

HOUSE BILL NO. 360
INTRODUCED BY D. LEWIS

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE VOLUNTARY EMPLOYMENT TERMINATION INCENTIVE ACT; DEFINING TERMS; PROVIDING AN INCENTIVE TO ELIGIBLE STATE EMPLOYEES WHO VOLUNTARILY TERMINATE EMPLOYMENT WITHIN A SPECIFIED TIME PERIOD; SPECIFYING THE FEATURES OF THE INCENTIVE; SPECIFYING THE POWERS AND DUTIES OF THE APPROVING AUTHORITY WITH RESPECT TO MANAGING THE WORK FORCE REDUCTIONS CAUSED BY THE TERMINATION INCENTIVE; ESTABLISHING A TRUST FUND FROM WHICH INCENTIVE BENEFITS AND ASSOCIATED COMPENSATION FOR UNUSED VACATION AND SICK LEAVE MUST BE PAID; PROVIDING AN APPROPRIATION FROM THE COAL SEVERANCE TAX PERMANENT FUND; AMENDING SECTIONS 2-18-704 AND 17-7-139, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, state budget restrictions will require significant reductions in state agency personal services budgets; and

WHEREAS, providing state employees with an incentive to voluntarily terminate employment within a specified timeframe will benefit employees, achieve vacancy savings, and avoid forced layoffs; and

WHEREAS, the incentive provided in this bill is projected to induce 578 current state employees to voluntarily leave employment; and

WHEREAS, if 578 state employees voluntarily leave employment and 400 of the vacated positions are eliminated, if state agencies keep the remaining positions vacant for at least 3 months, and if positions are either eliminated or are refilled by employees paid a base salary that is no more than 90% of the base salary, plus longevity, paid to the terminating employee, then the savings in personal services costs is projected to be \$34,913,627 for the biennium based on House Bill No. 2 personal service reductions totaling \$31,894, 609 and other personal service reductions totaling \$3,019,018; and

WHEREAS, a one-time appropriation of \$13,825,146, plus interest, will fund the incentive and payments for unused vacation leave and sick leave credit projected to be due pursuant to this bill; and

WHEREAS, the savings achieved is about 2 1/2 times the cost of the incentive.

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

NEW SECTION. Section 1. Short title. [Sections 1 through 7] may be cited as the "Voluntary Employment Termination Incentive Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 7], the following definitions apply.

- (1) "Agency" has the meaning provided in 2-18-101, not including the Montana university system.
- (2) "Approving authority" has the meaning provided in 17-7-102(3)(a) through (3)(e).
- (3) "Full-time employee" means a state agency employee who regularly works 40 hours a week or more throughout the year.
- (4) "Permanent employee" has the meaning provided in 2-18-101.

NEW SECTION. Section 3. Voluntary employment termination incentive -- eligibility -- benefits.

- (1) A state agency employee is eligible for the voluntary employment termination incentive if the employee:
 - (a) is a permanent and full-time employee;
 - (b) voluntarily terminates employment on or after July 1, 2003, but before September 30, 2003, except as provided under [section 5(2)];
 - (c) waives the benefits provided pursuant to the State Employee Protection Act under Title 2, chapter 18, part 12, except as provided in subsection (2)(c); and
 - (d) complies with the return-to-work limitation in subsection (3).
- (2) A state employee eligible under subsection (1) is entitled to:
 - (a) a cash incentive totaling 3% of the employee's base salary, plus longevity, as it was on the employee's termination date, for each year of continuous employment, as defined in 2-18-601, plus 5% interest compounded annually on the unpaid balance due pursuant to this subsection (2)(a), which must be paid as an annuity, subject to the following provisions:
 - (i) the total amount paid to an employee may not exceed the employee's annual base salary, plus longevity, plus 5% interest compounded annually on the unpaid balance;
 - (ii) the annuity must be paid in equal monthly payments over a period determined by the eligible employee;
 - (iii) a monthly payment may not be less than \$250 or the remaining balance due pursuant to this subsection (2)(a); and
 - (iv) the total number of monthly payments to the employee may not exceed 120;

(b) remain on the state group health insurance plan as provided for in 2-18-704(9); and

(c) access job training programs provided for in 2-18-1203(1)(b) if the employee pays the tuition or fee charged for program participation.

(3) An employee who voluntarily terminates employment and receives the benefits provided under subsection (2) may not return to employment with any agency for more than 960 hours in a calendar year unless the employee forfeits the benefits and repays any annuity payments received under subsection (2)(a).

NEW SECTION. Section 4. Payout of leave credit. Compensation for unused vacation leave under 2-18-617(2) and for unused sick leave under 2-18-618(6) or 2-18-1311 to an employee who voluntarily terminates employment pursuant to [sections 1 through 7] must be paid from the account established in [section 6].

NEW SECTION. Section 5. Approving authority responsibilities -- special conditions -- waivers. (1) Each approving authority shall, if necessary, manage reductions in workforce resulting from the incentive provided under [sections 1 through 7] by transferring personal service budgets between programs, agencies, and fiscal years as provided in 17-7-139(3).

(2) Until December 31, 2003, the approving authority may provide up to three 30-day time periods, in addition to the time period provided in [section 3(1)(b)], during which an employee may terminate service and be eligible for the incentive provided in [section 3].

(3) Each approving authority shall notify employees of their options pursuant to [sections 1 through 7] within 30 days after [the effective date of this act].

NEW SECTION. Section 6. Termination incentive trust fund account -- reversion to the coal severance tax permanent fund. (1) There is an account established as an employee benefit trust fund type, as provided in 17-2-102(3)(c), to the credit of the department of administration.

(2) Interest earned on funds in the account must remain in the account.

(3) Except as provided in subsection (4), funds in the account may be used only to pay for the costs of providing the voluntary employment termination incentive provided in [section 3] and the compensation for unused annual vacation leave and sick leave provided in [section 4].

(4) After all costs pursuant to [sections 1 through 7] have been paid, any unexpended funds in the account must revert to the coal severance tax permanent fund established in 17-5-703.

NEW SECTION. Section 7. Rulemaking authority. The department of administration may adopt rules to implement the provisions of [sections 1 through 7].

Section 8. Section 2-18-704, MCA, is amended to read:

"2-18-704. Mandatory provisions. (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in Title 19, chapter 3, part 21, a member with at least 5 years of service and who is at least age 50 while in covered employment to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group plan unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), ~~or (4)~~, or (9), shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for treatment of inborn errors of metabolism, as provided for in 33-22-131.

(8) An insurance contract or plan issued under this part must include substantially equivalent or greater coverage for outpatient self-management training and education for the treatment of diabetes and certain diabetic equipment and supplies as provided in 33-22-129.

(9) A state insurance contract issued under this part must permit an employee eligible for the benefit provided pursuant to [section 3(2)(b)] to remain a member of the group health insurance plan for up to 5 years after the employee's voluntary termination pursuant to [sections 1 through 7]. The years during which an employee remains a plan member under this subsection must be considered active service or covered employment for the purposes of determining the employee's continued eligibility to remain on the group health insurance plan under subsection (1)(a). The provisions of this subsection are in addition to the other rights and benefits provided for in this section."

Section 9. Section 17-7-139, MCA, is amended to read:

"17-7-139. Program transfers. (1) (a) Unless prohibited by law or a condition contained in the general appropriations act, the approving authority may approve agency requests to transfer appropriations between programs within each fund type within each fiscal year. ~~The Subject to subsection (3), the legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation.~~

(b) An explanation of any transfer that involves a significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. If the approving authority certifies that a request for a transfer representing a significant change in agency or program scope, objectives, activities, or expenditures is time-sensitive, the approving authority may approve the transfer prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines

that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee.

(c) All program transfers must be completed within the same fund from which the transfer originated. A request for a transfer accompanied by a justification explaining the reason for the transfer must be submitted by the requesting agency to the approving authority and the office of budget and program planning. Upon approval of the transfer in writing, the approving authority shall inform the legislative fiscal analyst of the approved transfer and the justification for the transfer. If money appropriated for a fiscal year is transferred to another fiscal year, the money may not be retransferred, except that money remaining from projected costs for spring fires estimated in the last quarter of the first year of a biennium may be retransferred.

(2) For the purposes of subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(a) the budget transfer exceeds \$1 million; or

(b) the budget transfer exceeds 25% of a program's total operating plan and the transfer is greater than \$25,000. If there have been other transfers to or from the program in the current fiscal year, all the transfers, including the transfer under consideration, must be used in determining the 25% and \$25,000 threshold.

(3) To manage the workforce reductions caused pursuant to the Voluntary Employment Termination Incentive Act, provided for in [sections 1 through 7], the approving authority for the executive branch may, in addition to program transfers authorized under subsection (1), transfer up to 50% of a program's personal services budget between state agencies unless the transfer is prohibited by the general appropriations act, or by law."

NEW SECTION. Section 10. Transfer from coal tax permanent fund -- appropriation. (1) There is transferred from the coal severance tax permanent fund established in Article IX, section 5, of the Montana constitution and provided for in 17-5-703 to the trust fund established in [section 6] \$13,825,146 for fiscal year 2004.

(2) There is appropriated to the department of administration from the trust fund established in [section 6] \$13,825,146 in fiscal year 2004 to implement [sections 1 through 7].

NEW SECTION. Section 11. Contingent voidness. If [this act] and House Bill No. 2 are both passed

and approved and if the appropriations contained in House Bill No. 2 are not accompanied by a narrative stating that appropriated amounts for personal services reflect reductions totaling at least \$31.8 million as the savings anticipated pursuant to [this act], then [this act] is void.

NEW SECTION. **Section 12. Three-fourths vote required.** Because [section 10] transfers money from the coal severance tax trust fund for appropriation, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage.

NEW SECTION. **Section 13. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 2, chapter 18, and the provisions of Title 2, chapter 18, apply to [sections 1 through 7].

NEW SECTION. **Section 14. Effective date.** [This act] is effective on passage and approval.

- END -