

SENATE BILL NO. 294

INTRODUCED BY S. FITZPATRICK

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3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO STATE
5 GOVERNMENT PAY PLANS; ~~ELIMINATING PAY BANDS~~; REQUIRING AN EMPLOYEE'S COMPENSATION
6 TO FALL WITHIN THE OCCUPATIONAL WAGE RANGE OF AN EMPLOYEE'S OCCUPATION; PROVIDING
7 DEFINITIONS RELATED TO COMPENSATION; REQUIRING THE OFFICE OF BUDGET AND PROGRAM
8 PLANNING TO REVIEW AND APPROVE ~~CHANGES TO AN AGENCY'S CLASSIFICATION OF AN~~
9 ~~OCCUPATION OR ITS RELATED JOB EVALUATION FACTORS~~ PAY INCREASES ABOVE AN EMPLOYEE'S
10 OCCUPATIONAL WAGE RANGE; ALLOWING IMPLEMENTATION OF A PAY PLAN TO BE A NEGOTIABLE
11 TERM FOR A COLLECTIVE BARGAINING UNIT; PROVIDING RULEMAKING AUTHORITY; AMENDING
12 SECTIONS 2-18-101, 2-18-102, 2-18-203, 2-18-301, 2-18-303, 2-18-1011, 2-18-1107, 2-18-1204, 13-37-106,
13 AND 15-2-102, MCA; AND PROVIDING AN EFFECTIVE DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **Section 1.** Section 2-18-101, MCA, is amended to read:

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

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

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

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

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

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

1 ~~(4)~~(5) "Board" means the board of personnel appeals established in 2-15-1705.

2 ~~(5)~~(6) "Broadband classification plan" means a job evaluation method that measures the difficulty of the
3 work and the knowledge or skills required to perform the work.

4 ~~(6)~~(7) "Broadband pay plan" means a pay plan using a pay hierarchy OF BROAD PAY BANDS AND ~~of broad~~
5 ~~pay bands~~ based on ~~the broadband~~ a classification plan, including market midpoint and occupational wage
6 ranges.

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

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

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

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

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

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

18 ~~(12)~~ "Entry salary" means a salary that is at least the occupational wage range minimum base salary for
19 each occupation. The term does not include compensation for training assignments of less than 1 year.

20 ~~(12)~~(13)~~(12)~~ "Job evaluation factor" means a measure of the complexities of the predominant duties of
21 a position.

22 ~~(13)~~(14)~~(13)~~ "Job sharing" means the sharing by two or more persons of a position.

23 ~~(14)~~(15)~~(14)~~ "Market salary" "Market midpoint" means the median base salary that other employers pay
24 to employees in comparable occupations as determined by the department's salary survey of the relevant labor
25 market.

26 ~~(15)~~(16)~~(15)~~ "Occupation" means a generalized family of positions having substantially similar duties and
27 requiring similar qualifications, education, and experience.

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

29 (16) "PAY BAND" MEANS A WIDE SALARY RANGE COVERING A NUMBER OF DIFFERENT OCCUPATIONS. PAY BANDS
30 ARE USED FOR REPORTING AND ANALYSIS PURPOSES ONLY.

1 ~~(17)(16)~~(17) "Occupational wage range" means a range of pay, including a minimum, market midpoint,
 2 and maximum salary, for a specific occupation that is most consistent with the pay being offered by competing
 3 employers for fully competent employees within that occupation. ~~THE MINIMUM SALARY FOR AN EMPLOYEE MAY NOT~~
 4 ~~BE GREATER THAN THE EMPLOYEE'S BASE SALARY AS OF [THE EFFECTIVE DATE OF THIS ACT]. THE SALARY FOR AN~~
 5 ~~EMPLOYEE MAY BE LESS THAN THE MINIMUM SALARY.~~

6 ~~(18)(17)~~(18) "Pay progression" means a process by which an employee's compensation may be
 7 increased, based on ~~improved competency~~ FACTORS DETERMINED BY THE DEPARTMENT, to bring the employee's
 8 compensation to a higher rate within the occupational wage range of the employee.

9 ~~(17)(19)(18)~~(19) "Permanent employee" means an employee who is designated by an agency as
 10 permanent and who has attained or is eligible to attain permanent status.

11 ~~(18)(20)(19)~~(20) "Permanent status" means the state an employee attains after satisfactorily completing
 12 an appropriate probationary period.

13 ~~(19)(21)(20)~~(21) "Personal staff" means those positions occupied by employees appointed by the elected
 14 officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as
 15 a whole.

16 ~~(20)(22)(21)~~(22) "Position" means a collection of duties and responsibilities currently assigned or
 17 delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

18 ~~(21)(23)(22)~~(23) "Program" means a combination of planned efforts to provide a service.

19 ~~(22)(24)(23)~~(24) "Seasonal employee" means a permanent employee who is designated by an agency
 20 as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights
 21 or benefits accrued during the preceding season.

22 ~~(23)(25)(24)~~(25) "Short-term worker" means a person who:

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

29 ~~(24)(26)(25)~~(26) "Student intern" means a person who:

- 30 (a) has been accepted in or is currently enrolled in an accredited school, college, or university and is

- 1 hired directly by an agency in a student intern position;
- 2 (b) is not eligible for permanent status;
- 3 (c) is not eligible to become a permanent employee without a competitive selection process;
- 4 (d) must be covered by the hiring agency's workers' compensation insurance;
- 5 (e) is not eligible to earn the leave and holiday benefits provided for in part 6 of this chapter or the group
- 6 insurance benefits provided in part 7 of this chapter; and
- 7 (f) may be discharged without cause.

8 ~~(25)(27)(26)(27)~~ "Telework" means a flexible work arrangement where a designated employee may work

9 from home within the state of Montana or an alternative worksite within the state of Montana 1 or more days a

10 week instead of physically traveling to a central workplace.

11 ~~(26)(28)(27)(28)~~ "Temporary employee" means an employee who:

- 12 (a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;
- 13 (b) performs temporary duties or permanent duties on a temporary basis;
- 14 (c) is not eligible for permanent status;
- 15 (d) is terminated at the end of the employment period; and
- 16 (e) is not eligible to become a permanent employee without a competitive selection process."

17

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

19 **"2-18-102. Personnel administration -- general policy setting -- and oversight.** (1) Except as

20 otherwise provided by law or collective bargaining agreement, the department shall:

- 21 (a) ~~encourage~~ and exercise leadership in the development of effective personnel administration within
- 22 the several agencies in the state and make available the facilities of the department to this end;
- 23 (b) foster and develop programs for recruitment and selection of capable persons for employment and
- 24 for the improvement of employee effectiveness, including training, ethical conduct, safety, health, counseling,
- 25 welfare, discipline, grievances, and evaluation for productivity and retention in permanent status;
- 26 (c) foster, develop, and promote job sharing in agencies;
- 27 (d) investigate from time to time the operation and effect of ~~parts 1 and 2~~ PARTS 1 THROUGH 3 of this
- 28 chapter and the policies made under those parts and report the findings and recommendations to the governor;
- 29 (e) establish policies, procedures, and forms for the maintenance of records of all employees in the state
- 30 service;

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

4 (2) The department may delegate authority granted to it under ~~parts 1 and 2~~ PARTS 1 THROUGH 3 to
 5 agencies in the state service that effectively demonstrate the ability to carry out the provisions of ~~parts 1 and 2~~
 6 PARTS 1 THROUGH 3, provided that the agencies remain in compliance with policies, procedures, timetables, and
 7 standards established by the department.

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

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

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

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

20 (A) APPROVE ANY SALARY INCREASE PROPOSED BY AN AGENCY THAT EXCEEDS AN EMPLOYEE'S OCCUPATIONAL
 21 WAGE RANGE PRIOR TO THE INCREASE GOING INTO EFFECT;

22 (b) ensure MONITOR THE WAY each agency compensates its employees within the parameters of the
 23 occupational wage range for each occupation; and

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

27 (6) THE PROVISIONS OF SUBSECTION (5)(A) DO NOT APPLY TO EMPLOYEES OF THE FOLLOWING AGENCIES:

28 (A) THE DEPARTMENT OF JUSTICE;

29 (B) THE OFFICE OF PUBLIC INSTRUCTION;

30 (C) THE PUBLIC SERVICE COMMISSION;

1 (D) THE SECRETARY OF STATE; AND
 2 (E) THE STATE AUDITOR'S OFFICE.
 3 (7) THE DEPARTMENT OF ADMINISTRATION SHALL ADOPT RULES AND PROCEDURES FOR JOB CLASSIFICATION.
 4 ~~(6)(8) An agency may not change the classification of an occupation or its related job evaluation factors~~
 5 ~~until the agency submits the proposed changes to and receives approval from the office of budget and program~~
 6 ~~planning~~ DEPARTMENT OF ADMINISTRATION."
 7

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

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

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

19 (3) The period of time for which retroactive pay for a ~~pay band allocation~~ compensation or classification
 20 appeal may be awarded under 2-18-1011 through 2-18-1013 or under parts 1 through 3 of this chapter may not
 21 extend beyond 30 days prior to the date on which the appeal was filed."
 22

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

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

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

30 (3) Total funds required to implement the pay increases, if any, provided for in 2-18-303 for any

1 employee group or bargaining unit may not be increased through collective bargaining over the amount
2 appropriated by the legislature.

3 (4) ~~The~~ When fiscally able, the department shall administer the pay program established by the
4 legislature on the basis of competency, ~~internal equity, and~~ competitiveness to the external labor market ~~when~~
5 ~~fiscally able, pay progression, and other nondiscriminatory factors, while considering pay relationships within an~~
6 ~~agency or pay unit.~~

7 (5) The broadband pay plan must consist of NINE PAY BANDS INCLUDING ~~nine pay bands~~ occupational
8 wage ranges based on an occupation and its job evaluation factor. Each ~~pay band~~ occupational wage range must
9 contain a salary range with a minimum, salary market midpoint, and a maximum salary. ~~THE MINIMUM SALARY FOR~~
10 ~~AN EMPLOYEE MAY NOT BE GREATER THAN THE EMPLOYEE'S BASE SALARY AS OF [THE EFFECTIVE DATE OF THIS ACT]. THE~~
11 SALARY FOR AN EMPLOYEE MAY BE LESS THAN THE MINIMUM SALARY.

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

13 (a) identify current market ~~rates~~ midpoints for all occupations; and

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

15 ~~— (c) recommend competitive pay zones.~~

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

18 (8) Nothing in this part prohibits the board of regents from engaging in negotiations with the collective
19 bargaining units representing the classified staff of the university system."
20

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

22 **"2-18-303. Procedures for administering broadband pay plan.** (1) On the first day of the first
23 complete pay period in fiscal year ~~2016~~ 2018, each employee is entitled to the amount of the employee's base
24 salary as it was on June 30, ~~2015~~ 2017.

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

27 (2) 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 (3) Effective on the first day of the first complete pay period that includes January 15, 2016, the base
30 salary of each employee must be increased by 50 cents an hour. Effective on the first day of the first complete

1 pay period that includes January 15, 2017, the base salary of each employee must be increased by 50 cents an
2 hour.

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

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

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

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

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

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

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

27

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

29 **"2-18-1011. ~~Pay band allocation~~ Classification or compensation grievance -- retaliation -- hearing**
30 **on complaint.** (1) An employee or the employee's representative affected by the implementation of parts 1

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

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

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

14
 15 **Section 7.** Section 2-18-1107, MCA, is amended to read:

16 **"2-18-1107. Salary increase based on elimination of position.** An agency head, as defined in
 17 2-18-1101, may, with the approval of the approving authority, as defined in 17-7-102, increase the salary for one
 18 or more positions in the agency by the amount of the salary for a position that was permanently eliminated by the
 19 agency within the last 30 days. However, an increased salary may not exceed the market ~~salary~~ midpoint for that
 20 position determined under Title 2, chapter 18, part 3. If an eliminated position's salary is redistributed under this
 21 section, the agency may not be given an increased appropriation in regard to the eliminated position under
 22 2-15-112(2)(e). An increase for an employee who is in a collective bargaining unit is a negotiable subject under
 23 39-31-305."

24
 25 **Section 8.** Section 2-18-1204, MCA, is amended to read:

26 **"2-18-1204. Salary and benefits protection -- employee transfer.** An employee whose position is
 27 eliminated as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency,
 28 or other actions by the legislature and who is subsequently transferred to a different position in a state agency
 29 is entitled to:

30 (1) the same hourly salary as previously received if the new position is ~~in the same competitive pay zone~~

- 1 the same classification or higher as the one previously held;
- 2 (2) retain all accrued sick leave credits;
- 3 (3) retain, cash out, or use accrued vacation leave credits to extend the employee's effective layoff date;
- 4 and
- 5 (4) relocation expenses as provided in agency policy."

6

7 **Section 9.** Section 13-37-106, MCA, is amended to read:

8 "**13-37-106. Salary.** ~~(1) The commissioner of political practices is entitled to receive a salary within the~~
 9 ~~pay band, as defined in 2-18-101, determined by the department of administration as provided in subsection (4).~~

10 ~~(2)~~(1) The commissioner of political practices is also entitled to longevity, expense reimbursement, leave,
 11 insurance, and other benefits provided to classified state employees under Title 2, chapter 18.

12 ~~(3)~~(2) The salary of the commissioner may not be reduced during the term for which the commissioner
 13 is appointed.

14 ~~(4)~~(3) The department of administration shall determine the appropriate occupation ~~and pay band~~ for
 15 the commissioner of political practices in the same manner that it determines the occupation ~~and pay band~~ for
 16 employees in state government pursuant to Title 2, chapter 18.

17 ~~(5)~~(4) The governor shall set the salary of the commissioner of political practices within the ~~pay band~~
 18 occupational wage range for the occupation established by the department of administration.

19 ~~(6)~~(5) The commissioner of political practices must receive pay adjustments consistent with those
 20 required by the legislature for state employees in 2-18-303 and 2-18-304."

21

22 **Section 10.** Section 15-2-102, MCA, is amended to read:

23 "**15-2-102. Qualification and compensation.** (1) To be appointed a member of the state tax appeal
 24 board, a person shall possess knowledge of the subject of taxation and skill in matters relating to taxation. A
 25 member may not hold any other state office or any office under the government of the United States or under the
 26 government of any other state. The person shall devote the entire time to the duties of the office and may not hold
 27 any other position of trust or profit or engage in any occupation or business interfering or inconsistent with the
 28 person's duties. The state tax appeal board is attached to the department of administration for administrative
 29 purposes only as provided in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does
 30 not apply.

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

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

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

13

14 NEW SECTION. Section 11. Effective date. [This act] is effective July 1, 2017.

15

- END -