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Opening Day Special Edition

2015 Session Preview

On Monday, January 12, 2015, the Legislature convened its first year of the 64th Biennial Session. During this “long” session, limited to 105 days, the major job facing legislators will be to adopt a 2015–17 Operating Budget which currently has a projected \$1.0+ billion shortfall (that is, the gap between anticipated revenues and expected expenditures is more than \$1.0 billion). To make matters worse, this projected shortfall does not include additional basic education enhancements necessary to comply with the Supreme Court’s orders in the *McCleary v. State* education funding case. The \$1.0 billion shortfall figure also fails to account for a required down payment to begin the implementation of the recently adopted class size reduction initiative, I-1351. Including *McCleary* enhancements (between \$1.2 and \$4.5 billion, depending on who is counting) and beginning to implement I-1351 (at least \$2.0 billion), the “real” shortfall swells to well-over \$4.0 billion (with a potential figure somewhere north of \$7.5 billion).

Solving this complicated budget puzzle will prove to be a difficult task. Further complicating matters is the continued divided control of the Legislature. Democrats continue to hold the majority in the House, albeit with a slim 51–47 lead (down from 55–43 during the 2013 and 2014 sessions). Senate Republicans were numerically outnumbered by Democrats in the last two years, but they controlled a newly formed Majority Coalition Caucus, comprised of Republicans and two dissident Democrats. Following the 2014 election, Republicans have outright control of the Senate; including one of the previous dissident Democrats, who will continue to caucus with Republicans, they hold a 26–23 majority.

When Republicans, joined by two Democrats, wrestled control of the Senate away from Democrats in 2013, they wanted to prove they would rule the Senate in a bi-partisan manner and offered Democrats the opportunity to Chair several Senate Committees. As a caucus, Democrats rejected the offer; however, three individual Democratic senators agreed to the proposition. In the last two years, two Democratic members served as Committee Chairs, while a third served as a Co-Chair of the important Transportation Committee. While Republicans will continue to use the Majority Coalition Caucus moniker in 2015—and they continue to publicly declare themselves to be a “bi-partisan” majority—they have already made moves to show their power. This year, there was no effort to offer Democrats shared control of committees; each of the Senate Committees will be headed by Republicans and will hold a numerical majority above Democrats.

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 www.wasa-oly.org/TWIO.**

Join us at the 2015 WASA/WSSDA/WASBO Legislative Conference, March 1–2. Register now at www.wasa-oly.org/Leg15

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In a further effort to show its control—and exert its influence on the entire legislative process—Republicans are expected to introduce amendments to Senate Rules during this first week of session. Understanding that the discussion of additional revenue (that is, “taxes”) will be heavily debated this session, the majority party has discussed a preemptive strike by severely limiting (or eliminating) the ability to move revenue-enhancing legislation. A little history is in order. Voters enacted or re-affirmed a requirement for tax increases to be approved by a two-thirds majority of both houses three separate times: in 1993, 1998, and 2007. The Legislature temporarily suspended the two-thirds threshold three times, most recently in 2010. In 2010, the voters again re-affirmed the two-thirds tax increase threshold with the adoption of Initiative 1053. Over the almost twenty years that the requirement was in place, multiple lawsuits were filed to overturn the rule; however, mostly due to procedural issues, the lawsuits were dismissed. Following the 2011 Session, after a failed attempt to adopt revenue enhancements, legislators and the League of Education Voters (and others) filed suit. The attempt to move the legislation was scripted in such a way that allowed the parties to ensure the Court would accept the case.

In May, 2011, the two-thirds vote requirement was found to be unconstitutional in King County Superior Court. The decision was appealed directly to the Supreme Court which heard the case in September, 2011. In February 2013, the Supreme Court affirmed the lower court’s decision, ruling the two-thirds vote requirement was unconstitutional. The Court’s decision invalidated the law.

With the Court’s decision that only the state constitution can dictate minimum required votes to adopt specific legislation, the focus of supporting legislators shifted to adoption of a constitutional amendment. Requiring a two-thirds majority of both houses, followed by an affirmative vote of the citizens, the route to amend the constitution was prohibitively difficult. Knowing that such an effort was near-impossible, much of the discussion about amending the constitution was purely political and was simply an attempt to send a message.

Back to 2015. Again, knowing that the issue of tax increases will be heavily debated, and knowing that the Court has clearly stated legislation to enact a minimum vote threshold for taxes is prohibited, a different tact has been discussed. In previous cases, the Court has indicated that rules governing the House and Senate are completely under the purview of the members of those bodies, so long as they do not conflict with other provisions under the law. So, while requiring tax increases to achieve a two-thirds majority vote on final passage is unconstitutional, a Senate requirement establishing a two-thirds majority vote to even allow tax increase legislation to be discussed is in order. Ironically enough, a bare minimum, simple majority vote is all that is necessary to amend and adopt Senate rules.

If the Senate adopts this rule, it will further impede the Legislature’s ability to craft and adopt a new two-year budget. House Democrats are vehemently opposed to drastically cutting government services to balance the budget and Senate Republicans are just as violently opposed to increasing revenue to balance the budget. A never-ending stalemate cannot occur. A new budget must (and at some point will) be adopted; however, as each side draws a line in the sand, a nerve-racking game of “budget chicken” will ensue. When one side will blink is anyone’s guess, but virtually every Olympia veteran believes the 2015 session will need more than 105 days to reach conclusion.

WASA 2015 Legislative Platform

During the 2015 Session, all school administrators—all educators—are strongly encouraged to engage in the legislative process. This historic session is being nicknamed the “Super Bowl” of sessions by many and provides a tremendous, potentially once-in-a-lifetime opportunity for K–12 education—an opportunity we should not waste. WASA, as a statewide association, will be in the midst of the fray and we hope our members, individually and collectively, will be heavily involved.

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The core of WASA's advocacy in 2015 continues to focus largely on education funding. Aligning with WASA's goals, the centerpiece of the **2015 Legislative Platform**—as recommended by the WASA Legislation & Finance Committee and adopted by the WASA Board of Directors—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. Although the Legislature provided basic education enhancements in 2013 and 2014, that "down payment" is less than recommended by the Legislature's own Education Funding Task Force and substantially less than the funding the state promised during the *McCleary* trial. Now, with the 2018 deadline for full compliance looming, the Legislature must substantially ramp up its investment in the paramount duty to stay on track.

While the state's economy continues to rebound, available revenues to meet the state's obligations are expected to fall short. A \$2.8 billion increase in revenues is projected in the coming biennium; however, mandatory maintenance level costs are expected to exceed this revenue increase by over \$1.0 billion—before accounting for any *McCleary*-related K–12 enhancement of at least \$1.2 billion. Adding another \$2.0 billion to fund voter-approved Initiative 1351 brings the potential shortfall to well over \$4.0 billion. The current state budget structure simply cannot accommodate the required increases in basic education or meet other state needs. The second point of the 2015 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. "Fully funding" basic education will be meaningless if services our students and families rely on in non-education budgets are slashed.

The final point of the platform centers on educator compensation. This continues to be a major part of education funding and clearly needs to be overhauled. Legislators, however, have been ignoring the problem—and continue to reject the fact that compensation is an integral part of HB 2261 and a key part of the Court's *McCleary* decision. We will be urging the Legislature to fully fund a restructured and competitive compensation system to ensure the state meets its responsibility to establish an equitable and ample allocation system.

Platform Talking Points

Comply with the Paramount Duty

- The Legislature provided a \$1.0 billion basic education down payment in 2013–15, yet its own Education Funding Task Force recommended a \$1.4 billion down payment. The state itself promised the Court it would provide substantially more funding than even the Task Force recommendation as it fully implemented HB 2261 and HB 2776.
- A substantial increased investment for basic education is necessary in the 2015–17 budget in order to get the state back on schedule to fully fund basic education by the Court's (and HB 2261's) 2018 deadline.
- The effort to fully implement 2010's HB 2776 by 2018 is commendable, but ignores additional funding promised in 2009's HB 2261. The Legislature cannot comply with the Court's orders by funding HB 2776 only.

Expand Available State Revenues

- Before accounting for substantial increases in basic education investments, the state's own Economic & Revenue Forecast Council's **Four-year Budget Outlook** projects a negative \$2.2 billion unrestricted ending fund balance in 2015–17—increasing to a \$4.7 billion red number in 2017–19. In simple terms, the Legislature has three options: capture "excess" revenue growth and divert it to K–12; reduce non-K–12 portions of the budget; and/or increase revenue.
 - o While the economy continues to rebound, 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 strangled.

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- o Cutting the budget is a very limited option. Fully two-thirds of the state budget is constitutionally or federally protected. Even dramatically reducing the portions of the one-third of budget items available to cut would not provide the necessary resources to adequately fund K–12 or the other required areas of the budget.
- o Increasing taxes is politically unpopular; however, it is 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, adopted in 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 increases investments.”
- The Supreme Court has also stated its concerns that the Legislature’s compensation decisions continue to force increased reliance on levies and noted in January 2014 that it is “deeply troubling” that the 2013–15 budget fails to address the compensation component of HB 2261.
- Failure to address the state’s obligation to adequately fund educator salaries will continue to force an unconstitutional overreliance on local levies.

For a more in-depth review of the 2015 Legislative Session and how the components of WASA’s Legislative Platform fit in the context of the session, please see [WASA’s 2015 Legislative Preview](#) (PowerPoint presentation).

Governor Inslee’s 2015–17 Budget Proposal

On December 18, Governor Jay Inslee presented his full **2015–17 Operating Budget proposal** following a week-long rollout. The centerpiece of his budget plan is his **education funding package**, consisting of a \$2.3 billion two-year investment for early learning (\$156 million), K–12 education (\$2.0 billion) and higher education (\$165 million).

For K–12 education, Inslee proposes a \$1.99 billion increase. The bulk of the funding, \$1.3 billion, would be for *McCleary* related basic education enhancements. His proposes \$751.8 million to fully fund Maintenance, Supplies and Operating Costs (MSOC) by the 2015–16 school year, as required by HB 2776. He would also fully fund HB 2776’s required K–3 Class Size Reduction (\$448.1 million) and state-funded All-Day Kindergarten (\$107.6 million) in the second year of the biennium (2016–17 school year)—one year ahead of schedule.

Governor Inslee’s budget documents (and his public comments) note that the proposed \$1.3 billion basic education investment would “constitute full implementation of House Bill 2776.” While this is true, it is important to remember that full implementation of HB 2776 does NOT fully implement HB 2261, nor does it fully comply with the Supreme Court’s Orders in *McCleary*. Certainly, fully implementing HB 2776 is positive; however, it is NOT the end of our road.

Compensation is another major component of Inslee’s education funding package. His proposal would fully fund Cost of Living Adjustments for educators, as required by of Initiative 732 (\$235.5 million), along with additional funding (\$150.1 million) to enhance that COLA. Combined, the funding would cover a 3 percent salary increase for the 2015–16 school year, followed by a 1.8 percent increase in the 2016–17 school year. These rates would be in alignment with increases recommended for state employees. In addition to compensation increases, the governor proposes funding (\$210.0 million) to provide

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maintenance-level funding for the state's share of higher employer pension rate contributions for K–12 employees.

Governor Inslee's \$39 billion expenditure package (\$38.99 billion) would significantly increase state spending over the current two-year budget, gobbling up the projected \$2.8 billion increase in revenues, plus more. To address the shortfall, the governor also submitted a comprehensive revenue package to fund it. Inslee's budget would be funded with a mix of revenue enhancements (including the closing of some tax loopholes), fund transfers, use of reserves and General Fund spending cuts and "efficiencies." Inslee's tax and revenue changes would raise \$1.5 billion (although almost \$100 million of new, extended or expanded tax preferences are included, dropping the total revenue to \$1.4 billion). More than half that amount (\$798 million) would come from a new seven percent capital gains tax and another \$380 million would come from a new carbon pollution tax. The budget would use \$450 million from reserves (requiring a 60 percent approval from the Legislature) and transfer a series of funds (\$217 million) into the General Fund. The proposal would also cut \$211 million in current General Fund spending and shift a series of costs from the General Fund to other fund sources in order to maximize federal funds, resulting in a "savings" of about \$212 million. Although Inslee's plan would utilize a significant amount of budget reserve funds, the package, if adopted, would ultimately leave \$911 million in the Ending Fund Balance to protect the budget from emergencies or another economic downturn. It should be noted that the \$450 million use of reserves would essentially be used to keep the budget balanced and afloat in the first year of the biennium, while waiting for his proposed taxes to kick in during the second part of the biennium.

For additional details on Governor Inslee's 2015–17 Operating Budget, please see WASA's Special Edition *TWIOs* ([Dec. 15, 2014](#) and [Dec. 18, 2014](#)).

Superintendent Dorn's 2015–17 Budget Request

Prior to the final development and release of Governor Inslee's 2015–17 Operating Budget proposal, individual state agency directors and separately elected officials submitted their budget requests. In October, State Superintendent Randy Dorn submitted his [K–12 education budget request](#). Dorn's request included education enhancements of over \$7.5 billion (over \$5.5 billion larger than Inslee's ultimate request). The vast majority of Dorn's budget (\$7.2 billion) would be directed for *McCleary* related compliance. In submitting the request to Governor Inslee, Dorn noted that the Legislature is behind schedule to fully comply with the Court's education funding orders and fulfilling his request would put the state back on schedule to meet the 2018 funding deadline. It should be noted that while Inslee's budget proposal focuses exclusively on funding for HB 2776 components, Dorn's budget request includes funding for HB 2776 as well as required components that are a part of HB 2261. The largest piece of Dorn's request is for educator compensation (not just a COLA, but the implementation of an updated and enhanced salary allocation model), which the Legislature continues to ignore and Inslee failed to address.

Clearly, Inslee's budget does little to address the major components of the superintendent's request. Two weeks prior to the release of the governor's budget, Dorn sent a [letter to Inslee](#) urging him to submit a budget "that is in compliance with the Constitution." Dorn noted that he understood his proposed \$7.2 billion request would be "an enormous increase in spending in one budget period." He strongly defended his proposal, however, by stating: "Adoption of this budget would certainly satisfy our obligations under the *McCleary* case, and our new obligations under Initiative 1351." In closing, Dorn said he anticipated that the Supreme Court will ask for his view on whether or not enough has been done to move the state closer to meeting its paramount duty. Dorn bluntly stated: "I will tell the Court—and the people of the state of Washington—that \$4.5 billion is the minimum level of new funding required under *McCleary*."

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Upon release of the governor's budget, Superintendent Dorn issued a **public response**. He acknowledged his displeasure with the proposal, saying: "I am disappointed that the Governor has not chosen to fund that which the Court has stated is required." He also bluntly noted that if the governor's education budget proposal was adopted "it would move this state one step closer to a constitutional crisis."

Legislative Budget Response

There has not been a substantial reaction to the governor's budget—except that he was immediately criticized (by Republicans and many Democrats) for changing course on his 2012 election pledge to reject tax increases. There will be hearings in both the House Appropriations Committee and the Senate Ways & Means Committee this week on the governor's budget; however, little other action is expected to occur until legislative budgets are released. Normally, that would not happen until at least the state's revenue forecast is updated in March. Many observers are suspecting there will not be much budget action (at least publicly) until the June revenue forecast is released. Regardless of the timing, this biennium it is the House's "turn" to begin the budget process (by tradition, the two houses alternate each biennium to determine who releases the first budget).

One specific reaction, from Senator Andy Hill (R-Redmond), is worth noting. Sen. Hill, as Chair of the Senate Ways & Means Committee, is the Senate's lead budget-writer and negotiator and recently released his "**2015 Budget Preview**." While it is not a direct response to Governor Inslee's budget proposal, he takes a few direct pokes at it and is clearly positioning his caucus—even before the gavel bangs to open session—to vociferously oppose revenue enhancements. Hill cleverly subtitles his Preview, "*The Deficit Myth*" and spends five pages to expound upon his belief that the state has more than enough revenue to: continue all current services, "fully finance the next statutorily required *McCleary* enhancement" and fund K–12 staff salary increases under I-732. A few issues to address:

- Hill notes: "The *McCleary* ruling's statutory components derive from HB 2776 (2010) which required funding enhancements in four areas by the 2017–18 school year: transportation (completed in 13–15), MSOC (required to be done in 15–17), and all-day kindergarten and K–3 class size reduction (required to be done in the 17–19 biennia)." As discussed earlier, the Court's *McCleary* decision is NOT simply an order to fund enhancements in HB 2776. In fact, central to the *McCleary* decision is the full implementation of HB 2261, noted by the Court as a "promising reform package...which if fully funded, will remedy deficiencies in the K–12 funding system." A budget limited to providing a \$752 million MSOC enhancement and an I-732 COLA will NOT appease the Supreme Court—nor will it meet the needs of school districts across the state.
- Hill includes two K–12 policy enhancements that are statutorily required: I-732 COLAs and MSOCs in HB 2776. In the discussion, he says, "Assuming neither of these statutes requiring these enhancements are changed...". It should be pointed out that there has been, and will continue to be, a heavy discussion in the Legislature about not just how to fund *McCleary*, but how to *avoid* funding *McCleary*—specifically by amending HB 2261/HB 2776 and/or by further redefining basic education. Last year, Senator Steve Litzow (R-Mercer Island), Chair of the Senate Early Learning & K–12 Education Committee, publicly stated his desire, not simply to amend HB 2261/HB 2776, but to "gut" the bills.
- Hill discusses that "two of the biggest drivers in 'ongoing or maintenance' level costs are increased debt service payments and higher pension costs for public employees." While he states no proposal to address increasing pension costs (or debt service payments), this is more evidence there will likely be much discussion about pension issues in this session, and the effort to move state/school employees

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from a “Defined Benefit” retirement system to a “Defined Contribution” retirement system will likely continue.

One final note from the Legislature. While Sen. Hill believes the state has no revenue problem, there are different opinions. In November, Representative Ross Hunter (D-Medina), Chair of the House Appropriations Committee—chief budget-writer and negotiator in the House and Sen. Hill’s counterpart—introduced his own review of the budget, “*Washington Budget 2015–17: High Degree of Difficulty*.” As you can imagine, Rep. Hunter has a bit of a different perspective on the situation. Hill states the 2015–17 budget can fully fund current services, with an additional \$1.0 billion left over to address *McCleary* enhancements and I-732 requirements. Hunter summarizes the situation like this: “Every dime of new revenue for the next biennium is already dedicated to existing programs, and there are about a billion dollars of expenditures that will need to be made in addition to that in the 2015–17 budget, plus we have to make a \$1.2 to \$2 billion new investment in K–12 education.”

Hunter states there are two basic ways to address the problem: raise new revenue or reduce other programs to make it possible to spend money on K–12 education—or some combination of the two extremes. He closes his review by saying, “It’s a fantasy to believe that we can fulfil our obligation to fund K–12 education without making cuts to the rest of the budget that will be unacceptable to large parts of the population and both federal and state courts.”

Hill and Hunter are just two legislators; however, the majority of their colleagues will line up behind one of these two budget leaders. And the two differing positions offer a preview of the debate we’ll be hearing the next several months.

Pensions and Health Benefits

By Fred Yancey – The Nexus Group

Past and current issues:

- The Supreme Court held that the state’s withdrawal of gainsharing and the uniform cost of living adjustment was lawful. The net effect for current workers in Plans 2/3 is that those who have 30 years and are at age 62 or above can continue to retire with full benefits with no penalty for early (pre 65) retirement.
- However, if a SERS, PERS, TRS Plans 2/3 member retired under early retirement factors, he/she is prohibited from performing any work for an employer who is a member of the public employee retirement system until age 65. He/she cannot work as a substitute teacher, substitute classified employee, perform a personal service contract or be a temporary or project employee for any employer covered by Department of Retirement Systems (DRS) plans. According to anecdotal evidence, this prohibition is adversely impacting school districts and local governments. However, legislators claim they are not hearing from districts that the lack of trained substitutes is a problem.
- A bill was proposed in the 2013–14 Session (SB 5651) to repeal this restriction on returning to part-time work but no action was taken. A new bill is being drafted to try again on this issue. Clearly, legislators need to see the need for taking action in this area in order for any bill to advance.
- A reminder that members in Plans 3 will have only one more opportunity (January 2015) to change their contribution rate in the defined contribution side of their pension. After that time, their contribution percentage will remain the same unless they change employers.
- Legislation was approved last Session that employees are to be granted up to two unpaid holidays a year for holidays of faith and conscience. Students are to be granted excused absences without penalty for exercising the same leave. It should be noted that although the employee absences are unpaid, any cost of a needed substitute is an unfunded cost to a district.

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Crystal ball issues that may come before the 2015 Legislative Session:

- Funding the *McCleary* decision will be the paramount duty of the upcoming Session. The critical questions and resulting conflicts the legislature will be asking are: Is new revenue needed? If so, from where does it come? If not, then what gets cut?
- Bills sponsored by Democrats that are likely to return include proposals to allow all employees to accrue sick and safe leave, to allow for paid vacation leave, and to set a statewide minimum wage of \$15/hour. If approved, these will add costs to districts which may translate to the building level with reduced staffing particularly affecting classified personnel.
- Bills sponsored by Republicans that are likely to return include proposals to establish a mandatory 401K (defined contribution) retirement plans for all state workers including elected officials, or to establish an optional 401K plan for all state employees. It can be argued that the present system helps attract and retain quality employees.
- The current \$150/month health care subsidy for pre-Medicare retirees which lowers PEBB insurance premiums is still threatened. Cost to the state is around \$266 million dollars a biennium. Cutting that subsidy represents real dollars that can be used during the 2015–17 biennium to help fund education and other areas.
- Last session an increase in pension rates for 2015–2017 was adopted. These rates represent an increase phased in over three biennia and are a result of both the increased longevity of retirees and the unfunded liabilities of TRS/PRS Plans 1.

The proposed rates are:

	Current Rates		2015–2017 Rates	
	Employer	Employee	Employer	Employee
PERS	9.21	4.92	11.18	6.12
TRS	10.39	4.96	13.13	5.95
SERS	9.82	4.64	11.58	5.63

- In 2012, ESSB 5940 regarding school employee benefits passed. It directed the Office of the Insurance Commissioner (OIC) to collect data on the health plans and costs from all school districts. This phase has been done with 100% of districts and carriers submitting the data. The legislation also mandated that school districts must offer a high deductible health plan option with a health savings account similar to that required for state employees.
- The Health Care Authority (HCA) has begun to analyze the OIC data and 1) determine if districts are making progress toward employee premiums for full family coverage that are not more than three times the premiums for employees purchasing single coverage, and 2) review the advantages and disadvantages to the state, school districts, and school employees of various approaches to consolidated purchasing of school employee health benefits. A preliminary report was presented on June 1, 2015, but it was just an overview of how best to develop differing models of consolidation with no analysis yet of the costs and/or savings.
- There is little likelihood of addressing the current 'loss' of two months of service credit when a former teacher moves into an administrative position. He/she can address this problem by changing his/her date of retirement. Contact DRS for more information on this option.

