EXHIBIT 1
DATE 2/12/2013
HB 240

LEGAL REVIEW NOTE

LC#: LC0715, To Legal Review Copy, as of January 8, 2013

Short Title: Clarify constitutional provisions and law related to board of regents /u-system

Attorney Reviewers: Laura Sankey/Todd Everts
Date: January 10, 2013

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 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.

Legal Reviewer Comments:

LC0715, as drafted, may raise potential constitutional concerns associated with Article X, section 9(2)(a) of the Montana Constitution. Section 9(2)(a) provides that "The government and control of the Montana university system is vested in a board of regents of higher education which shall have *full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system* and shall supervise and coordinate other public educational institutions assigned by law." (Emphasis added).

According to the Montana Supreme Court, this constitutional provision grants a high degree of independence and autonomy to the Board of Regents, subject only to the Legislature's power of appropriation. *Board of Regents v. Judge*, 168 Mont. 433 (1975). The Court in *Judge* further noted that "Inherent in the constitutional provision granting the Regents their power is the realization that the Board of Regents is the competent body for determining priorities in higher education." *Id.* at 454. In that case, the Court evaluated a number of statutory restrictions imposed on the university system, including a provision that imposed a limit on salary increases for certain university officials. The Court held that this statute "specifically [denied] the Regents

the power to function effectively by setting its own personnel policies and determining its own priorities" and held that limitation to be unconstitutional. *Id.*

As drafted, LC0715 prohibits the Board of Regents and units of the university system from adopting certain policies and regulations, which may raise potential questions about whether this bill conforms with Article X, section 9(2)(a) of the Montana Constitution.

Requester Comments: None