

LEGAL REVIEW NOTE

Bill No.: HB 633

LC#: LC 608, To Legal Review Copy, as
of March 2, 2021

Short Title: Establish public charter schools
act

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Date: March 10, 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:

HB 633, as drafted, may raise potential constitutional questions associated with Article X of the Montana Constitution. 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 that fall under the Board's directive to generally supervise public educational

systems. See *Board of Public Education v. Judge*, 167 Mont. 261 (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.

As drafted, HB 633 establishes a separate system for public charter schools to be supervised by a new public charter school commission. Section 4 of the bill draft gives the commission independent statewide chartering jurisdiction and authority. Sections 14 and 24 exempt public charter schools from the provisions of Title 20, MCA, except where otherwise explicitly provided, and section 20 of the bill draft specifically exempts public charter school teachers from the Board of Public Education's teacher or specialist certification requirements. A potential constitutional conformity issue may arise as to whether these sections conflict with the Board of Public Education's exercise of general supervision over the public school system prescribed by Article X, section 9(3)(a) of the Montana Constitution.

Requester Comments: