

## LEGAL REVIEW NOTE

**LC#:** LC2312, To Legal Review Copy, as of February 12, 2015

**Short Title:** Ensure local control of schools

**Attorney Reviewer:** Todd Everts/Laura Sankey

**Date:** February 13, 2015

### CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

*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).*

*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.*

#### **Legal Reviewer Comments:**

LC2312, as drafted, may raise a potential constitutional conformity issue associated with Article X of the Montana Constitution. Article X, section 9(3)(a), creates a "board of public education to exercise general supervision over the public school system and other such 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, section 1 of LC2312 prohibits the Board of Public Education from evaluating or adjusting a school's accreditation status based on the school district's adherence to the Board's content and performance standards or use of the assessments required by the Board. Section 2 of the bill prohibits the Board from ordering the Superintendent of Public Instruction to withhold a BASE aid distribution to a district that does not adhere to the content and performance standards or does not participate in state assessments. A potential constitutional conformity issue may arise with LC2312 as drafted regarding whether these provisions conflict with the Board of Public Education's exercise of general supervision over the public school system pursuant to Article X, section 9(3)(a).

This legal review note does not address any potential issues regarding whether the Board of Public Education has or has not delegated its constitutional authority to other entities. Only a complaint brought against the Board of Public Education and before a court of competent jurisdiction with a resulting opinion can make that determination.

The only potential constitutional conformity issue raised in this legal review note is whether, under the Montana Constitution, the Legislature can prohibit the Board of Education from evaluating or adjusting accreditation status or withholding BASE aid distributions from a school that does not adhere to the Board's content and performance standards or does not participate in state assessments.

**Requestor Comments:**