

SENATE BILL REPORT

ESHB 1849

As of March 28, 2011

Title: An act relating to establishing the Washington state education council.

Brief Description: Establishing the Washington state education council.

Sponsors: House Committee on Education Appropriations & Oversight (originally sponsored by Representatives Haigh, Santos, Dammeier, Seaquist, Finn, Maxwell, Sullivan, Probst, Hunt, Anderson, Frockt, Kenney and Kagi).

Brief History: Passed House: 3/02/11, 64-32.

Committee Activity: Early Learning & K-12 Education: 3/16/11, 3/24/11.

Brief Summary of Bill

- Creates a new Department of Education (DOE) as an executive branch agency. The head of DOE is the Secretary of Education, who is appointed by the Governor and subject to confirmation by the Senate.
- Creates the Washington State Education Council, with specified members, to advise the Secretary of Education.
- Includes the Professional Educator Standards Board, the State schools for the deaf and blind, and the higher education financial assistance program administration in the DOE.
- Abolishes and transfers the duties and functions of the Department of Early Learning, State Board of Education, and Quality Education Council to the DOE on a schedule determined by the transition team.
- Abolishes the Office of the Education Ombudsman immediately and the functions and duties are transferred to the DOE on a schedule determined by the transition team.
- Abolishes the Early Learning Advisory Council and the Achievement Gap Oversight and Accountability Committee.
- Abolishes the Washington State School Directors Association, effective December 2012, after a review by the transition team.
- Creates a transition team to develop an initial transition plan and implementation schedule for including the state-level early learning and K-12 educational entities

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in the DOE by January 16, 2013; and a transition subgroup to develop recommendations for a design to include the duties of the state-level post-secondary entities in the DOE by July 1, 2013.

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Staff: Susan Mielke (786-7422)

Background: The early learning, K-12, and higher education systems have a number of state-level agencies, councils, and boards. One of them is constitutionally-established.

Department of Early Learning (DEL). The DEL was created by the Legislature in 2006 for the primary purpose of implementing state early learning policy and coordinating, consolidating, and integrating child care and early learning programs in order to administer programs and funding as efficiently as possible. DEL oversees and regulates child care licensing and supports other early learning state and federal programs; child care licensing rate setting, and improving quality standards; background checks for licensed and certified child care; hearings appealing DEL actions; performance standards for the Early Childhood Education and Assistance Program (ECEAP); subsidy programs that help families pay for child care; Early Support for Infants and Toddlers (ESIT), for children birth to three with disabilities; and early home visiting programs. The Director of DEL is appointed by the Governor.

Early Learning Advisory Council (ELAC). The ELAC was established by the Legislature in 2007 to advise DEL on statewide early learning needs and develop a statewide early learning plan. Twenty-three members are specified in statute.

Superintendent of Public Instruction (SPI). The SPI was created in the state Constitution in 1889 and under the Constitution has supervision over all matters pertaining to the public schools of the state. Additionally, the SPI has specific statutory duties, including but not limited to gathering and reporting school information to state and federal authorities; preparing specifically requested reports each year, and providing other entities of state government with information for policymaking and budget preparation as needed; securing needed laws and appropriations from the state and federal governments and implementing those statutes enacted; distributing funds to local school districts and educational service districts (ESD); approving and monitoring the nine ESDs and 295 local school districts' expenditure budgets; administering the state School Construction Assistance Program and other grant programs; providing facilities services, and assisting local school districts with boundary issues; providing technical help in finance and curriculum matters to ESDs and school districts; monitoring and conducting consultation in areas such as basic education, assessment, curriculum development aligned with the EALRs, special needs programs for special student populations, and educational technology; issuing certificates for teachers, support personnel, and administrators of the K-12 system; and representing the interests and needs of education dealing with technology, environmental, arts, and partnership issues by serving on various state boards.

The Attorney General in a formal opinion found that the Legislature has discretion to prescribe the specific duties of the SPI and to create agencies and institutions to administer the state's public education system; however, it must respect the constitutional language granting the Superintendent supervisory power over the public school system. The Legislature may not delegate to another officer or agency the supervision authority of the SPI over the public schools. The constitutional authority of the SPI cannot be made subordinate to that of another officer or body. (AGO 1998 No. 6; and AGO 1961-62 No. 2)

State Board of Education (SBE). The SBE was established by the Washington Territorial Legislature in 1877. The SBE consists of 16 members – five elected by school board members, seven appointed by the Governor, the SPI, one elected by private schools, and two (nonvoting) students. The SBE's statutory purpose is to provide advocacy and strategic oversight of public education; implement a standards-based accountability framework that creates a unified system of increasing levels of support for schools in order to improve student academic achievement; provide leadership in the creation of a system that personalizes education for each student and respects diverse cultures, abilities, and learning styles; and promote achievement of the goals. Additional duties of the SBE include providing a broad leadership role in strategic oversight and policy for K-12 education; and establishing rules, standards, and guidelines for minimum high school graduation requirements, minimum basic education requirements, and private school approval.

Professional Educator Standards Board (PESB). The PESB was established in statute in 2000. The PESB has 13 members (the SPI, plus 12 gubernatorial appointees). The purpose of the PESB is to establish policies and requirements for the preparation and certification of educators that provide standards for competency in professional knowledge and practice in the areas of certification; a foundation of skills, knowledge, and attitudes necessary to help students with diverse needs, abilities, cultural experiences, and learning styles to meet or exceed the student learning goals. Specific statutory duties include advising the Governor, Legislature, and SPI; establishing policies, requirements and standards for educator preparation programs and educator certification; and administering assessments for pre-certification basic skills and subject knowledge assessments and professional-level certification.

Office of the Education Ombudsman (OEO). The OEO was created in statute in 2006 to provide information to parents, students, and others regarding their rights and responsibilities with respect to the state's public elementary and secondary education system, and advocate on behalf of elementary and secondary students. The OEO is located in the Office of the Governor and the Education Ombudsman is appointed by the Governor. Additional statutory duties of the OEO are to provide general information to students, families, and communities regarding the school system; help resolve conflict between families and schools; and provide policymakers with recommendations to improve the education system.

Achievement Gap Oversight and Accountability Committee (AGOAC). The AGOAC was established in 2009 to synthesize previous studies into an implementation plan and to recommend policies and strategies to close the achievement gap. The AGOAC is composed of six legislators; four members appointed by the Governor in consultation with the state ethnic commissions representing the African American, Latino, Asian American, and Pacific Islander communities; and one representative from each of the following: the Washington

federally recognized tribes, the OEO, and the Center for the Improvement of Student Learning in OSPI.

Quality Education Committee (QEC). The QEC was established by the Legislature in 2009 to inform and make recommendations on the ongoing implementation of the program of Basic Education and the funding to support it. The QEC is composed of eight legislators and one representative from each of the following: SPI, SBE, PESB, DEL, AGOAC, and the Governor's Office.

Washington State School Directors' Association (WSSDA). The WSSDA is comprised of all 1477 school board members from Washington State's 295 public school districts. Originally founded in 1922 as a private association but in 1947 it was established in statute as a state agency. The statutory purpose of WSSDA is to provide leadership, coordination of programs, advocacy, and services to support public school boards of directors. Specific duties assigned to WSSDA include providing materials and educational services to its members; maintaining multiple consultant resources to assist school boards in their work; implementing an active governmental relations program to communicate school directors' views to state education policymakers, and convening a wide array of committee and other meetings.

Educational Service Districts (ESDs). There are nine ESDs that provide regional services to local school districts, and assist the SPI, SBE, and other state educational agencies in performance of their duties. They were created in statute in 1969. Each ESD is governed by a seven or nine member board of directors that are elected by the school boards within the ESD. Specific statutory duties include providing budget, informational services, and professional development to local schools districts; providing direct services to students (special education, nurse corp, regional transportation coordinators, etc.); and providing professional development services as directed by the Legislature. ESDs are authorized to pay up to \$100 for membership in a statewide association for each ESD board member.

Washington State School for the Blind (WSSB). The WSSB was established in statute in 1886 with the primary purpose of educating and training visually impaired children. The WSSB is under the direction of a superintendent appointed by the Governor. A board of trustees, also appointed by the Governor, advises the superintendent.

State Center for Childhood Deafness and Hearing Loss (CDHL). The CDHL was originally created in statute in 1886 as the Washington State School for the Deaf with the primary purpose of educating and training hearing impaired children. The school's mission was broadened and its name changed in 2009. The center is under the direction of a director appointed by the Governor. A board of trustees, also appointed by the Governor, advises the director.

Higher Education Coordinating Board (HECB). Originally established in statute in 1969 as the Council on Higher Education. In 1975 the Legislature changed the membership, duties, and name to Council for Postsecondary Education. In 1985 the Legislature reconstituted the Council as the HECB. The HECB has ten members, appointed by the Governor, for the purpose of coordinating the state's public colleges and universities. Additionally, the HECB administers state and federal financial assistance programs.

Summary of Bill (Proposed Amendment): Legislative intent to create a seamless, cohesive state-level governance education system focused on students and learning from birth through college into a career is declared.

The Department of Education (DOE) is created as an executive branch agency to focus education policy development on implementing education programs and services that promote student achievement. The executive head of the DOE is the Secretary of Education who is appointed by the Governor and subject to confirmation by the Senate. The Secretary is assigned specific tasks, including developing a system-wide strategic plan that integrates four system-goals specified in the act. The SPI is housed in the DOE, retains supervisory duties pertaining to public schools granted by the Constitution, and is to cooperate and coordinate with the new DOE. The SPI is removed as a member of the PESB. The DOE includes the PESB, WSSB, and CDHL. The DEL, SBE, OEO, and QEC are abolished and their powers, duties, and functions are transferred to the DOE. Administration of the higher education financial assistance programs are transferred to the DOE. The ELAC and AGOAC are abolished. The statutes of WSSDA are repealed effective December 31, 2012, after the review of the transition team. The authority to pay for membership in a statewide association for each ESD board member is removed.

The Washington State Education Council (Council) is created to advise the Secretary of Education. The Council consists of 13 members: the SPI, who votes only in the case of a tie vote of the rest of the Council and cannot be chair of the Council; three members representing K-12 education elected by school district directors (one who resides in the Puget Sound Area, one who resides outside the Puget Sound Area, and one who resides in Eastern Washington); one member designated by the federally recognized Indian tribes; one member representing private schools, who votes only on matters affecting private schools; and one member representing home-based instruction who votes only on matters affecting home-based instruction; and six members appointed by the Governor (two members representing early learning, two members representing K-12 education; one member representing four-year institutions of higher education; and one member representing community and technical colleges). When making the appointments, the Governor must consider the diversity of the population, strive for a balanced representation of the state's geographic regions and consider appointing active practitioners and individuals with knowledge and experience in working with historically underrepresented populations. The DOE provides staff support to the Council.

A Governor-appointed transition team must complete an initial transition plan and implementation schedule by January 1, 2012, to phase-in the operations and responsibilities for early learning, K-12, and higher education financial assistance administration into the DOE. Additionally, the transition team must review the role of WSSDA and the Workforce Training and Education Coordinating Board and report findings with the plan. The transition team must hold public hearings to share the work plan, provide a status report, and report the transition plan and implementation schedule. Phase-in begins by July 1, 2012, and must be completed by January 16, 2013, unless otherwise directed by the Legislature.

A Governor-appointed transition subgroup must develop recommendations for a design to include the state-level higher education entities in the DOE. The recommendations must include a transition implementation plan and draft legislation to implement the plan. The

recommendations must be submitted to the Governor and Legislature by December 1, 2011, for the Legislature to enact legislation during the 2012 session that is necessary to implement the recommendations.

Technical changes are made. The Code Reviser must prepare legislation for the 2012 session to correct obsolete references resulting from this act.

EFFECT OF CHANGES MADE BY EARLY LEARNING & K-12 EDUCATION COMMITTEE (Proposed Amendments): The entire house bill is stricken.

Appropriation: None.

Fiscal Note: Available on House bill. Not requested on the striking amendment.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: On Engrossed Substitute House Bill. PRO: The bill's focus is to create a seamless system across early learning, K-12, and higher education and student focused. But the changes in the system need to occur now, so this bill is problem-focused. There are tremendous changes going on in pockets of our state but not statewide, so we want to suggest some amendments. The process for change has always been to have a high-level commission or task force that has resulted in the change but we have never really broken down the silos. The silos have resulted in children being lost at the transition points. The SBE has been studying effective governance of education and have recommendations to offer, including that the group should be composed of lay group and not people in the education system. While change in the governance system can make a difference it cannot be the only change that we make.

CON: Having one person in charge makes some sense and having fewer layers of bureaucracy makes sense. But this will do little or nothing to help Washington to have fewer children at-risk – we need to strengthen the family. This bill does not go far enough because a study is not needed – there needs to be action now

OTHER: If this is done it should not be done quickly. It is a complicated system, and there should be a thoughtful approach. We support adding practitioners to the council but the council should not review OEO or PESB because they are not governance entities.

On Proposed Amendment. PRO: The Governor believes it is time to put the education house in order and gather the fragments together. This proposal breaks down the silos and creates an integrated department of education to work systematically. We need a strategic plan that has clear lines of accountability. DOE will be responsible to our children and our families. Now there is duplication and cracks in the system. We need a better answer than what we have and we need to start now. Governance structures can and sometimes do make a difference to create a seamless system but it will take more than just reorganization. We support maintaining the constitutionally established Office of the Superintendent of Public Instruction, which has supervisory authority. We hope the performance measures that are

developed are diagnostic. We appreciate that the Council will reflect the diversity of our state and will include active practitioners. We don't want to lose the implementation of the new basic education definition, funding formulas, and enhancements when these functions are transferred from the QEC. If the Legislature believes that this is unconstitutional then the Legislature has tools that it can use to address the issue.

CON: This bill is just a distraction from the real issue that the Legislature should be addressing: the underfunding of education. The Legislature needs to fully fund the education system, including the new funding formulas and the increases that the Legislature has already approved. We support a seamless student-focused system and increased coordination through the educational continuum but a new DOE with a parallel OSPI does not work and is unconstitutional. Why aren't you putting all the agencies under OSPI? Coordination and collaboration can be achieved without creating a new agency. We are skeptical about the efficiencies and savings that will be accomplished by this bill we don't believe that the bill actually streamlines anything. You need to look at the specific problems that you think exists with the governance system and then address those specifics before you lump everyone together. We suggest you put the legislative education committees together so the Legislature does not look at the education system from silos. The new Council looks a lot like the current SBE so why not just keep the current SBE? School districts are concerned that this is the first step to consolidate school districts.

OTHER: School districts need help with funding – not this bill. This bill will not help us retain teachers or small class sizes but it will create a large bureaucracy. We request full voting rights for the private school representative on the Council.

It is difficult to know whether to support this or not because it is not fully thought out. A transition team is going to figure it out. Will a single department of education actually create a seamless, student focused system? It is difficult to accomplish cooperation through legislation. Do not rush into this change. There are too many questions that need to be answered before taking this action. For example, is this constitutional?

We support elevating the Governor's involvement in education and support maximizing integration of duties. However, we don't clearly see where the different functions will go and worry some of the functions will be lost. We do not support getting rid of the OEO. The OEO is an independent, neutral, and wonderful resource for families, especially but not only regarding special education. Please do not abolish but maintain the OEO in the Governor's Office or include the OEO as a separate entity within the DOE. They have highly trained and creative staff members who address all education issues, including special education, and they have made it possible to resolve complaints before they turn into expensive lawsuits.

The Council representation needs to be better balanced; so should add an additional higher education representation, including the private independent colleges. There should be a balance of all sectors in the DOE with a focus on early learning. We request full voting rights for the private school representative on the Council. The Council membership should be citizens – not stakeholders. How much public will be in public education. People will still need to have access to the process of decision making at the state and local level.

WSSDA has been reviewed by JLARC three times, and each time the Legislature has chosen to continue it as a state agency. Whether it is private or a state agency, the dues paid by the members will come from taxes. The Legislature mandates many things for school districts that are much more restrictive than requiring membership in WSSDA since the association sets its own dues and self-governs. Other public professionals are required to be members of associations, for example, judges. We should do all we can to strengthen the work of school boards, but this bill weakens them. We support a review of WSSDA by the transition team, but we should not presuppose the answer of that review by repealing WSSDA in this bill.

Persons Testifying: On Engrossed Substitute House Bill. PRO: Representative Haigh, prime sponsor; Representative Santos, sponsor; Marie Sullivan, WA State School Directors Assn. (WSSDA); Mitch Denning, Alliance of Educational Assn.; Edie Harding, SBE.

CON: Dave Powell, Walter Backstrom, Stand for Children.

OTHER: Doug Nelson, Public School Employees/Service Employees International Union; Ramona Hattendorf, WA State PTA; Dan Steele, WA Assn of School Administrators (WASA); Lucinda Young, Washington Education Association (WEA).

On Proposed Amendment. PRO: Senator McAuliffe, prime sponsor of amendment; Judy Hartmann, Leslie Goldstein, Governor's Policy Council; Lucinda Young, WEA; Jim Kainber, Stand for Children; Stephanie Cunningham, Jeannetta Charity-Cole, parent.

CON: Shawn Lewis, OSPI; Edie Harding, SBE; Marie Sullivan, WSSDA.

OTHER: Betsy McAlister, Cathey Murahashi, Arc of King County; Diane Stadden, Arc of Washington State; Judy Jennings, WA Federation of Independent Schools; Catherine Ahl, Larry Swift, citizen; George Scarola; League of Education Voters; Agda Burchard, Early Learning Action Alliance; Violet Boyer, Independent Colleges of WA; Donna Patrick, Developmentally Delayed Council; David Lord, Disability Rights of WA; Ramona Hattendorf, WA State PTA; Dan Steele, WASA; Doug Nelson, Public School Employees.