

## MINUTES

February 11, 2010

Minutes of the legislative meeting of the State Board of Education held February 11, 2010, at the Utah State Office of Education, Salt Lake City, Utah. Meeting commenced at 11:50 a.m. Janet A. Cannon, Chairman of the Law and Policy Committee chaired the meeting.

Members present were:

Chair Debra G. Roberts  
Member Kim R. Burningham  
Member Janet A. Cannon  
Member Leslie B. Castle  
Member David L. Crandall  
Member Greg W. Haws  
Member Denis R. Morrill  
Member C. Mark Openshaw  
Member David L. Thomas

Member Craig Coleman participated by Telephone.

Members Dixie L. Allen, Rosanita Cespedes, Robert DePoe, Douglas Holmes, Michael Jensen, and Carol A. Murphy were excused.

Also present were:

Superintendent Larry K. Shumway  
Deputy Superintendent Martell Menlove  
Associate Superintendent Brenda Hales  
Associate Superintendent Todd Hauber  
Associate Superintendent Judy Park  
Public Relations Director, Mark Peterson  
Board Secretary, Twila B. Affleck

Members of the Press:

Amy Stewart, Deseret Morning News

State Office of Education Staff:

Carol Lear, Law, Legislation and Educational Services

LesLee Snelson, Law, Legislation and Educational Services

Chairman Janet A. Cannon welcomed everyone and called the meeting to order.

### Budget Discussion

Deputy Superintendent Martell Menlove reported that Executive Appropriations this week allocated some additional funding for the FY10 fiscal year, basically holding public education harmless. We need to express gratitude to the Governor for his recommendation on this. There continues to be a cut to the State Office of Education of \$330,000 or 1%. We have already taken steps with hiring freezes and reductions and furlough days to accomplish this

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without any additional action at this level. He cautioned that we have also heard that until budget revenue numbers come in next Monday or Tuesday there still is a possibility of additional action.

Associate Superintendent Todd Hauber noted that H.B. 4 is worth looking at because even though the Minimum School Program does not receive a reduction, there is some shuffling of monies around to resolve the board and voted leeway and educator salary adjustments.

Superintendent Shumway expressed appreciation for the level of collaboration we have been able to receive. He and Superintendent Menlove have spent hours with the public education appropriations co-chairs and at the end of last night's meeting we were coming very close to a budget, at least out of that subcommittee, that would be very close to conforming with all of the things we have talked about as a board.

Superintendent Shumway reported that he and Chair Roberts had met with Governor Herbert this morning and we are still very much locked into and hopeful that we will fund at the same dollar level as last year, 2.947 billion. This is a goal that remains in reach and given what executive appropriations did earlier this week with the FY10 budget, it shows good faith to try to do the same for the FY11.

#### Proposed Legislation

##### **1SSB 92 - Amendments to Revenue and Taxation Title**

Member Dave Thomas reported that this bill will bring in \$103 million to the education fund (one time) from quarterly income tax filings.

Motion was made by Member David L. Thomas and seconded by Member C. Mark Openshaw that the Board take the position of support. Motion carried with Members Cannon, Castle, Coleman, Crandall, Haws, Morrill, Openshaw, Roberts and Thomas voting in favor; Member Burningham absent.

Deputy Superintendent Martell Menlove presented information on proposed legislation and actions were taken as noted below.

##### **HJR 25 - Joint Resolution Regarding School Fees and Supplies**

Representative Kraig Powell addressed the Board on the Resolution which seeks a constitutional amendment to allow the Legislature to authorize requirements that students in elementary and secondary schools provide their own supplies or pay a fee for school supplies. Fee waivers continue to be granted. It appears that the major change is the addition of fees at the elementary school level. Representative Powell indicated he had some discussion about this last year and was told it was against the constitution based on free public education. There has been

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a question raised as to when it is waivable. It was noted that this is mainly a school supplies issue and not other school activities.

Board Members made comments and posed questions relative to those that are not able to buy their own supplies and the fact that there is currently a dearth of supplies in the classrooms presently and teachers spend monies from their own pockets for supplies.

Member Greg Haws commented that there are unintended consequences to this and a free and public education is foundational to the safety of our society.

Representative Powell commented that he is a strong supporter of public education and he sees this as a positive development. The intent is to provide strong supporters of public education in this state with an opportunity to provide more funding for public education.

Representative Powell expressed appreciation for the opportunity to discuss this with the Board and would welcome further input from the Board. He indicated that even though this may pass the public education committee he is willing to pull it off of the floor to study it this year.

Motion was made by Member Greg W. Haws and seconded by Member C. Mark Openshaw that the Board ask Representative Powell to pull this bill for further study for a year. A constitutional amendment is serious enough that it ought not be done in a hurry of a legislative session. Further, that there be a cooperative effort with the State Office of Education in further discussion of the legislation.

Superintendent Shumway indicated that Representative Powell also wanted the same discussion in a committee meeting. He has no intention of moving forward and we should not leave it and wait and see.

Superintendent Shumway suggested that rather than the Board taking a formal position on this at this time that we communicate the feeling of the Board to him less formally and if there is a need for action from the Board we take further action.

Based upon the suggestion by Superintendent Shumway, Members Haws and Openshaw withdrew their motion.

#### **HB 268 - Public School Innovations**

Member Dave Thomas reported that they had made one of the changes he suggested that allows discretion of the state board whether or not we grant waivers to board rule, but did not make other changes. One concern was that within 60 days after receiving the school districts plan for the innovative school the state board of education **shall** take action which is not adequate

time to take action on the plan. Further that the State Board of Education shall approve a plan unless the Board concludes that the submitted plan is likely to result in a decrease in academic achievement or is not fiscally feasible. He had indicated he was uncomfortable with putting those kinds of parameters on the State Board – telling us how to vote. He indicated that as the legislation currently reads he would be opposed to it.

Member Denis Morrill questioned what is broken we are trying to fix. This is just another system of education and another set of things for someone to do.

Member Thomas commented that it was his understanding this would allow greater freedom for public schools without becoming a charter school.

Superintendent Shumway commented that on the provision that it tells the Board how to vote and he had expressed on the Board's behalf that this was offensive.

Motion was made by Member Denis R. Morrill and seconded by Member Leslie B. Castle to oppose on the basis that it encroaches on the constitutional duties of the board and encroaches on separation of powers. Motion carried unanimously.

### **HB 323 - School and Institutional Trust Lands Amendments**

Margaret Bird, Specialist, School Children's Trust provided background on the proposed legislation. The legislation provides a separate line item in the attorney general's budget for certain legal purposes. It appropriates an ongoing appropriation subject to future budget constraints, \$1,000,000 from the Land Grant Management Fund for the fiscal year 2010-11 to the Office of the Attorney General. She indicated that the main point to understand this is \$1 million ongoing annually.

Member Mark Openshaw commented that he had called Representatives Herrod and Sumsion who have indicated that the reason it is worded this way is there is no intention in going past the \$3 million, the issue is in the legislative review process relative to sunseting.

Considerable discussion ensued relative to whose responsibility it would be to bring about a lawsuit if necessary as well as with regard to the issue of eminent domain and sovereign issues.

Motion was made by Member Denis R. Morrill and seconded by Member Leslie B. Castle that the Board take a position in opposition to the bill. These are sacred monies that should be protected for the children of the state, and there is a constitutional obligation of the Attorney General to defend the state. Further, the Board is not taking a position on the

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legislature or the state taking legal action on the sovereign issues – these are state issues and children’s money should not be used to fund state issues.

Member Dave Thomas spoke against the motion on the premise that this is not just the state issue, this is specific to public education. This could be a specific line item for fighting specific lawsuits anticipated.

Member Craig Coleman commented that he did not like the fact that the federal government has us so firmly under their thumb and we are so afraid to challenge them and afraid we will lose that we don’t take the fight. It is his understanding that the federal government has not lived up to the agreements made at the time the state of Utah was made a state. Have not given to us that which was promised to us. We are not in a position to use the resources that belong to our state especially for the children of Utah. He understands the issue of using the trust money, but he would like to fight and stand up for the rights of Utah.

Member Denis Morrill commented that he agreed with Member Coleman and that is why the constitution appoints an Attorney General with a budget to stand up for the people of Utah.

Motion failed with Members Burningham, Cannon, Castle, Haws and Morrill voting in favor; Members Coleman, Crandall, Openshaw, Roberts and Thomas opposed.

Motion was made by Member David L. Crandall and seconded by Chair Debra G. Roberts that any decision about using trust lands money for a lawsuit to protect trust lands should be made by the SITLA Board, or at least in collaboration with the SITLA Board.

Motion was deemed out of order because it was not a specific position on the legislation.

Motion was made by Member David L. Crandall and seconded by Member C. Mark Openshaw to support the concept of the bill as long as it is amended stating that it has to be with the consent from the SITLA Board before any legal action is taken.

Member Denis Morrill spoke in opposition to the motion he has a problem with the action itself. The bigger part of the action hasn’t a prayer of winning.

Chair Debra Roberts spoke in favor of the motion because she felt the SILTA Board was wise in their decisions and they would oppose any legislation that would take it where it should be.

Motion failed with Members Coleman, Crandall, Openshaw, Roberts and Thomas voting I favor; Members Burningham, Cannon, Castle, Haws and Morrill opposed.

**HJR 3 - Joint Resolution on Teacher Performance Pay**

This is the same bill that was presented last year and the Board voted to support it.

Superintendent Shumway commented that this is supportive of the direction we are moving with the pilot program.

Motion was made by Member Greg W. Haws and seconded by chair Debra G. Roberts to support. Motion carried unanimously.

**SB 150 - Reading Requirements for Student Advancement**

This legislation is within the purview of the State Board of Education not the legislature.

Motion was made by Member David L. Thomas and seconded by Member Denis R. Morrill to oppose based on separation of powers issue.

Member Kim Burningham commented that there are some districts and schools already following this practice.

Motion carried with Members Burningham, Cannon, Castle, Crandall, Haws, Morrill, Openshaw and Thomas voting in favor; Member Coleman abstained.

**SB 55 - Authorization of Charter Schools by Higher Education Institutions**

Deputy Superintendent Menlove reported that he has met with Senator Adams and invited him here today to discuss the legislation.

Dr. Menlove noted that there is great respect for the State Charter School Board particularly in their role for providing resources and assistance and timeline in assuring start up of charter schools in the state. He has offered a legitimate amendment or substitution to facilitate including the State Charter School Board to Senator Adams.

It was noted that the State Charter School Board should be taking proposed legislation to the legislature.

There are enough questions with the bill and does not improve the quality of charter schools in Utah. The intent of the legislation is to expand the chartering entities.

Senator Adams has not accepted our suggestions.

It was noted that the legislation passed in the Senate and the House sponsor is Greg Hughes, and there is no fiscal note. The amendment specified the board of trustees authorized to do the chartering are the state colleges and universities.

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Member Denis Morrill spoke in opposition to the bill indicating that if they are going to monitor and control after the school is founded it takes away our role as general control and supervision.

Motion was made by Member Kim R. Burningham and seconded by Member Leslie B. Castle to oppose.

Member Dave Crandall spoke against the motion noting that if the State Charter School Board has been consulted on this and would like to hear their position prior to taking action.

Motion failed with Members Burningham, Cannon, Castle, Haws, and Morrill voting in favor; Members Coleman, Crandall, Openshaw and Thomas opposed.

**SB 144 - Vision Screening Amendments**

Motion was made by Chair Debra G. Roberts and seconded by Member C. Mark Openshaw to support. Motion carried with Members Burningham, Cannon, Castle, Crandall, Haws, Morrill, Openshaw and Thomas voting in favor; Member Coleman absent.

Member Kim Burningham commented that at the last meeting the Board talked about the retirement bills. He felt the legislation is extremely important and requested that before the Board was to take any action we invite those opposing to address the board.

(For complete details of the Tracking Sheet see General Exhibit No. 11131.)

Meeting adjourned at 2:00 p.m.