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**SUBSTITUTE SENATE BILL 5128**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senate Early Learning & K-12 Education (originally sponsored by Senators Wellman, Wilson, C., Conway, Dhingra, Hunt, Keiser, Lovelett, Nguyen, and Saldaña)

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

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

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

This flexibility has allowed school districts to creatively use the resources at their disposal to equitably address the needs of students during an ongoing emergency. However, the current funding model does not reflect the same flexibility necessary to adapt to temporary remote instruction. Under typical circumstances, the student transportation funding model uses student ridership data to appropriately allocate funding to school districts. Without legislative action, many school districts will report a significant drop in traditional student ridership, resulting in a funding decrease that will affect their ability to continue delivering services to students.

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

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

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

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

(ii) If a district is receiving allocations under the alternative formula provided in this section, rather than the allocation formula provided in RCW 28A.160.192, and the district provides full in-person instruction to at least 50 percent of enrolled students on the enrollment count day of any month, the district's annual student transportation allocation provided under this section is 80 percent for the duration of the school year.

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

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

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

(ii) Delivery of meals to students; and

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

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

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

(3)(a) If a district provides expanded services under subsection (1)(b) of this section and, as a result of providing such services, the district's total transportation expenditures exceed its budgeted allocation as determined in subsection (1)(a) of this section, the district may be eligible for additional transportation safety net award funding. A district is not eligible for safety net award funding under this section if it receives allocations under the allocation formula provided in RCW 28A.160.192.

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

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

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

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

(1)(a) The number of eligible students transported to and from school as provided for in RCW 28A.160.150, along with identification of stop locations and school locations, and (b) the number of miles driven for pupil transportation services as authorized in RCW 28A.160.150 the previous school year; and

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

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

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

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

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

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

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

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

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

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

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

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

(4) If a school or school district provided full remote or partial remote instruction under the authority of RCW 28A.150.290 due to a local, state, or national emergency that caused a substantial disruption to full in-person instruction, the superintendent of public instruction may use the student transportation data from the last reporting period in which the school district provided full in-person instruction to calculate transportation allocations. Such data may only be used until the subsequent reporting period when updated ridership data is available.

NEW SECTION. **Sec.**  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 ---**