

SENATE BILL NO. 476

INTRODUCED BY D. EMRICH, V. RICCI

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CODIFYING LAWS REGARDING THE SEPARATION OF POWERS DOCTRINE; DEFINING THE POWERS OF THE LEGISLATIVE BRANCH; DEFINING THE POWERS OF THE EXECUTIVE BRANCH; DEFINING THE POWERS OF THE JUDICIAL BRANCH; DEFINING THE POWERS OF THE BOARD OF REGENTS OF HIGHER EDUCATION AND THE BOARD OF PUBLIC EDUCATION; AMENDING SECTIONS 2-15-1505 AND 2-15-1507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

- NEW SECTION. Section 1. Separation of powers doctrine -- government powers generally -- limits.** (1) The powers of the executive branch and judicial branch are limited to those enumerated in the Montana constitution and granted by law.
- (2) The legislature may not enact a law that is contrary to the constitution or exercise executive branch powers provided for in [section 3] or judicial branch powers provided for in [section 4].
- (3) The executive branch may not exercise legislative branch powers provided for in [section 2] or judicial branch powers provided for in [section 4].
- (4) The judicial branch may not:
- (a) exercise legislative branch powers provided for in [section 2];
 - (b) amend the effective date of an act of the legislature before the law becomes effective;
 - (c) declare a law unenforceable as applied toward anyone other than the parties involved in a case or controversy; or
 - (d) exercise executive branch powers provided for in [section 3].
- (5) The power of the board of regents is defined as provided in [section 5].
- (6) The power of the board of public education is limited as provided in [section 5].

1 NEW SECTION. **Section 2. Legislative branch power.** Article V of the Montana constitution vests
2 the legislature with power that cannot be exercised by other branches of government. This power is exercised
3 through a legislature consisting of a senate and a house of representatives.
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5 NEW SECTION. **Section 3. Executive branch power.** Article VI of the Montana constitution vests
6 the executive branch with power that cannot be exercised by other branches of government. This power is
7 exercised through a governor, lieutenant governor, secretary of state, attorney general, superintendent of public
8 instruction, auditor, board of regents, and board of public education. The executive power includes:

- 9 (1) the authority of the board of regents to perform duties provided by law and [section 7]; and
10 (2) the authority of the board of public education to perform duties provided by law and [section 7].
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12 NEW SECTION. **Section 4. Judicial branch power.** Article VII of the Montana constitution vests the
13 judicial branch with power that cannot be exercised by other branches of government. This power is exercised
14 through a supreme court, district courts, justice courts, and other courts as may be provided by state statute.
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16 NEW SECTION. **Section 5. Executive branch power of board of regents and board of public**
17 **education -- definitions.** (1) The board of regents and the board of public education are agencies of the
18 executive branch of state government. As such, they are required to enforce, within their respective spheres,
19 laws adopted by the legislature or by the people.

20 (2) The oversight of the Montana university system entrusted by the state constitution to the board
21 of regents refers to the kind of oversight customarily exercised by executive branch officers over operations
22 assigned to them and does not extend to overriding state statutes. The board of regents' power regarding the
23 government, control, supervision, coordination, and management of the university system and other public
24 educational institutions is assigned by law.

25 (3) The duties entrusted by the state constitution to the board of public education are limited to
26 executive branch functions and do not extend to overriding state statutes. The board of public education
27 exercises general supervision over the public school system and other public educational institutions as
28 assigned by law.

(4) The rights of the people protected in the United States and Montana constitutions extend fully to geographical areas under the control of the board of regents and the board of public education. The boards are obligated to respect and protect those rights and to implement laws that protect or enhance those rights.

(5) As used in this section, the following definitions apply:

(a) "Board of public education" means the board of public education created in Article X, section 9(3), of the Montana constitution and 2-15-1507.

(b) "Board of regents" means the board of regents of higher education established by Article X, section 9(2), of the Montana constitution and 2-15-1505.

(c) "Coordination" means the process of organizing people or groups so that they work together properly and well.

(d) "General supervision" means general instructions are given and tasks are undertaken to achieve required outcomes or objectives.

(e) "Government" means the authority to supervise, coordinate, manage, and control.

(f) "Manage" or "management" means an activity inclusive of control that is performed on a daily basis.

(g) "Supervision" means regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.

Section 6. Section 2-15-1505, MCA, is amended to read:

"2-15-1505. Board of regents of higher education. (1) The board of regents of higher education created in Article X, section 9, subsection (2), of the Montana constitution consists of seven members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction, and commissioner of higher education are ex officio nonvoting members of the board of regents.

(2) The board of regents is an executive agency of government and as such is charged with complying with and enforcing state law within the scope of its jurisdiction as provided in [section 5]."

Section 7. Section 2-15-1507, MCA, is amended to read:

"2-15-1507. Board of public education. (1) The board of public education created in Article X, section 9, subsection (3), of the Montana constitution consists of seven members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction, and commissioner of higher education are ex officio nonvoting members of the board of public education.

(2) The board of public education is an executive agency of government and as such is charged with complying with and enforcing state law within the scope of its jurisdiction as provided in [section 5]."

NEW SECTION. **Section 8. Codification instruction.** [Sections 1 through 5] are intended to be codified as a new part in Title 1, chapter 1, and the provisions of Title 1, chapter 1, apply to [sections 1 through 5].

NEW SECTION. **Section 9.** **Effective date.** [This act] is effective on passage and approval.

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