



AN ACT REVISING SCHOOL FUNDING LAWS RELATED TO ENROLLMENT INCREASES; PROVIDING FOR SIGNIFICANT ENROLLMENT INCREASE PAYMENTS BASED ON THE OCTOBER ENROLLMENT COUNT; ELIMINATING THE CURRENT MECHANISM FOR ANTICIPATED UNUSUAL ENROLLMENT INCREASES; AMENDING SECTIONS 20-3-106, 20-9-141, 20-9-166, 20-9-308, 20-9-310, AND 20-9-313, MCA; AMENDING SECTION 11, CHAPTER 551, LAWS OF 2021; REPEALING SECTION 20-9-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-3-106, MCA, is amended to read:

"20-3-106. Supervision of schools -- powers and duties. The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

- (1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;
- (2) issue, renew, or deny teacher certification and emergency authorizations of employment;
- (3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;
- (4) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;
- (5) approve or disapprove school isolation within the limitations prescribed by 20-9-302;
- (6) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

- (7) establish a system of communication for calculating joint district revenue in accordance with the provisions of 20-9-151;
- (8) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;
- (9) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);
- (10) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(6) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;
- (11) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and ~~20-9-314~~;
- (12) distribute BASE aid and special education allowable cost payments in support of the BASE funding program in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;
- (13) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;
- (14) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;
- (15) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;
- (16) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;
- (17) recommend standards of accreditation for all schools to the board of public education in accordance with the provisions of 20-7-101;
- (18) evaluate compliance with the accreditation standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-102;
- (19) collect and maintain a file of curriculum guides and assist schools with instructional programs in

accordance with the provisions of 20-7-113 and 20-7-114;

(20) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(21) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(22) as the governing agent and executive officer of the state of Montana for K-12 career and vocational/technical education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(23) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(24) administer the traffic education program in accordance with the provisions of 20-7-502;

(25) administer the school food services program in accordance with the provisions of 20-10-201 through 20-10-203;

(26) review school building plans and specifications in accordance with the provisions of 20-6-622;

(27) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

(28) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties all school district student assessment data for a test required by the board of public education;

(29) administer the distribution of guaranteed tax base aid in accordance with 20-9-366 through 20-9-369; and

(30) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

Section 2. Section 20-9-141, MCA, is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the

following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(B) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid;

(iii) anticipated oil and natural gas production taxes;

(iv) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703;

(v) if applicable, a coal-fired generating unit closure mitigation block grant as provided in 20-9-638;

and

(vi) any portion of the increment remitted to a school district under 7-15-4286(3) or 7-15-4291 used to reduce the BASE levy budget.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Determine the sum of:

(i) any amount remaining after the determination in subsection (1)(c);

(ii) any portion of the increment remitted to a school district under 7-15-4286(3) or 7-15-4291 used to reduce the over-BASE budget levy; and

(iii) any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2).

(e) Subtract the amount determined in subsection (1)(d) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by:

~~(a)~~ dividing the amount determined in subsection (1)(c) by the sum of:

~~(i)(a)~~ the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

~~(i)(b)~~ the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000; ~~and~~

~~(b)~~ if applicable, subtracting the result of dividing any overpayment of the BASE budget levy in the prior year calculated as provided in 20-9-314 (6)(b)(ii) that is available for reduction of the district's BASE budget levy by the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703."

Section 3. Section 20-9-166, MCA, is amended to read:

"20-9-166. (Temporary) Financial support for transportation budget amendments and ~~and covid-19-related significant enrollment increases.~~ (1) Whenever a final budget amendment has been adopted for the transportation fund, the trustees may apply to the superintendent of public instruction for an increased payment for state transportation reimbursement. The superintendent of public instruction shall adopt rules for the application for state transportation reimbursement. The superintendent of public instruction shall approve or disapprove each application for state transportation reimbursement. When the superintendent of public instruction approves an application, the superintendent of public instruction shall determine the additional amount of state transportation reimbursement that will be made available to the applicant district because of ~~the increase in enrollment or additional pupil transportation obligations.~~ The superintendent of public instruction shall notify the applicant district of the superintendent's approval or disapproval and, in the event of approval, the amount of additional state aid that will be made available for the transportation fund. The superintendent of public instruction shall disburse the state aid to the eligible district at the time the next regular state aid payment is made.

(2) (a) ~~Any increase in enrollment for a district at the October enrollment count for fiscal years 2022 and 2023 compared to the enrollment count of the district in October of the immediately preceding fiscal year is declared by the legislature to be related to the uncertainty created by covid-19 and qualifies the district for additional financial support as described in this subsection (2). The legislature also declares that the state's fiscal challenges in the biennium beginning July 1, 2021, are a direct result of the economic downturn resulting from covid-19~~ When a district experiences an enrollment increase based on the October enrollment count, the district may be eligible for a significant enrollment increase payment in support of the district's general fund as described in this subsection (2).

(b) ~~Subject to reduction under subsection (2)(c), the amount of additional financial support~~ To be eligible for a significant enrollment increase payment, a district's October enrollment count in the current year converted to ANB must exceed the district's budget limit ANB for the school fiscal year 3 years prior by 110% or more. The significant enrollment increase payment the district qualifies for must be calculated by the superintendent of public instruction no later than December 1 following the October enrollment count as the difference between: the district's BASE budget for that fiscal year and the amount of the district's BASE budget

(i) an amount equal to 80% of the district's total per-ANB entitlement for that fiscal year if the district's budget limit ANB for that fiscal year was calculated using the district's actual October enrollment count in the current school year in place of the average of the preceding year's October and February enrollment counts minus the absorption factor; and

(ii) 80% of the district's total per-ANB entitlement for that fiscal year.

~~(c) (i) The total amount of the additional financial support for a district must be reduced by 10% of the Title I allocation and any portion of an amount allocated on a per-quality-educator basis to the district as of the enrollment count date pursuant to:~~

~~(A) the Coronavirus Response and Relief Supplemental Appropriations Act of 2021; and~~

~~(B) the American Rescue Plan Act of 2021, except for the 20% portion of the funds specifically earmarked and restricted to spending on learning loss programs.~~

~~(ii) The superintendent of public instruction shall consider the 10% amount calculated under this subsection (2)(c) as an expense eligible for reimbursement under catalog of federal domestic assistance number 84.425D.~~

~~(d) The only increases in financial support resulting from increased enrollment are the increases described in this subsection (2). The superintendent of public instruction shall allocate the additional financial support to a qualifying district, first from federal money appropriated by the legislature for this purpose and if necessary, from the BASE aid appropriation in House Bill No. 2.~~

(c) (i) The superintendent of public instruction shall notify a district of the district's eligibility for a significant enrollment increase payment and the amount by December 15.

(ii) The trustees of the district shall determine at the next scheduled board meeting and no later than March 1 whether to accept the full or a partial amount of the payment and adopt a general fund budget amendment for any accepted amount. A budget amendment under this section must be made by resolution of the trustees of the district and is not subject to the requirements of other budget amendments under Title 20, chapter 9, part 1. The trustees shall provide a copy of the budget amendment to the superintendent of public instruction in a manner determined by the superintendent of public instruction.

(iii) On receiving a copy of the budget amendment, the superintendent of public instruction shall disburse from the BASE aid appropriation in House Bill No. 2 the amount of the accepted payment distributed

with the remaining direct state aid payments for that fiscal year pursuant to 20-9-344.

~~(e)~~(d) A district receiving additional financial support under this subsection (2) shall deposit the money in the district's ~~miscellaneous programs~~ general fund and use it to address costs associated with the enrollment increase.

(e) For the purposes of this subsection (2), "absorption factor" means an ANB amount rounded to the nearest whole number equal to the sum of 5 ANB plus 3% of the district's budget limit ANB for that fiscal year. ~~(Terminates June 30, 2023--sec. 11, Ch. 551, L. 2021.)~~

~~**20-9-166. (Effective July 1, 2023) State financial aid for budget amendments.** Whenever a final budget amendment has been adopted for the general fund to finance the cost of an amendment resulting from increased enrollment, the trustees may apply to the superintendent of public instruction for an increased payment from the state for direct state aid. Whenever a final budget amendment has been adopted for the transportation fund, the trustees may apply to the superintendent of public instruction for an increased payment for state transportation reimbursement. The superintendent of public instruction shall adopt rules for the application. The superintendent of public instruction shall approve or disapprove each application for increased state aid made in accordance with 20-9-314 and this section. When the superintendent of public instruction approves an application, the superintendent of public instruction shall determine the additional amount of direct state aid or the state transportation reimbursement that will be made available to the applicant district because of the increase in enrollment or additional pupil transportation obligations. The superintendent of public instruction shall notify the applicant district of the superintendent's approval or disapproval and, in the event of approval, the amount of additional state aid that will be made available for the general fund or the transportation fund. The superintendent of public instruction shall disburse the state aid to the eligible district at the time the next regular state aid payment is made. "~~

Section 4. Section 20-9-308, MCA, is amended to read:

"20-9-308. BASE budgets and general fund budget limits. (1)~~(a)~~ The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district. ~~Except as provided in subsection (1)(b), the~~ The trustees of a district may adopt a general fund budget up to the greater of:

~~(i)(a)~~ the current year maximum general fund budget; or

~~(i)(b)~~ the previous year's general fund budget plus any increase in direct state aid for the basic and per-ANB entitlements and any increases in state funding of the data-for-achievement payment under 20-9-325 and in the general fund payments in 20-9-327 through 20-9-330.

~~(b) When anticipated enrollment increases under 20-9-314 are not realized in the previous year, the trustees may adopt a general fund budget up to the greater of:~~

~~(i) the current year maximum general fund budget; or~~

~~(ii) the previous year's adopted general fund budget recalculated to reflect the previous year's actual enrollment pursuant to 20-9-314 (6)(b) plus any increase in direct state aid for the basic and per-ANB entitlements and any increases in state funding of the data-for-achievement payment under 20-9-325 and in the general fund payments in 20-9-327 through 20-9-330.~~

(2) (a) Except as provided in subsection (2)(b), whenever the trustees of a district propose to adopt a general fund budget that exceeds the BASE budget for the district and propose to increase the over-BASE budget levy over the highest revenue previously authorized by the electors of the district or imposed by the district in any of the previous 5 years to support the general fund budget, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

(b) The intent of this section is to increase the flexibility and efficiency of elected school boards without increasing school district property taxes. In furtherance of this intent and provided that budget limitations otherwise specified in law are not exceeded, the trustees of a district may increase the district's over-BASE budget levy without a vote if the board of trustees reduces nonvoted property tax levies authorized by law to be imposed by action of the trustees of the district by at least as much as the amount by which the over-BASE budget levy is increased. The ongoing authority for any nonvoted increase in the over-BASE budget levy imposed under this subsection (2)(b) must be decreased in future years to the extent that the trustees of the district impose any increase in other nonvoted property tax levies.

(3) The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

- (c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;
 - (d) payments in support of special education programs under the provisions of 20-9-321;
 - (e) nonlevy revenue, as provided in 20-9-141; and
 - (f) a BASE budget levy on the taxable value of all property within the district.
- (4) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141."

Section 5. Section 20-9-310, MCA, is amended to read:

"20-9-310. Oil and natural gas production taxes for school districts -- allocation and limits. (1)

Except as provided in subsection (5), the maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget, determined in accordance with 20-9-308.

(2) Upon receipt of school district budget reports required under 20-9-134, the superintendent of public instruction shall provide the department of revenue with a list reporting the maximum general fund budget for each school district.

(3) Except as provided by 15-36-332(9), the department of revenue shall make the full quarterly distribution of oil and natural gas production taxes as required under 15-36-332(6) until the amount distributed reaches the limitation in subsection (1) of this section. The department of revenue shall deposit any amount exceeding the limitation in subsection (1) in the guarantee account provided for in 20-9-622.

(4) (a) Subject to the limitation in subsection (1) and the conditions in subsection (4)(b), the trustees shall budget and allocate the oil and natural gas production taxes anticipated by the district in any budgeted fund at the discretion of the trustees. Oil and natural gas production taxes allocated to the district general fund may be applied to the BASE or over-BASE portions of the general fund budget at the discretion of the trustees.

(b) Except as provided in subsection (4)(c), if the trustees apply an amount less than 12.5% of the total oil and natural gas production taxes received by the district in the prior school fiscal year to the district's general fund BASE budget for the upcoming school fiscal year, then:

(i) the trustees shall levy the number of mills required to raise an amount equal to the difference between 12.5% of the oil and natural gas production taxes received by the district in the prior school fiscal year and the amount of oil and natural gas production taxes the trustees budget in the district's general fund BASE budget for the upcoming school fiscal year;

(ii) the mills levied under subsection (4)(b)(i) are not eligible for the guaranteed tax base subsidy under the provisions of 20-9-366 through 20-9-369; and

(iii) the general fund BASE budget levy requirement calculated in 20-9-141 must be calculated as though the trustees budgeted 12.5% of the oil and natural gas production taxes received by the district in the prior year and the number of mills calculated in subsection (4)(b)(i) must be added to the number of mills calculated in 20-9-141(2).

(c) The provisions of subsection (4)(b) do not apply to the following:

(i) a district that has a maximum general fund budget of less than \$1 million;

(ii) a district whose oil and natural gas revenue combined with its adopted general fund budget totals 105% or less of its maximum general fund budget;

(iii) a district that has a maximum general fund budget of \$1 million or more and ~~has had an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314~~ was eligible for a significant enrollment increase payment pursuant to 20-9-166 in the fiscal year immediately preceding the fiscal year to which the provisions of this subsection (4) would otherwise apply; or

(iv) a district that has issued outstanding oil and natural gas revenue bonds. Funds received pursuant to this section must first be applied by the district to payment of debt service obligations for oil and natural gas revenue bonds for the next 12-month period.

(5) (a) The limit on oil and natural gas production taxes that a school district may retain under subsection (1) must be increased for any school district ~~with an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314~~ that was eligible for a significant enrollment increase payment pursuant to 20-9-166. The increase in the limit on oil and natural gas production taxes that a school district may retain under subsection (1) applies in the fiscal year immediately following the fiscal year in which ~~the office of public instruction has approved the district's unusual enrollment increase~~ the district was eligible and must be calculated by multiplying \$45,000 times each additional ANB ~~approved by the~~

~~superintendent of public instruction as provided in 20-9-314 used to calculate the significant enrollment increase payment pursuant to 20-9-166, including the absorption factor reduction.~~

(b) For a district in nonoperating status under 20-9-505, the maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget in the district's most recent operating year, determined in accordance with 20-9-308.

(6) In any year in which the actual oil and natural gas production taxes received by a school district are less than 50% of the total oil and natural gas production taxes received by the district in the prior year, the district may transfer money from any budgeted fund to its general fund in an amount not to exceed the amount of the shortfall."

Section 6. Section 20-9-313, MCA, is amended to read:

"20-9-313. Circumstances under which regular average number belonging may be increased.

(1) The average number belonging of a school, calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

(a) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number belonging for the school must be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

(b) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number belonging for the high school must be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend the high school.

(c) a district anticipates an increase in the average number belonging due to the closing of a private or public school in the district or a neighboring district. The estimated increase in average number belonging must be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

~~(d) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging must be based on estimates of increased enrollment approved by the superintendent of public instruction and must be computed in the manner prescribed by 20-9-314.~~

~~(e)~~(d) for the initial year of operation of a kindergarten program established under 20-7-117(1), the ANB to be used for budget purposes is:

(i) one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction, for the purpose of implementing a half-time kindergarten program as provided in 20-1-301; or

(ii) the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction, for the purpose of implementing a full-time kindergarten program as provided in 20-1-301; or

~~(f)~~(e) a high school district provides early graduation for a student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment. The increase must be established by the trustees as though the student had attended to the end of the school fiscal year and must be approved, disapproved, or adjusted by the superintendent of public instruction.

(2) This section does not apply to the expansion of a half-time kindergarten program to a full-time kindergarten program."

Section 7. Section 11, Chapter 551, Laws of 2021, is amended to read:

"Section 11. Termination. [~~Section 1 and 3~~ Section 1] ~~terminate~~ terminates June 30, 2023."

Section 8. Repealer. The following section of the Montana Code Annotated is repealed:

20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase.

Section 9. Effective date. [This act] is effective on passage and approval.

Section 10. Applicability. [This act] applies to school fiscal years beginning on or after July 1, 2023.

- END -

I hereby certify that the within bill,
HB 36, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2023.

President of the Senate

Signed this _____ day
of _____, 2023.

HOUSE BILL NO. 36

INTRODUCED BY D. BEDEY

BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE

AN ACT REVISING SCHOOL FUNDING LAWS RELATED TO ENROLLMENT INCREASES; PROVIDING FOR SIGNIFICANT ENROLLMENT INCREASE PAYMENTS BASED ON THE OCTOBER ENROLLMENT COUNT; ELIMINATING THE CURRENT MECHANISM FOR ANTICIPATED UNUSUAL ENROLLMENT INCREASES; AMENDING SECTIONS 20-3-106, 20-9-141, 20-9-166, 20-9-308, 20-9-310, AND 20-9-313, MCA; AMENDING SECTION 11, CHAPTER 551, LAWS OF 2021; REPEALING SECTION 20-9-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.