

LEGAL REVIEW NOTE

LC#: LC1589, To Legal Review Copy, as of
February 15, 2013

Short Title: Post Bill of Rights in public buildings

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Date: February 16, 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:

LC1589 requires that the Bill of Rights be conspicuously posted in an easily readable form in the main entry area and employee break room of every publicly funded building in Montana. Section 1(3). "Publicly funded building" means a building that is owned, rented, or leased wholly or partially with funds generated by or passed through a public entity. Section 1(3)(b)(i). A public entity is defined as "any agency of the United States government, any state agency, including the Montana university system, and any office or agency of Montana local government." (emphasis added) Section 1(3)(b)(ii).

As drafted, LC1589 may raise potential constitutional conformity issues with respect to the Supremacy Clause of the U.S. Constitution that provides:

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

U.S. Const., Art. VI, cl. 2. The Supremacy Clause provides that if a conflict between state and

federal law exists, federal law controls and state law is preempted. The U.S. Supreme Court has held that “[U]nder the Supremacy Clause, from which our pre-emption doctrine is derived, ‘any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield.’” *Gade v. National Solid Wastes Mang. Assoc.*, 505 U.S. 88, 108 (1992). In addition, the U.S. Supreme Court has held that states must “enact, enforce, and interpret state law in such fashion as not to obstruct the operation of federal law . . .” *Printz v. U.S.*, 521 U.S. 898, 913 (1997).

Consequently, LC1961 as a state law, requiring any agency of the United States government to post the Bill of Rights in any federal building that is publicly funded, may raise constitutional conformity issues with the Supremacy Clause of the U.S. Constitution.

Requester Comments: None.