

MINUTES

February 10, 2006

Minutes of the special legislative meeting of the State Board of Education held February 10, 2006, at the State Capitol Complex, W325, Salt Lake City, Utah. Meeting commenced at 10:15 a.m. Member Tom Gregory, Vice Chairman of the Law and Policy Committee presided at the meeting.

Members present were:

Chairman Kim R. Burningham
Vice Chairman Janet A. Cannon
Member Dixie L. Allen
Member Tim Beagley
Member Laurel Brown
Member Mark Cluff
Member Bill Colbert
Member Edward A. Dalton
Member Thomas Gregory
Member Greg W. Haws
Member Randall Mackey
Member Teresa L. Theurer

Members Dixie L. Allen and Teresa L. Theurer participated via Polycom. Members Bonnie Jean Beesley, Debra G. Roberts, Richard Sadler, Sara Sinclair, and Gary Swensen were excused.

Also present were:

Associate Superintendent Patrick Ogden
Associate Superintendent Raymond Timothy
Coordinator, Government and Legislative Relations, Carol B. Lear
Board Secretary Twila B. Affleck

Superintendent Patti Harrington and Associate Superintendent Myron Cottam were excused to attend the Utah School Superintendents Association meeting.

Legislation Review

Public Education Hotspots - Budget

Superintendent Harrington reviewed the Appropriations Committee List of funding priorities. (For complete details, see General Exhibit No.9849.) She encouraged Board Members as they contact legislators to discuss the need for the U-PASS Funding Shortfall to continue services, Unfunded MSP Growth, Math, Reading & Utah Basic Skills Competency Test Support.

She reported that the Joint Appropriations has met and heard the committee responses, and the Public Education Appropriations Committee probably will not meet again. She indicated that there are many rumors out there, and one of the big questions is where will public education be capped. At this time, we do not know the total number that will go to public education.

Member Teresa Theurer questioned if the concurrent enrollment money comes close to what we would need to makeup so we would not need the other concurrent enrolment bill? Secondly, one item that did not show up on the list was the ASSERT Program at USU. She has spoken with Senators Hale and Hillyard she would like to see the State Board be supportive of having that \$217,000 for the ASSERT Program.

Superintendent Harrington responded that the \$2.3 million was built around restoring the Concurrent Enrollment figures up to the \$50 per credit unit value. Because of the growth we have experienced since we built our budget, it is around the \$44-45 credit unit value. The old statute indicates it will be \$50 per credit unit value. If the money is restored, there would be no issue from the perspective of public education.

Superintendent Harrington further responded that the ASSERT Program is model program for autism that trains people who are then employed across the state to help children with autism. It was not on anyone's priority list for public education. If it can be brought in by Senator Hale and others it may have some opportunity. It has statewide value, even though it is located at Utah State University..

The Board reviewed and discussed legislative bills and took the following actions:

HB 7 - Repeal of Exemption from Nonresident Tuition

Chairman Kim Burningham reported that it was the request of the Public Education Committee that the Board take a position on this legislation. He commented that this is an issue of the definition of an illegal alien and whether or not they should have an opportunity to attend college with instate tuition. He is in favor of extending opportunity wherever we can but it has many sides to it..

Motion was made by Member Greg W. Haws to oppose. There being no second the motion died..

Motion was made by Member Mark Cluff and seconded by Member Bill Colbert to support.

Member Teresa Theurer questioned why we would want to be in support of this legislation.

Member Cluff responded that this is very emotional issue and we all want kids to have opportunity, especially for a college education, but according to what he is hearing from lawyers is that when they turn 18 they are adults and if they stay in the country over three years they remove any opportunity to become legal citizens or legal residents. By providing this extra fund we are aiding and abetting them in destroying opportunities. Another issue that has been brought up is that they go on and get their four year degree and legally they cannot be hired by any company because they are undocumented workers.

Member Greg Haws commented that this is a very emotional bill, it is an inconsistent position for us to open our schools to our children and treat them equally and give them all the hope of progressing in this society and then tell them once they graduate and receive a diploma from our public schools we tell them they are not welcome in our universities is inconsistent. He feels the federal government needs to solve their problems so we are not shackled by their lack of action.

Kim Langton, CEO, Centro de la Familia de Utah, and a co-chair for Utahns for the American Dream reported that they are against HB 7. He commented that some of the issues brought out today are very important to consider. He first addressed the issue of students once they reach 18 legally are crossing the line. If these students before they turn 18 go back to their countries of origin to attempt to get a student visa they will be asked by the State Department of our country where they went to high school, if they received a diploma, where did it come from. If these students came to this country as tourists and overstayed their visa, again through no fault of these students, but of their parents, they were in violation of the visa. If they were here without any documentation, they were here illegally, and that will deny them a student visa.

He further commented that the Board has supported these kids and they have come to this country, for whatever reason we may feel illegally, with a lot of constraints to overcome. They have graduated from high school, have high moral character and they are trying to become American citizens and most want to give back much of what they have gained. Our responsibility as Utahans is to form linkages – we need to do our part for these kids. He indicated that the Board has done its part very well in educating them through high school and it is time to continue that and help the federal government see their linkage, their responsibility to carry this forward.

David Doty, Assistant Commissioner, Utah Board of Regents, reported that the Board of Regents and the Commissioners Office has support HB 144 which passed in 2002 allowing these students to obtain the benefit of instate tuition under the conditions stipulated in the legislation. They now opposes HB 7 which would repeal the current law. He reiterated the comments of Mr. Langton that it is not as simple as a lot of people would have you believe for these students to get on the “legal track” once they turn 18 and go back to their country of origin and apply for a student visa. Under the US Patriot Act and other federal laws, it is very difficult for any foreign student to obtain a student visa. It can take two to three years to get the application through and then there are conditions upon that.

(For complete details of the materials presented, see General Exhibit No. 9850,)

Member Tim Beagley commented that he failed to see the real connection here with our business today, we are in charge of public education. He requested that we find a way to move on to public education issues.

Substitute motion was made by Member Tim Beagley and seconded by Member Bill Colbert to table this issue. Motion failed with Members Beagley, Cannon, Cluff, Colbert, Dalton and Gregory in favor; Members Allen, Brown, Burningham, Haws, Mackey and Theurer opposed

Original motion to support HB 7 failed with Members Allen, Cluff and Colbert in favor; Members Beagley, Brown, Burningham, Cannon, Dalton, Haws, Mackey and Theurer opposed.

Motion was made by Member Greg W. Haws and seconded by Member Randall Mackey to oppose H.B. 7. Motion failed with Members Brown, Burningham, Cannon, Haws, Mackey and Theurer voting in favor; Members Allen, Beagley, Cluff, Colbert, and Dalton and Gregory opposed.

Motion was made by Vice Chairman Janet A. Cannon and seconded by Member Bill Colbert to table H.B. 7. Motion carried with Members Allen, Beagley, Brown, Burningham, Cannon, Cluff, Colbert, Dalton, Mackey and Theurer voting in favor; Member Haws opposed.

1SHB 107 - Full Day Kindergarten

Motion was made by Member Laurel O. Brown and seconded by Member Mark Cluff to support. Motion carried unanimously.

HB 134 - Class Size Reduction

Motion was made by Member Laurel O. Brown and seconded by Member Tim Beagley to support.

Member Bill Colbert questioned where the funding for this would come from. He indicated he was in support of the concept but was concern that this will be a \$30 million increase.

Chairman Kim Burningham clarified that whenever there are bills with fiscal notes it sits in the Que and waits for a decision of the legislature as to the funding. The funding issue is not particularly relevant at this juncture.

Member Teresa Theurer commented that this has never been on our list of priorities and though she supports the concept she felt that until we get our other funding priorities and there is extra money to go to it we not take a position of support. This is a local issue and they can decide how big they can have their class sizes with the money that is available.

Substitute motion was made by Member Janet A. Cannon and seconded by Member Bill Colbert to support the concept and noted that the desire of the Board is that our funding priorities be met first.

Member Mark Cluff commented that we all agree that smaller class sizes are wonderful but when he was in California there was a bill passed there that reduced class sizes in K-3 to 20 students. A study just came out this year of the results of that and it indicated that there is no significant difference in reducing class size. One of the reasons was that there was such a demand for teachers they had to hire teachers that may have been substandard. It was discovered that a highly qualified teacher with small class size is definitely the best, a highly qualified teacher with larger class size does almost as well. His first priority would be highly qualified teachers.

Motion carried with Members Allen, Beagley, Brown, Burningham, Cannon, Cluff, Colbert, Dalton, Haws, and Mackey voting in favor; Member Theurer opposed.

HB 181 - Education Reform

Associate Superintendent Ray Timothy reported that he, Superintendent Harrington and Chairman Burningham have been invited to continue to work with Senator Stephenson and Representative Urquhart on this legislation. He presented a copy of our suggested changes, at their request. He indicated we will continue to dialogue. He noted the difference between the suggested changes we have submitted and the original bill is that it does continue to include the UBSCT remediation in the form of a stipend. We have tried to simplify it where if you fail test twice

you qualify for a stipend and not look at what degree you failed it. This would eliminate the management issue. The Second part is the teacher bonus plan and our suggested changes is to take the Boards Educator Quality Comprehensive Plan and begin to roll it out. The third part, is the 4-6 math initiative. The fourth part orderly termination. He indicated that the Board has not taken a position on the UBSCT portion of the remediation in the stipend form. He clarified that the bill is still evolving. (For complete details of the USOE proposed revisions, see General Exhibit No. 9851.)

Motion was made by Member Teresa L. Theurer and seconded by Member Greg W. Haws to take a position of watch.

Member Theurer questioned if a student can use the stipend at the high school they attend and will that go directly to the school. Dr. Timothy responded that the stipend can be used at a public school or a private institution. He further noted that the dollar amounts in the original bill are being scaled way back. Originally it was \$500, \$1,000 and \$1,500; they are now talking around \$200, \$500, \$800.

Chairman Burningham commented that he hoped Board Members would be very clear in expressing their point of view on this issue because this is one of the most important bills for the Board to consider.

Member Ed Dalton questioned if in creating this type of supplemental program if you are creating another form of a voucher program?

Member Dalton commented that when you start awarding teachers bonuses for certain kinds of performance. He questioned how that begins to spill out into the profession especially with other teachers who are having tremendous success with children who are also deserving.

Member Tim Beagley commented that he is not fundamentally opposed to giving vouchers for remediation as long as we have enough for fail-safe portions of it. His concern is that companies will come into the school and pick those students that are needing the least amount of remediation, therefore assuring they will pass the test and they will receive the money.

Associate Superintendent Ray Timothy pointed out that in the USOE suggested version on Line 128 where the initial language said they would be served on a first come first served basis. We don't know how you could do that, it would be very difficult to manage. In the USOE version, we put according to rules developed by the State Board. This would then give us time to work that out and let the Board develop the implementation rules.

Member Randall Mackey asked for clarification on the bonus that a teacher in economically disadvantaged school will only get the rewarded if the student pass the test. It was clarified that it is based on one-year growth.

Vice Chairman Janet Cannon questioned if the merit pay portion is only available to Title 1 teachers? Associate Superintendent Timothy responded that in the existing bill if you teach 4-6 math, Title 1 school, the average of your class makes one years growth, you are entitled to a bonus. If you are teaching K-3 reading and the average of your class makes one years growth you are entitled to a bonus.

Carol Lear, commented that one of her concerns with the way the bill was originally written was there was no money in the bill for administration. She felt this posed a Constitutional problem. You are sending money to private schools using the resources of the State Office of Education, all the personnel are paid with Uniform School Fund money. Keeping it simple is the only way it will work which is Title 1 schools and bonuses. Unless it is simple there is no way a even a couple of people can administer this. She was adamant that the Uniform School Fund money cannot pay to administer this program because it sends money to private schools.

Member Ed Dalton commented that we want our 4-6 math initiative but by putting this all together it seems it will handcuffs us and force us to go along with things we don't want or give up something we really want.

Member Bill Colbert voiced concern with having a watch position at this stage of the game if we are doing to have influence we need to take a different position and he would recommend we support the concept.

Substitute motion was made by Member Bill Colbert and seconded by Member Tim Beagley support concept with comment that it incorporates the USOE modifications.

Member Laurel Brown commented that if you support the concept you are supporting what it is now, not what you hope will change in the future.

Second Substitute motion was made by Member Mark Cluff and seconded by Chairman Kim R. Burningham to take a position of watch on the current HB 181; and to support the recommendation from the Utah State Office of Education.

Member Teresa Theurer commented that she was not sure she could support the orderly termination or the UBSCT. She expressed appreciation for what the staff has done on this but she did not feel she was ready to support the USOE draft.

Member Laurel Brown requested that the motion be split.

Position of Watch carried with Members Allen, Beagley, Brown, Burningham, Cannon, Cluff, Haws, Mackey and Theurer voting in favor; Members Colbert and Dalton opposed.

Support the USOE Recommendations

Member Laurel Brown requested an explanation on the orderly termination portion. Superintendent Harrington responded that the orderly termination results from a very small piece of the highly qualified teacher initiative. It is the piece that is most quickly picked up by the press as us wanting to dismiss teachers. The orderly termination changes we have made are showing a wilful act of unprofessional misconduct. Our position consists of a two-strike rule. You get one warning, you do it a second time and you are terminated.

Carol Lear commented that the language in the USOE recommendation mirrors the practice of the Orderly Termination Act.

Member Tim Beagley commented that he supports the work the State Office is doing the very fact that they

are involved is amazing. However, he is concerned that last year we had an experience when we talked with Representative Newbold about the Carson Smith Scholarship bill, she put together a tremendous bill and we supported it and then they took \$900,000 away from us at the last minute. His concern is once it gets out of our control we could be sorry we support it.

Member Teresa Theurer commented that she disliked this kind of bill putting four totally separate issues into one. She did not think the Board should support them unless they come from us and use our wording. She is also still very concerned about the UBSCT portion.

Vice Chairman Janet Cannon questioned what the fiscal note was attached to the bill? Associate Superintendent Timothy responded that there are different parts. In the actual bill we retained the \$15 million for the teacher bonus, but we put that in with the educator quality portion. The appropriations bill contains the portion for UBSCT remediation so it is not part of this bill. The 4-6 math initiative is in the appropriations bill. He further indicated that we have not developed a fiscal note for our version because we are still in discussion stages on the bill.

Carol Lear commented regarding the UBSCT portion and one really crucial difference if this should be supported and that is the class of recipients for UBSCT remediation is very wide, it is school districts, schools and private providers and we eliminated the home school opportunity. She also indicated she had the same concerns as Member Beagley relative to the the possibility of not having the funding for it and then we are expected to do it.

Chairman Kim Burningham commented that the UBSCT portion bothered him at first because it seemed to be a violation of his principles, it looks like we are giving money for a voucher program. However, he now believes that this section is giving money to the child to help them improve their UBSCT score. If we use this way, he believes we can get money to those kids who need the help. Further, we already use private schools for this kind of specialized help. He supports the principle of helping kids that need it.

Member Teresa Theurer comments that some of those students who need it might possibly come from families that cannot come up with that money up front along with the risk of not getting it back. Associate Superintendent Timothy reported that the bill does not require the family to up-front the cost. The provider would be taking the chance that they can remediate the student knowing that if the student does not pass the test they would not receive reimbursement.

Vice Chairman Cannon requested some assurance that the USOE suggested changes include dollars for administration of the program. Dr. Timothy responded that this has not been built in.

Member Ed Dalton questioned the bonus plan and what it really does. Associate Superintendent Ray Timothy responded that the Educator Quality Task Force presented to the Board the Comprehensive Educator Quality Plan which is a four year plan to roll in a professional compensation program for educators which includes multiple ways educators can be rewarded for excellence. This is what this bill does. Our suggested changes are to let us start

the initial stages of development of that plan working with districts, schools, and charter schools making sure that we have that discussion on what does a professional compensation plan look like.

Motion to support the USOE changes to HB 181 carried with Members Allen, Beagley, Brown, Burningham, Cannon, Cluff, Colbert, Dalton, Haws, and Mackey voting in favor; Member Theurer opposed.

HB 303 Public Education Club Amendments

Staff recommendation Unnecessary with comment already in board rule.

Motion was made by Member Laurel O. Brown and seconded by Vice Chairman Janet Cannon that the legislation is unnecessary because it is already in State Board rule. Motion carried with Members Allen, Brown, Burningham, Cannon, Cluff, Colbert, Dalton, Haws, Mackey and Theurer voting in favor; Member Beagley absent.

SB 144 - Child Care Exemptions Amendments

Motion was made by Member Teresa L. Theurer and seconded by Member Laurel O. Brown to oppose. Motion carried with Members Allen, Brown, Burningham, Cannon, Cluff, Colbert, Dalton, Haws, Mackey and Theurer voting in favor; Member Beagley absent.

HB 408 - Public Education Consolidated Report

Motion was made by Chairman Kim R. Burningham and seconded by Member Randall Mackey to support. Member Brown indicated she was in support as long as it is limited to the two items.

Motion carried with Members Allen, Brown, Burningham, Cannon, Cluff, Colbert, Dalton, Haws, Mackey and Theurer voting in favor; Member Beagley absent.

HB 437- Interpreters for the Hearing Impaired

Motion was made by Chairman Kim R. Burningham and seconded by Member Laurel O. Brown to oppose. Motion carried with Members Allen, Brown, Burningham, Cannon, Cluff, Colbert, Dalton, Haws, Mackey and Theurer voting in favor; Member Beagley absent.

HB 441 Basic Skills Competency Test Requirements

Motion was made by Member Laurel O. Brown and seconded by Member Mark Cluff to oppose with comment that in this day of high stakes testing it is too late to be taking the test in the 11th grade. Motion carried with Members Allen, Brown, Burningham, Cannon, Cluff, Colbert, Dalton, Gregory, Haws, Mackey and Theurer voting in favor; Member Beagley absent.

HB 363 - Driver License - Learner Permit Provisions

Motion was made by Member Laurel O. Brown and seconded by Vice Chairman Janet A. Cannon to adopt a position of watch. Motion carried with Members Allen, Brown, Burningham, Cannon, Cluff, Colbert, Dalton, Haws, Mackey and Theurer voting in favor; Member Beagley absent.

SB 204 - High School Graduation Amendments

Member Greg Haws indicated he was opposed to giving high school diploma to kids in home schools. He indicated that a test not the sole determination for high school diploma.

Member Mark Cluff reported that he attended the discussion on this and spoke to it. He indicated that part of the background on this is there are students who desire to just walk with their class. He had a constituent who took part of her education in home school, studied abroad in Europe, as well as took classes at Lone Peak High School and performed very well on the ACT and was accepted into Brigham Young University and received several national honors. She was wanting to be recognized for those national honors which other students in her class were at Lone Peak High School. She petitioned the school and the Board to just walk with her class. She was not asking for a diploma. He indicated he had no problem was with a school district giving a diploma with the requirements being followed. He recommended the possibility of having the state issue a diploma or a recognition of students who perform at this high level and allow them to walk at the high school graduation. As long as we do not specify to the school district.

Motion was made by Member Laurel O. Brown and seconded by Member Teresa Theurer to oppose SB 204 as written. Member Brown commented that you get into a lot of really difficult issue in granting credit. She indicated that while there are individual cases of students like this, when we make a law to fit the whole state that everyone should require them to give a high school diploma to a student who has attended a home school, without knowledge of the student, yet required to certify that the student has met all of the requirements from the high school. This takes away the local district and schools opportunity to make those decisions. As written it is too problematic to support.

Member Teresa Theurer commented that there was nothing stopping home school students from getting together and having their own graduation ceremony. The diploma is offered by the district based on the graduation requirements of the district. Further, if we allow home school students to take UBSCT who will pay for administer it.

Motion carried with Members Allen, Brown, Burningham, Cannon, Cluff, Dalton, Haws, Mackey and Theurer voting in favor; Member Colbert opposed.

2SSB 48 School Nurses Legislative Study

Motion was made by Chairman Kim R. Burningham and seconded by Member Edward A. Dalton to support. Motion carried with Members Allen, Brown, Burningham, Cannon, Cluff, Colbert, Dalton, Haws, Mackey and Theurer voting in favor; Member Beagley absent.

HB 167 - School Uniforms

Motion was made by Member Mark Cluff and seconded by Vice Chairman Janet A. Cannon to support. Motion carried with Members Allen, Burningham, Cannon, Cluff, Colbert, Dalton, Gregory, Haws and Theurer voting in favor; Members Beagley, Brown and Mackey absent.

1SHB 77 - School District Boundaries

Motion was made by Member Mark Cluff and seconded by Vice Chairman Janet A. Cannon to support of the 1SHB77.

Member Cluff explained that the Board had originally voted in opposition to the original bill because it set a limit and required that if there were 30,000 students within a boundary it could automatically create a new school district. The bill has been changed to allow local communities if the city council votes in support of creating a new school district they have that authority. He further noted that this was the law several years ago and was repealed and this is proposal to put it back.

Associate Superintendent Timothy reported that this passed out of committee today, and staff has not had an opportunity to look at it and was not prepared to make a recommendation.

Member Dalton voiced concern with taking a position without a staff recommendation and a chance to read the legislation.

Substitute motion was made by Member Edward A. Dalton and seconded by Member Bill Colbert to take a position of watch.

Vice Chairman Janet Cannon reported that this is an issue of significant interest to the people in her area. Understand the need to watch.

Motion carried with Members Allen, Burningham, Cannon, Cluff, Colbert, Dalton, Gregory, Haws and Theurer voting in favor; Members Beagley, Brown, and Mackey absent.

(For complete details of the legislative materials, see General Exhibit No. 9852.)

Motion was made by Member Bill Colbert and seconded by Vice Chairman Janet A. Cannon to adjourn. Motion carried.

Meeting adjourned at 11:50 a.m.