Why a $67 million fine isn't motivating the Legislature to act

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Republican Sen. Joe Fain, far right of frame, speaks in a mostly empty Senate chamber during adjournment of a 30-day special legislative session, on Tuesday, May 23, 2017, in Olympia, Wash. Gov. Jay Inslee immediately called the Legislature back for a second overtime session so that lawmakers can complete their work on the state budget.
Rachel La Corte AP

Washington state now has racked up $67 million in daily fines over lawmakers' failure to fully fund public schools.

That big-dollar figure hasn't proven much of a motivator so far. Right now, the Legislature is trudging through a second special session, still unable to agree on a new two-year budget that fixes how the state pays for K-12 education.

The fines started accruing in August 2015, when the state Supreme Court imposed a $100,000 penalty for each day the Legislature failed to come up with a school-funding
plan. The high court ordered the Legislature to place the fine money in a separate account to benefit basic education.

That has yet to happen — and it’s unclear whether lawmakers will pay the fine this year, either.

Monday marks 670 days since the court ordered the fines.

“You’re going to pay it to yourself? You’re going to take it from your left pocket and put it in your right pocket?” asked Senate Majority Leader Mark Schoesler, R-Ritzville. “The important thing is to get the school-funding formula right, and not worry about where you’re going to put what money for the court.”

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Senate Majority Leader Mark Schoesler, R-Ritzville

In the McCleary case, the state Supreme Court has ordered lawmakers to come up with a plan to take on the full cost of salaries for school employees. Right now, local school districts pay a large portion of those salary costs through their local property tax levies, an arrangement the court has ruled unconstitutional.

A 2014 contempt finding wasn’t enough to spur lawmakers into action. A year later, the court upped the ante with the daily fine.

Now, the court is threatening more serious sanctions if lawmakers can’t agree on a McCleary solution by the time they adjourn this year. Those sanctions could include shutting down the state’s school system or striking down billions of dollars in tax breaks the Legislature has approved in the past.

Tom Ahearne, the lead attorney for the plaintiffs in the McCleary case, said one reason the fine isn’t pushing the Legislature to finish the job is because lawmakers don’t consider it to be that much money. This year’s legislative budget proposals would spend $43-45 billion over the next two years, with about half that money going to K-12 schools.

“Why that isn’t motivating legislators is one, it is a relatively small number in the big budget,” Ahearne said. “Two, legislators aren’t paying it themselves, so they don’t really care.”

Lawmakers were unable to reach a deal during their 105-day session that adjourned in April, and now face a June 30 deadline to pass a budget before the state government partially shuts down.

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Tom Ahearne, lead attorney for the plaintiffs in the McCleary education case

While key lawmakers have spent several weeks meeting behind closed doors on school funding issues, there wasn’t a great deal of progress to report as of Friday, said state Sen. Christine Rolfes, D-Bainbridge Island.
Among other things, lawmakers still don’t agree on how much school districts should be able to raise in local property taxes, Rolfes said.

In plans released earlier this year, the Republican-controlled Senate proposed dramatically reducing how much money school districts can raise locally, while the Democratic-led House favored a much higher cap on local levies.

Rolfes said during their backroom discussions, the $100,000-a-day fine isn’t the problem at the forefront of leaders’ minds.

“I think a bigger motivating factor is getting the job done in time to avoid permanent layoffs and big disruptions to school districts,” said Rolfes, who is part of the group negotiating education policy. She said to ensure the state’s 295 school districts could plan their budgets for the coming school year, lawmakers need to finish their work by June 30.

House Majority Leader Pat Sullivan, D-Covington, said while $67 million in accumulated penalties sounds like a lot, in reality, “it is such a small portion of what we’re going to appropriate for K-12 schools.”

“Even if the fine were increased to $500,000, it wouldn’t add up to what we’re spending on K-12 education,” Sullivan said.

Ahearne, the McCleary plaintiffs’ attorney, said the average person would view a fine of that size much differently.

“Most Washington citizens would not think that someone owing them $100,000 a day is something to be blown off,” he said.

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