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**SECOND SUBSTITUTE SENATE BILL 5091**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Wellman, Conway, Darneille, Wilson, C., Kuderer, and Takko)

READ FIRST TIME 03/01/19.

1 AN ACT Relating to state and federal special education funding;  
2 amending RCW 28A.150.392, 28A.150.415, 28A.150.390, and 43.09.2856;  
3 creating a new section; and providing an expiration date.

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

5 NEW SECTION. **Sec. 1.** The legislature intends to provide the  
6 funding necessary to support a comprehensive and responsive education  
7 system that fully addresses the needs of students with disabilities.  
8 Under the current funding model, students with disabilities are  
9 funded as basic education students first, with additional funding  
10 provided through a statewide multiplier intended to meet the  
11 additional needs of each student as established in the student's  
12 individualized education program. Additionally, a safety net  
13 administered by the office of the superintendent of public  
14 instruction is available for school districts that demonstrate  
15 significant extra need beyond what they receive from the base funding  
16 formula.

17 The legislature notes that school districts across the state have  
18 identified the need for additional resources to create the  
19 educational environment necessary to give every student with an  
20 individualized education program the opportunity to succeed. It is  
21 the legislature's intent to maintain the current funding structure

1 for special education with necessary resources, and to collect data  
2 related to the numbers of students who fall into different cost  
3 categories of support. These additional data will inform whether an  
4 alternative system of funding may be necessary to better reflect  
5 current needs of our schools and our students. However, as these data  
6 are collected, the legislature also intends to provide immediate  
7 relief to school district special education programs by enhancing the  
8 supplemental funding school districts receive for every student in  
9 the program of special education and to provide easier access to the  
10 safety net when those base funds are not adequate.

11 **Sec. 2.** RCW 28A.150.392 and 2018 c 266 s 106 are each amended to  
12 read as follows:

13 (1) ~~((a))~~ To the extent necessary, state funds shall be made  
14 available for safety net awards for districts with demonstrated needs  
15 for special education funding beyond the amounts provided through the  
16 special education funding formula under RCW 28A.150.390.

17 ~~((b) If the federal safety net awards based on the federal  
18 eligibility threshold exceed the federal appropriation in any fiscal  
19 year, then the superintendent shall expend all available federal  
20 discretionary funds necessary to meet this need.))~~

21 (2) Safety net funds shall be awarded by the state safety net  
22 oversight committee subject to the following conditions and  
23 limitations:

24 (a) The committee shall award additional funds for districts that  
25 can convincingly demonstrate that all legitimate expenditures for  
26 special education exceed all available revenues from state basic  
27 education funding formulas.

28 (b) In the determination of need, the committee shall consider  
29 additional available revenues from federal sources.

30 (c) Differences in program costs attributable to district  
31 philosophy, service delivery choice, or accounting practices are not  
32 a legitimate basis for safety net awards.

33 (d) In the determination of need, the committee shall require  
34 that districts demonstrate that they are maximizing their eligibility  
35 for all state revenues related to services for students eligible for  
36 special education ~~((-eligible students))~~ and all federal revenues from  
37 federal impact aid, medicaid, and the individuals with disabilities  
38 education act-Part B and appropriate special projects. Awards

1 associated with (e) and (f) of this subsection shall not exceed the  
2 total of a district's specific determination of need.

3 (e) The committee shall then consider the extraordinary high cost  
4 needs of one or more individual (~~(special education)~~) students with  
5 disabilities under the individuals with disabilities act. Differences  
6 in costs attributable to district philosophy, service delivery  
7 choice, or accounting practices are not a legitimate basis for safety  
8 net awards.

9 (f) Using criteria developed by the committee, the committee  
10 shall then consider extraordinary costs associated with communities  
11 that draw a larger number of families with children in need of  
12 special education services, which may include consideration of  
13 proximity to group homes, military bases, and regional hospitals.  
14 Safety net awards under this subsection (2)(f) shall be adjusted to  
15 reflect amounts awarded under (e) of this subsection.

16 (g) The committee shall then consider the extraordinary high cost  
17 needs of one or more individual (~~(special education)~~) students with  
18 disabilities under the individuals with disabilities act served in  
19 residential schools as defined in RCW 28A.190.020, programs for  
20 juveniles under the department of corrections, and programs for  
21 juveniles operated by city and county jails to the extent they are  
22 providing a secondary program of education (~~(for students enrolled in~~  
23 ~~special education)~~).

24 (h) The maximum allowable indirect cost for calculating safety  
25 net eligibility may not exceed the federal restricted indirect cost  
26 rate for the district plus one percent.

27 (i) Safety net awards shall be adjusted based on the percent of  
28 potential medicaid eligible students billed as calculated by the  
29 superintendent of public instruction in accordance with chapter 318,  
30 Laws of 1999.

31 (j) Safety net awards must be adjusted for any audit findings or  
32 exceptions related to special education funding.

33 (k) Beginning in school year 2019-20, the average per pupil  
34 expenditure used to determine safety net awards must exclude state  
35 safety net funding provided in this section.

36 (3) The superintendent of public instruction shall adopt such  
37 rules and procedures as are necessary to administer the special  
38 education funding and safety net award process. By December 1, 2018,  
39 the superintendent shall review and revise the rules to achieve full  
40 and complete implementation of the requirements of this subsection

1 and subsection (4) of this section including revisions to rules that  
2 provide additional flexibility to access community impact awards.  
3 Before revising any standards, procedures, or rules, the  
4 superintendent shall consult with the office of financial management  
5 and the fiscal committees of the legislature. In adopting and  
6 revising the rules, the superintendent shall ensure the application  
7 process to access safety net funding is streamlined, timelines for  
8 submission are not in conflict, feedback to school districts is  
9 timely and provides sufficient information to allow school districts  
10 to understand how to correct any deficiencies in a safety net  
11 application, and that there is consistency between awards approved by  
12 school district and by application period. The office of the  
13 superintendent of public instruction shall also provide technical  
14 assistance to school districts in preparing and submitting special  
15 education safety net applications.

16 (4) On an annual basis, the superintendent shall survey districts  
17 regarding their satisfaction with the safety net process and consider  
18 feedback from districts to improve the safety net process. Each year  
19 by December 1st, the superintendent shall prepare and submit a report  
20 to the office of financial management and the appropriate policy and  
21 fiscal committees of the legislature that summarizes the survey  
22 results and those changes made to the safety net process as a result  
23 of the school district feedback.

24 (5) The safety net oversight committee appointed by the  
25 superintendent of public instruction shall consist of:

26 (a) One staff member from the office of the superintendent of  
27 public instruction;

28 (b) Staff of the office of the state auditor who shall be  
29 nonvoting members of the committee; and

30 (c) One or more representatives from school districts or  
31 educational service districts knowledgeable of special education  
32 programs and funding.

33 (6) Beginning in fiscal year 2020, safety net appropriations  
34 provided in the omnibus operating appropriations act may not include  
35 federal funding thereby eliminating the federal expenditure ratio  
36 requirement for districts to expend three times the statewide average  
37 per pupil to qualify for state safety net awards. A state expenditure  
38 ratio requirement may be identified in the omnibus operating  
39 appropriations act but, if identified, it must be less than the  
40 federal expenditure ratio requirement.

1       **Sec. 3.** RCW 28A.150.415 and 2017 3rd sp.s. c 13 s 105 are each  
2 amended to read as follows:

3       (1) Beginning with the 2018-19 school year, the legislature shall  
4 begin phasing in funding for professional learning days for  
5 certificated instructional staff. At a minimum, the state must  
6 allocate funding for:

7       (a) One professional learning day in the 2018-19 school year;

8       (b) Two professional learning days in the 2019-20 school year;  
9 and

10       (c) Three professional learning days in the 2020-21 school year.

11       (2) The office of the superintendent of public instruction shall  
12 calculate each school district's professional learning allocation as  
13 provided in subsection (1) of this section separate from the minimum  
14 state allocation for salaries as specified in RCW 28A.150.410 and  
15 associated fringe benefits on the apportionment reports provided to  
16 each school district. The professional learning allocation shall be  
17 equal to the proportional increase resulting from adding the  
18 professional learning days provided in subsection (1) of this section  
19 to the required minimum number of school days in RCW  
20 28A.150.220(5)(a) applied to the school district's minimum state  
21 allocation for salaries and associated fringe benefits for  
22 certificated instructional staff as specified in the omnibus  
23 operating appropriations act. Professional learning allocations shall  
24 be included in per-pupil calculations, such as special education, for  
25 programs funded on a per-student rate calculation.

26       (3) Nothing in this section entitles an individual certificated  
27 instructional staff to any particular number of professional learning  
28 days.

29       ~~((3))~~ (4) The professional learning days must meet the  
30 definitions and standards provided in RCW 28A.415.430, 28A.415.432,  
31 and 28A.415.434.

32       (5) Federal special education allocations may be used to provide  
33 professional development to classified and certificated staff who  
34 provide educational services and supports to students with a  
35 disability, as provided in this section or under RCW 28A.413.060.

36       **Sec. 4.** RCW 28A.150.390 and 2018 c 266 s 102 are each amended to  
37 read as follows:

38       (1) The superintendent of public instruction shall submit to each  
39 regular session of the legislature during an odd-numbered year a

1 programmed budget request for special education programs for students  
2 with disabilities. Funding for programs operated by local school  
3 districts shall be on an excess cost basis from appropriations  
4 provided by the legislature for special education programs for  
5 students with disabilities and shall take account of state funds  
6 accruing through RCW 28A.150.260 (4)(a), (5), (6), and (8) and  
7 28A.150.415.

8 (2) The excess cost allocation to school districts shall be based  
9 on the following:

10 (a) A district's annual average headcount enrollment of students  
11 ages birth through four and those five year olds not yet enrolled in  
12 kindergarten who are eligible for and enrolled in special education,  
13 multiplied by the district's base allocation per full-time equivalent  
14 student, multiplied by 1.15; and

15 (b) A district's annual average full-time equivalent basic  
16 education enrollment, multiplied by the district's funded enrollment  
17 percent, multiplied by the district's base allocation per full-time  
18 equivalent student, multiplied by ~~((0.9609))~~ 1.00.

19 (3) As used in this section:

20 (a) "Base allocation" means the total state allocation to all  
21 schools in the district generated by the distribution formula under  
22 RCW 28A.150.260 (4)(a), (5), (6), and (8) and the allocation under  
23 RCW 28A.150.415, to be divided by the district's full-time equivalent  
24 enrollment.

25 (b) "Basic education enrollment" means enrollment of resident  
26 students including nonresident students enrolled under RCW  
27 28A.225.225 and students from nonhigh districts enrolled under RCW  
28 28A.225.210 and excluding students residing in another district  
29 enrolled as part of an interdistrict cooperative program under RCW  
30 28A.225.250.

31 (c) "Enrollment percent" means the district's resident special  
32 education annual average enrollment, excluding students ages birth  
33 through four and those five year olds not yet enrolled in  
34 kindergarten, as a percent of the district's annual average full-time  
35 equivalent basic education enrollment.

36 (d) "Funded enrollment percent" means the lesser of the  
37 district's actual enrollment percent or thirteen and five-tenths  
38 percent.

1       **Sec. 5.** RCW 43.09.2856 and 2018 c 266 s 406 are each amended to  
2 read as follows:

3       (1) Beginning with the 2019-20 school year, to ensure that school  
4 district local revenues are used solely for purposes of enriching the  
5 state's statutory program of basic education, the state auditor's  
6 regular financial audits of school districts must include a review of  
7 the expenditure of school district local revenues for compliance with  
8 RCW 28A.150.276, including the spending plan approved by the  
9 superintendent of public instruction under RCW 28A.505.240 and its  
10 implementation, and any supplemental contracts entered into under RCW  
11 28A.400.200.

12       (2) If an audit under subsection (1) of this section results in  
13 findings that a school district has failed to comply with these  
14 requirements, then within ninety days of completing the audit the  
15 auditor must report the findings to the superintendent of public  
16 instruction, the office of financial management, and the education  
17 and operating budget committees of the legislature.

18       (3) The use of the state allocation provided for professional  
19 learning under RCW 28A.150.415 must be audited as part of the regular  
20 financial audits of school districts by the state auditor's office to  
21 ensure compliance with the limitations and conditions of RCW  
22 28A.150.415.

23       (4)(a) The state auditor must conduct a performance audit of  
24 school districts by February 1, 2020, for the 2018-19 school year to  
25 include a review of the following:

26       (i) Special education revenues and the sources of those revenues,  
27 by school district;

28       (ii) Special education expenditures and the object of those  
29 expenditures, by school district;

30       (iii) The distribution of students receiving special education  
31 services with a cost of fifteen thousand dollars or more per student,  
32 per school year. These data must be organized by band of cost,  
33 beginning with fifteen thousand dollars and increasing in increments  
34 of one thousand dollars.

35       (b) Special education data reported for each school district  
36 through the performance audit under this subsection must be compiled  
37 and submitted to the education committees of the legislature by  
38 December 1, 2020.

1        NEW SECTION.    **Sec. 6.**    Section 5 of this act expires December 1,  
2    2021.

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