



A HISTORY OF SCHOOL FUNDING LITIGATION

IN MONTANA & THE LEGISLATIVE RESPONSE



FUNDAMENTAL UNDERSTANDINGS

- #1 The revenue generating capacity of each district to support its schools varies greatly.

Revenue generating capacity to support schools is largely a function of the district's tax wealth (taxable valuation or TV) divided by a measure of school costs (# of kids or “ANB”; # of teachers; area of budget not filled by state, or “GTB Area”)

Taxable valuation or TV

Measure of Cost

- #2 Taxpayers can be unfortunate; schoolchildren can't. Their fortunes are intertwined.

The data in these tables may be outdated, but the big picture story is timeless.

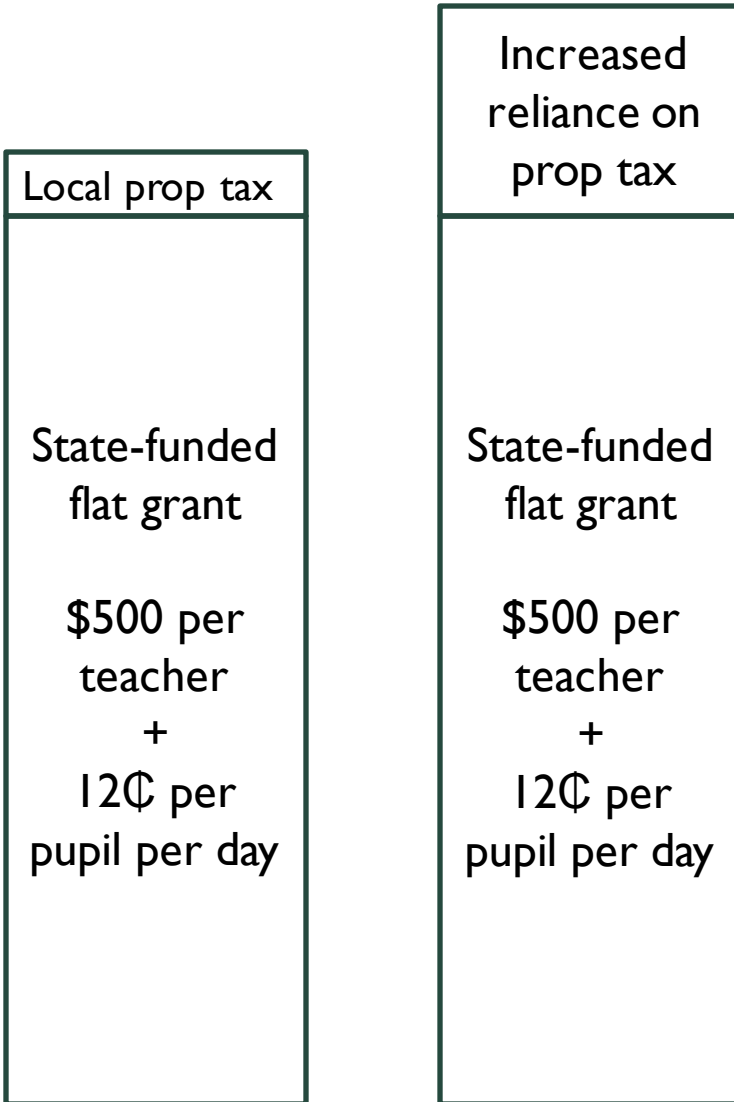
Superior, Darby, and Ennis K-12 districts are roughly the same size in terms of enrollment yet have vastly different property wealth.

School District	ANB	District taxable value	Taxable value/ANB
Superior K-12	310	\$4,366,576	\$14,086
Darby K-12	367	\$10,092,861	\$27,500
Ennis K-12	348	\$65,200,974	\$187,359

This means that raising the same amount of money requires vastly different tax effort.

School District	Value of a mill	Mills req'd to raise \$1 million	Tax on \$100,000 home
Superior K-12	\$4,367	229	\$317
Darby K-12	\$10,093	99	\$137
Ennis K-12	\$65,201	15	\$21

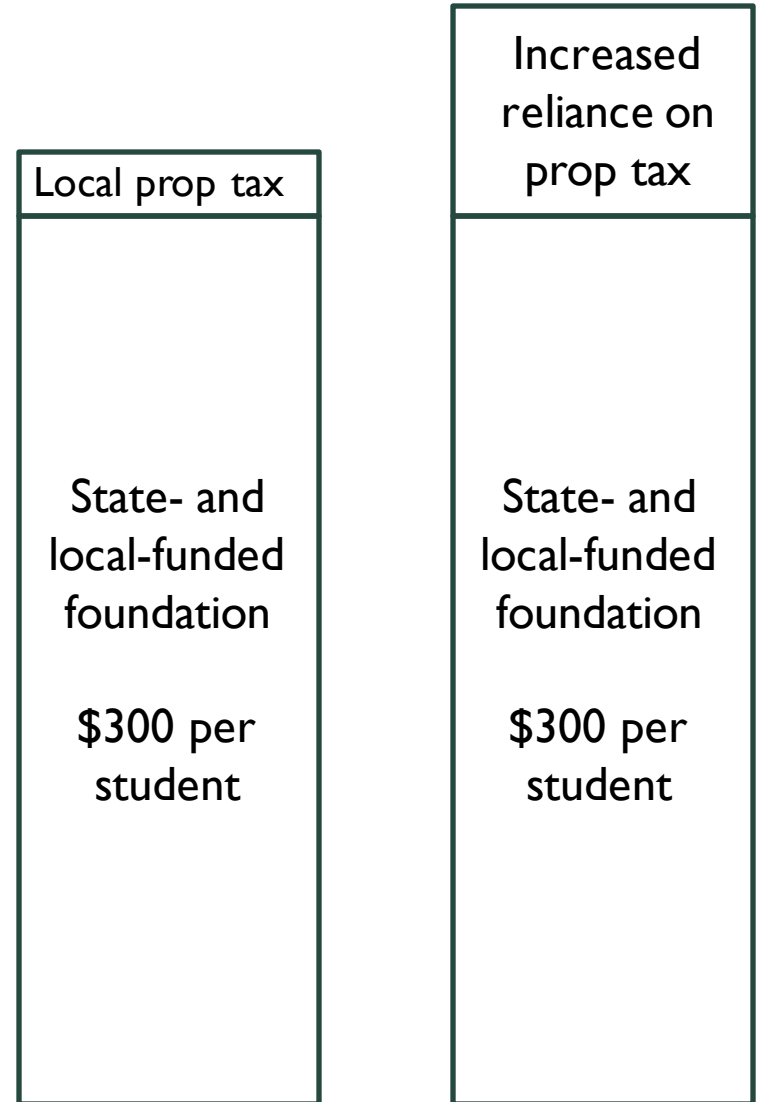
Flat grant formula 1935 - 1949



Over time as costs increase



Foundation program 1949 - 1993



Over time as costs increase





HELENA ELEM. SCHOOL DIST. v. STATE 236 MONT. 44 (1989) [AKA "HELENA I"]



ARTICLE X, SECTION I

Section I. Educational goals and duties. (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

SCHOOL FUNDING CONTEXT

- General Fund + 9 other budgeted funds + unbudgeted funds
- General Fund = 70% of total school funding
- 3 Stages of Funding under the Max. General Fund Budget Without a Vote (MGFBWV)
 - 80%: county and state equalization revenues (45 mills (county); earmarked revenues, surplus county Foundation Program revenue; direct appropriations by Leg. (state))
 - 20%: permissive levies – 6 mills for EL districts, 4 mills for HS districts (state permissive equalization revenues when districts couldn't fill up this bucket)
 - Anything above 100% of MGFBWV: voted property taxes
- In 1985-86 school year: most districts in 3rd stage – 35% of all general fund revenue came from these voted property taxes
 - Per-pupil spending disparities of up to 8 to 1 for similarly sized districts
- Compare to 1950: 81% of general fund revenue came from Foundation Program – less than 20% revenue from local levies and other sources

Examples of an inequitable school funding system in 1989 – unequal spending leads to inequality of educational opportunity

Legislative Fiscal Division

**Same Size – Unequal spending –
Unequal tax effort – Unequal wealth**

	Size	Spending/ANB	District Mills	Wealth - TV/ANB
Noxon Elem	133	\$800 more	33.55	\$ 38,084
Fort Shaw Simms El	133		60.00	\$ 8,121
Whitewater El	63	\$ 5,119	12.36	\$ 209,794
Ulm Elem	66	\$ 2,845	78.62	\$ 10,565
Choteau HS	157	\$ 4,358	21.60	\$ 73,889
Fairfield HS	137	\$ 3,657	44.36	\$ 21,848

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Legislative Fiscal Division

**Same Size – Unequal spending –
Same tax effort – Unequal wealth**

	Size	Spending/ANB	District Mills	Wealth - TV/ANB
Belfry Elem	118	\$ 4,548	27.90	\$ 97,642
Ramsay Elem	113	\$ 2,938	27.90	\$ 40,691
Sidney HS	506	\$ 3,301	10.80	\$ 124,713
Hamilton HS	506	\$ 2,219	12.00	\$ 15,914

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FINDINGS FROM PLAINTIFFS', MEA'S STUDIES

- Plaintiffs and the Montana Education Association each commissioned comparative studies of similarly-sized school districts around the state
- Benefits of better funding:
 - ❑ More enriched and expanded curricula (language arts; home economics; industrial arts; foreign languages)
 - ❑ Better equipped, from textbooks to AV materials, instructional equipment to consumable supplies
 - ❑ More science classes with better-stocked labs and more storage
 - ❑ Facilities are better maintained
 - ❑ More hands-on learning experiences
 - ❑ Stronger programs for gifted & talented students
 - ❑ More computers, better computer labs
 - ❑ Better library services with larger collections of all types of media
 - ❑ Wider range of extracurricular activities

STUDIES' CONCLUSIONS

- The availability of funds affects the extent and quality of educational opportunities
- There is a positive correlation between the level of school funding and the level of educational opportunity
- Better funding means a district has greater flexibility to reallocate resources based on program need
- Differences in spending between better- and underfunded districts are clearly invested in educationally relevant programs
- "...spending differences among similarly sized school districts in the state result in unequal educational opportunities for students."

STATE'S ARGUMENTS & COURT'S RESPONSE

- The State argued that the "equality of educational opportunity [that] is guaranteed to each person" in the Constitution is an aspirational goal.
 - The Supreme Court disagreed: no other place in the state Constitution "guarantees" a particular right, and further, this guarantee is binding on all branches of government at all levels – state, local, and school district
- The State argued that output, i.e. student success, is a better measure of the equality of educational opportunity than the inputs, i.e. funding.
 - The Supreme Court said no, we agree with the District Court that "the State failed to submit convincing evidence on the output theory of measurement."
- The State argued that statewide fiscal difficulties should excuse the funding disparities in per-pupil spending across districts
 - The Supreme Court disagreed: "such fiscal difficulties in no way justify perpetuating inequities."
- The State argued that Art. X, sec. 8 requires spending disparities to exist, because of the local control left to school boards
 - The Supreme Court said that the existing spending disparities couldn't be described as a result of local control, and that in fact, poorer districts had less control with fewer options due to fewer resources

THE SUPREME COURT'S CONCLUSIONS:

By failing to adequately fund the Foundation Program, the State forced an excessive reliance on permissive and voted levies, and thus failed to provide a system of quality public education granting to each student the equality of educational opportunity guaranteed by Art. X, sec. I.

The spending disparities among school districts around the state translated into a denial of educational opportunity, and thus, the system of funding public K-12 schools was unconstitutional.

BUT: the Court declined to set mandatory percentages for the State's share of funding and voted levies, noting "The control of [school] funds is primarily in the Legislature... [and] the Legislature has the power to increase or reduce various parts of [school funding] elements" or to add additional elements of funding.

The accreditation standards are also "the minimum standards upon which quality education must be built."

LEGISLATIVE RESPONSE – HB 28 (SPECIAL SESSION SUMMER 1989)

- Increased state share of foundation schedules
- Decreased reliance on local district property taxes
- Increased amount of permissive (nonvoted) taxing authority
- Established Guaranteed Tax Base (GTB) aid to equalize revenue generating capacity
 - among districts to support district general fund; and
 - among counties to support countywide school retirement funds
- Increased county equalization levies from 45 to 55 mills and established 40 mill statewide equalization levy (the 95 mills)
- Removed coal and oil and natural gas from the property tax base and moved to production-based taxes for them

"HELENA II"

Helena Elementary School District and the Montana Rural Education Association each filed suit against the state in 1991, alleging that the Legislature had failed to fix the unconstitutional elements at issue in Helena I when it passed HB 28. The cases went to trial in January 1993, but before the District Court could issue its ruling, the Legislature passed HB 667, which was an overhaul of many of the elements of the school funding system that hadn't been fixed with HB 28.

Because of the enactment of HB 667, the court declined to rule on the issues presented at trial, which were argued based on "the now defunct House Bill 28".

LEGISLATIVE RESPONSE – HB 667 (1993)

- Established a new formula (and our current structure) replacing the foundation program
- Established BASE or minimum budgets for all districts (BASE = Base Amount for School Equity) that are built on both basic entitlements and per-ANB entitlements
- Established maximum budgets for all districts; these minimum and maximum budget limits were intended to decrease disparities in spending and therefore help ensure our guarantee of equality of educational opportunity
- Revised special education funding
- Established Guaranteed Tax Base (GTB) mechanism for debt service (support for lower-wealth districts in repaying bonds for construction; this is currently called “debt service assistance”)



COLUMBIA FALLS ELEM. SCHOOL

DIST. v. STATE 326 MONT.304 (2005) [AKA "COLUMBIA FALLS I"]



DISTRICT COURT'S ANALYSIS OF HB 667

- The major problems with HB 667:
 - ❑ There wasn't a mechanism to address inflation
 - ❑ The dollar amounts in the bill weren't based on any study of teacher pay, cost of accreditation standards, fixed costs of the districts, or special education costs
 - ❑ Allowable increases to the districts' budgets weren't tied to the costs associated with increased accreditation standards or the new content and performance standards
 - ❑ The data the Legislature relied on in enacting HB 667 was already 2 years old
 - ❑ No study was done to justify the differences in ANB dollars for elementary students versus high school students
- Shortly after HB 667 was enacted, the Legislature enacted HB 22 in a special session, which reduced the state's funding by 4.5%, or \$19 million from the state general fund

STATE SCHOOL FUNDING TRENDS

- The State's share of the general fund budgets dropped from 71% in 1991 to just under 61% in 2003; the local share grew from 29% to 39% in that same period
- The State's share of special education costs dropped from 81% in 1989 to 41% in 2001; the local share grew from 7% to 38%
- Under HB 667's BASE budget system, 75 districts (8,000 ANB) were at the max in 1994; in 2003 there were 172 districts (35,500 ANB)
 - If you look at a threshold of 98% of the max in that same period, the number of districts grew from 92 to 220 and the ANB grew from 12,500 to 82,000
- Montana's national rank for teacher compensation declined from 28th in 1980 to 39th in 1992 to 47th in 2003
- Montana average salary for beginning/experienced teachers was \$22,000/\$34,000; the national average was \$32,000/\$44,000

EVIDENCE OF INADEQUACY OF FUNDING

- Growing number of school districts at or near maximum budget authority
- Increasing number of schools facing accreditation problems
- Difficulty attracting and retaining teachers because of declining salaries/benefits
- Large numbers of programs had been cut in recent years
- Increasing difficulties in constructing safe and adequate buildings and keeping existing ones up to code
- Increasing competition for general fund dollars between regular and special ed
- Declining share of the State's contribution to district general fund budgets
- **CONCLUSION:** the funding formula was not based on the costs of providing a basic system of quality public elementary and secondary schools

DISTRICT COURT'S CONCLUSIONS

- It isn't "necessary or proper [for the district court] to define or specifically determine the components of a 'basic system of free quality public elementary and secondary schools,'" nor is it necessary to "declare a specified percentage that would be sufficient to satisfy the State's share of the cost" of the school funding system. Rather, it is enough for the court to conclude "that the State is currently not meeting its obligation to fund its share of the costs of the system" as required by the Montana Constitution in Art. X, sec. I.
- "A particular requirement is that the funding system must be based on educationally-relevant factors. This requires that the funding system be based on the costs of meeting the standards that govern the operation of Montana's schools. Once adequate levels of funding are determined, the State must then fund its share of the cost of the system. The State's share must be an amount that is adequate at the BASE or foundation levels to allow districts to meet the standards. ...[This] applies not only to general funds, but to the overall costs of the elementary and secondary system."

SUPREME COURT'S CONCLUSIONS

- It's up to the Legislature to determine the definition of "quality" as it relates to the public school system. However, without defining quality, "the Legislature has no reference point from which to relate funding to educational needs. In the absence of a threshold definition of quality, we cannot conclude the system is adequately funded as required by Art. X, sec. 1(3)."
- Because the Legislature hadn't defined "quality," the Court couldn't conclude that the current system was designed to provide a "quality" education as required by Art. X, sec. 1(3). While deferring to the Legislature to determine that threshold definition, the Court also found that, "given the unchallenged findings made by the District Court, whatever definition the Legislature devises, the current funding system is not grounded in principles of quality, and cannot be deemed constitutionally sufficient."
- Based on the Court's holding in the second bullet, they declined to address the issue of whether the State was paying its share of the cost of the public school system.

LEGISLATIVE RESPONSES

■ SB 424 (2003)

- Established 20-9-326 and inflationary adjustments to the basic and per-ANB entitlements
- Increased state support for debt service assistance and transportation

■ 2005 Regular session

- SB 152 established 20-9-309 defining “basic system of free quality public elementary and secondary schools” and established “educationally relevant factors” that must be considered in the funding formula
- Formed the Joint Select Committee on Education Funding to try and redesign Montana’s school funding formula
- SB 525 created the Quality Schools Interim Committee (QSIC) to continue the select committee’s work

TIME OUT! 20-9-309 WARRANTS A LOOK

- (1) Pursuant to Article X, section 1, of the Montana constitution, the legislature is required to provide a basic system of free quality public elementary and secondary schools throughout the state of Montana that will guarantee equality of educational opportunity to all.
- (2) As used in this section, a "basic system of free quality public elementary and secondary schools" means:
 - (a) the educational program specified by the accreditation standards provided for in [20-7-111](#), which represent the minimum standards upon which a basic system of free quality public elementary and secondary schools is built;
 - (b) educational programs to provide for students with special needs, such as:
 - (i) a child with a disability, as defined in [20-7-401](#);
 - (ii) an at-risk student;
 - (iii) a student with limited English proficiency;
 - (iv) a child who is qualified for services under 29 U.S.C. 794; and
 - (v) gifted and talented children, as defined in [20-7-901](#);
 - (c) educational programs to implement the provisions of Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5, through development of curricula designed to integrate the distinct and unique cultural heritage of American Indians into the curricula, with particular emphasis on Montana Indians;
 - (d) qualified and effective teachers or administrators and qualified staff to implement the programs in subsections (2)(a) through (2)(c);
 - (e) facilities and distance learning technologies associated with meeting the accreditation standards;
 - (f) transportation of students pursuant to Title 20, chapter 10;
 - (g) a procedure to assess and track student achievement in the programs established pursuant to subsections (2)(a) through (2)(c); and
 - (h) preservation of local control of schools in each district vested in a board of trustees pursuant to Article X, section 8, of the Montana constitution.

20-9-309 CONT'D

- (3) In developing a mechanism to fund the basic system of free quality public elementary and secondary schools and in making adjustments to the funding formula, the legislature shall, at a minimum, consider the following educationally relevant factors:
 - (a) the number of students in a district;
 - (b) the needs of isolated schools with low population density;
 - (c) the needs of urban schools with high population density;
 - (d) the needs of students with special needs, such as a child with a disability, an at-risk student, a student with limited English proficiency, a child who is qualified for services under 29 U.S.C. 794, and gifted and talented children;
 - (e) the needs of American Indian students; and
 - (f) the ability of school districts to attract and retain qualified educators and other personnel.

20-9-309 CONT'D

- (4) The legislature shall:
 - (a) determine the costs of providing the basic system of free quality public elementary and secondary schools;
 - (b) establish a funding formula that:
 - (i) is based on the definition of a basic system of free quality public elementary and secondary schools and reflects the costs associated with providing that system as determined in subsection (4)(a);
 - (ii) allows the legislature to adjust the funding formula based on the educationally relevant factors identified in this section;
 - (iii) is self-executing and includes a mechanism for annual inflationary adjustments;
 - (iv) is based on state laws;
 - (v) is based on federal education laws consistent with Montana's constitution and laws; and
 - (vi) distributes to school districts in an equitable manner the state's share of the costs of the basic system of free quality public elementary and secondary schools; and
 - (c) consolidate the budgetary fund structure to create the number and types of funds necessary to provide school districts with the greatest budgetary flexibility while ensuring accountability and efficiency.
- (5) At least every 10 years, the legislature shall form the school funding interim commission pursuant to 5-20-301 for the purpose of reassessing the state's school funding formula.

LEGISLATIVE RESPONSES (CONT'D)

QSIC worked HARD between May and December 2005 but ultimately could not agree on a proposal to redesign the formula

2005 December Special Session

- SB I - Created 4 new, fully state-funded components to support BASE budgets:
 - Quality educator component (aka QE; about \$3,300 per QE)
 - At-risk payment (about \$5M distributed in proportion to fed Title I dollars)
 - Indian Ed for All (IEFA; about \$22/ANB)
 - American Indian Achievement Gap payment (about \$220/Indian student)
- HB I
 - Appropriated \$2.5M for a facilities condition inventory
 - Appropriated \$23M for deferred maintenance



COLUMBIA FALLS ELEM. SCHOOL

DIST. v. STATE 2008 MONT. DIST. LEXIS 483 [AKA "COLUMBIA FALLS II"]



DISTRICT COURT'S DECISION

- The court's opinion first walks through the dollar amounts and percentage increases in school funding between FY2005 and FY2008, then dives into the work undertaken by QSIC and the legislative response.
- The court noted various funding increases in that timeframe:
 - Total ongoing State aid for K-12 education increased from \$553 million in FY2004 to \$701 million in FY2009
 - Per-pupil state spending grew from \$3,738 in 2004 to \$4,947 in 2009
 - The State's share of general fund budgets grew from 60.5% in 2004 to 63.5% in FY2008 and 63.11% in FY2009, showing that "the State is heading in the right direction."
- "By and large... the State has done a good job of addressing the problems", but the court went on to note some comments to help avoid future problems - that the State's share and aid to district general funds "should not be declining, but should either be increasing or at least staying the same."

DISTRICT COURT'S CONCLUSIONS

- "[The] legislature and the state of Montana have made a good faith attempt to address the various problems mentioned by [the district court] and the supreme court. Tens of millions of dollars of additional funding have been supplied to the school districts."
- "This Court concludes that it is not the obligation of the legislature to fully fund whatever programs the individual school districts have adopted. The legislature is under no obligation to adopt an expenditure-based system in which the legislature would be required to fund whatever the districts request. It is up to the legislature to set the educational standards and provide an amount of funding equal to what it determines is necessary to [meet] those standards."
- "This Court concludes that the State is in the process of making a good faith effort to preserve and protect Montana's constitutional commitment to a sound public education system."



MQEC V. STATE

CONSENT DECREE



CONSENT DECREE

- SB 329 (2011) through a coordination instruction decreased the inflation calculated for FY 2013 from 2.43% to 1.6%
 - Impact: \$4.6 million cut from BASE aid
- MQEC filed suit against the State, alleging that the State had run afoul of its own laws and the Supreme Court's decision in Columbia Falls I by failing to fund the mandated inflationary increase.
- Rather than draw the case out, MQEC and the State, through the Attorney General's office, filed a consent decree with the district court to resolve the issue.
- Under the decree:
 - School district budgets for FY2013 would be inflation-adjusted at 2.43%
 - The State would make payments to the districts based on 2.43% inflation
 - The State would use the 2.43% inflation adjustment to calculate the present law base for the basic and per-ANB entitlements for the purposes of preparing and submitting a budget to the Legislature for the 2015 biennium

SELECTED LEGISLATIVE CHANGES TO SCHOOL FUNDING FORMULA SINCE 2007

- SB 2 (May Special Session 2007)
 - Increased GTB multiplier from 175% to 193%
 - Provided funding for full-time kindergarten

- SB 175 (2013)
 - Created a 5th fully state-funded Data for Achievement component (D4A; about \$22/ANB)
 - Increased basic and per-ANB entitlement amounts and provided inflationary adjustments to the 5 fully state-funded components
 - Established basic entitlement increments (additional money for the basic entitlement based on ANB)

- HB 647 (2017)
 - Eliminated school district general fund block grants and increased the GTB multiplier from 193% to 232% over several years