

HOUSE BILL NO. 251

INTRODUCED BY J. ESSMANN, J. SESSO

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR TEMPORARY LEGISLATIVE AIDES; PROVIDING EXCEPTIONS TO CERTAIN STATE BENEFITS; AMENDING SECTIONS 2-2-302, 2-18-103, ~~AND~~ 19-3-111, AND 19-3-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Temporary legislative aide -- definition. (1) ~~The presiding officers and minority leaders of the house and senate may each hire temporary legislative aides.~~ THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES, THE PRESIDENT OF THE SENATE, AND THE MINORITY LEADER OF THE SENATE MAY EACH HIRE ONE TEMPORARY LEGISLATIVE AIDE.

(2) A temporary legislative aide:

(a) is designated as temporary for a period of time not to exceed 24 months;

(b) may perform temporary duties or permanent duties on a temporary basis;

(c) is not eligible to become a permanent employee in this position or by linking or combining succeeding periods as a temporary legislative aide;

(d) may be terminated at the will of the employer or may be reappointed for another temporary legislative aide position;

(e) is not eligible to earn the leave and holiday benefits provided in Title 2, chapter 18, part 6; and

(f) is not eligible for membership in the public employees' retirement system established in 19-3-103.

(3) A temporary legislative aide who is regularly scheduled to work 6 months or more in a year and 20 hours or more in a week is eligible to purchase group insurance benefits provided in Title 2, chapter 18, part 7, at the aide's own expense without employer contribution UNLESS AN EMPLOYER CONTRIBUTION IS REQUIRED BY APPLICABLE FEDERAL LAW.

(4) A FORMER LEGISLATOR MAY NOT BE HIRED AS A TEMPORARY LEGISLATIVE AIDE UNLESS THE FORMER LEGISLATOR HAS BEEN OUT OF LEGISLATIVE OFFICE FOR AT LEAST 2 YEARS.

SECTION 2. SECTION 2-2-302, MCA, IS AMENDED TO READ:



1 **"2-2-302. Appointment of relative to office of trust or emolument unlawful -- exceptions --**
 2 **publication of notice.** (1) Except as provided in subsection (2), it is unlawful for a person or member of any
 3 board, bureau, or commission or employee at the head of a department of this state or any political subdivision
 4 of this state to appoint to any position of trust or emolument any person related or connected by consanguinity
 5 within the fourth degree or by affinity within the second degree.

6 (2) The provisions of 2-2-303 and this section do not apply to:

7 (a) a sheriff in the appointment of a person as a cook or an attendant;

8 (b) school district trustees if all the trustees, with the exception of any trustee who is related to the person
 9 being appointed and who must abstain from voting for the appointment, approve the appointment of a person
 10 related to a trustee;

11 (c) a school district in the employment of a person as a substitute teacher who is not employed as a
 12 substitute teacher for more than 30 consecutive school days as defined by the trustees in 20-1-302;

13 (d) the renewal of an employment contract of a person who was initially hired before the member of the
 14 board, bureau, or commission or the department head to whom the person is related assumed the duties of the
 15 office;

16 (e) the employment of election judges;

17 (f) the employment of pages or temporary session staff by the legislature; or

18 (g) county commissioners of a county with a population of less than 10,000 if all the commissioners, with
 19 the exception of any commissioner who is related to the person being appointed and who must abstain from
 20 voting for the appointment, approve the appointment of a person related to a commissioner.

21 (3) The provisions of 2-2-303 and this section apply to a temporary legislative aide provided for in
 22 [section 1].

23 ~~(3)~~(4) Prior to the appointment of a person referred to in subsection (2)(b) or (2)(g), written notice of the
 24 time and place for the intended action must be published at least 15 days prior to the intended action in a
 25 newspaper of general circulation in the county in which the school district is located or the county office or position
 26 is located."
 27

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

29 **"2-18-103. Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the following
 30 officers and employees in state government:

- 1 (1) elected officials;
- 2 (2) county assessors and their chief deputies;
- 3 (3) employees of the office of consumer counsel;
- 4 (4) judges and employees of the judicial branch;
- 5 (5) members of boards and commissions appointed by the governor, the legislature, or other elected
- 6 state officials;
- 7 (6) officers or members of the militia;
- 8 (7) agency heads appointed by the governor;
- 9 (8) academic and professional administrative personnel with individual contracts under the authority of
- 10 the board of regents of higher education;
- 11 (9) academic and professional administrative personnel and live-in houseparents who have entered into
- 12 individual contracts with the state school for the deaf and blind under the authority of the state board of public
- 13 education;
- 14 (10) investment officer, assistant investment officer, executive director, and five professional staff
- 15 positions of the board of investments;
- 16 (11) four professional staff positions under the board of oil and gas conservation;
- 17 (12) assistant director for security of the Montana state lottery;
- 18 (13) executive director and employees of the state compensation insurance fund;
- 19 (14) state racing stewards employed by the executive secretary of the Montana board of horseracing;
- 20 (15) executive director of the Montana wheat and barley committee;
- 21 (16) commissioner of banking and financial institutions;
- 22 (17) training coordinator for county attorneys;
- 23 (18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504, or temporary
- 24 legislative aides as provided in [section 1];
- 25 (19) chief information officer in the department of administration;
- 26 (20) chief business development officer and six professional staff positions in the office of economic
- 27 development provided for in 2-15-218;
- 28 (21) chief public defender appointed by the public defender commission pursuant to the Montana Public
- 29 Defender Act, Title 47, chapter 1, and the employees in the positions listed in 47-1-201(3)(a), who are appointed
- 30 by the chief public defender; and

1 (22) chief appellate defender in the office of appellate defender."

2

3 **Section 4.** Section 19-3-111, MCA, is amended to read:

4 **"19-3-111. Exemption for certain university temporary employees -- "temporary employee"**
 5 **defined.** (1) This chapter does not apply to a temporary employee ~~of the university system.~~

6 (2) As used in this section, "temporary employee" means:

7 (a) a temporary legislative aide hired pursuant to [section 1]; or

8 (b) an employee of the university system who is hired into a position that is not permanent and who has
 9 negotiated an alternative benefits package through a labor organization certified to represent employees of the
 10 university system pursuant to Title 39, chapter 31. The employer contribution to the alternative benefits package
 11 may not exceed the cost of the benefits that the employee would otherwise be entitled to through employment."

12

13 **SECTION 5. SECTION 19-3-412, MCA, IS AMENDED TO READ:**

14 **"19-3-412. Optional membership.** (1) Except as provided in 5-2-304, [section 1], and subsection (2)
 15 of this section, the following employees and elected officials in covered positions shall elect either to become
 16 active members of the retirement system or to decline this optional membership by filing an irrevocable, written
 17 application with the board in the manner prescribed in subsection (3):

18 (a) elected officials of the state or local governments, including individuals appointed to fill the unexpired
 19 term of elected officials, who:

20 (i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

21 (ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the
 22 defined contribution plan at the time of their election;

23 (b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered
 24 employment with all employers under this chapter in any fiscal year;

25 (c) employees directly appointed by the governor;

26 (d) employees working 10 months or less for the legislative branch to perform work related to the
 27 legislative session;

28 (e) the chief administrative officer of any city or county;

29 (f) employees of county hospitals or rest homes.

30 (2) A member who is elected to a local government position in which the member works less than 960

1 hours in a fiscal year may, within 90 days of taking office, decline optional membership with respect to the
2 member's elected position.

3 (3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1)
4 and provide written application forms to each employer.

5 (b) Each employee or elected official in a position covered under subsection (1) shall obtain the written
6 application form from the employer and complete and return it to the board.

7 (c) The written application must be filed with the board:

8 (i) for an employee described in subsection (1)(d), within 90 days of the commencement of the
9 employee's employment; and

10 (ii) for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f), within
11 90 days of the commencement of the employee's or elected official's employment.

12 (d) The employer shall retain a copy of the employee's or elected official's written application.

13 (4) If the employee or elected official fails to file the written application required under subsection (1) with
14 the board within the time allowed in subsection (3), the employee or elected official waives membership.

15 (5) An employee or elected official who declines optional membership may not receive membership
16 service or service credit for the employment for which membership was declined.

17 (6) An employee or elected official who declined optional membership but later becomes a member may
18 purchase service credit for the period of time beginning with the date of employment in which membership was
19 declined to the commencement of membership. Purchase of service credit pursuant to this subsection must
20 comply with 19-3-505.

21 (7) Except as provided in subsection (2), membership in the retirement system is not optional for an
22 employee or elected official who is already a member. Upon employment in a position for which membership is
23 optional:

24 (a) a member who was an active member before the employment remains an active member;

25 (b) a member who was an inactive member before the employment becomes an active member; and

26 (c) a member who was a retired member before the employment is subject to part 11 of this chapter.

27 (8) (a) An employee who declines membership for a position for which membership is optional may not
28 later become a member while still employed with the same employer but in a different optional membership
29 position.

30 (b) An elected official who declines membership for a position for which membership is optional may not

1 later become a member if reelected to the same optional membership position.

2 (c) If, after termination from employment for 30 days or more, an employee who was employed in an
3 optional membership position is reemployed in the same position or is employed in a different position for which
4 membership is optional, the employee shall again choose or decline membership.

5 (d) If the termination from employment is less than 30 days, an employee who declined membership is
6 bound by the employee's original decision to decline membership.

7 (9) An employee accepting a position that requires membership must become a member even if the
8 employee previously declined membership and did not have a 30-day break in service."

9

10 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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