



**Education Interim Committee**  
**65th Montana Legislature**

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TO: Education Interim Committee Members  
FROM: Laura Sankey Keip, Staff Attorney  
DATE: June 1, 2017  
RE: Constitutional Roles of the Montana Legislature, Board of Regents, and Board of Public Education

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**ARTICLE X, Section 1 – Educational Goals and Duties – Legislature’s Role**

- The Legislature is directed to provide a basic system of free quality public elementary and secondary schools
- The Legislature may provide for other educational institutions, public libraries, and educational programs as it deems desirable
- The Legislature is required to fund and distribute the state’s share of the cost of the basic elementary and secondary school system in an equitable manner to the school districts

**ARTICLE X, Section 9(1) – State Board of Education**

- The State Board of Education is comprised of the members of the Board of Regents and the members of the Board of Public Education
- This Board is responsible for long-range planning and for coordinating and evaluating policies and programs for the state’s educational systems

**ARTICLE X, Section 9(2) – Board of Regents of Higher Education**

- Government and control over the Montana University System is vested in the Board of Regents, who are granted the full power, responsibility, and authority to supervise, coordinate, manage, and control the university system
- There is a fine balance between the constitutional power of the Legislature and the constitutional power of the Board of Regents
- The Governor appoints 7 members to be confirmed by the Senate, and the Governor and Superintendent of Public Instruction serve as ex officio non-voting members
- The Board appoints the Commissioner of Higher Education
- The Board is authorized to supervise and coordinate other public educational institutions as assigned by law
- Appropriations and funds under the control of the Board of Regents are subject to the same audit provisions as all other state funds
- According to the Montana Supreme Court in Board of Regents v. Judge, 168 Mont. 433 (1975) (and the companion case, State ex rel. Judge v. Legislative Finance Committee, 168 Mont. 470 (1975)):
  - Montana’s Constitution is a prohibition upon legislative power rather than a grant of power

- The Legislature’s appropriation power extends beyond the general fund and encompasses all public operating funds of state government but does not extend to private funds received by state government and restricted by law, trust agreement, or contract
- The legislative power to appropriate reaches to the university system and the Legislature may exercise control over expenditures through itemization. However, the Legislature may not do indirectly through a line item appropriation or a condition what is impermissible for it to do directly, e.g. by infringing upon the authority of the Regents to supervise, coordinate, manage, and control the university system. The Court’s decision in Board of Regents v. Judge states that conditions imposed by the Legislature on appropriations to the university system must be looked at individually to determine their propriety

**ARTICLE X, Section 9(3) – Board of Public Education**

- The Board of Public Education exercises general supervision over the public school system and other educational institutions as may be assigned by law; other duties for the Board are provided by law
- The Governor appoints 7 members to be confirmed by the Senate, and the Governor, Commissioner of Higher Education, and Superintendent of Public Instruction are designated ex officio, non-voting members
- Powers and duties of the Board (see [20-2-121, MCA](#)):
  - Effect an orderly and uniform system of teacher and specialist certification and for the issuance of emergency authorization of employment by adopting policies pursuant to [20-4-102, MCA](#) and [20-4-111, MCA](#)
  - Consider the suspension or revocation of teacher or specialist certificates and appeals from the denial of a certificate pursuant to [20-4-110, MCA](#)
  - Administer and order the distribution of BASE aid pursuant to [20-9-344, MCA](#)
  - Adopt policies regarding the conduct of school on Saturday and the types of pupil-related-instruction days and procedures to approve PIR days pursuant to [20-1-303, MCA](#) and [20-1-304, MCA](#)
  - Adopt standards for accreditation for schools and establish each school’s accreditation status pursuant to [20-7-101, MCA](#) and [20-7-102, MCA](#)
  - Approve or disapprove education material selected by the Superintendent of Public Instruction for the educational media library pursuant to [20-7-201, MCA](#)
  - Adopt policies for conducting special education programs pursuant to [20-7-402, MCA](#)
  - Adopt rules for issuing documents certifying equivalency of completion of secondary education pursuant to [20-7-131, MCA](#)
  - Adopt policies for conducting programs for gifted and talented children pursuant to [20-7-903, MCA](#) and [20-7-904, MCA](#)
  - Adopt rules for student assessment in public schools