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**SECOND SUBSTITUTE SENATE BILL 5128**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Wellman, Wilson, C., Conway, Dhingra, Hunt, Keiser, Lovelett, Nguyen, and Saldaña)

READ FIRST TIME 02/12/21.

1 AN ACT Relating to student transportation funding during a local,  
2 state, or national emergency; amending RCW 28A.160.170 and  
3 28A.160.192; adding a new section to chapter 28A.160 RCW; adding a  
4 new section to chapter 28A.710 RCW; adding a new section to chapter  
5 28A.715 RCW; creating a new section; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** The legislature recognizes that the  
8 COVID-19 pandemic has significantly changed the delivery of education  
9 across the state, as school districts transition to remote learning  
10 environments to protect the health of students and staff. The  
11 legislature also recognizes that the role of transportation services  
12 has evolved alongside remote learning programs to help students  
13 equitably access the instructional program of basic education. As  
14 permitted by emergency proclamation, many school districts have  
15 adapted to remote learning by transporting meals, learning materials,  
16 and technology supports directly to students' homes or neighborhoods.  
17 Other school districts have used transportation resources to bring  
18 students to learning centers or other agencies where support services  
19 are provided.

20 This flexibility has allowed school districts to creatively use  
21 the resources at their disposal to equitably address the needs of

1 students during an ongoing emergency. However, the current funding  
2 model does not reflect the same flexibility necessary to adapt to  
3 temporary remote instruction. Under typical circumstances, the  
4 student transportation funding model uses student ridership data to  
5 appropriately allocate funding to school districts. Without  
6 legislative action, many school districts will report a significant  
7 drop in traditional student ridership, resulting in a funding  
8 decrease that will affect their ability to continue delivering  
9 services to students.

10 With this act, the legislature intends to temporarily suspend  
11 rider eligibility criteria for an expanded list of qualifying  
12 transportation services, so that all students can access necessary  
13 supports during the COVID-19 emergency. The legislature also intends  
14 to temporarily provide a fixed level of funding to school districts  
15 based on student service data to ensure that districts have the  
16 resources they need to continue serving students. Finally, the  
17 legislature intends to provide a mechanism for calculating student  
18 transportation funding immediately following the COVID-19 emergency,  
19 so that the temporary drop in student ridership does not impact  
20 future transportation allocations.

21 NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.160  
22 RCW to read as follows:

23 (1) If a school or school district is providing full remote or  
24 partial remote instruction under the authority of RCW 28A.150.290 due  
25 to a local, state, or national emergency that causes a substantial  
26 disruption to full in-person instruction, then the following  
27 provisions apply:

28 (a) (i) The district's annual student transportation allocation is  
29 either 70 percent of the district's estimated allocation for that  
30 school year assuming full in-person instruction, as determined by the  
31 superintendent of public instruction, or the amount the district  
32 would receive under the allocation formula provided in RCW  
33 28A.160.192, whichever is greater. If a district is providing full  
34 in-person instruction to at least 50 percent of enrolled students at  
35 the time the annual student transportation allocation is calculated,  
36 the percentage used for the allocation calculation is 80 percent  
37 rather than 70 percent.

38 (ii) If a district is receiving allocations under the alternative  
39 formula provided in this section, rather than the allocation formula

1 provided in RCW 28A.160.192, and the district provides full in-person  
2 instruction to at least 50 percent of enrolled students on the  
3 enrollment count day of any month, the district's annual student  
4 transportation allocation provided under this section is 80 percent  
5 for the duration of the school year.

6 (iii) If the final allowable expenditures for student  
7 transportation operations are less than the amount allocated in this  
8 subsection (1), the office of the superintendent of public  
9 instruction shall recover the difference between the amounts  
10 originally allotted and the final allowable expenditures for pupil  
11 transportation operations.

12 (b) In addition to the transportation services allowed under this  
13 chapter, the district may use student transportation allocations to  
14 provide the following expanded services to students, regardless of  
15 whether those students would qualify as eligible students under RCW  
16 28A.160.160:

17 (i) Delivery of educational services necessary to provide  
18 students with the opportunity to equitably access educational  
19 services during the period of remote instruction. Delivery of  
20 educational services include the transportation of materials,  
21 hardware, and other supports that assist students in accessing remote  
22 instruction, internet connectivity, or the curriculum;

23 (ii) Delivery of meals to students; and

24 (iii) Providing for the transportation of students to and from  
25 learning centers or other public or private agencies where  
26 educational and support services are being provided to students  
27 during the period of remote instruction. "Providing for" includes the  
28 provision of payments to allow students to use public transit to  
29 access the educational and support services.

30 (c) Nothing in this section is intended to limit a district's  
31 ability to use transportation allocations to pay for fixed  
32 transportation costs, such as school bus maintenance and basic  
33 administrative, regulatory, safety, or operational expenses.

34 (2) If a district provides expanded services under subsection  
35 (1)(b) of this section, the district must track by a separate  
36 accounting code the expenditures incurred by the district in  
37 providing such services. This data must be included in the report  
38 required under RCW 28A.160.170(2).

39 (3)(a) If a district provides expanded services under subsection  
40 (1)(b) of this section and, as a result of providing such services,

1 the district's total transportation expenditures exceed its budgeted  
2 allocation as determined in subsection (1)(a) of this section, the  
3 district may be eligible for additional transportation safety net  
4 award funding. A district is not eligible for safety net award  
5 funding under this section if it receives allocations under the  
6 allocation formula provided in RCW 28A.160.192.

7 (b) To be eligible for additional transportation safety net award  
8 funding, the school district must report, in accordance with  
9 statewide accounting guidance, the amount of the overexpenditure and  
10 the specific activities or services authorized under subsection  
11 (1)(b) of this section that created the overexpenditure. The office  
12 of the superintendent of public instruction shall request from school  
13 districts an application for pupil transportation safety net funding  
14 no later than May 1st. The application must contain the anticipated  
15 allowable costs provided in this section through the end of the  
16 current school year.

17 (c) To the extent necessary and subject to amounts appropriated  
18 for this specific purpose, the office of the superintendent of public  
19 instruction shall award additional transportation safety net award  
20 funding to school districts for eligible overexpenditures. If the  
21 statewide overexpenditures exceed the appropriation provided for this  
22 purpose, the office of the superintendent of public instruction shall  
23 prorate each school district's submission proportionately so that the  
24 total funding provided for this purpose is not exceeded. The office  
25 of the superintendent of public instruction shall make allocations to  
26 applicant school districts by June 1st based on the anticipated  
27 allowable costs submitted, prorated proportionally. Final adjustments  
28 to reflect demonstrated costs must occur by August 31st. The office  
29 of the superintendent of public instruction shall adjust final  
30 allocations to reflect the demonstrated costs and shall recover any  
31 safety net award funds in excess of allowable costs.

32 **Sec. 3.** RCW 28A.160.170 and 2009 c 548 s 306 are each amended to  
33 read as follows:

34 Each district shall submit three times each year to the  
35 superintendent of public instruction during October, February, and  
36 May of each year a report containing the following:

37 (1)(a) The number of eligible students transported to and from  
38 school as provided for in RCW 28A.160.150, along with identification  
39 of stop locations and school locations, and (b) the number of miles

1 driven for pupil transportation services as authorized in RCW  
2 28A.160.150 the previous school year; and

3 (2) Other operational data and descriptions as required by the  
4 superintendent to determine allocation requirements for each  
5 district. The superintendent shall require that districts separate  
6 the costs of operating the program for the transportation of eligible  
7 students to and from school as defined by RCW 28A.160.160(3)  
8 (~~from~~), non-to-and-from-school pupil transportation costs, and  
9 costs to provide expanded services under section 2(1)(b) of this act  
10 in the annual financial statement. The cost, quantity, and type of  
11 all fuel purchased by school districts for use in to-and-from-school  
12 transportation shall be included in the annual financial statement.

13 Each district shall submit the information required in this  
14 section on a timely basis as a condition of the continuing receipt of  
15 school transportation moneys.

16 **Sec. 4.** RCW 28A.160.192 and 2011 1st sp.s. c 27 s 3 are each  
17 amended to read as follows:

18 (1) The superintendent of public instruction shall phase-in the  
19 implementation of the distribution formula under this chapter for  
20 allocating state funds to school districts for the transportation of  
21 students to and from school. The phase-in shall begin no later than  
22 the 2011-2013 biennium and be fully implemented by the 2013-2015  
23 biennium.

24 (a) The formula must be developed and revised on an ongoing basis  
25 using the major cost factors in student transportation, including  
26 basic and special student loads, school district land area, average  
27 distance to school, roadway miles, and number of locations served.  
28 Factors must include all those site characteristics that are  
29 statistically significant after analysis of the data required by the  
30 revised reporting process.

31 (b) The formula must allocate funds to school districts based on  
32 the average predicted costs of transporting students to and from  
33 school, using a regression analysis. Only factors that are  
34 statistically significant shall be used in the regression analysis.  
35 Employee compensation costs included in the allowable transportation  
36 expenditures used for the purpose of establishing each school  
37 district's independent variable in the regression analysis shall be  
38 limited to the base salary or hourly wage rates, fringe benefit

1 rates, and applicable health care rates provided in the omnibus  
2 appropriations act.

3 (2) During the phase-in period, funding provided to school  
4 districts for student transportation operations shall be distributed  
5 on the following basis:

6 (a) Annually, each school district shall receive the lesser of  
7 the previous school year's pupil transportation operations  
8 allocation, or the total of allowable pupil transportation  
9 expenditures identified on the previous school year's final  
10 expenditure report to the state plus district indirect expenses using  
11 the federal restricted indirect rate as calculated in the district  
12 annual financial report;

13 (b) Annually, the amount identified in (a) of this subsection  
14 shall be adjusted for any budgeted increases provided in the omnibus  
15 appropriations act for salaries or fringe benefits;

16 (c) Annually, any funds appropriated by the legislature in excess  
17 of the maintenance level funding amount for student transportation  
18 shall be distributed among school districts on a prorated basis using  
19 the difference between the amount identified in (a) adjusted by (b)  
20 of this subsection and the amount determined under the formula in RCW  
21 28A.160.180; and

22 (d) Allocations provided to recognize the cost of depreciation to  
23 districts contracting with private carriers for student  
24 transportation shall be deducted from the allowable transportation  
25 expenditures in (a) of this subsection.

26 (3) If a school or school district is providing full remote or  
27 partial remote instruction under the authority of RCW 28A.150.290 due  
28 to a local, state, or national emergency that causes a substantial  
29 disruption to full in-person instruction, the superintendent of  
30 public instruction shall use the allocation formula described in  
31 section 2(1)(a) of this act rather than the formula described in this  
32 section.

33 (4) If a school or school district provided full remote or  
34 partial remote instruction under the authority of RCW 28A.150.290 due  
35 to a local, state, or national emergency that caused a substantial  
36 disruption to full in-person instruction, the superintendent of  
37 public instruction may use the student transportation data from the  
38 last reporting period in which the school district provided full in-  
39 person instruction to calculate transportation allocations. Such data

1 may only be used until the subsequent reporting period when updated  
2 ridership data is available.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 28A.710  
4 RCW to read as follows:

5 Sections 2 through 4 of this act govern school operation and  
6 management under RCW 28A.710.040 and apply to charter schools  
7 established under this chapter.

8 NEW SECTION. **Sec. 6.** A new section is added to chapter 28A.715  
9 RCW to read as follows:

10 Sections 2 through 4 of this act govern school operation and  
11 management under RCW 28A.715.020 and apply to state-tribal compact  
12 schools established under this chapter.

13 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
14 preservation of the public peace, health, or safety, or support of  
15 the state government and its existing public institutions, and takes  
16 effect immediately.

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