Defining and Funding a Basic System of Free Quality Public Elementary and Secondary Schools

Final Report of the Quality Schools Interim Committee

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Quality Schools Interim Committee

2005-2006

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Chapter 1: A Little History

Introduction

No one in Montana will argue the need for a high-quality public educational system. Public education is the cornerstone of our society. It is where our children learn the values that we all cherish as Americans. It is where our future is nurtured. Even the more pragmatic among us recognize the connection between economic development and a good educational system. Public education has always been a function of the states and not the federal government (although one could argue this latter point in light of the enactment of "No Child Left Behind"). In Montana, we have always recognized the importance of local communities having a certain amount of control of their schools. Public education is the responsibility of both the state and the local community.

The importance of public education was embedded in the 1889 Montana Constitution in Article XI, sections 1 and 6, that stated:

> (1) It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, free, common schools.
>
> (2) It shall be the duty of the legislative assembly to provide by taxation, or otherwise, sufficient means, in connection with the amount received from the general school fund, to maintain a public, free common school in each organized district in the state, for at least three months in each year.

In 1972, Montana adopted a new constitution that states in Article X, section 1:

> (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.
>
> (2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.
>
> (3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Montana's Constitution goes on, in Article X, section 8, to vest the supervision and control of schools in each school district in a locally elected board of trustees.

Although the importance of public education has been part and parcel of our thinking since territorial days, a major question associated with public education has been how to pay for it.

In 1865, the First Territorial Legislature enacted Montana's first school law. The law established the Territorial School Fund from receipts of the sales of certain lands granted to Montana by the federal government, enacted a countywide 1-mill levy, and required all fines for license violations to be deposited in the county school fund.[1]

Over the years, the county mill levy increased, a county tax for high schools was enacted, certain state taxes were earmarked, and biennial appropriations were made—all to support public schools. In 1935, the first school equalization legislation was enacted. The classroom unit became the basis for distributing state equalization aid. The amount for each elementary classroom unit was $500 per school year plus 12 cents per pupil per day. For junior and senior high schools, the rate was $600 per school year plus 15 cents per pupil per day.[2] This equalization aid provided only about 20% of the amount needed by school districts.[3] School districts, especially rural districts, had to rely heavily on district and county property taxes to support their schools. To compound these inequities, county levies were distributed to school districts on the basis of school district population, not on actual educational or financial needs.

By the mid-1940s, a decade of economic hardship, drought, and war had created a crisis in Montana public schools. A series of efforts, beginning in 1945, on the part of legislators, educators, parents, and other interested persons culminated in the passage of the Foundation Program Act of 1949 (Chapter 199, Laws of 1949). The principal provision of this new law was that all taxpayers would be taxed the same number of mills to support a minimum foundation program for each school district. The minimum foundation program was defined as "the amount required to operate and maintain an adequate and efficient

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[1] C.R. Anderson, Know Your School, Public Education in Montana (Helena, Montana: State Publishing Company, 1972), p. 15.

[2] Andrea Merrill, "The Montana School Foundation Program and State Equalization Aid: A Legislative and Financial History, 1941-1991", a report to the Joint Interim Subcommittee on School Funding (Helena, Montana: Montana Legislative Council, April 1992), p. 3.

[3] Ibid., p. 2.

school".[4] If the mills were not sufficient to fund the minimum foundation program, the state would pay the balance. In addition, a school district could augment the minimum educational program through a restricted nonvoted permissive levy. Two years later, school districts were given the authority to extend district spending even further by means of an unlimited voted levy.[5]

Helena Elementary School District No. 1 v. State

In 1985, a coalition of school districts and parents filed a lawsuit against the state, claiming that the Foundation Program violated the constitutional rights of students to equal protection of the law and to equal educational opportunity. In January 1988, District Court Judge Henry Loble ruled in favor of the plaintiffs. The Loble decision was upheld by the Montana Supreme Court in February of 1989. In its decision, the Supreme Court also decried the lack of a relationship between state funding and the mandated educational program as established by the state's minimum accreditation standards.[6] The Court also focused on the lack of adequate state funding.[7] The Legislature responded to the decisions in a special legislative session in the summer of 1989 with the passage of House Bill No. 28 (Chapter 11, Special Laws of June 1989) that increased the county equalization levies, enacted a statewide levy, dedicated specific sources of revenue to state equalization, and earmarked a percentage of the interest from the coal tax permanent trust funds and a percentage of the total coal severance taxes for school equalization. In addition, a guaranteed tax base program was enacted.

The new funding system devised in HB 28 did not last long, however, because in 1991, two more lawsuits were filed, challenging its constitutionality. When these two cases came before the First District Court in early 1993, the Montana Legislature was in session and eventually passed House Bill No. 667 (Chapter 633, Laws of 1993) that changed the school funding formula from the Foundation Program to the current BASE budgeting system for school district general funds. As a result, the pending lawsuits were ultimately dismissed. In late 1993, the Legislature met in special session and enacted House Bill No. 22

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[4] Chapter 199, Laws of 1949.

[5] Chapter 210, Laws of 1951.

[6] Helena Elementary School District No. 1 v. State, 236 Mont. 44, 53, 54, 769 P.2d 684 (1989).

[7] *Id.*, p. 55.

(Chapter 38, Special Laws of November 1993) that reduced state support for public schools by 4.5%.

Columbia Falls Elementary School District No. 6 v. State

In 2002, school districts and educational organizations from across Montana came together to form the Montana Quality Education Coalition (MQEC). Alarmed by what it saw as a continuing pattern of decreasing state support for public education, MQEC was determined to secure the funding necessary to provide all Montana children with a quality education. On September 3, 2002, MQEC filed a lawsuit in the First Judicial District, challenging the constitutionality of Montana's school funding system. The trial began on January 20, 2004, before District Court Judge Jeffrey Sherlock.

The plaintiffs argued that the current funding system was structurally flawed. It was not based on the cost of a quality education, the BASE and maximum budget amounts were arbitrary, enrollment declines caused disproportionate adverse impacts, and the system was complicated and irrational. In addition, the state's share of funding had steadily declined since 1991. The state based its defense of the current funding system on Montana's relative spending in light of its fiscal capacity as compared to other states, Montana's ability to recruit and retain quality teachers, and the achievement levels of Montana students as measured by available standardized tests.[8] Testimony concluded on February 4, and closing arguments were made on April 1.

On April 15, 2004, Judge Sherlock issued his decision. In his Findings of Fact, Judge Sherlock noted a number of major problems with HB 667 that created the current school funding system:

- lack of a mechanism to address inflation;
- no study of teacher pay, the cost of meeting accreditation standards, the fixed cost of school districts, or the costs of special education;
- reliance upon information that was 2 years old;
- lack of any study to justify the disparity in ANB (average number belonging) dollars for high school and elementary students; and
- allowable increases not tied to the costs of increased accreditation standards or content and performance standards.

He then summarized all of the evidence that supported the plaintiffs' contention that the state was not adequately funding its share of the cost of education, including:

[8] Columbia Falls School District No. 6 v. State, Cause No. BDV-2002-528 (1st Judicial District 2004).

- the growing number of school districts budgeting at or near their maximum authority;
- the increasing number of schools with accreditation problems;
- the difficulty in recruiting and retaining teachers because of decreasing salaries and benefits;
- the large number of programs that have been cut in recent years;
- the increasing difficulties in constructing new buildings or maintaining current buildings;
- the increasing competition for general fund dollars between regular and special education;
- the declining share of the state's contribution to school districts' general fund budgets; and
- a funding formula that is not reasonably related to the costs of providing a basic system of quality schools.

Judge Sherlock also noted that Article X, section 1(2), of the Montana Constitution requires the state to recognize "the distinct and unique cultural heritage of the American Indians" and to include the preservation of their cultural integrity in the state's educational goals. In his Findings, Judge Sherlock stated that the state has done nothing to implement this subsection.

In his Conclusions of Law, Judge Sherlock ruled that the current state funding system violates the Montana Constitution in that:

❶ The state has failed to recognize the distinct and unique cultural heritage of American Indians and has shown no commitment in its education goals to the preservation of their cultural integrity.

❷ The current school funding system fails to provide adequate funding for Montana's public schools.

❸ The state is not paying its share of the cost of the basic elementary and secondary system.

He further concluded that a school finance system must be based upon a determination of the needs and the costs of the public school system and upon educationally relevant factors. He affirmed the findings of the Supreme Court in the 1989 school funding lawsuit that the school accreditation standards do not fully define the constitutional rights of students and the constitutional responsibilities of the state for funding its public schools.

In his Suggested Remedies, Judge Sherlock stated that it was not appropriate for the Court to tell the Legislature how to design a school finance system. However, he also stated that the funding system must be based on the costs of meeting the standards that govern Montana schools. The state's share must be an amount that is adequate to allow districts to meet these standards. Because the state's constitutional obligations apply not only to general funds but also to the overall costs of the school system, Judge Sherlock recommended a phase-in plan for implementing a new funding system.

Judge Sherlock stayed his decision, pending resolution of the matter before the Montana Supreme Court. He also delayed the effective date of the decision until October 1, 2005, unless otherwise ordered by the Supreme Court, in order to give the 2005 Legislature an opportunity to address the issues in the decision.

On June 18, 2004, the state appealed the District Court decision to the Montana Supreme Court, asking that Court to declare that the District Court had erred in its decision. At the same time, the plaintiffs filed a motion requesting the Supreme Court to expedite the proceedings because it was in the public's best interest to have the case resolved before the 2005 Legislature convened. The plaintiffs also asked that the effective date of the decision be moved up to May 1, 2005. On June 22, 2004, the Court set an expedited briefing schedule, and oral arguments were heard on October 20, 2004.

On November 9, 2004, the Court issued a preliminary order setting forth its conclusions with regard to the issues raised on appeal. The Court did this because its workload precluded a full opinion being issued before the convening of the 2005 legislative session and the order would allow the Legislature sufficient time to address the Court's rulings. The full written opinion was issued on March 22, 2005. In its opinion, the Court upheld the District Court decision that Montana's public school funding system violated Article X, section 1(3), of the Montana Constitution that mandates that the Legislature provide a basic system of free quality public elementary and secondary schools and that it fund and distribute in an equitable manner the state's share of the cost of the basic system.[9]

The 2005 Legislative Session

When the 2005 Legislature convened in Helena on January 3, 2005, the major issue facing the assembled legislators was how to address the Sherlock decision. The Legislature

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[9] Columbia Falls Elementary School District No. 6 v. State, 326 Mont. 304, 109 P. 3d 257 (2005).

determined that the first task was to define a "basic system of free quality public elementary and secondary schools" because the Court had stated that "the Legislature can best construct a 'quality' system of education if it first defines what is a 'quality' system of education".[10] The Legislature ultimately adopted Senate Bill No. 152 (Chapter 208, Laws of 2005) that defines a basic system of free quality public elementary and secondary schools as:

- the educational program specified by the accreditation standards;
- educational programs to provide for students with special needs;
- educational programs to implement "Indian Education for All";
- qualified and effective teachers and administrators and qualified staff;
- facilities and distance learning technologies associated with meeting the accreditation standards;
- transportation of students;
- a procedure to assess and track student achievement; and
- preservation of local control of schools in each district vested in a board of trustees.

In addition, the legislation identified educationally relevant factors that may be used in making adjustments to the

[10] *Id.*, p. 310.

funding formula. These factors include the number of students in a district, the needs of both isolated and urban schools, the needs of students with special needs and American Indian students, and the ability of a school district to recruit and retain qualified staff.

In mid-February 2005, the House and Senate leadership created the Joint Select Committee on Education Funding whose purpose was to develop an education funding formula based on the definition and the educationally relevant factors in SB 152. The members of the Select Committee were Senators Don Ryan and Bob Story and Representatives Bill Glaser and Holly Raser. The Select Committee met 3-4 days every week through the 2005 legislative session and actively engaged the members of the education community[11] in a lively discussion of the needs of Montana students and Montana schools. As a result of these meetings, the Select Committee outlined a proposed education funding formula based on a series of components that fund schools and school districts in a cost-based manner and that streamlines the school district fund structures to measure and account accurately for the revenue available to schools and to provide maximum

[11] The term "education community" means the various educational organizations as well as individual school district officials.

flexibility of a district's resources. The components identified were:

- a per-student component to provide funding based on the enrollment characteristics of the district;
- a classroom component to provide funding for the costs of salaries, benefits, and professional development for teachers and instructional aides;
- an accredited program component to provide funding for the costs associated with a district's accredited programs that are not allocable to a classroom, special education program, or transportation program;
- a building operations and maintenance component to provide for maintenance and operation costs associated with school buildings and facilities;
- a special education component to fund the costs of providing education and related services to children with disabilities;
- a transportation component to provide for the costs of transporting students to and from school;
- a capital projects component to provide for the state's share of capital outlay, including buildings and major capital assets such as school buses; and
- a debt service component to provide for the state's share of principal and interest on school district general obligation bonds.[12]

Based upon various methods of calculating school costs, an appropriate amount of money would be determined for each component. The first five components would make up a school district's general fund. The remaining components would continue with their own separate funds.

The Joint Select Committee spent many meetings working on each of the components, deciding what costs should be included and making sure all of the elements of the definition in SB 152 were covered. The components would allow future Legislatures to adjust the funding to address specific concerns. For example, as the cost of textbooks increases, the Legislature could adjust the per-student component to address the increased cost. As the cost of health insurance increases, the Legislature could adjust the classroom entitlement to help districts cover the increases.

After many meetings, it became apparent to the Select Committee that more time was needed to fully develop the proposed education funding formula. The Select Committee

[12] "State of Montana School Funding Formula", final report of the Joint Select Committee on Education Funding, Legislative Services Division, April 15, 2005.

crafted an interim study proposal to continue the work it had begun. Senate Bill No. 525 (Chapter 371, Laws of 2005) created the Quality Schools Interim Committee and charged the Committee with assessing the educational needs of Montana students, determining the costs of a basic system of free quality public and elementary schools, determining the state's share of the costs, and constructing a funding formula that is fair and reasonable and that equitably distributes the state's share of the costs in the most efficient and effective manner. The interim committee was to complete its tasks by December 1, 2005, in anticipation of a special legislative session in December to address school funding.

Chapter 2: Quality Schools Interim Committee

The Quality Schools Interim Committee (QSIC) was composed of 11 members, eight legislators and three nonlegislators who were nonvoting members. The members were:

Senator Dave Lewis	Representative Bill Glaser
Senator Don Ryan	Representative Monica Lindeen
Senator Bob Story	Representative Holly Raser
Senator Jon Tester	Representative Pat Wagman

Superintendent of Public Instruction Linda McCulloch
David Ewer, Director of the Office of Budget and Program Planning
Dr. Kirk Miller, Chair of the Board of Public Education

At its first meeting of the interim, on May 4, 2005, the QSIC elected Representative Lindeen as Presiding Officer and Senator Story as Vice Presiding Officer. The QSIC was staffed by Connie Erickson, research analyst; Chris Lohse, research analyst; Eddye McClure, attorney; Jim Standaert, fiscal analyst; and Fong Hom, secretary. In addition to the legislative staff, the QSIC created a working group composed of staff members from other state agencies and three school district superintendents selected by the education community. The members of the working group were:

<u>Office of Budget and Program Planning</u>
Mike Burke
Amy Carlson
Nancy Hall

<u>Office of Public Instruction</u>
Joan Anderson
Madalyn Quinlan

<u>School Superintendents</u>
John McNeil, Savage Public Schools
Dr. Bruce Messinger, Helena Public Schools
Ivan Small, Poplar Public Schools

<u>Montana State Senate</u>
Kathy Fabiano

From time to time, the Committee called upon the services of other Legislative and Executive Branch staff.

Between May 4, 2005, and December 5, 2005, the QSIC held 17 meetings, including two 2-day meetings and one 3-day meeting. In addition, the working group met on an almost weekly basis during that same time period.

Chapter 3: Professional Consultants

R. C. Wood & Associates

At the very beginning of the interim study process, the QSIC recognized the need to hire a professional school finance consultant to oversee and direct staff in the collection and evaluation of the data necessary to assess the educational needs of public schools and to assist the QSIC in developing a new funding formula. A Request for Proposals for a professional school finance consultant was issued in early May of 2005. Three proposals were received: Maximus, Inc., Reston, Virginia; Montana Virtual Education Consultancy, Belgrade, Montana; and R. C. Wood & Associates, Gainesville, Florida. The proposals were evaluated by a team composed of Amy Carlson, Connie Erickson, Chris Lohse, Eddye McClure, Dr. Bruce Messinger, Madalyn Quinlan, and Jim Standaert. The members of the evaluation team scored the proposals separately and then met on May 31 in an open meeting to discuss each proposal, go over the individual scores, and then score them as a group. On June 3, 2005, the QSIC held a conference call meeting at which the evaluation team made its recommendation to hire R. C. Wood & Associates. The QSIC concurred with the recommendation.

R. C. Wood & Associates is a firm located in Gainesville, Florida, and is headed by Dr. R. Craig Wood, codirector of the University Council for the Educational Administration Center for Education Finance, and a nationally recognized expert in the area of education finance. Other members of the team who worked on the Montana study are Dr. Donald Robson, professor of educational leadership, School of Education, University of Montana; Dr. Merle Farrier, assistant professor of educational leadership, School of Education, University of Montana; Dr. Stephen Smith, private education consultant; Michael Griffith, program director, Education Finance Initiative, Education Commission of the States; and Joyce Silverthorne, education director for the Confederated Salish and Kootenai Tribes.

R. C. Wood & Associates (R. C. Wood) was contracted to provide:

- ✏ recommendations and assistance to staff in the design of a study, in the collection of data, and in the analysis and evaluation of information necessary to assess the educational needs of Montana's public schools based on the definition of a basic system of free quality public elementary and secondary schools, as provided by the Montana Legislature in SB 152;

- guidance in the determination of the costs of a basic system of free quality public elementary and secondary schools in Montana;
- recommendations on the level of funding needed to support the educationally relevant factors outlined in SB 152; and
- recommendations and assistance in the development of a funding mechanism that is based on the cost analysis and that ensures the equitable distribution of the state's share of the costs of a basic system of free quality elementary and secondary schools, as identified in SB 152.[13]

Needs Assessment

The first task undertaken by R. C. Wood was to assess the needs of Montana school districts. Rather than sample the state's school districts, every district was invited to participate in the assessment. The needs assessment instrument was structured around the current accreditation standards as well as the other quality factors in SB 152 and was designed with the assistance of the QSIC and the working group. The instrument, along with an exclusive password to access the survey, was provided online to every school district in the state. Hard copies of the survey were provided to those districts that required them. An overall return rate of 83% was achieved on the needs assessment. All of the various district organizational levels (K-6, K-8, 9-12, and K-12) were well-represented in the responses. All regions of the state from the northwest to the southeast were also well-represented. The only demographic factor related to response rate was school size; the larger the school district, the greater the response rate. R. C. Wood concluded that, based upon a high return rate and proportionate stratification by school size, the sample of school districts responding to the needs assessment provided an excellent statistical representation of all Montana school districts.[14]

The needs assessment resulted in the following findings:

Accreditation Standards

The number of certified personnel required by the accreditation standards are employed on a statewide level. With the proper distribution of funding, all school districts would meet the accreditation standards.

Special Education, Special Needs

The most serious deficiency in the state's obligation to fund and implement SB 152 is

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[13] R. Craig Wood, Donald Robson, Merle Farrier, Stephen Smith, Joyce Silverthorne, and Michael Griffith, "Determining the Cost of Providing an Adequate Education in the State of Montana", prepared for the Quality Schools Interim Committee and the Montana State Legislature (Gainesville Florida: R. C. Wood & Associates, 2005) p. 3.

[14] Ibid., p. 27.

the achievement gap experienced by American Indian students.

Indian Education for All

The state has not provided sufficient support to properly implement Indian Education for All on a statewide basis.

Recruitment and Retention of Qualified Educators

The state must ensure the quality of educators by providing the conditions necessary to attract, hire, and retain quality educators. Two considerations are a favorable school climate that will allow a teacher to achieve professional success and competitive compensation and benefits, especially health insurance.

Facilities and Distance Learning

The Legislature should adopt building standards appropriate to school facilities and fund a facility condition inventory of public school facilities in Montana, including an assessment of each school district's technology capabilities.

Transportation

The Legislature should eliminate the 3-mile restriction so that all students will have access to a safe and efficient way to get to school.

Assessment

Funding should be provided for assessments as well as the professional development for educators on how to use assessment results.[15]

Measurement of Financial Adequacy

To determine the financial adequacy of public elementary and secondary education in Montana, R. C. Wood employed four different nationally accepted methodologies: successful schools, professional judgment, evidence-based, and advanced statistical analysis. The successful schools approach uses outcome measures, such as attendance and dropout rates and student test scores, to identify schools that meet an identified standard of success. The professional judgment approach uses focus groups of educators and policymakers who meet and design a prototype school with all the educational goods and services required for providing an adequate education. The evidence-based approach is built on proven effective strategies for improving achievement in public schools. The advanced statistical analysis approach uses statistical methods to estimate the costs associated with meeting a

[15] Ibid., pp. 85-87.

specific set of outcomes in different school districts serving different school populations.

For the successful schools analysis, expenditure and performance data were gathered for all 843 public schools and all 434 public school districts in the state. This data included expenditures, student enrollment, per-pupil expenditures, graduation rates, student-to-teacher and student-to-staff ratios, accreditation status, adequate yearly progress status under "No Child Left Behind", information from the needs assessment survey, and results from criterion-referenced and norm-referenced tests. Using performance data, R. C. Wood defined the level of performance that would define success on these performance measures. Success was defined as follows:

- schools with a 90% graduation rate;
- districts that met full accreditation status;
- schools that had at least 60% and 75% of students scoring proficient or advanced on the math and reading sections of the MontCAS, a criterion-referenced test;
- schools that had at least 10% more students scoring proficient or advanced on MontCAS for the 2004-05 school year as compared to 2003-04;
- schools that had at least 10% fewer students scoring novice on MontCAS in 2004-05 as compared to 2003-04;
- schools that had at least 75% of students scoring proficient or advanced on all five sections of the Iowa Test of Basic Skills (ITBS), a norm-referenced test;
- schools that had at least 10% more students scoring proficient or advanced on all five sections of the ITBS in 2003-04 as compared to 2000-01;
- schools that had at least 10% more students scoring proficient or advanced on three sections of the ITBS in 2003-04 as compared to 2000-01; and
- schools that had at least 10% fewer students scoring novice on three sections of the ITBS in 2003-04 as compared to 2000-01.[16]

Groups of schools identified as successful or nonsuccessful based on the above criteria were then ranked based on average per-pupil expenditure. Then the percentage of special population students (special education, American Indian, free and reduced-price lunch, and limited English proficient) was calculated to arrive at an average percentage of special population students for each group of schools. Once the average per-pupil expenditure and special population percentages were established for successful and nonsuccessful schools on each performance measure, the discount rate per-pupil

[16] Ibid., pp. 112-113.

expenditure calculation was applied.[17] R. C. Wood then used a wide variety of analyses to compare average per-pupil expenditures of successful and nonsuccessful schools to determine how student expenditures relate to performance outcomes and what level of expenditures may be required to provide a quality education in Montana. The increased costs to the overall expenditures for public schools in Montana based on the successful schools methodology was approximately $96 million.

For the professional judgment analysis, R. C. Wood surveyed 122 school districts for additional information such as student-to-teacher and student-to-staff ratios and per-pupil costs for other education components such as instructional supplies and student activities. Sixty-one percent of the districts responded, and the survey results were provided to a panel of "experts" selected by the members of the QSIC. This panel met in Missoula in August of 2005. Numerous prototype schools of different sizes and different educational levels were created. The expert panel then identified the factors they believed were required for a quality education in Montana. Based on the professional judgment methodology, the increased costs of providing a quality education in Montana was approximately $329 million.[18]

An additional expert panel was convened to conduct a separate analysis regarding the education of American Indian students. Panel members were selected from recommendations by Indian educators, and information was gathered from both rural and urban school districts with significant numbers of American Indian students. The major discussion topic for this panel was closing the American Indian student achievement gap. The expert panel identified a number of strategies to increase the American Indian graduation rate that have been successfully implemented elsewhere in the nation. The panel also formulated some other recommendations related to professional development, school staffing, and student-teacher ratios. Because no other state has developed a general model for closing the American Indian student achievement gap, the actual costs could not be determined by the expert panel. Instead, two ideas were proposed by R. C. Wood. The first is to have the Legislature fund pilot programs, and the second is to provide additional funding

[17] The discount rate per-pupil expenditure calculation allows for a more valid comparison of successful and nonsuccessful schools by adjusting per-pupil expenditures based on the percentage of special student populations in schools.

[18] The professional judgment methodology typically results in the highest cost estimate of the four methodologies.

to schools with large numbers of American Indian students. The projected cost for two pilot programs is $10 million. An additional cost of $3.6 million is projected for providing additional professional development days specifically for Indian education on a statewide basis.

For the evidence-based analysis, R. C. Wood selected a variety of strategies that have proven to be successful and that can be directly funded through the state funding distribution formula: preschool, full-day kindergarten, full-time building principal, family outreach, professional development, technology, and class size reduction. R. C. Wood recommended that these types of programs be implemented on a pilot/limited basis at an estimated cost of $20.6 million.

For the advanced statistical analysis, R. C. Wood used the definition of a basic system of free quality public elementary and secondary schools contained in SB 152. The quantifiable portions of the definition were identified and the costs were computed. Based on this methodology, the increased cost to the overall expenditure for public schools is about $34 million.

Design of a New School Finance Distribution Formula

R. C. Wood recommended a school funding formula that differentiated between small and isolated school districts and all other school districts. The term "small and isolated" does not mean simply small school districts. The Legislature would need to define "small and isolated". Small and isolated school districts would be grouped into a Tier I cluster with the remaining school districts grouped into a Tier II cluster. The funding formula would start with a basic student allocation (BSA) established by the Legislature and based on actual costs. This BSA would then be adjusted by a weighted student enrollment figure and a teacher cost index figure. Tier II districts would be eligible for supplemental funding to compensate for declining enrollment. In addition to the BSA, Tier I districts would receive a set amount per classroom regardless of enrollment below a certain enrollment number. R. C. Wood also suggested that the formula allow for an annual 1% increase in total spending for each school district. The QSIC did not discuss or consider in any manner the school funding formula proposed by R. C. Wood.

For a more comprehensive look at the work of R. C. Wood & Associates, go to the QSIC website at http://leg.mt.gov/css/committees/interim/2005_2006/qual_schools where the final report, *Determining the Cost of Providing an Adequate Education in the State of Montana*, is posted.

Dr. Christiana Stoddard and Dr. Douglas Young

In addition to a needs assessment and an adequacy study, the QSIC also issued a request for services from within the Montana University System for an economic analysis regarding the ranges of total compensation, with a focus on salaries, that are necessary to recruit and retain quality teachers, administrators, and other staff to Montana's public schools. The QSIC received three proposals, one from David Aronofsky, University of Montana; one from Dr. Donald Robson and Dr. Merle Farrier, University of Montana; and one from Dr. Christiana Stoddard and Dr. Douglas Young, Montana State University-Bozeman. On June 28, 2005, the QSIC selected Dr. Stoddard and Dr. Young (Stoddard and Young), Professors of Economics in the Department of Agricultural Economics and Economics at MSU. Dr. Stoddard's field of study is the economics of education, while Dr. Young specializes in public finance.

Stoddard and Young analyzed salaries, turnover, difficulty hiring, and other dimensions of recruitment and retention for school personnel in Montana. They compared Montana's salaries in the late 1980s when salaries were closer to the national average to current salaries. They also compared Montana to other western states, some of which are experiencing similar declines in enrollment and relative salaries and some of which are experiencing rapid enrollment growth and relatively high salaries. Comparisons were also made among Montana school districts, looking at how salary, isolation, and other factors are related to problems with recruitment and retention.

Teachers in Montana: Changes Over Time and Comparisons With Other States

Using data from the National Center for Education Statistics, the Board of Public Education, and Montana school districts, Stoddard and Young looked at changes in teacher salaries since the late 1980s, how these salaries compared with other states, and the relationship between salaries and recruitment and retention. Stoddard and Young found that since 1988, Montana teacher salaries have fallen from 85% of the national average to 78% of the national average in 2004. At the same time, the number of teacher graduates who left Montana has increased. About 40% of recent Montana graduates teach in other states. This can be attributed to declining student enrollment and declining relative salaries in Montana. Stoddard and Young also found that student population growth was the most important factor affecting recruitment and retention.[19] In fact, the percentage of Montana schools that reported

[19] Christiana Stoddard and Douglas Young, "Recruitment, Retention and Salaries of Teachers and Other School Personnel in Montana", a report to the Quality Schools Interim Committee (Bozeman, Montana: Montana State University, 2005) p. 11.

difficulty in hiring showed little change as salaries fell relative to the national average.[20]

Teachers in Montana: Comparisons Between Montana Districts

Data on Montana salaries used by Stoddard and Young came primarily from the annual survey conducted by MEA-MFT. Additional salary information came from the Montana Small School Alliance and from a survey of Class "C" schools conducted by the University of Montana-Western. Recruitment and retention indicators used by Stoddard and Young were turnover rate, measure of difficulty in hiring, and the proportion of schools in a district with at least one misassigned teacher. Stoddard and Young then analyzed the relationship between salary and recruitment/retention indicators.

Not surprisingly, Stoddard and Young found that districts with the lowest starting salaries have higher turnover and more difficulty recruiting and are more likely to fail to meet accreditation standards because of misassigned teachers.[21] Other factors that significantly impact recruitment and retention are district contributions for health insurance, opportunities for salary growth, geographic isolation, and school size. Because more isolated school districts tend to experience a combination of these factors, these districts have the most severe recruitment and retention problems.

Stoddard and Young then asked the question, "How much would an increase in salaries affect recruitment and retention?". The answer to the question depends on whether the salaries were raised in all school districts or in just the lowest salary districts. If the salaries are raised in all districts, it will not change the attractiveness of teaching in a low-salary district. However, a 10% salary increase in the lowest paying districts would reduce turnover by about 20%, difficulty in hiring by about 10%, and misassigned teachers by about 30%.[22]

Salaries of Other School Personnel

Using data from the Montana Department of Labor and Industry, Stoddard and Young compared the annual salaries of public school employees in Montana with similar professionals working for other employers. Stoddard and Young cautioned that, while these comparisons are

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[20] Ibid., p. 28.

[21] Ibid.

[22] Ibid.

relevant, there are some difficulties. The occupations are not exactly the same, and, for public school employees, the annual salary may be for a 9-month or 10-month year. Also, weekly hours may vary.

Stoddard and Young found that on average professionals in Montana public schools earn slightly more than Montana employees in other sectors. However, this does not hold true across occupations. Administrators and managers, social service professionals, and librarians are paid more in the school sector while health professionals and technical support workers are paid less in the school sector. All workers in Montana, including school and nonschool professionals, across various occupations earn about 80% of the average salaries in the United States as a whole.[23]

Limitations of Study

Stoddard and Young identified some problems that hampered them in their analysis of the relationship between compensation and recruitment/retention. The problems they identified were:

❶ Data on personnel openings at the district level could be substantially improved.

❷ Compensation data is weak at both the state and district level, and data on benefits, especially health insurance, is even weaker.

❸ There is no data on supplemental compensation for additional duties, such as coaching.

❹ These problems are also concentrated in the small school districts.[24]

Stoddard and Young stated that future work in the area of compensation could be improved if these problems were remedied.

For a more comprehensive look at the work of Stoddard and Young, go to the QSIC website at http://leg.mt.gov/css/committees/interim/2005_2006/qual_schools where the final report, *Recruitment, Retention and Salaries of Teachers and Other School Personnel in Montana*, is posted.

[23] Ibid., p. 25.

[24] Ibid., pp. 29-30.

Chapter 4: Proposal for a New School Funding Formula

Funding Components

Based on the work of the Joint Select Committee from the 2005 legislative session and the professional consultants, the QSIC defined nine components that would comprise the new school funding formula. The components were directly related to the definition of a "basic system of free quality public elementary and secondary schools" contained in 20-9-309, MCA. The components were:

❶ per-student;
❷ classroom;
❸ accredited program;
❹ building operations and maintenance;
❺ special education;
❻ transportation;
❼ capital projects;
❽ school facility payment/debt service; and
❾ Indian Education for all.

The QSIC calculated the cost of these components based on known expenditure data for fiscal year 2004. With the exception of the capital projects and the Indian Education for All components, the QSIC adopted a base level funding for each component (fiscal year 2004 expenditures inflated to fiscal year 2007) and then adjusted the funding based on specific policy decisions (e.g., school district participation in state employee health insurance plan, additional funding for teacher salaries, and additional funding for at-risk students). The funding adjustments are discussed later in this report. Each component also contained a method for counting units (e.g., students, classrooms).

The QSIC expended most of its efforts on the per-student, classroom, accredited program, building operations and maintenance, capital projects, and Indian Education for All components. The QSIC addressed the remaining components briefly but left the fleshing out of those components to a future Legislature.

Because there is such a diversity in size among school districts in Montana, from Kester Elementary District with one student to Billings Public Schools with 15,000 students, the QSIC decided to use school district size categories in determining the per-student and classroom components. The Office of Public Instruction has established size categories for elementary and high school districts based on the number of students, and the QSIC adopted the OPI categories. They are as follows:

E6	<41 students
E5	41-150 students
E4	151-400 students

E3	401-850 students
E2	851-2500 students
E1	>2500 students

H5	<75 students
H4	75-200 students
H3	201-400 students
H2	401-1250 students
H1	>1250 students

Per-Student Component

The per-student component covers the costs of providing textbooks, supplies, and extracurricular activities, minus one-half of the extracurricular athletics, for each student in the district. The QSIC recommended continuing the use of average number belonging (ANB), including 3-year averaging, to count students for the per-student component but repealing the adjustment to ANB for pupil-instruction-related (PIR) days and funding the PIR days through the classroom component. The per-student component was set at each category size as follows:

E6	$558	H5	$1,442
E5	$362	H4	$1,005
E4	$363	H3	$ 843
E3	$339	H2	$ 648
E2	$231	H1	$ 369
E1	$145		

The QSIC adopted a procedure to provide additional funding to school districts to cover any additional resources, such as supplies and textbooks, necessary to address the needs of at-risk students. An at-risk student is a student who is affected by environmental conditions that negatively impact the student's educational performance or threaten a student's likelihood of promotion or graduation.[25] A Risk Category Index score would be developed for every school district in Montana using a series of categories that measured the "risk" of the district. The risk categories are:

- ❶ the percentage of students who were American Indian;
- ❷ the percentage of students who were eligible for free or reduced-price lunch;
- ❸ the percentage of migrant students;
- ❹ the percentage of students identified as limited English proficient;
- ❺ the educational attainment of women; and
- ❻ the per capita income.

The index score is intended to reflect the difference between the percentage of at-risk students in an average school district in Montana and the percentage of at-risk students in a particular district. Each district would receive an additional 10% of its per-student component to be used for at-risk students. Depending upon the district's index score, a district could receive an additional amount of

[25] 20-1-101(4), Montana Code Annotated.

money over the per-student component and the 10% add-on.

Classroom Component

The classroom component covers the personnel costs in the classroom, namely teachers and paraprofessionals. The component includes salaries, benefits, health insurance, professional development, and an allowance for substitute teachers.

The QSIC briefly reviewed the school funding formula model from Maine, which counts the actual number of teachers, and a model developed by the working group called the Montana Classroom Accreditation Model that relied on the accreditation standards. The QSIC eventually adopted another method developed by the working group for calculating the number of classrooms for each school district size category based upon the number of students allowed in each classroom by the accreditation standards with certain adjustments at the high school level. The total enrollment for each size category was then divided by the number of calculated classrooms for that category to determine a student-teacher ratio. The student-teacher ratio for each size category would be used to determine the number of classrooms that would be funded for each school district in that category by dividing a school district's ANB by the student-teacher ratio for that district's size category. The student-teacher ratios adopted by the QSIC for each district size category were as follows:

E6	8.6 students per teacher
E5	13.5 students per teacher
E4	15.4 students per teacher
E3	16.6 students per teacher
E2	17.9 students per teacher
E1	19 students per teacher

H5	8.5 students per teacher
H4	14.4 students per teacher
H3	16.6 students per teacher
H2	17.7 students per teacher
H1	19 students per teacher

In order to reflect the additional instruction time necessary for certain students, the classroom calculation included an ANB weighting factor for gifted and talented students and an ANB weighting factor for at-risk students.

The QSIC calculated the cost of each item in the classroom component in the following manner. For teacher salaries (including salary benefits such as retirement), the QSIC took the FY 2004 average salary by district size category and inflated it by 8.7%. The QSIC then added $4,000 to the salary. The teacher salaries in the classroom component were set as follows:

E6	$27,503	H5	$37,094
E5	$33,437	H4	$40,017
E4	$41,416	H3	$42,391
E3	$44,585	H2	$44,949
E2	$44,355	H1	$49,658
E1	$47,688		

The costs for paraprofessionals and substitutes were set at $765 and $761 per year, respectively (FY 2004 inflated to FY 2007 by 8.7%). The QSIC set the health insurance at $6,378 per FTE, the same amount as the state employees' health insurance benefit for FY 2007. The amount for professional development was set at $800 per FTE. Each of these items added together equaled the classroom component for each size category. That classroom component would then be multiplied by the number of calculated classrooms in each school district.

Accredited Program Component

The accredited program component funds the school district costs related to the district central office and school level administration and support services. Costs include salaries and benefits for both certified and classified personnel, purchased services, administrative supplies, food services, educational media, and other appropriate expenditures. Using the certified FTE requirements in the accreditation standards and the actual staffing patterns in districts, the QSIC calculated the number of certified and classified staff for each school district based on the standards and on district enrollment. The component was calculated using three tiers: a central office tier, a school office tier, and a per-student tier.

At the central office level, the certified staff includes the district superintendent, assistant superintendents, district level program and activities coordinators, curriculum coordinators, and, in larger school districts, department chairs. The noncertified central office staff includes the business manager, business clerks, district secretaries, nurses, human resources personnel, superintendent support/public relations personnel, information technology staff, central services, and athletic directors.

At the school level, the term "school" means an accredited program such as elementary, 7/8, middle school, or high school. "School" does not necessarily equate to a school building. It is possible to have one accredited program in a single school building. The certified staff required for the school level includes principals or supervising teachers, assistant principals, librarians, counselors, and school program coordinators. The classified staff includes secretaries and attendance and record clerks.

The per-student tier covers costs for purchased services, administrative supplies, and other expenditures. All of these costs would be allocated on a per-student basis at the district level.

The QSIC calculated the cost of each item in the accredited program component in the following manner. For salaries, the QSIC adopted the average salaries inflated to FY 2007 reported by Stoddard and Young for each employment type for all district size categories. The salaries were as follows:

- superintendent and assistant superintendent, $68,846;
- district-level program and activities coordinator, $65,005;
- curriculum coordinator, $65,015;
- business manager, $43,781;
- business clerical staff, $37,732;
- district secretarial staff, $25,101;
- nurse, $39,790;
- human resources staff, $48,565;
- information technology staff, $37,694
- central services staff, $24,310;
- athletics director, $36,508;
- supervising teacher, $39,870;
- principal and assistant principal, $65,986;
- librarian, $47,740;
- counselor, $52,229;
- school program coordinator, $39,870; and
- school secretarial, attendance, and records staff, $25,101.

The QSIC also adopted $6,378 per certified and classified FTE for health insurance, 1.3% of salaries for workers' compensation, $800 per certified FTE for professional development, and $500 per classified FTE for professional development and added $4,000 to the salaries and benefits for librarians and counselors. The per-student amounts were the same as the amounts in the per-student component.

Building Operations and Maintenance Component

The building operations and maintenance component includes those activities concerned with keeping a school's physical plant open, comfortable, and safe for use and keeping the grounds, buildings, and equipment in working condition. Expenditures for operations and maintenance include supervision of plant services, operations of buildings, care and upkeep of grounds, care and upkeep of buildings, vehicle operations and maintenance, and security services.

In addition to the base level funding, the QSIC adopted an additional amount of $5,800 for an elementary district and $51,000 for a high school district. These amounts were derived from actual school district expenditures. On top of the district amount was a per-student amount based on $4.50 times 137 square feet for a elementary student and 178 square feet for a high school student. The $4.50 was based on an estimate for operations and maintenance provided by the Architectural and Engineering Division of the Department of Administration. The square footage came from a report in the American School & University magazine that looked at averages for square footage per student across the nation.

Special Education Component

The special education component covers the cost of providing education and related services to children with disabilities. The component includes personnel costs, supplies, textbooks, equipment, assistive technology, contracted services, and travel costs. The current funding formula for special education includes block grants to districts based on enrollment and partial reimbursement for disproportionately high costs. The QSIC adopted the current funding formula and level of support. In addition, the QSIC added a per-educator entitlement of $4,000, $6,378 per educator for health insurance, and $800 per educator for professional development.

Transportation Component

The transportation component covers the costs of transporting students to and from school. The component includes individual transportation contracts with parents and transportation provided by the district either through district buses or a bus contract. The QSIC adopted the current on-schedule rates and formula for distributing transportation aid.

Capital Projects Component

The capital projects component provides for the state's share of the costs for capital outlay, including certain costs related to buildings and major capital assets. Expenditures in this component include land acquisition and improvement, architecture and engineering services, education-specific development, building acquisition and construction, and building improvement. Because there was a lack of data at the state level as to the number and condition of school district facilities across Montana, the QSIC recommended that a Facilities Condition Inventory be conducted or administered by the Architecture and Engineering Division of the Department of Administration. The QSIC recommended an appropriation of $2 million to conduct the inventory. To address the immediate needs of school districts, the QSIC recommended a one-time-only appropriation of $23 million to be used for deferred maintenance and weatherization. The QSIC recommended that the money be distributed on a per-student basis with a base amount per district. The per-student amount was set at $160 and the base amount was set at $1,000 per district. Districts would be allowed to spend the money over a 3-year period and could also use the money as a match for other local, state, or federal funding.

School Facility Payment/Debt Service Component

The purpose of the debt service component is to cover the state's share of the principal and interest on school district general obligation bonds. Currently the state provides support for the annual debt service payments on school bonds. The QSIC recommended using the current level and formula for distributing the state's funding in support of bond payments for school facilities (purchase and construction) in the debt service fund.

Indian Education for All Component

"Indian Education for All" is the term used to describe the statutory provisions implementing Article X, section 1(2), of the Montana Constitution. In his decision, Judge Sherlock noted that the Legislature was defenseless on the plaintiffs' claim that Article X, section 1(2), had not been implemented because the Legislature had provided no funding for resources or programs. Senate Bill No. 152, which defined a basic system of free quality public elementary and secondary schools, included Indian Education for All in that definition. The Joint Subcommittee did not specifically address Indian Education for All but it was tacitly understood that Indian Education for All would have to be addressed somewhere in the new school funding formula. The Joint Select-Committee made no recommendations as to the amount of funding or the distribution of the funding.

The QSIC created a ninth entitlement for Indian Education for All. The QSIC recommended that $3 million in ongoing funding be appropriated in this entitlement. The funding was to be distributed on a per-student basis ($22 per student) with each school receiving a minimum of $100. An additional $7 million of one-time-only funding was recommended for the purchase of materials. This amount would also be distributed on a per-student basis at $50 per student.

Health Insurance

The Governor's Office of Budget and Program Planning (OBPP) presented a proposal to the QSIC for providing health insurance assistance to school districts. The K-12 health care package had a number of features designed to save school districts money. Under this proposal, the state would assume responsibility for covering health care costs from $150,000 to $1 million per claim for an individual. This would apply only to active employees and their spouses and dependents. Free health risk screenings would be available every other year to active employees. Spouses and dependents could participate on a self-pay basis at a nominal fee. Aggressive case management would help school districts manage high-cost claims in order to provide the best care for the patient while controlling costs to the school district. School districts would have access to a purchasing pool for volume discount purchases of prescription drugs. The state would provide technical expertise to school districts to assist them in making informed decisions about purchasing health care coverage. This would be especially beneficial to small districts.

Instead of adopting the Governor's proposal, the QSIC recommended including school district personnel in the state employees' health insurance program. There would be a single pool with mandatory participation by school districts. The same rules and benefits for state employees would apply to school district employees. The state would continue to control the plan, but school district personnel would be added to the State Employee Group Benefits Advisory Council.

School District Fund Structure

In 2001, the Legislature passed House Bill No. 625 (Chapter 580, L. 2001) that created the K-12 Public School Funding Advisory Council to conduct a study of funding for K-12 public schools. One of the topics listed for study was to "determine if the existence of 25 budgeted and nonbudgeted funds unreasonably restricts local decisionmakers". The Advisory Council established a working group composed of school district clerks, business managers, a county superintendent, and representatives from the Office of Public Instruction, the Governor's Office, and the Montana School Boards Association to review and suggest improvements to the current structure of school district funds. Following a number of meetings, the working group made the following recommendations to the Advisory Council:

❶ consolidate the litigation fund, compensated absences fund, retirement fund, and transportation fund into the general fund and rename it the "general operating fund";

❷ close the lease rental fund, bus depreciation fund, building reserve fund, building fund, and technology fund and create a single "capital projects fund";

❸ split the miscellaneous programs fund into a "state and private programs fund" and a "federal programs fund";

❹ close the metal mines fund and the mining impact fund and use separate accounts in the state and private programs fund to account for this money;

❺ rename the adult education fund the "community education fund"; and

❻ close the traffic education fund and account for the program in the state and private programs fund.[26]

Nothing ever came of these particular recommendations, but the issue of the consolidation of funds continued to be of interest. Senate Bill No. 152 required that the number and types of school district budgetary funds be limited to those necessary for maximum budgetary flexibility while still ensuring accountability and efficiency. The Joint Select Committee proposed the creation of a general fund for current operations, a capital projects fund for buildings and other capital assets, and a debt service fund to pay principal and interest on school bonds. The Joint Select Committee outlined which current funds would be moved into one of these three funds, which funds would be left alone, and which funds would have minor changes made to them.

The QSIC created a fund structure task force to review the work of the 2001 Advisory Council and the Joint Select Committee and then make recommendations regarding budgetary fund structure. To provide continuity, many members of the 2001 working group also served on the task force. The task force made the following recommendations to the QSIC:

❶ retain the following special revenue funds: transportation, tuition, school food services, impact aid, interlocal cooperative, and compensated absences;

❷ retain, rename, and divide the miscellaneous programs fund into a federal programs fund and a state and private programs fund;

❸ retain the following funds until completion of the Facilities Condition Inventory: building, building reserve, bus depreciation, and lease rental agreement;

❹ (a) eliminate the technology fund and use timber money to fund the general fund components, allow districts to continue levying technology levies already approved by voters, deposit the proceeds into the building reserve fund, and use proceeds for major technology projects involving capital outlay; or

(b) continue to earmark timber money for major technology projects involving capital outlay, rename the technology fund the "capital projects fund", and deposit timber money and technology levies already approved by voters into that renamed fund;

❺ eliminate the following school district funds: flexibility, litigation reserve, traffic education, metal mines, and mining impact;

[26] "Governor's K-12 Public School Funding Study Advisory Council Report and Recommendations", Legislative Services Division, December 31, 2001, Appendix A.

6. expand allowable uses of money transferred to the compensated absences reserve to apply to all school district employees paid from nonfederal funds; and
7. require that the funding components that include salaries and benefits be adjusted when benefit rates are increased by state or federal law.

The QSIC adopted recommendation numbers one, two, three, and five. The QSIC also recommended that the timber money be de-earmarked and flow into the interest and income account to be distributed through the appropriations process, that the technology fund be eliminated, and that local school boards be allowed to decide on the disposition of funds currently on deposit in the technology fund.

General Fund Revenue Structure

Once the QSIC adopted all of the components of the proposed new school funding formula, the next step was to decide the structure of a district's new general fund. The general fund was to be made up of six components: per-student, classroom, accredited program, special education, Indian Education for All, and building operations and maintenance. The QSIC renamed the BASE budget as the quality line or Q-line base budget. The QSIC then set the Q-line at 100% of the general fund components. Direct state aid was left at 44.7% of the Q-line, but the guaranteed tax base portion of the general fund was increased to 55.3% of the Q-line. The maximum general fund budget was set at 120% of the Q-line. A school district would be allowed to seek a voted levy for the 20% over the Q-line.

Revenue

The QSIC commissioned several reports from the OBPP on various revenue issues surrounding school funding. The QSIC looked at disparities in school mill levies, impacts of statewide equalization of certain revenues, equalization of school mills statewide, budgeting of oil, gas, and coal revenues by school districts and the school district block grants that replaced the revenue lost to districts from tax reductions and other revenue changes incorporated in House Bill No. 124 of the 2001 legislative session. The QSIC spent a considerable amount of time discussing revenue issues. However, in the end, no decisions were made with regard to revenues for school funding.

Proposed Legislation

The QSIC authorized the drafting of two pieces of legislation. LC 0001 (Appendix A) implemented the new school funding formula recommended by the QSIC.

LC 2005 (Appendix B) moved school district employees into the state employees' health insurance program. The two bill drafts were extensively discussed by the QSIC and commented upon by members of the public. In the end, the QSIC voted down a motion to move forward with the legislation for introduction in the December 2005 Special Session of the Legislature. An overwhelming majority of the QSIC members believed that the bills were not ready for legislative consideration.

Chapter 5: Available Materials

The following materials relevant to the work of the Quality Schools Interim Committee are available from the Legislative Services Division or on the Quality Schools Interim Committee website at http://leg.mt.gov/css/committees/interim/2005_2006/qual_schools.

Minutes of Meetings (including exhibits)

May 4, 2005
June 3, 2005
June 6, 2005
June 24, 2005
June 28, 2005
July 21-22, 2005
August 30-31 and September 1, 2005
September 8, 2005
September 14, 2005
September 23, 2005
September 30, 2005
October 11, 2005
October 17, 2005
October 24, 2005
November 1-2, 2005
November 18, 2005
December 5, 2005

Videotapes of every meeting are also available from the Legislative Services Division at a cost of $5 per tape.

Staff Reports and Memoranda

Disparities in School Mill Levies, July 2005, Dan Dodds, Ryan Jose, and Neil Templeton, Office of Budget and Program Planning

Disequalizing Affects of State HB 124 Reimbursements, July 2005, Nancy Hall, Office of Budget and Program Planning

Property Tax Information Related to K-12, July 2005, Judy Paynter, Dan Dodds, and Ryan Jose, Office of Budget and Program Planning

School Transportation 2005, July 2005, Jim Standaert, Legislative Fiscal Division

The Achievement Gap in Montana: Features and Policy Prescriptions, August 2005, Christopher Lohse, Susan Ockert, and Joyce Silverthorne, Legislative Services Division

Final Report on School Facilities, September 2005, Mike Burke, Office of Budget and Program Planning

American Indian Student Achievement in Montana Public Schools, September 2005, Christopher Lohse and Susan Ockert, Legislative Services Division

At-Risk Distribution Mechanisms, September 2005, Christopher Lohse, Legislative Services Division

Policy Questions Associated With the Per-Student Entitlement, September 2005, Madalyn Quinlan, Office of Public Instruction

K-12 Health Care Package, September 2005, Office of Budget and Program Planning

Equalizing School Mills (K-12) Statewide, September 2005, Ryan Jose, Brad Simshaw, and Judy Paynter, Office of Budget and Program Planning

A Proposed Funding Mechanism for Montana Public Schools, September 2005, Quality Schools Interim Committee Working Group, Legislative Services Division

Progress Report on Work of the Quality Schools Interim Committee, October 2005, Jim Standaert, Legislative Fiscal Division

Accredited Program Entitlement, October 2005, Madalyn Quinlan and Joan Anderson, Office of Public Instruction

Schools Budgeting of Oil and Natural Gas and Coal Revenue, October 2005, Neil Templeton, Marla Larson, and Judy Paynter, Office of Budget and Program Planning

Property Tax Liability Impacts if Certain Revenues are Equalized Statewide or Allocated Through the School Funding Model, November 2005, Judy Paynter and Ryan Jose, Office of Budget and Program Planning

New General Fund Revenue Structure Options, November 2005, Jim Standaert, Legislative Fiscal Division

Fund Structure Task Force Report, November 2005, Eddye McClure and Kathy Fabiano, Legislative Services Division

Appendix A

LC0001 is 180+ pages in length. For a copy, please call the Legislative Services Division at 444-3064, go to the Quality Schools Interim Committee website, or directly to this web address:

http://leg.mt.gov/content/committees/interim/2005_2006/qual_schools/LC0001.pdf

**** Bill No. ****

Introduced By *************

By Request of the *********

A Bill for an Act entitled: "An Act health insurance; and providing effective dates."

Be it enacted by the Legislature of the State of Montana:

Section 2. Section 2-9-212, MCA, is amended to read:

"**2-9-212.** ~~**Political subdivision tax**~~ **<u>Tax</u> levy to pay premiums.** (1) Subject to 15-10-420 and ~~subsection~~ <u>subsections</u> (2) <u>and (3)</u> of this section, a political subdivision~~, except for a school district,~~ may levy an annual property tax in the amount necessary to fund the premium for insurance, deductible reserve fund, and self-insurance reserve fund as authorized in this section and to pay the principal and interest on bonds or notes issued pursuant to 2-9-211(5).

(2) (a) If a political subdivision<u>, other than a school district,</u> made contributions for group benefits under 2-18-703 on or before July 1, 2001, the increase in the political subdivision's property tax levy for the political subdivision's premium contributions for group benefits under 2-18-703 beyond the amount of contributions in effect at the beginning of the last fiscal year is not subject to the mill levy calculation limitation provided for in 15-10-420. Levies implemented under this section must be calculated separately from the mill levies calculated under 15-10-420 and are not subject to the inflation factor described in 15-10-420(1)(a). If tax-billing software is capable, the county treasurer shall list separately the cumulative mill levy or dollar amount on the tax notice sent to each taxpayer under 15-16-101(2). The amount must also be reported to the department of administration pursuant to 7-6-4003. The mill levy must be described as the permissive medical levy.

(b) Each year prior to implementing a levy under subsection (2)(a), after notice of the hearing given under 7-1-2121 or 7-1-4127, a public hearing must be held regarding any proposed increases.

(c) A levy under this ~~section~~ subsection (2) in the previous year may not be included in the amount of property taxes that a governmental entity is authorized to levy for the purposes of determining the amount that the governmental entity may assess under the provisions of 15-10-420(1)(a). When a levy under this ~~section~~ subsection (2) decreases or is no longer levied, the revenue may not be combined with the revenue determined in 15-10-420(1)(a).

(3) A school district may levy an annual property tax to provide for the employer contribution to the state employee and school district employee group benefit plans provided for in Title 2, chapter 18, parts 7 and 8."

{*Internal References to 2-9-212:*
2-9-211 x 2-18-703 x 15-10-420x }

Section 3. Section 2-15-1016, MCA, is amended to read:

"2-15-1016. State employee and school district employee group benefits advisory council -- composition. (1) The department shall create a state employee and school district employee group benefits advisory council under 2-15-122.

(2) The members of the advisory council must be selected from a diverse group in order to adequately represent the interests of state employees, school district employees, and retirees.

(3) One member of the advisory council must be a retired state employee.

(4) Each labor organization, as defined in 39-31-103, representing more than 1,000 employees of the state of Montana is entitled to one representative on the advisory council."

{*Internal References to 2-15-1016:*
2-18-618 x 2-18-809 x}

Section 4. Section 2-18-618, MCA, is amended to read:

"2-18-618. Sick leave. (1) A permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated.

Employees are not entitled to be paid sick leave until they have been continuously employed for 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits ~~provided~~ if they ~~work~~ have worked the qualifying period.

(5) A short-term worker may not earn sick leave credits.

(6) Except as otherwise provided in 2-18-1311, an employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(7) An employee who receives a lump-sum payment pursuant to this section or who, pursuant to 2-18-1311, converts unused sick leave to employer contributions to a health care expense trust account and who is again employed by any agency may not be credited with sick leave for which the employee has previously been compensated or for which the employee has received an employer contribution to the health care expense trust account.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(9) An employee of a state agency may contribute any portion of the employee's accumulated sick leave to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave, irrespective of the employee's membership or nonmembership in the employee welfare benefit plan established pursuant to 2-18-1304. The department of administration shall, in consultation with the state employee <u>and school district employee</u> group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

(10) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave."

{*Internal References to 2-18-618:*
2-18-107 x   2-18-1311 x   20-9-512 x   39-71-2328 x}

Section 5. Section 2-18-701, MCA, is amended to read:

"**2-18-701.** ~~**Definition**~~ <u>**Definitions**</u>. ~~In~~ <u>As used in</u> this part, <u>the following definitions apply</u> ~~as it applies to a person employed in the executive, judicial, or legislative branches of state government~~:

<u>(1) "School district employee" means a person employed by a public elementary or high school district, as defined in 20-6-101, a K-12 school district, as defined in 20-6-701, or an education cooperative, as described in 20-7-451, who is regularly employed for 30 or more hours a week during the school year or employed for fewer hours, but not less than 18 hours a week, as specified in a collective bargaining agreement or by employer policy or education cooperative policy in a nonbargaining school district or education cooperative.</u>

~~(1)~~<u>(2) (a)</u> ~~"employee"~~ <u>"State employee"</u> means:

~~(a)~~<u>(i)</u> a permanent full-time employee, as provided in 2-18-601;

~~(b)~~<u>(ii)</u> a permanent part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week;

~~(c)~~(iii) a seasonal full-time employee, as provided in 2-18-601, who is regularly scheduled to work 6 months or more a year or who works for a continuous period of more than 6 months a year although not regularly scheduled to do so;

~~(d)~~(iv) a seasonal part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so;

~~(e)~~(v) elected state officials;

~~(f)~~(vi) officers and permanent employees of the legislative branch;

~~(g)~~(vii) judges and permanent employees of the judicial branch;

~~(h)~~(viii) academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education;

~~(i)~~(ix) a temporary full-time employee, as provided in 2-18-601:

~~(i)~~(A) who is regularly scheduled to work more than 6 months a year;

~~(ii)~~(B) who works for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

~~(iii)~~(C) whose temporary status is defined through collective bargaining;

~~(j)~~(x) a temporary part-time employee, as provided in 2-18-601:

~~(i)~~(A) who is regularly scheduled to work 20 hours or more a week for 6 months or more a year;

~~(ii)~~(B) who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

~~(iii)~~(C) whose temporary status is defined through collective bargaining; and

~~(k)~~(xi) a part-time or full-time employee of the state compensation insurance fund. As used in this subsection, "part-time or full-time employee of the state compensation insurance fund" means an employee eligible for inclusion in the state employee group benefit plans under the rules of the department of administration.

~~(2)~~(b) ~~"employee"~~ "State employee" does not include a student intern, as defined in 2-18-101."

{*Internal References to 2-18-701:*
2-18-702 x 2-18-703 a 10-1-1007 a 19-3-108 x*
20-15-225 x*}

Section 6. Section 2-18-702, MCA, is amended to read:

"2-18-702. Group insurance for ~~public~~ state employees and ~~officers~~ school district employees. (1) (a) Except as provided in subsection (1)(c), all counties, cities, and towns~~, school districts,~~ and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans for the benefit of their officers and employees and their dependents. The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.

(b) The governing body of a county, city, or town may, at its discretion, consider the employees of private, nonprofit economic development organizations to be employees of the county, city, or town solely for the purpose of participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans as provided in subsection (1)(a). The governing body of the county, city, or town may require an employee or organization to pay the actual cost of coverage required for participation or may, at its discretion and subject to any restriction on who may be a member of a group, pay all or part of the cost of coverage of the employee of the organization.

(c) The governing body of a third, fourth, fifth, sixth, or seventh class county or the board of trustees of a hospital district may, at its discretion, exempt employees of a county hospital, county rest home, or hospital district from participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans provided pursuant to subsection (1)(a) or (1)(b).

(2) State employees and ~~elected officials,~~ school district employees, as defined in 2-18-701, may participate in state employee and school district employee group benefit plans as ~~are~~ provided for under part 8 of this chapter.

(3) (a) For state ~~officers and~~ employees, the premiums required from time to time to maintain the insurance in force must be paid by the insured ~~officers and~~ state employees, and the state treasurer shall deduct the premiums from the salary or wages of each ~~officer or~~ state employee who elects to become insured, on the ~~officer's or~~ state employee's written order, and issue a warrant for the premiums to the insurer.

(b) For school district employees, the premiums required from time to time to maintain the insurance in force must be paid by the insured school district employees, and the school district shall deduct the premiums from the salary or wages of each employee who elects to become insured, on the employee's written order, and pay the total for the premiums to the insurer.

(4) For ~~the purpose~~ purposes of this section, the plans of health service corporations for defraying or assuming the cost of professional services of ~~licentiates~~ licensees in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services must be construed as group insurance and the dues payable under the plans must be construed as premiums for group insurance.

(5) If ~~the board of trustees of a school district implements a self-insured group health plan or if~~ the board of regents implements an alternative to conventional insurance to provide group benefits to its employees, the board shall maintain the alternative plan on an actuarially sound basis."

{*Internal References to 2-18-702:*
19-3-108 x   20-3-331 a   20-15-225* x   41-3-119* }

Section 7. Section 2-18-703, MCA, is amended to read:

"2-18-703. Contributions. (1) Each agency, as defined in 2-18-601, and the state compensation insurance fund shall contribute the amount specified in this section toward the group benefits cost.

(2) (a) For state employees ~~defined in 2-18-701~~ and for members of the legislature, the employer contribution for group benefits is ~~$460 a month for the period from July 2005 through December 2005,~~ $506 a month for the period from January 2006 through December 2006~~,~~ and $557 a month for January 2007 and for each succeeding month. For school district employees, the employer contribution is $557 a month for July 2007 and for each succeeding month. For employees of the Montana university system, the employer contribution for group benefits is $506 a month for the period from July 2005 through June 2006 and $557 a month for July 2006 and for each succeeding month.

(b) If a state employee or school district employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305.

(c) Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group ~~benefit~~ benefits contribution.

(d) An employee who elects not to be covered by a state-sponsored group ~~benefit~~ benefits plan may not receive the state contribution or school district contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group ~~benefit~~ benefits plan is the secondary payer and medicare is the primary payer.

(3) For employees of ~~elementary and high school~~ community college districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 a month. Subject to the public hearing requirement provided in 2-9-212(2)(b), the increase in a local government's property tax levy for premium contributions for group benefits beyond the amount of contributions in effect on the first day of the last fiscal year is not subject to the mill

levy calculation limitation provided for in 15-10-420.

(4) Unused employer contributions for any state employee <u>or school district employee</u> must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(6) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents."

{*Internal References to 2-18-703:*
2-9-212 a   2-9-212 a   2-18-101 x   2-18-101 x
2-18-107 x   2-18-812 x   5-2-303 x   15-10-420 x
19-3-108 x   20-15-225* x   20-15-403a* }

Section 8. Section 2-18-711, MCA, is amended to read:

"2-18-711. Cooperative purchasing of employee benefit services and insurance products -- procedures. (1) To provide employee group benefits, an agency, as defined in 2-18-601, and the state compensation insurance fund may participate with other agencies, nonprofit organizations, or business entities and in voluntary disability insurance purchasing pools provided for under 33-22-1815 if the agency or the state fund determines that cooperative purchasing is in the agency's or the state fund's best interest.

(2) Cooperative purchases under this section may be conducted according to purchasing procedures developed by the participating parties if, for contracts valued at $20,000 a year or more, purchasing procedures, at a minimum, include:

(a) public notice in three major Montana newspapers of requirements for submitting bids or offers; and

(b) consideration of all submitted bids or offers.

~~(3) For purposes of this section, "employee" also means a schoolteacher.~~"

{*Internal References to 2-18-711: None.*}

Section 9. Section 2-18-808, MCA, is amended to read:

"2-18-808. Purpose. The purpose of this part is to establish a program under which the state may provide state employees <u>and school district employees</u> with adequate group hospitalization, health, medical, disability, life, and other related group benefits in an efficient manner and at an affordable cost."

{*Internal References to 2-18-808: None.*}

Section 10. Section 2-18-809, MCA, is amended to read:

"2-18-809. Definitions. As used in this part, the following definitions apply:

(1) "Advisory council" means the state employee <u>and school district employee</u> group benefits advisory council provided for in 2-15-1016.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Flexible spending account" means a funding and accounting arrangement allowed by federal law that:

(a) gives a state employee <u>or a school district employee</u> a choice between receiving taxable salary or having a part of the employee's salary withheld; and

(b) provides for depositing any portion of the state employee's <u>or school district employee's</u> salary withheld and any employer contribution designated by the employee into an account and receiving from that account nontaxable reimbursement for certain out-of-pocket medical expenses of the state employee <u>or school district employee</u> or a dependent of the employee.

(4) <u>(a)</u> "Group benefits" means group hospitalization, health, medical, surgical, disability, life, and other similar and related group benefits provided to <u>state</u> officers<u>,</u> ~~and~~ <u>state</u> employees<u>,</u> ~~of the state~~ <u>and school district</u>

employees, including flexible spending account benefits.

(b) The term "group benefits" does not include:

(i) casualty insurance, defined in 33-1-206;

(ii) marine insurance, authorized in 33-1-209 and 33-1-221 through 33-1-229;

(iii) property insurance, defined in 33-1-210;

(iv) surety insurance, defined in 33-1-211; and

(v) title insurance, defined in 33-1-212.

(5) "School district employee" means a person employed by a public elementary or high school district, as defined in 20-6-101, a K-12 school district, as defined in 20-6-701, or an education cooperative, as described in 20-7-451, who is regularly employed for 30 or more hours a week during the school year or employed for fewer hours, but not less than 18 hours a week, as specified in a collective bargaining agreement or by employer policy or education cooperative policy in a nonbargaining school district or education cooperative.

~~(5)~~(6) (a) "State employee" means an employee of the state, specifically including a member or employee of the legislative branch of state government.

(b) The term "state employee" does not include employees of counties, cities, towns, school districts, or the Montana university system or a student intern, as defined in 2-18-101."

{*Internal References to 2-18-809: None.*}

Section 11. Section 2-18-810, MCA, is amended to read:

"2-18-810. Functions of advisory council. (1) The department shall meet and consult with the advisory council before negotiating, contracting, or otherwise modifying state employee group benefit plans.

(2) The advisory council shall meet quarterly to review the existing state employee and school district employee group benefit plans, to review claims problems, and to advise the department on state employee and school district employee group benefit matters."

{*Internal References to 2-18-810: None.*}

Section 12. Section 2-18-811, MCA, is amended to read:

"2-18-811. General duties of ~~the~~ department. The department shall:

(1) adopt rules for the conduct of its business under this part and to carry out the purposes of this part;

(2) negotiate and administer contracts for state employee and school district employee group benefit plans;

(3) design state employee and school district employee group benefit plans, establish specifications for bids, and make recommendations for acceptance or rejection of bids;

(4) prepare an annual report ~~which~~ that describes the state employee and school district employee group benefit plans being administered, details the historical and projected program costs and the status of reserve funds, and makes recommendations, if any, for change in existing state employee and school district employee group benefit plans;

(5) prior to each legislative session, perform or obtain an analysis of rate adequacy of all state employee and school district employee group benefit plans administered under this part; ~~and~~

(6) submit the report required in this section to the office of budget and program planning as a part of the information required by 17-7-111; and

(7) in consultation with the office of public instruction, adopt procedures for enrolling school district employees in the plans provided for in this part and for the payment and collection of employer and employee contributions required under this part. The collection of employer and employee contributions must be accomplished through the withholding of direct state aid or guaranteed tax base payments."

{*Internal References to 2-18-811: None.*}

Section 13. Section 2-18-812, MCA, is amended to read:

"2-18-812. Alternatives to conventional insurance for providing state employee and school

district employee group benefits authorized -- requirements. The department may establish alternatives to conventional insurance for providing state employee and school district employee group benefits. The requirements for providing alternatives to conventional insurance are as follows:

(1) The department shall maintain state employee and school district employee group benefit plans on an actuarially sound basis.

(2) The department shall maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of state employee and school district employee group benefit plans.

(3) The department shall deposit all reserve funds and premiums paid to a state employee and school district employee group ~~benefit~~ benefits plan account within the state self-insurance reserve fund, and the deposits must be expended for claims under the plan.

(4) The department shall deposit income earned from the investment of a state employee and school district employee group ~~benefit~~ benefits plan's reserve fund into the account established under subsection (3) in order to offset the costs of administering the plan. Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(5) The department shall deposit into the account provided for in subsection (3) all portions of a state employee's or school district employee's salary designated by the employee to be withheld for the purposes of flexible spending account benefits as well as any employee-designated portion of the employer contribution for group benefits provided for in 2-18-703 that is not required to be used for mandatory or elected benefits. Income earned on the deposits must be retained within the account and used for the purposes provided in this subsection. The money deposited and income earned on the deposits must be used for:

(a) payment of claims made by the employee;

(b) payment of reasonable costs of administration of the flexible spending account program;

(c) offsetting losses of the flexible spending account program; and

(d) reducing administration fees collected from participants in the program.

(6) The department shall, prior to implementation of any alternative to conventional insurance, present to the advisory council the evidence upon which the department has concluded that the alternative method will be more efficient, less costly, or otherwise superior to contracting for conventional insurance.

(7) Except as otherwise provided in Title 33, chapter 18, part 9, the provisions of Title 33 do not apply to the department when exercising the powers and duties provided for in this section."

{*Internal References to 2-18-812: None.*}

Section 14. Section 2-18-813, MCA, is amended to read:

"2-18-813. Combining existing employee groups authorized. The department may combine existing state employee <u>and school district employee</u> groups into larger groups for the purpose of establishing state employee <u>and school district employee</u> group benefit plans on behalf of the combined groups. The department may also combine state employees <u>and school district employees</u> into a single group for purposes of state employee <u>and school district employee</u> group benefits under this part."

{*Internal References to 2-18-813: None.*}

Section 15. Section 2-18-814, MCA, is amended to read:

"2-18-814. Administrative costs. The department shall include the costs of administering and negotiating state employee <u>and school district employee</u> group benefit plans established under this part, as well as the costs of hiring necessary consultants, actuaries, and auditors under this part, as part of the cost for state employee <u>and school district employee</u> group benefits."

{*Internal References to 2-18-814: None.*}

Section 16. Section 2-18-816, MCA, is amended to read:

"2-18-816. Biennial audit of group benefit plans required. The state employee <u>and school</u>

district employee group benefit plans established under this part, whether established on a self-funded basis or not, must be audited every 2 years. The audit must cover the 2-year period since the last audit and be conducted by or at the direction of the legislative auditor."

{*Internal References to 2-18-816: None.*}

Section 17. Section 10-1-1007, MCA, is amended to read:

"10-1-1007. Right to return to employment without loss of benefits -- exceptions -- definition. (1) Subject to the provisions of this section, after a leave of absence for state active duty, a member is entitled to return to employment with the same seniority, status, pay, health insurance, pension, and other benefits as the member would have accrued if the member had not been absent for the state active duty.

(2) (a) If a member was a probationary employee when ordered to state active duty, the employer may require the member to resume the member's probationary period from the date when the member's leave of absence for state active duty began.

(b) An employer may decide whether or not to authorize the member to accrue sick leave, vacation leave, military leave, or other leave benefits during the member's leave of absence for state active duty. However, the member may not be provided with lesser leave accrual benefits than are provided to all other employees of the employer in a similar but nonmilitary leave status.

(c) (i) An employer's health plan must provide that:

(A) a member may elect to not remain covered under the employer's health plan while the member is on state active duty but that when the member returns, the member may resume coverage under the plan without the plan considering the employee to have incurred a break in service; and

(B) a member may elect to remain on the employer's health plan while the member is on state active duty without being required to pay more than the regular employee share of the premium, except as provided in subsection (2)(c)(ii).

(ii) If a member's state active duty qualifies the member for coverage under the state of Montana's health insurance plan as an employee of the department of military affairs, the employer's health plan may require the member to pay up to 102% of the full premium for continued coverage.

(iii) A health insurance plan covering an employee who is a member serving on state active duty is not required to cover any illness or injury caused or aggravated by state active duty.

(iv) If the member is a state employee <u>or school district employee</u> prior to being ordered to state active duty, the member does not become qualified as an employee of the department of military affairs for the purposes of health plan coverage until the member's state active duty qualifies the member to be considered an employee of the department of military affairs pursuant to 2-18-701.

(d) An employer's pension plan must provide that when a member returns to employment from state active duty:

(i) the member's period of state active duty may constitute service with the employer or employers maintaining the plan for the purposes of determining the nonforfeitability of the member's accrued benefits and for the purposes of determining the accrual of benefits under the plan; and

(ii) if the member elects to receive credit and makes the contributions required to accrue the pension benefits that the member would have accrued if the member had not been absent for the state active duty, then the employer shall pay the amount of the employer contribution that would have been made for the member if the member had not been absent.

(e) An employer is not obligated to allow the member to return to employment after the member's absence for state active duty if:

(i) the member is no longer qualified to perform the duties of the position, subject to the provisions of 49-2-303 prohibiting employment discrimination because of a physical or mental disability;

(ii) the member's position was temporary and the temporary employment period has expired;

(iii) the member's request to return to employment was not done in a timely manner;

(iv) the employer's circumstances have changed so significantly that the member's continued employment with the employer cannot reasonably be expected; or

(v) the member's return to employment would cause the employer an undue hardship.

(3) (a) For the purposes of this section and except as provided in subsection (3)(b), "timely manner" means:

(i) for state active duty of up to 30 days, the member returned to employment for the next regular work shift following safe travel time plus 8 hours;

(ii) for state active duty of 30 days to 180 days, the member returned to employment within 14 days of termination of state active duty; and

(iii) for state active duty of more than 180 days, the member returned to employment within 90 days of termination of the state active duty.

(b) If there are extenuating circumstances that preclude the member from returning to employment within the time period provided in subsection (3)(a) through no fault of the member, then for the purposes of this section "timely manner" means within the time period specified by the adjutant general provided for in 2-15-1202."

{*Internal References to 10-1-1007: None.*}

Section 18. Section 20-3-331, MCA, is amended to read:

"20-3-331. Purchase of insurance -- self-insurance plan. (1) The board of trustees of a district may purchase insurance coverage or establish a self-insurance plan for the district, trustees, and employees for liability as provided in 2-9-211. ~~and for~~ The board of trustees of a district shall participate in the state employee and school district employee group ~~health and life insurance~~ benefit plans as provided in ~~2-18-702~~ Title 2, chapter 18, parts 7 and 8. The board of trustees shall include the cost of coverage in the ~~general fund~~ budget of the district ~~and as~~

~~authorized for the district transportation program in 20-10-143(1)(d)~~.

(2) Whenever the board of trustees of a district ~~establish~~ establishes a self-insurance plan for liability as provided in 2-9-211, the board of trustees shall establish an internal service fund to account for the activities of the self-insurance plan."

{*Internal References to 20-3-331: None.*}

Section 19. Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, ~~2-18-703,~~ 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-401, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 40-6-237, 49-3-101, 49-3-102, 52-2-617, 53-20-304, 82-10-201 through 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

{*Internal References to 20-15-403: None.*}

Section 20. Section 39-31-305, MCA, is amended to read:

"39-31-305. Duty to bargain collectively -- good faith. (1) The public employer and the exclusive representative, through appropriate officials or their representatives, ~~shall~~ have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2) ~~of this section~~.

(2) (a) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the public employer or ~~his~~ the public employer's designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising ~~thereunder~~ under an agreement and the execution of a written contract incorporating any agreement reached.

(b) Because school district employees, as defined in 2-18-701, are required to participate in the state employee and school district employee group benefit plans under Title 2, chapter 18, parts 7 and 8, those group insurance benefits are not negotiable for school districts except as provided in 2-18-703. ~~Such~~ The obligation in subsection (2)(a) does not compel either party to agree to a proposal or require the making of a concession.

(3) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith."

{*Internal References to 39-31-305:*
2-18-303 x   2-18-303 x   2-18-303 x   2-18-303x
2-18-622 x   2-18-703 a   2-18-1107x   39-31-304x
39-71-2328x }

NEW SECTION. **Section 21. Transition.** (1) The department of administration shall develop procedures for enrolling school district employees in the state employee and school district employee group benefit plans provided for in Title 2, chapter 18, parts 7 and 8. The procedures must include phasing in of the enrollment of school district employees as existing contracts for insurance benefits expire or are terminated.

(2) A school district may not enter into a new contract or extend an existing contract for health insurance coverage or for third-party

administration related to health insurance coverage for a period beyond July 1, 2007.

(3) A school district with a self-funded health benefit plan or employee group health plan holding rate stabilization or other local health benefit reserve funds is required to use the funds of the health benefit plan to pay claims and other liabilities of the district's health benefit plan. Upon enrollment in the state employee and school district employee group benefits plan, the remaining reserves must be maintained by the district under the provisions of 20-3-331 and must be used to pay for employee benefit costs as determined by a collective bargaining agreement or an employer policy or as required by applicable state or federal law.

NEW SECTION. **Section 22. Unfunded mandate law superseded.** Although the legislature has included funding for insurance benefits in [this act], the provisions of [this act] expressly supersede and modify the requirements of 1-2-113.

NEW SECTION. **Section 23. {standard} Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this section].

NEW SECTION. **Section 24. {standard} Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2007.

(2) [Section 20 and this section] are effective on passage and approval.

- END -

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