
SECOND SUBSTITUTE HOUSE BILL 1134

State of Washington

63rd Legislature

2013 Regular Session

By House Appropriations (originally sponsored by Representatives McCoy, Santos, Appleton, Lytton, Ryu, Stanford, Roberts, Jinkins, Haigh, Freeman, and Hunt)

READ FIRST TIME 03/01/13.

1 AN ACT Relating to state-tribal education compact schools; amending
2 RCW 49.60.400 and 84.52.0531; adding a new section to chapter 28A.642
3 RCW; adding a new section to chapter 43.215 RCW; adding a new chapter
4 to Title 28A RCW; and providing expiration dates.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

7 (a) American Indian and Alaska Native students make up 2.5 percent
8 of the total student population in the state and twenty-five percent or
9 more of the student population in fifty-seven schools across the state.

10 (b) American Indian students in Washington have the highest annual
11 drop-out rate at 9.5 percent, compared to 4.6 percent of all students
12 in each of grades nine through twelve. Of the students expected to
13 graduate in 2010 because they entered the ninth grade in 2006, the
14 American Indian on-time graduation rate was only fifty-eight percent,
15 compared to 76.5 percent of all students.

16 (c) The teaching of American Indian language, culture, and history
17 are important to American Indian people and critical to the educational
18 attainment and achievement of American Indian children.

1 (d) The state-tribal education compacts authorized under this
2 chapter reaffirm the state's important commitment to government-to-
3 government relationships with the tribes that has been recognized by
4 proclamation, and in the centennial accord and the millenium agreement.
5 These state-tribal education compacts build upon the efforts
6 highlighted by the office of the superintendent of public instruction
7 in its 2012 Centennial Accord Agency Highlights, including: The Since
8 Time Immemorial (STI): Tribal Sovereignty in Washington State
9 Curriculum Project that imbeds the history surrounding sovereignty and
10 intergovernmental responsibilities into this state's classrooms; the
11 agency's regular meetings with the superintendents of the seven current
12 tribal schools, as well as the federal bureau of Indian education
13 representatives at the regional and national level on issues relating
14 to student academic achievement, accessing of funding for tribal
15 schools, and connecting tribal schools to the K-20 network; and the
16 recent establishment, in statute, of the office of native education
17 within the office of the superintendent of public instruction.

18 (e) School funding should honor tribal sovereignty and reflect the
19 government-to-government relationship between the state and the tribes,
20 however the current structure that requires negotiation of an
21 interlocal agreement between a school district and a tribal school
22 ignores tribal sovereignty and results in a siphoning of funds for
23 administration that could be better used for teaching and learning.

24 (2) The legislature further finds that:

25 (a) The need for high-quality, culturally competent early learning
26 opportunities continues to grow;

27 (b) There is a preparation gap among entering kindergartners with
28 many children, especially those from low-income homes, arriving at
29 kindergarten without the knowledge, skills, and good health necessary
30 to succeed in school;

31 (c) Upon entry into the K-12 school system, the educational
32 opportunity gap becomes more evident, with children of color and from
33 low-income homes having lower scores on math, reading, and writing
34 standardized tests, as well as lower graduation rates and higher rates
35 of dropping out of school; and

36 (d) Comprehensive, culturally competent early learning and greater
37 collaboration between the early learning and K-12 school systems will

1 ensure appropriate connections and smoother transitions for children,
2 and help eliminate or bridge gaps that might otherwise develop.

3 (3) In light of these findings, it is the intent and purpose of the
4 legislature to:

5 (a) Authorize the superintendent of public instruction to enter
6 into state-tribal education compacts; and

7 (b) Foster the development of a voluntary, high-quality, and
8 culturally competent early learning pilot program to work in
9 conjunction with, and offer a seamless transition to, schools
10 established pursuant to state-tribal education compacts.

11 NEW SECTION. **Sec. 2.** (1) The superintendent of public instruction
12 is authorized to enter into state-tribal education compacts.

13 (2) No later than six months after the effective date of this
14 section, the superintendent of public instruction shall establish an
15 application and approval process, procedures, and timelines for the
16 negotiation, approval or disapproval, and execution of state-tribal
17 education compacts.

18 (3) The process may be initiated by submission, to the
19 superintendent of public instruction, of a resolution by:

20 (a) The governing body of a tribe in the state of Washington; or

21 (b) The governing body of any of the schools in Washington that are
22 currently funded by the federal bureau of Indian affairs, whether
23 directly or through a contract or compact with an Indian tribe or a
24 tribal consortium.

25 (4) The resolution must be accompanied by an application that
26 indicates the grade or grades from kindergarten through twelve that
27 will be offered and that demonstrates that the school will be operated
28 in compliance with all applicable laws, the rules adopted thereunder,
29 and the terms and conditions set forth in the application.

30 (5) Within ninety days of receipt of a resolution and application
31 under this section, the superintendent must convene a government-to-
32 government meeting for the purpose of considering the resolution and
33 application and initiating negotiations.

34 (6) State-tribal education compacts must include provisions
35 regarding:

36 (a) Compliance;

37 (b) Notices of violation;

- 1 (c) Dispute resolution, which may include nonjudicial processes
- 2 such as mediation;
- 3 (d) Recordkeeping and auditing;
- 4 (e) The delineation of the respective roles and responsibilities;
- 5 (f) The term or length of the contract, and whether or not it is
- 6 renewable; and
- 7 (g) Provisions for compact termination.
- 8 (7) The superintendent of public instruction shall adopt such rules
- 9 as are necessary to implement this chapter.

10 NEW SECTION. **Sec. 3.** (1) A school that is the subject of a state-
11 tribal education compact must operate according to the terms of its
12 compact executed in accordance with section 2 of this act.

13 (2) Schools that are the subjects of state-tribal education
14 compacts are exempt from all state statutes and rules applicable to
15 school districts and school district boards of directors, except those
16 statutes and rules made applicable under this chapter and in the state-
17 tribal education compact executed under section 2 of this act.

18 (3) Each school that is the subject of a state-tribal education
19 compact must:

20 (a) Provide a curriculum and conduct an educational program that
21 satisfies the requirements of RCW 28A.150.200 through 28A.150.240 and
22 28A.230.010 through 28A.230.195;

23 (b) Employ certificated instructional staff as required in RCW
24 28A.410.010, however such schools may hire noncertificated
25 instructional staff of unusual competence and in exceptional cases as
26 specified in RCW 28A.150.203(7);

27 (c) Comply with the employee record check requirements in RCW
28 28A.400.303 and the mandatory termination and notification provisions
29 of RCW 28A.400.320, 28A.400.330, 28A.405.470, and 28A.405.475;

30 (d) Comply with nondiscrimination laws;

31 (e) Adhere to generally accepted accounting principles and be
32 subject to financial examinations and audits as determined by the state
33 auditor, including annual audits for legal and fiscal compliance; and

34 (f) Be subject to and comply with legislation enacted after the
35 effective date of this section governing the operation and management
36 of schools that are the subject of a state-tribal education compact.

1 (4) No such school may engage in any sectarian practices in its
2 educational program, admissions or employment policies, or operations.

3 (5) Nothing in this chapter may limit or restrict any enrollment or
4 school choice options otherwise available under Title 28A RCW.

5 NEW SECTION. **Sec. 4.** (1) A school that is the subject of a state-
6 tribal education compact may not charge tuition except to the same
7 extent as school districts may be permitted to do so with respect to
8 out-of-state and adult students pursuant to chapter 28A.225 RCW, but
9 may charge fees for participation in optional extracurricular events
10 and activities.

11 (2) Such schools may not limit admission on any basis other than
12 age group, grade level, or capacity and must otherwise enroll all
13 students who apply.

14 (3) If capacity is insufficient to enroll all students who apply,
15 a school that is the subject of a state-tribal education compact may
16 prioritize the enrollment of tribal members and siblings of already
17 enrolled students.

18 NEW SECTION. **Sec. 5.** (1) A school that is the subject of a state-
19 tribal education compact must report student enrollment. Reporting
20 must be done in the same manner and use the same definitions of
21 enrolled students and annual average full-time equivalent enrollment as
22 is required of school districts. The reporting requirements in this
23 subsection are required for a school to receive state or federal
24 funding that is allocated based on student characteristics.

25 (2) Funding for a school that is the subject of a state-tribal
26 education compact shall be allocated by the superintendent of public
27 instruction according to the schedule established under RCW
28 28A.510.250, including general apportionment, special education,
29 categorical, and other nonbasic education moneys. Allocations must be
30 based on the statewide average staff mix ratio of all public schools
31 from the prior school year and the school's actual full-time equivalent
32 enrollment. A school that is the subject of a state-tribal education
33 compact is not eligible for enhanced small school assistance funding.
34 Such a school is eligible to apply for state grants on the same basis
35 as a school district.

1 (3) In the school's first year of operation under a compact
2 executed under section 2 of this act, amounts payable must be based on
3 the projections of first-year student enrollment established in the
4 compact. The office of the superintendent of public instruction must
5 reconcile the amounts paid in the first year of operation to the
6 amounts that would have been paid based on actual student enrollment
7 and make adjustments to the school's allocations over the course of the
8 second year of operation.

9 (4) Any moneys received by a school that is the subject of a state-
10 tribal education compact from any source that remain in the school's
11 accounts at the end of any budget year must remain in the school's
12 accounts for use by the school during subsequent budget years.

13 (5) Schools that are the subject of state-tribal education compacts
14 are encouraged to conduct early learning pilot programs developed under
15 section 9 of this act in conjunction with their school programs for
16 kindergarten and beyond.

17 NEW SECTION. **Sec. 6.** A new section is added to chapter 28A.642
18 RCW to read as follows:

19 Nothing in this chapter prohibits schools established under chapter
20 28A.--- RCW (the new chapter created in section 10 of this act) from:

- 21 (1) Implementing a policy of Indian preference in employment; or
22 (2) Prioritizing the admission of tribal members where capacity of
23 the school's programs or facilities is not as large as demand.

24 **Sec. 7.** RCW 49.60.400 and 1999 c 3 s 1 are each amended to read as
25 follows:

26 (1) The state shall not discriminate against, or grant preferential
27 treatment to, any individual or group on the basis of race, sex, color,
28 ethnicity, or national origin in the operation of public employment,
29 public education, or public contracting.

30 (2) This section applies only to action taken after December 3,
31 1998.

32 (3) This section does not affect any law or governmental action
33 that does not discriminate against, or grant preferential treatment to,
34 any individual or group on the basis of race, sex, color, ethnicity, or
35 national origin.

1 (4) This section does not affect any otherwise lawful
2 classification that:

3 (a) Is based on sex and is necessary for sexual privacy or medical
4 or psychological treatment; or

5 (b) Is necessary for undercover law enforcement or for film, video,
6 audio, or theatrical casting; or

7 (c) Provides for separate athletic teams for each sex.

8 (5) This section does not invalidate any court order or consent
9 decree that is in force as of December 3, 1998.

10 (6) This section does not prohibit action that must be taken to
11 establish or maintain eligibility for any federal program, if
12 ineligibility would result in a loss of federal funds to the state.

13 (7) Nothing in this section prohibits schools established under
14 chapter 28A.--- RCW (the new chapter created in section 10 of this act)
15 from:

16 (a) Implementing a policy of Indian preference in employment; or

17 (b) Prioritizing the admission of tribal members where capacity of
18 the school's programs or facilities is not as large as demand.

19 (8) For the purposes of this section, "state" includes, but is not
20 necessarily limited to, the state itself, any city, county, public
21 college or university, community college, school district, special
22 district, or other political subdivision or governmental
23 instrumentality of or within the state.

24 ((+8)) (9) The remedies available for violations of this section
25 shall be the same, regardless of the injured party's race, sex, color,
26 ethnicity, or national origin, as are otherwise available for
27 violations of Washington antidiscrimination law.

28 ((+9)) (10) This section shall be self-executing. If any part or
29 parts of this section are found to be in conflict with federal law, the
30 United States Constitution, or the Washington state Constitution, the
31 section shall be implemented to the maximum extent that federal law,
32 the United States Constitution, and the Washington state Constitution
33 permit. Any provision held invalid shall be severable from the
34 remaining portions of this section.

35 **Sec. 8.** RCW 84.52.0531 and 2012 1st sp.s. c 10 s 8 are each
36 amended to read as follows:

1 The maximum dollar amount which may be levied by or for any school
2 district for maintenance and operation support under the provisions of
3 RCW 84.52.053 shall be determined as follows:

4 (1) For excess levies for collection in calendar year 1997, the
5 maximum dollar amount shall be calculated pursuant to the laws and
6 rules in effect in November 1996.

7 (2) For excess levies for collection in calendar year 1998 and
8 thereafter, the maximum dollar amount shall be the sum of (a) plus or
9 minus (b), (c), and (d) of this subsection minus (e) of this
10 subsection:

11 (a) The district's levy base as defined in subsections (3) and (4)
12 of this section multiplied by the district's maximum levy percentage as
13 defined in subsection (~~((6))~~) (7) of this section;

14 (b) For districts in a high/nonhigh relationship, the high school
15 district's maximum levy amount shall be reduced and the nonhigh school
16 district's maximum levy amount shall be increased by an amount equal to
17 the estimated amount of the nonhigh payment due to the high school
18 district under RCW 28A.545.030(3) and 28A.545.050 for the school year
19 commencing the year of the levy;

20 (c) Except for nonhigh districts under (d) of this subsection, for
21 districts in an interdistrict cooperative agreement, the nonresident
22 school district's maximum levy amount shall be reduced and the resident
23 school district's maximum levy amount shall be increased by an amount
24 equal to the per pupil basic education allocation included in the
25 nonresident district's levy base under subsection (3) of this section
26 multiplied by:

27 (i) The number of full-time equivalent students served from the
28 resident district in the prior school year; multiplied by:

29 (ii) The serving district's maximum levy percentage determined
30 under subsection (~~((6))~~) (7) of this section; increased by:

31 (iii) The percent increase per full-time equivalent student as
32 stated in the state basic education appropriation section of the
33 biennial budget between the prior school year and the current school
34 year divided by fifty-five percent;

35 (d) The levy bases of nonhigh districts participating in an
36 innovation academy cooperative established under RCW 28A.340.080 shall
37 be adjusted by the office of the superintendent of public instruction

1 to reflect each district's proportional share of student enrollment in
2 the cooperative;

3 (e) The district's maximum levy amount shall be reduced by the
4 maximum amount of state matching funds for which the district is
5 eligible under RCW 28A.500.010.

6 (3) For excess levies for collection in calendar year 2005 and
7 thereafter, a district's levy base shall be the sum of allocations in
8 (a) through (c) of this subsection received by the district for the
9 prior school year and the amounts determined under subsection (4) of
10 this section, including allocations for compensation increases, plus
11 the sum of such allocations multiplied by the percent increase per full
12 time equivalent student as stated in the state basic education
13 appropriation section of the biennial budget between the prior school
14 year and the current school year and divided by fifty-five percent. A
15 district's levy base shall not include local school district property
16 tax levies or other local revenues, or state and federal allocations
17 not identified in (a) through (c) of this subsection.

18 (a) The district's basic education allocation as determined
19 pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

20 (b) State and federal categorical allocations for the following
21 programs:

22 (i) Pupil transportation;

23 (ii) Special education;

24 (iii) Education of highly capable students;

25 (iv) Compensatory education, including but not limited to learning
26 assistance, migrant education, Indian education, refugee programs, and
27 bilingual education;

28 (v) Food services; and

29 (vi) Statewide block grant programs; and

30 (c) Any other federal allocations for elementary and secondary
31 school programs, including direct grants, other than federal impact aid
32 funds and allocations in lieu of taxes.

33 (4) For levy collections in calendar years 2005 through 2017, in
34 addition to the allocations included under subsection (3)(a) through
35 (c) of this section, a district's levy base shall also include the
36 following:

37 (a)(i) For levy collections in calendar year 2010, the difference
38 between the allocation the district would have received in the current

1 school year had RCW 84.52.068 not been amended by chapter 19, Laws of
2 2003 1st sp. sess. and the allocation the district received in the
3 current school year pursuant to RCW 28A.505.220;

4 (ii) For levy collections in calendar years 2011 through 2017, the
5 allocation rate the district would have received in the prior school
6 year using the Initiative 728 rate multiplied by the full-time
7 equivalent student enrollment used to calculate the Initiative 728
8 allocation for the prior school year; and

9 (b) The difference between the allocations the district would have
10 received the prior school year using the Initiative 732 base and the
11 allocations the district actually received the prior school year
12 pursuant to RCW 28A.400.205.

13 (5) For levy collections in calendar years 2011 through 2017, in
14 addition to the allocations included under subsections (3)(a) through
15 (c) and (4)(a) and (b) of this section, a district's levy base shall
16 also include the difference between an allocation of fifty-three and
17 two-tenths certificated instructional staff units per thousand full-
18 time equivalent students in grades kindergarten through four enrolled
19 in the prior school year and the allocation of certificated
20 instructional staff units per thousand full-time equivalent students in
21 grades kindergarten through four that the district actually received in
22 the prior school year, except that the levy base for a school district
23 whose allocation in the 2009-10 school year was less than fifty-three
24 and two-tenths certificated instructional staff units per thousand
25 full-time equivalent students in grades kindergarten through four shall
26 include the difference between the allocation the district actually
27 received in the 2009-10 school year and the allocation the district
28 actually received in the prior school year.

29 (6) For levy collections beginning in calendar year 2014 and
30 thereafter, in addition to the allocations included under subsections
31 (3)(a) through (c), (4)(a) and (b), and (5) of this section, a
32 district's levy base shall also include the funds allocated by the
33 superintendent of public instruction under section 5 of this act to a
34 school located in the district that is the subject of a state-tribal
35 education compact.

36 (7)(a) A district's maximum levy percentage shall be twenty-four
37 percent in 2010 and twenty-eight percent in 2011 through 2017 and
38 twenty-four percent every year thereafter;

1 (b) For qualifying districts, in addition to the percentage in (a)
2 of this subsection the grandfathered percentage determined as follows:

3 (i) For 1997, the difference between the district's 1993 maximum
4 levy percentage and twenty percent; and

5 (ii) For 2011 through 2017, the percentage calculated as follows:

6 (A) Multiply the grandfathered percentage for the prior year times
7 the district's levy base determined under subsection (3) of this
8 section;

9 (B) Reduce the result of (b)(ii)(A) of this subsection by any levy
10 reduction funds as defined in subsection (~~(7)~~) (8) of this section
11 that are to be allocated to the district for the current school year;

12 (C) Divide the result of (b)(ii)(B) of this subsection by the
13 district's levy base; and

14 (D) Take the greater of zero or the percentage calculated in
15 (b)(ii)(C) of this subsection.

16 (~~(7)~~) (8) "Levy reduction funds" shall mean increases in state
17 funds from the prior school year for programs included under
18 subsections (3) and (4) of this section: (a) That are not attributable
19 to enrollment changes, compensation increases, or inflationary
20 adjustments; and (b) that are or were specifically identified as levy
21 reduction funds in the appropriations act. If levy reduction funds are
22 dependent on formula factors which would not be finalized until after
23 the start of the current school year, the superintendent of public
24 instruction shall estimate the total amount of levy reduction funds by
25 using prior school year data in place of current school year data.
26 Levy reduction funds shall not include moneys received by school
27 districts from cities or counties.

28 (~~(8)~~) (9) The definitions in this subsection apply throughout
29 this section unless the context clearly requires otherwise.

30 (a) "Prior school year" means the most recent school year completed
31 prior to the year in which the levies are to be collected.

32 (b) "Current school year" means the year immediately following the
33 prior school year.

34 (c) "Initiative 728 rate" means the allocation rate at which the
35 student achievement program would have been funded under chapter 3,
36 Laws of 2001, if all annual adjustments to the initial 2001 allocation
37 rate had been made in previous years and in each subsequent year as
38 provided for under chapter 3, Laws of 2001.

1 (d) "Initiative 732 base" means the prior year's state allocation
2 for annual salary cost-of-living increases for district employees in
3 the state-funded salary base as it would have been calculated under
4 chapter 4, Laws of 2001, if each annual cost-of-living increase
5 allocation had been provided in previous years and in each subsequent
6 year.

7 ~~((9))~~ (10) Funds collected from transportation vehicle fund tax
8 levies shall not be subject to the levy limitations in this section.

9 ~~((10))~~ (11) The superintendent of public instruction shall
10 develop rules and inform school districts of the pertinent data
11 necessary to carry out the provisions of this section.

12 ~~((11))~~ (12) For calendar year 2009, the office of the
13 superintendent of public instruction shall recalculate school district
14 levy authority to reflect levy rates certified by school districts for
15 calendar year 2009.

16 NEW SECTION. Sec. 9. A new section is added to chapter 43.215 RCW
17 to read as follows:

18 (1) The department of early learning shall convene a working group
19 to develop and pilot programs of early learning from birth to
20 kindergarten that work in conjunction with, and offer a seamless
21 transition to, K-12 education programs for kindergarten and beyond in
22 schools that are the subjects of state-tribal education compacts. The
23 director of the department of early learning or a designee shall serve
24 as the chair of the working group.

25 (2) The working group shall include:

26 (a) Three representatives from tribes; and

27 (b) Three representatives selected and appointed by the director of
28 the department of early learning.

29 (3) The early learning working group shall develop recommended
30 parameters and minimum standards for the early learning pilot programs.

31 (4) The early learning working group shall also examine service
32 delivery models and make recommendations with respect to funding
33 options for enabling schools that are the subjects of state-tribal
34 education compacts to provide, or contract for the provision of, these
35 early learning services to children from birth to kindergarten.

36 (5) Recommendations under subsections (3) and (4) of this section

1 are due no later than six months after the effective date of this
2 section.

3 (6) The department of early learning, in consultation with the
4 superintendent of public instruction and any participants in a pilot
5 program under section 5(5) of this act, shall submit a preliminary
6 report to the education and early learning committees of the
7 legislature regarding the implementation and progress of the early
8 learning pilot program by December 1, 2017, with a final report due by
9 December 1, 2022. The final report must include:

10 (a) An evaluative component that analyzes and compares measurements
11 on tools, tests, and markers such as the Washington kindergarten
12 inventory of developing skills, third grade reading, and high school
13 graduation to determine whether the early learning pilot programs
14 affiliated with schools that are the subject of state-tribal education
15 compacts are effectively closing the educational opportunity gap; and

16 (b) Recommendations with respect to whether the pilot program
17 should be made permanent or expanded.

18 (7) This section expires August 1, 2023.

19 NEW SECTION. **Sec. 10.** Sections 1 through 5 of this act constitute
20 a new chapter in Title 28A RCW.

21 NEW SECTION. **Sec. 11.** Section 8 of this act expires January 1,
22 2018.

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