



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill # HB0329

Title: Establish the Students with Special Needs Equal Opportunity Act

Primary Sponsor: Vinton, Sue

Status: As Introduced

- | | | |
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| <input checked="" type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
Expenditures:				
General Fund	\$99,400	\$94,959	\$126,964	\$128,918
General Fund Appropriation	\$75,000	\$30,000	\$0	\$0
State Special Revenue	\$0	\$780,817	\$789,911	\$800,782
Revenue:				
General Fund	\$0	\$0	\$0	\$0
General Fund Appropriation	\$0	\$0	\$0	\$0
State Special Revenue	\$0	\$780,817	\$789,911	\$800,782
Net Impact-General Fund Balance:	(\$174,400)	(\$124,959)	(\$126,964)	(\$128,918)

Description of fiscal impact: HB 329 establishes a Montana special needs education savings account program, establishes requirements and responsibilities, and provides an appropriation for administration of the program of \$75,000 in FY 2022 and \$30,000 in FY 2023. State general fund support required for this program is estimated to be \$194,359 for the 2023 biennium.

FISCAL ANALYSIS

Assumptions:

Office of Public Instruction (OPI)

- HB 329 creates a special needs equal opportunity education savings accounts for qualified students. The definition of a "qualified student" is a student between the ages of 5 and 18 (inclusive) who was counted during the previous school year for ANB funding and is not currently enrolled in the Montana School for the Deaf and Blind, Pine Hills Youth Correctional Facility, or the Riverside Youth Correctional Facility or is

eligible to enter a Montana state public school program. The student must also meet one of the following criteria:

- a. be identified as a student with a disability under Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq.
 - b. be identified as having a disability under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.
2. HB 329 directs the Superintendent of Public Instruction will determine the lesser of the “district student amount” for the resident district or the “statewide average district student amount” and notify the resident district of the qualifying student the amount to be distributed by the resident district to the Montana special needs equal opportunity education savings account on behalf of the qualifying student.
 3. To determine the “district student amount,” the district budget limitation ANB is divided into the district general fund adopted budget of the resident district as these are the basis for determining the district adopted budget. Those district student amounts range from \$5,849 to \$78,387 in 397 operating school districts.
 4. The same assumptions were made when calculating the “statewide average district student amount”. The following table shows the estimated calculated statewide amounts.

Fiscal Year	Total Estimated School District Adopted General Fund Budgets	ANB	Estimated Statewide Average District Student Amount
FY 2021	\$1,184,351,793	155,293	\$7,627
FY 2022	\$1,191,357,610	155,727	\$7,650
FY 2023	\$1,220,674,632	156,333	\$7,808
FY 2024	\$1,242,963,008	157,355	\$7,899
FY 2025	\$1,265,379,027	158,018	\$8,008

5. Based on the October 2019 official enrollment count, 19,645 students are identified as a student with disabilities attending 372 school districts.
6. Based on the October 2019 official enrollment count, 3,765 students are identified under Section 504 attending 391 school districts across the state. The table below is a trend for 504 data. As user guides have improved and trainings, webinars, and other learning opportunities have become available, schools are better identifying and providing information to OPI.

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
504 plans	1,427	1,626	1,723	2,047	2,742	2,742	3,765

7. It is estimated that 23,410 students would be eligible for the Montana special needs education savings account program.
8. The table below is the calculated maximum amount that could be redirected from public schools to the Montana special needs equal opportunity education savings account program based on eligible students multiplied by the statewide average district student amount or district student amount.

FY 2022	FY 2023	FY 2024	FY 2025
\$179,086,500	\$182,785,280	\$184,915,590	\$187,467,280

9. If all 23,410 eligible students participated in the education savings account, the program would transfer approximately \$180 million annually of state funding and local property tax dollars from the local public school districts to the education savings account. It is anticipated not more than 100 students would participate in the education savings accounts program.

10. Section 9 of HB 329 requires 95% of the money to be deposited in a private purpose trust fund to be used for participating students and 5% of the money to be deposited in the OPI special needs education savings state special revenue account established in the bill.
11. The following table represents the amount of funding anticipated in this fiscal note for participation of 100 students that would be received in the private purpose trust funds (95%) and in the OPI special needs education savings account (5%).

	FY 2022	FY 2023	FY 2024	FY 2025
Number of participants	0	100	100	100
Private Purpose (95%)	\$0	\$741,760	\$750,405	\$760,760
OPI Special Needs Ed Savings (5%)	\$0	\$39,040	\$39,495	\$40,040

12. Money deposited into a Montana special needs education savings account may be used on behalf of a student for tuition, fees, software, instructional materials, and a wide range of both curricular and extracurricular services. The account can also be used to pay tuition, books, online courses, or other fees for postsecondary institutions.
13. The funds from the educational savings account may not be spent on computer hardware, other technological devices, or transportation unless specific to the allowable costs outlined in section 5 of HB 329.
14. Education cooperative as used in HB 329 is assumed to be either a multi-district cooperative established under 20-3-363, MCA, or a full-service education cooperative established under 20-7-451, MCA.
15. HB 329 requires that OPI develop a private purpose trust fund that has a separate accounting for each participating student. Private-purpose trust funds are used to report trust arrangements, other than pension and investment trusts, under which principal and income benefit individuals, private organizations, or other governments.
16. HB 329 establishes a special needs education savings account for the OPI to cover costs associated with the implementation of the program. Five percent of the money transferred to OPI from the resident school districts would be deposited into the account and the account is statutorily appropriated in 17-7-502, MCA.
17. The OPI anticipates approximately 100 students would participate in the education savings account based on historic information of such accounts in other states.
18. The OPI projects that beginning in FY 2023 approximately \$7,808 each year would be deposited for each student participating in the special education savings accounts created by HB 329.
19. Under HB 329, a parent must notify the Superintendent of Public Instruction in the fall and again in the spring that their child would qualify for the education savings account. The parent signs the contract assurances listed in Section 4 of HB 329.
20. Each parent is required to submit to the Superintendent of Public Instruction copies of all expense receipts and account statements related to the savings account.
21. The Superintendent of Public Instruction must make information about the program available, conduct audits of accounts, remove parents who do not comply with the contract, and suspend accounts where applicable.
22. The Superintendent of Public Instruction is to collect quarterly reports of services provided to qualified students from qualified schools who enroll students participating in the special needs equal opportunity education savings account program.
23. The Superintendent of Public Instruction is required to establish rules necessary for administering the program and are limited to the following:
 - a. Establishment of no fewer than two time periods each year during which a student's parent may notify the superintendent of the parent's desire for the student to participate in the program. Each time period must be at least one month long. One period must be between September 1 and January 1, and the other time period must be between March 1 and June 1, based on the superintendent's determination of district and parent needs.
 - b. Verification of student eligibility pursuant to [section 3];

- c. Creation of a parent contract pursuant to [section 5];
 - d. notification of the resident school district of the student's participation in the program;
 - e. calculation of the amount of the district student amount and the statewide average district student amount;
 - f. auditing of expenditures for allowable educational services from a student's account; and
 - g. auditing of payments received by qualified schools under the program.
24. The OPI would use the 2021-22 school year to develop and implement the education savings account program. There are many details related to managing these savings accounts, including consumer financial protections and disclosure regulations, which need to be researched. Application processes and procedures would need to be put in place.
25. HB 329 appropriates \$75,000 to the OPI for FY 2022 and \$30,000 for FY 2023 for program administrative purposes. OPI expects it would need at least 2.00 FTE with legal, accounting, and financial skills to develop and operate this program at a cost of \$140,000 per year. The operating budget would be \$10,400, and indirect costs would total \$24,000 in FY 2022 and \$24,000 in FY 2023.
26. The program would have to include at least 445 students to participate in the program in future years to generate enough funding to cover the estimated costs of operating the program.
27. A legal review has been provided by the staff of the Legislative Services Division for HB 329.

Department of Revenue

28. It is assumed that the reimbursement provided for in section 4 of the bill would not be considered taxable income and would fall under the qualified scholarship exclusion in IRC 117.
29. With no changes in taxable incomes, the proposed changes made by HB 329 do not have any direct impact to the Department of Revenue.

Montana School for the Deaf and Blind (MSDB)

30. MSDB students are exempt under the definition of a “Qualified Student”.
31. MSDB does not receive BASE aid payments or ANB calculation payments.
32. The number of students attending MSDB could decline if parents opted to use the savings account to purchase specialized services via this program. The financial burden would then fall on the students’ resident districts.

Office of Public Instruction

33. HB 329, Section 9(7)(a) directs the Office of Public Instruction will create a “special needs equal opportunity ESA administration account” within the state special revenue fund. Section 9(7)(9)(b) states that the account is to be statutorily appropriated. The following table answers questions per 17-1-508(2), MCA.

	<u>YES</u>	<u>NO</u>
a. The money is from a continuing, reliable, and estimable source.	X	
b. The use of the appropriation or the expenditure occurrence is predictable and reliable.	X	
c. The authority exists elsewhere.		X
d. An alternative appropriation method is available, practical, or effective.	X	
e. It appropriates state general fund money for purposes other than paying for emergency services.		X
f. The money is used for general purposes.		X
g. The legislature wishes to review expenditure and appropriation levels each biennium.	X	
h. An expenditure cap and sunset date are excluded.	X	

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
FTE	2.00	2.00	2.00	2.00
<u>Expenditures:</u>				
Personal Services	\$140,000	\$140,000	\$142,100	\$144,232
Operating Expenses	\$34,400	\$24,000	\$24,360	\$24,725
Equipment	\$0	\$741,776	\$750,415	\$760,743
TOTAL Expenditures	<u>\$174,400</u>	<u>\$905,776</u>	<u>\$916,875</u>	<u>\$929,700</u>
<u>Funding of Expenditures:</u>				
General Fund (01)	\$99,400	\$94,959	\$126,964	\$128,918
General Fund (01) Appropriation	\$75,000	\$30,000	\$0	\$0
State Special Revenue (02)	\$0	\$39,041	\$39,496	\$40,039
Private Purpose Trust Funds (09)	\$0	\$741,776	\$750,415	\$760,743
TOTAL Funding of Exp.	<u>\$174,400</u>	<u>\$905,776</u>	<u>\$916,875</u>	<u>\$929,700</u>
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
General Fund (01) Appropriation	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$39,041	\$39,496	\$40,039
Private Purpose Trust Funds (09)	\$0	\$741,776	\$750,415	\$760,743
TOTAL Revenues	<u>\$0</u>	<u>\$780,817</u>	<u>\$789,911</u>	<u>\$800,782</u>
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	(\$99,400)	(\$94,959)	(\$126,964)	(\$128,918)
General Fund (01) Appropriation	(\$75,000)	(\$30,000)	\$0	\$0
State Special Revenue (02)	\$0	\$0	\$0	\$0
Private Purpose Trust Funds (09)	\$0	\$0	\$0	\$0

Effect on County or Other Local Revenues or Expenditures:

1. School districts may adopt higher general fund budgets to offset the loss of funds related to this bill. In consideration of these increases and not allowing budgets to surpass the highest allowable budget, it is estimated that property taxes could increase.
2. The difference in the potential increase needed to provide for the qualified schools could be greater than the potential schools could vote property tax increases to offset the loss leading to potential budget shortfalls. (Approximately 90% of expenditures go to teacher pay and the cost is the same with 10 or 9 students in the classroom).
3. For every student in this program, a resident district would be required to contribute \$7,808 to the special needs education savings account. This funding would not be budgeted and would reduce funding for other educational expenditures. If all 23,410 eligible students participated in the education savings account, the program would transfer approximately \$180 million annually of state funding and local property tax dollars to the education savings account.

Technical Notes:

1. Article X, section 6 of the Montana Constitution prohibits aid to sectarian schools. Specifically, “The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.” It is likely that the provisions of HB 322 violate this section of the Montana Constitution.
2. The earliest that the program would become operational is the 2022-23 school year. Language should be added to the bill to recognize that the details of setting up the education savings account program will take planning and development time.
3. The bill does not indicate whether the education savings accounts could be invested to earn interest.
4. The bill does not appropriate funds from the “special needs equal opportunity education savings trust” for parental reimbursement payments. Thus, there is no authority for reimbursement payments by any agency to parents. Appropriations would need to be included in HB 2 or another appropriation mechanism.
5. HB 322 attempts to bypass the requirements of the Individuals with Disabilities (IDEA) by waiving the Free Appropriate Public Education (FAPE) requirement (page 4 section 5(b).) but the requirement that the student continue to be enrolled in the district of residence until age 19 for ANB purposes means that the IDEA requirement for providing FAPE for all enrolled students continues. Under this circumstance the parent could take the student to a program that cannot meet the child’s needs, and then file a complaint against the school district for not ensuring that the child received FAPE.
6. Limiting the list of protected classes (“Qualified school does not discriminate on the basis of race, color, or national origin”) omits protections provided in the Montana Human Rights Act in 49-2-307: It is unlawful for a public or private educational institution to exclude from admission any student on the basis of “race, creed, religion, sex, marital status, color, age, physical disability, or national origin or because of mental disability, unless based on reasonable grounds.”
7. Page 2, line 17, states that to qualify for an education savings account, a student must have been counted in the previous year for purposes of school district ANB funding. Language is needed for HB 329 to indicate the amount of the education savings account payment allocated to a student who was enrolled on a part-time basis.
8. Schools receive state special education monies to serve students in the district. If a substantial portion of these state special education monies follow students to a nonpublic school, the state could have difficulty meeting federal maintenance of effort requirements.
9. The district student amount and the statewide average district student amount are not finalized until early November. The withholdings from BASE aid payments would be estimates in August through October.
9. Section 4(1)(k) makes payments to a cooperative educational program an allowable expense of the program. In Montana this is not possible for public school special education cooperatives. A school district may contract with other school districts to form a cooperative. Elementary and high school districts are defined in 20-6-101, MCA. This does not appear to allow a private school or other entity to enter into a cooperative agreement to provide educational services.
10. It is possible that the continued payment of state aid based upon a child in this program being counted as ANB may infer the child is still enrolled in the district. In order for a student to be “parentally placed” in a private school, the student cannot be enrolled in the public school district. Under 20-9-311, MCA, ANB is based on enrollment counts taken twice a year. If a student is not enrolled, they would not be counted, and the district would not receive funding for that student. If counted for ANB the child is apparently enrolled and the district is responsible for free and appropriate education (FAPE) and the parent cannot relieve the district of this responsibility. A legal review of this issue may be necessary.

- 11. If the student must be enrolled in a public school to use this savings account, the public school is responsible for FAPE. At the time the child enters the program, the school district would need to ensure the private school is providing FAPE and the public school is held liable through IDEA and state rule if that is not true.

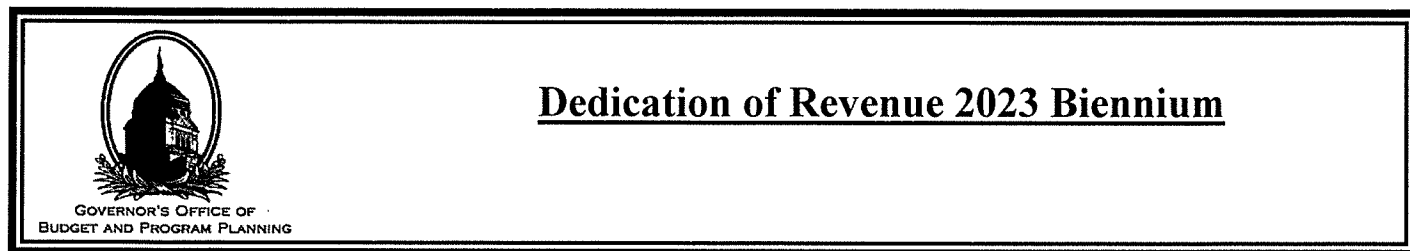
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Sponsor's Initials

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Budget Director's Initials

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Date



17-1-507, MCA.

- a) **Are there persons or entities that benefit from this dedicated revenue that do not pay? (please explain)**

Yes, school districts pay into the account and the Office of Public Instruction administrative costs are paid from the fund for administration of the Montana special needs equal opportunity education savings account program.

- b) **What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?**

The revenue is segregated for a specific purpose.

- c) **Is the source of revenue relevant to current use of the funds and adequate to fund the program activity that is intended? Yes / No (if no, explain)**

There are no current state funds being used. These funds will be paid by school districts to administer the program in HB 329.

- d) **Does the need for this state special revenue provision still exist? ___ Yes ___ No (Explain)**

Yes, this is dedicated to the purposes of the Montana special needs equal opportunity education savings account program and administration of the funds.

- e) **Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please Explain)**

No, the state special revenue will be accounted for in the SABHRS, state accounting system.

- f) **Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please Explain)**

Yes, the revenue is derived from legislative policy to provide additional state support for education.

- g) **How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please Explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)**

Use of a new fund ensures that cash is deposited and available before expenses are incurred. Expenditure tracking and analysis is more efficient when they are isolated in a specific fund.