

**HARVEY KRONBERG'S QUORUM REPORT**

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## DOGGETT REJECTS GOP LEADERSHIP ARGUMENTS AND SEEMS TO HOLD ALL THE CARDS

**It appears that in original 2009 stimulus application, Perry made comparable assurances about future legislative efforts**

*UPDATE: The original link to "page 4" in the story was incorrect and has been replaced with the proper one.*

Congressman **Lloyd Doggett**, faced with an impressive blockade from the Texas Republican armada this afternoon, says he won't back down in his fight to force Gov. **Rick Perry** into compliance with the Democrats' desired intent for supplemental education funding.

Doggett faces wide partisan opposition in his efforts, from the chair of the Texas *Senate Education Committee* to the commissioner of education to the state's two Republicans in the U.S. Senate. All are calling on Doggett to pull his amendment from the \$10 billion edujobs bill, now attached to a Senate bill on the modernization of the *Federal Aviation Administration*. Doggett dismissed Republican concerns this afternoon.

"What we're witnessing is the fact they want another blank check to the state of Texas, to be spent however they want to spend it," said Doggett from his Austin office. "We are insisting that federal dollars go to local education purposes and not for some fund you intend to use however you please sometime in the future."

On a practical level, no one in the *House* is going to wait around to make Texas happy, Doggett said. The FAA bill will be on the floor of House next Tuesday for probably no more than two hours of debate. Stripping out the amendment would only mean the bill would have to go back to the Senate, meaning it would be practically impossible to guarantee funds would start flowing to states before schools start.

"If anything is changed in that bill, it's going to delay monies going out around the country," Doggett said. "We're going to be lucky to get everybody back there for the 218 votes needed to approve this bill."

Doggett has fought the fight on this amendment, attempting to attach it more than once to legislation. Even the **Obama** administration was not on board, he admits, when the Austin-based congressman inserted state-specific language to require Texas to guarantee that new federal money will not be used to plug impending budget holes. Texas share of the \$10 billion edujobs bill would be about \$830 million.

Right now, the *Department of Education* is decidedly neutral on Doggett's fight, offering up an acknowledgement of concerns and a spreadsheet that shows the bill would save 15,400 jobs in Texas.

"We're aware of the concerns raised by the Governor and are reviewing the language in the legislation," said *DOE* spokesman **Justin Hamilton**. "We look forward to ensuring that every state is able to receive their allocation of funds in the education jobs bill."

Privately, some in the education circles have questioned the timing of the announcement, which has coincided with the announcement of federal accountability ratings. According to a news release out of the *Texas Education Agency*, one in five school districts failed the federal threshold of making adequate yearly progress -- even with a new controversial growth measure that bumped the ratings of more than 1,300 schools.

Flagship school districts in many of the state's urban areas failed to satisfy federal requirements for progress.

Then there's the curious matter of the substance of the Republicans' objection. The language that Doggett added in his amendment to the edujobs bill is intended to guarantee a level of "state maintenance" in the next biennium. Republicans insist Perry can't bind future legislatures; yet that's appears to be exactly what the Governor did when he signed [Page 4](#) of the *State Fiscal Stabilization Fund application* to receive the original stimulus package in 2009. That page guaranteed "maintenance of effort" in future years.

Former judge **Scott McCown**, who heard the state's last school finance case and now heads up the liberal-leaning *Center for Public Policy Priorities*, has looked at the language and doesn't see much of a legal impediment to meeting the requirements set out under the edujobs bill.

McCown said language in the edujobs amendment applies "maintenance of effort" requirements on all states. All states that accept funding have to meet one of two thresholds: tax collections in FY 2009 must be less than FY 2006; or states must agree use state dollars, to spend the same on education in FY 2011 as the state spent in FY 2009.

So every state, essentially, has to agree to "maintain current effort" and not use the new funds to plug budget holes. Doggett's Texas-specific language, added to the bill, requires the percentage of state monies spent on state education be maintained through FY 2011, 2012 and 2013.

"We could have gone with the other (more general) language, but I thought there were too many loopholes in it," Doggett said. "I am sure there have been problems in other states, but no other state has managed to divert \$3.2 billion in stimulus money away from education. That's almost as much as what was spent on the entire country on *Race to the Top*."

McCown said the key issue within the Doggett amendment is the type of assurance Perry must offer the federal government. McCown's reading of the language indicates that all Perry would have to do is to sit down with Comptroller **Susan Combs**, go over the numbers, and then indicate the state is capable of meeting specified revenue targets to sustain its current "maintenance of effort" over the next three years.

Then Perry would have to forward some type of written assurance to the government that he would make a good faith effort to maintain that effort, McCown said.

"First we have to determine what the revenue target is and, second, we have to determine if we're likely to meet it," McCown said. "If we are, then there should be no problem sending the feds a letter that we're likely to meet the target."

In other words, according to McCown, no one is likely to smack Texas' knuckles with a ruler or ask the governor to return millions of dollars if the state finds itself in unexpected dire financial straits two years from now and unable to spend the same percentage of the budget on public education.

"It's not asking the governor to bind the legislature to certain expenditures," McCown said. "It's asking the governor to make a good faith prediction that the state is likely to meet these requirements. And, from what I can tell, there are no clawback or enforcement provisions included in the language."

If you toss out the "binding future Legislatures" argument, lawyers in education circles question how Lt. Gov. **David Dewhurst** or anyone else could sue over the matter of singling out Texas for additional requirements to receive federal money. What would be the cause of action? Who would have standing? What is the injury, and to whom? If the question is injury, maybe the Democrats ought to go ahead and sue the governor for failing to agree to

the guidelines.

The money involved, in this case, is not an entitlement guaranteed to all states, goes the argument. The government gives money to one state over another all the time. It's called earmarks.

Doggett said the assurances he wants is that if Perry is still governor on Nov. 3, he will not immediately turn around and send out a memo to school districts saying new federal money now replaces state funding. The Austin congressman rejects the notion that such an effort violates the Constitution.

"All Governor Perry has to do is affirm he will not single out cutting public education funds using federal dollars," Doggett said. "All we're doing is trying to add some assurances."

We have requested comment from the Governor's office regarding the apparent assurances of legislative effort in the 2009 stimulus application and will post the response upon receipt.

**By Kimberly Reeves**

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