

1 SENATE BILL NO. 139

2 INTRODUCED BY M. CUFFE

3 BY REQUEST OF THE GOVERNOR

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO APPOINTMENTS
6 MADE BY THE GOVERNOR; PROVIDING FOR THE APPOINTMENT BY THE GOVERNOR OF CERTAIN
7 DEPUTY HEADS OF DEPARTMENTS; PROVIDING THAT DEPUTY HEADS OF DEPARTMENTS ARE NOT
8 SUBJECT TO SENATE CONFIRMATION; PROVIDING FOR PERSONAL STAFF FOR CERTAIN
9 APPOINTEES; EXEMPTING CERTAIN INDIVIDUALS FROM CERTAIN LAWS RELATED TO STATE
10 EMPLOYEES, INCLUDING THE BROADBAND CLASSIFICATION PLAN; PROHIBITING LOBBYING BY
11 CERTAIN DEPARTMENTAL DEPUTIES; AMENDING SECTIONS 2-15-1001, 2-15-1201, 2-15-1301, 2-15-
12 1701, 2-15-1801, 2-15-2201, 2-15-2301, 2-15-2501, 2-15-3001, 2-15-3301, 2-15-3401, 2-15-3501, 2-18-101, 2-
13 18-103, 2-18-104, 5-7-310, AND 87-1-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
14 AN APPLICABILITY DATE."

15

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

17

18 NEW SECTION. **Section 1. Departmental deputy directors.** (1) At the beginning of each
19 gubernatorial term, for each of the following departments, the governor shall appoint a deputy head of the
20 department:

- 21 (a) department of administration;
- 22 (b) department of military affairs;
- 23 (c) department of revenue;
- 24 (d) department of labor and industry;
- 25 (e) department of commerce;
- 26 (f) department of public health and human services;
- 27 (g) department of corrections;
- 28 (h) department of transportation;

- 1 (i) department of agriculture;
 2 (j) department of natural resources and conservation;
 3 (k) department of fish, wildlife, and parks; and
 4 (l) department of environmental quality.

5 (2) The governor shall select a deputy head of the department on the basis of the person's
 6 professional and administrative knowledge and experience.

7 (3) An appointment of a deputy head of a department by the governor is not subject to confirmation by
 8 the senate.

9 (4) There may be only one deputy head of a department for each department.

10 (5) A deputy head of a department serves at the pleasure of the governor. The governor may remove
 11 a deputy head of a department at any time and appoint a new deputy head of the department.

12 (6) If a vacancy occurs in the office of a deputy head of a department, the governor shall appoint a
 13 new deputy head of the department to serve at the pleasure of the governor.

14

15 **Section 2.** Section 2-15-1001, MCA, is amended to read:

16 "**2-15-1001. Department of administration -- head -- deputy.** (1) There is created a department of
 17 administration.

18 (2) The department head is a director of administration appointed by the governor in accordance with
 19 2-15-111.

20 (3) The deputy director of the department is appointed by the governor in accordance with [section
 21 1]."

22

23 **Section 3.** Section 2-15-1201, MCA, is amended to read:

24 "**2-15-1201. Department of military affairs -- head -- deputy.** (1) There is a department of military
 25 affairs.

26 (2) The department head is the adjutant general of the state, who ~~shall~~ must be appointed and shall
 27 serve in the same manner as ~~are~~ directors in 2-15-111. In addition, the adjutant general ~~shall~~ must have the
 28 qualifications as prescribed in 2-15-1202.

1 (3) The deputy director of the department is appointed by the governor in accordance with [section
 2 1]."

3
 4 **Section 4.** Section 2-15-1301, MCA, is amended to read:
 5 **"2-15-1301. Department of revenue -- head -- deputy.** (1) There is a department of revenue.
 6 (2) The department head is the director of revenue.
 7 (3) The deputy director of the department is appointed by the governor in accordance with [section
 8 1]."

9
 10 **Section 5.** Section 2-15-1701, MCA, is amended to read:
 11 **"2-15-1701. Department of labor and industry -- head -- deputy.** (1) There is a department of labor
 12 and industry.
 13 (2) (a) As prescribed in Article XII, section 2, of the Montana constitution, the department head is the
 14 commissioner of labor and industry.
 15 (2)(b) The commissioner must be appointed and shall serve as provided in 2-15-111.
 16 (3)(c) The commissioner must receive an annual salary in an amount equal to other department
 17 directors.
 18 (4)(d) Before entering on the duties of the office, the commissioner shall take and subscribe to the
 19 oath of office prescribed by the Montana constitution.
 20 (3) The deputy commissioner of the department is appointed by the governor in accordance with
 21 [section 1]."

22
 23 **Section 6.** Section 2-15-1801, MCA, is amended to read:
 24 **"2-15-1801. Department of commerce -- head -- deputy.** (1) There is a department of commerce.
 25 (2) The department head is a director of commerce appointed by the governor in accordance with 2-
 26 15-111.
 27 (3) The deputy director of the department is appointed by the governor in accordance with [section
 28 1]."

1

2 **Section 7.** Section 2-15-2201, MCA, is amended to read:

3 **"2-15-2201. Department of public health and human services -- head -- deputy. (1)** There is a
4 department of public health and human services.

5 (2) The department head is a director of public health and human services appointed by the governor
6 in accordance with 2-15-111.

7 (3) The deputy director of the department is appointed by the governor in accordance with [section
8 11."

9

10 **Section 8.** Section 2-15-2301, MCA, is amended to read:

11 **"2-15-2301. Department of corrections -- head -- deputy. (1)** There is a department of corrections.

12 (2) The department head is a director of corrections appointed by the governor in accordance with 2-
13 15-111.

14 (3) The deputy director of the department is appointed by the governor in accordance with [section
15 11."

16

17 **Section 9.** Section 2-15-2501, MCA, is amended to read:

18 **"2-15-2501. Department of transportation -- head -- deputy. (1)** There is a department of
19 transportation.

20 (2) The department head is the director of transportation appointed by the governor in accordance
21 with 2-15-111.

22 (3) The deputy director of the department is appointed by the governor in accordance with [section 11].

23 (4) The department may have as many divisions as are necessary, but it must have divisions of:

24 ~~(1)~~(a) highways;

25 ~~(2)~~(b) aeronautics;

26 ~~(3)~~(c) administration;

27 ~~(4)~~(d) rail and transit; and

28 ~~(5)~~(e) motor carrier services."

1

2 **Section 10.** Section 2-15-3001, MCA, is amended to read:3 **"2-15-3001. Department of agriculture -- head -- deputy.** (1) There is a department of agriculture.4 (2) The department head is a director of agriculture appointed by the governor in accordance with 2-
5 15-111.6 (3) The deputy director of the department is appointed by the governor in accordance with [section
7 11."

8

9 **Section 11.** Section 2-15-3301, MCA, is amended to read:10 **"2-15-3301. Department of natural resources and conservation -- head -- deputy.** (1) There is a
11 department of natural resources and conservation.12 (2) The department head is the director of natural resources and conservation appointed by the
13 governor in accordance with 2-15-111.14 (3) The deputy director of the department is appointed by the governor in accordance with [section
15 11."

16

17 **Section 12.** Section 2-15-3401, MCA, is amended to read:18 **"2-15-3401. Department of fish, wildlife, and parks -- head -- deputy.** (1) There is a department of
19 fish, wildlife, and parks.20 (2) The department head is the director of fish, wildlife, and parks appointed by the governor in
21 accordance with 2-15-111. The director is the secretary of the:22 ~~(4)~~(a) fish and wildlife commission established in 2-15-3402; and23 ~~(2)~~(b) state parks and recreation board established in 2-15-3406.24 (3) The deputy director of the department is appointed by the governor in accordance with [section
25 11."

26

27 **Section 13.** Section 2-15-3501, MCA, is amended to read:28 **"2-15-3501. Department of environmental quality -- head -- deputy.** (1) There is a department of

1 environmental quality.

2 (2) The department head is the director of environmental quality appointed by the governor in
3 accordance with 2-15-111.

4 (3) The deputy director of the department is appointed by the governor in accordance with [section
5 11."

6

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

8 **"2-18-101. Definitions.** As used in parts 1 through 3 and part 10 of this chapter, the following
9 definitions apply:

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

12 (2) "Base salary" means the base hourly pay rate annualized paid to an employee, excluding overtime
13 and longevity.

14 (3) "Benchmark" means a representative position in a specific occupation that is used to illustrate the
15 application of the job evaluation factor used to classify the occupation.

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

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

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

21 (7) "Broadband pay plan" means a pay plan using a pay hierarchy of broad pay bands based on a
22 classification plan, including market midpoint and occupational wage ranges.

23 (8) "Compensation" means the annual or hourly wage or salary and includes the longevity allowance
24 provided in 2-18-304 and leave and holiday benefits provided in part 6 of this chapter.

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

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

28 (11) (a) Except in 2-18-306, "employee" means any state employee other than an employee excepted

1 under 2-18-103 or 2-18-104.

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

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

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

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

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

10 (16) "Occupational wage range" means a range of pay, including a minimum, market midpoint, and
11 maximum salary, for a specific occupation that is most consistent with the pay being offered by competing
12 employers for fully competent employees within that occupation. The salary for an employee may be less than
13 the minimum salary.

14 (17) "Pay band" means a wide salary range covering a number of different occupations. Pay bands are
15 used for reporting and analysis purposes only.

16 (18) "Pay progression" means a process by which an employee's compensation may be increased,
17 based on documented factors determined by the department, to bring the employee's compensation to a higher
18 rate within the occupational wage range of the employee.

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

22 (20) "Permanent status" means the state an employee attains after satisfactorily completing an
23 appropriate probationary period.

24 (21) "Personal staff" means those positions occupied by employees appointed by the elected officials
25 enumerated in Article VI, section 1, of the Montana constitution ~~or~~ by the public service commission as a
26 whole, or by each director appointed by the governor as provided in 2-15-111(1).

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

1 (23) "Program" means a combination of planned efforts to provide a service.

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

5 (25) "Short-term worker" means a person who:

6 (a) may be hired by an agency without using a competitive hiring process for an hourly wage
7 established by the agency;

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

9 (c) is not eligible for permanent status;

10 (d) may not be hired into a permanent position by the agency without a competitive selection process;

11 (e) is not eligible to earn the leave and holiday benefits provided in part 6 of this chapter; and

12 (f) may be discharged without cause.

13 (26) "Student intern" means a person who:

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

16 (b) is not eligible for permanent status;

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

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

19 (e) is not eligible to earn the leave and holiday benefits provided for in part 6 of this chapter; and

20 (f) may be discharged without cause.

21 (27) (a) "Telework" means a flexible work arrangement where a designated employee may work from:

22 (i) home within the state of Montana or an alternative worksite within the state of Montana 1 or more
23 days a week instead of physically traveling to a central workplace; or

24 (ii) an alternative worksite outside the state of Montana limited to:

25 (A) employees who are mental health professionals as defined in 27-1-1101 involved in psychological
26 or psychiatric evaluations and treatment;

27 (B) employees engaged in providing services related to information technology as defined in 2-17-
28 506; or

1 (C) employees who are medical professionals involved in medical evaluations and treatment.

2 (b) The office of budget and program planning must approve a designated employee's alternative
3 worksite outside the state of Montana before the employee begins work.

4 (28) "Temporary employee" means an employee who:

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

6 (b) performs duties on a temporary basis;

7 (c) is not eligible for permanent status;

8 (d) is terminated at the end of the employment period; and

9 (e) is not eligible to become a permanent employee without a competitive selection process."
10

10

11 **Section 15.** Section 2-18-103, MCA, is amended to read:

12 **"2-18-103. Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the following
13 officers and employees in state government:

14 (1) elected officials;

15 (2) county assessors and their chief deputies;

16 (3) employees of the office of consumer counsel;

17 (4) judges and employees of the judicial branch;

18 (5) members of boards and commissions appointed by the governor, the legislature, or other elected
19 state officials;

20 (6) officers or members of the militia;

21 (7) agency heads appointed by the governor;

22 (8) deputy heads of departments appointed by the governor as provided in [section 1];

23 ~~(8)(9)~~ academic and professional administrative personnel with individual contracts under the
24 authority of the board of regents of higher education;

25 ~~(9)(10)~~ academic and professional administrative personnel and live-in houseparents who have

26 entered into individual contracts with the state school for the deaf and blind under the authority of the state
27 board of public education;

28 ~~(10)(11)~~ investment officer, assistant investment officer, executive director, and eight professional staff

- 1 positions of the board of investments;
- 2 ~~(11)~~(12) four professional staff positions under the board of oil and gas conservation;
- 3 ~~(12)~~(13) assistant director for security of the Montana state lottery;
- 4 ~~(13)~~(14) executive director and employees of the state compensation insurance fund;
- 5 ~~(14)~~(15) state racing stewards employed by the executive secretary of the Montana board of
- 6 horseracing;
- 7 ~~(15)~~(16) executive director of the Montana wheat and barley committee;
- 8 ~~(16)~~(17) commissioner of banking and financial institutions;
- 9 ~~(17)~~(18) training coordinator for county attorneys;
- 10 ~~(18)~~(19) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;
- 11 ~~(19)~~ (20) chief information officer in the department of administration;
- 12 ~~(20)~~(21) chief business development officer and six professional staff positions in the office of
- 13 economic development provided for in 2-15-218; and
- 14 ~~(21)~~(22) the director of the office of state public defender provided for in 2-15-1029."

15

16 **Section 16.** Section 2-18-104, MCA, is amended to read:

17 **"2-18-104. Exemption for personal staff -- limit.** (1) ~~Subject to the limitations in subsections (2) and~~

18 ~~(3), members~~ Members of a personal staff provided for in this section are exempt from parts 1 through 3 and

19 10.

20 (2) The personal staff ~~who are exempted by subsection (1) of each elected official enumerated in~~

21 Article VI, section 1, of the Montana constitution may not exceed 10 unless otherwise approved by the

22 department according to criteria developed by the department. Under no circumstances may the total

23 exemptions of each elected official exceed 15.

24 (3) The number of members of the personal staff of the public service commission who are exempted

25 by subsection (1) may not exceed 10.

26 (4) The number of members of the personal staff of each director appointed by the governor as

27 provided in 2-15-111 may not exceed:

28 (a) 1, if a department has fewer than 250 full-time employees as defined in 2-18-601; or

1 **(b) 2, if a department has 250 or more full-time employees as defined in 2-18-601.**"

2

3 **Section 17.** Section 5-7-310, MCA, is amended to read:

4 **"5-7-310. Prohibition of lobbying by former government personnel.** (1) An individual may not be
5 licensed as a lobbyist and a principal may not directly authorize or permit lobbying by an individual if during the
6 24 months prior to applying for a license that individual served as a state legislator, elected state official,
7 department director, deputy head of a department provided for in [section 1], appointed state official, or member
8 of a certain personal staff, as defined by 2-18-101.

9 (2) The prohibition in subsection (1) does not apply to an individual who seeks a license to serve as a
10 lobbyist as part of the individual's responsibilities as an employee of state or local government."

11

12 **Section 18.** Section 87-1-404, MCA, is amended to read:

13 **"87-1-404. Appointment of ~~deputy director and wardens~~.** The director ~~shall have~~ has the power to
14 employ ~~and appoint a deputy director and~~ a sufficient number of wardens for the proper enforcement of the fish
15 and game laws of the state and the orders, rules, and regulations of the department and for ~~such~~ any other
16 purposes ~~as the director may designate.~~"

17

18 NEW SECTION. **Section 19. Transition.** (1) When the governor initially appoints each deputy head
19 of a department provided for in [section 1(1)] pursuant to [section 22(1)], the position must be reclassified to an
20 exempted status as provided in 2-18-103.

21 (2) A position authorized by [sections 1 through 22] under 2-18-103(8) or 2-18-104(3) may be filled
22 using only the existing budget of the department.

23

24 NEW SECTION. **Section 20. Codification instruction.** [Section 1] is intended to be codified as an
25 integral part of Title 2, chapter 15, part 1, and the provisions of Title 2, chapter 15, part 1, apply to [section 1].

26

27 NEW SECTION. **Section 21. Effective date.** [This act] is effective on passage and approval.

28

