

SENATE BILL NO. 410

INTRODUCED BY L. JONES

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO TAX CREDITS FOR  
5 ELEMENTARY AND SECONDARY EDUCATION; ALLOWING INCOME TAX CREDITS FOR  
6 ~~TAXPAYER-DIRECTED TAX PAYMENTS~~ DONATIONS TO PUBLIC SCHOOLS AND ~~FOR DONATIONS TO~~  
7 STUDENT SCHOLARSHIP ORGANIZATIONS; PROVIDING SUPPLEMENTAL FUNDING TO PUBLIC  
8 SCHOOLS FOR INNOVATIVE EDUCATION; ESTABLISHING GEOGRAPHIC REGIONS AND DISTRICTS FOR  
9 SUPPLEMENTAL FUNDING DISTRIBUTIONS; CREATING A STATE SPECIAL REVENUE ACCOUNT;  
10 ESTABLISHING OPERATING REQUIREMENTS, REVIEW PROCESSES, AND TERMINATION PROCEDURES  
11 FOR STUDENT SCHOLARSHIP ORGANIZATIONS; PROVIDING THAT THE AMOUNT OF A SCHOLARSHIP  
12 IS NOT TAXABLE INCOME; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-30-2110  
13 AND 20-9-543, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY  
14 DATE, AND A TERMINATION DATE."

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

17  
18 NEW SECTION. **Section 1. Purpose.** Pursuant to 5-4-104, the legislature finds that the purpose of  
19 innovative educational programs is to enhance the curriculum of public schools with supplemental private  
20 contributions through tax replacement programs. THE TAX CREDIT FOR TAXPAYER DONATIONS UNDER [SECTIONS 1  
21 THROUGH 6] MUST BE ADMINISTERED IN COMPLIANCE WITH ARTICLE V, SECTION 11(5), AND ARTICLE X, SECTION 6, OF  
22 THE MONTANA CONSTITUTION.

23  
24 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 6], the following definitions  
25 apply:

- 26 (1) "Eligible public school" means a Montana public school.  
27 (2) "Geographic region" has the meaning provided in [section 3].  
28 (3) "Innovative educational program" means an advanced academic program that enhances the  
29 curriculum or academic program of an eligible public school and that is not part of the regular academic program  
30 of an eligible public school. The instruction, program, or other activities offered through an innovative educational

1 program must include at least one of the following characteristics:

2 (a) provides different focus, methodology, skill training, or delivery, including internet-based and distance  
3 learning technologies, than is provided in a typical academic program of a public school;

4 (b) is accessible before or after public school hours, on weekends, as a year-round program, as an  
5 extension of the public school year, or in a combination of these characteristics;

6 (c) uses specialized instructional materials, instructors, or instruction not provided by a public school;

7 (d) uses internships and other work-based learning opportunities for a student that supplements the  
8 curriculum or academic program of a student and provides a student with the opportunity to apply the knowledge  
9 and skills learned in the academic program; or

10 (e) offers instruction or programming that provides credits or advanced placement, or both, at a 2-year  
11 or 4-year college or university.

12 (4) "Large district" has the meaning provided in [section 3].

13 (5) "Quality educator" has the meaning provided in 20-4-502.

14 (6) "Taxpayer" has the meaning provided in 15-30-2101.

15

16 **NEW SECTION. Section 3. Establishment of geographic regions and large districts -- innovative**

17 **educational program.** (1) (a) Geographic regions are established on the basis of county boundaries and are  
18 designed to achieve approximate statewide equity among the eleven regions in terms of the number of trustees  
19 on school boards located within the applicable regions. The equity must be reviewed periodically by the  
20 superintendent of public instruction by dividing the number of trustees serving on school boards located within  
21 the applicable region, including trustees on school boards referenced in subsection (2), by the total number of  
22 geographic regions and large districts.

23 (b) The geographic regions are established as follows:

24 (i) 1st region: Flathead, Lake, and Lincoln Counties;

25 (ii) 2nd region: Blaine, Hill, and Phillips Counties;

26 (iii) 3rd region: Daniels, Roosevelt, Sheridan, and Valley Counties;

27 (iv) 4th region: Dawson, Garfield, McCone, Prairie, Richland, and Wibaux Counties;

28 (v) 5th region: Cascade, Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, and Wheatland  
29 Counties;

30 (vi) 6th region: Mineral, Missoula, Ravalli, and Sanders Counties;

- 1 (vii) 7th region: Beaverhead, Deer Lodge, Granite, Jefferson, Madison, Powell, and Silver Bow Counties;  
 2 (viii) 8th region: Broadwater, Gallatin, Meagher, Park, and Sweet Grass Counties;  
 3 (ix) 9th region: Big Horn, Carbon, Stillwater, Treasure, and Yellowstone Counties;  
 4 (x) 10th region: Carter, Custer, Fallon, Powder River, and Rosebud Counties; and  
 5 (xi) 11th region: Chouteau, Glacier, Lewis and Clark, Liberty, Pondera, Teton, and Toole Counties.

6 (2) (a) Large districts are established as each of the seven largest school districts in the state based on  
 7 combined pupil enrollment from kindergarten through the 12th grade.

8 (b) The seven largest school districts are established as follows:

- 9 (i) Billings;  
 10 (ii) Butte;  
 11 (iii) Bozeman;  
 12 (iv) Great Falls;  
 13 (v) Helena;  
 14 (vi) Kalispell; and  
 15 (vii) Missoula.

16 (3) The superintendent of public instruction shall make recommendations to the education and local  
 17 government interim committee regarding any adjustments to the regions and large districts necessary to preserve  
 18 equity and fairness.

19  
 20 **NEW SECTION. Section 4. Distribution of supplemental revenue to public schools -- innovative**  
 21 **educational program.** (1) The superintendent of public instruction shall:

22 (a) obligate at least 95% of its annual revenue from the educational improvement account provided for  
 23 in [section 5] for supplemental funding to eligible public schools for innovative educational programs and  
 24 technology deficiencies;

25 (b) provide innovative educational program or technology deficiency supplemental funding to eligible  
 26 public schools; and

27 (c) distribute supplemental funding from the educational improvement account to each geographic region  
 28 and each large district in a manner that provides proportionate funding based on the amount of ~~money directed~~  
 29 ~~by taxpayers~~ DONATIONS under [section 13] in each of the respective geographic regions and large districts. In  
 30 distributing the supplemental funding, the superintendent of public instruction shall set the maximum receivable

1 amount for each school DISTRICT in a geographic region or large district based on a ratio of the ~~school's~~ SCHOOL  
 2 DISTRICT'S number of quality educators to the total number of quality educators in the ~~school's~~ SCHOOL DISTRICT'S  
 3 geographic region or large district.

4 (2) (a) Subject to subsection (2)(b), the superintendent of public instruction shall use the taxpayer's  
 5 residential address and allocate the supplemental funding to the geographic region or large district schools that  
 6 serve the taxpayer's residence. If a residential address is served by schools that are part of a large district and  
 7 a smaller district, then the superintendent of public instruction must allocate the supplemental funding between  
 8 the large district and the geographic region of the smaller district based on the ~~number of grades~~ AVERAGE  
 9 NUMBER BELONGING served by each district.

10 (b) A taxpayer may specify the geographic region or large district in which the supplemental funding must  
 11 be used. IF A TAXPAYER SPECIFIES THAT AN ALLOCATION IS TO BE USED IN A:

12 (I) GEOGRAPHIC REGION, THE ALLOCATION MAY NOT BE USED IN A LARGE DISTRICT; AND

13 (II) LARGE DISTRICT, THE ALLOCATION MAY NOT BE USED IN A GEOGRAPHIC REGION.

14 (3) The supplemental funding must be deposited in the district's school flexibility fund provided for in  
 15 20-9-543. EACH DISTRICT SHALL REPORT THE EXPENDITURE OF SUPPLEMENTAL FUNDING FOR SPECIFIC SCHOOLS TO THE  
 16 SUPERINTENDENT OF PUBLIC INSTRUCTION.

17  
 18 NEW SECTION. Section 5. Educational improvement account -- revenue allocated --  
 19 **appropriations from account.** (1) There is an educational improvement account in the state special revenue  
 20 fund established in 17-2-102. The funds in the account must be administered by the superintendent of public  
 21 instruction.

22 (2) ~~Taxpayer-directed tax payments must be paid into the account as provided in [section 13].~~ THE  
 23 DEPARTMENT SHALL ACCEPT DONATIONS FOR THE PURPOSE OF FUNDING INNOVATIVE EDUCATIONAL PROGRAMS AND  
 24 DEPOSIT THE DONATIONS INTO THE ACCOUNT. THE DEPARTMENT SHALL PREAPPROVE TAX CREDITS FOR DONATIONS AS  
 25 PROVIDED IN [SECTION 13].

26 (3) Interest and earnings on the account must be deposited in the account.

27 (4) Appropriations may be made from the account to the superintendent of public instruction for  
 28 administrative expenses and for supplemental funding to public schools as provided in [section 4].

29  
 30 NEW SECTION. Section 6. Rulemaking. The superintendent of public instruction may adopt rules,

1 prepare forms, and maintain records that are necessary to implement and administer [sections 1 through 6].

2  
 3 **NEW SECTION. Section 7. Purpose.** Pursuant to 5-4-104, the legislature finds that the purpose of  
 4 student scholarship organizations is to provide parental and student choice in education with private contributions  
 5 through tax replacement programs. THE TAX CREDIT FOR TAXPAYER DONATIONS UNDER [SECTIONS 7 THROUGH 17]  
 6 MUST BE ADMINISTERED IN COMPLIANCE WITH ARTICLE V, SECTION 11(5), AND ARTICLE X, SECTION 6, OF THE MONTANA  
 7 CONSTITUTION.

8  
 9 **NEW SECTION. Section 8. Definitions.** As used in [sections 7 through 17], the following definitions  
 10 apply:

- 11 (1) "Department" means the department of revenue provided for in 2-15-1301.
- 12 (2) "Eligible student" means a student who is a Montana resident and who is 5 years of age or older on  
 13 or before September 10 of the year of attendance and has not yet reached 19 years of age.
- 14 (3) "Geographic region" has the meaning provided in [section 3].
- 15 (4) "Large district" has the meaning provided in [section 3].
- 16 (5) "Partnership" has the meaning provided in 15-30-2101.
- 17 (6) "Pass-through entity" has the meaning provided in 15-30-2101.
- 18 (7) "Qualified education provider" means an education provider that:
- 19 (a) is not a public school;
- 20 (b) (i) is accredited, has applied for accreditation, or is provisionally accredited by a state, regional, or  
 21 national accreditation organization; or
- 22 (ii) is a nonaccredited provider or tutor and has informed the child's parents or legal guardian in writing  
 23 at the time of enrollment that the provider is not accredited and is not seeking accreditation;
- 24 (c) is not a home school as referred to in 20-5-102(2)(e);
- 25 (d) administers a nationally recognized standardized assessment test or criterion-referenced test and:  
 26 (i) makes the results available to the child's parents or legal guardian; and  
 27 (ii) administers the test for all 8th grade and 11th grade students and provides the overall scores on a  
 28 publicly accessible private website or provides the composite results of the test to the office of public instruction  
 29 for posting on its website;
- 30 (e) satisfies the health and safety requirements prescribed by law for private schools in this state; and

- 1 (f) qualifies for an exemption from compulsory enrollment under 20-5-102(2)(e) and 20-5-109.
- 2 (8) "Small business corporation" has the meaning provided in 15-30-3301.
- 3 (9) "Student scholarship organization" means a charitable organization in this state that:
- 4 (a) is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, 26
- 5 U.S.C. 501(c)(3);
- 6 (b) allocates not less than 90% of its annual revenue for scholarships to allow students to enroll with any
- 7 qualified education provider; and
- 8 (c) provides educational scholarships to eligible students without limiting student access to only one
- 9 education provider.
- 10 (10) "Taxpayer" has the meaning provided in 15-30-2101.
- 11
- 12 **NEW SECTION. Section 9. Requirements for student scholarship organizations.** (1) A student
- 13 scholarship organization:
- 14 (a) shall obligate at least 90% of its annual revenue for scholarships. For the purpose of this calculation:
- 15 (i) the cost of the annual fiscal review provided for in [section 11(1)(b)] may be paid out of the total
- 16 contributions before calculation of the 90% minimum obligation amount; and
- 17 (ii) all contributions subject to the 90% minimum obligation amount that are received in 1 calendar year
- 18 must be paid out in scholarships within the 3 calendar years following the contribution.
- 19 (b) may not restrict or reserve scholarships for use at a particular education provider or any particular
- 20 type of education provider and shall allow an eligible student to enroll with any qualified education provider of the
- 21 parents' or legal guardian's choice;
- 22 (c) shall provide scholarships to eligible students to attend instruction offered by a qualified education
- 23 provider;
- 24 (d) may not provide a scholarship to an eligible student for an academic year that exceeds 50% of the
- 25 per-pupil average of total public school expenditures calculated in [section 22];
- 26 (e) shall ensure that the organization's average scholarship for an academic year does not exceed 30%
- 27 of the per-pupil average of total public school expenditures calculated in [section 22];
- 28 (f) shall maintain separate accounts for scholarship funds and operating funds;
- 29 (g) may transfer funds to another student scholarship organization;
- 30 (h) shall maintain an application process under which scholarship applications are accepted, reviewed,

1 approved, and denied; and

2 (i) shall comply with payment and reporting requirements in accordance with [sections 10 and 11].

3 (2) An organization that fails to satisfy the conditions of this section is subject to termination as provided  
4 in [section 16].

5  
6 **NEW SECTION. Section 10. Tuition payment limitation.** (1) A student scholarship organization shall  
7 deliver the scholarship funds directly to the qualified education provider selected by the parents or legal guardian  
8 of the child to whom the scholarship was awarded. The qualified education provider shall immediately notify the  
9 parents or legal guardian that the payment was received.

10 (2) A parent or legal guardian of an eligible student may not accept one or more scholarship awards from  
11 a student scholarship organization for an eligible student if the total amount of the awards exceeds 50% of the  
12 per-pupil average of total public school expenditures calculated in [section 22]. This limitation applies to each  
13 eligible student of a parent or legal guardian.

14  
15 **NEW SECTION. Section 11. Reporting requirements for student scholarship organizations.** (1)  
16 Each student scholarship organization shall:

17 (a) submit a notice to the department of its intent to operate as a student scholarship organization prior  
18 to accepting donations;

19 (b) complete an annual fiscal review of its accounts by an independent certified public accountant within  
20 120 days after the close of the calendar year that discloses for each of the 3 most recently completed calendar  
21 years:

22 (i) the total number and dollar value of individual and corporate contributions;

23 (ii) the total number and dollar value of scholarships obligated to eligible students;

24 (iii) the total number and dollar value of scholarships awarded to eligible students; and

25 (iv) the cost of the annual fiscal review;

26 (c) submit the annual fiscal review report to the department within 150 days of the close of the calendar  
27 year.

28 (2) The department shall provide written notice to a student scholarship organization that fails to submit  
29 the annual fiscal review report, and the organization has 30 days from receipt of the notice to submit the report.

30 (3) An organization that fails to satisfy the conditions of this section is subject to termination as provided

1 in [section 16].

2

3 **NEW SECTION. Section 12. Student scholarship organizations -- listing on website.** (1) The  
4 department shall maintain on its website a hyperlink to a current list of all:

5 (a) student scholarship organizations that have provided notice pursuant to [section 11(1)(a)]; and

6 (b) qualified education providers that accepted scholarship funds from a student scholarship organization.

7 (2) The list must include:

8 (a) a statistical compilation of the information received from the student scholarship organizations; and

9 (b) a hyperlink to the qualified education provider's overall testing scores contained on a publicly  
10 accessible private website or to the office of public instruction's website pursuant to [section 8(7)(d)(ii)].

11

12 **NEW SECTION. Section 13. Credit for providing supplemental funding to public schools --**  
13 **~~directed tax payment -- innovative educational program.~~** (1) Subject to subsection (5), a taxpayer or

14 corporation is allowed a credit against the tax imposed by chapter 30 or 31 for ~~taxpayer-directed tax payments~~

15 DONATIONS MADE to the educational improvement account provided for in [section 5] for the purpose of providing

16 supplemental funding to public schools for innovative educational programs and technology deficiencies. The

17 ~~donor~~ TAXPAYER may direct a ~~contribution~~ THE DONATION to a geographic region or a large district AS PROVIDED IN

18 [SECTION 4(2)(B)]. The amount of the credit allowed for the ~~taxpayer-directed tax payment~~ is equal to the amount

19 of the donation, not to exceed \$150.

20 (2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through

21 entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same

22 proportion as used to report the entity's income or loss.

23 (b) A ~~contribution~~ DONATION by an estate or trust qualifies for the credit. Any credit not used by the estate

24 or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the

25 beneficiary's income from the estate or trust for Montana income tax purposes.

26 (3) The credit allowed under this section may not exceed the taxpayer's income tax liability.

27 (4) There is no carryback or carryforward of the credit permitted under this section, and the credit must

28 be applied in the year the ~~directed tax payment~~ DONATION is made, as determined by the taxpayer's accounting  
29 method.

30 (5) (a) (i) The aggregate amount of ~~taxpayer-directed tax payments~~ TAX CREDITS allowed under this

1 section is \$3 million beginning in tax year 2015.

2 (ii) Beginning in 2016, by August 1 of each year, the department shall determine if \$3 million in ~~directed~~  
3 ~~tax payments~~ DONATIONS were made by taxpayers or preapproved by the department. If this condition is satisfied,  
4 the aggregate amount of ~~directed tax payments~~ TAX CREDITS allowed must be increased by 10% for each  
5 succeeding tax year.

6 (b) The department shall approve the amount of TAX credits for taxpayers on a first-come, first-served  
7 basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes  
8 a ~~directed tax payment~~ DONATION after total ~~directed tax payments~~ DONATIONS claimed exceeds the aggregate  
9 limit, the taxpayer's return will be processed without regard to the credit. If a disallowance creates an  
10 underpayment of tax liability, then the department shall notify the taxpayer of the disallowed claim and the  
11 taxpayer has 60 days to pay the underpayment that is attributable to the disallowed claim before interest and  
12 penalties are assessed under 15-1-216.

13 ~~(c) Subject to subsection (7), to claim credit under this section, a taxpayer shall attach a form that is~~  
14 ~~approved by the department to the taxpayer's tax return confirming that a directed tax payment was made.~~

15 (6) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for  
16 state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of  
17 the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

18 (a) claiming a credit under this section instead of a deduction; or

19 (b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for  
20 which the credit is allowed under this section.

21 (7) After consultation with the superintendent of public instruction, the department may develop an  
22 internet-based registration system that provides ~~donors~~ TAXPAYERS with the opportunity to obtain preapproval for  
23 a tax credit before making a ~~contribution~~ DONATION.

24  
25 **NEW SECTION. Section 14. Qualified education tax credit for contributions to student scholarship**  
26 **organizations.** (1) Subject to subsection (5), a taxpayer or corporation is allowed a credit against the tax imposed  
27 by chapter 30 or 31 for donations made to a student scholarship organization. The donor may not direct or  
28 designate contributions to a parent, legal guardian, or specific qualified education provider. The amount of the  
29 credit allowed is equal to the amount of the donation, not to exceed \$150.

30 (2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through

1 entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same  
2 proportion as used to report the entity's income or loss.

3 (b) A contribution by an estate or trust qualifies for the credit. Any credit not used by the estate or trust  
4 may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's  
5 income from the estate or trust for Montana income tax purposes.

6 (3) The credit allowed under this section may not exceed the taxpayer's income tax liability.

7 (4) There is no carryback or carryforward of the credit permitted under this section, and the credit must  
8 be applied in the year the donation is made, as determined by the taxpayer's accounting method.

9 (5) (a) (i) The aggregate amount of tax credits allowed under this section is \$3 million beginning in tax  
10 year 2015.

11 (ii) Beginning in 2016, by August 1 of each year, the department shall determine if \$3 million in tax credits  
12 were claimed by taxpayers or preapproved by the department. If this condition is satisfied, the aggregate amount  
13 of tax credits allowed must be increased by 10% for each succeeding tax year.

14 (b) The department shall approve the amount of tax credits for taxpayers on a first-come, first-served  
15 basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes  
16 a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed  
17 without regard to the credit. If a disallowance creates an underpayment of tax liability, then the department shall  
18 notify the taxpayer of the disallowed claim and the taxpayer has 60 days to pay the tax that is attributable to the  
19 disallowed claim before interest and penalties are assessed under 15-1-216.

20 ~~(c) Subject to subsection (7), to claim the tax credit under this section, a taxpayer shall attach a form that~~  
21 ~~is approved by the department to the taxpayer's tax return confirming that a donation was made. The form must~~  
22 ~~be signed by the student scholarship organization and include the taxpayer's name, address, tax identification~~  
23 ~~number, the amount of the contribution, and the date of the contribution.~~

24 (6) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for  
25 state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of  
26 the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

27 (a) claiming a credit under this section instead of a deduction; or

28 (b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for  
29 which the credit is allowed under this section.

30 (7) The department may develop an internet-based registration system that provides donors with the

1 opportunity to obtain preapproval for a tax credit before making a contribution.

2

3 **NEW SECTION. Section 15. Report to revenue and transportation interim committee -- student**  
 4 **scholarship organizations.** Each biennium, the department shall provide to the revenue and transportation  
 5 interim committee a list of student scholarship organizations receiving contributions from businesses and  
 6 individuals that are granted tax credits under [section 14]. The listing must detail the tax credits claimed under  
 7 the individual income tax in chapter 30 and the corporate income tax in chapter 31.

8

9 **NEW SECTION. Section 16. Review determination -- termination -- confidentiality.** (1) Subject to  
 10 subsection (7), the department is authorized to examine any books, papers, records, or memoranda relevant to  
 11 determining whether a student scholarship organization is in compliance with [sections 8, 9, and 11].

12 (2) If a student scholarship organization is not in compliance, the department shall provide to the  
 13 organization written notice of the specific failures and the organization has 30 days from the date of the notice  
 14 to correct deficiencies. If the organization fails to correct all deficiencies, the department shall provide a final  
 15 written notice of the failure to the organization. The organization may appeal the department's determination of  
 16 failure to comply according to the uniform dispute review procedure in 15-1-211 within 30 days of the date of the  
 17 notice.

18 (3) (a) If a student scholarship organization does not seek review under 15-1-211 or if the dispute is not  
 19 resolved, the department shall issue a final department decision.

20 (b) The final department decision for a student scholarship organization must provide that the student  
 21 scholarship organization:

22 (i) will be removed from the list of eligible student scholarship organizations provided in [section 12] and  
 23 notified of the removal;

24 (ii) shall within 15 calendar days of receipt of notice from the department of removal from the eligible list:

25 (A) cease all operations as a student scholarship organization and transfer all scholarship account funds  
 26 to a properly operating student scholarship organization; and

27 (B) provide written notice to all applicants that have been preapproved for a tax credit that the  
 28 organization is not allowed to operate as a student scholarship organization and that the applicant has 45 days  
 29 from the date the organization was removed from the eligible list to transfer preapproval status to another student  
 30 scholarship organization.

1 (4) A student scholarship organization that receives a final department decision may seek review of the  
2 decision from the state tax appeal board pursuant to 15-2-302.

3 (5) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial  
4 review pursuant to 15-2-303.

5 (6) If a student scholarship organization files an appeal pursuant to this section, the organization may  
6 continue to operate until the decision of the court is final.

7 (7) The identity of donors who make ~~directed tax payments~~ DONATIONS to the educational improvement  
8 account provided for in [section 5] or donations to a student scholarship organization is confidential tax  
9 information that is subject to the provisions of 15-30-2618.

10  
11 NEW SECTION. **Section 17. Rulemaking.** The department may adopt rules, prepare forms, and  
12 maintain records that are necessary to implement and administer [sections 7 through 17].

13  
14 NEW SECTION. **Section 18. Credit for providing supplemental funding to public schools --**  
15 **directed tax payment -- innovative educational program.** There is a credit against tax liability under this  
16 chapter for a ~~taxpayer-directed tax payment~~ DONATION MADE to the educational improvement account as provided  
17 in [section 13].

18  
19 NEW SECTION. **Section 19. Qualified education individual income tax credit for contributions to**  
20 **student scholarship organization.** There is a credit against tax liability under this chapter for a charitable  
21 donation made to a student scholarship organization as provided in [section 14].

22  
23 NEW SECTION. **Section 20. Credit for providing supplemental funding to public schools --**  
24 **corporate ~~directed tax payment~~ CREDIT -- innovative educational program.** There is a credit against tax  
25 liability under this chapter for a ~~taxpayer-directed tax payment~~ DONATION MADE to the educational improvement  
26 account as provided in [section 13].

27  
28 NEW SECTION. **Section 21. Qualified education corporate credit for contributions to student**  
29 **scholarship organization.** There is a credit against tax liability under this chapter for a charitable donation made  
30 to a student scholarship organization as provided in [section 14].

1

2           **NEW SECTION. Section 22. Statewide average per-pupil spending.** (1) The superintendent of public  
3 instruction shall calculate the per-pupil average of total public school expenditures in Montana for the second  
4 most recently completed school fiscal year by August 1 of the ensuing school fiscal year and make the calculation  
5 available to the public. The calculation is made by dividing total expenditures calculated in subsection (2) by total  
6 pupils calculated in subsection (3).

7           (2) Funds to be included in total school expenditures for the second most recently completed school year  
8 include but are not limited to:

9           (a) district general fund expenditures;

10           (b) transportation;

11           (c) bus depreciation;

12           (d) food services;

13           (e) tuition;

14           (f) retirement;

15           (g) miscellaneous programs;

16           (h) traffic education;

17           (i) nonoperating fund;

18           (j) lease-rental agreement;

19           (k) compensated absence fund;

20           (l) metal mines tax reserve;

21           (m) state mining impact;

22           (n) impact aid;

23           (o) litigation reserve;

24           (p) technology acquisition;

25           (q) flexibility fund;

26           (r) debt service;

27           (s) building reserve; and

28           (t) interlocal agreement.

29           (3) Total pupils are computed using an amount equal to the per-pupil average, but not the per-ANB  
30 average provided in 20-9-311, for Montana school districts for the second most recently completed school year.

1

2           **Section 23.** Section 15-30-2110, MCA, is amended to read:

3           **"15-30-2110. Adjusted gross income.** (1) Subject to subsection (13), adjusted gross income is the  
4 taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62,  
5 and in addition includes the following:

6           (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other  
7 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana  
8 under federal law;

9           (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.  
10 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

11           (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a  
12 reduction of Montana income tax liability;

13           (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue  
14 Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

15           (d) depreciation or amortization taken on a title plant as defined in 33-25-105;

16           (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the  
17 amount recovered reduced the taxpayer's Montana income tax in the year deducted;

18           (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of  
19 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution  
20 of the same estate or trust for the same tax period; and

21           (g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after  
22 December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted  
23 gross income.

24           (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not  
25 include the following, which are exempt from taxation under this chapter:

26           (a) (i) all interest income from obligations of the United States government, the state of Montana, or a  
27 county, municipality, district, or other political subdivision of the state and any other interest income that is exempt  
28 from taxation by Montana under federal law;

29           (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.  
30 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

- 1 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including  
2 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;
- 3 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income  
4 received as defined in 15-30-2101;
- 5 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:
- 6 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total  
7 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in  
8 excess of \$30,000 as shown on the taxpayer's return;
- 9 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity  
10 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in  
11 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000  
12 as shown on their joint return;
- 13 (d) all Montana income tax refunds or tax refund credits;
- 14 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);
- 15 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section  
16 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January  
17 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage,  
18 or lodging;
- 19 (g) all benefits received under the workers' compensation laws;
- 20 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the  
21 employee under federal law, including premiums paid by the employer for an employee pursuant to 33-22-166;
- 22 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a  
23 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- 24 (j) principal and income in a medical care savings account established in accordance with 15-61-201  
25 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a  
26 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;
- 27 (k) principal and income in a first-time home buyer savings account established in accordance with  
28 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase  
29 of a single-family residence;
- 30 (l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition

1 program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal  
2 Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of  
3 a designated beneficiary;

4 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the  
5 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

6 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of  
7 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution  
8 of the same estate or trust for the same tax period;

9 (o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch  
10 risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction  
11 is not provided for federal income tax purposes;

12 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant  
13 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and  
14 taxpayer meet the filing requirements in 15-30-2602.

15 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or  
16 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

17 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; ~~and~~

18 (s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in  
19 15-31-163; ~~and~~

20 (t) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to  
21 [section 10].

22 (3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall  
23 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as  
24 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election  
25 is effective.

26 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business  
27 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and  
28 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and  
29 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries  
30 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must

1 be made to determine the amount of income or loss of the partnership or small business corporation.

2 (5) Married taxpayers filing a joint federal return who are required to include part of their social security  
3 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal  
4 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement  
5 benefits when they file separate Montana income tax returns. The federal base must be split equally on the  
6 Montana return.

7 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section  
8 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may  
9 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital  
10 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss  
11 must be split equally on each return.

12 (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and  
13 who file separate Montana income tax returns are not required to recompute allowable passive losses according  
14 to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal  
15 Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must  
16 be shown on that spouse's return; otherwise, the loss must be split equally on each return.

17 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a  
18 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.  
19 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is  
20 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

21 (9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a  
22 qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate  
23 Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return.  
24 The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted  
25 gross income.

26 (b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and  
27 related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana  
28 income tax returns may claim the same amount of the deduction that is allowed on the federal return. The  
29 deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross  
30 income.

1 (10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end  
2 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income  
3 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is  
4 absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the  
5 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the  
6 taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the  
7 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted  
8 gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage  
9 in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting  
10 or expected to last at least 12 months.

11 (11) (a) An individual who contributes to one or more accounts established under the Montana family  
12 education savings program or to a qualified tuition program established and maintained by another state as  
13 provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted  
14 gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each  
15 spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses  
16 may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The  
17 reduction in adjusted gross income under this subsection applies only with respect to contributions to an account  
18 of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the  
19 taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect  
20 to withdrawals of contributions that reduced adjusted gross income.

21 (b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in  
22 15-62-208.

23 (12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection  
24 (12)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

25 (i) is a health care professional licensed in Montana as provided in Title 37;

26 (ii) is serving a significant portion of a designated geographic area, special population, or facility  
27 population in a federally designated health professional shortage area, a medically underserved area or  
28 population, or a federal nursing shortage county as determined by the secretary of health and human services  
29 or by the governor;

30 (iii) has had a student loan incurred as a result of health-related education; and

1 (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment  
2 program described in subsection (12)(b) as an incentive to practice in Montana.

3 (b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or  
4 qualified private program. A qualified private loan repayment program includes a licensed health care facility, as  
5 defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility  
6 as a licensed health care professional.

7 (13) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of  
8 capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are  
9 determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

10 (14) By November 1 of each year, the department shall multiply the amount of pension and annuity  
11 income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii)  
12 by the inflation factor for that tax year, but using the year 2009 consumer price index, and rounding the results  
13 to the nearest \$10. The resulting amounts are effective for that tax year and must be used as the basis for the  
14 exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency--sec.  
15 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

16

17 **Section 24.** Section 20-9-543, MCA, is amended to read:

18 **"20-9-543. School flexibility fund -- uses.** (1) (a) The trustees of a district shall establish a school  
19 flexibility fund and may use the fund, in their discretion, for school district expenditures incurred for:

20 (i) technological equipment enhancements and expansions considered by the trustees to support  
21 enhanced educational programs in the classroom;

22 (ii) facility expansion and remodeling considered by the trustees to support the delivery of educational  
23 programs or the removal and replacement of obsolete facilities;

24 (iii) supplies and materials considered by the trustees to support the delivery of enhanced educational  
25 programs;

26 (iv) student assessment and evaluation;

27 (v) the development of curriculum materials;

28 (vi) training for classroom staff considered by the trustees to support the delivery of enhanced educational  
29 programs;

30 (vii) purchase, lease, or rental of real property that must be used to provide free or reduced price housing

1 for classroom teachers;

2 (viii) salaries, benefits, bonuses, and other incentives for the recruitment and retention of classroom  
3 teachers and other certified staff, subject to collective bargaining when applicable; ~~or~~

4 (ix) increases in energy costs caused by an increase in energy rates from the rates paid by the district  
5 in fiscal year 2001 or from increased use of energy as a result of the expansion of facilities, equipment, or other  
6 resources of the district; or

7 (x) innovative educational programs as defined in [section 2] and technology deficiencies.

8 (b) If the district's ANB calculated for the current fiscal year is less than the ANB for the current fiscal  
9 year when averaged with the 4 previous fiscal years, the district may use money from the school flexibility fund  
10 to phase in over a 5-year period the spending reductions necessary because of the reduction in ANB.

11 (2) The trustees of a district shall fund the school flexibility fund with the money allocated under [section  
12 4] and 20-9-542 and with the money raised by the levy under 20-9-544.

13 (3) The financial administration of the school flexibility fund must be in accordance with the financial  
14 administration provisions of this title for a budgeted fund."

15  
16 **NEW SECTION. Section 25. Codification instruction.** (1) [Sections 1 through 6] are intended to be  
17 codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [sections 1  
18 through 6].

19 (2) [Sections 7 through 17] are intended to be codified as an integral part of Title 15, and the provisions  
20 of Title 15 apply to [sections 7 through 17].

21 (3) [Sections 18 and 19] are intended to be codified as an integral part of Title 15, chapter 30, part 23,  
22 and the provisions of Title 15, chapter 30, part 23, apply to [sections 18 and 19].

23 (4) [Sections 20 and 21] are intended to be codified as an integral part of Title 15, chapter 31, and the  
24 provisions of Title 15, chapter 31, apply to [sections 20 and 21].

25 (5) [Section 22] is intended to be codified as an integral part of Title 20, chapter 9, and the provisions  
26 of Title 20, chapter 9, apply to [section 22].

27  
28 **NEW SECTION. Section 26. Severability.** If a part of [this act] is invalid, all valid parts that are  
29 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
30 the part remains in effect in all valid applications that are severable from the invalid applications.

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NEW SECTION. **Section 27. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 28. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014.

NEW SECTION. **Section 29. Termination.** [This act] terminates December 31, 2021.

- END -