

LEGAL REVIEW NOTE

Bill No.: HB 950

LC#: LC 3123 To Legal Review copy, as of
March 21, 2023

Short Title: Establish the Student and
Administration Equality Act

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Date: March 22, 2023

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:

HB 950, as drafted, may raise potential constitutional concerns associated with Article X, section 9(2)(a) of the Montana Constitution. Section 9(2)(a) provides that "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." (Emphasis added).

The Montana Supreme Court has held that this constitutional provision grants a high degree of independence and autonomy to the Board of Regents (Board), subject to the Legislature's power to appropriate and audit, set terms of office, and determine the Board's oversight of additional educational institutions as prescribed by law. Board of Regents v. State, 2022 MT 128, ¶ 12. When weighing the constitutional authority of the Legislature against the constitutional authority of the Board, the Court will look at whether a legislative direction is "a direction of academic policy or administration" and will consider how that direction impacts the Board's management and control of the Montana university system (MUS). Id. at ¶14. The Court has determined that the impact of legislative actions in relation to the Board's constitutional authority must be considered on a case-by-case basis. Id.

In Board of Regents v. Judge, the Court held that legislative restrictions on salary increases for university system campus presidents was an unconstitutional infringement on the Board's power to function effectively by setting its own personnel policies and determining its own priorities. Board of Regents v. Judge, 168 Mont. 433, 454. The Court noted that "[i]nherent in the constitutional provision granting the Regents their power is the realization that the Board of Regents is the competent body for determining priorities in higher education." Id.

In Board of Regents v. State, the Legislature's attempt to set policy regarding firearms on university system campuses and override existing Board Policy 1006 was held to be an unconstitutional interference with the Board's full governance and control of the university system. State, 2022 MT at ¶ 19. Board Policy 1006 "relates directly to the academic and administrative operations of the MUS. ... Board Policy 1006 reflects the Board's judgment on an issue undoubtedly within the scope of its constitutional authority under [Article X, sec. 9(2)(a)] – the appropriate means by which to maintain a safe, secure, and orderly educational environment in its classrooms and on its campuses and properties." Id. at ¶ 20. The Court determined that upholding the legislation in question would

... give the Legislature control and supervision over MUS campuses and render the Board ministerial officers with no true authority other than to effectuate the Legislature's will. Such application directly contradicts the constitutionally granted powers of the Board and undermines the Board's ability to govern the MUS... Exercise of the legislative power to undermine the constitutional powers of the Board cannot stand. Id. at ¶ 19.

HB 950 establishes the Student and Administration Equality Act. As drafted, Section 3 provides an explicit process and procedure to be established at every public postsecondary institution, including every unit of the university system and every community college, for disciplinary proceedings governing alleged violations of nonacademic disciplinary or conduct rules. Additionally, Section 3 requires specific provisions be included in each institution's code of student conduct, including: an express presumption of innocence until an accused student or student organization formally acknowledges responsibility or at the conclusion of a hearing at which the institution has established every element of an alleged violation; a right to a live hearing; an opportunity to appeal; and reasonable continuing access to the administrative file for the disciplinary proceeding. These provisions in HB 950 may raise potential questions about whether this bill conforms with Article X, section (9)(2)(a), of the Montana Constitution.

Requester Comments: