STATE OF ARIZONA

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March 3, 2006

The Honorable Jim Weiers
Speaker of the House
Arizona House of Representatives
1700 West Washington Street
Phoenix, Arizona 85007

Re: House Bill 2064: English language learners

Dear Speaker Weiers:

Yesterday, I received House Bill 2064, related to English Language Learner (ELL) programs. I have decided to allow the bill to become law without my signature. After nine months of meetings and three vetoes, it is time to take this matter to a federal judge. I am convinced that getting this bill into court now is the most expeditious way ultimately to bring the state into compliance with federal law.

To that end, I have asked the Attorney General to file a motion to expedite the Court's decision regarding the legal sufficiency of House Bill 2064. Further, the Attorney General will re-urge the Court to order that all fines received to date be distributed as soon as possible to our schools for ELL instruction. These fines total $21 million, or approximately $140.09 per ELL student based on the FY 2006 student count and should be distributed above and beyond the funding currently appropriated for ELL students. If added to this year's base funding of $355.00 per student, for example, Arizona would spend $495.09 per ELL student in FY 2006.

Even that amount, however, is inadequate, and I will therefore continue to support enhanced funding and accountability for ELL programs in the context of the FY 2007 budget.

Although I am allowing House Bill 2064 to become law without my signature, I do not believe this bill meets either the Court's multiple orders or our existing consent decree. It fails in a number of important ways, including, but not limited to:

- Arbitrary Funding Level: there is no reason to believe that the funding contained in House Bill 2064 bears any rational relationship to the actual cost of implementing a successful language acquisition program.
- Failure to Ensure Academic Accountability: the point of teaching children to speak, read and write in English is to allow them to succeed academically and to ultimately become contributing members of the workforce. This bill cuts off funding to students after two years, regardless of their academic progress and does not ensure ELL students would even be able to pass AIMS.
- Failure to Determine Program Effectiveness: rather than using respected experts to advise the state on best practices and the real costs of ELL instruction, House Bill 2064 instead creates a system by which political appointees with no required minimum qualifications make important educational policy decisions.
- Unwise Creation of a New Bureaucracy and Excess Paperwork: the bill adds an extra layer of government and does not focus on long-term student success.
- Violation of Federal Supplanting Laws: the bill requires ELL payments to school districts and charter schools to be reduced by the amount of federal monies they receive, in violation of federal law.

Arbitrary Funding Level

In its order of January 24, 2000, the Court ruled that the state's funding scheme was "arbitrary and capricious" because it bore no "rational relationship to the actual cost of implementing a language acquisition program." There is no reason to believe that the small and arbitrary increase in base funding proposed by House Bill 2064 corresponds to any practical examination of cost-benefit data, or that it bears any "rational relationship to the actual cost of implementing a language acquisition program."

The state has commissioned several studies and surveys regarding the actual costs of funding English language instruction. Despite some problems with those surveys, the conclusions reached in each of them are similar, and they each call for more funding than is provided in House Bill 2064. Indeed, the funding called for in House Bill 2064 is not rationally related to the actual average costs currently incurred by Arizona's schools in providing ELL instruction. Moreover, because the bill omits any future cost analysis and subjects future funding requests to approval by the Superintendent of Public Instruction, it does not ensure adequate long-term funding for English language instruction.

Failure to Ensure Academic Accountability

In 1998, Arizona voters passed Proposition 203 and mandated a program of learning called Sheltered English Immersion (SEI). That law recognized that language development and academic instruction must go hand in hand to enable students to achieve in school and contribute to the American economy. The state must not only comply with this voter-approved mandate, it must also be accountable for students' success; and in Arizona, that means they must be able to pass AIMS.

The Court has ordered that students be monitored for two years following their exit from an ELL program to review both their language ***and*** academic achievement. The Court has further required the state to intervene during this two-year period if an ELL student demonstrates a lack of adequate English language acquisition or academic achievement. House Bill 2064 fails to recognize and fund this type of monitoring and intervention. By mandating language intervention only and eliminating funding after two years regardless of English proficiency, this bill eliminates existing protections for students and parents and defies the Court's orders to ensure that ELL students achieve academically.

Failure to Determine Program Effectiveness

House Bill 2064's lack of measurement of the effectiveness of English language instruction is also disappointing. Although the Arizona Department of Education (ADE) should have collected, over the years, reams of information regarding successful ELL strategies at our more than 2,000 schools, it claims to not be able to produce this information without a new permanent task force that functions separate and apart from the State Board of Education. Many schools are highly successful in teaching and graduating ELL students; but we need to know how they obtain that level of success, and help other schools replicate those programs and practices. Unfortunately, House Bill 2064 does not identify or fund these strategies.

Instead, House Bill 2064 mandates that instructional "models" and funding decisions be developed in a process driven by political appointees; it ignores my request to ensure the task force is comprised of experts in education and finance. The state should contract with an independent third party to determine the best practice models and the costs to fund them, so that funding is not arbitrary and capricious and the models are successful and accountable.

Unwise Creation of a New Bureaucracy and Excess Paperwork

This bill also creates new bureaucracy and paperwork that appears unrelated to long-term student success. More than one-quarter of the new money appropriated in this bill is for the creation of a new bureaucracy within the Arizona Department of Education, rather than actual classroom education. Though ADE has made a case for additional staff to oversee ELL programs, it has not justified the level of bureaucracy called for in House Bill 2064 or explained how it might otherwise reallocate existing resources. Excessive administrative costs and poor oversight result in wasted state funds that would be better spent in our classrooms.

Arizona taxpayers have no guarantee that the state will be accountable for the few additional dollars this bill invests in ELL programs. Instead, they are guaranteed a new and bigger state bureaucracy.

Violation of Federal Supplanting Laws

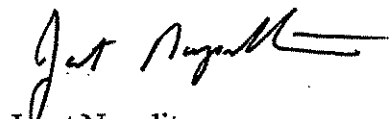
House Bill 2064 also violates federal law by seeking to use federal funds to supplant, rather than supplement, state funding obligations. States are expressly prohibited by federal law from using Title I, IIA or III monies to supplant state funding obligations. *See* 20 U.S.C. § 6314 (a) (2) (B) (schools receiving Title I funds shall use such funds "only to supplement the amount of funds that would, in the absence of funds under this part, be available from non-Federal sources for the school, including funds needed to provide services that are required by law for....children with limited English proficiency"); 20 U.S.C. § 6613 (f) ("Funds received under this subpart [of Title IIA] shall be used to supplement, and not supplant, non-Federal funds that would otherwise be used for activities authorized under this subpart"); 20 U.S.C.A. § 6825(g) (Title III funds "shall be used ***so as to supplement the level of Federal, State, and local public funds that, in the absence of such availability, would have been expended for programs for limited English proficient children*** and immigrant children and youth ***and in no case to supplant such Federal, State, and local public funds***") (emphasis added).

Section 4 of House Bill 2064, however, requires school districts and charter schools to reduce their funding requests for ELL programs by the amount of federal Title I, IIA and III funds they receive. As such, this provision violates the clear prohibition on supplanting state public funds, subjects the state to possible legal claims seeking repayment of the millions of federal dollars we receive, and should be struck down on the grounds that federal law preempts it.

Section 4 of the bill also requires a school district's ELL funding to be reduced by a portion of the Impact Aid monies it receives. This would harm a number of our school districts -- particularly those on Tribal reservations -- and would appear to also violate federal intent with respect to ELL funding.

Given the ongoing refusal of legislative leadership to address the foregoing concerns legislatively without judicial intervention, I will allow House Bill 2064 to become law so that any and all deficiencies in the bill can be promptly identified by the Court and rectified during this legislative session.

Yours very truly,



Janet Napolitano
Governor

cc: Hon. Ken Bennett
Hon. Chuck Gray