

HOUSE BILL REPORT

HB 2261

As Reported by House Committee On:
Education Appropriations
Ways & Means

Title: An act relating to education.

Brief Description: Concerning the state's education system.

Sponsors: Representatives Sullivan, Priest, Hunter, Anderson, Maxwell, White, Quall, Lias, Dammeier, Rodne, Wallace, Pedersen, Kelley, Goodman, Springer, Hope, Nelson, Miloscia, Carlyle, Hunt, Morris, Morrell, Probst, Pettigrew, Eddy, Simpson, Kenney, Moeller, Smith, Condotta, McCoy, Kagi, Chase, Rolfes, Clibborn, Ormsby, Haler and Cox.

Brief History:

Committee Activity:

Education Appropriations: 2/25/09, 3/2/09 [DPS];

Ways & Means: 3/6/09, 3/9/09 [DPS(APPE)].

Brief Summary of Substitute Bill

- Adopts definitions and financing formulas for a Program of Basic Education and an Instructional Program that the Legislature deems complies with Article IX of the State Constitution.
- Sets forth financing formulas based on a prototypical school model and using inputs such as class size; types of school staff; central office administration; supplemental instruction for students who are underachieving, non-English proficient, and in special education; and allocations for maintenance, supplies, and operating costs.
- Provides for the revised definitions and financing formulas to begin in the 2011-12 school year, with the intent to be phased-in over a six-year period.
- Creates five technical working groups to continue development of policies and implementation details regarding a revised Program of Basic Education and the funding formulas to support it; a system of compensation that supports effective teaching; a Program of Early Learning; a local funding system for levies and levy equalization; and systems of education data.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Creates a Basic Education Steering Committee to oversee the working groups and monitor overall implementation.

HOUSE COMMITTEE ON EDUCATION APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Haigh, Chair; Sullivan, Vice Chair; Priest, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Anderson, Haler, Hunter, Kagi, Quall, Rolfes and Wallace.

Minority Report: Do not pass. Signed by 1 member: Representative Cox.

Staff: Ben Rarick (786-7349) and Barbara McLain (786-7383)

Background:

Introduction.

Basic Education. Article IX, Sections 1 and 2 of the State Constitution declare that: (1) it is the paramount duty of the state to make ample provision for the education of the state's children; and (2) the Legislature is required to provide for a general and uniform system of public schools.

In response to a Superior Court ruling which held that the state had not expressly defined, determined the substantive content of, or funded a Program of Basic Education (School Funding I), the Legislature adopted the Basic Education Act (BEA) of 1977. Subsequent court decisions (School Funding II in 1983 and *Tunstall v Bergeson* in 2000) have held that other educational programs are also part of the state's constitutional obligations. Through this combination of statutory law and judicial decisions, these programs have come to be collectively referred to as "Basic Education," signifying a constitutional obligation by the state under Article IX to provide the programs.

The courts have also established various principles that are associated with the Basic Education designation. For example, under the School Funding II Superior Court ruling, once the Legislature has defined and fully funded the Program of Basic Education, it may not reduce that level of funding, even in periods of fiscal crisis. However, the definitions and funding formulas are subject to review, evaluation, and revision by the Legislature to meet the current needs of the children in the state.

Joint Task Force on Basic Education Finance. In 2007 the Legislature established the Joint Task Force on Basic Education Finance (Task Force). The Task Force was charged with reviewing the definition of Basic Education, developing options for a new funding structure and funding formulas, and proposing a new definition of Basic Education realigned with the expectations for the state's public education system. The Task Force's final report was issued on January 14, 2009.

Program of Basic Education.

Definition. The 1977 BEA defines the Program of Basic Education as:

- the goal of the school system, which includes providing students the opportunity to develop essential knowledge and skills in various subjects;
- the Instructional Program to be made available by school districts; and
- the determination and distribution of state funding to support the Instructional Program.

Instructional Program. School districts must make the Instructional Program accessible to all students aged 5 to 21; offer a district-wide average of 1,000 instructional hours in grades 1 through 12 and 450 hours for kindergarten; provide a minimum school year of 180 days; and provide instruction in the Essential Academic Learning Requirements. In addition, each school district must maintain a ratio of at least 46 Basic Education certificated instructional staff (CIS) for each 1,000 full-time equivalent (FTE) students. The CIS includes teachers, counselors, nurses, librarians, and other school staff required to have state certificates.

Funding Allocation for Instructional Program. The distribution formulas for the Instructional Program are based primarily on staffing ratios that drive an allocation for each 1,000 FTE students. There are minimum staffing ratios for CIS, administrative staff, and classified staff, with the numeric ratios set forth in statute. The formulas must also recognize non-salary costs. The formulas are "for allocation purposes only," leaving it to school districts to determine how best to use the resources. The remaining detail of the funding and distribution formulas, including any enhancements beyond the statutory minimums, are found in the appropriations act and associated documents.

Categorical Programs. State funding for the Learning Assistance Program (LAP) and the Transitional Bilingual Instruction Program (TBIP) must be expended on the students to be served in the program. Statute directs that funding for the LAP to be based on the income level of students; otherwise, the funding formulas for these programs are contained in the appropriations act.

Special Education for students with disabilities is funded on an "excess cost" basis. The formula, which appears in the appropriations act, is a percentage (1.15 percent for children aged birth to five that are not in kindergarten and .9309 for students in grades kindergarten through 12) of the Instructional Program allocation. The allocation is based on a maximum of 12.7 percent of total FTE student enrollment in grades kindergarten through 12. The appropriations act also establishes a Special Education Safety Net where funds are made available for safety net awards for school districts with demonstrated needs for special education funding beyond the amounts provided through the excess cost allocation.

Other Topics.

Early Learning. State and federally-supported preschool programs are overseen by the Department of Early Learning (DEL). The Legislature provides funding to support the Early Childhood Education and Assistance Program, which is similar to the federally-funded Headstart program. The programs are delivered under contract with the DEL, and providers

include school districts, Educational Service Districts, community colleges, and non-profit community organizations.

Certification and Compensation. The Professional Educator Standards Board (PESB) establishes state certification requirements for teachers and other educators. State allocations for salaries for CIS are provided through a salary schedule adopted by the Legislature in the appropriations act. The current schedule is based on years of experience and academic degrees and credits attained by the individual. Actual salaries are determined through collective bargaining, subject to certain minimum and maximum requirements.

Local Funding. The School Funding I decision found that local voter-approved property tax levies can only be used to fund enrichment programs and programs outside the Program of Basic Education. The Levy Lid Act (enacted along with the BEA) limits the amount of revenue that can be raised through maintenance and operations levies. The Local Effort Assistance program (LEA) or levy equalization was created to mitigate the effect that above-average property tax rates might have on the ability of a school district to raise local revenues through voter-approved levies. The LEA is also expressly not part of Basic Education.

Education Data. Since 2002, the Office of Superintendent of Public Instruction (OSPI) has been developing a data system that assigns each student a unique student identification number and collects demographic and other information. In 2007 the Legislature directed the OSPI to establish standards for school data systems and a reporting format for school districts. A new student data system will be implemented statewide in 2008-09 with increased capacity to collect data and connect information from other data bases.

Accountability. The State Board of Education (SBE) has responsibility for implementing a statewide accountability system that includes identification of successful schools and districts, those in need of assistance, and those in which state intervention measures are needed. For the past two years, the SBE has been working on accountability, and on January 15, 2009, they adopted a resolution to develop an accountability index, work to build the capacity of districts to help their schools improve, establish a process for placing schools and districts on Academic Watch, and continue to refine the details of the accountability system.

Summary of Substitute Bill:

Introduction.

Intent. The Legislature's intent is to fulfill its obligation under Article IX of the State Constitution to define and fund a Program of Basic Education and to establish a general and uniform system of public schools. For practical and educational reasons, wholesale change cannot occur instantaneously. The Legislature intends to adopt a schedule for the concurrent implementation of the redefined Program of Basic Education and the resources necessary to support it, beginning in the 2011-12 school year and phased in over a six-year period. It is also the Legislature's intent not to revise or delay this implementation other than for educational reasons. However, the Legislature may make revisions to the formulas and schedules for technical purposes and consistency.

Steering Committee. A Basic Education Steering Committee (Steering Committee) is created to monitor and oversee implementation of the new definition of Basic Education. Members include eight legislators and representatives of the Governor's Office, the State Board of Education (SBE), the Superintendent of Public Instruction (SPI), the Professional Educator Standards Board (PESB), and the Department of Early Learning (DEL).

The Steering Committee monitors the progress and work of five technical working groups. The Steering Committee receives progress reports from the groups by November 15, 2009, and makes a report to the Legislature by January 1, 2010, including recommendations for resolving issues or decisions requiring legislative action during the 2010 legislative session. The Steering Committee's first report also includes a recommended schedule for concurrent phase-in of any changes in the Basic Education Program and funding formulas so that increases in funding occur concurrently with any increases in program and instructional requirements.

The Steering Committee then submits annual reports in November of each year until 2016, and expires June 30, 2017.

Program of Basic Education.

Definition. Effective September 1, 2011, the Program of Basic Education that complies with Article IX of the State Constitution is:

- the Instructional Program of Basic Education provided by public schools;
- the program for students in residential schools and juvenile detention facilities;
- the program for individuals under age 18 who are in adult correctional facilities; and
- transportation and transportation services to and from school for eligible students.

Instructional Program. Also effective September 1, 2011, the Instructional Program of Basic Education to be provided by public schools includes the Learning Assistance Program, the Transitional Bilingual Instructional Program (TBIP), and Special Education for students with disabilities. Minimum staffing ratios for CIS are repealed.

Funding Allocation for Instructional Program. Beginning September 1, 2011, a new distribution formula is created for the allocation of state funds to school districts to support the Instructional Program of Basic Education. The formula is for allocation purposes only. Nothing requires a particular teacher-to-student ratio or requires use of allocated funds to pay for particular types or classifications of staff.

The formula is based on minimum staffing and non-staff costs to support prototypical schools. Prototypes illustrate the level of resources needed to operate a school of a particular size with particular types and grade levels of students using commonly understood terms and inputs. Allocations to school districts will be adjusted from the prototypes based on actual full-time equivalent (FTE) student enrollment in each grade in each school in the district, adjusted for small schools and to reflect other factors in the appropriations act.

The school prototypes are defined as:

- High school: 600 FTE students in grades 9 through 12;

- Middle school: 432 FTE students in grades 7 and 8; and
- Elementary school: 400 FTE students in grades kindergarten through 6.

For each school prototype, the core allocation consists of four parts:

1. *Class Size*: an allocation based on the number of FTE teachers calculated using the following factors: the minimum instructional hours required for the grade span, one teacher planning period per day, and average class sizes of various types as specified in the appropriations act;
2. *Other Building Staff*: an allocation for principals, teacher-librarians, student health services, guidance counselors, professional development coaches, office support, custodians, and student/staff safety;
3. *Maintenance, Supplies, and Operating Costs (MSOC)*: a per-FTE student allocation for student technology, utilities, curriculum, instructional professional development, other building costs, and central office administration. The allocation would be enhanced for student enrollment in certain career and technical education and science courses; and
4. *Central Office Administrative Staff*: a staffing allocation calculated as a percentage of the allocations for teachers and other building staff for all schools in the district, with the percentage specified in the appropriations act.

Allocations for middle and high schools that are based on the number of low-income students will be adjusted to reflect underreporting of eligibility for Free and Reduced Price Lunch (FRL) among these students.

Categorical Programs. Within the distribution formula for the Instructional Program of Basic Education are enhancements in addition to the core allocation for the following categorical programs:

1. *Learning Assistance Program*: an enhancement based on the percent of FRL students in each school to provide an extended school day and school year, plus an allocation for MSOC;
2. *Transitional Bilingual Instruction Program*: an enhancement for students eligible for and enrolled in the TBIP based on the percent of the school day a student is assumed to receive supplemental instruction, plus an allocation for MSOC; and
3. *Special Education*: an enhancement made on an excess cost basis that is a specified percentage (1.15 percent for students aged birth to five who are not in kindergarten and .9309 for students in grades kindergarten through 12) of the core allocation for classroom teachers, other building staff, and MSOC, plus the allocation for the LAP and the TBIP. The excess cost allocation is based on district-wide enrollment not to exceed 12.7 percent of total FTE enrollment in grades kindergarten through 12.

The Special Education Safety Net is placed into statute. Clarifications and corrections are made to other statutes to align with the new distribution formulas. Beginning September 1,

2011, salary allocations based on the statewide salary allocation schedule are calculated using the staffing allocations under the new formula.

The Legislature intends to redefine the Instructional Program of Basic Education. The supporting funding formulas must be implemented beginning in 2011-12 and are intended to be phased in over a six-year period according to an implementation schedule adopted by the Legislature. The Office of Financial Management (OFM) and the OSPI convene a technical working group with a broad array of stakeholder representatives to recommend a revised program, the details of the funding formulas, and a concurrent implementation schedule.

Other Topics.

Early Learning. The Legislature finds that disadvantaged children do not have an opportunity to attain the goals of a Basic Education in the regular instructional program without supplemental preschool instruction. The Legislature intends to establish a Program of Early Learning for at-risk children, which shall become a part of the Program of Basic Education. The DEL and the OSPI convene a technical working group with a broad array of stakeholder representatives to develop the Basic Education Program of Early Learning, including program parameters and standards, student eligibility, and a governance model and delivery system.

Certification and Compensation. The Legislature intends to establish a comprehensive system of teacher certification, evaluation, and mentoring that is directly aligned with a revised system of compensation and focused on the achievement of effective teaching. The OFM and the OSPI convene a technical working group with a broad array of stakeholder representatives to recommend a compensation system that supports effective teaching and the recruitment and retention of high quality staff, including any changes to teacher certification and professional development.

Local Funding. The Legislature finds that the value of permitting local levies to support public schools must be balanced with the value of equity and fairness to students and taxpayers. Local finance through levies and the LEA are key components of the overall system of financing public schools even though they are outside the definition of Basic Education. The OFM and the OSPI convene a technical working group with a broad array of stakeholder representatives to develop options for a new system of supplemental school funding through local levies and the LEA.

Education Data. The Legislature intends to establish comprehensive data accountability systems for financial, student, and educator data. Minimum elements and capacity of the systems are described. The OSPI convenes a technical working group with a broad array of stakeholder representatives to propose a design for the systems, including creating a comprehensive needs requirement document detailing information and capacity needs and focusing on financial data needed for new finance models, changes to school district budgeting and accounting, capacity to link across systems, and data governance. The working group can be divided into two subgroups to focus on teacher and student data as compared to finance and budgeting data.

Accountability. The Legislature finds that comprehensive finance reform must be accompanied by an equally comprehensive and transparent system of school and district accountability. The SBE must submit a proposal for a comprehensive school and district accountability system to the Legislature by December 1, 2009, including recommended legislation and resources needed for implementation.

Substitute Bill Compared to Original Bill:

All provisions are added in the substitute bill. The original bill contained a statement of the Legislature's intent to continue to review, evaluate, and revise the definition and funding of Basic Education; to monitor the progress of developing formulas, processes, and systems; and to begin a schedule of implementation in the 2011-12 school year.

Appropriation: None.

Fiscal Note: Requested on February 27, 2009.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 101 through 108, 203, and 501 through 507, dealing with the implementation of the new Program of Basic Education and funding formulas, which take effect September 1, 2011.

Staff Summary of Public Testimony:

(In support of the substitute bill) This bill is a recognition that we have a lot more work to do. There are some areas of common agreement; chief among them is a funding system based on prototypical schools. But, as evidenced by the intent sections, there are many areas where much more work is needed. This bill in no way reflects a level of satisfaction with the bill as it stands now; instead, it reflects a commitment to continue working, discussing, and trying to craft a piece of legislation that we can all be proud of. There is enthusiastic support for this bill, realizing that this is a work in progress. With a serious and deepening financial crisis facing our schools, now more than ever there is a need to have hope for a better future for children in our public schools. This starts with a new definition of Basic Education. There is continued support for a K-12 funding system based on prototypical schools and the redefinition of a program of Basic Education.

This has a long way to go, but the willingness of the participants to continue working and discussing is appreciated. Despite the fiscal crisis in the state and in school districts, there is support for a plan to be adopted this year. We need a roadmap for the future. There should be an ongoing oversight group that is nonpartisan and includes individuals from outside the political or education system to assure that the definition of Basic Education remains up to date.

This is a vehicle that is desperately needed. It is currently a shell, but everyone is willing to work on the details. There should be additional components in the bill to address issues raised in the achievement gap studies, such as cultural competency for teachers and

accountability for closing the gap. Higher education and the colleges of education can make contributions to the compensation and data working groups. Parents are hungry for reform. There is much agreement about the prototypical schools and data. The new formulas are exciting, and there is hope that the end product will be more robust in these areas. There needs to be a strong tie between compensation, certification, and professional development.

There are high levels of emotion around all aspects of this bill. Until the entire system changes, low income children and children of color will continue to be left behind. We must ensure that we have the tools to have the best system of public education. It is appreciated that the importance of teacher-librarians and library materials continues to be called out.

(With concerns on the substitute bill) The state faces difficult times, which makes consideration of such a comprehensive proposal difficult when the reality is that school districts face budget cuts. There is also support for consideration of revenue sources, which are not addressed in the substitute bill. The current proposal does not quite get there with a new definition of Basic Education. Early Learning must be included as one of the state's best investments in public education. There must be a clearer link to graduation requirements. A system of funding Basic Education must be put into place. The basic pieces are like a Rubik's Cube; they all must go together and be on the table together. This is the only way to assure a general and uniform system of schools.

For years, the Professional Educator Standards Board has developed recommendations for strengthening the continuum of educator preparation, certification, and professional development. Other proposals have been more consistent with that vision; it is disheartening to see none of those elements in this bill. More meat needs to be put on the bones. School districts are broke and the funding system is broken. The Basic Education definition should more clearly include the definition of a meaningful high school diploma. The current accountability system is not transparent. Some schools are academically bankrupt, but the state does not have the mechanisms to deal with them. There has already been much more work on a system of accountability than is seen here; more specific direction should be given to the State Board of Education (SBE).

Words matter; there are trigger words that cause conflict and demoralization. Accountability needs to build from the legislative decision-makers first. After that, accountability should be imposed on the Office of Superintendent of Public Instruction, then school districts, and only then on educators and students. Too often excellent efforts and programs have been cut off due to elimination of funding.

What is needed is a meaningful bill that leads to a comprehensive package of reforms. Each of the issues raised in the underlying bill must be addressed. Compromise is a necessary part of that process. The overall goal must be the improvement of student learning; this must be at the forefront of all considerations. If we are going to embark on a redefinition of Basic Education, the goal should very clearly be stated as assuring that all students are ready for college, work, and citizenship. There should be a robust data system that builds rather than replicates prior work and an explicitly-stated system of accountability that provides more direction for the SBE.

(Opposed) None.

Persons Testifying: (In support of the substitute bill) Representative Sullivan, prime sponsor; Lisa Macfarlane, League of Education Voters; Doug Nelson, Public School Employees of Washington; Mitch Denning, Alliance of Education Associations; Lew McMurren, Washington Technology Industry Association; Bob Cooper; Washington Association of Colleges for Teacher Education; Vicki Austin and Cheryl Jones, Black Education Strategy Roundtable; and Carolyn Logue, Washington Library Media Association.

(With concerns on the substitute bill) Bill Freund, Washington Education Association; Barbara Mertens, Washington Association of School Administrators; Dan Steele, Washington State School Directors' Association; Jennifer Priddy, Office of Superintendent of Public Instruction; Jennifer Wallace, Professional Educator Standards Board; Edie Harding, State Board of Education; Christie Perkins, Washington State Special Education Coalition; Kim Howard, Washington State Parent Teacher Association; Brian Jeffries, Washington Roundtable; and Jim Kainber, Stand for Children.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: The substitute bill by Committee on Education Appropriations be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Linville, Chair; Ericks, Vice Chair; Dammeier, Assistant Ranking Minority Member; Cody, Darneille, Haigh, Hunt, Hunter, Kagi, Kenney, Pettigrew, Priest, Seaquist and Sullivan.

Minority Report: Do not pass. Signed by 7 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Chandler, Conway, Kessler, Ross and Schmick.

Staff: Ben Rarick (786-7349)

Summary of Recommendation of Committee On Ways & Means Compared to Recommendation of Committee On Education Appropriations:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 101 through 108, 203, and 501 through 507, dealing with the implementation of the new Program of Basic Education and funding formulas, which take effect September 1, 2011.

Staff Summary of Public Testimony:

(In support) There has already been significant time and effort put into this process, and there is significant time and effort that must continue during the session. There is a commitment to

continue working on this bill to reach the goal of a final product. If we do not pass a bill this session, we will be failing our students. School districts are facing a crisis. Class sizes will be larger; there will be fewer courses and a general degradation of the system. We need a plan for a way out and a way back. A plan is necessary to create hope for teachers, staff, parents, and students. Parents need to see hope for more hours of effective instruction and more opportunities to address struggling students.

Early learning is the single best investment in K-12 education that we can make. If 2009 is the year to modernize the definition of Basic Education, Early Learning should be included in the modernization. This represents a natural next step of many years of work in education. High quality Early Learning targeted to at-risk children is cost-effective. It is appreciated that nonemployee costs are recognized and specified in terms of how the funding will be driven out. It is appreciated that teacher-librarians are included in the prototypical school model.

What parents are looking for is a pathway that will evolve our education system to better meet 21st century needs. The education system should not be static. This proposal and the work that has preceded it is not just about updating the funding formulas, but updating the overall system. It is critical to keep the momentum going. Technology industries are customers of the education system; they appreciate the progress that is being made to create the next generation of job creators and innovators. It is recognized that this is a work in progress.

(With concerns) There is support for a new definition of the program of Basic Education, a funding model based on prototypical schools, and an oversight committee to work out the details of the plan. In other legislation, there were proposals for sources of revenue. It is appropriate to keep working on the issue. We need a roadmap for the future to be adopted this year. The new definition of Basic Education must be adaptable. There should be an ongoing commission to assure that the definition of Basic Education remains viable. The new definition must be phased in concurrently as new funds are provided. This is an improvement over previous proposals that imposed new requirements without funding.

Schools face significant financial difficulties. There will be thousands of people laid off. Some school districts are already on financial watch; there will be more over the next biennium. In the context of this bill, this means it is critical to move forward and enact a program this session. The concerns with previous proposals had more to do with the level of specificity in the phase-in than the content of the formulas and the program of Basic Education being proposed. Transportation funding needs to be folded in to this bill or enacted through another bill.

The fear is that there will be an expanded definition of Basic Education, but that funding will not follow. If the state decides to embark on this important effort, any redefinition of a Basic Education must include an explicit goal to prepare all high school graduates for college and work. The definition must be clearly linked to a transparent system of assistance and intervention tied directly to that goal. A robust data system is imperative to any action the Legislature would take to allocate new funding. School districts do not currently report financial data at the school level, making it impossible for the Legislature to determine the effectiveness of major investments. That level of detail is critical.

(Opposed) None.

Persons Testifying: (In support) Representative Sullivan, prime sponsor; Mitch Denning, Alliance of Education Associations; Jerry Bender, Association of Washington School Principals; Jon Gould, Children's Alliance and Early Learning Action Alliance; Nancy Moffatt, Washington Association of School Business Officials; Lew McMurrin, Washington Technology Industry Association; George Scarola, League of Education Voters; Roz Thompson, Tumwater High School and Washington Library Media Association; Kim Howard, Washington State Parent Teacher Association; and Bob Cooper, Washington Association of Colleges for Teacher Education.

(With concerns) Brian Jeffries, Washington Roundtable; Bill Freund, Washington Education Association; Dan Steele, Washington State School Directors' Association; and Ken Kanikeberg, Office of the Superintendent of Public Instruction.

Persons Signed In To Testify But Not Testifying: None.