

HOUSE BILL NO. 197

INTRODUCED BY J. CARLSON, S. GUNDERSON, J. SCHILLINGER, C. KNUDSEN, K. ZOLNIKOV, B. MITCHELL, P. FIELDER, . DURAM, T. MOORE, L. BREWSTER, J. HINKLE, B. LER, A. REGIER, K. SEEKINS-CROWE, R. MARSHALL, C. HINKLE, J. READ, T. BROCKMAN, M. YAKAWICH, B. BROWN, J. FULLER, J. SMALL, M. NOLAND, D. LENZ, D. BARTEL, C. FRIEDEL, T. FALK, J. TREBAS, J. KASSMIER, B. PHALEN, L. HELLEGAARD

A BILL FOR AN ACT ENTITLED: "AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE X, SECTION 9, OF THE MONTANA CONSTITUTION TO CLARIFY THE AUTHORITY OF THE BOARD OF REGENTS OF HIGHER EDUCATION; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Purpose.** The purpose of the amendment to Article X, section 9, of the Montana constitution is to clarify that whatever powers may be delegated to the board of regents in Article X, those powers are inferior to all restraints on government memorialized in Article II and elsewhere in the Montana constitution and are subject to laws approved by the legislative and executive branches.

NEW SECTION. **Section 2. Legislative findings.** The legislature finds that:

- (1) the board of regents has asserted in litigation that the exercise of power by the board is not subject to constraint by parts of the Montana constitution outside of Article X;
- (2) the board of regents has asserted in litigation that exercise of power by the board is not subject to duly enacted laws of Montana;
- (3) the board of regents' claim that its authority is immune to the Montana constitution and laws would establish the board as a fourth branch of government that is superior to all other branches;
- (4) the board of regents is created by the Montana constitution and cannot be superior to it;
- (5) the purpose of the amendment to Article X, section 9, of the Montana constitution is to clarify

1 absolutely that:

2 (a) the board of regents, having been created by the Montana constitution, is inferior to the
3 Montana constitution and is also inferior to the laws created pursuant to the Montana constitution; and

4 (b) the board of regents may not assert, claim, or exercise any authority or power that conflicts with
5 any provision in the Montana constitution or any law duly enacted pursuant to the Montana constitution; and

6 (6) the board of regents is properly an administrator of the Montana university system, but no more
7 than an administrator.

8

9 **Section 3.** Article X, section 9, of The Constitution of the State of Montana is amended to read:

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

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

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

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

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

25 (e) The board may not exercise any power that conflicts with any other provision of this constitution
26 or that conflicts with a state law.

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

1 shall be provided by law.

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

5
6 **NEW SECTION. Section 4. Two-thirds vote required.** Because [section 3] is a legislative proposal
7 to amend the constitution, Article XIV, section 8, of the Montana constitution requires an affirmative roll call vote
8 of two-thirds of all the members of the legislature, whether one or more bodies, for passage.

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10 **NEW SECTION. Section 5. Effective date.** [This act] is effective on approval by the electorate.

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12 **NEW SECTION. Section 6. Submission to electorate.** [This act] shall be submitted to the qualified
13 electors of Montana at the general election to be held in November 2024 by printing on the ballot the full title of
14 [this act] and the following:

15 YES on Constitutional Amendment ____.

16 NO on Constitutional Amendment ____.

17 - END -