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Montana Association of School Business Officials | Montana Federation of Public Employees | Montana Quality Education Coalition | Montana Rural Education Association | Montana School Boards Association | School Administrators of Montana

Statement Opposing *HB351 Working Draft Revisions*

June 16, 2020

The partners of the Montana Public Education Center (MT-PEC) oppose the *HB351 Working Draft Revisions* (PD 0002) establishing a bureaucratic structure charged with judging the merits of school district proposals through a competitive grant program.

HB 351, as passed by the 2019 Montana Legislature, defines “transformational learning” as:
A flexible system of pupil-centered learning that is designed to develop the full educational potential of each pupil that:

- i. is customized to address each pupil's strengths, needs, and interests;*
- ii. includes continued focus on each pupil's proficiency over content; and*
- iii. actively engages each pupil in determining what, how, when, and where each pupil learns.*

Creating a competitive grant program would fundamentally distort the intent and goals of transformational learning, it would create a monolithic system of evaluation that is neither flexible nor customized to meet the needs each individual student.

The overwhelming interest in accessing transformational learning aid has further exemplified the demand from the field for the flexibility and incentives to develop innovative programming that meets students where they are and builds on student interests, backgrounds and strengths.

MT-PEC has remained engaged throughout the inaugural year of transformational learning and has provided solutions to meet the demand for this program. Attached you will find the amendments provided to Legislative staff and the Office of Public Instruction in February 2020.

These solutions address the challenges presented by the overwhelming demand for transformational learning aid and advanced opportunity aid (HB 387). The amendments would remove the rule making obligation for the board of public education in terms of deadlines for submission. They would also replace a limited appropriation and anticipated scarcity of resources in both bills with an appropriation process backed up by both the use of leftover appropriations from other K-12 BASE aid elements and the supplemental appropriations process.

The partners of MT-PEC urge the Education Interim Committee to oppose the *HB351 Working Draft Revisions* (PD 0022) and adopt the solutions offered by MT-PEC in the attached document.

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House Bill 351 and HB 387 Amendments for 2021 Session

Section 1. Section 20-7-1602 is amended to read as follows:

- “20-7-1602. ~~(Temporary)~~ Incentives for creation of transformational learning programs.** (1)
- (a) A school district as defined in **20-6-101** that satisfies the conditions of subsection (2) and is qualified by the board of public education pursuant to subsection (3) is eligible for a 4-consecutive-year provision of the transitional funding and flexibilities in subsections (4) and (5).
- (b) A school district may be qualified by the board of public education for no more than one 4-consecutive-year provision of transitional funding and flexibilities in any 8-year period.
- (2) To qualify for the transitional funding and flexibilities in subsections (4) and (5), the board of trustees of a district shall submit an application that has been approved by motion of the board of trustees and signed by the presiding officer to the board of public education for approval of a transformational learning program on a form provided by the superintendent of public instruction. The school board's application must:
- (a) identify the number of full-time equivalent educators meeting the criteria of **20-9-327(3)** who will participate in the district's transformational learning program, with full-time equivalence calculated and reported by the district based on the planned portion of each qualifying educator's full-time equivalent assignment that is dedicated to the district's transformational learning program;
- (b) include the district's definition of proficiency within the meaning of that term as used in **20-9-311(4)(d)**. The definition must not require seat time as a condition or other element of determining proficiency. The definition must be incorporated in the district's policies and must be used for purposes of determining content and course mastery and other progress, promotion from grade to grade, grades, and graduation for pupils enrolled in the district's transformational learning program.
- (c) include a strategic plan with appropriate planning horizons for implementation, measurable objectives to ensure accountability, and planned strategies to:
- (i) develop a transformational learning plan for each participating pupil that honors individual interests, passions, strengths, needs, and culture and that is rooted in relationships with teachers, family, peers, and community members;
- (ii) embed community-based, experiential, online, and work-based learning opportunities and foster a learning environment that incorporates both face-to-face and virtual connections;
- (iii) provide effective professional development to assist employees in transitioning to a transformational learning model; and
- (iv) ensure equality of educational opportunity to participate by all pupils of the district.
- (3) On an annual basis, the board of public education shall:
- (a) establish and notify school districts of **by rule** the opening and closing dates for receipt of applications and annual reports;
- (b) qualify districts that submit an application meeting the requirements of subsection (2) for the funding in subsection (4) and the flexibilities in subsection (5) ~~until the annual appropriation is exhausted, after which further applications, including first-time applications and annual reports requesting an expansion of a previously approved plan, are to be deferred for consideration in a subsequent year, in the order of date received, if and when additional funds become available for distribution;~~
- (c) require each participating school district to submit an annual report demonstrating continued qualification for funding under this section and including a report of progress toward measurable

objectives under the school district's transformational learning plan. The school district shall include any decrease or requested increase in the number of participating full-time equivalent educators under subsection (2)(a) for adjustments to its funding. ~~Any increase in funding based on requested increased levels of participation under subsection (2)(a) must be determined in the order of date received among all first-time applications and annual reports requesting an expansion of a previously approved plan and must be contingent on the availability of funds within any appropriation of the legislature. An application deferred for consideration in a subsequent year due to lack of funding must be annually updated each year after more than 1 full fiscal year has passed from the date of original submission of the application in order for the application to retain its priority by original date received.~~

(d) on or before September 15 of even-numbered years, report to the education interim committee on the progress made by districts operating under approved transformational learning plans.

(4) (a) Except as provided in subsection (4)(d), for a period of 4 consecutive fiscal years following the fiscal year in which a district is qualified by the board of public education and contingent on continued compliance with annual reporting requirements under subsection (3), the superintendent of public instruction shall provide a transformational learning aid payment to the district equivalent to 50% of the quality educator payment defined in **20-9-306** from the immediate prior fiscal year multiplied by the number of the district's full-time equivalent educators reported under subsection (2)(a) of this section.

(b) The payment under this subsection (4) must be distributed directly to the school district's flexibility fund established under **20-9-543** no later than June 30 of fiscal year 2020 and by October 1 of each year beginning fiscal year 2021 by the superintendent of public instruction. The money must be expended by the district only for the purposes set forth in the district's approved transformational learning program.

~~(c) For fiscal years 2020 and 2021, a school district may not receive more than 25% of the total amount of payments made under this subsection.~~

~~(d) Applications qualified by the board of public education in fiscal year 2020 must be funded beginning in fiscal year 2020.~~

(5) During each year that a school district remains qualified for funding under subsection (4), the district's trustees may:

(a) if the obligations of transparency set forth in **20-9-116** are met, levy an annual permissive property tax not to exceed 100% of any funds distributed to the district under subsection (4). Proceeds of the levy must be deposited in the district's flexibility fund established under **20-9-543** and must be expended by the district only for the purposes of the district's approved transformational learning plan.

(b) transfer state or local revenue from any budgeted or nonbudgeted fund, other than the debt service fund or retirement fund, to the district's flexibility fund.

(6) (a) Any funds transferred pursuant to subsection (5)(b) may be expended by the district solely for the purposes of implementing the district's approved transformational learning plan. Any transfers of funds are not considered expenditures to be applied against budget authority.

(b) Any transfers that are not expended for the purposes of implementing the district's approved transformational learning plan within 2 full school fiscal years after the funds are transferred must be transferred back to the originating fund from which the revenue was transferred.

(c) The intent of subsection (5)(b) and this subsection (6) is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the amount of funds transferred.

(7) The present law base calculated for K-12 local assistance under Title 17, chapter 7, part 1, must include transformational learning aid as defined in subsection (8).

(8) If the money available for transformational learning aid is not the result of a reduction in spending under 17-7-140 and is not sufficient to provide the transformational learning aid to all districts qualifying for such aid as determined under this section, the superintendent of public instruction shall request the budget director to submit a request for a supplemental appropriation in the second year of the biennium that is sufficient to complete the funding of transformational learning aid for the elementary and high school districts for the current biennium.

~~(8)~~ **(9)** For the purposes of this title, the following definitions apply:

(a) "Transformational learning" means a flexible system of pupil-centered learning that is designed to develop the full educational potential of each pupil that:

- (i) is customized to address each pupil's strengths, needs, and interests;
- (ii) includes continued focus on each pupil's proficiency over content; and
- (iii) actively engages each pupil in determining what, how, when, and where each pupil learns.

(b) "Transformational learning aid" means 50% of the quality educator payment defined in **20-9-306** multiplied by:

(i) for fiscal year 2020, 5% of the statewide number of full-time equivalent educators from fiscal year 2019 calculated as provided in **20-9-327**;

(ii) for fiscal year 2021, 7.5% of the statewide number of full-time equivalent educators from fiscal year 2020 calculated as provided in **20-9-327**; and

(iii) for fiscal year 2022 and subsequent fiscal years, 10% of the statewide number of full-time equivalent educators from the fiscal year immediately preceding the year to which distribution of transformational aid applies calculated as provided in **20-9-327**. ~~(Terminates June 30, 2027—sec. 7, Ch. 402, L. 2019.)~~

Section 2. Section 17-7-301 is amended to read as follows:

17-7-301. Authorization to expend during first year of biennium from appropriation for second year -- proposed supplemental appropriation defined -- limit on second-year expenditures. (1) An agency may make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium if authorized by the general appropriations act. An agency that is not authorized in the general appropriations act [or in Chapter 415, Laws of 2019,] to make first-year expenditures may be granted spending authorization by the approving authority upon submission and approval of a proposed supplemental appropriation to the approving authority. The proposal submitted to the approving authority must include a plan for reducing expenditures in the second year of the biennium that allows the agency to contain expenditures within appropriations. If the approving authority finds that, due to an unforeseen and unanticipated emergency, the amount actually appropriated for the first fiscal year of the biennium with all other income will be insufficient for the operation and maintenance of the agency during the year for which the appropriation was made, the approving authority shall, after careful study and examination of the request and upon review of the recommendation for executive branch proposals by the budget director, submit the proposed supplemental appropriation to the legislative fiscal analyst.

(2) The plan for reducing expenditures required by subsection (1) is not required if the proposed supplemental appropriation is:

- (a) due to an unforeseen and unanticipated emergency for fire suppression;

(b) requested by the superintendent of public instruction, in accordance with the provisions of **20-9-351, 20-7-1506, or 20-7-1602**, and is to complete the state's funding of guaranteed tax base aid, transportation aid, **transformational learning aid, advanced opportunity aid** or equalization aid to elementary and secondary schools for the current biennium;

(c) requested by the department of public health and human services when the expenditures for the approved level of medicaid benefits exceed the level of the appropriations for medicaid benefits;

(d) requested by the department of public health and human services when the expenditures for the approved level of medicaid expansion benefits exceed the level of the appropriations for medicaid expansion benefits; or

(e) requested by the attorney general and:

(i) is to pay the costs associated with litigation in which the department of justice is required to provide representation to the state of Montana; or

(ii) in accordance with the provisions of **7-32-2242**, is to pay costs for which the department of justice is responsible for confinement of an arrested person in a detention center.

(3) Upon receipt of the recommendation of the legislative finance committee pursuant to **17-7-311**, the approving authority may authorize an expenditure during the first fiscal year of the biennium to be made from the appropriation for the second fiscal year of the biennium. Except as provided in subsection (2), the approving authority shall require the agency to implement the plan for reducing expenditures in the second year of the biennium that contains agency expenditures within appropriations.

(4) The agency may expend the amount authorized by the approving authority only for the purposes specified in the authorization.

(5) The approving authority shall report to the next legislature in a special section of the budget the amounts expended as a result of all authorizations granted by the approving authority and shall request that any necessary supplemental appropriation bills be passed.

(6) As used in this part, "proposed supplemental appropriation" means an application for authorization to make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium.

(7) (a) Except as provided in subsections (2) and (7)(b), an agency may not make expenditures in the second year of the biennium that, if carried on for the full year, will require a deficiency appropriation, commonly referred to as a "supplemental appropriation".

(b) An agency shall prepare and, to the extent feasible, implement a plan for reducing expenditures in the second year of the biennium that contains agency expenditures within appropriations. The approving authority is responsible for ensuring the implementation of the plan. If, in the second year of a biennium, mandated expenditures that are required by state or federal law will cause an agency to exceed appropriations or available funds, the agency shall reduce all nonmandated expenditures pursuant to the plan in order to reduce to the greatest extent possible the expenditures in excess of appropriations or funding. An agency may not transfer funds between fund types in order to implement a plan. (*Subsection (2)(c) terminates June 30, 2021--sec. 13, Ch. 393, L. 2019; bracketed language in subsection (1) and subsection (2)(d) terminate June 30, 2021--sec. 48, Ch. 415, L. 2019.*)

Section 3. Section 17-7-304 is amended to read as follows:

17-7-304. Disposal of unexpended appropriations. (1) All money appropriated for any specific purpose except **for unexpended money appropriated for K-12 BASE aid as provided in [NEW**

SECTION 4, money ~~that~~ appropriated for the university system units listed in subsection (2) and except as provided in subsection (4) must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made or may be used to fund the provisions of **2-18-1203** through **2-18-1205** and **19-2-706** in the succeeding year.

(2) Except as provided in **17-2-108** and subsection (3) of this section, all money appropriated for the university of Montana campuses at Missoula, Butte, Dillon, and Helena and the Montana state university campuses at Bozeman, Billings, Havre, and Great Falls, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, and the bureau of mines and geology with central offices in Butte must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance and to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to **17-7-140**. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated.

(4) (a) Subject to subsection (4)(b), after the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment, by fund type, and remaining unexpended and unencumbered at the end of the year may be reappropriated to be spent during the following 2 years for any purpose, except for increases in pay, that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning.

(b) (i) Any portion of the 30% of the unexpended and unencumbered money referred to in subsection (4)(a) that was appropriated to a legislative branch entity may be deposited in the account established in **5-11-407**.

(ii) After the end of a biennium, any portion of the unexpended and unencumbered money appropriated for the operation of the preceding legislature in a separate appropriation act may be deposited in the account established in **5-11-407**. The approving authority shall determine the portion of the unexpended and unencumbered money that is deposited in the account.

(iii) Any portion of the 30% of the unexpended and unencumbered money referred to in subsection (4)(a) that was appropriated to the legislative audit division may be deposited in the account established in **5-13-404**.

(5) When the carryforward appropriation authority is established on the accounting system, and prior to spending funds pursuant to subsection (4), an agency must report to the approving authority how those funds will be spent in the following 2 years.

SECTION 3. NEW SECTION. ALLOCATION OF UNEXPENDED APPROPRIATIONS OF K-12 BASE AID. Any unexpended appropriation of K-12 BASE aid must, after the expiration of the time for which appropriated, revert to an account held by the superintendent of public instruction. The superintendent of public instruction shall distribute such funds to complete the state's funding of any

K-12 program for which the Legislature has appropriated funds in the current biennium that, in the absence of such funding, would result in either a request for a supplemental appropriation or funding below the levels for which school districts are qualified.

SECTION 4. Repealer. Section 7, Chapter 402, Laws of 2019 is repealed.

Section 5. Section 20-7-1506 is amended to read as follows:

20-7-1506. Incentives for creation of advanced opportunity programs. (1) A district that satisfies the conditions of subsection (2) and is qualified by the board of public education pursuant to subsection (3) is eligible for the funding and flexibilities in subsections (4) and (5).

(2) (a) To qualify for the funding and flexibilities in subsections (4) and (5), the board of trustees of a district shall submit an application that has been approved by motion of the board and signed by the presiding officer to the board of public education for approval of an advanced opportunity program on a form provided by the superintendent of public instruction.

(b) The school board's application must include a strategic plan with appropriate planning horizons for implementation, measurable objectives to ensure accountability, and planned strategies to:

(i) develop an advanced opportunity plan for each participating pupil from grades 6 through 12 that fosters individualized pathways for career and postsecondary educational opportunities and that honors individual interests, passions, strengths, needs, and culture and is supported through relationships among teachers, family, peers, the business community, postsecondary education officials, and other community stakeholders;

(ii) embed community-based, experiential, online, and work-based learning opportunities and foster a learning environment that incorporates both face-to-face and virtual connections; and

(iii) ensure equality of educational opportunity to participate by all qualifying pupils of the district.

(3) The board of public education shall:

(a) establish **by rule** the opening and closing dates for receipt of applications and annual reports;

(b) no later than January 31, qualify for the subsequent school year nonparticipating districts that submit an application meeting the requirements of subsection (2) for the funding in subsection (4) and the flexibilities in subsection (5);

(c) no later than January 31, requalify for the subsequent school year participating districts that submit an annual report demonstrating continued qualification for funding under this section and including a report of progress toward measurable objectives under the district's advanced opportunity plan and any updates to the plan;

~~(d) limit the districts qualified under subsections (3)(b) and (3)(c) based on the appropriation available in the subsequent year and on the order of date received, after which further applications are to be deferred for consideration in a subsequent year, in the order of date received. An application deferred for consideration in a subsequent year due to lack of funding must be annually updated each year after more than 1 full fiscal year has passed from the date of original submission of the application in order for the application to retain its priority by original date received.~~

~~(e)~~ (d) on or before September 15 of even-numbered years, report to the education interim committee pursuant to **5-11-210** on the progress made by districts operating under approved advanced opportunity plans. The report must address, at a minimum:

(i) the number of pupils benefiting from advanced opportunity aid;

(ii) the number and type of credits and certifications or credentials earned by pupils that have been paid for by the program;

(iii) projected growth in the program and funding needs for the next biennium; and

(iv) any issues with the program reported by pupils, parents, districts, postsecondary institutions, or examination administrators and how these issues are being addressed and whether the issues require legislative action.

(4) Beginning in fiscal year 2021, the superintendent of public instruction shall provide advanced opportunity aid to each district qualified by the board of public education under subsection (3) by October 1. The aid under this section must be distributed directly to the school district's flexibility fund under **20-9-543**.

(5) Advanced opportunity aid may be expended on any qualifying pupil by the district subject to the following conditions:

(a) at least 60% of a district's annual distribution of advanced opportunity aid must be spent or encumbered to address out-of-pocket costs that would otherwise, in the absence of such expenditure, be assumed by a qualifying pupil or the pupil's family as a result of participation in an advanced opportunity. The trustees have full discretion to allocate expenditures among all pupils of the district or any select group of pupils, using any reasonable method they consider appropriate in their full discretion to meet the individual needs of each pupil who pursues an advanced opportunity. The trustees may create free district initiatives of their own that satisfy the conditions of this subsection (5)(a). Permissible expenditures include:

(i) dual credit tuition at any institution under authority of the board of regents;

(ii) exam fees used for postsecondary advancement, placement, or credit, including but not limited to exam fees associated with the ACT, SAT, CLEP, career advancement, international baccalaureate, and advanced placement;

(iii) fees charged by and any out-of-pocket costs of any business providing work-based learning opportunities to a qualifying pupil of the district, including the cost of workers' compensation insurance for work-based learning opportunities;

(iv) exam and other fees of any industry-recognized credential or license for which a qualifying pupil is eligible as a result of participation in an advanced opportunity; and

(v) the costs of participation for qualifying pupils that are identified as necessary, in the discretion of the district and upon request of a qualifying pupil, to maximize the benefit of an advanced opportunity for a qualifying pupil;

(b) advanced opportunity aid remaining that is not expended or carried forward for the purposes of subsection (5)(a) may be spent by the district to provide any K-12 career and vocational/technical education course offered by the district.

(6) A district qualified for funding under subsection (3) may supplement state funding of advanced opportunity aid with matched expenditures from its adopted adult education budget, not to exceed 25% of the district's advanced opportunity aid. The conditions under subsection (5) apply to any matched expenditures funded under this subsection (6).

(7) The present law base calculated for K-12 local assistance under Title 17, chapter 7, part 1, must include advanced opportunity aid. **as follows:**

(a) — for fiscal year 2022, an amount sufficient to provide advanced opportunity aid to:

(i) — 50% of all elementary districts;

~~(ii) 50% of all high school districts; and~~

~~(iii) 50% of all K-12 districts;~~

~~(b) for fiscal year 2023, an amount sufficient to provide advanced opportunity aid to:~~

~~(i) 75% of all elementary districts;~~

~~(ii) 75% of all high school districts; and~~

~~(iii) 75% of all K-12 districts;~~

~~(c) for fiscal year 2024 and subsequent fiscal years, an amount sufficient to provide advanced opportunity aid to:~~

~~(i) 100% of all elementary districts;~~

~~(ii) 100% of all high school districts; and~~

~~(iii) 100% of all K-12 districts.~~

~~(8) If the money available for advanced opportunity aid is not the result of a reduction in spending under **17-7-140** and is not sufficient to provide the advanced opportunity aid to all districts qualifying for such aid as determined under this section, the superintendent of public instruction shall request the budget director to submit a request for a supplemental appropriation in the second year of the biennium that is sufficient to complete the funding of advanced opportunity aid for the elementary and high school districts for the current biennium.~~