

1 HOUSE BILL NO. 168

2 INTRODUCED BY J. KARLEN, L. SMITH, T. CROWE, C. FITZPATRICK, C. KEOGH, K. KORTUM, E.
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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SCHOOL FUNDING LAWS TO PROVIDE THAT 3-
6 YEAR-OLD AND 4-YEAR-OLD CHILDREN WITH DISABILITIES PARTICIPATING IN SCHOOL DISTRICT
7 SPECIAL EDUCATION PROGRAMS ARE ELIGIBLE FOR INCLUSION IN ANB CALCULATIONS; AMENDING
8 SECTION 20-9-311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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10 WHEREAS, section 20-7-411(3), MCA, obligates school districts to provide a special education
11 program for each child with a disability beginning at age 3; and

12 WHEREAS, the prohibition on including preschool pupils in annual number belonging (ANB) counts
13 under section 20-9-311(7), MCA, applies specifically to preschool programs created at trustees' discretion
14 under section 20-7-117(2), MCA; and

15 WHEREAS, if preschool-aged children with disabilities receiving special education from a school district
16 are not included in ANB counts, there is no mechanism for state financial support for their education.

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

19
20 **Section 1.** Section 20-9-311, MCA, is amended to read:

21 **"20-9-311. Calculation of average number belonging (ANB) -- 3-year averaging.** (1) Average
22 number belonging (ANB) must be computed for each budget unit as follows:

23 (a) compute an average enrollment by adding a count of regularly enrolled pupils who were
24 enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on
25 the first Monday in February of the prior school fiscal year or the next school day if those dates do not fall on a
26 school day, and divide the sum by two; and

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

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

(3) When a school district has approval to operate less than the minimum aggregate hours under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) (a) Except as provided in subsection (4)(d), for the purpose of calculating ANB, enrollment in an education program:

(i) from 180 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;

(ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time enrollment;

(iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time enrollment; and

(iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.

(b) Except as provided in subsection (4)(d), enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.

(c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on the hours necessary and appropriate to provide the course within a regular classroom schedule.

(d) A school district may include in its calculation of ANB a pupil who is enrolled in a program providing fewer than the required aggregate hours of pupil instruction required under subsection (4)(a) or (4)(b) if the pupil has demonstrated proficiency in the content ordinarily covered by the instruction as determined by the school board using district assessments. The ANB of a pupil under this subsection (4)(d) must be converted to an hourly equivalent based on the hours of instruction ordinarily provided for the content over which the student has demonstrated proficiency.

(e) (i) Except as provided in subsection (4)(e)(ii), a pupil in kindergarten through grade 12 who is concurrently enrolled in more than one public school, program, or district may not be counted as more than one full-time pupil for ANB purposes. When a pupil is concurrently enrolled in more than one district, any fractional enrollment under subsection (4)(a) must be attributed first to a pupil's nonresident district.

(ii) A pupil who participates in a jumpstart program under Title 20, chapter 7, part 18, may be counted as up to 1 1/4 enrollment for ANB purposes. A district shall add one-quarter enrollment for a pupil who participated in an early literacy jumpstart program to the pupil's regular enrollment count under this subsection (4) in both the October and February enrollment counts following the student's participation in the jumpstart program.

(5) For a district that is transitioning from a half-time to a full-time kindergarten program, the state superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose of calculating ANB for the elementary programs offering full-time kindergarten in the current year. For the purposes of calculating the 3-year ANB, the superintendent of public instruction shall count the kindergarten enrollment as one-half enrollment and then add the additional kindergarten ANB to the 3-year average ANB for districts offering full-time kindergarten.

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

(7) (a) (i) The enrollment of preschool pupils, in preschool programs created at the discretion of trustees as provided in 20-7-117, may not be included in the ANB calculations.

(ii) Preschool children with disabilities receiving special education services as required under 20-7-411(3) may be included in ANB calculations based on the aggregate hours of pupil instruction as provided in subsection (4) of this section.

(b) Except as provided in subsection (7)(c), a pupil who has reached 19 years of age by September 10 of the school year may not be included in the ANB calculations.

(c) A pupil with disabilities who is over 19 years of age and has not yet reached 21 years of age by September 10 of the school year and who is receiving special education services from a school district pursuant to 20-7-411(4)(a) may be included in the ANB calculations if:

(i) the student has not graduated;

(ii) the student is eligible for special education services and is likely to be eligible for adult services for individuals with developmental disabilities due to the significance of the student's disability; and

(iii) the student's individualized education program has identified transition goals that focus on

1 preparation for living and working in the community following high school graduation since age 16 or the
2 student's disability has increased in significance after age 16.

3 (d) A school district providing special education services pursuant to subsection (7)(c) is
4 encouraged to collaborate with agencies and programs that serve adults with developmental disabilities in
5 meeting the goals of a student's transition plan.

6 (8) The average number belonging of the regularly enrolled pupils for the public schools of a
7 district must be based on the aggregate of all the regularly enrolled pupils attending the schools of the district,
8 except that:

9 (a) the ANB is calculated as a separate budget unit when:

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

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

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

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

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

- 1 (B) 50% of the basic entitlement for the fifth year; and
- 2 (C) 25% of the basic entitlement for the sixth year.
- 3 (b) when a junior high school has been approved and accredited as a junior high school, all of the
- 4 regularly enrolled pupils of the junior high school must be considered as high school district pupils for ANB
- 5 purposes;
- 6 (c) when a middle school has been approved and accredited, all pupils below the 7th grade must
- 7 be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered
- 8 high school pupils for ANB purposes; or
- 9 (d) when a school has been designated as nonaccredited by the board of public education
- 10 because of failure to meet the board of public education's assurance and performance standards, the regularly
- 11 enrolled pupils attending the nonaccredited school are not eligible for average number belonging calculation
- 12 purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE
- 13 funding program for the district.
- 14 (9) The district shall provide the superintendent of public instruction with semiannual reports of
- 15 school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the
- 16 superintendent.
- 17 (10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education
- 18 program provided by the district through any combination of in-person or remote instruction may be included for
- 19 ANB purposes only if the pupil is offered access to the complete range of educational services for the basic
- 20 education program required by the accreditation standards adopted by the board of public education.
- 21 (b) Access to school programs and services for a student placed by the trustees in a private
- 22 program for special education may be limited to the programs and services specified in an approved individual
- 23 education plan supervised by the district.
- 24 (c) Access to school programs and services for a student who is incarcerated in a facility, other
- 25 than a youth detention center, may be limited to the programs and services provided by the district at district
- 26 expense under an agreement with the incarcerating facility.
- 27 (d) This subsection (10) may not be construed to require a school district to offer access to
- 28 activities governed by an organization having jurisdiction over interscholastic activities, contests, and

1 tournaments to a pupil who is not otherwise eligible under the rules of the organization.

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

4 (a) a resident of the district or a nonresident student admitted by trustees under a student
5 attendance agreement and who is attending a school or an offsite instructional setting of the district;

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

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

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

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

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

19 (g) enrolled in an educational program or course provided at district expense using remote delivery
20 methods, including but not limited to tutoring, distance learning programs, online programs, and technology
21 delivered learning programs. The pupil:

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

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

25 (iii) must be enrolled in the educational program or course under a mandatory attendance
26 agreement as provided in 20-5-321; or

27 (iv) must be receiving remote instruction under 20-7-118(1)(c).

28 (h) a resident of the district attending the Montana youth challenge program or a Montana job

1 corps program under an interlocal agreement with the district under 20-9-707.

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

4 (13) (a) A district may, for ANB purposes, include in the October and February enrollment counts an
5 individual who is otherwise eligible under this title and who during the prior school year:

6 (i) resided in the district;

7 (ii) was not enrolled in the district or was not enrolled full time; and

8 (iii) completed an extracurricular activity with a duration of at least 6 weeks.

9 (b) (i) Except as provided in subsection (13)(b)(ii), each completed extracurricular activity under
10 subsection (13)(a) may be counted as one-sixteenth enrollment for the individual, but under this subsection (13)
11 the individual may not be counted as more than one full-time enrollment for ANB purposes.

12 (ii) Each completed extracurricular activity lasting longer than 18 weeks may be counted as one-
13 eighth enrollment.

14 (c) For the purposes of this section, "extracurricular activity" means:

15 (i) a sport or activity sanctioned by an organization having jurisdiction over interscholastic
16 activities, contests, and tournaments;

17 (ii) an approved career and technical student organization, pursuant to 20-7-306; or

18 (iii) a school theater production.

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

23 (b) For a K-12 district that has been in existence for 3 years or more, the district's maximum
24 general fund budget and BASE budget for the ensuing school fiscal year must be calculated separately for the
25 elementary and high school programs pursuant to subsection (14)(a) and then combined.

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

28 (a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the

1 previous 2 school fiscal years; and

2 (b) dividing the sum calculated under subsection (15)(a) by three."

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4 NEW SECTION. **Section 2. Effective date.** [This act] is effective July 1, 2025.

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6 NEW SECTION. **Section 3. Applicability.** [This act] applies to enrollment counts and ANB

7 calculations conducted in school fiscal years beginning on or after July 1, 2025.

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