

## LEGAL REVIEW NOTE

**Bill No.:** HB 185

**LC#:** LC 2575, To Legal Review Copy, as  
of January 9, 2021

**Short Title:** Revise laws related to basic  
instructional program in high schools

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**Date:** January 12, 2021

### CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

*As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of jurisdictionally relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.*

*This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review IS NOT dispositive of the issue of constitutional conformity and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See *Alexander v. Bozeman Motors, Inc.*, 356 Mont. 439, 234 P.3d 880 (2010); *Eklund v. Wheatland County*, 351 Mont. 370, 212 P.3d 297 (2009); *St. v. Pyette*, 337 Mont. 265, 159 P.3d 232 (2007); and *Elliott v. Dept. of Revenue*, 334 Mont. 195, 146 P.3d 741 (2006).*

#### Legal Reviewer Comments:

Article X, section 9(3)(a), of the Montana Constitution creates a "board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law." The Montana Supreme Court has held that the Legislature does not have the ability to remove duties from the Board of Public Education (Board) that fall under the Board's directive to generally supervise public educational systems. See *Board of Public Education v. Judge*, 167 Mont. 261, 268-269 (1975), holding that the

Legislature could not transfer responsibility for vocational education from the Board of Public Education to the State Board of Education because the Legislature did not have the authority to alter the structure of the three constitutional boards of education where the State Board of Education was intended only to plan, coordinate, and evaluate the state's educational systems.

Section 1 of HB 185 as drafted directs school district trustees to offer a course in personal finance as part of the district's math course offerings to meet graduation requirements and requires districts that offer a foreign language course to also offer a software programming course in lieu of the foreign language requirement. Section 1 may raise a potential constitutional question as to whether this legislative direction conflicts with the Board's exercise of general supervision over the public school system and the local boards of trustees' constitutional responsibility to supervise and control the schools in each district as prescribed by Article X, sections 8 and 9(3)(a), of the Montana Constitution.

### **Requester Comments:**

In the Constitution of Montana, it states both:

Article X, Section 1, (3) **"The legislature shall** provide a basic system of free quality public elementary and secondary schools. **The legislature may** provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system."

Article X, Section 9, (3) (A) "There is a board of public education to exercise general supervision over the public school system and such other public educational institutions **as may be assigned by law.**"

It seems that according to the Constitution of Montana- the legislature is the body that has ultimately been vested by the people with responsibility of ensuring that a system of education continues in such a way that it will develop the full educational potential of each person of the state. (See also Article X, Section 1, (1))

### **Per LexisNexis® Montana Constitution Annotated: Article X, Sections 1 and 9**

As the final guardian and protector of the right to education, it is incumbent upon the court to assure that the system enacted by the legislature enforces, protects and fulfills the right. Columbia Falls Elem. Sch. Dist. No. 6 v. State, 2005 MT 69, 326 Mont. 304, 109 P.3d 257, 2005 Mont. LEXIS 79 (Mont. 2005).

Because Mont. Const. art. X, § 1(3) mandates that the legislature provide a quality education, the legislature can best construct a "quality" system of education if it first defines what is a "quality" system of education. Columbia Falls Elem. Sch. Dist. No. 6 v. State, 2005 MT 69, 326 Mont. 304, 109 P.3d 257, 2005 Mont. LEXIS 79 (Mont. 2005).

In Response: The Legislature in response to the 2005 Columbia Falls litigation enacted a statutory definition in MCA 20-9-309. Notice that providing for "qualified and effective teachers" and "educational program specified by the accreditation standards" both fit into this definition. The legislature is ultimately thus enabled to construct a "quality" system of education.

**Mandate to Legislature:**

Article XI, sec. 1, 1889 Mont. Const., was not exclusive so as to limit the legislative power to the establishment and maintenance of common schools and institutions only. The purpose was to ensure a system of common schools, but nothing limits the power of the Legislature to provide for other schools. The section was not a limitation upon the legislative power, but is a mandate to the Legislature. Evers v. Hudson, 36 M 135, 92 P 462 (1907).

**Legislature to Define Powers and Duties:**

Article XI, sec. 11, 1889 Mont. Const., merely vested control over educational institutions in the State Board of Education and authorized the Legislature to define and circumscribe the powers and duties of the Board. State ex rel. Dragstedt v. St. Bd. of Education, 103 M 336, 62 P2d 330 (1936); State ex rel. Veeder v. St. Bd. of Education, 97 M 121, 33 P2d 516 (1934).