

1 *Holland* House BILL NO. 582 *Wally Martinez*  
 2 INTRODUCED BY *Wm E Boharski* *James Green* *McLee* *Miller*

3 *Vick Barnett* *Leanna James* *Brainard* *Curtis* *Rehbein*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN INDIVIDUAL INCOME TAX CREDIT FOR  
 5 QUALIFYING ELEMENTARY AND SECONDARY EDUCATION EXPENSES PAID BY AN INDIVIDUAL FOR A  
 6 DEPENDENT MINOR; REQUIRING A DECLARATION OF INTENT TO CLAIM A TAX CREDIT; AMENDING  
 7 SECTIONS 20-9-161, 20-9-162, 20-9-163, AND 20-9-311, MCA; AND PROVIDING AN IMMEDIATE  
 8 EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE." *Smoot* *Joe Lashen*

9 *Simpkins*  
 10 WHEREAS, Article X, section 1(1), of the Montana Constitution guarantees equality of educational  
 11 opportunity to each person of the state; and

12 WHEREAS, the Legislature finds that allowing lower-income parents the same ability that wealthy  
 13 parents now have in selecting the school of their choice enhances equality of educational opportunity; and

14 WHEREAS, the Legislature strongly supports the rights of parents to choose the way in which their  
 15 children are educated, consistent with their academic expectations and personal values; and

16 WHEREAS, the Legislature believes that competition in the educational marketplace has a  
 17 strengthening effect on both public and private education and serves the long-term best interests of all  
 18 students; and

19 WHEREAS, the Legislature supports an education policy that fosters the free movement of  
 20 educational consumers to the schools of their choice; and

21 WHEREAS, the Legislature finds that it is fiscally and educationally prudent to have the private  
 22 sector absorb a portion of the ever-increasing number of students that are overcrowding our public schools  
 23 and costing taxpayers tens of millions of dollars of capital construction costs; and

24 WHEREAS, the Legislature finds that parental choice in education can reduce the Montana property  
 25 and income tax burdens and increase the amount of money available to educate each child in the public  
 26 schools.

27  
 28 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

29  
 30 NEW SECTION. Section 1. Elementary and secondary education expense tax credit. (1) There is

1 a credit against the taxes otherwise due under this chapter for qualified elementary and secondary  
2 education expenses paid by an individual for a dependent who is a minor during the tax year. In order to  
3 claim the credit, the individual must have a completed intent form to claim an education tax credit on file  
4 with the state pursuant to [section 2].

5 (2) (a) Education expenses that qualify for the credit under this section are amounts paid as tuition  
6 and fees by an individual for a dependent who is in compliance with Title 20, chapter 5, part 1.

7 (b) Qualifying education expenses do not include amounts paid to a governmental entity as  
8 property taxes, assessments, or fees.

9 (3) The amount of the credit for qualifying education expenses is as follows:

10 (a) up to \$375, as applied against the first \$375 of qualifying education expenses, for the tax year  
11 beginning January 1, 1995, but only for the amount by which those expenses have increased from the  
12 previous tax year;

13 (b) up to \$750 for the tax year beginning January 1, 1996, as applied against the first \$375 of  
14 qualifying education expenses for attendance from January 1, 1996, to June 30, 1996, and against the  
15 first \$375 of qualifying education expenses for attendance from July 1, 1996, to December 31, 1996; and

16 (c) up to \$1,000 for tax years beginning on or after January 1, 1997.

17 (4) A deduction or credit is not allowed under any other provision of this chapter with respect to  
18 any amount for which a credit is allowed under this section. Any amount of the credit allowed under this  
19 section that is in excess of an individual's tax liability must be refunded to the individual.

20 (5) In the case of a married individual filing a separate return, the amount of the credit under  
21 subsection (3) is limited to one-half of the applicable amount.

22  
23 **NEW SECTION. Section 2. Intent to claim education tax credit -- form.** (1) The superintendent of  
24 public instruction shall provide a form on which to declare the intent to claim an education tax credit. The  
25 form must outline the tax credit provided by [section 1] and must contain an affidavit that the individual  
26 completing the form intends to enroll a dependent minor in a school other than a public school in the district  
27 of residence during the following school year. The form must be distributed to each student attending public  
28 school. Forms must also be provided to and be available from each county superintendent of schools.

29 (2) In order to be eligible for the tax credit provided for in [section 1], an individual shall annually  
30 complete the form provided for in subsection (1) and return the form to an official of the individual's district

1 of residence by May 10. Each district shall forward the forms to the county superintendent, who shall then  
2 forward the forms to the superintendent of public instruction. The number of eligible dependent minors  
3 indicated on the forms who were enrolled during that year must be excluded from ANB calculations for the  
4 ensuing school year.

5 (3) The superintendent of public instruction shall forward a copy of each form to the department  
6 of revenue for use in determining eligibility for the tax credit provided for in [section 1].  
7

8 **Section 3.** Section 20-9-161, MCA, is amended to read:

9 **"20-9-161. Definition of budget amendment for budgeting purposes.** As used in this title, unless  
10 the context clearly indicates otherwise, the term "budget amendment" for the purpose of school budgeting  
11 means an amendment to an adopted budget of the district for the following reasons:

12 (1) an increase in the enrollment of an elementary or high school district that is:

13 (a) beyond what could reasonably have been anticipated at the time of the adoption of the budget  
14 for the current school fiscal year whenever, because of the enrollment increase, the district's budget for  
15 any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and  
16 support the district for the entire current school fiscal year; or

17 (b) because of enrollment of students for whom a form to declare the intent to claim an education  
18 tax credit was filed as provided in [section 2];

19 (2) the destruction or impairment of any school property necessary to the maintenance of the  
20 school, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering school property unfit  
21 for its present school use;

22 (3) a judgment for damages against the district issued by a court after the adoption of the budget  
23 for the current year;

24 (4) an enactment of legislation after the adoption of the budget for the current year that imposes  
25 an additional financial obligation on the district;

26 (5) the receipt of:

27 (a) a settlement of taxes protested in a prior school fiscal year; or

28 (b) taxes from a prior school fiscal year as the result of a tax audit by the department of revenue  
29 or its agents; or

30 (c) delinquent taxes from a prior school fiscal year; and

1 (d) a determination by the trustees that it is necessary to expend all or a portion of the taxes  
2 received under subsection (5)(a), (5)(b), or (5)(c) for a project or projects that were deferred from a previous  
3 budget of the district as a result of the protested taxes; or

4 (6) any other unforeseen need of the district that cannot be postponed until the next school year  
5 without dire consequences affecting the safety of the students and district employees or the educational  
6 functions of the district."

7  
8 **Section 4.** Section 20-9-162, MCA, is amended to read:

9 **"20-9-162. Authorization for budget amendment adoption.** (1) (a) Notwithstanding the provisions  
10 of subsections (2) and (3), a budget amendment may be adopted at any time of the school fiscal year,  
11 except that a budget amendment required by an enrollment increase as provided in 20-9-161(1)(a) may not  
12 be adopted until after October 1.

13 (b) The trustees may approve a budget amendment pursuant to 20-9-161(2) through (6) by a  
14 resolution.

15 (c) Whenever the trustees of a district decide that a budget amendment is necessary, they may  
16 proclaim the need for the budget amendment by a majority vote of the trustees. The proclamation must  
17 state the facts constituting the need for the budget amendment, the funds affected by the budget  
18 amendment, the anticipated source of financing, the estimated amount of money required to finance the  
19 budget amendment, and the time and place the trustees will meet for the purpose of considering and  
20 adopting the budget amendment for the current school fiscal year.

21 (2) The trustees shall send a copy of the proclamation to the county superintendent and to the  
22 board of county commissioners of the county.

23 (3) The trustees shall submit a budget amendment for an enrollment increase to the superintendent  
24 of public instruction for approval in the manner provided in 20-9-163."

25  
26 **Section 5.** Section 20-9-163, MCA, is amended to read:

27 **"20-9-163. Resolution for budget amendment -- petition to superintendent of public instruction.**  
28 (1) Whenever the trustees of a district decide that a budget amendment is necessary because of an  
29 enrollment increase, they may petition the superintendent of public instruction to adopt a resolution for the  
30 budget amendment. The petition must be signed by a majority of the trustees.

1 (2) The petition must state the facts constituting the need for the budget amendment, the  
2 estimated amount of money required to fund the budget amendment, the funds affected by the budget  
3 amendment, the anticipated source of financing for the budget amendment, and the current year  
4 enrollment.

5 (3) The superintendent of public instruction shall promptly approve or disapprove the petition  
6 requesting approval to adopt a resolution for a budget amendment because of increased enrollment. If the  
7 petition is for a budget amendment for an enrollment increase as provided in 20-9-161(1)(a), the  
8 superintendent of public instruction shall adjust the district's maximum general fund budget based on the  
9 approved enrollment increase. Upon approval, a district may not adopt a budget amendment if the amount  
10 will cause the district to exceed the district's adjusted maximum general fund budget. If the petition is  
11 approved, the trustees may adopt a resolution for a budget amendment and take all other steps required  
12 for the adoption of a budget amendment. Approval of a petition by the superintendent of public instruction  
13 authorizes the board of trustees to initiate a budget amendment by resolution and does not relieve the  
14 trustees of the necessity of complying with the requirements of the school budgeting laws. Approval of the  
15 petition may not be construed as approval of any subsequent application for increased state aid on account  
16 of the budget amendment."

17  
18 **Section 6.** Section 20-9-311, MCA, is amended to read:

19 **"20-9-311. Calculation of average number belonging (ANB).** (1) Average number belonging (ANB)  
20 must be computed as follows:

21 (a) compute an average enrollment by:

22 (i) adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday  
23 in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior  
24 school fiscal year, or the nearest school day if those dates do not fall on a school day; ~~and~~

25 (ii) divide the sum by two; and

26 (iii) subtract the number of students who were enrolled during the prior school fiscal year as  
27 indicated on the forms provided for in [section 2]; and

28 (b) multiply the average enrollment calculated in subsection (1)(a) by the sum of the  
29 pupil-instruction and the approved pupil-instruction-related days for the current school fiscal year and divide  
30 by 180.

1 (2) For the purpose of calculating ANB under subsection (1), up to 7 approved  
2 pupil-instruction-related days may be included in the calculation.

3 (3) When a school district has approval to operate less than 180 school days under 20-9-804, the  
4 total ANB must be calculated in accordance with the provisions of 20-9-805.

5 (4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be  
6 counted as enrollment for one-half day.

7 (5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1),  
8 enrollment at a regular session of the program for at least 2 hours of either a morning or an afternoon  
9 session must be counted as one-half pupil for ANB purposes. If a variance has been granted as provided  
10 in 20-1-302, ANB must be computed in a manner prescribed by the superintendent of public instruction,  
11 but the ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

12 (6) When any pupil has been absent, with or without excuse, for more than 10 consecutive school  
13 days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the  
14 pupil resumes attendance prior to the day of the enrollment count.

15 (7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the  
16 ANB calculations.

17 (8) The average number belonging of the regularly enrolled, full-time pupils for the public schools  
18 of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the  
19 schools of the district, except that when:

20 (a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city  
21 or town located in the district and at least 20 miles from any other school of the district, the number of  
22 regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the  
23 district must receive a basic entitlement for the school calculated separately from the other schools of the  
24 district;

25 (ii) a school of the district is located more than 20 miles from any other school of the district and  
26 no incorporated territory is involved in the district, the number of regularly enrolled, full-time pupils of the  
27 school must be calculated separately for ANB purposes and the district must receive a basic entitlement  
28 for the school calculated separately from the other schools of the district; or

29 (iii) the superintendent of public instruction approves an application not to aggregate when  
30 conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel,

1 or when any other condition exists that would result in an unusual hardship to the pupils of the school if  
2 they were transported to another school, the number of regularly enrolled, full-time pupils of the school  
3 must be calculated separately for ANB purposes and the district must receive a basic entitlement for the  
4 school calculated separately from the other schools of the district;

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

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

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

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

18 (10) For average daily attendance reporting purposes, districts shall provide the superintendent of  
19 public instruction with annual reports of school attendance for regularly enrolled students and special  
20 education students, using a format determined by the superintendent."

21  
22 **NEW SECTION. Section 7. Codification instruction.** (1) [Section 1] is intended to be codified as  
23 an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to  
24 [section 1].

25 (2) [Section 2] is intended to be codified as an integral part of Title 20, chapter 3, part 1, and the  
26 provisions of Title 20, chapter 3, part 1, apply to [section 2].

27  
28 **NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are  
29 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
30 applications, the part remains in effect in all valid applications that are severable from the invalid

1 applications.

2

3 NEW SECTION. **Section 9. Effective date -- retroactive applicability.** [This act] is effective on  
4 passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after  
5 December 31, 1994.

6

-END-

STATE OF MONTANA - FISCAL NOTE


Fiscal Note for HB0582, as amended by House Taxation Committee 3/15/95

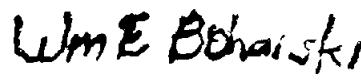
DESCRIPTION OF PROPOSED LEGISLATION:

An act providing an individual income tax credit for qualifying elementary and secondary education expenses paid by an individual for a dependent minor; requiring a declaration of intent to claim a tax credit; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

1. This bill applies retroactively to tax years beginning after December 31, 1994; the first fiscal impact will be felt in FY96.
2. The credit is available for students receiving educational benefits in compliance with Title 20, Chapter 5, Part 1 attending private or attending public schools for which parents pay tuition.
3. The credit allowed is a "refundable credit"; that is, the credit amount in excess of the taxpayers's tax liability will be refunded to the taxpayer.
4. The individual claiming the tax credit must file a form declaring the individual's intention to claim an educational tax credit with the school district of residence by May 10 for the ensuing school year. The first opportunity to file this form would be in May 1995.
5. Home school students will not qualify for the credit due to the requirement that the credit is only available for "tuition" payments which must be made to a third party.
6. Public schools who are currently waiving tuition charges do not initiate charges in response to this potential credit to parents.
7. The requirement that credits only be allowed for the first \$375 of tuition or fees and that it only applies to the extent this is an increase from 1994 will limit the credit to new private school students and new public school students for whom the parents must pay tuition. This limit applies to tax years 1995 and 1996.
8. The estimate of the fiscal 1996 and 1997 impact assumes that tax credits are taken for expenses incurred for newly enrolled students. Newly enrolled students includes those who transfer from public schools, those initially entering a public school for which the parents pay tuition, and those entering private schools as their first school.
9. New private school enrollments and public school enrollments for whom parents may tuition are annually 10% of the respective total enrollments excluding those who transfer from public schools.
10. Without the tax credit incentive, enrollment in Montana public schools will grow at an annual rate of approximately 1% per year; private school enrollment will grow at the same rate.
11. Prior to enactment of HB582 private school enrollment are anticipated to be 8,690 students in 1995-1996 and 8,773 students in 1996-1997. Public school enrollments for whom parents pay tuition are anticipated to be 795 in 1995-1996 and 803 in 1996-1997.
12. It is assumed that 1% of public school enrollments would transfer in the first year and 2.0% by the second year. The total number of students transferred out of the public school system will be 1662 in 1995-1996 and 3356 by 1996-1997.

 3-18-95  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

  
WILLIAM BOHARSKI, PRIMARY SPONSOR DATE  
Fiscal Note for HB0582, as amended by House  
Taxation Committee 3/15/95

HB 582

(continued)

13. In tax year 1995 (FY96), an average credit of \$375 will be claimed for 1662 students enrolling in private schools rather than public schools, 869 new students enrolling for the first time in private schools, and 80 new public school students for whom parents pay tuition.
14. In tax year 1996 (FY97), an average credit of \$750 will be claimed for the 2611 students cited in item #12. In addition 1694 students who enroll in private schools rather than public schools, 877 new private school students, and 80 new public school students for whom parents pay tuition beginning in school year 1996-97 will be eligible for a \$375 credit.
15. Due to the decline in the amount of credit for each additional student in families with more than one student the average credit per student will be 81.7% of the maximum credit allowed.
16. The full revenue impact of the tax year liability impact occurs in the following fiscal year.
17. The per-student entitlement is \$3,343 for students in grades K-6 and \$4,680 for students in grades 7-12. Non-public school students are pro-rated at 70% K-6 and 30% grades 7-12.
18. The average per student state general fund savings resulting from students enrolling in private schools who would have otherwise been anticipated to enroll in public schools will be \$2039.
19. These estimates do not include public school students whose parents pay fees for commercial/industrial arts, music, science, or agricultural courses, or fees paid to participate in athletics or driver's education.
20. The savings to the state for reduced direct state aid and GTB aid will be \$3,388,736 for FY 1996 and \$6,842,435 for FY 1997.
21. There will be an annual cost of \$9,000 associated with the printing and distribution of 180,000 tax forms on which a parent or guardian declares the intent to claim a tuition tax credit. HB 582 requires that enough forms be printed for distribution to every public school student and that it also be available from each county superintendent.

FISCAL IMPACT:Expenditures:

Office of Public Instruction

Expenditures will decrease by \$3,388,736 million in FY 1996 and \$6,842,435 million in FY 1997 for direct state aid and GTB aid paid to public school districts. State expenditures for printing and distributing the form for declaring the intention to claim a tuition tax credit will be \$9,000 in each year of the 1997 biennium.

Department of Revenue

This proposal would require additional administrative expenditures to add a line for the credit to income tax form, and to provide for an additional Grade 8 FTE to review and verify the claims for credit. Total administrative expenses would increase \$29,321 in FY96 and \$24,534 in FY97 and each year thereafter.

Revenues:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Individual Income Tax	\$ (798,966)	\$ (2,413,381)

Net Impact:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Public School Support	3,388,736	6,842,435
Tax credits	(798,966)	(2,413,381)
OPI administrative costs	(9,000)	(9,000)
DOR administrative costs	(29,321)	(24,534)
Total (State General Fund savings)	2,551,449	4,395,520

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

To the extent public school districts have lower enrollments than would have occurred with out this incentive state aid will be reduced as calculated above. If districts adjust expenditures proportionately to enrollment changes district costs and taxes will be reduced. If minor enrollment changes have little effect on total expenditures, budgets may not be reduced and local taxes would increase to offset reduced state aid. Increases in district taxes for districts who spend in excess of the BASE budget will require voter approval.

TECHNICAL NOTES:

1. It is unclear if kindergarten students in private schools would be eligible for the tax credit as Title 20, chapter 5, part 1 makes no specific reference to these children.
2. Public school districts traditionally vote a budget in April and sign teacher contracts prior to the May 10th deadline for an individual to declare their intent to claim a tuition tax credit. Those districts with a significant number of students transferring to non-public schools experience difficulties.

LONG-RANGE IMPACTS:

In future years the cost or savings to the state from HB582 will be determined primarily by increases in the tax credit and the number of taxpayers who enroll students in private schools rather than public schools. In HB582 the tax credit rises to \$1000 in tax year 1997 when the credits are fully implemented and is extended to all private school students and public school students for whom parents pay tuition. Based on the average state savings of \$2039 for each student who leaves a public school and a cost of \$1000 for the associated tax credit, each family who removes their children from public schools to enroll in private schools would generate a net savings of \$1039 if the family transferred one child. If more than 9278 such taxpayers make this change there would be an annual net gain to the state, if less than this number change there would be an annual net loss to the state. If families with more than one child make this move fewer children would have to be transferred to make the incentive cost neutral.