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SUPREME COURT
STATE OF WASHINGTON
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NO. 78637-2

SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON STATE FARM BUREAU FEDERATION,
WASHINGTON STATE GRANGE, NATIONAL FEDERATION
OF INDEPENDENT BUSINESS, BUILDING INDUSTRY
ASSOCIATION OF WASHINGTON, EVERGREEN FREEDOM
FOUNDATION, WASHINGTON ASSOCIATION OF REALTORS,
and STEVE NEIGHBORS,

Respondents/Cross-Appellants,

v.

CHRISTINE O. GREGOIRE, Governor of the State of Washington;
STATE EXPENDITURE LIMIT COMMITTEE; and
STATE OF WASHINGTON,

Appellants/Cross-Respondents.

**STATE'S REPLY TO BRIEF OF AMICUS CURIAE
ASSOCIATION OF WASHINGTON BUSINESS**

ROB MCKENNA
Attorney General

Maureen Hart, WSBA 7831
Solicitor General

Jeffrey T. Even, WSBA 20367
Deputy Solicitor General

PO Box 40100
Olympia, WA 98504-0100
360-586-0728

*Attorneys For Appellants/
Cross Respondents*

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Appellants submit this brief in response to the *Amicus Curiae* brief submitted on behalf of the Association of Washington Business (AWB).

I. ARGUMENT

A. **The Court Need Not And Should Not Reach The Issue Raised By The AWB**

The only issue raised by AWB is one that the Court need not reach to fully resolve this case. Moreover, despite AWB's argument to the contrary, the issue that it raises is one raised only by amicus, AWB. For this additional reason, the Court should not consider it.

The Court need not reach AWB's argument because it arises only if the Court concludes that ESHB 2314 raised general fund revenues for expenditure in excess of the state expenditure limit, thereby triggering the voter approval requirement of RCW 43.135.035(2)(a). For reasons explained in the State's principal briefs, such a conclusion would be erroneous. State's Opening Br. at 23-40; State's Reply and Response to Cross-Appeal at 42. Two separate legislative enactments, ESSB 6896, Laws of 2006, ch. 56, § 7(6), and the 2005 budget, Laws of 2005, ch. 518, §§ 1607 and 1701, raised the fiscal year 2006 state expenditure limit by \$250 million. That \$250 million increase forecloses the basis for Respondents' claim that ESHB 2314 raised revenues for expenditure in excess of the state expenditure limit, and therefore triggered the voter

approval provision of RCW 43.135.035(2)(a). For these reasons, the Court need not and should not reach AWB's argument.

Second, although AWB suggests otherwise, its statutory argument is one raised only by amicus, AWB, and should not be considered for that additional reason. *Zuver v. Airtouch Commuc'ns, Inc.*, 153 Wn.2d 293, 304 n.4, 103 P.3d 753 (2004) (refusing to consider issues raised solely by amicus). AWB describes its argument as "a purely statutory basis, not thus far elaborated by either party, for resolving the validity of the voter approval provision of I-601." AWB Br. at 4. AWB is correct that no party has raised the argument that it seeks to raise. Although AWB suggests that this new argument is not "of the kind disfavored by this Court" (AWB Br. at 1 n.2), AWB does not explain how this is so. And *Sundquist Homes, Inc. v. Snohomish County Public Utility District 1*, 140 Wn.2d 403, 997 P.2d 915 (2000), the only authority that AWB cites for this proposition, does not support it. In *Sundquist*, the Court reiterated and applied the well-established rule that arguments raised only by amicus will not be considered (*id.* at 413), and noted that to the extent amici in that case merely "echoed" arguments made by Sundquist, the Court's disposition of Sundquist's arguments similarly disposed of amici's arguments. *Id.* To the extent AWB is suggesting that its statutory argument simply "echoes arguments" that the parties have "set forth in

[their] briefing” (*id.*), its suggestion is not well taken. By definition, an echo is a repetition. As AWB recognizes, no party has presented the statutory argument that it posits. AWB Br. at 1, 4.¹

B. The Significance That AWB Tries To Attribute To SSB 6078 Section 2’s Amendment Of RCW 43.135.035(1) Lacks Support

Even if the Court were to consider AWB’s argument, it is unsound. AWB’s argument relies on Substitute Senate Bill (SSB) 6078, Laws of 2005, ch. 72, section 2. Based solely on the enacting clause of SSB 6078 section 2, AWB contends that the Legislature “freshly re-enact[.]” the voter approval requirement of RCW 43.135.035(2)(a) (AWB Br. at 11) and that it thereby “*intended itself to be bound* by the voter approval provision *in 2005.*” AWB Br. at 2. According to AWB, the basis and only basis for gleaning such an intent is the Legislature’s use of the terms “re-enacted and amended” in section 2’s enacting clause, rather than simply, “amended”.

The enacting clause of SSB 6078, section 2 provides that, “RCW 43.135.035 and 2001 c 3 s 8 and 2000 2nd sp.s. c 2 s 2 are each reenacted and amended to read as follows[.]”. Insofar as it is relevant to this case,

¹ Although AWB characterizes its argument as “purely statutory” (AWB Br. at 4), it also presents this new “statutory” argument as a reason for distinguishing the voter approval provision of RCW 43.135.035(2)(a) from the voter approval requirement that the Court held invalid in *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 11 P.3d 762 (2000). AWB Br. at 12-20. To this extent, AWB’s statutory argument also relates to the constitutionality of RCW 43.135.035(2).

what follows is essentially the addition of a time-limited proviso to the general rule stated in the first sentence of RCW 43.135.035(1), that a supermajority vote is required for all actions that raise revenues for the general fund. The proviso begins with the word, “However”, and goes on to say that, for a limited period, such actions may be taken by majority vote. Section 2 of SSB 6078 made no amendment whatsoever of the voter approval requirement of RCW 43.135.035(2)(a), and contrary to AWB’s argument (AWB Br. at 7), by the terms of the first and second sentences of RCW 43.135.035(1) and the first sentence of subsection (2)(a), as set forth in section 2 of SSB 6078, the voter approval requirement applies to any action taken to raise revenues for the general fund, not simply to those during the period covered by the proviso. AWB’s argument boils down then to asserting that, by making no change whatsoever in the voter approval requirement of RCW 43.135.035(2)(a), and adding a time-limited proviso to RCW 43.135.035(1) allowing majority enactment of revenue measures for the general fund, the Legislature somehow intended to specially bind itself to the voter approval requirement. This result certainly does not follow from any operative language in section 2, and it does not follow from the language of the enacting clause either.

Although AWB refers to “reenacted and amended” in the enabling clause of SSB 6078, section 2 as “legislative terms of art” (AWB Br. at 6),

it provides no further explanation. The history of RCW 43.135.035 demonstrates that the reason the Legislature used the “terms of art” “reenacted and amended” in the enacting clause of SSB 6078, section 2, had nothing to do with the voter approval requirement of RCW 43.135.035(2)(a), and that these “terms of art” indicate no such intent. Rather, the Legislature used those terms to reflect that SSB 6078, section 2 reconciled two inconsistent prior amendments to RCW 43.135.035 and further amended that statute. In 2000, the Legislature amended RCW 43.135.035 by adding language to paragraph (4) and creating paragraph (5). Laws of 2000, 2nd Spec. Sess., ch. 2, § 2 (attached as App. A). That November, the voters enacted Initiative 728, a ballot measure addressing school class sizes. Section 8 of I-728 also amended RCW 43.135.035, without reference to the amendment that the Legislature made earlier the same year. Laws of 2001, ch. 3, § 8 (provision of I-728 amending RCW 43.135.035 to add language to paragraph (4)) (attached as App. B).² As the Code Reviser’s Bill Drafting Guide explains, the term “reenacted and amended” is used when a bill both corrects a prior double amendment and adds an additional amendment. Office of the Code Reviser, Bill Drafting

² Driven by the time necessary to collect signatures, Initiative 728 was filed with the Secretary of State on February 8, 2000, before the Legislature enacted its own amendment to RCW 43.135.035 that same year. <http://www.secstate.wa.gov/elections/initiatives/people.aspx?y=2000> (listing initiatives filed in 2000 with the Secretary of State, and showing filing dates).

Guide, § 2(10)(i).³ Quite plainly, the Legislature “reenacted and amended” RCW 43.135.035 in the manner described in the Bill Drafting Guide to reconcile two unrelated prior amendments, not to somehow express an intention to bind itself to the voter approval requirement of RCW 43.135.035(2)(a). *See also, In re Custody of Stell*, 56 Wn. App. 356, 364-65, 783 P.2d 615 (1989) (noting that the reenactment of a statute indicates continuity with the prior statute, including prior case law construing it).

Even if that were not the case, however, AWB’s argument that the Legislature was bound by the voter approval requirement depends on the erroneous notion, also prominent in many of the arguments offered by Respondents, that a statute may limit the Legislature’s plenary authority to enact any other statute not prohibited by the constitution. “Insofar as legislative power is not limited by the constitution it is unrestrained.” *Cedar Cy. Comm. v. Munro*, 134 Wn.2d 377, 386, 950 P.2d 446 (1998) (quoting *Moses Lake Sch. Dist. 161 v. Big Bend Cmty. Coll.*, 81 Wn.2d 551, 555, 503 P.2d 86 (1972), *appeal dismissed*, 412 U.S. 934 (1973)). The constitutionality of ESHB 2314 has not been challenged, and AWB does not argue that ESHB 2314 runs afoul of any constitutional constraint.

³ The Bill Drafting Guide is available online through the Code Reviser’s Web site at: <http://www1.leg.wa.gov/CodeReviser/Bill+Drafting/>.

AWB simply argues that in enacting ESHB 2314, the Legislature “failed to abide by” RCW 43.135.035(2)(a). AWB Br. at 2. This contention is fundamentally flawed. State statutes are on equal footing; one does not preclude enactment of another. Indeed, AWB’s suggestion that it is “[t]he role of the Court . . . to hold the Legislature accountable to its own duly enacted (or reenacted, in this case) procedures” (AWB Br. at 16) is remarkable for its misunderstanding of the judicial role in our system of government, and in the usurpation of legislative authority that it invites the Court to undertake. Const. art. II, § 9 (“Each house may determine the rules of its own proceedings[.]”); *State ex rel. Daschbach v. Meyers*, 38 Wn.2d 330, 332, 229 P.2d 506 (1951):

The legislature and this court are co-ordinate branches of our state government, and we cannot interfere with the legislature in its legislative processes, but are limited to a consideration of the constitutionality and interpretation of its acts.

AWB also seems to suggest that although it is well established that the current Legislature cannot bind a future one (*Washington Ass’n of Neighborhood Stores v. State*, 149 Wn.2d 359, 367, 70 P.3d 920 (2003); *see also* Brief of *Amicus Curiae* Gary Locke at 11-17), the same Legislature may temporarily “bind itself.” AWB Br. at 7-10. AWB cites no authority for this proposition and it is inconsistent with the plenary

lawmaking authority of the Legislature, discussed above and in the State's principal briefs.

C. *Amicus* AWB Offers No Sound Reason To Distinguish This Court's Decision In *Amalgamated Transit*

AWB attempts to distinguish this Court's holding in *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 11 P.3d 762 (2000), on the theory that the voter approval requirement of RCW 43.135.035(2)(a) applies to a narrower class of legislation than did the voter approval requirement of Initiative 695, based on its unsound view of section 2 of SSB 6078. As discussed above, all that SSB 6078, section 2 did was add a proviso to RCW 43.135.035(1) that, for a limited period, allows enactment of bills raising revenues for the general fund by majority vote, rather than supermajority vote. The voter approval requirement was not amended or in any way narrowed and, by its own terms, and the terms of RCW 43.135.035(1), it applies both to such bills enacted during that period and otherwise.

Even if that were not the case, however, AWB's argument, like that of Respondents, also misconstrues this Court's holding in *Amalgamated Transit* that, "[n]either the Legislature nor the people acting in their legislative capacity has the power to condition a state law solely on voter approval". *Amalgamated Transit*, 142 Wn.2d at 241 (emphasis

omitted). This Court reasoned that the exclusive process for the Legislature or the people to refer a measure to the ballot is the referendum process specified in article II, § 1(b) of the state constitution. *Amalgamated Transit*, 142 Wn.2d at 241. That constitutional provision provides only for referring individual measures to the ballot, either by voter petition or by specific legislative referral. Const. art. II, § 1(b). It makes no provision for referring *classes* of legislation to the ballot, no matter the size of the class.

The State has explained in prior briefs that the line this Court drew in *Amalgamated Transit* was between voter approval as a condition on a class of future legislation and referral to the people of a specific enactment.⁴ *Amalgamated Transit*, 142 Wn.2d at 242. As this Court has reasoned, requiring voter approval of any class of legislation, large or small, would permit piecemeal dismantling of the Legislature's authority. "Such a result would be inconsistent with the representative form of government in this state." *Id.*; see also Br. of Amici Washington Education Association, et al. at 11-12.

⁴ State's Opening Br. at 43; State's Reply Br. and Resp. to Cross-Appeal at 24.

II. CONCLUSION

This Court should reverse the decision of the Snohomish County Superior Court as to the State's original appeal, and affirm that court's decision with regard to Respondents' cross-appeal.

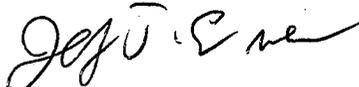
RESPECTFULLY SUBMITTED this 8th day of November,

2006

ROB MCKENNA
Attorney General



Maureen Hart, WSBA 7831
Solicitor General



Jeffrey T. Even, WSBA 20367
Deputy Solicitor General

PO Box 40100
Olympia, WA 98504-0100
360-586-0728

*Attorneys For Appellants/
Cross Respondents*

APPENDIX A

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 3169

Chapter 2, Laws of 2000

56th Legislature
2000 2nd Special Legislative Session

EXPENDITURE LIMIT

EFFECTIVE DATE: 7/1/00

Passed by the House April 27, 2000
Yeas 88 Nays 9

CLYDE BALLARD
Speaker of the House of Representatives

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate April 27, 2000
Yeas 27 Nays 18

BRAD OWEN
President of the Senate

Approved May 2, 2000

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 3169** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

CYNTHIA ZEHNDER
Chief Clerk

FILED

May 2, 2000 - 10:36 a.m.

Secretary of State
State of Washington

ENGROSSED HOUSE BILL 3169

Passed Legislature - 2000 Second Special Session

State of Washington 56th Legislature 2000 2nd Special Session

By Representatives Barlean, Doumit, Huff, H. Sommers, D. Schmidt, Ruderman, Hankins, Edmonds, Alexander, Kenney, Schindler, Miloscia, Tokuda, Quall, Lantz, Linville, Fortunato, Boldt, Fisher, Edwards, Constantine, Romero, Scott, Keiser, Schual-Berke, McIntire, Kastama, Hatfield, Carlson, McDonald, Kessler, Ogden, Dunshee, Cooper, Wood, Regala, O'Brien, Stensen, Anderson, Wolfe, Morris, Veloria, Benson, Hurst, Rockefeller, Sullivan, Woods, Lisk, Parlette, Campbell, Talcott, Ballasiotes and Thomas

Read first time 03/21/2000. Referred to Committee on Appropriations.

1 AN ACT Relating to modifying the state expenditure limit law by
2 strengthening the expenditure limit and providing for timely deposits
3 to the education construction fund; amending RCW 43.135.025,
4 43.135.035, and 43.135.045; providing an effective date; and declaring
5 an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 43.135.025 and 1994 c 2 s 2 are each amended to read
8 as follows:

9 (1) The state shall not expend from the general fund during any
10 fiscal year state moneys in excess of the state expenditure limit
11 established under this chapter.

12 (2) Except pursuant to a declaration of emergency under RCW
13 43.135.035 or pursuant to an appropriation under RCW 43.135.045(4)(b),
14 the state treasurer shall not issue or redeem any check, warrant, or
15 voucher that will result in a state general fund expenditure for any
16 fiscal year in excess of the state expenditure limit established under
17 this chapter. A violation of this subsection constitutes a violation
18 of RCW 43.88.290 and shall subject the state treasurer to the penalties
19 provided in RCW 43.88.300.

1 (3) The state expenditure limit for any fiscal year shall be the
2 previous fiscal year's state expenditure limit increased by a
3 percentage rate that equals the fiscal growth factor.

4 (4) For purposes of computing the state expenditure limit for the
5 fiscal year beginning July 1, 1995, the phrase "the previous fiscal
6 year's state expenditure limit" means the total state expenditures from
7 the state general fund, not including federal funds, for the fiscal
8 year beginning July 1, 1989, plus the fiscal growth factor. This
9 calculation is then computed for the state expenditure limit for fiscal
10 years 1992, 1993, 1994, and 1995, and as required under RCW
11 43.135.035(4).

12 (5) A state expenditure limit committee is established for the
13 purpose of determining and adjusting the state expenditure limit as
14 provided in this chapter. The members of the state expenditure limit
15 committee are the director of financial management, the attorney
16 general or the attorney general's designee, and the chairs of the
17 senate committee on ways and means and the house of representatives
18 committee on appropriations. All actions of the state expenditure
19 limit committee taken pursuant to this chapter require an affirmative
20 vote of at least three members.

21 (6) Each November, the ((office of financial management)) state
22 expenditure limit committee shall adjust the expenditure limit for the
23 preceding fiscal year based on actual expenditures and known changes in
24 the fiscal growth factor and then project an expenditure limit for the
25 next two fiscal years. ((The office of financial management shall
26 notify the legislative fiscal committees of all adjustments to the
27 state expenditure limit and projections of future expenditure limits.))
28 If, by November 30th, the state expenditure limit committee has not
29 adopted the expenditure limit adjustment and projected expenditure
30 limit as provided in subsection (5) of this section, the attorney
31 general or his or her designee shall adjust or project the expenditure
32 limit, as necessary.

33 ((+6)) (7) "Fiscal growth factor" means the average of the sum of
34 inflation and population change for each of the prior three fiscal
35 years.

36 ((+7)) (8) "Inflation" means the percentage change in the implicit
37 price deflator for the United States for each fiscal year as published
38 by the federal bureau of labor statistics.

1 ((+8+)) (9) "Population change" means the percentage change in
2 state population for each fiscal year as reported by the office of
3 financial management.

4 **Sec. 2.** RCW 43.135.035 and 1994 c 2 s 4 are each amended to read
5 as follows:

6 (1) After July 1, 1995, any action or combination of actions by the
7 legislature that raises state revenue or requires revenue-neutral tax
8 shifts may be taken only if approved by a two-thirds vote of each
9 house, and then only if state expenditures in any fiscal year,
10 including the new revenue, will not exceed the state expenditure limits
11 established under this chapter.

12 (2)(a) If the legislative action under subsection (1) of this
13 section will result in expenditures in excess of the state expenditure
14 limit, then the action of the legislature shall not take effect until
15 approved by a vote of the people at a November general election. The
16 office of financial management shall adjust the state expenditure limit
17 by the amount of additional revenue approved by the voters under this
18 section. This adjustment shall not exceed the amount of revenue
19 generated by the legislative action during the first full fiscal year
20 in which it is in effect. The state expenditure limit shall be
21 adjusted downward upon expiration or repeal of the legislative action.

22 (b) The ballot title for any vote of the people required under this
23 section shall be substantially as follows:

24 "Shall taxes be imposed on in order to allow a
25 spending increase above last year's authorized spending adjusted for
26 inflation and population increases?"

27 (3)(a) The state expenditure limit may be exceeded upon declaration
28 of an emergency for a period not to exceed twenty-four months by a law
29 approved by a two-thirds vote of each house of the legislature and
30 signed by the governor. The law shall set forth the nature of the
31 emergency, which is limited to natural disasters that require immediate
32 government action to alleviate human suffering and provide humanitarian
33 assistance. The state expenditure limit may be exceeded for no more
34 than twenty-four months following the declaration of the emergency and
35 only for the purposes contained in the emergency declaration.

36 (b) Additional taxes required for an emergency under this section
37 may be imposed only until thirty days following the next general

1 election, unless an extension is approved at that general election.
2 The additional taxes shall expire upon expiration of the declaration of
3 emergency. The legislature shall not impose additional taxes for
4 emergency purposes under this subsection unless funds in the education
5 construction fund have been exhausted.

6 (c) The state or any political subdivision of the state shall not
7 impose any tax on intangible property listed in RCW 84.36.070 as that
8 statute exists on January 1, 1993.

9 (4) If the cost of any state program or function is shifted from
10 the state general fund on or after January 1, 1993, to another source
11 of funding, or if moneys are transferred from the state general fund to
12 another fund or account, the ~~((office of financial management))~~ state
13 expenditure limit committee, acting pursuant to RCW 43.135.025(5),
14 shall lower the state expenditure limit to reflect the shift. For the
15 purposes of this section, a transfer of money from the state general
16 fund to another fund or account includes any state legislative action
17 taken after July 1, 2000, that has the effect of reducing revenues from
18 a particular source, where such revenues would otherwise be deposited
19 into the state general fund, while increasing the revenues from that
20 particular source to another state or local government account.

21 (5) If the cost of any state program or function is shifted to the
22 state general fund on or after January 1, 2000, from another source of
23 funding, or if moneys are transferred to the state general fund from
24 another fund or account, the state expenditure limit committee, acting
25 pursuant to RCW 43.135.025(5), shall increase the state expenditure
26 limit to reflect the shift.

27 **Sec. 3.** RCW 43.135.045 and 1994 c 2 s 3 are each amended to read
28 as follows:

29 (1) The emergency reserve fund is established in the state
30 treasury. During each fiscal year, the state treasurer shall deposit
31 in the emergency reserve fund all general fund--state revenues in
32 excess of the state expenditure limit for that fiscal year. Deposits
33 shall be made at the end of each fiscal quarter based on projections of
34 state revenues and the state expenditure limit. The treasurer shall
35 make transfers between these accounts as necessary to reconcile actual
36 annual revenues and the expenditure limit for fiscal year 2000 and
37 thereafter.

1 (2) The legislature may appropriate moneys from the emergency
2 reserve fund only with approval of at least two-thirds of the members
3 of each house of the legislature, and then only if the appropriation
4 does not cause total expenditures to exceed the state expenditure limit
5 under this chapter.

6 (3) The emergency reserve fund balance shall not exceed five
7 percent of (~~biennial~~) annual general fund--state revenues as
8 projected by the official state revenue forecast. Any balance in
9 excess of five percent shall be transferred on a quarterly basis by the
10 state treasurer to the education construction fund hereby created in
11 the treasury. The treasurer shall make transfers between these
12 accounts as necessary to reconcile actual annual revenues for fiscal
13 year 2000 and thereafter.

14 (4)(a) Funds may be appropriated from the education construction
15 fund exclusively for common school construction or higher education
16 construction.

17 (b) Funds may be appropriated for any other purpose only if
18 approved by a two-thirds vote of each house of the legislature and if
19 approved by a vote of the people at the next general election. An
20 appropriation approved by the people under this subsection shall result
21 in an adjustment to the state expenditure limit only for the fiscal
22 period for which the appropriation is made and shall not affect any
23 subsequent fiscal period.

24 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and takes effect
27 July 1, 2000.

Passed the House April 27, 2000.

Passed the Senate April 27, 2000.

Approved by the Governor May 2, 2000.

Filed in Office of Secretary of State May 2, 2000.

APPENDIX B

CHAPTER 3

[Initiative 728]

SCHOOL CLASS SIZES

AN ACT Relating to public education and directing surplus state revenues to provide additional resources to support high standards of achievement for all students through class size reductions; extended learning opportunities for students who need or want additional time in school; investments in educators and their professional development; dedicating unrestricted lottery proceeds to schools; and authorizing school districts to receive funds from the state property tax levy; amending RCW 67.70.240, 84.52.067, 43.135.035, 43.135.045, and 28A.150.380; adding a new section to chapter 28A.505 RCW; adding a new section to chapter 84.52 RCW; creating new sections; and providing effective dates.

Be it enacted by the People of the State of Washington:

NEW SECTION. Sec. 1. This act may be known and cited as the K-12 2000 student achievement act.

NEW SECTION. Sec. 2.

GENERAL PURPOSE

The citizens of Washington state expect and deserve great public schools for our generation of school children and for those who will follow. A quality public

education system is crucial for our state's future economic success and prosperity, and for our children and their children to lead successful lives.

The purpose of this act is to improve public education and to achieve higher academic standards for all students through smaller class sizes and other improvements. A portion of the state's surplus general fund revenues is dedicated to this purpose.

In 1993, Washington state made a major commitment to improved public education by passing the Washington education reform act. This act established new, higher standards of academic achievement for all students. It also established new levels of accountability for students, teachers, schools, and school districts. However, the K-12 finance system has not been changed to respond to the new standards and individual student needs.

To make higher student achievement a reality, schools need the additional resources and flexibility to provide all students with more individualized quality instruction, more time, and the extra support that they may require. We need to ensure that curriculum, instruction methods, and assessments of student performance are aligned with the new standards and student needs. The current level of state funding does not provide adequate resources to support higher academic achievement for all students. In fact, inflation-adjusted per-student state funding has declined since the legislature adopted the 1993 education reform act.

The erosion of state funding for K-12 education is directly at odds with the state's "paramount duty to make ample provision for the education of all children...." Now is the time to invest some of our surplus state revenues in K-12 education and redirect state lottery funds to education, as was originally intended, so that we can fulfill the state's paramount duty.

Conditions and needs vary across Washington's two hundred ninety-six school districts. School boards accountable to their local communities should therefore have the flexibility to decide which of the following strategies will be most effective in increasing student performance and in helping students meet the state's new, higher academic standards:

- (1) Major reductions in K-4 class size;
- (2) Selected class size reductions in grades 5-12, such as small high school writing classes;
- (3) Extended learning opportunities for students who need or want additional time in school;
- (4) Investments in educators and their professional development;
- (5) Early assistance for children who need prekindergarten support in order to be successful in school; and
- (6) Providing improvements or additions to facilities to support class size reductions and extended learning opportunities.

REDUCING CLASS SIZE

Smaller classes in the early grades can significantly increase the amount of learning that takes place in the classroom. Washington state now ranks forty-eighth in the nation in its student-teacher ratio. This is unacceptable.

Significant class size reductions will provide our children with more individualized instruction and the attention they need and deserve and will reduce behavioral problems in classrooms. The state's long-term goal should be to reduce class size in grades K-4 to no more than eighteen students per teacher in a class.

The people recognize that class size reduction should be phased-in over several years. It should be accompanied by the necessary funds for school construction and modernization and for high-quality, well-trained teachers.

EXTENDED LEARNING OPPORTUNITIES

Student achievement will also be increased if we expand learning opportunities beyond our traditional-length school day and year. In many school districts, educators and parents want a longer school day, a longer school year, and/or all-day kindergarten to help students improve their academic performance or explore new learning opportunities. In addition, special programs such as before-and-after-school tutoring will help struggling students catch and keep up with their classmates. Extended learning opportunities will be increasingly important as attainment of a certificate of mastery becomes a high school graduation requirement.

TEACHER QUALITY

Key to every student's academic success is a quality teacher in every classroom. Washington state's new standards for student achievement make teacher quality more important than ever. We are asking our teachers to teach more demanding curriculum in new ways, and we are holding our educators and schools to new, higher levels of accountability for student performance. Resources are needed to give teachers the content knowledge and skills to teach to higher standards and to give school leaders the skills to improve instruction and manage organizational change.

The ability of school districts throughout the state to attract and retain the highest quality teaching corps by offering competitive salaries and effective working conditions is an essential element of basic education. The state legislature is responsible for establishing teacher salaries. It is imperative that the legislature fund salary levels that ensure school districts' ability to recruit and retain the highest quality teachers.

EARLY ASSISTANCE

The importance of a child's intellectual development in the first five years has been established by widespread scientific research. This is especially true for children with disabilities and special needs. Providing assistance appropriate to children's developmental needs will enhance the academic achievement of these children in grades K-12. Early assistance will also lessen the need for more expensive remedial efforts in later years.

NO SUPPLANTING OF EXISTING EDUCATION FUNDS

It is the intent of the people that existing state funding for education, including all sources of such funding, shall not be reduced, supplanted, or otherwise adversely impacted by appropriations or expenditures from the student achievement fund created in RCW 43.135.045 or the education construction fund.

INVESTING SURPLUS IN SCHOOLS UNTIL GOAL MET

It is the intent of the people to invest a portion of state surplus revenues in their schools. This investment should continue until the state's contribution to funding public education achieves a reasonable goal. The goal should reflect the state's paramount duty to make ample provision for the education of all children and our citizens' desire that all students receive a quality education. The people set a goal of per-student state funding for the maintenance and operation of K-12 education being equal to at least ninety percent of the national average per-student expenditure from all sources. When this goal is met, further deposits to the student achievement fund shall be required only to the extent necessary to maintain the ninety percent level.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.505 RCW to read as follows:

ACCOUNTABILITY. School districts shall have the authority to decide the best use of student achievement funds to assist students in meeting and exceeding the new, higher academic standards in each district consistent with the provisions of this act.

(1) Student achievement funds shall be allocated for the following uses:

(a) To reduce class size by hiring certificated elementary classroom teachers in grades K-4 and paying nonemployee-related costs associated with those new teachers;

(b) To make selected reductions in class size in grades 5-12, such as small high school writing classes;

(c) To provide extended learning opportunities to improve student academic achievement in grades K-12, including, but not limited to, extended school year, extended school day, before-and-after-school programs, special tutoring programs, weekend school programs, summer school, and all-day kindergarten;

(d) To provide additional professional development for educators, including additional paid time for curriculum and lesson redesign and alignment, training to ensure that instruction is aligned with state standards and student needs, reimbursement for higher education costs related to enhancing teaching skills and knowledge, and mentoring programs to match teachers with skilled, master teachers. The funding shall not be used for salary increases or additional compensation for existing teaching duties, but may be used for extended year and extended day teaching contracts;

(e) To provide early assistance for children who need prekindergarten support in order to be successful in school;

(f) To provide improvements or additions to school building facilities which are directly related to the class size reductions and extended learning opportunities under (a) through (c) of this subsection.

(2) Annually on or before May 1st, the school district board of directors shall meet at the time and place designated for the purpose of a public hearing on the proposed use of these funds to improve student achievement for the coming year. Any person may appear or by written submission have the opportunity to comment on the proposed plan for the use of these funds. No later than August 31st, as a part of the process under RCW 28A.505.060, each school district shall adopt a plan for the use of these funds for the upcoming school year. Annually, each school district shall provide to the citizens of their district a public accounting of the funds made available to the district during the previous school year under this act, how the funds were used, and the progress the district has made in increasing student achievement, as measured by required state assessments and other assessments deemed appropriate by the district. Copies of this report shall be provided to the superintendent of public instruction and to the academic achievement and accountability commission.

Sec. 4. RCW 67.70.240 and 1997 c 220 s 206 are each amended to read as follows:

The moneys in the state lottery account shall be used only:

(1) For the payment of prizes to the holders of winning lottery tickets or shares;

(2) For purposes of making deposits into the reserve account created by RCW 67.70.250 and into the lottery administrative account created by RCW 67.70.260;

(3) For purposes of making deposits into the ~~((state's general fund))~~ education construction fund and student achievement fund created in RCW 43.135.045. For the transition period from the effective date of this section until and including June 30, 2002, fifty percent of the moneys not otherwise obligated under this section shall be placed in the student achievement fund and fifty percent of these moneys shall be placed in the education construction fund. On and after July 1, 2002, until June 30, 2004, seventy-five percent of these moneys shall be placed in the student achievement fund and twenty-five percent shall be placed in the education construction fund. On and after July 1, 2004, all deposits not otherwise obligated under this section shall be placed in the education construction fund. Moneys in the state lottery account deposited in the education construction fund and the student achievement fund are included in "general state revenues" under RCW 39.42.070;

(4) For distribution to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs. Three million dollars shall be distributed under this subsection during calendar year 1996. During subsequent years, such distributions shall equal the prior year's distributions increased by four percent. Distributions under this

subsection shall cease when the bonds issued for the construction of the baseball stadium are retired, but not more than twenty years after the tax under RCW 82.14.0485 is first imposed;

(5) For distribution to the stadium and exhibition center account, created in RCW 43.99N.060. Subject to the conditions of RCW 43.99N.070, six million dollars shall be distributed under this subsection during the calendar year 1998. During subsequent years, such distribution shall equal the prior year's distributions increased by four percent. No distribution may be made under this subsection after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met. Distributions under this subsection shall cease when the bonds are retired, but not later than December 31, 2020;

(6) For the purchase and promotion of lottery games and game-related services; and

(7) For the payment of agent compensation.

The office of financial management shall require the allotment of all expenses paid from the account and shall report to the ways and means committees of the senate and house of representatives any changes in the allotments.

NEW SECTION. Sec. 5. A new section is added to chapter 84.52 RCW to read as follows:

(1) A portion of the proceeds of the state property tax levy shall be distributed to school districts in the amounts and in the manner provided in this section.

(2) The amount of the distribution to each school district shall be based upon the average number of full-time equivalent students in the school district during the previous school year, and shall be calculated as follows:

(a) Out of taxes collected in calendar years 2001 through and including 2003, an annual amount equal to one hundred forty dollars per each full-time equivalent student in all school districts shall be deposited in the student achievement fund to be distributed to each school district based on one hundred forty dollars per full-time equivalent student in the school district for each year beginning with the school year 2001-2002.

(b) Out of taxes collected in calendar year 2004, an annual amount equal to four hundred fifty dollars per full-time equivalent student in all school districts shall be deposited in the student achievement fund to be distributed to each school district based on four hundred fifty dollars per full-time equivalent student for each year beginning with the school year 2004-2005. Each subsequent year, the amount deposited shall be adjusted for inflation as defined in RCW 43.135.025(7).

(3) The office of the superintendent of public instruction shall verify the average number of full-time equivalent students in each school district from the previous school year to the state treasurer by August 1st of each year.

NEW SECTION. Sec. 6. Section 5 of this act applies to taxes levied in 2000 for collection in 2001 and thereafter.

Sec. 7. RCW 84.52.067 and 1967 ex.s. c 133 s 2 are each amended to read as follows:

All property taxes levied by the state for the support of common schools shall be paid into the general fund of the state treasury as provided in RCW 84.56.280, except for the amounts collected under section 5 of this act which shall be directly deposited into the student achievement fund and distributed to school districts as provided in section 5 of this act.

Sec. 8. RCW 43.135.035 and 1994 c 2 s 4 are each amended to read as follows:

(1) After July 1, 1995, any action or combination of actions by the legislature that raises state revenue or requires revenue-neutral tax shifts may be taken only if approved by a two-thirds vote of each house, and then only if state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter.

(2)(a) If the legislative action under subsection (1) of this section will result in expenditures in excess of the state expenditure limit, then the action of the legislature shall not take effect until approved by a vote of the people at a November general election. The office of financial management shall adjust the state expenditure limit by the amount of additional revenue approved by the voters under this section. This adjustment shall not exceed the amount of revenue generated by the legislative action during the first full fiscal year in which it is in effect. The state expenditure limit shall be adjusted downward upon expiration or repeal of the legislative action.

(b) The ballot title for any vote of the people required under this section shall be substantially as follows:

"Shall taxes be imposed on in order to allow a spending increase above last year's authorized spending adjusted for inflation and population increases?"

(3)(a) The state expenditure limit may be exceeded upon declaration of an emergency for a period not to exceed twenty-four months by a law approved by a two-thirds vote of each house of the legislature and signed by the governor. The law shall set forth the nature of the emergency, which is limited to natural disasters that require immediate government action to alleviate human suffering and provide humanitarian assistance. The state expenditure limit may be exceeded for no more than twenty-four months following the declaration of the emergency and only for the purposes contained in the emergency declaration.

(b) Additional taxes required for an emergency under this section may be imposed only until thirty days following the next general election, unless an extension is approved at that general election. The additional taxes shall expire upon expiration of the declaration of emergency. The legislature shall not impose additional taxes for emergency purposes under this subsection unless funds in the education construction fund have been exhausted.

(c) The state or any political subdivision of the state shall not impose any tax on intangible property listed in RCW 84.36.070 as that statute exists on January 1, 1993.

(4) If the cost of any state program or function is shifted from the state general fund on or after January 1, 1993, to another source of funding, or if moneys are transferred from the state general fund to another fund or account, the office of financial management shall lower the state expenditure limit to reflect the shift. This subsection does not apply to the dedication or use of lottery revenues under RCW 67.70.240(3) or property taxes under section 5 of this act, in support of education or education expenditures.

Sec. 9. RCW 43.135.045 and 1994 c 2 s 3 are each amended to read as follows:

(1) The emergency reserve fund is established in the state treasury. During each fiscal year, the state treasurer shall deposit in the emergency reserve fund all general fund--state revenues in excess of the state expenditure limit for that fiscal year. Deposits shall be made at the end of each fiscal quarter based on projections of state revenues and the state expenditure limit.

(2) The legislature may appropriate moneys from the emergency reserve fund only with approval of at least two-thirds of the members of each house of the legislature, and then only if the appropriation does not cause total expenditures to exceed the state expenditure limit under this chapter.

(3) The emergency reserve fund balance shall not exceed five percent of ~~((biennial))~~ annual general fund--state revenues as projected by the official state revenue forecast. Any balance in excess of five percent shall be transferred on a quarterly basis by the state treasurer ~~((to the education construction fund hereby created in the treasury))~~ as follows: Seventy-five percent to the student achievement fund hereby created in the state treasury and twenty-five percent to the general fund balance. When per-student state funding for the maintenance and operation of K-12 education meets a level of no less than ninety percent of the national average of total funding from all sources per student as determined by the most recent published data from the national center for education statistics of the United States department of education, as calculated by the office of financial management, further deposits to the student achievement fund shall be required only to the extent necessary to maintain the ninety percent level. Remaining funds are part of the general fund balance and these funds are subject to the expenditure limits of this chapter.

(4) The education construction fund is hereby created in the state treasury.

(a) Funds may be appropriated from the education construction fund exclusively for common school construction or higher education construction.

(b) Funds may be appropriated for any other purpose only if approved by a two-thirds vote of each house of the legislature and if approved by a vote of the people at the next general election. An appropriation approved by the people under this subsection shall result in an adjustment to the state expenditure limit only for

the fiscal period for which the appropriation is made and shall not affect any subsequent fiscal period.

(5) Funds from the student achievement fund shall be appropriated to the superintendent of public instruction strictly for distribution to school districts to meet the provisions set out in the student achievement act. Allocations shall be made on an equal per full-time equivalent student basis to each school district.

Sec. 10. RCW 28A.150.380 and 1995 c 335 s 103 are each amended to read as follows:

(1) The state legislature shall, at each regular session in an odd-numbered year, appropriate from the state general fund for the current use of the common schools such amounts as needed for state support to the common schools during the ensuing biennium as provided in this chapter, RCW 28A.160.150 through 28A.160.210, 28A.300.170, and 28A.500.010.

(2) The state legislature shall also, at each regular session in an odd-numbered year, appropriate from the student achievement fund and education construction fund solely for the purposes of and in accordance with the provisions of the student achievement act during the ensuing biennium.

NEW SECTION. Sec. 11. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act.

NEW SECTION. Sec. 12. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 13. This act takes effect January 1, 2001, except for section 4 of this act which takes effect July 1, 2001.

Originally filed in Office of Secretary of State March 1, 2000.

Approved by the People of the State of Washington in the General Election on November 7, 2000.