

CERTIFICATION OF ENROLLMENT

**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1134**

Chapter 242, Laws of 2013

63rd Legislature  
2013 Regular Session

SUPERINTENDENT OF PUBLIC INSTRUCTION--STATE-TRIBAL EDUCATION  
COMPACTS

EFFECTIVE DATE: 07/28/13

Passed by the House April 18, 2013  
Yeas 82 Nays 12

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

Passed by the Senate April 16, 2013  
Yeas 45 Nays 3

BRAD OWEN

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**President of the Senate**

Approved May 15, 2013, 1:35 p.m.

JAY INSLEE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1134** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

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**Chief Clerk**

FILED

May 16, 2013

**Secretary of State  
State of Washington**

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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1134

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AS AMENDED BY THE SENATE

Passed Legislature - 2013 Regular Session

State of Washington                      63rd Legislature                      2013 Regular Session

By House Appropriations (originally sponsored by Representatives McCoy, Santos, Appleton, Lytton, Ryu, Stanford, Roberts, Jinkins, Haigh, Freeman, and Hunt)

READ FIRST TIME 03/01/13.

1            AN ACT Relating to state-tribal education compact schools; amending  
2 RCW 49.60.400 and 84.52.0531; adding a new section to chapter 28A.642  
3 RCW; adding a new chapter to Title 28A RCW; and providing an expiration  
4 date.

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

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

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

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

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

1 (d) The state-tribal education compacts authorized under this  
2 chapter reaffirm the state's important commitment to government-to-  
3 government relationships with the tribes that has been recognized by  
4 proclamation, and in the centennial accord and the millennium  
5 agreement. These state-tribal education compacts build upon the  
6 efforts highlighted by the office of the superintendent of public  
7 instruction in its 2012 Centennial Accord Agency Highlights, including:  
8 The Since Time Immemorial (STI): Tribal Sovereignty in Washington  
9 State Curriculum Project that imbeds the history surrounding  
10 sovereignty and intergovernmental responsibilities into this state's  
11 classrooms; the agency's regular meetings with the superintendents of  
12 the seven current tribal schools, as well as the federal bureau of  
13 Indian education representatives at the regional and national level on  
14 issues relating to student academic achievement, accessing of funding  
15 for tribal schools, and connecting tribal schools to the K-20 network;  
16 and the recent establishment, in statute, of the office of native  
17 education within the office of the superintendent of public  
18 instruction.

19 (e) School funding should honor tribal sovereignty and reflect the  
20 government-to-government relationship between the state and the tribes,  
21 however the current structure that requires negotiation of an  
22 interlocal agreement between a school district and a tribal school  
23 ignores tribal sovereignty and results in a siphoning of funds for  
24 administration that could be better used for teaching and learning.

25 (2) The legislature further finds that:

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

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

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

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

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

6 (2) No later than six months after the effective date of this  
7 section, the superintendent of public instruction shall establish an  
8 application and approval process, procedures, and timelines for the  
9 negotiation, approval or disapproval, and execution of state-tribal  
10 education compacts.

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

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

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

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

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

27 (6) State-tribal education compacts must include provisions  
28 regarding:

29 (a) Compliance;

30 (b) Notices of violation;

31 (c) Dispute resolution, which may include nonjudicial processes  
32 such as mediation;

33 (d) Recordkeeping and auditing;

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

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

37 (g) Provisions for compact termination.

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

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

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

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

13 (a) Provide a curriculum and conduct an educational program that  
14 satisfies the requirements of RCW 28A.150.200 through 28A.150.240 and  
15 28A.230.010 through 28A.230.195;

16 (b) Employ certificated instructional staff as required in RCW  
17 28A.410.010, however such schools may hire noncertificated  
18 instructional staff of unusual competence and in exceptional cases as  
19 specified in RCW 28A.150.203(7);

20 (c) Comply with the employee record check requirements in RCW  
21 28A.400.303 and the mandatory termination and notification provisions  
22 of RCW 28A.400.320, 28A.400.330, 28A.405.470, and 28A.405.475;

23 (d) Comply with nondiscrimination laws;

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

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

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

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

34 NEW SECTION. **Sec. 4.** (1) A school that is the subject of a state-  
35 tribal education compact may not charge tuition except to the same  
36 extent as school districts may be permitted to do so with respect to

1 out-of-state and adult students pursuant to chapter 28A.225 RCW, but  
2 may charge fees for participation in optional extracurricular events  
3 and activities.

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

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

11 NEW SECTION. **Sec. 5.** (1) A school that is the subject of a state-  
12 tribal education compact must report student enrollment. Reporting  
13 must be done in the same manner and use the same definitions of  
14 enrolled students and annual average full-time equivalent enrollment as  
15 is required of school districts. The reporting requirements in this  
16 subsection are required for a school to receive state or federal  
17 funding that is allocated based on student characteristics.

18 (2) Funding for a school that is the subject of a state-tribal  
19 education compact shall be apportioned by the superintendent of public  
20 instruction according to the schedule established under RCW  
21 28A.510.250, including general apportionment, special education,  
22 categorical, and other nonbasic education moneys. Allocations for  
23 certificated instructional staff must be based on the average staff mix  
24 ratio of the school, as calculated by the superintendent of public  
25 instruction using the statewide salary allocation schedule and related  
26 documents, conditions, and limitations established by the omnibus  
27 appropriations act. Allocations for classified staff and certificated  
28 administrative staff must be based on the salary allocations of the  
29 school district in which the school is located, subject to conditions  
30 and limitations established by the omnibus appropriations act. Nothing  
31 in this section requires a school that is the subject of a state-tribal  
32 education compact to use the statewide salary allocation schedule.  
33 Such a school is eligible to apply for state grants on the same basis  
34 as a school district.

35 (3) Any moneys received by a school that is the subject of a state-  
36 tribal education compact from any source that remain in the school's

1 accounts at the end of any budget year must remain in the school's  
2 accounts for use by the school during subsequent budget years.

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

5 Nothing in this chapter prohibits schools established under chapter  
6 28A.--- RCW (the new chapter created in section 9 of this act) from:

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

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

12 (1) The state shall not discriminate against, or grant preferential  
13 treatment to, any individual or group on the basis of race, sex, color,  
14 ethnicity, or national origin in the operation of public employment,  
15 public education, or public contracting.

16 (2) This section applies only to action taken after December 3,  
17 1998.

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

22 (4) This section does not affect any otherwise lawful  
23 classification that:

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

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

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

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

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

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

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

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

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

13        ~~((+9))~~ (10) This section shall be self-executing. If any part or  
14 parts of this section are found to be in conflict with federal law, the  
15 United States Constitution, or the Washington state Constitution, the  
16 section shall be implemented to the maximum extent that federal law,  
17 the United States Constitution, and the Washington state Constitution  
18 permit. Any provision held invalid shall be severable from the  
19 remaining portions of this section.

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

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

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

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

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

35        (b) For districts in a high/nonhigh relationship, the high school  
36 district's maximum levy amount shall be reduced and the nonhigh school  
37 district's maximum levy amount shall be increased by an amount equal to



1 the estimated amount of the nonhigh payment due to the high school  
2 district under RCW 28A.545.030(3) and 28A.545.050 for the school year  
3 commencing the year of the levy;

4 (c) Except for nonhigh districts under (d) of this subsection, for  
5 districts in an interdistrict cooperative agreement, the nonresident  
6 school district's maximum levy amount shall be reduced and the resident  
7 school district's maximum levy amount shall be increased by an amount  
8 equal to the per pupil basic education allocation included in the  
9 nonresident district's levy base under subsection (3) of this section  
10 multiplied by:

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

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

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

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

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

27 (3) For excess levies for collection in calendar year 2005 and  
28 thereafter, a district's levy base shall be the sum of allocations in  
29 (a) through (c) of this subsection received by the district for the  
30 prior school year and the amounts determined under subsection (4) of  
31 this section, including allocations for compensation increases, plus  
32 the sum of such allocations multiplied by the percent increase per full  
33 time equivalent student as stated in the state basic education  
34 appropriation section of the biennial budget between the prior school  
35 year and the current school year and divided by fifty-five percent. A  
36 district's levy base shall not include local school district property  
37 tax levies or other local revenues, or state and federal allocations  
38 not identified in (a) through (c) of this subsection.

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

3 (b) State and federal categorical allocations for the following  
4 programs:

5 (i) Pupil transportation;

6 (ii) Special education;

7 (iii) Education of highly capable students;

8 (iv) Compensatory education, including but not limited to learning  
9 assistance, migrant education, Indian education, refugee programs, and  
10 bilingual education;

11 (v) Food services; and

12 (vi) Statewide block grant programs; and

13 (c) Any other federal allocations for elementary and secondary  
14 school programs, including direct grants, other than federal impact aid  
15 funds and allocations in lieu of taxes.

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

20 (a)(i) For levy collections in calendar year 2010, the difference  
21 between the allocation the district would have received in the current  
22 school year had RCW 84.52.068 not been amended by chapter 19, Laws of  
23 2003 1st sp. sess. and the allocation the district received in the  
24 current school year pursuant to RCW 28A.505.220;

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

30 (b) The difference between the allocations the district would have  
31 received the prior school year using the Initiative 732 base and the  
32 allocations the district actually received the prior school year  
33 pursuant to RCW 28A.400.205.

34 (5) For levy collections in calendar years 2011 through 2017, in  
35 addition to the allocations included under subsections (3)(a) through  
36 (c) and (4)(a) and (b) of this section, a district's levy base shall  
37 also include the difference between an allocation of fifty-three and  
38 two-tenths certificated instructional staff units per thousand full-

1 time equivalent students in grades kindergarten through four enrolled  
2 in the prior school year and the allocation of certificated  
3 instructional staff units per thousand full-time equivalent students in  
4 grades kindergarten through four that the district actually received in  
5 the prior school year, except that the levy base for a school district  
6 whose allocation in the 2009-10 school year was less than fifty-three  
7 and two-tenths certificated instructional staff units per thousand  
8 full-time equivalent students in grades kindergarten through four shall  
9 include the difference between the allocation the district actually  
10 received in the 2009-10 school year and the allocation the district  
11 actually received in the prior school year.

12 (6) For levy collections beginning in calendar year 2014 and  
13 thereafter, in addition to the allocations included under subsections  
14 (3)(a) through (c), (4)(a) and (b), and (5) of this section, a  
15 district's levy base shall also include the funds allocated by the  
16 superintendent of public instruction under section 5 of this act to a  
17 school that is the subject of a state-tribal education compact and that  
18 formerly contracted with the school district to provide educational  
19 services through an interlocal agreement and received funding from the  
20 district.

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

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

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

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

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

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

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

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

1        ~~((7))~~ (8) "Levy reduction funds" shall mean increases in state  
2 funds from the prior school year for programs included under  
3 subsections (3) and (4) of this section: (a) That are not attributable  
4 to enrollment changes, compensation increases, or inflationary  
5 adjustments; and (b) that are or were specifically identified as levy  
6 reduction funds in the appropriations act. If levy reduction funds are  
7 dependent on formula factors which would not be finalized until after  
8 the start of the current school year, the superintendent of public  
9 instruction shall estimate the total amount of levy reduction funds by  
10 using prior school year data in place of current school year data.  
11 Levy reduction funds shall not include moneys received by school  
12 districts from cities or counties.

13        ~~((8))~~ (9) The definitions in this subsection apply throughout  
14 this section unless the context clearly requires otherwise.

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

17        (b) "Current school year" means the year immediately following the  
18 prior school year.

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

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

30        ~~((9))~~ (10) Funds collected from transportation vehicle fund tax  
31 levies shall not be subject to the levy limitations in this section.

32        ~~((10))~~ (11) The superintendent of public instruction shall  
33 develop rules and inform school districts of the pertinent data  
34 necessary to carry out the provisions of this section.

35        ~~((11))~~ (12) For calendar year 2009, the office of the  
36 superintendent of public instruction shall recalculate school district  
37 levy authority to reflect levy rates certified by school districts for  
38 calendar year 2009.

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

3        NEW SECTION.    **Sec. 10.**    Section 8 of this act expires January 1,  
4 2018.

Passed by the House April 18, 2013.

Passed by the Senate April 16, 2013.

Approved by the Governor May 15, 2013.

Filed in Office of Secretary of State May 16, 2013.