

**Section-by-Section Summary of LCLFC3  
General Revision of the Broadband Pay Plan  
DRAFT bill**

Prepared by Julie Johnson, Legislative Services Division  
for the Legislative Finance Committee  
September 15, 2014

Section No.	MCA Section - Catchline	Summary of Revisions	Substantive change in current law
1.	2-6-110. Electronic information and nonprint records -- public access -- fees.	Strikes reference to "pay band"	
2.	2-18-101. Definitions.	Strikes reference to "pay band" Inserts definition of "blue collar pay band" Amends definition of "broadband pay plan" to include reference to a "market midpoint and occupational wage ranges" Strikes definition of "competitive pay zone" Inserts definition of "entry salary" Strikes definition of "pay band" Inserts definition of "occupational wage range" and "pay progression"	X
3.	2-18-102. Personnel administration -- general policy setting <u>and oversight.</u>	Requires OBPP to: (1) review and approve any proposed changes to the classification of an occupation or its related job evaluation factors; (2) ensure agencies compensate their employees within the parameters of the occupational wage range; (3) provide a report to the LFC identifying any agency that provides a base salary for an employee outside of the parameters. Prohibits an executive agency from changing the classification of an occupation or its related job evaluation factors until it submits the proposed changes to and receives approval from OBPP	X

Section No.	MCA Section - Catchline	Summary of Revisions	Substantive change in current law
4.	2-18-203. Review of positions.	Strike references to “pay band”	
5.	2-18-301. Intent of part – rules.	Eliminates requirement for a 5 state survey (added in 2013 session) and requires compensation plan to be based on a biennial salary survey (as pre-2013). Requires the DOA to: (1) administer the pay program in a manner that considers competency, pay relationships within an agency or pay unit, competitiveness, pay progression, and other non-discriminatory factors, when fiscally able. Eliminates reference to “internal equity”; (2) identify current market midpoints in the biennial survey; and (3) establish the occupational wage range to each occupation Strikes references to “pay bands”	X
6.	2-18-303. Procedures for administering broadband pay plan.	Strikes redundant definition of “entry/base salary” Allows implementation of the plan to be a negotiable term for a collective bargaining unit.	
7.	2-18-1011. <del>Pay band allocation</del> <u>Classification</u> or compensation grievance -- retaliation -- hearing on complaint.	Strikes references to “pay bands”	
8.	13-37-06. Salary.	Strikes references to “pay bands”	
9.	15-2-102. Qualification and compensation.	Strikes references to “pay bands”	
10.	Effective Date.	Effective July 1, 2015.	

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act eliminating pay bands; requiring an employee's compensation to fall within the occupational wage range of the employee's occupation; providing definitions related to compensation, requiring the office of budget and program planning to review and approve changes to an agency's classification of an occupation or its related job evaluation factors; revising the biennial salary survey; allowing implementation of a pay plan to be a negotiable term fore a collective bargaining unit; amending sections 2-6-110, 2-18-101, 2-18-102, 2-18-203, 2-18-204, 2-18-206, 2-18-301, 2-18-303, 2-18-1011, 13-37-106, and 15-2-102, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 2-6-110 , MCA, is amended to read:

**"2-6-110. Electronic information and nonprint records -- public access -- fees.** (1) (a) Except as provided by law, each person is entitled to a copy of public information compiled, created, or otherwise in the custody of public agencies that is in electronic format or other nonprint media, including but not limited to videotapes, photographs, microfilm, film, or computer disk, subject to the same restrictions applicable to the information in printed

form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic or nonprint information.

(b) The provisions of subsection (1)(a) do not apply to collections of the Montana historical society established pursuant to 22-3-101.

(2) Except as provided by law and subject to subsection (3), an agency may charge a fee, not to exceed:

(a) the agency's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media;

(b) expenses incurred by the agency as a result of mainframe and midtier processing charges;

(c) expenses incurred by the agency for providing online computer access to the person requesting access;

(d) other out-of-pocket expenses directly associated with the request for information, including the retrieval or production of electronic mail; and

(e) the hourly market rate for an administrative assistant ~~in pay band 3 of the broadband pay plan, as provided for in 2-18-301,~~ in the current fiscal year for each hour, or fraction of an hour, after one-half hour of copying service has been provided.

(3) (a) In addition to the allowable fees in subsection (2), the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the property valuation and assessment system database from which the information

is requested. The fee must be charged to persons, federal agencies, state agencies, and other entities requesting the database or any part of the database from any department property valuation and assessment system. The fee may not be charged to the governor's office of budget and program planning, the state tax appeal board, or any legislative agency or committee.

(b) The department of revenue may not charge a fee for information provided from any department property valuation and assessment system database to a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer's property.

(c) All fees received by the department of revenue under subsection (2) and this subsection (3) must be deposited in a state special revenue fund as provided in 15-1-521.

(d) Fees charged by the secretary of state pursuant to this section must be set and deposited in accordance with 2-15-405.

(4) For the purposes of this section, the term "agency" has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

(5) An agency may not charge more than the amount provided under subsection (2) for providing a copy of an existing nonprint record.

(6) Subject to 15-1-103, an agency shall ensure that a copy of information provided to a requester is of a quality that reflects the condition of the original if requested by the requester.

(7) This section does not authorize the release of electronic security codes giving access to private information."

{Internal References to 2-6-110:

2-6-103x            15-1-521x            61-11-510x}

**Section 2.** Section 2-18-101 , MCA, is amended to read:

**"2-18-101. Definitions.** As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Base salary" means the amount of compensation paid to an employee, excluding:

(a) state contributions to group benefits provided in 2-18-703;

(b) overtime;

(c) fringe benefits as defined in 39-2-903; and

(d) the longevity allowance provided in 2-18-304.

(3) "Benchmark" means a representative position in a specific occupation that is used to illustrate the application of the job evaluation factor used to ~~determine the pay band for an~~ classify the occupation.

(4) "Blue collar pay plan" means a strictly negotiated classification and pay plan consisting of unskilled or skilled labor, trades and crafts occupations.

(5) "Board" means the board of personnel appeals established in 2-15-1705.

~~(5)~~ (6) "Broadband classification plan" means a job evaluation

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As of: September 15, 2014 (9:48AM)

LCLFC3

method that measures the difficulty of the work and the knowledge or skills required to perform the work.

~~(6)~~(7) "Broadband pay plan" means a pay plan using a pay hierarchy ~~of broad pay bands based on the broadband a~~ classification plan, including market midpoint and occupational wage ranges.

~~(7)~~(8) "Compensation" means the annual or hourly wage or salary and includes the state contribution to group benefits under the provisions of 2-18-703.

~~(8)~~(9) "Competencies" means sets of measurable and observable knowledge, skills, and behaviors that contribute to success in a position.

~~(9)~~ "Competitive pay zone" means ~~that portion of the pay range for a band level of an occupation that is most consistent with the pay being offered by competing employers for fully competent employees within that occupation.~~

(10) "Department" means the department of administration created in 2-15-1001.

(11) (a) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104.

(b) The term does not include a student intern.

(12) "Entry salary" means a salary that is at least the occupational wage range minimum base salary for each occupation. The term does not include compensation for training assignments of less than one year.

~~(12)~~(13) "Job evaluation factor" means a measure of the complexities of the predominant duties of a position.

~~(13)~~(14) "Job sharing" means the sharing by two or more persons of a position.

~~(14)~~(15) "Market ~~rate~~ midpoint" means the median base salary that other employers pay to employees in comparable occupations as determined by the department's biennial salary survey of the relevant labor market.

~~(15)~~(16) "Occupation" means a generalized family of positions having substantially similar duties and requiring similar qualifications, education, and experience.

~~(16) "Pay band" means a wide salary range covering a number of different occupations.~~

(17) "Occupational wage range" means a range of pay, including a minimum, market midpoint, and maximum salary, for a specific occupation that is most consistent with the pay being offered by competing employers for fully competent employees within that occupation.

(18) "Pay progression" means compensation whereby an employee's compensation may be increased, based on improved competency, to bring the employee's compensation to a higher rate within the occupational pay range of the employee.

~~(17)~~(19) "Permanent employee" means an employee who is designated by an agency as permanent and who has attained or is eligible to attain permanent status.

~~(18)~~(20) "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period.

~~(19)~~(21) "Personal staff" means those positions occupied by

employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

~~(20)~~(22) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

~~(21)~~(23) "Program" means a combination of planned efforts to provide a service.

~~(22)~~(24) "Seasonal employee" means a permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.

~~(23)~~(25) "Short-term worker" means a person who:

(a) is hired by an agency for an hourly wage established by the agency;

(b) may not work for the agency for more than 90 days in a continuous 12-month period;

(c) is not eligible for permanent status;

(d) may not be hired into another position by the agency without a competitive selection process; and

(e) is not eligible to earn the leave and holiday benefits provided in part 6 of this chapter or the group insurance benefits provided in part 7 of this chapter.

~~(24)~~(26) "Student intern" means a person who:

(a) has been accepted in or is currently enrolled in an

accredited school, college, or university and is hired directly by an agency in a student intern position;

(b) is not eligible for permanent status;

(c) is not eligible to become a permanent employee without a competitive selection process;

(d) must be covered by the hiring agency's workers' compensation insurance;

(e) is not eligible to earn the leave and holiday benefits provided for in part 6 of this chapter or the group insurance benefits provided in part 7 of this chapter; and

(f) may be discharged without cause.

~~(25)~~ (27) "Telework" means a flexible work arrangement where a designated employee may work from home within the state of Montana or an alternative worksite within the state of Montana 1 or more days a week instead of physically traveling to a central workplace.

~~(26)~~ (28) "Temporary employee" means an employee who:

(a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;

(b) performs temporary duties or permanent duties on a temporary basis;

(c) is not eligible for permanent status;

(d) is terminated at the end of the employment period; and

(e) is not eligible to become a permanent employee without a competitive selection process."

{ Internal References to 2-18-101:

2-1-501x	2-18-111x	2-18-601x	2-18-601x
2-18-601x	2-18-601x	2-18-601x	2-18-627x
2-18-701x	2-18-809x	2-18-1101x	2-18-1202x

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2-18-1202x	2-18-1202x	2-18-1303x	5-7-310x
13-37-106a	15-2-102a	39-29-101x	39-29-101x
39-30-103x	39-30-103x	39-30-103x}	

**Section 3.** Section 2-18-102 , MCA, is amended to read:

**"2-18-102. Personnel administration -- general policy setting and oversight.** (1) Except as otherwise provided by law or collective bargaining agreement, the department shall:

(a) ~~encourage and~~ exercise leadership in the development of effective personnel administration within the several agencies in the state and make available the facilities of the department to this end;

(b) foster and develop programs for recruitment and selection of capable persons for employment and for the improvement of employee effectiveness, including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation for productivity and retention in permanent status;

(c) foster, develop, and promote job sharing in agencies;

(d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the policies made under those parts and report the findings and recommendations to the governor;

(e) establish policies, procedures, and forms for the maintenance of records of all employees in the state service;

(f) apply and carry out parts 1 and 2 and the policies under those parts and perform any other lawful acts that may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

(2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided that the agencies remain in compliance with policies, procedures, timetables, and standards established by the department.

(3) The department shall develop and issue personnel policies for the state and shall adopt policies or rules to implement this part, except 2-18-111. Adequate public notice must be given to all interested parties of proposed changes or additions to the personnel policies before the date on which they are to take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or additions to the personnel policies before the date on which they are to take effect.

(4) The department shall develop model rules of conduct for all state employees based upon the provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional rules appropriate to the specific circumstances of the agency.

(5) Except as otherwise provided by law, the office of budget and program planning shall:

(a) review and approve any proposed changes to the classification of an occupation or its related job evaluation factors.

(b) ensure agencies compensate their employees within the parameters of the occupational wage range for each occupation; and

(c) provide a report in an electronic format to the legislative finance committee identifying any agency that provides a base salary for an employee outside of the parameters of the occupational wage range for the employee's occupation and the reasons for the differences.

(6) An executive agency may not change the classification of an occupation or its related job evaluation factors until it submits the proposed changes to and receives approval from the office of budget and program planning."

{Internal References to 2-18-102: None.}

**Section 4.** Section 2-18-203 , MCA, is amended to read:

**"2-18-203. Review of positions ~~--- change in pay band~~ ~~allocation~~.** (1) The department shall review the job evaluation factor of positions on a regular basis and may adjust the occupations for the positions to reflect significant changes in duties and responsibilities. If adjustments are to be made to benchmarks or criteria used for ~~allocating~~ classifying positions ~~to pay bands~~ affecting employees within a bargaining unit, the department shall consult with the representative of the bargaining unit prior to implementation of the adjustments, except for positions factored in the blue-collar pay plan, which must remain a mandatory negotiable item under Title 39, chapter 31.

(2) Employees and employee organizations must be given the opportunity to appeal ~~the allocation or reallocation of a position to a pay band. The pay band assigned to an occupation and benchmarks~~

their classification. Classification standards are not appealable subjects under 2-18-1011 through 2-18-1013.

(3) The period of time for which retroactive pay for a ~~pay band allocation~~ compensation or classification appeal may be awarded under 2-18-1011 through 2-18-1013 or under parts 1 through 3 of this chapter may not extend beyond 30 days prior to the date on which the appeal was filed."

{Internal References to 2-18-203: None.}

**Section 5.** Section 2-18-301 , MCA, is amended to read:

**"2-18-301. Intent of part -- rules.** (1) It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104, be based, in part, on an analysis and comparison of the ~~municipal and state government labor markets in North Dakota, South Dakota, Idaho, and Wyoming market~~ as provided by the department ~~from the national compensation association of state governments salary survey and other information relative to the state government salaries and compensation in those states~~ in a biennial salary survey. ~~For the biennium beginning July 1, 2013, the department shall determine this information before pay raises are implemented. For legislative sessions following the biennium beginning July 1, 2013, the department shall submit~~ The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111~~÷.~~

~~—— (a) an analysis of how Montana government employee salaries and~~

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As of: September 15, 2014 (9:48AM)

LCLFC3

~~other compensation compare to the municipal and state government salaries in North Dakota, South Dakota, Idaho, and Wyoming; and~~  
~~—— (b) an analysis of the labor market as determined by the department in a biennial salary survey.~~

(2) Pay adjustments, if any, provided for in 2-18-303 supersede any other plan or systems established through collective bargaining after the adjournment of the legislature. (3) Total funds required to implement the pay increases, if any, provided for in 2-18-303 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the legislature.

(4) The department shall administer the pay program established by the legislature, when fiscally able, on the basis of competency, internal equity, considering pay relationships within an agency or pay unit or other non-discriminatory factors, pay progression, and competitiveness to ~~the municipal and state government labor markets in North Dakota, South Dakota, Idaho, and Wyoming~~ external labor markets. ~~The intent is to bring all pay bands to the same relationship percentage of the market rate midpoint salary comparison when fiscally able.~~

(5) The broadband pay plan must consist of ~~nine pay bands~~ occupational wage ranges, based on occupation and its job evaluation factor. Each ~~pay band~~ occupational wage range must contain a salary range with a minimum, market midpoint, and a maximum salary.

- (6) Based on the biennial salary survey, the department shall:
- (a) identify current market ~~rates~~ midpoints for all

occupations; and

(b) establish ~~salary ranges for each pay band~~ the occupational wage range for each occupation; ~~and~~

~~—— (c) recommend competitive pay zones with the municipal and state government labor markets in North Dakota, South Dakota, Idaho, and Wyoming using the national compensation association of state governments salary survey and other relevant information for those states.~~

(7) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part.

(8) Nothing in this part prohibits the board of regents from engaging in negotiations with the collective bargaining units representing the classified staff of the university system."  
{ *Internal References to 2-18-301:*

2-6-110a }

**Section 6.** Section 2-18-303 , MCA, is amended to read:

**"2-18-303. Procedures for administering broadband pay plan.**

(1) On the first day of the first complete pay period in fiscal year 2014, each employee is entitled to the amount of the employee's base salary as it was on June 30, 2013.

~~—— (2) An employee's base salary may be no less than the minimum salary of the pay band to which the employee's position is allocated.~~

(2) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a

negotiable subject under 39-31-305.

(3) Funds appropriated under section 4, Chapter 385, Laws of 2013, must be used to increase the base pay for each employee. The base pay of employees must be increased as determined by the executive branch, including those subject to the provisions of Title 39, chapter 31, with particular attention to the lower pay bands and those who did not receive a base pay increase during the biennium beginning July 1, 2011.

(4) (a) (i) A member of a bargaining unit may not receive the pay adjustment provided for in subsection (3) until the employer's collective bargaining representative receives written notice that the employee's collective bargaining unit has ratified a collective bargaining agreement.

(ii) If ratification of a collective bargaining agreement, as required by subsection (4) (a) (i), is not completed by the date on which a legislatively authorized pay increase is implemented, members of the bargaining unit must continue to receive the compensation that they were receiving until an agreement is ratified.

(b) Methods of administration consistent with the purpose of this part and necessary to properly implement the pay adjustments provided for in this section may be provided for in collective bargaining agreements.

(5) (a) Montana highway patrol officer base salaries must be established through the broadband pay plan. Before January 1 of each odd-numbered year, the department shall, after seeking the advice of the Montana highway patrol, conduct a salary survey to be used in

establishing the base salary for existing and entry-level highway patrol officer positions. The county sheriff's offices in the following consolidated governments and counties are the labor market for purposes of the survey: Butte-Silver Bow, Cascade, Yellowstone, Missoula, Lewis and Clark, Gallatin, Flathead, and Dawson. The base salary for existing and entry-level highway patrol officer positions must then be determined by the department of justice, using the results of the salary survey and the department of justice pay plan guidelines. Base or biennial salary increases under this subsection are exclusive of and not in addition to any increases otherwise awarded to other state employees after July 1, 2006.

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(c) The department of justice shall submit the salary survey to the office of budget and program planning as a part of the information required by 17-7-111.

(d) The salary survey and plan must be completed at least 6 months before the start of each regular legislative session."

{ Internal References to 2-18-303:

2-18-301x          2-18-301x          2-18-304x          13-37-106x

15-2-102x          44-1-504x }

**Section 7.** Section 2-18-1011 , MCA, is amended to read:

**"2-18-1011. ~~Pay band allocation~~ Classification or compensation grievance -- retaliation -- hearing on complaint. (1)**

An employee or the employee's representative affected by the

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

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

(3) An action that attempts to revise the determination of a ~~pay band~~ an employee's classification and that involves an employee exercising a right conferred by 2-18-1011 through 2-18-1013 in a way that would adversely affect the employee prior to final resolution or entry of a final order with respect to the action is presumed to be interference, restraint, coercion, or retaliation prohibited by subsection (2) unless the review was commenced or scheduled prior to filing of the appeal and was not prompted by the grievance appealed from. The presumption is rebuttable."

{*Internal References to 2-18-1011:*

2-18-203 x\*      2-18-203 x\*      2-18-1011x \*      87-1-205 x\* }

**Section 8.** Section 13-37-106 , MCA, is amended to read:

**"13-37-106. Salary.** ~~(1) The commissioner of political practices is entitled to receive a salary within the pay band, as~~

~~defined in 2-18-101, determined by the department of administration as provided in subsection (4).~~

~~(2)~~ (1) The commissioner of political practices is ~~also~~ entitled to longevity, expense reimbursement, leave, insurance, and other benefits provided to classified state employees under Title 2, chapter 18.

~~(3)~~ (1) The salary of the commissioner may not be reduced during the term for which the commissioner is appointed.

~~(4)~~ (1) The department of administration shall determine the appropriate ~~occupation and pay band~~ classification for the commissioner of political practices in the same manner that it determines the occupation and ~~pay band~~ occupational wage range for employees in state government pursuant to Title 2, chapter 18.

~~(5)~~ (1) The governor shall set the salary of the commissioner of political practices within the ~~pay band~~ occupational wage range for the occupation established by the department of administration.

~~(6)~~ (1) The commissioner of political practices must receive pay adjustments consistent with those required by the legislature for state employees in 2-18-303 and 2-18-304."

{Internal References to 13-37-106: None.}

**Section 9.** Section 15-2-102 , MCA, is amended to read:

**"15-2-102. Qualification and compensation.** (1) To be appointed a member of the state tax appeal board, a person shall possess knowledge of the subject of taxation and skill in matters relating to taxation. A member may not hold any other state office or any office

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As of: September 15, 2014 (9:48AM)

LCLFC3

under the government of the United States or under the government of any other state. The person shall devote the entire time to the duties of the office and may not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with the person's duties. The state tax appeal board is attached to the department of administration for administrative purposes only as provided in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(2) State tax appeal board members must be paid a salary within the ~~pay band, defined in 2-18-101, determined~~ occupational wage range for the occupation designated by the department of administration as provided in subsection (3). State tax appeal board members must receive pay and pay adjustments consistent with those required by the legislature for state employees in 2-18-303 and 2-18-304. The member designated as presiding officer as provided for in 15-2-103 must receive an additional 5% in salary. All members of the board must receive travel expenses as provided for in 2-18-501 through 2-18-503 when away from the capital on official business.

(3) The department of administration shall determine the appropriate occupation ~~and pay band~~ for the state tax appeal board members in the same manner that it determines the occupation ~~and pay band~~ for employees in state government pursuant to Title 2, chapter 18.

(4) The governor shall set the salary of the state tax appeal board members within the ~~pay band~~ occupational wage range established by the department of administration."

{Internal References to 15-2-102: None.}

NEW SECTION. **Section 10.** {standard} **Effective date.** [This act] is effective July 1, 2015.

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