

HOUSE BILL NO. 152
INTRODUCED BY R. HAMILTON
BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE QUALITY SCHOOLS FACILITY GRANT PROGRAM; PROVIDING FOR FUNDING OF THE PROGRAM THROUGH THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT; PROVIDING FOR ADMINISTRATION OF THE PROGRAM THROUGH THE DEPARTMENT OF COMMERCE; ESTABLISHING ~~CRITERIA AND PRIORITIES~~ AN EQUITABLE FORMULA FOR THE AWARD OF GRANTS; DEPOSITING CERTAIN TIMBER HARVEST REVENUE, CERTAIN MINERAL ROYALTIES, AND POWER SITE RENTAL PAYMENTS IN THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT; STATUTORILY APPROPRIATING \$1 MILLION A YEAR FOR GRANTS FOR SCHOOL TECHNOLOGY PURPOSES; APPROPRIATING \$12 MILLION TO THE DEPARTMENT OF COMMERCE TO AWARD SCHOOL FACILITY PROJECT GRANTS, MATCHING PLANNING GRANTS, AND EMERGENCY GRANTS TO PUBLIC SCHOOL DISTRICTS FOR SCHOOL FACILITIES DURING THE 2011 BIENNIUM; AMENDING SECTIONS 17-6-340, 20-9-342, 20-9-343, 20-9-516, 20-9-534, 20-9-620, 20-9-622, AND 77-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE ~~DATES~~ DATE AND AN APPLICABILITY DATE."

WHEREAS, in keeping with Montana's constitutional requirements for school funding and the Montana Supreme Court's decision in Columbia Falls Elementary School District No. 6 v. State, 2005 MT 69, 326 Mont. 304, 109 P.3d 257 (2005), the 2005 Legislature directed that a school funding system providing a "basic system of free quality public elementary and secondary schools" must include, among other things, consideration of funding for school facilities; and

WHEREAS, in its December 2005 Special Session, the Legislature appropriated \$2.5 million from the general fund to the Department of Administration for the completion of a condition and needs assessment and energy audit of K-12 public school facilities; and

WHEREAS, in the May 2007 Special Session, the Legislature established a school facility improvement account in the state special revenue fund to provide money to schools to implement the recommendations of the school facility condition and needs assessment and energy audit following its completion and provided for the transfer of money into the account to be used as determined by the 2009 Legislature; and

WHEREAS, the Department of Administration has completed its conditions and needs assessment and energy audit of Montana's K-12 public schools and has made recommendations for improvements related to

safety and energy conservation and to extend the life of school facilities; ~~and,~~

~~WHEREAS, the Department of Commerce efficiently and effectively administers the Treasure State Endowment Program to assist local governments in funding infrastructure projects; and~~

~~WHEREAS, the Legislature seeks to commit ongoing state resources to school facilities by establishing a program to administer the award to public school districts for school facility project grants, matching planning grants, and emergency grants using the Treasure State Endowment Program as a model.~~

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 9 8] may be cited as the "Quality Schools Facility Grant Program Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 9 8] is to establish a mechanism to distribute grants to public school districts for school facility and technology projects from the school facility and technology account established in 20-9-516. The account is to be used to assist schools in addressing major deferred maintenance, energy efficiency, critical infrastructure needs, emergency facility needs, and technological improvements and establishes an ongoing flow of state revenue into the account. Grants must be distributed for projects that:

- (1) enhance the quality of life and protect the health, safety, and welfare of Montana's public school students;
- (2) ensure the successful delivery of an educational system that meets the accreditation standards provided for in 20-7-111;
- (3) extend the life of Montana's existing public school facilities;
- (4) promote energy conservation and reduction;
- (5) integrate technology into Montana's education framework to support student educational needs for the 21st century; and
- (6) are fiscally responsible by considering both long-term and short-term needs of the public school district, the local community, and the state.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 9 8], the following definitions apply:

- (1) "Account" means the school facility and technology account provided for in 20-9-516.
- (2) "Department" means the department of commerce established in 2-15-1801.
- (3) "Emergency" means the imminent threat or actual occurrence of an event causing immediate peril to life, property, or the environment that can be averted or minimized with timely action.
- (4) "Program" means the quality schools facility grant program established in [section 4].
- (5) "Public school district" means a district as defined in 20-6-101 or a K-12 school district as defined in 20-6-701.
- (6) "School" has the meaning provided for in 20-6-501.
- (7) "School facility project" means a project to support a basic system of free quality public elementary and secondary schools under 20-9-309 that involves:
 - (a) construction of a school facility;
 - (b) major repairs or deferred maintenance to an existing school facility;
 - (c) major improvements or enhancements to an existing school facility; or
 - (d) information technology infrastructure, including installations, upgrades, or improvements to an existing school facility or facilities.

NEW SECTION. Section 4. Quality schools facility grant program -- legislature to authorize grants -- types of grants available. (1) There is a quality schools facility grant program funded by the account.

(2) As provided in [section 5], the legislature shall authorize the following types of financial assistance to public school districts under [sections 1 through 9 8]:

- (a) grants to public school districts for school facility projects;
- (b) matching planning grants to public school districts for the planning of school facility projects; and
- (c) emergency grants to public school districts for a school facility project that is necessitated by an emergency.

NEW SECTION. Section 5. Procedure for approval of projects -- role of department and governor -- approval by legislature. (1) The department shall:

- ~~(a) receive proposals for school facility projects from public school districts;~~
- ~~—— (b) assist public school districts in preparing cost estimates for projects;~~
- ~~(c)~~(A) as appropriate, consult with other state agencies, including but not limited to the department of administration and the office of public instruction;

~~(d) with the exception of emergency grants and matching planning grants, prepare and submit to the governor a list of recommendations as to projects and the form and amount of financial assistance for each project, prioritized in accordance with the requirements of [section 6];~~

~~(e)(B)~~ report to each regular session of the legislature the status of all school facility projects for which grants were approved by a previous legislature but have not been completed;

~~(f)(C)~~ award matching planning grants; in accordance with rules adopted by the department, to public school districts for the planning of school facility projects within the limits of legislative appropriations for this purpose. The department shall prioritize the award of matching planning grants in accordance with the requirements of THE FORMULA PROVIDED FOR IN [section 6]. The department shall report to the governor and the legislature regarding each matching planning grant awarded during a biennium.

~~(g)(D)~~ award emergency grants to public school districts in accordance with rules adopted by the department and within the limits of legislative appropriations for this purpose. The department shall report to the governor and the legislature regarding each emergency grant awarded during a biennium.

~~(2) The governor shall review the projects recommended by the department under subsection (1)(d) and submit to the legislature a list of recommendations as to projects and the form and amount of financial assistance for each project.~~

~~(3)(2) (a)~~ The legislature shall ENSURE THAT THE GRANTS APPROPRIATED BY THE LEGISLATURE SATISFY THE CONDITIONS DESCRIBED IN [SECTION 7].;

~~———(i) consider the governor's recommendations, approve grants to public school districts for school facility projects, and appropriate money to the department from the account to fund the grants that have been approved, after the deduction of administrative expenses by the department; and~~

~~———(ii) authorize funding and appropriate money to the department from the account to be awarded to public school districts by the department for matching planning grants and emergency grants, after the deduction of administrative expenses by the department.~~

~~———(b) Grants approved by the legislature are dependent on the availability of funds and will be made available by the department in the order that the grant recipient satisfies the conditions described in [section 7].~~

~~———NEW SECTION. Section 6. Priorities for projects -- application of criteria -- consideration of project attributes -- adjustments for educationally relevant factors.(1) In preparing recommendations to the governor under [section 5], the department shall apply the following criteria to applications for school facility projects in the listed order of priority:~~

~~—— (a) projects that solve urgent and serious public health or safety problems or that enable public school districts to meet state or federal health or safety standards;~~

~~—— (b) projects that provide improvements necessary to bring school facilities up to current local, state, and federal codes and standards;~~

~~—— (c) projects that enhance a public school district's ability to offer specific services related to the requirements of the accreditation standards provided for in 20-7-111;~~

~~—— (d) projects that provide long-term, cost-effective benefits through energy-efficient design;~~

~~—— (e) projects that incorporate long-term, cost-effective benefits to school facilities, including the technology needs of school facilities; and~~

~~—— (f) projects that enhance educational opportunities for students.~~

~~—— (2) In applying the criteria under subsection (1), the department shall consider, without preference or priority, the following attributes of a school facility project application:~~

~~—— (a) the need for financial assistance;~~

~~—— (b) the fiscal capacity of the public school district to meet the conditions established in [section 7];~~

~~—— (c) past efforts to ensure sound, effective, long-term planning and management of the school facility and attempts to address school facility needs with local resources;~~

~~—— (d) the ability to obtain funds from sources other than the funds provided under [sections 1 through 9];~~
and

~~—— (e) the importance of the project and support for the project from the community.~~

~~—— (3) Before making its recommendations to the governor, the department may make adjustments to its ranking of the projects based on the educationally relevant factors established in 20-9-309. Before making any adjustments, the department may consult with the office of public instruction concerning the educationally relevant factors.~~

NEW SECTION. SECTION 6. FORMULA FOR FUNDING SCHOOL FACILITY PROJECTS. EVERY SCHOOL DISTRICT IN THE STATE OF MONTANA MUST RECEIVE FUNDING FROM THE QUALITY SCHOOLS FACILITY GRANT PROGRAM FOR THE 2011 BIENNIUM ONLY. BASED ON THE TOTAL MONEY AVAILABLE TO THE PROGRAM AND ON THE TOTAL NUMBER OF QUALITY EDUCATORS IN PUBLIC SCHOOL DISTRICTS STATEWIDE, A SCHOOL DISTRICT MUST RECEIVE QUALITY SCHOOLS FACILITY GRANT FUNDING PRORATED TO THE NUMBER OF QUALITY EDUCATORS IN THE DISTRICT.

NEW SECTION. Section 7. Conditions for grants. Disbursement of grant funds by the department

for projects approved by the legislature under [section 5] is subject to the following conditions:

- ~~(1) A grant agreement must be executed between the department and the grant recipient.~~
- ~~———— (2) The scope of work and budget for the project must be consistent with the application submitted by the grant recipient, reviewed by the department, and approved by the legislature. The department will consider requests to reduce the scope of a project in accordance with rules adopted by the department.~~
- ~~(3)(1) The grant recipient shall document that any matching funds required for completion of the project or to conduct project planning are firmly committed.~~
- ~~(4)(2) The grant recipient must have an established financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles.~~
- ~~(5)(3) The project must adhere to the design standards required by applicable regulatory agencies. Recipients of program funds for projects that are not subject to any design standards shall comply with generally accepted industry standards.~~
- ~~(6) The grant recipient shall satisfy other specific requirements considered necessary by the department to accomplish the purpose of the project as described in the application to the department.~~

~~———— **NEW SECTION. Section 8. Disbursement of funds -- department discretion when actual expenses are less than projected expenses.** (1) The department shall disburse grant funds on a reimbursement basis as grant recipients incur eligible project expenses.~~

- ~~———— (2) If actual project expenses are lower than the projected project expenses, the department may, at its discretion:~~
- ~~———— (a) direct an outright or partial reduction in the amount of grant funds provided to the grant recipient; or~~
- ~~———— (b) allow the use of the remaining authorized program grant amounts for the completion of additional school facility improvements directly related to the approved school facility project that will further enhance the school facility.~~

~~**NEW SECTION. Section 8. Department to adopt rules.** The department shall adopt rules necessary to implement [sections 1 through 9 8], including but not limited to rules regarding: GUIDELINES FOR USING FUNDS AND FOR REPORTING ON PROJECTS ACCOMPLISHED.~~

- ~~(1) application guidelines and deadlines;~~
- ~~———— (2) the evaluation process and ranking of applications;~~
- ~~———— (3) grant award conditions, including requirements for matching funds;~~

- ~~—— (4) scope and procedures for the award of matching planning grants and emergency grants;~~
- ~~—— (5) amendments to grant awards; and~~
- ~~—— (6) grant administration, including but not limited to requirements for:~~
 - ~~—— (a) the project's startup;~~
 - ~~—— (b) compliance with other federal, state, or local laws, regulations, or requirements;~~
 - ~~—— (c) financial management related to the project;~~
 - ~~—— (d) property acquisition;~~
 - ~~—— (e) project and grant management;~~
 - ~~—— (f) project monitoring; and~~
 - ~~—— (g) project closeout procedures.~~

NEW SECTION. Section 9. Department to award grants for 2011 biennium -- appropriation -- report to legislature. (1) For the 2011 biennium only, ~~after receiving and evaluating proposals,~~ the department ~~may~~ SHALL award to public school districts school facility project grants, matching planning grants, and emergency grants. The total grants awarded by the department under this section may not exceed the legislative appropriation in subsection (2). In awarding grants under this subsection, all definitions and requirements of [sections 1 through 8 7] and rules adopted under [section 9 8] apply except that the department need not submit its recommendations to the governor and legislative approval is not required for the award of specific grants.

(2) There is appropriated to the department of commerce from the school facility and technology account \$12 million, from which the department may deduct its administrative expenses, to be used for the award of grants to public school districts during the 2011 biennium as provided in subsection (1). Of this appropriation, \$900,000 is to be used for matching planning grants to public school districts and \$100,000 is to be used for emergency grants to public school districts. The appropriations designated for matching planning grants and for emergency grants may be used only for those purposes and may not be used for grants to public school districts for school facility projects.

(3) The department shall report to the 2011 legislature on all grants approved by the department under this section during the 2011 biennium.

Section 10. Section 17-6-340, MCA, is amended to read:

"17-6-340. Purchase of permanent fund mineral estate. The department of natural resources and conservation may purchase the mineral production rights held by the public school fund established in Article X,

section 2, of the Montana constitution for fair market value. If the department of natural resources and conservation purchases mineral production rights, any royalty payments received by the board that are not used to reimburse the coal severance tax trust fund for the loan used for purchasing the mineral production rights must be deposited in the guarantee account provided for in 20-9-622 and transferred to the school facility ~~improvement~~ and technology account provided for in 20-9-516."

Section 11. Section 20-9-342, MCA, is amended to read:

"20-9-342. Deposit of interest and income money by state board of land commissioners. ~~The~~ Except as provided in 20-9-516, state board of land commissioners shall annually deposit the interest and income money for each calendar year into the guarantee account, provided for in 20-9-622, for state equalization aid by the last business day of February following the calendar year in which the money was received."

Section 12. Section 20-9-343, MCA, is amended to read:

"20-9-343. Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means revenue as required in this section for:

(a) distribution to the public schools for guaranteed tax base aid, BASE aid, and state reimbursement for school facilities, ~~and grants for school technology purchases;~~ and

(b) negotiated payments authorized under 20-7-420(3) up to \$500,000 a biennium.

(2) The superintendent of public instruction may spend throughout the biennium funds appropriated for the purposes of guaranteed tax base aid, BASE aid for the BASE funding program, state reimbursement for school facilities, and negotiated payments authorized under 20-7-420(3), ~~and school technology purchases.~~

(3) ~~From July 1, 2001, through June 30, 2003, the following money must be paid into the guarantee account provided for in 20-9-622 for the public schools of the state as indicated:~~

~~—— (a) interest and income money described in 20-9-341 and 20-9-342; and~~

~~—— (b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342.~~

~~—— (4) Beginning July 1, 2003, the~~ The following money must be paid into the guarantee account provided for in 20-9-622 for the public schools of the state as indicated:

(a) (i) ~~subject to subsection (4)(a)(ii)~~ 20-9-516(2)(a), interest and income money described in 20-9-341 and 20-9-342; and

(ii) ~~an amount of money equal to the income money attributable to the difference between the average~~

~~sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year, which is statutorily appropriated, pursuant to 20-9-534, to be used for the purposes of 20-9-533;~~

(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342."

Section 13. Section 20-9-516, MCA, is amended to read:

"20-9-516. School facility ~~improvement~~ and technology account. (1) There is a school facility ~~improvement and technology~~ account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools ~~to implement the recommendations of the school facility condition and needs assessment and energy audit conducted pursuant to section 1, Chapter 1, Special Laws of December 2005;~~ for:

- ~~(1)(a)~~ (a) major deferred maintenance;
- ~~(2)(b)~~ (b) improving energy efficiency in school facilities; ~~or~~
- ~~(3)(c)~~ (c) critical infrastructure in school districts;
- (d) emergency facility needs; and
- (e) technological improvements.

(2) There must be deposited in the account:

(a) an amount of money equal to the income attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year;

(b) the mineral royalties transferred from the guarantee account as provided in 20-9-622; and

(c) the rental income received from power site leases as provided in 77-4-208; AND

(D) INTEREST AND INCOME EARNED ON MONEY IN THE ACCOUNT."

Section 14. Section 20-9-534, MCA, is amended to read:

"20-9-534. School technology purchases Statutory appropriation for school technology purposes.

(1) The amount of \$1 million a year is statutorily appropriated, as provided in 17-7-502, from the school facility and technology account established in 20-9-516 for grants for school technology purposes.

(2) By September 1, the superintendent of public instruction shall allocate the annual ~~amount~~ statutory appropriation for ~~grants for school technology purchases purposes~~ to each district based on the ratio that each

district's BASE budget bears to the statewide BASE budget amount for all school districts multiplied by the amount of money provided in 20-9-343 for the purposes of 20-9-533 in the prior fiscal year. ~~The grants for school technology purchases are statutorily appropriated, as provided in 17-7-502."~~

Section 15. Section 20-9-620, MCA, is amended to read:

"20-9-620. Definition. (1) As used in 20-9-621, 20-9-622, and this section, "distributable revenue" means, except for that portion of revenue described in ~~20-9-343(4)(a)(ii)~~ 20-9-516(2)(a) and available on or after July 1, 2003, 77-1-607, and 77-1-613, 95% of all revenue from the management of school trust lands and the permanent fund, including timber sale proceeds, lease fees, interest, dividends, and net realized capital gains.

(2) The term does not include mineral royalties or land sale proceeds that are deposited directly in the permanent fund or net unrealized capital gains that remain in the permanent fund until realized."

Section 16. Section 20-9-622, MCA, is amended to read:

"20-9-622. Guarantee account. (1) There is a guarantee account in the state special revenue fund. The guarantee account is intended to:

- (a) stabilize the long-term growth of the permanent fund; and
- (b) maintain a constant and increasing distributable revenue stream. All realized capital gains and all distributable revenue must be deposited in the guarantee account. Except as provided in ~~subsections~~ subsection (2) ~~and (3)~~, the guarantee account is statutorily appropriated, as provided in 17-7-502, for distribution to school districts through school equalization aid as provided in 20-9-343.

(2) As long as a portion of the coal severance tax loan authorized in section 8, Chapter 418, Laws of 2001, is outstanding, the department of natural resources and conservation shall monthly transfer from the guarantee account to the general fund an amount that represents the amount of interest income that would be earned from the investment of the amount of the loan that is currently outstanding. When the loan is fully paid, all mineral royalties deposited in the guarantee account must be transferred to the school facility ~~improvement and technology~~ account pursuant to 17-6-340.

~~(3) The revenue distributed through 20-9-534 must be used for the purposes of 20-9-533."~~

Section 17. Section 77-4-208, MCA, is amended to read:

"77-4-208. Rental for power sites -- deposit of rental money in proper accounts. (1) The rental payment to the state for power sites must be paid annually or semiannually, and ~~such the rental shall~~ may not

be less than the full market value of the estate or interest disposed of through the granting of the lease or license, such ~~The~~ value ~~to~~ must be carefully ascertained from all available sources.

(2) Ninety-five percent of all rental payments received under this section must be deposited in the school facility and technology account provided for in 20-9-516. The remaining 5% of the rental payments received must be deposited annually in the public school permanent fund provided for in 20-9-621."

NEW SECTION. Section 18. Codification instruction. [Sections 1 through 9 ~~8~~] are intended to be codified as an integral part of Title 90, chapter 6, and the provisions of Title 90, chapter 6, apply to [sections 1 through 9 ~~8~~].

NEW SECTION. Section 19. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 20. Effective dates: DATE. ~~(1) Except as provided in subsection (2), [this act] is effective July 1, 2009.~~

~~—— (2) [Sections 11 through 17 and this section] are [THIS ACT] IS effective on passage and approval.~~

NEW SECTION. Section 21. Applicability. [Section ~~18~~ 17] applies to rental payments due and owing after December 31, 2010.

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