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**SUBSTITUTE HOUSE BILL 2335**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** House Education (originally sponsored by Representatives Santos, Lekanoff, Nance, and Reed)

READ FIRST TIME 01/31/24.

1 AN ACT Relating to state-tribal education compacts; and amending  
2 RCW 28A.715.010 and 28A.715.020.

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

4 **Sec. 1.** RCW 28A.715.010 and 2018 c 257 s 1 are each amended to  
5 read as follows:

6 (1) The superintendent of public instruction is authorized to  
7 enter into state-tribal education compacts.

8 (2) No later than six months after July 28, 2013, the  
9 superintendent of public instruction shall establish an application  
10 and approval process, procedures, and timelines for the negotiation,  
11 approval or disapproval, and execution of state-tribal education  
12 compacts.

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

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

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

20 (4) The resolution must be accompanied by an application that  
21 indicates the grade or grades from kindergarten through twelve that

1 will be offered and that demonstrates that the school will be  
2 operated in compliance with all applicable laws, the rules adopted  
3 thereunder, and the terms and conditions set forth in the  
4 application.

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

9 (6) State-tribal education compacts must include provisions  
10 regarding:

11 (a) Compliance;

12 (b) Notices of violation;

13 (c) Dispute resolution, which may include nonjudicial processes  
14 such as mediation;

15 (d) Recordkeeping and auditing;

16 (e) The delineation of the respective roles and responsibilities;

17 (f) The term or length of the contract, and whether or not it is  
18 renewable; and

19 (g) Provisions for compact termination.

20 (7) If a tribal school chooses to participate in the teachers'  
21 retirement system, the school employees' retirement system, or both,  
22 the state-tribal education compact must also include the following:

23 (a) Acknowledgment by the tribal school that it affirmatively  
24 chooses to participate in the teachers' retirement system, the school  
25 employees' retirement system, or both;

26 (b) Evidence that the person or persons who sign the compact on  
27 behalf of a tribe, dependent Indian community, or subdivision thereof  
28 have authority under tribal or community law to bind the tribe or  
29 dependent Indian community to all provisions in the compact,  
30 including any waiver of sovereign immunity;

31 (c) If the tribal school chooses to participate in the teachers'  
32 retirement system:

33 (i) Agreement by the tribal school that it meets the definition  
34 of an employer as defined in chapter 41.32 RCW;

35 (ii) Agreement by the tribal school to adhere to all reporting,  
36 contribution, and auditing requirements as defined in chapter 41.32  
37 RCW, and all rules adopted under authority of RCW 41.50.050(5);

38 (iii) Agreement between the superintendent of public instruction  
39 and the tribal school that for the duration of the compact the school

1 will be a public school for the purposes of retirement plan  
2 membership as defined in chapter 41.32 RCW; and

3 (iv) Agreement by the tribal school that, at the request of the  
4 superintendent of public instruction, the tribal school will make  
5 available to the superintendent any records the tribal school has  
6 provided to the department of retirement systems as required under  
7 the reporting, contribution, and auditing requirements defined in  
8 chapter 41.32 RCW, and rules implementing that chapter;

9 (d) If the tribal school chooses to participate in the school  
10 employees' retirement system:

11 (i) Agreement by the tribal school that it meets the definition  
12 of an employer as defined in chapter 41.35 RCW;

13 (ii) Agreement by the tribal school to adhere to all reporting,  
14 contribution, and auditing requirements as defined in chapter 41.35  
15 RCW, and all rules adopted under authority of RCW 41.50.050(5); and

16 (iii) Agreement by the tribal school that, at the request of the  
17 superintendent of public instruction, the tribal school will make  
18 available to the superintendent any records the tribal school has  
19 provided to the department of retirement systems as required under  
20 the reporting, contribution, and auditing requirements defined in  
21 chapter 41.35 RCW, and rules implementing that chapter;

22 (e) Agreement by the tribe or, if applicable, the dependent  
23 Indian community, to a limited waiver of sovereign immunity and  
24 consent to the jurisdiction of the Washington state courts for the  
25 purpose of enforcing the reporting, contribution, and auditing  
26 requirements defined in chapters 41.32 and 41.35 RCW and all rules  
27 adopted under authority of RCW 41.50.050(5);

28 (f) Agreement by the tribal school to dissolution procedures  
29 memorialized in the state-tribal education compact so that all  
30 parties are aware of their expectations and duties if the compact  
31 terminates or the tribal school chooses to no longer participate in  
32 the state retirement systems at a future date;

33 (g) Acknowledgment by the tribal school that it has been advised  
34 that choosing to no longer participate in the retirement systems may  
35 result in federal tax implications for the governing body and its  
36 employees that are outside the control of the state of Washington,  
37 the department of retirement systems, and the superintendent of  
38 public instruction, and that the tribal school is encouraged to seek  
39 counsel before agreeing to any dissolution procedures in the compact;  
40 and

1 (h) Acknowledgment by both parties that the pension plan  
2 participation portions of the state-tribal education compact are null  
3 and void if the federal internal revenue service issues guidance  
4 stating that any portion of those sections are in conflict with the  
5 plan qualification requirements for governmental plans in section  
6 401(a) of the internal revenue code, and the conflict cannot be  
7 resolved through administrative action, statutory change, or  
8 amendment to the state-tribal education compact.

9 (8) For tribal schools that opt out of pension plan  
10 participation, such schools' employees shall have no right to earn  
11 additional service credit in the plan.

12 (9) The superintendent of public instruction shall adopt such  
13 rules as are necessary to implement this chapter and consult with the  
14 state board of education on provisions within new or revised state-  
15 tribal education compacts relating to the duties or authorizations of  
16 the board.

17 (10) "Tribal school" for the purposes of this section means any  
18 school qualified to participate in a state-tribal education compact  
19 under this section.

20 **Sec. 2.** RCW 28A.715.020 and 2013 c 242 s 3 are each amended to  
21 read as follows:

22 (1) A school that is the subject of a state-tribal education  
23 compact must operate according to the terms of its compact executed  
24 in accordance with RCW 28A.715.010.

25 (2) Schools that are the subjects of state-tribal education  
26 compacts are exempt from all state statutes and rules applicable to  
27 school districts and school district boards of directors, except  
28 those statutes and rules made applicable under this chapter and in  
29 the state-tribal education compact executed under RCW 28A.715.010.

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

32 (a) Provide a curriculum and conduct an educational program that  
33 satisfies the requirements of RCW 28A.150.200 through 28A.150.240 and  
34 28A.230.010 through 28A.230.195, unless an exemption for one or more  
35 of these requirements is expressly included within the state-tribal  
36 education compact;

37 (b) Employ certificated instructional staff as required in RCW  
38 28A.410.010, however such schools may hire noncertificated

1 instructional staff of unusual competence and in exceptional cases as  
2 specified in RCW 28A.150.203(7);

3 (c) Comply with the employee record check requirements in RCW  
4 28A.400.303 and the mandatory termination and notification provisions  
5 of RCW 28A.400.320, 28A.400.330, 28A.405.470, and 28A.405.475;

6 (d) Comply with nondiscrimination laws;

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

11 (f) Be subject to and comply with legislation enacted after July  
12 28, 2013, governing the operation and management of schools that are  
13 the subject of a state-tribal education compact.

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

17 (5) Nothing in this chapter may limit or restrict any enrollment  
18 or school choice options otherwise available under (~~Title 28A RCW~~)  
19 this title.

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