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**HOUSE BILL 1338**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Representatives Harris, Walen, and Eslick

AN ACT Relating to preserving public school resources during the COVID-19 emergency; adding a new section to chapter 28A.320 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. **Sec.**  (1) The legislature finds that Article IX, section 1 of the state Constitution provides that "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex."

(2) On February 29, 2020, the governor issued proclamation 20-05 declaring a state of emergency for the state of Washington due to illness and death resulting from the COVID-19 pandemic.

(3) In March 2020, the governor ordered an emergency closure of all Washington public schools due to the COVID-19 pandemic. Schools remained closed for the remainder of the 2019-20 school year.

(4) Washington public schools stepped up to provide extraordinary services during the COVID-19 related shutdown, including setting up day care centers to allow first responders and health care workers to continue going to work saving lives, and distributing essential meals not only to students but directly to families in need.

(5) Federal, state, and local regulations and public health guidelines have been continuously updated due to the uncertainty, developing knowledge, and the everchanging nature of the COVID-19 pandemic.

(6) The COVID-19 pandemic has placed extraordinary burdens on students, families, educators, and schools. There is no fully equitable manner to deliver all of the educational and other essential services schools provide without some in-person services. Yet, as shown by the COVID-19 infection rate in even the most highly controlled adult-only environments, there is no way to make a school or any in-person environment completely safe during a pandemic. As schools restart and expand in-person services during this health emergency, they are once again asked to do the extraordinary — increase equity in education while also adding expansive new safety protections so that any in-person services can be delivered more safely. Both goals require additional financial resources, at a time when state resources have been substantially depleted due to the impact of the COVID-19 pandemic.

(7) Public schools operating during the COVID-19 pandemic must focus their time and limited resources on fulfilling their paramount duty to educate the children of Washington. Doing so requires thoughtful planning on how to use scarce financial resources to further equitable access and delivery of essential educational services while also increasing training and implementing costly safety precautions. Limited public funds allocated to schools during the COVID-19 pandemic should not be diverted to costly new litigation and liability exposure arising from the COVID-19 pandemic.

NEW SECTION. **Sec.**  A new section is added to chapter 28A.320 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "COVID-19" means a respiratory disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(b) "COVID-19 pandemic" means the state of emergency relating to the outbreak and spread of COVID-19 declared in the governor's proclamation 20-05 on February 29, 2020, and any renewals thereof.

(c) "Reopening plan" means the school reopening plan developed by a school during the COVID-19 pandemic and approved by its governing body. A reopening plan must be based on the Washington schools 2020 reopening plan template developed by the office of the superintendent of public instruction in consultation with the state board of education.

(d) "School" means a school district, an educational service district, a charter school established under chapter 28A.710 RCW, a state-tribal compact school established under chapter 28A.715 RCW, the center for deaf and hard of hearing youth, or the Washington school for the blind. The term includes a school's officers, employees, and members of the governing body acting in their official capacity.

(2) Except as provided in subsection (4) of this section, there is no liability on the part of a school for claims of damage, loss, injury, or death relating to COVID-19 infection if the school:

(a) Adopts a reopening plan;

(b) Files the reopening plan with the office of the superintendent of public instruction and the state board of education; and

(c) Makes reasonable efforts to implement the reopening plan.

(3) Except as provided in subsection (4) of this section, a person or a person's representative may not bring suit or recover from a school for damage, loss, injury, or death relating to COVID-19 infection if the school:

(a) Adopts a reopening plan;

(b) Files the reopening plan with the office of the superintendent of public instruction and the state board of education; and

(c) Makes reasonable efforts to implement the reopening plan.

(4) This section does not protect a school from suit or liability for damage, loss, injury, or death relating to COVID-19 infection caused by the willful and wanton misconduct of the school.

(5) This section applies to claims of damage, loss, injury, or death alleged to have been sustained or suffered during the COVID-19 pandemic or during the 12 months following the end of the COVID-19 pandemic.

(6) This section does not apply to employee claims for injuries sustained in the course and scope of employment pursuant to Title 51 RCW.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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