

Amendment - 2nd Reading/2nd House-tan - Requested by: Keith Regier - (S) Committee of Whole

- 2023

68th Legislature 2023

Drafter: Pad McCracken, 406-444-3595

HB0517.002.001

1 HOUSE BILL NO. 517
2 INTRODUCED BY M. HOPKINS, E. BUTCHER, G. HERTZ, D. ZOLNIKOV, J. HINKLE, S. GUNDERSON, M.
3 REGIER, S. VINTON, R. KNUDSEN, J. KASSMIER, T. MOORE, B. LER, B. PHALEN, F. NAVE, L.
4 BREWSTER, B. MITCHELL, A. REGIER, S. KERNS, K. SEEKINS-CROWE, C. HINKLE, G. FRAZER, M.
5 BINKLEY, S. ESSMANN, T. SMITH, R. MINER, G. PARRY, N. NICOL, G. NIKOLAKAKOS, P. GREEN

6
7 A BILL FOR AN ACT ENTITLED: "AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN
8 AMENDMENT TO ARTICLE X, SECTION 9, OF THE MONTANA CONSTITUTION TO PROVIDE DULY
9 ELECTED LAWMAKERS AUTHORITY TO ENACT LAWS TO PROTECT CONSTITUTIONAL RIGHTS OF
10 STUDENTS, FACULTY, AND STAFF OF THE MONTANA UNIVERSITY SYSTEM."

11
12 WHEREAS, in Healy v. James, the Supreme Court of the United States held that "the vigilant
13 protection of constitutional freedoms is nowhere more vital than in the community of American schools"; and

14 WHEREAS, the current official text of the Montana Constitution has been interpreted by Montana
15 courts to forbid the state from enacting law to protect the constitutional rights of students, the public, faculty, or
16 staff; and

17 WHEREAS, the state must not violate the state or federal constitutional rights of enrolled or prospective
18 students, faculty, or staff; and

19 WHEREAS, the state must provide remedies for parties whose constitutional rights have been violated
20 by the Montana University System; and

21 WHEREAS, the state has a compelling interest in ensuring that the Montana University System
22 complies with the state and federal constitutions; and

23 WHEREAS, the state is responsible for paying damages awarded to parties who have proven in court
24 that their constitutional rights have been violated by the Montana University System; and

25 WHEREAS, the Montana Constitution's text should provide duly elected lawmakers the authority to
26 protect the state and federal constitutional rights of students, the public, faculty, or staff at the Montana
27 University System; and

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1 WHEREAS, this amendment will ensure the state may enact legislation to require the Montana
2 University System to maintain policies and practices that protect the state and federal constitutional rights of
3 enrolled or prospective students, faculty, or staff, or from providing remedies for parties whose constitutional
4 rights have been violated by the Montana University System.

5

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

7

8 **Section 1.** Article X, section 9, of The Constitution of the State of Montana is amended to read:

9 **"Section 9. Boards of education.** (1) There is a state board of education composed of the board of
10 regents of higher education and the board of public education. It is responsible for long-range planning, and for
11 coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified
12 budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each
13 component board.

14 (2) (a) ~~The~~ Except as provided in subsections (2)(e) and (2)(f), the government and control of the
15 Montana university system is vested in a board of regents of higher education which shall have full power,
16 responsibility, and authority to supervise, coordinate, manage and control the Montana university system and
17 shall supervise and coordinate other public educational institutions assigned by law.

18 (b) The board consists of seven members appointed by the governor, and confirmed by the
19 senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex
20 officio non-voting members of the board.

21 (c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

22 (d) The funds and appropriations under the control of the board of regents are subject to the same
23 audit provisions as are all other state funds.

24 (e) The legislature may enact laws requiring the board of regents of higher education and units of
25 the Montana university system to adopt and maintain policies and practices that protect the rights and
26 associated civil liberties provided in the Montana constitution and those provided in the United States
27 constitution. In pursuit of these protections the state may provide judicial remedies. THIS SUBSECTION (2)(E) MAY

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1 NOT BE CONSTRUED TO ALLOW THE LEGISLATURE TO DIRECT CURRICULUM, ~~research, or hiring practices~~ WITHIN THE
2 MONTANA UNIVERSITY SYSTEM.

3 (f) The board of regents of higher education and units of the Montana university system are not
4 exempt from laws of general applicability.

5 (3) (a) There is a board of public education to exercise general supervision over the public school
6 system and such other public educational institutions as may be assigned by law. Other duties of the board
7 shall be provided by law.

8 (b) The board consists of seven members appointed by the governor, and confirmed by the
9 senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state
10 superintendent of public instruction shall be ex officio non-voting members of the board."
11

12 NEW SECTION. Section 2. Two-thirds vote required. Because [section 1] is a legislative proposal
13 to amend the constitution, Article XIV, section 8, of the Montana constitution requires an affirmative roll call vote
14 of two-thirds of all the members of the legislature, whether one or more bodies, for passage.
15

16 NEW SECTION. Section 3. Effective date. [This act] is effective on approval by the electorate.
17

18 NEW SECTION. Section 4. Submission to electorate. [This act] shall be submitted to the qualified
19 electors of Montana at the general election to be held in November 2024 by printing on the ballot the full title of
20 [this act] and the following:

21 YES on Constitutional Amendment ____.

22 NO on Constitutional Amendment ____.

23 END -