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**SUBSTITUTE HOUSE BILL 2239**

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**State of Washington                      64th Legislature      2015 2nd Special Session**

**By** House Appropriations (originally sponsored by Representatives Hunter, Lytton, Sullivan, and Carlyle)

READ FIRST TIME 06/24/15.

1            AN ACT Relating to implementation of a plan for fulfilling  
2 Article IX obligations; adding a new chapter to Title 28A RCW;  
3 providing an expiration date; and declaring an emergency.

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

5            NEW SECTION.    **Sec. 1.**    INTENT. (1) In its January 2012 ruling in  
6 *McCleary v. State*, the state supreme court declared that Engrossed  
7 Substitute House Bill No. 2261 (2009) (chapter 548, Laws of 2009),  
8 "if fully funded," constituted a "promising reform" that would remedy  
9 deficiencies in the state's compliance with its paramount duty to  
10 make ample provision for the education of its children. In Engrossed  
11 Substitute House Bill No. 2261, the legislature revised its previous  
12 formulas to establish the prototypical school model, and it directed  
13 the quality education council and its technical working groups to  
14 recommend the details of necessary formula enhancements to the  
15 prototypical school model. The following year, the legislature  
16 enacted Substitute House Bill No. 2776 (2010), which provided in  
17 statute quantification of the formula enhancements and established  
18 statutory deadlines for funding and implementation of these  
19 deadlines. Specifically, Substitute House Bill No. 2776 called for  
20 (a) full funding of the expected cost transportation formula by the  
21 2013-2015 biennium, which the legislature implemented in the budget

1 for the 2013-2015 biennium, fully funding the model in the 2014-15  
2 school year; (b) full funding of the enhanced formula for materials,  
3 supplies, and operating costs by the 2015-16 school year, which both  
4 houses of the legislature have funded in the respective 2015-2017  
5 proposed budgets that have passed each chamber; (c) full funding for  
6 all-day kindergarten by the 2017-18 school year, which both houses of  
7 the legislature have funded in the respective 2015-2017 budgets that  
8 have passed each chamber, one year ahead of the statutory deadline;  
9 and (d) full funding for K-3 class size reduction by the 2017-18  
10 school year, which both houses of the legislature have funded in a  
11 phase-in schedule in the respective 2015-2017 proposed budgets that  
12 have passed each chamber, with full implementation planned for the  
13 2017-18 school year.

14 (2) In its September 2014 order in *McCleary*, the court indicated  
15 that it expects the legislature to provide the court with a plan  
16 against which to measure the state's progress toward full  
17 implementation. As described in subsection (1) of this section, in  
18 Substitute House Bill No. 2776 the legislature enacted a  
19 comprehensive plan for funding the enhancements to the prototypical  
20 school formula, and the legislature has not failed to meet a  
21 statutorily prescribed deadline. These enhancements to the funding  
22 formula address transportation and materials, supplies, and operating  
23 costs, two of the areas identified by the court in which state  
24 funding allocations were insufficient to support the state's program  
25 of basic education, thereby causing school districts to rely on local  
26 levies for implementation of the state's basic education program.

27 (3) The 2012 *McCleary* ruling also identified a constitutional  
28 flaw in the funding formula that predated Engrossed Substitute House  
29 Bill No. 2261 and Substitute House Bill No. 2776: State allocations  
30 for teacher salaries were insufficient to provide districts with  
31 adequate funding to hire and retain teachers for the state's program  
32 of basic education. The court explained that district expenditures  
33 for salaries exceed state allocations for salaries, including an  
34 average difference of eight thousand dollars for certificated  
35 instructional staff and forty thousand dollars for administrators.  
36 The court acknowledged that some of this difference was likely due to  
37 legitimate TRI contracts. Further, it is likely that some of these  
38 salary expenditures are attributable to school districts' decisions  
39 made at a local level to hire additional staff to supplement the  
40 state's program of basic education. Even so, the legislature accepts

1 the court's conclusion that at least some of these salary  
2 expenditures are properly the state's responsibility as part of its  
3 duty to allocate sufficient funding to hire and retain qualified  
4 staff for the state's program of basic education. The court's  
5 conclusion represents a structural flaw in the way in which the state  
6 allocates funding for K-12 education. To correct inadequacies of the  
7 state salary allocation formulas, the legislature intends to review  
8 and quantify the scope of the need for additional state allocations  
9 so that the state may implement its new salary funding formula in the  
10 2018-19 school year. As a starting point for this task, the  
11 legislature finds that the review process should begin with the  
12 assumption that a minimum of ninety percent of total statewide school  
13 district actual salary expenditures for state-funded employees  
14 represents the minimum salary cost of the state's program of basic  
15 education.

16 (4) The legislature finds there is reason for concern that the  
17 state's existing tax base will be insufficient to support the  
18 additional state allocations required by the new salary formula. For  
19 this reason, the legislature intends to review and quantify the need  
20 for new or additional state revenue sources, including but not  
21 limited to the state property tax, the state sales tax, the state  
22 business and occupation tax, a capital gains tax, or a carbon  
23 pollution tax.

24 (5) The legislature further finds that increased state salary  
25 allocations, while a necessary part of the solution, are not a  
26 complete solution. The legislature intends to correct the inadequate  
27 state salary allocations identified by the court, but it cannot do so  
28 without simultaneously addressing the use of and accountability for  
29 local levies for enrichments to the state-funded program of basic  
30 education. The intricacies of these entwined topics mean that a  
31 piecemeal or interim solution is not feasible as a matter of law,  
32 educational policy, or fiscal policy. Further, due to the complexity  
33 of any plan that requires changes to property taxes, a solution  
34 requires sufficient lead time to align potential local levy or other  
35 property tax revisions with school year allocations in the state  
36 budget, including possible transition periods.

37 (6) Finally, the legislature finds that enactment of  
38 comprehensive reforms to the interrelated issues of state K-12 salary  
39 allocations and local levies requires quantitative and policy  
40 analysis and deliberations in a public, transparent process.

1 (7) For these reasons, the legislature intends to enact a  
2 schedule for researching and enacting policies for fully funding all  
3 elements of Engrossed Substitute House Bill No. 2261 on September 1,  
4 2018. As set forth in this chapter, the legislature intends to review  
5 and enact legislation on:

6 (a)(i) State salary allocations. The state must quantify the  
7 portion of salaries for state-funded employees that is part of the  
8 state's program of basic education, and it must enact a new state  
9 salary model for allocating salary funding for state-funded employees  
10 to school districts. The new model must include localization, and it  
11 may also include simplification or elimination of the state salary  
12 grid for certificated instructional staff.

13 (ii) State allocations for health insurance benefits.

14 (iii) State revenues as needed to support state salary and health  
15 insurance benefits allocations.

16 (b) Enrichment and TRI. The state must enact definitions of  
17 "enrichment" and authorized TRI that provide school districts with  
18 sufficient flexibility to implement local education priorities  
19 outside the state's program of basic education while protecting the  
20 state's ability to demonstrate that its allocations fund the state's  
21 program of basic education.

22 (c) Local levies. Having established state policies on TRI and  
23 enrichment, the state must enact new laws governing local levy  
24 collections, including levy bases, rates, or lids. These new policies  
25 may require associated revisions to the state property tax, including  
26 growth limits on the state property tax, but this will require  
27 additional legislative deliberation after the legislature sets new  
28 local levy policies.

29 (d) State levy equalization. Under the current program of local  
30 effort assistance under chapter 28A.500 RCW, the majority of school  
31 districts are eligible for state levy equalization payments, and  
32 state expenditures for levy equalization are growing more rapidly  
33 than revenues from local levies. Though many districts rely on this  
34 funding, there are policy questions about whether this type of  
35 assistance should be addressed through state funding formulas or  
36 state laws governing local levies.

37 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
38 section apply throughout this chapter unless the context clearly  
39 requires otherwise. These definitions apply only for purposes of

1 establishing the duties of the council and the legislature under this  
2 chapter. As provided elsewhere in this chapter, the legislature  
3 recognizes that some of the terms defined in this section are  
4 expressly intended to be redefined by the legislature in future  
5 legislation.

6 (1) "Consumer price index" means the previous calendar year's  
7 annual average consumer price index, using the official current base,  
8 compiled by the bureau of labor statistics, United States department  
9 of labor for the state of Washington. If the bureau of labor  
10 statistics develops more than one consumer price index for areas  
11 within the state, then "consumer price index" means the index  
12 covering the greatest number of people, covering areas exclusively  
13 within the boundaries of the state.

14 (2) "Council" means the Washington education funding council  
15 established in section 3 of this act.

16 (3) "Enrichment" means additional services, instruction,  
17 supplies, or similar expenditures that supplement and are not within  
18 the state's program of basic education, and that may be funded by  
19 local levies consistent with *Seattle School District v. State* (1978)  
20 and *McCleary v. State* (2012).

21 (4) "Levy equalization" means a state-funded program of aid that  
22 assists school districts in funding enrichment that supplements the  
23 state's program of basic education, and that is intended to mitigate  
24 the effect that above average local levy rates might have on the  
25 ability to fund these supplements locally. The program of local  
26 effort assistance established in chapter 28A.500 RCW is an example of  
27 "levy equalization."

28 (5) "Local levies" means maintenance and operation levies  
29 collected by school districts under RCW 84.52.053 and 84.52.0531.

30 (6) "Localization" means a methodology for adjusting state salary  
31 allocations to reflect local or regional differences in the cost of  
32 salaries necessary to allow school districts to hire and retain  
33 state-funded employees for the state's program of basic education.

34 (7) "Ninety percent minimum" means an assumption, as a starting  
35 point for further analysis and enactment, that the state's total  
36 statewide salary allocations under the new formula may be no less  
37 than the sum of (a) total statewide salary allocations for state-  
38 funded employees in the 2014-15 school year and (b) ninety percent of  
39 the portion of total statewide actual school district salary  
40 expenditures for state-funded employees in the 2014-15 school year

1 that exceeds the amount in (a) of this subsection, as such sum is  
2 adjusted for inflation using the consumer price index.

3 (8) "State-funded employees" means school district employees for  
4 which the state allocates funding pursuant to the prototypical school  
5 formula in RCW 28A.150.260 and the omnibus operating appropriations  
6 act.

7 (9) "State's program of basic education" means the instructional  
8 program of basic education defined in RCW 28A.150.220.

9 (10) "TRI" means separate contracts for additional time,  
10 responsibility, or incentive, which pursuant to RCW 28A.400.200, may  
11 not be used for the provision of services that are part of the  
12 state's program of basic education.

13 NEW SECTION. **Sec. 3.** WASHINGTON EDUCATION FUNDING COUNCIL  
14 ESTABLISHED. (1) The legislature intends to fulfill its obligations  
15 under Article IX of the state Constitution by completing its  
16 implementation of all aspects of chapter 548, Laws of 2009 by  
17 September 1, 2018. The funding formulas under chapter 28A.150 RCW to  
18 support the state's instructional program must be revised and fully  
19 implemented by that date under the schedule of annual benchmarks  
20 prescribed in this chapter.

21 (2) The Washington education funding council is created to advise  
22 the legislature as the state moves toward full implementation of the  
23 state's program of basic education established pursuant to chapter  
24 548, Laws of 2009 and the financing and revenues necessary to support  
25 such program. The council must make recommendations on how the  
26 legislature should meet the requirements outlined in chapter 548,  
27 Laws of 2009 by September 1, 2018, thereby fulfilling the  
28 requirements of the state supreme court in *McCleary v. State*. As  
29 provided in this chapter, the council must submit to the legislature  
30 recommended changes to state salary allocation formulas and state tax  
31 laws to support the state's program of basic education as established  
32 under chapter 548, Laws of 2009, along with any corresponding  
33 recommendations on local levy laws, levy equalization, or other state  
34 laws.

35 (3) As provided in sections 5 and 7 of this act, the council  
36 shall submit reports to the governor and the legislature detailing  
37 its recommendations, including recommendations for resolving issues  
38 or decisions requiring legislative action during the 2016 and 2017  
39 legislative sessions, and recommendations for any funding necessary

1 to complete development and implementation of chapter 548, Laws of  
2 2009. The recommendations must also include the technical details for  
3 implementing the recommendations.

4 (4)(a) The council consists of the following members:

5 (i) Eight legislators, with two members from each of the two  
6 largest caucuses of the senate appointed by the president of the  
7 senate and two members from each of the two largest caucuses of the  
8 house of representatives appointed by the speaker of the house of  
9 representatives;

10 (ii) The governor, or the governor's designee;

11 (iii) The state superintendent of public instruction, or the  
12 superintendent's designee; and

13 (iv) The state treasurer, or the treasurer's designee.

14 (b) The council shall select cochairs from among its legislative  
15 members.

16 (c) The council is staffed by the house of representatives office  
17 of program research, senate committee services, and the office of  
18 financial management, with additional staff support provided by the  
19 state entities with representatives on the council.

20 (5) Legislative members of the council must be reimbursed for  
21 travel expenses in accordance with RCW 44.04.120. Nonlegislative  
22 members, except those representing an employer or organization, are  
23 entitled to be reimbursed for travel expenses in accordance with RCW  
24 43.03.050 and 43.03.060.

25 (6) The expenses of the council must be paid jointly by the  
26 senate and the house of representatives. Council expenditures are  
27 subject to approval by the senate facilities and operations committee  
28 and the house of representatives executive rules committee, or their  
29 successor committees.

30 NEW SECTION. **Sec. 4.** WASHINGTON EDUCATION FUNDING COUNCIL MAY  
31 ESTABLISH TECHNICAL WORKING GROUPS. (1) The council may also  
32 establish technical working groups to advise the task force on  
33 technical and practical aspects of proposed policies and formulas.

34 (2) The technical working group or groups may include  
35 representatives of the legislative evaluation and accountability  
36 program committee, school district and educational service district  
37 financial managers, the Washington association of school business  
38 officers, the Washington education association, the Washington  
39 association of school administrators, the association of Washington

1 school principals, the Washington state school directors'  
2 association, the public school employees of Washington, the  
3 educational opportunity gap oversight and accountability committee,  
4 and other interested stakeholders with expertise in education finance  
5 or state revenue.

6 NEW SECTION. **Sec. 5.** WASHINGTON EDUCATION FUNDING COUNCIL  
7 RECOMMENDATIONS TO THE 2016 LEGISLATURE. By December 1, 2015, the  
8 council shall provide the legislature and governor with:

9 (1) Preliminary recommendations for statewide minimum and average  
10 salary allocations for certificated instructional staff, certificated  
11 administrative staff, and classified staff, including recommendations  
12 on localization, to take effect with the 2018-19 school year. The  
13 starting point for the council's recommendation must be the ninety  
14 percent minimum, but the council may make a different recommendation  
15 based on the research in subsection (3) of this section;

16 (2) Preliminary recommendations for amount of and mechanisms for  
17 state allocations for state-funded school district employee health  
18 insurance benefits. In making the recommendations, the council must  
19 consider data and analysis submitted by the health care authority to  
20 the legislature in June 2015 pursuant to chapter 3, Laws of 2012 2nd  
21 sp. sess. to consider the adequacy of and mechanisms for these  
22 allocations;

23 (3)(a) Research describing the current use of TRI and  
24 supplemental contracts, broken down by use and estimated dollar  
25 amount per use. This research must distinguish among (i) additional  
26 services, such as coaching, or similar services rendered outside the  
27 school day; (ii) additional services performed during the school day,  
28 such as service as a department head; (iii) salary supplements for  
29 work "deemed done" or work such as grading papers that would  
30 ordinarily be considered part of the teacher's job; (iv) supplemental  
31 contracts that are part of the state's program of basic education,  
32 such as preparation of individualized education plans; and (v) other  
33 types of supplemental contracts;

34 (b) Research describing, and quantifying if possible, other  
35 factors that affect TRI and other supplemental contracts including,  
36 but not limited to: Collective bargaining laws and practices, local  
37 compensation philosophy, local cost-of-living differences, difficulty  
38 of attracting staff to particular schools or programs, and community  
39 expectations;



1 (c) Research describing local levy expenditures on items other  
2 than salaries, broken down into specific categories, such as  
3 technology, the transitional bilingual instruction program, special  
4 education, the highly capable program, athletics, extracurricular  
5 activities, other intermural activities, or equipment;

6 (4) In light of the research in subsection (3) of this section,  
7 recommendations for a statutory definition of enrichment and  
8 authorized TRI. The recommendations must be sufficiently specific to  
9 provide guidance to school districts and auditors;

10 (5) Recommendations on protections for the state to ensure that  
11 local levy funding is used only for enrichment. These may include  
12 additional auditing requirements, additional requirements for school  
13 district accounting, additional reporting by school districts, and  
14 changes to collective bargaining laws or practices; and

15 (6) Recommendations on whether the state should continue  
16 providing levy equalization, or whether state support for funding  
17 enrichments outside the state's program of basic education should be  
18 addressed through state funding formulas, other state funding, or  
19 levy laws. If the council recommends continued state funding for levy  
20 equalization, it must recommend measures for such funding to increase  
21 at a rate that is commensurate with growth in revenues from local  
22 levies.

23 NEW SECTION. **Sec. 6.** LEGISLATION TO BE ENACTED DURING THE 2016  
24 LEGISLATIVE SESSION. By June 30, 2016, the legislature shall enact  
25 legislation that:

26 (1) Quantifies the portion of locally funded salaries that is the  
27 responsibility of the state's program of basic education and  
28 establishes preliminary policy guidance for the council to develop a  
29 new state salary model for implementation in the 2018-19 school year,  
30 which (a) must include localization, and (b) may include  
31 simplification or elimination of the state certificated instructional  
32 staff salary grid, or (c) includes both, or other policies;

33 (2) Establishes preliminary policy guidance for the amount of and  
34 mechanisms for state allocations for health insurance benefits for  
35 state-funded school district employees. The legislation must consider  
36 the work of the joint legislative audit and review committee under  
37 chapter 3, Laws of 2012 2nd sp. sess.;

38 (3) Effective September 1, 2018:

39 (a) Defines "enrichment";

1 (b) Defines appropriate use of local levy funding to supplement  
2 salaries for state-funded employees; and

3 (c) Establishes protections that allow the state to demonstrate  
4 its funding of the state's program of basic education and that  
5 ensures local levy expenditures are outside the state's program of  
6 basic education;

7 (4) Establishes preliminary policy guidance for local levies for  
8 collection beginning in calendar year 2018, including a combination  
9 of rates, bases, or lids, or any of these. The local levy policy must  
10 reflect the newly enacted definition of "enrichment" and the new  
11 policies regarding use of local levies to supplement state salary  
12 allocations for the state's program of basic education; and

13 (5) Establishes preliminary policy guidance for any use of state  
14 funding as levy equalization beginning in calendar year 2018,  
15 including whether levy equalization is more appropriately addressed  
16 through state funding formulas or state laws governing local levy  
17 laws rather than state assistance. If the legislature enacts  
18 preliminary policy guidance that includes continued state funding for  
19 levy equalization, it must also enact provisions for such funding to  
20 increase at a rate commensurate with growth in revenues from local  
21 levies.

22 NEW SECTION. **Sec. 7.** WASHINGTON EDUCATION FUNDING COUNCIL  
23 RECOMMENDATIONS TO THE 2017 LEGISLATURE. By November 15, 2016, the  
24 council and its technical working groups must make recommendations to  
25 the legislature on the following:

26 (1) Quantification, including methods for future adjustment, of a  
27 new salary model for implementation in the 2018-19 school year,  
28 including quantification and methods for localization and  
29 simplification or elimination of the existing grid;

30 (2) Recommendations on other sources of state revenue to support  
31 state allocations for chapter 548, Laws of 2009, including but not  
32 limited to the property taxes and growth limits; business and  
33 occupation taxes; sales taxes; a capital gains tax; or a carbon  
34 pollution tax;

35 (3) Quantification of appropriate local levy bases, rates, or  
36 lids, or any of these, with recommended legislation for collection in  
37 calendar year 2019, and local levy policies for the 2018 transition  
38 year; and

1 (4) Quantification of formulas for any program of levy  
2 equalization, beginning by calendar year 2019.

3 NEW SECTION. **Sec. 8.** LEGISLATION TO BE ENACTED IN THE 2017  
4 LEGISLATIVE SESSION. By June 30, 2017, the legislature must enact  
5 legislation that accomplishes the following:

6 (1) Enacts a new salary allocation model for the 2018-19 school  
7 year, which must include localization, and makes appropriations in  
8 the 2017-2019 operating budget for distribution to districts under  
9 this model. Total state salary allocations under the new formula must  
10 comply with the ninety percent minimum requirement;

11 (2) Beginning with 2017-18 school year, appropriates funding in  
12 the omnibus operating appropriations act, for health insurance  
13 benefits for state-funded employees based on the rate at which the  
14 state appropriates funding for health insurance benefits for state  
15 employees in the omnibus operating appropriations act;

16 (3) Considers the recommendations of the council regarding  
17 whether changes to state tax laws, including property taxes and  
18 growth limits and business and occupation taxes; sales taxes; a  
19 capital gains tax; or a carbon pollution tax or other state tax laws,  
20 are necessary to support the new state salary allocation model and to  
21 correspond with new state law governing local levies. If the  
22 legislature chooses to reduce local levies while increasing the state  
23 property tax levy, the legislature must enact (a) a state property  
24 tax levy rate for the transitional year of calendar year 2018,  
25 including adjustments to state levy growth caps as necessary; and (b)  
26 local levy lids for calendar year 2018;

27 (4) Establishes new bases, rates, or lids, or any of these, for  
28 local levies for collection beginning in calendar year 2018 or  
29 calendar year 2019, depending on subsection (3) of this section; and

30 (5) Enacts formulas and makes appropriations for any program of  
31 levy equalization, beginning by calendar year 2019.

32 NEW SECTION. **Sec. 9.** EXPIRATION DATE FOR WASHINGTON EDUCATION  
33 FUNDING COUNCIL AND IMPLEMENTATION SCHEDULE. This chapter expires  
34 August 1, 2019.

35 NEW SECTION. **Sec. 10.** CODIFICATION. Sections 1 through 9 of  
36 this act constitute a new chapter in Title 28A RCW.

1        NEW SECTION.    **Sec. 11.**    EMERGENCY CLAUSE. This act is necessary  
2 for the immediate preservation of the public peace, health, or  
3 safety, or support of the state government and its existing public  
4 institutions, and takes effect immediately.

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