



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2025 Biennium

**Bill information:**

HB0393 - Establish the Students with Special Needs Equal Opportunity Act (Vinton, Sue )

**Status:** As Introduced

- Significant Local Gov Impact     
  Needs to be included in HB 2     
  Technical Concerns  
 Included in the Executive Budget     
  Significant Long-Term Impacts     
  Dedicated Revenue Form Attached

### FISCAL SUMMARY

	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>
<b>Expenditures:</b>				
General Fund	\$110,089	\$114,565	\$146,223	\$148,183
General Fund Appropriation	\$75,000	\$30,000	\$0	\$0
State Special Revenue	\$0	\$34,083	\$35,105	\$35,865
Trust Fund	\$0	\$647,579	\$666,987	\$681,441
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
General Fund Appropriation	\$0	\$0	\$0	\$0
State Special Revenue	\$0	\$34,083	\$35,105	\$35,865
Trust Fund	\$0	\$647,579	\$666,987	\$681,441
<b>Net Impact-General Fund Balance:</b>	<u>(\$185,089)</u>	<u>(\$114,565)</u>	<u>(\$146,223)</u>	<u>(\$148,183)</u>

**Description of fiscal impact:** HB 393 establishes a Montana special needs education savings account program, establishes requirements and responsibilities, and provides an appropriation for administration of the program of \$75,000 in FY 2024 and \$30,000 in FY 2025. State general fund support required for this program in addition to the appropriation is estimated to be \$110,089 in FY 2024 and \$114,565 in FY 2025.

### FISCAL ANALYSIS

**Assumptions:**

- HB 393 establishes a special needs equal opportunity education savings account program for qualified students.

2. The definition of a “qualified student” is a student between the ages of 5 and 18 (inclusive) who was counted during the previous school year for ANB funding and is not currently enrolled in the Montana School for the Deaf and Blind or Pine Hills Correctional Facility or is eligible to enter a Montana state public school program. The student must also be identified as a student with a disability under the Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq.
3. HB 393 directs the Superintendent of Public Instruction to notify the resident district of the qualifying student the amount to be distributed by the resident district to the Montana special needs equal opportunity education savings account on behalf of the qualifying student.
4. To determine the Educational Savings Account (ESA) the amount is calculated as the sum of:
  - a. Data for achievement payment (Data) under 20-9-306, MCA;
  - b. Indian Education for All payment (IEA) under 20-9-306, MCA;
  - c. Per-ANB amounts of the instructional (IBG) and related services (RSBG) block grants under 20-9-321, MCA; and
  - d. Per-ANB entitlement amount under 20-9-306, MCA, multiplied by the ratio of school district adopted budget to district maximum general fund budget.
5. The ESA amount is estimated as follows:

Elementary Programs (all represent dollars)									
Fiscal Year	Data	IEA	140% IBG	140% RSBG	Per-ANB	Per-ANB Minimum	Per-ANB Maximum	ESA Amount Minimum	ESA Amount Maximum
FY2023	22.29	23.28	213.46	71.15	5,962.00	4,769.60	5,962.00	5,099.78	6,292.18
FY2024	22.89	23.91	215.89	71.96	6,123.00	4,898.40	6,123.00	5,233.05	6,457.65
FY2025	23.58	24.63	222.38	74.13	6,307.00	5,045.60	6,307.00	5,390.32	6,651.72
FY2026	24.29	25.37	229.05	76.36	6,496.00	5,196.80	6,496.00	5,551.87	6,851.07
FY2027	24.82	25.92	234.01	78.01	6,637.00	5,309.60	6,637.00	5,672.36	6,999.76

High School Programs (all represent dollars)									
Fiscal Year	Data	IEA	140% IBG	140% RSBG	Per-ANB	Per-ANB Minimum	Per-ANB Maximum	ESA Amount Minimum	ESA Amount Maximum
FY2023	22.29	23.28	213.46	71.15	7,634.00	6,107.20	7,634.00	6,437.38	7,964.18
FY2024	22.89	23.91	215.89	71.96	7,840.00	6,272.00	7,840.00	6,606.65	8,174.65
FY2025	23.58	24.63	222.38	74.13	8,075.00	6,460.00	8,075.00	6,804.72	8,419.72
FY2026	24.29	25.37	229.05	76.36	8,317.00	6,653.60	8,317.00	7,008.67	8,672.07
FY2027	24.82	25.92	234.01	78.01	8,497.00	6,797.60	8,497.00	7,160.36	8,859.76

6. For the purposes of this fiscal note, all estimates are calculated on the average of the minimum and maximum ESA amounts and an average is used between elementary and high school programs.
7. Based on the October 2022 official enrollment count, 21,127 students are identified as a student with disabilities attending 373 school districts and would qualify for the Montana special needs education savings account program.
8. The table below calculates the maximum amount that could be redirected from public schools to the Montana Special Needs Equal Opportunity Education Savings account program based on eligible students multiplied by the statewide average district student amount or district student amount.

FY 2024	FY 2025	FY 2026	FY 2027
\$139,818,571	\$144,014,646	\$148,330,977	\$151,545,196

9. If all 21,127 eligible students participated in the education savings account, the program would transfer approximately \$140 million annually of state funding and local property tax dollars from the local public-school districts to the education savings account. For purposes of this fiscal note, it is expected that not more than 100 students would participate in the education savings accounts program.
10. Section 9 of HB 393 requires 95% of the money to be deposited in a private purpose trust fund to be used for participating students and 5% of the money to be deposited in the Special Needs Education Savings state special revenue account established in the bill for the Office of Public Instruction (OPI) administration of the program.
11. The OPI projects that beginning in FY 2025 approximately \$6,816.62 each year would be deposited for each student participating in the special education savings accounts created by HB 393
12. The following table represents the amount of funding anticipated to be received from school districts to OPI for program participation of 100 students. The private purpose trust funds would receive 95% and the special needs education savings account would receive 5%.

	FY 2024	FY 2025	FY 2026	FY 2027
Number of participants	0	100	100	100
Private Purpose (95%)	\$0	\$647,579	\$666,987	\$681,441
OPI Special Needs Ed Savings (5%)	\$0	\$34,083	\$35,105	\$35,865

13. Money deposited into a Montana Special Needs Education savings account may be used on behalf of a student for tuition, fees, software, instructional materials, and a wide range of both curricular and extracurricular services. The account can also be used to pay tuition, books, online courses, or other fees for postsecondary institutions.
14. The funds from the educational savings account may not be spent by the student for computer hardware, other technological devices, or transportation unless specific to the allowable costs outlined in section 5 of HB 393.
15. Education cooperative as used in HB 393 is assumed to be either a multi-district cooperative established under 20-3-363, MCA, or a full-service education cooperative established under 20-7-451, MCA.
16. Section 10 of HB 393 creates a special needs equal opportunity education savings trust fund that is to be an instrumentality of the state and created for a public purpose. The fund is to be used by OPI to develop a separate trust for each participating student.
17. HB 393, new Section 9(7), creates a special needs education savings account to be used to cover OPI administrative costs of the program. Five percent of the money transferred to OPI from the resident school districts would be deposited into the account and the account is statutorily appropriated in 17-7-502, MCA.
18. Under HB 393, a parent must notify the Superintendent of Public Instruction in the fall and again in the spring that their child would qualify for the education savings account. The parent signs the contract assurances listed in Section 4 of HB 393.
19. Each parent is required to submit to the Superintendent of Public Instruction copies of all expense receipts and account statements related to the savings account.
20. The Superintendent of Public Instruction must make information about the program available, conduct audits of accounts, remove parents who do not comply with the contract, and suspend accounts where applicable.
21. The Superintendent of Public Instruction is to collect quarterly reports of services provided to qualified students from qualified schools who enroll students participating in the Special Needs Equal Opportunity Education Savings Account Program.
22. The Superintendent of Public Instruction is required to establish rules necessary for administering the program and are limited to the following:
  - a. Establishment of no fewer than two time periods each year during which a student's parent may notify the superintendent of the parent's desire for the student to participate in the program. Each time period must be at least one month long. One period must be between September 1 and January 1, and the

other time period must be between March 1 and June 1, based on the superintendent's determination of district and parent needs.

- b. verification of student eligibility pursuant to [section 3];
  - c. creation of a parent contract pursuant to [section 5];
  - d. notification of the resident school district of the student's participation in the program;
  - e. calculation of the amount of the district student amount and the statewide average district student amount;
  - f. auditing of expenditures for allowable educational services from a student's account; and
  - g. auditing of payments received by qualified schools under the program.
23. The OPI would use the 2023-24 school year to develop and implement the education savings account program. There are many details related to managing these savings accounts, including consumer financial protections and disclosure regulations, which need to be researched. Application processes and procedures would need to be put in place.
24. HB 393 appropriates \$75,000 to the OPI for FY 2024 and \$30,000 for FY 2025 for program administrative purposes.
25. OPI expects it would need at least 2.00 FTE to include an Accountant 1 and an Accountant 3 for the legal, accounting, and financial skills to develop and operate this program at a cost of \$146,000 per year. The operating budget would be \$12,600 which includes a desk package of \$1,600 and a computer package of \$1,200 for each FTE one-time-only in FY 2024 and FY 2025 and beyond operating costs would be \$7,000. Indirect costs would total \$26,489 in FY 2024 and \$25,648 in FY 2025. Personal services and operating costs are inflated in FY 2026 and FY 2027 by 1.5% per year.
26. The program would have to include at least 548 students to participate in the program in future years to generate enough funding to cover the estimated costs of operating the program.
27. There is a legal review note with this bill.
28. HB 393, Section 9(7)(a) creates a “special needs equal opportunity ESA administration account” within the state special revenue fund. Section 9(7)(9)(b) states that the account is to be statutorily appropriated. The following table answers questions per 17-1-508(2), MCA.

	<u>YES</u>	<u>NO</u>
a. The money is from a continuing, reliable, and estimable source.	X	
b. The use of the appropriation or the expenditure occurrence is predictable and reliable.	X	
c. The authority exists elsewhere.		X
d. An alternative appropriation method is available, practical, or effective.	X	
e. It appropriates state general fund money for purposes other than paying for emergency services.		X
f. The money is used for general purposes.		X
g. The legislature wishes to review expenditure and appropriation levels each biennium.	X	
h. An expenditure cap and sunset date are excluded.	X	

	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>
<b><u>Fiscal Impact:</u></b>				
FTE	2.00	2.00	2.00	2.00
<b><u>Expenditures:</u></b>				
Personal Services	\$146,000	\$146,000	\$148,190	\$150,413
Operating Expenses	\$39,089	\$32,648	\$33,138	\$33,635
Student Assistance	\$0	\$647,579	\$666,987	\$681,441
<b>TOTAL Expenditures</b>	<b>\$185,089</b>	<b>\$826,227</b>	<b>\$848,315</b>	<b>\$865,489</b>
<b><u>Funding of Expenditures:</u></b>				
General Fund (01)	\$110,089	\$114,565	\$146,223	\$148,183
General Fund (01) Appropriation	\$75,000	\$30,000	\$0	\$0
State Special Revenue (02)	\$0	\$34,083	\$35,105	\$35,865
Trust Fund (09)	\$0	\$647,579	\$666,987	\$681,441
<b>TOTAL Funding of Exp.</b>	<b>\$185,089</b>	<b>\$826,227</b>	<b>\$848,315</b>	<b>\$865,489</b>
<b><u>Revenues:</u></b>				
General Fund (01)	\$0	\$0	\$0	\$0
General Fund (01) Appropriation	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$34,083	\$35,105	\$35,865
Trust Fund (09)	\$0	\$647,579	\$666,987	\$681,441
	<b>\$0</b>	<b>\$681,662</b>	<b>\$702,092</b>	<b>\$717,306</b>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
General Fund (01)	(\$110,089)	(\$114,565)	(\$146,223)	(\$148,183)
General Fund (01) Appropriation	(\$75,000)	(\$30,000)	\$0	\$0
State Special Revenue (02)	\$0	\$0	\$0	\$0
Trust Fund (09)	\$0	\$0	\$0	\$0

**Effect on County or Other Local Revenues or Expenditures:**

1. School districts may adopt higher general fund budgets to offset the loss of funds related to this bill and therefore, local property taxes could increase.
2. The difference in the potential increase needed to provide for the qualified schools could be greater than the potential schools could vote property tax increases to offset the loss leading to potential budget shortfalls. (Approximately 90% of expenditures go to teacher pay and the cost is the same with nine or ten students in the classroom).
3. For every student in this program, a resident district would be required to contribute \$6,816.62 to the special needs education savings account. This funding would not be budgeted and would reduce funding for other instruction-related expenditures. If all 21,127 eligible students participated in the education savings account, the program would transfer approximately \$140 million annually of state funding and local property tax dollars to the education savings account.

**Technical Notes:**

1. Article X, section 6 of the Montana Constitution prohibits aid to sectarian schools. Specifically, “The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary

or scientific institution, controlled in whole or in part by any church, sect, or denomination.” HB 393 may violate this section of the Montana Constitution.

2. The earliest that the program would become operational is the 2024-25 school year.
3. HB 393 attempts to bypass the requirements of the Individuals with Disabilities (IDEA) by waiving the Free Appropriate Public Education (FAPE) requirement in Section 5(1)(b) but the requirement that the student continue to be enrolled in the district of residence until age 19 for ANB purposes means that the IDEA requirement for providing FAPE for all enrolled students continues. Under this circumstance the parent could take the student to a program that cannot meet the child’s needs, and then file a complaint against the school district for not ensuring that the child received FAPE.
4. Limiting the list of protected classes, Section 3(6)(c), *Qualified school does not discriminate on the basis of race, color, or national origin*, omits protections provided in the Montana Human Rights Act in 49-2-307: It is unlawful for a public or private educational institution to exclude from admission any student on the basis of “race, creed, religion, sex, marital status, color, age, physical disability, or national origin or because or mental disability, unless based on reasonable grounds.”
5. Section 3(7)(c) states that to qualify for an education savings account, a student must have been counted in the prior year for purposes of school district ANB funding. Language is needed for HB 393 to indicate the amount of the education savings account payment allocated to a student who was enrolled on a part-time basis.
6. The district student amount and the statewide average district student amount are not finalized until early November. Payment from school districts would be estimates in August through October.
9. Section 4(1)(k) makes payments to a cooperative educational program an allowable expense of the program. In Montana this is not possible for public school special education cooperatives. A school district may contract with other school districts to form a cooperative. Elementary and high school districts are defined in 20-6-101, MCA. This does not appear to allow a private school or other entity to enter into a cooperative agreement to provide educational services.
10. It is possible that the continued payment of state aid based upon a child in this program being counted as ANB may infer the child is still enrolled in the district. In order for a student to be “parentally placed” in a private school, the student cannot be enrolled in the public school district. Under 20-9-311, MCA, ANB is based on enrollment counts taken twice a year. If a student is not enrolled, they would not be counted, and the district would not receive funding for that student. If counted for ANB the child is apparently enrolled and the district is responsible for free and appropriate education (FAPE) and the parent cannot relieve the district of this responsibility. A legal review of this issue may be necessary.
11. If the student must be enrolled in a public school to use this savings account, the public school is responsible for FAPE. At the time the child enters the program, the school district would need to ensure the private school is providing FAPE and the public school is held liable through IDEA and state.

**NOT SIGNED BY SPONSOR**

Sponsor’s Initials

Date

Budget Director’s Initials

2-10-23

Date

- a) **Are there persons or entities that benefit from this dedicated revenue that do not pay? (please explain)**  
Yes, school districts pay into the account from the district general fund which is funded with state and local monies. The Office of Public Instruction administrative costs are paid from the fund for administration of the Montana special needs equal opportunity education savings account program.
- b) **What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?**  
The revenue is segregated for a specific purpose.
- c) **Is the source of revenue relevant to current use of the funds and adequate to fund the program activity that is intended? Yes / No (if no, explain)**  
There are no current state funds being used for this purpose. The funds will be paid by K-12 public school districts to administer the program in HB 393.
- d) **Does the need for this state special revenue provision still exist?  Yes  No (Explain)**  
Yes, this is dedicated to the purposes of the Montana special needs equal opportunity education savings account program and administration of the funds.
- e) **Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please Explain)**  
No, the state special revenue will be accounted for in the SABHRS, state accounting system.
- f) **Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please Explain)**  
Yes, the revenue is derived from legislative policy to provide additional state support for education.
- g) **How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please Explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)**  
Use of a new fund ensures that cash is deposited and available before expenses are incurred. Expenditure tracking and analysis is more efficient when they are isolated in a specific fund.