H-2610.5

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 2239**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Hunter, Lytton, Sullivan, and Carlyle

AN ACT Relating to implementation of a plan for fulfilling Article IX obligations; adding a new chapter to Title 28A RCW; providing an expiration date; and declaring an emergency.

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

NEW SECTION. **Sec.**  INTENT. (1) In its January 2012 ruling in *McCleary v. State*, the state supreme court declared that Engrossed Substitute House Bill No. 2261 (2009) (chapter 548, Laws of 2009), "if fully funded," constituted a "promising reform" that would remedy deficiencies in the state's compliance with its paramount duty to make ample provision for the education of its children. In Engrossed Substitute House Bill No. 2261, the legislature revised its previous formulas to establish the prototypical school model, and it directed the quality education council and its technical working groups to provide the details of necessary formula enhancements to the prototypical school model. The following year, the legislature enacted Substitute House Bill No. 2776 (2010), which provided in statute quantification of the formula enhancements and established statutory deadlines for funding and implementation of these deadlines. Specifically, Substitute House Bill No. 2776 called for (a) full funding of the expected cost transportation formula by the 2013-2015 biennium, which the legislature implemented in the budget for the 2013-2015 biennium, fully funding the model in the 2014-15 school year; (b) full funding of the enhanced formula for materials, supplies, and operating costs by the 2015-16 school year, which both houses of the legislature have funded in the respective 2015-2017 proposed budgets that have passed each chamber; (c) full funding for all-day kindergarten by the 2017-18 school year, which both houses of the legislature have funded in the respective 2015-2017 budgets that have passed each chamber, one year ahead of the statutory deadline; and (d) full funding for K-3 class size reduction by the 2017-18 school year, in which both houses of the legislature have funded a phase-in schedule in the respective 2015-2017 proposed budgets that have passed each chamber, with full implementation planned for the 2017-18 school year.

(2) In its September 2014 order in *McCleary*, the court indicated that it expects the legislature to provide the court with a plan against which to measure the state's progress toward full implementation. As described in subsection (1) of this section, in Substitute House Bill No. 2776 the legislature enacted a comprehensive plan for funding the enhancements to the prototypical school formula, and the legislature has not failed to meet a statutorily prescribed deadline. These enhancements to the funding formula address transportation and materials, supplies, and operating costs, two of the areas identified by the court in which state funding allocations were insufficient to support the state's program of basic education, thereby causing school districts to rely on school district levies for implementation of the state's basic education program.

(3) The original ruling also identified a constitutional flaw in the funding formula that predated Engrossed Substitute House Bill No. 2261 and Substitute House Bill No. 2776: State allocations for teacher salaries were insufficient to provide districts with adequate funding to hire and retain teachers for the state's program of basic education. The court explained that district expenditures for salaries exceed state allocations for salaries, including an average difference of eight thousand dollars for certificated instructional staff and forty thousand dollars for administrators. The court acknowledged that some of this difference was likely due to legitimate contracts for extra time, responsibility, or incentive under RCW 28A.400.200. Further, it is likely that some of these salary expenditures are attributable to school districts' decisions made at a local level to hire staff to supplement the state's allocations for the state's program of basic education. Even so, the legislature accepts the court's conclusion that at least some of these salary expenditures are properly the state's responsibility as part of its duty to allocate sufficient funding to hire and retain qualified staff for the state's program of basic education. This conclusion represents a structural flaw in the way in which the state allocates funding for K-12 education.

(4) The legislature finds that increased state salary allocations, while a necessary part of the solution, are not a complete solution. Before the legislature may appropriate and allocate sufficient funding to correct the structural flaw with state salary allocations, it requires further information, analysis, and policy deliberation on numerous important issues. Further, due to the complexity of any plan that requires changes to property taxes, a solution requires sufficient lead time to align property tax revisions with school year allocations in the state budget. For these reasons, the legislature intends to enact a schedule for researching and enacting policies for fully funding all elements of Engrossed Substitute House Bill No. 2261 on September 1, 2018. As set forth in this chapter, the legislature intends to review and enact legislation on:

(a) Time, responsibility, or incentive (TRI) contracts and supplemental contracts. The state needs additional data on actual district expenditures on TRI contracts and other supplemental contracts. Data currently available to the legislature identify the amount districts pay on average for TRI, but do not identify what specific TRI items are purchased or for how much. The state requires this data to enact a policy on supplemental contracts that is consistent with a legal and policy determination of appropriate local "enrichment."

(b) State salary allocations. Once the state has established the proportion of local salary contributions that more correctly is part of the state's duty to fund salaries for the state's program of basic education, the state must establish a mechanism for delivering this additional funding to school districts. This requires the state to enact a new salary allocation policy. This new salary allocation methodology must include a regional salary allocation model. It may also include simplification or elimination of the state salary grid on which teacher salary allocations are made.

(c)(i) Proper use of school district levies to supplement the state's program of basic education. The state must enact a definition of "enrichment" that provides school districts with sufficient flexibility to implement local education priorities outside the state's program of basic education while protecting the state's ability to demonstrate that its allocations fund the state's program of basic education.

(ii) The relationship of local effort assistance to the state's program of basic education and state levy laws. The majority of school districts are eligible for local effort assistance, also known as levy equalization. Under local effort assistance, the state provides additional funding as an enhancement outside the program of basic education to districts that due to proportionally lower property values are at a relative disadvantage in raising school district levies to enrich the program of basic education. Though many districts rely on this funding, there are policy questions about whether this type of assistance should be addressed through state foundational funding or levy laws.

(d) School district levies. Once the state has established an appropriate policy on supplemental contracts and local enrichment, and once the legislature has quantified its obligation to provide additional salary obligations, the state must define a policy on school district levy collections, and it must then quantify that policy in legislation on districts' levy bases, rates, or lids. Because the current levy lid and base law expires at the end of calendar year 2017, this policy must be enacted in time for the levies that comply with the new policy to be collected beginning calendar year 2019, with 2018 constituting a transitional year between the current levy statute and newly enacted policies. Establishing new policies on levy bases and levy lids may require associated revisions to the state property tax, including growth limits on the state property tax, but this will require additional legislative deliberation after the legislature sets new levy policies that are based on a legislative definition of "enrichment" and other education policies.

NEW SECTION. **Sec.**  WASHINGTON EDUCATION FUNDING COUNCIL ESTABLISHED. (1) The legislature intends to fulfill its obligations under Article IX of the state Constitution by completing its implementation of all aspects of chapter 548, Laws of 2009 by September 1, 2018. The funding formulas under chapter 28A.150 RCW to support the state's instructional program must be revised and fully implemented by that date under the schedule of annual benchmarks prescribed in this chapter.

(2) The Washington education funding council is created to advise the legislature as the state moves toward full implementation of the program of basic education established pursuant to chapter 548, Laws of 2009 and the financing and revenues necessary to support such program. The council must make recommendations on how the legislature should meet the requirements outlined in chapter 548, Laws of 2009 by September 1, 2018, thereby fulfilling the requirements of the state supreme court in *McCleary v. State*. The council must submit to the legislature recommended changes to state salary allocation formulas, and school district levy laws, along with any corresponding recommendations on local effort assistance, state property tax laws, or other state tax laws, to support the instructional program of basic education as established under chapter 548, Laws of 2009.

(3) As provided in sections 4 and 6 of this act, the council shall submit reports to the governor and the legislature detailing its recommendations, including recommendations for resolving issues or decisions requiring legislative action during the 2016 and 2017 legislative sessions, and recommendations for any funding necessary to complete development and implementation of chapter 548, Laws of 2009. The recommendations must also include the technical details for implementing the recommendations.

(4)(a) The Washington education funding council consists of the following members:

(i) Eight legislators, with two members from each of the two largest caucuses of the senate appointed by the president of the senate and two members from each of the two largest caucuses of the house of representatives appointed by the speaker of the house of representatives;

(ii) The governor, or the governor's designee;

(iii) The state superintendent of public instruction, or the superintendent's designee; and

(iv) The state treasurer, or the treasurer's designee.

(b) The council shall select cochairs from among its legislative members.

(c) The council is staffed by the house of representatives office of program research, senate committee services, and the office of financial management, with additional staff support provided by the state entities with representatives on the council.

(5) Legislative members of the council must be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(6) The expenses of the council must be paid jointly by the senate and the house of representatives. Council expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

NEW SECTION. **Sec.**  COUNCIL MAY ESTABLISH TECHNICAL WORKING GROUPS. (1) The Washington education funding council may also establish technical working groups to advise the task force on technical and practical aspects of proposed policies and formulas.

(2) The technical working group or groups may include representatives of the legislative evaluation and accountability program committee, school district and educational service district financial managers, the Washington association of school business officers, the Washington education association, the Washington association of school administrators, the association of Washington school principals, the Washington state school directors' association, the public school employees of Washington, the educational opportunity gap oversight and accountability committee, and other interested stakeholders with expertise in education finance or state revenue.

NEW SECTION. **Sec.**  WASHINGTON EDUCATION FUNDING COUNCIL RECOMMENDATIONS TO THE 2016 LEGISLATURE. By December 1, 2015, the Washington education funding council shall provide the legislature and governor with:

(1)(a) Research describing the current use of TRI and supplemental contracts, broken down by use and estimated dollar amount per use. This research must distinguish among (i) additional services, such as coaching, or similar services rendered outside the school day; (ii) additional services performed during the school day, such as service as a department head; (iii) salary supplements for work "deemed done" or work such as grading papers that would ordinarily be considered part of the teacher's job; (iv) supplemental contracts that are part of the state's program of basic education, such as preparation of individualized education plans; and (v) other types of supplemental contracts;

(b) Research describing, and quantifying if possible, other factors that affect supplemental contracts including, but not limited to: Collective bargaining laws and practices, local compensation philosophy, regional cost-of-living differences, difficulty of attracting staff to particular schools or programs, and community expectations;

(c) Research describing school district levy expenditures on items other than salaries, broken down into specific categories, such as technology, the transitional bilingual instruction program, special education, the highly capable program, athletics, extracurricular activities, other intermural activities, or equipment;

(2) In light of the research in subsection (1) of this section, recommendations for legislation to define the "enrichment" that may be appropriately funded with school district levies outside the state's program of basic education. The recommendations must be sufficiently specific to provide guidance to school districts and auditors;

(3) Recommendations on protections for the state to ensure that school district levy funding is used only for enrichment. These may include additional auditing requirements, additional requirements for school district accounting, additional reporting by school districts, and changes to collective bargaining laws or practices;

(4) Preliminary recommendations for statewide minimum and average salary allocations for certificated instructional staff, certificated administrative staff, and classified staff, including recommendations on methodologies for regional adjustment of state allocations; and

(5) Recommendations on whether the state should continue providing local effort assistance to enhance school district levy funding for relatively property-poor districts, or whether state support for funding enrichments outside the program of basic education should be addressed through state funding formulas, other state funding, or levy laws.

NEW SECTION. **Sec.**  LEGISLATION TO BE ENACTED DURING THE 2016 LEGISLATIVE SESSION. By June 30, 2016, the legislature shall enact legislation that:

(1) Effective September 1, 2018:

(a) Defines "enrichments" to the state's program of basic education that may appropriately be used to supplement with local funding;

(b) Defines appropriate use of levy funding to supplement salaries; and

(c) Establishes protections that allow the state to demonstrate its funding of the state's program of basic education and that ensures levy expenditures are outside the state's program of basic education;

(2) Quantifies the portion of locally funded salaries that is the responsibility of the state's program of basic education and provides direction for a new salary model within a specified percentage of the state-base salary or other specified formula;

(3) Establishes preliminary policy guidance for the Washington education funding council to develop a new state salary model for implementation in the 2018-19 school year, which (a) must include regional salary allocations, and (b) may include simplification or elimination of the state teacher salary grid, or (c) both, or other policies;

(4) Establishes preliminary policy guidance for school district levies for collection beginning in calendar year 2018, including a combination of rates, bases, or lids, or any of these. The school district levy policy must reflect the definition of "enrichment" and the new policies regarding use of levies to supplement salary allocations for the local program; and

(5) Establishes preliminary policy guidance for use of state moneys as local effort assistance to supplement school district levy funding for enrichments outside the program of basic education beginning in calendar year 2018, including whether this is appropriately addressed through state foundational funding formulas or levy laws rather than state assistance in funding enrichments.

NEW SECTION. **Sec.**  WASHINGTON EDUCATION FUNDING COUNCIL RECOMMENDATIONS TO THE 2017 LEGISLATURE. By November 15, 2016, the Washington education funding council and its technical working groups must make recommendations to the legislature on the following:

(1) Quantification, including methods for future adjustment, of a new salary model for implementation in the 2018-19 school year, including quantification and methods for adjusting regional salary allocations and simplification or elimination of the existing grid;

(2) Quantification of appropriate school district levy bases, rates, or lids, or any of these, with recommended legislation for collection in calendar year 2019, and levy policies for the 2018 transition year;

(3) Recommendations on how, if at all, these changes to school district levies should result in changes to state property tax policies, including growth caps;

(4) Recommendations on other sources of state revenue to support state allocations for chapter 548, Laws of 2009, including but not limited to a carbon pollution tax; and

(5) Quantification of formulas for any program of local effort assistance, beginning by calendar year 2019.

NEW SECTION. **Sec.**  LEGISLATION TO BE ENACTED IN THE 2017 LEGISLATIVE SESSION. By June 30, 2017, the legislature must enact legislation that accomplishes the following:

(1) Enacts a new salary allocation model for the 2018-19 school year, which must include regional adjustments, and make appropriations in the 2017-2019 operating budget for distribution to districts under this model;

(2) Considers the recommendations of the Washington education funding council regarding whether changes to state property tax laws, or other state tax laws, including a carbon pollution tax, are necessary to correspond with new school district levy policies. If the legislature chooses to reduce school district maintenance and operations levies while increasing the state property tax levy, the legislature must enact (a) a state property tax levy rate for the transitional year of calendar year 2018, including adjustments to levy growth caps as necessary; and (b) school district levy lids for calendar year 2018;

(3) Establishes new bases, rates, or lids, or any of these, for school district levies for collection beginning in calendar year 2018 or calendar year 2019, depending on subsection (2) of this section; and

(4) Enacts formulas and makes appropriations for any program of local effort assistance, beginning by calendar year 2019.

NEW SECTION. **Sec.**  This chapter expires August 1, 2019.

NEW SECTION. **Sec.**  Sections 1 through 8 of this act constitute a new chapter in Title 28A RCW.

NEW SECTION. **Sec.**  EMERGENCY CLAUSE. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**