

1 SENATE BILL NO. 282

2 INTRODUCED BY D. LEWIS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A TAX CREDIT FOR CONTRIBUTIONS TO STUDENT
5 SCHOLARSHIP ORGANIZATIONS BY INDIVIDUAL AND CORPORATE TAXPAYERS; PROVIDING
6 REQUIREMENTS FOR GRANTING SCHOLARSHIPS AND DETERMINING SCHOOLS OR PROGRAMS
7 ELIGIBLE TO EDUCATE STUDENTS RECEIVING SCHOLARSHIPS; PROVIDING THAT THE AMOUNT OF
8 THE SCHOLARSHIP IS NOT TAXABLE INCOME; ESTABLISHING THE MAXIMUM AMOUNT THAT MAY BE
9 CLAIMED AS A CREDIT; LIMITING THE TOTAL AMOUNT OF CREDITS THROUGH AN APPLICATION
10 PROCESS TO THE DEPARTMENT OF REVENUE; REQUIRING REPORTS TO THE REVENUE AND
11 TRANSPORTATION INTERIM COMMITTEE; ADJUSTING THE CALCULATION OF ANB TO REFLECT
12 SCHOLARSHIP STUDENTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-30-2110
13 AND 20-9-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
14 APPLICABILITY DATE."

15
16 WHEREAS, a quality education is crucial for individual achievement and for the long-term health of our
17 society; and

18 WHEREAS, most, but not all, students perform well in a traditional public school setting; and

19 WHEREAS, it is in the best interest of this state to ensure that all parents and foster parents, regardless
20 of means, have the opportunity to choose an educational venue that works best for their children; and

21 WHEREAS, Montana is one of only eight remaining states without school choice or charter schools; and

22 WHEREAS, many Montana parents and foster parents would like the opportunity to choose a school for
23 their children among options that include private schools, charter schools, virtual schools, and home schooling;
24 and

25 WHEREAS, approximately 2,000 new dropouts enter the state's labor market each year; and

26 WHEREAS, Montana high school graduates on average earn 22% more than Montana high school
27 dropouts after controlling for differences in age, gender, and race. The total cost to Montana's economy that
28 results from these reduced taxable earnings amounts to \$216 million annually. The lost wages of high school
29 dropouts lead to lower state tax contributions. This lost tax revenue amounts to approximately \$16.3 million
30 annually due to the lower wages of high school dropouts; and

1 WHEREAS, Montana's high school dropouts are almost twice as likely to report "fair" or "poor" health as
2 graduates. Dropouts are also almost twice as likely to receive Medicaid subsidies and to be more reliant on the
3 state to cover the related expenses. Higher Medicaid use by dropouts costs Montana nearly \$23 million per year;
4 and

5 WHEREAS, nearly 1 of every 10 young male dropouts were institutionalized on a given day in 2006-2007
6 versus fewer than 1 of 33 high school graduates. The total annual fiscal impact of dropouts on the state's
7 incarceration costs is almost \$10 million; and

8 WHEREAS, by permanently cutting the dropout rate in half, each class of new high school graduates will
9 yield over \$32 million in direct gross economic benefits to the state.

10

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

12

13 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 6], the following definitions
14 apply:

15 (1) "Eligible student" means a student who is a Montana resident and who:

16 (a) is eligible to enroll in a kindergarten or an elementary or secondary school program in Montana; or

17 (b) is currently placed or during the previous fiscal year was placed in foster care under the supervision
18 of the state.

19 (2) "Qualified school or program" means a school or program that:

20 (a) is a nonpublic educational facility or entity that qualifies its students for exemption from compulsory
21 enrollment under 20-5-102;

22 (b) (i) is accredited, has applied for accreditation, or is provisionally accredited by:

23 (A) the accrediting association of seventh-day adventist schools;

24 (B) the American montessori society;

25 (C) the association of christian teachers and schools;

26 (D) the national independent private schools association;

27 (E) the North American christian school accrediting association;

28 (F) the Wisconsin evangelical lutheran synod;

29 (G) the association of classical christian schools;

30 (H) the association of christian schools international;

- 1 (I) christian schools international;
- 2 (J) the national association for the education of young children;
- 3 (K) national lutheran schools;
- 4 (L) the pacific northwest association of independent schools;
- 5 (M) the western catholic educational association;
- 6 (N) the northwest accreditation commission; or
- 7 (O) the American association of christian schools; or
- 8 (ii) is a nonaccredited school and has informed the child's parents or foster parents in writing at the time
- 9 of enrollment that the school is not accredited and is not seeking accreditation;
- 10 (c) is not a home school as provided in 20-5-109;
- 11 (d) administers a nationally recognized normative assessment test and makes the results available to
- 12 the child's parents or foster parents; and
- 13 (e) satisfies the health and safety requirements prescribed by law for private schools in this state.
- 14 (3) "Student scholarship organization" means a charitable organization in this state that:
- 15 (a) is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, 26
- 16 U.S.C. 501(c)(3);
- 17 (b) allocates not less than 90% of its annual revenue for scholarships to allow students to attend any
- 18 qualified school or program; and
- 19 (c) provides educational scholarships to eligible students without limiting availability to students of only
- 20 one school or any particular type of school.
- 21
- 22 **NEW SECTION. Section 2. Requirements for student scholarship organizations.** (1) A student
- 23 scholarship organization:
- 24 (a) shall obligate at least 90% of its annual revenue for scholarships of which 10% must be obligated for
- 25 scholarships available only to Indian students, but if scholarships requested and awarded do not meet 90% of
- 26 contributions received, the balance may be carried forward for the next 2 years;
- 27 (b) may not restrict or reserve scholarships for use at a particular school or any particular type of school
- 28 and shall allow an eligible student to attend any qualified school or program of the parents' or foster parents'
- 29 choice;
- 30 (c) may provide scholarships only to eligible students to attend a qualified school or program;

1 (d) shall grant an average scholarship of at least \$3,000 for the year 2012, increasing the average
2 amount in subsequent years by the year-over-year annual increase in the consumer price index, U.S. city
3 average, all urban consumers, for all items, using the year 2011-2012 as the base of 100, as published by the
4 bureau of labor statistics of the U.S. department of labor;

5 (e) shall maintain separate accounts for scholarship funds and operating funds;

6 (f) may transfer funds to another student scholarship organization;

7 (g) shall complete an annual fiscal review of its accounts by an independent certified public accountant
8 by May 15 and provide a copy of the review to the department of revenue in accordance with [section 3]; and

9 (h) shall annually submit a notice to the office of public instruction, in accordance with office of public
10 instruction rules, of its participation as a student scholarship organization under [sections 1 through 8] and, for
11 the purpose of ANB determination under 20-9-311, report the name of each student who attended a public school
12 the previous year and receives a scholarship, the name and address of the public school the student attended
13 prior to receiving the scholarship, and the last day the student attended the public school.

14 (2) A student scholarship organization is eligible to participate in the provisions of [sections 1 through
15 8] unless the department of revenue has determined that the organization has substantially and intentionally failed
16 to comply with the provisions of subsection (1). The organization may appeal the department's determination of
17 failure to comply with subsection (1) according to the uniform dispute review procedure in 15-1-211.

18
19 **NEW SECTION. Section 3. Taxation requirements for student scholarship organizations.** (1) Each
20 student scholarship organization shall by May 30 of each year report to the department of revenue, on a form
21 prescribed by the department, the total number and the total dollar value of contributions received by the student
22 scholarship organization and the total number and the total dollar value of scholarships granted by the student
23 scholarship organization.

24 (2) A copy of the annual fiscal review conducted pursuant to [section 2] must accompany the report.

25 (3) The department of revenue may not require any other substantive information from student
26 scholarship organizations except as expressly authorized in [sections 1 through 8].

27
28 **NEW SECTION. Section 4. Report to revenue and transportation interim committee.** Each
29 biennium the department of revenue shall provide a list to the revenue and transportation interim committee of
30 all student scholarship organizations receiving contributions from businesses and individuals that are granted tax

1 credits under [sections 1 through 8].

2

3 **NEW SECTION. Section 5. Restrictive endorsement -- tuition payment limitation.** (1) The parent
4 or foster parent of a student to whom a scholarship award is granted shall restrictively endorse a scholarship
5 award check to a qualified school or program for deposit into the account of the qualified school or program. The
6 parent or foster parent may not designate any entity or individual associated with the participating qualified school
7 or program as the parent's or foster parent's attorney-in-fact to endorse a scholarship check. A participant who
8 fails to comply with this section forfeits the scholarship.

9 (2) A parent or foster parent of an eligible student may not accept one or more scholarship awards from
10 a student scholarship organization if the total amount of the awards exceeds the individual total tuition amount
11 charged by the qualified school or program for that student.

12

13 **NEW SECTION. Section 6. Website.** The office of public instruction shall maintain on its website a link
14 to a current list of all student scholarship organizations that have provided notice pursuant to [section 2].

15

16 **NEW SECTION. Section 7. Qualified education tax credit.** (1) An individual taxpayer is allowed a
17 credit against the tax imposed by this chapter for charitable donations made to a student scholarship organization
18 in a preapproved amount as provided in this section.

19 (2) The tax credit is not allowed if a donor designates that the donor's charitable donations be made to
20 a student scholarship organization for the direct benefit of any dependent of the donor or the donor otherwise
21 engages in any attempt to directly or indirectly direct the distribution of scholarships by the student scholarship
22 organization.

23 (3) If the credit allowed under this section is claimed by a small business corporation, as defined in
24 15-30-3301, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion
25 used to report the corporation's or partnership's income or loss for Montana income tax purposes.

26 (4) The total amount of the tax credit under this section for a tax year may not exceed 90% of the
27 taxpayer's income tax liability. Any unused tax credit may be carried forward against the taxpayer's succeeding
28 5 years' tax liability. A credit is not allowed the taxpayer against prior years' tax liability.

29 (5) (a) (i) The aggregate initial amount of tax credits allowed under this section is \$3.5 million for tax year
30 2011.

1 (ii) By August 1 of each year, the department shall determine the percentage that the total amount of tax
2 credits granted for the prior tax year is of the total amount of scholarships granted for that tax year. The
3 determination must be based on the annual fiscal reviews that student scholarship organizations have provided
4 to the department in accordance with [section 3]. If the amount of tax credits exceeds 80% of the amount that was
5 awarded in scholarships, the aggregate amount of tax credits allowed in this subsection (5)(a) must be increased
6 by 30% over the amount allowed the prior tax year. If the percentage of the amount granted for scholarships is
7 less than 80% of the credits allowed, then the allowed tax credit amount remains unchanged for the next tax year.

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

10 (c) For the purposes of subsections (5)(a) and (5)(b), a student scholarship organization shall notify
11 potential donors of the requirements of this section. Before making a contribution to a student scholarship
12 organization, a potential donor shall notify the department on or before October 1 of the total amount of
13 contributions that the potential donor intends to make to the student scholarship organization. The department
14 shall preapprove or deny the requested amount within 30 days after receiving the request from the potential
15 donor. If within 30 days the department fails to preapprove or deny the request, the request is considered
16 approved. To receive a tax credit under this section, a donor shall make the contribution to the student
17 scholarship organization within 30 days after receiving notice from the department that the requested amount was
18 preapproved or within 30 days of the date the amount was considered approved. If the potential donor does not
19 make the contribution within the required time, the department may not include the preapproved contribution
20 amount when calculating the limit prescribed in subsection (5)(a) and the donor may not receive the credit.

21 (d) Preapproval of contributions by the department must be based solely on the availability of tax credits
22 subject to the aggregate total limit established in subsection (5)(a).

23 (e) To claim the student scholarship organization tax credit under this section, a taxpayer shall attach
24 to the taxpayer's tax return a letter of confirmation of donation issued by the student scholarship organization to
25 which the contribution was made. The letter of confirmation of donation must contain the taxpayer's name,
26 address, and tax identification number, the amount of the contribution, the date of the contribution, and the
27 amount of the credit.

28 (6) A credit is not allowed under this section with respect to any amount deducted by the taxpayer as
29 a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue
30 Code, 26 U.S.C. 501(c)(3).

1 (7) The department may adopt rules and administer the tax provisions of this section.

2 (8) As used in this section:

3 (a) "charitable donation" means the payment of funds by the taxpayer during the tax year for which a
4 credit under this section is claimed and allowed to a student scholarship organization operating pursuant to
5 [sections 1 through 6] that are used for tuition and fees for a qualified school or program;

6 (b) "qualified school or program" has the meaning provided in [section 1]; and

7 (c) "student scholarship organization" has the meaning provided in [section 1].

8

9 **NEW SECTION. Section 8. Qualified education tax credit.** (1) A corporation is allowed a credit
10 against the tax imposed by this chapter for charitable donations made to a student scholarship organization as
11 provided in [section 7(2) through (8)] in an amount not to exceed 90% of the corporation's tax liability.

12 (2) A credit allowed by this section must be administered pursuant to and meet the requirements of
13 [section 7(2) through (8)].

14

15 **Section 9.** Section 15-30-2110, MCA, is amended to read:

16 **"15-30-2110. Adjusted gross income.** (1) Subject to subsection (13), adjusted gross income is the
17 taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62,
18 and in addition includes the following:

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

22 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
23 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

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

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

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

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

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

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

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

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

12 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
13 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

14 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including
15 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

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

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

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

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

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

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

28 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section
29 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January
30 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage,

- 1 or lodging;
- 2 (g) all benefits received under the workers' compensation laws;
- 3 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the
4 employee under federal law;
- 5 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a
6 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- 7 (j) principal and income in a medical care savings account established in accordance with 15-61-201
8 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a
9 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;
- 10 (k) principal and income in a first-time home buyer savings account established in accordance with
11 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase
12 of a single-family residence;
- 13 (l) contributions withdrawn from a family education savings account or earnings withdrawn from a family
14 education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated
15 beneficiary;
- 16 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the
17 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- 18 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of
19 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution
20 of the same estate or trust for the same tax period;
- 21 (o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch
22 risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction
23 is not provided for federal income tax purposes;
- 24 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant
25 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and
26 taxpayer meet the filing requirements in 15-30-2602.
- 27 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or
28 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;
- 29 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; ~~and~~
- 30 (s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in

1 15-31-163; and

2 (t) the amount of a scholarship awarded to an eligible student by a student scholarship organization
3 pursuant to [sections 1 through 6].

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

8 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business
9 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and
10 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
11 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries
12 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must
13 be made to determine the amount of income or loss of the partnership or small business corporation.

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

19 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section
20 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may
21 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital
22 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss
23 must be split equally on each return.

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

29 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a
30 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.

1 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is
2 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

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

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

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

23 (11) An individual who contributes to one or more accounts established under the Montana family
24 education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the
25 contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for
26 the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made
27 by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection
28 applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is
29 the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a
30 Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions

1 that reduced adjusted gross income.

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

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

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

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

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

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

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

19 (14) By November 1 of each year, the department shall multiply the amount of pension and annuity
20 income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii)
21 by the inflation factor for that tax year, but using the year 2009 consumer price index, and rounding the results
22 to the nearest \$10. The resulting amounts are effective for that tax year and must be used as the basis for the
23 exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency--sec.
24 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

25

26 **Section 10.** Section 20-9-311, MCA, is amended to read:

27 **"20-9-311. Calculation of average number belonging (ANB) -- three-year averaging.** (1) Average
28 number belonging (ANB) must be computed for each budget unit as follows:

29 (a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were
30 enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on

- 1 February 1 of the prior school fiscal year, or the next school day if those dates do not fall on a school day, and
2 divide the sum by two; and
- 3 (b) multiply the average enrollment calculated in subsection (1)(a) by the sum of 180 and the approved
4 pupil-instruction-related days for the current school fiscal year and divide by 180.
- 5 (2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related
6 days may be included in the calculation.
- 7 (3) When a school district has approval to operate less than the minimum aggregate hours under
8 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.
- 9 (4) (a) For the purpose of calculating ANB, enrollment in an education program:
- 10 (i) from 180 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time
11 enrollment;
- 12 (ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time
13 enrollment;
- 14 (iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time
15 enrollment; and
- 16 (iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.
- 17 (b) Enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per
18 school year may not be included for purposes of ANB.
- 19 (c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on
20 the hours necessary and appropriate to provide the course within a regular classroom schedule.
- 21 (d) A pupil in kindergarten through grade 12 who is concurrently enrolled in more than one public school,
22 program, or district may not be counted as more than one full-time pupil for ANB purposes.
- 23 (5) For a district that is transitioning from a half-time to a full-time kindergarten program, the state
24 superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose
25 of calculating ANB for the elementary programs offering full-time kindergarten in the current year. For the
26 purposes of calculating the 3-year ANB, the superintendent of public instruction shall count the kindergarten
27 enrollment as one-half enrollment and then add the additional kindergarten ANB to the 3-year average ANB for
28 districts offering full-time kindergarten.
- 29 (6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days,
30 the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes

1 attendance prior to the day of the enrollment count.

2 (7) The enrollment of preschool pupils, as provided in 20-7-117, may not be included in the ANB
3 calculations.

4 (8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a
5 district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the
6 district, except that the ANB is calculated as a separate budget unit when:

7 (a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town
8 located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled,
9 full-time pupils of the school must be calculated as a separate budget unit for ANB purposes and the district must
10 receive a basic entitlement for the school calculated separately from the other schools of the district;

11 (ii) a school of the district is located more than 20 miles from any other school of the district and
12 incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school
13 must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school
14 calculated separately from the other schools of the district;

15 (iii) the superintendent of public instruction approves an application not to aggregate when conditions
16 exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any
17 other condition exists that would result in an unusual hardship to the pupils of the school if they were transported
18 to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately
19 for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the
20 other schools of the district; or

21 (iv) two or more districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, the ANB and
22 the basic entitlements of the component districts must be calculated separately for a period of 3 years following
23 the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional
24 years as follows:

25 (A) 75% of the basic entitlement for the fourth year;

26 (B) 50% of the basic entitlement for the fifth year; and

27 (C) 25% of the basic entitlement for the sixth year.

28 (b) a junior high school has been approved and accredited as a junior high school, all of the regularly
29 enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB
30 purposes;

1 (c) a middle school has been approved and accredited, all pupils below the 7th grade must be
2 considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high
3 school pupils for ANB purposes; or

4 (d) a school has not been accredited by the board of public education, the regularly enrolled, full-time
5 pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes,
6 nor will an average number belonging for the nonaccredited school be used in determining the BASE funding
7 program for the district.

8 (9) The district shall provide the superintendent of public instruction with semiannual reports of school
9 attendance, absence, and enrollment for regularly enrolled students, using a format determined by the
10 superintendent.

11 (10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program
12 provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes
13 only if the pupil is offered access to the complete range of educational services for the basic education program
14 required by the accreditation standards adopted by the board of public education.

15 (b) Access to school programs and services for a student placed by the trustees in a private program
16 for special education may be limited to the programs and services specified in an approved individual education
17 plan supervised by the district.

18 (c) Access to school programs and services for a student who is incarcerated in a facility, other than a
19 youth detention center, may be limited to the programs and services provided by the district at district expense
20 under an agreement with the incarcerating facility.

21 (d) This subsection (10) may not be construed to require a school district to offer access to activities
22 governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a
23 pupil who is not otherwise eligible under the rules of the organization.

24 (11) A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under this
25 title and who is:

26 (a) a resident of the district or a nonresident student admitted by trustees under a student attendance
27 agreement and who is attending a school of the district;

28 (b) unable to attend school due to a medical reason certified by a medical doctor and receiving
29 individualized educational services supervised by the district, at district expense, at a home or facility that does
30 not offer an educational program;

1 (c) unable to attend school due to the student's incarceration in a facility, other than a youth detention
2 center, and who is receiving individualized educational services supervised by the district, at district expense, at
3 a home or facility that does not offer an educational program;

4 (d) receiving special education and related services, other than day treatment, under a placement by the
5 trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's
6 expense under an approved individual education plan supervised by the district;

7 (e) participating in the running start program at district expense under 20-9-706;

8 (f) receiving educational services, provided by the district, using appropriately licensed district staff at
9 a private residential program or private residential facility licensed by the department of public health and human
10 services;

11 (g) enrolled in an educational program or course provided at district expense using electronic or offsite
12 delivery methods, including but not limited to tutoring, distance learning programs, online programs, and
13 technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite
14 instructional setting with the approval of the trustees of the district. The pupil shall:

15 (i) meet the residency requirements for that district as provided in 1-1-215;

16 (ii) live in the district and must be eligible for educational services under the Individuals With Disabilities
17 Education Act or under 29 U.S.C. 794; or

18 (iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.

19 (h) a resident of the district attending the Montana youth challenge program or a Montana job corps
20 program under an interlocal agreement with the district under 20-9-707.

21 (12) A district shall, for ANB purposes, calculate the enrollment of an eligible Montana youth challenge
22 program participant as half-time enrollment.

23 (13) (a) For an elementary or high school district that has been in existence for 3 years or more, the
24 district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated
25 using the current year ANB for all budget units or the 3-year average ANB for all budget units, whichever
26 generates the greatest maximum general fund budget.

27 (b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund
28 budget and BASE budget for the ensuing school fiscal year must be calculated separately for the elementary and
29 high school programs pursuant to subsection (13)(a) and then combined.

30 (14) The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:

1 (a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the
2 previous 2 school fiscal years; and

3 (b) dividing the sum calculated under subsection (14)(a) by three.

4 (15) For the purpose of determining ANB under subsection (1) or (13), students who are enrolled in a
5 qualified school or program and are receiving scholarships under [sections 1 through 8] and who were previously
6 enrolled in a public school must be subtracted from the current year count, and if a 3-year ANB is used, they must
7 also be subtracted from the counts for the previous two years."

8
9 **NEW SECTION. Section 11. Codification instruction.** (1) [Sections 1 through 6] are intended to be
10 codified as an integral part of Title 20, and the provisions of Title 20 apply to [sections 1 through 6].

11 (2) [Section 7] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions
12 of Title 15, chapter 30, apply to [section 7].

13 (3) [Section 8] is intended to be codified as an integral part of Title 15, chapter 31, and the provisions
14 of Title 15, chapter 31, apply to [section 8].

15
16 **NEW SECTION. Section 12. Effective date.** [This act] is effective on passage and approval.

17
18 **NEW SECTION. Section 13. Retroactive applicability.** [This act] applies retroactively, within the
19 meaning of 1-2-109, to tax years beginning after December 31, 2010.

20 - END -