

Long Title

General Description:

This joint resolution of the Governor, Legislature, and State Board of Education calls upon the federal Congress and President to reauthorize the federal Elementary and Secondary Education Act ("ESEA"), 20 U.S.C.A. § 6301, et seq. Further, it establishes state control over the educational policy of the State of Utah with respect to such federal legislation. Finally, it calls on Utah's members of Congress to sponsor or co-sponsor legislation to correct the deficiencies of the ESEA and No Child Left Behind Act ("NCLB").

Highlighted Provisions

This resolution expresses support for the goals of educational improvement and progress, seeks Utah's share of federal educational funds while maintaining full and unequivocal state control to the highest degree of educational decisions, and expresses support for the re-authorization and amendment of the ESEA.

Money Appropriated in this Bill:

None.

Other Special Clauses:

None.

Resolution

Be it jointly resolved by the Legislature of the State of Utah, the Governor of the State of Utah, and the Utah State Board of Education:

WHEREAS, the Governor, Legislature, State Board of Education, educational leaders, educational groups, business leaders, and others recognize an imperative and immediate need to make changes to Utah's education system to provide a world-class education for its children; and

WHEREAS, both federal and state education leaders appear to be in agreement as to improving educational outcomes for children and that control of educational systems must be under the full control of the constitutionally established structures in the State of Utah; and

WHEREAS, the State of Utah has adopted rigorous educational standards, the Utah Core, assessment systems, SAGE, and teacher evaluation systems in good faith response to its obligations under federal law; and

WHEREAS, such changes may also include substantial and continuing changes, as Utah deems it advisable, to its teacher compensation system, educator evaluation system, teacher training, educational standards, assessment systems and other changes; and

WHEREAS, the Utah State Board of Education is, under the Utah Constitution, obligated and empowered to exercise general control and supervision over public schools in the State of Utah; and

WHEREAS, the federal Elementary and Secondary Education Act of 1965 was extensively amended in 2001 by the No Child Left Behind Act of 2001, 20 U.S.C. §§ 6301, et seq.; and

WHEREAS, NCLB set a series of ambitious targets, including proficiency for all students in math and reading by 2014—targets which every state and almost every school have found nearly impossible to meet [“the Federal Mandate”]; and

WHEREAS, as various states, including Utah, were at risk for failing to meet the Federal Mandate , in January 2012, the United States Department of Education (“US DE”) instituted, a process whereby states could escape the consequences of failing the Federal Mandate by applying for a waiver under conditions set by US ED; and

WHEREAS, some have argued that the waiver of the Federal Mandate used by the US DE may be unconstitutional encroachments on the rights and prerogatives of the states in the United States' system of dual sovereignty, see, e.g., Derek Black, Federalizing Education by Waiver, 68 Vand. L. Rev. (forthcoming April 2015); and

WHEREAS, at the very least, the Federal Mandate coupled with the prescriptive requirements of NCLB waivers, create complex demands that potentially require the abdication of state sovereignty in return for both federal mandates and federal funds; and

WHEREAS, Utah educational leaders have consistently asserted Utah’s exclusive sovereignty over its public education system, including, without limitation, its curriculum, curricular standards, assessment system, teacher training, educator evaluation and all other aspects of its education system, assertions which the US ED has unqualifiedly accepted; and

WHEREAS, on 22 August 2014, the Utah State Board of Education sought a waiver of certain onerous provisions of the NCLB from Secretary Duncan and US ED (the "Utah Waiver"), recognizing Utah's refusal to abdicate its sovereignty, its refusal to accept federal control of state education, and its demand to receive its rightful portion of federal educational funds; and

WHEREAS, the Utah Waiver was expressly conditioned on Utah’s "its absolute and exclusive right to modify, without negative effects with respect to its Waiver, its Utah Core Standards, SAGE testing, UCAS report card, and PEER teacher and principal evaluations[,] withhtout approval of the U.S. Department of Education. The State Board further reserves its righthgt to

withdraw from the Waiver if the State Board finds that such Waiver violates Utah Code Ann. § 53A-1-402.6(7);" and

WHEREAS, this Utah Waiver, including the clear assertion of the State of Utah's full and unequivocal sovereignty over its educational system, in every detail, was accepted and approved without modification by the US ED; and

WHEREAS, the State Board of Education may seek an NCLB "renewal" from the US ED, with the same full and unequivocal assertion its absolute of sovereignty over its education system, in every detail; and

WHEREAS, "waivers" and "renewals" are necessary due to systemic and widely-recognized flaws in NCLB; and

NOW, THEREFORE, BE IT RESOLVED that the Legislature and the Governor of the State of Utah call upon the State Board of Education to continue to protect and preserve Utah's exclusive and unique sovereignty over its education system, in every detail, in the event that it seeks such "waivers" or "renewals" of NCLB; and

BE IT FURTHER RESOLVED that the State of Utah hereby asserts its sole and exclusive right to control its educational system in every aspect; and

BE IT FURTHER RESOLVED that the Legislature, the Governor, and the State Board of Education firmly assert that the sovereignty over Utah's educational system may not be compromised by a promise of federal funds; and

BE IT FURTHER RESOLVED that the Legislature, the Governor, and the State Board of Education of the State of Utah call upon all members of Utah's congressional delegation to sponsor legislation preserving Utah's educational state sovereignty, to amend and alter the NCLB to make such continuing "waivers" or "renewals" unnecessary, and to further support and encourage educational achievement.