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## About TWIO

***This Week in Olympia* is emailed to active WASA, AEA, and WASBO members each Friday during the Legislative Session and is posted on WASA's website at [www.wasa-oly.org/TWIO](http://www.wasa-oly.org/TWIO).**

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## Pre-Session Special Edition

### ***McCleary v. State Status***

In 2017, legislators convened with the *McCleary* deadline hanging over their heads. The Supreme Court's *McCleary* decision, directing the Legislature to amply fund basic education as required by the state constitution, was handed down in January 2012. In that initial ruling, the Court ordered the Legislature to comply with the constitution's "paramount duty" provision by 2018; however, it was not until late-2016 that the ultimate *McCleary* deadline was clarified.

After a series of fits and starts following the 2012 ruling, the Legislature finally buckled down in 2016 and made a concerted effort to enact a Court-ordered education funding plan to comply with *McCleary*. Ultimately, [E2SSB 6195](#) was adopted, with legislators claiming the bill embodied the required *McCleary* plan. In reality, the bill was more of a "plan to plan," requiring further study, instead of a proposal that established any specific plan. The law established a new 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 supporting legislation, were to be submitted to the Legislature by the first day of the 2017 session.

In May of 2016, the Legislature submitted its required post-budget *McCleary* progress report to the Supreme Court and declared, "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 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."

After the hearing, 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." The Court ordered that the Contempt Order against the state (ordered in 2014) and the \$100,000 per day sanctions (imposed in 2015) continue until a "complete legislative plan demonstrating how [the State] will fully comply" with the constitutional paramount duty is adopted.

The Court also defined 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." They further clarified that, while September 1, 2018 is the ultimate deadline, the

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remaining details of the basic education program “must be in place by the final adjournment of the 2017 Legislative Session.” Those details were required to include “funding sources and the necessary appropriations for the 2017–19 biennium.” This set the stage for 2017 to be the Year of *McCleary*, as the 2017 session was the Legislature’s last opportunity to solve the *McCleary* problem.

The Education Funding Task Force met from April to December 2016 in order to craft recommendations for the long-sought education funding plan. When the time came to present and adopt those recommendations, however, partisan bickering prevented the group from agreeing to any recommendations—or even a final report.

The Education Funding Task Force continued to meet throughout the 2017 session, but agreement proved to be difficult. The Legislature blew through the 105-day session deadline without an education funding plan and without a 2017–19 Operating Budget. After 173 days of session, an education funding plan ([EHB 2242](#)) and a two-year budget were unveiled and quickly adopted by the Legislature. (With business still incomplete—including a two-year Capital Budget—the Legislature continued to meet until the end of its Third Special Session, adjourning after a longest-ever 193 days.)

In late July, the Legislature submitted its required *McCleary* progress report and declared that the recently adopted budget ([SSB 5883](#)) and education funding plan (EHB 2242) fulfilled the constitutional obligation ordered by the Court. They stated all components of basic education established in [ESHB 2261](#) (2009) and [SHB 2776](#) (2010) are fully funded; state funding of basic education salaries are fully funded; and newly adopted statutory provisions ensure local levies are not used on the program of basic education. Before issuing another Order, the Court set a hearing to hear oral arguments in the case on October 24.

The Court wasted little time in responding. On November 15, Justices declared that the State “has satisfied the Court’s mandate to fully fund the program of basic education” as established by ESHB 2261 and SHB 2776—except for staff salaries. They went on to clarify, “the Court is satisfied that the new salary model established by EHB 2242 provides for full State funding of basic education salaries sufficient to recruit and retain competent teachers, administrators, and staff.” They noted, however, EHB 2242 and the budget fall short in fully funding salary increases by the 2018–19 school year, as ordered by the Court. Accordingly, the Court will continue to retain jurisdiction in the case and maintain the \$100,000 per day sanction “with the expectation that the State will enact measures to achieve full compliance during the *regular* 2018 Legislative Session.” Justices emphasized the “regular” session, indicating that the 2018 Legislature can have as many special sessions as they desire; however, legislators must comply with this Order by March 8, the final day of the 2018 Regular Legislative Session. A progress report will again be required from the State, along with a response from the plaintiffs, the Network for Excellence in Washington Schools (NEWS). Justices noted that following the receipt of these briefs, the Court will reconvene and “immediately address” whether there is compliance or if additional remedial measures are needed.

In short, the Legislature will be required to provide approximately \$1.0 billion in a 2018 Supplemental Operating Budget for additional basic education salaries to fully comply with the Court’s directive.

### 2018 Session Preview

On Monday, January 8, 2018, the Legislature will convene its second year of the 65th Legislature. This “short” session is limited to 60 days. Following the state’s longest session in history—and with a major election in November, wherein all 98 seats in the House and half the seats in the Senate will be on the ballot—no one in Olympia is betting on overtime this year.

For the first time in several years, Washington’s Legislature will be under one-party control. Democrats continue to maintain control of the House, with a slim 50-48 majority, and

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following a Democrat takeover of the Republican-held seat in the 45th district (Redmond), Democrats will control the Senate with a 25-24 majority (Democrats technically hold a 26-23 majority; however, one dissident Democrat will continue caucusing with Republicans, effectively giving the party a 25-24 majority). While some issues that Senate Republicans have bottled up are expected to see some action this session (such as the Voting Rights Act), many major issues will still likely be set aside (such as the Capital Gains tax). Moderate Democrats in both houses will be reluctant to support costly or controversial issues, meaning the thin Democrat majorities in both houses will make it difficult to find the necessary 50 and 25 votes to adopt those bills.

Democratic control of the Legislature does not even ensure the adoption of a full 2017–19 Capital Budget. Senate Republicans still refuse to support a Capital Budget until there is a *Hirst* (water rights) fix. Of course, Democrats can adopt a Capital Budget without Republican support; however, the major funding source for the Capital Budget is a separate bond bill, which requires a 60 percent majority vote—and Republicans have said they will withhold their vote on the bond bill without a *Hirst* fix.

For K–12 education, the major issue (in addition to adoption of a Capital Budget) will be dealing with the Court’s November Order and finding another \$1.0 billion for basic education salaries. With “*McCleary* fatigue” setting in and a belief by most legislators that they have done more than necessary to comply with *McCleary*, it is unclear if there will even be much of an effort to find the necessary funding. *McCleary* fatigue will also make it difficult for WASA and the rest of the education community to successfully advance “fixes” to EHB 2242.

### WASA 2018 Legislative Platform

During the 2018 Session, all school administrators—all educators—are strongly encouraged to engage in the legislative process. As important as it was to participate in 2017, this year may be even more important, given that most legislators are weary of *McCleary* and believe that education “got theirs” in the budget.

The core of WASA’s advocacy in 2018 continues to focus on basic education funding. Aligning with WASA’s goals, the centerpiece of the **2018 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. (Following the Court’s November Order indicating the Legislature had “fully funded” each of the components of basic education (except educator salaries), we will have to “soft pedal” the talk about paramount duty to ensure legislators do not get turned off and tune us out.)

The adoption of an education funding plan was a major focus of the 2017 Legislature, as noted above. Ultimately, EHB 2242 was adopted. The bill implements a comprehensive revision of Washington’s K–12 education funding system. This funding plan, ordered in 2012 by the Supreme Court in the original *McCleary* decision (and later reiterated), was developed in closed-door meetings of the Legislature’s Education Funding Task Force and unveiled less than 24 hours before it was brought to the floor of the House and Senate to be voted upon. Over the last six months since EHB 2242 was adopted and signed into law, WASA members and WASA staff have thoroughly analyzed the bill and have found a series of deficiencies. The WASA Legislative Platform identifies a set of the highest priority fixes necessary to effectively implement the bill: (1) special education funding, (2) salary allocations and a state salary schedule, (3) levy authority and Local Effort Assistance, and (4) regionalization methodology.

When the WASA Platform was drafted and adopted, we were still anticipating we would have opportunities for success in advancing fixes to EHB 2242. The Court’s November ruling put a bit of a damper on that optimism; however, we will still be focusing on fixes to EHB 2242 for two reasons: (1) if we don’t ask, we definitely will not get what we want; and (2) by discussing fixes to EHB 2242 now, we can lay the groundwork for success in 2019—when

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there will be a long session, there will be a new budget to be adopted, and potentially there could be a set of new legislators.

WASA continues to advocate for a series of required updates to 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. Given the Legislature's failure to adopt a full 2017–19 Capital Construction Budget, leaving over \$1.0 billion of school construction funding on the table, WASA will strongly advocate for the adoption of an already agreed upon budget as the first priority of the 2018 Legislature.

Finally, WASA will once again argue the state's current budget structure simply cannot accommodate the required increases in basic education and meet other state needs. The 2018 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. WASA will continue to use the Board-adopted Position on [Enhanced State Revenues](#) to guide our support or opposition of revenue proposals.

### Local Funding Work Group Priorities

In addition to amendments WASA will be requesting in EHB 2242, most of the rest of the education community will be seeking changes to EHB 2242. The Local Funding Work Group (LFWG), started by WASBO and WASA in 2014, and later joined by WSSDA (school directors), WSPA (HR directors), AEA (school nutrition directors and school maintenance officials), and AWSP (principals), has adopted its [priorities for 2018](#), with a focus on the necessary “fixes” to EHB 2242. The fixes requested are similar to the fixes being advocated by WASA. While numerous deficiencies were discussed, members agreed to tackle: Levies and Local Effort Assistance (LEA); Special Education; and Salary allocations and State schedule.

The adopted priorities urge the Legislature to:

- Delay the implementation of new levy and LEA policy until a more workable and equitable levy reduction plan is developed;
- Increase per-student special education funding, via the “excess cost multiplier”; and
- Implement a simplified mandatory state salary schedule and allocation model that includes a staff mix factor.

### Governor's Budget Request—UPDATE

On December 14, 2017, Governor Inslee—as required by law—released his [2018 Supplemental Operating Budget proposal](#). Details of the proposal were reviewed in a [Special Edition of TWIO](#), so we won't rehash that information here. However, because we wanted to provide a prompt summary of Inslee's budget, we were not able to get into some of the more intricate or “hidden” details. After having additional time to review the governor's proposal, we felt it was important to highlight two key issues: (1) *McCleary* \$1.0 billion add; and (2) EHB 2242 Hold Harmless provisions.

#### ***McCleary* \$1.0 billion add**

As described in the review of Inslee's budget and previously in this *TWIO*, the Supreme Court has ordered the Legislature to fully fund basic education by September 1, 2018. EHB 2242 and SSB 5883 phase-in additional funding of educator salaries, delaying the “full funding” until 2019. To meet the September 1, 2018 deadline, the Legislature must find approximately \$1.0 billion and provide it in the 2018 Supplemental Operating Budget. Certainly, this will

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be a difficult task; however, Governor Inslee proposed a clever budget gimmick to address the issue without having to cobble together the full \$1.0 billion.

In short, Inslee proposes to revise the current school district apportionment schedule, so that districts receive additional apportionment dollars in July and August and less during the remainder of the year. (For additional details, see the [TWIO review of the budget proposal](#).) School districts will receive the same amount of money they normally would receive, but the timing would be different. This shift would allow a budget reduction of \$604 million in Fiscal Year 2019 and provide for an increase of \$761 million for salary allocations prior to September 1, 2018. Inslee then provides an additional \$157 million in the budget to reach the \$1.0 billion mark (or near that goal).

This budget shift was described in Inslee's budget highlights (and WASA's *TWIO* review). What wasn't known, however, is where this additional funding came from. It was assumed that the money came from the Ending Fund Balance rather than the Budget Stabilization Account (BSA) because accessing money from the BSA takes a 60 percent supermajority vote (unless the governor declares an emergency). Reaching the necessary 60 percent threshold seems impossible, as Senate Republicans have publicly said they won't support accessing BSA dollars.

What has come to light now is another clever budget gimmick from the governor's office. The Washington constitution (Article 7, Section 12) requires an annual transfer of 1 percent of General Fund revenues to the BSA. In 2019–21, the required transfer is estimated to be \$476 million and the governor proposes to transfer this funding back to the General Fund. Again, to withdraw funds from the BSA 60 percent of each house must approve; however, it appears that because this transfer from the General Fund to the BSA and back to the General Fund would occur in the next biennial budget, a 60 percent BSA vote would not occur until next session. We anticipate that this transfer-retransfer gimmick will show up in the next Four-year Budget Outlook; the [Economic & Revenue Forecast Council](#) is set to adopt the new Outlook on January 23. Stay Tuned.

### **EHB 2242 Hold Harmless provisions**

EHB 2242 includes two hold harmless provisions (and the budget provides \$5.0 million—and \$9.0 million over four years—to fund the hold harmless provisions). The first states that in 2018–19, a district's **salary allocation** will be the greater of the district's 2017–18 **salary allocations**, adjusted for inflation, or the district's allocation based on the new statewide average salaries (EHB 2242, Section 101(8)). The second deals with regionalization and states that no district will receive less state funding for minimum state **salary allocations** as compared to its prior school year as a result of adjustments reflecting updated regionalized salaries (EHB 2242, Section 104(2)(b)(ii)(4)).

For months, many legislators have been telling school district leaders that the hold harmless provisions are for total funding—even though it is very clear from the black-and-white text of EHB 2242 that a hold harmless is provided for **salary allocations**. It is our understanding that leadership in all four caucuses have directed their members to describe hold harmless provisions as covering total funding. When faced with a major discrepancy between an adopted law and legislative talking points something has to give. Since EHB 2242 was adopted, two things have occurred. First, [Legislative Budget Notes](#) (which are annually produced by House and Senate fiscal committee staff with the assistance of Legislative Evaluation & Accountability Program Committee staff to describe items funded in the budget) were unveiled to match legislative talking points, NOT adopted legislation. The \$5.0 million hold harmless funding is described like this:

Funding is provided for a hold harmless payment beginning with the 2018–19 school year. A school district qualifies for a hold harmless payment if the **sum of a school district's state basic education allocations under the funding formulas included in EHB 2242 plus a school district's local enrichment levy and local**

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**effort assistance** under EHB 2242 is less than the sum of what the district would have received for that year from the state basic education allocations, local maintenance and operation levy, and local effort assistance ***under the law as it existed on January 1, 2017*** (emphasis added).

On first review, using total funding (basic education allocation, plus local levy, plus LEA) is positive. However, the last clause (“*under the law as it existed on January 1, 2017*”) is disconcerting. Remember, on January 1, 2017, it was assumed the levy cliff (loss of four percent in levy authority) would occur. In other words, when calculating your basic education allocation, plus local levy, plus LEA, it is assumed the levy cliff has already occurred.

Following the release of the Legislative Budget Notes, Governor Inslee released his 2018 Supplemental Operating Budget proposal. His proposal, Section 502(1)(h), includes almost identical language:

A school district qualifies for a hold harmless payment if the sum of the school district’s ***state basic education allocations plus its enrichment levy and local effort assistance*** under chapter 13, Laws of 2017 3rd sp. sess. is less than the sum of what the district would have received for that year from the state basic education allocations, local maintenance and operation levy, and local effort assistance ***under the law as it existed on January 1, 2017*** (emphasis added).

At this point, it has not been officially confirmed if our concerns are valid; however, it is hard to imagine that a plain reading of the Budget Notes and Inslee’s budget amendment say anything other than what we fear. We will keep you apprised.

## Pensions/Health Benefits

By Fred Yancey – The Nexus Group

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“Great innovations should not be forced on slender majorities.” Thomas Jefferson

Preview of 2018 Legislative Session(s)

Health Care, Pensions, Financials, and Other Issues

Given the fact there are slim Democrat majorities in both the House and Senate, the 2018 Session may well be one of incremental changes. Although the House ‘majority’ caucus is fairly cohesive, that is not the case in the Senate, with at least five Democrats, (not counting Senator Tim Sheldon) who are not only conservative and often vote or threaten to vote with the Republicans, depending on the issue.

At least three significant pieces of legislation were passed during the 2017 session(s): [EHB 2242](#) (Basic Education), [SSB 5975](#) (Paid Family/Medical Leave), and [SSB 5883](#) (2017–2019 Budget). In addition, several earlier legislative proposals that failed to advance during these sessions found themselves implemented through various provisos in these bills.

To review:

### **Family and Medical Leave**

[SSB 5975](#)—Relating to paid family and medical leave passed the Senate 37-12, passed the House 65-29, and the Governor signed the bill.

This paid family and medical leave is in addition to the leave approved by the voters with passage of I-433 which comes into effect on January 1, 2018. [More detailed and lawyerly explanations.](#)

**SSB 5975**—Benefits would be funded by a 0.04% of 1% payroll tax paid by both employers and employees to the Employment Security Department (ESD) beginning January 1, 2019. The paid leave benefits would not be available until the following year in 2020.

### **State Average Wage**

As of January 1, 2018, the statewide minimum wage goes to \$11.50/hour.

### **Health Insurance**

[EHB 2242](#)—Funding fully the state’s program of basic education by providing equitable education opportunities through reform of state and local education contributions contained a provision establishing a consolidated health care purchasing system for public employees. Within this bill, a school employees’ benefits board (SEBB), within the State Health Care Authority (HCA) is to be created. Its mission is to design and approve state-wide insurance benefit plans for school employees and to establish eligibility criteria for participation in insurance benefit plans. It would remove health benefits from collective bargaining at a district level.

Sections 801-819 of the bill, deals with the development of the SEBB, the composition of the working/development group and how to deal with the issue of current and future collective bargaining agreements. Present school employees and retirees are to be covered by this new entity. **The transition is due to be implemented by January 1, 2020.**

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There are many details in this 120-page document and consequently many unanswered questions. The [Health Care Authority has a link](#) of Frequently Asked Questions and will also take questions that may be posted there as well.

A reminder of some aspects of this new law.

1. Districts will be asked next year, 2018, and in the future for continuing data about its coverages, rates, experience histories, etc. placing demands on district personnel and software programs to track and report.
2. By December 15, 2018, the HCA, Public Employee Benefit Board (PEBB), and SEBB will analyze the development of a risk pool for retired and disabled employees including non-Medicare and Medicare individuals and the need for, and the amount of an ongoing subsidy allocation payable by active school employees.
3. The HCA will begin collecting an administrative surcharge from districts in 2018 and this charge will continue in funding the program. (The Legislature pre-funded this program by \$83 million dollars. The HCA estimates a need for 150 new employees.)
4. Beginning January 1, 2020, no basic or optional benefits may be provided by employer contributions if they are not provided by the SEBB.
5. Bargaining of the amount to be contributed for health benefits after July 1, 2018, will be conducted in even numbered years beginning January 1, 2020, between the Governor and a coalition of bargaining representatives. Their agreement, once OFM certified, must be submitted to the Legislature for either approval or denial.
6. Kate Davis, from OFM has indicated that their analysis shows that estimated increased costs to school district will be in the neighborhood of \$125 million dollars.
7. Meanwhile, the newly signed Federal tax revisions, do away with the insurance mandate under the previous Affordable Care Act. This is likely to cause insurance companies to substantially raise their premiums.

### **The Future: 2018**

Areas of focus and questions for the 2018 Session and school districts include:

1. What changes/proposed legislative fixes need to be put in place to correct/amend the 2017 Session bills related to basic education, pension funding, leaves, health insurance, and budget?
2. One issue that WEA is addressing with proposed legislation concerns funding for health benefits. Under present state worker contracts, there is an 85%/15% ratio for premium payments. Employees pay no more than 15% of the cost. The yet to be developed school district insurance plans also mandate this 85%/15% split however, the Legislature did not budget enough money for districts to cover these costs. (Also, as a reminder, employees working 630 hours qualify for benefits.)
3. A reminder that the Senate Republicans attempt to get the equalization dollars paid to districts will be based on the Federal CPI rather than the traditional Seattle-based CPI (Maximum 3%). The Federal one is lower (1.6% as of July 2017). One option could be to lower all present pension COLA's to the Federal rate. The Federal government has already adopted this method for figuring future retiree increases.
4. Can TRS 1/PERS 1 members get restoration of some form of COLA? Two proposals are in the works; one has already been pre-filed (HB 2323); the other which was approved by the Select Committee on Pension Policy has yet to be filed. [HB 2323](#): Dolan, Appleton, Muri, Stonier, and Stambaugh, would grant a permanent 3% COLA for retirees. The other SCPP agency request legislation

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- would grant a one-time 3% COLA for the first \$25,000 of pension up to a maximum of \$750/year.
5. What will happen in the health insurance field regarding costs? Plan choices? Plan benefits? The likely scenario is that rates will increase although the ratio between individual and family rates will significantly decline. The richness of benefit coverages will be narrowed, including fewer drugs covered by prescriptions.
  6. Will there be a lowering or an increase of the health care insurance benefit for school Medicare retirees? WSSRA, RPEC, and AARP are working to either restore the present \$150 subsidy to the \$183 amount funded in 2011, or even increase it in light of the \$52+/month increase in Uniform PEBB insurance for Medicare retirees.
  7. Will there be a broadening of the options for school district use of retired teachers? There remains a dire teacher shortage, and there is a labor pool of experience educators who are available for limited service. Can the hours of eligibility be increased?



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