

SENATE BILL 12

Introduced by Brown, R.

|      |   |
|------|---|
| 6/20 | Introduced                                    |
| 6/20 | Referred to Education & Cultural<br>Resources |
|      | Died in Committee                             |

1 Senate BILL NO. 112  
2 INTRODUCED BY Bob Brown  
3 BY REQUEST OF THE GOVERNOR  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING ELEMENTARY AND  
6 SECONDARY SCHOOL PUPILS TO ATTEND SCHOOLS OUTSIDE THEIR  
7 RESIDENT DISTRICTS AND CHANGING THE DATE OF APPLICATION;  
8 REQUIRING CERTAIN TUITION PAYMENTS; PROVIDING FOR PROPERTY  
9 TAX CREDITS IN THE RESIDENT DISTRICT; AMENDING SECTIONS  
10 20-5-301, 20-5-302, 20-5-311, AND 20-5-313, MCA; AND  
11 PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE."  
12

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

14 **Section 1.** Section 20-5-301, MCA, is amended to read:

15 "20-5-301. (Temporary) Elementary tuition with  
16 mandatory approval. (1) Any child may be enrolled in and  
17 attend an elementary school outside of the elementary  
18 district in which the child resides when the elementary  
19 school is located in:

20 (a) any other district of the county of the child's  
21 residence;

22 (b) a county adjoining the child's county of  
23 residence; or

24 (c) a district of another state that is adjacent to  
25 the county of the child's residence.

1 (2) When a parent or guardian of a child wishes to  
2 have the child attend a school under the provisions of this  
3 section, the parent or guardian shall apply to the county  
4 superintendent of the county of the parent or guardian's  
5 residence before ~~July~~ June 1 ~~of~~ prior to the school fiscal  
6 year for which approval is sought except in those cases when  
7 substantial changes in circumstances occurred subsequently  
8 to justify later application. The application must be made  
9 on a tuition agreement form supplied by the county  
10 superintendent and must be approved, before permission to  
11 enroll in and attend school outside of the district under  
12 the provisions of this section may be granted, by:

13 (a) the trustees of the elementary district in which  
14 the child resides;

15 (b) the trustees of the district where the child  
16 wishes to attend school; and

17 (c) the county superintendent of the county of the  
18 child's residence.

19 (3) In considering the approval of a tuition  
20 application, the tuition approval agents prescribed in this  
21 section shall approve the application for a resident child  
22 when:

23 (a) the child resides more than 3 miles from any  
24 school of his resident elementary district and the school  
25 the pupil wishes to attend is less distant than the nearest

1 school of the resident elementary district;

2 (b) the child resides more than 3 miles from any  
3 school of his resident elementary district and the district  
4 does not provide transportation under the provisions of this  
5 title;

6 (c) the child resides more than 3 miles from any  
7 school of his resident elementary district, the resident  
8 district does not provide transportation under the  
9 provisions of this title, and school bus transportation is  
10 furnished by the district operating the school which he  
11 wishes to attend;

12 (d) the child is a member of a family who must send  
13 another child outside of the elementary district to attend  
14 high school and the child of elementary age may more  
15 conveniently attend an elementary school where the high  
16 school is located, provided the child resides more than 3  
17 miles from an elementary school of the resident district or  
18 the parent must move to the elementary district where the  
19 high school is located in order to enroll the other child in  
20 high school;

21 (e) the child has been declared by a court of  
22 competent jurisdiction to be an abused, neglected, or  
23 dependent child, as defined in 41-3-102, or a delinquent  
24 youth, as defined in 41-5-103, and has been ordered to be  
25 placed in a licensed youth care facility which is approved

1 by the department of family services and as a result of the  
2 order the child is required to attend elementary school  
3 outside of the district of his residence (for purposes of  
4 this subsection, the prescribed geographic relationship of  
5 the receiving district to the district of residence does not  
6 apply); or

7 (f) the child is required to attend elementary school  
8 outside the district of residence as the result of an order  
9 of a court of competent jurisdiction. For the purposes of  
10 this subsection (f), the following do not apply:

11 (i) the prescribed geographic relationship of the  
12 receiving district to the district of residence in this  
13 subsection (3); or

14 (ii) an order issued under Title 40, chapter 4, part 2.

15 (4) The trustees of the district where the school to  
16 be attended is located may disapprove a tuition agreement  
17 that satisfies any of the mandatory approval conditions  
18 specified in subsection (3) when they find that, due to  
19 insufficient room and overcrowding, the accreditation of the  
20 school would be adversely affected by the acceptance of the  
21 child. In the event of disapproval, the trustees shall  
22 notify the parent in writing within 15 days of the first  
23 receipt of the application. (Terminates June 30, 1992--sec.  
24 3, Ch. 492, L. 1989.)

25 ~~20-5-301.~~ (Effective July 1, 1992) Elementary tuition

1 with mandatory approval. (1) Any child may be enrolled in  
2 and attend an elementary school outside of the elementary  
3 district in which he resides when such elementary school is  
4 located in:

- 5 (a) any other district of the county of his residence;
- 6 (b) a county adjoining his county of residence; or
- 7 (c) a district of another state that is adjacent to  
8 the county of his residence.

9 (2) When a parent or guardian of a child wishes to  
10 have his child attend a school under the provisions of this  
11 section, he shall apply to the county superintendent of the  
12 county of his residence before ~~July~~ June 1 of prior to the  
13 school fiscal year for which he seeks approval except in  
14 those cases when substantial changes in circumstances  
15 occurred subsequently to justify later application. The  
16 application shall be made on a tuition agreement form  
17 supplied by the county superintendent and shall be approved,  
18 before permission to enroll in and attend school outside of  
19 the district under the provisions of this section may be  
20 granted, by:

- 21 (a) the trustees of the elementary district in which  
22 the child resides;
- 23 (b) the trustees of the district where the child  
24 wishes to attend school; and
- 25 (c) the county superintendent of the child's

1 residence.

2 (3) In considering the approval of a tuition  
3 application, the tuition approval agents prescribed in this  
4 section shall approve such application for a resident child  
5 when:

6 (a) the child resides less than 3 miles from the  
7 school which he wishes to attend and more than 3 miles from  
8 any school of his resident elementary district;

9 (b) the child resides more than 3 miles from any  
10 school of his resident elementary district and such district  
11 does not provide transportation under the provisions of this  
12 title;

13 (c) the child resides more than 3 miles from any  
14 school of his resident elementary district, the resident  
15 district does not provide transportation under the  
16 provisions of this title, and school bus transportation is  
17 furnished by the district operating the school which he  
18 wishes to attend;

19 (d) the child is a member of a family who must send  
20 another child outside of the elementary district to attend  
21 high school and the child of elementary age may more  
22 conveniently attend an elementary school where the high  
23 school is located, provided the child resides more than 3  
24 miles from an elementary school of the resident district or  
25 the parent must move to the elementary district where the

1 high school is located in order to enroll the other child in  
2 high school;

3 (e) the child has been declared by a court of  
4 competent jurisdiction to be an abused, neglected, or  
5 dependent child, as defined in 41-3-102, or a delinquent  
6 youth, as defined in 41-5-103, and has been ordered to be  
7 placed in a licensed youth care facility which is approved  
8 by the department of family services and as a result of the  
9 order the child is required to attend elementary school  
10 outside of the district of his residence; for purposes of  
11 this subsection, the prescribed geographic relationship of  
12 the receiving district to the district of residence does not  
13 apply; or

14 (f) the child is required to attend elementary school  
15 outside the district of residence as the result of an order  
16 of a court of competent jurisdiction. For the purposes of  
17 this subsection (f), the following do not apply:

18 (i) the prescribed geographic relationship of the  
19 receiving district to the district of residence in this  
20 subsection (3); or

21 (ii) an order issued under Title 40, chapter 4, part 2.

22 (4) The trustees of the district where the school to  
23 be attended is located may disapprove a tuition agreement  
24 that satisfies any of the mandatory approval conditions  
25 specified in subsection (3) above when they find that, due

1 to insufficient room and overcrowding, the accreditation of  
2 the school would be adversely affected by the acceptance of  
3 the child. In the event of disapproval, the trustees shall  
4 so notify the parent in writing within 15 days of the first  
5 receipt of the application."

6 **Section 2.** Section 20-5-302, MCA, is amended to read:

7 "20-5-302. Elementary tuition with discretionary  
8 approval. ~~In--considering--the--approval--of--a--tuition~~  
9 ~~application--that--is--not--required--to--be--approved--under--the~~  
10 ~~provisions--of--20-5-301,--the--tuition--approval--agents~~  
11 ~~prescribed--in--20-5-301--may--approve--such--application--when~~  
12 ~~such--approval--agents,--individually,--determine--that--the~~  
13 ~~tuition-agreement-should-be-approved-because-of:~~

14 (1) ~~the--distance--and--road--conditions--between--the~~  
15 ~~child's--residence--and--any--school--of--his--resident--district;~~

16 (2) ~~the--trading--center--of--the--child's--parents;~~

17 (3) ~~an--opportunity--to--live--with--his--relatives;~~

18 (4) ~~dormitory--facilities--in--the--district--to--be~~  
19 ~~attended;~~

20 (5) ~~the--living--conditions--of--the--child's--family;~~

21 (6) ~~the--availability--of--transportation;--or~~

22 (7) ~~the--type--of--educational--program--available--in--the~~  
23 ~~school--to--be--attended. (1) An elementary district board of~~  
24 ~~trustees shall, by June 20 of each year, determine how many~~  
25 ~~elementary pupils, in addition to its resident pupils and~~

1 those it has accepted under 20-5-301, it is able to accept  
 2 pursuant to this section without adversely affecting the  
 3 accreditation of the school due to insufficient room. The  
 4 board shall then accept the applications for enrollment of  
 5 that number of elementary pupils.

6 (2) When a parent or guardian of a child wishes to  
 7 have his child enrolled in and attend an elementary school  
 8 outside of the elementary district in which he resides and  
 9 the child does not qualify for mandatory enrollment under  
 10 20-5-301, the parent or guardian may apply before June 1  
 11 prior to the school fiscal year for which he seeks  
 12 enrollment to the board of trustees of the district in which  
 13 he wishes to enroll his child. The parent or guardian may  
 14 apply to more than one district for a school year. He shall  
 15 indicate on each application the districts to which he has  
 16 applied and shall list the districts in order of preference.

17 (3) (a) If the district receives more applications  
 18 than it is able to accept under subsection (1), it shall  
 19 give preference to applications that indicate that no other  
 20 school has been applied to and to those that indicate that  
 21 the school is the first preference of the applicant.

22 (b) If the school is unable to accept all applications  
 23 under subsection (3)(a), it shall first accept the  
 24 applications of those pupils who have siblings attending the  
 25 school and shall then prioritize applications on the basis

1 of proximity to the school or on any other basis determined  
 2 by the board of trustees.

3 (4) If the school district has more openings under  
 4 subsection (1) than applications naming the school as a sole  
 5 or first-preference school, it shall continue the selection  
 6 process described in subsection (3) until it has accepted  
 7 the number of pupils determined in accordance with  
 8 subsection (1).

9 (5) (a) A pupil who is enrolled in a school district  
 10 pursuant to this section may, unless otherwise provided by  
 11 law, continue to attend that school until he is no longer  
 12 eligible to attend. He shall attend the school for the  
 13 entire year for which the initial application is submitted  
 14 and for any subsequent school year unless his parent or  
 15 guardian gives notice pursuant to subsection (5)(b).

16 (b) The pupil's parent or guardian shall notify the  
 17 district of residence and the district at which the pupil  
 18 attended school in writing by June 1 if the pupil will not  
 19 attend school in the nonresident district during the ensuing  
 20 school fiscal year.

21 (6) A board of trustees shall grant or deny in writing  
 22 an application submitted pursuant to this section by July 15  
 23 of the year in which it is submitted. A denial must contain  
 24 the reasons for denial. Within 5 days of receipt of the  
 25 denial, the applicant may request an informal hearing before

1 a committee, appointed by the chairman of the board,  
 2 consisting of two parents of children that attend the school  
 3 applied for, two teachers at that school, and the principal  
 4 of the school. The informal hearing must be held within 10  
 5 days of receipt of the request. At the close of the hearing,  
 6 the committee shall make written recommendations to the  
 7 board whether the application should be approved or denied.  
 8 The board shall meet within 10 days of the committee's  
 9 recommendation and make a final decision on the application.

10 (7) The parent or guardian of a pupil who attends a  
 11 school outside the district of his residence shall receive  
 12 from the resident district an amount of money equal to the  
 13 state transportation payment the district receives for that  
 14 pupil. The parent or guardian shall pay to the receiving  
 15 district an amount that is equal to the remainder after the  
 16 school's state equalization payment is subtracted from the  
 17 average cost expended by the district for the education of  
 18 a pupil. The parent or guardian may credit that amount  
 19 against the property tax due during that fiscal year in his  
 20 resident elementary district.

21 (8) The district shall retain all applications naming  
 22 the school as a sole or first-preference school and consider  
 23 each application for succeeding school years until the  
 24 parent withdraws the application or until the pupil becomes  
 25 ineligible to attend the school."

1 **Section 3.** Section 20-5-311, MCA, is amended to read:

2 **"20-5-311. High school tuition.** (1) Any child may be  
 3 enrolled in and attend a high school outside of the high  
 4 school district in which he resides when such high school is  
 5 located in Montana or in a county of another state that is  
 6 adjacent to the state of Montana. When a parent or guardian  
 7 of a child wishes to have his child attend a school under  
 8 the provisions of this section, he shall apply to the county  
 9 superintendent of the county of his residence before ~~July~~  
 10 June 1 of prior to the school fiscal year for which he seeks  
 11 approval except in those cases when substantial changes in  
 12 circumstances occurred subsequently to justify later  
 13 application. Such application shall be made on a tuition  
 14 agreement form supplied by the county superintendent. The  
 15 trustees of the district of residence, the trustees of the  
 16 district in which the child wishes to attend school, and the  
 17 county superintendent are the approval agents for tuition to  
 18 another high school within the county. The county  
 19 superintendent of the county of residence and the trustees  
 20 of the district in which the child wishes to attend school  
 21 are the approval agents for attendance outside the county.

22 (2) (a) (i) The approval agents shall approve a  
 23 tuition application when a child lives closer to a high  
 24 school of another district than any high school located  
 25 within his resident district or when, due to road or

1 geographic conditions, it is impractical to attend the high  
2 school nearest his residence.

3 (ii) However, the approval agents are not required to  
4 approve a tuition application for a student seeking to  
5 attend a high school outside the state of Montana or the  
6 resident district if the resident district provides  
7 transportation. This exception does not apply when:

8 (A) the child resides in a county different from the  
9 county wherein the school he wishes to attend is located; or

10 (B) the child has enrolled in a high school outside  
11 his resident district and has received an approved tuition  
12 agreement on or before April 30, 1985. For the purposes of  
13 this subsection (2)(a)(ii)(B), the child has the right to  
14 continue his high school education in the receiving high  
15 school outside his resident district on an approved tuition  
16 agreement, subject to the provisions of this section.

17 (b) The approval agents shall approve a tuition  
18 application when a child, as a result of a court order, is  
19 required to attend high school outside the district of  
20 residence:

21 (i) but within the state of Montana or another state  
22 that maintains a reciprocal tuition agreement under  
23 20-5-314; or

24 (ii) in a state that does not have a reciprocal tuition  
25 agreement pursuant to 20-5-314. The amount of daily tuition

1 may not be greater than the average daily cost per student  
2 in the district of residence. The amount of annual tuition  
3 may not be greater than the average annual cost per student  
4 in the district of residence. The county superintendent  
5 shall calculate the average annual and the average daily  
6 cost per student. For purposes of this subsection (b), the  
7 following do not apply:

8 (A) an order issued under Title 40, chapter 4, part 2;

9 (B) placement of a child pursuant to Title 20, chapter  
10 7, part 4.

11 (c) In approving a tuition agreement under this  
12 provision, the approval agents may require the child to  
13 attend the high school closest to his residence. The  
14 approval agents may approve any other tuition application  
15 that satisfies the geographic requirements of this section.

16 (3) The trustees of the district where the child  
17 wishes to attend school shall approve or disapprove any  
18 tuition application submitted to them under the provisions  
19 of this section within 15 days after the receipt of the  
20 application.

21 (4) The county superintendent shall notify the parent  
22 or guardian and the trustees of the district where the child  
23 wishes to attend school of the tuition agreement approval or  
24 disapproval. If a tuition agreement is disapproved by one or  
25 more approval agents, the parent may appeal such disapproval



1 to the county superintendent and, subsequently, to the  
2 superintendent of public instruction under the provision for  
3 the appeal of controversies in this title.

4 (5) The approval of any tuition agreement by all of  
5 the applicable approval agents or upon appeal shall  
6 authorize the child named in such agreement to enroll in and  
7 attend the school named in such agreement for the ensuing  
8 school fiscal year."

9 **Section 4.** Section 20-5-313, MCA, is amended to read:

10 **"20-5-313. Individual tuition for high school pupil.**

11 (1) Any child eligible to attend high school may attend  
12 school in the high school district in which he resides  
13 without payment of tuition.

14 (2) ~~No provision of this title shall be construed to~~  
15 ~~deny a parent the right to send his child, at his own~~  
16 ~~expense, to any high school outside of his district of~~  
17 ~~residence when the parent agrees to pay the tuition~~  
18 ~~acceptable to the trustees of the high school district~~  
19 ~~operating such high school. When the attendance is approved,~~  
20 ~~the parent shall pay tuition at the rate fixed by the~~  
21 ~~trustees. However, under this section, tuition as~~  
22 ~~determined in 20-5-312 shall be reduced by the amount the~~  
23 ~~parent of the child paid in district and county property~~  
24 ~~taxes during the immediately preceding school fiscal year~~  
25 ~~for the benefit and support of the district in which the~~

1 ~~child will attend school.~~

2 ~~(3)(a) For the purposes of this section, "parent"~~  
3 ~~includes an individual shareholder of a domestic corporation~~  
4 ~~as defined in 35-1-102 whose shares are 95% held by related~~  
5 ~~family members to the sixth degree of consanguinity or by~~  
6 ~~marriage to the sixth degree of affinity.~~

7 ~~(b) The tax amount to be credited to reduce any~~  
8 ~~tuition charge to a parent under this subsection is~~  
9 ~~determined in the following manner:~~

10 ~~(i) determine the percentage of the total shares of~~  
11 ~~the corporation held by the shareholder parent or parents;~~

12 ~~(ii) determine the portion of property taxes paid in~~  
13 ~~the preceding school fiscal year by the corporation for the~~  
14 ~~benefit and support of the district in which the child will~~  
15 ~~attend school;~~

16 ~~(c) The percentage of total shares as determined in~~  
17 ~~subsection (3)(b)(i) is the percentage of taxes paid as~~  
18 ~~determined in subsection (3)(b)(ii) that is to be credited~~  
19 ~~to reduce the tuition charge. When a parent or guardian of a~~  
20 ~~child wishes to have his child enrolled in and attend a high~~  
21 ~~school district outside of his resident high school district~~  
22 ~~and the child does not qualify for mandatory enrollment~~  
23 ~~under 20-5-301, the parent or guardian may apply before June~~  
24 ~~1 prior to the school fiscal year for which he seeks~~  
25 ~~enrollment to the board of trustees of the district in which~~

1 he wishes to enroll his child. The parent or guardian may  
2 apply to more than one district for a school year. He shall  
3 indicate on each application the districts to which he has  
4 applied and shall list the districts in order of  
5 preference."

6 NEW SECTION. Section 5. Effective date --  
7 termination. [This act] is effective June 1, 1990, and  
8 terminates June 1, 1991.

-End-