

Examples of Flexibility Newly Allowed From Legislative Changes in the 2011 and 2013 Legislative Sessions

By Lance Melton, Executive Director, MTSBA

Starting in the 2011 Legislative Session under SB 329 and continuing with Senate Bills 175, 191 and 348 in the 2013 Legislative Session, Montana's public schools have been provided with additional flexibility in the transfer and other adapted use of funds. We have successfully worked to take down (or at least allow you the flexibility of taking down) many of the "silos" that have hamstrung our members in maximizing their efficiency and flexibility in the use of school district resources across all budgeted and nonbudgeted funds.

We have achieved these gains largely through a collaboration with legislators who believe in balancing local control and decision-making with protection of local property taxpayers. A common theme within the changes in the 2011 and 2013 Legislative Sessions is that trustees ought to have greater flexibility in the use of school district resources, provided that there are adequate safeguards for taxpayers. This concept was first embraced in the law in SB 329 through language in the following two sections of Title 20:

- **20-9-208(4) and 20-3-363(4) *(Identical language in both sections of law):**
"The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy *for the purpose of* restoring the amount of funds transferred."

This concept of balancing the interests of flexibility and efficiency with protection of the taxpayer has been echoed in legislation passed in the 2013 Session.

Below are a few of the key changes in the law of which you should be aware.

2011 Legislative Session:

Before addressing the more comprehensive changes in the law from the 2013 Legislative Session, it is important to quickly recap the key changes in SB 329 from the 2011 Legislative Session that got the ball rolling when it comes to increased flexibility and optimization of resources.

Under SB 329, school districts received enhanced authority to form multidistrict agreements over the previous law that MTSBA drafted and passed in the 2005 Legislative Session. Under the old law, school districts could form a multidistrict agreement, but only if they were part of the same unified school system or operating under joint board status. With the passage of SB 329, school districts have been able to form a multidistrict agreement between *multiple* districts and have received substantial increased flexibility in the use of resources across multiple budgeted

funds when doing so. The key changes in law passed in SB 329 from the 2011 Session were:

- a. School districts now have authority for the first time to ask the voters to allow a transfer of any funds for any purpose and if the voters approve the transfer, the district can thereafter complete the transfer and spend the funds on any purpose approved on the ballot. (Section 20-9-208(2)(a)(i)(B).
- b. School districts that form a multidistrict agreement between two or more districts have the ability to contract for the joint operations and maintenance of their districts. In doing so, the participating districts can:
 - i. Transfer up to 44.7% of their respective general funds into the coordinating district's interlocal agreement fund.
 1. ***Note that this allows districts the flexibility to avoid fund balance reappropriated in its entirety and to carry over general fund balances that would otherwise be limited by the 10% cap on reserves***). Many school districts took advantage of this provision, resulting in a drop in Fund Balance Reappropriated from \$19 million in FY11 to \$7.2 million in FY12 to \$4.3 million in FY13. Fund balance reappropriated statewide, however, remains several million dollars per year that could be otherwise be captured and used by school districts under this provision, rather than allow the state to recycle such funds and discount their statewide cost of guaranteed tax base aid.
 - ii. Transfer resources from any other budgeted fund and use them for ***any purpose*** authorized by the multidistrict agreement. In other words, the silos that otherwise restrict use of such funds are down when it comes to multi-district agreements. See the following copy of an email from Deputy Superintendent Dennis Parman from February 12, 2012, concurring with our interpretation of SB 329 in this regard:

From: "Parman, Dennis" <DParman@mt.gov>

Subject: RE: SB 329 Amendments

Date: February 5, 2012 7:03:42 PM MST

To: Lance Melton <lmelton@mtsba.org>

Lance,

We agree with the following: "a district could take excess balance from its transportation or bus depreciation fund (just by way of example) and, as long as they don't backfill the levy the next year, could transfer amounts from those funds to the interlocal cooperative fund as part of a multidistrict agreement and could thereafter use those funds for purposes other than transportation and bus depreciation (again by way of example only) without first obtaining voter approval for the new use of such funds"

Dennis J. Parman

Deputy Superintendent

This revolution in the way of thinking will take some getting used to, and we all need to think more creatively in how these laws could be applied. Some districts are significantly ahead of the curve in using this law to its full extent while others are reluctant to take the flexibility that has been given them.

Example to contemplate/Food for thought: There are districts in Montana who, using the law change referenced above, transferred and thereby protected their retirement reserves from recapture under HB 377. They transferred such funds to their Flexibility Fund and are committed to using such funds to pay for the costs of retirement of their staff (though they are not required to do so when the transfer is made as part of a multidistrict agreement). As a result, the state will not be using any of those districts' reserves between the old 35% and the new 20% limit.

Are you one of the lucky few that thought of this?

2013 Legislative Session:

c. SB 175 Changes Increasing Flexibility and Access to Funding:

- i. **Section 7** of the bill gives substantially expanded increased budget authority to school districts over the MAX, by allowing an increase to the extent of any increase in the basic or the ANB entitlement from year to year. With 156 of 410 school districts operating above the MAX and frozen in their budget limits, this is a substantial enhancement.
- ii. **Section 7** allows a school district to total its property taxes from all funds and, as long as it stays at or below that total, it can increase its over BASE general fund levy without a vote.
 1. Once you raise your over BASE levy without a vote, you lose the ongoing authority to keep that over BASE levy up to the extent of any increase in overall property taxes in the district from year to year, regardless of the reason why such taxes must go up.
 2. Example: A district that substantially increased its transportation fund taxes to grow its reserve in FY13 could reduce the amount increased in FY14 and use that savings to increase its FY14 over BASE levy without a vote.
- iii. Section 8 has a variety of new flexibilities for oil and gas districts, including reduced amounts required to be budgeted for tax relief in the general fund, and full exemptions from budgeting oil and gas revenues in the general fund for districts with max general fund budgets of \$1 million or less, low spending districts and districts with unusual enrollment increases.
- iv. Section 10 allows a district to calculate ANB on either seat time (the traditional method) or proficiency, customized for each individual student's needs and capabilities.

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

- v. Limits state funding consequences for a district for being nonaccredited – funding can now be pulled only for a district that has failed to comply with both the assurance (or input) standards and the new performance standards. If you are out of compliance with input standards but your students are performing at the levels required for performance under the accreditation standards, your funding cannot be pulled.
- vi. Section 11 provides for a more generous threshold for unusual enrollment increases, at 4% or 40 students, ***but only if you apply by June 30. So, make sure to apply if you think there is a chance you will see an increase above the thresholds.***

d. SB 191 Changes Increasing Flexibility and Access to Funding:

- i. Allows a district to use the nonvoted tuition fund to pay for any actual costs of providing FAPE to IDEA students that are above the current federal, state and local funding streams.
- ii. You have to know what actual costs are before you can levy the difference, so you will have to wait to levy until one year after the expenditures. OPI guidance, however, suggests that you can use an interfund loan to pay for the actual costs in the year of expense and then pay the loan back from your levy in the subsequent year.

e. SB 348 Changes Increasing Flexibility and Access to Funding:

- i. Allows a district to transfer state or local revenue from any fund other than debt service or retirement to its building reserve fund (create one if you don't already have one) and use the funds for enhancements to school safety and security.
- ii. Examples of how you could spend the money (from section 9 of SB 348) include:
 - a. *planning for improvements to school safety, **including but not limited to** the cost of services provided by architects, engineers, and other consultants;*
 - b. *installing or updating locking mechanisms and ingress and egress systems at public school access points, including but not limited to systems for exterior egress doors and interior passageways and rooms, using contemporary technologies;*
 - c. *installing or updating bullet-resistant windows and barriers;*

and

d. installing or updating emergency response systems using contemporary technologies.

- ii. Transfers are valid for FY 13, 14 and 15 fiscal years. If you don't encumber or spend the money by June 30, 2015, it must be transferred back to the originating fund.
- iii. School safety and security is not defined in law and SB 348 provides for the discretion of the trustees in making judgments regarding qualifying expenditures.