

SENATE BILL REPORT

SB 5639

As of March 30, 2011

Title: An act relating to education governance.

Brief Description: Creating a student-focused state-level education governance system.

Sponsors: Senators McAuliffe, Tom, Eide, Harper, Prentice and Shin; by request of Governor Gregoire.

Brief History:

Committee Activity: Early Learning & K-12 Education: 2/02/11, 2/10/11, 2/16/11 [DPS-WM, w/oRec].

Ways & Means: 2/22/11.

Brief Summary of Proposed Second Substitute

- Creates a new Department of Education (DOE) as an executive branch agency. The head of the DOE is the Secretary of Education, who is appointed by the Governor and subject to confirmation by the Senate.
- Creates the Washington State Education Council, with specified members, to advise the Secretary of Education.
- Includes the Professional Educator Standards Board, the state schools for the deaf and blind, and the Higher Education Financial Assistance Program Administration in the DOE.
- Abolishes and transfers the duties and functions of the Department of Early Learning, State Board of Education, and Quality Education Council to the DOE on a schedule determined by the transition team.
- Abolishes the Office of the Education Ombudsman and transfers the functions and duties to the DOE on July 1, 2012.
- Abolishes the Early Learning Advisory Council and the Achievement Gap Oversight and Accountability Committee.
- Abolishes the Washington State School Directors Association as a state agency, effective December 2012, after a review by the transition team.
- Creates a transition team to develop an initial transition plan and implementation schedule for including the state-level early learning and K-12 educational entities

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

in the DOE by January 16, 2013, and a transition subgroup to develop recommendations for a design to include the duties of the state-level postsecondary entities in the DOE by July 1, 2013.

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Majority Report: That Substitute Senate Bill No. 5639 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators McAuliffe, Chair; Harper, Vice Chair; Litzow, Ranking Minority Member; Eide, Hobbs, King, Nelson, Rockefeller and Tom.

Minority Report: That it be referred without recommendation.

Signed by Senator Fain.

Staff: Susan Mielke (786-7422)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Elise Greef (786-7708)

Background: The early learning and K-12 education systems have a number of state-level agencies, councils, and boards, including the Office of Superintendent of Public Instruction, which is constitutionally-established.

Department of Early Learning (DEL). The DEL was created by the Legislature in 2006 for the primary purpose of implementing state early learning policy and coordinating, consolidating, and integrating child care and early learning programs in order to administer programs and funding as efficiently as possible. DEL oversees and regulates child care licensing and supports other early learning state and federal programs; child care licensing rate setting, and improving quality standards; background checks for licensed and certified child care; hearings appealing DEL actions; performance standards for the Early Childhood Education and Assistance Program (ECEAP); subsidy programs that help families pay for child care; Early Support for Infants and Toddlers (ESIT), for children birth to three with disabilities; and early home visiting programs. The Director of DEL is appointed by the Governor.

Early Learning Advisory Council (ELAC). The ELAC was established by the Legislature in 2007 to advise DEL on statewide early learning needs and develop a statewide early learning plan. Twenty-three members are specified in statute.

Superintendent of Public Instruction (SPI). The SPI was created in the state Constitution in 1889 and under the Constitution has supervision over all matters pertaining to the public schools of the state. Additionally, the SPI has specific statutory duties, including but not limited to gathering and reporting school information to state and federal authorities; preparing specifically requested reports each year, and providing other entities of state government with information for policymaking and budget preparation as needed; securing

needed laws and appropriations from the state and federal governments and implementing those statutes enacted; distributing funds to local school districts and educational service districts (ESD); approving and monitoring the nine ESDs and 295 local school districts' expenditure budgets; administering the state School Construction Assistance Program and other grant programs; providing facilities services, and assisting local school districts with boundary issues; providing technical help in finance and curriculum matters to the ESDs and school districts; monitoring and conducting consultation in areas such as basic education, assessment, curriculum development aligned with the EALRs, special needs programs for special student populations, and educational technology; issuing certificates for teachers, support personnel, and administrators of the K-12 system; and representing the interests and needs of education dealing with technology, environmental, arts, and partnership issues by serving on various state boards.

The Attorney General in a formal opinion found that the Legislature has discretion to prescribe the specific duties of the SPI and to create agencies and institutions to administer the state's public education system; however, it must respect the constitutional language granting the Superintendent supervisory power over the public school system. The Legislature may not delegate to another officer or agency the supervision authority of the SPI over the public schools. The constitutional authority of the SPI cannot be made subordinate to that of another officer or body. (AGO 1998 No. 6; and AGO 1961-62 No. 2)

State Board of Education (SBE). The SBE was established by the Washington Territorial Legislature in 1877. The SBE consists of 16 members – five elected by school board members, seven appointed by the Governor, the SPI, one elected by private schools, and two (nonvoting) students. The SBE's statutory purpose is to provide advocacy and strategic oversight of public education; implement a standards-based accountability framework that creates a unified system of increasing levels of support for schools in order to improve student academic achievement; provide leadership in the creation of a system that personalizes education for each student and respects diverse cultures, abilities, and learning styles; and promote achievement of the goals. Additional duties of the SBE include providing a broad leadership role in strategic oversight and policy for K-12 education; and establishing rules, standards, and guidelines for minimum high school graduation requirements, minimum basic education requirements, and private school approval.

Professional Educator Standards Board (PESB). The PESB was established in statute in 2000. The PESB has 13 members (the SPI, plus 12 gubernatorial appointees). The purpose of the PESB is to establish policies and requirements for the preparation and certification of educators that provide standards for competency in professional knowledge and practice in the areas of certification; a foundation of skills, knowledge, and attitudes necessary to help students with diverse needs, abilities, cultural experiences, and learning styles to meet or exceed the student learning goals. Specific statutory duties include advising the Governor, Legislature, and the SPI; establishing policies, requirements and standards for educator preparation programs and educator certification; and administering assessments for pre-certification basic skills and subject knowledge assessments and professional-level certification.

Quality Education Council (QEC). The QEC was created in statute by the Legislature in 2009 to recommend and inform the ongoing implementation by the Legislature of an

evolving program of basic education and the financing to support such program, develop strategic recommendations for the program of basic education and update every four years, and identify measurable goals and priorities for the educational system in Washington. The QEC has 13 specified members, including eight legislators.

Achievement Gap Oversight and Accountability Committee (AGOAC). The AGOAC was created in statute by the Legislature in 2009 to synthesize the findings and recommendations from the 2008 achievement gap studies into an implementation plan and to recommend policies and strategies to the SPI, the PESB, and the SBE to close the achievement gap. The AGOAC has 13 specified members, including six legislators.

Educational Service Districts (ESDs). There are nine ESDs that provide regional services to local school districts, and assist the SPI, SBE, and other state educational agencies in performance of their duties. They were created in statute in 1969. Each ESD is governed by a seven or nine member board of directors that are elected by the school boards within the ESD. Specific statutory duties include providing budget, informational services, and professional development to local schools districts; providing direct services to students (special education, nurse corp, regional transportation coordinators, etc.); and providing professional development services as directed by the Legislature. The ESDs are authorized to pay up to \$100 for membership in a statewide association for each ESD board member.

Office of the Education Ombudsman (OEO). The OEO was created in statute in 2006 to provide information to parents, students, and others regarding their rights and responsibilities with respect to the state's public elementary and secondary education system, and advocate on behalf of elementary and secondary students. The six OEO staff are located in the Office of the Governor and the Education Ombudsman is appointed by the Governor. Additional statutory duties of the OEO are to provide general information to students, families, and communities regarding the school system; help resolve conflict between families and schools; and provide policymakers with recommendations to improve the education system.

Washington State School for the Blind (WSSB). The WSSB was established in statute in 1886 with the primary purpose of educating and training visually impaired children. The WSSB is under the direction of a superintendent appointed by the Governor. A board of trustees, also appointed by the Governor, advises the superintendent.

State Center for Childhood Deafness and Hearing Loss (CDHL). The CDHL was originally created in statute in 1886 as the Washington State School for the Deaf with the primary purpose of educating and training hearing impaired children. The school's mission was broadened and its name changed in 2009. The center is under the direction of a director appointed by the Governor. A board of trustees, also appointed by the Governor, advises the director.

Washington State School Directors' Association (WSSDA). The WSSDA is comprised of all 1477 school board members from Washington State's 295 public school districts. Originally founded in 1922 as a private association but in 1947 it was established in statute as a state agency. The statutory purpose of the WSSDA is to provide leadership, coordination of programs, advocacy, and services to support public school boards of directors. Specific duties assigned to the WSSDA include providing materials and educational services to its

members; maintaining multiple consultant resources to assist school boards in their work; implementing an active governmental relations program to communicate school directors' views to state education policymakers, and convening a wide array of committee and other meetings.

Higher Education Coordinating Board (HECB). Originally established in statute in 1969 as the Council on Higher Education. In 1975 the Legislature changed the membership, duties, and name to Council for Postsecondary Education. In 1985 the Legislature reconstituted the Council as the HECB. The HECB has ten members, appointed by the Governor, for the purpose of coordinating the state's public colleges and universities. Additionally, the HECB administers state and federal financial assistance programs.

Workforce Training and Education Coordinating Board (WTECB). The WTECB was established in statute in 1991 and has 11 members appointed by the Governor. The WTECB provides planning, coordination, evaluation, monitoring, and policy analysis for the state training system, which includes career and technical education in public high schools.

According to the Education Commission of the States in 2008:

- 23 states have the Chief State School Officer (CSSO) appointed by the State Board of Education: Alabama, Alaska, Arkansas, Colorado, Connecticut, Hawaii, Illinois, Louisiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New York, Ohio, Rhode Island, Utah, Vermont, and West Virginia.
- 13 states have the CSSO appointed by the Governor: Delaware, Florida, Iowa, Maine, Minnesota, New Hampshire, New Jersey, New Mexico, Pennsylvania, South Dakota, Tennessee, Texas, and Virginia.
- 14 states elect the CSSO: Arizona, California, Georgia, Idaho, Indiana, Montana, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, Washington, Wisconsin, and Wyoming.
- 24 states governors appoint an education official (the SPI, Commissioner of Education or Secretary of Education) to the executive cabinet: California, Colorado, Connecticut, Delaware, Georgia, Idaho, Kentucky, Louisiana, Maine, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Nevada, New Jersey, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Dakota, Tennessee, Virginia, and West Virginia.

Summary of Bill (Proposed Substitute): Legislative findings are made that consolidation of state-level education entities result in a governance system with a unifying student-centered vision, common goals, shared priorities, and linked outcomes, improved outcomes for learners and less management burdens for local delivery systems.

The Department of Education (DOE) is created as an executive branch agency to focus education policy development on implementing education programs and services that promote student achievement. The SPI is housed within the DOE but retains the supervisory duties granted under the constitution. The SPI must cooperate and coordinate with the new DOE. The executive head of the DOE is the Secretary of Education who is appointed by the Governor and subject to confirmation by the Senate. The Secretary is assigned specific tasks, including developing a system-wide strategic plan that integrates four system goals specified

in the act. The DOE includes the PESB, the WSSB, the CDHL, and the Higher Education Financial Assistance Program Administration. The DEL and the SBE are abolished and their powers, duties, and employees are transferred to the DOE on a schedule determined by the transition team. The QEC is abolished and some of its duties are transferred to the DOE on a schedule determined by the transition team. The OEO is abolished and its functions and duties are transferred to the DOE on July 1, 2012. The ELAC and the AGOAC are abolished. The WSSDA statutes are repealed, effective December 31, 2012, after a review by the transition team.

A governor-appointed transition team must complete a transition plan and implementation schedule by January 1, 2012, to phase-in the DOE. The transition team must hold public hearings to share the work plan, how the public will give input to the transition process, a status report, and the transition plan and phase-in schedule. Phase-in begins by July 1, 2012, and must be completed by January 16, 2013, unless otherwise directed by the Legislature. By January 1, 2012, the transition team must also recommend whether the WSSDA should be a state agency with mandatory membership for all school districts and review the role of the WTECB with regards to K-12 education and recommend whether the role should be included in the DOE. A transition subgroup is also created to recommend which postsecondary powers, duties, and functions should be included or transferred to the DOE by July 1, 2013.

The Washington State Education Council is created to advise the Secretary. The council consists of 13 members: Six members are appointed by the Governor (two representing early learning, two representing K-12 education, one representing four-year institutions of higher education, and one representing community and technical colleges); three members representing K-12 education elected by school district directors (one who resides in the Puget Sound Area, one who resides outside the Puget Sound area, and one who resides in Eastern Washington); one representative of the federally recognized Indian tribes; one representative of the approved private K-12 schools (who votes only on private school issues); one representative of home-based instruction (who votes only on home-based instruction issues); and the SPI (who votes only in the case of a tie vote of the rest of the Council and cannot be chair of the Council). When appointing the members the Governor must consider the diversity of the state and consider including individuals with knowledge and experience in working with historically underrepresented populations, and consider including active practitioners. The DOE provides staff support to the Council.

The ESDs are to assist the DOE in performance of its duties. The authority to pay for membership in a statewide association for each ESD board member is removed.

Technical changes are made. The Code Reviser must prepare legislation for the 2012 session to correct obsolete references resulting from the act.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Proposed Second Substitute): The PESB and the higher education financial assistance program administration are included in the DOE. Once the DOE begins, July 1, 2012, the OEO is abolished and the duties are transferred to the new DOE. The WSSDA repeal is made effective December 31, 2012, after the transition team has completed its review. The transition team must hold public hearings. A transition subgroup is created to recommend which postsecondary powers, duties, and functions should be included or transferred to the

DOE by July 1, 2013. The Council that advises the Secretary of Education is expanded from seven members to 13 by adding the representatives of the Indian tribes, the approved private K-12 schools, home-based instruction, four-year institutions of higher education, and community and technical colleges. Additional criteria for the Governor to consider when appointing the Council members is including individuals with knowledge and experience in working with historically underrepresented populations and including active practitioners.

EFFECT OF CHANGES MADE BY EARLY LEARNING & K-12 EDUCATION COMMITTEE (Recommended First Substitute): The SPI is maintained as a constitutionally elected office with supervision over public schools. The higher education state-level entities are removed from the bill but after the P-12 transition to the DOE is complete, the Governor is encouraged to assemble a new transition team to consider, and if appropriate, coordinate inclusion of state level higher education agencies into the DOE. The PESB is abolished and its powers, duties, and employees are transferred to the DOE. The QEC is abolished and some of its powers and duties are transferred to the DOE, but not its employees. The AGOAC, and the OEO are abolished. The P-12 Education Council is created to advise the Secretary and consists of:

- the Superintendent of Public Instruction, who votes only in a tie and cannot be the chair of the Council;
- two members representing early learning appointed by the Governor;
- three members representing K-12 education elected by school district directors, one of whom must be a resident of the Puget Sound area; one of whom must be a resident outside of the Puget Sound area; and one of whom must be a resident of Eastern Washington; and
- two members representing K-12 education appointed by the Governor.

Appropriation: None.

Fiscal Note: Requested on on February 1, 2011.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill (Early Learning & K-12 Education): From Hearing Held on February 2, 2011

PRO: Most of the jobs in the new economy will require a certificate of some sort or a college degree. Our educational system needs to change to meet those student needs. We need to strengthen the transition points where our students pass from one sector to the other: early learning to K-12 and K-12 to higher education. The status quo system is not working because we don't have a system – we have silos. Each silo has plans but it is not a seamless plan and often not with common goals, which makes our transition points very weak points. The system we create should have one strategic plan to support our students from birth to career and have a student focus. Our system must be able to respond to changes by sharing best practices and scaling up the best practices statewide, for example online textbooks. The only clear effective way to create system accountability is to be united and not fractured. We need a way for all kids to have a voice in a stable system of education.

CON: It doesn't matter who is in charge of education if there is no funding to support it. This distracts from the most important issue that should be discussed, which is how to fund education this year in light of the scarce resources.

OTHER: This is an important conversation to have. We are interested in reforming the education system but differ on the details. The current structure of our separate silos, which are focused on their individual missions and without sufficient coordination, makes innovation very difficult; but we don't know if one person would be able to successfully lead all the strands of education. Perhaps it should be done regionally. Money and resources are short, but achievement and accountability is improving. The timeline in this bill is very aggressive and such a complete overhaul of the education system requires more discussion.

We do not think WSSDA should be included in the bill because it does not contribute to the education bureaucracy and does not receive state funding. It also performs a role in accountability that will be lost if it is abolished. We are concerned with abolishing the SBE. By having school directors elect some of the members of the SBE, there is a balance of perspectives that will be lost in a Department with a Secretary who is appointed by the Governor. Maybe the SBE should be the P-20 Council. We support keeping PESB because it has practitioners making decisions about certification and licensing. If a P-20 Council is created then it should include school directors and educators. The SBCTC and SBE have worked very well.

Washington has a tradition of strong citizen involvement and this does not include sufficient citizen involvement in the system to provide balance to the executive power. If the SPI were retained under this system their advocacy voice for students would be muted by this structure and become the voice of the Governor. We are concerned that the institutions would not retain their autonomy because best practices which are often experimental would be imposed upon them.

From Hearing Held on February 10, 2011

PRO: We need a comprehensive, streamlined, seamless education system that is coordinated with a focus on the students instead of the fragmented governing bodies that we currently have. When everything is under one umbrella there is more communication and collaboration, which will help us do better closing the achievement gap, keeping our students from dropping out of school, and reducing remediation at the higher education institutions. There should be one central point for accountability; so we support the constitutional amendment to eliminate the position of the elected SPI. We suggest that the PESB could also be transferred to the DOE. We like how the bill speaks to the transitions between early learning, K-12, and higher education.

CON: While we agree with streamlining the state level agencies we oppose this bill because the Secretary is appointed not elected by the people. Do not take away the right of citizens to elect a nonpartisan, independent education official that is separate from the Governor. We oppose dissolving the State Board of Education because it is the voice of the schools' boards. We are concerned that the transition will cause delay in the expansion and funding of basic education but if it will help facilitate the implementation then we are all for it.

OTHER: Higher education is very in favor of collaboration and coordination to assist students to be better prepared when they arrive. We are concerned with the surrender of local control for the public higher education institutions with all the centralization.

Persons Testifying (Early Learning & K-12 Education): From Hearing Held on February 2, 2011

PRO: Christine Gregoire, Governor.

CON: Jerry Bender, Association of Washington of School Principals.

OTHER: Mary Fertakis, Marie Sullivan, Washington State School Directors' Association; Lucinda Young, Washington Education Association; Tim Knue, Washington Association for Career and Technical Education; George Scarola, League of Education Voters; Dan Steele, Washington Association of School Administrators; Marsh Riddle Buly, Western Washington University Woodring College of Education; Anthony Flinn, Eastern Washington University.

From Hearing Held on February 10, 2011

PRO: Senator McAuliffe, prime sponsor; Ann Luce, Partnership for Learning.

CON: Tracy Zahn, Rich Halterman, Bridgeport School District; Catherine Ahl, League of Women Voters; Romana Hattendorf, Washington State PTA.

OTHER: George Scalia, League of Education Voters; Anthony Flinn, Eastern Washington University; David Westberg, Joint Council of Stationary Engineers.

Staff Summary of Public Testimony on Recommended First Substitute (Ways & Means): PRO: This bill will create a streamlined, more effective, student-focused system. It takes the important first steps to building the connection between early learning, K-12, and higher education.

CON: Private schools have had a voice over the last 40 years in education. This bill eliminates any private school representation at all. We save the state \$25 to \$30 million by serving students outside the public system. We oppose the abolishment of the OEO. This office provides a number of benefits, including saving parents litigation costs. Last year about 60 percent of the OEO's cases were directed toward special education students; the office serves a critical function for those who cannot serve themselves so well. K-12 education costs about \$10,000 per student; with 85,000 students in K-12 private schools, that represents a savings of \$850 million per year, which does not even include capital costs. We are very concerned about eliminating all private school representation. There is concern there is no fiscal note, and concern about a constitutional conflict by creating another entity overseeing K-12 education. The bill appears to drive additional costs; if there is additional funding available next biennium, it should be put directly into student support. Abolishing WSSDA does not save any direct state money and might cause the state to have to take on responsibilities the association currently handles.

OTHER: The OEO's current funding is \$530,000 which translates to about 50 cents per student. That's a small cost with an immediate impact. The OEO intervened in 844 cases this fiscal year with a high success rate, 80 to 98 percent. The OEO has been instrumental in

helping with an incident of brutal violence in a school. We support the bill but oppose the specific provision that abolishes the OEO. The OEO supports our students of color and students who are bullied or marginalized. The OEO prevents lawsuits and keeps students from dropping out of school – which prevents other costly social problems. The OEO is independent of any particular school district or the Office of SPI and, therefore, serves an important disinterested role. Loss of OEO functions would create additional costs to districts and to the state. The office eliminates conflict, gets children back into school, and helps them graduate. There are 295 school districts in the state, which is less than \$2,000 per district for the OEO to provide the ability for parents and students to redress their government. This office has been one of the only avenues available for voices to be heard and suggest doubling or tripling the OEO's budget.

Persons Testifying (Ways & Means): PRO: Leslie Goldstein, Governor's Policy Office.

CON: Dr. David Zimmerman, Amazing Grace Lutheran School; Joel L. Domingo, Seattle Special Education Parent Teacher Student Association; Ken Kanikeberg, Office of SPI; Judy Jennings, Washington Federation of Independent Schools; John M. Higley, 27th Legislative District Chair for the Pierce County Republican Party; Marie Sullivan, WSSDA.

OTHER: Peggy A. Johnson; Kevin Sheldon, Iris Okimoto Nielsen, Brad Fulkerson; Linda Slater, parent; Sharon Rodgers; Dianna Stadden, Parent and The Arc of Washington; Ramona Hattendorf, Washington State PTA; Kevin Sheldon, parent.