

David W. Diacon  
2319 Livingston Ave.  
Missoula MT 59801  
(406) 770-9226  
dwdiacon@diacon.us.com  
Amicus curiae pro se

**FILED**

SEP 22 2021

ANGIE SPARKS, Clerk of District Court  
By *[Signature]* Deputy Clerk

**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY**

**BOARD OF REGENTS OF HIGHER  
EDUCATION OF THE STATE OF  
MONTANA,**

**Petitioner,**

**v.**

**THE STATE OF MONTANA, by and  
through Austin Knudsen, Attorney  
General of the State of Montana in his  
official capacity,**

**Respondent.**

**Cause No. BDV-2021-598**

**BRIEF OF AMICUS CURIAE  
DAVID W. DIACON**

*(email)*

COMES NOW David W. Diacon, pro se, and hereby submits this brief of Amicus Curiae pursuant to the Order Denying Intervention Motions and Briefing Schedule, dated July 16, 2021, as modified by the Amended Order Setting Briefing Schedule, dated September 1, 2021.

**I. Background**

The Board of Regents [hereinafter Board] asserts that the Montana Legislature [hereinafter Legislature] lacks authority to regulate firearms on the

Montana University System [hereinafter MUS] properties. Petition for Declaratory Relief, May 27, 2021. The Board claims that its authority under Montana Constitution § X gives it sole authority to regulate firearms on MUS properties to the complete exclusion of the constitutional authority of the Legislature. *Id.* The Board seeks declaratory judgment that HB 102 is unconstitutional as applied to the Board, MUS, and properties thereof. *Id.* ¶ 35.

In addressing the Boards assertions, the broad language of Montana Constitution Article X § 9 must not be read or construed in isolation and must stand in relation to other relevant provisions found in the constitution. *Board of Regents v. Judge*, 168 Mont. 433, 443, 543 P.2d 1323, 1329 (1975). The Montana Supreme Court set forth the following rules of construction for such issues in *Judge*:

1. [T]he Constitution must receive a broad and liberal interpretation consistent with the purpose of the framers and the people in adopting it, that it may serve the needs of a growing state; the proper interpretation of any constitutional provision requires us to remember that it is a part of the organic law -- organic not only in the sense that it is fundamental, but also in the sense that it is a living thing designed to meet the needs of a progressive society, amid all the detail changes to which a progressive society is subject.
2. The Montana Constitution, unlike the Constitution of our United States, is a prohibition upon legislative power, rather than a grant of power.
3. A constitution, or provision thereof, should receive a reasonable and practical interpretation in accord with common sense.
4. All provisions of the Constitution bearing upon the same subject matter are to receive appropriate attention and be construed together.
5. Since the constitutional analysis will determine the validity or invalidity of legislative acts, the presumption of constitutionality and burden on the party

seeking to overcome the presumption stated in *State ex rel. Mills v. Dixon*, 66 Mont. 76, 84, 213 P. 227, 229, is also appropriate: the constitutionality of a legislative enactment is *prima facie* presumed, and every intendment in its favor will be made unless its unconstitutionality appears beyond a reasonable doubt.

6. The court must harmonize in a practical manner the constitutional power of the legislature to [pass laws mandating certain obligations] with the constitutional power of the Regents to supervise, coordinate, manage and control the university system.

*Id.* at 443-444, 213 P.2d at 1329-1330 (internal quotes and citations omitted).

The following sections apply these rules of construction to the issue at Bar.

## **II. The Board of Regents is a constitutionally created executive agency.**

The powers of the government are divided into three distinct branches – legislative, executive, and judicial. Mont. Const. Art. 3 § 1. To harmonize the relevant provisions of the constitution, the boards established by Montana Constitution Article X must fall within one of the enumerated branches. The Board, although not under direct supervision of the governor, is an executive agency. This status is supported by the inclusion of the governor and superintendent of public instruction, two elected executive officers, as ex officio non-voting members of the board. Mont. Const. Art. X § 9(2)(b). Inclusion of executive officers on the board but restricting their voting status indicates that the Board is an executive body that is insulated from direct control by those elected executive officers. Prospective Board members are selected by the governor and

approved by the senate, a procedure that comports with selection of other executive agency officers. Mont. Const. Arts. X § 9(2)(b), VI §8(2).

Because the "full power and authority" of the Board as an executive agency must be construed in relation to Legislature's authority to pass laws relating to the Board, the purpose for which the Board was established and the powers which were contemplated by the delegates to the 1972 Constitutional Convention are germane. From the proceedings of the Convention, the Board's executive function is clear.

1. There were good reasons to establish a board of regents.

Delegate Champoux, the chairman of the Education and Lands Committee, presented the reasoning for establishing a board of regents. Higher education was in the process of becoming a complex undertaking and was not merely another state service, and the control of education therefore needed to stand apart from the executive branch business-as-usual. Conv'n Tr. 6283:7-16.<sup>1</sup> Bureaucratic control was the biggest impending threat to quality education and was viewed as a modern problem of political development that was only becoming more severe. Conv'n Tr. 6275:13-18, 6284:16-21, 6285:6-10. The core problem arose from the bureaucrats hired to administer laws. Conv'n Tr. 6285:11-12, 16-18. Academic

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<sup>1</sup> Conv'n Tr.: Transcripts of Proceedings, Montana Constitutional Convention, Vol. 8 pp 5721-6408, March 10-11, 1972; Transcript of Proceedings, Montana Constitutional Convention, Vol. 9 pp 6409-7045, March 13-14, 1972. Relevant pages of the transcripts are attached hereto as Exhibit A.

quality would suffer at the hands of "state budget officers, state auditors, comptrollers, purchasing departments, personnel offices, central building agencies," along with older forms of control found in legislative riders on appropriations. Conv'n Tr. 6286:10-14, 17-23. These influences indicated that higher education would need "long range planning and administrative decentralization" (away from the centralized executive branch). Conv'n Tr. 6287:3-10. Champoux asserted that higher education needed "a strong board of regents to make long-range plans which are appropriate to the needs of higher education and free from short term political whims." Conv'n Tr. 6289:10-12. If a board of higher education has the responsibility for higher education, it needs the authority to carry out that responsibility and it must be free from political changes of fortune and immune from external political or ideological pressure. Conv'n Tr. 6297:15-6298:1. With these reasons in mind, Champoux demonstrated the governmental interference that posed a threat to higher education.

2. The committee had specific examples of administrative agency interference.

Specific examples of executive branch interference in higher education are in the Constitutional Convention record demonstrating what the Education and Lands Committee sought to insulate the Board from. The music department in Missoula was not able to purchase pianos that its faculty deemed appropriate because an accountant in the department of administration had to submit the

purchase for the lowest bid. Conv'n Tr. 6294:16-24. The department of administration tried to impose an archaic accounting system on the university system that was not appropriate for educational institutions and for which the university system had an appropriate system. Conv'n Tr. 6295:5-12. The same department also wanted to incorporate university connected funds into the state general fund and to administer research grants through the senate. Conv'n Tr. 6295:17-19, 24-25. The highly paid department chair of the University of Montana philosophy department spent hours of his professional time requisitioning typewriters, paper, and paperclips. Conv'n Tr. 6469:7-6470:5. Access to reference materials at a university library was disrupted for unreasonable periods of time because of lack of continuity in contracts for book binding; the process was also inefficient and increased costs. Conv'n Tr. 6548:7-6549:12.

In addition to bureaucratic interference, regular political interference was also a threat to higher education.

3. External political and ideological pressure was detrimentally applied to faculty.

Specific examples of political interference in higher education are in the Constitutional Convention record demonstrating what the Education and Lands Committee sought to insulate the Board from. One faculty member gave a politically controversial speech about business cooperatives and economics for which his salary was eliminated from the budget during the next legislative session

and another faculty member was suspended for researching and promulgating controversial mine taxation views. Conv'n Tr. 6297:3-14.

For these reasons the committee sought to create a constitutional board to protect higher education from these influences.

4. The Constitutional Convention did not create an autonomous body in the Board of Regents.

To insulate higher education from executive branch and political influence, the committee originally proposed that the board would be a body corporate – “There shall be a board of regents of higher education, a body corporate, which shall govern and control the academic, financial, and administrative affairs of the Montana university system...” Conv'n Tr. 6267:4-7. The purpose of this term was that it: provided legal recognition of the board apart from a normal administrative or executive agency; limited liability of board members; maintained continuity as members changed; defined the legal rights and responsibilities of the board; and generally allowed the board to govern the internal affairs of the university system. Conv'n Tr. 6280:10-6281:4. The committee acknowledged that the powers of such a body would be determined by charter and articles of incorporation, be especially assigned, or be delegated to it, and that such powers are normally subordinate and local. Conv'n Tr. 6281:3-25. The purpose was to be “master of your own house” and be able to hire and fire employees, and to set curriculum. Conv'n Tr. 6282:11-13. Of special relevance, Champoux noted that

the delegates had been loosely using the term autonomy, which he defined as freedom and complete independence, which he said was not necessary to the authority of the board of regents. Conv'n Tr. 6282:14-18.

Because of contention regarding the use of the term body corporate, Delegate Rollins submitted an amendment that replaced that term: "The government and control of Montana's university system shall be vested in a board of regents..." Conv'n Tr. 6480:24-6481:1.

In proposing this amendment, I'm trying to achieve certain things and to avoid certain types of objections. I'm trying to achieve a board of regents that has the essential powers to carry on the work of the university system and such other educational institutions as might be assigned by law to that board of regents. In my opinion, the major duty of higher education is education. The only reasons why there should be administrative control would be to make it so that it can carry out its primary task with the additional need for accountability to the people who support it. So, I think this amendment indicates a board of regents with the powers to make the necessary decisions to conduct higher education. I am willing to sacrifice the idea of body corporate. I didn't understand it too well anyway, and apparently many others don't.

Conv'n Tr. 6481:23-6482:12

Further debate questioned the scope of "manage and control". Conv'n Tr. 6505:14-15. Rollins opined that the grant of authority applied toward the academic function of educating people without undue influence from outside authorities. Conv'n Tr. 6506:20-25. Champoux stated "for the record" that the "committee does not want to set up a separate unit of government," but instead asserted that the authority sought for a board of regents extended to requisitioning supplies,



determining disposition of faculty, supervise building projects of the university system, and provide oversight to all university campuses. Conv'n Tr. 6513:20-6514:13. Delegate Heliker bolstered Champoux's reasons for the grant of authority with similar examples. Conv'n Tr. 6516:18-6519:2

There was general support among the delegates for some level of insulation of higher education from executive and legislative influence but with lingering concern about creating an entity that was "an island by themselves completely nonresponsible to anyone." E.g., Conv'n Tr. 6520:23-6521:2, 6549:20-22.

The amendment process eventually produced the current Article X § 9 of the Montana Constitution that states in pertinent part, "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..."

Based on review of the convention transcripts, the nature of the Board's executive power and authority can be inferred. "Government," as it pertains to the Board, does not mean that the Board is its own government that can enact laws. Rather, government means the continuous exercise of authority over and performance of functions for the university system.<sup>2</sup> In this light, the Board is

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<sup>2</sup> See Merriam-Webster Dictionary at <https://www.merriam-webster.com/dictionary/government>, accessed Sept. 16, 2021.

placed in continuous exercise of authority and performance of functions and control over the MUS, without that authority and control being spread across, diluted by, and interfered with, by other executive branch agencies. The Board is insulated from normal, direct executive control by the governor. The Board is also insulated from direct line-item budgetary control of educational functions by the Legislature. *See Judge*, 168 Mont. at 450, 543 P.2d at 1333. The Board alone is the administrative body of the MUS, separate from direct supervision by the executive branch. The Board alone can be held responsible to the people for the proper and efficient governance of higher education. The Board can purchase supplies, contract, hire and fire faculty and staff, and purchase equipment necessary for operations. The Board determines and responds to the needs of the organization as it pertains to conducting higher education. The Board brings the separate universities and colleges under one controlling body. The Board performs the functions necessary to coordinate personnel and other resources to achieve the duty of providing higher education to students. The Board can rent MUS facilities for the financial benefit of the MUS. *See Duck Inn v. Mont. State Univ. N.*, 285 Mont. 519, 949 P.2d 1179 (1997). However, nowhere in the Constitutional Convention transcripts is there evidence that the Board was intended to have the power to write and enact laws, let alone determine law regulating the carrying of firearms on MUS property.

The Board's business is providing higher education. The constitutional grant of broad power and authority supports its status as a constitutionally isolated, stand-alone executive agency with commensurate power provide for the functioning of the agency. The Board's power and authority are limited to administering a system of efficient and quality higher education. The Board's constitutional power as an executive body does not equate to the constitutional power of the Legislature to enact laws.

**III. The power to set public policy and laws regulating firearms in Montana rests solely with the Montana Legislature.**

The Montana Legislature has plenary power to regulate firearms in the State of Montana. Legislative power of the State is vested in a legislature consisting of a senate and a house of representatives. Mont. Const. Art. V § 1. Legislative powers include authority to make, amend, and repeal laws, as well as the power to control fiscal matters such as budgets, appropriations, and levying of taxes. *Kock v. Yellowstone Cnty.*, 243 Mont. 447, 451, 795 P.2d 454, 457 (1990).

The power of the Legislature to make laws and regulations for the protection of public health, safety, welfare and morals is plenary and commonly referred to as police power. *In re Sonsteng*, 175 Mont. 307, 314, 573 P.2d 1149, 1153 (1975).

Local government units are also granted police power under Montana Constitution Article XI, which is acquired by and through the adoption of a self-government

charter. Mont. Const. Art. XI §§ 4, 5. The exercise of local government police powers is subordinate to the laws passed by the Legislature. *Id.* at § 6.

The right to bear arms is subject to the police power of the state. *State v. Fadness*, 2012 MT 12, ¶ 31, 363 Mont. 322, 268 P.3d 17. The right to bear arms is “inextricably tied to the concept of the virtuous citizen” and may be appropriately restricted in cases of criminal conviction because the person has shown his disregard for others in society and his possession of a firearm threatens the security of his fellow citizens. *Id.* (internal citations omitted). Additionally, even though HB 102 implements a self-executing right, the Legislature may implement laws in furtherance of the purpose, enforcement of, or better protection of the right secured by the constitution. *Missoula v. Mtn. Water Co.*, 2018 MT 139, ¶ 13, 391 Mont. 422, 419 P.3d 685. Therefore, the Legislature has authority through its police power to enact laws regulating who may carry firearms and where firearms may be carried.

The Board does not have police power. The Board does not have legislative power expressly given to it anywhere in the Montana Constitution. *See generally* Mont. Const. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted. Mont. Const. Art. III § 1. Without an express constitutional grant of legislative authority,

the Board lacks any such power, which is consistent with its status as an executive agency. Neither is the Board a local government unit under Montana Constitution Article XI. *Mitchell v. University of Montana*, 240 Mont. 261, 783 P.2d 1337 (1989). Because it is not a local government unit, the Board does not obtain legislative power from Article XI. The Board simply and clearly lacks legislative power.

Because the Board does not have legislative power and firearm regulation is subject to the police power of the state, the Board does not have independent authority to regulate firearms. The Board lacks independent authority to regulate firearms, therefore the Legislature did not violate the Board's constitutional authority by implementing HB 102.

**IV. The Legislature properly delegated authority to the Board to regulate firearms by enacting HB 102.**

Section 6 of HB 102 [attached hereto as Exhibit B] properly delegates legislative authority to the Board to regulate firearms on MUS property. The Legislature may delegate its legislative powers to an administrative body so long as it sets forth a policy, rule, or standard for guidance and does not vest it with arbitrary and uncontrolled discretion. *State v. Spady*, 2015 MT 218, ¶ 19, 380 Mont. 179, 354 P.3d 590. The law-making power may not be granted to an administrative body to be exercised under the guise of administrative discretion. *Bacus v. Lake Cnty.*, 138 Mont. 69, 78, 354 P.2d 1056, 1061 (1960). The Board

has inappropriately exercised administrative discretion by regulating firearms for years. See Pet'n Decl. Relief ¶ 28 May 27, 2021. The Legislature recognized the Board's inappropriate violation of the Legislature's constitutional authority and specifically addressed the matter in HB 102 § 3. Ex. B. The Legislature then delegated certain authority to the Board in HB 102 § 6. *Id.* In section 6, the Legislature provided specific rules and standards by which the Board could "prohibit or regulate" specified activities pertaining to carrying of firearms on MUS property. *Id.*

**V. The Board's authority to create policies and rules for the implementation of a system of higher education does not rise to the level of legislative authority.**

The authority granted to the Board by Article X § 9(2) of the Montana Constitution does not equate to legislative power. It is the exclusive power of the Legislature to enact the laws of this State and the exclusive power of the Executive branch to implement and enforce those laws. *MEA-MFT v. McCulloch*, 2012 MT 211, ¶ 29, 366 Mont. 266, 291 P.3d 1075. Most executive agencies must promulgate their rules under the Montana Administrative Procedures Act. Mont. Code Ann. Title 2, chapter 4. However, the Board is exempt from the requirements of the Act in promulgating its policies and rules. Mont. Code Ann. § 2-4-102. This ability to independently promulgate policies and rules is consistent with the Board's authority to govern the university system. However, the authority

to make administrative rules is not a delegation of legislative power, nor can such rules be raised from an administrative to a legislative character (even in cases where a violation of the administrative rule is punishable as a public offense). *State v. Stark*, 100 Mont. 365, 373, 52 P.2d 890, 894 (1935) (citing *Union Bridge Co. v. United States*, 204 U.S. 364, 27 S. Ct. 367 (1907)).

The Board may make rules and policies to execute its duty to provide a system of higher education, but such rules and policies are not equal to or prohibitive of a law regulating the carrying of firearms passed by the Legislature pursuant to its police powers.

## **VI. Conclusion.**

Enactment of HB 102 in its entirety is constitutional as applied to Board of Regents, the Montana University System, and campuses and locations. The Board is an executive agency without legislative power and because the Board does not have legislative power, the Legislature's enactment of HB 102 is not violative of the Board's authority granted by the Montana Constitution Article X § 9.

Neither does HB 102 violate the Board's constitutional purpose of providing continuous administration of a system of higher education. The Legislature has properly and appropriately delegated to the Board certain and specific power to regulate firearms on MUS property. HB 102 provides guidance by which the Board may implement its administrative rulemaking regarding firearms on campus.

The Board has offered no support that the carrying of firearms directly and negatively impacts the education function of the units of the university system, and thus there is no direct impact on the Board's ability to administer the system of higher education. *See Glass v. Paxton*, 900 F.3d 233, 2018 U.S. App. LEXIS 22843 (5th Cir. 2018) (Professors could not manufacture standing in a First Amendment claim by self-censuring speech based on speculation that concealed carry license holders would, through their actions, intimidate professors and students in the classroom).

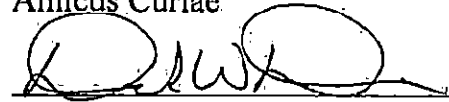
Based on the foregoing, the enactment of HB 102, as applied to the Board of Regents, Montana University System and properties thereof, was a proper exercise of legislative power under Montana Constitution Article V; the Legislature did not violate the separation of powers under Montana Constitution Article III § 1; the Board of Regent's power and authority granted by Montana Constitution Article X § 9 is consistent with the Board's executive branch functions; the Board of Regents does not have legislative authority; the Board of Regents, as an executive branch agency, is limited to enforcing the laws of the State of Montana; the Board of Regent's rule making authority is limited to managing a system of higher education, subject to and limited by the laws enacted by the Legislature; and, the Board of Regents does not have independent power to regulate firearms.

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Respectfully submitted to the Court this 22nd day of September, 2021.

Amicus Curiae

A handwritten signature in black ink, appearing to read 'D. W. Diacon', written over a horizontal line.

David W. Diacon, pro se

Certificate of Service

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing *Brief of Amicus Curiae David W. Diacon* via email, as stipulated to by the parties, upon the following:

Kyle Anne Gray  
Emily J. Cross  
Brienne C. McClafferty  
Holland & Hart LLP  
kgray@hollandhart.com  
ejcross@hollandhart.com  
bcmclafferty@hollandhart.com

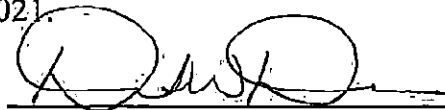
Martha Sheehy  
Sheehy Law Firm  
msheehy@sheehylawfirm.com

Ali Bovingdon  
MUS Chief Legal Counsel  
abovingdon@montana.edu

Attorneys for Petitioner  
David Dewhirst  
J. Stuart Segrest  
Hannah Tokerud  
Montana Attorney General  
David.dewhirst@mt.gov  
ssegrest@mt.gov  
Hannah.tokerud@mt.gov

Attorneys for Respondent

Signed this 22nd day of September, 2021.



David W. Diacon

Montana State Library



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EXHIBIT

A

1 tendent of public instruction shall be ex officio non-voting  
2 members of the board. The duties of this board and the super-  
3 intendent of public instruction shall be prescribed by law.  
4 Section eleven, Board of Regents of Higher Education: There  
5 shall be a board of regents of higher education, a body corp-  
6 orate, which shall govern and control the academic, financial,  
7 and administrative affairs of the Montana university system,  
8 and shall supervise and coordinate other public educational  
9 institutions which may be assigned by law. Said board shall  
10 consist of seven members appointed by the governor to six year  
11 overlapping terms, subject to confirmation by the senate, under  
12 regulations provided by law. The board shall appoint its ex-  
13 ecutive officer and prescribe his term and duties. The gov-  
14 ernor and superintendent of public instruction shall be ex  
15 officio non-voting members of this board. (End reading) Mr.  
16 Chairman, sections nine, ten and eleven.

17 CHAIRMAN GRAYBILL: Very well.

18 Mr. Champoux.

19 DELEGATE CHAMPOUX: Mr. President, fellow Delegates,  
20 at this point I would like to spend some time going over what  
21 the two-board concept is and in the process telling you about  
22 some of the ramifications in terms of what will happen, for  
23 instance. I also intend to define body corporate along the  
24 way. Oh -- I move that when this committee does arise that we  
25 adopt nine, ten and eleven. Is that proper at this time?

1 it? A board of lay people watching over this, having a check  
2 on the state superintendent's office, and so forth? The need  
3 for a separate board for public education promises then to  
4 become even greater in the future. The present trends indi-  
5 cate the assumption of much greater role in educational fin-  
6 ancing by state and federal, possibly as much as ninety per-  
7 cent -- and I don't want to go into that because this is ac-  
8 cording to Serrano and there's a variance factor there that  
9 constitutional lawyers say there's somewhere between ten and  
10 twelve percent, but we don't know. Well, a well-informed and  
11 representative board would provide a much needed balance to  
12 decisions on administrative policies, and that is one of the  
13 things that I want to emphasize. In this whole business of  
14 the boards, we have to keep in mind all the time that the  
15 legislature is not going to be here in session all the time,  
16 that the representatives of the people are not going to be  
17 here administering this, and the greatest fear is the bureau-  
18 cracy. The greatest fear is the bureaucracy. A large major-  
19 ity of witnesses who testified on the subject, including key  
20 state officials and many educators, spoke in favor of the two-  
21 board concept. As a matter of fact, every major person in-  
22 volved in education, like the state superintendent of public  
23 instruction, the presidents of all the university systems,  
24 community -- the university units -- the community college  
25 presidents, the Montana Education Association, the largest



1 for education is a board of regents of higher education. The  
2 same reasons which apply to the need for specialization and  
3 concentration on the public school board hold also for the  
4 board of regents. Higher education is fundamentally different  
5 from public school education in goals, curriculum, financing,  
6 control, operation, and so forth, and it must be administered  
7 accordingly. There is very little in common between the public  
8 school system and higher education, other than a shared need  
9 to provide a smooth transition for students between the two  
10 systems. Now, I have a kind of a suspicion that some of you  
11 are interested in what this word, a body corporate, means, so  
12 at this point I want to stop and define a body corporate and  
13 tell you a little bit about it, and at the end of this -- my  
14 little lecture here today, I'm going to tell you what we see  
15 as happening if this occurs and what we see as not happening  
16 if it occurs. All right, let's look at the definition of a  
17 body corporate. This is from Black's Law Dictionary. One:  
18 it provides legal recognition as an entity apart from a normal  
19 administrative or executive agency. It limits liability of  
20 directors or members. And that point was brought up by some  
21 board members in terms that they can be sued without this.  
22 Under this the board can but not members. It recognizes the  
23 perpetuation of the body between individual membership. It  
24 generally grants right to purchase or sell property, hold  
25 title to property, sue, contract, adopt a seal, and so forth.

1 It generally grants right to the body to govern its own inter-  
2 nal operations, and that should be emphasized. That is what  
3 the key to all of this is about, the power to govern its own  
4 internal operations, according to articles of charter or in-  
5 corporation -- in other words, the grant of power. It has this  
6 power to exercise all powers necessary or convenient to affect  
7 any or all of the purposes for which the organization is or-  
8 ganized, sell things and what-have-you. Now, the following  
9 states have a body corporate: Alaska, California, Colorado,  
10 Georgia, Hawaii, Idaho, Louisiana, Michigan, Minnesota, New  
11 York and Florida. A body corporate is also a term applied to  
12 corporations, public and private, and is a term particularly  
13 applied to a public corporation having powers especially as-  
14 signed. It indicates the distinguishing characteristics of a  
15 corporation -- and what are the distinguishing characteristics?  
16 Is an artificial person a legal entity, capable of acting  
17 through its corporate offices and agents, of suing, being sued,  
18 taking and holding property, contracting in its own name, and  
19 of continuing to exist independently of the individuals who  
20 compose it? All right. A public corporation is one created  
21 by the state for political purposes and to act as an agency in  
22 the administration of civil powers delegated to it. Generally  
23 within a particular territory a subdivision of the state and  
24 usually invested for that purpose with subordinate and local  
25 powers, and so forth. Now, all school districts in the state

1 of Montana by statute are body corporates. All school dis-  
2 tricts in the state of Montana by statute are body corporates.  
3 If you look at the Revised Codes, 75-6501, it says any district  
4 shall be a body corporate. Every community college in the  
5 state of Montana -- community college district -- is a body  
6 corporate. If you look at the Revised Codes, 75-8102, these  
7 are by statutes however, all vo-tech schools -- centers which  
8 are administered by local school districts come under the pow-  
9 ers of a body corporate. The university system is the only  
10 educational unit in the state that is not a body corporate.  
11 Now, what does it mean, really? It means that you are master  
12 in your own house, that you can set your own curriculum, that  
13 you can hire and fire, and I'll go into detail later on as to  
14 what the limitations on this power are. We've been using the  
15 term, autonomy, around here. I think that we've been using it  
16 rather loosely because autonomy means freedom, complete inde-  
17 pendence, and this isn't necessary to the case as we shall  
18 point out with this board. All right. A recognition of the  
19 particular needs and problems of higher education has led all  
20 but two states in the Union -- all but two -- to establish  
21 separate state governing boards for higher education. Now,  
22 they have either established it by constitutional status or  
23 by legislative status. Montana and Idaho remain the only two  
24 states which retain a single board for both public schools and  
25 the university system. Some states have more than two boards



1 for their educational system. Some have three and four, but the  
2 generally recognized principle is that different educational  
3 tasks require different administrative structures. As noted  
4 in the comments to the previous sections, major studies of  
5 education in Montana have recommended the creation of two  
6 separate boards. The Durham report, 1958, and so forth. In add-  
7 ition to administrative questions, another fundamental reason  
8 exists for the establishment of a separate board of regents of  
9 higher education. Higher education is not simply another  
10 state service. The administrative structure of higher educa-  
11 tion cannot be considered an ordinary state agency. The uni-  
12 que character of the college and university stands apart from  
13 the business-as-usual of the state. Higher learning and re-  
14 search is a sensitive area which requires a particular kind of  
15 protection not matched in other administrative functions of  
16 the state. Few would dispute the vital importance of academic  
17 freedom to the process of higher learning. Such freedom is  
18 the essence of the American higher educational system. The  
19 great movements of mankind have come out of the great modern  
20 schools, the modern university system, ever since the time of  
21 the Renaissance, and the greatest of these movements have  
22 come out of the schools that were unfettered by controls that  
23 would tend to stifle them. Only in an atmosphere of independ-  
24 ent and unfettered inquiry can an objective pursuit of know-  
25 ledge be conducted which is unhindered by prejudice and vested

1 interest. The great contributions to both scientific and  
2 humanistic learning which have emerged from American colleges  
3 and universities can be attributed in large part to the free-  
4 dom traditionally enjoyed by the teachers and students in such  
5 institutions.. This was the idea implicit in the founding of  
6 both private and public colleges and universities in the United  
7 States. And here I want to stop for a minute and say some-  
8 thing --

9 (Laughter)

10 DELEGATE CHAMPOUX: You're awake. How about that?

11 CHAIRMAN GRAYBILL: You're entitled to one mistake,  
12 Mr. Champoux. Go ahead.

13 DELEGATE CHAMPOUX: I'm sure going to make more of  
14 you when I get through -- saying something about that.

15 (Laughter)

16 DELEGATE CHAMPOUX: Oh, we needed a pause. In the  
17 beginning these schools were established independently. If  
18 you go back in the Renaissance -- only in modern times have  
19 we found this tendency for more state and bureaucratic control  
20 and it's getting worse and worse, as I will show you, all the  
21 time. The society as a whole accepts the principle unreserv-  
22 edly -- excuse me -- this was the idea implicit in the found-  
23 ing of both private and public colleges and universities in  
24 the United States, and it is an idea which still prevails.  
25 The society as a whole accepts the principle unreservedly.

1 Rarely does a direct attack come upon the concept of free in-  
2 quiry. However, a more subtle kind of coercion has made its  
3 appearance, and it is of the sort which is likely to become  
4 an even greater threat to the integrity of higher education  
5 in the future and this is the growing power of the centralized,  
6 bureaucratic state. Without overtly intending to curtail free-  
7 doms, the modern state has absorbed an increasing amount of  
8 power and control in the name of efficiency. A pervasive  
9 form of influence and manipulation has grown hand in hand with  
10 the emerging predominance of the government form and the com-  
11 puter. What do I mean by that? Laws are made by legislators  
12 but the bureaucrats administer them and that's the problem.  
13 We hear all the time about the unresponsive government, the  
14 unresponsive government, and so many times we think of it as  
15 being the governor, the attorney general, the legislators, and  
16 so forth. The greatest danger in this country is not from  
17 our elected officials but the ones that are hired to administer  
18 the laws. I'll never forget the day two years ago, in a  
19 speech, Senator Metcalf said, in Kalispell, that he had been  
20 in the Congress for I don't know how many years and all of a  
21 sudden he heard about an agency down in the cellar of some  
22 building there that had fought at something he wanted to do.  
23 He looked into this and he found out about an agency that had  
24 been never authorized by anyone, anywhere, and here it was  
25 administering programs. Not only that, Senator Goldwater --

1 boy, I've hit both sides of the fence there, haven't I -- over  
2 in Spokane made the same claim. I've got the right and left  
3 in on it now -- that the greatest danger is from this bureau-  
4 cratic control. A warning of this social trend was voiced  
5 in a landmark study of the condition of the American univer-  
6 sity conducted in the late 1950's under the chairmanship of  
7 Dr. Milton Eisenhower under a Ford Foundation grant. Now I've  
8 got good old Ike on my side. The study described a variety of  
9 creeping controls on university systems which have appeared in  
10 recent years across the country. It warns that strict adher-  
11 ence by institutions of higher learning to a bewildering array  
12 of centralized bureaucratic controls will ultimately endanger  
13 the academic as well as the administrative freedom of the  
14 colleges in this country. This is from a book by -- it's in  
15 a book called The Campus and the State by Malcolm Moos and  
16 Francis Bourke. Among the sources of growing controls which  
17 increasingly impinge on universities are state budget offices,  
18 state auditors, comptrollers, purchasing departments, person-  
19 nel offices, central building agencies, and a variety of older  
20 forms of control, such as legislative riders, which are being  
21 used in new ways to affect colleges and universities. The  
22 informal controls associated with these direct means often ex-  
23 ert an even stronger influence on the educational process.  
24 The study concludes that the maintenance of the system of  
25 higher education free from unnecessary bureaucratic and polit-

1 ical interference is important not only to a healthy academic  
2 atmosphere but also to the administrative efficiency of the  
3 system of higher education. Creative research, and I quote,  
4 by its very nature, requires freedom to move in a different  
5 direction if the facts uncovered require it. The further away  
6 budget authority lies and the more time consuming it is to get  
7 permission for such changes, the less will be accomplished.  
8 Research and instruction at the higher levels are not services  
9 for which specifications can be written in advance, and for  
10 which one seeks the lowest bidder. They are venture capital  
11 investments where one successful strike in a multitude, either  
12 in the form of a new ideal, or a trained individual capable  
13 of producing them, may spell the difference between a forward-  
14 moving or a retrograding nation. The power to coordinate and  
15 operate the system of higher education is one which belongs  
16 primarily, properly, to an informed board of regents who have  
17 the knowledge and ability to determine rationally the course  
18 of higher education. Master plans have been suggested for the  
19 guidance of higher education in Montana but have failed to be  
20 applied because of a lack of power. We could have a master  
21 plan in this state where all of the higher education units  
22 would be coordinated--all of them--so we wouldn't have this  
23 duplication of forces, this duplication of programs, and also  
24 the duplication of our units, if we only had power in a board  
25 that could enforce its own mandates in terms of its internal

1 control, and that is going to be one of the greatest benefits  
2 -- and I want to put that on the record as the intent of this  
3 committee -- that this unit would tend to put the house of  
4 higher education in proper order. A board of regents empowered  
5 to carry out its informed judgments would be an important force  
6 for efficiency in the higher educational system. It is this  
7 factor of efficiency which is highlighted in the study chaired  
8 by Dr. Eisenhower. The primary conclusion of the study is  
9 that freedom actually enhances efficient operation of a univer-  
10 sity system. You might say, you know, why, we'll give them  
11 freedom and they're going to go off and do their own thing.  
12 They're going to be very aware of public opinion, and once  
13 they can put their own house in order -- they've got the  
14 control to do it -- they will. The fact that higher education  
15 very largely owes its autonomous position in state government  
16 to the belief that freedom promotes rather than limits effi-  
17 ciency -- . In the future there is one point that colleges  
18 and universities will need to make to the public and its  
19 elected representatives very persuasively. This is simply  
20 that the goal of efficiency in higher education can be realized  
21 without non-educational officials intervening in the fiscal  
22 affairs of colleges and universities. The factors in partic-  
23 ular add to the efficiency of a university -- two factors --  
24 which is relatively free to control its own affairs--one, long  
25 range planning. We've seen a lot of instant expert work in

1 this very floor here. All the time. What would you feel like  
2 if you were a professor that planned something a long time and  
3 had come up, tried to get it passed in the legislature, com-  
4 pletely fail, and then some guy in the back row got up and  
5 decided, well, this is a brilliant idea and passed it and  
6 you'd have to administrate it, oftentimes without money to  
7 finance it. In the future there is one point that colleges  
8 and universities will need -- well, -- long range planning  
9 and administrative decentralization. There is a clear need  
10 for a strong board of regents to make long-range plans which  
11 are appropriate to the needs of higher education and free from  
12 short term political whims. The limits of decentralization --  
13 centralization in government -- oftentimes operations have  
14 become apparent, particularly in such an unpredictable and  
15 flexible field as higher education. A board of regents which  
16 is given the power to control and manage its own affairs would  
17 enormously improve the planning situation for higher education  
18 in Montana. Well, I want to get to something here now. Last  
19 Thursday on the floor of this assembly was distributed a let-  
20 ter to certain Delegates from the office of the department of  
21 administration. I heard about it. I finally acquired a copy,  
22 and I want to read you that letter. It says: The department  
23 of administration is in favor of safeguarding the academic  
24 freedom of the university system in the Constitution. However,  
25 the proposed change goes far beyond the question of academic

1 buy second hand equipment because of a state regulation, even  
2 from Helena, the city of Helena. Now, the problem comes when  
3 you have eight year old Sears and Roebuck pianos. You ought  
4 to listen to some of those students and their piano playing.  
5 The state department of administration has been attempting for  
6 two years to impose an accounting system on the university  
7 system which is simply not appropriate to educational institu-  
8 tions. The university system has, in fact, been using a far  
9 more modern double entry accounting system than the state has  
10 used for years. The same system that is recommended by the  
11 American Council of Education and used nationally in all major  
12 universities for educational accounting. The university sub-  
13 mits the most detailed and well prepared financial reports in  
14 the state, double entry, twice a year. The obvious solution  
15 to this problem is simply to write a computer program that goes  
16 along with the university system and include it in the state  
17 system. I wonder if they've thought of that yet? The state  
18 administration department has expressed desire to incorporate  
19 other university connected funds into the state general fund,  
20 which is dormitories, fraternities, sororities, and so forth.  
21 These funds are self-sustaining and self-liquidating. It  
22 would be silly to bring them all the way up here when they're  
23 going to have to be turned over so many times at Missoula,  
24 Bozeman, and so forth. Research grants by the government --  
25 they want to administer them all through the state senate.



1 But one of the better ones is the motor pool. This has been  
2 a fiasco from the start. The university was paying eight cents  
3 per mile previously. Now it pays eight point six percent.  
4 Well, that may be inflation. Even after handing over approx-  
5 imately a hundred and fifty cars to the state, enormous in-  
6 convenience and extra cost in time is wasted in going to and  
7 from the depots, adding mileage and time to the cost of going  
8 out of the way is probably greater than the savings. It takes  
9 seven months to get billing. Not only that, anyone who uses  
10 a car permanently assigned to him must send in daily -- daily  
11 a report on its use. The man at the agricultural experiment  
12 station has to drive eighteen miles each way, each day, to get  
13 gas for his car. The state is in the process of getting into  
14 the gas station business -- competing with private industry.  
15 All of this resulted from the bright idea of a bureaucrat that  
16 the car pool in Helena should be made statewide. Look at in-  
17 vestment. In its review of the university investment policy  
18 the legislative audit committee complimented the university  
19 system on its fine record and said it should continue until the  
20 state could do as well. The state is making three percent on  
21 its investments; the university is making six percent.

22 CHAIRMAN GRAYBILL: Mr. Champoux, I wonder if you  
23 could conclude as quickly as possible.

24 DELEGATE CHAMPOUX: I will right now.

25 CHAIRMAN GRAYBILL: I think you've had plenty of

1 time.

2 DELEGATE CHAMPOUX: Here it is. O.K. If you look  
3 at also some other problems, a tax on people, individuals, in  
4 the system -- some of you remember Dr. Morton Borden here a  
5 few years ago because of a speech he made out in Minnesota, I  
6 guess it was, on cooperatives and the economic system before  
7 the Farmers Union. He was severely attacked on this floor.  
8 They tried to eliminate his salary from the budget. As a  
9 result, Borden is now teaching, head of the graduate program  
10 at the university of Santa Barbara. Dr. Louis Levine made  
11 extensive studies of mine taxation and because of their con-  
12 troversial nature with respect to powerful mining interests,  
13 the chancellor, under pressure from the legislature and a  
14 threat to cut appropriations, suspended Dr. Levine. He re-  
15 signed and went to New York. Well, if a board is created for  
16 higher education and given the responsibility for education  
17 but not the authority to carry out such responsibility, how  
18 can they be held accountable to the people. If the real auth-  
19 ority for carrying out the policies of higher education is  
20 dispersed among the bureaucratic political frameworks of other  
21 agencies, who, then, is accountable to the public. A healthy  
22 post-secondary educational system must have freedom from pol-  
23 itical changes of fortune while still maintaining its respon-  
24 sibility and accountability to the state. The institutions  
25 themselves, the centers of teaching and learning, must be

1 immune from external political or ideological pressures. Thank  
2 you very much for the time I've spent.

3 CHAIRMAN GRAYBILL: Very well, the issues under con-  
4 sideration is sections nine, ten and eleven. Mr. Rygg, you  
5 have an amendment. Do you want us to read it?

6 DELEGATE RYGG: Yes, would you read it, please?

7 CHAIRMAN GRAYBILL: Will the Clerk read Mr. Rygg's  
8 amendment to section nine?

9 CLERK HANSON: Mr. Chairman (reading): I move to  
10 amend by deleting in their entirety sections nine, ten and  
11 eleven on pages twenty-four, twenty-five, twenty-seven and  
12 thirty-one of the Education and Public Lands Committee proposal  
13 number ten, and by substituting in lieu thereof the following  
14 section: (quote) Section ten. The general control and super-  
15 vision of the state university and the various other state  
16 educational institutions shall be vested in a commissioner of  
17 education whose powers and duties shall be prescribed and  
18 regulated by law. Signed, Rygg. (End reading)

19 Mr. Chairman.

20 DELEGATE RYGG: Mr. Chairman.

21 CHAIRMAN GRAYBILL: Mr. Rygg has proposed an amend-  
22 ment to eliminate sections nine, ten and eleven and put in  
23 place thereof a section nine, which would set up a commissioner  
24 of education.

25 Mr. Rygg.

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1 legislative audit can get its work done there. I don't think  
2 this amendment of Delegate Heliker does the job.

3 CHAIRMAN GRAYBILL: Mrs. Bugbee.

4 DELEGATE BUGBEE: Mr. Chairman. I'd like to say,  
5 first of all, that no one has asked me to speak on this and  
6 I'd like to describe something to you that I know fairly in-  
7 timately. My husband is chairman of the philosophy depart-  
8 ment at the University of Montana and I think you would agree  
9 with me that he's a rather highly paid person for the state  
10 of Montana. Perhaps I shouldn't say this, but he has been  
11 offered four chairmanships of other departments in the rest  
12 of the country. All four of them were more than what he is  
13 being paid now and he has turned them down. I consider, and  
14 I think a number of people in this room who have had children  
15 who have worked with him -- He's very competent at what he  
16 does, but at the same time, within his daily work, he has  
17 an enormous amount of paper work to face. He has told me  
18 that every year it gets worse. This is not talking about the  
19 point of view of the top of the university itself, but what  
20 happens to someone who is a professor in the system. With  
21 this increase in paper work, it means that this is what he  
22 does more and more. The very requisitioning of a typewriter  
23 in his department becomes something that has consumed hours  
24 of his time. The real question I want to ask is -- This has  
25 to do with autonomy and also how funds of the university are

1 spent. Do you really want him -- Does the state of Montana  
2 want him to work at something he does very well? Do they  
3 want him to spend this sizable amount of time, which increases  
4 with every year, requisitioning paper clips, typewriters,  
5 paper, etc.? I would like to read from the Eisenhower Report.  
6 Mr. Champoux spoke about it the other day, but it expresses  
7 better than I can part of the problem which I think we should  
8 think about at this point. For the greater part of the cen-  
9 tury, the relations between public institutions of higher  
10 education and state government have been marked by increasing  
11 anxiety. This tension has been more visibly and deeply felt  
12 by educators than by state officials. The point of depart-  
13 ure for this development cannot, of course, be precisely  
14 fixed by the way this was written in 1957, I think. Generally  
15 speaking, it may be said to commence with the movement be-  
16 ginning around 1917 to regroup state administrative units  
17 into a more centralized orbit and to bring them under tighter  
18 executive control. This won't take me very long. The state  
19 budget office beyond question is now in the position to wield  
20 more actual or potential influence over higher education than  
21 any other state administrative agency. With the development  
22 of the executive budget, in state after state, the budget  
23 office has moved forward to a point where its recommendations  
24 can have a decisive effect on the judgments reached by both  
25 the governor and the legislature on appropriations for higher

1 possibly some minor amendments that might come up. At this  
2 time, we already have Mr. Heliker's amendment, section eleven  
3 plus the last sentence of Rollins'. Mr. Rollins, I would  
4 entertain a motion to amend that by adding your section  
5 eleven. After you've spoken, I would entertain a motion from  
6 you, Mr. Barnard, to put a substitute motion. That would  
7 get your three before us and then we can get Mr. Rygg's  
8 before us if we ever get there.

9 DELEGATE ROLLINS: Mr. Chairman.

10 CHAIRMAN GRAYBILL: Mr. Rollins.

11 DELEGATE ROLLINS: At the time you were speaking  
12 about me, someone else came to speak to me. Would you say  
13 that again please?

14 CHAIRMAN GRAYBILL: Mr. Rollins, is there any  
15 question which one you're going to listen to now? I'm  
16 just kidding you. Mr. Rollins, would you like to move your  
17 section eleven as an amendment to Mr. Heliker's motion?

18 DELEGATE ROLLINS: Yes, Mr. President. I move that  
19 my amendment be read as an amendment to Mr. Heliker's.

20 CHAIRMAN GRAYBILL: All right. Will the clerk please  
21 read Mr. Rollins' amendment?

22 CLERK HANSON: (Reading) Mr. Chairman. I move to  
23 amend the Heliker amendment by adding the following language  
24 before his sentence. Section eleven: The government and  
25 control of Montana's university system shall be vested in a

1 board of regents who shall be selected as provided herein.  
2 The regents shall have full power, responsibility and author-  
3 ity to supervise management and control of the Montana uni-  
4 versity system and shall supervise and coordinate other public  
5 educational institutions which may be assigned by law. Said  
6 board shall consist of seven members appointed by the governor  
7 to overlapping terms, subject to confirmation by the senate,  
8 under regulations provided by law. The board shall appoint  
9 its executive officer and describe his term and duties. The  
10 governor and the superintendent of public instruction shall  
11 be ex officio, nonvoting members of this board. The regents  
12 shall present a unified budget request to the legislative  
13 assembly. Signed, Rollins.

14 CHAIRMAN GRAYBILL: Then, Mr. Rollins' does, of  
15 course, incorporate the rest of that sentence there because  
16 it's an amendment to Mr. Heliker's. So, it does have the  
17 funds and appropriations under control of the regents shall  
18 be subject to the same legislative audit provisions as other  
19 funds of the state. Is that correct, Mr. Rollins?

20 DELEGATE ROLLINS: Yes, Mr. President. I'd like  
21 to speak to that a moment please.

22 CHAIRMAN GRAYBILL: Very well.

23 DELEGATE ROLLINS: In proposing this amendment, I'm  
24 trying to achieve certain things and to avoid certain types  
25 of objections. I'm trying to achieve a board of regents that



1 collections as revenue in the general fund to the extent the  
2 costs were involved in appropriated monies. Seven, seek  
3 legislation to provide the statutory authority for waiver  
4 or reduction of fees in those circumstances where such waiver  
5 or reduction is in the best interest of the state. Eight,  
6 establish a uniform university accounting system which meets  
7 management's needs and is compatible with the state wide  
8 system currently in operation. With regard to the university  
9 fees, the legislative auditor's report found that over six  
10 hundred and twenty-five thousand dollars in fees were waived  
11 by the university during fiscal year 1969 and 1970. Of this  
12 amount, five hundred and twenty-five thousand, eight seventy-  
13 seven in fees were waived under circumstances which were not  
14 specifically authorized by law. The department of adminis-  
15 tration is in the process of implementing an accounting in  
16 the budget system and the legislative audit is just reporting  
17 the facts as they are. I think that anyone that knows some-  
18 thing about the competition that exists between the univer-  
19 sity units, how one president at one time has been in suprem-  
20 acy and the other president has been again, you could find  
21 reasons for the legislature to be concerned and the executive  
22 department to have some concern for some sort of a coordin-  
23 ating policy on this proposition. In my opinion, I think  
24 that we shouldn't turn around and give and delegate all of  
25 the powers to a board of regents or to a commissioner of

1 education.

2 DELEGATE CHAMPOUX: I'd like to ask Mr. Nutting one  
3 question for the record please.

4 DELEGATE NUTTING: Yes.

5 DELEGATE CHAMPOUX: Now, just to clarify this, if  
6 I may, when you said after the fact, you mean post audit. Is  
7 that correct, sir? You do not mean pre audit.

8 DELEGATE NUTTING: That's what an audit discussion  
9 is.

10 DELEGATE CHAMPOUX: Thank you very much, sir.

11 CHAIRMAN GRAYBILL: Mr. Mahoney.

12 DELEGATE MAHONEY: Mr. Chairman. I am a little bit  
13 perturbed here or worried or whatever the word that we could  
14 use -- disturbed -- yes, maybe that's good. When we get  
15 down here in this line that says manage and control, how  
16 supreme is that? I'd like to have Mr. Rollins define that  
17 for me, if he would. How complete should the control of the  
18 board of regents be of the university system?

19 DELEGATE ROLLINS: I can't answer that categorically,  
20 Mr. Mahoney, but I feel that the board of regents should  
21 have the powers needed to carry out the academic functions  
22 of the university system without undue harassment from out-  
23 side forces. We're in the business of educating people. We  
24 are not in the business of running a business according to  
25 certain things. We're not trying to make a profit. I think

1 we set them up subject to the general laws of the state of  
2 Montana. That would be to all of the laws affecting all of  
3 the other divisions of state government. We have a provision,  
4 of course, in here that would limit the legislature from  
5 passing punitive laws directly against the university system.  
6 The last paragraph is identical to the proposal of the Edu-  
7 cation Committee in section number eleven. I just introduce  
8 this as a subject for discussion and that we might be able  
9 to work something out of it that all of us might agree with  
10 and would be workable with the university system. That's  
11 all I have, Mr. President.

12 CHAIRMAN GRAYBILL: Mr. Champoux.

13 DELEGATE CHAMPOUX: May I, first of all, direct a  
14 question to Mr. Mahoney and then react to Mr. Barnard?

15 CHAIRMAN GRAYBILL: Yes, you may.

16 DELEGATE CHAMPOUX: Charlie, I agree -- where did  
17 Charlie go?

18 CHAIRMAN GRAYBILL: Let's skip his question, shall  
19 we?

20 DELEGATE CHAMPOUX: All right. For the record, I'm  
21 going to state what I want to state about it anyway. The  
22 committee does not want to set up a separate unit of govern-  
23 ment here. We feel -- I do, by the Rollins' amendment, that  
24 it provides all kinds of controls, but I certainly don't  
25 think the governor wants to hire and fire the university

1 professors one after another. Nor, I'm sure the governor  
2 doesn't want to sign requisition slips every Monday morning  
3 for paper clips. Now, the state architect's office was the  
4 one that reviewed the university science building. Perhaps  
5 if there had been provision for a local architect on the  
6 scene, even as one of his subordinates -- that is to say  
7 attached to the board of regents of higher education --  
8 we might have avoided that problem. In Michigan, the problem  
9 is that each unit of the university system is an independent  
10 unit, each unit. Now, what we want to do is to give the  
11 control to this body here called the board of regents of  
12 higher education, so we can stop this independent movement  
13 on behalf of all of these different schools. That's what  
14 the intent of that is. Let's look at Mr. Barnard's amendment  
15 if I may. The first problem we're going to have here, of  
16 course, -- and I hate to start this one all over again --  
17 and that's the business about what's a public trust? By  
18 gosh, I'm going to read Saxby's book before I debate that  
19 one. Another problem that's going to be is what's the gener-  
20 al laws of Montana? Why that phrase? Can we define that  
21 as distinct from other laws? Thirdly, once we've given this  
22 power, then we say the legislature shall pass no law which  
23 infringes upon, diminishes or transfers to another body. Is  
24 that going to be a general law, or what kind of a law is that  
25 going to be? Also, number four, the board shall appoint its

1 executive officer -- aren't we going to have this commissioner  
2 of higher education there? Thank you.

3 CHAIRMAN GRAYBILL: Mr. Davis.

4 DELEGATE DAVIS: Mr. President. In the event we  
5 don't get this concluded before the noon hour -- Mr. Barnard's  
6 first paragraph comes from your Law Review that you all re-  
7 ceived of Lawrence Waldock and was considered extensively in  
8 committee. I don't care which one we finally go on and start  
9 delousing and get the thing so we can live with it, but you  
10 could all read your Law Review article during the noon hour  
11 if you want to find out about his. I think Mr. Waldock, in  
12 his conclusion, said this: The quality of education in Mon-  
13 tana will continue to depend more upon the caliber of the  
14 state's legislators, regents and general citizenry than upon  
15 the phrasing of this constitutional provision. I think that's  
16 true. We can go with one or the other and get it worked  
17 over but that is where it comes from and you could read it  
18 over if anyone is interested.

19 CHAIRMAN GRAYBILL: Mr. Heliker.

20 DELEGATE HELIKER: It seems to me that essentially  
21 what Mr. Mahoney and Mr. Barnard both are saying is that  
22 they want to make the legislature the board of regents. That  
23 is what the majority proposal is aimed at preventing, of  
24 giving the board of regents the authority to be the board of  
25 regents and giving the legislature to control the board of

1 regents via the appropriations and via the legislative audit.  
2 Now, I spoke on this subject at some length last Saturday  
3 and I pointed out to you that the AFL-CIO state executive  
4 secretary had given you a letter which he has stated certain  
5 objections to the majority report and proposed a, what he  
6 called, a reasonable compromise. That reasonable compromise  
7 is the exact wording of Mr. Barnard's proposal before you  
8 now. I told you then the reason why the state AFL-CIO wanted  
9 that particular wording. They want it because they think  
10 it will leave the legislature the board of regents and they  
11 can't twist the arms in the legislative halls and put the  
12 pressure on the board of regents which will make it possible  
13 or easier, at least, for them to accomplish their ends in  
14 negotiating labor contracts with the board of regents or  
15 with the separate unit managements. The basic question be-  
16 fore us is still the same one that always has been and that  
17 is, are we going to give to the board of regents the ability  
18 to manage the university system? Are we going to make them a  
19 real board of regents with the power and independence of the  
20 legislature and of the executive so that the management of  
21 the university units do not have to run to some bureaucrat in  
22 Helena or have the legislature specifying by line items and  
23 by particular instructions, exactly how the university shall  
24 be operated, but shall have the authority to do that them-  
25 selves. Let me give you an example of the sort of thing that

1 comes up. It comes up all of the time. Enrollments in the  
2 university are never predictable and in particular courses,  
3 they are particularly unpredictable. We run constantly into  
4 the problem that we have more students than we expect and we  
5 have to have more equipment to handle a class than we expected  
6 we would have to have. This is particularly true in the  
7 sciences where they use fairly expensive instruments. For  
8 example, one that came up fairly recently was a gas -- if I  
9 can pronounce it; this is a little bit out of my field -- well,  
10 a mass spectrometer and a gas chronograph. These are fairly  
11 expensive items which have to be used in the classroom and  
12 in the laboratory, and they didn't have enough. Now, they  
13 didn't have, as things are now structured, the power to go  
14 out and buy those things immediately and have them available  
15 so that the students could use them in this course. They  
16 had to go through the state department of administration  
17 and take three weeks to get them -- three weeks out of a ten  
18 week quarter, which seriously interferes with the ability  
19 to do the instructional job that we want to do. If the board  
20 of regents is given the kind of authority that the majority  
21 proposes, this sort of thing wouldn't happen because the  
22 board would then have the financial authority to take care  
23 of this kind of problem. Now, there are other kinds of  
24 problems which arise --

25 (Tape Changed)

1           CHAIRMAN GRAYBILL: The Committee will be in order.  
2 Mr. Heliker, you may proceed.

3           DELEGATE HELIKER: Mr. Chairman. To revert to the  
4 example that I was giving you of the scientific instruments,  
5 let me remind you that should the university management, for  
6 some reason which is difficult for me to imagine, be extrav-  
7 agant in the use of this power, they will have to report.  
8 They are financially accountable. The legislature will ob-  
9 tain the audit after the fact and can call them on the carpet  
10 when they next come before the legislature. Another problem  
11 which has arisen, and as a matter of fact is a current  
12 problem, is the insistence of the department of administration  
13 upon uniform classifications. The fact of the matter is that  
14 the board of regents and the university administrations are  
15 in a much better position to determine the classification  
16 of university personnel than a department of administration.  
17 The department of administration turns out to have very strange  
18 ideas. For example, the functions of deans who they want  
19 to throw in with the heads of strictly nonacademic depart-  
20 ments. It seems to me, as a person who has been around  
21 higher education for a long time, that this is nonsense and  
22 that the university administrations are in the best position  
23 to make these judgments. They should not be under the thumb  
24 of Mr. Saxby or other representatives of the executive.  
25 They should have a measure of independence from them and must



1 have a measure of independence from the executive as well  
2 as the legislature if they are to be able to do their job.  
3 That's the issue before us. Are we going to make the board  
4 of regents the board of regents or are we going to leave the  
5 legislature the board of regents? The legislature, I repeat,  
6 will, has and always will have plenty of power, because it  
7 controls the purse string. It will have the power of appro-  
8 priation and it will have the power of audit.

9 CHAIRMAN GRAYBILL: Mr. Barnard.

10 DELEGATE BARNARD: Mr. President. The first thing  
11 is that I would like to correct one statement that has been  
12 made here on the floor that this particular proposal I intro-  
13 duced was a creature of the labor organizations. I would  
14 have to tell all of you that the labor groups were not even  
15 aware of it until I pointed this out to them when I was dis-  
16 cussing this and looking for something that might work as a  
17 compromise that people would accept. That's where they got  
18 their information from. It was nothing they dreamed up and  
19 thought of that would work for their own advantage. I'm  
20 responsible for whatever information the labor groups got  
21 and nobody else. I picked this up and have worked on it for  
22 weeks trying to figure out if it might work as a compromise.  
23 I don't know if it will or it won't, but I don't want any  
24 misunderstanding as to where it came from. I would like to  
25 also point out something else. I've had some experience with

1 the purchasing department downstairs, not just recently, but  
2 a few years back. I saw an instance where a switch from an  
3 outside purchasing group, through the purchasing department,  
4 saved Montana a hundred and forty thousand dollars. It hasn't  
5 been too long ago. Yet, I know that the purchasing depart-  
6 ment doesn't demand that every item that any institution buys  
7 goes through that department. There are many things that  
8 they buy that are general items that they can buy locally at  
9 a better price and get them when they need them. They are  
10 not as iron clad as a lot of people here would like to let  
11 on they are. I've worked with the purchasing department of  
12 the state of Montana and I've worked with the purchasing de-  
13 partment of the federal government. They all work about the  
14 same. Where there's a real need for an immediate purchase,  
15 there are no questions asked. When there's time to go  
16 through the purchasing department, that's what they like to  
17 have you do. It saves you people money every time they do  
18 it. Just think of the one item and it wasn't a very big  
19 item either -- a saving of a hundred and forty thousand dol-  
20 lars that I saw not too long ago right through the purchasing  
21 department downstairs. That's the reason why I think we  
22 should have some connection with the general government of  
23 the state of Montana with the university system. Again, I  
24 want to state that I think the board of regents needs auth-  
25 ority. They need sufficient authority to do a good job but

1 we don't want to sit them out on an island by themselves  
2 completely nonresponsible to anyone. That's the thing I don't  
3 want to accomplish. I don't also want to subject them to  
4 punitive laws by the legislative assembly and that's why the  
5 statement about the general laws of Montana is in here. There  
6 is some other wording in here that perhaps doesn't do any  
7 good or any harm. I'm not overly proud of the proposal but  
8 I still think it's probably the best one we've got so far.

9 CHAIRMAN GRAYBILL: Mr. Davis.

10 DELEGATE DAVIS: Mr. President and fellow delegates.  
11 We've got three proposals before us. There's not too much  
12 difference in any of them. The most time has been really  
13 taken on Mr. Rollins. I think the same thing could be done  
14 with the majority. Our chairman, and I concur with him,  
15 thinks it's an adequate substitute. I think the work has  
16 been done on Mr. Rollins' in any language change, so I  
17 would recommend that we proceed at this time by defeating  
18 Mr. Barnard's, substituting Mr. Rollins', passing it and  
19 then go to work on the language of Mr. Rollins'. If you  
20 want to put in Mr. Rygg's language and test it and Rollins'  
21 or whatever you want to do, and then we'll make some progress.  
22 I think we're stalemated here now and going in a circle.

23 CHAIRMAN GRAYBILL: Is there other discussion of  
24 Mr. Barnard's proposal? Mr. Barnard, do you want to close  
25 again?

1 I just don't see how we can -- we're just in an absolute box  
2 if we do that, so I oppose the Rygg amendment.

3 CHAIRMAN GRAYBILL: Is there other discussion?

4 (No response)

5 CHAIRMAN GRAYBILL: Very well. Oh, Mrs. Speer, yes.  
6 Mrs. Speer.

7 DELEGATE SPEER: I rise to speak against Mr. Rygg's  
8 amendment. I spent thirty-seven years at the university of  
9 Montana as a documents librarian and for about fifteen or twen-  
10 ty of those years, I was in charge of the binding. In that  
11 experience I learned what the inefficiency and the cost to the  
12 state was of placing the university system under the administra-  
13 tive and financial regulations of the legislature. This meant  
14 that the contract for the binding had to be submitted each year  
15 to the purchasing agent and then were awarded to the lowest  
16 bidder. We spent, or I spent many hours each year in prepar-  
17 ing estimates of the costs that were involved in changing bind-  
18 eries. This is sort of an internal matter but I just explain  
19 that this involves matching colors at your new bindery. It  
20 involves taking rubbings of the backs of the volumes in order  
21 to insure that you had the same kind of lettering, the same  
22 size, the same placement on the back. Now, if then the purch-  
23 asing agent awarded the contract to the lowest bidder, it  
24 didn't make any difference how far away or how long a time the  
25 volumes were away from the library and not available for use.

1 Upon their return, then, to the library we -- if we had to  
2 change to a new bindery, we had to spend the time in collating,  
3 that is in going through the volumes to see if the binderies  
4 could be relied upon to see that every page was there and was  
5 not torn or mutilated or missing. I cannot recall the amount  
6 of money involved in the binding budget of the university  
7 library, but it was a very substantial sum and there was a  
8 great deal of cost that was incurred in the changing of bind-  
9 eries every year. It did not always occur every year but we  
10 were never able to place the bindery, renew the contract with  
11 the same binder without going through all of this bidding pro-  
12 cedure.

13 CHAIRMAN GRAYBILL: Very well, is there other dis-  
14 cussion?

15 Mrs. Bugbee.

16 DELEGATE BUGBEE: Mr. President, I would just say that  
17 if we are ever to have a new day for higher education in this  
18 state, we must defeat this amendment. Thank you.

19 CHAIRMAN GRAYBILL: Mr. Skari.

20 DELEGATE SKARI: I think it is the sense of this body  
21 to provide some degree of insulation for the field of higher  
22 education from political pressures. For this reason, I resist  
23 the amendment by Mr. Rygg. I think that this insulation will  
24 not guarantee excellence in the field of higher education, but  
25 I think you'd have a better chance if we do provide it. Thank



AN ACT GENERALLY REVISING GUN LAWS; PROVIDING A LEGISLATIVE PURPOSE, INTENT, AND FINDINGS; PROVIDING LOCATIONS WHERE CONCEALED WEAPONS MAY BE CARRIED AND EXCEPTIONS; PROHIBITING THE MONTANA UNIVERSITY SYSTEM AND BOARD OF REGENTS FROM INFRINGING ON CONSTITUTIONAL RIGHTS AND PROVIDING EXCEPTIONS; PROVIDING A SEPARATE CIVIL CAUSE OF ACTION FOR VIOLATIONS OF THIS ACT; AMENDING SECTIONS 45-3-111, 45-8-316, 45-8-328, AND 45-8-351, MCA; REPEALING SECTIONS 45-8-317 AND 45-8-339, MCA; AND PROVIDING EFFECTIVE DATES.

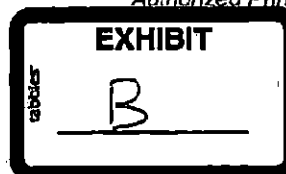
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Purpose.** The purpose of [sections 1 through 11] is to enhance the safety of people by expanding their legal ability to provide for their own defense by reducing or eliminating government-mandated places where only criminals are armed and where citizens are prevented from exercising their fundamental right to defend themselves and others.

**Section 2. Legislative Intent.** It is the intent of the legislature to reduce or remove provisions of law that limit or prohibit the ability of citizens to defend themselves by restricting with prior restraint the right to keep or bear arms that the people have reserved to themselves in the Montana constitution, and to further establish that the right to defense of a person's life, liberty, or property is a fundamental right.

**Section 3. Legislative findings.** The legislature declares and finds as follows:

(1) Nowhere in Article X, section 9(2)(a), of the Montana constitution is any power granted to amend, suspend, alter, or abolish the Montana constitution, nor is any power granted to affect or interfere with the rights the people have reserved to themselves specifically from interference by government entities and government



actors in Article II of the Montana constitution.

(2) The Montana university system was created and is controlled by the Montana constitution and the land and buildings occupied by the university system are public property and not private property and are therefore clearly government entities.

(3) Any significant prohibition upon the possession of firearms at or on the various campuses of the Montana university system calls into question the rights that the people have reserved to protect themselves from government interference under Article II, section 12, of the Montana constitution.

(4) Zones where guns are prohibited provide an increased risk to the health and safety of citizens because these zones create an unreasonable expectation of government-provided safety, while that safety cannot be provided or ensured.

(5) In *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the United States supreme court affirmed that the second amendment to the United States constitution reserves to individuals the fundamental right to keep and bear arms for self-defense and is applicable as a restriction upon state and local governments and all political subdivisions of state and local government through the 14th amendment to the United States constitution.

**Section 4. Where concealed weapon may be carried – exceptions.** A person with a current and valid permit issued pursuant to 45-8-321 or recognized pursuant to 45-8-329 may not be prohibited or restricted from exercising that permit anywhere in the state, except:

(1) in a correctional, detention, or treatment facility operated by or contracted with the department of corrections or a secure treatment facility operated by the department of public health and human services;

(2) in a detention facility or secure area of a law enforcement facility owned and operated by a city or county;

(3) at or beyond a security screening checkpoint regulated by the transportation security administration in a publicly owned, commercial airport;

(4) in a building owned and occupied by the United States;

(5) on a military reservation owned and managed by the United States;

(6) on private property where the owner of the property or the person who possesses or is in control

of the property, including a tenant or lessee of the property, expressly prohibits firearms;

(7) within a courtroom or an area of a courthouse in use by court personnel pursuant to an order of a justice of the peace or judge; or

(8) in a school building as determined by a school board pursuant to 45-8-361.

**Section 5. Prohibition on infringement of constitutional rights.** The board of regents and all university system employees subject to the authority of the board of regents are prohibited from enforcing or coercing compliance with any rule or regulation that diminishes or restricts the rights of the people to keep or bear arms as reserved to them in Article II of the Montana constitution, especially those rights reserved in Article II, sections 4 through 12, notwithstanding any authority of the board of regents under Article X, section 9(2)(a), of the Montana constitution.

**Section 6. Regulation of firearms prohibited for certain people – exceptions.** (1) Except as provided in subsection (2), the board of regents and any unit of the university system may not regulate, restrict, or place an undue burden on the possession, transportation, or storage of firearms on or within university system property by a person eligible to possess a firearm under state or federal law and meeting the minimum safety and training requirements in 45-8-321(3).

(2) The board of regents or a unit of the university system may prohibit or regulate the following:

(a) the discharge of a firearm on or within university system property unless the discharge is done in self-defense;

(b) the removal of a firearm from a gun case or holster unless the removal is done in self-defense or within the domicile on campus of the lawful possessor of the firearm;

(c) the pointing of a firearm at another person unless the lawful possessor is acting in self-defense;

(d) the carrying of a firearm outside of a domicile on campus unless the firearm is within a case or holster;

(e) the failure to secure a firearm with a locking device whenever the firearm is not in the possession of or under the immediate control of the lawful possessor of the firearm;

(f) the possession or storage of a firearm in an on-campus dormitory or housing unit without the



express permission of any roommate of the lawful possessor of the firearm;

(g) the possession or storage of a firearm by any individual who has a history of adjudicated university system discipline arising out of the individual's interpersonal violence or substance abuse;

(h) the possession of a firearm at an event on campus where campus authorities have authorized alcohol to be served and consumed; and

(i) the possession of a firearm at an athletic or entertainment event open to the public with controlled access and armed security on site.

**Section 7. Remedy for violations** Any person that suffers deprivation of rights enumerated under [sections 1 through 6] has a cause of action against any governmental entity, as defined in 2-9-101. The cause of action must be filed in district court. If a person asserting a deprivation of rights prevails, the person may be awarded reasonable costs, attorney fees, and damages.

**Section 8.** Section 45-3-111, MCA, is amended to read:

**~~"45-3-111. Openly carrying weapon – display – exemption.~~** (1) Any person who is not otherwise prohibited from doing so by federal or state law may openly carry a weapon and may communicate to another person the fact that the person has a weapon.

(2) If a person reasonably believes that the person or another person is threatened with bodily harm, the person may warn or threaten the use of force, including deadly force, against the aggressor, including drawing or presenting a weapon.

~~(3) This section does not limit the authority of the board of regents or other postsecondary institutions to regulate the carrying of weapons, as defined in 45-8-361(5)(b), on their campuses."~~

**Section 9.** Section 45-8-316, MCA, is amended to read:

**~~"45-8-316. Carrying concealed firearms – exemption.~~** (1) A person who carries or bears concealed upon the individual's person a firearm shall be punished by a fine not exceeding \$500 or by imprisonment in the county jail for a period not exceeding 6 months, or both.

(2) A person who has previously been convicted of an offense, committed on a different occasion

than the offense under this section, in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon the individual's person a firearm shall be punished by a fine not exceeding \$1,000 or be imprisoned in the state prison for a period not exceeding 5 years, or both.

(3) This section does not apply to a person eligible to possess a firearm under state or federal law."

**Section 10.** Section 45-8-328, MCA, is amended to read:

**"45-8-328. Carrying concealed weapon in prohibited place -- penalty.** (1) Except for a person issued a permit pursuant to 45-8-321 or a person recognized pursuant to 45-8-329 legislative security officers authorized to carry a concealed weapon in the state capitol as provided in 45-8-317(1)(k), a person commits the offense of carrying a concealed weapon in a prohibited place if the person purposely or knowingly carries a concealed weapon in:

(e) portions of a building used for state or local government offices and related areas in the building that have been restricted;

~~(b) a bank, credit union, savings and loan institution, or similar institution during the institution's normal business hours. It is not an offense under this section to carry a concealed weapon while:~~

~~(i) using an institution's drive-up window, automatic teller machine, or unstaffed night depository; or~~

~~(ii) at or near a branch office of an institution in a mall, grocery store, or other place unless the person is inside the enclosure used for the institution's financial services or is using the institution's financial services.~~

~~(c) a room in which alcoholic beverages are sold, dispensed, and consumed under a license issued under Title 16 for the sale of alcoholic beverages for consumption on the premises.~~

(2) ~~It is not a defense that the person had a valid permit to carry a concealed weapon.~~ A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed \$500, or both."

**Section 11.** Section 45-8-351, MCA, is amended to read:

**"45-8-351. Restriction on local government regulation of firearms.** (1) Except as provided in subsection (2), a county, city, town, consolidated local government, or other local government unit may not

prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

(2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of unpermitted concealed weapons or the carrying of unconcealed weapons to a publicly owned and occupied building under its jurisdiction.

(b) Nothing contained in this section allows any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others or to prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

~~(c) A local ordinance enacted pursuant to this section may not prohibit a legislative security officer who has been issued a concealed weapon permit from carrying a concealed weapon in the state capitol as provided in 45-8-317."~~

**NEW SECTION.** Section 12. **Repealer.** The following sections of the Montana Code Annotated are repealed:

45-8-317. Exceptions.

45-8-339. Carrying firearms on train -- penalty.

**Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 14. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45, chapter 8, part 3, apply to [sections 1 through 7].

**Section 15. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on

passage and approval.

(2) [Section 6] is effective June 1, 2021.

- END -

**HOUSE BILL NO. 102**

**INTRODUCED BY S. BERGLEE, M. BINKLEY, L. BREWSTER, N. DURAM, P. FIELDER, G. FRAZER, J. FULLER, S. GALLOWAY, E. HILL, C. HINKLE, J. HINKLE, M. HOPKINS, J. KASSMIER, C. KNUDSEN, R. KNUDSEN, B. LER, R. MARSHALL, T. MOORE, J. PATELIS, B. PHALEN, V. RICCI, J. SCHILLINGER, K. SEEKINS-CROWE, L. SHELDON-GALLOWAY, J. TREBAS, S. VINTON, D. SKEES, J. CARLSON, J. GILLETTE, S. KERNS, B. MITCHELL, M. NOLAND, M. STROMSWOLD, B. TSCHIDA, B. BEARD, W. GALT, B. USHER, K. ZOLNIKOV**

**AN ACT GENERALLY REVISING GUN LAWS; PROVIDING A LEGISLATIVE PURPOSE, INTENT, AND FINDINGS; PROVIDING LOCATIONS WHERE CONCEALED WEAPONS MAY BE CARRIED AND EXCEPTIONS; PROHIBITING THE MONTANA UNIVERSITY SYSTEM AND BOARD OF REGENTS FROM INFRINGING ON CONSTITUTIONAL RIGHTS AND PROVIDING EXCEPTIONS; PROVIDING A SEPARATE CIVIL CAUSE OF ACTION FOR VIOLATIONS OF THIS ACT; AMENDING SECTIONS 45-3-111, 45-8-316, 45-8-328, AND 45-8-351, MCA; REPEALING SECTIONS 45-8-317 AND 45-8-339, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE DATES.**

I hereby certify that the within bill,  
HB 102, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.