

1                   **CONCURRENT RESOLUTION ON THE ELEMENTARY AND**  
2   **SECONDARY EDUCATION ACT**

3   2015 GENERAL SESSION

4   STATE OF UTAH

5   **Chief Sponsor: Steve Eliason**

6   Senate Sponsor: Ann Millner

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8 **LONG TITLE**

9 **General Description:**

10                   This concurrent resolution of the Legislature and the Governor calls upon the United  
11 States Congress to reauthorize the Elementary and Secondary Education Act.

12 **Highlighted Provisions:**

13                   This resolution:

14                   ▶ calls upon the members of Utah's congressional delegation to sponsor legislation in  
15 Congress that reauthorizes the Elementary and Secondary Education Act (ESEA,  
16 also known as No Child Left Behind); and

17                   ▶ urges the State Board of Education to continue to protect and preserve Utah's  
18 exclusive sovereignty over Utah's education system if the State Board of Education  
19 considers it necessary or prudent to seek a waiver or renewal of provisions of ESEA  
20 as currently authorized.

21 **Special Clauses:**

22                   None

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24 *Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:*

25                   WHEREAS, Utah seeks to provide high-quality education for the children of the state;

26                   WHEREAS, numerous education groups, business groups, and other stakeholders have  
27 called upon education leaders to substantially reform and improve the education system in



28 Utah;

29 WHEREAS, such reforms have required substantial and continuing changes, including  
30 changes to Utah's teacher compensation system, educator evaluation system, teacher training,  
31 education standards, and assessment systems;

32 WHEREAS, the Legislature is, under the Utah Constitution, obligated to establish and  
33 maintain public schools in the state of Utah;

34 WHEREAS, the Utah State Board of Education is, under the Utah Constitution and as  
35 further directed by the Legislature in statute, obligated to exercise general control and  
36 supervision over public schools in the state of Utah;

37 WHEREAS, the Elementary and Secondary Education Act, 20 U.S.C. Sec. 6301, et seq.  
38 (ESEA, also known as No Child Left Behind), as implemented, has demanded states, including  
39 Utah, to make many education reforms;

40 WHEREAS, Utah's education leaders feel strongly that education reforms must be  
41 under the full control of Utah's constitutionally established structures;

42 WHEREAS, funding under Title I of ESEA is conditioned on compliance with the  
43 provisions of ESEA;

44 WHEREAS, ESEA mandates 100% student proficiency by 2014 in math and reading  
45 (the federal mandate);

46 WHEREAS, the United States Department of Education (USDE), Congress, and the  
47 states agree that the federal mandate is unattainable and must be repealed;

48 WHEREAS, ESEA was scheduled to be re-authorized in 2007, at which time the  
49 federal mandate would be repealed;

50 WHEREAS, Congress failed to re-authorize ESEA in 2007;

51 WHEREAS, USDE, recognizing that the unattainable federal mandate would leave  
52 states at risk of losing Title I funding, instituted a process whereby states could escape the  
53 consequences of the federal mandate by applying for a waiver under conditions determined by  
54 USDE;

55 WHEREAS, it is argued, in a forthcoming Vanderbilt Law Review article, that the  
56 ESEA waiver provisions used by USDE may constitute an unconstitutional encroachment on  
57 the rights and prerogatives of the states in the United States' system of dual sovereignty;

58 WHEREAS, in 2010, the Utah State Board of Education adopted new education

59 curriculum standards, known as the Utah Core Standards, to ensure that Utah students are  
60 prepared for college-level work and competition in the economy of the twenty-first century;

61 WHEREAS, on 5 March 2012, then State Superintendent of Public Instruction, Dr.  
62 Larry Shumway, asserted to the United States Secretary of Education, Dr. Arne Duncan  
63 (Secretary Duncan), that Utah, through its State Board of Education, reserves "the right to  
64 make changes to, and to add or subtract from, the Utah Core Standards at its discretion" and,  
65 moreover, to assert and maintain "complete control of Utah's learning standards in all areas of  
66 our public education system";

67 WHEREAS, on 7 March 2012, Secretary Duncan responded to Dr. Shumway's  
68 assertion of state education sovereignty, "confirm[ing] our full and unqualified agreement with  
69 your letter and your understanding of the law regarding State control over K-12 learning  
70 standards...States have the sole right to set learning standards";

71 WHEREAS, on 22 August 2014, the Utah State Board of Education applied for an  
72 ESEA waiver under conditions set forth by USDE ("Utah's ESEA Flexibility Waiver");

73 WHEREAS, Utah's ESEA Flexibility Waiver was expressly conditioned on Utah's  
74 absolute and exclusive right to modify, without negative effects, its waiver, the Utah Core  
75 Standards, state assessment and accountability requirements, and teacher and principal  
76 evaluations without approval of USDE;

77 WHEREAS, the State Board of Education has reserved the right to withdraw Utah's  
78 ESEA Flexibility Waiver if the board finds that the waiver violates Utah Code Ann. Subsection  
79 [53A-1-402.6\(7\)](#);

80 WHEREAS, Utah's ESEA Flexibility Waiver, including the clear assertion of Utah's  
81 unequivocal sovereignty over its education system, was accepted and approved without  
82 modification by USDE;

83 WHEREAS, by December 2014, USDE began preparations for another round of ESEA  
84 waivers, now known as renewals, to last for a period of three years;

85 WHEREAS, it is the intent of the State Board of Education to seek an ESEA renewal  
86 from USDE and, in doing so, would again assert Utah's sovereignty over its education system;

87 WHEREAS, the need for ESEA waivers and renewals stems from systematic and  
88 widely recognized flaws in ESEA that have prompted virtually every state in the nation to seek  
89 ESEA waivers or renewals;

90 WHEREAS, while Utah desires to receive its rightful portion of funds distributed under  
91 ESEA, it will not sacrifice any degree of state sovereignty to obtain such funds; and

92 WHEREAS, ESEA and its implementing regulations purport to encourage innovation,  
93 reform, and change in education systems, which are concepts that parties to this concurrent  
94 resolution agree with in principle:

95 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the  
96 Governor concurring therein, calls upon Senator Orrin Hatch, Senator Mike Lee,  
97 Representative Rob Bishop, Representative Jason Chaffetz, Representative Chris Stewart, and  
98 Representative Mia Love to sponsor or cosponsor legislation in Congress to reauthorize ESEA  
99 to render ESEA waivers or renewals unnecessary and to preserve Utah's state sovereignty over  
100 education.

101 BE IT FURTHER RESOLVED that the Legislature and the Governor urge the State  
102 Board of Education to continue to protect and preserve Utah's exclusive sovereignty over  
103 Utah's education system if the State Board of Education considers it necessary or prudent to  
104 seek a waiver or renewal of provisions of ESEA as currently authorized.

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**Legislative Review Note**  
**as of 2-16-15 5:00 PM**

**Office of Legislative Research and General Counsel**