

1 *House* BILL NO. *700*
 2 INTRODUCED BY *Frank Bradley Kelly Palmer*
 3 *Palmer*

4 A BILL FOR AN ACT ENTITLED: "AN ACT CONCERNING PUBLIC
 5 EMPLOYMENT RELATIONS, RENAMING THE MERIT SYSTEM COUNCIL AND
 6 THE BOARD OF PERSONNEL APPEALS, TRANSFERRING CERTAIN
 7 FUNCTIONS, AND REQUIRING THE ESTABLISHMENT OF A GRIEVANCE
 8 PROCEDURE; AMENDING SECTIONS 59-914, 59-1602, 59-1603,
 9 82A-206, AND 82A-1014, R.C.M. 1947; AND REPEALING SECTIONS
 10 32-2504 THROUGH 32-2505.3 AND 82A-709, R.C.M. 1947."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 59-914, R.C.M. 1947, is amended to
 14 read as follows:

15 "59-914. Merit system continued. The merit system,
 16 established in 1940 by certain state agencies of state
 17 government, as a requirement for receipt of federal funds,
 18 shall continue to operate for those agencies under the
 19 policies and procedures established by the ~~merit system~~
 20 ~~council~~ department subject to review by the personnel review
 21 board."

22 Section 2. Section 59-1602, R.C.M. 1947, is amended to
 23 read as follows:

24 "59-1602. Definitions. ~~When used in this act~~ As used
 25 in this chapter, the following definitions apply: (1)

1 "public employer" means the state of Montana or any
 2 political subdivision thereof, including but not limited to,
 3 any town, city, county, district, school board, board of
 4 regents, public and quasi-public corporation, housing
 5 authority or other authority established by law, and any
 6 representative or agent designated by the public employer to
 7 act in its interest in dealing with public employees, when
 8 the board of regents is the public employer defined in this
 9 section, the student government at an institution of higher
 10 education may designate an agent or representative to meet
 11 and confer with the board of regents and the faculty
 12 bargaining agent prior to negotiations with the professional
 13 educational employees, to observe those negotiations and
 14 participate in caucuses as part of the public employer's
 15 bargaining team, and to meet and confer with the board of
 16 regents regarding the terms of agreement prior to the
 17 execution of a written contract between the regents and the
 18 professional educational employees. The student observer is
 19 obliged to maintain the confidentiality of these
 20 negotiations.

21 (2) "public employee" means a person employed by a
 22 public employer in any capacity, except elected officials,
 23 persons directly appointed by the governor, supervisory
 24 employees and management officials (as defined in subsection
 25 (3) and (4) below) or members or any state board or

1 commission who serve the state intermittently, school
 2 district clerks and school administrators, registered
 3 professional nurses performing service for health care
 4 facilities, professional engineers and engineers in
 5 training, and includes any individual whose work has ceased
 6 as a consequence of, or in connection with, any unfair labor
 7 practice or concerted employee action;

8 (3) "supervisory employee" means any individual having
 9 authority, in the interest of the employer to hire,
 10 transfer, suspend, lay off, recall, promote, discharge,
 11 assign, reward, discipline other employees, having
 12 responsibility to direct them, to adjust their grievances,
 13 or effectively to recommend such action, if in connection
 14 with the foregoing the exercise of such authority is not of
 15 a merely routine or clerical nature, but requires the use of
 16 independent judgment;

17 (4) "management officials" means representatives of
 18 management having authority to act for the agency on any
 19 matters relating to the implementation of agency policy;

20 (5) "labor organization" means any organization or
 21 association of any kind in which employees participate and
 22 which exists for the primary purpose of dealing with
 23 employers concerning grievances, labor disputes, wages,
 24 rates of pay, hours of employment, fringe benefits, or other
 25 conditions of employment;

1 (6) "exclusive representative" means the labor
 2 organization which has been designated by the board as the
 3 exclusive representative of employees in an appropriate unit
 4 or has been so recognized by the public employer;

5 (7) "board" means the ~~board-of-personnel--appeals~~
 6 public employment labor relations board provided for in
 7 section 82A-1014;

8 (8) "person" includes one or more individuals, labor
 9 organizations, public employees, associations, corporations,
 10 legal representatives, trustees, trustees in bankruptcy, or
 11 receivers;

12 (9) "unfair labor practice" means any unfair labor
 13 practice listed in section 59-1605;

14 (10) "labor dispute" includes any controversy
 15 concerning terms, tenure or conditions of employment, or
 16 concerning the association or representation of persons in
 17 negotiating, fixing, maintaining, changing, or seeking to
 18 arrange terms or conditions of employment, regardless of
 19 whether the disputants stand the proximate relation of
 20 employer and employee;

21 (11) "appropriate unit" means a group of public
 22 employees banded together for collective bargaining purposes
 23 as designated by the board."

24 Section 3. Section 59-1603, R.C.M. 1947, is amended to
 25 read as follows:

1 *59-1603. Employees' right to join or form labor
2 organization and engage in collective bargaining activities.

3 (1) Public employees shall have, and shall be protected in
4 the exercise of, the right of self-organization, to form,
5 join or assist any labor organization, to bargain
6 collectively through representatives of their own choosing
7 on questions of wages, hours, fringe benefits, and other
8 conditions of employment and to engage in other concerted
9 activities for the purpose of collective bargaining or other
10 mutual aid or protection, free from interference, restraint
11 or coercion.

12 (2) Public employees and their representatives shall
13 recognize the prerogatives of public employers to operate
14 and manage their affairs in such areas as but not limited
15 to:

- 16 (a) direct employees;
- 17 (b) hire, promote, transfer, assign, and retain
18 employees;
- 19 (c) relieve employees from duties because of lack of
20 work or funds or under conditions where continuation of such
21 work be inefficient and nonproductive;
- 22 (d) maintain the efficiency of government operations;
- 23 (e) determine the methods, means, job classifications,
24 and personnel by which government operations are to be
25 conducted;

1 (f) take whatever actions may be necessary to carry
2 out the missions of the agency in situations of emergency;

3 (g) establish the methods and processes by which work
4 is performed.

5 (3) Labor organizations designated in accordance with
6 the provisions of this act are responsible for representing
7 the interest of all employees in the exclusive bargaining
8 unit without discrimination for the purposes of collective
9 bargaining with respect to rates of pay, hours, fringe
10 benefits, and other conditions of employment.

11 (4) Certification as an exclusive representative shall
12 be extended or continued as the case may be only to a labor
13 or employee organization the written bylaws of which provide
14 for and guarantee the following rights and safeguards and
15 whose practices conform to such rights and safeguards as:
16 provisions are made for democratic organization and
17 procedures; elections are conducted pursuant to adequate
18 standards and safeguards; controls are provided for the
19 regulation of officers and agents having fiduciary
20 responsibility to the organization; and requirements exist
21 for maintenance of sound accounting and fiscal controls
22 including annual audits.

23 (5) No public employee who is a member of a bona fide
24 religious sect, or division thereof, the established and
25 traditional tenets or teachings of which oppose a

1 requirement that a member of such sect or division join or
 2 financially support any labor organization, may be required
 3 to join or financially support any labor organization as a
 4 condition of employment, if such public employee pays, in
 5 lieu of periodic union dues, initiation fees, and
 6 assessments, at the same time or times such periodic union
 7 dues, initiation fees, and assessments would otherwise be
 8 payable, a sum of money equivalent to such periodic union
 9 dues, initiation fees, and assessments, to a nonreligious,
 10 nonunion charity designated by the labor organization. Such
 11 public employee shall furnish to such labor organization
 12 written receipts evidencing such payments and failure to
 13 make such payments or furnish such receipts shall subject
 14 the employee to the same sanctions as would nonpayment of
 15 dues, initiation fees or assessments under the applicable
 16 collective bargaining agreement.

17 A public employee desiring to avail himself or herself
 18 to the right of nonassociation with a labor organization as
 19 provided in this subsection shall make written application
 20 to the chairman of the board of ~~personnel appeals~~. Within
 21 ten days of the date of receipt of such application, the
 22 chairman shall appoint a committee of three (3) consisting
 23 of a clergyman not connected with the sect in question, a
 24 labor union official not directly connected with the labor
 25 organization in question and a member of the public at

1 large, who shall be the chairman. The committee shall,
 2 within ten (10) days of the date of its appointment, meet at
 3 the locale of either the employee's residence or place of
 4 employment and, after receiving written or oral
 5 presentations from all interested parties, determine by a
 6 majority vote whether or not such public employee qualifies
 7 for the right of nonassociation with such labor
 8 organization. The committee's decision shall be made in
 9 writing within three (3) days of the meeting date and a copy
 10 thereof shall be forthwith mailed to such public employee,
 11 labor organization and the chairman of the board of
 12 ~~personnel appeals.~~"

13 Section 4. Section 82A-206, R.C.M. 1947, is amended to
 14 read as follows:

15 "82A-206. ~~Merit-system-council~~ Personnel review board
 16 --allocated -- composition. (1) There is a ~~merit-system~~
 17 ~~council~~ personnel review board.

18 (2) The ~~council board~~ is allocated to the department
 19 for administrative purposes only as prescribed in section
 20 82A-108. However, the ~~council board~~ may hire its own
 21 personnel, and section 82A-108(2)(d) does not apply.

22 (3) The ~~council board~~ is composed of three (3)
 23 members, appointed by the governor for ~~six (6)-year~~ 6-year
 24 overlapping terms. ~~The-governor-shall-appoint-the-members~~
 25 ~~upon-the-recommendation-of-the-agencies-which-participate-in~~

1 ~~the joint merit system and in accordance with federal~~
2 ~~requirements.~~

3 (4) Members ~~shall be~~ are compensated and reimbursed as
4 are members of advisory councils in section 82A-110(5)."

5 Section 5. There is a new R.C.M. section numbered
6 82A-206.1 that reads as follows:

7 82A-206.1. Functions of personnel review board. (1) An
8 employee affected by the operation of Title 59, chapter 9,
9 or by other conditions of employment is entitled to file a
10 complaint with the personnel review board and to be heard
11 under the provisions of a grievance procedure to be
12 prescribed by the board.

13 (2) Direct or indirect interference, restraint,
14 coercion, or retaliation by an employee's supervisor or by
15 an agency against an employee because the employee has filed
16 or attempted to file a complaint with the board shall also
17 be basis for a complaint and shall entitle the employee to
18 file a complaint with the board and to be heard, under the
19 provisions of the grievance procedure prescribed by the
20 board.

21 (3) If upon the preponderance of the evidence taken at
22 the hearing the board is of the opinion that the employee is
23 aggrieved, it may issue an order to the department of
24 administration or other appropriate agency requiring such
25 action as will resolve the employee's grievance. In any

1 hearing the board is not bound by statutory or common law
2 rules of evidence.

3 (4) The board or the employee may petition for the
4 enforcement of the board's order and for appropriate
5 temporary relief and shall file in the district court the
6 record of the proceedings. Upon the filing of the petition,
7 the district court has jurisdiction of the proceeding.
8 Thereafter, the district court shall set the matter for
9 hearing. After the hearing, the district court shall issue
10 its order granting such temporary or permanent relief as it
11 considers just and proper. No objection that has not been
12 raised before the board may be considered by the court
13 unless the failure or neglect to raise the objection is
14 excused because of extraordinary circumstances. The findings
15 of the board with respect to questions of fact, if supported
16 by substantial evidence on the record considered as a whole,
17 are conclusive.

18 (5) The grievance procedure in a collective bargaining
19 agreement takes precedence over the grievance procedure in
20 this section for employees who are members of bargaining
21 units for the purposes of Title 59, chapter 16.

22 Section 6. Section 82A-1014, R.C.M. 1947, is amended
23 to read as follows:

24 "82A-1014. Board ~~of personnel~~ appeals Public
25 employment labor relations board created. (1) There is

1 created a ~~board of personnel appeals~~ public employment labor
2 relations board.

3 (2) The board is allocated to the department of labor
4 and industry for administrative purposes only as prescribed
5 in section 82A-108.

6 (3) The board consists of five ~~(5)~~ members appointed
7 by the governor. Two ~~(2)~~ members shall represent management,
8 two ~~(2)~~ members shall represent employees or employee
9 organizations of the state, and one ~~(1)~~ member shall
10 represent a neutral position.

11 ~~(4) (a) Any employee or his representative affected~~
12 ~~by the operation of title 59, chapter 9, R.C.M., 1947, is~~
13 ~~entitled to file a complaint with the board and to be heard,~~
14 ~~under the provisions of a grievance procedure to be~~
15 ~~prescribed by the board.~~

16 ~~(b) Direct or indirect interference, restraint,~~
17 ~~coercion, or retaliation by an employee's supervisor or the~~
18 ~~agency for which the employee works against an employee~~
19 ~~because the employee has filed or attempted to file a~~
20 ~~complaint with the board shall also be basis for a complaint~~
21 ~~and shall entitle the employee to file a complaint with the~~
22 ~~board and to be heard, under the provisions of the grievance~~
23 ~~procedure prescribed by the board.~~

24 ~~(c) If upon the preponderance of the evidence taken at~~
25 ~~the hearing the board is of the opinion that the employee is~~

1 aggrieved, it may issue an order to the department of
2 administration requiring such action of the department as
3 will resolve the employee's grievance. In any hearing the
4 board is not bound by statutory or common law rules of
5 evidence.

6 ~~(d) The board or the employee may petition for the~~
7 ~~enforcement of the board's order and for appropriate~~
8 ~~temporary relief, and shall file in the district court the~~
9 ~~record of the proceedings. Upon the filing of the petition,~~
10 ~~the district court shall have jurisdiction of the~~
11 ~~proceedings. Thereafter, the district court shall set the~~
12 ~~matter for hearing. After the hearing, the district court~~
13 ~~shall issue its order granting such temporary or permanent~~
14 ~~relief as it considers just and proper. No objection that~~
15 ~~has not been raised before the board shall be considered by~~
16 ~~the court unless the failure or neglect to raise the~~
17 ~~objection is excused because of extraordinary circumstances.~~
18 ~~The findings of the board with respect to questions of fact~~
19 ~~if supported by substantial evidence on the record~~
20 ~~considered as a whole shall be conclusive.~~

21 ~~(5) (4) The board is designated a quasi-judicial board~~
22 ~~for purposes of section 82A-112."~~

23 Section 7. Repealer. Sections 32-2504, 32-2505,
24 32-2505.1, 32-2505.3, 32-2505.3, and 82A-709, R.C.M. 1947,
25 are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 391-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 7, 19 77, there is hereby submitted a Fiscal Note for House Bill 700 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 700 proposes to rename the Merit System Council and the Board of Personnel Appeals, transferring certain functions, and requiring the establishment of a grievance procedure.

ASSUMPTIONS:

1. Four positions currently budgeted for in the Board of Personnel Appeals will be transferred to the re-defined Personnel Review Board.
2. With these transferred positions and such additional support as may be provided by the Department of Administration, the additional functions can be absorbed within current budget projections.

FISCAL IMPACT:

None.

Richard L. Young for
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-17-77

Approved by Committee
on Labor & Employment
Relations

1 HOUSE BILL NO. 700

2 INTRODUCED BY BRAND,

3 PALMER, FABREGA, BRADLEY, MELOY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CONCERNING PUBLIC
6 EMPLOYMENT RELATIONS, RENAMING THE MERIT SYSTEM COUNCIL AND
7 THE BOARD OF PERSONNEL APPEALS, TRANSFERING CERTAIN
8 FUNCTIONS, AND REQUIRING THE ESTABLISHMENT OF A GRIEVANCE
9 PROCEDURE; AMENDING SECTIONS 59-914, 59-1602, 59-1603,
10 82A-206, AND 82A-1014, R.C.M. 1947; AND REPEALING SECTIONS
11 32-2504 THROUGH 32-2505.3 AND 82A-709, R.C.M. 1947."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 59-914, R.C.M. 1947, is amended to
15 read as follows:

16 "59-914. Merit system continued. The merit system,
17 established in 1940 by certain state agencies of state
18 government, as a requirement for receipt of federal funds,
19 shall continue to operate for those agencies under the
20 policies and procedures established by the merit system
21 ~~council department subject to review AND APPROVAL by the~~
22 ~~personnel review board."~~

23 Section 2. Section 59-1602, R.C.M. 1947, is amended to
24 read as follows:

25 "59-1602. Definitions. ~~When used in this act as used~~

1 ~~in this chapter, the following definitions apply:~~ (1)

2 "public employer" means the state of Montana or any
3 political subdivision thereof, including but not limited to,
4 any town, city, county, district, school board, board of
5 regents, public and quasi-public corporation, housing
6 authority or other authority established by law, and any
7 representative or agent designated by the public employer to
8 act in its interest in dealing with public employees, when
9 the board of regents is the public employer defined in this
10 section, the student government at an institution of higher
11 education may designate an agent or representative to meet
12 and confer with the board of regents and the faculty
13 bargaining agent prior to negotiations with the professional
14 educational employees, to observe those negotiations and
15 participate in caucuses as part of the public employer's
16 bargaining team, and to meet and confer with the board of
17 regents regarding the terms of agreement prior to the
18 execution of a written contract between the regents and the
19 professional educational employees. The student observer is
20 obliged to maintain the confidentiality of these
21 negotiations.

22 (2) "public employee" means a person employed by a
23 public employer in any capacity, except elected officials,
24 persons directly appointed by the governor, supervisory
25 employees and management officials (as defined in subsection

1 (3) and (4) below) or members or any state board or
 2 commission who serve the state intermittently, school
 3 district clerks and school administrators, registered
 4 professional nurses performing service for health care
 5 facilities, professional engineers and engineers in
 6 training, and includes any individual whose work has ceased
 7 as a consequence of, or in connection with, any unfair labor
 8 practice or concerted employee action;

9 (3) "supervisory employee" means any individual having
 10 authority, in the interest of the employer to hire,
 11 transfer, suspend, lay off, recall, promote, discharge,
 12 assign, reward, discipline other employees, having
 13 responsibility to direct them, to adjust their grievances,
 14 or effectively to recommend such action, if in connection
 15 with the foregoing the exercise of such authority is not of
 16 a merely routine or clerical nature, but requires the use of
 17 independent judgment;

18 (4) "management officials" means representatives of
 19 management having authority to act for the agency on any
 20 matters relating to the implementation of agency policy;

21 (5) "labor organization" means any organization or
 22 association of any kind in which employees participate and
 23 which exists for the primary purpose of dealing with
 24 employers concerning grievances, labor disputes, wages,
 25 rates of pay, hours of employment, fringe benefits, or other

1 conditions of employment;

2 (6) "exclusive representative" means the labor
 3 organization which has been designated by the board as the
 4 exclusive representative of employees in an appropriate unit
 5 or has been so recognized by the public employer;

6 (7) "board" means the ~~board of personnel appeals~~
 7 public employment labor relations board provided for in
 8 section 82A-1014;

9 (8) "person" includes one or more individuals, labor
 10 organizations, public employees, associations, corporations,
 11 legal representatives, trustees, trustees in bankruptcy, or
 12 receivers;

13 (9) "unfair labor practice" means any unfair labor
 14 practice listed in section 59-1605;

15 (10) "labor dispute" includes any controversy
 16 concerning terms, tenure or conditions of employment, or
 17 concerning the association or representation of persons in
 18 negotiating, fixing, maintaining, changing, or seeking to
 19 arrange terms or conditions of employment, regardless of
 20 whether the disputants stand the proximate relation of
 21 employer and employee;

22 (11) "appropriate unit" means a group of public
 23 employees banded together for collective bargaining purposes
 24 as designated by the board."

25 Section 3. Section 59-1603, R.C.M. 1947, is amended to

1 read as follows:

2 "59-1603. Employees' right to join or form labor
3 organization and engage in collective bargaining activities.

4 (1) Public employees shall have, and shall be protected in
5 the exercise of, the right of self-organization, to form,
6 join or assist any labor organization, to bargain
7 collectively through representatives of their own choosing
8 on questions of wages, hours, fringe benefits, and other
9 conditions of employment and to engage in other concerted
10 activities for the purpose of collective bargaining or other
11 mutual aid or protection, free from interference, restraint
12 or coercion.

13 (2) Public employees and their representatives shall
14 recognize the prerogatives of public employers to operate
15 and manage their affairs in such areas as but not limited
16 to:

17 (a) direct employees;

18 (b) hire, promote, transfer, assign, and retain
19 employees;

20 (c) relieve employees from duties because of lack of
21 work or funds or under conditions where continuation of such
22 work be inefficient and nonproductive;

23 (d) maintain the efficiency of government operations;

24 (e) determine the methods, means, job classifications,
25 and personnel by which government operations are to be

1 conducted;

2 (f) take whatever actions may be necessary to carry
3 out the missions of the agency in situations of emergency;

4 (g) establish the methods and processes by which work
5 is performed.

6 (3) Labor organizations designated in accordance with
7 the provisions of this act are responsible for representing
8 the interest of all employees in the exclusive bargaining
9 unit without discrimination for the purposes of collective
10 bargaining with respect to rates of pay, hours, fringe
11 benefits, and other conditions of employment.

12 (4) Certification as an exclusive representative shall
13 be extended or continued as the case may be only to a labor
14 or employee organization the written bylaws of which provide
15 for and guarantee the following rights and safeguards and
16 whose practices conform to such rights and safeguards as:
17 provisions are made for democratic organization and
18 procedures; elections are conducted pursuant to adequate
19 standards and safeguards; controls are provided for the
20 regulation of officers and agents having fiduciary
21 responsibility to the organization; and requirements exist
22 for maintenance of sound accounting and fiscal controls
23 including annual audits.

24 (5) No public employee who is a member of a bona fide
25 religious sect, or division thereof, the established and

1 traditional tenets or teachings of which oppose a
 2 requirement that a member of such sect or division join or
 3 financially support any labor organization, may be required
 4 to join or financially support any labor organization as a
 5 condition of employment, if such public employee pays, in
 6 lieu of periodic union dues, initiation fees, and
 7 assessments, at the same time or times such periodic union
 8 dues, initiation fees, and assessments would otherwise be
 9 payable, a sum of money equivalent to such periodic union
 10 dues, initiation fees, and assessments, to a nonreligious,
 11 nonunion charity designated by the labor organization. Such
 12 public employee shall furnish to such labor organization
 13 written receipts evidencing such payments and failure to
 14 make such payments or furnish such receipts shall subject
 15 the employee to the same sanctions as would nonpayment of
 16 dues, initiation fees or assessments under the applicable
 17 collective bargaining agreement.

18 A public employee desiring to avail himself or herself
 19 to the right of nonassociation with a labor organization as
 20 provided in this subsection shall make written application
 21 to the chairman of the board of ~~personnel appeals~~. Within
 22 ten days of the date of receipt of such application, the
 23 chairman shall appoint a committee of three (3) consisting
 24 of a clergyman not connected with the sect in question, a
 25 labor union official not directly connected with the labor

1 organization in question and a member of the public at
 2 large, who shall be the chairman. The committee shall,
 3 within ten (10) days of the date of its appointment, meet at
 4 the locale of either the employee's residence or place of
 5 employment and, after receiving written or oral
 6 presentations from all interested parties, determine by a
 7 majority vote whether or not such public employee qualifies
 8 for the right of nonassociation with such labor
 9 organization. The committee's decision shall be made in
 10 writing within three (3) days of the meeting date and a copy
 11 thereof shall be forthwith mailed to such public employee,
 12 labor organization and the chairman of the board of
 13 ~~personnel appeals~~."

14 Section 4. Section 82A-206, R.C.M. 1947, is amended to
 15 read as follows:

16 "82A-206. Merit ~~system council~~ Personnel review board
 17 -- allocated -- composition. (1) There is a merit ~~system~~
 18 ~~council~~ personnel review board.

19 (2) The ~~council~~ board is allocated to the department
 20 OF LABOR AND INDUSTRY for administrative purposes only as
 21 prescribed in section 82A-108. However, the ~~council~~ board
 22 may hire its own personnel, and section 82A-108(2)(d) does
 23 not apply.

24 (3) The ~~council~~ board is composed of three (3)
 25 members, appointed by the governor for ~~six (6) year~~ 6-year

1 overlapping terms. ~~The governor shall appoint the members~~
 2 ~~upon the recommendation of the agencies which participate in~~
 3 ~~the joint merit system and in accordance with federal~~
 4 ~~requirements.~~

5 (4) Members ~~shall be~~ ~~are~~ compensated and reimbursed as
 6 are members of advisory councils in section 82A-110(5)."

7 Section 5. There is a new R.C.M. section numbered
 8 82A-206.1 that reads as follows:

9 82A-206.1. Functions of personnel review board. (1) An
 10 employee affected by the operation of Title 59, chapter 9,
 11 or by other conditions of employment is entitled to file a
 12 complaint with the personnel review board and to be heard
 13 under the provisions of a grievance procedure to be
 14 prescribed by the board.

15 (2) Direct or indirect interference, restraint,
 16 coercion, or retaliation by an employee's supervisor or by
 17 an agency against an employee because the employee has filed
 18 or attempted to file a complaint with the board shall also
 19 be basis for a complaint and shall entitle the employee to
 20 file a complaint with the board and to be heard, under the
 21 provisions of the grievance procedure prescribed by the
 22 board.

23 (3) If upon the preponderance of the evidence taken at
 24 the hearing the board is of the opinion that the employee is
 25 aggrieved, it may issue an order to the department of

1 administration or other appropriate agency requiring such
 2 action as will resolve the employee's grievance. In any
 3 hearing the board is not bound by statutory or common law
 4 rules of evidence.

5 (4) The board or the employee may petition for the
 6 enforcement of the board's order and for appropriate
 7 temporary relief and shall file in the district court the
 8 record of the proceedings. Upon the filing of the petition,
 9 the district court has jurisdiction of the proceeding.
 10 Thereafter, the district court shall set the matter for
 11 hearing. After the hearing, the district court shall issue
 12 its order granting such temporary or permanent relief as it
 13 considers just and proper. No objection that has not been
 14 raised before the board may be considered by the court
 15 unless the failure or neglect to raise the objection is
 16 excused because of extraordinary circumstances. The findings
 17 of the board with respect to questions of fact, if supported
 18 by substantial evidence on the record considered as a whole,
 19 are conclusive.

20 (5) The grievance procedure in a collective bargaining
 21 agreement takes precedence over the grievance procedure in
 22 this section for employees who are members of bargaining
 23 units for the purposes of Title 59, chapter 16.

24 Section 6. Section 92A-1014, R.C.M. 1947, is amended
 25 to read as follows:

1 ~~"82A-1014. Board of personnel appeals~~ Public
2 employment labor relations board created. (1) There is
3 created a ~~board of personnel appeals~~ public employment labor
4 relations board.

5 (2) The board is allocated to the department of labor
6 and industry for administrative purposes only as prescribed
7 in section 82A-108.

8 (3) The board consists of five ~~(5)~~ members appointed
9 by the governor. Two ~~(2)~~ members shall represent management,
10 two ~~(2)~~ members shall represent employees or employee
11 organizations of the state, and one ~~(1)~~ member shall
12 represent a neutral position.

13 ~~(4)(a) Any employee or his representative affected~~
14 ~~by the operation of Title 59, chapter 9, R.C.M., 1947, is~~
15 ~~entitled to file a complaint with the board and to be heard,~~
16 ~~under the provisions of a grievance procedure to be~~
17 ~~prescribed by the board.~~

18 ~~(b) Direct or indirect interference, restraint,~~
19 ~~coercion, or retaliation by an employee's supervisor or the~~
20 ~~agency for which the employee works against an employee~~
21 ~~because the employee has filed or attempted to file a~~
22 ~~complaint with the board shall also be basis for a complaint~~
23 ~~and shall entitle the employee to file a complaint with the~~
24 ~~board and to be heard, under the provisions of the grievance~~
25 ~~procedure prescribed by the board.~~

1 ~~(c) If upon the preponderance of the evidence taken at~~
2 ~~the hearing the board is of the opinion that the employee is~~
3 ~~aggrieved, it may issue an order to the department of~~
4 ~~administration requiring such action of the department as~~
5 ~~will resolve the employee's grievances. In any hearing the~~
6 ~~board is not bound by statutory or common law rules of~~
7 ~~evidence.~~

8 ~~(d) The board or the employee may petition for the~~
9 ~~enforcement of the board's order and for appropriate~~
10 ~~temporary relief, and shall file in the district court the~~
11 ~~record of the proceedings. Upon the filing of the petition,~~
12 ~~the district court shall have jurisdiction of the~~
13 ~~proceedings. Thereafter, the district court shall set the~~
14 ~~matter for hearing. After the hearing, the district court~~
15 ~~shall issue its order granting such temporary or permanent~~
16 ~~relief as it considers just and proper. No objection that~~
17 ~~has not been raised before the board shall be considered by~~
18 ~~the court unless the failure or neglect to raise the~~
19 ~~objection is excused because of extraordinary circumstances.~~
20 ~~The findings of the board with respect to questions of fact,~~
21 ~~if supported by substantial evidence on the record~~
22 ~~considered as a whole, shall be conclusive.~~

23 ~~(5)(4)~~ The board is designated a quasi-judicial board
24 for purposes of section 82A-112."

25 Section 7. Repealer. Sections 32-2504, 32-2505,

HB 0700/02

- 1 32-2505.1, 32-2505.2, 32-2505.3, and 82A-709, R.C.M. 1947,
- 2 are repealed.

-End-

1 HOUSE BILL NO. 700

2 INTRODUCED BY BRAND,

3 PALMER, FABREGA, BRADLEY, MELOY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CONCERNING PUBLIC
6 EMPLOYMENT RELATIONS, RENAMING THE MERIT SYSTEM COUNCIL AND
7 THE BOARD OF PERSONNEL APPEALS, TRANSFERRING CERTAIN
8 FUNCTIONS, AND REQUIRING THE ESTABLISHMENT OF A GRIEVANCE
9 PROCEDURE; AMENDING SECTIONS 59-914, 59-1602, 59-1603,
10 82A-206, AND 82A-1014, R.C.M. 1947; AND REPEALING SECTIONS
11 32-2504 THROUGH 32-2505.3 AND 82A-709, R.C.M. 1947."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 59-914, R.C.M. 1947, is amended to
15 read as follows:

16 "59-914. Merit system continued. The merit system,
17 established in 1940 by certain state agencies of state
18 government, as a requirement for receipt of federal funds,
19 shall continue to operate for those agencies under the
20 policies and procedures established by the ~~merit-system~~
21 ~~council department subject to review AND APPROVAL by the~~
22 ~~personnel review board."~~

23 Section 2. Section 59-1602, R.C.M. 1947, is amended to
24 read as follows:

25 "59-1602. Definitions. ~~When used in this act As used~~

1 in this chapter, the following definitions apply: (1)
2 "public employer" means the state of Montana or any
3 political subdivision thereof, including but not limited to,
4 any town, city, county, district, school board, board of
5 regents, public and quasi-public corporation, housing
6 authority or other authority established by law, and any
7 representative or agent designated by the public employer to
8 act in its interest in dealing with public employees, when
9 the board of regents is the public employer defined in this
10 section, the student government at an institution of higher
11 education may designate an agent or representative to meet
12 and confer with the board of regents and the faculty
13 bargaining agent prior to negotiations with the professional
14 educational employees, to observe those negotiations and
15 participate in caucuses as part of the public employer's
16 bargaining team, and to meet and confer with the board of
17 regents regarding the terms of agreement prior to the
18 execution of a written contract between the regents and the
19 professional educational employees. The student observer is
20 obliged to maintain the confidentiality of these
21 negotiations.

22 (2) "public employee" means a person employed by a
23 public employer in any capacity, except elected officials,
24 persons directly appointed by the governor, supervisory
25 employees and management officials (as defined in subsection

1 (3) and (4) below) or members or any state board or
 2 commission who serve the state intermittently, school
 3 district clerks and school administrators, registered
 4 professional nurses performing service for health care
 5 facilities, professional engineers and engineers in
 6 training, and includes any individual whose work has ceased
 7 as a consequence of, or in connection with, any unfair labor
 8 practice or concerted employee action;

9 (3) "supervisory employee" means any individual having
 10 authority, in the interest of the employer to hire,
 11 transfer, suspend, lay off, recall, promote, discharge,
 12 assign, reward, discipline other employees, having
 13 responsibility to direct them, to adjust their grievances,
 14 or effectively to recommend such action, if in connection
 15 with the foregoing the exercise of such authority is not of
 16 a merely routine or clerical nature, but requires the use of
 17 independent judgment;

18 (4) "management officials" means representatives of
 19 management having authority to act for the agency on any
 20 matters relating to the implementation of agency policy;

21 (5) "labor organization" means any organization or
 22 association of any kind in which employees participate and
 23 which exists for the primary purpose of dealing with
 24 employers concerning grievances, labor disputes, wages,
 25 rates of pay, hours of employment, fringe benefits, or other

1 conditions of employment;

2 (6) "exclusive representative" means the labor
 3 organization which has been designated by the board as the
 4 exclusive representative of employees in an appropriate unit
 5 or has been so recognized by the public employer;

6 (7) "board" means the ~~board of personnel appeals~~
 7 public employment labor relations board provided for in
 8 ~~section 82A-1014;~~

9 (8) "person" includes one or more individuals, labor
 10 organizations, public employees, associations, corporations,
 11 legal representatives, trustees, trustees in bankruptcy, or
 12 receivers;

13 (9) "unfair labor practice" means any unfair labor
 14 practice listed in section 59-1605;

15 (10) "labor dispute" includes any controversy
 16 concerning terms, tenure or conditions of employment, or
 17 concerning the association or representation of persons in
 18 negotiating, fixing, maintaining, changing, or seeking to
 19 arrange terms or conditions of employment, regardless of
 20 whether the disputants stand the proximate relation of
 21 employer and employee;

22 (11) "appropriate unit" means a group of public
 23 employees banded together for collective bargaining purposes
 24 as designated by the board."

25 Section 3. Section 59-1603, R.C.M. 1947, is amended to

1 read as follows:

2 "59-1603. Employees' right to join or form labor
3 organization and engage in collective bargaining activities.

4 (1) Public employees shall have, and shall be protected in
5 the exercise of, the right of self-organization, to form,
6 join or assist any labor organization, to bargain
7 collectively through representatives of their own choosing
8 on questions of wages, hours, fringe benefits, and other
9 conditions of employment and to engage in other concerted
10 activities for the purpose of collective bargaining or other
11 mutual aid or protection, free from interference, restraint
12 or coercion.

13 (2) Public employees and their representatives shall
14 recognize the prerogatives of public employers to operate
15 and manage their affairs in such areas as but not limited
16 to:

17 (a) direct employees;

18 (b) hire, promote, transfer, assign, and retain
19 employees;

20 (c) relieve employees from duties because of lack of
21 work or funds or under conditions where continuation of such
22 work be inefficient and nonproductive;

23 (d) maintain the efficiency of government operations;

24 (e) determine the methods, means, job classifications,
25 and personnel by which government operations are to be

1 conducted;

2 (f) take whatever actions may be necessary to carry
3 out the missions of the agency in situations of emergency;

4 (g) establish the methods and processes by which work
5 is performed.

6 (3) Labor organizations designated in accordance with
7 the provisions of this act are responsible for representing
8 the interest of all employees in the exclusive bargaining
9 unit without discrimination for the purposes of collective
10 bargaining with respect to rates of pay, hours, fringe
11 benefits, and other conditions of employment.

12 (4) Certification as an exclusive representative shall
13 be extended or continued as the case may be only to a labor
14 or employee organization the written bylaws of which provide
15 for and guarantee the following rights and safeguards and
16 whose practices conform to such rights and safeguards as:
17 provisions are made for democratic organization and
18 procedures; elections are conducted pursuant to adequate
19 standards and safeguards; controls are provided for the
20 regulation of officers and agents having fiduciary
21 responsibility to the organization; and requirements exist
22 for maintenance of sound accounting and fiscal controls
23 including annual audits.

24 (5) No public employee who is a member of a bona fide
25 religious sect, or division thereof, the established and

1 traditional tenets or teachings of which oppose a
 2 requirement that a member of such sect or division join or
 3 financially support any labor organization, may be required
 4 to join or financially support any labor organization as a
 5 condition of employment, if such public employee pays, in
 6 lieu of periodic union dues, initiation fees, and
 7 assessments, at the same time or times such periodic union
 8 dues, initiation fees, and assessments would otherwise be
 9 payable, a sum of money equivalent to such periodic union
 10 dues, initiation fees, and assessments, to a nonreligious,
 11 nonunion charity designated by the labor organization. Such
 12 public employee shall furnish to such labor organization
 13 written receipts evidencing such payments and failure to
 14 make such payments or furnish such receipts shall subject
 15 the employee to the same sanctions as would nonpayment of
 16 dues, initiation fees or assessments under the applicable
 17 collective bargaining agreement.

18 A public employee desiring to avail himself or herself
 19 to the right of nonassociation with a labor organization as
 20 provided in this subsection shall make written application
 21 to the chairman of the board of ~~personnel appeals~~. Within
 22 ten days of the date of receipt of such application, the
 23 chairman shall appoint a committee of three (3) consisting
 24 of a clergyman not connected with the sect in question, a
 25 labor union official not directly connected with the labor

1 organization in question and a member of the public at
 2 large, who shall be the chairman. The committee shall,
 3 within ten (10) days of the date of its appointment, meet at
 4 the locale of either the employee's residence or place of
 5 employment and, after receiving written or oral
 6 presentations from all interested parties, determine by a
 7 majority vote whether or not such public employee qualifies
 8 for the right of nonassociation with such labor
 9 organization. The committee's decision shall be made in
 10 writing within three (3) days of the meeting date and a copy
 11 thereof shall be forthwith mailed to such public employee,
 12 labor organization and the chairman of the board of
 13 ~~personnel appeals.~~"

14 Section 4. Section 82A-206, R.C.M. 1947, is amended to
 15 read as follows:

16 *82A-206. Merit ~~system council~~ Personnel review board
 17 -- allocated -- composition. (1) There is a merit ~~system~~
 18 ~~council~~ personnel review board.

19 (2) The ~~council board~~ is allocated to the department
 20 OF LABOR AND INDUSTRY for administrative purposes only as
 21 prescribed in section 82A-108. However, the ~~council~~ board
 22 may hire its own personnel, and section 82A-108(2)(d) does
 23 not apply.

24 (3) The ~~council board~~ is composed of three (3)
 25 members, appointed by the governor for ~~six (6) year~~ 6-year

1 overlapping terms. ~~The governor shall appoint the members~~
 2 ~~upon the recommendation of the agencies which participate in~~
 3 ~~the joint merit system, and in accordance with federal~~
 4 ~~requirements.~~

5 (4) Members shall be ~~are~~ compensated and reimbursed as
 6 are members of advisory councils in section 82A-110(5)."

7 Section 5. There is a new R.C.M. section numbered
 8 82A-206.1 that reads as follows:

9 82A-206.1. Functions of personnel review board. (1) An
 10 employee affected by the operation of Title 59, chapter 9,
 11 or by other conditions of employment is entitled to file a
 12 complaint with the personnel review board and to be heard
 13 under the provisions of a grievance procedure to be
 14 prescribed by the board.

15 (2) Direct or indirect interference, restraint,
 16 coercion, or retaliation by an employee's supervisor or by
 17 an agency against an employee because the employee has filed
 18 or attempted to file a complaint with the board shall also
 19 be basis for a complaint and shall entitle the employee to
 20 file a complaint with the board and to be heard, under the
 21 provisions of the grievance procedure prescribed by the
 22 board.

23 (3) If upon the preponderance of the evidence taken at
 24 the hearing the board is of the opinion that the employee is
 25 aggrieved, it may issue an order to the department of

1 administration or other appropriate agency requiring such
 2 action as will resolve the employee's grievance. In any
 3 hearing the board is not bound by statutory or common law
 4 rules of evidence.

5 (4) The board or the employee may petition for the
 6 enforcement of the board's order and for appropriate
 7 temporary relief and shall file in the district court the
 8 record of the proceedings. Upon the filing of the petition,
 9 the district court has jurisdiction of the proceeding.
 10 Thereafter, the district court shall set the matter for
 11 hearing. After the hearing, the district court shall issue
 12 its order granting such temporary or permanent relief as it
 13 considers just and proper. No objection that has not been
 14 raised before the board may be considered by the court
 15 unless the failure or neglect to raise the objection is
 16 excused because of extraordinary circumstances. The findings
 17 of the board with respect to questions of fact, if supported
 18 by substantial evidence on the record considered as a whole,
 19 are conclusive.

20 (5) The grievance procedure in a collective bargaining
 21 agreement takes precedence over the grievance procedure in
 22 this section for employees who are members of bargaining
 23 units for the purposes of Title 59, chapter 16.

24 Section 6. Section 82A-1014, R.C.M. 1947, is amended
 25 to read as follows:

1 ~~"82A-1014. Board of personnel~~ appeals Public
 2 employment labor relations board created. (1) There is
 3 created a ~~board of personnel~~ appeals public employment labor
 4 relations board.

5 (2) The board is allocated to the department of labor
 6 and industry for administrative purposes only as prescribed
 7 in section 82A-108.

8 (3) The board consists of five ~~(5)~~ members appointed
 9 by the governor. Two ~~(2)~~ members shall represent management,
 10 two ~~(2)~~ members shall represent employees or employee
 11 organizations of the state, and one ~~(1)~~ member shall
 12 represent a neutral position.

13 ~~(4) (a) Any employee or his representative affected~~
 14 ~~by the operation of Title 59, chapter 9, RvCvM, 1947, is~~
 15 ~~entitled to file a complaint with the board and to be heard~~
 16 ~~under the provisions of a grievance procedure to be~~
 17 ~~prescribed by the board.~~

18 ~~(b) Direct or indirect interference, restraint,~~
 19 ~~coercion, or retaliation by an employee's supervisor or the~~
 20 ~~agency for which the employee works against an employee~~
 21 ~~because the employee has filed or attempted to file a~~
 22 ~~complaint with the board shall also be basis for a complaint~~
 23 ~~and shall entitle the employee to file a complaint with the~~
 24 ~~board and to be heard under the provisions of the grievance~~
 25 ~~procedure prescribed by the board.~~

1 ~~(c) If upon the preponderance of the evidence taken at~~
 2 ~~the hearing the board is of the opinion that the employee is~~
 3 ~~aggrieved, it may issue an order to the department of~~
 4 ~~administration requiring such action of the department as~~
 5 ~~will resolve the employee's grievances. In any hearing the~~
 6 ~~board is not bound by statutory or common law rules of~~
 7 ~~evidence.~~

8 ~~(d) The board or the employee may petition for the~~
 9 ~~enforcement of the board's order and for appropriate~~
 10 ~~temporary relief, and shall file in the district court the~~
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 12 ~~the district court shall have jurisdiction of the~~
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 14 ~~matter for hearing. After the hearing, the district court~~
 15 ~~shall issue its order granting such temporary or permanent~~
 16 ~~relief as it considers just and proper. No objection that~~
 17 ~~has not been raised before the board shall be considered by~~
 18 ~~the court unless the failure or neglect to raise the~~
 19 ~~objection is excused because of extraordinary circumstances.~~
 20 ~~The findings of the board with respect to questions of fact,~~
 21 ~~if supported by substantial evidence on the record,~~
 22 ~~considered as a whole, shall be conclusive.~~

23 ~~(5)(4)~~ The board is designated a quasi-judicial board
 24 for purposes of section 82A-112."

25 Section 7. Repealer. Sections 32-2504, 32-2505,

HB 0700/02

1 32-2505.1, 32-2505.2, 32-2505.3, and 82A-709, R.C.M. 1947,
2 are repealed.

-End-

April 5, 1977

SENATE
STANDING COMMITTEE REPORT
Joint Select Committee on Employee Compensation

That House Bill No. 700, third reading, be amended as follows:

1. Amend page 1, section 1, line 22.

Following: "board."

Insert: "The Merit System shall be extended only to those employees as required for the receipt of federal funds."

2. Amend page 8, section 4, line 24.

Following: "of"

Strike: "three {3}"

Insert: "five (5)"

3. Amend page 9, section 5, line 14.

Following: "board"

Insert: "in accordance with the Montana Administrative Procedures Act"

4. Amend page 13, line 2.

Following: line 2

Insert: "Section 8. Notwithstanding other provisions of this Act, whenever Federal Merit System Standards are applicable to programs as a condition for receipt of Federal Funds, the department shall take such action as is necessary to assure that all personnel practices in those programs are in accord with the Federal Standards and those provisions found not to be in compliance with such standards shall not be implemented in those programs."