

SENATE BILL NO. 250

INTRODUCED BY

*Rebecca Halligan, Linda Nelson, Josh, Ketyebery*

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING A SCHOOL DISTRICT TO ESTABLISH A NONBUDGETED LITIGATION RESERVE FUND; AMENDING SECTION 20-9-201, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**NEW SECTION.**

**Section 1. Litigation reserve fund.** (1) The trustees of a school district may establish a litigation reserve fund only when litigation that is pending against the district could result in an award against the district.

(2) At the end of each school fiscal year, the trustees may transfer a portion of the general fund end-of-the-year fund balance to establish the fund. The transfer is not subject to the adopted general fund budget.

(3) Upon conclusion of litigation, the balance of the money in the fund reverts to the general fund.

**Section 2.** Section 20-9-201, MCA, is amended to read:

**"20-9-201. Definitions and application.** (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law or by the superintendent of public instruction under the provisions of subsection (2). Funds are classified as follows:

(a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend money from the fund. The general fund, transportation fund, bus depreciation reserve fund, tuition fund, retirement fund, debt service fund, building reserve fund, adult education fund, nonoperating fund, and any other funds designated by the legislature are budgeted funds.

(b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend money on deposit in the fund. The school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, interlocal cooperative fund, internal service fund, impact aid fund, enterprise fund, agency fund, extracurricular fund, metal mines tax reserve fund,

1 endowment fund, litigation reserve fund, and any other funds designated by the legislature are nonbudgeted  
2 funds.

3 (2) The school financial administration provisions of this title apply to all money of any elementary  
4 or high school district. Elementary and high school districts shall record the receipt and disbursement of  
5 all money in accordance with generally accepted accounting principles. The superintendent of public  
6 instruction has general supervisory authority as prescribed by law over the school financial administration  
7 provisions, as they relate to elementary and high school districts. The superintendent of public instruction  
8 shall adopt rules necessary to secure compliance with the law.

9 (3) Except as otherwise provided by law, whenever the trustees of a district determine that a fund  
10 is inactive and will no longer be used, the trustees shall close the fund by transferring all cash and other  
11 account balances to the general fund if the fund does not have a cash or fund balance deficit."

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13 NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an  
14 integral part of Title 20, chapter 9, part 5, and the provisions of Title 20, chapter 9, part 5, apply to  
15 [section 1].

16

17 NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 1995.

18

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0250, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act authorizing a school district to establish a nonbudgeted litigation reserve fund.

ASSUMPTIONS:

1. The trustees of a district may establish a litigation reserve fund only when litigation that is pending against the district could result in an award against the district.
2. Under existing law, school districts have the following options for paying litigation costs:
  - a) Section 20-9-471, MCA authorizes the issuance and sale of obligations to the Board of Investments, without a vote of the electorate, for the purpose of financing the payment of legal claims and judgments. The term of the obligation may not exceed 5 years. An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district, subject to the debt limitation established in 20-9-406.
  - b) Section 2-9-316, MCA allows districts to satisfy a final judgment out of funds that may be available from the following sources:
    1. insurance
    2. general fund or any other funds legally available to the district
    3. a property tax collected by a special levy not to exceed 10 mills
    4. proceeds from the sale of bonds. Property taxes may be levied to amortize such bonds, provided the levy for payment of such bonds may not exceed 10 mills annually.
  - c) Section 20-9-161, MCA defines "budget amendment" to mean an amendment to the adopted budget of the district for... (3) a judgment for damages against the district issued by a court after the adoption of the budget for the current year;... (6) any other unforeseen need of the district that cannot be postponed until the next school year without dire consequences affecting the safety of the students and district employees or the education functions of the district.
3. Insurance contracts are written to defend and indemnify a district. It is assumed that all districts are insured to cover their full exposure under 2-9-108, MCA. In a negligence action against the district, the insurance policy will cover attorneys fees and expenses related to defending the district.
4. Employment-related issues are often excluded from insurance coverage. It is assumed that SB 250 is intended to allow districts to reserve funds for awards against the district for employee contract or human rights violations. Awards are typically granted for back-pay to the employee.

*David Lewis*

2-1-95

*Linda Nelson*

2/1/95

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

LINDA NELSON, PRIMARY SPONSOR DATE

Fiscal note for SB0250, as introduced

**SB 250**

ASSUMPTIONS (continued):

5. Expenditures reported on the FY94 trustees financial summaries for school districts do not provide the level of detail to estimate the number of districts and the amounts that districts would reserve for litigation in response to this proposal. Given the means that are available to districts under existing law to pay judgments, it is expected that a small, but unknown number of districts will establish litigation reserve funds under SB 250 for the payment of back-pay awarded to successful plaintiffs.
  
6. In GTB-eligible districts transfers from the ending fund balance to the litigation reserve fund will reduce fund balance reappropriated. As a result, the district general fund mill levy will increase as will the state guaranteed tax base cost.

FISCAL IMPACT: The fiscal impact will depend on the number of districts who face qualifying litigation and the proportion of their budget funded from state GTB subsidy. Based on a small number of districts using the reserve fund as cited under assumption #5 increased state GTB costs is expected to be small.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

There will be a small increase in local property tax levies to the extent that districts increase their reserve funds under this bill and do not use the ending fund balance to reduce local property taxes in the ensuing school year.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

TECHNICAL NOTES:

APPROVED BY COM ON EDUCATION  
AND CULTURAL RESOURCES

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(3) Upon conclusion of litigation, the balance of the money in the fund reverts to the general fund  
AND MUST BE USED TO REDUCE THE DISTRICT'S GENERAL FUND BASE BUDGET LEVY REQUIREMENT  
COMPUTED PURSUANT TO 20-9-141.

**Section 2.** Section 20-9-201, MCA, is amended to read:

**"20-9-201. Definitions and application.** (1) As used in this title, unless the context clearly indicates  
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(3) Upon conclusion of litigation, the balance of the money in the fund reverts to the general fund AND MUST BE USED TO REDUCE THE DISTRICT'S GENERAL FUND BASE BUDGET LEVY REQUIREMENT COMPUTED PURSUANT TO 20-9-141.

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-END-





## HOUSE STANDING COMMITTEE REPORT

March 13, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Education and Cultural Resources report that Senate Bill 250 (third reading copy -- blue) be concurred in as amended.

Signed: Peggy Arnott  
Peggy Arnott, Vice Chair

Carried by: Rep. Ellis

And, that such amendments read:

1. Title, line 6.

Following: line 5

Insert: "IMMEDIATE"

Following: "DATE"

Insert: "AND A RETROACTIVE APPLICABILITY DATE"

2. Page 1, line 14.

Following: "~~balance~~"

Strike: "THE"

Insert: "At the end of each school fiscal year, the"

3. Page 1, lines 15 and 16.

Following: "fund." on line 15

Strike: remainder of line 15 through line 16

4. Page 2, line 20.

Following: "~~date~~"

Insert: "-- retroactive applicability"

Strike: "July 1, 1995"

Insert: "on passage and approval and applies retroactively,  
within the meaning of 1-2-109, to the school fiscal year  
beginning July 1, 1994"

-END-

SB 250

Committee Vote:  
Yes 12, No 6.

HOUSE

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20 **NEW SECTION. Section 4. Effective date -- RETROACTIVE APPLICABILITY.** [This act] is effective  
 21 ~~July 1, 1995~~ **ON PASSAGE AND APPROVAL AND APPLIES RETROACTIVELY, WITHIN THE MEANING OF**  
 22 **1-2-109, TO THE SCHOOL FISCAL YEAR BEGINNING JULY 1, 1994.**  
 23

-END-