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About TWIO

This Week in Olympia is emailed to active WASA and AEA members each Friday during the Legislative Session and is posted on WASA's website at <https://wasa-oly.org/WASA/TWIO>.

Join us at the 2017 WASSDA/WASA/WASBO Legislative Conference, February 12–13. Register at <http://wasa-oly.org/wasa/leg17>

Pre-Session Special Edition

McCleary v. State Update

The 2016 Legislature convened under a cloud of a Contempt of Court Order—accompanied by a \$100,000 per day sanction—issued by the Supreme Court for failing (repeatedly) to submit an ordered funding plan to comply with the 2012 *McCleary* decision. Legislation declared to embody the required *McCleary* plan was introduced early in the session. That bill, [SB 6195](#), turned out to be more of a “plan to plan,” requiring further study, instead of a proposal that established any specific plan. The bill was adopted by both houses and signed by the governor. The new law established the Education Funding Task Force and charged them with providing a series of recommendations to implement the state’s program of basic education. Recommendations from the Task Force, along with any supporting legislation, must be submitted to the Legislature by January 9, 2017—the first day of session. At this point, it appears unlikely that the Task Force will submit any recommendation—more on that next week.

The state’s required [post-budget *McCleary* progress report](#) was submitted to the Supreme Court on May 18, 2016. The first sentence of the report declares, “The State has complied with the Court’s orders to submit a plan for achieving compliance with Article IX, Section 1 of the Washington Constitution.” The remainder of the report provides arguments why the Contempt Order should be dissolved and the imposition of sanctions should be terminated. Rather than consenting to the State’s request, the Court responded by [summoning the parties](#) to appear before the Court on September 7, 2016, for oral arguments to address: “(1) what remains to be done to timely achieve constitutional compliance, (2) how much it is expected to cost, (3) how the State intends to fund it, and (4) what significance, if any, the Court should attach to E2SSB 6195 in determining compliance with the Court’s order to provide a complete plan.”

On October 6, the Court released a [new Order](#). The Court stated that E2SSB 6195’s “call for further study and recommendations does not constitute a plan demonstrating how the State will meet its constitutional obligation.” At the same time, the Court acknowledged the Legislature’s adopted commitment to meet its paramount duty by the end of the 2017 Session, but firmly stated: “A pledge, regardless of good intentions, is still not a plan.” Ultimately, the Court ordered that the Contempt Order against the state and the \$100,000 per day sanctions continue until a “complete legislative plan demonstrating how [the State] will fully comply”

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with the constitutional paramount duty is adopted. Additionally, they clarified the sanctions must be specifically “paid into a segregated account for the benefit of basic education.”

The Court also clarified the “2018” deadline to fully comply with the Court’s decision. Justices clarified: “The State has until September 1, 2018, to fully implement its program of basic education.” This was a bit of a blow, as the education community has been arguing the 2018 deadline was the start of the 2017–18 school year. While this clarification can be considered a loss, the Court’s further clarification was a big win. September 1, 2018 is the ultimate deadline; however, the Court noted the remaining details of the basic education program “must be in place by the final adjournment of the 2017 Legislative Session.” Those details must include “funding sources and the necessary appropriations for the 2017–19 biennium.” This means the 2017 session is the Legislature’s last opportunity to solve the *McCleary* problem.

2017 Session Preview

On Monday, January 9, 2017, the Legislature will convene its first year of the 65th Biennial Session. During this “long” session, limited to 105 days, the major job facing legislators will be to adopt a 2017–19 Operating Budget, including the necessary components to comply with the Supreme Court’s *McCleary* decision. That job is expected to be difficult, and most observers are assuming it will take more time than the 105-day Regular Session to complete the task.

State revenue projections have been positive in the last few quarters, with estimated revenues increasing over previous projections. The most recent revenue forecast from the state’s [Economic & Revenue Forecast Council](#) projects there will be over \$2.5 billion in available spending capacity above the current 2015–17 budget. Unfortunately, while state revenues continue to increase, state expenditures continue to increase at a faster rate. Even with additional revenues, the most recent four-year [Budget Outlook](#) projects a *negative* \$1.49 billion Ending Fund Balance. Even including the available revenues in the difficult-to-access Budget Stabilization Account (\$1.63 billion), total reserves are projected to be a paltry \$138 million.

Further complicating matters is the continued divided control of the Legislature. Democrats continue to hold the majority in the House, with a slim 50-48 lead over Republicans—the same marginal lead the Democrats held in the 64th Legislature. Senate Republicans lost one seat in the November election and are numerically outnumbered by their Democratic counterparts 25-24; however, one dissident Democrat will continue to caucus with Republicans. This allows the so-called “Senate Majority Coalition Caucus” to maintain its control of the Senate—meaning, the Republican-led caucus, with 25 votes, will organize the committee structure, appoint committee chairs and control the agenda in the Senate.

WASA 2017 Legislative Platform

During the 2017 Session, all school administrators—all educators—are strongly encouraged to engage in the legislative process more than ever before. The 2017 Session, the last session for the Legislature to adopt budget and policy measures to finally comply with the *McCleary* ruling, is a historic, once-in-a-lifetime opportunity for K–12 education. This is an opportunity that we simply cannot waste. WASA and our other education association partners will be in the fray and we hope our members, individually and collectively, will be heavily involved.

The core of WASA’s advocacy in 2017 will continue to focus largely on education funding. Aligning with WASA’s goals, the centerpiece of the [2017 Legislative Platform](#) is the ongoing effort to hold the Legislature accountable for delivering on the state’s “paramount duty,” complying with the Supreme Court’s orders in the *McCleary* education funding decision. As the 2018 deadline for full compliance rapidly approaches, the Legislature must take action during the 2017 Session to significantly ramp up its investment in the paramount duty.

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While the state's economy continues to rebound, available revenues to meet the state's obligations continue to fall short. The current state budget structure simply cannot accommodate the required increases in basic education or meet other state needs. The second point of the 2017 Platform specifically requests the enhancement of state revenues to ensure the Legislature is able to fully comply with its paramount duty to fully fund basic education and also prevent drastic reductions of other necessary government services.

The third point of the platform centers on educator compensation. We will continue to urge the Legislature to fully fund a restructured and competitive compensation system. The platform also stresses that the 2017 Legislature must act promptly to prevent the approaching "levy cliff" by addressing the state's constitutional obligation to adequately fund educator salaries, ending the unconstitutional overreliance on local levies. We will also continue to advocate for current basic education labor costs to be funded first, before any potential reduction of local levies—while also continuing to oppose any proposal to fund compensation that simply "swaps" state and local property tax authority without providing new state funding.

The 2017 Platform's final point addresses school construction. We will be urging the Legislature to: (1) advance a constitutional amendment to the people to authorize school district bond issues to be approved with a simple majority vote; (2) update the current, outdated funding formulas to ensure funding more closely reflects actual construction costs and educational space needs; and (3) provide a significant enhancement in capital funds to assist school districts to construct or modernize facilities necessary to fully implement the required reduction of class sizes and full-day kindergarten.

WASA 2017 Platform Talking Points

You are encouraged to use the following [Talking Points](#) for WASA's 2017 Legislative Platform, along with your own school district's "story," as you talk with your legislators. These Talking Points will help guide you in explaining WASA's positions and also ensure that your message aligns with your colleagues' messages as they meet with their own legislators. During this crucial session, school administrators need to speak with a common voice and prevent the Legislature from falling back on their favorite strategy of "divide and conquer." If legislators succeed in pitting one district against another, they will reject our expertise and make decisions for their own best interests, not for the benefit of K–12 education and more than 1 million students deserving of their support.

Comply with the Paramount Duty

- Legislators boast that funding for K–12 education has increased by \$4.5 billion in the last four years; however, they neglect to note much of that increase comes from backfilling previous cuts and required Maintenance Level increases. (Note: "Maintenance Level" refers to the funding of currently authorized services, adjusted for increasing or decreasing caseloads/enrollment or other mandatory expenses.)
- The \$2.3 billion in *McCleary*-related increases that have been provided is positive, but is far less than the Joint Task Force on Education Funding (2012) recommended and substantially less than the state promised the Court it would provide.
- The effort to fully implement 2010's HB 2776 is commendable, but ignores additional funding promised (and required) by 2009's HB 2261. While the Supreme Court has clarified the state has until September 1, 2018, to fully implement the program of basic education, they also noted the funding sources and the necessary appropriations to comply with the paramount duty must be in place by the final adjournment of the 2017 Session. In other words, 2017 is the last session to take action to determine and appropriate the necessary ample funding for basic education to meet the Court's—and the constitution's—requirements.

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Expand Available State Resources

- Before accounting for substantial increases in basic education investments (including at least \$3.5 billion for education compensation), the state's own Economic & Revenue Forecast Council's Four-year Budget Outlook projects a negative unrestricted ending fund balance in 2017–19. In simple terms, there are three options: capture “excess” revenue growth and divert it to K–12; reduce non-K–12 portions of the budget; and/or increase available revenue.
- The state's economy continues to rebound; however, increases in state expenses continue to outpace revenue growth. Simply siphoning excess revenue growth to K–12 will not meet the HB 2261/HB 2776 funding requirements and, at the same time, all non-education budget items will be starved.
- Cutting the budget is a very limited option. Fully 70 percent of the state budget is constitutionally or federally protected. Even dramatically reducing items in the portion of the budget available to cut would not provide the necessary resources to adequately fund K–12—or other required areas of the budget.
- The state currently provides almost 700 tax exemptions, tax preferences, or tax deferrals. Eliminating all of these preferences or exemptions would free up over \$30 billion in new revenue. Repealing all current tax exemptions may be somewhat irrational (for example, the current property tax exemption for low-income seniors is commendable and seems worthy to maintain); however, eliminating—or at least reducing—select preferences that are deemed to have less merit (including those that have no clear purpose or have failed to achieve public goals) could still make available considerable new revenue.
- Increasing revenue—usually via increasing taxes—is politically unpopular. It is, however, the only viable way to fully fund basic education with “stable, reliable, and dependable” funding and prevent drastic reductions of areas of the budget that have direct impacts on K–12 education.

Ensure Competitive Public School Employee Compensation

- Many legislators reject that school employee compensation is an integral part of basic education; however, their own legislation calls it out as an area of concern to address. HB 2261 (2009), clearly states the Legislature's intent to “enhance the current salary allocation model” and clearly notes that “continuing to attract and retain the highest quality educators will require increased investments.”
- The Supreme Court has stated “nothing could be more basic than adequate pay” and has repeatedly reminded the Legislature that a major component of the state's deficiency in meeting its constitutional obligation is its consistent underfunding of the actual cost of recruiting and retaining competent teachers, administrators, and staff.
- The continued failure to address the state's obligation to adequately fund educator salaries continues to force an unconstitutional overreliance on local levies. The actual cost of current basic education labor costs must be fully funded first, prior to any potential reduction of local levy authority. If local levy capacity and LEA funding is decreased before a corresponding increase in state funding, many school districts will go over the “levy cliff” and will have difficulty meeting financial obligations, forcing deep budget cuts and substantial employee layoffs.
- While the state transitions to full state funding of K–12 compensation, the Legislature needs to take action to limit local compensation to work time outside of the program of basic education, protecting districts at the bargaining table and moving towards a more equitable compensation system.

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Enhance School Construction Assistance

- Regardless of the state's investment in school facilities, it is expected that a local contribution will be required to access most state construction assistance. If that is the case, many districts need additional assistance—in the form of a reduction in the current, outdated supermajority bond passage requirement to a simple majority (constitutional amendment) and/or funding that does not require a local “match.”
- The Legislature has consistently provided sufficient resources to cover expected School Construction Assistance Program (SCAP) requests. Unfortunately, this “full funding” falls well-short of school district needs because SCAP formulas are outdated and do not reflect school district education specifications or actual school construction costs. The Student Space Allocation (SSA) needs to at least meet national averages and the Construction Cost Allowance (CCA) needs to reflect actual construction costs.
- In 2015 and 2016, the Legislature provided additional assistance beyond the “base” Capital Budget specifically to fund additional classrooms for all-day kindergarten and smaller class sizes. The \$235 million provided, however, barely makes a dent in the expected cost of over \$2.0 billion to fund the necessary additional classrooms.
- The Supreme Court has clarified that enhanced funding of all-day kindergarten and class size reduction is essential, but “the state must account for the actual costs to schools of providing these components of basic education,” noting that the duty to amply fund education “must be borne by the state, not local districts.” It is vital that school districts receive an influx in capital funds for additional space to accommodate all-day kindergarten and a drastic reduction in K–3 class sizes.

WASA Revenue Criteria

This fall, as the WASA Legislation & Finance Committee was finalizing its recommendations for WASA's 2017 Legislative Platform, members engaged in a conversation about the association's position regarding revenue enhancements. Point number two, “Expand Available State Revenues” (discussed above) has been a part of the WASA Platform for the last few sessions. While the association has supported this position, legislators often attack that position and ask what we would propose to enhance revenues. In the past, we have simply responded that we know the state's revenue structure is antiquated and needs to be revamped and enhanced, but have noted we are not “tax experts” and it is the job of Legislators to find a solution. This has been a not-so-subtle avoidance of offering our own solutions.

Understanding revenue proposals are going to be a part of the discussion this session, Committee members wanted the association to have the ability to adequately respond to those proposals as they are introduced and move through the legislative process. The Committee formed a Revenue Sub-Committee to review a set of principles or criteria which WASA could use to determine support or opposition to revenue proposals. In November, the Sub-Committee recommended a set of criteria, which was accepted by the full Legislation & Finance Committee, which forwarded the recommendations to the full WASA Board for its review and adoption. The following [revenue criteria](#), along with a brief introduction, were adopted by the Board at its December 13 meeting:

WASA Position on Enhanced State Revenues

School administrators recognize the numerous and varied systems, infrastructure, and programs essential for Washington to be a strong and vibrant place to live and work. We also recognize additional resources are necessary to support all of those needs while also meeting the state's paramount duty to fully fund education. We, therefore, support an enhancement in the state's tax structure.

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To gain WASA's support of any proposal to enhance revenue or restructure the state tax system, it must be:

- **Ample**—Proposals must raise enough revenue to fully fund basic education without harming other essential state services;
- **Sustainable**—Proposals must provide for stable and dependable revenue that better addresses economic fluctuations; and
- **Equitable**—Proposals must establish a more balanced and progressive tax structure for taxpayers and school districts across the state.

Scheduling Note

The first week or two of a new biennial session is traditionally filled with pomp and circumstance, a series of Committee Work Sessions to get new and returning legislators up-to-speed on various issues, and other activities, but usually is void of any real action on substantive issues. There are always exceptions to the rules, however. Next week, right out of the gate, legislative committees will be addressing two important education issues. The first is action on the levy cliff. [HB 1059](#), legislation prefiled earlier this week, would delay the current law provisions to reduce school district levy lids and Local Effort Assistance, scheduled to occur January 1, 2018. The bill has been scheduled for a public hearing in the House Appropriations Committee on Wednesday, January 11, at 3:30 p.m. It is our understanding that the Committee intends to fast-track the bill and is expected to take executive action and adopt the bill on Thursday. If that happens, it is hoped that the full House will also quickly act on the bill, giving us ample time to work with a presumably less receptive Senate.

The second issue is school siting. Current provisions of the Growth Management Act (GMA) prevent schools from being built outside of designated Urban Growth Boundaries. [HB 1017](#), prefiled in December, would require counties and cities planning under GMA to prioritize the siting of schools and allow schools to be built outside of Urban Growth Boundaries in certain circumstances. Multiple school siting related bills have been introduced in the past few years, but have stalled for various reasons. Last year, the Chair of the Local Government Committee, which normally deals with GMA issues, established a moratorium on any GMA-related bills moving from her Committee. It is unclear if that moratorium still stands, but this year it does not matter. HB 1017 has been referred to the House Environment Committee and has been scheduled to be heard on Thursday, January 12, at 8:00 a.m.

AEA

By Mitch Denning

WAMOA and WSNA are pleased that the Governor's Operating Budget for 2017–19 takes on the compensation issue that has been long neglected during previous sessions. It's a comprehensive approach which begins a formal conversation about the full funding of basic education salaries and the beginning of levy reform.

Funding his robust revenue package is also included, and AEA supports full funding of K–12 basic education that is regular and dependable.

Both associations also favor the proposed funding of facility and nutrition needs in the Governor's Capital Budget for 2017–19. His proposed Emergency Repairs and Equal Access Grants (\$6M) include the small repair grant in the amount of \$3M of non-recurring urgent safety and health needs. WAMOA would consult with OSPI on this grant's program administration, just as they did with the small repair grant (2005–13).

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Within the proposed Healthy Kids/Healthy Schools Grants (\$3M), WAMOA would consult with OSPI on the administration of the three grants, including, (1) replacement of lead-contaminated drinking water fixtures (\$1M); (2) purchase of child nutrition equipment or kitchen renovation (\$1M); and (3) purchase of equipment or renovation for physical education (\$1M). This grant is similar to the Healthy Kids/Healthy Schools Grant in the 2015–17 Capital Budget, and WSNA and WAMOA support the proposed grants.

Both associations are watching closely the work of the Education Funding Task Force and then subsequent bills that come from their recommendations to fully fund basic education. Levy dollars help some districts fund their child nutrition programs, and, of course, the M&O levy, which districts run on a regular basis, deals a lot with school facility maintenance.

Finally, both associations appreciate the opportunity to be included with five other associations in serving as resources to the Legislature in their task of meeting the State’s constitutional “paramount duty” by providing and funding a program of basic education for every K–12 student in our state. The other associations include, WASA (superintendents, other central office administrative staff), WASBO (school business officials), WSSDA (school directors), WSPA (school personnel officials), and AWSP (school principals).



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