

LEGAL REVIEW NOTE

Bill No.: HB 543

LC#: LC 1212, To Legal Review Copy, as
of February 17, 2021

Short Title: Generally revise laws related to
school instruction on the
Constitution and the Pledge

Attorney Reviewer: Todd Everts
Laura Sankey Keip

Date: February 17, 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 8, of the Montana Constitution 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." 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.

In section 1 of HB 543, the board of trustees in each school district is required to ensure that all students from 3rd through 12th grade receive instruction about the United States Constitution and the Pledge of Allegiance. 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: