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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)

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

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

NEW SECTION. **Sec.**  INTENT. (1) In its January 2012 ruling in *McCleary v. State*, the state supreme court declared that Engrossed Substitute House Bill No. 2261 (2009) (chapter 548, Laws of 2009), "if fully funded," constituted a "promising reform" that would remedy deficiencies in the state's compliance with its paramount duty to make ample provision for the education of its children. In Engrossed Substitute House Bill No. 2261, the legislature revised its previous formulas to establish the prototypical school model, and it directed the quality education council and its technical working groups to recommend the details of necessary formula enhancements to the prototypical school model. The following year, the legislature enacted Substitute House Bill No. 2776 (2010), which provided in statute quantification of the formula enhancements and established statutory deadlines for funding and implementation of these deadlines. Specifically, Substitute House Bill No. 2776 called for (a) full funding of the expected cost transportation formula by the 2013-2015 biennium, which the legislature implemented in the budget for the 2013-2015 biennium, fully funding the model in the 2014-15 school year; (b) full funding of the enhanced formula for materials, supplies, and operating costs by the 2015-16 school year, which both houses of the legislature have funded in the respective 2015-2017 proposed budgets that have passed each chamber; (c) full funding for all-day kindergarten by the 2017-18 school year, which both houses of the legislature have funded in the respective 2015-2017 budgets that have passed each chamber, one year ahead of the statutory deadline; and (d) full funding for K-3 class size reduction by the 2017-18 school year, which both houses of the legislature have funded in a phase-in schedule in the respective 2015-2017 proposed budgets that have passed each chamber, with full implementation planned for the 2017-18 school year.

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

(3) The 2012 *McCleary* ruling also identified a constitutional flaw in the funding formula that predated Engrossed Substitute House Bill No. 2261 and Substitute House Bill No. 2776: State allocations for teacher salaries were insufficient to provide districts with adequate funding to hire and retain teachers for the state's program of basic education. The court explained that district expenditures for salaries exceed state allocations for salaries, including an average difference of eight thousand dollars for certificated instructional staff and forty thousand dollars for administrators. The court acknowledged that some of this difference was likely due to legitimate TRI contracts. Further, it is likely that some of these salary expenditures are attributable to school districts' decisions made at a local level to hire additional staff to supplement the state's program of basic education. Even so, the legislature accepts the court's conclusion that at least some of these salary expenditures are properly the state's responsibility as part of its duty to allocate sufficient funding to hire and retain qualified staff for the state's program of basic education. The court's conclusion represents a structural flaw in the way in which the state allocates funding for K-12 education. To correct inadequacies of the state salary allocation formulas, the legislature intends to review and quantify the scope of the need for additional state allocations so that the state may implement its new salary funding formula in the 2018-19 school year. As a starting point for this task, the legislature finds that the review process should begin with the assumption that a minimum of ninety percent of total statewide school district actual salary expenditures for state-funded employees represents the minimum salary cost of the state's program of basic education.

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

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

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

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

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

(ii) State allocations for health insurance benefits.

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

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

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

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

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. These definitions apply only for purposes of establishing the duties of the council and the legislature under this chapter. As provided elsewhere in this chapter, the legislature recognizes that some of the terms defined in this section are expressly intended to be redefined by the legislature in future legislation.

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

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

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

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

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

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

(7) "Ninety percent minimum" means an assumption, as a starting point for further analysis and enactment, that the state's total statewide salary allocations under the new formula may be no less than the sum of (a) total statewide salary allocations for state-funded employees in the 2014-15 school year and (b) ninety percent of the portion of total statewide actual school district salary expenditures for state-funded employees in the 2014-15 school year that exceeds the amount in (a) of this subsection, as such sum is adjusted for inflation using the consumer price index.

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

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

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

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

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

(3) As provided in sections 5 and 7 of this act, the council shall submit reports to the governor and the legislature detailing its recommendations, including recommendations for resolving issues or decisions requiring legislative action during the 2016 and 2017 legislative sessions, and recommendations for any funding necessary to complete development and implementation of chapter 548, Laws of 2009. The recommendations must also include the technical details for implementing the recommendations.

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

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

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

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

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

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

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

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

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

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

(2) The technical working group or groups may include representatives of the legislative evaluation and accountability program committee, school district and educational service district financial managers, the Washington association of school business officers, the Washington education association, the Washington association of school administrators, the association of Washington school principals, the Washington state school directors' association, the public school employees of Washington, the educational opportunity gap oversight and accountability committee, and other interested stakeholders with expertise in education finance or state revenue.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Effective September 1, 2018:

(a) Defines "enrichment";

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**--- END ---**