

# FINAL BILL REPORT

## ESHB 2261

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### PARTIAL VETO C 548 L 09

Synopsis as Enacted

**Brief Description:** Concerning the state's education system.

**Sponsors:** House Committee on Education Appropriations (originally sponsored by Representatives Sullivan, Priest, Hunter, Anderson, Maxwell, White, Quall, Lias, Dammeier, Rodne, Wallace, Pedersen, Kelley, Goodman, Springer, Hope, Nelson, Miloscia, Carlyle, Hunt, Morris, Morrell, Probst, Pettigrew, Eddy, Simpson, Kenney, Moeller, Smith, Condotta, McCoy, Kagi, Chase, Rolfes, Clibborn, Ormsby, Haler and Cox).

**House Committee on Education Appropriations**  
**House Committee on Ways & Means**  
**Senate Committee on Early Learning & K-12 Education**  
**Senate Committee on Ways & Means**

#### **Background:**

##### Introduction.

*Basic Education.* Article IX, Sections 1 and 2 of the State Constitution declare that: (1) it is the paramount duty of the state to make ample provision for the education of the state's children; and (2) the Legislature is required to provide for a general and uniform system of public schools.

In response to a superior court ruling which held that the state had not expressly defined, determined the substantive content of, or funded a Program of Basic Education (School Funding I), the Legislature adopted the Basic Education Act (BEA) of 1977. Subsequent court decisions (School Funding II in 1983 and *Tunstall v Bergeson* in 2000) have held that other educational programs are also part of the state's constitutional obligations, including:

- Special Education programs for students with disabilities;
- Transitional Bilingual education programs;
- remediation assistance programs (now known as the Learning Assistance Program);
- transportation for some students; and
- education for students in residential programs and juvenile detention and for juveniles detained in adult correctional facilities.

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*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.*

Through this combination of statutory law and judicial decisions, these programs have come to be collectively referred to as "Basic Education," signifying a constitutional obligation by the state under Article IX to provide for the programs.

The courts have also established various principles that are associated with the Basic Education designation. For example, under the School Funding II superior court ruling, once the Legislature has defined and fully funded the Program of Basic Education, it may not reduce that level of funding, even in periods of fiscal crisis. However, the definitions and funding formulas are subject to review, evaluation, and revision by the Legislature to meet the current needs of the children in the state.

*Joint Task Force on Basic Education Finance.* In 2007 the Legislature established the Joint Task Force on Basic Education Finance (Task Force). The Task Force was charged with reviewing the definition of Basic Education, developing options for a new funding structure and funding formulas, and proposing a new definition of Basic Education that was realigned with the expectations for the state's public education system. The Task Force's final report was issued on January 14, 2009.

#### Program of Basic Education.

*Definition.* The 1977 BEA defines the Program of Basic Education as:

- the goal of the school system, which includes providing students the opportunity to develop essential knowledge and skills in various subjects;
- the Instructional Program to be made available by school districts; and
- the determination and distribution of state funding to support the Instructional Program.

*Instructional Program.* School districts must: make the Instructional Program accessible to all students aged 5 to 21; offer a district-wide average of 1,000 instructional hours in grades 1 through 12 and 450 hours for kindergarten; provide a minimum school year of 180 days; and provide instruction in the Essential Academic Learning Requirements. In addition, each school district must maintain a ratio of at least 46 Basic Education certificated instructional staff (CIS) for each 1,000 full-time equivalent (FTE) students. The CIS includes teachers, counselors, nurses, librarians, and other school staff required to have state certificates.

In 2007 legislation was enacted to phase-in the provision of full-day kindergarten, starting with schools with the highest number of low-income students. This expansion is expressly outside the definition of Basic Education.

*Funding Allocation for Instructional Program.* The distribution formulas for the Instructional Program are based primarily on staffing ratios that drive an allocation for each 1,000 FTE students. There are minimum staffing ratios for CIS, administrative staff, and classified staff, with the numeric ratios set forth in statute. The formulas must also recognize non-salary costs. The formulas are "for allocation purposes only," leaving it to school districts to determine how best to use the resources. The remaining detail of the funding and distribution formulas, including any enhancements beyond the statutory minimums, are found in the state appropriations act and associated documents.

*Categorical Programs.* State funding for the Learning Assistance Program (LAP) and the Transitional Bilingual Instruction Program (TBIP) must be expended on the students to be served in the program. A statute directs that funding for the LAP be based on the income level of students; otherwise, the funding formulas for these programs are contained in the state appropriations act.

Special Education for students with disabilities is funded on an "excess cost" basis. The formula, which appears in the state appropriations act, is a percentage (1.15 percent for children aged birth to five who are not in kindergarten and .9309 for students in grades kindergarten through 12) of the Instructional Program allocation. The allocation is based on a maximum of 12.7 percent of total FTE student enrollment in grades kindergarten through 12. The state appropriations act also establishes a Special Education Safety Net where funds are made available for safety net awards for school districts with demonstrated needs for special education funding beyond the amounts provided through the excess cost allocation.

#### Other Programs.

*Early Learning.* State and federally-supported preschool programs are overseen by the Department of Early Learning (DEL). The Legislature provides funding to support the Early Childhood Education and Assistance Program, which is similar to the federally funded Headstart program. The programs are delivered under contract with the DEL, and providers include school districts, Educational Service Districts, community colleges, and non-profit community organizations. Early Learning has not been considered part of Basic Education.

*Graduation Requirements.* Minimum high school graduation requirements are established by the State Board of Education (SBE) and include 19 course credits with a distribution of courses across subject areas. In 2008 the SBE adopted a policy framework for new graduation requirements called "Core 24" that is based 24 course credits. The SBE has also adopted a definition of a meaningful high school diploma: the opportunity for students to graduate from high school ready for success in postsecondary education, gainful employment, and citizenship.

*Highly Capable.* The courts have previously declined to include supplemental instruction for highly capable (gifted) students under the Program of Basic Education. The statutes for the Highly Capable Program say that state funds, if provided, are to be based on a per-student amount not to exceed 3 percent of a district's FTE student enrollment. The 2007-09 appropriations act allocates funding at 2.314 percent of FTE enrollment.

*Pupil Transportation.* The pupil transportation funding formula is intended to fund the costs of transportation of eligible students to and from school at 100 percent or as close as reasonably possible. The formula calculates costs based on a radius mile for each student transported, adjusted by various factors. A study in 2006 by the Joint Legislative Audit and Review Committee found a 95 percent probability that "to and from" pupil transportation expenditures exceeded the state allocation by between \$92 and \$114 million in the 2004-05 school year.

In 2007 the Legislature directed the Office of Financial Management to contract for a study recommending two alternative student transportation funding formula options. The final report was presented to the Legislature in December 2008.

#### Other Topics.

*Certification.* The Professional Educator Standards Board (PESB) establishes state certification requirements for teachers and other educators. There are two levels of state certification: residency and professional. To receive a residency certificate, teachers must complete an approved program offered through a College of Education. In 2007 the Legislature directed the PESB to implement a uniform and externally administered assessment of teaching skill for professional certification by 2010.

*Compensation.* State allocations for salaries for CIS are provided through a salary schedule adopted by the Legislature in the state appropriations act. The schedule is based on years of experience and academic degrees and credits attained by the individual. Since 1993 the Legislature has provided funding for Learning Improvement Days (LID) through the salary allocation schedule. The state appropriations act requires school districts to add the LID to the 180-day contract year to be eligible for the funds and limits their use to specific activities identified in a school improvement plan.

*Local Funding.* The School Funding I decision found that local voter-approved property tax levies may only be used to fund enrichment programs and programs outside the Program of Basic Education. The Levy Lid Act (enacted along with the BEA) limits the amount of revenue that can be raised through maintenance and operations levies. The Local Effort Assistance program (LEA) or levy equalization was created to mitigate the effect that above-average property tax rates might have on the ability of a school district to raise local revenues through voter-approved levies. The LEA is also expressly not part of Basic Education.

*Education Data.* Since 2002, the Office of Superintendent of Public Instruction (OSPI) has been developing a data system that assigns each student a unique student identification number and collects demographic and other information. In 2007 the Legislature directed the OSPI to establish standards for school data systems and a reporting format for school districts. A new student data system will be implemented statewide in 2008-09 with increased capacity to collect data and connect information from other data bases.

In 2007 an Education Research and Data Center (Data Center) was created within the Office of Financial Management. The purpose of the Data Center is to serve as a hub for data originating from the various education sectors: early learning, K-12, two- and four-year higher education, and workforce training and employment.

*Accountability.* The SBE has responsibility for implementing a statewide accountability system that includes identification of successful schools and districts, those in need of assistance, and those in which state intervention measures are needed. For the past two years, the SBE has been working on accountability, and on January 15, 2009, it adopted a resolution to develop an accountability index, work to build the capacity of districts to help their schools improve, establish a process for placing schools and districts on Academic Watch, and continue to refine the details of the accountability system.

## **Summary:**

### Introduction.

*Intent.* The Legislature intends to continue to review, evaluate, and revise the definition and funding of Basic Education in order to continue to fulfill the state's obligation under Article IX of the State Constitution. For practical and educational reasons, major changes in the program and funding cannot occur instantaneously. The Legislature intends to develop a realistic implementation strategy and establish a formal structure for monitoring the implementation of an evolving Program of Basic Education and the financing necessary to support it. The Legislature intends that the redefined Program of Basic Education and funding be fully implemented by 2018. It is the Legislature's intent that the policies and formulas under the bill will constitute the Legislature's definition of Basic Education once fully implemented.

*Quality Education Council.* A Quality Education Council (QEC) is created to recommend and inform ongoing implementation of an evolving definition of Basic Education. Members include eight legislators and representatives of the Governor's Office, the State Board of Education (SBE), the Superintendent of Public Instruction (SPI), the Professional Educator Standards Board (PESB), and the Department of Early Learning (DEL).

The QEC develops strategic recommendations on the Program of Basic Education, taking into consideration the capacity of the education system and the progress of implementing data systems. Recommendations are intended to inform educational policy and funding decisions, identify measurable goals and priorities for a ten-year time period, and enable continuing implementation of an evolving program. The QEC makes a report to the Legislature by January 1, 2010, including recommendations for resolving issues or decisions requiring legislative action during the 2010 legislative session. The QEC's first report also includes:

- a recommended schedule for concurrent phase-in of any changes in the Basic Education Program and funding with full implementation to be completed by September 1, 2018;
- a recommended schedule for phasing-in implementation of the new pupil transportation funding formula beginning in 2013;
- consideration of a statewide mentoring program; and
- recommendations for a Program of Early Learning for at-risk children.

The QEC is staffed by the Office of the Superintendent of Public Instruction (OSPI) and the Office of Financial Management (OFM). After 2009, the QEC meets no more than four times per year.

### Program of Basic Education.

*Definition.* Effective September 1, 2011, the Program of Basic Education that complies with Article IX of the State Constitution is defined as:

- the Instructional Program of Basic Education provided by public schools;
- the program for students in residential schools and juvenile detention facilities;
- the program for individuals under age 18 who are in adult correctional facilities; and

- transportation and transportation services to and from school for eligible students.

The Program of Basic Education also includes the opportunity for students to develop the knowledge and skills necessary to meet graduation requirements, intended to allow them the opportunity to graduate with a meaningful high school diploma, that prepares them for postsecondary education, gainful employment, and citizenship.

*Instructional Program.* Also effective September 1, 2011, the minimum Instructional Program of Basic Education offered by school districts is as follows:

- 180 school days per school year, with 180 half-days for kindergarten, which is increased to 180 full days beginning with schools with the highest percentages of low-income students;
- a district-wide average of 1,000 instructional hours across all grade levels, to be increased according to an implementation schedule adopted by the Legislature to 1,080 hours in grades 7 through 12 and 1,000 instructional hours in grades 1 through 6; and
- 450 instructional hours in kindergarten, to be increased to 1,000 hours as full-day kindergarten is phased-in.

The Instructional Program also includes the opportunity for students to complete 24 credits for high school graduation, subject to a phase-in of course and credit requirements by the Legislature; supplemental instruction through the Learning Assistance Program (LAP), the Transitional Bilingual Instructional Program (TBIP), and the Highly Capable Program; and Special Education for students with disabilities.

*Funding Allocation for Instructional Program.* Beginning September 1, 2011, a new distribution formula is created for the allocation of state funds to school districts to support the Instructional Program of Basic Education, to be implemented to the extent the technical details of the formula have been adopted by the Legislature. The formula is for allocation purposes only. Nothing requires a particular teacher-to-student ratio or requires use of allocated funds to pay for particular types or classifications of staff.

The formula is based on minimum staffing and non-staff costs to support prototypical schools. Prototypes illustrate the level of resources needed to operate a school of a particular size with particular types and grade levels of students using commonly understood terms and inputs. Allocations to school districts will be adjusted from the prototypes based on actual full-time equivalent (FTE) student enrollment in each grade in each school in the district, adjusted for small schools and to reflect other factors in the state appropriations act.

The school prototypes are defined as:

- High school: 600 FTE students in grades 9 through 12;
- Middle school: 432 FTE students in grades 7 and 8; and
- Elementary school: 400 FTE students in grades kindergarten through 6.

For each school prototype, the core allocation consists of four parts:

1. *Class Size:* an allocation based on the number of FTE teachers calculated using the following factors: the minimum instructional hours required for the grade span, one

teacher planning period per day, and average class sizes of various types as specified in the state appropriations act;

2. *Other Building Staff*: an allocation for principals, teacher-librarians, student health services, guidance counselors, professional development coaches, teaching assistance, office and technology support, custodians, and classified staff providing student/staff safety;
3. *Maintenance, Supplies, and Operating Costs (MSOC)*: a per-FTE student allocation for student technology, utilities, curriculum, instructional professional development, other building costs, and central office administration. The allocation will be enhanced for student enrollment in certain career and technical education and science courses; and
4. *Central Office Administrative Staff*: a staffing allocation calculated as a percentage of the allocations for teachers and other building staff for all schools in the district, with the percentage specified in the state appropriations act.

Allocations for middle and high schools that are based on the number of low-income students will be adjusted to reflect underreporting of eligibility for Free and Reduced Price Lunch (FRL) among these students.

*Categorical Programs*. Within the distribution formula for the Instructional Program of Basic Education are enhancements in addition to the core allocation for the following categorical programs:

1. *Learning Assistance Program*: an enhancement based on the percent of FRL students in each school to provide an extended school day and school year, plus an allocation for MSOC;
2. *Transitional Bilingual Instruction Program*: an enhancement for students eligible for and enrolled in the TBIP based on the percent of the school day a student is assumed to receive supplemental instruction, plus an allocation for MSOC;
3. *Highly Capable Program*: an enhancement based on 2.314 percent of each district's FTE student enrollment to provide an extended school day and school year, plus an allocation for MSOC; and
4. *Special Education*: an enhancement made on an excess cost basis that is a specified percentage (1.15 percent for students aged birth to five who are not in kindergarten and .9309 for students in grades kindergarten through 12) of the core allocation for basic class size, other building staff, and MSOC. The excess cost allocation is based on district-wide enrollment not to exceed 12.7 percent of total FTE enrollment in grades kindergarten through 12.

The Special Education Safety Net is placed into statute. Clarifications and corrections are made to other statutes to align with the new distribution formulas.

*Finance Working Group.* The OFM, with assistance from the SPI, convenes a technical working group to develop the new funding formulas and propose an implementation schedule for concurrent phase-in of increased program requirements and increased funding. The working group also examines possible sources of revenue to support increased funding and presents options to the Legislature and the QEC. The working group submits its recommendations to the Legislature by December 1, 2009.

*System Capacity.* The OSPI must make biennial determinations of the education system's capacity to accommodate increased resources and report to the Legislature. "System capacity" includes capital facilities, qualified staff and the higher education system's capacity to prepare them, and data and data systems capable of helping the state allocate resources.

#### Other Programs.

*Early Learning Working Group.* The Legislature finds that disadvantaged young children need supplemental instruction in preschool to assure they have the opportunity to meaningfully participate and reach the necessary levels of achievement in the regular Program of Basic Education. The Legislature intends to establish a Program of Early Learning for at-risk children and intends to include it within the overall Program of Basic Education.

The OSPI, with assistance from the DEL, convene a technical working group to continue developing a proposal for a statewide Washington Head Start Program. The working group:

- recommends eligibility criteria focusing on children aged 3 and 4 considered most at-risk;
- develops options for a mixed service delivery system;
- develops options for shared governance including the DEL and the SPI;
- recommends parameters and minimum standards; and
- continues development of a statewide kindergarten assessment process.

The working group submits progress reports to the QEC by September 1, 2010, and September 1, 2011, with a final report due by September 1, 2012.

*Graduation Requirements.* The SBE must forward any proposed changes to minimum high school graduation requirements to the legislative education committees and the QEC, and the Legislature must be provided an opportunity to act before changes are adopted. Changes with a fiscal impact on school districts take effect only if formally authorized and funded by the Legislature.

*Highly Capable.* The Legislature finds that, for highly capable students, access to accelerated learning and enhanced instruction is access to a Basic Education. The Legislature does not intend to prescribe a single method to identify highly capable students. Instead, the Legislature intends to allocate funding based on 2.314 percent of each school district's population and authorize districts to identify through multiple, objective criteria those students eligible to receive accelerated learning and enhanced instruction through the Highly Capable Program of the district. Access to the Highly Capable Program does not constitute an individual entitlement for any particular student. A Safety Net process is

created for districts with demonstrated needs for funding for Highly Capable Programs beyond amounts provided in the formula.

*Pupil Transportation.* A new pupil transportation funding formula is authorized using a regression analysis to allocate funds to school districts. The funding basis of a radius mile is removed. Ridership counts are increased to three times per year, and extended academic day transportation is included within allowable trips. Implementation of the formula is phased-in beginning with the 2013-14 school year, and a method of allocating any increased funding during the phase in period is specified.

Efficiency reporting also begins in the 2013-14 school year. Individual reviews will be conducted on districts with 90 percent or less efficiency. A report summarizing the efficiency reviews and resulting changes made by districts must be submitted to the Legislature by December 1 of each year.

#### Other Topics.

*Certification.* By January 1, 2010, the PESB must adopt articulated standards for effective teaching that are evidence-based, measurable, associated with improved student learning, and calibrated on a career continuum. To the extent possible, the PESB must incorporate standards for cultural competency.

Also by January 1, 2010, the PESB must:

- adopt a definition of "master teacher," consistent with and including certification by the National Board for Professional Teaching Standards;
- submit an update on implementation of the uniform external assessment for professional certification;
- develop a proposal for a uniform classroom-based means of evaluating teacher effectiveness at preservice, to be used during student teaching. The assessment must include a common and standardized rubric for determining performance and use multiple measures of classroom performance, artifacts, and student work. The proposal must establish a timeline for when the assessment would be required, taking into account the capacity of the education system to accommodate a new assessment;
- recommend the length of time that a residency certificate is valid and the time period for professional certification; and
- estimate the costs and authority needed to implement these provisions.

Beginning no earlier than September 1, 2011, professional certification will be based on two years of successful teaching experience and the results of the external assessment, and may not require candidates to enroll in a professional certification program. Beginning July 1, 2011, residency certificate programs must demonstrate how the program produces effective teachers.

*Compensation Working Group.* The OFM, with assistance from the OSPI, convenes a working group beginning July 1, 2011, to recommend the details of an enhanced salary allocation model that aligns educator certification with the compensation system.

Recommendations from the working group must include:

- reducing the number of tiers in the salary allocation model;

- accounting for geographic and labor market adjustments;
- the role and types of bonuses;
- accomplishing salary equalization over a set period of years; and
- fiscal estimates to implement the recommendations, including permanently grandfathering current staff on the current schedule.

The working group must also conduct or contract for a comparative labor market analysis of salaries and other compensation for specified groups of educators and school staff. The working group makes an initial report to the Legislature by December 1, 2012.

A statute regarding LID is amended so that school districts are eligible to receive funding that is limited to specific activities related to student learning.

*Local Funding Working Group.* The Legislature finds that the value of permitting local levies to support public schools must be balanced with the value of equity and fairness to students and taxpayers. Local finance through levies and the LEA are key components of the overall system of financing public schools even though they are outside the definition of Basic Education. The OFM, with assistance from the OSPI, convenes a working group beginning July 1, 2010, to develop options for a new system of supplemental funding through local school levies and the LEA. The working group must recommend a phase-in plan that ensures no school district suffers a decrease in funding from one year to the next due to implementation of the new system. A report to the Legislature is due December 1, 2011.

*Education Data Improvement System.* It is the Legislature's intent to establish a comprehensive K-12 data improvement system for financial, student, and educator data. The objective of the system is outlined. It is the further intent to provide independent review and evaluation of the system by the OFM Data Center.

It is the Legislature's intent that the K-12 data improvement system include the following:

- comprehensive educator and student information, with numerous variables specified;
- capacity to link educator assignment and certification information, and educator information with student information;
- common coding of courses and major areas of study;
- a common, standardized structure for reporting the costs of programs;
- separate accounting of state, federal, and local revenues and costs;
- information linking state funding formulas to school district budgeting and accounting;
- information that is centrally accessible and updated regularly; and
- an anonymous copy of data that is updated at least quarterly and made available to the public.

To the extent data is available, the OSPI must make various specified reports available on the Internet, which must be run on-demand against current data or run on the most recent data. The reports include: various measures of spending per student and by student, estimated according to a specified algorithm; improvement on statewide assessments, computed as specified; and various calculations of student to teacher ratios.

A K-12 Data Governance Group (Governance Group) is established within the OSPI to:

- create a comprehensive needs requirement document detailing the specific information and technical capacity needed by districts to meet the Legislature's expectations for a K-12 data improvement system;
- conduct a gap analysis of current and planned information;
- focus on financial and cost data necessary to support new K-12 financial models and on assuring the capacity to link data across systems;
- define the operating rules and governance structure for K-12 data collection, as specified; and
- establish minimum standards for K-12 data systems, as specified.

The OSPI must submit a preliminary report to the Legislature by November 15, 2009, and a final report by September 1, 2010.

The Data Center must identify critical research and policy questions and the data needed to address them. Annually, the Data Center provides a list of data elements and quality improvements to the Governance Group. Within three months of receiving the list, the Governance Group returns a feasibility analysis, and the Data Center submits a recommendation to the Legislature for any statutory changes or financial resources needed to collect or improve the data. The Data Center and the OSPI must take all actions necessary to secure federal funds to implement these provisions.

*Shared Accountability.* The Legislature finds that comprehensive finance reform must be accompanied by a new mechanism for defining relationships and expectations for the state, school districts, and schools. The Legislature intends to develop a proactive, collaborative system in which the state and school districts share accountability for supporting continuous improvement and achieving state standards.

The SBE is directed to continue development of an accountability framework that creates a unified system of support for schools. The SBE must develop an accountability index based on student growth using fair, consistent, transparent criteria and multiple indicators including graduation rates and assessment results. Once the index has identified schools needing assistance, a more thorough analysis will be done that includes examination of state resources, achievement gaps, and community support.

Based on the accountability index and in consultation with the OSPI, the SBE must develop a proposal and timeline for implementing a comprehensive system of voluntary support and assistance, taking into account the capacity limitations of the K-12 system. The proposal and timeline must be submitted to the Legislature for review before being implemented, and changes with a fiscal impact on school districts take effect only if authorized by the Legislature.

The SBE also develops a proposal and timeline for a more formalized comprehensive system targeted to those that have not demonstrated improvement in a voluntary system and also taking into account the capacity limitations of the K-12 system. The proposal takes effect only if formally authorized by the Legislature and includes:

- an academic performance audit conducted by peer review teams;
- corrective action plans, which would be developed by local school boards, be subject to approval by the SBE, and become binding on the school districts; and

- monitoring of district progress by the OSPI.

The SBE must work with the Data Center and the Funding Working Group to: determine the feasibility of using the prototypical school funding model as a reporting tool; seek federal approval to use the state accountability system for federal accountability purposes; and submit proposals and timelines to the Legislature by December 1, 2009.

**Votes on Final Passage:**

House	71	26	
Senate	26	23	(Senate amended)
House	67	31	(House concurred)

**Effective:** July 26, 2009  
May 19, 2009 (Section 112)  
September 1, 2011 (Sections 101-110 and 701-710)  
September 1, 2013 (Sections 304-311)

**Partial Veto Summary:** A section was vetoed that declared legislative intent to establish a Program of Early Learning for at-risk children to be included within the overall Program of Basic Education. The section also directed the DEL and the OSPI to convene a technical working group to develop a proposal for the Program of Early Learning and established reporting timelines. A section was also vetoed that established a Safety Net process for school districts with demonstrated needs for funding for the Highly Capable Program beyond amounts provide in the funding formula.