

# Initiative 732

## Background and Provisions

Initiative 732 was approved by the voters as an initiative to the people in November 2000. It is codified as RCW 28A.400.205-206 and RCW 50.465 and 468.

The initiative required the state to fund annual salary cost-of-living adjustments (COLAs) for all K-12 school district employees (*not* just teachers), academic employees of community and technical colleges, and technical college classified employees. The COLAs are based on the Seattle Consumer Price Index (CPI-Seattle) for the previous calendar year, as compiled by the U.S. Bureau of Labor Statistics.

Prior to I-732, salary increases for K-12 and community/technical college employees were a matter of policy discretion, as they have been and continue to be for state employees except for those higher education employees covered by the initiative. In 1999-01, for example, the Legislature as a policy step provided increases in salaries for state funded K-12 staff of 3.0 percent each year, with additional increases for beginning teachers. These increases were on top of the “step” increases that a large portion of instructional staff receive for additional experience and education.

I-732 as enacted specified that each school district is to be provided an allocation sufficient to grant this Seattle CPI-based cost-of-living increase, including mandatory salary-related benefits, to all employees of the district. It requires each school district to distribute its cost-of-living allocations in accordance with the district’s salary schedules, collective bargaining agreements, and compensation policies.

It also declared that beginning with the 2001-02 school year, the state must fully fund the COLAs directed therein as part of its basic education obligation under Article IX of the Washington Constitution.

## I-732 Litigation

Assertions by initiative sponsors that “all means all” notwithstanding, the text of I-732 left the state’s funding obligation under the new law unclear. While it stated that each district shall be provided an allocation sufficient to grant the COLA to “all employees of the district,” it also said in the same section that the cost of those COLAs would be calculated by applying the CPI-indexed percentage to “any state-funded salary base used in state funding formulas for teachers and other school district employees” – which includes salaries only of state-funded staff, and not staff supported by local levies or other funding. The calculation directed by the initiative did not and could not produce enough state funds to pay for the increases for “all employees of the district.”

The “all means all” interpretation also meant that for the first time, the state would be allocating money for salary increases for employees that were not funded by the state. This not only broke with the Basic Education Act, but raised a constitutional issue, because the amounts districts would receive from the state for salary increases would depend in part on their ability to pass local levies.

Governor Locke, in his proposed 2001-03 budget, included funding for I-732 salary increases for state-funded staff only. The governor said that this was the most reasonable reading of the text of the initiative, and that it followed a long-established state practice consistent with the major court

decisions on school funding in Washington. The Legislature agreed, appropriating I-732 funding only for district employees in the state-funded salary base. The Washington Education Association initiated a lawsuit to force the state to allocate funding for the increases for all school district employees, regardless of whether those employees were supported by state, local, or other sources of funds.

In *McGowan v. State* (2002), the state Supreme Court ruled that as a statutory responsibility only, the state must fund the COLA for all school district employees, whether included in the state salary base or not. The Court invalidated, however, the provision of I-732 that incorporated the COLA within the state's basic education funding obligation. The Court ruled the I-732 COLAs were not basic education because (1) salary increases for district employees are not a "program" of basic education, (2) providing COLAs to employees whose duties fall outside the definition of basic education would result in an unconstitutional commingling of basic education funding with levy funding, and (3) providing COLAs to levy-funded employees would result in an unconstitutional lack of uniformity in state funding among districts.

*McGowan* therefore affirmed that "all means all" for the purpose of COLA allocations to school districts. In rejecting the declaration of I-732 that the COLAs were a part of the state's basic education obligation, however, it removed any constitutional barrier to amendment of the initiative.

### **2003 Amendment of I-732**

As part of the effort to close a 2003-05 budget shortfall estimated at \$2.7 billion, Governor Locke proposed to amend both the education initiatives passed in 2000. The Legislature followed his lead. SB 6059 (C 20 L 03) suspended, for the 2003-04 and 2004-05 school years only, the requirement of I-732 that the state fund CPI-indexed COLAs for K-12 employees and the applicable CC/TC employees. The act also:

- Eliminated the provision of I-732 declaring the COLAs to be part of basic education that the Supreme Court had invalidated the year before;
- Removed the language of the initiative that required the state to fund the COLA for all school district employees, rather than just those funded by the state through formula-driven staff allocations. This made moot, through statutory amendment, the finding in *McGowan* that "all means all" for the purpose of the COLA allocations, and returned the law to the long-standing policy that the state funds K-12 salary increases for state-funded staff only.

SB 6059 resulted in budget savings of \$244 million in public schools and \$17 million in higher education. The legislation was an important piece of the 2003-05 budget solution intended to avoid tax increases while preserving essential state services.

I-732 funding has been maintained according to law since the suspension of the COLA in 2003-05. In the current biennium the state will spend \$420 million from the state General Fund for salary increases of 3.7 percent in the first year and 3.9 percent in the second.

### **School District Concerns about I-732**

In the last year or two school districts around the state have voiced complaints that I-732 works financial hardships on them because the state funds the COLAs only for state-funded staff so the districts must cover the increases for all other staff through their own resources. This has resulted, some report, in reductions to school staff and programs.

There are a number of possible considerations in assessing the school districts' complaint about I-732 and formulating a legislative response:

- (1) The Legislature has *never* funded salary increases for non-state funded staff. That was true before I-732, when the Legislature provided salary increases for state-funded staff at its discretion, as it usually did, and true after I-732, when that discretion was removed and a duty to provide annual, inflation-based increases was placed in law. This is not, then, a fundamentally new problem for school districts, which have always had to rely on local levies, discretionary state funds, and other resources to provide the same increases to non-state funded staff.
- (2) Districts are not mandated by law to provide the same increases to all staff. As a January 2008 OPR presentation to the Appropriations Subcommittee on Education states, "I-732 does not obligate school districts to provide COLA increases at the full Seattle CPI rate." Districts can choose to distribute those state dollars differently across staff, so long as they spend them on salary-related costs. In practice, OPR adds, this can be "logistically challenging" for districts because of state salary controls that require that all beginning teachers be paid consistent with the state salary allocation schedule. There are no state salary controls for classified staff, so this factor does not apply to them. No one underestimates the challenges that local collective bargaining can present to the management of state allocations for I-732 increases.
- (3) There is no doubt that the awkward method I-732 directs for the calculation of the COLAs can present difficulties for school districts in budget planning (just as it can for the state). The increase for each year is statutorily pegged to the percentage increase in the Seattle CPI for the prior calendar year. This means that when the state writes a biennial budget in the spring of each odd-numbered year, it must appropriate funds for the second-year COLA on the basis of a *forecast* of inflation for the calendar year it is in, in the near-certain knowledge this forecast will be wrong and it will have to come back in the second year and adjust the funded amount for the *actual* inflation figure. For the 2007-09 biennium the Legislature budgeted I-732 COLAs at 3.7 percent for the first year and 2.8 percent for the second year. The actual increase in the Seattle CPI for calendar year 2007 was 3.8 percent – much more than budgeted. This required the state to add \$39.1 million for I-732 in the 2008 supplemental budget to be in compliance with the law. It wreaked havoc for school districts that now, with contracts for many employees in place, had to decide how to distribute state COLA allocations of 3.8 percent, rather than 2.8 percent, across district staff. This was not a problem they faced when the Legislature had policy discretion in salary increases for K-12 employees. It was less certain that the Legislature would provide the increases than under I-732, but ironically, it was more certain what those increases would be in each year when it did provide them.

The Basic Education Finance Task Force has examined I-732 in detail as it deliberates on policy for compensation of school employees. Whether through the task force or their own deliberations, legislators should examine potential modifications to I-732 that reasonably, efficiently, and constitutionally address the concerns about the law raised by school officials.