

E2SHB 1134 - S COMM AMD
By Committee on Ways & Means

ADOPTED AND ENGROSSED 4/16/13

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that:

4 (a) American Indian and Alaska Native students make up 2.5 percent
5 of the total student population in the state and twenty-five percent or
6 more of the student population in fifty-seven schools across the state.

7 (b) American Indian students in Washington have the highest annual
8 drop-out rate at 9.5 percent, compared to 4.6 percent of all students
9 in each of grades nine through twelve. Of the students expected to
10 graduate in 2010 because they entered the ninth grade in 2006, the
11 American Indian on-time graduation rate was only fifty-eight percent,
12 compared to 76.5 percent of all students.

13 (c) The teaching of American Indian language, culture, and history
14 are important to American Indian people and critical to the educational
15 attainment and achievement of American Indian children.

16 (d) The state-tribal education compacts authorized under this
17 chapter reaffirm the state's important commitment to government-to-
18 government relationships with the tribes that has been recognized by
19 proclamation, and in the centennial accord and the millennium
20 agreement. These state-tribal education compacts build upon the
21 efforts highlighted by the office of the superintendent of public
22 instruction in its 2012 Centennial Accord Agency Highlights, including:
23 The Since Time Immemorial (STI): Tribal Sovereignty in Washington
24 State Curriculum Project that imbeds the history surrounding
25 sovereignty and intergovernmental responsibilities into this state's
26 classrooms; the agency's regular meetings with the superintendents of
27 the seven current tribal schools, as well as the federal bureau of
28 Indian education representatives at the regional and national level on
29 issues relating to student academic achievement, accessing of funding
30 for tribal schools, and connecting tribal schools to the K-20 network;

1 and the recent establishment, in statute, of the office of native
2 education within the office of the superintendent of public
3 instruction.

4 (e) School funding should honor tribal sovereignty and reflect the
5 government-to-government relationship between the state and the tribes,
6 however the current structure that requires negotiation of an
7 interlocal agreement between a school district and a tribal school
8 ignores tribal sovereignty and results in a siphoning of funds for
9 administration that could be better used for teaching and learning.

10 (2) The legislature further finds that:

11 (a) There is a preparation gap among entering kindergartners with
12 many children, especially those from low-income homes, arriving at
13 kindergarten without the knowledge, skills, and good health necessary
14 to succeed in school;

15 (b) Upon entry into the K-12 school system, the educational
16 opportunity gap becomes more evident, with children of color and from
17 low-income homes having lower scores on math, reading, and writing
18 standardized tests, as well as lower graduation rates and higher rates
19 of dropping out of school; and

20 (c) Comprehensive, culturally competent early learning and greater
21 collaboration between the early learning and K-12 school systems will
22 ensure appropriate connections and smoother transitions for children,
23 and help eliminate or bridge gaps that might otherwise develop.

24 (3) In light of these findings, it is the intent and purpose of the
25 legislature to authorize the superintendent of public instruction to
26 enter into state-tribal education compacts.

27 NEW SECTION. **Sec. 2.** (1) The superintendent of public instruction
28 is authorized to enter into state-tribal education compacts.

29 (2) No later than six months after the effective date of this
30 section, the superintendent of public instruction shall establish an
31 application and approval process, procedures, and timelines for the
32 negotiation, approval or disapproval, and execution of state-tribal
33 education compacts.

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

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

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

5 (4) The resolution must be accompanied by an application that
6 indicates the grade or grades from kindergarten through twelve that
7 will be offered and that demonstrates that the school will be operated
8 in compliance with all applicable laws, the rules adopted thereunder,
9 and the terms and conditions set forth in the application.

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

14 (6) State-tribal education compacts must include provisions
15 regarding:

16 (a) Compliance;

17 (b) Notices of violation;

18 (c) Dispute resolution, which may include nonjudicial processes
19 such as mediation;

20 (d) Recordkeeping and auditing;

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

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

24 (g) Provisions for compact termination.

25 (7) The superintendent of public instruction shall adopt such rules
26 as are necessary to implement this chapter.

27 NEW SECTION. **Sec. 3.** (1) A school that is the subject of a state-
28 tribal education compact must operate according to the terms of its
29 compact executed in accordance with section 2 of this act.

30 (2) Schools that are the subjects of state-tribal education
31 compacts are exempt from all state statutes and rules applicable to
32 school districts and school district boards of directors, except those
33 statutes and rules made applicable under this chapter and in the state-
34 tribal education compact executed under section 2 of this act.

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

1 (a) Provide a curriculum and conduct an educational program that
2 satisfies the requirements of RCW 28A.150.200 through 28A.150.240 and
3 28A.230.010 through 28A.230.195;

4 (b) Employ certificated instructional staff as required in RCW
5 28A.410.010, however such schools may hire noncertificated
6 instructional staff of unusual competence and in exceptional cases as
7 specified in RCW 28A.150.203(7);

8 (c) Comply with the employee record check requirements in RCW
9 28A.400.303 and the mandatory termination and notification provisions
10 of RCW 28A.400.320, 28A.400.330, 28A.405.470, and 28A.405.475;

11 (d) Comply with nondiscrimination laws;

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

15 (f) Be subject to and comply with legislation enacted after the
16 effective date of this section governing the operation and management
17 of schools that are the subject of a state-tribal education compact.

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

20 (5) Nothing in this chapter may limit or restrict any enrollment or
21 school choice options otherwise available under Title 28A RCW.

22 NEW SECTION. **Sec. 4.** (1) A school that is the subject of a state-
23 tribal education compact may not charge tuition except to the same
24 extent as school districts may be permitted to do so with respect to
25 out-of-state and adult students pursuant to chapter 28A.225 RCW, but
26 may charge fees for participation in optional extracurricular events
27 and activities.

28 (2) Such schools may not limit admission on any basis other than
29 age group, grade level, or capacity and must otherwise enroll all
30 students who apply.

31 (3) If capacity is insufficient to enroll all students who apply,
32 a school that is the subject of a state-tribal education compact may
33 prioritize the enrollment of tribal members and siblings of already
34 enrolled students.

35 NEW SECTION. **Sec. 5.** (1) A school that is the subject of a state-
36 tribal education compact must report student enrollment. Reporting

1 must be done in the same manner and use the same definitions of
2 enrolled students and annual average full-time equivalent enrollment as
3 is required of school districts. The reporting requirements in this
4 subsection are required for a school to receive state or federal
5 funding that is allocated based on student characteristics.

6 (2) Funding for a school that is the subject of a state-tribal
7 education compact shall be apportioned by the superintendent of public
8 instruction according to the schedule established under RCW
9 28A.510.250, including general apportionment, special education,
10 categorical, and other nonbasic education moneys. Allocations for
11 certificated instructional staff must be based on the average staff mix
12 ratio of the school, as calculated by the superintendent of public
13 instruction using the statewide salary allocation schedule and related
14 documents, conditions, and limitations established by the omnibus
15 appropriations act. Allocations for classified staff and certificated
16 administrative staff must be based on the salary allocations of the
17 school district in which the school is located, subject to conditions
18 and limitations established by the omnibus appropriations act. Nothing
19 in this section requires a school that is the subject of a state-tribal
20 education compact to use the statewide salary allocation schedule.
21 Such a school is eligible to apply for state grants on the same basis
22 as a school district.

23 (3) Any moneys received by a school that is the subject of a state-
24 tribal education compact from any source that remain in the school's
25 accounts at the end of any budget year must remain in the school's
26 accounts for use by the school during subsequent budget years.

27 NEW SECTION. **Sec. 6.** A new section is added to chapter 28A.642
28 RCW to read as follows:

29 Nothing in this chapter prohibits schools established under chapter
30 28A.--- RCW (the new chapter created in section 9 of this act) from:

- 31 (1) Implementing a policy of Indian preference in employment; or
32 (2) Prioritizing the admission of tribal members where capacity of
33 the school's programs or facilities is not as large as demand.

34 **Sec. 7.** RCW 49.60.400 and 1999 c 3 s 1 are each amended to read as
35 follows:

- 36 (1) The state shall not discriminate against, or grant preferential

1 treatment to, any individual or group on the basis of race, sex, color,
2 ethnicity, or national origin in the operation of public employment,
3 public education, or public contracting.

4 (2) This section applies only to action taken after December 3,
5 1998.

6 (3) This section does not affect any law or governmental action
7 that does not discriminate against, or grant preferential treatment to,
8 any individual or group on the basis of race, sex, color, ethnicity, or
9 national origin.

10 (4) This section does not affect any otherwise lawful
11 classification that:

12 (a) Is based on sex and is necessary for sexual privacy or medical
13 or psychological treatment; or

14 (b) Is necessary for undercover law enforcement or for film, video,
15 audio, or theatrical casting; or

16 (c) Provides for separate athletic teams for each sex.

17 (5) This section does not invalidate any court order or consent
18 decree that is in force as of December 3, 1998.

19 (6) This section does not prohibit action that must be taken to
20 establish or maintain eligibility for any federal program, if
21 ineligibility would result in a loss of federal funds to the state.

22 (7) Nothing in this section prohibits schools established under
23 chapter 28A.--- RCW (the new chapter created in section 9 of this act)
24 from:

25 (a) Implementing a policy of Indian preference in employment; or

26 (b) Prioritizing the admission of tribal members where capacity of
27 the school's programs or facilities is not as large as demand.

28 (8) For the purposes of this section, "state" includes, but is not
29 necessarily limited to, the state itself, any city, county, public
30 college or university, community college, school district, special
31 district, or other political subdivision or governmental
32 instrumentality of or within the state.

33 ((+8)) (9) The remedies available for violations of this section
34 shall be the same, regardless of the injured party's race, sex, color,
35 ethnicity, or national origin, as are otherwise available for
36 violations of Washington antidiscrimination law.

37 ((+9)) (10) This section shall be self-executing. If any part or
38 parts of this section are found to be in conflict with federal law, the

1 United States Constitution, or the Washington state Constitution, the
2 section shall be implemented to the maximum extent that federal law,
3 the United States Constitution, and the Washington state Constitution
4 permit. Any provision held invalid shall be severable from the
5 remaining portions of this section.

6 **Sec. 8.** RCW 84.52.0531 and 2012 1st sp.s. c 10 s 8 are each
7 amended to read as follows:

8 The maximum dollar amount which may be levied by or for any school
9 district for maintenance and operation support under the provisions of
10 RCW 84.52.053 shall be determined as follows:

11 (1) For excess levies for collection in calendar year 1997, the
12 maximum dollar amount shall be calculated pursuant to the laws and
13 rules in effect in November 1996.

14 (2) For excess levies for collection in calendar year 1998 and
15 thereafter, the maximum dollar amount shall be the sum of (a) plus or
16 minus (b), (c), and (d) of this subsection minus (e) of this
17 subsection:

18 (a) The district's levy base as defined in subsections (3) and (4)
19 of this section multiplied by the district's maximum levy percentage as
20 defined in subsection (~~((+6+))~~) (7) of this section;

21 (b) For districts in a high/nonhigh relationship, the high school
22 district's maximum levy amount shall be reduced and the nonhigh school
23 district's maximum levy amount shall be increased by an amount equal to
24 the estimated amount of the nonhigh payment due to the high school
25 district under RCW 28A.545.030(3) and 28A.545.050 for the school year
26 commencing the year of the levy;

27 (c) Except for nonhigh districts under (d) of this subsection, for
28 districts in an interdistrict cooperative agreement, the nonresident
29 school district's maximum levy amount shall be reduced and the resident
30 school district's maximum levy amount shall be increased by an amount
31 equal to the per pupil basic education allocation included in the
32 nonresident district's levy base under subsection (3) of this section
33 multiplied by:

34 (i) The number of full-time equivalent students served from the
35 resident district in the prior school year; multiplied by:

36 (ii) The serving district's maximum levy percentage determined
37 under subsection (~~((+6+))~~) (7) of this section; increased by:

1 (iii) The percent increase per full-time equivalent student as
2 stated in the state basic education appropriation section of the
3 biennial budget between the prior school year and the current school
4 year divided by fifty-five percent;

5 (d) The levy bases of nonhigh districts participating in an
6 innovation academy cooperative established under RCW 28A.340.080 shall
7 be adjusted by the office of the superintendent of public instruction
8 to reflect each district's proportional share of student enrollment in
9 the cooperative;

10 (e) The district's maximum levy amount shall be reduced by the
11 maximum amount of state matching funds for which the district is
12 eligible under RCW 28A.500.010.

13 (3) For excess levies for collection in calendar year 2005 and
14 thereafter, a district's levy base shall be the sum of allocations in
15 (a) through (c) of this subsection received by the district for the
16 prior school year and the amounts determined under subsection (4) of
17 this section, including allocations for compensation increases, plus
18 the sum of such allocations multiplied by the percent increase per full
19 time equivalent student as stated in the state basic education
20 appropriation section of the biennial budget between the prior school
21 year and the current school year and divided by fifty-five percent. A
22 district's levy base shall not include local school district property
23 tax levies or other local revenues, or state and federal allocations
24 not identified in (a) through (c) of this subsection.

25 (a) The district's basic education allocation as determined
26 pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

27 (b) State and federal categorical allocations for the following
28 programs:

29 (i) Pupil transportation;

30 (ii) Special education;

31 (iii) Education of highly capable students;

32 (iv) Compensatory education, including but not limited to learning
33 assistance, migrant education, Indian education, refugee programs, and
34 bilingual education;

35 (v) Food services; and

36 (vi) Statewide block grant programs; and

37 (c) Any other federal allocations for elementary and secondary

1 school programs, including direct grants, other than federal impact aid
2 funds and allocations in lieu of taxes.

3 (4) For levy collections in calendar years 2005 through 2017, in
4 addition to the allocations included under subsection (3)(a) through
5 (c) of this section, a district's levy base shall also include the
6 following:

7 (a)(i) For levy collections in calendar year 2010, the difference
8 between the allocation the district would have received in the current
9 school year had RCW 84.52.068 not been amended by chapter 19, Laws of
10 2003 1st sp. sess. and the allocation the district received in the
11 current school year pursuant to RCW 28A.505.220;

12 (ii) For levy collections in calendar years 2011 through 2017, the
13 allocation rate the district would have received in the prior school
14 year using the Initiative 728 rate multiplied by the full-time
15 equivalent student enrollment used to calculate the Initiative 728
16 allocation for the prior school year; and

17 (b) The difference between the allocations the district would have
18 received the prior school year using the Initiative 732 base and the
19 allocations the district actually received the prior school year
20 pursuant to RCW 28A.400.205.

21 (5) For levy collections in calendar years 2011 through 2017, in
22 addition to the allocations included under subsections (3)(a) through
23 (c) and (4)(a) and (b) of this section, a district's levy base shall
24 also include the difference between an allocation of fifty-three and
25 two-tenths certificated instructional staff units per thousand full-
26 time equivalent students in grades kindergarten through four enrolled
27 in the prior school year and the allocation of certificated
28 instructional staff units per thousand full-time equivalent students in
29 grades kindergarten through four that the district actually received in
30 the prior school year, except that the levy base for a school district
31 whose allocation in the 2009-10 school year was less than fifty-three
32 and two-tenths certificated instructional staff units per thousand
33 full-time equivalent students in grades kindergarten through four shall
34 include the difference between the allocation the district actually
35 received in the 2009-10 school year and the allocation the district
36 actually received in the prior school year.

37 (6) For levy collections beginning in calendar year 2014 and
38 thereafter, in addition to the allocations included under subsections

1 (3)(a) through (c), (4)(a) and (b), and (5) of this section, a
2 district's levy base shall also include the funds allocated by the
3 superintendent of public instruction under section 5 of this act to a
4 school that is the subject of a state-tribal education compact and that
5 formerly contracted with the school district to provide educational
6 services through an interlocal agreement and received funding from the
7 district.

8 (7)(a) A district's maximum levy percentage shall be twenty-four
9 percent in 2010 and twenty-eight percent in 2011 through 2017 and
10 twenty-four percent every year thereafter;

11 (b) For qualifying districts, in addition to the percentage in (a)
12 of this subsection the grandfathered percentage determined as follows:

13 (i) For 1997, the difference between the district's 1993 maximum
14 levy percentage and twenty percent; and

15 (ii) For 2011 through 2017, the percentage calculated as follows:

16 (A) Multiply the grandfathered percentage for the prior year times
17 the district's levy base determined under subsection (3) of this
18 section;

19 (B) Reduce the result of (b)(ii)(A) of this subsection by any levy
20 reduction funds as defined in subsection ~~((+7))~~ (8) of this section
21 that are to be allocated to the district for the current school year;

22 (C) Divide the result of (b)(ii)(B) of this subsection by the
23 district's levy base; and

24 (D) Take the greater of zero or the percentage calculated in
25 (b)(ii)(C) of this subsection.

26 ~~((+7))~~ (8) "Levy reduction funds" shall mean increases in state
27 funds from the prior school year for programs included under
28 subsections (3) and (4) of this section: (a) That are not attributable
29 to enrollment changes, compensation increases, or inflationary
30 adjustments; and (b) that are or were specifically identified as levy
31 reduction funds in the appropriations act. If levy reduction funds are
32 dependent on formula factors which would not be finalized until after
33 the start of the current school year, the superintendent of public
34 instruction shall estimate the total amount of levy reduction funds by
35 using prior school year data in place of current school year data.
36 Levy reduction funds shall not include moneys received by school
37 districts from cities or counties.

1 ~~((8))~~ (9) The definitions in this subsection apply throughout
2 this section unless the context clearly requires otherwise.

3 (a) "Prior school year" means the most recent school year completed
4 prior to the year in which the levies are to be collected.

5 (b) "Current school year" means the year immediately following the
6 prior school year.

7 (c) "Initiative 728 rate" means the allocation rate at which the
8 student achievement program would have been funded under chapter 3,
9 Laws of 2001, if all annual adjustments to the initial 2001 allocation
10 rate had been made in previous years and in each subsequent year as
11 provided for under chapter 3, Laws of 2001.

12 (d) "Initiative 732 base" means the prior year's state allocation
13 for annual salary cost-of-living increases for district employees in
14 the state-funded salary base as it would have been calculated under
15 chapter 4, Laws of 2001, if each annual cost-of-living increase
16 allocation had been provided in previous years and in each subsequent
17 year.

18 ~~((9))~~ (10) Funds collected from transportation vehicle fund tax
19 levies shall not be subject to the levy limitations in this section.

20 ~~((10))~~ (11) The superintendent of public instruction shall
21 develop rules and inform school districts of the pertinent data
22 necessary to carry out the provisions of this section.

23 ~~((11))~~ (12) For calendar year 2009, the office of the
24 superintendent of public instruction shall recalculate school district
25 levy authority to reflect levy rates certified by school districts for
26 calendar year 2009.

27 NEW SECTION. **Sec. 9.** Sections 1 through 5 of this act constitute
28 a new chapter in Title 28A RCW.

29 NEW SECTION. **Sec. 10.** Section 8 of this act expires January 1,
30 2018."

ADOPTED 4/16/13

1 On page 1, line 1 of the title, after "schools;" strike the
2 remainder of the title and insert "amending RCW 49.60.400 and
3 84.52.0531; adding a new section to chapter 28A.642 RCW; adding a new
4 chapter to Title 28A RCW; and providing expiration dates."

--- END ---