EXHIBIT 14
DATE 2/23/15
HB 583

LEGAL REVIEW NOTE

LC#: LC1839 Redo To Legal Review Copy, as of February 13, 2015

Short Title: Revise laws with respect to protecting private property

Attorney Reviewer: Todd Everts

Date: February 15, 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:

LC1839, as drafted, prohibits the State of Montana or a political subdivision of the state from indoctrinating children who are 18 years or younger for global citizenship. Section 2(1)(g). LC1839 defines the term "indoctrinate" to mean "to teach a person to fully accept the ideas, opinions, and beliefs of a particular group and to not consider other ideas, opinions, and beliefs." Section 3(4). LC1839 provides that "Global citizenship" means "placing a person's identity as a member of a global community above the person's identity as a citizen of a particular nation or state." Section 3(3).

LC1839's prohibition is imposed on the "State of Montana or a political subdivision". The State of Montana includes the board of public education, the board of regents, and the university system. The definition of political subdivision under LC1839 includes school districts. Section 3(7).

It is unclear as to whether LC1839's prohibition against the indoctrination of children 18 years of age or younger for global citizenship would encompass a prohibition imposed on the board of public education and school districts as well as the board of regents and the university system with respect to courses and curriculum that involves or is related to global civics and law. To the extent that this prohibition applies, LC1839, as drafted, may raise potential conformity issues under the Montana Constitution, as to whether the Legislature has the authority to apply such a prohibition with respect to the board of education or the board of regents.

LC1839, 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.

LC1839 may also raise a potential constitutional concern associated with Article X, section 9(2)(a), of the Montana Constitution, which provides: "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." This 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).

Requester Comments: None.