

## 1 SENATE BILL NO. 468

2 INTRODUCED BY F. THOMAS

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE APPOINTING POWER OF THE GOVERNOR  
 5 TO DEPUTY DIRECTORS AND DIVISION ADMINISTRATORS OF DEPARTMENTS; PROVIDING FOR  
 6 SERVICE CREDIT IF A DEPUTY DIRECTOR OR DIVISION ADMINISTRATOR IS REMOVED BY A  
 7 GOVERNOR; PROVIDING AN EMPLOYMENT PREFERENCE WITH STATE GOVERNMENT FOR DEPUTY  
 8 DIRECTORS AND DIVISION ADMINISTRATORS REMOVED BY A GOVERNOR; AMENDING SECTIONS  
 9 2-15-111, 2-15-112, 2-18-103, 2-18-1203, 19-2-706, AND 39-2-912, MCA; AND PROVIDING AN  
 10 IMMEDIATE EFFECTIVE DATE."

11

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

13

14 **Section 1.** Section 2-15-111, MCA, is amended to read:

15 **"2-15-111. Appointment and qualifications of department heads.** (1) The governor shall appoint  
 16 at the beginning of each gubernatorial term each department head who is a director in this chapter. The  
 17 governor may also appoint the deputy director for a department and the division administrators within a  
 18 department.

19 (2) An appointment of a director by the governor is subject to the confirmation of the senate,  
 20 except that the governor may appoint a director to assume office before the senate meets in its next  
 21 regular session to consider the appointment. A director so appointed is vested with all the functions of the  
 22 office upon assuming the office and is a de jure officer, notwithstanding the fact that the senate has not  
 23 yet confirmed the appointment. If the senate does not confirm the appointment of a director, the governor  
 24 shall make a new appointment.

25 (3) A director, deputy director, and division administrator ~~serve~~ serve at the pleasure of the  
 26 governor. The governor may remove a director, deputy director, or division administrator at any time and  
 27 appoint a new ~~director~~ individual to the office.

28 (4) The governor shall select a director, deputy director, and division administrator on the basis  
 29 of ~~his~~ the individual's professional and administrative knowledge and experience and ~~such~~ additional  
 30 qualifications as are provided by law.

1 (5) If a vacancy occurs in the office of a director, deputy director, or division administrator, the  
2 governor shall appoint a new ~~director~~ individual to serve at the pleasure of the governor.

3 (6) Heads of departments who are not directors ~~shall~~ must be elected or appointed and serve, and  
4 their vacancies filled, as provided by law."

5

6 **Section 2.** Section 2-15-112, MCA, is amended to read:

7 **"2-15-112. Duties and powers of department heads.** (1) Except as otherwise provided by law,  
8 each department head shall:

9 (a) supervise, direct, account for, organize, plan, administer, and execute the functions vested in  
10 the department by this chapter or other law;

11 (b) establish the policy to be followed by the department and employees;

12 (c) compile and submit reports and budgets for the department as required by law or requested  
13 by the governor;

14 (d) provide the governor with any information that the governor requests at any time on the  
15 operation of the department;

16 (e) represent the department in communications with the governor;

17 (f) prescribe rules, consistent with law and rules established by the governor, for the  
18 administration of the department; the conduct of the employees; the distribution and performance of  
19 business; and the custody, use, and preservation of the records, documents, and property pertaining to  
20 department business. The lieutenant governor, secretary of state, attorney general, auditor, and  
21 superintendent of public instruction may prescribe their own rules for their departments or offices, and the  
22 governor may not prescribe rules for them. The rules described in this subsection are limited to statements  
23 concerning only the internal management of the agency and not affecting private rights or procedures  
24 available to the public. This section does not authorize the adoption of any rule as rules are defined in the  
25 Montana Administrative Procedure Act.

26 (g) subject to the approval of the governor, establish the internal organizational structure of the  
27 department and allocate the functions of the department to units to promote the economic and efficient  
28 administration and operation of the department. The internal structure of the department must be  
29 established in accordance with 2-15-104(2).

30 (h) subject to law, establish and make appointments to necessary subordinate positions and

1 abolish unnecessary positions;

2 (i) maintain a central office in Helena for the department and maintain other facilities throughout  
3 the state ~~as~~ that may be required for the effective and efficient operation of the department.

4 (2) Except as otherwise provided by law, each department head may:

5 (a) subject to law, transfer employees between positions, remove persons appointed to positions,  
6 and change the duties, titles, and compensation of employees within the department;

7 (b) delegate any of the functions vested in the department head to subordinate employees;

8 (c) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal  
9 government or any other source in administering the department's functions;

10 (d) enter into agreements with federal, state, and local agencies necessary to carry out the  
11 department's functions; and

12 (e) eliminate positions within the department, other than the deputy director and division  
13 administrators. If the salary for an eliminated position is not redistributed as provided for under 2-18-1107,  
14 the office of budget and program planning shall increase the department's appropriation in the second year  
15 of the biennium by an amount equal to one-half of the savings resulting from the elimination of a position.  
16 The increased appropriation in the second year of the biennium may be expended at the discretion of the  
17 department head, provided that the expenditure is consistent with the goals and objectives of the  
18 department. The remaining one-half must revert to the original funding source. This subsection (2)(e) does  
19 not apply to an agency allocated to a department in either year of the 2 years of the biennium for  
20 administrative purposes, as provided in 2-15-121. Section 17-7-138 does not apply to this subsection  
21 (2)(e)."

22

23 **Section 3.** Section 2-18-103, MCA, is amended to read:

24 **"2-18-103. Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the  
25 following officers and employees in state government:

26 (1) elected officials;

27 (2) county assessors and their chief deputies;

28 (3) employees of the office of consumer counsel;

29 (4) judges and employees of the judicial branch;

30 (5) members of boards and commissions appointed by the governor, the legislature, or other

- 1 elected state officials;
- 2 (6) officers or members of the militia;
- 3 (7) agency heads, deputy directors, and division administrators appointed by the governor;
- 4 (8) academic and professional administrative personnel with individual contracts under the
- 5 authority of the board of regents of higher education;
- 6 (9) academic and professional administrative personnel and live-in houseparents who have entered
- 7 into individual contracts with the state school for the deaf and blind under the authority of the state board
- 8 of public education;
- 9 (10) investment officer, assistant investment officer, executive director, and five professional staff
- 10 positions of the board of investments;
- 11 (11) four professional staff positions under the board of oil and gas conservation;
- 12 (12) assistant director for security of the Montana state lottery;
- 13 (13) executive director and employees of the state compensation insurance fund;
- 14 (14) state racing stewards employed by the executive secretary of the Montana board of
- 15 horseracing;
- 16 (15) executive director of the Montana wheat and barley committee;
- 17 (16) commissioner of banking and financial institutions;
- 18 (17) training coordinator for county attorneys;
- 19 (18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504."

20

21 **Section 4.** Section 2-18-1203, MCA, is amended to read:

22 **"2-18-1203. General protection -- job register -- seniority preference.** (1) An employee whose

23 position is eliminated as a result of privatization, reorganization of an agency, closure of or a reduction in

24 force at an agency, removal as a deputy director or division administrator by the governor, or other actions

25 by the legislature is entitled to:

26 (a) notice of announcements for jobs for which the employee may qualify that arise within the

27 terminating agency or within state government. Notices must be provided by the state for a period of 1

28 year from the date of separation.

29 (b) access to any job retraining and career development programs provided by the state through

30 the Job Training Partnership Act service delivery areas dislocated worker programs, provided that the

1 employee begins participating in a program within 1 year after the elimination of the employee's position;  
2 and

3 (c) inclusion in a special job register from which all agencies, except an agency attempting to hire  
4 for a position exempt under 2-18-103 or 2-18-104, shall attempt to hire employees prior to seeking  
5 applications from the general public. The employee must be listed in the job register according to the  
6 occupational categories in which the employee is qualified for employment. An employee's eligibility to  
7 participate in the job register terminates 2 years from the effective date of the employee's layoff or 2 years  
8 from the date of the employee's completion of job training provided under subsection (1)(b), whichever  
9 is later.

10 (2) (a) An agency attempting to hire from the job register shall consider the employee's  
11 qualifications and length of state service. If two or more employees listed in the job register are equally  
12 qualified for a vacant position, the agency shall select the employee with the longest continuous state  
13 service.

14 (b) If there is not an employee listed on the job register who meets the job qualifications for the  
15 vacant position, the agency may hire a qualified external applicant or establish a training assignment,  
16 according to state policy.

17 (3) Each state agency shall pay to the department of labor and industry a set amount that is equal  
18 to the department's average cost of providing the retraining and development services for state employees  
19 in the previous fiscal year for each involuntarily terminated state employee who requests access to any  
20 job training and career development program provided by the department."

21

22 **Section 5.** Section 19-2-706, MCA, is amended to read:

23 **"19-2-706. Additional service for member involuntarily terminated from membership service.** (1)

24 An employee of the state or university system is entitled to the involuntary termination provision provided  
25 in subsection (3) if:

26 (a) the employee is a member of the public employees', game wardens' and peace officers',  
27 sheriffs', or highway patrol officers' retirement system;

28 (b) the employee's active service is involuntarily terminated because of:

29 (i) elimination of the employee's position as a result of privatization, reorganization of an agency,  
30 closure of or a reduction in force at an agency, or other actions by the legislature;

- 1           (ii) removal of the employee as a deputy director or division administrator by the governor; or  
2           (iii) in the case of a legislator, ~~because of~~ term limits terminating the service of the legislator in  
3 either one of the houses of the legislature;
- 4           (c) the employee is eligible for a normal service retirement or early retirement under the applicable  
5 provisions of the retirement system to which the member belongs; and
- 6           (d) the employee waives termination benefits for which the employee would otherwise be eligible  
7 under the State Employee Protection Act.
- 8           (2) The cost of each year of service purchased under this section is the total actuarial cost of  
9 purchasing the service based on the most recent actuarial valuation of the retirement system.
- 10          (3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost  
11 of purchasing up to 3 years of additional service that the member was qualified to purchase under  
12 19-3-513, 19-6-804, 19-7-804, or 19-8-904. The employer-paid portion applied toward the service  
13 purchase must be calculated using the formula  $A \times B \times C$  when:
- 14          (a) A is equal to a maximum of 3 additional years of service that the member is eligible to  
15 purchase;
- 16          (b) B is equal to the sum of the employer and employee contribution rates in the member's  
17 retirement system; and
- 18          (c) C is equal to the member's gross compensation paid during the immediate preceding 12  
19 months of membership service. The employer may not be charged more than the total actuarial cost of  
20 the service purchased by the terminated employee.
- 21          (4) The member shall pay the difference, if any, between the full actuarial cost of the service to  
22 be purchased and the amount contributed by the employer under subsection (3). A member may elect to  
23 purchase less than the full amount of service for which the member is eligible under this section, but the  
24 election may not reduce the amount of the employer's contribution as calculated under subsection (3).
- 25          (5) The board may allow an employer to pay the contributions required under subsection (3) in  
26 installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.
- 27          (6) A member who has received additional service under this section and who returns to  
28 employment for the same jurisdiction for 600 or more hours in a calendar year forfeits the additional  
29 service. The employer's contribution to purchase that member's additional service, minus any retirement  
30 benefits already paid, must be credited to the employer. As used in this subsection, the same jurisdiction

1 means all agencies of the state, including the university system."

2

3 **Section 6.** Section 39-2-912, MCA, is amended to read:

4 **"39-2-912. Exemptions.** This part does not apply to a discharge:

5 (1) that is subject to any other state or federal statute that provides a procedure or remedy for  
6 contesting the dispute. The statutes include those that prohibit discharge for filing complaints, charges,  
7 or claims with administrative bodies or that prohibit unlawful discrimination based on race, national origin,  
8 sex, age, disability, creed, religion, political belief, color, marital status, and other similar grounds.

9 (2) of an employee covered by a written collective bargaining agreement or a written contract of  
10 employment for a specific term; or

11 (3) of a department director, deputy director, or division administrator by the governor."

12

13 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

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