



To: House Committee on Business and Labor
From: Richard Donovan, Oregon School Boards Association
Re: HB 4113, class size as a mandatory subject of bargaining
Date: Feb. 7, 2018

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Chair Holvey and members of the House Committee on Business and Labor:

On behalf of OSBA membership, including 197 school districts and 19 Education Service Districts throughout the state of Oregon, thank you for the opportunity to testify on HB 4113. OSBA strongly opposes the passage of HB 4113. It’s bad policy, it’s expensive, and it’s unlikely to help students in any way.

HB 4113 would make class size a mandatory subject of bargaining in contract negotiations between school districts and educator representatives. Are class sizes in some districts too large? Absolutely. Do large class sizes impact the way teachers teach and students learn? Almost certainly. But is mandating that the bargaining table be the venue for addressing these issues good policy? Absolutely not, because implementation will come at tremendous cost to school districts, and research indicates it is unlikely to tangibly benefit student outcomes. Every dollar spent on class size is a dollar that is not spent on something that is significantly beneficial to students and their achievement.

Enacting HB 4113 will either reduce class size or result in penalties to school districts, or both

Ratifying HB 4113 will result in at least one of two possible outcomes: forced class-size reduction or increased costs to school districts in the form of contractual penalties. Both are bad for school districts and students.

Class Size Reduction policy analysis

Forcing class-size reduction is bad for Oregon right now because it would be expensive, and nothing indicates that it is the best investment to benefit student achievement. In a meta-analysis of CSR policy research, the author concludes, “Reducing class size is one of the most expensive things you can do in education. Even if it does have a substantial positive effect, it still might not be the best use of limited resources.” In some cases, other investments, including raising teacher salaries, could be more effective. “Really the lesson is that you want to build in flexibility... Different school districts have different needs. It’s very far from one-size-fits-all.”¹

¹ Thompson-Dexaux, citing Chingos, *Class Size: What the research says...*; Appendix 3.

Other states that have implemented such policies over the past several decades, including California and Florida, have not seen the anticipated gains in student achievement. Those states have recently moved away from statewide legislatively mandated class-size reductions, citing cost.²

If the goal of HB 4113 is to reduce class sizes, this will come at tremendous cost. The Oregon Department of Education (ODE) estimates that it would cost hundreds of millions of dollars to reduce class sizes by even one student statewide.³ Furthermore, cost projections don't include any indication as to where new teachers will be found. In other states, teacher shortages combined with class-size reductions have led to disastrous results.⁴ Finally, these projections do not include any other costs associated with expanding the number of classrooms, including but not limited to facilities costs and other one-time costs.

Bargaining impacts to school districts

If the goal of HB 4113 is not to force class-size reductions, then it is to elevate the status of class size to that of other working conditions. Currently, class size is a permissive subject of bargaining. Collective bargaining is governed by relevant state and federal law. For school districts, community colleges and other public-sector employers, the Public Employee Collective Bargaining Act (PECBA), ORS 243.650-243.782, governs collective bargaining. Initially enacted in 1973, PECBA underwent significant revision in 1995 via SB 750.

Under PECBA, a subject of bargaining falls into one of three categories: mandatory, permissive, or prohibited. The distinction between mandatory and permissive is crucial. An impasse over a mandatory subject of bargaining can trigger significant legal consequences, including economic action, such as strikes. Permissive subjects may not trigger economic action at impasse.

In the 1980s and 1990s, a series of Employee Relations Board (ERB) cases, collectively known generally as “the Tigard cases,” dealt with class size directly.⁵ From the early decisions under the PECBA, the ERB held that class size was a permissive subject of bargaining. As the years went on, this changes as the ERB

² Freedberg, *Class size reduction policies continue to unravel*, Appendix 3.

³ Costs, Appendix 1

⁴ Jepsen/Rivkin, *Class size reduction...*, Appendix 3.

⁵ *Tualatin Valley Bargaining Council v. Tigard School Dist.*, 11 PECBR 590 (1989), *affirmed*, 106 Or. App. 381 (1991), *reversed*, 314 Or. 274 (1992), *on remand*, 14 PECBR 321 (1993), *AWOP*, 128 Or. App. 59 (1994).

found that class size was closely related to quintessential bargaining issues such as pay and workload. In 1980, the ERB held that, while class size itself was a permissive subject, the impacts of class size were mandatory for bargaining.

A decade later, the ERB reversed its prior holdings and held, in the first Tigar case, that class size was mandatory for bargaining. The Court of Appeals affirmed the decision, but the Oregon Supreme Court reversed, holding that the Board improperly focused on workload rather than correctly implementing the existing balancing test. A further series of remands and decisions followed through 1994, setting the stage for the 1995 legislative revision of PECBA, which deliberately created a class-size exclusion for bargaining under PECBA. Creation of that exclusion was a major motivating factor in the legislative process, and its inclusion in the final bill would later be referred to as the “crown jewel” of the scope of bargaining exclusions attained in SB 750 by the governor’s chief negotiator, Henry Drummonds.

If the desired outcome is a discussion about class size between teachers and school board members, then HB 4113 is unnecessary. School district boards regularly engage in class-size discussions. Some districts⁶ even include class-size language in contracts.

Rather, it seems more likely that elevating class size to the status of working condition is about requiring school districts to put into contracts expensive penalty clauses for class sizes that are beyond their control. School districts cannot control how many students are legally entitled to receive services, nor can they control the main source of the budget, the SSF allocation from the Legislature. These types of penalty clauses have been proposed across the state, and range from per-student/per-day costs, stipends as a percentage of teacher salary, and others.⁷

HB 4113 elevates the chance of labor strife and work stoppage, and Washington state is an example.

If school districts are forced to negotiate over class size, then the possibility of strikes in school districts across Oregon becomes much more likely. Consider Washington state. Voters in Washington passed I-351 in 2015, a statewide ballot measure targeting class size. When the Washington Legislature declined to implement that measure, citing the ongoing *McCleary* education funding case,⁸ tens of thousands of teachers walked out. The strikes affected at least 65 school

⁶ Sample districts with class size contract language that OSBA is aware of: Medford, St. Helens.

⁷ See sample district proposals with district penalties, Appendix 2

⁸ http://www.courts.wa.gov/appellate_trial_courts/SupremeCourt/?fa=supremecourt.McCleary_Education

districts⁹ across Washington. An estimated 30,000 teachers walked out of classrooms.¹⁰ In Seattle alone, more than 50,000 students were unable to attend class.¹¹

There are few outcomes more damaging to a local community and to student achievement than teachers walking out on strike. Teacher strikes are bad for students. They hurt student achievement.¹² And enacting HB 4113 would make strikes more likely.

Conclusion

Mandating class-size bargaining is about either forcing districts to reduce class size, which is dubious and expensive policy, or forcing districts to pay more money that they do not have. If the Legislature wants to actually reduce class size, then the focus should be on investing in policies to do so, or to otherwise support teachers.

Supporting HB 4113 means supporting a special-interest group at the cost of Oregon's students and student achievement. And it comes at a potential cost that this state cannot afford, even as this legislative body is planning over the coming year to address how we can create and adequately pay for a K-12 system that leads to student success. Please vote "no" on HB 4113.

⁹ <https://www.washingtonea.org/ourvoice/walk-outs/>

¹⁰ http://inthesetimes.com/working/entry/18004/washington_state_teachers_strike

¹¹ https://www.huffingtonpost.com/2015/05/19/seattle-teachers-strike_n_7338474.html

¹² https://www.washingtonpost.com/news/wonk/wp/2012/09/10/how-teacher-strikes-hurt-student-achievement/?utm_term=.daec40b9b0fa

APPENDIX 1. Cost Information

OSBA HB 4113 Potential Cost Survey Responses

School District	2019-2021 biennium					
	Reduce by 1		Reduce by 2		Reduce by 3	
	New	Cost	New	Cost	New	Cost
Albany SD	7	\$1,330,000	14	\$2,660,000	21	\$3,990,000
Beaverton	78.7	\$20,680,594	134.2	\$34,052,119	206.1	\$46,194,082
Bend-La Pine	27.5	\$5,707,625	53.35	\$11,072,793	84.93	\$17,627,222
Bethel	7	\$1,680,840	14	\$3,361,380	21	\$5,042,520
Centennial SD	9	\$2,118,600	18	\$4,237,200	27	\$6,355,800
Central SD	5	\$808,562	11	\$1,778,834	16	\$2,587,396
Corvallis	6	\$900,000	16	\$2,400,000	21	\$4,050,000
Creswell SD	13	\$2,555,904	26	\$5,111,808	39	\$7,667,712
Eagle Point SD 9	3	\$593,000	11	\$2,170,000	18	\$3,553,000
Eugene 4J	22	\$4,733,960	44	\$9,467,920	66	\$14,201,880
Gervais SD	3.55	\$566,967	7.6	\$1,213,790	12.2	\$1,948,452
Hillsboro	17.35	\$3,866,377	34.7	\$7,732,753	52.05	\$11,599,130
Lebanon	8	\$1,104,000	19	\$2,622,000	30	\$4,140,000
Lincoln County SD	11	\$2,256,606	22	\$4,410,639	30	\$6,189,255
Molalla River SD	5	\$950,000	10	\$1,900,000	15	\$2,850,000
North Clackamas	20	\$4,162,608	41	\$8,533,346	62	\$12,904,085
Oregon Trail	13	\$3,051,308	26	\$6,102,616	39	\$9,153,924
Parkrose SD	8	\$1,864,000	16	\$3,728,000	24	\$5,592,000
Perrydale SD	5	\$967,580	6.5	\$1,257,854	8	\$1,548,128
Portland Public Schools	90	\$20,160,000	191	\$42,784,000	302	\$67,648,000
Salem-Keizer	52	\$11,809,366	103	\$23,391,628	161	\$36,563,613
Scappoose	8	\$1,697,440	16	\$3,493,760	26	\$5,516,680
St. Helens SD	5	\$1,039,935	10	\$2,079,871	16	\$3,327,793
Tigard-Tualatin	19.91	\$4,761,718	41.51	\$9,925,688	65.01	\$15,543,509
Tillamook	3	\$599,511	7	\$1,199,022	10	\$1,798,533
Union SD	21	\$1,799,595	25	\$2,142,375	27	\$2,313,765
Total values:	468.0	\$101,766,096	917.9	\$198,829,396	1,399.3	\$299,906,479
Total ADMr displayed:	282,423					
ADMr % of OR displayed:	49.12%					

All data provided by relevant school district at request of OSBA, Jan./Feb., 2018
ADMr data from Oregon Department of Education, Nov., 2017 Estimates.

Statewide Estimated Costs of Class Size Reductions

	Current Avg Class Size	QEM Target Avg Class Size	Cost in 2019-21 Biennium (Millions)		
			Reduce by 1	Reduce by 2	Reduce by 3
Elementary Schools					
Kindergarten	22	20	\$21.5	\$45.2	*
First Grade	23	20	\$19.6	\$41.2	\$64.8
Grades 2-3	24	23	\$36.0	*	*
Grades 3-4	25	24	\$33.1	*	*
Middle Schools	24	21	\$64.7	\$135.3	\$211.7
High Schools	24	21	\$90.9	\$190.5	\$299.0
Total for All Schools			\$266.0	\$412.1	\$575.6

* Reduction not needed because QEM target already met

Source: Oregon Department of Education, Office of Research and Data Analysis
28-Dec-17

APPENDIX 2: Sample Proposals Containing Penalties

Please find below examples of select contract proposal language received by districts that contain contractual penalties related to numerical class size ratios. All language and formatting taken directly from proposals received by relevant school district as part of contract negotiations.

Lebanon School District, Lebanon Education Association proposal, April 6, 2015.

Article 6, Section G (Teaching Hours and Teaching Load):

Class Size/Caseload

1. Large class loads represent a hardship on the individual employee, as well as the students in the classrooms. The Association acknowledges that the District may lack the ability to control all of the factors that influence class size, particularly the number of classrooms and the number of students.

a. The District will strive to adhere to these ideal class sizes:

- : K-2: 18 students per classroom
- : 3-5: 22 students per classroom
- : 6-12: 25 students per classroom

b. Should class sizes exceed the following maximums, the district will compensate teachers \$10 a day, per student:

- : K-2: no more than 22 students per classroom
- : 3-5: no more than 26 students per classroom
- : 6-12: no more than 30 students per classroom

c. Combination Classes: When determined by the district that combination classes are necessary to balance class sizes or for subject areas at the secondary level, the District will:

- : request teacher volunteers for the class
- : work collaboratively with the grade level teams in placing students
- : consider the nature of students to placed in the class, including ability ranges and behaviors
- : provide smaller class sizes than single grade level classes- assign new students to single grade level classrooms after all classes are established in the building, unless the enrollment difference between a combination classroom and all same-grade, single grade classes is three (3) students; then the next new student may be assigned to the combination classroom
- : insure that plan is created for the students' reintegration into the single-level classrooms the following year (if applicable)

d. Should special education caseloads exceed the following maximum, the district will compensate teachers \$10 per day, per student

- : Special Education Teachers paperwork caseload- 30 students
- : Specialist/Speech Language Pathologists work caseload- 50 students

Gresham-Barlow School District, Gresham-Barlow Education Association proposal, April 20, 2017

C. Workload

1. Teachers shall be compensated at a rate of \$50 per additional student per month when classroom sizes rise above the maximum threshold described below. Students with an identified IEP/504 shall be weighted at a rate of twice that of a General Education student when determining classroom size. For the purposes of this article, Core Content is defined as English Language Arts, Math, Social Studies and Science. Class size calculations will be made by the end of the third full week of school and by the end of the third full week of the second semester of each school year and shall remain fixed for the purposes of calculating pay. Teacher Assistants (TA's) are not counted as part of classroom size. Stipends shall be calculated using the two class size reports described above and paid out evenly over the October-January and February-June months. Members working less than 1.0 FTE shall have their class size calculations pro-rated for purposes to this article.

Compensation Thresholds are listed below:

- Grades K-2 – 25 students
- Blended Grades – 27 students
- Grades 3-5 – 30 students
- Core Content Classes Grades 6-8 – 170 students
- Counselors K-8 – 600 students

- Core Content Grades 9-12 – 180 students
- Counselors 9-12 -450 students.

Reynolds School District, Reynolds Education Association proposal, April 6, 2017.

Article 27

Class Workload

- A. Class Size Guidelines
 1. General Education Instructors
The recommended guidelines for workloads in the Reynolds School District shall be as follows:
K – 3 25 students

4 – 6 28 students
 7 – 12 30 students per class multiplied by a maximum of 6 classes *180 students (total load)

An effort shall be made to balance individual sections of like classes.
 *except in cases provided for in Northwest Accreditation recommendations.

2. Special Education and ELD Instructors

The recommended guidelines for classroom workloads for special education and English language learner instructors shall be approximately at half of those of their counterpart general education instructors.

K – 3 12
4 – 6 14
7 – 12 15 students per class multiplied by a maximum of 5 classes (75 students total)

- B. *Sec. B. (Procedure) not included in interest of space; no proposed changes relevant to class size*
- C. *Sec. C. (Limits) not included in interest; no proposed changes relevant to class size*

D. Remedies to Class Size Guidelines Overages

Remedies are cumulative in nature until a new classroom is formed.

1. General Education

<u>Overage:</u>	<u>Remedies</u>
<u>K – 2</u>	<u>1 – 3 Notify Overage Committee for Monitoring</u>
	<u>4 – 6 Overage Pay</u>
	<u>7 – 10 1.0 EA</u>
	<u>11+ New Classroom</u>

2. Special Education & ELD Instructors

<u>Overage:</u>	<u>Remedies</u>
<u>K – 2</u>	<u>1 – 2 Overage Pay</u>
	<u>3 – 6 1.0 EA</u>
	<u>7+ New Classroom</u>

Unit members who are compelled to exceed the class size guideline are entitled to overage pay. Overage pay will be calculated at ten percent (10%) of the member’s annual salary. This compensation will be prorated and will last for as long as the class size guidance is exceeded.

APPENDIX 3: Class Size Reduction policy research and analysis

Please find below select articles pertaining to Class Size Reduction (CSR) research and analysis. Please note: not all articles condemn CSR policy. Most indicate that CSR is expensive, has demonstrated some value with very low class sizes in the early grades (~15 students, K – 3), and otherwise does not demonstrate strong returns in terms of investment cost and student achievement. These articles are from a variety of sources, including journals, trade news publications, and popular websites. Additional articles can be found in footnotes.

Academic publications and articles

Class Size Policy Overview, Jennifer Thompson, Education Commission of the States, presentation to the OR. Legislative Task Force on Class Sizes, July 2016.
<https://olis.leg.state.or.us/liz/201511/Committees/JTFCS/2016-07-19-09-00/MeetingMaterials>

Class Size: What Research Says and What It Means for State Policy, Matthew Chingos and Russell Whitehurst, Brookings Institution, May 2013.
<https://www.brookings.edu/research/class-size-what-research-says-and-what-it-means-for-state-policy/>

Class Size and Student Achievement: Research Review, Center for Public Education, July 2005.
<http://www.centerforpubliceducation.org/Main-Menu/Organizing-a-school/Class-size-and-student-achievement-At-a-glance/Class-size-and-student-achievement-Research-review.html>

Class Size Reduction, Teacher Quality, and Academic Achievement in California Public Elementary Schools, Christopher Jepsen and Steven Rivkin, Public Policy Institute of California, 2002.
http://www.ppic.org/content/pubs/report/R_602CJR.pdf

Newspaper, trade publication, and popular website articles

Should States Spend Billions to Reduce Class Sizes?, Amelia Thomson-DeVaux, fivethirtyeight.com, December 2014.
<https://fivethirtyeight.com/features/should-states-spend-billions-to-reduce-class-sizes/>

Class size reduction program continues to unravel, Louis Freedberg, EdSource.org, May 2012.
<https://edsources.org/2012/class-size-reduction-program-continues-to-unravel/8730>

Recent Editorials, re: HB 4113

[*A bad bargain for schools*](#), The Register-Guard, Feb. 2, 2018

[*Legislature should kill class-size bill*](#), Corvallis Gazette-Times, Feb. 1, 2018

[*Bill is not the best way to improve education*](#), Bend Bulletin, Jan. 23, 2018