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Voucher vote in November?

Huntsman shifts course, says he may move up election 3 months

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Gov. Jon Huntsman Jr. said Friday he may order a special election on school vouchers this November, instead of February, if lawmakers agree to help local governments pay the additional costs of the statewide referendum.

The governor's proposal to move the election up three months surfaced as GOP legislative leaders insisted they are not going to revisit the voucher issue, and advised State Board of Education officials to think again about not implementing one of two voucher bills passed by the 2007 Legislature.

Huntsman had announced he wanted the election to consider repealing a voucher bill to be held at the same time as the state's presidential primary on Feb. 5, 2008, a date that would have to be approved by lawmakers in a special session.

Now, though, the governor said he may take the referendum "to the people sooner rather than later" — without a special session. Under the law, he can set a special election in either June or November without legislative action.

A November special election — and skipping a special legislative session — is just fine with House Speaker Greg Curtis, R-Sandy. "The public has asked for a vote. We need to get it to them," Curtis said.

Voucher supporters have said it is really of no consequence when the election is held since there is already a voucher law on the books. Only one of the two voucher bills lawmakers approved is subject to the repeal vote.

But Kim Burningham, chairman of the State Board of Education, said he would prefer it sooner than later so it would not be in the middle of the legislative session.

Before he decides, though, Huntsman said he wants a commitment that the 2008 Legislature will pick up local governments' share of the \$3.5 million price tag for a statewide election. Curtis said just how much that would cost has yet to be calculated.

Curtis and Senate President John Valentine, R-Orem, spoke on the voucher issue before the annual Taxes Now conference sponsored by the Utah Taxpayers Association in the Little America Hotel. Huntsman talked with reporters about vouchers after addressing the conference.

The legislative leaders said rumors that House and Senate GOP conservative legislators outfoxed their Democratic and moderate Republican colleagues by passing two voucher bills last session are not true.

In fact, Curtis, who last session played a major role in pushing for vouchers — which had failed six other times in the Legislature — said that anyone who believed that legislators knew beforehand how the voucher issue would play out is just perpetrating "a lie."

Lawmakers passed two voucher bills. The first and main bill passed by just one vote in the House after \$9.2 million was added to offset the anticipated revenue lost to local school districts.

Then, the last night of the 2007 Legislature, lawmakers passed a second voucher bill, calling it a funding and "cleanup" amendment to the first bill.

But the second bill contained much of the language of the first bill, except the \$9.2 million. And while the first bill will now go before voters in a referendum, the second bill cannot because it was passed by a supermajority (two-thirds) of lawmakers.

Some have called for the governor, who signed both bills, to call a special session where legislators could clear up the discrepancy — and make the upcoming public referendum on private school vouchers a clean up or down vote.

State board members said it would be the most ethical and fair way and would sidestep the "political game."

"It appeals to me because it puts the decision in the hands of the public without any manipulation," said Burningham.

But Huntsman, who may avoid calling a special session, said it will be up to the courts to settle the issue. "We all know there will be some critical court cases that play out in the next few months," the governor said, adding that in the meantime, there shouldn't be any "second-guessing."

Curtis said lawmakers wouldn't deal with vouchers in a special session, anyway.

"There are always unintended consequences" in legislative work, the speaker said. And often those consequences aid one group while harming another. In the case of private school vouchers, that unintended consequence — the second bill staying in place — seems to help those who want vouchers.

"When you are on the right side of unintended consequences, you are reluctant to step back in" to a political fight that may not be necessary, he added.

"But if luck is with you, you smile, be gracious and move on," said Curtis. In other words, GOP legislative leaders will not be trying to "fix" the two-voucher-bill issue before citizens get to vote on the referendum, now probably in early November.

Burningham said if that's the case then it will all boil down to a legal decision on whether the second bill can stand alone.

Lawmakers are not shirking their duty, said Valentine. On the contrary, Attorney General Mark Shurtleff has already opined that the second voucher bill has enough enactment language in it to implement private school vouchers in Utah. And until any court rules otherwise, the state board and public education administrators should move forward with starting up the voucher system.

But state board members on Thursday refused to adopt such implementing rules until they have some questions answered regarding how to fill in "holes" in the new law. That appears to violate Shurtleff's opinion, said Valentine.

"There was a clear directive" from the attorney general, said Valentine, who like Curtis is an attorney.

"I question why (the board) is not following the law," the president said. Valentine said he's at a loss to figure out why, and "we will be having discussions with the State Board of Education very soon."

Board leaders did have rules drafted for the the original law, which is now on hold. But they said even if they do decide there is enough language in the second law to allow them to draft a rule it is going to take some time — that could mean vouchers won't be available to families this fall.

Voucher supporters say the board is just stalling

"They are totally dragging their feet — it's the same program and they could easily shift the rules to apply to (the second law) if they wanted to," said Leah Barker, spokeswoman for Parents for Choice in Education and Children First Utah, who said nearly 6,000 Utah families are waiting to apply for a voucher.

Legislators have no direct power over the publicly elected state board.

However, lawmakers have the power of the purse, because they fund the state board's internal operations.

As further evidence that GOP legislative leaders didn't plan the second voucher bill vote as a way to bypass any referendum attempt, Curtis said legislators could

have "changed two words" in the second bill's title "and a few other words here or there" and they would have had the exact same enactment language in the second bill as in the first.

And it would have been clear to anyone, and made a better case in court, that the second, legally binding bill could stand alone to implement vouchers.

"It could have been exactly the same bill" — but wasn't — and so voucher supporters in the Legislature were not trying to be "tricky," said Curtis.

Curtis said he doesn't understand why "anyone opposed to vouchers" would have voted in favor of the second bill, anyway.

Rep. Greg Hughes, R-Draper, told the conference — crowded with the movers and shakers in state government and business — that some voucher advocates didn't even want to debate or pass the second bill. That was because they had already "won" with the main voucher bill, and some concerns by Democrats and GOP moderates dealt with in the second bill should just be ignored.

But Curtis told Hughes as a voucher winner he should be gracious, and that more funding wanted by opponents to vouchers should be given in the second bill.

The second bill was not "some draconian effort" to bypass any referendum, said Hughes. "It was a collaborative effort" with some voucher opponents "to fix" some of the concerns in the main bill, said Hughes.

Hughes went on to say that overall Utah's private school voucher plan — where parents who send their children to private schools can get between \$500 and \$3,000 a year (depending on family income) per child — "is one of the most broad-based in the nation."

Money to pay for vouchers comes out of the state's General Fund, not its education fund. And the law says public schools will still get full funding for five years for students who go to private schools — thus clearly not harming public education funding, Hughes said.

Huntsman said the other, unrelated bill he intended to ask lawmakers to consider in special session may have to wait until the 2008 Legislature. The bill, named "Henry's law" after a dog blinded and burned by his owner's now ex-husband, would make some acts of animal cruelty a felony. It failed to pass in the final minutes of the last session.

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