

Jan McComb

To: Senator Education Committee

From: Jan McComb

Date: 2/26/18

Re: HB 4013

For the record, my name is Jan McComb, private citizen, and I reside in Salem in the legislative districts of Sen. Winters and Rep. Evans. I am here to testify in favor of HB 4013 and answer any questions about how it was implemented at the Department of Education when I worked there.

I was staff to the board when this law took effect and so I followed the legislative history carefully to ensure it was implemented with fidelity.

INTENT

During the bill's public hearings in 2009, the treasurer and secretary of state testified that the purpose of the law change was to give the two offices opportunities to weigh in with the State Board of Education regarding modification of civics and financial literacy academic standards and the development of Essential Skills in those two areas. They would be non-voting members and there to lend their expertise in these two areas.

Office holders or designees would only attend meetings when those subjects were being considered. It was expected that any designees would be employees of the office. Proponents of the bill stated that the position would not be used for political purposes.

The bill's sponsor did not consult with the board or its staff prior to the developing the legislation. Academic standards are updated on a seven-year cycle so adding these two members did not guarantee there would be significantly more discussion on these two topics. Workgroups are always created when standards are being updated, and that would be the most effective time to assist in the development of the standards. As I recall, these two offices are generally consulted during this preliminary work for their input, due to their historic interest in the subjects.

IMPLEMENTATION

- ✓ The State Treasurer and the Secretary of State were added to the board's webpage (not designees).
- ✓ New e-mail addresses weren't created as the two office holders already had email addresses.

- ✓ Meeting materials were delivered to the two offices, and those offices would decide to who to send, if anyone. Generally they reviewed the agenda to see if topics that pertained to their office was scheduled.
- ✓ Designees were full-time employees.
- ✓ The two new members were not reimbursed for travel expenses, since their offices were in Salem, where the board met.
- ✓ According to board minutes, out of 101 days of board meetings from 2010 through 2016, a designee from one of the two offices attended parts of four meetings.

This interpretation was maintained through 2016 but in the spring of 2017 it was re-interpreted by one of the offices, who named a non-state employee to meetings. It is not clear whether the designee chose which parts of meetings to attend or if attendance was done at the direction of the office. Attendance was not linked to civics or financial literacy, and it does not appear that the designee ever raised these issues.

Because legislators are sensitive to when legislation is not implemented by state agencies as intended, this bill gives you an opportunity to revisit the policy and the original intent.

STATE EMPLOYEE AS DESIGNEE

If the Legislature would like to continue this expansion of the State Board of Education, there are a number of reasons why it would be beneficial to have a state employee as the designee.

- **FINANCIAL DISCLOSURE:** Without financial disclosure as required for the other board members, the treasurer, and secretary of state, nonemployees may use the position to make money and we would not know about it, an ethics violation. State employees are trained in state ethics law, while private citizens may only have a tenuous grasp of what is allowed.
- **ALIGNMENT WITH OFFICE:** As generally understood, a designee represents the office or person that appointed them. State employees understand this role and strive to ensure that anything they say reflects the views of the actual board member, in this case, the state treasurer and the secretary of state. As an employee, designees would have frequent contact with the appointing office and understand its views; it would not be a platform for their individual beliefs and views.
- **POTENTIAL ROLE CONFUSION:** When the designee is not an employee of the office they are representing, they might have their own, independent public persona. In the situation where they use the title, “state board of education member” in social media or newspaper comments, it is unclear who is speaking in social media posts—the governor, the office holder, the state board, or an independent citizen who is not acting in their public official. Posts might include political statements, and again further raises the confusion about who is actually speaking.
- **BOARD ROLES:** When governor-appointed board members opine in their community or at state functions, they are asked to either not identify themselves as board members or to add that while they are board members, they are not speaking on behalf of the board (unless the board has voted and given them this responsibility). This is to clarify that they are not representing the board.

- PUBLIC RECORDS: State workers are regularly drilled about public records law and understand that e-mails are regularly requested and released, and do not take offense when these requests are made.
- PUBLIC RECORDS: Similarly, the state archivist has opined that private Facebook pages created by a public official that discuss the public business is a public document. Records generally have a three-year retention period. A non-state employee may not understand this, and may delete postings or block some Oregon citizens from the site.
- PUBLIC RECORDS: An independently created Facebook page makes it more difficult for the state offices to oversee and manage the page, which is the usual case for public records.
- PUBLIC MEETINGS LAW: A state employee would better understand public meetings law and that it is inappropriate to discuss board business via e-mail with a quorum of the board, for example.
- LEGAL ISSUES: Board members, like a jury, listen to various arguments and eventually make a decision. They make decisions as a body and do not independently act to develop new facts and legal theories. A private citizen, understandably does not necessarily understand this role and may involve themselves with one side or another in a dispute. A state employee better understands their neutral role.
- LEGAL ISSUES: Similarly, a state employee understands that state agencies must rely on DOJ in legal matters, whether they agree with the advice or not.
- PARLIAMENTARY PROCEDURE: Public employees are more likely to be aware of how boards operate, and would be more likely to interpret protocols as strategies to enhance the effectiveness of a board, rather than that of silencing members.
- ROLE OF STATE BOARD: A lack of understanding about Oregon education and the role of the state board and department can lead to erroneous conclusions since Oregon is particularly organized as a local control state. Private citizens could become frustrated when the department or board doesn't intervene more in local matters and conclude that state players just don't care when that's not the case.
- WORK ENVIRONMENT: A state employee better understands state workplace policies and behavior norms.

CONCLUSION

Although appointed by an elected official (the governor), the state board has always been apolitical with both Democrats and Republicans named to the board. This has worked well and created an atmosphere of open dialogue and an honest discussion from diverse viewpoints of the issues based on the facts.

The State Board of Education consists of ethical and responsible citizens who volunteer their personal time to make Oregon better. They do not “rubber stamp” recommendations made by the Deputy Superintendent and often challenge the staff on their recommendations. One only has to look at how they handled the issue of Native American mascots over many years, seeking public input at every turn to understand that they are not afraid of criticism or controversy or public input.

Meetings are live streamed and then archived. There’s a time for public comment at each meeting. The public can e-mail members. Every action is transparent. This is not a board that is afraid of outspoken critics—in fact, they *welcome and request* other points of view. If this bill passes, it will not affect anyone’s criticism of the board.

The policy decision before this panel is whether to support the original intent of the bill, eliminate representation of the State Treasurer and Secretary of State completely, or to modify and clarify the participation of those offices. Passing HB 4013 would clarify that any designee be a full-time employee as intended, but does not restrict the input of these two offices to the topics of civics and financial literacy. I believe this is a compromise that honors the original purpose of the bill.

Thank you for taking the time in your busy day to read my testimony.