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Forcing lawmakers to act involves big risks

By The Herald Editorial Board

It's clear that a \$100,000-a-day fine hasn't weighed heavily on the minds of lawmakers since the state Supreme Court sanctioned the state in 2015 for the Legislature's failure to fully fund basic education, as determined in the McCleary decision.

The fine, now totaling around \$28 million, exists only in an accounting of it kept by the state Office of Financial Management. Legislators didn't, as directed by the court, set up a fund to accept the daily payments. Much like the promise to figure out the state's education funding mess, the fine is an I.O.U.

The Supreme Court is now considering reports and briefs filed by legislators, [the McCleary plaintiffs](#) and [Randy Dorn, the state's Superintendent of Public Instruction](#), as it considers its next move regarding the Legislature's progress and whether to keep or amend the sanctions it has imposed.

[Lawmakers gave themselves a passing grade](#), pointing to recent increases in education funding for material, supplies and operating costs, student transportation, all-day kindergarten and more K-3 teachers. And legislators offered up their plan for a task force to study reforms to cure the state's over-reliance on school district levies to fund a significant portion of basic education, particularly teacher salaries.

But the McCleary plaintiffs and Dorn say not enough has been done. Both said lawmakers have delayed necessary action to meet the Legislature's own 2017-18 school year deadline and have refused to identify new sources of revenue necessary to fund McCleary's costs and end the state's reliance on local levies. Some lawmakers and state officials have said the Legislature needs to add about \$3.5 billion to the state's two-year budget to amply fund education as the state constitution requires.

Dorn has now suggested the court consider five options to spur action by lawmakers, four of which would force a very high-stakes game of chicken. [In an amicus brief to the court, Dorn suggests](#) the court consider:

Holding all lawmakers in contempt and fining them as individuals;

Withholding local school levy revenue from school districts;

Suspending business and personal tax incentives, including Boeing's aerospace tax breaks;

Shutting down state government, except for schools and other constitutionally required functions; or

Closing all public schools until the Legislature has fully funded them.

The first option imposes some individual financial coercion to convince lawmakers to get their work done. The other four are intended to bring unrelenting public pressure to bear on legislators.

We share Dorn's frustration with the Legislature's delays and its reluctance to consider honest solutions to provide the revenue needed. He makes these suggestions out of genuine concern for the students he is responsible for and not as a political stunt for votes; he's not running for re-election. But his final four suggestions come at too great a potential risk to school districts, business and individual taxpayers, the operation of important, if not vital, state agencies and school children themselves.

It's true that the threat to close all schools has worked elsewhere. Dorn, in his brief, points to New Jersey in 1976; its Supreme Court closed schools that May but lifted the order by July when its legislature passed a funding package, including a state income tax.

But those attempts to coerce lawmakers would put too much faith in a divided Legislature's ability to reach decisions in a reasoned and careful fashion that will fully fund education and at the same time correct inequalities in funding among rich and poor districts. Nor does it take into account how different the Legislature's makeup could be following this fall's elections.

The Legislature needs to employ all due speed, but not haste, to finish the job.

Dorn's "nuclear" options shouldn't be necessary.

But check back with us if the deadline isn't met.

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