

HOUSE BILL NO. 464

INTRODUCED BY J. ELLIS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE STATE
5 EMPLOYEE PAY PLANS; REVISING THE DUTIES OF THE DEPARTMENT OF ADMINISTRATION RELATED
6 TO PERSONNEL ADMINISTRATION; REVISING DEFINITIONS; REQUIRING THE DEPARTMENT OF
7 ADMINISTRATION TO REPORT CERTAIN INFORMATION BIENNIALY; REVISING ADMINISTRATION OF
8 THE BROADBAND PAY PLAN; PROVIDING THAT IMPLEMENTATION OF A PAY PLAN IS A NEGOTIABLE
9 SUBJECT FOR MEMBERS OF A COLLECTIVE BARGAINING UNIT; AMENDING SECTIONS 2-18-101,
10 2-18-102, 2-18-203, 2-18-301, 2-18-303, 2-18-1011, AND 2-18-1107, MCA; AND PROVIDING AN EFFECTIVE
11 DATE."

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

14
15 **Section 1.** Section 2-18-101, MCA, is amended to read:

16 **"2-18-101. Definitions.** As used in parts 1 through 3 and part 10 of this chapter, the following definitions
17 apply:

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

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

- 21 (a) state contributions to group benefits provided in 2-18-703;
- 22 (b) overtime;
- 23 (c) fringe benefits as defined in 39-2-903; and
- 24 (d) the longevity allowance provided in 2-18-304.

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

27 (4) "Blue-collar pay plan" means a strictly negotiated classification and pay plan consisting of unskilled
28 or skilled labor, trades, and crafts occupations. Blue-collar employees are excluded from the broadband pay plan.

29 ~~(4)~~(5) "Board" means the board of personnel appeals established in 2-15-1705.

30 ~~(5)~~(6) "Broadband classification plan" means a job evaluation method that measures the ~~difficulty~~



1 complexity of the work and using job evaluation factors and assigns an occupation to each position based on the
 2 knowledge or skills required to perform the work.

3 ~~(6)(7)~~ "Broadband pay plan" means a pay plan using a pay hierarchy of ~~broad pay bands~~ based on the
 4 broadband classification plan requiring pay to be set within pay schedules of each occupation.

5 ~~(7)(8)~~ "Compensation" means the annual or hourly wage or salary and includes the state contribution
 6 to group benefits under the provisions of 2-18-703.

7 ~~(8)(9)~~ "Competencies" means sets of measurable and observable knowledge, skills, and behaviors that
 8 contribute to success in a position.

9 ~~(9)(10)~~ "Competitive pay zone" means that portion of the pay range for a band level of an occupation that
 10 is most consistent with the pay being offered by competing employers for fully competent employees within that
 11 occupation.

12 ~~(10)(11)~~ "Department" means the department of administration created in 2-15-1001.

13 ~~(11)(12)~~ (a) Except in 2-18-306, "employee" means any state employee other than an employee excepted
 14 under 2-18-103 or 2-18-104.

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

16 ~~(12)(13)~~ "Job evaluation factor" means a measure of the complexities of the predominant duties of a
 17 position.

18 ~~(13)(14)~~ "Job sharing" means the sharing by two or more persons of a position.

19 ~~(14)(15)~~ "Market ~~salary~~ midpoint" means the median base salary that other employers pay to employees
 20 in comparable occupations as determined by the department's salary survey of the relevant labor market.

21 ~~(15)(16)~~ "Occupation" means a ~~generalized family of positions having substantially similar duties and~~
 22 ~~requiring similar qualifications, education, and experience~~ category of work based on similar knowledge, skills,
 23 and general characteristics that is used to identify a group of jobs.

24 ~~(16)(17)~~ "Pay band" means a wide salary range covering a number of different occupations with similar
 25 complexity.

26 (18) "Pay schedule" is a range of pay for each occupation employed by an agency.

27 ~~(17)(19)~~ "Permanent employee" means an employee who is designated by an agency as permanent and
 28 who has attained or is eligible to attain permanent status.

29 ~~(18)(20)~~ "Permanent status" means the state an employee attains after satisfactorily completing an
 30 appropriate probationary period.

1 ~~(19)~~(21) "Personal staff" means those positions occupied by employees appointed by the elected officials
2 enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

3 ~~(20)~~(22) "Position" means a collection of duties and responsibilities currently assigned or delegated by
4 competent authority, requiring the full-time, part-time, or intermittent employment of one person.

5 ~~(21)~~(23) "Program" means a combination of planned efforts to provide a service.

6 ~~(22)~~(24) "Seasonal employee" means a permanent employee who is designated by an agency as
7 seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights
8 or benefits accrued during the preceding season.

9 ~~(23)~~(25) "Short-term worker" means a person who:

- 10 (a) is hired by an agency for an hourly wage established by the agency;
11 (b) may not work for the agency for more than 90 days in a continuous 12-month period;
12 (c) is not eligible for permanent status;
13 (d) may not be hired into another position by the agency without a competitive selection process; and
14 (e) is not eligible to earn the leave and holiday benefits provided in part 6 of this chapter or the group
15 insurance benefits provided in part 7 of this chapter.

16 ~~(24)~~(26) "Student intern" means a person who:

- 17 (a) has been accepted in or is currently enrolled in an accredited school, college, or university and is
18 hired directly by an agency in a student intern position;
19 (b) is not eligible for permanent status;
20 (c) is not eligible to become a permanent employee without a competitive selection process;
21 (d) must be covered by the hiring agency's workers' compensation insurance;
22 (e) is not eligible to earn the leave and holiday benefits provided for in part 6 of this chapter or the group
23 insurance benefits provided in part 7 of this chapter; and
24 (f) may be discharged without cause.

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

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

- 29 (a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;
30 (b) performs temporary duties or permanent duties on a temporary basis;

- 1 (c) is not eligible for permanent status;
 2 (d) is terminated at the end of the employment period; and
 3 (e) is not eligible to become a permanent employee without a competitive selection process."
 4

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

6 **"2-18-102. Personnel administration -- general policy setting.** (1) Except as otherwise provided by
 7 law or collective bargaining agreement, the department shall:

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

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

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

14 (d) investigate from time to time the operation and effect of parts 1 ~~and 2~~ through 3 of this chapter and
 15 the policies made under those parts and report the findings and recommendations to the governor;

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

18 (f) apply and carry out parts 1 ~~and 2~~ through 3 and the policies under those parts and perform any other
 19 lawful acts that may be necessary or desirable to carry out the purposes and provisions of parts 1 ~~and 2~~ through
 20 3.

21 (2) The department may delegate authority granted to it under parts 1 ~~and 2~~ through 3 to agencies in
 22 the state service that effectively demonstrate the ability to carry out the provisions of parts 1 ~~and 2~~ through 3,
 23 provided that the agencies remain in compliance with policies, procedures, timetables, and standards established
 24 by the department.

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

30 (4) The department shall develop model rules of conduct for all state employees based upon the

1 provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the
 2 provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional rules
 3 appropriate to the specific circumstances of the agency."

4

5 **Section 3.** Section 2-18-203, MCA, is amended to read:

6 **"2-18-203. Review of positions -- change in pay band allocation classification.** (1) The department
 7 shall review the job evaluation factor of positions on a regular basis and may adjust the occupations for the
 8 positions to reflect significant changes in duties and responsibilities. If adjustments are to be made to benchmarks
 9 or criteria used for ~~allocating~~ classifying positions to ~~pay bands~~ affecting employees within a bargaining unit, the
 10 department shall consult with the representative of the bargaining unit prior to implementation of the adjustments,
 11 except for positions factored in the blue-collar pay plan, which must remain a mandatory negotiable item under
 12 Title 39, chapter 31.

13 (2) Employees and employee organizations must be given the opportunity to appeal ~~the allocation or~~
 14 ~~reallocation of a position to a pay band~~ their classifications. The ~~pay band assigned to an occupation and~~
 15 ~~benchmarks~~ classification standards are not appealable subjects under 2-18-1011 through 2-18-1013.

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

19

20 **Section 4.** Section 2-18-301, MCA, is amended to read:

21 **"2-18-301. Intent of part -- rules -- policies -- state agencies to report.** (1) It is the intent of the
 22 legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103
 23 or 2-18-104, be based, in part, on an analysis of the labor markets as provided by the department in a biennial
 24 salary survey. The salary survey must be submitted to the office of budget and program planning as a part of the
 25 information required by 17-7-111.

26 (2) Pay adjustments, if any, provided for in 2-18-303 supersede any other plan or systems established
 27 through collective bargaining after the adjournment of the legislature.

28 (3) Total funds required to implement the pay increases, if any, provided for in 2-18-303 for any
 29 employee group or bargaining unit may not be increased through collective bargaining over the amount
 30 appropriated by the legislature.

1 (4) The department shall administer the pay program established by the legislature on the basis of
2 competency, internal equity, and competitiveness to the external labor market when fiscally able.

3 (5) The broadband pay plan must consist of nine pay bands, competitive pay zones, and agency pay
4 schedules. Each pay band must contain a salary range with a minimum salary and a maximum salary.

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

6 ~~_____ (a) identify current market rates for all occupations;~~

7 ~~_____ (b) establish salary ranges for each pay band; and~~

8 ~~_____ (c) recommend~~ identify competitive pay zones and market midpoints for each occupation at the
9 appropriate job evaluation factor. By July 1 of each odd-numbered year, or when collective bargaining
10 agreements are ratified as provided in 2-18-303, each agency under the broadband plan shall establish pay
11 schedules using the most recent biennial salary survey for each occupation at the appropriate job evaluation
12 factor and document the reason in the pay plan rules if the pay schedule is different from the department's
13 competitive pay zone.

14 (7) No later than November 15 of each even-numbered year, the department shall prepare reports. The
15 reports must:

16 (a) compare agency base salaries by occupation to occupational pay zones and the market midpoints
17 in the most recent biennial salary survey and the biennial salary survey that is currently in effect;

18 (b) describe all base pay increases and the reasons for an increase that is more than any increase
19 provided in 2-18-303(3); and

20 (c) be submitted to the governor and the legislative finance committee and made available to the public.

21 ~~(7)(8)~~ The department may promulgate rules or policies not inconsistent with the provisions of this part,
22 collective bargaining statutes, or negotiated contracts to carry out the purposes of this part.

23 ~~(8)(9)~~ Nothing in this part prohibits the board of regents from engaging in negotiations with the collective
24 bargaining units representing the classified staff of the university system."
25

26 **Section 5.** Section 2-18-303, MCA, is amended to read:

27 **"2-18-303. Procedures for administering broadband pay plan.** (1) On the first day of the first
28 complete pay period in fiscal year ~~2016~~ 2018, each employee is entitled to the amount of the employee's base
29 salary as it was on June 30, ~~2015~~ 2017.

30 (2) An employee's base salary may be no less than the minimum salary ~~of the pay band to which the~~

1 ~~employee's position is allocated~~ for the employee's classification as determined by the agency's pay schedule.

2 (3) Effective on the first day of the first complete pay period that includes January 15, 2016, the base
3 salary of each employee must be increased by 50 cents an hour. Effective on the first day of the first complete
4 pay period that includes January 15, 2017, the base salary of each employee must be increased by 50 cents an
5 hour. To the extent that the plan applies to employees within a collective bargaining unit, the implementation of
6 the plan is a negotiable subject under 39-31-305.

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

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

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

16 (c) An agency may not increase an employee's pay for a broadband pay reason unless the increase is
17 first approved by the office of budget and program planning.

18 (5) (a) Montana highway patrol officer base salaries must be established through the broadband pay
19 plan. Before January 1 of each odd-numbered year, the department shall, after seeking the advice of the Montana
20 highway patrol, conduct a salary survey to be used in establishing the base salary for existing and entry-level
21 highway patrol officer positions. The county sheriff's offices in the following consolidated governments and
22 counties are the labor market for purposes of the survey: Butte-Silver Bow, Cascade, Yellowstone, Missoula,
23 Lewis and Clark, Gallatin, Flathead, and Dawson. The base salary for existing and entry-level highway patrol
24 officer positions must then be determined by the department of justice, using the results of the salary survey and
25 the department of justice pay plan guidelines. Base or biennial salary increases under this subsection are
26 exclusive of and not in addition to any increases otherwise awarded to other state employees after July 1, 2006.

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

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

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

3

4 **Section 6.** Section 2-18-1011, MCA, is amended to read:

5 **"2-18-1011. ~~Pay band allocation~~ Classification or compensation grievance -- retaliation -- hearing**

6 **on complaint.** (1) An employee or the employee's representative affected by the implementation of parts 1
7 through 3 of this chapter is entitled to file a complaint with the board of personnel appeals provided for in
8 2-15-1705 and to be heard under the provisions of a grievance procedure to be prescribed by the board.

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

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

20

21 **Section 7.** Section 2-18-1107, MCA, is amended to read:

22 **"2-18-1107. Salary increase based on elimination of position.** An agency head, as defined in
23 2-18-1101, may, with the approval of the approving authority, as defined in 17-7-102, increase the salary for one
24 or more positions in the agency by the amount of the salary for a position that was permanently eliminated by the
25 agency within the last 30 days. However, an increased salary may not exceed the market ~~salary~~ midpoint for that
26 position determined under Title 2, chapter 18, part 3. If an eliminated position's salary is redistributed under this
27 section, the agency may not be given an increased appropriation in regard to the eliminated position under
28 2-15-112(2)(e). An increase for an employee who is in a collective bargaining unit is a negotiable subject under
29 39-31-305."

30

1 NEW SECTION. **Section 8. Effective date.** [This act] is effective July 1, 2017.

2 - END -