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### 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](http://www.wasa-oly.org/TWIO).**

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**Join us at the 2013 WASA/WSSDA/WASBO Legislative Conference, March 10–11. Register now at <http://www.wssda.org>**

### 2013 Session Preview

On Monday, January 14, the 63rd Washington State Legislature will convene its 2013 legislative session. A recurring theme for the past several sessions, the 2013 session will begin amid fiscal concerns. During this “long” session, limited to 105 days, legislators must adopt a 2013–15 Operating Budget which currently has a projected \$900 million shortfall (that is, the gap between anticipated revenues and expected expenditures is nearly \$1.0 billion). To make matters worse, this projected shortfall does not include the significant down payment to K–12 education necessary to comply with the Supreme Court’s order in the *McCleary v. State* education funding case. Including that required funding swells the projected shortfall to well-over \$2.0 billion (or more, depending on the ultimate size of the down payment).

In simple terms, closing the budget gap will require broad reductions to most areas of state government or an increase in revenues (or a combination of those two options). After multiple years of large budget cuts, additional reductions will surely negatively impact direct services. Revenue increases will be difficult to achieve, however. Washington’s new governor, Jay Inslee (to be sworn into office on January 16) repeatedly discussed his opposition to tax increases on the campaign trail. Since being elected, he has continued to reject the idea of “general revenue increases,” going so far as to say that he would veto any tax package that reached his desk.

Agreeing with Governor-elect Inslee is a newly minted majority in the State Senate. Even though election returns resulted in the Democrats retaining a numerical advantage, 26-23, over the Republicans, a “Republican-minded” majority will control the Senate. Two conservative Democrats, Rodney Tom (D-Medina) and Tim Sheldon (D-Potlatch) have broken with their party and joined the Republicans to form a new 25-member “Senate Majority Coalition Caucus.” On Monday, which is sure to be a raucous (and historic) opening session, Coalition members will adopt new Senate rules, putting them in a position of power. After the rules are changed, Sen. Tom will be installed as Senate Majority Leader and Sen. Sheldon will be installed as Senate President Pro Tempore.

With a governing majority, the Coalition will also create its own Committee structure and with it, appoint Committee Chairs. The Coalition has proposed that 15 committees be created, with Republicans leading six of those committees, Democrats leading another six, and the final three co-chaired by members of each party. “Minority” Democrats have rejected this proposal and it appears that Republicans will control each of the Senate’s Standing Committees, including the all-important Rules Committee, which controls the agenda and flow of legislation on the Senate floor. Coalition leaders, and their newly installed Ways &

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Means Committee Chair, Sen. Andy Hill (R-Redmond), have already clearly stated they have no intention of even considering tax increases.

Further complicating any effort to raise revenue is Initiative 1185, which was overwhelmingly adopted by voters in November. I-1185, Tim Eyman's most recent tax-limitation initiative, requires a two-thirds majority vote of both houses of the Legislature to adopt revenue increases. I-1185's predecessor, I-1053, is before the Supreme Court awaiting a decision on its constitutionality. A ruling is expected to be handed down soon. Even if I-1053 is ruled to be unconstitutional, however, most legislators have made it clear any potential revenue package will not be adopted in Olympia, but would be sent to the voters for their decision.

The budget news in 2013 is grim (again); however, this session presents K-12 education with its best opportunity for real, meaningful growth in recent memory. K-12 education has the support of the Supreme Court. As they have retained jurisdiction in the *McCleary* case, legislators know their every move is being closely watched (as evidenced by the Court's most recent Order, discussed later in this *TWIO*). It will be interesting to see if they have the courage to ignore the Court and continue to, in simple terms, break the law. K-12 education is also strongly supported by the voters as shown in poll after poll. Use *TWIO* and other WASA legislative resources to engage with your local representatives and keep the pressure up, constantly reminding them that K-12 education is not just another budget expenditure, but a wise investment in the state's future. On Monday, legislators will swear an oath to uphold the constitution, which declares K-12 education as the State's "Paramount Duty." It is incumbent upon school administrators to keep legislators' feet to the fire to ensure they uphold their oath.

## Governor Gregoire's 2013-15 Budget Proposal

On December 18, 2012, outgoing Governor Christine Gregoire released her **final biennial Operating Budget proposal**. As required by law, Gregoire's budget submittal balances the budget within existing revenue. This budget would make policy reductions of \$829.3 million. For K-12 education, the budget would provide no new basic education funding to address *McCleary* (that is, no enhanced funding for: additional class size reduction; full day kindergarten expansion; Maintenance, Supplies & Operating Costs (MSOC) increases; or the new pupil transportation funding formula). Additionally, Local Effort Assistance (LEA or "levy equalization") would be reduced by \$100.0 million.

Gregoire rejected the current revenues approach, clearly stating that an all-cuts budget would have "unacceptable consequences for our state and its people." With that, Gregoire quickly turned the page and introduced a second budget (called a "Book II" budget in legislative parlance) which includes a series of program reductions along with, in her words, "reasonable revenue solutions to maintain essential state services." Additionally, her second budget includes a down payment to begin addressing the basic education needs as required by the Supreme Court in its *McCleary* decision.

Gregoire's Book II budget includes "maintenance level" changes (that is, required cost increases to continue current programs) of \$2.53 billion and "policy" additions of \$284.7 million. K-12 education would receive a \$1.0 billion down payment in an effort to comply with *McCleary*. The proposal would reduce K-2 class sizes in high poverty schools (\$193.4 million) and expand full day kindergarten in high poverty schools (\$121.0 million). Funding for MSOC would be enhanced (\$401.0 million), along with an additional allocation to train teachers in the state's new Teacher/Principal Evaluation Project and to give principals additional time to evaluate them (\$79.0 million). Additional pupil transportation funding would fully implement the new funding formula a year before it is required (\$209.1 million).

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In the 2011–13 budget, the state “temporarily” reduced salary allocations for teachers and other educational staff (by 1.9 percent and 3 percent, respectively). Gregoire’s proposal would restore those cuts, providing \$166.0 million. Increased educational staff Cost-of-Living Allocations required under Initiative 732, however, would again be frozen, saving \$360.3 million.

To allow for the increased spending in her budget, Gregoire proposes several revenue changes:

- Repeal of the current extracted fuel use tax exemption benefiting oil refineries. This is expected to produce \$62.6 million in 2013–15.
- Impose a phased in wholesale excise tax on gasoline and diesel fuel to pay for pupil transportation. Beginning July 1, 2013 the tax would be 1.85 percent; in 2015–17, it would be 2.91 percent; and in 2017–19, it would be 4.62 percent. The expected revenue in 2013–15 is \$368.0 million.
- Extend the current temporary beer tax surcharge and extend the temporary Business & Occupation tax surcharge, both scheduled to expire in June 2013, through the end of 2016. The additional revenues raised in 2013–15 (\$101.0 million in beer taxes and \$534.0 million in B&O taxes) would be used to help pay for pupil transportation costs until the wholesale excise tax is fully phased in.
- Re-impose the recent voter-repealed tax on carbonated beverages (raising \$57.0 million in 2013–15) and extend the current sales tax to candy and gum (raising \$68.6 million in 2013–15). This would be used to pay for home care worker raises recently mandated by state arbitration.

In addition to this tax package, Gregoire would enhance state revenues by transferring \$171.6 million from various accounts into the General Fund. She would also enhance the state’s General Fund by not making \$56.5 million in distributions to local governments.

Gregoire’s final budget proposal will have trouble gaining traction in the Legislature, even among those who support the ideas contained within it, simply because the outgoing governor will not be around to advocate for the package. Senate and House budget-writers will have their own set of ideas that will be developed and debated in the coming months and, given recent history, it is likely minority party budget-writers will present their own competing set of ideas. As the session progresses, Governor-elect Inslee is also expected to unveil his own budget proposal with his own thoughts and suggestions. Governor Gregoire’s budget, however, presents a starting point for discussion. And she presents a compelling case about the need for revenue. Let the battle begin.

For additional details on Governor Gregoire’s budget, please note that [OSPI has posted its budget “pivot tables”](#) projecting the differences between current funding and the Governor’s proposal. OSPI has also scheduled a K–20 Videoconference to review Gregoire’s proposal. It is scheduled for Wednesday, January 16 from 9:30-12:00. All ESDs have been set up to have interactive access to the K–20. The PowerPoint presentation for the videoconference will be posted on OSPI’s [budget preparation web page](#) no later than 8:00 a.m. on January 16.

## Joint Task Force on Education Funding

The Joint Task Force on Education Funding was established in 2012 in [HB 2824](#) and charged with: making recommendations for how the Legislature can meet the requirements of ESHB 2261 (adopted in 2009) and SHB 2776 (adopted in 2010); and developing a proposal for “a reliable and dependable funding mechanism” to support basic education programs. As required, the Task Force submitted its (somewhat incomplete) [Final Report](#) to the Legislature on December 31, 2012.

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outlining to determine the ultimate costs to amply fund ESHB 2261/SHB 2776; however, they failed to prioritize or develop a phase-in schedule for the line items within the basic education box. A majority of the Task Force also adopted a list of possible funding options, but they failed to adopt one “preferred option” as required by law. House Republican members of the Task Force submitted an “alternative proposal” (minority) report with their own ideas on the level of funding required to “fully fund” ESHB 2261/SHB 2776. They also rejected the idea that any new revenues were necessary to accomplish their suggested funding levels, but failed to “identify what areas already in the budget would be eliminated or reduced” as required by law. Disappointingly, even though Senate Republican members of the Task Force participated throughout the process, they failed to sign onto the Final Report; sign onto the House Republican minority report; or submit their own minority report.

The work of the Task Force, albeit incomplete, will be a major part of the discussion among legislators as they attempt to approve legislation and/or budgets to comply with the Supreme Court’s directives. It is vital that school administrators remain engaged in these conversations.

### ***McCleary v. State* Update**

When the Supreme Court ruled on the *McCleary v. State* case on January 5, 2012, they took the unique step of retaining jurisdiction in the case. At the time, it was unclear what retention of jurisdiction would look like. The State and the Plaintiffs (Network for Excellence in Washington Schools or NEWS) were required to submit briefs to the Court with their suggestions. On July 18, 2012, the Court submitted its **Final Order on Retention of Jurisdiction**.

In its Final Order on Retention of Jurisdiction, the Court directed the State to submit regular “compliance reports” to report on the State’s actions to achieve compliance with the constitutional paramount duty as required in the *McCleary* decision. The first report was required to be submitted on September 17, 2012. Subsequent reports are due within 60 days of the governor’s signing each biennial or supplemental budget until 2018. The Order provides an opportunity for the Plaintiffs to respond to the State’s reports addressing the adequacy of the compliance progress claimed by the State. The Plaintiff’s response must be filed within 30 days after the State submits its reports.

The Order also reiterates that the Supreme Court is requiring the State to fully comply with Article IX, Section 1 of the constitution by 2018, and accordingly requires each of the State’s compliance reports to demonstrate “real”, “measurable”, and “steady” progress towards meeting that 2018 full compliance deadline. Finally, the Order reserves for the Court full flexibility to decide the appropriate steps to take if the State fails to prove it is making the real, measurable, and steady progress required by the Court.

As required, the **State submitted its first “compliance report”** on September 17, 2012. Throughout the report, there is really no attempt to persuade the Court that the Legislature made any “real”, “measurable” or “steady” progress towards compliance with the Court’s directives. Rather, the Legislature asks to be excused “given the timing of the [*McCleary*] ruling, the critical need for an effective implementation plan, the need to close this [\$1.4 billion] deficit in a supplemental budget year, and uncertainty over the form of judicial supervision.” In fact, the report almost asks that the Legislature be forgiven for not making progress towards compliance because they “rejected proposals to balance the budget by making reductions to the program of basic education.”

On October 17, **NEWS filed its response** to the state’s first report. NEWS blasted the State’s report arguing that the Legislature clearly failed to “demonstrate steady progress” under

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ESHB 2261 and clearly failed to “show real and measurable progress” towards compliance with the constitution by 2018. NEWS argued the State’s filing “demonstrated the Legislature continued to talk about funding ESHB 2261, but also continued to not provide that funding. Continuing well known underfunding is not steady progress.”

Many legislators continue to believe that due to a “separation of powers” issue, the Court has no authority over the Legislature’s actions (or inactions). Firing a shot across the bow, the NEWS filing includes a list of “tools” (from constitutional case law) the Court could use to compel compliance with the constitution. Examples include:

- Imposing contempt sanctions and fines against recalcitrant officials.
- Prohibiting State payments for other specific expenses or line items until the Court’s Constitutional ruling is obeyed.
- Ordering the Legislature to fund specific education amounts.
- Prohibiting funding for less than 100% of students in a given program or grade level (e.g., full day kindergarten).
- Ordering the sale of State property to fund compliance.
- Issuing a writ of mandamus to the Legislature to compel performance.

Although the Court clearly has the prerogative to respond to these initial filings, it was not expected they would. The Court, however, issued **further orders regarding McCleary** on December 20, 2012. The Court determined that the State’s initial compliance report “falls short” of the Court’s earlier Order. The Court declared that the report “does not sufficiently indicate how full compliance with Article IX, Section 1 will be achieved.” The Court strongly states that “steady progress requires forward movement” and, responding directly to the State’s report, says “Slowing the pace of funding cuts is necessary, but it does not equate to forward progress.”

The State’s next compliance report is due following the 2013 Session and the Court now specifically directs the Legislature to “set out the State’s plan in sufficient detail to allow progress to be measured.” Additionally, the Legislature is directed to develop a phase-in plan that addresses “all areas of K–12 education identified in ESHB 2261.”

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The 2013 WASA Session Guide will be available soon! The Session Guide will be emailed to active members and will be available on our website.



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