

HOUSE BILL REPORT

HCR 4410

As Passed Legislature

Brief Description: Establishing a joint select committee to address school funding.

Sponsors: Representatives Sullivan, Kretz, Maxwell and Santos.

Brief History:

Committee Activity:

None.

Floor Activity:

Passed House: 2/15/12, 92-0.

Passed Senate: 2/27/12, Adopted.

Passed Legislature.

Brief Summary of Bill

- Establishes a legislative Joint Select Committee on Article IX Litigation.

Staff: Kristen Fraser (786-7148).

Background:

Article IX, section 1 of the state Constitution declares that it is the paramount duty of the state to make ample provision for the education of all children within its borders. Beginning with *Seattle School District No. 1 v. State* (1978), the Washington Supreme Court (Court) has ruled that this section creates a state duty to define and fully fund a program of basic education, and creates a corresponding right in the state's children to receive educational opportunities. Because this funding duty arises from the Constitution, the *Seattle School District No. 1* Court declared that it takes precedence over other state programs.

In January of 2012, the Court issued its ruling in *McCleary v. State*, an education funding case. The Court held that the state had failed to meet its Article IX duty to fully fund the costs of its basic education program. The Court identified salary allocations, student transportation funding, and nonemployee related costs as areas of particular shortfalls. As in the *Seattle School District No. 1* case, the Court ruled that the Article IX duty is imposed on

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the state as a body politic, and therefore Article IX contemplates a shared responsibility among the three branches of government. The *McCleary* ruling reaffirmed two key principles from *Seattle School District No. 1*: it is the province of the judiciary to interpret the constitution and "say what the law is," but the Court must leave the means of implementing the Article IX duty to the Legislature.

Although the Court found that the state had failed to satisfy its funding duty, the Court also determined that Engrossed Substitute House Bill 2261 (Chapter 548, Laws of 2009) constituted a "promising reform program" that would, if fully funded, remedy deficiencies in the K-12 funding system. Explaining that the 2011-13 legislative budget made only small steps toward implementation of these funding reforms, the Court said that it "cannot stand idly by as the Legislature makes unfulfilled promises for reform," and it ruled that the judicial branch would retain jurisdiction over the case in order to monitor reforms under Engrossed Substitute House Bill 2261 and under the "paramount duty" generally. The Court declared that this approach would "foster[] dialogue and cooperation between coordinate branches of state government" regarding funding reforms.

The Court has not previously retained jurisdiction over an education funding case. (In the 1978 *Seattle School District No. 1* case, the Court expressly rejected the lower court's decision to retain jurisdiction over the case.) The Court has asked the state and the *McCleary* plaintiffs to provide briefing on their respective preferred forms of retaining jurisdiction. The state's opening brief is due March 12, 2012.

Summary of Bill:

Legislative findings are made regarding the paramount nature of the Article IX education funding duty and the Legislature's role in implementing this duty. The Legislature declares that it does not believe that judicial oversight of its legislative prerogatives is necessary, but that the Legislature recognizes that the Court has retained jurisdiction over the *McCleary* case under the unique circumstances presented by the Article IX duty. For this reason, the Legislature states that it desires to establish a structure and process for interaction between the legislative and judicial branches in order to achieve the common purpose of amply providing for the education of Washington's children.

A legislative Joint Select Committee (Committee) on Article IX Litigation is established. The Committee consists of eight legislators, two each from the two largest caucuses of the Senate and the House of Representatives. The duties of the Committee are:

- facilitating communication with the Court on school funding legislation and other actions of the Legislature related to the Article IX duty;
- advising and directing the attorneys who represent the Legislature before the Court in the *McCleary* case; and
- apprising legislators and the Legislature of communications from the Court on *McCleary*.

Senate Committee Services and the Office of Program Research must provide staff support to the committee.

Appropriation: None.

Fiscal Note: Not requested.