

1 HOUSE BILL NO. 100

2 INTRODUCED BY W. PRICE

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A NEW PROCEDURE FOR REVIEW OF THE
6 CLASSIFICATION OF STATE JOBS THAT ARE CLASSIFIED PURSUANT TO TITLE 2, CHAPTER 18, PART
7 2; PROVIDING A GRIEVANCE PROCEDURE; AMENDING SECTIONS 2-18-203, 2-18-1011, AND 87-1-205,
8 MCA; AND PROVIDING EFFECTIVE DATES."

9

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

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12 **Section 1.** Section 2-18-203, MCA, is amended to read:

13 **"2-18-203. Review of positions by department required -- change in classification.** (1) The
14 department shall continuously review all positions on a regular basis and adjust classifications to reflect
15 significant changes in duties and responsibilities. In the event that adjustments are to be made to class
16 specifications, class series benchmarks, or criteria used for allocating positions to classes affecting
17 employees within a bargaining unit, the department shall consult with the representative of the bargaining
18 unit prior to implementation of the adjustments, except for blue-collar and teachers' classification plans,
19 which plans must remain mandatory negotiable items under Title 39, chapter 31.

20 (2) Employees and employee organizations must be given the opportunity to ~~appeal~~ have the
21 allocation or reallocation of a position to a class reviewed. The grade assigned to a class and factors
22 assigned to class series benchmarks are not ~~appealable subjects under 2-18-1011 through 2-18-1013~~
23 subject to review pursuant to [section 3].

24 (3) The period of time for which retroactive pay for a classification ~~appeal~~ review may be awarded
25 under ~~2-18-1011 through 2-18-1013 or under parts 1 through 3 of this chapter~~ this part may not extend
26 beyond 30 days prior to the date on which the ~~appeal~~ review was ~~filed~~ requested pursuant to [section 3]."

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28 **Section 2.** Section 2-18-1011, MCA, is amended to read:

29 **"2-18-1011. Classification or compensation grievance -- retaliation -- hearing on complaint.** (1)
30 An employee or ~~his~~ an employee's representative affected by the operation of ~~parts~~ part 1 ~~through~~ or part

1 3 of this chapter is entitled to file a complaint with the board of personnel appeals provided for in
 2 2-15-1705 and to be heard under the provisions of a grievance procedure to be prescribed by the board.

3 (2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor
 4 or the agency for which the employee works or by any other agency of state government against an
 5 employee because the employee has filed or attempted to file a complaint with the board ~~shall~~ is also be
 6 a basis for a complaint and ~~shall entitle~~ entitles the employee to file a complaint with the board and to be
 7 heard under the provisions of the grievance procedure prescribed by the board.

8 ~~(3) An action attempting to revise the class specifications of or series of class specifications~~
 9 ~~involving an employee exercising a right conferred by 2-18-1011 through 2-18-1013 in a way which~~
 10 ~~would adversely affect the employee prior to final resolution or entry of a final order with respect thereto~~
 11 ~~is presumed to be an interference, restraint, coercion, or retaliation prohibited by subsection (2) of this~~
 12 ~~section unless such review was commenced or scheduled prior to filing of the appeal and was not~~
 13 ~~prompted by the grievance appealed from. The presumption is rebuttable."~~

14

15 NEW SECTION. **Section 3. Classification review procedures -- grievance procedure.** (1) An
 16 employee may request a review of the classification of the employee's position.

17 (2) If an employee requests a review of the classification of the employee's position, the review
 18 must first be conducted by the agency within which the employee is employed and must be conducted
 19 pursuant to rules adopted by the department.

20 (3) An employee whose position classification was reviewed pursuant to subsection (2) may, if
 21 the employee is dissatisfied with the results of that review, request a review by the department of the
 22 classification of the employee's position. A review conducted by the department pursuant to this
 23 subsection must be conducted in accordance with rules adopted by the department.

24 (4) (a) An employee whose position classification was reviewed by the department pursuant to
 25 subsection (3) may, if the employee is dissatisfied with the results of that review, request a review of the
 26 classification by a review panel appointed by the department. The review panel must consist of three
 27 disinterested individuals, selected according to rules adopted by the department, whom the department
 28 recognizes as knowledgeable about classification. A review conducted by the panel must provide an
 29 opportunity for a hearing at which the employee may present evidence and argument. The hearing may
 30 be conducted in person or by telephone or videoconference. The review panel is not bound by statutory

1 or common-law rules of evidence.

2 (b) If the panel determines, by a preponderance of the evidence submitted as part of the review,
3 that the employee's position is not classified correctly, the panel may direct the appropriate agency to
4 change the disputed classification and the agency shall comply with the direction of the panel.

5 (c) The decision of the panel must be filed with the board of personnel appeals. The decision is
6 not subject to appeal to an administrative or judicial entity and is not subject to review by a district court
7 pursuant to Title 2, chapter 4, part 7. The board of personnel appeals shall notify the parties of the
8 decision.

9 (5) A decision by an agency, the department, or a panel, pursuant to subsections (2) through (4),
10 respectively, must be based on the classification standard in effect at the time that the review was
11 requested by the employee.

12 (6) An employee who suffers direct or indirect interference, restraint, coercion, or retaliation by
13 the employee's supervisor, the agency for which the employee works, or any other agency of state
14 government against the employee because the employee requested or attempted to request a review of
15 the employee's job classification pursuant to this section may file a grievance with the department. The
16 grievance must be heard by the department pursuant to a procedure established by department rule.

17 (7) The department shall adopt rules to implement this section.

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19 **Section 4.** Section 87-1-205, MCA, is amended to read:

20 **"87-1-205. Grievance procedure.** (1) An employee of the department, aggrieved by a serious
21 matter of his employment based upon work conditions, supervision, or the result of an administrative
22 action, except the review of the classification of a job classified pursuant to Title 2, chapter 18, part 2,
23 who has exhausted all administrative remedies within the department, is entitled to a hearing before the
24 board of personnel appeals provided for in 2-15-1705 and subject to the provisions of 2-18-1011 through
25 2-18-1013. Any order of the board is binding upon the department.

26 (2) The classification of a job that is classified pursuant to Title 2, chapter 18, part 2, may be
27 reviewed only pursuant to [section 3]."

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29 NEW SECTION. **Section 5. Codification instruction.** [Section 3] is intended to be codified as an
30 integral part of Title 2, chapter 18, part 10, and the provisions of Title 2, chapter 18, part 10, apply to

1 [section 3].

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3 NEW SECTION. **Section 6. Saving clause.** [This act] does not affect rights and duties that
4 matured, penalties that were incurred, or proceedings that were begun before October 1, 2001.

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6 NEW SECTION. **Section 7. Effective dates.** (1) Except as provided in subsection (2), [this act]
7 is effective October 1, 2001.

8 (2) [Sections 3(7), 5, and 6 and this section] are effective on passage and approval.

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