

1 *Senate* BILL NO. *444*
 2 INTRODUCED BY *Dwight Raskie*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A CAREER
 5 SERVICE SYSTEM FOR MONTANA STATE EMPLOYEES; INCREASING
 6 MEMBERSHIP IN THE MERIT SYSTEM COUNCIL; AUTHORIZING THE
 7 MERIT SYSTEM COUNCIL TO ADMINISTER THE ACT; AMENDING
 8 SECTIONS 59-903, 82A-206, and 82A-1014, R.C.M. 1947."
 9

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

11 Section 1. There is a new R.C.M. section that reads as
 12 follows:

13 Short title. This act may be cited as "The Montana
 14 Career Service Act".

15 Section 2. There is a new R.C.M. section that reads as
 16 follows:

17 Purpose. The purpose of the act is to establish a
 18 system of career service personnel management for the
 19 executive branch of state government based on merit
 20 principles and scientific methods governing appointment,
 21 promotion, compensation, removal, and transfer of employees
 22 and other matters related to personnel management.

23 Section 3. There is a new R.C.M. section that reads as
 24 follows:

25 Definitions. As used in this act, the following

1 definitions apply:

2 (1) "Appointing authority" means the authority to
 3 appoint to positions in the classified service and is
 4 reserved to elected officials and heads of departments and
 5 agencies within state government.

6 (2) "Certify" means forwarding to a requesting agency
 7 names of eligible applicants.

8 (3) "Career service" means positions in the executive
 9 branch of state government to which this act applies.

10 (4) "Employee" means any person working in the
 11 executive branch of state government, paid by the state of
 12 Montana, or remunerated by other funds raised, appropriated,
 13 or otherwise generated by the state.

14 (5) "Officer" means an employee of state government
 15 who is appointed and serves at the pleasure of a public
 16 official, board, or commission.

17 (6) "Public official" means a member of state
 18 government elected by popular vote.

19 (7) "Personnel administrator" means the administrator
 20 appointed by and serving at the pleasure of the merit system
 21 council to administer the career service.

22 (8) "Position" means a collection of duties and
 23 responsibilities assigned by the appointing authority to one
 24 individual.

25 (9) "Eligible applicant" means a position applicant

1 who meets the minimum qualification requirements for a
2 respective position.

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

5 "82A-206. Merit system council — allocated —
6 composition. (1) There is a merit system council.

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

11 (3) The council is composed of ~~three (3)~~ five members,
12 appointed by the governor for ~~six (6)~~ year ~~6~~-year
13 overlapping terms. The governor shall appoint the members
14 upon the recommendation of the agencies which participate in
15 the joint merit system, and in accordance with federal
16 requirements.

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

19 Section 5. There is a new R.C.M. section that reads as
20 follows:

21 Duties of department of administration transferred. The
22 duties of the department of administration under Title 59,
23 chapter 9, are transferred to the merit system council.

24 Section 6. Section 59-903, R.C.M. 1947, is amended to
25 read as follows:

1 "59-903. Definitions. For the purposes of this act:

2 (1) "Agency" means any department, board, commission,
3 office, bureau, institution, or unit of state government
4 recognized in the state budget.

5 (2) "Department" means the ~~department~~ of
6 ~~administration~~ merit system council.

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

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

13 Section 7. Section 82A-1014, R.C.M. 1947, is amended
14 to read as follows:

15 "82A-1014. Board of personnel appeals created. (1)
16 There is created a board of personnel appeals.

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

20 (3) The board consists of five ~~(5)~~ members appointed
21 by the governor. Two ~~(2)~~ members shall represent management,
22 two ~~(2)~~ members shall represent employees or employee
23 organizations of the state, and one ~~(1)~~ member shall
24 represent a neutral position.

25 ~~(4) (a) Any employee or his representative affected by~~

1 the operation of ~~Title 59, chapter 9, R.C.M., 1947,~~ is
 2 entitled to file a complaint with the board and to be heard
 3 under the provisions of a grievance procedure to be
 4 prescribed by the boards

5 ~~(b) Direct or indirect interference, restraint,~~
 6 ~~coercion, or retaliation by an employee's supervisor or the~~
 7 ~~agency for which the employee works against an employee~~
 8 ~~because the employee has filed or attempted to file a~~
 9 ~~complaint with the board shall also be basis for a complaint~~
 10 ~~and shall entitle the employee to file a complaint with the~~
 11 ~~board and to be heard, under the provisions of the grievance~~
 12 ~~procedure prescribed by the boards~~

13 ~~(c) If upon the preponderance of the evidence taken at~~
 14 ~~the hearing the board is of the opinion that the employee is~~
 15 ~~aggrieved, it may issue an order to the department of~~
 16 ~~administration requiring such action of the department as~~
 17 ~~will resolve the employee's grievance. In any hearing the~~
 18 ~~board is not bound by statutory or common law rules of~~
 19 ~~evidence~~

20 ~~(d) The board or the employee may petition for the~~
 21 ~~enforcement of the board's order and for appropriate~~
 22 ~~temporary relief, and shall file in the district court the~~
 23 ~~record of the proceedings. Upon the filing of the petition~~
 24 ~~the district court shall have jurisdiction of the~~
 25 ~~proceedings. Thereafter, the district court shall set the~~

1 matter for hearing. After the hearing, the district court
 2 shall issue its order granting such temporary or permanent
 3 relief as it considers just and proper. No objection that
 4 has not been raised before the board shall be considered by
 5 the court unless the failure or neglect to raise the
 6 objection is excused because of extraordinary circumstances.
 7 The findings of the board with respect to questions of fact,
 8 if supported by substantial evidence on the record
 9 considered as a whole, shall be conclusive

10 ~~(5)(4)~~ The board is designated a quasi-judicial board
 11 for purposes of section 82A-112."

12 Section 8. There is a new R.C.M. section that reads as
 13 follows:

14 Application of act. This act shall apply to all
 15 positions in the career service except:

- 16 (1) elected officials and their chief deputy and
 17 executive secretary;
- 18 (2) officers and employees of the legislative branch;
- 19 (3) judges and employees of the judicial branch;
- 20 (4) members of boards and commissions appointed by the
 21 governor, appointed by the legislature, or appointed by
 22 other elected state officials;
- 23 (5) officers or members of the militia;
- 24 (6) agency heads appointed by the governor;
- 25 (7) academic and professional administrative personnel

1 with individual contracts under the authority of the board
2 of regents of higher education;

3 (8) personal staff of the elected officials enumerated
4 in Article VI, section 1, of the constitution of Montana;

5 (9) persons employed in a professional or scientific
6 capacity as consultants or to conduct a temporary and
7 special inquiry, investigation, or examination for the
8 legislature or a department or agency of state government;

9 (10) state employees who are serving an apprenticeship
10 or are journeymen craftsmen within their trade;

11 (11) positions considered to be inappropriate to the
12 career service due to the special nature of the position as
13 determined by the council.

14 Section 9. There is a new R.C.M. section that reads as
15 follows:

16 Council duties. The council shall:

17 (1) help foster and assure a career service personnel
18 system for all state employees. In carrying out this
19 function, the council shall review and hear comments from
20 any concerned individual, department, agency, or their
21 representative on any personnel rule or modification thereof
22 adopted by the council.

23 (2) review any personnel action of any agency that is
24 alleged by an affected party or an authorized representative
25 of an affected party to be arbitrary or contrary to law or

1 rule and set aside that action if it finds those allegations
2 to be correct;

3 (3) adopt procedural rules and hold hearings it finds
4 necessary to properly perform the duties, functions, and
5 powers imposed on or vested in it by law;

6 (4) select and appoint a qualified personnel
7 administrator and those employees, experts, and special
8 assistants necessary to carry out effectively the provisions
9 of this act;

10 (5) establish and maintain a roster of all state
11 employees in which there shall be set forth, as to each
12 employee, the classification title of the position occupied,
13 the salary or pay, change in classification title, status,
14 and any other relevant personnel data that the council
15 considers necessary;

16 (6) recruit employees for state service;

17 (7) maintain a personnel classification plan and a pay
18 plan as required by Title 59, chapter 9;

19 (8) prepare, in accordance with the provisions of this
20 act and rules adopted hereunder, appropriate selection
21 procedures, ratings of candidates for appointment, and
22 eligibility lists;

23 (9) establish and maintain a descriptive listing of
24 all positions under this act;

25 (10) certify persons as eligible for appointment within

1 the career service in accordance with the provisions of this
2 act and rules adopted hereunder;

3 (11) devise plans for and cooperate with persons with
4 appointing authority and other supervisors in the conduct of
5 employee training programs so that the quality of service
6 rendered by state employees may be continually improved;

7 (12) investigate from time to time the operation and
8 effect of this act and the rules adopted hereunder and make
9 reports and recommendations to the governor and legislature
10 as requested or required by law;

11 (13) assure that all lists and classifications are
12 cross-referenced and set up to promote a system of quick and
13 efficient information retrieval.

14 Section 10. There is a new R.C.M. section that reads
15 as follows:

16 Appeal of grievances. If a grievance remains unresolved
17 after exhaustion of departmental grievance procedures, an
18 employee may demand a hearing before the council as provided
19 for contested cases in the Montana Administrative Procedure
20 Act and proceedings shall be held as provided therein. Any
21 final action or decision of the council is subject to
22 further appeal under the Montana Administrative Procedure
23 Act.

24 Section 11. There is a new R.C.M. section that reads
25 as follows:

1 Agencies to furnish records. All departments and
2 agencies covered by the career service personnel system
3 shall furnish any related records or information which the
4 council requests for any purpose of this act except records
5 made confidential by statute or the state constitution.

6 Section 12. There is a new R.C.M. section that reads
7 as follows:

8 Records open to public inspection. The records of the
9 council, except those records made confidential by statute
10 or the state constitution, are public records and are open
11 to public inspection, subject to regulations as to the time
12 and manner of inspection prescribed by the council.

13 Section 13. There is a new R.C.M. section that reads
14 as follows:

15 Examiners. The council may select certain state
16 employees to act as examiners in the preparation and rating
17 of tests. A person with appointing authority shall excuse an
18 employee in his department or agency from his regular duties
19 for the time required for his work as an examiner. Officers
20 and employees are not entitled to extra pay for their
21 service as examiners but are entitled to their regular pay
22 and reimbursement for necessary traveling and other expenses
23 as authorized by law.

24 Section 14. There is a new R.C.M. section that reads
25 as follows:

1 Departmental personnel officers. Each department of
2 state government shall designate a staff employee to serve
3 as personnel officer for that agency or department to
4 administer personnel responsibilities specified in this act
5 by the council.

6 Section 15. There is a new R.C.M. section that reads
7 as follows:

8 Nondiscrimination. The council, the personnel
9 administrator, and all employees shall comply with the
10 following rules:

11 (1) Discrimination on the basis of political
12 affiliation is prohibited.

13 (2) Discrimination on the basis of age, between
14 persons 18 years of age or older and under 65 years of age,
15 or physical disability is prohibited except when specific
16 age or physical requirements constitute demonstrated and
17 bona fide occupational qualifications necessary for
18 effective work performance.

19 Section 16. There is a new R.C.M. section that reads
20 as follows:

21 Federal rule to prevail. Whenever the provisions of any
22 law, rule, or order of any federal agency or authority
23 providing or administering federal funds for use in Montana
24 conflict with this act or rules adopted hereunder, the
25 provisions of the federal law, rule, or order prevail and

1 govern the class of employment and employees affected
2 thereby.

3 Section 17. There is a new R.C.M. section that reads
4 as follows:

5 Criteria for personnel management actions. All
6 personnel management actions taken under the provisions of
7 this act shall be in compliance with sound personnel
8 principles as follows:

9 (1) recruiting, selecting, and advancing employees on
10 the basis of but not limited to relative ability, knowledge,
11 and skills and open consideration of qualified applicants
12 for initial appointments and promotions;

13 (2) providing equitable compensation;

14 (3) training employees to assure high quality
15 performance;

16 (4) retraining employees when necessary, correcting
17 inadequate performance, and separating employees whose
18 performance cannot be improved;

19 (5) assuring fair treatment without regard to age,
20 political affiliation, race, color, national origin, marital
21 status, sex, religion, or creed;

22 (6) protecting employees against forced involvement in
23 partisan political activities.

24 Section 18. There is a new R.C.M. section that reads
25 as follows:

1 Other council duties. The council shall adopt rules in
2 the areas of recruitment, selection, procedure, promotion,
3 and other personnel procedures for all state employees.

4 Section 19. There is a new R.C.M. section that reads
5 as follows:

6 Person shall be certified. No person may be appointed
7 or promoted to a position in the career service unless
8 certified as eligible by the council.

9 Section 20. There is a new R.C.M. section that reads
10 as follows:

11 Final selection of eligible applicant for a position.
12 Persons with appointing authority have exclusive authority
13 to make the final selection of employees in their respective
14 departments, divisions, bureaus, or agencies from lists of
15 eligible applicants prepared by the council under rules
16 promulgated by the council.

17 Section 21. There is a new R.C.M. section that reads
18 as follows:

19 Character of entrance and promotion procedures --
20 confidentiality. (1) Entrance and promotion selection
21 procedures shall be of a character to determine the
22 qualifications, fitness, and ability of the persons
23 determined best qualified to perform the duties of the
24 applicable position classification.

25 (2) Selection procedures may include the following

1 devices:

2 (a) work-sample and performance tests;

3 (b) practical written tests;

4 (c) individual and group oral examination;

5 (d) ratings of training and experience;

6 (e) physical examinations; and

7 (f) background and reference inquiries.

8 (3) All written examinations, performance tests, and
9 other selection procedures shall be held confidential unless
10 utilized or released through legal order. Once the
11 confidentiality of a selection device has been compromised,
12 that device shall be invalidated and a new device
13 constructed.

14 Section 22. There is a new R.C.M. section that reads
15 as follows:

16 Limitation on contents of application form. No question
17 in any form of application or in any selection procedure may
18 be framed to elicit any information concerning the political
19 or religious opinions or affiliations of any applicant, nor
20 may any inquiry be made concerning those opinions or
21 affiliations. No discrimination may be exercised,
22 threatened, or promised by any person in the employ of any
23 agency in state government or of the department against or
24 in favor of any applicant or employee because of his age,
25 political affiliation, race, color, national origin, sex,

1 marital status, religion, or creed.

2 Section 23. There is a new R.C.M. section that reads
3 as follows:

4 Public notice of vacancies. The council shall give
5 public notice of all vacancies or expected vacancies in the
6 career service in the manner specified by rules adopted by
7 the council.

8 Section 24. There is a new R.C.M. section that reads
9 as follows:

10 Notice to applicant. The council shall send to each
11 person competing in any selection process written notice of
12 his final eligibility status or of his failure to obtain
13 eligibility, within 30 calendar days after the receipt of
14 his application.

15 Section 25. There is a new R.C.M. section that reads
16 as follows:

17 Preferential treatment for veterans. Preferential
18 treatment for veterans and their spouses under this
19 personnel system shall be determined in accordance with the
20 provisions of applicable state law and rules.

21 Section 26. There is a new R.C.M. section that reads
22 as follows:

23 Certification to requesting agency of eligible persons.
24 Upon written notice from a person with appointing authority
25 that a position in the career service is to be filled, the

1 council shall certify the names of a limited number, not
2 less than three, of the highest qualified eligible
3 applicants who are willing to accept appointment from lists
4 for the classification to which the position is allocated or
5 a comparable classification.

6 Section 27. There is a new R.C.M. section that reads
7 as follows:

8 Certification procedure. (1) The names certified from
9 promotional and open employment lists shall consist of a
10 limited number of the highest eligible applicants.

11 (2) The detailed conditions and provisions for
12 certification and removal from eligibility shall be
13 prescribed by rules of the council.

14 (3) If the appropriate lists do not contain the names
15 of a sufficient number of eligible applicants willing to
16 accept appointment to make possible the certification
17 provided for in this section, the names of all eligible
18 persons on lists for comparable classifications who are
19 willing to accept appointment shall be certified.

20 Section 28. There is a new R.C.M. section that reads
21 as follows:

22 Appointment limitation. No person may be appointed to
23 or employed in a position in the career service under a
24 classification title which has not been approved by the
25 council as appropriate to the duties to be performed.

1 Section 29. There is a new R.C.M. section that reads
2 as follows:

3 Employee evaluation. In cooperation with persons with
4 appointing authority, the council shall establish a system
5 of employee performance evaluation for employees in the
6 career service. This evaluation shall take place annually or
7 more frequently if necessary.

8 Section 30. There is a new R.C.M. section that reads
9 as follows:

10 Inter- and intra-agency transfers. Inter- and
11 intra-agency transfers without change in title or salary may
12 be made at any time.

13 Section 31. There is a new R.C.M. section that reads
14 as follows:

15 Layoffs and separations. Employees in the career
16 service who have acquired permanent status are not subject
17 to separation or suspension or layoff except for cause or
18 reasons of curtailment of work or lack of funds. Retention
19 of employees in classes affected by a reduction in force
20 will be based upon systematic consideration of appointment,
21 length of service, and relative efficiency.

22 Section 32. There is a new R.C.M. section that reads
23 as follows:

24 Reinstatement to previous class of position.
25 Appointments of other qualified persons to classes of

1 positions from which an employee was separated by reduction
2 in force may not be made until the separated employee has
3 been offered but refused reinstatement. The order of
4 reinstatement shall be that the last person laid off is the
5 first reinstated.

6 Section 33. There is a new R.C.M. section that reads
7 as follows:

8 Prohibitions. (1) No person may make any false
9 statement, certificate, mark, rating, or report with regard
10 to any test, certification, or appointment made under this
11 act or in any manner commit or attempt to commit any fraud
12 preventing the impartial execution of this act and the rules
13 adopted hereunder.

14 (2) No person may, directly or indirectly, give,
15 render, pay, offer, solicit, or accept any money, service,
16 or other valuable consideration for or on account of any
17 appointment or proposed appointment to, promotion or
18 proposed promotion to, or any advantage in a position in the
19 career service.

20 (3) No employee of the council or other person may
21 defeat, deceive, or obstruct any person in this right to
22 examination, eligibility, certification, or appointment
23 under this act or furnish any person any special or secret
24 information for the purpose of affecting the rules or
25 prospects of any person with respect to employment in the

1 career service.

2 (4) Any person who knowingly and deliberately violates
3 any provision of this act is ineligible for appointment to
4 or employment in a position in the state career service for
5 up to 5 years, and if that person is an officer or employee
6 of the state, he is guilty of misconduct in office and shall
7 forfeit that office or position.

8 (5) The council shall enforce this section and is
9 granted power and authority necessary to carry out this
10 section.

11 Section 34. There is a new R.C.M. section that reads
12 as follows:

13 Current state employees not affected. Employees of the
14 state and the federally aided agencies served by the present
15 merit system council at the effective date of this act do
16 not lose any rights accrued at that time. Those employees
17 who have gained permanent status are not subject to further
18 examination except when they wish to qualify for promotion.
19 Those employees' rights as permanent employees are
20 continuous within the provisions of this act.

21 Section 35. There is a new R.C.M. section that reads
22 as follows:

23 Apportionment of costs. (1) The council shall maintain
24 accurate records identifying the cost of administering the
25 provisions of this act. At the close of each quarter year

1 period, it shall summarize the cost and shall bill each
2 department, division, bureau, section, unit, or agency for a
3 pro rata share of the administrative cost based on a
4 quarterly average number of employees in the career service
5 of all the departments, divisions, bureaus, sections, units,
6 or agencies for their appropriated calendar quarter.

7 (2) Each department, division, bureau, section, unit,
8 or agency that receives support from the federal government
9 or nongeneral fund sources shall include in their budget
10 sufficient amounts to meet their pro rata share of the cost
11 of administering this act and shall remit those shares
12 quarterly to the state treasury in the manner prescribed by
13 the council.

14 (3) The council is authorized and directed to accept
15 on behalf of the state any grant or contribution, federal or
16 otherwise, made to assist in meeting the cost of carrying
17 out the purposes of this act.

18 Section 36. There is a new R.C.M. section that reads
19 as follows:

20 State agencies to assist. All state agencies shall
21 adhere to and assist the council in administering the
22 provisions of this act.

23 Section 37. There is a new R.C.M. section that reads
24 as follows:

25 Collective bargaining not affected. Nothing in this act

1 restricts the career service employees' right to negotiate
2 on questions of wages, hours, fringe benefits, and other
3 conditions of employment as provided in Title 59, chapter
4 16.

5 Section 38. There is a new R.C.M. section that reads
6 as follows:

7 Penalty -- willful violation. Any person who purposely
8 violates any provision of this law or the policies of this
9 act is guilty of a misdemeanor and upon conviction shall be
10 punished by a fine not to exceed \$1,500 or imprisonment in
11 the county jail not exceeding 1 year, or both.

12 Section 39. Severability. If a part of this act is
13 invalid, all valid parts that are severable from the invalid
14 part remain in effect. If a part of this act is invalid in
15 one or more of its applications, the part remains in effect
16 in all valid applications that are severable from the
17 invalid applications.

-End-