



**STATE BOARD OF EDUCATION
TRUSTEES OF BOISE STATE UNIVERSITY
TRUSTEES OF IDAHO STATE UNIVERSITY
TRUSTEES OF LEWIS-CLARK STATE COLLEGE
BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO
STATE BOARD FOR PROFESSIONAL-TECHNICAL EDUCATION**

**APPROVED MINUTES
STATE BOARD OF EDUCATION
March 12, 2013
Special Teleconference Meeting
Boise, ID**

A special teleconference meeting of the State Board of Education was held March 12, 2013. It originated from the Board office in Boise Idaho. Acting Board President Don Soltman presided and called the meeting to order at 1:30 p.m. A roll call of members was taken. The purpose of the meeting is to discuss legislation, specifically House Bill (HB) 282.

Present:

Don Soltman, Acting President
Emma Atchley, Secretary
Richard Westerberg
Bill Goesling
Tom Luna
Milford Terrell
Rod Lewis

PLANNING, POLICY AND GOVERNMENTAL AFFAIRS (PPGA)

1. Legislative Update

BOARD ACTION

M/S (Atchley/Westerberg): That the State Board of education support House Bill 282.

M/S (Luna/Terrell) To postpone the Board's action on the motion until 4:00 pm Mountain Time Thursday March 14, 2013, to give the agencies, the State Board and the universities time to discuss their concerns and bring back their final product at that time. The motion carried four to three. Dr. Goesling, Mr. Luna and Mr. Westerberg voted nay on the motion to postpone.

Ms. Atchley introduced the item indicating the bill would allow institutions to have status that is similar to that of the University of Idaho. She indicated the Department of Administration has informed the Board that they have some concerns about the legislation.

Ms. Bent from the Board office reviewed the details of the bill for the Board. She said the bill grants the Board the authority and responsibility to direct control over the institutions regarding financial matters, personnel matters, land use and construction matters, purchasing matters, and any matter as provided by law. The proposed legislation allows those institutions who wish to, to continue any existing participation and any statewide program for services. If they elect to discontinue participation they may elect to enter into written agreements with state departments to provide services on mutually agreeable terms. Ms. Atchley indicated the bill would have a direct impact on Boise State University (BSU), Idaho State University (ISU) and Lewis-Clark State College (LCSC). The bill may also impact several state agencies that currently provide services to the institutions. Staff indicated it has not been able to complete a comprehensive review due to the short timing of when they received the information. HB 282 did address some of the initial concerns that were expressed by institutions regarding the ability to opt in or opt out of the use of services.

The agencies that were present for comment included the Department of Administration, the Controller's Office, the Division of Human Resources, and the Governor's Office.

Ms. Teresa Luna reported for the Department of Administration, stating that they currently manage several programs which will be impacted by this legislation. She expressed concern with the impact to those programs should Higher Education in whole or in part choose to leave. She recommended in depth discussion regarding the fiscal impacts to the programs this legislation will affect. She also expressed concern with the lack of timelines and notification requirements to the affected agencies. She indicated the Department's willingness to work together on this legislation with Higher Education and other affected agencies, and would prefer to hold the bill until the next legislative session after an agreeable solution is met. Ms. Luna offered an additional recommendation that if this legislation does move forward, that it be amended to require Higher Education to provide notice that they intend to opt out 18 months in advance of the fiscal year they intend to leave the program, and to require them to show the fiscal burden to both the institution and the affected programs they are leaving.

Mr. Terrell asked how their fiscal situation would be affected. Ms. Luna responded that if a Higher Education entity leaves a program such as group insurance without any notification, the Department of Administration is committed to appropriations that are based on the whole group being in place. This would create a conflict with the multi-year contracts they have signed in their current plan. Ms. Luna clarified that during August, the appropriation is set for the fiscal year 18 months out. Ms. Luna indicated that if the bill goes through, they would need immediate notification. Mr. Keith Reynolds, Fiscal Officer from the Department of Administration, addressed the 18 month timeline indicating that the appropriation amount that the state sets its budgets from is published in the July manual from the Division of Financial Management in draft form; the calculation itself is done in March or April – which is why it seems like such a long timeline. Mr. Terrell asked if 15 months would be sufficient for notice. Mr. Reynolds indicated that would be agreeable but longer would be better. There was further discussion regarding the effect of the legislation on agencies as well as amendments to it.

Ms. Kim Toryanski, Deputy Director for the Division of Human Resources, commented on behalf of Administrator Vicki Tokita. She indicated there is a fiscal impact to the agency and for the three institutions. She pointed out they are funded by dedicated funds and one source is from fees from the institutions which represents about 7% of their funding. They also have concerns with record keeping and risk management issues. Mr. Luna asked how they would deal with a

staff resource reduction given the loss of funds. Ms. Toryanski responded that she couldn't speak to how the split in personnel may end up at this time.

Mr. Roger Brown from the Governor's office thanked those agencies present for their engagement and openness to the discussion. From the Controller's Office, Brian Woolfe, Controller, and Dan Goicoechea, Chief of Staff, indicated they are not opposed to the idea conceptually, but are in opposition to the bill itself and the timing of the proposed legislation. He said they are committed to work with the universities and the State Board of Education to try to resolve any issues they may have. Mr. Goicoechea indicated their office would likely testify against the bill. He named the reasons why which included conflict with existing statutes, conflict with the Board of Examiners, conflict with Idaho Code 67-1031 related to record keeping of general or special funds that the University of Idaho, the State Board of Education, or the state's colleges and universities may create. He pointed out that the language in Subsection B of the bill would potentially exempt all institution classified employees from the personnel system and stated there could also be perceived or inherent property rights affected. Other sections of conflict mentioned included Idaho Code 67-5301 and 59-1601. Mr. Goicoechea also indicated another item of concern for the Controller's Office is related to the Statewide Cost Allocation Pool or SWCAP. He reiterated they are not in opposition to solving the problem, but they are not in agreement with the rush of this legislation. He concluded his comments by indicating the Controller's office would like to be supportive of the concept, but it would be upon further exploration of impacts across boundaries of both agencies and statute. Additionally, they would like to have an opportunity to provide cost estimates for the proposed changes.

Dr. Kustra commented the flexibility and independence for BSU is warranted given the fact that their state appropriations are low. He acknowledged the concerns of the other agencies that testified and felt there would be a fair way to amend the legislation to assist with the time line, adding that in his opinion it is a very workable piece of legislation. Mr. Satterlee commented on the issues raised by the Controller's office. He felt the statutes may not be in conflict, but could be better harmonized. He added that the Idaho Supreme Court and the Idaho Code as written already have this concept in place and offered some background information. Section 33-4005, Idaho code states that the State Board of Education is supposed to have, "all powers and duties with reference to said college as are now granted by the statutes of the State of Idaho and the Board of Regents of the University of Idaho." He concluded by saying that treating all the institutions the same is important and that credible sources of law and education literature points strongly in favor of institutions being constitutionally flexible in their state constitution.

Mr. Soltman asked if the Board currently has a procedure or process for developing and putting forth legislation. Ms. Bent indicated the current Board process is the same as the Executive Agency process where legislative ideas come forth in June, after which the language comes before the Board in October for final approval. Mr. Soltman asked if this piece of legislation has gone through that process. Ms. Bent responded that it has not. Dr. Goesling asked if the Board has the staff to accommodate any additional work. Dr. Rush responded that the workload would occur at the institutional level and that there would be little administrative burden on Board staff. Mr. Terrell expressed concern about rushing the bill through without Board staff having ample time to review the materials and impact. Mr. Luna asked if there is an AG's opinion on the matter. Mr. Satterlee responded that the Attorney General's office responded in March of 2000 with an opinion answering several questions related to the matter. He added that the weight of the authority is there, but that there is opposition to this legislation that it may conflict with other sections of Idaho Code is an issue. Mr. Terrell asked the Board's legal opinion. Ms. Marcus from the Board office responded that she doesn't have a definitive opinion other than to note

there does appear to be a conflict between the way the constitution is worded, and with statute, that could be cleared up through legislation. She did not want to opine with the lack of time to review the material. Mr. Lewis commented that clarification of the issues would be very helpful.

Mr. Soltman pointed out there is a Board process necessary for reviewing legislation and that BSU did not propose this legislation in June when legislative ideas were requested. Dr. Kustra indicated that in 2009 the Board did take an action on the issue. Mr. Satterlee confirmed that the Board's action was to pursue autonomy on the item. Mr. Lewis reminded the Board that this issue has been before it for a considerable amount of time. Authority is given to the Board to separate itself from the agencies if it feels it is appropriate for the institutions, thereby enabling the Board flexibility to do what it thinks is right for the institutions.

Mr. Luna commented that there is no fiscal note in the language and there will certainly be a fiscal impact to other agencies. He requested to know more about the fiscal impact to state government and also questioned the urgency of this legislation, commenting the concerns expressed from the other agencies are largely a request more time for review the materials. He felt that if the agencies and institutions were given some time to sort through the details that an agreeable solution would likely be arrived at to address all concerns, considering earlier discussion indicated agreement with the concept of the legislation. Mr. Lewis encouraged being very supportive of this bill. Mr. Luna asked for a motion to postpone the original motion until Thursday to allow the agencies and institutions further review.

Mr. Westerberg clarified that the Board was asked to opine one way or another on this bill and that it clarifies and/or vests a particular authority to the Board. He is supportive of the bill and reminded Board members that there is a process the bill will follow allowing for amendments.

There was brief discussion about another legislative item, but the Board opted to discuss it at a later time.

Other Business:

There being no further business, a motion to adjourn was entertained.

M/S (Terrell/Atchley): To adjourn at 2:57 p.m. The motion carried unanimously.