

LEGAL REVIEW NOTE

Bill No.: SB 162

LC#: LC0728 To Legal Review Copy, as of
January 12, 2017

Short Title: Provide local infrastructure

Attorney Reviewer: Todd Everts/Julie Johnson

Date: January 17, 2017

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:

LC0728 is a bill to provide grant funding for local infrastructure projects throughout the state. The bill provides for \$40 million in grant funding to be distributed equally among four regions in the state. As drafted, the bill requires the state administration and veterans' affairs interim committee, commonly referred to as SAVA, to decide which applicants receive grant funding. Section 5(7) of the bill provides that "The interim committee shall issue a final list of grant recipients for each region by October 15, 2017."

Article V, section 11(2), of the Montana Constitution provides:

(2) Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

The Montana Supreme Court has previously ruled that the Legislature cannot delegate its authority to a legislative committee made up of less than the entire legislative body. For example, in Judge v. Legislative Finance Committee, 168 Mont. 470, 543 P.2d 1317 (1975), the Legislature enacted the Legislative Finance Act. The Act included provisions that authorized the Legislative Finance Committee to approve budget amendments during the interim, which Governor Judge challenged.

In Judge, the Montana Supreme Court concluded that the power to approve budget amendments that was delegated in the Act was "properly exercisable only by either the entire legislature or an executive officer or agency." Given that the action of the Legislative Finance Committee "did not constitute an action of the entire legislature" under Article V, section 11(2), of the Montana Constitution, the Supreme Court declared the provisions of the Act allowing the Legislative Finance Committee to make budget amendments "invalid as unconstitutional delegations of legislative power". Judge, 168 Mont. at 477, 543 P.2d at 1321.

LC0728 may potentially be in conflict with Article V, section 11(2), given that the draft bill authorizes an interim committee to decide which grant applicants are awarded grant funds. Typically, recommendations for grant awards are made by a state agency and then are subject to legislative approval of the full Legislature.¹ Here, the grants would not be submitted to the full Legislature, and would be approved by a legislative committee. Therefore, the bill raises potential conformity issues with Article V, section 11(2), and may be considered a possible improper delegation of legislative power.

Requester Comments:

LC0728 asks the Legislature to make an appropriation to be used for local government infrastructure projects around the state. The State Administration and Veteran Affairs Interim Committee would then vet projects for these funds. The Legal Review states that in Judge v. Legislative Finance Committee budget amendments can only be "properly exercisable only by either the entire legislature or an executive officer or agency." LC0728 does have the Legislature approve a budget amendment. The Legislature through LC0728 will also know that the appropriation will go to local governments for infrastructure projects. The SAVA Interim

¹ Treasure State Endowment Program grants, Montana Arts Council grants, and Treasure State Endowment Regional Water grants are submitted to the full legislative body for approval by the Legislature.

Committee will not be making a budget amendment, therefore the connection of LC028 with Judge v. Legislative Finance Committee is not the same.

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