

# SENATE BILL REPORT

## ESB 6048

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As Passed Senate, March 9, 2009

**Title:** An act relating to education.

**Brief Description:** Concerning the state's education system.

**Sponsors:** Senators Oemig, Jarrett, McAuliffe, Hobbs, McDermott, Franklin, Kohl-Welles and Haugen.

**Brief History:**

**Committee Activity:** Early Learning & K-12 Education: 2/23/09 [DP, DNP, w/oRec].  
Passed Senate: 3/09/09, 28-20.

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### SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

**Majority Report:** Do pass.

Signed by Senators McAuliffe, Chair; Kauffman, Vice Chair, Early Learning; Oemig, Vice Chair, K-12; Hobbs, Jarrett and McDermott.

**Minority Report:** Do not pass.

Signed by Senators King, Ranking Minority Member; Brandland.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Holmquist.

**Staff:** Susan Mielke (786-7422)

**Background:** Paramount Duty of the State. Under article IX, section 1 of the Washington State Constitution, "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders...." The courts have interpreted this to mean that the state must define a program of basic education and amply fund it from a regular and dependable source. The courts have found that local levies are not regular or dependable and may only be used for enrichment programs beyond basic education. The courts have concluded that once the Legislature has established full funding for the program of basic education it may not reduce such funding, even in periods of fiscal crisis. However, the Legislature is required to review, evaluate, and revise the program of education and its funding in order to meet the current needs of the children in the state. The state must also

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

provide a general and uniform system of public schools under article IX, section 2 of the Constitution.

Definition and Instructional Program of Basic Education. In order to carry out its constitutional responsibility and in response to court decisions, the Legislature passed the Basic Education Act of 1977 (BEA), defining a basic education by establishing goals, minimum program hours, teacher-student contact hours, and a mix of course offerings for school districts to provide. The minimum instructional program currently offered by school districts must be accessible to students who are five years of age and less than 21 years of age, consist of 180 school days per school year (with 180 half-days for kindergarten), and a districtwide annual average of 1,000 instructional hours across grades 1-12 (with at least 450 hours for kindergarten).

The courts have found that a basic education also includes specialized instruction due to a disability; the Learning Assistance Program (LAP), which provides remedial instruction to students functioning below grade level in reading, math, and language arts; the Transitional Bilingual Instruction Program (TBIP), which assists students to achieve competency in English when they are from homes where the primary language is other than English; the educational program for students in residential schools and detention facilities and students under the age of 18 incarcerated in adult correctional facilities; and portions of the student transportation program.

Local Control. While it is the state's constitutional duty to fund basic education and to provide a general and uniform system of public schools, the delivery of public education is and historically has been a local function with power vested in the local school boards.

Graduation requirements. The Legislature has delegated the authority to establish high school graduation requirements to the State Board of Education.

State Funding Allocation for Basic Education. The funding allocation for the basic education instructional program is based on instructional, administrative, and classified staff per student ratios, staff compensation factors, and nonemployee related costs. The state funding formula allocates state funds to each school district, but does not mandate a specific use or spending pattern for the majority of basic education funds received by school districts, except that the funds provided for the categorical programs of special education, LAP, TBIP, and the student transportation program must be expended on the program for which it was allocated.

- *General Apportionment.* Every enrolled K-12 student generates state funding under the general apportionment formula. The amount received by each school district varies based on certain characteristics, such as teacher experience and historical salary levels.
- *Special Education.* State funding is based on the additional “excess costs” of educating students with disabilities receiving special education services. For birth through five-year-olds, the special education allocation is 115 percent of the district’s average per-student general apportionment allocation. For birth through two-year-olds, school districts have the option of offering special education programs for this age group but must provide services for children age three through five. For five- to 21-year-olds, the state Special Education allocation is 93 percent of the district’s average per student general apportionment allocation and is in addition to the general

apportionment allocation. In addition to the per student allocation, the special education funding structure includes a safety net process for districts that can demonstrate extraordinary special education program costs beyond state and federal resources.

- *LAP*. School districts receive allocations based on students eligible for free or reduced price meals (FRM).
- *TBIP*. School districts receive a per eligible student allocation.
- *Institutional Education Programs*. The state funds a 220-day institutional education program allocated to the school districts, educational service districts, or others that provide the educational programs. The amounts vary based on the type and size of program.
- *Student Transportation*. State funds allocated for student transportation costs are in addition to the basic education allocation. Generally, a district is not required to transport students, but if a district provides student transportation then the state funds the program through a categorical allocation, based on rates that are set by the Legislature each year:
  - a rate for each K-5 public school student living within one mile of the school;
  - a rate determined by the number of students (the count is taken over a one-week period during the school year), number of trips, and distance from the school using a weighted mileage factor for students that live more than one mile from the school. The distance is not based on the actual bus routes but on the distance in a straight line (as the crow flies) from the bus stop to the school; and
  - a rate for reimbursing districts for purchasing school buses.

Teacher Certification. The Professional Educator Standards Board (PESB) is responsible for the policy and oversight of Washington's system of educator preparation and certification. There are currently two levels of teacher certification: residency and professional. To receive a residency certificate, teachers must complete an approved teacher preparation program. Approved programs must require the candidates to demonstrate competencies based on standards adopted by PESB, including evidence of positive impact on student learning. Candidates must also pass a state-administered basic skills and content knowledge test. A residency certificate is valid until the holder has completed two years of successful teaching in Washington and may be renewed once with a five-year expiration date.

To obtain a professional certificate, teachers enroll in an approved professional certification program or earn a certificate from the National Board for Professional Teaching Standards (NBPTS). Professional certificates can be renewed every five years based on continuing education credits. In 2007 the Legislature directed the PESB to implement a uniform and externally-administered assessment of teaching skill for professional certification by 2010.

Learning Improvement Days (LIDs). Since 1993 the Legislature has provided funding for some form of LIDs. In 2007 LIDs were put into statute as targeted professional development. School districts must report to the Office of the Superintendent of Public Instruction (OSPI) how funds are used and the outcomes. Currently, the appropriations act provides two LIDs for school districts that add the LIDs to the 180-day contract. The act limits the use of LIDs specific activities identified in a school improvement plan. Both the

statute and appropriations act provide that LIDs are not part of the definition of basic education.

Accountability. The Legislature has directed the State Board of Education (SBE) to implement a standards-based accountability system to improve student academic achievement, which includes identification of successful schools and districts, those in need of assistance, and those in which state intervention measures are needed. Intervention strategies may be implemented only after authorization by the Legislature, which has not occurred.

For the past two years SBE has been working on an accountability system and on January 15, 2009, SBE adopted a resolution to:

- develop an accountability index to identify schools and districts based on student achievement;
- work to build the capacity of districts to help their schools improve, including an Innovation Zone program to provide improvement assistance;
- establish a process for placing schools and districts on Academic Watch if no significant improvement occurs, which would include a binding performance contract between the state and the district; and
- continue to refine the details of the accountability system.

Education Data Center. In 2007 the Legislature created an Education Data Center (Center) within the Office of Financial Management (OFM) and required the Center to work jointly with the Legislative Evaluation and Accountability Program Committee (LEAP) in conducting collaborative analyses of early learning, K-12, and higher education programs and issues.

Local Levies and Local Effort Assistance (LEA). The Washington State Constitution gives school districts the authority to collect property tax revenues in excess of 1 percent of the assessed value of county property for transportation, capital or operating purposes, and to assume excess debt when voters approve a levy or bond issue. These school levy dollars are retained by the school district and do not go into the State General Fund. Local levy funds may only be used for enrichment programs and not for basic education obligations.

In 1987 a program of state-provided levy equalization or LEA was created by statute to mitigate the effect that above-average property tax rates might have on the ability of a school district to raise local revenues to supplement the state's basic program of education. Districts are eligible for levy equalization if they have passed a local maintenance and operations levy, and their 12 percent levy rate is higher than the statewide average. LEA funds are not part of a school district's basic education allocation.

Highly Capable. The courts have declined to include supplemental instruction for highly capable (gifted) students under the basic education. If funds are provided by the state for the program then current statutes require the allocation to be on an excess cost basis based on a per student amount not to exceed 3 percent of the district's full-time equivalent (FTE) student enrollment. The 2007-09 Appropriations Act allocates funding at 2.314 percent of FTE enrollment.

Basic Education Finance Task Force. On January 14, 2009, the task force, created by the Legislature in 2007, submitted its final report with recommendations on the definition of basic education, the instructional program of basic education, and core allocations for basic education. The report included five minority reports.

**Summary of Engrossed Bill:** In enacting this legislation, the Legislature intends to continue to review, evaluate, and revise the definition and funding of basic education in order to continue to fulfill the state's constitutional obligation and build capacity to anticipate and support potential future enhancements as the needs of our citizens continue to evolve.

Paramount Duty of the State. The Legislature's intent is to fulfill its obligation under the State Constitution to define and fund a program of basic education and to establish a general and uniform system of public schools. For practical and educational reasons, major change cannot occur instantaneously. The Legislature intends to begin a schedule for implementation of a redefined program of basic education and the resources necessary to support it, beginning in the 2011-12 school year. The Legislature intends to continue to review and revise the formulas, including making revisions for technical purposes.

Definition and Instructional Program of Basic Education. Effective September 1, 2011, the program of basic education that complies with the State Constitution is that which provides the opportunity to develop the knowledge and skills necessary to meet the state-established high school graduation requirements that are intended to allow students to have the opportunity to graduate with a meaningful diploma that prepares them for postsecondary education, gainful employment, and citizenship, including the following:

- the minimum instructional program currently offered by school districts, including LAP, TBIP, and an appropriate education for all eligible students with disabilities;
- the educational program for students in residential schools, juvenile detention facilities, and for individuals under age 18 who are in adult correctional facilities; and
- the addition of transportation and transportation services to and from school for eligible students.

Local Control. School districts may enrich the instructional program of basic education with additional instruction, services, programs, or activities that the school district determines is appropriate.

Graduation Requirements. SBE must forward any proposed changes to high school graduation requirements to the legislative education committees. The Legislature must be provided an opportunity to act before changes are adopted by the SBE. Changes with a fiscal impact on school districts take effect only if formally authorized by the Legislature.

State Funding Allocation for Basic Education. Effective September 1, 2011, the minimum staffing ratios are repealed. Beginning September 1, 2011, a new distribution formula for the allocation of state funds to support the Instructional Program of Basic Education is in effect. The formula is for allocation purposes only. Nothing requires a particular teacher-to-student ratio or particular types or classifications of staff.

To the extent the technical details of the formula have been adopted by the Legislature, the distribution formula is based on minimum staffing and nonstaff costs to support prototypical

schools. The prototypes illustrate the level of resources needed to operate a school of a particular size with particular types and grade levels of students using commonly understood terms and inputs. Allocations to school districts will be adjusted from the prototypes based on actual FTE student enrollment in each grade, in each school in the district, adjusted for small schools and reflecting other factors in the Appropriations Act. Allocations for middle and high schools that are based on the percent of students in the school who are eligible for FRM will be adjusted to reflect underreporting of eligibility for FRM among these students.

The school prototypes are defined as follows:

- high school: 600 FTE students in grades nine through 12;
- middle school: 432 FTE students in grades seven and eight; and
- elementary school: 400 FTE students in grades kindergarten through six.

The minimum allocation for each level of school prototype consists of four parts:

- *Class Size.* An allocation based on the number of FTE classroom teachers to provide for the annual instructional hours and at least one teacher planning period per school day, based on an average class size as specified in the appropriations act. The appropriations act must specify the basic average class size; basic average class size in schools with more than 50 percent of students eligible for FRM; and average class size in grades K-3.
- *Other Building Staff.* An allocation for staff in addition to classroom teachers.
- *Maintenance, Supplies, and Operating Costs (MSOC).* A per-FTE student allocation for student technology, utilities, curriculum, instructional professional development, other building costs, and central office administration.
- *Central Office Administrative Staff.* An allocation based on a percentage, identified in the Appropriations Act, of the allocations for teachers and other staff for all schools in the district.

The minimum allocation is enhanced for LAP, TBIP, and students with disabilities who are eligible for special education, as follows:

- *Learning Assistance Program.* An enhancement based on the percent of students in each school eligible for FRM. The minimum allocation for LAP must provide an extended school day and extended school year for each level of prototypical school, and a per student allocation for MSOC;
- *Transitional Bilingual Instruction Program.* An enhancement based on the number of students in each school enrolled in the TBIP, the percent of the school day a student is assumed to receive supplemental instruction, and a per student allocation for MSOC; and
- *Special Education.* An enhancement based on the basic average class size, other staff in addition to class room teachers, and a per student allocation for MSOC.

The special education excess cost allocation formula and the safety net are placed into statute. Clarifications and corrections are made to statutes of the other categorical programs to align with the new distribution formulas.

Funding Working Group. It is the intent of the Legislature that no increased programmatic or instructional expectations be imposed upon schools or school districts without an accompanying increase in resources. OFM, with OSPI, must convene a technical work

group, with specified members, to address specified issues and recommend to the Legislature the details of the funding formulas and a concurrent implementation schedule by December 1, 2009.

Phase-in. OSPI must annually make determinations on the educational system's capacity to accommodate increased resources in relation to the recommended elements in the prototypical funding allocation model and identify areas where there are specific and significant capacity limitations to providing enhancements and recommend how to address the limitations. The Legislature must review the OSPI recommendations to ensure that no enhancement is imposed on the system that cannot be accommodated by the system's capacity. System capacity includes capital facilities, types of available staff and staff experience levels, and the availability of data. Increases in appropriations that are not basic education must be used primarily for the purposes of building system capacity to support class size reductions in kindergarten through third grade or enhancing a statewide beginning teacher and support system.

Teacher Certification and Professional Development. The Legislature recognizes that teachers and administrators must be provided access to opportunities to gain knowledge and skills that will enable them to be increasingly successful. By January 1, 2010, PESB must:

- adopt performance standards for effective teaching calibrated for each level of certification. The standards must, to the extent possible, incorporate standards for cultural competency, as defined in the bill;
- define a master teacher, with a comparable level of increased competency between the professional level and the master level as between the professional level and the National Board certification; and
- submit to the Governor and Legislature:
  - an update on the implementation of the professional certificate assessment;
  - a proposal for a uniform and reliable classroom-based evaluation of teacher effectiveness for the student-teaching field experience that uses multiple measures of performance, and a timeline for when the assessment will be required for successful completion of a state-approved teacher preparation program; and
  - after consulting with stakeholders, a recommendation on the length of time that a residency certificate is valid and when a teacher must meet the minimum level of performance to receive a professional certificate in order to continue to be certified as a teacher. The recommendation must include a description of the stakeholders' comments.

Beginning, July 1, 2011, educator preparation programs for residency certification must demonstrate how the program produces effective teachers. If funds are appropriated, recognizing the capacity limitation of the education systems, the PESB must develop the system proposed through the 2011-12 school year. No earlier than September 1, 2011, a professional certificate must be based on a minimum of two years of successful teaching experience as defined by the PESB and the results of the professional certificate assessment, and may not require enrollment in a professional certification program.

LIDs. School districts are eligible to receive funds for LIDs for activities that contribute to specified outcomes. School districts must document how the funds contribute to measurable improvement in the outcomes.

Accountability. The Legislature intends to develop a system in which the state and school districts share accountability for achieving the state educational standards and supporting continuous improvement through progressive levels of support.

SBE is directed to continue to develop an accountability framework, including an accountability index based on student growth to identify schools and districts for recognition and additional state support, and for use as a self-assessment by schools and districts. SBE, with OSPI, must submit to the Legislature a proposal and timeline for the implementation of a comprehensive system of voluntary support and assistance for schools and districts based on the accountability index. The timeline must accommodate capacity limitations of the K-12 educational system. Changes that have a fiscal impact on school districts take effect only if formally authorized by the Legislature.

By December 1, 2012, SBE must submit to the Legislature a proposal, timeline, and recommended resources for a comprehensive system of improvement targeted to challenged schools and districts that have not demonstrated sufficient improvement through the voluntary system. The timeline must accommodate capacity limitations of the K-12 educational system. The proposal takes effect only if formally authorized by the Legislature.

SBE, with OSPI, must seek approval from the federal Department of Education to use the accountability index and the state system of support, assistance, and potential intervention to replace the federal accountability system under No Child Left Behind.

Education Data Center. SBE must work with the Center and the funding working group to determine the feasibility of using the prototypical funding allocation model as a tool for schools and districts to report how state resources are used.

Compensation Working Group. The Legislature understands that continuing to attract and retain the highest quality educators will require increased investments. Beginning July 1, 2011, OFM must convene a working group, with specified membership, to make recommendations on specified issues and an enhanced salary allocation model that aligns with state expectations for educator development and certification and an implementation schedule. The group must conduct or contract for a preliminary comparative labor market analysis of compensation for school districts employees and report the results to the Legislature. The working group must make an initial report by December 1, 2012, and must include whether additional work is necessary.

Local Levies and LEA. The Legislature finds that local levy authority remains an important component of the overall support of the public schools even though it is outside the state's obligation for basic education. Beginning July 1, 2010, OFM must convene a working group, with specified membership, to develop options for a new system of supplemental school funding through local levies and the LEA. The working group must report to the Legislature December 1, 2011.



Oversight. The Legislature intends to maintain an active and ongoing role in monitoring the development and implementation of the redefinition of basic education and new funding formula. The SBE, PESB, OFM, and technical working groups must present status reports to a joint work session of the House and Senate education committees as required by the Legislature.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: The genesis for this bill originated from two other bills that addressed redefining and funding basic education. There was much to appreciate in the earlier bills but this new bill will provide a good and solid base for building a new definition of basic education for our students. Too many people became entrenched either for or against each of those bills so now we are starting from a clean slate, which hopefully will allow everyone to work together. The reality is that we will always want to have more money for education but in the resource-constrained legislative environment that we face this year how can we do something of value for the kids. We need an implementation plan and we need a revenue package so that the plan can be implemented. The task force had a deliberate focus on putting the best possible educators before our students and we urge the Legislature to reinsert the frameworks from the previous bills for the Professional Educators Standards Board to develop a new continuum of educator preparation and certification system and come back with the fiscal implications of the new system. If the state embarks on redefining basic education then it should include a goal that all high school students should graduate career and college ready, a data system, and a clear and transparent system of accountability. It is important to have goals in the legislation and then we can listen to a variety of means to get there. Most important is having a high quality education that reaches from early learning through K-12 and into post-secondary. The task force found that including early learning in basic education was warranted because of the good return on investment of targeting early learning for at-risk kids. A clear definition of basic education and the funding will be necessary to gain the public's support, which will be vital to achieving this goal through new revenue. A flexible allocation based on a prototypical model levels the playing field for all students and the taxpayers that support them. An oversight group can aid change in a system that is too often called unresponsive. It is important that you clearly define each step in the process to get to a new definition and full funding. We think you should fix the classified employees and the administrators salaries first to show the way for the rest of the changes.

CON: Washington has been declining in the ranking of states based on the amount of per pupil funding and is near the bottom. The Legislature is facing devastating cuts to education. This bill is a distraction from our real priority of protecting funding for education. This bill is too vague. It potentially will make extensive changes but without funding; the changes to teacher certification, evaluation, compensation, and school accountability will make little difference. We support funding based on prototypical schools because it is more transparent

and should be adopted this year. This is not the solution. Teachers are shocked that these things are being addressed by the Legislature when there is such a large deficit. The Legislature should be concentrating on fully funding education. This bill will actually increase class size making teachers' jobs harder. We are already dealing with underfunding and with the projected cuts it will not be doable. With increased certification requirements it will drive teachers from the profession because you are asking for so much more. The focus should be on funding because funding is important. We encourage you to consider the Full Funding Coalition revenue proposal, which would dedicate to education 50 percent of any future state revenue increases over 5 percent.

OTHER: We support putting in place a blueprint for funding the redesigned definition of basic education. Education reform was adopted without the funding to make significant changes. School districts will experience massive cuts and are already using local resources to supplement state funding. There is too much in the comprehensive measures that were put forth by the task force and the Full Funding Coalition to start to work from just intent now. Because our children of color and children of poverty are scoring lower on state assessments than others and they are not continuing on to higher education the Legislature needs to act this session. Washington is one of three states that require nothing for low performing high schools so the Legislature needs to move forward with an accountability system. We hope this bill will let the State Board of Education (SBE) know if the board is moving in the right direction on CORE 24 and accountability. We urge you to provide funding for a new basic education definition that includes early learning. Not to many years ago K-12 use to be more than 50 percent of the state budget and now it is only 41 percent, and while inputs are not the only thing it is important. It is clear that we must have a revenue plan because we can't cut back on what is being done now. We can not do this without new revenue. One option would be a moratorium on the WASL because it costs a lot to administer the assessment and all the alternatives – and because it is a graduation requirement.

**Persons Testifying:** PRO: Senator Oemig, prime sponsor; David Spring, parent; Jennifer Wallace, Professional Education Standards Board; Nancy Hiteshue, Washington Roundtable; Judith Turpin, Association of University Women of Washington; Martha Rice, Washington State School Directors Association; Mitch Denning, Alliance of Education Association; Barbara Mertens, Washington Association of School Administrators; Doug Nelson, PSE SEIU 1948; Jon Gould, Children's Alliance and Early Learning Action Alliance.

CON: Mary Lindquist, Washington Education Association; Shari Ludden, first grade teacher; Jared Kink, secondary school teacher.

OTHER: Ken Kanikeberg, Office of the Superintendent of Public Instruction; Edie Harding, SBE; Christie Perkins, Washington State Special Education Coalition.