

LEGAL REVIEW NOTE

Bill No.: SB 99

LC#: LC0288, To Legal Review Copy, as of
December 16, 2020

Short Title: Establish parameters for K-12 human
sexuality education

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Date: December 22, 2020

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:

SB 99, as drafted, may raise potential constitutional issues associated with Article X, sections 8 and 9, of the Montana Constitution. Article X, section 9(3)(a), provides that "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. Other duties of the board shall be provided by law." Article X, section 8, further provides that "The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by

law." Section 20-7-111, MCA, assigns to the Board of Public Education the duty to "define and specify the basic instructional program for pupils in public schools," to be set forth in the standards of accreditation, and permits the board of trustees of a school district to approve other instruction.

As drafted, Section 2 of SB 99 prohibits a child from receiving instruction about human sexuality unless that child's parent agrees in writing to allow the child to attend the instruction. A potential issue is whether the legislative proscription in Section 2, related to school curriculum, conforms with the Board of Public Education's constitutional responsibility to exercise general supervision over the public school system and the local boards of trustees' constitutional responsibility to supervise and control schools in each school district.

In addition, SB 99, as drafted, may potentially conflict with the statutory duties implementing Article X of the Montana Constitution set out in section 20-7-111, MCA.

Requester Comments: