SENATE BILL REPORT
SB 6109

As of April 23, 2015

Title: An act relating to compliance with constitutional basic education requirements.

Brief Description: Concerning compliance with constitutional basic education requirements.

Sponsors: Senators Dammeier, Litzow, Hill, Fain, Becker, Rivers, King, Braun, Honeyford, Schoesler and Sheldon.

Brief History:
Committee Activity: Ways & Means: 4/17/15.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Lorrell Noahr (786-7708)

Background: Basic Education. The Washington State Constitution (Constitution) provides: "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders. . ." The Washington Supreme Court has interpreted this to mean that the Legislature must define an instructional program of basic education for public schools and amply fund it from a regular and dependable source. The court provided guidance to the Legislature that the funding should reflect actual costs of providing the defined instructional program of basic education and that in terms of "quantitative inputs," staffing ratios and salaries are the most significant factors in determining the cost of education. The court recently reaffirmed that reliance on local school district levies for funding basic education is unconstitutional because local levies are not a regular and dependable funding source because levies are temporary, subject to approval by the voters, and highly variable. The court has directed that local levy funding may only be used for enrichment activities outside of the definition of basic education.

Compensation. The Legislature allocates money to each district for employee salaries and associated fringe benefits.

Certificated Instructional Staff (CIS). State funding for teachers and other certificated instructional staff salaries is provided through the state salary allocation schedule, which uses education and years of experience to vary the salary levels. School districts have the authority to establish the actual salaries paid to staff, subject to local collective bargaining and within certain limits set by the Legislature. School districts may provide supplemental

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pay for additional time, responsibilities, and incentives – also known as “TRI” – beyond that provided by the state. The vast majority of supplemental contracts are paid from local revenue. State law provides that supplemental pay contracts must not create any present or future funding obligation for the state.

Certificated Administrative Staff (CAS) and Classified Staff (CLS). In the case of administrators and classified staff – such as bus drivers, food service workers, custodial staff, classroom aides, there is not a state salary allocation model. However, each district receives an allocation for these staff based on historical salary allocations adjusted for any cost-of-living increases. The actual salary levels for administrators and classified staff are determined through the local collective-bargaining process. There are no state limitations with respect to salary levels of administrators or classified staff.

National Board for Professional Teaching Standards (NBPTS). NBPTS is a national, nonprofit organization that has developed standards for teaching and a voluntary system to certify teachers, librarians, and school counselors, who meet those standards. CIS who attain certification from NBPTS receive an annual bonus in each year of the ten years for which the certification is in effect. The amount of the bonus is identified in statute as $5,000. An additional $5,000 bonus is available for individuals with NBPTS certification who teach in a high poverty school, which is a school in which at least 70 percent of the students qualify for free and reduced-price lunch.

Collective Bargaining Agreements. Collective bargaining for certificated employees was authorized by the Legislature in statute in 1975. Under current law, collective bargaining is defined for certificated employees as negotiating in good faith on wages, hours, and terms and conditions of employment. Collective bargaining agreements can be for up to three years in duration.

Compensation Technical Working Group. In 2009, the Legislature created the Compensation Technical Working Group to recommend the details of an enhanced salary allocation model that aligns educator certification with the compensation system. The final report was submitted June 20, 2012. Recommendations from the working group include providing K–12 employees require a state salary allocation level comparable to occupations with similar knowledge, skills, abilities, education and training requirements; conducting a comparable wage analysis every four years to ensure that the K–12 salaries keep pace with the wages of comparable occupations; compress the salary allocation model and structure it according to the stages of the career continuum for educators; providing the higher salary allocation from either the new or the old model as the new model is phased-in.

<u>Benefits.</u> *Health Benefits.* Health benefits for K–12 school district employees are negotiated and purchased separately by each district. According to a 2014 Office of Insurance Commissioner (OIC) report insurance carriers provided health benefits coverage in 2013 through 764 health plans for 295 school districts, at a premium cost of $1.02 billion for 200,785 employees and dependents. One school district provided coverage through a self-insured health benefits plan.

Health benefits for state agency and higher education employees, state and K–12 retirees, and some local government and school district employees are provided through the Public

Employees Benefits (PEB) program which is administered by the Health Care Authority (HCA). The Public Employees Benefits Board (PEBB) adopts the benefit plans to be offered and establishes the premium rates. In 2013 the PEB program provided health benefits coverage to approximately 227,000 state agency and higher education employees and dependents through seven health plans, and to over 83,000 retirees through nine plans.

For the 2013-15 fiscal biennium, the state budget provides school districts $768 per month for insurance benefits for each full-time equivalent (FTE) certificated employee allocation and $884 per month for each FTE classified employee allocation. The higher classified funding rate reflects that the allocations are often used for two or more part-time employees. State agency and higher education institution budgets included $782 per month for each eligible position for Fiscal Year 2014 and $662 per month for Fiscal Year 2015. In the 2014-15 school year, districts send $66.64 each month for full-time employees and a pro-rated amount for part-time employees, to the HCA for funding the cost of PEB program coverage for school retirees.

At the school district level, the actual distribution of the state health benefit allocation is determined through collective bargaining. Employee contributions vary by district, and by bargaining units within districts, and there is substantial variation in the share of the costs paid by employees who insure only themselves versus those who also insure their family members.

In 2010 the State Auditor's Office conducted a performance review of K–12 school employee health benefits purchasing and made three main recommendations in its 2011 report: (1) streamline the system to improve efficiency, transparency, and stability; (2) standardize coverage levels for more affordable, quality medical benefits; and (3) reduce costs by restructuring the health benefits system. In 2011 the Legislature directed the HCA to develop a plan to implement a consolidated health benefits system for K–12 employees. The HCA report was delivered in December 2011.

In 2012 Engrossed Substitute Senate Bill 5940 (ESSB 5940) made changes to the requirements for school district employee health benefits to promote several goals, including (1) having all employees make at least a minimum premium contribution; (2) having employees pay higher premiums for richer benefit plans; (3) offering a high deductible health plan and health savings account option in all districts; and (4) making progress towards achieving employee premiums for full family coverage that are not more than three times larger than the premiums for employee-only coverage.

ESSB 5940 also required school districts and their health insurers and other entities that help provide employee health plans to annually submit health benefit plan information to OIC, including plan enrollment for classified and certificated employees and for part-time and full-time employees; district and employee premium costs; claims and administrative expenses; health plan benefits and actuarial values; and other information. Beginning in 2013, OIC began submitting annual reports to the Legislature regarding the information reported by the school districts and their health insurers. The November 2014 OIC report provided data reported for health benefit plans offered in 2013.

ESSB 5940 also imposed analysis and reporting requirements on the HCA and the Joint Legislative Audit and Review Committee (JLARC). By June 1, 2015, the HCA must submit a report that analyzes the data in the OIC reports, and reviews the advantages and disadvantages of various approaches to consolidated purchasing of school employee health benefits, including the costs of the options, and a proposed timeline for any recommended actions.

By December 31, 2015, JLARC must submit a report to the Legislature indicating the progress by school districts and their benefit providers in achieving a list of established goals and performance expectations, and must make recommendations regarding affordability and equity goals. In the 2015-16 school year JLARC will (1) review and rank school district progress in meeting statutory requirements for benefit offerings, premiums, and competitive contracting standards; (2) provide grants to the highest performing districts; and (3) provide a report and recommendations to the Legislature, including legislation necessary for implementation of the recommendations.

Tax Deferred Annuity Plans. School districts may offer tax deferred annuity plans under section 403(b) of the federal internal revenue code to their employees. Contributions to the plans can be made by either the employer or the employee, depending on the plan design selected by the employer. Contributions to such plans are made on a pre-tax basis up to an annual maximum, currently $18,000 for employees under age 50 and $24,000 for those over age 50.

State law currently provides that the actual average salary paid to certificated instructional staff by a school district must not exceed the district's average salary used for those positions in the state basic education allocations. It also provides that certain fringe benefit contributions must be included as salary in determining the district average salary for the certificated instructional staff positions.

<u>Local School District Fund Accounts.</u> Under current law, school districts must establish the following funds:

- a general fund for the maintenance and operation of the district;
- a capital projects fund for major capital purposes;
- a debt service fund for the retirement of bonds; and
- an associated student body fund for all monies generated through the programs and activities of any associated student body organization.

<u>State Auditor.</u> The State Auditor's Office is established in the Constitution as part of the executive branch of state government. The auditor has the statutory authority to conduct financial audits on every and all governments in the state, including school districts.

<u>Local School District Levies</u>. School districts are authorized to raise funds locally for their districts through excess levies. Since 1977, the Legislature has limited the amount school districts may request from their voters and collect through maintenance and operation (M&O) levies. The maximum amount that may be raised is based on the school districts prior year state and federal funding. The amount that may be raised is typically referred to as the levy lid.

Under current law, 205 of the 295 school districts have a levy lid of 28 percent of the district's state and federal funding, which was temporarily increased in the 2010 legislative session from 24 percent. This means that school districts may request voter approval and collect $0.28 for each $1 of state and federal revenue the district receives. The other 90 school districts have a levy lid ranging from 28.01 percent to 37.90 percent.

In addition to temporarily increasing the levy lid from 24 percent to 28 percent in the 2010 legislative session, the Legislature amended the levy lid statute to increase a district's levy base by including certain non-basic education revenues formerly allocated by the state in addition to the revenues the district actually receives from state and federal sources. These increases expire effective with levies for calendar year 2018. At that time the levy lid will return to 24 percent and the formally allocated revenues will be removed from the levy base.

<u>Local Effort Assistance.</u> The Local Effort Assistance program (LEA) or levy equalization was created in 1987 to mitigate the effect that above-average property tax rates might have on the ability of a school district to raise local revenues through voter-approved levies. The LEA is expressly not part of basic education. The amount is calculated based on equalizing tax rates to a statewide average for a certain equalization rate. The current LEA equalization rate is 14 percent. In calendar year 2018, the LEA equalization rate will decrease to 12 percent.

<u>State Property Tax for the Common Schools.</u> All real and personal property in the state is subject to property tax each year based on its value, unless specific exemption is provided by law. The Constitution requires that taxes be uniform within a class of property. Uniformity requires both an equal rate of tax and equality in valuing the property taxes. The Constitution limits regular property tax levies to a maximum of 1 percent of the property's value – $10 per $1,000 of assessed value. The Legislature has established individual district rate maximums and aggregate rate maximums to keep the total tax rate for regular property taxes within the constitutional limit.

The state property tax levy rate is limited to $3.60 per $1,000 of assessed value. The actual tax rate for state property taxes collected in 2015 is $2.19 per $1,000 of assessed value. State property tax levy revenues are dedicated to support common schools.

Regular property tax levies, including the state property tax levy for the common schools, are limited by a statutory maximum growth rate in the amount of tax revenue that may be collected from year to year. The limit requires a reduction of property tax rates as necessary to limit the growth in the total amount of property tax revenue received to the lesser of 1 percent or inflation. The revenue limitation does not apply to new value placed on tax rolls attributable to new construction, improvements to existing property, or changes in state-assessed valuation.

Summary of Bill: <u>Compensation.</u> *All Staff.* A comparable wage analysis must be conducted every six years by the Washington State Employment Security Department (ESD) with the intent to ensure that K–12 salaries keep pace with the wages of comparable occupations. The first analysis, including any recommendations for salary adjustments based on the analysis, must be submitted to the Governor and the Legislature by September 1, 2020. Subsequent reports must be submitted by July 1 every six years thereafter.

The state must provide for a localization factor applied to the base salary amounts of all state-funded K–12 staff. The localization factor is calculated annually by the ESD in accordance with the Omnibus Appropriations Act. The ESD must annually submit to the Governor and the appropriate legislative committees a comparison of the comparable occupations by staffing type and metropolitan statistical area. The data provided by the report will be the basis for the localization factor.

CIS. The Legislature must establish a statewide salary schedule to be used by school districts to distribute state funds for basic education CIS. Beginning in the 2017-18 school year through the 2018-19 school year, the statewide salary schedule must be phased-in for CIS as specified in the Omnibus Appropriations Act and the framework provided. The framework requires state funding for individual CIS with an entry-level residency certificate at a salary level based on whether the individual has a bachelor's or advanced degree. An individual CIS may remain on a residency certificate for up to nine years. State funding must be provided a salary increase for any individual CIS who obtains a professional certificate at a salary level based on whether the individual has a bachelor's or advance degree. A minimum of three years of experience is required to make the progression from the residency certificate to the professional certificate. The state must provide an additional salary increase for an individual CIS after nine years of experience with a professional or continuing certificate. Salaries based on an advanced degree must only be for those degrees that are relevant to the individual's current or expected future assignments, as determined by the school district. As the revised statewide salary schedule is phased-in, if the salary for an individual certificated instructional staff for the 2016-17 school year would be greater than the salary provided for the phase-in year then the allocation for the individual must be the higher salary.

CAS and CLS. The district-wide total compensation for CAS must not exceed the total state allocation for CAS augmented by the localization factor. As additional state salary allocations are phased in for CAS during the 2017-18 school year, school districts must be provided the greater of either the increased statewide salary allocation for school year 2017-18 or the school district's salary allocation as provided in the 2016-17 school year. The district-wide total compensation for classified staff must not exceed the total state allocation for classified staff augmented by the localization factor calculated annually.

The Office of Superintendent of Public Instruction and the Professional Educator Standards Board must adopt rules to implement the statewide salary schedule and localization factor.

I-732 COLA. The I-732 COLA is repealed.

Supplemental Contracts. The authorization for TRI contracts is modified. Instead, school districts are authorized to use local funds for enhancements outside of the program of basic education, which may include providing an enhanced salary or benefit for CIS that exceeds the state provided salary. The use of local funds must meet the following limitations and conditions:

- must not be provided for any activity that is normally associated with the basic education program required by Article IX of the state Constitution, including any activity that supports students to earn course credits or grades;

- must be provided solely for non-basic education activities outside of the normal, regularly scheduled school day or year;
- must be time-based and the individual's immediate supervisor must certify to the superintendent of the school district that the activity was done in the appropriate time and manner and was provided in compliance with the limitations;
- must not cause the state to incur any present or future funding obligation;
- must not exceed one year and, if not renewed, must not constitute adverse change in accordance with RCW 28A.405.300 through 28A.405.380;
- must be separately accounted for by the school districts;
- must be audited as part of the regular financial audits of school districts by the State Auditor's Office to ensure compliance with the limitations and conditions of this subsection; and
- may be collectively bargained.

NBPTS. NBPTS bonuses expressly excluded from the program or funding of basic education.

Collective Bargaining Agreements. Collective bargaining agreements currently in effect are not affected or impaired by the changes to the statutes addressing salaries of CIS. Collective bargaining agreements entered into, modified, reopened, or renewed thereafter must be consistent with the changes in the statutes addressing state K–12 CIS salaries and local enhancements of salaries. Agreements must not provide an increase in salary or other compensation during the 2015-2017 biennium unless the additional compensation is expressly provided by the Legislature.

<u>School Employees' Benefits Board.</u> A nine-member School Employees' Benefits Board (SEBB) is established as part of a consolidated school district employees health benefits purchasing program in the HCA. By September 30, 2015, the Governor must appoint eight members to the board including four representing certificated and classified employees and four with expertise in employee health benefits policy and administration. The HCA director or designee is chair of the SEBB.

The SEBB responsibilities include the following:

- developing school employee benefit plans that include comprehensive, evidence-based health care benefits;
- authorizing premium contributions, including employee contributions for family coverage for full-time employees that do not exceed three times the required employee contribution for employee-only coverage and pro-rated employer contributions for part-time employees;
- determining the terms of employee and dependent eligibility criteria and enrollment policies, subject to the condition that employees must work at least one-half time to be eligible for coverage;
- determining the terms for participation in the SEBB plans, and the penalties for failing to comply with participation criteria;
- participating with the HCA and in coordination with the PEBB in the selection of carriers to provide health and dental plans; and
- reporting to legislative policy and fiscal committees by November 30, 2020, regarding whether the provisions of the act have resulted in cost savings to the state.

The HCA duties are expanded to include administering health care benefit programs for school employees. Beginning January 1, 2017, all school districts must participate in the SEBB program including districts and employees currently participating in the PEBB program, and health benefits for all school district and educational service district employees are merged into a single, community-rated risk pool separate from the risk pool for PEBB health benefits. School retirees and state retirees continue to participate in PEBB health plans. By December 15, 2015, the HCA, in consultation with the PEBB and SEBB, must complete an analysis of the most appropriate risk pool for retired school employees. A non-voting position on the PEBB that represents school employees is eliminated effective December 31, 2016.

The current exemptions from public disclosure that are provided for proprietary data, actuarial formulas, and similar information solicited for the PEB program are extended also to information solicited for the SEBB program. Provisions requiring the HCA to contract with PEBB managed care plans for chronic care management within health homes are extended to SEBB plans. Separate SEBB program accounts, similar to accounts currently used for the PEBB program, are established in the custody of the State Treasurer.

Health insurers that provide medical and dental plans to school districts as of December 31, 2014, and districts that have self-funded plans, must provide the HCA with specified data by April 1, 2016, to support the initial procurement of plans for the SEBB program. The required data is similar to the data insurers and districts report to the OIC through December 31, 2015. Thereafter the school districts must submit data required by the SEBB program to administer the consolidated purchasing of health services and the OIC will no longer submit annual data reports to the Legislature. The requirement that JLARC issue a report to the Legislature by December 2015 is repealed.

The scope of the medical, dental, vision, and other basic insurance benefits provided for school employees is removed from local bargaining. Current provisions dealing with school district pooling arrangements established by bargaining units are abolished. Beginning January 1, 2017, school district contributions to employee insurance purchased through the HCA must conform to requirements established by HCA statutes and the SEBB.

All collective bargaining agreements entered into between school districts and organizations representing certificated or classified school district employees must be consistent with the changes made by the bill. After April 1, 2016, bargaining over the dollar amount expended for school employee health care benefits beginning July 1, 2017, must be conducted between the Governor or the Governor's designee and one coalition of all the exclusive bargaining representatives impacted by benefit purchasing with the SEBB. The coalition bargaining must follow the model initially established for state employees in RCW 41.80.020.

Annuity Plans. School districts that offer tax deferred annuity plans to their employees may not make employer contributions to the plans beginning as of September 1, 2017. Amounts paid by school districts to the HCA to provide medical, dental, and other basic benefits are not included in the calculation of the district's actual average salary paid to certificated instructional staff.

Accounting. School districts must provide separate accounting of state, federal, and local revenues and expenditures, and basic education and non-basic education expenditures.

Local School District Fund Accounts. School districts must establish a local revenue fund for the purpose of accounting for the financial operations of a school district that are paid for from local revenue. Money deposited into the local revenue fund must include, but not be limited to, proceeds from maintenance and operations levies and local effort assistance payments from the state. Expenditures from the fund must be tracked separately to account for the use of local funds within a school district.

State Auditor. After a tentative collective bargaining agreement between an employer and an exclusive bargaining representative is achieved, the agreement must be submitted to the Washington State Auditor's Office. The auditor must review the agreement and the school district's financial statements to determine whether any local levy funds will be expended for basic education purposes. The agreement can be implemented only if the State Auditor certifies that the contract complies with the limitations on use of local funds for enhancements outside the program of basic education.

The State Auditor's regular financial audits of school districts must include a review of the expenditure of local levy funds to ensure they are not being expended for basic education purposes. If the State Auditor makes a finding that for two consecutive financial audits a school district has used local funds for basic education purposes then the district must repay an equal amount back to the state using the current year local levy revenue. The school district may take no longer than five school years to fully pay back the full amount to the state.

Local School District Levies. Beginning in calendar year 2018, a school district's actual levy collections will be reduced by the budgeted amount of any new K–12 salary enhancements received after August 1, 2017. In calendar year 2019, the reduction must be made using the actual K–12 salary enhancements received after August 1, 2017. However, the school district’s levy rate per $1,000 of assessed value will not be reduced below $1.25. Beginning in calendar year 2020, the local maximum levy authority for all districts is set at $1.25 per $1,000 of assessed value. It is further clarified that levy funds may only be used for enhancements outside of the program of basic education.

For calendar years 2018 and 2019, LEA payments will remain at calendar year 2017 levels and will not be reduced as a result of decreases in levy collections related to K–12 salary enhancements. Beginning in calendar year 2020, LEA will be based on equalizing school districts that levy $1 per $1,000 of assessed value to a statewide median per pupil value.

The act further clarifies that levy funds may only be used for enhancements outside of the program of basic education. The State Auditor must report to the Office of Superintendent of Public Instruction and the Legislature regarding any school district non-compliance issues with this provision.

State Property Tax. The state property tax is increased to the following:

- $2.70 for taxes collected in calendar year 2018;
- $3.50 for taxes collected in 2019; and

- $3.60 for taxes collected in 2020.

After 2020, the state property tax is limited to the current statutory levy growth limit of the lesser of 1 percent or inflation per year.

Other statutes and statutory language is repealed or stricken to align with the statutory changes made.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: Yes.

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