

SENATE BILL NO. 152

INTRODUCED BY J. SESSO

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO STATE EMPLOYEES; REVISING
5 WHAT CONSTITUTES BASE SALARY AND COMPENSATION; REVISING DEFINITIONS OF CERTAIN
6 WORKERS AND EMPLOYEES; REVISING THE EMPLOYER CONTRIBUTION TO GROUP BENEFITS;
7 ELIMINATING THE OPTION TO DEPOSIT CERTAIN EMPLOYEE-DESIGNATED PORTIONS OF THE
8 EMPLOYER CONTRIBUTION TO GROUP BENEFITS INTO A FLEXIBLE SPENDING ACCOUNT; REVISING
9 ~~CERTAIN OPTIONAL PAYMENTS TO A LEGISLATOR'S INSURER WHEN THE LEGISLATOR DOES NOT~~
10 ~~ENROLL OR TERMINATES ENROLLMENT IN THE GROUP PLAN~~; AMENDING SECTIONS 2-18-101,
11 2-18-601, 2-18-701, 2-18-703, AND 2-18-812, AND 5-2-303, MCA; AND PROVIDING EFFECTIVE DATES AND
12 A RETROACTIVE APPLICABILITY DATE."

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

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

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

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

21 (2) "Base salary" means the ~~amount of compensation~~ BASE HOURLY PAY RATE ANNUALIZED paid to an
22 employee, excluding: OVERTIME AND LONGEVITY.

23 ~~(a) state contributions to group benefits provided in 2-18-703;~~

24 ~~(b)(a) overtime;~~

25 ~~(c) fringe benefits as defined in 39-2-903; and~~

26 ~~(d)(b) the longevity allowance provided in 2-18-304; and~~

27 ~~(c) leave and holiday benefits provided in part 6 of this chapter.~~

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

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

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

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

5 (7) "Compensation" means the annual or hourly wage or salary and includes the ~~state contribution to~~
6 ~~group benefits under the provisions of 2-18-703~~ longevity allowance provided in 2-18-304 and leave and holiday
7 benefits provided in part 6 of this chapter.

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

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

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

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

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

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

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

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

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

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

24 (17) "Permanent employee" means an employee who is designated by an agency as permanent, who
25 was hired through a competitive selection process unless excepted from the competitive process by law, and who
26 has attained or is eligible to attain permanent status.

27 (18) "Permanent status" means the state an employee attains after satisfactorily completing an
28 appropriate probationary period.

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

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

3 (21) "Program" means a combination of planned efforts to provide a service.

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

7 (23) "Short-term worker" means a person who:

8 (a) ~~is~~ may be hired by an agency without using a competitive hiring process for an hourly wage
9 established by the agency;

10 (b) may not work for the agency for more than 90 days in a continuous 12-month period;

11 (c) is not eligible for permanent status;

12 (d) may not be hired into ~~another~~ a permanent position by the agency without a competitive selection
13 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;~~ and

16 (f) may be discharged without cause.

17 (24) "Student intern" means a person who:

18 (a) has been accepted in or is currently enrolled in an accredited school, college, or university and ~~is~~ may
19 be hired directly by an agency in a student intern position without using a competitive selection process;

20 (b) is not eligible for permanent status;

21 (c) is not eligible to become a permanent employee without a competitive selection process;

22 (d) must be covered by the hiring agency's workers' compensation insurance;

23 (e) is not eligible to earn the leave and holiday benefits provided for in part 6 of this chapter ~~or the group~~
24 ~~insurance benefits provided in part 7 of this chapter;~~ and

25 (f) may be discharged without cause.

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

29 (26) "Temporary employee" means an employee who:

30 (a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;

- 1 (b) performs ~~temporary duties or permanent~~ duties on a temporary basis;
2 (c) is not eligible for permanent status;
3 (d) is terminated at the end of the employment period; and
4 (e) is not eligible to become a permanent employee without a competitive selection process."
5

6 **Section 2.** Section 2-18-601, MCA, is amended to read:

7 **"2-18-601. Definitions.** For the purpose of this part the following definitions apply:

8 (1) (a) "Agency" means any legally constituted department, board, or commission of state, county, or
9 city government or any political subdivision of the state.

10 (b) The term does not mean the state compensation insurance fund.

11 (2) "Break in service" means a period of time in excess of 5 working days when the person is not
12 employed and that severs continuous employment.

13 (3) "Common association" means an association of employees established pursuant to 2-18-1310 for
14 the purposes of employer and employee participation in the plan.

15 (4) "Continuous employment" means working within the same jurisdiction without a break in service of
16 more than 5 working days or without a continuous absence without pay of more than 15 working days.

17 (5) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the
18 department of administration to participate in the plan.

19 (6) "Employee" means any person employed by an agency except elected state, county, and city
20 officials, schoolteachers, persons contracted as independent contractors or hired under personal services
21 contracts, and student interns.

22 (7) "Full-time employee" means an employee who normally works 40 hours a week.

23 (8) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or
24 20-1-305, except Sundays.

25 (9) "Member" means an employee who belongs to a voluntary employees' beneficiary association
26 established under 2-18-1310.

27 (10) "Part-time employee" means an employee who normally works less than 40 hours a week.

28 (11) "Permanent employee" means a permanent employee as defined in 2-18-101.

29 (12) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section
30 501(c)(9) pursuant to 2-18-1304.

- 1 (13) "Seasonal employee" means a seasonal employee as defined in 2-18-101.
- 2 (14) "Short-term worker" means:
- 3 (a) for the executive and judicial branches, a short-term worker as defined in 2-18-101; or
- 4 (b) for the legislative branch, an individual who:
- 5 (i) ~~is~~ may be hired by a legislative agency without using a competitive process for an hourly wage
- 6 established by the agency;
- 7 (ii) may not work for the agency for more than 6 months in a continuous 12-month period;
- 8 (iii) is not eligible for permanent status;
- 9 (iv) may not be hired into ~~another~~ a permanent position by the agency without a competitive selection
- 10 process; ~~and~~
- 11 (v) is not eligible to earn the leave and holiday benefits provided in this part ~~or the group insurance~~
- 12 ~~benefits provided in part 7; and~~
- 13 (vi) may be discharged without cause.
- 14 (15) "Sick leave" means a leave of absence with pay for:
- 15 (a) a sickness suffered by an employee or a member of the employee's immediate family; or
- 16 (b) the time that an employee is unable to perform job duties because of:
- 17 (i) a physical or mental illness, injury, or disability;
- 18 (ii) maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical care
- 19 for the employee or the employee's child;
- 20 (iii) parental leave for a permanent employee as provided in 2-18-606;
- 21 (iv) quarantine resulting from exposure to a contagious disease;
- 22 (v) examination or treatment by a licensed health care provider;
- 23 (vi) short-term attendance, in an agency's discretion, to care for a relative or household member not
- 24 covered by subsection (15)(a) until other care can reasonably be obtained;
- 25 (vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family
- 26 and Medical Leave Act of 1993; or
- 27 (viii) death or funeral attendance of an immediate family member or, at an agency's discretion, another
- 28 person.
- 29 (16) "Student intern" means a student intern as defined in 2-18-101.
- 30 (17) "Temporary employee" means a temporary employee as defined in 2-18-101.

1 (18) "Transfer" means a change of employment from one agency to another agency in the same
2 jurisdiction without a break in service.

3 (19) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal
4 business at the request of the employee and with the concurrence of the employer."
5

6 **Section 3.** Section 2-18-701, MCA, is amended to read:

7 **"2-18-701. Definitions.** As used in this part, the following definitions apply:

8 (1) "Dependent" has the meaning provided in 33-22-140.

9 (2) ~~(a)~~ "Employee", as the term applies to a person employed in the executive, judicial, or legislative
10 branches of state government, means:

11 ~~(i)~~(a) a permanent full-time employee, as provided in 2-18-601;

12 ~~(ii)~~(b) a permanent part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20
13 hours or more a week;

14 ~~(iii)~~(c) a seasonal full-time employee, as provided in 2-18-601, who is regularly scheduled to work 6
15 months or more a year or who works for a continuous period of more than 6 months a year although not regularly
16 scheduled to do so;

17 ~~(iv)~~(d) a seasonal part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20
18 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous period
19 of more than 6 months a year although not regularly scheduled to do so;

20 ~~(v)~~(e) elected officials;

21 ~~(vi)~~(f) officers and permanent employees of the legislative branch;

22 ~~(vii)~~(g) judges and permanent employees of the judicial branch;

23 ~~(viii)~~(h) academic, professional, and administrative personnel having individual contracts under the
24 authority of the board of regents of higher education or the state board of public education;

25 ~~(ix)~~(i) a temporary full-time employee, as provided in 2-18-601:

26 ~~(A)~~(i) who is regularly scheduled to work more than 6 months a year;

27 ~~(B)~~(ii) who works for a continuous period of more than 6 months a year although not regularly scheduled
28 to do so; or

29 ~~(C)~~(iii) whose temporary status is defined through collective bargaining;

30 ~~(x)~~(j) a temporary part-time employee, as provided in 2-18-601:

- 1 (A)(i) who is regularly scheduled to work 20 hours or more a week for 6 months or more a year;
- 2 (B)(ii) who works 20 hours or more a week for a continuous period of more than 6 months a year although
- 3 not regularly scheduled to do so; or
- 4 (C)(iii) whose temporary status is defined through collective bargaining; ~~and~~
- 5 (k) a full-time short-term worker, as provided in 2-18-101 and 2-18-601, who is in a position that does
- 6 not recur each year;
- 7 (l) a part-time short-term worker, as provided in 2-18-101 and 2-18-601, who is regularly scheduled to
- 8 work 20 hours or more a week in a position that does not recur each year; and
- 9 ~~(m)~~(m) a part-time or full-time employee of the state compensation insurance fund. As used in this
- 10 subsection, "part-time or full-time employee of the state compensation insurance fund" means an employee
- 11 eligible for inclusion in the state employee group benefit plans under the rules of the department of administration.
- 12 ~~(b) The term does not include a student intern, as defined in 2-18-101."~~

- 13
- 14 **Section 4.** Section 2-18-703, MCA, is amended to read:
- 15 **"2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, and the state compensation
- 16 insurance fund shall contribute the amount specified in this section toward the group benefits cost.
- 17 (2) (a) For employees defined in 2-18-701 and for members of the legislature, the employer contribution
- 18 for group benefits is ~~\$887 a month from January 2015 through December 2015, \$976 a month from January 2016~~
- 19 ~~through December 2016, and \$1,054 a month from January 2017 through December 2017~~ 2019.
- 20 (b) For employees defined in 2-18-701 and for members of the legislature, beginning January ~~2018~~ 2020
- 21 and for each succeeding month, the cost of group benefits, including both the employer and employee
- 22 contributions for group benefits and health flexible spending accounts, may not exceed the monthly amount for
- 23 self-only coverage and coverage other than self-only that will trigger the excise tax under 26 U.S.C. 4980I,
- 24 including any cost-of-living adjustments under 26 U.S.C. 4980I. This section limits contributions for group benefits
- 25 only to the extent needed to avoid triggering the excise tax under 26 U.S.C. 4980I.
- 26 (c) For employees of the Montana university system, the employer contribution for group benefits is ~~\$887~~
- 27 ~~a month from July 2014 through June 2016 and \$1,054 a month from July 2016 through the earlier of:~~
- 28 (i) June ~~2018~~ 2020; or
- 29 (ii) the month before the first month in which the excise tax under 26 U.S.C. 4980I applies.
- 30 (d) For employees of the Montana university system, beginning the earlier of July ~~2018~~ 2020 or the first

1 month in ~~2018~~ 2020 in which the excise tax under 26 U.S.C. 4980I applies, and for each succeeding month, the
2 cost of group benefits, including both the employer and employee contributions for group benefits and health
3 flexible spending accounts, may not exceed the monthly amount for self-only coverage and coverage other than
4 self-only that will trigger the excise tax under 26 U.S.C. 4980I, including any cost-of-living adjustments under 26
5 U.S.C. 4980I. This section limits contributions for group benefits only to the extent needed to avoid triggering the
6 excise tax under 26 U.S.C. 4980I.

7 (e) If a state employee is terminated to achieve a reduction in force, the continuation of contributions for
8 group benefits beyond the termination date is subject to negotiation under 39-31-305 and to the protections of
9 2-18-1205. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly
10 scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who
11 elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion
12 of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B
13 of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the
14 secondary payer and medicare the primary payer.

15 (3) For employees of elementary and high school districts, the employer's contributions may exceed but
16 may not be less than \$10 a month.

17 (4) (a) For employees of political subdivisions, as defined in 2-9-101, except school districts, the
18 employer's contributions may exceed but may not be less than \$10 a month.

19 (b) Subject to the public hearing requirement provided in 2-9-212(2)(b), the amount in excess of the base
20 contribution of a local government's property tax levy for contributions for group benefits as determined in
21 subsection (4)(c) is not subject to the mill levy calculation limitation provided for in 15-10-420.

22 (c) (i) Subject to subsections (4)(c)(ii) and (4)(c)(iii), the base contribution is determined by multiplying
23 the average annual contribution for each employee on July 1, 1999, times the number of employees for whom
24 the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal year.

25 (ii) If a political subdivision did not make contributions for group benefits on or before July 1, 1999, and
26 subsequently does so, the base contribution is determined by multiplying the average annual contribution for each
27 employee in the first year the political subdivision provides contributions for group benefits times the number of
28 employees for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal
29 year.

30 (iii) If a political subdivision has made contributions for group benefits but has not previously levied for

1 contributions in excess of the base contribution, the political subdivision's base is determined by multiplying the
2 average annual contribution for each employee at the beginning of the fiscal year immediately preceding the year
3 in which the levy will first be levied times the number of employees for whom the employer made contributions
4 for group benefits under 2-9-212 in that fiscal year.

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

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

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

14

15 **Section 5.** Section 2-18-812, MCA, is amended to read:

16 **"2-18-812. Alternatives to conventional insurance for providing state employee group benefits**
17 **authorized -- requirements.** The department may establish alternatives to conventional insurance for providing
18 state employee group benefits. The requirements for providing alternatives to conventional insurance are as
19 follows:

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

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

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

26 (4) The department shall deposit income earned from the investment of a state employee group benefit
27 plan's reserve fund into the account established under subsection (3) in order to offset the costs of administering
28 the plan.

29 (5) The department shall deposit into the account provided for in subsection (3) all portions of a state
30 employee's salary designated by the employee to be withheld for the purposes of flexible spending account

1 benefits as well as any employee-designated portion of the employer contribution for group benefits provided for
 2 in 2-18-703 that is not required to be used for mandatory or elected benefits. Income earned on the deposits must
 3 be retained within the account and used for the purposes provided in this subsection. The money deposited and
 4 income earned on the deposits must be used for:

- 5 (a) payment of claims made by the employee;
- 6 (b) payment of reasonable costs of administration of the flexible spending account program;
- 7 (c) offsetting losses of the flexible spending account program; and
- 8 (d) reducing administration fees collected from participants in the program.

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

12 (7) Except as otherwise provided in Title 33, chapter 18, part 9, the provisions of Title 33 do not apply
 13 to the department when exercising the powers and duties provided for in this section."
 14

15 ~~Section 6.~~ Section 5-2-303, MCA, is amended to read:

16 ~~"5-2-303. Participation in state benefits group -- employer contribution made to other qualifying~~
 17 ~~plan. (1) Individual members of the senate and the house of representatives may enroll in the state employees~~
 18 ~~benefits group during the terms to which they have been elected. The provider of benefits shall enroll and collect~~
 19 ~~employee contributions directly from those legislators. The employer contribution must be paid from funds~~
 20 ~~appropriated for that purpose.~~

21 ~~(2) (a) If a member does not enroll or terminates enrollment elects to waive coverage under the state~~
 22 ~~employees benefits group plan and is insured under a plan providing disability insurance, as defined in 33-1-207,~~
 23 ~~providing the member and any tax dependents with minimum essential coverage, as defined in 26 U.S.C. 5000A,~~
 24 ~~the department of administration, upon request of the member, shall pay to the member's insurer member an~~
 25 ~~amount equal to the premium required to be paid by the member for coverage of the member and any~~
 26 ~~dependents under the disability insurance plan, subject to the limitation contained in subsection subsections (2)(b)~~
 27 ~~and (2)(c) less any applicable tax withholding.~~

28 ~~(b) A payment made under subsection (2)(a) may not exceed the amount of the employer contribution~~
 29 ~~for group benefits for members of the legislature as provided for in 2-18-703.~~

30 ~~(c) A member may not be reimbursed for premiums for a plan offered as an individual major medical~~

1 ~~policy, including a plan offered through the health insurance marketplace, or for premiums for coverage under~~
2 ~~medicare or a medicare supplement plan.~~

3 ~~—— (c)(d) Unused employer contributions must be transferred to an account as provided in 2-18-703 for a~~
4 ~~legislator who is a state employee and who has contributions paid for by another agency when the legislature is~~
5 ~~not in session."~~

6
7 NEW SECTION. Section 6. Effective dates. (1) Except as provided in subsection (2), [this act] is
8 effective July 1, 2017.

9 (2) ~~[Sections 4 and 6 and this section]~~ [SECTION 4] AND THIS SECTION are effective on passage and
10 approval.

11
12 NEW SECTION. Section 7. Retroactive applicability. ~~[Sections 4 and 6] apply~~ [SECTION 4] APPLIES
13 retroactively, within the meaning of 1-2-109, to January 1, 2017.

14 - END -