

SENATE BILL NO. 348

INTRODUCED BY HALLIGAN
BY REQUEST OF THE SUPERINTENDENT
OF PUBLIC INSTRUCTION

IN THE SENATE

FEBRUARY 9, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES.
	FIRST READING.
FEBRUARY 19, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 22, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 48; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES.
	FIRST READING.
MARCH 2, 1993	ON MOTION, REREFERRED TO SELECT COMMITTEE ON SCHOOL FUNDING.
MARCH 17, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
	ON MOTION, REREFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES.
MARCH 29, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 30, 1993	SECOND READING, CONCURRED IN.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 91; NOES, 8.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 6, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 7, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 ~~Senate~~ BILL NO. **348**
 2 INTRODUCED BY Holly
 3 BY REQUEST OF THE SUPERINTENDENT
 4 OF PUBLIC INSTRUCTION
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING FULL-TIME
 7 SPECIAL PUPILS TO BE REGULARLY ENROLLED FOR ANB PURPOSES;
 8 AMENDING SECTIONS 20-7-431, 20-7-457, 20-9-147, 20-9-303,
 9 20-9-311, 20-9-313, 20-9-321, AND 20-9-507, MCA; REPEALING
 10 SECTION 20-7-458, MCA; AND PROVIDING EFFECTIVE DATES."
 11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 13 **Section 1.** Section 20-7-431, MCA, is amended to read:
 14 "20-7-431. Allowable cost schedule for special programs
 15 -- superintendent to make rules -- annual accounting. (1)
 16 For the purpose of determining the foundation program amount
 17 for special education as defined in 20-9-321, the following
 18 ~~schedule of allowable costs must be followed by the school~~
 19 ~~district in preparation of its special education budget for~~
 20 ~~state aid request purposes and reports must be reviewed by~~
 21 ~~the superintendent of public instruction in his review and~~
 22 ~~approval of the budget (for the purposes of determining the~~
 23 ~~amount of the foundation program for special education for~~
 24 ~~the district, and as used in this schedule, "full-time~~
 25 ~~special pupil" and "regular ANB" are to be determined in~~

1 ~~accordance with 20-9-311 and 20-9-313~~ payments and a
 2 district's special education expenditures:
 3 (a) instruction: salaries, benefits, supplies,
 4 textbooks, and other expenses, including:
 5 (i) the cost of salaries and benefits of special
 6 program teachers, regular program teachers, and teacher
 7 aides, ~~special education supervisors, audiologists, and~~
 8 ~~speech and hearing clinicians the entire cost if employed~~
 9 ~~full-time in the special program, if such personnel are~~
 10 ~~shared between special and regular programs a portion of~~
 11 ~~the entire cost~~ corresponding to the entire working time
 12 ~~which that~~ each person devotes to the special program;
 13 (ii) the total cost of teaching supplies and textbooks
 14 ~~if used exclusively for special programs the actual total~~
 15 ~~cost;~~
 16 (iii) the purchase, rental, repair, and maintenance of
 17 instructional equipment required to implement a student's
 18 individualized education program;
 19 ~~four other expenses:~~
 20 (iv) activities associated with teacher assistance teams
 21 that provide prereferral intervention;
 22 ~~five~~ (v) the cost of contracted services, including fees
 23 paid for professional advice and consultation regarding
 24 special students or the special program, and the delivery of
 25 special education services by public or private

1 agencies--the-actual-total-cost;

2 {B}{vi} transportation costs for special education
3 instructional personnel who travel on an itinerant basis
4 from school to school or district to district or to in-state
5 child study team meetings or in-state individualized
6 education program meetings--the-actual-cost-to-the-district
7 calculated-on-the-same-mileage-rate-used-by-the-district-for
8 other-travel-reimbursement-purposes;

9 (b) supportive related services, including:

10 (i) the cost of salaries and benefits of professional
11 supportive personnel--the-entire-cost-if-employed-full-time
12 in-the-special-program;-if-the-personnel-are-shared-between
13 special-and-regular-programs--a-portion-of-the-entire-cost
14 corresponding-to-the-entire-working-time-which--each--person
15 devotes-to-the-special-program, corresponding to the working
16 time that each person devotes to the special program.

17 Professional supportive personnel may include special
18 education supervisors, speech-language pathologists,
19 audiologists, counselors, social workers, psychologists,
20 psychometrists, physicians, nurses, and physical and
21 occupational therapists.

22 (ii) the cost of salaries and benefits of clerical
23 personnel who assist professional personnel in supportive
24 services--the-entire-cost--if-employed--full--time--in--the
25 special-program;-if-the-personnel-are-shared-between-special

1 and--regular--programs--a-portion--of--the--entire--cost
2 corresponding--to--the-entire-working-time-which-each-person
3 devotes-to-the-special-program, corresponding to the working
4 time that each person devotes to the special program;

5 {c}--equipment;

6 {i}--equipment--the-actual-total-cost;

7 {ii}--special-equipment-for-district-owned--school--buses
8 necessary--to-accommodate-special-students--the-actual-total
9 cost;

10 {iii}--special-equipment-for-school-buses--contracted--to
11 transport--special--students--that--portion--of--the--contract
12 price-attributable-to--the--cost--of--special--equipment--or
13 personnel--required--to--accommodate--special--students--the
14 actual-special-cost;

15 {iv}--repair--and--maintenance--of--equipment--the-actual
16 total-cost;

17 {iii} the cost of supplies for special programs;

18 {iv} activities associated with teacher assistance teams
19 that provide prereferral interventions;

20 {v} the cost of contracted services, including fees
21 paid for professional advice and consultation regarding
22 special students or the special program, and the delivery of
23 special education services by public or private agencies;

24 {vi} transportation costs for special education related
25 services personnel who travel on an itinerant basis from

school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings;

(vii) equipment purchase, rental, repair, and maintenance required to implement a student's individualized education program;

(viii) the additional cost of special education cooperatives or joint boards, including operation and maintenance, travel, recruitment, and administration.

(2) The superintendent of public instruction shall adopt rules in accordance with the policies of the board of public education for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

~~(b) defining the total special program caseload that must be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(b) of this section; and~~

~~(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(c)(i) of this section.~~

(3) An annual accounting of all expenditures of school district general fund money for special education must be

made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for the accounting.

~~(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the foundation program for special education.~~

(5)(4) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

(6)(5) (a) Notwithstanding other provisions of the law, the superintendent of public instruction may not approve a foundation program amount for special education that exceeds legislative appropriations; however, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation.

(b) If the total special education allowable cost of the special education budgets payment, as determined in 20-9-321, exceeds legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations based upon prioritized budget items as established by the superintendent of public

~~instruction. The amount of the approved budgets in excess of the available appropriations may not be reimbursed under the foundation program for special education and is the responsibility of the school district.~~

Section 2. Section 20-7-457, MCA, is amended to read:

"20-7-457. Funding provisions for special education purposes of cooperatives or joint boards. (1) The superintendent of public instruction shall pay directly to a cooperative or to a joint board formed under 20-3-361 prior to July 1, 1992, for special education purposes the approved special education allowable costs for contracted special education services from the state special revenue fund for state equalization aid as provided in 20-9-343 cost payments determined pursuant to 20-9-321. The total of the payments must be within the limit set by the legislature for approved special education budgets.

(2) A school district that elects to participate in a cooperative for special education purposes shall agree in the cooperative contract to participate for a period of at least 3 years.

(3) A school district that elects to participate in a joint board formed under 20-3-361 for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to participate or to not participate in a joint

board agreement for the next school fiscal year.

(4) ~~After June 30, 1990,~~ A cooperative that has not met the requirements of 20-7-453 and 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction. The superintendent shall adopt rules for approval of full service education cooperatives ~~formed after June 30, 1990.~~

(5) A full service education cooperative may establish a retirement fund, a miscellaneous programs fund, and a transportation fund, as provided for in 20-9-201, for the purposes of a full service education cooperative contract and the purposes allowed by law.

(6) Before July 1, 1994, the superintendent of public instruction, after consulting with regional representatives, shall define boundaries for cooperatives established for special education programs that incorporate the territory of all public school districts.

(7) Restructuring of cooperatives established for providing special education services must:

(a) be limited to a statewide total of no more than 23;

(b) include districts that are adjacent to each other and not overlapping into another cooperative's territory; and

(c) provide that all districts located within a cooperative's boundary may voluntarily become a cooperative

1 member."

2 **Section 3.** Section 20-9-147, MCA, is amended to read:

3 "20-9-147. Approval to amend general fund budget for
4 ensuing school fiscal year. (1) The trustees of a district
5 may determine that expenses from the following sources will
6 need to be funded by the general fund budget in the ensuing
7 school fiscal year:

8 (a) a budget amendment authorized under the provisions
9 of 20-9-161 through 20-9-163;

10 (b) metal mines tax reserve fund authorized in
11 20-9-231;

12 (c) special education expenditures approved under the
13 provisions of 20-9-321~~(3)~~(8);

14 (d) transfer of services from or dissolution of a
15 special education cooperative; and

16 (e) tuition receipts deposited in the miscellaneous
17 programs fund.

18 (2) Whenever the trustees determine that expenses from
19 the sources in subsection (1) will need to be funded by the
20 general fund in the ensuing year, the trustees shall
21 petition the superintendent of public instruction for
22 approval to add the expenditures from any of the sources to
23 the current year's general fund budget for the purposes of
24 calculating the ensuing year's general fund budget
25 limitation. The petition must set forth in writing the

1 specific reasons for the request and a report of the actual
2 expenditures.

3 (3) The superintendent of public instruction shall
4 promptly approve or disapprove the petition for approval to
5 add the expenditures from the sources in subsection (1) to
6 the current year's general fund budget for the purposes of
7 calculating the ensuing year's general fund budget."

8 **Section 4.** Section 20-9-303, MCA, is amended to read:

9 "20-9-303. Definition of foundation program --
10 nonisolated school foundation program financing -- special
11 education funds. (1) As used in this title, the term
12 "foundation program" means the minimum expenditures that are
13 sufficient to provide for the educational program of a
14 school. The foundation program relates only to those
15 expenditures authorized by a district's general fund budget
16 and may not include expenditures from any other fund. It is
17 financed by:

18 (a) county equalization money, as provided in 20-9-331
19 and 20-9-333;

20 (b) state equalization aid, as provided in 20-9-343;

21 (c) appropriations for special education; and

22 (d) a district levy as provided in subsection (3) for
23 support of a school not approved as an isolated school under
24 the provisions of 20-9-302.

25 (2) The foundation program includes:

1 (a) amounts in support of general education programs as
2 provided in the schedules in 20-9-316 through 20-9-320; and

3 (b) payments in support of special education programs
4 under 20-9-321.

5 (3) An elementary school having an ANB of nine or fewer
6 pupils for 2 consecutive years which is not approved as an
7 isolated school under the provisions of 20-9-302 may budget
8 and spend the schedule amount, but the county and state
9 shall participate in financing one-half of the foundation
10 program, and the district shall finance the remaining
11 one-half by a tax levied on the property of the district.
12 When a school of nine or fewer pupils is approved as
13 isolated under the provisions of 20-9-302, the county and
14 state shall participate in the financing of the total amount
15 of the foundation program.

16 (4) Funds provided to support the special education
17 accounting-budget program may be expended only for special
18 education purposes as approved by the superintendent of
19 public instruction in accordance with the special education
20 budgeting provisions of this title. Expenditures for special
21 education must be accounted for separately from the balance
22 of the school district general fund. ~~Transfers-between-items~~
23 ~~within-the-special-education-budget-for-accounting--purposes~~
24 ~~may--be--made--at-the-discretion-of-the-board-of-trustees-in~~
25 ~~accordance-with-the-financial-administration--part--of--this~~

1 title: The unexpended--balance amount of the special
2 education accounting-budget-carries-over-to-the-next-year-to
3 allowable cost payment that is not matched with district
4 funds, as required in 20-9-321, will reduce by a like amount
5 the amount--of--funding--required-to-finance-the district's
6 ensuing year's foundation program amount for special
7 education."

8 **Section 5.** Section 20-9-311, MCA, is amended to read:

9 "20-9-311. Calculation of average number belonging
10 (ANB). (1) Average number belonging must be computed by
11 determining the total of the aggregate days of attendance by
12 regularly enrolled, full-time pupils during the second
13 semester of the preceding school fiscal year and the first
14 semester of the current school fiscal year plus the
15 aggregate days of absence by regularly enrolled, full-time
16 pupils during the second semester of the preceding school
17 fiscal year and the first semester of the current school
18 fiscal year and by dividing the total by 180. However, when
19 a school district has approval to operate less than 180
20 school days under 20-9-804, the total must be calculated in
21 accordance with the provisions of 20-9-805. For the purpose
22 of calculating ANB under this section, the days of
23 attendance for a regularly enrolled pupil may not exceed 180
24 pupil-instruction days and 7 pupil-instruction-related days.
25 Attendance for a part of a morning session or a part of an

1 afternoon session by a pupil must be counted as attendance
 2 for one-half day. In calculating the ANB for pupils enrolled
 3 in a program established under 20-7-117(1), attendance at or
 4 absence from a regular session of the program for at least 2
 5 hours of either a morning or an afternoon session ~~will~~ must
 6 be counted as one-half day attended or absent as the case
 7 may be. If a variance has been granted as provided in
 8 20-1-302, ANB ~~will~~ must be computed in a manner prescribed
 9 by the superintendent of public instruction, but ~~in no case~~
 10 may the ANB may not exceed one-half for each kindergarten
 11 pupil. When any pupil has been absent, with or without
 12 excuse, for more than 10 consecutive school days, including
 13 pupil-instruction-related days, ~~his~~ the absence after the
 14 10th day of absence may not be included in the aggregate
 15 days of absence and ~~his~~ the pupil's enrollment in the school
 16 may not be considered in the calculation of the average
 17 number belonging until he ~~resumes~~ attendance at school is
 18 resumed.

19 ~~(2)--If--a--student--spends--less--than--half--his--time--in--the~~
 20 ~~regular--program--and--the--balance--of--his--time--in--school--in--the~~
 21 ~~special--education--program--he--is--considered--a--full--time~~
 22 ~~special--pupil--but--is--not--considered--regularly--enrolled--for~~
 23 ~~ANB--purposes--If--a--student--spends--half--or--more--of--his--time~~
 24 ~~in--school--in--the--regular--program--and--the--balance--of--his--time~~
 25 ~~in--the--special--education--program--he--is--considered--regularly~~

1 ~~enrolled--for--ANB--purposes--~~

2 ~~(3)(2)~~ The average number belonging of the regularly
 3 enrolled, full-time pupils for the public schools of a
 4 district must be based on the aggregate of all the regularly
 5 enrolled, full-time pupils attending the schools of the
 6 district, except that when:

7 (a) (i) a school of the district is located more than 3
 8 miles beyond the incorporated limits of a city or town
 9 located in the district and 3 miles from any other school of
 10 the district, all of the regularly enrolled, full-time
 11 pupils of the school must be calculated separately for ANB
 12 purposes; or

13 (ii) a school of the district is located more than 3
 14 miles from any other school of the district and ~~no~~
 15 incorporated territory is not involved in the district, all
 16 of the regularly enrolled, full-time pupils of the school
 17 must be calculated separately for ANB purposes;

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

22 (c) a middle school has been approved and accredited,
 23 all pupils below the 7th grade must be considered elementary
 24 school pupils for ANB purposes and the 7th and 8th grade
 25 pupils must be considered high school pupils for ANB

1 purposes; or

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

8 ~~†4†~~(3) When 11th or 12th grade students are regularly
9 enrolled on a part-time basis, high schools may calculate
10 the ANB to include an "equivalent ANB" for those students.
11 The method for calculating an equivalent ANB must be
12 determined in a manner prescribed by the superintendent of
13 public instruction."

14 **Section 6.** Section 20-9-313, MCA, is amended to read:

15 "20-9-313. Circumstances under which the regular
16 average number belonging may be increased. The average
17 number belonging of a school, calculated in accordance with
18 the ANB formula prescribed in 20-9-311, may be increased
19 when:

20 (1) the opening of a new elementary school or the
21 reopening of an elementary school has been approved in
22 accordance with 20-6-502. The average number belonging for
23 the school must be established by the county superintendent
24 and approved, disapproved, or adjusted by the superintendent
25 of public instruction.

1 (2) the opening or reopening of a high school or a
2 branch of the county high school has been approved in
3 accordance with 20-6-503, 20-6-504, or 20-6-505. The average
4 number belonging for the high school must be established by
5 the county superintendent's estimate, after an investigation
6 of the probable number of pupils that will attend the high
7 school.

8 (3) a district anticipates an increase in the average
9 number belonging due to the closing of any private or public
10 school in the district or a neighboring district. The
11 estimated increase in average number belonging must be
12 established by the trustees and the county superintendent
13 and approved, disapproved, or adjusted by the superintendent
14 of public instruction no later than the fourth Monday in
15 June.

16 (4) a district anticipates an unusual enrollment
17 increase in the ensuing school fiscal year. The increase in
18 average number belonging must be based on estimates of
19 increased enrollment approved by the superintendent of
20 public instruction and must be computed in the manner
21 prescribed by 20-9-314.

22 (5) for the initial year of operation of a program
23 established under 20-7-117(1), the ANB to be used for budget
24 purposes is the same as one-half the number of 5-year-old
25 children residing in the district as of September 10 of the

preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction; or

~~{6}-a full-time special pupil, as defined in 20-9-311, in a given school fiscal year may no longer be considered a full-time special pupil in the ensuing school fiscal year {the superintendent of public instruction may grant one ANB for the pupil for the ensuing school fiscal year};-or~~

~~{7}{6}~~ a high school district provides early graduation for any student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment or when a high school district provides early graduation for a class of students who have completed the requirements for graduation after 175 pupil-instruction days in the 12th grade. The increase must be established by the trustees as though the student had attended to the end of the school fiscal year and must be approved, disapproved, or adjusted by the superintendent of public instruction."

Section 7. Section 20-9-321, MCA, is amended to read:

"20-9-321. Foundation program and contingency funds for special education. (1) For the purpose of establishing the foundation program amount for a current year special education program for a school district, the superintendent of public instruction shall determine the total estimated

~~cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget must be prepared on forms provided by the superintendent of public instruction and must set out for each program special education payment to a school district, cooperative, or joint board for special education services formed under 20-3-361 prior to July 1, 1992, using the following factors:~~

~~(a) the estimated allowable costs associated with operating the program where allowable costs are as defined in 20-7-431 district ANB student count as established pursuant to 20-9-311 and 20-9-313;~~

~~(b) the number of pupils expected to be enrolled in the program a per-ANB amount for the special education instructional block grant; and~~

~~(c) a per-ANB amount for the special education related services block grant;~~

~~(d) weighted cost factors for cooperatives or joint boards meeting the requirements of 20-7-457, to compensate for the additional costs of operations and maintenance, travel, supportive services, recruitment, and administration;~~

~~(e) district and cooperative expenditure reports; and~~

~~{c}{f} any other data required by the superintendent of public instruction for budget justification purposes and to~~

administer the provisions of 20-9-315 through 20-7-431 and 20-9-321.

(2) ~~The total amount of allowable costs approved by the superintendent of public instruction is the special education foundation program amount for current year special education program purposes. The total amount of allowable costs that are approved for the special education budget may not, under any condition, be less than the foundation program amount for one regular ANB for each full-time special pupil in the school district.~~ Special education allowable cost payments must be granted to each school district and cooperative with a special education program as follows:

(a) An instructional block grant must be awarded to each school district, based on the district ANB and the per-ANB special education instructional amount.

(b) A special education related services block grant must be awarded to each school district that is not a cooperative member, based on the district ANB and the per-ANB special education related services amount. The special education related services block grant amount for districts that are members of approved cooperatives or a joint board must be awarded to the cooperatives or joint board. If a cooperative or joint board meets the requirements of 20-7-457, the special education related

services block grant must be weighted for the factors in subsection (1)(d).

(3) The superintendent of public instruction shall annually determine the per-ANB special education instructional and special education related services block grant amounts based on the prior years' trustees' expenditure data for special education instruction and related services.

(4) The superintendent of public instruction shall adopt rules necessary to implement this section.

(5) A district shall provide a 25% local contribution for special education, matching every \$3 of state special education instructional and special education related services block grants with at least one local dollar. A district that is a cooperative member is required to provide the 25% match of the special education related services grant amount to the special education cooperative, but the district is not required to match the weighted funding factors.

(6) The superintendent of public instruction shall determine the actual district match based on the trustees' reports. Any unmatched portion reverts to the state and must be subtracted from the district's ensuing year's foundation program payment.

(7) If a district's allowable costs of special

1 education, as verified by the trustees' reports, exceed by
 2 at least 10% the total of the special education
 3 instructional and special education related services block
 4 grant plus the required district match, the district is
 5 eligible for a 65% reimbursement of the costs that exceed
 6 the additional 10%. A district that demonstrates severe
 7 economic hardship because of exceptional special education
 8 costs may apply to the superintendent of public instruction
 9 for an advance on the reimbursement for the year in which
 10 the actual costs will be incurred.

11 {3}(8) Any amount of the special education allowable
 12 costs for a district approved under the provisions of
 13 subsection (2) that is an increase in the approved allowable
 14 costs from the previous school fiscal year and is a result
 15 of expanded programs or recalculations of the special
 16 education allowable costs base may be deposited and managed
 17 in the separate account of the miscellaneous programs fund
 18 of the district that is prescribed in subsection--(4)
 19 20-9-507..

20 {4}--if--a--special--education--program--is--implemented--or
 21 expanded--during--a--given--school--term--too--late--to--be--included
 22 in--the--determination--of--the--district--foundation--program--for
 23 the--school--year--as--prescribed--in--this--part,--allowable--costs
 24 approved--under--the--budgeting--provisions--of--subsections--(1)
 25 and--(2)--for--the--operation--of--the--program--during--the--given

1 year--must--be--funded--from--any--legislative--appropriation--for
 2 contingency--financing--for--special--education--Contingency
 3 funds--granted--under--this--subsection--must--be--deposited--in--a
 4 separate--account--of--the--miscellaneous--programs--fund--of--the
 5 district--as--provided--in--20-9-507--However,--if--contingency
 6 funds--are--not--available,--then--subject--to--the--approval--of--the
 7 program--by--the--superintendent--under--the--budget--amendment
 8 provisions--of--20-9-161(6),--allowable--costs--for--the--given
 9 year--may--be--funded--in--the--miscellaneous--programs--fund--by
 10 other--revenue--sources--and--added--to--the--foundation--program
 11 amount--for--special--education--for--the--subsequent--school--year
 12 under--the--provisions--of--20-9-147--The--allowable--costs--must
 13 be--recorded--as--previous--year--special--education--expenses--in
 14 the--school--district--budget--for--the--subsequent--school--year.

15 {5}--(A)--The--special--education--contingency--funds--in
 16 subsection--(4):

17 {i}--are--biennially--appropriated;

18 {ii}--are--for--emergencies--that--may--arise--in--the--special
 19 education--programs--of--school--districts--or--special--education
 20 cooperatives;--and

21 {iii}--may--be--used--to--fund--positions--that--have--gone
 22 unfilled--for--a--full--school--fiscal--year--and--for--which--state
 23 special--education--funds--were--not--awarded;

24 {b}--The--board--of--trustees--of--a--district--or--the
 25 management--board--of--a--special--education--cooperative--may

1 apply---for---contingency---funding---by---submitting---to---the
2 superintendent-of-public-instruction, in the form prescribed
3 by---the---superintendent---of---public---instruction,---written
4 documentation that describes the need for the funds.

5 {6}--The--sum--of--the--previous--year--special--education
6 expenses--as--defined--in--subsections--{3}--and--{4}--and--the
7 foundation-program-amount-for-current-year-special-education
8 as--defined--in--subsections--{1}--and--{2}--is--the--special
9 education-budget-for-accounting-purposes.

10 {7}{9} The foundation program amount for special
11 education determined in this section must be added to the
12 foundation program schedule amount of--the--regular--program
13 ANB--defined-in determined pursuant to 20-9-311 and 20-9-313
14 through 20-9-320 to obtain the total foundation program
15 amount for the district."

16 **Section 8.** Section 20-9-507, MCA, is amended to read:

17 "20-9-507. **Miscellaneous programs fund.** (1) The
18 trustees of a district receiving money from local, state,
19 federal, or other sources provided in 20-5-307(4),
20 20-5-312(8), and 20-9-321{3}{8} other than money under the
21 provisions of Title I of Public Law 81-874 or federal money
22 designated for deposit in a specific fund of the district
23 shall establish a miscellaneous programs fund for the
24 deposit of the money. The money may be a reimbursement of
25 miscellaneous program fund expenditures already realized by

1 the district or may be a grant of money for the financing of
2 expenditures to be realized by the district for a special,
3 approved program to be operated by the district. When the
4 money is a reimbursement, the money may be expended at the
5 discretion of the trustees for school purposes. When the
6 money is a grant, the money must be expended according to
7 the conditions of the program approval by the superintendent
8 of public instruction or any other approval agent. Within
9 the miscellaneous programs fund, the trustees shall cause a
10 separate accounting to be maintained for each federal grant
11 program and for the aggregate of all reimbursement money.

12 (2) The financial administration of the miscellaneous
13 programs fund must be in accordance with the financial
14 administration provisions of this title for a nonbudgeted
15 fund."

16 NEW SECTION. **Section 9. Repealer.** Section 20-7-458,
17 MCA, is repealed.

18 NEW SECTION. **Section 10. Effective dates.** (1) [Section
19 1] is effective July 1, 1994.

20 (2) [Sections 2 through 6] are effective July 1, 1995.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0348, Third Reading.

DESCRIPTION OF PROPOSED LEGISLATION:

An act authorizing full-time special pupils to be regularly enrolled for ANB purposes.

ASSUMPTIONS:

1. The current section 20-7-431(6) limiting the special education foundation program amount to the level appropriated by the legislature remains effective.
2. This bill has no impact on the allocation of special education monies for the 1995 biennium. The calculated special education payments would be prorated under the existing system based on the current appropriation of \$33,861,000 for special education plus contingency.
3. Full-time special education students would not be counted in the ANB count for foundation program funding until FY96. Each year the number of full-time special education students declines by approximately 200 students. Approximately 2,300 reported on FY93 ANB reports.
4. The reimbursement component of this bill would provide districts with a phase-in to a new funding system by looking back in the first 2 years at expenditure patterns that were established under the former distribution system, thereby easing districts into the new distribution pattern.

FISCAL IMPACT: No impact for the 1995 biennium.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

State equalization costs will increase significantly in FY96 when full time special education pupils are counted for ANB purposes. If these ANB had been counted in FY93 State foundation and GTB costs would have been \$5.9 million higher. The provision for 65 percent reimbursement for special education costs in excess of the block grant amounts may add significantly to future costs as well.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Districts will be required to provide local matching funds as the district contribution to support special education. Districts will receive additional state foundation and GTB funds as full time special education pupils are counted for ANB purposes.

TECHNICAL NOTES:

1. It is not clear if districts may count full time special education pupils for ANB purposes in FY95. Section 5 of the bill deletes the required exclusion of these students after January 1, 1994.
2. It is not clear if the limitation on special education foundation amounts to the amount appropriated by the legislature found in current law and Section 1 take precedence over the amount determined in Section 7.

David Lewis 3.3.93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Mike Halligan 3.4.93

MIKE HALLIGAN, PRIMARY SPONSOR DATE
Fiscal Note for SB0348, Third Reading

SB 348

APPROVED BY COMM. ON EDUCATION
AND CULTURAL RESOURCES

SENATE BILL NO. 348

INTRODUCED BY HALLIGAN

BY REQUEST OF THE SUPERINTENDENT

OF PUBLIC INSTRUCTION

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING FULL-TIME SPECIAL PUPILS TO BE REGULARLY ENROLLED FOR ANB PURPOSES; AMENDING SECTIONS 20-7-431, 20-7-457, 20-9-147, 20-9-303, 20-9-311, 20-9-313, 20-9-321, AND 20-9-507, MCA; REPEALING SECTION 20-7-458, MCA; AND PROVIDING EFFECTIVE DATES."

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

Section 1. Section 20-7-431, MCA, is amended to read:

"20-7-431. Allowable cost schedule for special programs -- superintendent to make rules -- annual accounting. (1) For the purpose of determining the foundation program amount for special education as defined in 20-9-321, the following schedule of allowable costs must be followed by the school district in preparation of its special education budget for state aid request purposes and reports must be reviewed by the superintendent of public instruction in his review and approval of the budget (for the purposes of determining the amount of the foundation program for special education for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in

accordance with 20-9-311 and 20-9-313) payments and a district's special education expenditures:

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses, including:

(i) the cost of salaries and benefits of special program teachers, regular program teachers, and teacher aides, special education supervisors, audiologists, and speech and hearing clinicians the entire cost if employed full-time in the special program, if such personnel are shared between special and regular programs a portion of the entire cost corresponding to the entire working time which that each person devotes to the special program;

(ii) the total cost of teaching supplies and textbooks if used exclusively for special programs the actual total cost;

(iii) the purchase, rental, repair, and maintenance of instructional equipment required to implement a student's individualized education program;

(iii) other expenses;

(iv) activities associated with teacher assistance teams that provide prereferral intervention;

(v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private

1 agencies--the-actual-total-cost;
 2 {B}(vi) transportation costs for special education
 3 instructional personnel who travel on an itinerant basis
 4 from school to school or district to district or to in-state
 5 child study team meetings or in-state individualized
 6 education program meetings--the-actual-cost-to-the-district
 7 calculated-on-the-same-mileage-rate-used-by-the-district-for
 8 other-travel-reimbursement-purposes;

9 (b) supportive related services, including:
 10 (i) the cost of salaries and benefits of professional
 11 supportive personnel--the-entire-cost-if-employed-full-time
 12 in-the-special-program;-if-the-personnel-are-shared-between
 13 special--and--regular-programs--a-portion-of-the-entire-cost
 14 corresponding-to-the-entire-working-time-which--each--person
 15 devotes-to-the-special-program, corresponding to the working
 16 time that each person devotes to the special program.
 17 Professional supportive personnel may include special
 18 education supervisors, speech-language pathologists,
 19 audiologists, counselors, social workers, psychologists,
 20 psychometrists, physicians, nurses, and physical and
 21 occupational therapists.

22 (ii) the cost of salaries and benefits of clerical
 23 personnel who assist professional personnel in supportive
 24 services--the-entire--cost--if--employed--full--time--in--the
 25 special-program;-if-the-personnel-are-shared-between-special

1 and--regular--programs--a--portion--of---the---entire---cost
 2 corresponding--to--the-entire-working-time-which--each-person
 3 devotes-to-the-special-program, corresponding to the working
 4 time that each person devotes to the special program;

5 {c)--equipment--
 6 {i)--equipment--the-actual-total-cost;
 7 {ii)--special-equipment-for-district-owned--school--buses
 8 necessary--to-accommodate-special-students--the-actual-total
 9 cost;

10 {iii)--special-equipment-for-school-buses--contracted--to
 11 transport--special--students--that--portion--of-the-contract
 12 price-attributable-to--the--cost--of--special--equipment--or
 13 personnel--required--to--accommodate--special--students--the
 14 actual-special-cost;

15 {iv)--repair--and--maintenance--of--equipment--the-actual
 16 total-cost;

17 (iii) the cost of supplies for special programs;
 18 (iv) activities associated with teacher assistance teams
 19 that provide prereferral interventions;

20 (v) the cost of contracted services, including fees
 21 paid for professional advice and consultation regarding
 22 special students or the special program, and the delivery of
 23 special education services by public or private agencies;

24 (vi) transportation costs for special education related
 25 services personnel who travel on an itinerant basis from

school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings;

(vii) equipment purchase, rental, repair, and maintenance required to implement a student's individualized education program;

(viii) the additional cost of special education cooperatives or joint boards, including operation and maintenance, travel, recruitment, and administration.

(2) The superintendent of public instruction shall adopt rules in accordance with the policies of the board of public education for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

~~(b) defining the total special program caseload that must be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(b) of this section; and~~

~~(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(c)(i) of this section.~~

(3) An annual accounting of all expenditures of school district general fund money for special education must be

made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for the accounting.

~~(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the foundation program for special education.~~

(4) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

(5) (a) Notwithstanding other provisions of the law, the superintendent of public instruction may not approve a foundation program amount for special education that exceeds legislative appropriations; however, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation.

(b) If the total special education allowable cost of the special education budgets payment, as determined in 20-9-321, exceeds legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations based upon prioritized budget items as established by the superintendent of public

~~instruction. The amount of the approved budgets in excess of the available appropriations may not be reimbursed under the foundation program for special education and is the responsibility of the school district.~~

Section 2. Section 20-7-457, MCA, is amended to read:

"20-7-457. Funding provisions for special education purposes of cooperatives or joint boards. (1) The superintendent of public instruction shall pay directly to a cooperative or to a joint board formed under 20-3-361 prior to July 1, 1992, for special education purposes the approved special education allowable costs for contracted special education services from the state special revenue fund for state equalization aid as provided in 20-9-343 cost payments determined pursuant to 20-9-321. ~~The total of the payments must be within the limit set by the legislature for approved special education budgets.~~

(2) A school district that elects to participate in a cooperative for special education purposes shall agree in the cooperative contract to participate for a period of at least 3 years.

(3) A school district that elects to participate in a joint board formed under 20-3-361 for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to participate or to not participate in a joint

board agreement for the next school fiscal year.

(4) ~~After June 30, 1990,~~ a A cooperative that has not met the requirements of 20-7-453 and 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction. The superintendent shall adopt rules for approval of full service education cooperatives ~~formed after June 30, 1990.~~

(5) A full service education cooperative may establish a retirement fund, a miscellaneous programs fund, and a transportation fund, as provided for in 20-9-201, for the purposes of a full service education cooperative contract and the purposes allowed by law.

(6) Before July 1, 1994, the superintendent of public instruction, after consulting with regional representatives, shall define boundaries for cooperatives established for special education programs that incorporate the territory of all public school districts.

(7) Restructuring of cooperatives established for providing special education services must:

(a) be limited to a statewide total of no more than 23;

(b) include districts that are adjacent to each other and not overlapping into another cooperative's territory; and

(c) provide that all districts located within a cooperative's boundary may voluntarily become a cooperative

1 member."

2 **Section 3.** Section 20-9-147, MCA, is amended to read:

3 "20-9-147. Approval to amend general fund budget for
4 ensuing school fiscal year. (1) The trustees of a district
5 may determine that expenses from the following sources will
6 need to be funded by the general fund budget in the ensuing
7 school fiscal year:

8 (a) a budget amendment authorized under the provisions
9 of 20-9-161 through 20-9-163;

10 (b) metal mines tax reserve fund authorized in
11 20-9-231;

12 (c) special education expenditures approved under the
13 provisions of 20-9-321~~(3)~~(8);

14 (d) transfer of services from or dissolution of a
15 special education cooperative; and

16 (e) tuition receipts deposited in the miscellaneous
17 programs fund.

18 (2) Whenever the trustees determine that expenses from
19 the sources in subsection (1) will need to be funded by the
20 general fund in the ensuing year, the trustees shall
21 petition the superintendent of public instruction for
22 approval to add the expenditures from any of the sources to
23 the current year's general fund budget for the purposes of
24 calculating the ensuing year's general fund budget
25 limitation. The petition must set forth in writing the

1 specific reasons for the request and a report of the actual
2 expenditures.

3 (3) The superintendent of public instruction shall
4 promptly approve or disapprove the petition for approval to
5 add the expenditures from the sources in subsection (1) to
6 the current year's general fund budget for the purposes of
7 calculating the ensuing year's general fund budget."

8 **Section 4.** Section 20-9-303, MCA, is amended to read:

9 "20-9-303. Definition of foundation program --
10 nonisolated school foundation program financing -- special
11 education funds. (1) As used in this title, the term
12 "foundation program" means the minimum expenditures that are
13 sufficient to provide for the educational program of a
14 school. The foundation program relates only to those
15 expenditures authorized by a district's general fund budget
16 and may not include expenditures from any other fund. It is
17 financed by:

18 (a) county equalization money, as provided in 20-9-331
19 and 20-9-333;

20 (b) state equalization aid, as provided in 20-9-343;

21 (c) appropriations for special education; and

22 (d) a district levy as provided in subsection (3) for
23 support of a school not approved as an isolated school under
24 the provisions of 20-9-302.

25 (2) The foundation program includes:

(a) amounts in support of general education programs as provided in the schedules in 20-9-316 through 20-9-320; and

(b) payments in support of special education programs under 20-9-321.

(3) An elementary school having an ANB of nine or fewer pupils for 2 consecutive years which is not approved as an isolated school under the provisions of 20-9-302 may budget and spend the schedule amount, but the county and state shall participate in financing one-half of the foundation program, and the district shall finance the remaining one-half by a tax levied on the property of the district. When a school of nine or fewer pupils is approved as isolated under the provisions of 20-9-302, the county and state shall participate in the financing of the total amount of the foundation program.

(4) Funds provided to support the special education accounting-budget program may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions of this title. Expenditures for special education must be accounted for separately from the balance of the school district general fund. ~~Transfers-between-items within-the-special-education-budget-for-accounting--purposes may--be--made--at-the-discretion-of-the-board-of-trustees-in accordance-with-the-financial-administration--part--of--this~~

~~title. The unexpended--balance amount of the special education accounting-budget-carries-over-to-the-next-year-to allowable cost payment that is not matched with district funds, as required in 20-9-321, will reduce by a like amount the amount--of--funding--required-to-finance-the district's ensuing year's foundation program amount for special education."~~

Section 5. Section 20-9-311, MCA, is amended to read:

"20-9-311. Calculation of average number belonging (ANB). (1) Average number belonging must be computed by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year and by dividing the total by 180. However, when a school district has approval to operate less than 180 school days under 20-9-804, the total must be calculated in accordance with the provisions of 20-9-805. For the purpose of calculating ANB under this section, the days of attendance for a regularly enrolled pupil may not exceed 180 pupil-instruction days and 7 pupil-instruction-related days. Attendance for a part of a morning session or a part of an

1 afternoon session by a pupil must be counted as attendance
 2 for one-half day. In calculating the ANB for pupils enrolled
 3 in a program established under 20-7-117(1), attendance at or
 4 absence from a regular session of the program for at least 2
 5 hours of either a morning or an afternoon session ~~will~~ must
 6 be counted as one-half day attended or absent as the case
 7 may be. If a variance has been granted as provided in
 8 20-1-302, ANB ~~will~~ must be computed in a manner prescribed
 9 by the superintendent of public instruction, but ~~in no case~~
 10 may the ANB may not exceed one-half for each kindergarten
 11 pupil. When any pupil has been absent, with or without
 12 excuse, for more than 10 consecutive school days, including
 13 pupil-instruction-related days, ~~his~~ the absence after the
 14 10th day of absence may not be included in the aggregate
 15 days of absence and ~~his~~ the pupil's enrollment in the school
 16 may not be considered in the calculation of the average
 17 number belonging until he resumes attendance at school is
 18 resumed.

19 ~~{2}--If--a--student--spends--less--than--half--his--time--in--the~~
 20 ~~regular--program--and--the--balance--of--his--time--in--school--in--the~~
 21 ~~special--education--program,--he--is--considered--a--full--time~~
 22 ~~special--pupil--but--is--not--considered--regularly--enrolled--for~~
 23 ~~ANB--purposes,--if--a--student--spends--half--or--more--of--his--time~~
 24 ~~in--school--in--the--regular--program--and--the--balance--of--his--time~~
 25 ~~in--the--special--education--program,--he--is--considered--regularly~~

1 ~~enrolled--for--ANB--purposes:~~

2 ~~{3}~~ {2} The average number belonging of the regularly
 3 enrolled, full-time pupils for the public schools of a
 4 district must be based on the aggregate of all the regularly
 5 enrolled, full-time pupils attending the schools of the
 6 district, except that when:

7 (a) (i) a school of the district is located more than 3
 8 miles beyond the incorporated limits of a city or town
 9 located in the district and 3 miles from any other school of
 10 the district, all of the regularly enrolled, full-time
 11 pupils of the school must be calculated separately for ANB
 12 purposes; or

13 (ii) a school of the district is located more than 3
 14 miles from any other school of the district and no
 15 incorporated territory is not involved in the district, all
 16 of the regularly enrolled, full-time pupils of the school
 17 must be calculated separately for ANB purposes;

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

22 (c) a middle school has been approved and accredited,
 23 all pupils below the 7th grade must be considered elementary
 24 school pupils for ANB purposes and the 7th and 8th grade
 25 pupils must be considered high school pupils for ANB

1 purposes; or

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

8 ~~†4†~~(3) When 11th or 12th grade students are regularly
9 enrolled on a part-time basis, high schools may calculate
10 the ANB to include an "equivalent ANB" for those students.
11 The method for calculating an equivalent ANB must be
12 determined in a manner prescribed by the superintendent of
13 public instruction."

14 **Section 6.** Section 20-9-313, MCA, is amended to read:

15 "20-9-313. Circumstances under which the regular
16 average number belonging may be increased. The average
17 number belonging of a school, calculated in accordance with
18 the ANB formula prescribed in 20-9-311, may be increased
19 when:

20 (1) the opening of a new elementary school or the
21 reopening of an elementary school has been approved in
22 accordance with 20-6-502. The average number belonging for
23 the school must be established by the county superintendent
24 and approved, disapproved, or adjusted by the superintendent
25 of public instruction.

1 (2) the opening or reopening of a high school or a
2 branch of the county high school has been approved in
3 accordance with 20-6-503, 20-6-504, or 20-6-505. The average
4 number belonging for the high school must be established by
5 the county superintendent's estimate, after an investigation
6 of the probable number of pupils that will attend the high
7 school.

8 (3) a district anticipates an increase in the average
9 number belonging due to the closing of any private or public
10 school in the district or a neighboring district. The
11 estimated increase in average number belonging must be
12 established by the trustees and the county superintendent
13 and approved, disapproved, or adjusted by the superintendent
14 of public instruction no later than the fourth Monday in
15 June.

16 (4) a district anticipates an unusual enrollment
17 increase in the ensuing school fiscal year. The increase in
18 average number belonging must be based on estimates of
19 increased enrollment approved by the superintendent of
20 public instruction and must be computed in the manner
21 prescribed by 20-9-314.

22 (5) for the initial year of operation of a program
23 established under 20-7-117(1), the ANB to be used for budget
24 purposes is the same as one-half the number of 5-year-old
25 children residing in the district as of September 10 of the

preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction; or

~~{6}--a full-time special pupil, as defined in 20-9-311, in a given school fiscal year may no longer be considered a full-time special pupil in the ensuing school fiscal year {the superintendent of public instruction may grant one ANB for the pupil for the ensuing school fiscal year}; or~~

~~{7}{6}~~ a high school district provides early graduation for any student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment or when a high school district provides early graduation for a class of students who have completed the requirements for graduation after 175 pupil-instruction days in the 12th grade. The increase must be established by the trustees as though the student had attended to the end of the school fiscal year and must be approved, disapproved, or adjusted by the superintendent of public instruction."

Section 7. Section 20-9-321, MCA, is amended to read:

"20-9-321. Foundation program and contingency funds for special education. (1) For the purpose of establishing the foundation program amount for a current year special education program for a school district, the superintendent of public instruction shall determine the total estimated

cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget must be prepared on forms provided by the superintendent of public instruction and must set out for each program special education payment to a school district, cooperative, or joint board for special education services formed under 20-3-361 prior to July 1, 1992, using the following factors:

(a) the estimated allowable costs associated with operating the program where allowable costs are as defined in 20-7-431 district ANB student count as established pursuant to 20-9-311 and 20-9-313;

(b) the number of pupils expected to be enrolled in the program a per-ANB amount for the special education instructional block grant; and

(c) a per-ANB amount for the special education related services block grant;

(d) weighted cost factors for cooperatives or joint boards meeting the requirements of 20-7-457, to compensate for the additional costs of operations and maintenance, travel, supportive services, recruitment, and administration;

(e) district and cooperative expenditure reports; and

~~{c}{f}~~ any other data required by the superintendent of public instruction for budget justification purposes and to

administer the provisions of ~~20-9-315~~ through 20-7-431 and 20-9-321.

(2) ~~The total amount of allowable costs approved by the superintendent of public instruction is the special education foundation program amount for current year special education program purposes. The total amount of allowable costs that are approved for the special education budget may not, under any condition, be less than the foundation program amount for one regular ANB for each full-time special pupil in the school district.~~ Special education allowable cost payments must be granted to each school district and cooperative with a special education program as follows:

(a) An instructional block grant must be awarded to each school district, based on the district ANB and the per-ANB special education instructional amount.

(b) A special education related services block grant must be awarded to each school district that is not a cooperative member, based on the district ANB and the per-ANB special education related services amount. The special education related services block grant amount for districts that are members of approved cooperatives or a joint board must be awarded to the cooperatives or joint board. If a cooperative or joint board meets the requirements of 20-7-457, the special education related

services block grant must be weighted for the factors in subsection (1)(d).

(3) The superintendent of public instruction shall annually determine the per-ANB special education instructional and special education related services block grant amounts based on the prior years' trustees' expenditure data for special education instruction and related services.

(4) The superintendent of public instruction shall adopt rules necessary to implement this section.

(5) A district shall provide a 25% local contribution for special education, matching every \$3 of state special education instructional and special education related services block grants with at least one local dollar. A district that is a cooperative member is required to provide the 25% match of the special education related services grant amount to the special education cooperative, but the district is not required to match the weighted funding factors.

(6) The superintendent of public instruction shall determine the actual district match based on the trustees' reports. Any unmatched portion reverts to the state and must be subtracted from the district's ensuing year's foundation program payment.

(7) If a district's allowable costs of special

1 education, as verified by the trustees' reports, exceed by
 2 at least 10% the total of the special education
 3 instructional and special education related services block
 4 grant plus the required district match, the district is
 5 eligible for a 65% reimbursement of the costs that exceed
 6 the additional 10%. A district that demonstrates severe
 7 economic hardship because of exceptional special education
 8 costs may apply to the superintendent of public instruction
 9 for an advance on the reimbursement for the year in which
 10 the actual costs will be incurred.

11 {3}(8) Any amount of the special education allowable
 12 costs for a district approved under the provisions of
 13 subsection (2) that is an increase in the approved allowable
 14 costs from the previous school fiscal year and is a result
 15 of expanded programs or recalculations of the special
 16 education allowable costs base may be deposited and managed
 17 in the separate account of the miscellaneous programs fund
 18 of the district that is prescribed in subsection--(4)
 19 20-9-507.

20 {4}--If--a--special--education-program-is-implemented-or
 21 expanded-during-a-given-school-term-too-late-to-be--included
 22 in--the-determination-of-the-district-foundation-program-for
 23 the-school-year-as-prescribed-in-this-part, allowable--costs
 24 approved--under--the-budgeting-provisions-of-subsections--(1)
 25 and--(2)--for-the-operation-of-the-program--during--the--given

1 year--must--be-funded-from-any-legislative-appropriation-for
 2 contingency-financing--for--special--education--Contingency
 3 funds--granted--under-this-subsection-must-be-deposited-in-a
 4 separate-account-of-the-miscellaneous-programs-fund--of--the
 5 district--as--provided--in-20-9-507. However, if contingency
 6 funds-are-not-available, then subject-to-the-approval-of-the
 7 program-by-the-superintendent--under--the--budget--amendment
 8 provisions--of--20-9-161(6), allowable--costs-for-the-given
 9 year-may-be-funded-in-the-miscellaneous--programs--fund--by
 10 other--revenue--sources--and-added-to-the-foundation-program
 11 amount-for-special-education-for-the-subsequent-school--year
 12 under--the--provisions-of-20-9-147. The allowable-costs-must
 13 be-recorded-as-previous-year-special-education--expenses--in
 14 the-school-district-budget-for-the-subsequent-school-year.

15 {5}--(a)--The--special--education--contingency--funds--in
 16 subsection--(4):

17 {i}--are-biennially-appropriated;

18 {ii}--are--for--emergencies-that-may-arise-in-the-special
 19 education-programs-of-school-districts-or-special--education
 20 cooperatives; and

21 {iii}--may--be--used--to--fund--positions--that-have-gone
 22 unfilled-for-a-full-school-fiscal-year-and-for--which--state
 23 special-education-funds-were-not-awarded;

24 {b}--The--board--of--trustees--of--a--district--or--the
 25 management-board-of--a--special--education--cooperative--may

1 apply---for---contingency---funding---by---submitting---to---the
 2 superintendent-of-public-instruction,-in-the-form-prescribed
 3 by---the---superintendent--of--public---instruction,---written
 4 documentation-that-describes-the-need-for-the-funds:

5 {6}--The--sum--of--the--previous--year--special--education
 6 expenses-as-defined-in--subsections--{3}--and--{4}--and--the
 7 foundation-program-amount-for-current-year-special-education
 8 as--defined--in--subsections--{1}--and--{2}--is--the--special
 9 education-budget-for-accounting-purposes:

10 {7}{9} The foundation program amount for special
 11 education determined in this section must be added to the
 12 foundation program schedule amount of--the--regular--program
 13 ANB--defined-in determined pursuant to 20-9-311 and 20-9-313
 14 through 20-9-320 to obtain the total foundation program
 15 amount for the district."

16 **Section 8.** Section 20-9-507, MCA, is amended to read:

17 "20-9-507. Miscellaneous programs fund. (1) The
 18 trustees of a district receiving money from local, state,
 19 federal, or other sources provided in 20-5-307(4),
 20 20-5-312(8), and 20-9-321{3}{8} other than money under the
 21 provisions of Title I of Public Law 81-874 or federal money
 22 designated for deposit in a specific fund of the district
 23 shall establish a miscellaneous programs fund for the
 24 deposit of the money. The money may be a reimbursement of
 25 miscellaneous program fund expenditures already realized by

1 the district or may be a grant of money for the financing of
 2 expenditures to be realized by the district for a special,
 3 approved program to be operated by the district. When the
 4 money is a reimbursement, the money may be expended at the
 5 discretion of the trustees for school purposes. When the
 6 money is a grant, the money must be expended according to
 7 the conditions of the program approval by the superintendent
 8 of public instruction or any other approval agent. Within
 9 the miscellaneous programs fund, the trustees shall cause a
 10 separate accounting to be maintained for each federal grant
 11 program and for the aggregate of all reimbursement money.

12 (2) The financial administration of the miscellaneous
 13 programs fund must be in accordance with the financial
 14 administration provisions of this title for a nonbudgeted
 15 fund."

16 NEW SECTION. **Section 9.** Repealer. Section 20-7-458,
 17 MCA, is repealed.

18 NEW SECTION. **Section 10.** Effective dates. (1) [Section
 19 ± 5] is effective July JANUARY 1, 1994.

20 (2) [Sections 2-through 1, 3, 4, AND 6 THROUGH 9] are
 21 effective July 1, ±995 1994.

-End-

SENATE BILL NO. 348

INTRODUCED BY HALLIGAN

BY REQUEST OF THE SUPERINTENDENT

OF PUBLIC INSTRUCTION

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING FULL-TIME SPECIAL PUPILS TO BE REGULARLY ENROLLED FOR ANB PURPOSES; AMENDING SECTIONS 20-7-431, 20-7-457, 20-9-147, 20-9-303, 20-9-311, 20-9-313, 20-9-321, AND 20-9-507, MCA; REPEALING SECTION 20-7-458, MCA; AND PROVIDING EFFECTIVE DATES."

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

Section 1. Section 20-7-431, MCA, is amended to read:

"20-7-431. Allowable cost schedule for special programs -- superintendent to make rules -- annual accounting. (1) For the purpose of determining the foundation program amount for special education as defined in 20-9-321, the following schedule of allowable costs must be followed by the school district in preparation of its special education budget for state aid request purposes and reports must be reviewed by the superintendent of public instruction in his review and approval of the budget (for the purposes of determining the amount of the foundation program for special education for the district and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in

accordance with 20-9-311 and 20-9-313) payments and a district's special education expenditures:

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses, including:

(i) the cost of salaries and benefits of special program teachers, regular program teachers, and teacher aides, special education supervisors, audiologists, and speech and hearing clinicians the entire cost if employed full-time in the special program; if such personnel are shared between special and regular programs a portion of the entire cost corresponding to the entire working time which that each person devotes to the special program;

(ii) the total cost of teaching supplies and textbooks if used exclusively for special programs the actual total cost;

(iii) the purchase, rental, repair, and maintenance of instructional equipment required to implement a student's individualized education program;

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.

HOUSE STANDING COMMITTEE REPORT

March 29, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Education and Cultural Resources report that Senate Bill 348 (third reading copy -- blue) be concurred in as amended .

Signed: HS "Sonny" Hanson

Sonny Hanson, Chair

And, that such amendments read:

Carried by: Rep. Peck

1. Page 1, line 11.

Following: line 10

Insert: "STATEMENT OF INTENT

A statement of intent is required for this bill because 20-7-431 gives the superintendent of public instruction rulemaking authority to implement changes in special education funding distribution.

It is the intent of the legislature to enhance student and taxpayer equity by revising the method of distributing special education state funding to school districts and special education cooperatives. A revision in funding distribution methods may necessitate transitional steps to minimize disruption of program services to students. It is intended that the superintendent of public instruction implement the changes in the funding provisions of this bill to assist a smoother transition and to minimize the impact of the changes to students and districts."

-END-

SB 348

HOUSE

Committee Vote:

Yes 17 No 1

SENATE BILL NO. 348

INTRODUCED BY HALLIGAN

BY REQUEST OF THE SUPERINTENDENT

OF PUBLIC INSTRUCTION

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING FULL-TIME SPECIAL PUPILS TO BE REGULARLY ENROLLED FOR ANB PURPOSES; AMENDING SECTIONS 20-7-431, 20-7-457, 20-9-147, 20-9-303, 20-9-311, 20-9-313, 20-9-321, AND 20-9-507, MCA; REPEALING SECTION 20-7-458, MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE 20-7-431 GIVES THE SUPERINTENDENT OF PUBLIC INSTRUCTION RULEMAKING AUTHORITY TO IMPLEMENT CHANGES IN SPECIAL EDUCATION FUNDING DISTRIBUTION.

IT IS THE INTENT OF THE LEGISLATURE TO ENHANCE STUDENT AND TAXPAYER EQUITY BY REVISING THE METHOD OF DISTRIBUTING SPECIAL EDUCATION STATE FUNDING TO SCHOOL DISTRICTS AND SPECIAL EDUCATION COOPERATIVES. A REVISION IN FUNDING DISTRIBUTION METHODS MAY NECESSITATE TRANSITIONAL STEPS TO MINIMIZE DISRUPTION OF PROGRAM SERVICES TO STUDENTS. IT IS INTENDED THAT THE SUPERINTENDENT OF PUBLIC INSTRUCTION IMPLEMENT THE CHANGES IN THE FUNDING PROVISIONS OF THIS BILL TO ASSIST A SMOOTHER TRANSITION AND TO MINIMIZE THE IMPACT

OF THE CHANGES TO STUDENTS AND DISTRICTS.

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

Section 1. Section 20-7-431, MCA, is amended to read:

"20-7-431. Allowable cost schedule for special programs -- superintendent to make rules -- annual accounting. (1) For the purpose of determining the foundation program amount for special education as defined in 20-9-321, the following schedule of allowable costs must be followed by the school district in preparation of its special education budget for state aid request purposes and reports must be reviewed by the superintendent of public instruction in his review and approval of the budget for the purposes of determining the amount of the foundation program for special education for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with 20-9-311 and 20-9-313; payments and a district's special education expenditures:

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses, including:

(i) the cost of salaries and benefits of special program teachers, regular program teachers, and teacher aides, special education supervisors, audiologists, and speech and hearing clinicians the entire cost if employed full-time in the special program, if such personnel are

1 ~~shared--between--special--and--regular--programs--a--portion--of~~
 2 ~~the--entire--cost~~ corresponding to the entire working time
 3 ~~which that~~ each person devotes to the special program;

4 (ii) the total cost of teaching supplies and textbooks
 5 ~~if-used-exclusively~~ for special programs--~~the--actual--total~~
 6 ~~cost;~~

7 (iii) the purchase, rental, repair, and maintenance of
 8 instructional equipment required to implement a student's
 9 individualized education program;

10 ~~{iii}-other-expenses-~~

11 (iv) activities associated with teacher assistance teams
 12 that provide prereferral intervention;

13 ~~{A}{v}~~ the cost of contracted services, including fees
 14 paid for professional advice and consultation regarding
 15 special students or the special program, and the delivery of
 16 special education services by public or private
 17 agencies--the--actual--total--cost;

18 ~~{B}{vi}~~ transportation costs for special education
 19 instructional personnel who travel on an itinerant basis
 20 from school to school or district to district or to in-state
 21 child study team meetings or in-state individualized
 22 education program meetings--the--actual--cost--to--the--district
 23 calculated-on-the-same-mileage-rate-used-by-the-district-for
 24 other-travel-reimbursement-purposes;

25 (b) supportive related services, including:

1 (i) the cost of salaries and benefits of professional
 2 supportive personnel--the--entire--cost--if--employed--full--time
 3 in--the--special--program--if--the--personnel--are--shared--between
 4 special--and--regular--programs--a--portion--of--the--entire--cost
 5 corresponding--to--the--entire--working--time--which--each--person
 6 devotes--to--the--special--program, corresponding to the working
 7 time that each person devotes to the special program.

8 Professional supportive personnel may include special
 9 education supervisors, speech-language pathologists,
 10 audiologists, counselors, social workers, psychologists,
 11 psychometrists, physicians, nurses, and physical and
 12 occupational therapists.

13 (ii) the cost of salaries and benefits of clerical
 14 personnel who assist professional personnel in supportive
 15 services--the--entire--cost--if--employed--full--time--in--the
 16 special--program--if--the--personnel--are--shared--between--special
 17 and--regular--programs--a--portion--of--the--entire--cost
 18 corresponding--to--the--entire--working--time--which--each--person
 19 devotes--to--the--special--program, corresponding to the working
 20 time that each person devotes to the special program;

21 ~~{c}-equipment-~~

22 ~~{i}-equipment--the--actual--total--cost;~~

23 ~~{ii}-special-equipment-for-district-owned--school--buses~~
 24 ~~necessary--to-accommodate-special-students--the--actual--total~~
 25 ~~cost;~~

1 ~~{iii}-special-equipment-for-school-buses--contracted--to~~
 2 ~~transport--special--students--that--portion--of-the-contract~~
 3 ~~price-attributable-to--the--cost--of--special--equipment--or~~
 4 ~~personnel--required--to--accommodate--special--students--the~~
 5 ~~actual-special-cost;~~

6 ~~{iv}-repair--and--maintenance--of--equipment--the-actual~~
 7 ~~total-cost;~~

8 {iii} the cost of supplies for special programs;

9 {iv} activities associated with teacher assistance teams
 10 that provide prereferral interventions;

11 {v} the cost of contracted services, including fees
 12 paid for professional advice and consultation regarding
 13 special students or the special program, and the delivery of
 14 special education services by public or private agencies;

15 {vi} transportation costs for special education related
 16 services personnel who travel on an itinerant basis from
 17 school to school or district to district or to in-state
 18 child study team meetings or in-state individualized
 19 education program meetings;

20 {vii} equipment purchase, rental, repair, and
 21 maintenance required to implement a student's individualized
 22 education program;

23 {viii} the additional cost of special education
 24 cooperatives or joint boards, including operation and
 25 maintenance, travel, recruitment, and administration.

1 (2) The superintendent of public instruction shall
 2 adopt rules in accordance with the policies of the board of
 3 public education for:

4 {a} keeping necessary records for supportive and
 5 administrative personnel and any personnel shared between
 6 special and regular programs;

7 ~~{b}--defining-the-total-special--program--caseload--that~~
 8 ~~must--be--assigned-to-specific-support-persons-and-the-kinds~~
 9 ~~of-professional-specialties-to-be-considered-relevant-to-the~~
 10 ~~program-before-the-district--may--count--an--allowable--cost~~
 11 ~~under-subsection-{1}{b}-of-this-section;-and~~

12 ~~{c}--defining--the--kinds--or--types--of-equipment-whose~~
 13 ~~costs-may-be-counted--under--subsection--{1}{c}{1}--of--this~~
 14 ~~section.~~

15 (3) An annual accounting of all expenditures of school
 16 district general fund money for special education must be
 17 made by the district trustees on forms furnished by the
 18 superintendent of public instruction. The superintendent of
 19 public instruction shall make rules for the accounting.

20 ~~{4}--if-a-board-of-trustees-chooses-to-exceed-the-budget~~
 21 ~~approved--by-the-superintendent-of-public-instruction;-costs~~
 22 ~~in-excess-of-the-approved-budget-may-not-be-reimbursed-under~~
 23 ~~the-foundation-program-for-special-education;~~

24 {5}{4} Allowable costs prescribed in this section do
 25 not include the costs of the teachers' retirement system,

the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

(6)(5) (a) Notwithstanding other provisions of the law, the superintendent of public instruction may not approve a foundation program amount for special education that exceeds legislative appropriations; however, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation.

(b) If the total special education allowable cost of ~~the--special--education--budgets~~ payment, as determined in 20-9-321, exceeds legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations ~~based-upon-prioritized budget-items-as-established-by-the-superintendent-of--public instruction--The-amount-of-the-approved-budgets-in-excess-of the-available-appropriations-may-not-be-reimbursed-under-the foundation---program---for--special--education--and--is--the responsibility-of-the-school-district."~~

Section 2. Section 20-7-457, MCA, is amended to read:

"20-7-457. Funding provisions for special education purposes of cooperatives or joint boards. (1) The superintendent of public instruction shall pay directly to a cooperative or to a joint board formed under 20-3-361 prior

to July 1, 1992, for special education purposes the approved special education allowable costs--for--contracted--special education--services--from-the-state-special-revenue-fund-for state-equalization-aid-as-provided-in-20-9-343 cost payments determined pursuant to 20-9-321. ~~The-total-of--the--payments must-be-within-the-limit-set-by-the-legislature-for-approved special-education-budgets.~~

(2) A school district that elects to participate in a cooperative for special education purposes shall agree in the cooperative contract to participate for a period of at least 3 years.

(3) A school district that elects to participate in a joint board formed under 20-3-361 for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to participate or to not participate in a joint board agreement for the next school fiscal year.

(4) ~~After--June--30--1990--a~~ A cooperative that has not met the requirements of 20-7-453 and 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction. The superintendent shall adopt rules for approval of full service education cooperatives ~~formed-after-June-30-1990~~.

(5) A full service education cooperative may establish a retirement fund, a miscellaneous programs fund, and a

1 transportation fund, as provided for in 20-9-201, for the
2 purposes of a full service education cooperative contract
3 and the purposes allowed by law.

4 (6) Before July 1, 1994, the superintendent of public
5 instruction, after consulting with regional representatives,
6 shall define boundaries for cooperatives established for
7 special education programs that incorporate the territory of
8 all public school districts.

9 (7) Restructuring of cooperatives established for
10 providing special education services must:

11 (a) be limited to a statewide total of no more than 23;

12 (b) include districts that are adjacent to each other
13 and not overlapping into another cooperative's territory;
14 and

15 (c) provide that all districts located within a
16 cooperative's boundary may voluntarily become a cooperative
17 member."

18 **Section 3.** Section 20-9-147, MCA, is amended to read:

19 "20-9-147. Approval to amend general fund budget for
20 ensuing school fiscal year. (1) The trustees of a district
21 may determine that expenses from the following sources will
22 need to be funded by the general fund budget in the ensuing
23 school fiscal year:

24 (a) a budget amendment authorized under the provisions
25 of 20-9-161 through 20-9-163;

1 (b) metal mines tax reserve fund authorized in
2 20-9-231;

3 (c) special education expenditures approved under the
4 provisions of 20-9-321~~(3)~~(8);

5 (d) transfer of services from or dissolution of a
6 special education cooperative; and

7 (e) tuition receipts deposited in the miscellaneous
8 programs fund.

9 (2) Whenever the trustees determine that expenses from
10 the sources in subsection (1) will need to be funded by the
11 general fund in the ensuing year, the trustees shall
12 petition the superintendent of public instruction for
13 approval to add the expenditures from any of the sources to
14 the current year's general fund budget for the purposes of
15 calculating the ensuing year's general fund budget
16 limitation. The petition must set forth in writing the
17 specific reasons for the request and a report of the actual
18 expenditures.

19 (3) The superintendent of public instruction shall
20 promptly approve or disapprove the petition for approval to
21 add the expenditures from the sources in subsection (1) to
22 the current year's general fund budget for the purposes of
23 calculating the ensuing year's general fund budget."

24 **Section 4.** Section 20-9-303, MCA, is amended to read:

25 "20-9-303. Definition of foundation program --

1 nonisolated school foundation program financing -- special
 2 education funds. (1) As used in this title, the term
 3 "foundation program" means the minimum expenditures that are
 4 sufficient to provide for the educational program of a
 5 school. The foundation program relates only to those
 6 expenditures authorized by a district's general fund budget
 7 and may not include expenditures from any other fund. It is
 8 financed by:

9 (a) county equalization money, as provided in 20-9-331
 10 and 20-9-333;

11 (b) state equalization aid, as provided in 20-9-343;

12 (c) appropriations for special education; and

13 (d) a district levy as provided in subsection (3) for
 14 support of a school not approved as an isolated school under
 15 the provisions of 20-9-302.

16 (2) The foundation program includes:

17 (a) amounts in support of general education programs as
 18 provided in the schedules in 20-9-316 through 20-9-320; and

19 (b) payments in support of special education programs
 20 under 20-9-321.

21 (3) An elementary school having an ANB of nine or fewer
 22 pupils for 2 consecutive years which is not approved as an
 23 isolated school under the provisions of 20-9-302 may budget
 24 and spend the schedule amount, but the county and state
 25 shall participate in financing one-half of the foundation

1 program, and the district shall finance the remaining
 2 one-half by a tax levied on the property of the district.
 3 When a school of nine or fewer pupils is approved as
 4 isolated under the provisions of 20-9-302, the county and
 5 state shall participate in the financing of the total amount
 6 of the foundation program.

7 (4) Funds provided to support the special education
 8 accounting-budget program may be expended only for special
 9 education purposes as approved by the superintendent of
 10 public instruction in accordance with the special education
 11 budgeting provisions of this title. Expenditures for special
 12 education must be accounted for separately from the balance
 13 of the school district general fund. ~~Transfers-between-items~~
 14 ~~within-the-special-education-budget-for-accounting--purposes~~
 15 ~~may--be--made--at-the-discretion-of-the-board-of-trustees-in~~
 16 ~~accordance-with-the-financial-administration--part--of--this~~
 17 ~~title.~~ The ~~unexpended--balance~~ amount of the special
 18 education ~~accounting-budget-carries-over-to-the-next-year-to~~
 19 ~~allowable cost payment that is not matched with district~~
 20 ~~funds, as required in 20-9-321, will reduce by a like amount~~
 21 ~~the amount--of--funding--required-to-finance-the~~ district's
 22 ensuing year's foundation program amount for special
 23 education."

24 **Section 5.** Section 20-9-311, MCA, is amended to read:

25 "20-9-311. Calculation of average number belonging

(ANB). (1) Average number belonging must be computed by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year and by dividing the total by 180. However, when a school district has approval to operate less than 180 school days under 20-9-804, the total must be calculated in accordance with the provisions of 20-9-805. For the purpose of calculating ANB under this section, the days of attendance for a regularly enrolled pupil may not exceed 180 pupil-instruction days and 7 pupil-instruction-related days. Attendance for a part of a morning session or a part of an afternoon session by a pupil must be counted as attendance for one-half day. In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), attendance at or absence from a regular session of the program for at least 2 hours of either a morning or an afternoon session ~~will~~ must be counted as one-half day attended or absent as the case may be. If a variance has been granted as provided in 20-1-302, ANB ~~will~~ must be computed in a manner prescribed by the superintendent of public instruction, but ~~in no case~~

may the ANB may not exceed one-half for each kindergarten pupil. When any pupil has been absent, with or without excuse, for more than 10 consecutive school days, including pupil-instruction-related days, ~~his~~ the absence after the 10th day of absence may not be included in the aggregate days of absence and ~~his~~ the pupil's enrollment in the school may not be considered in the calculation of the average number belonging until ~~he resumes~~ attendance at school is resumed.

~~{2}--if--a--student--spends--less--than--half--his--time--in--the--regular--program--and--the--balance--of--his--time--in--school--in--the--special--education--program,--he--is--considered--a--full--time--special--pupil--but--is--not--considered--regularly--enrolled--for--ANB--purposes,--if--a--student--spends--half--or--more--of--his--time--in--school--in--the--regular--program--and--the--balance--of--his--time--in--the--special--education--program,--he--is--considered--regularly--enrolled--for--ANB--purposes.~~

~~{3}~~ (2) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) (i) a school of the district is located more than 3 miles beyond the incorporated limits of a city or town located in the district and 3 miles from any other school of

1 the district, all of the regularly enrolled, full-time
2 pupils of the school must be calculated separately for ANB
3 purposes; or

4 (ii) a school of the district is located more than 3
5 miles from any other school of the district and no
6 incorporated territory is not involved in the district, all
7 of the regularly enrolled, full-time pupils of the school
8 must be calculated separately for ANB purposes;

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

13 (c) a middle school has been approved and accredited,
14 all pupils below the 7th grade must be considered elementary
15 school pupils for ANB purposes and the 7th and 8th grade
16 pupils must be considered high school pupils for ANB
17 purposes; or

18 (d) a school has not been accredited by the board of
19 public education, the regularly enrolled, full-time pupils
20 attending the nonaccredited school are not eligible for
21 average number belonging calculation purposes, nor will an
22 average number belonging for the nonaccredited school be
23 used in determining the foundation program for the district.

24 ~~(4)~~(3) When 11th or 12th grade students are regularly
25 enrolled on a part-time basis, high schools may calculate

1 the ANB to include an "equivalent ANB" for those students.
2 The method for calculating an equivalent ANB must be
3 determined in a manner prescribed by the superintendent of
4 public instruction."

5 **Section 6.** Section 20-9-313, MCA, is amended to read:

6 "20-9-313. Circumstances under which the regular
7 average number belonging may be increased. The average
8 number belonging of a school, calculated in accordance with
9 the ANB formula prescribed in 20-9-311, may be increased
10 when:

11 (1) the opening of a new elementary school or the
12 reopening of an elementary school has been approved in
13 accordance with 20-6-502. The average number belonging for
14 the school must be established by the county superintendent
15 and approved, disapproved, or adjusted by the superintendent
16 of public instruction.

17 (2) the opening or reopening of a high school or a
18 branch of the county high school has been approved in
19 accordance with 20-6-503, 20-6-504, or 20-6-505. The average
20 number belonging for the high school must be established by
21 the county superintendent's estimate, after an investigation
22 of the probable number of pupils that will attend the high
23 school.

24 (3) a district anticipates an increase in the average
25 number belonging due to the closing of any private or public

school in the district or a neighboring district. The estimated increase in average number belonging must be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

(4) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging must be based on estimates of increased enrollment approved by the superintendent of public instruction and must be computed in the manner prescribed by 20-9-314.

(5) for the initial year of operation of a program established under 20-7-117(1), the ANB to be used for budget purposes is the same as one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction; or

~~{6}--a full-time special pupil, as defined in--20-9-311, in--a given school fiscal year may no longer be considered a full-time special pupil in the ensuing--school--fiscal--year {the--superintendent of public instruction may grant one ANB for the pupil for the ensuing school fiscal year}; or~~

~~{7}{6}~~ a high school district provides early graduation

for any student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment or when a high school district provides early graduation for a class of students who have completed the requirements for graduation after 175 pupil-instruction days in the 12th grade. The increase must be established by the trustees as though the student had attended to the end of the school fiscal year and must be approved, disapproved, or adjusted by the superintendent of public instruction."

Section 7. Section 20-9-321, MCA, is amended to read:

"20-9-321. Foundation program and contingency funds for special education. (1) For the purpose of establishing the foundation program amount for a current year special education program for a school district, the superintendent of public instruction shall determine the total estimated cost--of--the--special--education--program--for--the--school district--on--the--basis--of--a--special--education--program--budget submitted--by--the--district--The--budget--must--be--prepared--on forms--provided--by--the--superintendent--of--public--instruction and--must--set--out--for--each--program special education payment to a school district, cooperative, or joint board for special education services formed under 20-3-361 prior to July 1, 1992, using the following factors:

(a) the estimated--allowable--costs--associated--with

~~operating-the-program-where-allowable-costs-are-as-defined~~
~~in-20-7-431~~ district ANB student count as established
 pursuant to 20-9-311 and 20-9-313;

(b) ~~the-number-of-pupils-expected-to-be-enrolled-in-the~~
 program a per-ANB amount for the special education
 instructional block grant; and

(c) a per-ANB amount for the special education related
 services block grant;

(d) weighted cost factors for cooperatives or joint
 boards meeting the requirements of 20-7-457, to compensate
 for the additional costs of operations and maintenance,
 travel, supportive services, recruitment, and
 administration;

(e) district and cooperative expenditure reports; and

~~(f)~~ any other data required by the superintendent of
 public instruction for budget-justification-purposes-and to
 administer the provisions of 20-9-315-through 20-7-431 and
 20-9-321.

(2) ~~The-total-amount-of-allowable-costs-approved-by-the~~
~~superintendent---of---public---instruction---is---the---special~~
~~education-foundation-program-amount-for-current-year-special~~
~~education-program-purposes-The-total-amount-of-allowable~~
~~costs-that-are-approved-for-the-special-education-budget-may~~
~~not,--under--any--condition,--be--less--than--the--foundation~~
~~program-amount--for--one--regular--ANB--for--each--full-time~~

~~special-pupil-in-the-school-district~~ Special education
 allowable cost payments must be granted to each school
 district and cooperative with a special education program as
 follows:

(a) An instructional block grant must be awarded to
 each school district, based on the district ANB and the
 per-ANB special education instructional amount.

(b) A special education related services block grant
 must be awarded to each school district that is not a
 cooperative member, based on the district ANB and the
 per-ANB special education related services amount. The
 special education related services block grant amount for
 districts that are members of approved cooperatives or a
 joint board must be awarded to the cooperatives or joint
 board. If a cooperative or joint board meets the
 requirements of 20-7-457, the special education related
 services block grant must be weighted for the factors in
 subsection (1)(d).

(3) The superintendent of public instruction shall
 annually determine the per-ANB special education
 instructional and special education related services block
 grant amounts based on the prior years' trustees'
 expenditure data for special education instruction and
 related services.

(4) The superintendent of public instruction shall

1 adopt rules necessary to implement this section.

2 (5) A district shall provide a 25% local contribution
 3 for special education, matching every \$3 of state special
 4 education instructional and special education related
 5 services block grants with at least one local dollar. A
 6 district that is a cooperative member is required to provide
 7 the 25% match of the special education related services
 8 grant amount to the special education cooperative, but the
 9 district is not required to match the weighted funding
 10 factors.

11 (6) The superintendent of public instruction shall
 12 determine the actual district match based on the trustees'
 13 reports. Any unmatched portion reverts to the state and must
 14 be subtracted from the district's ensuing year's foundation
 15 program payment.

16 (7) If a district's allowable costs of special
 17 education, as verified by the trustees' reports, exceed by
 18 at least 10% the total of the special education
 19 instructional and special education related services block
 20 grant plus the required district match, the district is
 21 eligible for a 65% reimbursement of the costs that exceed
 22 the additional 10%. A district that demonstrates severe
 23 economic hardship because of exceptional special education
 24 costs may apply to the superintendent of public instruction
 25 for an advance on the reimbursement for the year in which

1 the actual costs will be incurred.

2 ~~{3}~~(8) Any amount of the special education allowable
 3 costs for a district approved under the provisions of
 4 subsection (2) that is an increase in the approved allowable
 5 costs from the previous school fiscal year and is a result
 6 of expanded programs or recalculations of the special
 7 education allowable costs base may be deposited and managed
 8 in the separate account of the miscellaneous programs fund
 9 of the district that is prescribed in subsection--~~{4}~~
 10 20-9-507.

11 ~~{4}~~--If--a--special--education--program--is--implemented--or
 12 expanded--during--a--given--school--term--too--late--to--be--included
 13 in--the--determination--of--the--district--foundation--program--for
 14 the--school--year--as--prescribed--in--this--part,--allowable--costs
 15 approved--under--the--budgeting--provisions--of--subsections--~~{1}~~
 16 and--~~{2}~~--for--the--operation--of--the--program--during--the--given
 17 year--must--be--funded--from--any--legislative--appropriation--for
 18 contingency--financing--for--special--education;--Contingency
 19 funds--granted--under--this--subsection--must--be--deposited--in--a
 20 separate--account--of--the--miscellaneous--programs--fund--of--the
 21 district--as--provided--in--20-9-507;--However,--if--contingency
 22 funds--are--not--available,--then--subject--to--the--approval--of--the
 23 program--by--the--superintendent--under--the--budget--amendment
 24 provisions--of--20-9-16~~{6}~~,--allowable--costs--for--the--given
 25 year--may--be--funded--in--the--miscellaneous--programs--fund--by

other--revenue--sources--and-added-to-the-foundation-program amount-for-special-education-for-the-subsequent-school--year under--the--provisions-of-20-9-147. The allowable costs must be recorded as previous-year-special-education--expenses--in the-school-district-budget-for-the-subsequent-school-year.

{5}--(a) The--special--education--contingency--funds--in subsection-(4):

{i}--are-biennially-appropriated;

{ii}--are--for--emergencies-that-may-arise-in-the-special education-programs-of-school-districts-or-special--education cooperatives;-and

{iii}--may--be--used--to--fund--positions--that-have-gone unfilled-for-a-full-school-fiscal-year-and-for--which--state special-education-funds-were-not-awarded.

{b}--The---board--of--trustees--of--a--district--or--the management-board-of--a--special--education--cooperative--may apply---for---contingency---funding--by--submitting--to--the superintendent-of-public-instruction, in-the-form-prescribed by--the--superintendent--of--public---instruction,---written documentation-that-describes-the-need-for-the-funds.

{6}--The--sum--of--the--previous--year-special-education expenses-as-defined-in--subsections--{3}--and--{4}--and--the foundation-program-amount-for-current-year-special-education as--defined--in--subsections--{1}--and--{2}--is--the-special education-budget-for-accounting-purposes.

{7}(9) The foundation program amount for special education determined in this section must be added to the foundation program schedule amount of--the--regular--program ANB--defined-in determined pursuant to 20-9-311 and 20-9-313 through 20-9-320 to obtain the total foundation program amount for the district."

Section 8. Section 20-9-507, MCA, is amended to read:

"20-9-507. **Miscellaneous programs fund.** (1) The trustees of a district receiving money from local, state, federal, or other sources provided in 20-5-307(4), 20-5-312(8), and 20-9-321{3}{8} other than money under the provisions of Title I of Public Law 81-874 or federal money designated for deposit in a specific fund of the district shall establish a miscellaneous programs fund for the deposit of the money. The money may be a reimbursement of miscellaneous program fund expenditures already realized by the district or may be a grant of money for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. When the money is a reimbursement, the money may be expended at the discretion of the trustees for school purposes. When the money is a grant, the money must be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall cause a

1 separate accounting to be maintained for each federal grant
2 program and for the aggregate of all reimbursement money.

3 (2) The financial administration of the miscellaneous
4 programs fund must be in accordance with the financial
5 administration provisions of this title for a nonbudgeted
6 fund."

7 NEW SECTION. Section 9. Repealer. Section 20-7-458,
8 MCA, is repealed.

9 NEW SECTION. Section 10. Effective dates. (1) [Section
10 ~~1~~ 5] is effective July JANUARY 1, 1994.

11 (2) [Sections ~~2~~-through 1, 3, 4, AND 6 ~~THROUGH~~ 9] are
12 effective July 1, ~~1995~~ 1994.

-End-