LEGAL REVIEW NOTE

Bill No.: HB 511

LC#: LC 3160, To Legal Review Copy, as of January 18, 2023

Short Title: Revising self-finance laws

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Date: February 13, 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 511, as drafted may raise a potential constitutional question as to whether it conflicts with the First Amendment based on a ruling by the United States Supreme Court in Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612 (1976).

HB 511 proposes to amend 13-37-216, which sets limits on campaign contributions by adding a new subsection 4, that provides;

(4) A candidate may make unlimited loans to the candidate's campaign, but the candidate may not otherwise contribute to the candidate's campaign in excess of the limits established in subsection (2).

Under subsection (2), the amount of loans one can lend to his or her campaign is limited by the office for which that person is running. For example, a candidate for a state office in a statewide election, other than the candidates for governor and lieutenant governor, may not lend more than $700 to his or her own campaign for each election. A candidate for any other public office may not lend more than $400 for each election.

The United States Supreme Court considered restrictions of the amount of loans a candidate may make to his or her campaign in Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612 (1976). In Buckley, a federal senator challenged a law that prohibited him from loaning his campaign more that $35,000. The Supreme Court ruled that limits from a candidates personal funds were unconstitutional under the First Amendment because it imposed a "substantial restraint on the ability of persons to engage in protected First Amendments expression." Buckley, 424 U.S. at 52. The Court went on to explain:

> The candidate, no less than any other person, has a First Amendment right to engage in the discussion of public issues and vigorously and tirelessly to advocate his own election and the election of other candidates. Indeed, it is of particular importance that candidates have the unfettered opportunity to make their views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on election day. Buckley, 424 U.S. at 52-53.

Buckley was superseded by the Bipartisan Campaign Reform Act of 2002 ("BCRA"), which came before the United States Supreme Court in 2003 in McConnell v. FEC, 540 U.S. 93, 124 S. Ct. 619, 157 L. Ed. 2d 491. That case considered independent expenditures by political action committees. However, it appears that the ruling in Buckley considering a candidate's ability to lend funds to his or her own campaign has never been overruled.

Therefore, HB 511, as drafted, restricts the amount of loans one can make to his or her campaign. Therefore, HB 511 raises potential conformity issues with the requirements of the First Amendment of the U.S. Constitution based on the ruling in Buckley v. Valeo.

Requester Comments: