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2014 Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation

Part I: Introduction and Background

A. Judicial Oversight in *McCleary v. State*

The Washington State Supreme Court (Court) issued its decision in *McCleary v. State* on January 5, 2012.[1] The Court found that the state failed to meet its paramount constitutional duty by "consistently providing school districts with a level of resources that falls short of the actual costs of the basic education program."[2] The Court acknowledged that the 2009 Legislature had enacted Engrossed Substitute House Bill 2261 (ESHB 2261),[3] education financing reforms "which if fully funded, will remedy deficiencies in the K-12 funding system."[4] The Court deferred to the Legislature's chosen means of discharging its constitutional duty but

[1] *McCleary v. State*, 173 Wn.2d 477 (2012)
[2] *McCleary*, 173 Wn.2d at 537.
[3] Laws of 2009, Chapter 548 (hereinafter ESHB 2261).
[4] *McCleary*, 173 Wn.2d at 545-46.

retained jurisdiction to help facilitate progress in the state's plan to fully implement the reforms by 2018.[5] In 2012, the Legislature created the Joint Select Committee on Article IX Litigation (Committee) to facilitate communication with the Court on school funding legislation and litigation.[6] The Court's order of July 18, 2012, directed the Committee to report annually following enactment of each operating budget, summarizing the legislative actions taken to implement the reforms and achieve compliance with Article IX of the state constitution.[7] The Court declined to "measure the steps taken in each legislative session between 2012 and 2018 against full constitutional compliance," but indicated that the State must "show real and measurable progress" toward achieving full compliance.[8]

B. The "Promising Reform" of ESHB 2261

As described in more detail in the Committee's 2012 and 2013 reports to the Court,[9] the Legislature revised the definition of basic education in

[5] *Id.*
[6] House Concurrent Resolution 4410 (2012).
[7] *McCleary v. State*, No. 84362-7 (Wash. St. Sup. Ct. July 18, 2012) at 2 (order establishing terms of retained jurisdiction) (hereinafter July 2012 Order).
[8] *Id.* at 3.
[9] Joint Select Committee on Article IX Litigation, Report to Washington State Supreme Court (August 29, 2013) (hereinafter (2013 Committee Report); Joint Select Committee on Article IX Litigation, Report to Washington State Supreme Court (September 17, 2012) (hereinafter 2012 Committee Report).

seminal 2009 legislation, ESHB 2261. The Legislature further put into place a structure of work groups and councils to monitor implementation of those policies and recommend continuing revisions, subject to consideration and possible further action by the Legislature. In 2010, the Legislature enacted Substitute House Bill 2776 (SHB 2776),[10] which implemented additional details of the revisions to the state's funding formulas to support the public schools and laid out an implementation plan for four specific enhancements in state financial support for basic education in the public schools. The Court's Order of January 9, 2014, recognized "the implementation plan called for by SHB 2776."[11]

This plan called for implementation by the 2013-15 fiscal biennium of the new expected cost transportation formula to provide services for students who live outside a one mile radius of school.[12] As described in detail below, the Legislature has provided full funding of transportation based on actual expected costs by the statutory due date.

[10] Laws of 2010, Chapter 236 (hereinafter SHB 2776).
[11] *McCleary v. State*, No. 84362-7 (Wash. St. Sup. Ct. January 9, 2014) at 8 (order in response to 2013 Committee Report) (hereinafter January 2014 Order).
[12] RCW 28A.160.192.

SHB 2776 also called for implementation of the new formula for general education K–12 materials, supplies, and operating costs (MSOC) by the 2015-16 school year.[13] The Legislature has in the last two years made investments in general education K–12 MSOC totaling $432 million. The Court implied in its January 2014 Order that the Legislature was behind schedule on implementing the general education K-12 MSOC. [14] However, the implementation of the general education K-12 MSOC is not statutorily required to be on a linear basis. Current law requires the full funding of general education K-12 MSOC by 2016. Thus, with respect to general education K-12 MSOC, as will be discussed below in more detail, this Committee acknowledges that the upcoming 2015-17 budget cycle is the critical year to ensure that current law general education K-12 MSOC allocation levels are realized.

Furthermore, by the 2017-18 school year, SHB 2776 required investments in improved instruction for very young children in the form of funding for all-day kindergarten for all Washington children and funding to support

[13] RCW 28A.150.260(8)(b).
[14] January 2014 Order at 4.

reduced class size to 17 students per class in kindergarten through third grade.[15]

In addition, ESHB 2261 set the stage for more rigorous graduation requirements and more instructional time to allow students to achieve them.[16] This part of the statutory plan established a required increase in minimum instructional hours from the districtwide average of 1,000 hours previously required and expanded the number of credits required to graduate from high school to 24 credits from the 20 credits established by the State Board of Education.[17] Both of these components, and 2014 legislation affecting them, are described more fully in Part III.B below.

C. Joint Select Committee on Article IX Litigation

The Court in the *McCleary* decision[18] and its subsequent orders[19] has consistently recognized that the Legislature and the Court are coequal branches of state government, and the Court has expressed the desire to foster dialogue and cooperation between the Legislature and the Court to meet the state's constitutional paramount duty. The Legislature

[15] RCW 28A.150.315 and 28A.150.260(3)(b).
[16] RCW 28A.150.220(2)(a) and 28A.150.220(3)(b).
[17] RCW 28A.230.090 and WAC 180-51-067.
[18] *McCleary*, 173 Wn.2d at 540-46.
[19] January 2014 Order at 8; *McCleary v. State*, No. 84362-7 (Wash. St. Sup. Ct. December 20, 2012) at 2 (order in response to 2012 Committee Report) (hereinafter December 2012 Order).

specifically created the Committee to facilitate such communication. However, it is important to note that the Committee does not have policy-making or budget-making authority. The tasks of developing policy and budgets for K-12 education are assigned to several standing committees,[20] and such policies and appropriations require enactment by a constitutional majority of each house of the Legislature, as well as approval by the Governor. The Committee's core purpose is to enable communications between the Legislature and the Court.[21] The Committee's reports have been submitted with the intent to implement the dialogue, cooperation, and understanding sought by both the Court and the Legislature.

D. Reports to date by the Joint Select Committee on Article IX Litigation

To date, the Committee has filed two progress reports with the Supreme Court.[22] Notably, the report approved in 2013 by a unanimous vote of the Committee acknowledged the expenditures required for full funding of three critical basic education funding categories. The report stated that under current law, MSOC would require an additional $857 million

[20] The current standing policy and fiscal committees are the Senate Early Learning and K-12 Education Committee; Senate Ways and Means Committee; House Education Committee, House Appropriations Subcommittee on Education, and the House Appropriations Committee.
[21] House Concurrent Resolution 4410 (2010).
[22] 2013 Committee Report; 2012 Committee Report.

investment in the next biennial budget in order to be in compliance with the current law targets set forth in SHB 2776. The report further found that by 2018, the Legislature needed to provide an additional $316 million in funding to implement universal all-day kindergarten and $1.08 billion by 2018 to fully fund K-3 class size reduction targets set forth in current law.[23]

On January 9, 2014, the Court issued the January 2014 Order after reviewing the Committee's 2013 Report and the subsequent response by the Network for Excellence in Washington Schools plaintiffs.[24] While acknowledging that additional investments were made in the 2013 biennial budget, the Court declared that the state was not on track to meet its 2018 constitutional funding obligations. The Court therefore requested, beginning in the 2014 legislative session, that the Legislature increase the pace of its basic education investments to be on track for full compliance by 2018. The Court further ordered: "the State shall submit, no later than April 30, 2014, a complete plan for fully implementing its program of

[23] See 2013 Committee Report at pp. 12-17.
[24] January 2014 Order at 2-3.

basic education for each school year between now and the 2017-18 school year[.]"[25]

[25] January 2014 Order at 8.

Part II: Context for the 2014 Legislative Session

A. Context of the 2013-15 Budget Development Process

Washington operates on a biennial (two-year) budget cycle. The budgets for the 2013-15 fiscal biennium cover the period from July 1, 2013, through June 30, 2015. Although there are always exceptions, the presumption of a biennial budget is that significant funding decisions are made to cover the full biennium, including incremental enhancements that may be implemented from year to year within the biennium.

The 2013-15 biennial operating budget contained a number of planned enhancements to basic education funding between the first fiscal year and the second fiscal year of the biennium, totaling $982 million:

	(dollars in millions)	
Enhancement	**FY 2014**	**FY2015**
Pupil Transportation	$35.2	$96.6
General Education K–12 MSOC	$152.1	$221.8
All-Day Kindergarten	$39.4	$50.4
K-1 Class Size Reduction	$42.1	$61.5
Learning Assistance Program	$62.8	$80.3
Increased Instructional Hours	$0.0	$97.0
Other Enhancements	$16.4	$26.5
Total Enhancements	**$348.0**	**$634.1**

The purpose of a supplemental budget is to make adjustments to the biennial budget. These adjustments may address a number of different

areas, including revisions to revenue estimates, updates to caseload estimates, and updates for statutorily required inflationary increases. The Legislature may also choose to enact new policies that could increase or decrease spending. A supplemental budget is not a requirement of continued operations.

From start to finish the state budget process may take between six and eight months. The process begins when agencies submit their budget request to the Governor in October. The Governor then proposes his biennial budget in December, a month before the Legislature convenes.[26] See Section A of the Appendix for a more detailed description of Washington's biennial and supplemental budgeting process.

For the 2014 supplemental budget, the Governor's Office of Financial Management director provided agencies with instructions to limit discretionary budget requests that, among other objectives, "improve services while *reducing* costs."[27] This direction is consistent with the

[26] Office of Financial Management, A Guide to the Washington State Budget Process, August 2013, available at http://www.ofm.wa.gov/reports/budgetprocess.pdf
[27] Office of Financial Management, 2014 Supplemental Operating Budget Instructions, August 2013, available at http://www.ofm.wa.gov/budget/instructions/2014suppbudgetinstructions.pdf

approach the Legislature took while evaluating adjustments funded in the 2014 supplemental operating budget.

The Court's January 2014 Order directed that the Committee report with a plan representing a detailed path for fully implementing the basic education program by 2018. As mentioned above, the Legislature has empaneled a series of task forces and committees to make recommendations to the full Legislature over the last several years to make recommendations and inform the implementation of ESHB 2261 and SHB 2776. As a general proposition, the stumbling block remains the development *and passage* of a full financing package of budget, tax, and revenue reforms to implement the basic education program laid out in those bills.

B. Context for Legislature's 2014 Work in Light of Court Order and Statutory Obligations

By retaining jurisdiction in *McCleary*, the Court has played a significant role in progress towards full state funding of the program of basic education. As the Court itself noted of the 2013 legislative session, any casual observer of the state legislative process would notice that education funding has become a higher priority for the state. This aspect of the

Court's role in the interbranch dialogue has promoted legislative discussion of education funding because the Court has added a constitutional urgency and judicial imprimatur to the Legislature's ongoing policy debates. *See* IV.B, *infra*, for discussion of various bills introduced in the 2014 session to address *McCleary*, the Court's January 2014 Order, and K-12 funding and accountability.

While the Legislature has continued to work to meet the Court's directive, this case has not surprisingly sparked significant debate over the separation of powers and the role of the judiciary in budgeting policy. The members of this Committee, all of whom play a significant role in setting education policy in the Legislature, recognize the Court′s legitimate mandate to ensure that the paramount duty is fulfilled in a constitutionally adequate manner. Our goal is to ensure that the paramount duty is met and that measures taken by the Legislature, and by extension, the Court, do not result in a constitutional conflict that is counterproductive to that end.

C. Full Funding of the Pupil Transportation Formula.

State funding to support basic education programs is allocated through various formulas, the details of which are specified in statute and through

the budget. The components of the prototypical school model are statutory ratios that, when combined with the inputs to the model, determine the funding allocation for each school district. As input values change, such as the number of full-time equivalent (FTE) students, the allocation to the school district will also change. The state continuously refines its estimates of inputs with the assistance of the Office of the Superintendent of Public Instruction (OSPI), the Office of Financial Management, and the Caseload Forecast Council. Final allocations of state funds paid to school districts are based on each district's respective actual or final input values. This process is explained in more detail in Section B of the Appendix.

The transportation funding requirement adopted by the Legislature in ESHB 2261 changed the previous formula to one based on a regression analysis that would adequately compensate districts for transportation of their students to school using a reasonably efficient model. This new formula was the result of several years of analysis and design.[28] Through

[28] JLARC Pupil Transportation Study 2006 and OFM Pupil Transportation Funding Methodology Options 2008.

SHB 2276, the Legislature committed to fully fund this new formula during the 2013-15 biennium.[29]

In its January 2014 Order, the Court "cautioned" the Legislature "that revised funding formulas cannot be used to declare 'full funding,' when the actual costs of meeting the education rights of Washington students remain unfunded."[30] The Court cited a 2008 estimate from the OSPI, the recommendations of the Joint Task Force on Education Funding (JTFEF), and the Plaintiff's Response to the 2013 Post-Budget filing, to conclude that student transportation is not fully funded.

However, the Legislature did not revise the formula. Instead, variable formula inputs changed. The early OSPI estimate and the Plaintiff's Response both rely on early estimates of the full costs while the Legislature funded actual expected costs as provided by school districts to OSPI. In other words, the Legislature's funding actions in 2013 were predicated on the actual legislative fact-finding process, not merely conjecture or estimates, and not a revision to the policies that underlie the formula. The Legislature reiterates its position that the transportation

[29] RCW 28A.160.192.
[30] January 2014 Order at 4.

investments made in the 2013-15 biennial budget brought the state up to full funding in this basic education category. See Section B of the Appendix for additional explanation of K-12 funding to support basic education, the pupil transportation funding formula, and the reasons for varying cost estimates of full implementation of pupil transportation and other policy decisions.

Part III: The 2014 Legislative Session—Enacted Education Funding Laws

A. 2014 Investment in General Education K–12 Materials, Supplies & Operating Costs (MSOC)

Given the context for the 2014 legislative session set forth in Part II above, the Legislature reports to the Court that its 2014 supplemental budget invested an additional $58 million in general education K–12 MSOC to implement SHB 2776. SHB 2776[31] requires that by 2016, the Legislature allocate $1,213.64 per pupil under the general education K–12 MSOC formula. In 2008, prior to ESHB 2261 and SHB 2776, the beginning allocation was $517.91 per pupil. The biennial budget passed in 2013 increased that allocation to $737.02 per pupil for school year 2013-14 and $781.72 per pupil for school year 2014-15.[32] The supplemental budget passed in 2014 increased the school year 2014-15 investment further to

[31] RCW 28A.150.260 (8)

[32] During the development of the 2013-15 biennial budget, the Legislature considered revisions to the implementation target for the K-12 general education MSOC figure based on actual district costs but chose to defer formally changing the current statutory targets until additional data became available. The Legislature has identified that initial MSOC figures adopted in SHB 2776 were based on a survey of actual school district expenditures, to which only a small number of districts responded. Given the revised reporting requirements of ESHB 2261, the state now has actual data from all districts on district costs. The Legislature continues to monitor these annual expenditure reports of school districts and assess the initial survey of school districts that was provided to inform SHB 2776. If the Legislature chooses to adjust these targets this should not be considered a" tautological change," but rather an effort for the formulas to reflect actual program costs.

$848.04 per pupil. This increase makes up approximately 43 percent of the margin between the initial value as specified in SHB 2776 (adjusted for inflation) and the target required under current law.[33] The most recent calculations by legislative fiscal staff indicate that to reach the $1,213.64 per-pupil target as required under current law, the Legislature will need to invest an additional $746 million in general education K–12 MSOC alone in the 2015-2017 biennial budget to meet the statutory implementation date of the 2015-16 school year.[34]

In 2014, the Legislature made no further investments in either kindergarten through third grade class size reduction or expansion of all-day kindergarten beyond the additional investments made in the original 2013-15 biennial budget.

[33] The estimate of the state's progress toward meeting the targeted per pupil allocation for general education K-12 MSOC does not include maintenance level investments related to inflationary adjustments. Adjusting for inflation, the beginning allocation is $572.50 per pupil.

[34] It is important to note the previously stated estimates from the 2013 Committee Report were based on the legislative policies and the best caseload and inflationary information available at that time. Those estimates are updated with each subsequent revision to policy, caseload, and inflation estimates. For instance, the report previously stated an estimate of $857 million to fully fund general education MSOC in the 2015-17 biennium. With the additional $58 million investment in 2014 and the current estimates for inflation and caseload, the estimate to fully fund the general education MSOC for the 2015-17 biennium is now $746 million.

The $58 million investment for the increase to the general education K–12 MSOC allocation formula was the single largest policy expenditure in the 2014 supplemental budget.[35]

B. Engrossed Second Substitute Senate Bill 6552: Modifications To Instructional Hour And Graduation Requirements Under The Basic Education Program

An increase in instructional hours and the number of credits required for high school graduation are components in the expanded definition of the program of basic education adopted under ESHB 2261 in 2009. Both the change to instructional hours and the opportunity for students to earn 24 credits were to be phased in according to a schedule adopted by the Legislature. In 2011, the Legislature stated that the increase in instructional hours would not occur before the 2014-15 school year.[36]

With regard to graduation requirements, ESHB 2261 further states that the distribution of credits are to be determined by the State Board of Education (SBE), but that any changes to graduation requirements proposed by the SBE must first be submitted to the Legislature for

[35] Office of Program Research, Conference Report Summary for ESSB 6002 (March 13, 2014), available at http://leap.leg.wa.gov/leap/Budget/Detail/2014/HOSummary0313.pdf
[36] Laws of 2011, Chapter 27 1st Sp. Sess.

review.[37] Any changes determined by an analysis conducted by the OSPI to have a fiscal impact must be expressly authorized and funded by the Legislature.[38] The SBE adopted a proposed 24-credit Career- and College-Ready Graduation Requirements framework by resolution on November 10, 2010, and revised it on January 9, 2014.[39] The fiscal analysis conducted by the OSPI indicated potential costs associated with aspects of the proposal, so legislative authorization was required for implementation.[40]

In the 2013 legislative session, the Legislature directed school districts to increase instructional hours beginning with the 2014-15 school year and made an investment of $97 million in the 2013-15 budget intended to support the increase.[41] The $97 million was calculated based on the cost of 2.2222 additional hours of instruction per week.[42]

[37] RCW 28A.150.220(3)(b) and 28A.230.090(2)(c).
[38] RCW 28A.230.090(2)(c).
[39] State Board of Education, Resolution of November 10, 2010 (Resolution to Approve Washington State Graduation Requirements: Career and College Ready); Resolution of January 9, 2014 (Resolution to Approve Washington State Graduation Requirements Framework: Career and College Ready).
[40] Office of the Superintendent of Public Instruction, OSPI Cost of Proposed Graduation Requirements
[41] Laws of 2013 2nd Sp. Sess.,ch. 4, sec. 502(12.
[42] *Id.*

During the 2014 legislative session, legislators heard from parents, students, teachers, school administrators, school board members, business leaders, the Superintendent of Public Instruction, and others from across state that the funding as provided in the 2013-15 biennial budget would result in only a few minutes being added onto each class period and would not result in the meaningful increase in instruction or the positive impact on student learning that was expected by the Legislature.[43] The testimony provided in the various standing legislative committees suggested that it would be a better educational policy to focus the use of the funds to implement the increase from the current 20 credits required for high school graduation to 24 credits to enable school districts to design the most appropriate instructional programs with more classes, instructional offerings, and teachers to assist students in meeting the increased graduation requirements.

There was additional testimony that the structure of the required increase in instructional hours as originally adopted reduced the flexibility of

[43] TVW video of legislative committee hearings: Feb 5, 2014 Senate Early Learning & K-12 Education at 1:30 PM; Feb 6, 2014 Senate Early Learning & K-12 Education at 5:30 PM; Feb 10, 2014 Senate Ways & Means at 1:30 PM; Feb 11, 2014 Senate Ways & Means at 1:30 PM; Feb 24, 2014 House Education at 1:30 PM; Feb 26, 2014 House Education at 8:00 AM; Feb 27, 2014 House Appropriations at 3:30 PM; Mar 1, 2014 House Appropriations at 9:00 AM.

school districts to design and implement educational programs to support their students. According to this testimony, the structure could not accommodate the diverse array of school configurations and instructional schedules that districts use to offer programming that meets the educational needs of their unique populations of students and communities.

Therefore, under Engrossed Second Substitute Senate Bill 6552 (E2SSB 6552),[44] the Legislature exercised its policy-making prerogative to change these aspects of the basic education program. Based on the input received from educators and others, the 2014 Legislature shifted the focus and intent of the investments away from compliance with the increased minimum instructional hours offering and toward assisting school districts to provide an opportunity for students to earn 24 credits for high school graduation and obtain a meaningful diploma, beginning with the graduating class of 2019. School districts will be permitted to apply for a delayed implementation of the graduation requirements for no more than two years. The 2014 Legislature also modified the structure of the increase in instructional hours and directed that implementation will occur

[44] Laws of 2014, Chapter 217 (hereinafter E2SSB 6552).

beginning in the 2015-16 school year. This provides greater flexibility to school districts to implement increased instructional time in a meaningful way for Washington students to attain a more meaningful high school diploma**.**

E2SSB 6552 also expands flexibility for students through the use of career and technical education program equivalencies that permit a student to achieve proficiency in academic subjects through career and technical education in fields which the student intends to pursue after high school. School districts will be permitted to waive up to two of the required credits for individual students based on unusual circumstances and in accordance with locally-adopted policies.

E2SSB 6552 was predicated on a clear educational policy choice. The additional flexibility for both the students and the school districts is important to improve student opportunities and outcomes, as opposed to merely adding a marginal increase in student seat time—the practical effect of the previous policy.[45]

[45] Section 1 of E2SSB 6552 reflects this express intent and purpose based on the direct input from school district superintendents and others.

Additionally, in accordance with the Court's direction that funding for the basic education program must reflect the actual cost of providing the program components,[46] the Legislature reviewed the fiscal analysis of the cost of the proposed graduation requirements by OSPI. Full implementation of the 24 credits was estimated to cost $67.2 million in the 2010 estimate.[47]

Reflecting the OSPI cost estimate, the Legislature reallocated $97 million of funding originally provided in the 2013-15 biennial budget. The Legislature shifted funding away from increasing instructional hours for high school students and toward providing students with an opportunity to obtain 24 credits for high school graduation. Additionally, the Legislature recognized that the Career- and College-Ready Graduation Requirements as recommended by the SBE will result in an increase from one to two laboratory science credits. Therefore, the Legislature modified the prototypical school funding formula to provide a laboratory science class size enhancement of 19.98 full-time equivalent students for grades 9 through 12, which will provide more teaching units in the formula.. The Career- and College-Ready Graduation Requirements also permit students

[46] *McCleary*, 173 Wn.2d at 532; January 2014 Order at 5.
[47] State Board of Education: OSPI Cost of Proposed Graduation Requirements

to substitute one art credit and both world language credits for a personalized pathway requirement based on a student's High School and Beyond Plan. The Legislature heard testimony that this flexibility allows for choices that a student may need assistance with in order to make the best choice for the student's future college and career plans. The Legislature responded to these concerns by providing an increase in high school guidance counselors from 2.009 to 2.539 for each prototypical high school.

Finally, to accommodate the shifts in curriculum and course offerings necessitated by adding additional credits in science, the arts, and world languages under the Career- and College-Ready Graduation Requirements, an additional per-student allocation of $164.25 above the current allocation for general education K–12 MSOC was provided based on students enrolled in grades 9 through 12 to provide for increased costs for technology, curricula and textbooks, supplies and library materials, and instructional professional development.

With the enactment of E2SSB 6552, the Legislature thus implemented two key elements of the revised definition of basic education under ESHB 2261. It is significant that E2SSB 6552 was developed through a

collaborative, bipartisan negotiating process that began in the Senate and that led to passage by overwhelming margins in both chambers.[48]

[48] E2SSB 6552 was approved by the House on a vote of 93-5 and by the Senate 45-2.

Part IV: Next Steps—Consensus-Building and Continued Legislative Planning on Education Funding

A. Legislative Review and Consensus-Building

ESHB 2261 and SHB 2776 constitute an overall framework for what the basic education program should look like by 2018. This is not to suggest that these policies are immutable, or that one Legislature may enact an unamendable statute that prevents a future Legislature from passing any future changes to a given educational policy.[49] The obvious caveat is that any such change must comply with Article IX. This Court has recognized in this case that "the Legislature's 'uniquely constituted fact-finding and opinion gathering processes' provide the best forum for addressing the difficult policy questions inherent in forming the details of an education system."[50] The Court has repeatedly emphasized that selecting the means of fulfilling the Article IX duty falls within the legislative sphere.[51] Unquestionably then, the Legislature retains not only the prerogative but the duty to review and revise the program of basic education, including

[49] *Farm Bureau v. Gregoire*, 162 Wn.2d 284, 290 (2007) ("No legislature can enact a statute that prevents a future legislature from exercising its law-making power."); *compare McCleary*, 173 Wn.2d at 526-27 (basic education programs are not "etched in constitutional stone" but the Court will limit the Legislature's ability to eliminate such programs). *See* Section C of Appendix, *infra*.
[50] *McCleary*, 173 Wn.2d at 517.
[51] *McCleary*, 173 Wn.2d at 517.

reduction, elimination, or deferral of basic education programs for valid educational purposes,[52] For example, in 2013 the Legislature made significant changes to the Learning Assistance Program and created a panel of experts to develop a menu of best practices for remediation strategies that are to be funded by the LAP program. The Legislature is still awaiting the results of those changes to determine if additional modifications to the program of basic education are warranted. As discussed above, this year the Legislature exercised that prerogativeto modify the program of basic education when it revised the priority of graduation requirements and instructional hours based on evidence from districts of what would make a more positive impact on student learning . While there remain differences between the chambers and the political caucuses on how to implement and finance basic education, there is general agreement that the Legislature must, consistent with its constitutional role, maintain the essential policy making prerogative so long as any particular changes are consistent with the constitutional directives of the Court.

[52] *McCleary*,173 Wn.2d at 526-27.

B. Continued Legislative Issue Studies and Discussion

The Legislature did not enact additional timelines in 2014 to implement the program of basic education as directed by the Court in its January 2014 Order. As noted above, this Committee previously reached a consensus on the broad funding levels required under SHB 2776 as reflected in the 2013 Committee Report to this Court.[53] Nonetheless, there was no political agreement reached either among the political caucuses or between the legislative chambers on what the full implementation plan should look like, and the Article IX Committee does not have the authority to propose such a plan absent legislation. Continued discussion of evolving and emerging proposals was a key legislative activity during the 2014 legislative session.

The following portion of the report describes various bills that were introduced and would have addressed in full or in part the "plan" that the Court requested for full implementation, including proposals related to

[53] It is important to note the previously stated estimates from the 2013 Committee Report were based on the legislative policies and the best caseload and inflationary information available at that time. Those estimates are updated with each subsequent revision to policy, caseload, and inflation estimates. For instance, the report previously stated an estimate of $857 million to fully fund general education MSOC in the 2015-17 biennium. With the additional $58 million investment and the current estimates for inflation and caseload, the estimate to fully fund the general education MSOC for the 2015-17 biennium is now $746 million.

incremental enhancements to basic education, educator compensation, and local and state financing to support public schools.[54] Although none of these bills passed the Legislature, they are meaningful because they show significant work is occurring and because unsuccessful bills introduced in one Legislature may lay the groundwork for successful bills in a subsequent Legislature.

1. Comprehensive Incremental Plans

The following two bills proposed comprehensive plans to enhance funding for basic education programs in an incremental fashion and address educator compensation:

Substitute House Bill 2792[55] *(Implementing the state's education funding obligation by increasing allocations to school districts, which include materials, supplies, and operating costs, all-day kindergarten, and class size reduction in kindergarten through third grade).* SHB 2892 proposed revisions to the Transitional Bilingual Instructional Program (TBIP) and Learning Assistance Program (LAP) statutes to align with funding enhancements in the 2013-2015 operating budget and amends the

[54] Bills, Bill Reports, and other legislative documents related to the bills referenced in this portion of the report may be accessed at the Legislature's Bill Information website: http://apps.leg.wa.gov/billinfo/.

[55] Referred to House Appropriations Committee; passed to the House Rules Committee, as amended.

transportation funding formula to reflect the fully funded and implemented system. It proposed an equal annual increment phase-in for the remaining enhancements under SHB 2776, salary allocations for classified and certificated administrative staff, guidance counselor and parent engagement coordinator staffing, and increased TBIP instructional hours for middle and high school students. It modifies instructional hour requirements and implements a 24-credit Career- and College- Ready Graduate Requirements framework for high school graduation. A legislative Task Force on Local Education Financing Reform to make recommendations on state and local funding and certificated staff compensation was also proposed.

Senate Bill 6574[56] (*Improving education financing*). Proposed SB 6574 specified legislative intent to provide an expenditure plan to meet the Court's January 2014 Order. Part I proposed a linear phase-in for the remaining SHB 2776 items; aligned basic education funding formula statutes with funding enhancements provided in the 2013-15 biennial budget; modified instructional hours and created new funding enhancements to support implementation of 24-credits for high school graduation; phased-in increased compensation for certificated instructional

[56] Referred to Senate Early Learning and K-12 Education Committee

staff by the 2020-21 school year and for classified and certificated administrative by the 2019-20 school year; and limited supplemental contracts to 10 percent of the state salary allocations. Part II proposed further enhancements to the prototypical school funding model and reinstated the suspended cost of living adjustment. Part III proposed revenue to support increased basic education funding by repealing or changing specified tax exemptions and eliminating a preferential B&O tax rate.

2. Local and State Financing

The following two bills addressed local and state financing to support the public schools:

Engrossed Substitute Senate Bill 6499[57] *(Creating the joint task force on local education financing reform).* ESSB 6499 proposed the creation of a Joint Task Force on Local Education Financing Reform (Task Force), consisting of eight legislators, the Governor, and the Superintendent of Public Instruction. The proposed purpose of the Task Force was to review relevant studies, the use of local levies by school districts, and issues

[57] Referred to Senate Early Learning and K-12 Education Committee; passed to Senate Rules, as amended; passed Senate Floor, as amended; Referred to House Appropriations Subcommittee on Education.

associated with the local levy process. Task Force recommendations were due by December 2014. Other bills introduced on this topic in the 2014 session include Substitute House Bill 2792 (section 7); and Engrossed Substitute Senate Bill 6002, (section 924, as passed the House).

Substitute Senate Bill 5881[58] (*Dedicating new revenue to education*). SSB 5881 proposed that two-thirds of new state general fund revenue be dedicated to expenditures for education programs, including K-12, higher education, and early learning programs. The bill's intent section declared that, as measured by the relative growth rate, state spending for education programs has been a declining priority in the state budget, as compared to spending for noneducation programs. Under the proposed bill, two-thirds of any expenditures of new revenue to the state general fund must be made for state education programs beginning with fiscal year 2016 and ending in fiscal 2025.

C. Future Legislation

There are profoundly different political and policy perspectives within the 147 members of the Legislature on how best to proceed to meet the State's Article IX duty. As summarized above, proposals have been introduced

[58] Referred to Senate Ways and Means; passed to Senate Rules, as amended.

addressing the funding of the basic education program and other education reforms but have not had sufficient consensus to pass the Legislature.

However, reaching a consensus on educational policy and funding is possible within the Legislature, as demonstrated by the passage of E2SSB 6552. This legislation represents the work of a bipartisan, bicameral group of legislators who agreed to meet and explore the possibilities of reaching an agreement by merging several different bills. The group worked through the multiple policies over multiple meetings and recommended changes that resulted in only seven "no" votes. This is an example of what must happen in the upcoming two-year budget cycle.

The Legislature recognizes, as does the Court, that the remaining enhancement targets must be met by the statutory implementation date of 2018, which means that the pace of implementation must increase. For this reason, the upcoming biennial budget developed in the 2015 legislative session must address how the targets will be met. As described above, the Legislature has met the statutory deadline for full implementation of the new pupil transportation formula, and it has implemented the other enhancements required by SHB 2776, with full implementation of MSOC due in the 2015-16 school year. Additionally,

the Legislature has initiated the provisions of ESHB 2261 for instructional hours and the opportunity to earn 24 credits for high school graduation. Further, under the current statutory timeline, the levy base of school districts will automatically be reduced in 2018,[59] and this will continue to foster a discussion about over-reliance on local levies and the level of state funding for basic education, including compensation.

For the previously discussed reasons related to the nature of a supplemental budget year, the Committee respectfully suggests that the Court give deep consideration to its response to the actions taken in 2014, that such response not be counterproductive, and that it recognize that 2015 is the next and most critical year for the Legislature to reach the grand agreement needed to meet the state's Article IX duty by the statutorily scheduled full implementation date of 2018.

[59] In 2010, 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. RCW 84.52.013 (Laws of 2010, ch. 237). This increase expires effective with levies for calendar year 2018.

Appendix

A. The Budget Development Process

Washington's biennial budget process has its roots in the state constitution, which requires that any expenditures from the state treasury be authorized by an appropriation in law.[60] Under Article VIII, section 4, appropriations laws are temporary in nature, and authority to expend pursuant to an appropriation ends with the fiscal biennium for which the appropriation is made. As discussed in more detail in Section C of this Appendix, these constitutional principles mean that each Legislature appropriates for roughly the two years for which it is elected, and not beyond.

1. The Biennial Budget: Policies for Two Years in a Single Act

For this reason, Washington enacts biennial budgets in each odd-numbered year.[61] In other words, the Legislature enacts appropriation policies for two years in a single piece of legislation. The budget approved for the 2013-15 biennium remains in effect from July 1, 2013, through June 30, 2015. In the second year of each biennium, the

[60] Const. art. VIII, sec. 4. All tax revenues must be deposited in the state treasury. Const. art. VII, sec. 6.

[61] An outline of the budget process is found at http://www.ofm.wa.gov/reports/budgetprocess.pdf.

Legislature considers changes to the biennial budget enacted in the first year in a supplemental budget. Such changes typically represent mid-course corrections to the two-year spending plans to account for changes in caseload forecasts and actual reported data for funding drivers such as school enrollments, prison populations, public assistance caseloads, or significant changes in the economy of the state.

The operating budget includes appropriations for the general day-to-day operating expenses of state agencies, colleges and universities, and the public schools. Examples of typical operating expenses are employee salaries and benefits; leases, contracts, goods and services; state apportionments to school districts, and medical assistance payments. About half of the operating budget is funded by the state general fund (GFS) with the balance from federal and other funding sources. The major sources of GFS revenues (forecasted for the 2013-15 biennium) are the retail sales and use tax (51%), the business and occupations tax (20%), and the state property tax (dedicated to common schools) (12%).

A new operating budget generally is written as incremental changes to the currently enacted maintenance level budget. The maintenance level budget is the estimated cost of providing currently authorized services in

the new budget period. It is calculated using current ongoing appropriations, application of any bow wave adjustments (costs or savings that occur in the future because a current budget item is not yet fully implemented), and adjustments for caseload or enrollment or other funding driver changes to mandatory programs.

The maintenance level budgets for some of the largest programs are calculated using what is effectively a zero-based approach. In other words, rather than being calculated based on carrying forward current appropriated levels, those programs' budgets are built "from scratch" each biennium. Formula-based budgets such as school apportionment are an example of such a budgeting approach.

The caseload forecast (prepared by the independent Caseload Forecast Council) projects the number of persons expected to seek and meet entitlement requirements for services including the K-12 public school system, long-term care, medical assistance, foster care, and adoption support. This establishes maintenance level, the theoretical base from which changes are made to create the new biennial budget.

Once the maintenance level is estimated, the Governor and Legislature focus on policy changes to the maintenance level budget. These policy level decisions may add funding for new or expanded services/programs or reduce funding for existing services/programs. While the net policy changes (policy additions and reductions combined) may be relatively small, the absolute value of the policy additions and reductions is typically significant. These policy level decisions generally are made after reviewing the activities of agencies and programs in the base budget.

In the enacted budget, the Legislature adopts a single funding level for any given agency, or in the case of larger programs such as K-12 and human services, funding levels are adopted by program. Previous expenditures, carry-forward, maintenance and policy steps are simply a way of communicating both how the budget was calculated and how it changes previous policy decisions. The Legislative Budget Notes published by the legislative fiscal committees explain and illustrate these steps.[62]

2. The State's Supplemental Budget

As mentioned above, a supplemental operating budget is typically, but not always, enacted during the short, 60-day session in even numbered years.

[62] Legislative Budget Notes for the last several biennia are available at leap.leg.wa.gov.

The supplemental budget makes adjustments to the biennial budget. These adjustments may address a number of different areas, including revisions to revenue estimates, updates to caseload estimates and other funding drivers, and updates for statutorily required inflationary increases. The Legislature may also choose to make new policies that could increase or decrease spending, such as the policy to make an additional enhancement to MSOC in supplemental appropriations act that is the subject of this report. A supplemental budget is not a requirement of continued operations.

B. How the State funds K-12 Education

1. K-12 Education Funding Formulas

The need for state funding formulas arises from the complex legal relationship between the state and its school districts. Beginning with Judge Doran's 1977 decision in *Seattle School District* and confirmed 35 years later with the Court's *McCleary* ruling, the duty to make ample provision for a program of basic education clearly falls on the *state* and its officers and taxpayers.[63] At the same time, state education policy is—and

[63] *Seattle School District v. State*, No. 53950 (Thurston Co. Sup. Ct. Jan. 14, 1977), Mem. Op. at 11-13, 31-34, *affirmed in part and reversed in part by Seattle School District v. State*, 90 Wn.2d 476 512-13 (1978) (Article IX duty imposed on state as sovereign body politic); *McCleary*, 173 Wn.2d at 515, 537 (same; state bears duty of full funding).

has been before since statehood—based on the principle of local control of schools by directors elected by the local community. This means that the basic funding duty falls on the state, but the implementation duty rests on locally governed school districts—295 of them.

After Judge Doran's January 1977 decision in *Seattle School District*, it became apparent that the state's Article IX duty required it to provide basic, foundational funding rather than mere equalization for locally raised school revenues. The 1977 Legislature responded by enacting the formulas found in the 1977 Basic Education Act.[64] These formulas were based on a staff ratio designed to allocate to school districts sufficient funding to hire teachers and other staff. Since 1977, these formulas provide funding "for allocation purposes only."[65] This means that school districts choose how to spend their state allocations to implement the Basic Education Act, subject to some exceptions, such as minimum staffing ratios and spending categorical funding for the specified purpose.

[64]Laws of 1977 1st Ex. Sess. Chapter 359
[65]Laws of 1977 1st Ex. Sess. ch. 359 sec. 5; RCW 28A.150.260(2) (for allocation purposes only; districts are not required to operate a "prototypical school").

In *McCleary*, the Court expressed concerns that the Legislature's former definition of full funding was a mere "tautology"—in effect the state was arguing that it funded its statutory formulas, ergo it had funded basic education.[66] Yet districts' arguments in the underlying case could also be reduced to a tautology: the state must reimburse whatever districts spend.[67] The Court did not require this result. Instead, *McCleary* confirmed that the state may fund school districts through apportionment formulas, so long as those formulas are constitutionally adequate. To be adequate, these formulas must correlate to the cost of providing the state's program of basic education.[68]

State funding formulas will not always be perfect.[69] These formulas need to make ample provision and promote uniformity of educational opportunity while encouraging efficiency and not rewarding inefficiency. The Court has said that it will not dwell on the "minutiae" of legislative

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[66] *McCleary*, 173 Wn.2d at 532.
[67] *McCleary v. State*, No. 07-2-02323, (King. Co. Sup. Ct. Feb. 4, 2010), slip. op. at 54, 57-58 (implying that state must fund actual cost of district operations).
[68] *McCleary*, 173 Wn.2d at 532-33, 539 (formulas must generate funding sufficient to pay for cost of state's *program* and must achieve or be reasonably likely to achieve the Article IX objective).
[69] For example, *McCleary* cites a report of the Joint Legislative Audit and Review Committee for the proposition that the former transportation funding formula underfunded many districts' costs, 173 Wn.2d at 535, but that same formula also overfunded other districts. Joint Legislative Audit and Review Committee, K-12 Pupil Transportation Study (2006).

funding formulas, because enacting the statutes is within the Legislature's duty to establish the means by which the state satisfies Article IX.[70] For these reasons, this Section B of the Appendix offers additional information about state funding formulas.

a. Overview of Washington's State Funding for the Program of Basic Education

State funding to support basic education programs is allocated through various formulas, the details of which are specified in statute and through the budget. The majority of funding is distributed for the instructional program of basic education through a funding model referred to as the prototypical school model which was implemented by the state beginning September 1, 2011, pursuant to ESHB 2261 and SHB 2776. The formulas in the prototypical school model are based on minimum staffing and non-staff costs to support prototypical schools. Prototypes illustrate the level of resources needed to operate a school of a particular size with particular types and grade levels of students using commonly understood terms and inputs. Allocations to individual school districts are adjusted from the prototypes based on the school districts' actual inputs, including the actual FTE student enrollment in each grade in each school in the district,

[70] *Federal Way School District v. State*, 163 Wn.2dd 514, 526-27 (2009) (details of school funding formulas are the province of the legislative branch).

adjusted for factors specified in the budget such as the small school factor. As the inputs to the model change or estimates of the inputs are refined, the state's estimated cost to fund the model also changes.

i. General Education

The state's prototypical school model defines three school types: a high school of 600 full-time equivalent (FTE) students in grades 9 through 12; a middle school of 432 FTE students in grades 7 and 8; and an elementary school of 400 FTE students in grades kindergarten through 6. The formula additionally defines the class size in each of the 13 grades. In order to calculate the number of FTE teachers needed for a prototypical school, the formulas include factors for the minimum instructional hours required for the grade span, teacher planning periods, and class sizes of various educational program types as specified in statute and the state budget bill. The number of teaching staff calculated is a key factor in the formula for the prototypical school allocation, but it is not the only factor. The prototypical school formula also includes allocations for a specified number of other building staff, such as principals, librarians, counselors, custodians and other certificated and classified staff types; MSOC; and districtwide central office administrative and classified staff.

Each of the prototypical school model formula components are provided in statute or the budget bill and when combined with the individual school district inputs to the model, determine the funding allocation for each school district. Input values include student FTE enrollment and certificated instructional staff mix, which accounts for each district's mix of staff experience and educational attainment. As input values change, the allocation to the school district will also change accordingly. The state continuously refines its estimates of inputs with the assistance of the OSPI, the Office of Financial Management, and the Caseload Forecast Council. Final allocations of state funds paid to school districts are based on each district's respective actual or final input values. Again, these distributions are "for allocation purposes only": school districts are not required to operate exactly according to the prototypical school model.

ii. Categorical Programs

In addition to funding for general education, state funding is provided for special programs within the state's defined program of basic education. These programs include special education, the Transitional Bilingual Instruction Program, the Learning Assistance Program, and the Highly Capable Program. Just as with the general education funding formulas, the state allocates funding for each of the categorical programs based on a

formula that includes a defined set of assumptions and school districts' respective inputs. The distribution formulas for the Learning Assistance, Transitional Bilingual and Highly Capable programs each provide additional hours of instruction for eligible students recognized by the funding formula. Special education funding allocations are provided in addition to the full basic education allocations and are based on a cost in excess of the basic general education program.

iii. Other Programs within Basic Education

Beginning September 1, 2011, pupil transportation funding moved from a unit cost allocation model to an expected cost allocation model pursuant to ESHB 2261 and SHB 2776. Under the expected cost model, funding allocations must be calculated using a regression analysis of major cost factors that are expected to increase, or decrease; the prior year's pupil-transportation costs, including the count of basic and special-student ridership; district land area; roadway miles; the average distance to school; and other statistically-significant coefficients. In addition, the state provides funding for school bus replacement costs using a depreciation schedule.

The state also funds a 220-day educational program for children in certain institutions, such as juvenile rehabilitation institutions and residential habilitation centers for students with developmental disabilities.

b. K-12 Funding Enhancements in the 2013-15 Biennial and 2014 Supplemental Budgets

As described in the Committee′s 2013 Committee Report and as summarized above in this report, the Legislature enacted a number of policies in 2013 to enhance funding for the program of basic education. These policies included full funding and implementation of the pupil transportation expected cost model beginning with the 2014-15 school year; increased per pupil allocations for MSOC; continued implementation of all-day kindergarten for all of Washington's kindergarten students; and reduced class size allocations for kindergarten and first grade students in high poverty schools. Pursuant to its obligation and commitment to continually review and revise the program of basic education, the Legislature also enhanced the Learning Assistance Program by increasing the instructional hours funded through the formula, increased the prototypical school staffing allocations for guidance counselors and parent involvement coordinators, and provided state-funded supplemental instruction following a student's exit from the Transitional Bilingual Instruction Program.

Additionally, as explained above in section III.A of this report, in 2014 the Legislature invested an additional $58 million in general education K–12 MSOC, and through E2SSB 6552 it revised and reallocated existing funding toward the opportunity to earn 24 credits for high school graduation.

2. Example of a Formula in Action: How Transportation was Fully Funded

The Court's concerns about the 2013 Committee Report indicate the confusion that may arise from the way in which the state's budget, which is based on fiscal years, allocates state funding for school districts that is based on school years. A biennial budget consists of two fiscal years, each of which runs from July 1 to June 30. Fiscal years are named for the year in which they end. For example, the 2013-15 biennial budget consists of fiscal years 2014 and 2015. In contrast, school years run from September 1 to August 31. Although the state appropriates based on fiscal years, it allocates state school funding policies based on school years. Because the state fiscal year and the school year do not align, the state budget appropriates on the portion of the program costs that occur in the state fiscal year.[71] For example, the state budget for fiscal year 2014

[71] RCW 28A.510.250 provides a monthly payment schedule for school district apportionment payments. This statute dictates how the state recognizes proportions of a school year's costs during the state fiscal year, so payments are not made in equal

appropriates 80 percent of the costs for the 2013-14 school year.[72] The remaining 20 percent of school year 2013-14's costs are appropriated in state fiscal year 2015.

This difference in alignment may result in state fiscal year appropriations that appear to understate funding for new K-12 programs. The funding descriptions provided in the 2013 Committee Report represented the cumulative cost of the policy enhancements for both state fiscal years of the biennial budget. Similarly, the majority and minority recommendations of the Joint Task Force on Education Funding (JTFEF) to the Legislature also represented the cumulative cost of the recommended policy enhancements for both fiscal years of the biennial budget.[73] The challenge created by this type of representation is that it does not allow the reader to fully understand the incremental increases that are provided from one school year to the next, nor does it enable the reader to make a full and complete comparison of the underlying policies (enacted or recommended) by individual school years.

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increments. Eighty percent of a school year's expenses are applied to the first fiscal year and twenty percent are applied to the second fiscal year.

[72] This percentage corresponds to the schedule in RCW 28A.510.250.

[73] Final Report, Joint Task Force on Education Funding (December 2012), available at http://www.leg.wa.gov/JointCommittees/EFTF/Documents/JTFEF%20Final%20Report%20-%20combined%20(2).pdf

This problem is most clearly evident in the description of the pupil transportation funding. The estimate provided for full funding of the pupil transportation expected cost model, as recommended by the JTFEF, was $141.6 million for the 2013-15 biennium. The enacted 2013-15 budget provided $131.7 million and also indicated that the formula was fully funded. The difference of $10 million dollars was the result of different policies in the first year of the biennium, not clearly described in either document. The missing detail behind the JTFEF recommendation is that the policy recommended funding 50 percent of the estimated cost in the 2013-14 school year and 100 percent of the estimated cost in the 2014-15 school year, reaching full implementation in the 2014-15 school year. The legislatively enacted policy funded 40 percent of the estimated cost in the 2013-14 school year and 100 percent of the estimated cost in the 2014-15 school year. Like the JTFEF recommendation, it did meet full implementation by the required due date, but the cumulative cost for the two years of the biennium was reduced by $10 million by reducing the partially implemented first year.

Exhibits 1 and 2 illustrate how the difference in state and school fiscal years affects the state funding allocation and how the $110 million dollars per school year for pupil transportation funding enhancements were

proportioned (as recommended by the JTFEF and as actually funded in the budget) by school year and then the corresponding costs for this policy decision by fiscal year.

The Court has also cited an earlier 2010 Quality Education Council (QEC) estimate as the state's benchmark for fully funding pupil transportation.[74] The early cost estimate, which moves as underlying school district variables change, can be considered a conservative estimate based on preliminary estimated data. As described above, a host of variable school district inputs affect actual allocations—in this illustration, the pupil transportation allocation. These variable inputs may result in different annual funding levels, even though there has been no change to the substantive policy defined by the formula.

The Court expressed concern in its January 2014 Order that the state cannot use "tautological" changes to the funding formula to declare full funding.[75] Formula adjustments that reflect new data or updated variables are not tautological changes, nor are they actual changes to the formula; rather, they implement the policy of the formula. Further, the Legislature

[74] Quality Education Council 2010 Report
[75] January 2014 Order at 4.

expressly declared its intent in ESHB 2261 to review and revise funding formulas and schedules as needed for technical or other reasons.[76] As can be seen in the exhibits provided at the end of the appendix, the Legislature did not change the transportation funding formula established in statute.

C. Budgeting and Legislative Policy-Setting

As described above, the practice of enacting biennial budgets is not just a legislative tradition, but also a constitutional requirement:

> No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within one calendar month after the end of the next ensuing fiscal biennium[.]

This requirement confirms a principle found in many aspects of our state constitution: subject to the requirements of the constitution, voters are governed contemporaneously by the representatives they elect, not by the dead hands of past Legislatures. The 63rd Legislature, which convened in January of 2013 and will be replaced by the 64th Legislature in January of 2015, may appropriate only through June 30, 2015, the fiscal biennium that is generally coextensive with the period for which the 63rd

[76]Laws of 2009, Section 2, Chapter 548. As discussed in Section C of the Appendix, nothing in the Constitution requires the Legislature to reserve this right in statute.

Legislature sits. The members of the 63rd Legislature appropriate the taxes paid by the voters who elected them—not the taxpayers of the future who may elect different representatives that embrace different policies.[77] A "continuing" appropriation law that purports to authorize expenditures for a future biennium is invalid.[78]

Just as the Legislature may not appropriate for future biennia, neither may it enact an "unamendable" law. A Legislature may enact statutory programs that will require appropriations in following biennia, but a subsequent Legislature has the power to amend or repeal those statutes.[79] This concept, sometimes phrased colloquially as "you can't bind a future Legislature," is rooted in the principle that under Article II each Legislature is vested with a plenary legislative power. If the Court were to reason otherwise, then it would in effect elevate a statutory enactment to

[77]For example, Article VIII, section 1, permits the Legislature to authorize bonds, which constitute contracts for which future legislatures must appropriate and future taxpayers pay, but it requires the safeguard of a legislative supermajority vote.

[78] Const. art. VIII, sec. 4; *Association of Neighborhood Stores v. State* , 149 Wn.2d 359, 365 (2003) (purpose of Art. VIII, sec. 4 is to secure to the legislative department the power to authorize expenditures; appropriations are subject to two-year requirement); *State* ex rel. *Washington Toll Bridge Authority v. Yelle*, 61 Wn.2d 28, 44 (citing the "axiom" that one legislature may, within constitutional limits, establish a contractual obligation, but one legislature may not charge succeeding legislatures with the duty of making appropriations).

[79] *Farm Bureau*, 162 Wn.2d at 290 (each duly elected legislature is vested with plenary law-making power; "That which a prior legislature has enacted, the current legislature can amend or repeal.").

quasi-constitutional status—a constitutional amendment "enacted" without the safeguards of a two-thirds legislative vote and ratification by the people.[80]

The ability of each successive Legislature to amend the law is consistent with the *Seattle School District* principle that the Legislature has not only the power but the duty to review and revise the program of basic education to meet the changing needs of school children.[81] For this reason, though not constitutionally required to do so, the Legislature in ESHB 2261 expressly declared its intent to review and revise funding formulas and schedules, and it expressly reserved the right to make additional revisions to the formulas for "technical purposes and consistency." The Court as recently as the January 2014 Order emphasized that full funding must account for actual costs of the state program, and this requires legislative review and revision. For example, initial general education K–12 MSOC figures adopted in SHB 2776 were based on a survey of actual school district expenditures, to which only a small number of districts responded. Given the revised reporting requirements of ESHB 2261, the state now has

[80] *See* Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Powers of the American Union* 147 (1890) ("To say that the Legislature may pass irrepealable laws, is to say that it may alter the very constitution from which it derives its authority").
[81] *Seattle School District v. State*, 90 Wn.2d at 516-520.

actual annually reported expenditure data from all school districts. During the development of the 2013-15 biennial budget, the Legislature considered revisions to the implementation target for the K-12 general education MSOC figure based on actual district costs, but chose to defer formally changing the current statutory targets until additional data became available. The Legislature continues to monitor these annual expenditure reports of school districts and continues to assess the initial survey of school districts that was provided to inform SHB 2776. If the Legislature chooses to adjust these targets, the adjustment should not be considered a "tautological" formula revision , but rather an effort for the formulas to reflect actual program costs. As exemplified in the passage of E2SSB 6552 and as the Court has repeatedly acknowledged in this case, the ability to address such issues must remain part of the Legislature's duly recognized fact-finding and policy-making functions.

Based on the substantive principles of Article IX, this Court has imposed some outside limits on the Legislature's ability to revise a previously enacted program of basic education. Specifically, this Court stated that "any reduction of programs or offerings from the basic education program must be accompanied by an educational policy rationale" and that the Legislature may not make any such reduction for a fiscal crisis or mere

expediency.[82] Even so, the Court at the same time acknowledged that the definition of basic education is not "etched in constitutional stone" and that the Legislature has the ability to revise it, so long as it does not eliminate an offering for reasons unrelated to educational policy. The Court confirmed this principle in its January 2014 Order, in which it stated that there is not a single viable plan to constitutional compliance. Within the bounds of the constitution, the Legislature retains authority for selecting the means of Article IX implementation. And within the bounds of the constitution, the Legislature may change these means.

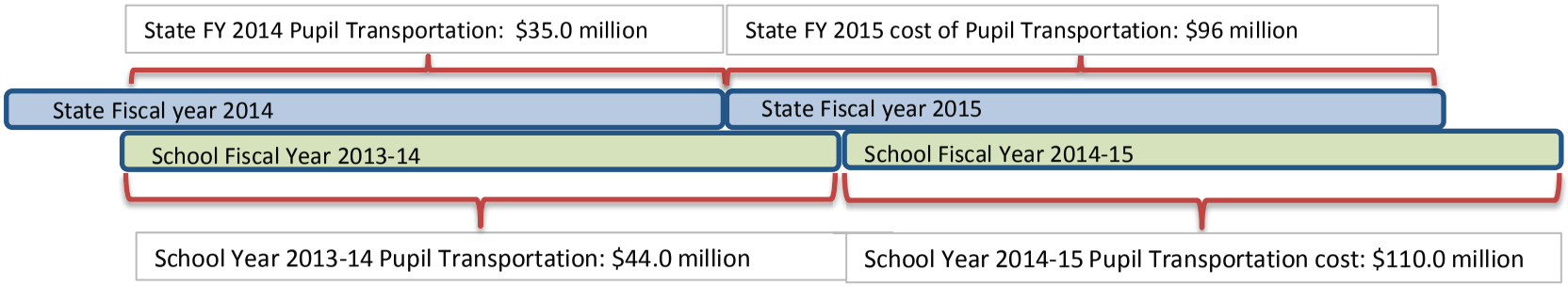
D: Additional Summaries of Non-Basic Education Bills Considered during the 2014 Legislative Session

In addition to the proposed bills described in Part IV B of this report, the Legislature also considered proposals on topics outside the program of basic education.[83] For example, Engrossed House Bill 2797 (*Funding all-day kindergarten and early elementary class size reduction facility needs with lottery revenues*) and Substitute Senate Bill 6483 (*Financing facilities to support education reform with general obligation bonds*), while not addressing basic education funding formulas, proposed new funding for

[82] *McCleary*, 173 Wn.2d at 526-27.
[83] Bills, Bill Reports, and other legislative documents related to the bills referenced in this portion of the report may be accessed at the Legislature's Bill Information website: http://apps.leg.wa.gov/billinfo/.

school facilities, including addressing the impact of all-day kindergarten expansion and K-3 class size reduction. Additionally, Substitute Senate Bill 5880 (*Changing the requirements for the multiple measures of student growth used in teacher and principal evaluations*), while not amending a basic education program, addressed issues associated with state and federal accountability for schools.

Exhibit 1. State Funded Policy for Pupil Transportation in the 2013-15 Enacted Biennial Budget



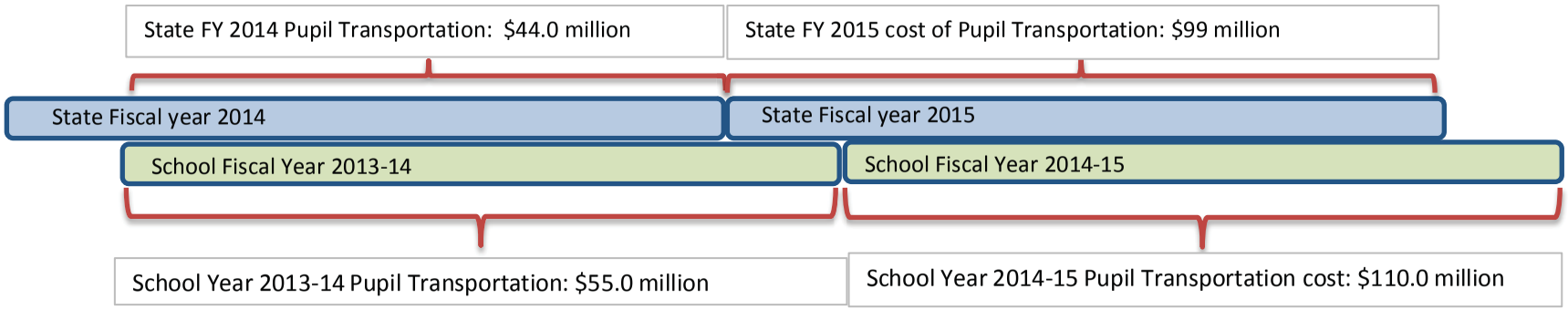
Example from the 2013-15 Enacted Biennial Budget:
-State increases the pupil transportation funding to 40% of the margin between the starting point and the target , to begin September 1, 2013, the first day of the 2013-14 school year. The policy is enhanced in the 2014-15 school year to fully fund the expected cost of pupil transportation, as estimated by the Office of the Superintendent of Public Instruction.

-The school year cost of the policy is $44.0M in SY 2013-14 (40% of the full funding cost) and $110.0M in SY 2014-15 (100% of the full funding cost).

-The state fiscal year cost is $35.0M in FY 2014 (cost to fund September 1, 2013 - June 30, 2014) and $96.0M in FY 2015 (cost to fund July 1, 2013 through June 30, 2015).

-Breakdown of state cost of new policy: State FY 2014 pays for the first 10 months of School Year 2013-14. State FY 2015 pays for the last 2 months of School Year 2014-15 and the first 10 months of School Year 2014-15.

Exhibit 2. Joint Task Force on Education Funding Recommended Policy for Pupil Transportation Allocation



Example from the Joint Task Force on Education Funding Recommendation:

-JTFEF recommends increasing the pupil transportation funding to 50% of the margin between the beginning allocation and the target , to begin September 1, 2013, the first day of the 2013-14 school year. JTFEF recommend that the state fully fund the expected cost of pupil transportation in SY 2014-15. Estimated cost of full funding provided by the Office of the Superintendent of Public Instruction.

-The school year cost of the recommended policy is $55.0M in SY 2013-14 (50% of the full funding cost) and $110.0M in SY 2014-15 (100% of the full funding cost).

-The state fiscal year cost of the recommended policy is $44.0M in FY 2014 (cost to fund September 1, 2013 - June 30, 2014) and $99.0M in FY 2015 (cost to fund July 1, 2013 through June 30, 2015).

-Breakdown of state cost of new policy: State FY 2014 pays for the first 10 months of School Year 2013-14. State FY 2015 pays for the last 2 months of School Year 2014-15 and the first 10 months of School Year 2014-15.

-Difference from the state funded policy is the percent of margin funded in the 2013-14 school year.