

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1134

63rd Legislature
2013 Regular Session

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

Speaker of the House of Representatives

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

President of the Senate

Approved

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.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1134

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.

--- END ---