

The *McCleary* Decision

History, Context & Next Steps

State Board of Education Retreat

September 26, 2012

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Guiding Questions for Today

1. What is the Pertinent History that Led Up to *McCleary*?
2. What is the significance of ESHB 2261 and SHB 2776 as it relates to the State meeting its Paramount Duty?
3. What does the *McCleary* decision say, and What is the job of the Joint Task Force on Basic Education Funding?
4. Ultimately, how can this process change the lives of kids in Washington State?

Part I – Pertinent History & Context

The same, but different

Many States Have or Are Litigating Issues of School Funding Adequacy & Equity

Included: List of State Litigation on School Funding from the *Access Network*

Plaintiff Victory (22)	State Defendant Victory (11)	Pending (8)
Alaska* Arizona† Arkansas Colorado Connecticut Idaho Kansas Kentucky Maryland Massachusetts Missouri◇ Montana New Hampshire New Jersey New Mexico New York North Carolina Ohio South Carolina Texas Vermont Wyoming	Alabama Arizona† Florida Illinois Indiana Missouri◇ Nebraska Oklahoma Oregon Pennsylvania Rhode Island	Alaska* California Connecticut Florida Illinois Rhode Island South Dakota Washington *Note: WA is included in 'pending' because this chart preceded the latest Supreme Court ruling in McCleary.

Source: [National Education Access Network](#)

The same, but different

Many States Struggle with School Funding Adequacy & Equity.
But Yes, Washington is Unique!

The relative strength of Washington's constitutional language:

*It is the **paramount duty** of the state to make **ample** provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.*

"No other State has placed the common school on so high a pedestal."

- Theodore Stiles, a member of the 1889 constitutional convention in Washington

A basic history

Pre-1974

- The *Strayer-Haig minimum foundation formula* – per pupil funding with no empirical basis.
- Significant variation – financially & programmatically -- existed across districts

1974

- *Northshore vs. Kinnear* decision (1974), followed by A.G. Slade Gorton opinion - ‘State didn’t lose this time, but its still vulnerable...’

1975

- *Wally Miller Report* documented staffing ratios in districts “that passed or did not request” a levy in 1975; this became a basis for defining *ample*.

1977

- *School funding I* – Rules against the State, as portended in *Kinnear*.
- Mandates funding for basic education through regular and dependable revenue sources, without resort to special levies.

A basic history

Part II – Selected Cases & Acts

1977

- Basic Education Act of 1977 & the Levy Lid Act of 1977
- The Basic Education Act defined basic education (180 days, funded staff ratios, minimum instructional hours, instructional content).
- The Levy Lid Act imposed first substantive limits on local excess levies.

1983

- *School Funding II*
- Once the legislature has defined and fully funded basic education, it may not reduce it.
- Basic education is not limited to just ‘general appointment’; expands to special needs

2009

- *Federal Way School District v. State*
- Varying salary allocations to districts alleged to be “arbitrary and irrational”
- Supreme Court reverses Superior Court – Variability of salary levels across district is not in and of itself unconstitutional.

2012

- *McCleary Decision...*

Source: Fraser, K. The State Constitution and School Funding in Washington: What Policy-Makers Need to Know – Presentation to Washington Learns; October, 2005

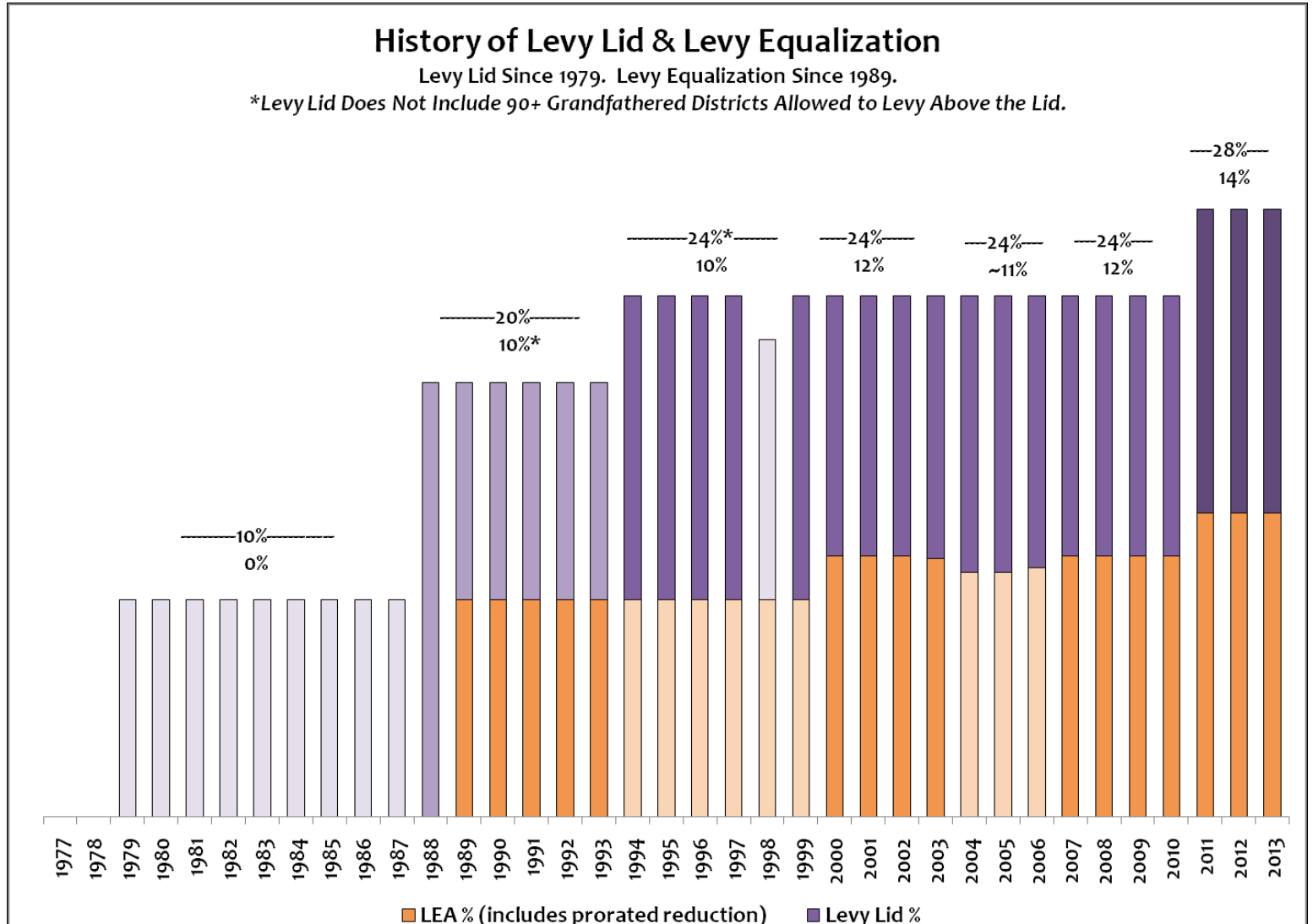
More History - Limits on local levies?

A combination of political pressures & judicial mandates

- \$183 million in levy failures (including Seattle) in the first 6 months of 1975 brought issue to a head.
 - Legislature provided temporary financial relief in 1975.
- Levy Lids Are, in Theory, a Mechanism for Ensuring Some Equity Across Districts, and Emphasizing State Funding (More Reliable, More Dependable) for Basic Education.
- Over history, the lid has been adjusted (upward) many times and multiple phase-down schedules have been introduced, but none fully implemented.

“Levy Creep”

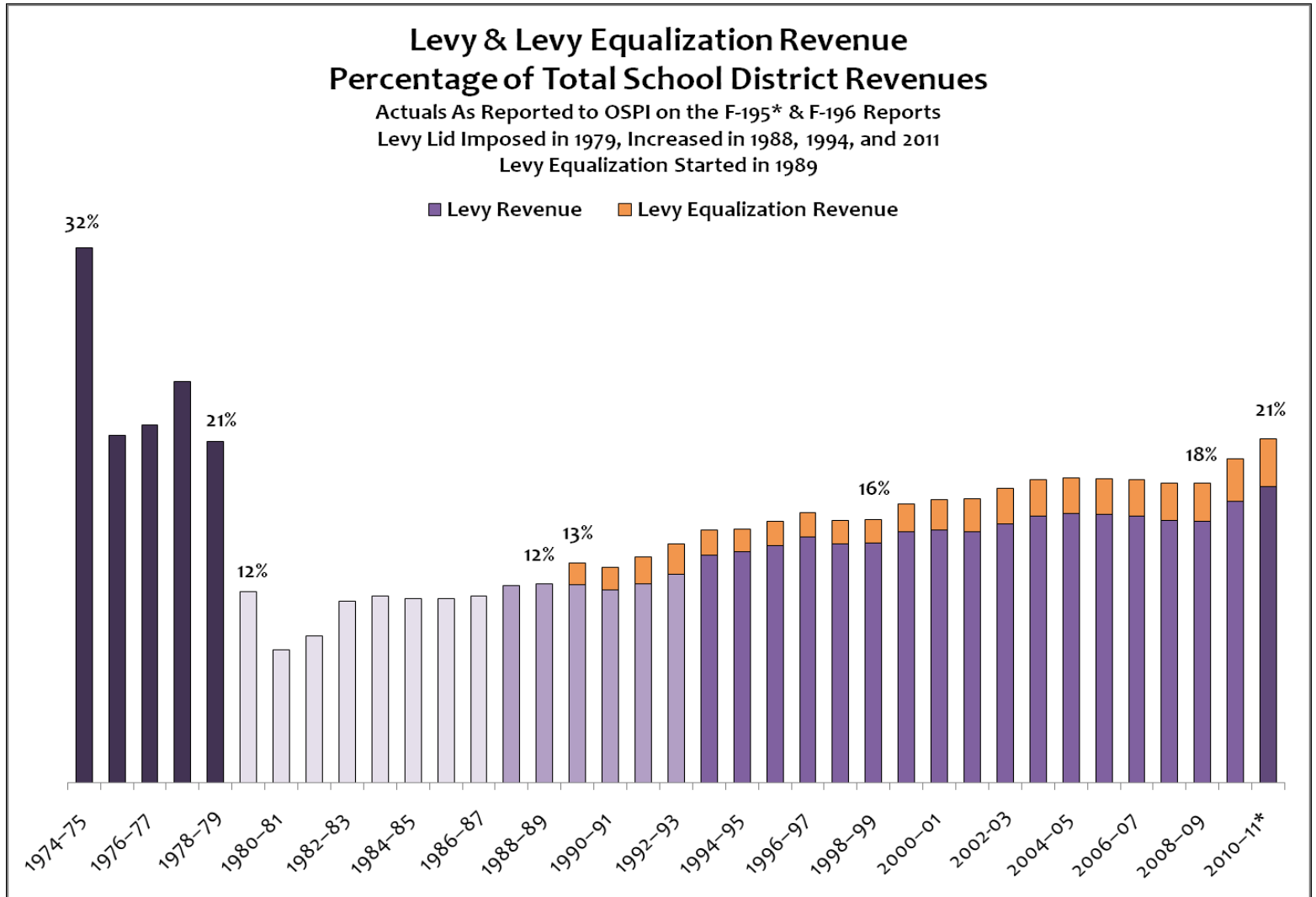
Since the Levy Lid Act, Legislature Has Gradually Raised the Lid



Source: Levy and Local Effort Assistance Technical Working Group - Presentation to the Quality Education Council; August 24th, 2011

“Levy Creep”

Since the Levy Lid Act, Local Taxes Gradually Assume Larger Share



Source: Levy and Local Effort Assistance Technical Working Group - Presentation to the Quality Education Council; August 24th, 2011

Part II –
The Significance of ESHB 2261
and SHB 2776

Two Landmark Pieces of Legislation

- Basic Education Task Force – recommended revised definition of Basic Education and funding enhancements.
- ESHB 2261 (2009) -- New funding structure
 - Adopted new definition of basic education, with prototypical schools framework.
- SHB 2776 (2010) – New funding promises
 - Made several significant commitments to enhance basic education funding over a phase-in period, culminating in 2017-18 school year.
- Arguably, these bills represented the first significant shifts away from the original assumptions of the Basic Education Act of 1977, and the Wally Miller Report.

What is the Prototypical School Framework?

General Apportionment , pre-2011

Relatively simple, but not very transparent

1. Student Enrollment



2. Formula Staff Units Per 1000 Students

Example: "46 CIS/1000 students in grades 5-12"

(Certificated Instructional, Administrative, & Classified Staff)



3. Salaries & Benefits

([LEAP 12E document](#))



4. Nonemployee Related Costs (NERC)

(Example: "\$10,000/Cert Instructional Staff")



State General Apportionment

"The State funds a certain number of staff units based on how many students are enrolled. Staff units are funded at different amounts in different districts based on grandfathering and other factors"

What class size does the state fund? How many counselors are funded in a typical high school?

How much do we provide each student for textbooks and computers?

New prototypical schools funding model

(effective September 1, 2011)

Presents class sizes and categories of staff in a prototypical school framework

Prototypical High School	
Prototype Enrollment: 600	
Staff are expressed as FTE/school	
Class Size in grades 9-12*:	28.7
Librarians:	.52
Guidance Counselors:	1.91
Health/Social Services: (Nurses/Social Workers)	.12
Administrative Staff: (Principals/Vice Principals)	1.88
Non-Instruct. Classified : (Office Aids, Custodians, Security Guards, etc)	6.37
Instructional Aides (Non-certified Classroom Aides)	.65

*Class size in high school vocational programs: 26.6
*Class size in Skills Center programs: 22.8

Shows the Assumed Class Size ... and Engenders Debate About Whether Its Adequate.

Is 1/10th of a Nurse FTE enough for a high school of 600 students enough?

“Old” system of funding students with different needs

Additional amounts for higher cost students – flat dollar amounts

✓ Bilingual Education

- \$886 per transitional bilingual student
- Is based on individual student eligibility

✓ Free/Reduced Lunch Eligible (Learning Assistance Program)

- \$282 per eligible student unit
- Not based on individual student eligibility; driven by poverty
- Enhanced amount provided for districts with concentrations of poverty above 40%

✓ Highly capable

- Based on 2.3% of enrollment
- \$400 per student
- Not based on eligibility of individual students, but rather an allocation based on a percentage assumption.

Flat Dollar Amounts (What is \$282 supposed to pay for? How do we know if its 'enough'?)

Amounts not updated for 2012 session

“New” system of K-12 Finance

(effective September 1, 2011)

Assumptions of program are more explicit

More Instructional Time for Students Needing Additional Help	
*Expressed as Additional Hours of Supplemental Instruction Per Week	
Learning Assistance Program*	1.52
Transitional Bilingual Program*	4.78
Highly Capable Program*	2.16

Is 1 ½ hours of additional instructional time per week enough?

Is \$56/kid enough for technology?

Supplies, Materials, & Other Operating Costs (MSOC)	
Non-salary related cost items	
Technology	\$56.63
Utilities & Insurance	\$153.87
Curriculum & Textbooks	\$60.80
Other Supplies & Library Materials	\$129.08
Professional Development	\$9.40
Facilities Maintenance	\$76.23
Security & Central Office	\$52.81
Total:	\$538.82
	/student*
*vocational & skill center students receive more	

Part III -- What are the promises embedded in 2261 & 2776?

Language of ESHB 2261 –

Major Program Changes - what is Required, and When?

	Instructional Hours/Days Kindergarten	Instructional Hours/Days grades 1-6	Instructional Hours grades 7-12	High School Graduation Requirements	Basic Education Program Adjustments
<i>Program Change</i>	A requirement for 180 full days of instruction in Kindergarten (from the current half day requirement), plus 1,000 hours of instruction (from the current 450 hours requirement).	Requires 1,000 hours of instruction in grades 1-6 by grade level rather than the current requirement, which is averaged across grades.	An increase in annual instructional hours, by grade, to 1,080 (from the current average across grades of 1,000 hours).	Instruction that provides students “the opportunity to complete twenty-four credits for high school graduation ”	Include highly capable program as part of the program of basic education.
<i>Statutory Timeline</i>	This requirement is to be “ <i>phased-in each year until full statewide implementation of all-day kindergarten is achieved in the 2017-18 school year.</i> ”	This requirement takes effect “ <i>according to an implementation schedule adopted by the legislature, but not before the 2014-15 school year.</i> ”	This requirement takes effect “ <i>according to an implementation schedule adopted by the legislature, but not before the 2014-15 school year.</i> ”	This requirement is “ <i>subject to a phased-in implementation of the twenty-four credits as established by the legislature.</i> ”	Effective September 1, 2011
<i>RCW Citation</i>	RCW 28A.150.315	RCW 28A.150.220	RCW 28A.150.220	RCW 28A.150.220 Also, RCW 28A.230.090 (c)	RCW 28A.150.260 10(c)

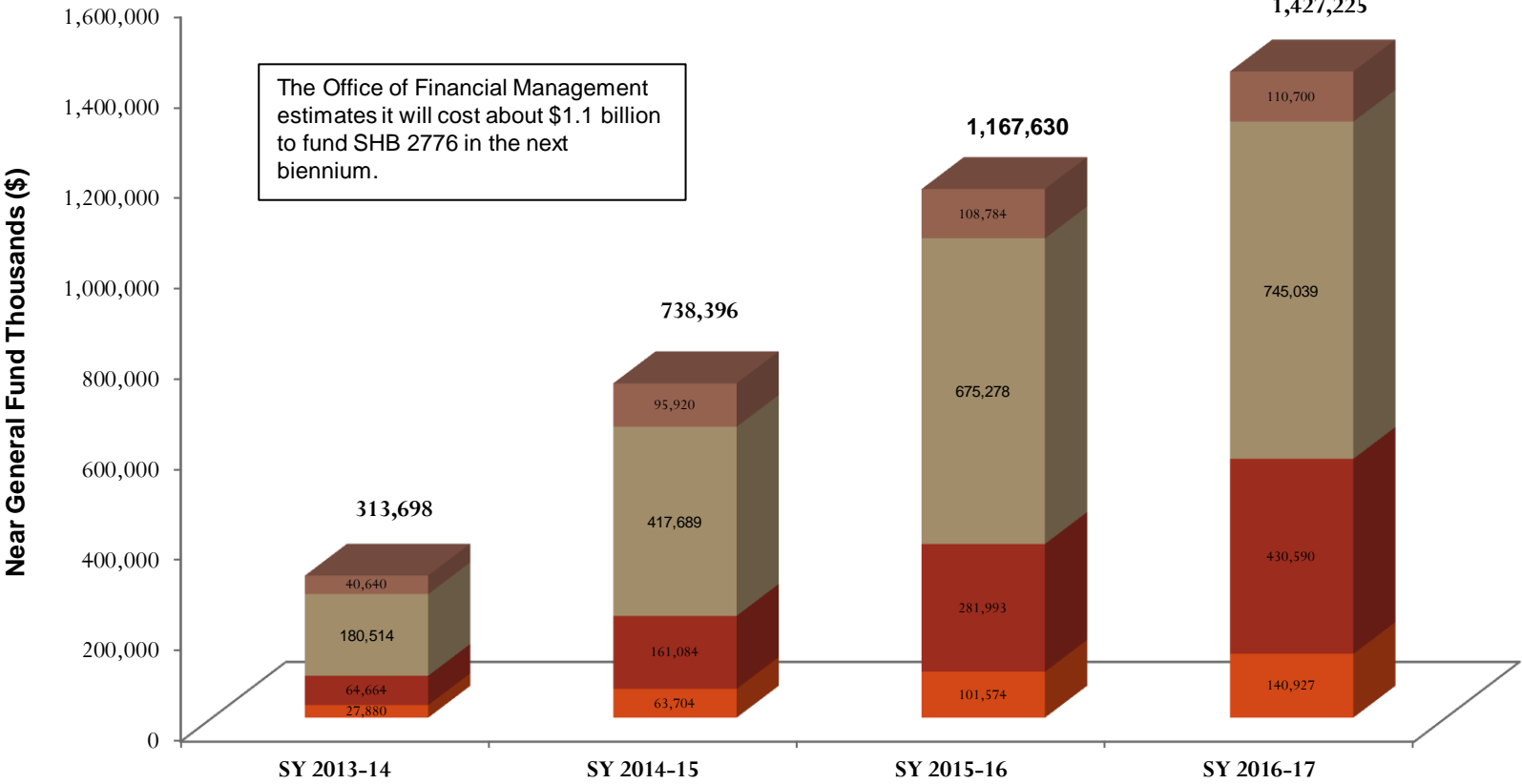
Language of SHB 2776 –

Major Funding Enhancements - What is Required, and When?

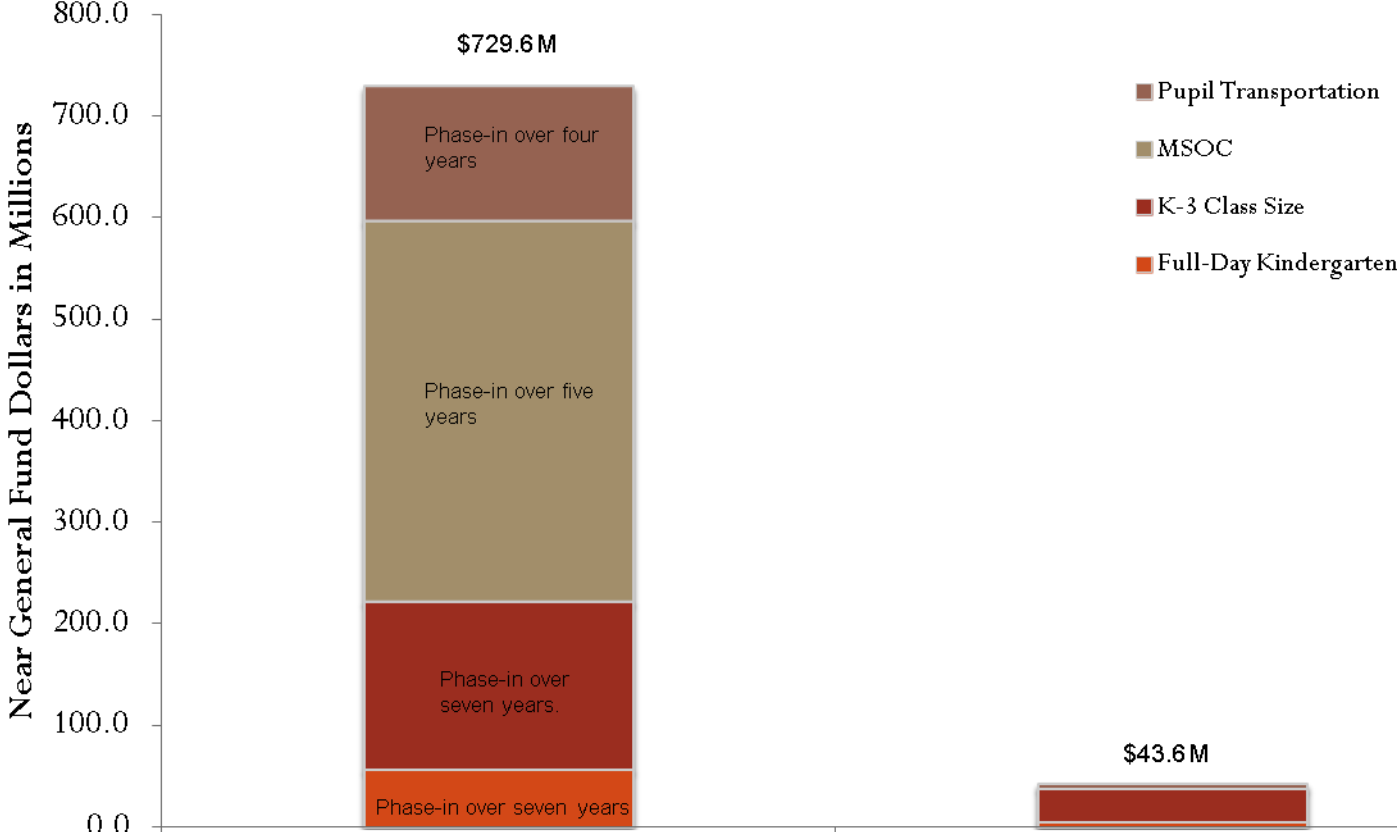
Transportation	K-3 class size	Kindergarten	MSOC	Intent Language
<p data-bbox="73 386 392 608">“The phase-in shall begin no later than the 2011-2013 biennium and be fully implemented by the 2013-2015 biennium.”</p> <p data-bbox="92 729 369 772">RCW 28A.160.192; effective 9/1/11</p>	<p data-bbox="440 386 759 1143">“During the 2011-2013 biennium and beginning with schools with the highest percentage of students eligible for free and reduced-price meals in the prior school year, the general education average class size for grades K-3 shall be reduced until the average class size funded under this subsection (4) is no more than 17.0 full-time equivalent students per teacher beginning in the 2017-18 school year.”</p> <p data-bbox="440 1205 759 1248">RCW 28A.150.260 4(b); effective 9/1/11</p>	<p data-bbox="809 386 1128 722">“During the 2011-2013 biennium, funding shall continue to be phased-in each year until full statewide implementation of all-day kindergarten is achieved in the 2017-18 school year.”</p> <p data-bbox="836 843 1112 886">RCW 28A.150.315; effective 9/1/11</p>	<p data-bbox="1178 386 1497 1065">“During the 2011-2013 biennium, the minimum allocation for maintenance, supplies, and operating costs shall be increased as specified in the omnibus appropriations act. The following allocations, adjusted for inflation from the 2007-08 school year, are provided in the 2015-16 school year, after which the allocations shall be adjusted annually for inflation.”</p> <p data-bbox="1178 1148 1497 1190">RCW 28A.150.260 8(b); effective 9/1/11</p>	<p data-bbox="1547 386 1866 801">“It is the intent of the legislature that specified policies and allocation formulas adopted under this act will constitute the legislature's definition of basic education under Article IX of the state Constitution once fully implemented.”</p>

SHB 2776 Costs of Implementation

■ Full-Day Kindergarten
 ■ K-3 Class Size
 ■ Materials, Supplies & Operating Costs
 ■ Transportation



SHB 2776: What is funded in the current budget?



	2776 Costs Per Fiscal Note	2011-13 Budgeted
Pupil Transportation	133.0	5.0
MSOC	374.5	0.0
K-3 Class Size	165.1	33.6
Full-Day Kindergarten	57.0	5.0

Part IV -- What does the *McCleary* decision say, and what is the job of the Joint Task Force on Basic Education Funding?

McCleary Decision – Key Passages

- “...the State has not complied ... with its duty to make ample provision for the education of all children”
- “The State must amply provide for the education of all Washington children as the State’s first and highest priority before any other State programs or operations”
- Ample provision means “considerably more than just adequate”
- “... This court cannot stand on the sidelines and hope the State meets its constitutional mandate to amply fund education”
- “We defer to the legislature’s chosen means of discharging its article IX, section 1 duty, but the judiciary will retain jurisdiction over the case to help ensure progress in the State’s plan to fully implement education reforms by 2018.”

Joint Education Funding Task Force

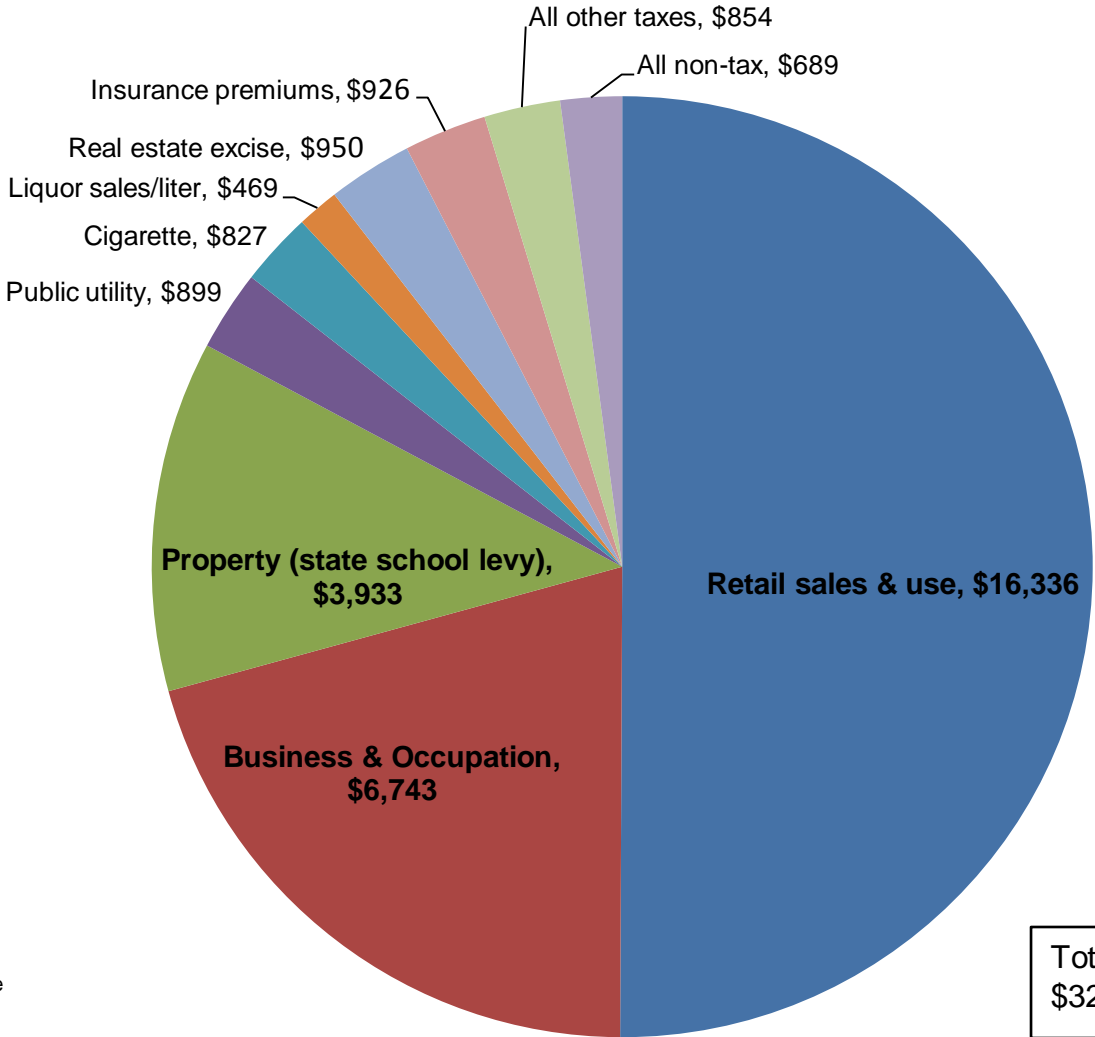
- Created by HB 2824, 2012 Session. Eight legislators, three governor appointees.
- “Shall make recommendations on how the legislature can meet the requirements outlined in Chapter 548, Laws of 2009 and Chapter 236, Laws of 2010.”
- “Shall develop a proposal for a reliable and dependable funding source to support basic education programs.”
- Report due December 31, 2012.

What are Some Key Considerations for the Joint Task Force?

- What does 'Ample' cost?
- Can economic growth alone solve the problem of school funding adequacy in this state?
- Can funds be redirected within the existing budget to help defray the cost of funding *McCleary*?
- Does the tax structure matter?
- How can (or should) higher education and early learning be protected from the pressures to dedicate state funding to K-12, per *McCleary*?
- What sorts of accountability provisions will ensure that additional funding produces additional results?

Where does the money come from?

General Fund-State Tax Collections, Forecast 2013-15 (\$ Millions)

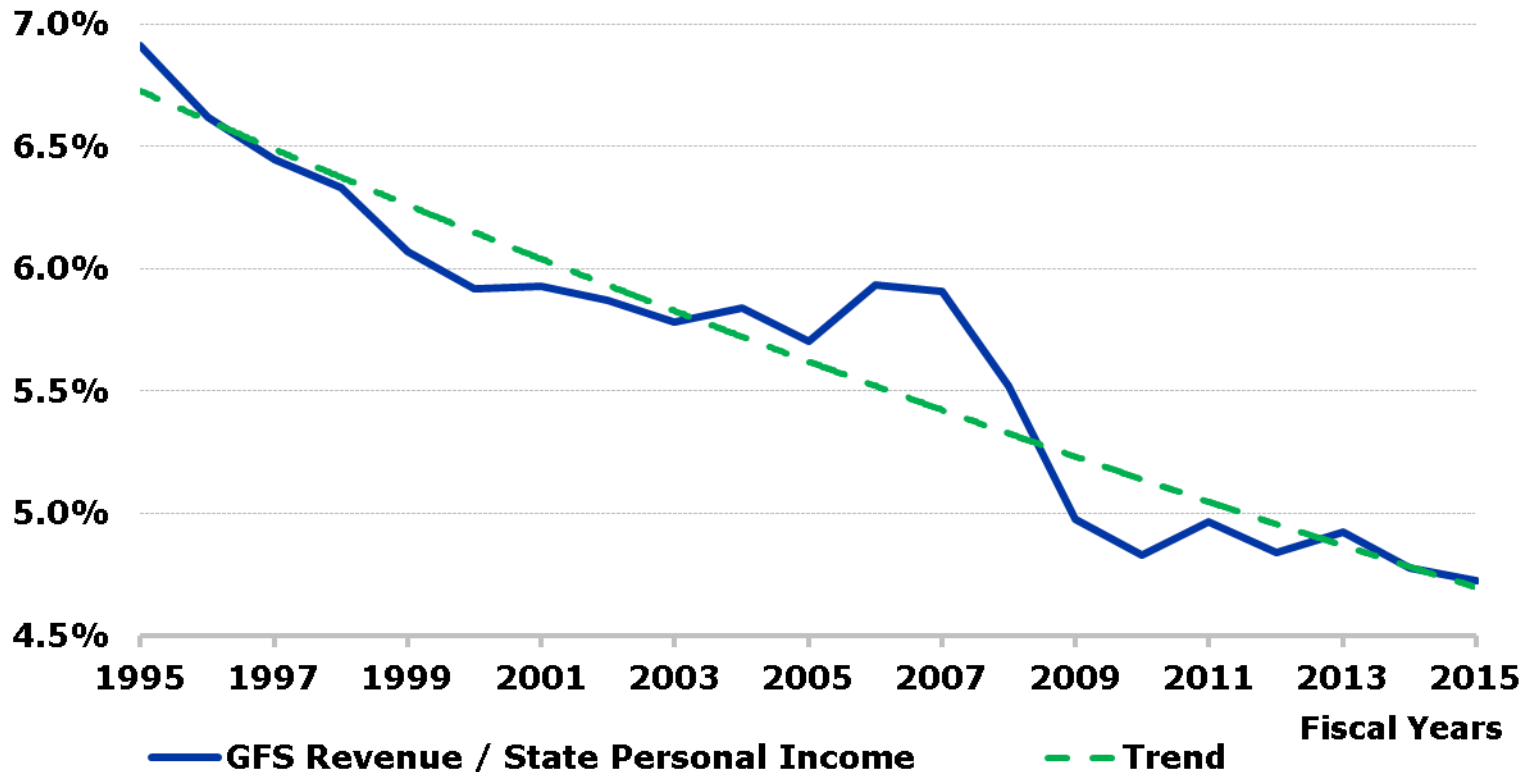


Data: Economic and Revenue Forecast Council, June 2012.

Total General Fund-State: \$32,625 million

Over time, people are contributing less – as a percentage of their income – to the state general fund. But why?

Total General Fund-State Revenue as Percentage of State Personal Income



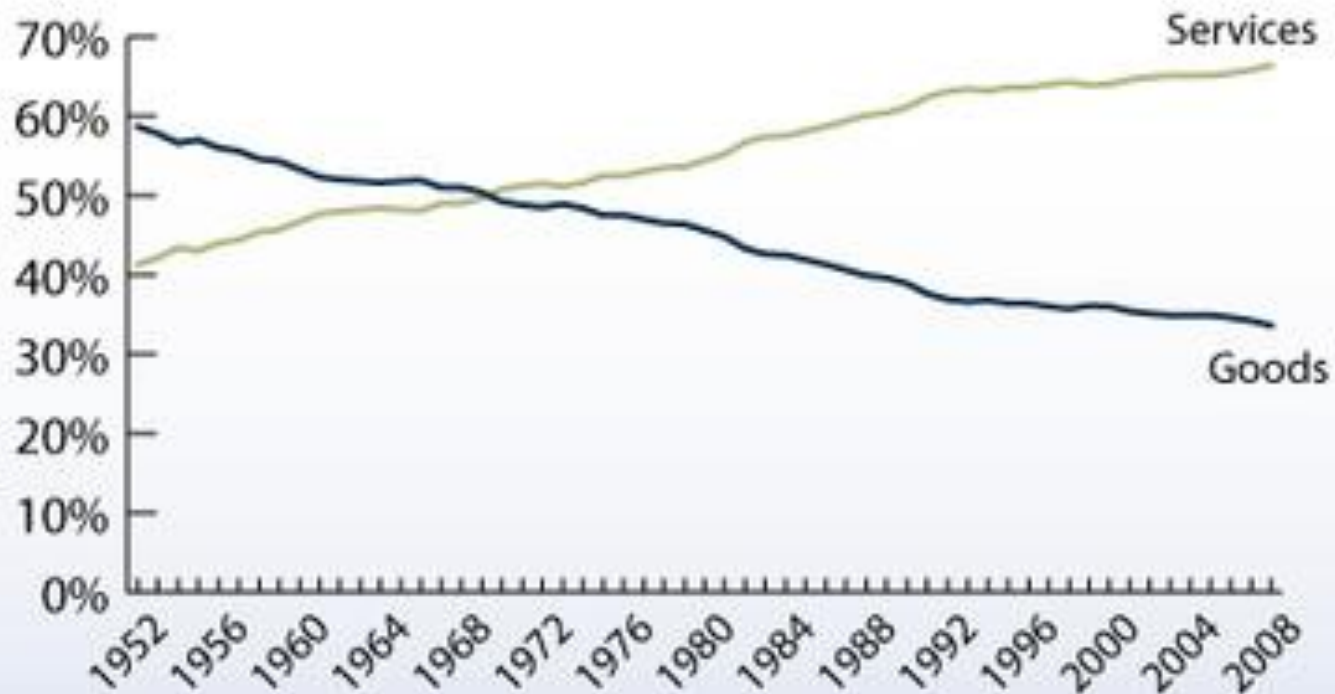
*Current definition of Revenue Act

Source: Washington Economic Revenue & Forecast Council; data through FY 2011, February 2012 forecast

Is a Goods-based Sales Tax an Anachronism?

As purchasing has gradually shifted from mostly goods to mostly services, WA's sales tax has eroded. (And Internet sales takes a cut, too)

Figure 3: Goods and services in the U.S. as a share of personal consumptions expenditures, 1952-2008

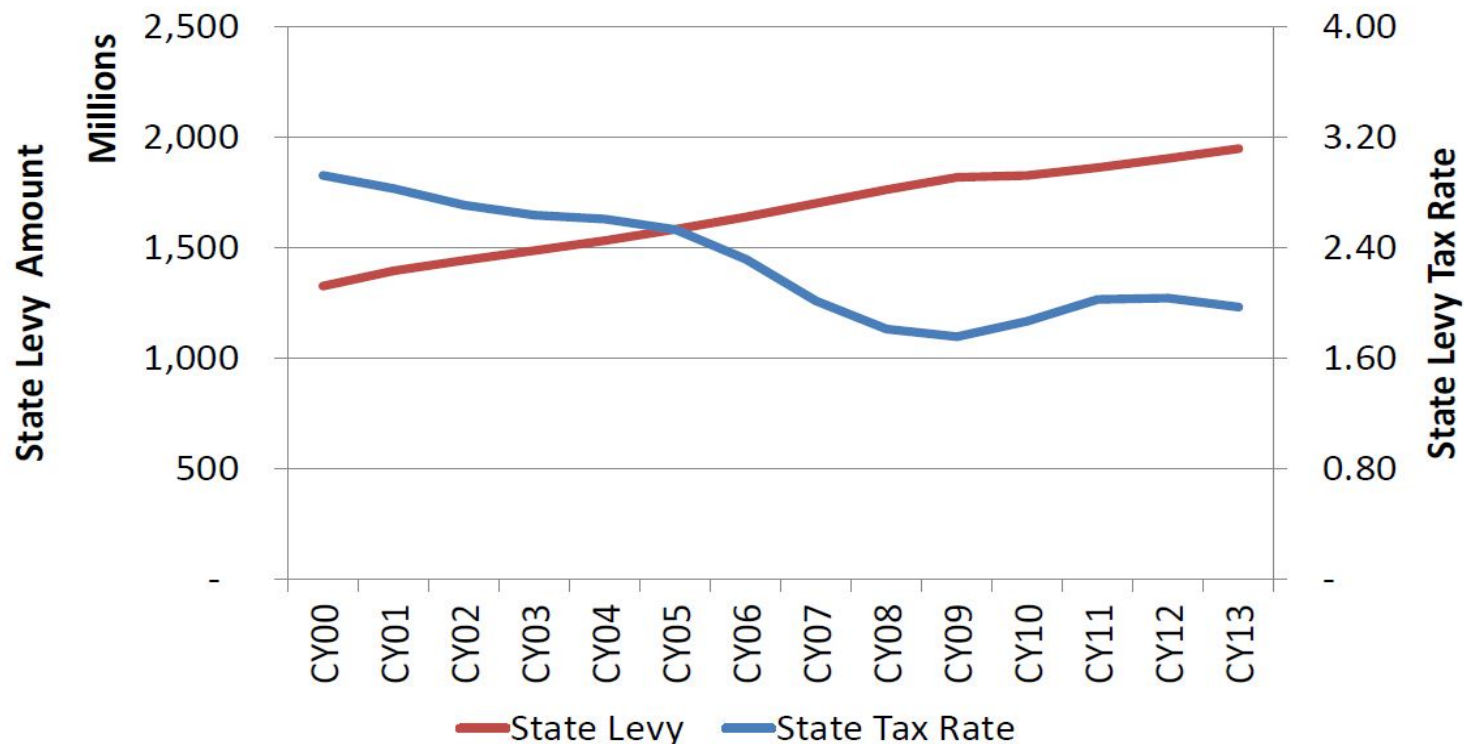


Source: BPC calculations of data from the U.S. Bureau of Economic Analysis (NIPA 1.1.5)

Secondary Source:
Washington State
Budget & Policy
Center

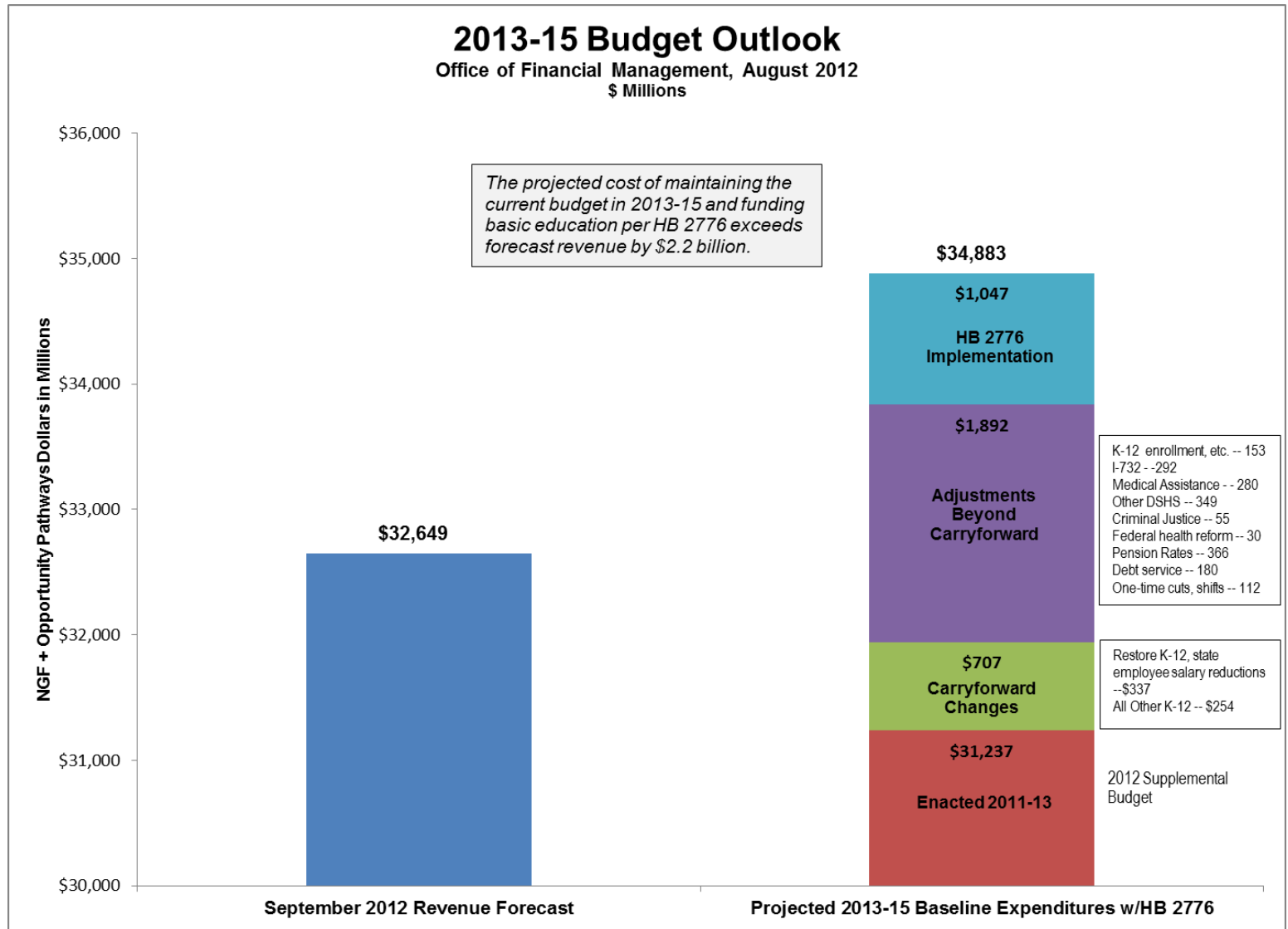
But, I thought we dedicated \$3.60 of state property tax to education?

Since 2000 the state property tax levy has grown at about 3% per year. The tax rate declined from \$2.92 in 2000 to a low of \$1.75 in 2009. The 2011 rate is \$2.06.

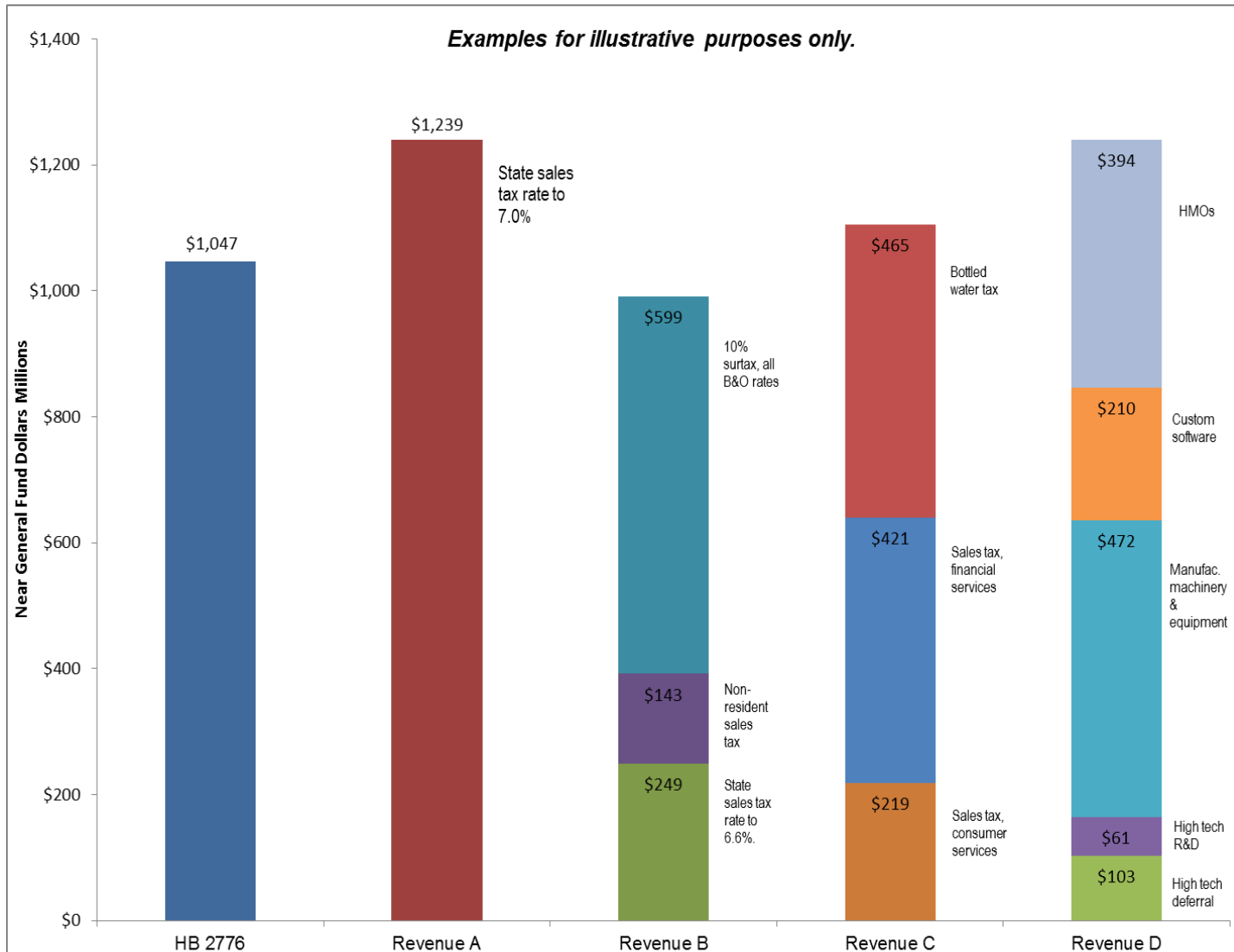


Source: House Ways and Means Committee Staff Materials

The Budget Challenge for 2013-15



What does the cost of 2776 in the next biennium represent, if funded solely from new taxes?



Data: Joint Task Force on Education Funding, Sept. 2012. QEC, Jan. 2010. Revenue estimates shown are for 2011-13.

The Future of McCleary

Asking the Tough Questions

- Are McCleary mandates and Initiative-inspired spending limits ultimately incompatible?
- What's the End Game for McCleary? Even if they “Retain Jurisdiction,” what can the Court ultimately do?
- What if the public doesn't agree schools are underfunded?
- If you had \$1 billion to invest, what would you buy?
- How do we appropriately balance the rights of children with the rights of tax payers (how much is too much to ask for? And what's the burden of proof?).
- Swapping increased state taxes for reduced local taxes may make a greater portion of school funding ‘reliable and dependable,’ but it won't necessarily improve outcomes for kids. What's in it for the kids?

The Future of McCleary

How can this change the lives of kids?

- Money alone won't guarantee better outcomes for kids. It's a necessary, but not sufficient, precondition of student success.
- Funding needs to be accompanied by intentionality in...
 - System Goals (and therefore, streamlined governance)
 - Accountability for Results
 - State Assistance to Struggling Schools