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GENERAL SESSION

February 18, 2015

Program Topic: State School Board Election Process

Presented by: Education Committee
Director: Donna Murphy

Speakers: U.S. Sen. Mike Lee

Rep. Norm Thurston (R) Dist. 64, (Utah County);
Sponsor, HB263 State School Board Powers Modifications
HB297 State School Board Elections Amendments

Rep. Francis Gibson (R) Dist. 65, (Utah County);
Sponsor, HB186 State School Board Membership
and Election Amendments

Rep. Kraig Powell – (R) Dist. 54, (Summit, Wasatch Counties)
Sponsor, HB342 Amendments to State School Board Election Process

Sen. Alvin Jackson, Jr. (R) – (Dist. 14, Utah County);
Sponsor, SB104 Education Elections and Reporting Amendments

Rep. Daniel McCay (R) – Dis. 41, (Salt Lake County) - Bluffdale, Riverton, Herriman
Sponsor, HB305 State Board of Education Membership Amendment
HJR16 Proposal to Amend Utah Constitution –
Governance of Public Education

Sen. Lee, surprising WSLC with an unexpected visit, began by complimenting membership on its 95th year of service to the state. Quoting Abraham Lincoln, in his Fourth of July address to Congress in 1861, he said, government's role is to "elevate the condition of men – to lift artificial weights from all shoulders, to clear the paths of laudable pursuit for all, to afford all an unfettered start and a fair chance, in the race of life." He takes this council from Lincoln to

mean that instead of imposing bureaucratic barriers between the people and a clear path to success, we should empower local citizen organizations, churches, and charities to more effectively assist in that effort.

He mentioned two bills he is currently working on in Congress. One is ***The Family Fairness and Opportunity Tax Reform Act***, in which a married couple with two children making the median national

income of \$51,000 would see a tax cut of approximately \$5,000 per year. Also, he and Sen. Dick Durbin (D-IL) are co-sponsoring ***The Smarter Sentencing Act*** to modernize federal drug sentencing policies by giving federal judges more discretion in sentencing those convicted of non-violent drug offenses.

Responding to questions, Sen. Lee spoke about the filibuster practice and immigration policy. Characterizing federal immigration law as cumbersome and outdated, he also mentioned the bi-partisan Immigrant Innovation (or I-Squared) Act. It would streamline the applicable U.S. immigration laws to attract high-tech immigrant specialists.

Rep. Thurston spoke of four processes available for consideration regarding the selection of the State School Board. They include (1) *partisan election*, (2) *non-partisan election*, (3) *gubernatorial appointment*, and (4) *“group appointment” model*.

(1) Rep. Thurston feels his constituents are less favorable of a *partisan* election, in which delegates (along with their biases) make the choice. He believes partisan elections also tend to favor candidates with more extreme views.

(2) There is no natural filtering system in a *non-partisan* election. School districts are huge; bigger than either representative or senatorial districts. This model is vulnerable in that wealthy special interest groups often back candidates.

(3) The *gubernatorial model*, where the governor appoints school board members, has the drawback of making it difficult to change appointees. Also, with the change of governors comes inevitable policy change.

(4) The *group appointment process* has not yet been tried in Utah. However, Rep. Thurston thinks it deserves serious

consideration. The process is one in which local school boards in all 15 districts come together to select State School Board members.

He stressed the fact that the most important thing we want from our State School Board members is accountability. They must be alert to local needs. Whichever model we choose to staff our State School Board should meet that requirement.

Responding to questions, Rep. Thurston noted again that our current gubernatorial model has been ruled unconstitutional, as a free speech issue. His bill, ***HB297 State School Board Elections Amendments***, represents the group appointment model. He said it would probably require an amendment to the state constitution.

Rep. Gibson began by noting how the issue of partisan State School Board elections seems to come up every year and be “shot down” every year. He said Sen. Jackson’s bill, ***SB104 Education Elections and Reporting Amendments***, would remove the nominating committee, and provide that members of the State Board and local school boards *with student enrollment above a specified level* are elected through partisan election.

Rep. Gibson’s bill ***HB186 State School Board Membership and Election Amendments*** would also do away with the nominating committee, but a candidate could be placed on the ballot as a nonpartisan candidate by (1) filing a declaration of candidacy and (2) obtaining 2,000 signatures. A State School Board district has roughly 20,000 people.

He sees ***HB186*** as a compromise bill to both the partisan and non-partisan process, in that the signatures would need to be gathered from a wide geographic area truly representative of the whole district.

Responding to questions, Rep. Gibson affirmed that local school board members make decisions about teacher pay. The downside to his bill is that the process of gathering signatures from each area of the district is difficult, although candidates with enough resources could probably hire a company to do it. Also, the vetting process would not be as stringent as having to face delegates for questioning. He also said several other bills others may morph into one as the session progresses. However, most would require a constitutional change.

Rep. Powell said Utah's multi-tiered process (having a nominating committee choose candidates to submit to the governor for a final selection) has recently been ruled to violate the constitutional guarantees of free speech by giving the governor and the committee "unfettered discretion" in advancing or excluding candidates.

Our current method has given rise to various alternative bills over the last few years. The process, he acknowledged, is a decidedly "odd one." He sponsored a bill last year that would have disallowed a paid lobbyist from serving on the committee. He thinks it possible the recent ruling by the federal judge against our current system may have been influenced by that bill.

Utah is in an interesting situation as a result of the ruling, and the state has a wide variety of choices available to it. As examples, he said Sen. Jackson favors partisan elections for both state and local school boards. His bill, however, may be modified by a compromise with another bill. Sen. Milner favors selecting the State School Board the way the Board of Regents is selected for higher education. If a process is chosen requiring a constitutional change, we would also need an interim solution until we can vote on it in 2016.

Responding to questions, Rep. Powell said The House is considering several proposals.

Rep. Gibson is putting forward a non-partisan, signature gathering approach. In addition, Rep. Powell's bill, ***HB342 Amendments to State School Board Election Process*** would address the issue of proper vetting, as it would require candidates to be sitting local board members. He believes it would be constitutional. The Primary model would also pass constitutional muster, as it would do away with the nominating committee. He said the bills up for consideration do not currently mandate having debates be covered by the media.

Sen. Jackson said (U.S. District Court/District of Utah) Judge Waddoups' ruling against Utah's existing State School Board election process highlights the three existing problems with the process itself. It lacks clarity, it lacks transparency, and it lacks accountability to parents.

If a government official must undergo a rigorous vetting process, the senator believes it's even more essential for a State School Board member. Acknowledging that some of his constituents favor a non-partisan election method to replace our present one, he said he personally sees more advantages in a partisan one.

He also prefers the caucus system and believes in empowering parents at the most local level. His legislation ***SB104 Education Elections and Reporting Amendments*** would make *candidates for, and members of* the State Board of Education (and certain local school boards) subject to a partisan election. Only "mega districts" with populations of over 50,000 are defined as those "certain local school boards."

Responding to questions, Sen. Jackson said he opposes bills that call for signature gathering. He also noted time is of the essence since the legislature must chose a way forward before the end of the 2015 session. Whichever process is selected, it

should be one that properly vets candidates and keeps the most local control with parents. Also, the political Parties will need to decide whether or not State School Board candidates will be given time to speak at their Conventions.

Rep. McCay said his vision for the State School Board election is one that features a shared legislative and executive branch input. He believes that his legislation ***HB305 State Board of Education Membership Amendment and HJR16 Proposal to Amend Utah Constitution – Governance of Public Education*** represent a unique compromise. Together, they would provide for the partisan election of the members of the State Board of Education unless voters approve an amendment allowing the governor to appoint board members with Senate approval.

He asked, “How does the State School Board factor into the natural tension that should exist between the three branches of government?” He believes the board is essentially a “quasi-fourth branch,” in that

there is no check or balance as exists between the judicial, executive and legislative branches. People have legitimate concerns regarding the accountability of the board. He likes the model of the Board of Regents for higher education. The governor submits candidate names and the Senate ratifies them.

Responding to questions, Rep. McCay agreed that legislators are expected to have a say in some state education decisions. Whether a partisan or non-partisan pathway is chosen to determine board members, that won’t be a substantial enough change to obtain the necessary checks & balances. Only a compromise blend of the executive and legislative will do that. The “check” on the taxpayer is that the State School Board can only spend money allotted to it by the legislature. He stated that the key to accountability is a united executive and legislative branch making decisions jointly regarding school spending.

Reported by Pam Grange

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**President: Kari Malkovich
Advisor: Skip Reese
Assist. Editor: Eileen Hallet Stone
Editor: Pam Grange**

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117 West 900 South
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