

HOUSE BILL NO. 309

Introduced: 01/18/83

Referred to Committee on Labor & Employment Relations:
01/18/83

Hearing: 1/26/83

Report: 02/19/83, Do Pass, As Amended

2nd Reading: 02/22/83, Do Pass

3rd Reading: 02/23/82, Do Pass

Transmitted to Senate: 02/23/83

Referred to Committee on Labor & Employment Relations: 3/1/83

Hearing: 3/17/83

Report: 03/24/83: Be Concurred In, As Amended

2nd Reading: 03/26/83, Be Not Concurred In

2nd Reading: 03/26/83, Be Concurred In

3rd Reading: 03/28/82

Bill Killed

1 HOUSE BILL NO. 309
 2 INTRODUCED BY Barbara
 3 BY REQUEST OF THE PERSONNEL AND LABOR RELATIONS
 4 STUDY COMMISSION
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A UNIFORM
 7 GRIEVANCE PROCESS FOR STATE EMPLOYEES; TO DISCONTINUE
 8 EMPLOYEE GRIEVANCE APPEAL FUNCTIONS OF THE BOARD OF
 9 PERSONNEL APPEALS FOR THE DEPARTMENTS OF HIGHWAYS AND FISH,
 10 WILDLIFE, AND PARKS; TO DISCONTINUE THE MERIT SYSTEM
 11 COUNCIL; AMENDING SECTION 87-1-403, MCA; REPEALING SECTIONS
 12 2-15-1006, 2-18-1091, 2-18-1001 THROUGH 2-18-1003, AND
 13 87-1-205, MCA; AND PROVIDING AN EFFECTIVE DATE."
 14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 16 NEW SECTION. Section 1. Policy statement. It is the
 17 policy of this state to grant employees a grievance
 18 procedure designed to secure certain basic procedural rights
 19 as delineated in [sections 1 through 6].
 20 NEW SECTION. Section 2. Definitions. For purposes of
 21 [sections 1 through 6], the following definitions apply:
 22 (1) "Employee" means any state employee who has been
 23 employed for 6 calendar months except:
 24 (a) elected officials;
 25 (b) personal staff members of elected officials

1 exempted from the classification system under 2-18-104;
 2 (c) members of boards and commissions appointed by the
 3 governor or the legislature or by other state officials;
 4 (d) officers or members of the militia;
 5 (e) agency heads appointed by the governor;
 6 (f) a policymaking executive branch employee in the
 7 position of deputy director, deputy commissioner, or
 8 division administrator;
 9 (g) academic and professional administrative personnel
 10 with individual contracts under the authority of the board
 11 of regents of higher education;
 12 (h) a policymaking employee of the judicial branch
 13 designated as such by the chief justice of the Montana
 14 supreme court or a personal law clerk of the judicial
 15 branch;
 16 (i) policymaking employees of the legislative branch
 17 designated as such by the appropriate legislative committee
 18 or members of the immediate staffs of the majority and
 19 minority leadership of the legislature; or
 20 (j) academic and professional administrative personnel
 21 who have entered into individual contracts with the state
 22 school for the deaf and blind under the authority of the
 23 state board of public education.
 24 (2) "Grievable subject" means an agency action
 25 involving the termination, demotion, suspension, or layoff

HB 309

1 for more than 40 working hours of an employee, or the
2 involuntary transfer of an employee to another geographical
3 location, or retaliation taken against an employee for
4 participation in or filing a grievance under the procedures
5 of [sections 1 through 6].

6 (3) "Grievance" means an employee complaint involving
7 a grievable subject.

8 NEW SECTION. Section 3. Grievance procedure. Every
9 agency employing an employee shall establish, at a minimum,
10 rules consistent with the following provisions:

11 (1) Whenever practical, prior notice of at least 5
12 days must be given to each affected employee with regard to
13 an agency action on a grievable subject.

14 (2) Agency action on a grievable subject must be
15 consistent with contemporaneous written agency policy.

16 (3) A grievance may be filed anytime within 10 working
17 days of the grievable incident. A grievance is considered
18 filed when it is reduced to writing by the employee and
19 presented to the employee's immediate supervisor or other
20 responsible agency official.

21 (4) An employee who has filed a grievance is entitled
22 to a hearing under Title 2, chapter 4, part 6. The hearing
23 examiner appointed by the agency must be a neutral party.
24 The employee must be given the opportunity on his own time
25 to examine relevant documents, present his views, and

1 question witnesses on matters relating to a filed grievance.

2 (5) The decision of the hearing officer is advisory to
3 the chief administrative officer of the employing state
4 agency who shall make the final decision on the grievance.

5 (6) The final decision must be in writing and must be
6 responsive to the issues properly raised in the filed
7 grievance.

8 (7) The procedure for handling grievances must be
9 designed so that a final decision is made no later than 90
10 days following the filing of the grievance, except that this
11 time may be extended by mutual agreement of the agency and
12 the grievant.

13 NEW SECTION. Section 4. Authority of chief
14 administrative officer to remedy a grievance -- remedy for
15 procedural errors. The chief administrative officer of an
16 agency may remedy a valid grievance in any reasonable
17 manner. In the case of procedural errors, the chief
18 administrative officer may require the act to be redone
19 following proper procedures or, if the error was not
20 prejudicial to the grievant, the error may be disregarded
21 and no remedy given.

22 NEW SECTION. Section 5. Judicial review -- court
23 costs. (1) The rights guaranteed by [sections 1 through 6]
24 may be enforced by suit in a district court of appropriate
25 venue, and the decision of the chief administrative officer

1 is reviewable under the provisions of Title 2, chapter 4,
2 part 7.

3 (2) The court may grant costs and attorney's fees to a
4 prevailing plaintiff.

5 NEW SECTION. Section 6. Grievance procedure and
6 negotiated procedure mutually exclusive. Nothing in
7 [sections 1 through 6] limits the rights of exclusive
8 representatives and employers under 39-31-310, except that
9 no grievance may be pursued under both [sections 1 through
10 6] and the procedures negotiated by an exclusive
11 representative. The filing of a grievance under one
12 procedure constitutes a waiver of the right to pursue the
13 matter under the other procedure. However, after filing and
14 upon mutual agreement of all parties, a grievance may be
15 transferred from one process to the other.

16 Section 7. Section 87-1-403, MCA, is amended to read:

17 "87-1-403. Regulation of employees by director. ~~{1}~~
18 ~~The--director--may--suspend--without-pay--reduce--in--rank--or~~
19 ~~remove--any--employee--at--any--time--for--cause--providing--that~~
20 ~~any--person--who--has--been--continuously--employed--for--1--year--or~~
21 ~~more--immediately--preceding--any--suspension--or--discharge--may~~
22 ~~demand--and--receive--a--hearing--before--the--department--on--the~~
23 ~~charges--filed--The--action--of--the--department--resulting--from~~
24 ~~such--a--hearing--constitutes--final--administrative--action--for~~
25 ~~purposes--of--filing--a--grievance--with--the--board--of--personnel~~

1 ~~appeals--as--provided--in--87-1-205.~~

2 ~~{2}~~ The director shall rate all employees on the basis
3 of merit and efficiency in accordance with rules adopted by
4 the department to secure a proper rating of each person
5 employed. The salaries of employees shall be fixed by the
6 department, and travel expenses, as provided for in 2-18-501
7 through 2-18-503, as amended, shall be allowed employees
8 while upon official business away from designated
9 headquarters."

10 NEW SECTION. Section 8. Repealer. Sections 2-15-1006,
11 2-18-105, 2-18-1001 through 2-18-1003, and 87-1-205, MCA,
12 are repealed.

13 NEW SECTION. Section 9. Codification instruction.
14 Sections 1 through 6 are intended to be codified as a part
15 of Title 2, chapter 18, part 10, and definitions of 2-18-101
16 apply to sections 1 through 6.

17 NEW SECTION. Section 10. Severability. If a part of
18 this act is invalid, all valid parts that are severable from
19 the invalid part remain in effect. If a part of this act is
20 invalid in one or more of its applications, the part remains
21 in effect in all valid applications that are severable from
22 the invalid applications.

23 NEW SECTION. Section 11. Effective date. This act is
24 effective on July 1, 1983.

-End-

STATE OF MONTANA

REQUEST NO. 324-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 5, 19 83, there is hereby submitted a Fiscal Note for House Bill 309, Amended pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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 309, amended, would establish a uniform grievance process for state employees before the Board of Personnel Appeals.

ASSUMPTIONS:

- 1) The Board of Personnel Appeals can handle the workload associated with the legislation assuming the grievance and appeals officer position (#33), currently a vacant staff position, is included in the board's staffing level for fiscal years 1984 and 1985. The costs to include this position are therefore the only additional costs.
- 2) The Board of Personnel Appeals can absorb costs of proposed legislation relating to administration, operating expenses and costs pertaining to the function of the existing five-member quasi-judicial Board of Personnel Appeals.
- 3) Additional general and earmarked fund money may be required for back pay awards and attorney's fees under section 6. Estimated annual cost: \$4,000 back pay; \$28,000 attorney's fees.

FISCAL IMPACT:

	<u>FY 84</u>	<u>FY 85</u>
<u>Additional Costs</u>		
Salary & Benefits of Appeals Officer	\$ 25,468	\$ 25,033
Back Pay and Attorneys Fees	32,000	32,000
Increase Costs to General Fund	<u>\$ 57,468</u>	<u>\$ 57,033</u>

FISCAL NOTE 12:E/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-9-83

1 STATEMENT OF INTENT

2 HOUSE BILL 309

3 House Labor and Employment Relations Committee

4

5 It is the intent of the legislature that when the Board
6 of Personnel Appeals adopts rules to implement HB 309, that
7 it review the present rules for the Departments of Highways
8 and Fish, Wildlife, and Parks and determine the extent to
9 which those rules may be applicable to all state employees.
10 It is further the intent of the legislature that the rules
11 be adopted to provide timely and efficient proceedings while
12 otherwise assuring that employees receive procedural due
13 process and fairness throughout.

SECOND READING

AB309

Approved by Committee
on Labor & Employment
Relations

HOUSE BILL NO. 309

INTRODUCED BY BARDANOUVE

BY REQUEST OF THE PERSONNEL AND LABOR RELATIONS

STUDY COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A UNIFORM
GRIEVANCE PROCESS FOR CERTAIN STATE EMPLOYEES; TO
~~DISCONTINUE EMPLOYEE GRIEVANCE APPEAL FUNCTIONS OF THE BOARD~~
~~OF PERSONNEL APPEALS FOR THE DEPARTMENTS OF HIGHWAYS AND~~
~~FISH, WILDLIFE, AND PARKS~~; TO DISCONTINUE THE MERIT SYSTEM
COUNCIL; AMENDING ~~SECTION~~ SECTIONS 2-18-1001 THROUGH
2-18-1003, AND 87-1-403, MCA; REPEALING SECTIONS 2-15-1006,
2-18-105, 2-18-1001 THROUGH 2-18-1003, AND 87-1-205, MCA;
AND PROVIDING AN EFFECTIVE DATE."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

Section 1. Section 2-18-1001, MCA, is amended to read:

"2-18-1001. Highway department personnel grievances

Grievance procedure -- hearing -- exclusions -- rules. (1)
An Unless otherwise provided by law, an employee of the
department of highways aggrieved by a serious matter of his
employment based upon work conditions, supervision, or the
result of an administrative action and who has exhausted a

state executive branch agency who has been employed by the
state at least 6 calendar months and who has been
terminated, demoted, suspended, or laid off for more than 40
working hours, transferred to another geographical location
involuntarily, or reprimanded in writing, after exhaustion
of all other internal agency administrative remedies is
entitled to a hearing on the matter before the board of
personnel appeals, under the provisions of a grievance
procedure to be prescribed by the board, for resolution of
the grievance.

(2) Direct or indirect interference, restraint,
coercion, or retaliation by an employee's supervisor or the
department of highways employing agency against an aggrieved
employee because the employee has filed or attempted to file
a grievance with the board shall is also be basis for a
grievance and shall entitle entitles the employee to a
hearing before the board for resolution.

(3) The procedure for handling grievances must be
designed so that a final decision is made no later than 90
days following the filing of the grievance, except that this
time may be extended by mutual agreement of the agency and
the grievant.

(4) Employees holding the positions covered by
2-18-103 and 2-18-104 are excluded from the provisions of
this section.

1 ~~(5) The board of personnel appeals may adopt~~
2 ~~procedural rules for handling employee grievances."~~

3 Section 2. Section 2-18-1002, MCA, is amended to read:

4 ~~"2-18-1002. Grievance--procedure-----hearing board of~~
5 ~~personnel appeals to hear grievances---evidence -- order.~~
6 (1) The board of personnel appeals provided for in 2-15-1705
7 shall hear grievances of--personnel--of-the-department-of
8 highways filed under 2-18-1001.

9 (2) If upon the preponderance of the evidence taken at
10 the hearing the board is of the opinion that the employee is
11 aggrieved, it may issue an order to the department--of
12 highways employing agency requiring such action of the
13 department agency as will resolve the employee's grievance.
14 Upon a showing by the affected agency that the board's order
15 will unreasonably interfere with the agency's statutory
16 responsibilities, the board shall reconsider its action.

17 (3) In any hearing the board is not bound by statutory
18 or common-law rules of evidence."

19 Section 3. Section 2-18-1003, MCA, is amended to read:

20 ~~"2-18-1003. Enforcement Judicial review of board order~~
21 ~~-- petition in district court -- costs and fees. (1) The~~
22 ~~board, the affected state agency, or the aggrieved employee~~
23 ~~may petition for the enforcement review of the board's order~~
24 ~~and for appropriate temporary relief and shall file in the~~
25 ~~district court the record of the proceedings. Upon the~~

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

13 ~~(2) The court may grant costs and attorney's fees to~~
14 ~~the prevailing party."~~

15 ~~NEW SECTION.~~ Section 4. Grievance procedure and
16 negotiated procedure mutually exclusive. Nothing in
17 2-18-1001 through 2-18-1003 limits the rights of exclusive
18 representatives and employers under 39-31-310, except that
19 no grievance may be pursued under 2-18-1001 through
20 2-18-1003 and the procedures negotiated by an exclusive
21 representative. The filing of a grievance under one
22 procedure constitutes a waiver of the right to pursue the
23 matter under the other procedure. However, after filing and
24 upon mutual agreement of all parties, a grievance may be
25 transferred from one process to the other.

1 Section 5. Section 87-1-403, MCA, is amended to read:
 2 "87-1-403. Regulation of employees by director. {1}
 3 ~~The director may suspend without pay, reduce in rank, or~~
 4 ~~remove any employee at any time for cause, providing that~~
 5 ~~any person who has been continuously employed for 1 year or~~
 6 ~~more immediately preceding any suspension or discharge may~~
 7 ~~demand and receive a hearing before the department on the~~
 8 ~~charges fitted. The action of the department resulting from~~
 9 ~~such a hearing constitutes final administrative action for~~
 10 ~~purposes of filing a grievance with the board of personnel~~
 11 ~~appeals as provided in 87-1-205.~~

12 {2} The director shall rate all employees on the basis
 13 of merit and efficiency in accordance with rules adopted by
 14 the department to secure a proper rating of each person
 15 employed. The salaries of employees shall be fixed by the
 16 department, and travel expenses, as provided for in 2-18-501
 17 through 2-18-503, as amended, shall be allowed employees
 18 while upon official business away from designated
 19 headquarters."

20 NEW SECTION. Section 6. Repealer. Sections 2-15-1006,
 21 2-18-105, and 87-1-205, MCA, are repealed.

22 NEW SECTION. Section 7. Codification instruction.
 23 Section 4 is intended to be codified as an integral part of
 24 Title 2, chapter 18, part 10, and the definitions of
 25 2-18-101 apply to sections 1 through 4.

1 NEW SECTION. Section 8. Severability. If a part of
 2 this act is invalid, all valid parts that are severable from
 3 the invalid part remain in effect. If a part of this act is
 4 invalid in one or more of its applications, the part remains
 5 in effect in all valid applications that are severable from
 6 the invalid applications.
 7 NEW SECTION. Section 9. Effective date. This act is
 8 effective July 1, 1983.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 309

3 House Labor and Employment Relations Committee

4

5 It is the intent of the legislature that when the Board
6 of Personnel Appeals adopts rules to implement HB 309, that
7 it review the present rules for the Departments of Highways
8 and Fish, Wildlife, and Parks and determine the extent to
9 which those rules may be applicable to all state employees.
10 It is further the intent of the legislature that the rules
11 be adopted to provide timely and efficient proceedings while
12 otherwise assuring that employees receive procedural due
13 process and fairness throughout.

THIRD READING
HB 309

HOUSE BILL NO. 309

INTRODUCED BY BARDANOUVE

BY REQUEST OF THE PERSONNEL AND LABOR RELATIONS

STUDY COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A UNIFORM GRIEVANCE PROCESS FOR CERTAIN STATE EMPLOYEES; TO ~~DISCONTINUE-EMPLOYEE-GRIEVANCE-APPEAL-FUNCTIONS-OF-THE-BOARD-OF-PERSONNEL-APPEALS-FOR-THE--DEPARTMENTS--OF--HIGHWAYS--AND-FISH--WILDLIFE--AND-PARKS~~ TO DISCONTINUE THE MERIT SYSTEM COUNCIL; AMENDING ~~SECTION~~ SECTIONS 2-18-1001 THROUGH 2-18-1003, AND 87-1-403, MCA; REPEALING SECTIONS 2-15-1006, 2-18-105, 2-18-1001-THROUGH-2-18-1003, AND 87-1-205, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

Section 1. Section 2-18-1001, MCA, is amended to read:

"2-18-1001. Highway--department--personnel--grievances Grievance procedure -- hearing -- exclusions -- rules. (1) ~~An~~ Unless otherwise provided by law an employee of the ~~department-of-highways-aggrieved-by-a-serious-matter-of-his~~ employment based upon work conditions, supervision, or the ~~result-of-an-administrative-action-and-who-has--exhausted a~~

~~state executive branch agency who has been employed by the state at least 6 calendar months and who has been terminated, demoted, suspended, or laid off for more than 40 working hours, transferred to another geographical location involuntarily, or reprimanded in writing, after exhaustion of all other internal agency administrative remedies is entitled to a hearing on the matter before the board of personnel appeals, under the provisions of a grievance procedure to be prescribed by the board, for resolution of the grievance.~~

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the ~~department-of-highways employing agency~~ against an aggrieved employee because the employee has filed or attempted to file a grievance with the board ~~shall~~ is also be basis for a grievance and ~~shall--entitle~~ entitles the employee to a hearing before the board for resolution.

(3) ~~The procedure for handling grievances must be designed so that a final decision is made no later than 90 days following the filing of the grievance, except that this time may be extended by mutual agreement of the agency and the grievant.~~

(4) ~~Employees holding the positions covered by 2-18-103 and 2-18-104 are excluded from the provisions of this section.~~

~~(1) The board of personnel appeals may adopt procedural rules for handling employee grievances."~~

Section 2. Section 2-18-1002, MCA, is amended to read:

~~"2-18-1002. Grievance--procedure-----hearing Board of personnel appeals to hear grievances -- evidence -- order.~~
 (1) The board of personnel appeals provided for in 2-15-1705 shall hear grievances of--personnel--of-the-department-of highways filed under 2-18-1001.

(2) If upon the preponderance of the evidence taken at the hearing the board is of the opinion that the employee is aggrieved, it may issue an order to the department--of highways employing agency requiring such action of the department agency as will resolve the employee's grievance. ~~Upon a showing by the affected agency that the board's order will unreasonably interfere with the agency's statutory responsibilities, the board shall reconsider its action.~~

(3) In any hearing the board is not bound by statutory or common-law rules of evidence."

Section 3. Section 2-18-1003, MCA, is amended to read:

~~"2-18-1003. Enforcement Judicial review of board order -- petition in district court -- costs and fees. (1) The board, the affected state agency, or the aggrieved employee may petition for the enforcement review of the board's order and for appropriate temporary relief and shall file in the district court the record of the proceedings. Upon the~~

filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing. After the hearing, the district court shall issue its order granting such temporary or permanent relief as it considers just and proper. No objection that has not been raised before the board ~~shall~~ may be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

~~(2) The court may grant costs and attorney's fees to the prevailing party."~~

NEW SECTION. Section 4. Grievance procedure and negotiated procedure mutually exclusive. Nothing in 2-18-1001 through 2-18-1003 limits the rights of exclusive representatives and employers under 39-31-310, except that no grievance may be pursued under 2-18-1001 through 2-18-1003 and the procedures negotiated by an exclusive representative. The filing of a grievance under one procedure constitutes a waiver of the right to pursue the matter under the other procedure. However, after filing and upon mutual agreement of all parties, a grievance may be transferred from one process to the other.

1 Section 5. Section 87-1-403, MCA, is amended to read:
 2 "87-1-403. Regulation of employees by director. {1}
 3 ~~The director may suspend without pay, reduce in rank, or~~
 4 ~~remove any employee at any time for cause, providing that~~
 5 ~~any person who has been continuously employed for 1 year or~~
 6 ~~more immediately preceding any suspension or discharge may~~
 7 ~~demand and receive a hearing before the department on the~~
 8 ~~charges fitted the action of the department resulting from~~
 9 ~~such a hearing constitutes final administrative action for~~
 10 ~~purposes of filing a grievance with the board of personnel~~
 11 ~~appeals as provided in 87-1-205.~~

12 {2} The director shall rate all employees on the basis
 13 of merit and efficiency in accordance with rules adopted by
 14 the department to secure a proper rating of each person
 15 employed. The salaries of employees shall be fixed by the
 16 department, and travel expenses, as provided for in 2-18-501
 17 through 2-18-503, as amended, shall be allowed employees
 18 while upon official business away from designated
 19 headquarters."

20 NEW SECTION. Section 6. Repealer. Sections 2-15-1006,
 21 2-18-105, and 87-1-205, MCA, are repealed.

22 NEW SECTION. Section 7. Codification Instruction.
 23 Section 4 is intended to be codified as an integral part of
 24 Title 2, chapter 18, part 10, and the definitions of
 25 2-18-101 apply to sections 1 through 4.

1 NEW SECTION. Section 8. Severability. If a part of
 2 this act is invalid, all valid parts that are severable from
 3 the invalid part remain in effect. If a part of this act is
 4 invalid in one or more of its applications, the part remains
 5 in effect in all valid applications that are severable from
 6 the invalid applications.
 7 NEW SECTION. Section 9. Effective date. This act is
 8 effective July 1, 1983.

-End-

March 24, 1983

SENATE STANDING COMMITTEE REPORT
(Labor & Employment Relations)

That House Bill No. 309 be amended as follows:

1. Page 2, line 4.
Following: "hours,"
Insert: "or"
2. Page 2, line 5.
Following: "involuntarily"
Strike: "or reprimanded in writing,"
3. Page 2, line 15.
Following: "also be"
Insert: "a"
4. Page 2, lines 18 through 22.
Strike: subsection (3) in its entirety
Re-number: subsequent subsections
5. Page 3, line 10.
Following: "employee"
Strike: "is" through "aggrieved" on line 11
Insert: "was terminated, demoted, suspended, or laid off for more than 40 working hours or transferred to another geographical location involuntarily and that the action was taken without just cause, in violation of law, in retaliation for filing or attempting to file a grievance appeal or in violation of state or agency rules or written policies which resulted in substantial prejudice to the rights of the employee"
6. Page 3, line 21.
Following: "court"
Strike: "--costs and fees. (1)"
Insert: "."
7. Page 3, line 22.
Following: line 21
Strike: "board, the"
Following: "agency"
Strike: "1"
8. Page 4, lines 13 and 14.
Strike: subsection (2) in its entirety

1 STATEMENT OF INTENT

2 HOUSE BILL 309

3 House Labor and Employment Relations Committee

4
5 It is the intent of the legislature that when the Board
6 of Personnel Appeals adopts rules to implement HB 309, that
7 it review the present rules for the Departments of Highways
8 and Fish, Wildlife, and Parks and determine the extent to
9 which those rules may be applicable to all state employees.
10 It is further the intent of the legislature that the rules
11 be adopted to provide timely and efficient proceedings while
12 otherwise assuring that employees receive procedural due
13 process and fairness throughout.

REFERENCE BILL

HB 309

HOUSE BILL NO. 309

INTRODUCED BY BARDANOUVE

BY REQUEST OF THE PERSONNEL AND LABOR RELATIONS

STUDY COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A UNIFORM GRIEVANCE PROCESS FOR CERTAIN STATE EMPLOYEES; TO DISCONTINUE EMPLOYEE GRIEVANCE APPEAL FUNCTIONS OF THE BOARD OF PERSONNEL APPEALS FOR THE DEPARTMENTS OF HIGHWAYS AND FISH, WILDLIFE, AND PARKS; TO DISCONTINUE THE MERIT SYSTEM COUNCIL; AMENDING SECTIONS 2-18-1001 THROUGH 2-18-1003, AND 87-1-403, MCA; REPEALING SECTIONS 2-15-1006, 2-18-105, 2-18-1001 THROUGH 2-18-1003, AND 87-1-205, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

Section 1. Section 2-18-1001, MCA, is amended to read:

"2-18-1001. Highway department personnel grievances grievance procedure -- hearing -- exclusions -- rules. (1) An unless otherwise provided by law an employee of the department of highways aggrieved by a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action and who has exhausted a

state executive branch agency who has been employed by the state at least 6 calendar months and who has been terminated, demoted, suspended, or laid off for more than 40 working hours, OR transferred to another geographical location involuntarily, or ~~reprimanded in writing~~ after exhaustion of all other internal agency administrative remedies is entitled to a hearing on the matter before the board of personnel appeals, under the provisions of a grievance procedure to be prescribed by the board, for resolution of the grievance.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the department of highways employing agency against an aggrieved employee because the employee has filed or attempted to file a grievance with the board ~~shall~~ is also be a basis for a grievance and ~~shall~~ entitles the employee to a hearing before the board for resolution.

~~that the procedure for handling grievances must be designed so that a final decision is made no later than 90 days following the filing of the grievance except that this time may be extended by mutual agreement of the agency and the grievant~~

that Employees holding the positions covered by 2-18-103 and 2-18-104 are excluded from the provisions of this section.

~~§1(4) The board of personnel appeals may adopt procedural rules for handling employee grievances.~~

Section 2. Section 2-18-1002, MCA, is amended to read:

~~"2-18-1002. Grievance--procedure-----hearing Board of personnel appeals to hear grievances -- evidence -- order.~~
(1) The board of personnel appeals provided for in 2-15-1705 shall hear grievances of--personnel--of-the-department-of highways filed under 2-18-1001.

(2) If upon the preponderance of the evidence taken at the hearing the board is of the opinion that the employee is aggrieved ~~WAS TERMINATED, DEMOTED, SUSPENDED, OR LAID OFF FOR MORE THAN 40 WORKING HOURS OR TRANSFERRED TO ANOTHER GEOGRAPHICAL LOCATION INVOLUNTARILY AND THAT THE ACTION WAS TAKEN WITHOUT JUST CAUSE, IN VIOLATION OF LAW, IN RETALIATION FOR FILING OR ATTEMPTING TO FILE A GRIEVANCE APPEAL OR IN VIOLATION OF STATE OR AGENCY RULES OR WRITTEN POLICIES WHICH RESULTED IN SUBSTANTIAL PREJUDICE TO THE RIGHTS OF THE EMPLOYEE.~~ it may issue an order to the department--of--highways employing agency requiring such action of the department agency as will resolve the employee's grievance. ~~Upon a showing by the affected agency that the board's order will unreasonably interfere with the agency's statutory responsibilities, the board shall reconsider its action.~~

(3) In any hearing the board is not bound by statutory

or common-law rules of evidence."

Section 3. Section 2-18-1003, MCA, is amended to read:

~~"2-18-1003. Enforcement Judicial Review of board order -- petition in district court ---costs-and-fees. §11~~ The board--the affected state agency or the aggrieved employee may petition for the-enforcement ~~Review~~ of the board's order and for appropriate temporary relief and shall file in the district court the record of the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing. After the hearing, the district court shall issue its order granting such temporary or permanent relief as it considers just and proper. No objection that has not been raised before the board ~~shall~~ may be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

~~§12--The--court--may--grant--costs--and--attorney's--fees--to--the-prevailing--party."~~

NEW SECTION. Section 4. Grievance procedure and negotiated procedure mutually exclusive. Nothing in 2-18-1001 through 2-18-1003 limits the rights of exclusive

1 representatives and employers under 39-31-310, except that
 2 no grievance may be pursued under 2-18-1001 through
 3 2-18-1003 and the procedures negotiated by an exclusive
 4 representative. The filing of a grievance under one
 5 procedure constitutes a waiver of the right to pursue the
 6 matter under the other procedure. However, after filing and
 7 upon mutual agreement of all parties, a grievance may be
 8 transferred from one process to the other.

9 Section 5. Section 87-1-403, MCA, is amended to read:

10 "87-1-403. Regulation of employees by director. {1}
 11 ~~The director may suspend without pay, reduce in rank, or~~
 12 ~~remove any employee at any time for cause, providing that~~
 13 ~~any person who has been continuously employed for 1 year or~~
 14 ~~more immediately preceding any suspension or discharge may~~
 15 ~~demand and receive a hearing before the department on the~~
 16 ~~charges filed. The action of the department resulting from~~
 17 ~~such a hearing constitutes final administrative action for~~
 18 ~~purposes of filing a grievance with the board of personnel~~
 19 ~~appeals as provided in 87-1-205.~~

20 {2} The director shall rate all employees on the basis
 21 of merit and efficiency in accordance with rules adopted by
 22 the department to secure a proper rating of each person
 23 employed. The salaries of employees shall be fixed by the
 24 department, and travel expenses, as provided for in 2-18-501
 25 through 2-18-503, as amended, shall be allowed employees

1 while upon official business away from designated
 2 headquarters."

3 **NEW_SECTION.** Section 6. Repealer. Sections 2-15-1006,
 4 2-18-105, and 87-1-205, MCA, are repealed.

5 **NEW_SECTION.** Section 7. Codification instruction.
 6 Section 4 is intended to be codified as an integral part of
 7 Title 2, chapter 18, part 10, and the definitions of
 8 2-18-101 apply to sections 1 through 4.

9 **NEW_SECTION.** Section 8. Severability. If a part of
 10 this act is invalid, all valid parts that are severable from
 11 the invalid part remain in effect. If a part of this act is
 12 invalid in one or more of its applications, the part remains
 13 in effect in all valid applications that are severable from
 14 the invalid applications.

15 **NEW_SECTION.** Section 9. Effective date. This act is
 16 effective July 1, 1983.

-End-