

SENATE BILL NO. 448  
INTRODUCED BY NELSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT EMPLOYEES OF LOCAL GOVERNMENTAL ENTITIES MAY ENROLL IN THE STATE EMPLOYEE GROUP BENEFIT PLANS UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 2-15-1016, 2-18-618, 2-18-701, 2-18-702, 2-18-703, 2-18-808, 2-18-809, 2-18-810, ~~2-18-811~~, 2-18-812, 2-18-813, AND 2-18-814, ~~AND 2-18-816~~; MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Local governmental entity enrollment.** (1) A group of local employees may enroll in the state ~~and local~~ employee group benefit plans under the following conditions:

~~(1)(A)~~ there is a minimum total of 1,000 employees in aggregate from a local governmental entity or any combination of local governmental entities; and

~~(2)(B)~~ any local governmental entity ~~must~~ SHALL elect to join through a formal process that provides for a 5-year commitment and for election of all employees of the local governmental entity.

(2) THE DEPARTMENT SHALL ESTABLISH REASONABLE RISK AND ADMINISTRATIVE COSTS IN SETTING PREMIUMS FOR LOCAL GOVERNMENT ENTITIES. THE RISK COSTS APPLY TO ANY NEW GROUP FOR THE FIRST 3 YEARS.

**Section 2.** Section 2-15-1016, MCA, is amended to read:

**"2-15-1016. State and local employee group benefits advisory council -- composition.** (1) The department shall create a state and local employee group benefits advisory council under 2-15-122.

(2) The members of the advisory council must be selected from a diverse group in order to adequately represent the interests of state and local employees and retirees.

(3) One member of the advisory council must be a retired state employee.

(4) Each labor organization, as defined in 39-31-103, representing more than 1,000 employees of the state of Montana is entitled to one representative on the advisory council.

(5) For each group of 1,000 employees of local governmental entities, there must be one representative LOCAL GOVERNMENT EMPLOYEES ARE ALLOWED PROPORTIONAL REPRESENTATION on the advisory council."

**Section 3.** Section 2-18-618, MCA, is amended to read:

**"2-18-618. (Temporary) Sick leave.** (1) A permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) A short-term worker may not earn sick leave credits.

(6) An employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(7) An employee who receives a lump-sum payment pursuant to this section and who is again employed by any agency may not be credited with sick leave for which the employee has previously been compensated.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(9) An employee may contribute any portion of the employee's accumulated sick leave to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave. The department of administration shall, in consultation with the state and local employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

(10) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave.

**2-18-618. (Effective on occurrence of contingency) Sick leave.** (1) A permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) A short-term worker may not earn sick leave credits.

(6) Except as otherwise provided in 2-18-1311, an employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(7) An employee who receives a lump-sum payment pursuant to this section or who, pursuant to 2-18-1311, converts unused sick leave to employer contributions to a health care expense trust account and who is again employed by any agency may not be credited with sick leave for which the employee has previously been compensated or for which the employee has received an employer contribution to the health care expense trust account.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(9) An employee of a state agency may contribute any portion of the employee's accumulated sick leave to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave, irrespective of the employee's membership or nonmembership in the employee welfare benefit plan established pursuant to 2-18-1304. The department of administration shall, in consultation with the state and local employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

(10) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave."

**Section 4.** Section 2-18-701, MCA, is amended to read:

**"2-18-701. Definitions.** In this part, as it ~~applies~~ APPLIED to a person employed BY A LOCAL GOVERNMENTAL ENTITY, AS DEFINED IN 2-18-809, OR in the executive, judicial, or legislative branches of state government, "employee" means:

- (1) a permanent full-time employee, as provided in 2-18-601;
- (2) a permanent part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week;
- (3) a seasonal full-time employee, as provided in 2-18-601, who is regularly scheduled to work 6 months or more a year or who works for a continuous period of more than 6 months a year although not regularly scheduled to do so;
- (4) a seasonal part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so;
- (5) elected officials;
- (6) officers and permanent employees of the legislative branch;
- (7) judges and permanent employees of the judicial branch;
- (8) academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education;
- (9) a temporary full-time employee, as provided in 2-18-601:
  - (a) who is regularly scheduled to work more than 6 months a year;
  - (b) who works for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

- (c) whose temporary status is defined through collective bargaining;
- (10) a temporary part-time employee, as provided in 2-18-601:
  - (a) who is regularly scheduled to work 20 hours or more a week for 6 months or more a year;
  - (b) who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so; or
  - (c) whose temporary status is defined through collective bargaining; and
- (11) a part-time or full-time employee of the state compensation insurance fund. As used in this subsection, "part-time or full-time employee of the state compensation insurance fund" means an employee eligible for inclusion in the state ~~and local~~ employee group benefit plans under the rules of the department of administration."

**Section 5.** Section 2-18-702, MCA, is amended to read:

**"2-18-702. Group insurance for public employees and officers.** (1) (a) Except as provided in subsection (1)(c), all counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans for the benefit of their officers and employees and their dependents. The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.

(b) The governing body of a county, city, or town may, at its discretion, consider the employees of private, nonprofit economic development organizations to be employees of the county, city, or town solely for the purpose of participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans as provided in subsection (1)(a). The governing body of the county, city, or town may require an employee or organization to pay the actual cost of coverage required for participation or may, at its discretion and subject to any restriction on who may be a member of a group, pay all or part of the cost of coverage of the employee of the organization.

(c) The governing body of a third, fourth, fifth, sixth, or seventh class county or the board of trustees of a hospital district may, at its discretion, exempt employees of a county hospital, county rest home, or hospital district from participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans provided pursuant to subsection (1)(a) or (1)(b).

(2) State AND LOCAL employees and elected officials, as defined in 2-18-701, may participate in state and

~~local~~ employee group benefit plans as are provided for under part 8 of this chapter.

(3) For state officers and employees, the premiums required from time to time to maintain the insurance in force must be paid by the insured officers and employees, and the state treasurer shall deduct the premiums from the salary or wages of each officer or employee who elects to become insured, on the officer's or employee's written order, and issue a warrant for the premiums to the insurer.

(4) For the purpose of this section, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services must be construed as group insurance and the dues payable under the plans must be construed as premiums for group insurance.

(5) If the board of trustees of a school district implements a self-insured group health plan or if the board of regents implements an alternative to conventional insurance to provide group benefits to its employees, the board shall maintain the alternative plan on an actuarially sound basis."

**SECTION 6. SECTION 2-18-703, MCA, IS AMENDED TO READ:**

**"2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, and the state compensation insurance fund shall contribute the amount specified in this section toward the group benefits cost.

(2) For state employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is \$295 a month for the period from July 2001 through December 2001, \$325 a month for the period from January 2002 through December 2002, and \$366 a month for January 2003 and for each succeeding month. For employees of the Montana university system, the employer contribution for group benefits is \$325 a month for the period from July 2001 through June 2002 and \$366 a month for the period from July 2002 through June 2003 and for each succeeding month. When a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than \$10 a month. Subject to the public hearing

requirement provided in 2-9-212(2)(b), the increase in a local government's property tax levy for premium contributions for group benefits beyond the amount of contributions in effect on July 1, 1999, is not subject to the mill levy calculation limitation provided for in 15-10-420.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(6) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents."

**Section 7.** Section 2-18-808, MCA, is amended to read:

**"2-18-808. Purpose.** The purpose of this part is to establish a program under which the state may provide state and local employees with adequate group hospitalization, health, medical, disability, life, and other related group benefits in an efficient manner and at an affordable cost."

**Section 8.** Section 2-18-809, MCA, is amended to read:

**"2-18-809. Definitions.** As used in this part, the following definitions apply:

(1) "Advisory council" means the state and local employee group benefits advisory council provided for in 2-15-1016.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Flexible spending account" means a funding and accounting arrangement allowed by federal law that:

(a) gives a state employee or a local employee a choice between receiving taxable salary or having a part of the employee's salary withheld; and

(b) provides for depositing any portion of the state employee's or local employee's salary withheld and any employer contribution designated by the employee into an account and receiving from that account nontaxable reimbursement for certain out-of-pocket medical expenses of the state employee OR LOCAL EMPLOYEE or a dependent of the employee.

(4) (a) "Group benefits" means group hospitalization, health, medical, surgical, disability, life, and other similar and related group benefits provided to officers and employees of the state and local governmental entities, including flexible spending account benefits.

(b) The term "group benefits" does not include casualty insurance, defined in 33-1-206; marine insurance, authorized in 33-1-209 and 33-1-221 through 33-1-229; property insurance, defined in 33-1-210; surety insurance, defined in 33-1-211; and title insurance, defined in 33-1-212.

(5) (A) "Local employee" means an employee of a local governmental entity.

(B) THE TERM DOES NOT INCLUDE EMPLOYEES OF SCHOOL DISTRICTS.

(6) "Local governmental entity" means a political subdivision of the state or organizations or entities supported in whole by public funds or expending public funds, including counties, incorporated cities or towns, school districts, or a district formed pursuant to Title 7.

(5)(7) (a) "State employee" means an employee of the state, specifically including a member or employee of the legislative branch of state government.

(b) The term "state employee" does not include employees of counties, cities, towns, school districts, or the Montana university system."

**Section 9.** Section 2-18-810, MCA, is amended to read:

**"2-18-810. Functions of advisory council.** (1) The department shall meet and consult with the advisory council before negotiating, contracting, or otherwise modifying state and local employee group benefit plans.

(2) The advisory council shall meet quarterly to review the existing state and local employee group benefit plans, to review claims problems, and to advise the department on state employee and local employee group benefit matters."

~~Section 9.~~ Section 2-18-811, MCA, is amended to read:

~~"2-18-811. General duties of the department.~~ The department shall:

~~(1) adopt rules for the conduct of its business under this part and to carry out the purposes of this part;~~

~~(2) negotiate and administer contracts for state and local employee group benefit plans;~~

~~(3) design state and local employee group benefit plans, establish specifications for bids, and make recommendations for acceptance or rejection of bids;~~

~~(4) prepare an annual report which describes the state and local employee group benefit plans being administered, details the historical and projected program costs and the status of reserve funds, and makes~~



recommendations, if any, for change in existing state and local employee group benefit plans;

~~———(5) prior to each legislative session, perform or obtain an analysis of rate adequacy of all state and local employee group benefit plans administered under this part; and~~

~~———(6) submit the report required in this section to the office of budget and program planning as a part of the information required by 17-7-111."~~

**Section 10.** Section 2-18-812, MCA, is amended to read:

**"2-18-812. Alternatives to conventional insurance for providing state and local employee group benefits authorized -- requirements.** The department may establish alternatives to conventional insurance for providing state and local employee group benefits. The requirements for providing alternatives to conventional insurance are as follows:

(1) The department shall maintain state and local employee group benefit plans on an actuarially sound basis.

(2) The department shall maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of state and local employee group benefit plans.

(3) The department shall deposit all reserve funds and premiums paid to a state and local employee group benefit plan account within the state self-insurance reserve fund, and the deposits must be expended for claims under the plan.

(4) The department shall deposit income earned from the investment of a state and local employee group benefit plan's reserve fund into the account established under subsection (3) in order to offset the costs of administering the plan. Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(5) The department shall deposit into the account provided for in subsection (3) all portions of a state or local employee's salary designated by the employee to be withheld for the purposes of flexible spending account benefits as well as any employee-designated portion of the employer contribution for group benefits provided for in 2-18-703 that is not required to be used for mandatory or elected benefits. Income earned on the deposits must be retained within the account and used for the purposes provided in this subsection. The money deposited and income earned on the deposits must be used for:

(a) payment of claims made by the employee;

(b) payment of reasonable costs of administration of the flexible spending account program;

- (c) offsetting losses of the flexible spending account program; and
- (d) reducing administration fees collected from participants in the program.

(6) The department shall, prior to implementation of any alternative to conventional insurance, present to the advisory council the evidence upon which the department has concluded that the alternative method will be more efficient, less costly, or otherwise superior to contracting for conventional insurance.

(7) Except as otherwise provided in Title 33, chapter 18, part 9, the provisions of Title 33 do not apply to the department when exercising the powers and duties provided for in this section."

**Section 11.** Section 2-18-813, MCA, is amended to read:

**"2-18-813. Combining existing employee groups authorized.** The department may combine existing state or local employee groups into larger groups for the purpose of establishing state ~~and local~~ employee group benefit plans on behalf of the combined groups. The department may also combine state and local employees into a single group for purposes of state and local employee group benefits under this part."

**Section 12.** Section 2-18-814, MCA, is amended to read:

**"2-18-814. Administrative costs.** The department shall include the costs of administering and negotiating state ~~and local~~ employee group benefit plans established under this part, as well as the costs of hiring necessary consultants, actuaries, and auditors under this part, as part of the cost for state and local employee group benefits."

~~Section 13.~~ Section 2-18-816, MCA, is amended to read:

~~"2-18-816. Biennial audit of group benefit plans required.~~ The state and local employee group benefit plans established under this part, whether established on a self-funded basis or not, must be audited every 2 years. The audit must cover the 2-year period since the last audit and be conducted by or at the direction of the legislative auditor."

NEW SECTION. **Section 13. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 18, part 8, and the provisions of Title 2, chapter 18, part 8, apply to [section 1].

NEW SECTION. **Section 14. Effective date.** [This act] is effective January 1, 2004.

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