

## HOUSE BILL NO. 846

INTRODUCED BY J. SINRUD

BY REQUEST OF THE HOUSE APPROPRIATIONS STANDING COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING STATE EMPLOYEE CLASSIFICATION AND COMPENSATION; REQUIRING THAT EMPLOYEES BE PLACED ON THE NEW BROADBAND PAY PLAN; PROVIDING FOR IMPLEMENTATION OF THE BROADBAND PAY PLAN BY STATE AGENCIES; PROHIBITING THE TRANSFER OF FUNDS FOR PURPOSES OF FUNDING PERSONAL SERVICES PAY INCREASES; REPLACING STATUTORY SALARIES FOR LEGISLATORS WITH SALARIES BASED UPON THE BROADBAND PAY PLAN; SETTING SALARIES FOR THE COMMISSIONER OF POLITICAL PRACTICES AND THE MEMBERS OF THE STATE TAX APPEAL BOARD; APPROPRIATING FUNDS TO IMPLEMENT PAY AND BENEFIT REVISIONS FOR THE COMMISSIONER OF POLITICAL PRACTICES AND THE MEMBERS OF THE STATE TAX APPEAL BOARD; AMENDING SECTIONS 2-6-110, 2-15-131, 2-18-101, 2-18-201, 2-18-202, 2-18-203, 2-18-204, 2-18-206, 2-18-207, 2-18-301, 2-18-303, 2-18-304, 2-18-1011, 2-18-1204, 5-2-301, 5-2-302, 13-37-106, 15-2-102, 17-7-102, 17-7-139, 39-51-301, AND 44-1-504, MCA; REPEALING SECTIONS 2-18-205 AND 2-18-312, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES."

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 a state employee classified as grade 10, market salary, under 2-18-312~~ 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) 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."

**Section 2.** Section 2-15-131, MCA, is amended to read:

**"2-15-131. Rights of state personnel.** Unless otherwise provided in this chapter, each state officer or employee affected by the reorganization of the executive branch of state government under this chapter is entitled to all rights ~~which he~~ possessed as a state officer or employee before the effective date of the applicable part of this chapter, including rights to tenure in office and of ~~rank or grade~~ pay, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy. This section is not intended to create any new rights for any state officer or employee but to continue only those rights in effect before the effective date of the applicable part of this chapter or an amendment to this chapter."

**Section 3.** 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) "Anniversary date", except as modified in part 3 of this chapter, means the month and day on which an employee began the most recent period of uninterrupted state service.~~

~~(3)~~(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 occupation.

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

(5) "Broadband classification plan" means a job evaluation method that measures the difficulty of the work and the knowledge or skills required to perform the work.

(6) "Broadband pay plan" means a pay plan using a pay hierarchy of broad pay bands based on the broadband classification plan.

~~(5) "Class" means one or more positions substantially similar with respect to the kind or nature of duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be used to~~

~~designate each position allocated to the class, similar qualifications may be required of persons appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.~~

~~(6) "Class series benchmark" means a representative position within a class series that is used to illustrate the application of the job evaluation factors that are used to classify positions in the classification plan. A benchmark description describes the duties and responsibilities assigned and the factors applied to the class series benchmark.~~

~~(7) "Class specification" means a written descriptive statement of the duties and responsibilities characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and qualifications necessary to perform the work of the class.~~

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

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

~~(10)(9) "Department" means the department of administration created in 2-15-1001.~~

~~(11)(10) (a) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104 from the statewide classification system.~~

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

~~(12)(11) "Entry salary" means the entry-level base salary for each grade provided in 2-18-312 occupational pay range.~~

~~(13) "Grade" means the number assigned to a pay range within a pay schedule in part 3 of this chapter.~~

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

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

~~(15) "Market ratio" means an employee's base salary divided by the market salary for the employee's pay grade.~~

~~(16)(14) "Market salary" means the midpoint in a an occupational pay grade provided in 2-18-312 range, based on the average base salary that other employers pay to employees in comparable occupations as determined by the department's salary survey of the relevant labor market.~~

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

~~(16) "Occupational pay range" means a range of pay, including an entry salary, market salary, and maximum salary, for a specific occupation within a specific pay band. An occupation may have more than one~~

occupational pay range. An occupational pay range must fit within the appropriate pay band.

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

~~(17)~~(18) "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)~~(19) "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period.

~~(19)~~(20) "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)~~(21) "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)~~(22) "Program" means a combination of planned efforts to provide a service.

~~(22)~~(23) "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)~~(24) "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)~~(25) "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)~~(26) "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)~~(27) "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."

**Section 4.** Section 2-18-201, MCA, is amended to read:

**"2-18-201. Development Implementation and maintenance of personnel broadband classification plan.** (1) The department shall ~~develop~~ implement and maintain a ~~personnel broadband~~ broadband classification plan for all ~~state~~ state positions ~~and classes of positions~~ in state service ~~following hearings involving affected employees and employee organizations~~, except those exempt in 2-18-103 and 2-18-104. The broadband classification plan must provide for pay based upon but not limited to job performance, employee competencies, and market progression. An employee's performance must be evaluated by an annual performance appraisal.

(2) The legislative council shall in a like manner ~~develop~~ implement and maintain a broadband classification plan for employees of the legislative branch, other than those of the office of consumer counsel."

**Section 5.** Section 2-18-202, MCA, is amended to read:

**"2-18-202. Guidelines for classification.** (1) In providing for the broadband classification plan, the department shall group all positions in ~~the~~ state service into defined ~~classes~~ occupations based on similarity of ~~duties~~ work performed, responsibilities assumed, ~~and complexity~~ difficulty of work, required knowledge, and required skills. ~~so that:~~

~~— (a) similar qualifications of education, experience, knowledge, skill, and ability can be required of applicants for each position in the class;~~

~~— (b) the same title can be used to identify each position in the class;~~

~~(c)(2) similar~~ Similar pay may be provided under the same conditions with equity to each position within ~~the class~~ to individuals with the same occupation within an occupational pay range.

(2) A class may consist of only one position."

**Section 6.** Section 2-18-203, MCA, is amended to read:

**"2-18-203. Review of positions -- change in classification pay band allocation.** (1) The department shall continuously review ~~all the job evaluation factor of~~ positions on a regular basis and ~~may~~ adjust ~~classifications~~ the occupations for the positions to reflect significant changes in duties and responsibilities. ~~In the event that~~ If adjustments are to be made to ~~class specifications, class series~~ benchmarks; or criteria used for allocating positions to ~~classes~~ 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 and teachers' classification plans pay plan, which ~~plans~~ must remain a mandatory negotiable ~~items~~ 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 class pay band. The grade pay band assigned to ~~a class~~ an occupation and ~~factors assigned to class series~~ benchmarks are not appealable subjects under 2-18-1011 through 2-18-1013.

(3) The period of time for which retroactive pay for a classification pay band allocation 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."

**Section 7.** Section 2-18-204, MCA, is amended to read:

**"2-18-204. Determination of number and classes occupations of employees in each agency.** (1) ~~Based on documentation to be submitted by each agency, the~~ The department shall determine the ~~classes of occupations for~~ positions of employees of in each agency or program thereof ~~before the beginning of each fiscal year~~. At any time, upon request of the an agency, the department may amend the ~~classes of positions of employees in any~~ list of occupations for the requesting agency or program thereof.

(2) Based on documentation to be submitted by each agency, the budget director shall determine the number of positions and employees (full-time equivalents) of each agency or program thereof prior to preparation of the executive budget and before the beginning of each fiscal year. At any time, upon the request of the agency, the budget director may amend the number of positions or employees (full-time equivalents) in any agency or program thereof.

(3) This section does not limit legislative authority to amend the determinations of the department or the budget director."

**Section 8.** Section 2-18-206, MCA, is amended to read:

**"2-18-206. List of positions maintained.** To facilitate state budgeting and as directed by the budget director, each agency shall maintain a list of current authorized positions, the number of positions in each ~~class~~ occupation, and the salaries or wages being paid, appropriated, or proposed for each ~~class~~ position. Each position must have a current job description."

**Section 9.** Section 2-18-207, MCA, is amended to read:

**"2-18-207. Department authorization for increase of ~~salary or wage of class~~ occupational pay range.** An agency may not increase the ~~salary or wage~~ occupational pay range of any ~~class of positions~~ occupation without authorization of the department."

**Section 10.** Section 2-18-301, MCA, is amended to read:

**"2-18-301. Purpose and intent of part -- rules.** (1) The purpose of this part is to provide the market-based compensation necessary to attract and retain competent and qualified employees in order to perform the services that the state is required to provide to its citizens.

(2) 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 on an analysis of the labor market as provided by the department in a biennial salary survey. 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.

(3) Except as provided in 2-18-110, pay adjustments ~~and pay schedules~~ provided for in 2-18-303 ~~and in 2-18-312~~ supersede any other plan or systems established through collective bargaining after the adjournment of the 59<sup>th</sup> legislature.

(4) Pay ~~levels~~ provided for in ~~2-18-312~~ 2-18-303 may not be increased through collective bargaining after adjournment of the 59<sup>th</sup> legislature.

(5) Total funds required to implement the pay ~~schedules~~ increases provided for in ~~2-18-312~~ 2-18-303 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the 59<sup>th</sup> legislature.

(6) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(7) The broadband pay plan must consist of nine pay bands. Each pay band must contain a salary range with a minimum salary and a maximum salary. The department shall adopt an entry salary, market salary, and maximum salary for each occupation within each pay band. These salary ranges are also known as occupational



pay ranges. The department shall develop rules regarding the transition of employees to the broadband pay plan. The rules must include a percentage of market, as identified in the approved market survey, that all agencies shall initially follow for a transition to the broadband pay plan. This percentage is called the transitional market rate. All agency transitions to the broadband pay plan must be accomplished within the existing appropriation levels. This subsection does not require a reduction in pay for an employee whose pay exceeds the transitional market rate.

(8) Based on the biennial salary survey, the department shall:

(a) identify current market rates for all occupations;

(b) establish pay band levels; and

(c) set occupational pay ranges for all occupations.

~~(7)~~(9) 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)~~(10) 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."

**Section 11.** Section 2-18-303, MCA, is amended to read:

**"2-18-303. Procedures for ~~using~~ administering broadband pay schedules plan.** ~~(1) The pay schedule provided in 2-18-312 must be implemented as follows:~~

~~— (a) The pay schedule provided in 2-18-312 indicates the entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.~~

~~— (b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections (5) through (9).~~

~~(c)~~(1) (a) On the first day of the first complete pay period in fiscal year ~~2006~~ 2008, each employee is entitled to the amount of the employee's base salary as it was on June 30, ~~2005~~ 2007.

~~(d)~~(b) Effective on the first day of the first complete pay period that includes ~~an employee's anniversary date during the fiscal year ending June 30, 2006~~ October 1, 2007, the base salary of each employee must be increased by ~~3.5% or \$1,005, based upon 2,080 annual hours in a pay status, whichever is greater~~ 3%. Effective on the first day of the first complete pay period that includes ~~an employee's anniversary date during the fiscal year ending June 30, 2007~~ October 1, 2008, the base salary of each employee must be increased by ~~4% or \$1,188, based upon 2,080 annual hours in a pay status, whichever is greater~~ 3%. For employees hired on or before September 30, 2005, the anniversary date is October 1.

(2) (a) Effective October 1, 2007, and October 1, 2008, the appropriation that represents 6/10 of 1% of the salary for each full-time equivalent position must be allocated to each agency to distribute to its employees for reasons that include but are not limited to job performance, employee competencies, and market progression.

(b) To the extent that this distribution applies to employees within a collective bargaining unit, the distribution is a negotiable subject under Title 39, chapter 31. The amount of money allocated to agencies and available to distribute to members of each bargaining unit must be determined by multiplying the salaries of the total number of full-time equivalent employees in the bargaining unit by 6/10 of 1%.

(c) The allocation described in subsection (2)(b) may not be distributed to members of a collective bargaining unit until the employer's collective bargaining representative receives written notice that the employees' collective bargaining unit has ratified a pay addendum to the collective bargaining agreement specifying the distribution.

~~(e)(3)~~ An employee's base salary may be no less than the pay band entry salary for the employee's assigned grade occupation.

~~(2) The pay schedule provided in 2-18-312 and the provisions of subsections (1)(a) through (1)(d) of this section do not apply to those employees who are members of collective bargaining units that have collectively bargained to participate in a separate or alternative classification and pay plan or who are covered under subsections (5) and (6) of this section.~~

~~(3)(4)~~ (a) (i) If the legislature authorizes a pay increase for state employees, a A member of a bargaining unit may not receive a the pay increase provided for in subsection (1)(b) until the employer's collective bargaining representative receives written notice that the employee's collective bargaining unit has ratified a completely integrated collective bargaining agreement.

(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection ~~(3)(a)(i)~~ (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 ~~not inconsistent~~ consistent with the purpose of this part and necessary to properly implement the pay ~~schedules and~~ adjustments provided for in ~~2-18-312~~ and this section may be provided for in collective bargaining agreements.

~~(4)(5)~~ The current wage or salary of an employee may not be reduced by the implementation of the broadband pay ~~schedules plan~~ provided for in ~~2-18-312~~.

~~(5) The department may authorize a separate pay schedule for classes of medical professionals if the~~

rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified professionals:

~~———(6) (a) The department may develop and implement an alternative pay and classification plan for certain classes, occupations, and work units. Pay for employees in the alternative pay and classification plan may be established and changed based on demonstrated competencies and accomplishments, on the labor market, and on other situations defined by the department.~~

~~———(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.~~

~~———(7) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. To the extent that the program applies to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.~~

~~(8) The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. To the extent that these adjustments apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305.~~

~~(9)~~(6) (a) Montana highway patrol officer base salaries and biennial salary increases must be established through ~~an alternative pay and classification~~ 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 and any biennial salary increase 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 and biennial salary increases 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 ~~must be submitted~~ to the office of budget and program planning as a part of the information required by 17-7-111.

(d) (i) ~~Except as provided in subsection (9)(d)(ii), the~~ The salary survey and plan must be completed at least 6 months before the start of each regular legislative session.

(ii) ~~The first survey must be completed by January 1, 2006, for the plan to be implemented for the first full pay period in fiscal year 2007.~~

(7) The department shall prepare an annual report on the recruitment and retention of state employees."

**Section 12.** Section 2-18-304, MCA, is amended to read:

**"2-18-304. Longevity allowance.** (1) (a) In addition to the compensation provided for in 2-18-303 ~~or~~ 2-18-342, each employee who has completed 5 years of uninterrupted state service must receive 1.5% of the employee's base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

(b) In addition to the longevity allowance provided under subsection (1)(a), each employee who has completed 10 years of uninterrupted state service, 15 years of uninterrupted state service, ~~or completed~~ 20 years of uninterrupted state service must receive an additional 0.5% of the employee's base salary for each of those additional 5 years of uninterrupted service.

(c) Service to the state is not interrupted by authorized leaves of absence.

(2) (a) For the purpose of determining years of service under this section, an employee must be credited with 1 year of service for each period of:

(i) 2,080 hours of service following the employee's date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 uninterrupted calendar months following the employee's date of employment in which the employee was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any month. An employee of a school at a state institution or the university system must be credited with 1 year of service if the employee is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section.

(3) For the purposes of calculating longevity, employment as a short-term worker does not apply toward years of service."

**Section 13.** Section 2-18-1011, MCA, is amended to read:

**"2-18-1011. Classification Pay band allocation or compensation grievance -- retaliation -- hearing on complaint.** (1) An employee or ~~his~~ the employee's representative affected by the operation 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 ~~shall is~~ also be the basis for a complaint and ~~shall entitle~~ 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 ~~attempting that attempts~~ to revise the class specifications of or series of class specifications determination of a pay band involving and that involves an employee exercising a right conferred by 2-18-1011 through 2-18-1013 in a way ~~which that~~ would adversely affect the employee prior to final resolution or entry of a final order with respect thereto to the action is presumed to be an interference, restraint, coercion, or retaliation prohibited by subsection (2) of this section unless ~~such the~~ 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."

**Section 14.** Section 2-18-1204, MCA, is amended to read:

**"2-18-1204. Salary and benefits protection -- employee transfer.** An employee whose position is eliminated as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature and who is subsequently transferred to a different position in a state agency is entitled to:

(1) the same hourly salary as previously received if the new position is ~~at the same grade level in the same occupational pay range~~ or higher as the one previously held;

(2) retain all accrued sick leave credits;

(3) retain, cash out, or use accrued vacation leave credits to extend the employee's effective layoff date;

and

(4) relocation expenses as provided in agency policy."

**Section 15.** Section 5-2-301, MCA, is amended to read:

**"5-2-301. Compensation and expenses for members while in session.** (1) Legislators are entitled to a salary commensurate to that of the daily rate ~~of an entry grade 10 classified state employee~~ for an employee

earning \$10.33 an hour in effect when the regular session of the legislature in which they serve is convened under 5-2-103 for those days during which the legislature is in session. The hourly rate must be adjusted by any statutorily required pay increase. The president of the senate and the speaker of the house must receive an additional \$5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) Subject to subsection (4), legislators are entitled to a daily allowance, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments must stop when the legislature recesses for more than 3 days and resume when the legislature reconvenes.

(4) After November 15, and prior to December 15 of each even-numbered year, the department of administration shall conduct a survey of the allowance for daily expenses of legislators for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the average daily expense allowance for Montana legislators in determining the average daily rate for legislators. The department shall include only states with specific daily allowances in the calculation of the average. If the average daily rate is greater than the daily rate for legislators in Montana, legislators are entitled to a new daily rate for those days during which the legislature is in session. The new daily rate is the daily rate for the prior legislative session, increased by the percentage rate increase as determined by the survey, a cost of living increase to reflect inflation that is calculated pursuant to 15-6-134, or 5%, whichever is less. The expense allowance is effective when the next regular session of the legislature in which the legislators serve is convened under 5-2-103.

(5) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

(6) In addition to the mileage allowance provided for in subsection (5), legislators, upon submittal of an appropriate claim for mileage reimbursement to the legislative services division, are entitled to:

- (a) three additional round trips to their place of residence during each regular session; and
- (b) additional round trips as authorized by the legislature during special session.

(7) Legislators are not entitled to any additional mileage allowance under subsection (5) for a special session if it is convened within 7 days of a regular session."

**Section 16.** Section 5-2-302, MCA, is amended to read:

**"5-2-302. Compensation and expenses when legislature not in session.** When the legislature is not in session, a member of the legislature, while engaged in legislative business with prior authorization of the appropriate funding authority, is entitled to:

(1) a mileage allowance as provided in 2-18-503;

(2) expenses as provided in 2-18-501 and 2-18-502; and

(3) a salary equal to one full day's pay at the rate of a classified state employee, described in 5-2-301(1) for each 24-hour period of time (from midnight to midnight), or portion thereof of a 24-hour period, spent away from home on authorized legislative business. However, if time spent for business other than authorized legislative business results in lengthening a legislator's stay away from home into an additional 24-hour period, ~~he~~ the legislator may not be compensated for the additional day."

**Section 17.** Section 13-37-106, MCA, is amended to read:

**"13-37-106. Salary.** (1) The commissioner of political practices ~~is entitled to receive an annual salary of \$31,551 and beginning October 1, 1997, is entitled to receive a salary, as of the first full pay period in fiscal year 2008, based on an hourly rate of \$25.995 equal to the market salary of a grade 18 classified employee as provided in 2-18-312.~~

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

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

(4) 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."

**Section 18.** 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 must possess knowledge of the subject of taxation and skill in matters ~~pertaining thereto~~ relating to taxation. ~~No person so appointed~~ A member may not hold any other state office or any office 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 ~~shall~~ 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 ~~transferred~~ allocated to the department of administration for administrative purposes only as is specified 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 ~~shall~~ must be paid a salary, as of the first full period of fiscal year 2008, based upon an hourly rate of \$20.67, except that the member designated as the presiding officer must

~~receive a salary based on an hourly rate of \$21.704 equivalent to that of a grade 17 salary as provided in 2-18-342. State tax appeal board members must receive pay and pay adjustments consistent with those required by the legislature for classified state employees in 2-18-303 and 2-18-304. The member designated as presiding officer as provided for in 15-2-103 must have an additional 5% added to the salary. All members of the board shall must receive travel expenses as provided for in 2-18-501 through 2-18-503, as amended; when away from the capital on official business."~~

**Section 19.** Section 17-7-102, MCA, is amended to read:

**"17-7-102. Definitions.** As used in this chapter, the following definitions apply:

- (1) "Additional services" means different services or more of the same services.
- (2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.
- (3) "Approving authority" means:
  - (a) the governor or the governor's designated representative for executive branch agencies;
  - (b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;
  - (c) the speaker for the house of representatives;
  - (d) the president for the senate;
  - (e) appropriate legislative committees or a designated representative for legislative branch agencies;
 or
  - (f) the board of regents of higher education or its designated representative for the university system.
- (4) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature.
- (5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.
- (6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.
- (7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set



forth in 17-8-101.

(8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) (a) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding.

(b) ~~For~~ Subject to subsection (9)(c), for purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(c) Any adjustment to the personal services portion of the base budget in excess of the funding provided in the fully funded pay plan approved by the previous legislature must be considered a new proposal. For the purposes of this subsection (9)(c), the fully funded pay plan is the aggregate amount appropriated for personal services by the previous legislature for a department, agency, or program, including present law adjustments.

(10) "Present law base" means subject to subsection (9)(c), that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

- (a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;
- (b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;
- (c) inflationary or deflationary adjustments; and
- (d) elimination of nonrecurring appropriations.

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell."

**Section 20.** 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 legislature may restrict the use of funds~~ Funds appropriated for personal services to allow use may be used only for the purpose of the appropriation, and funds not appropriated for personal services may not be used for personal services.

(b) An explanation of any significant transfer must be submitted on a regular basis to the interim committee that has program evaluation and monitoring functions for the agency pursuant to Title 5, chapter 5, part 2. 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.

(c) 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.

(d) 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.

(e) 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."

**Section 21.** Section 39-51-301, MCA, is amended to read:

**"39-51-301. Administration -- duties and powers of department.** (1) It is the duty of the department to administer this chapter and it may adopt, amend, or rescind rules to employ persons, make expenditures, require reports, make investigations, and take action that it considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and must have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

(5) Employees transferring from the department of revenue to the department as a result of the termination of the delegation of duties associated with unemployment insurance contribution functions are entitled to all rights, including those under 2-15-131, possessed as a state officer or employee before transferring, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department of revenue for recruitment purposes for 1 year from the date of the termination of the delegation of duties associated with unemployment insurance contribution functions.

(6) The department shall succeed the department of revenue in its rights to property relating to the termination of the delegation of duties associated with unemployment insurance contribution functions to the extent that is consistent with federal property transfer policy. The property includes real property, records, office equipment, forms, supplies, and contracts other than the program budget plan with the United States department of labor.

(7) (a) The termination of the delegation of duties associated with unemployment insurance contribution functions does not affect the validity of any pending judicial or administrative proceeding.

(b) All appeals that have not been heard prior to the termination of the delegation of duties associated

with unemployment insurance contribution functions must be made in accordance with the procedures identified in 39-51-1109.

(c) The department must be substituted for the department of revenue and succeed to all audits, determinations, and other actions following the date of the termination of the delegation of duties associated with unemployment insurance contribution functions.

(8) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the termination of the delegation of duties associated with unemployment insurance contribution functions remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the delegation of duties. The department is substituted for the department of revenue and succeeds to the rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this subsection do not apply to the program budget plan agreement between the department and the United States department of labor."

**Section 22.** Section 44-1-504, MCA, is amended to read:

**"44-1-504. Special revenue account to partially fund highway patrol officers' salaries -- statutory appropriation.** (1) There is an account in the state special revenue fund provided for in 17-2-102.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of justice to fund, pursuant to ~~2-18-303(10)~~ 2-18-303(6):

~~(a) an increase in the base salary for the number of highway patrol officer positions existing on June 30, 2006;~~

~~(b)(a)~~ the base salary and associated operating costs for ~~new~~ highway patrol officer positions created after June 30, 2006; and

~~(c)(b)~~ biennial salary increases ~~after June 30, 2006~~, for highway patrol officers."

NEW SECTION. **Section 23. Appropriations.** (1) There is appropriated to the state tax appeal board from the state general fund \$173,307 in fiscal year 2008 and \$174,014 in fiscal year 2009 to be used to pay salaries for state tax appeal board members.

(2) There is appropriated to the office of the commissioner of political practices \$73,587 in fiscal year 2008 and \$76,136 in fiscal year 2009 to be used to pay the salary for the commissioner of political practices.

NEW SECTION. **Section 24. Repealer.** Sections 2-18-205 and 2-18-312, MCA, are repealed.

COORDINATION SECTION. **Section 25. Coordination instruction.** If House Bill No. 13 and [this act] are both passed and approved and if House Bill No. 13 and [this act] both amend sections 13-37-106 and 15-2-102, then the amendments to those sections in House Bill No. 13 are void.

NEW SECTION. **Section 26. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2007.

(2) [Sections 1 through 16 and 19 through 22] are effective January 1, 2009.

NEW SECTION. **Section 27. Applicability.** (1) [Sections 15 and 16] apply to legislators beginning with the legislative session convening in January 2009.

(2) [Sections 1 through 14 and 18 through 21] apply to collective bargaining negotiations commenced prior to the 61st legislative session.

- END -

