

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 TO PUBLIC SCHOOLS AND FOR DONATIONS TO STUDENT
7 SCHOLARSHIP ORGANIZATIONS; PROVIDING SUPPLEMENTAL FUNDING TO PUBLIC SCHOOLS FOR
8 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."

15
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.

21
22 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 6], the following definitions
23 apply:

- 24 (1) "Eligible public school" means a Montana public school.
25 (2) "Geographic region" has the meaning provided in [section 3].
26 (3) "Innovative educational program" means an advanced academic program that enhances the
27 curriculum or academic program of an eligible public school and that is not part of the regular academic program
28 of an eligible public school. The instruction, program, or other activities offered through an innovative educational
29 program must include at least one of the following characteristics:
30 (a) provides different focus, methodology, skill training, or delivery, including internet-based and distance

1 learning technologies, than is provided in a typical academic program of a public school;

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

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

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

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

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

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

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

13

14 **NEW SECTION. Section 3. Establishment of geographic regions and large districts -- innovative**
15 **educational program.** (1) (a) Geographic regions are established on the basis of county boundaries and are
16 designed to achieve approximate statewide equity among the eleven regions in terms of the number of trustees
17 on school boards located within the applicable regions. The equity must be reviewed periodically by the
18 superintendent of public instruction by dividing the number of trustees serving on school boards located within
19 the applicable region, including trustees on school boards referenced in subsection (2), by the total number of
20 geographic regions and large districts.

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

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

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

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

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

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

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

29 (vii) 7th region: Beaverhead, Deer Lodge, Granite, Jefferson, Madison, Powell, and Silver Bow Counties;

30 (viii) 8th region: Broadwater, Gallatin, Meagher, Park, and Sweet Grass Counties;

- 1 (ix) 9th region: Big Horn, Carbon, Stillwater, Treasure, and Yellowstone Counties;
- 2 (x) 10th region: Carter, Custer, Fallon, Powder River, and Rosebud Counties; and
- 3 (xi) 11th region: Chouteau, Glacier, Lewis and Clark, Liberty, Pondera, Teton, and Toole Counties.
- 4 (2) (a) Large districts are established as each of the seven largest school districts in the state based on
- 5 combined pupil enrollment from kindergarten through the 12th grade.
- 6 (b) The seven largest school districts are established as follows:
- 7 (i) Billings;
- 8 (ii) Butte;
- 9 (iii) Bozeman;
- 10 (iv) Great Falls;
- 11 (v) Helena;
- 12 (vi) Kalispell; and
- 13 (vii) Missoula.
- 14 (3) The superintendent of public instruction shall make recommendations to the education and local
- 15 government interim committee regarding any adjustments to the regions and large districts necessary to preserve
- 16 equity and fairness.
- 17

18 **NEW SECTION. Section 4. Distribution of supplemental revenue to public schools -- innovative**

19 **educational program.** (1) The superintendent of public instruction shall:

- 20 (a) obligate at least 95% of its annual revenue from the educational improvement account provided for
- 21 in [section 5] for supplemental funding to eligible public schools for innovative educational programs and
- 22 technology deficiencies;
- 23 (b) provide innovative educational program or technology deficiency supplemental funding to eligible
- 24 public schools; and
- 25 (c) distribute supplemental funding from the educational improvement account to each geographic region
- 26 and each large district in a manner that provides proportionate funding based on the amount of money directed
- 27 by taxpayers under [section 13] in each of the respective geographic regions and large districts. In distributing
- 28 the supplemental funding, the superintendent of public instruction shall set the maximum receivable amount for
- 29 each school in a geographic region or large district based on a ratio of the school's number of quality educators
- 30 to the total number of quality educators in the school's geographic region or large district.

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

7 (b) A taxpayer may specify the geographic region or large district in which the supplemental funding must
 8 be used.

9 (3) The supplemental funding must be deposited in the district's school flexibility fund provided for in
 10 20-9-543.

11
 12 NEW SECTION. **Section 5. Educational improvement account -- revenue allocated --**
 13 **appropriations from account.** (1) There is an educational improvement account in the state special revenue
 14 fund established in 17-2-102. The funds in the account must be administered by the superintendent of public
 15 instruction.

16 (2) Taxpayer-directed tax payments must be paid into the account as provided in [section 13].

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

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

20
 21 NEW SECTION. **Section 6. Rulemaking.** The superintendent of public instruction may adopt rules,
 22 prepare forms, and maintain records that are necessary to implement and administer [sections 1 through 6].

23
 24 NEW SECTION. **Section 7. Purpose.** Pursuant to 5-4-104, the legislature finds that the purpose of
 25 student scholarship organizations is to provide parental and student choice in education with private contributions
 26 through tax replacement programs.

27
 28 NEW SECTION. **Section 8. Definitions.** As used in [sections 7 through 17], the following definitions
 29 apply:

30 (1) "Department" means the department of revenue provided for in 2-15-1301.

- 1 (2) "Eligible student" means a student who is a Montana resident and who is 5 years of age or older on
2 or before September 10 of the year of attendance and has not yet reached 19 years of age.
- 3 (3) "Geographic region" has the meaning provided in [section 3].
- 4 (4) "Large district" has the meaning provided in [section 3].
- 5 (5) "Partnership" has the meaning provided in 15-30-2101.
- 6 (6) "Pass-through entity" has the meaning provided in 15-30-2101.
- 7 (7) "Qualified education provider" means an education provider that:
- 8 (a) is not a public school;
- 9 (b) (i) is accredited, has applied for accreditation, or is provisionally accredited by a state, regional, or
10 national accreditation organization; or
- 11 (ii) is a nonaccredited provider or tutor and has informed the child's parents or legal guardian in writing
12 at the time of enrollment that the provider is not accredited and is not seeking accreditation;
- 13 (c) is not a home school as referred to in 20-5-102(2)(e);
- 14 (d) administers a nationally recognized standardized assessment test or criterion-referenced test and:
- 15 (i) makes the results available to the child's parents or legal guardian; and
- 16 (ii) administers the test for all 8th grade and 11th grade students and provides the overall scores on a
17 publicly accessible private website or provides the composite results of the test to the office of public instruction
18 for posting on its website;
- 19 (e) satisfies the health and safety requirements prescribed by law for private schools in this state; and
- 20 (f) qualifies for an exemption from compulsory enrollment under 20-5-102(2)(e) and 20-5-109.
- 21 (8) "Small business corporation" has the meaning provided in 15-30-3301.
- 22 (9) "Student scholarship organization" means a charitable organization in this state that:
- 23 (a) is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, 26
24 U.S.C. 501(c)(3);
- 25 (b) allocates not less than 90% of its annual revenue for scholarships to allow students to enroll with any
26 qualified education provider; and
- 27 (c) provides educational scholarships to eligible students without limiting student access to only one
28 education provider.
- 29 (10) "Taxpayer" has the meaning provided in 15-30-2101.
- 30

1 **NEW SECTION. Section 9. Requirements for student scholarship organizations.** (1) A student
2 scholarship organization:

3 (a) shall obligate at least 90% of its annual revenue for scholarships. For the purpose of this calculation:

4 (i) the cost of the annual fiscal review provided for in [section 11(1)(b)] may be paid out of the total
5 contributions before calculation of the 90% minimum obligation amount; and

6 (ii) all contributions subject to the 90% minimum obligation amount that are received in 1 calendar year
7 must be paid out in scholarships within the 3 calendar years following the contribution.

8 (b) may not restrict or reserve scholarships for use at a particular education provider or any particular
9 type of education provider and shall allow an eligible student to enroll with any qualified education provider of the
10 parents' or legal guardian's choice;

11 (c) shall provide scholarships to eligible students to attend instruction offered by a qualified education
12 provider;

13 (d) may not provide a scholarship to an eligible student for an academic year that exceeds 50% of the
14 per-pupil average of total public school expenditures calculated in [section 22];

15 (e) shall ensure that the organization's average scholarship for an academic year does not exceed 30%
16 of the per-pupil average of total public school expenditures calculated in [section 22];

17 (f) shall maintain separate accounts for scholarship funds and operating funds;

18 (g) may transfer funds to another student scholarship organization;

19 (h) shall maintain an application process under which scholarship applications are accepted, reviewed,
20 approved, and denied; and

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

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

24
25 **NEW SECTION. Section 10. Tuition payment limitation.** (1) A student scholarship organization shall
26 deliver the scholarship funds directly to the qualified education provider selected by the parents or legal guardian
27 of the child to whom the scholarship was awarded. The qualified education provider shall immediately notify the
28 parents or legal guardian that the payment was received.

29 (2) A parent or legal guardian of an eligible student may not accept one or more scholarship awards from
30 a student scholarship organization for an eligible student if the total amount of the awards exceeds 50% of the

1 per-pupil average of total public school expenditures calculated in [section 22]. This limitation applies to each
2 eligible student of a parent or legal guardian.

3
4 **NEW SECTION. Section 11. Reporting requirements for student scholarship organizations. (1)**

5 Each student scholarship organization shall:

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

8 (b) complete an annual fiscal review of its accounts by an independent certified public accountant within
9 120 days after the close of the calendar year that discloses for each of the 3 most recently completed calendar
10 years:

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

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

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

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

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

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

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

21
22 **NEW SECTION. Section 12. Student scholarship organizations -- listing on website. (1)** The

23 department shall maintain on its website a hyperlink to a current list of all:

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

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

26 (2) The list must include:

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

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

30

1 NEW SECTION. **Section 13. Credit for providing supplemental funding to public schools --**
2 **directed tax payment -- innovative educational program.** (1) Subject to subsection (5), a taxpayer or
3 corporation is allowed a credit against the tax imposed by chapter 30 or 31 for taxpayer-directed tax payments
4 to the educational improvement account provided for in [section 5] for the purpose of providing supplemental
5 funding to public schools for innovative educational programs and technology deficiencies. The donor may direct
6 a contribution to a geographic region or a large district. The amount of the credit allowed for the taxpayer-directed
7 tax payment is equal to the amount of the donation, not to exceed \$150.

8 (2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through
9 entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same
10 proportion as used to report the entity's income or loss.

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

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

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

17 (5) (a) (i) The aggregate amount of taxpayer-directed tax payments allowed under this section is \$3
18 million beginning in tax year 2015.

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

22 (b) The department shall approve the amount of credits for taxpayers on a first-come, first-served basis
23 and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a
24 directed tax payment after total directed tax payments claimed exceeds the aggregate limit, the taxpayer's return
25 will be processed without regard to the credit. If a disallowance creates an underpayment of tax liability, then the
26 department shall notify the taxpayer of the disallowed claim and the taxpayer has 60 days to pay the
27 underpayment that is attributable to the disallowed claim before interest and penalties are assessed under
28 15-1-216.

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

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

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

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

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

10
11 **NEW SECTION. Section 14. Qualified education tax credit for contributions to student scholarship**
12 **organizations.** (1) Subject to subsection (5), a taxpayer or corporation is allowed a credit against the tax imposed
13 by chapter 30 or 31 for donations made to a student scholarship organization. The donor may not direct or
14 designate contributions to a parent, legal guardian, or specific qualified education provider. The amount of the
15 credit allowed is equal to the amount of the donation, not to exceed \$150.

16 (2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through
17 entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same
18 proportion as used to report the entity's income or loss.

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

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

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

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

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

30 (b) The department shall approve the amount of tax credits for taxpayers on a first-come, first-served

1 basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes
2 a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed
3 without regard to the credit. If a disallowance creates an underpayment of tax liability, then the department shall
4 notify the taxpayer of the disallowed claim and the taxpayer has 60 days to pay the tax that is attributable to the
5 disallowed claim before interest and penalties are assessed under 15-1-216.

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

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

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

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

16 (7) The department may develop an internet-based registration system that provides donors with the
17 opportunity to obtain preapproval for a tax credit before making a contribution.

18
19 **NEW SECTION. Section 15. Report to revenue and transportation interim committee -- student**
20 **scholarship organizations.** Each biennium, the department shall provide to the revenue and transportation
21 interim committee a list of student scholarship organizations receiving contributions from businesses and
22 individuals that are granted tax credits under [section 14]. The listing must detail the tax credits claimed under
23 the individual income tax in chapter 30 and the corporate income tax in chapter 31.

24
25 **NEW SECTION. Section 16. Review determination -- termination -- confidentiality.** (1) Subject to
26 subsection (7), the department is authorized to examine any books, papers, records, or memoranda relevant to
27 determining whether a student scholarship organization is in compliance with [sections 8, 9, and 11].

28 (2) If a student scholarship organization is not in compliance, the department shall provide to the
29 organization written notice of the specific failures and the organization has 30 days from the date of the notice
30 to correct deficiencies. If the organization fails to correct all deficiencies, the department shall provide a final

1 written notice of the failure to the organization. The organization may appeal the department's determination of
2 failure to comply according to the uniform dispute review procedure in 15-1-211 within 30 days of the date of the
3 notice.

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

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

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

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

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

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

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

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

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

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

26
27 **NEW SECTION. Section 17. Rulemaking.** The department may adopt rules, prepare forms, and
28 maintain records that are necessary to implement and administer [sections 7 through 17].

29
30 **NEW SECTION. Section 18. Credit for providing supplemental funding to public schools --**

1 **directed tax payment -- innovative educational program.** There is a credit against tax liability under this
 2 chapter for a taxpayer-directed tax payment to the educational improvement account as provided in [section 13].

3
 4 NEW SECTION. **Section 19. Qualified education individual income tax credit for contributions to**
 5 **student scholarship organization.** There is a credit against tax liability under this chapter for a charitable
 6 donation made to a student scholarship organization as provided in [section 14].

7
 8 NEW SECTION. **Section 20. Credit for providing supplemental funding to public schools --**
 9 **corporate directed tax payment -- innovative educational program.** There is a credit against tax liability under
 10 this chapter for a taxpayer-directed tax payment to the educational improvement account as provided in [section
 11 13].

12
 13 NEW SECTION. **Section 21. Qualified education corporate credit for contributions to student**
 14 **scholarship organization.** There is a credit against tax liability under this chapter for a charitable donation made
 15 to a student scholarship organization as provided in [section 14].

16
 17 NEW SECTION. **Section 22. Statewide average per-pupil spending.** (1) The superintendent of public
 18 instruction shall calculate the per-pupil average of total public school expenditures in Montana for the second
 19 most recently completed school fiscal year by August 1 of the ensuing school fiscal year and make the calculation
 20 available to the public. The calculation is made by dividing total expenditures calculated in subsection (2) by total
 21 pupils calculated in subsection (3).

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

- 24 (a) district general fund expenditures;
 25 (b) transportation;
 26 (c) bus depreciation;
 27 (d) food services;
 28 (e) tuition;
 29 (f) retirement;
 30 (g) miscellaneous programs;

- 1 (h) traffic education;
- 2 (i) nonoperating fund;
- 3 (j) lease-rental agreement;
- 4 (k) compensated absence fund;
- 5 (l) metal mines tax reserve;
- 6 (m) state mining impact;
- 7 (n) impact aid;
- 8 (o) litigation reserve;
- 9 (p) technology acquisition;
- 10 (q) flexibility fund;
- 11 (r) debt service;
- 12 (s) building reserve; and
- 13 (t) interlocal agreement.

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

16

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

18 **"15-30-2110. Adjusted gross income.** (1) Subject to subsection (13), adjusted gross income is the
19 taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62,
20 and in addition includes the following:

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

24 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
25 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

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

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

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

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

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

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

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

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

14 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
15 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

16 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including
17 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

18 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income
19 received as defined in 15-30-2101;

20 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

21 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
22 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in
23 excess of \$30,000 as shown on the taxpayer's return;

24 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
25 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in
26 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000
27 as shown on their joint return;

28 (d) all Montana income tax refunds or tax refund credits;

29 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

30 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section

1 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January
2 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage,
3 or lodging;

4 (g) all benefits received under the workers' compensation laws;

5 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the
6 employee under federal law, including premiums paid by the employer for an employee pursuant to 33-22-166;

7 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a
8 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

9 (j) principal and income in a medical care savings account established in accordance with 15-61-201
10 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a
11 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

12 (k) principal and income in a first-time home buyer savings account established in accordance with
13 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase
14 of a single-family residence;

15 (l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition
16 program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal
17 Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of
18 a designated beneficiary;

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

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

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

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

30 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or

1 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;
2 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; ~~and~~
3 (s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in
4 15-31-163; and
5 (t) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to
6 [section 10].

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

11 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business
12 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and
13 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
14 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries
15 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must
16 be made to determine the amount of income or loss of the partnership or small business corporation.

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

22 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section
23 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may
24 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital
25 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss
26 must be split equally on each return.

27 (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and
28 who file separate Montana income tax returns are not required to recompute allowable passive losses according
29 to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal
30 Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must

1 be shown on that spouse's return; otherwise, the loss must be split equally on each return.

2 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a
3 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.
4 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is
5 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

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

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

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

26 (11) (a) An individual who contributes to one or more accounts established under the Montana family
27 education savings program or to a qualified tuition program established and maintained by another state as
28 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
29 gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each
30 spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses

1 may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The
2 reduction in adjusted gross income under this subsection applies only with respect to contributions to an account
3 of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the
4 taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect
5 to withdrawals of contributions that reduced adjusted gross income.

6 (b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in
7 15-62-208.

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

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

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

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

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

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

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

25 (14) By November 1 of each year, the department shall multiply the amount of pension and annuity
26 income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii)
27 by the inflation factor for that tax year, but using the year 2009 consumer price index, and rounding the results
28 to the nearest \$10. The resulting amounts are effective for that tax year and must be used as the basis for the
29 exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency--sec.
30 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

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

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

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

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

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

(iv) student assessment and evaluation;

(v) the development of curriculum materials;

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

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

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

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

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

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

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

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

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

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

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

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

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

12

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

16

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

18

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

21

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

23

- END -