

HOUSE BILL NO. 718

2/08 Introduced
2/08 Referred to Business & Labor
2/08 Fiscal Note Requested
2/12 Hearing
2/13 Committee Report-Bill Pass As Amended
2/16 Fiscal Note Received
2/16 2nd Reading Pass
2/19 3rd Reading Pass

Transmitted to Senate

2/21 Referred to Labor & Employment Relations
3/14 Hearing
3/20 Adverse Committee Report
3/20 Statement of Intent Attached
3/20 Bill Killed

1 House BILL NO. 718
 2 INTRODUCED BY Andy Stops
 3 Mark
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A UNIFORM
 5 GRIEVANCE PROCESS FOR CERTAIN STATE EMPLOYEES; TO
 6 DISCONTINUE THE MERIT SYSTEM COUNCIL; AMENDING SECTIONS
 7 2-18-1001 THROUGH 2-18-1003 AND 87-1-403, MCA; REPEALING
 8 SECTIONS 2-15-1006, 2-18-105, AND 87-1-205, MCA; AND
 9 PROVIDING AN EFFECTIVE DATE."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Section 2-18-1001, MCA, is amended to read:
 13 "2-18-1001. ~~Highway--department--personnel--grievances~~
 14 Grievance procedure -- hearing -- exclusions -- rules. (1)
 15 An Unless otherwise provided by law, an employee of the
 16 department-of-highways-aggrieved-by-a-serious-matter-of--his
 17 employment--based--upon-work-conditions, supervision, or the
 18 result-of-an-administrative-action-and-who-has--exhausted a
 19 state executive branch agency who has been employed by the
 20 state at least 6 calendar months and who has been
 21 terminated, demoted, suspended, or laid off for more than 40
 22 working hours or transferred to another geographical
 23 location involuntarily, after exhausting all other internal
 24 agency administrative remedies, is entitled to a hearing on
 25 the matter before the board of personnel appeals, under the

1 provisions of a grievance procedure to be prescribed by the
 2 board, for resolution of the grievance.
 3 (2) Direct or indirect interference, restraint,
 4 coercion, or retaliation by an employee's supervisor or the
 5 ~~department-of-highways~~ employing agency against an aggrieved
 6 employee because the employee has filed or attempted to file
 7 a grievance with the board ~~shall is~~ is also be a basis for a
 8 grievance and ~~shall--entitle~~ entitles the employee to a
 9 hearing before the board for resolution.
 10 (3) Employees holding the positions covered by
 11 2-18-103 and 2-18-104 are excluded from the provisions of
 12 this section.
 13 (4) The board may adopt procedural rules for handling
 14 employee grievances."
 15 Section 2. Section 2-18-1002, MCA, is amended to read:
 16 "2-18-1002. ~~Grievance--procedure-----hearing~~ Board to
 17 hear grievance -- evidence -- order. (1) The board of
 18 personnel appeals provided for in 2-15-1705 shall hear
 19 ~~grievances of-personnel-of-the-department-of-highways~~ filed
 20 under 2-18-1001.
 21 (2) If upon the preponderance of the evidence taken at
 22 the hearing the board is of the opinion that the employee ~~is~~
 23 ~~aggrieved was terminated, demoted, suspended, or laid off~~
 24 for more than 40 working hours or transferred to another
 25 geographical location involuntarily and that the action was

1 taken without just cause, in violation of law, in
 2 retaliation for filing or attempting to file a grievance
 3 appeal, or in violation of state or agency rules or written
 4 policies which resulted in substantial prejudice to the
 5 rights of the employee, it may issue an order to the
 6 department--of--highways employing agency requiring such
 7 action of the department agency as will resolve the
 8 employee's grievance. Upon a showing by the affected agency
 9 that the board's order will unreasonably interfere with the
 10 agency's statutory responsibilities, the board shall
 11 reconsider its action.

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

14 Section 3. Section 2-18-1003, MCA, is amended to read:
 15 "2-18-1003. Enforcement Judicial review of board order
 16 -- petition in district court. The board affected state
 17 agency or the aggrieved employee may petition for the
 18 enforcement review of the board's order and for appropriate
 19 temporary relief and shall file in the district court the
 20 record of the proceedings. Upon the filing of the petition,
 21 the district court shall have jurisdiction of the
 22 proceeding. Thereafter, the district court shall set the
 23 matter for hearing. After the hearing, the district court
 24 shall issue its order granting such temporary or permanent
 25 relief as it considers just and proper. No objection that

1 has not been raised before the board ~~shall~~ may be
 2 considered by the court unless the failure or neglect to
 3 raise the objection is excused because of extraordinary
 4 circumstances. The findings of the board with respect to
 5 questions of fact, if supported by substantial evidence on
 6 the record considered as a whole, shall be conclusive."

7 NEW SECTION. Section 4. Grievance procedure and
 8 negotiated procedure mutually exclusive. Nothing in
 9 2-18-1001 through 2-18-1003 limits the rights of exclusive
 10 representatives and employers under 39-31-310, except that
 11 no grievance may be pursued under both 2-18-1001 through
 12 2-18-1003 and the procedures negotiated by an exclusive
 13 representative. The filing of a grievance under one
 14 procedure constitutes a waiver of the right to pursue the
 15 matter under the other procedure. However, after filing and
 16 upon mutual agreement of all parties, a grievance may be
 17 transferred from one process to the other.

18 Section 5. Section 87-1-403, MCA, is amended to read:
 19 "87-1-403. Regulation of employees by director. ~~††~~
 20 ~~The--director--may--suspend--without-pay--reduce-in-rank--or~~
 21 ~~remove-any-employee-at-any-time-for--cause--providing--that~~
 22 ~~any--person-who-has-been-continuously-employed-for-1-year-or~~
 23 ~~more-immediately-preceding-any-suspension-or--discharge--may~~
 24 ~~demand--and--receive--a-hearing-before-the-department-on-the~~
 25 ~~charges-filed--The-action-of-the-department--resulting--from~~

~~1 such--a--hearing-constitutes-final-administrative-action-for
2 purposes-of-filing-a-grievance-with-the-board--of--personnel
3 appeals-as-provided-in-87-i-205-~~

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

12 NEW SECTION. Section 6. Extension of authority. Any
13 existing authority of the board of personnel appeals to make
14 rules on the subject of the provisions of this act is
15 extended to the provisions of this act.

16 NEW SECTION. Section 7. Repealer. Sections 2-15-1006,
17 2-18-105, and 87-1-205, MCA, are repealed.

18 NEW SECTION. Section 8. Codification instruction.
19 Section 4 is intended to be codified as an integral part of
20 Title 2, chapter 18, part 10, and the definitions of
21 2-18-101 apply to section 4.

22 NEW SECTION. Section 9. Severability. If a part of
23 this act is invalid, all valid parts that are severable from
24 the invalid part remain in effect. If a part of this act is
25 invalid in one or more of its applications, the part remains

1 in effect in all valid applications that are severable from
2 the invalid applications.

3 NEW SECTION. Section 10. Effective date. This act is
4 effective July 1, 1985.

-End-

STATE OF MONTANA

REQUEST NO. FNN 370-85

FISCAL NOTE

Form BD-15

In compliance with a written request received February 8, 19 85, there is hereby submitted a Fiscal Note for H.B. 718 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:

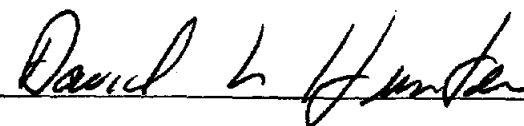
"An act to establish a uniform grievance process for certain state employees; to discontinue the merit system council; amending sections 2-18-1001 through 2-18-1003 and 87-1-403, MCA; repealing sections 2-15-1006, 2-18-105 and 87-1-205, MCA; and providing an effective date of July 1, 1985."

ASSUMPTIONS:

1. The Board of Personnel Appeals can handle the additional workload with the addition of 1 FTE Hearings Officer (Grade 14, Step 2).
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.

FISCAL IMPACT:

	<u>FY 86</u>	<u>FY 87</u>
Increased General Fund Expenditures:	\$ <u>24,888</u>	\$ <u>24,888</u>



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 14, 1985
HB 718

APPROVED BY COMM. ON
BUSINESS AND LABOR

HOUSE BILL NO. 718

INTRODUCED BY ADDY, DONALDSON, HARPER, MARKS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A UNIFORM GRIEVANCE PROCESS FOR CERTAIN STATE EMPLOYEES; 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, AND 87-1-205, MCA;---AND PROVIDING-AN-EPPECTIVE-DATE."

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

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~~ 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, after exhausting 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--entitle~~ entitles the employee to a hearing before the board for resolution.

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

(4) The board may adopt procedural rules for handling employee grievances.

(5) A COMPLAINT PURSUANT TO 2-18-1001 THROUGH 2-18-1003 MUST BE FILED WITH THE BOARD WITHIN 180 DAYS AFTER THE GRIEVANCE ARISES."

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

"2-18-1002. ~~Grievance-procedure----~~hearing Board to hear grievance -- 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



1 aggrieved was terminated, demoted, suspended, or laid off
 2 for more than 40 working hours or transferred to another
 3 geographical location involuntarily and that the action was
 4 taken without just cause, in violation of law, in
 5 retaliation for filing or attempting to file a grievance
 6 appeal, or in violation of state or agency rules or written
 7 policies which resulted in substantial prejudice to the
 8 rights of the employee, it may issue an order to the
 9 department--of--highways employing agency requiring such
 10 action--of--the--department agency PARTIAL OR FULL BACKPAY,
 11 WITH BENEFITS, REINSTATEMENT IN THE SAME OR IN A SIMILAR
 12 POSITION, REMOVAL OF DISPUTED MATERIAL FROM THE EMPLOYEE'S
 13 PERSONNEL FILE, OR ANY SUCH ACTION OF THE DEPARTMENT as will
 14 resolve the employee's grievance. Upon--a--showing--by--the
 15 affected--agency--that--the--board's-order-will-unreasonably
 16 interfere-with-the-agency's-statutory-responsibilities,--the
 17 board-shall-reconsider-its-action:

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

20 (4) THE BOARD SHALL ISSUE A FINAL ORDER WITHIN 5
 21 MONTHS AFTER ANY HEARING HELD PURSUANT TO THIS SECTION."

22 Section 3. Section 2-18-1003, MCA, is amended to read:
 23 "2-18-1003. Enforcement Judicial review of board order
 24 -- petition in district court. The board affected state
 25 agency or the aggrieved employee may petition for the

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

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 both 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. THESE TWO

1 PROCEDURES ARE AN EMPLOYEE'S SOLE AND EXCLUSIVE REMEDY FOR
2 PERSONNEL ACTIONS UNDER 2-18-1002.

3 Section 5. Section 87-1-403, MCA, is amended to read:
4 "87-1-403. Regulation of employees by director. {1}
5 ~~The--director--may--suspend--without--pay,--reduce--in--rank,--or~~
6 ~~remove--any--employee--at--any--time--for--cause,--providing--that~~
7 ~~any--person--who--has--been--continuously--employed--for--1--year--or~~
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11 ~~such--a--hearing--constitutes--final--administrative--action--for~~
12 ~~purposes--of--filing--a--grievance--with--the--board--of--personnel~~
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14 {2} The director shall rate all employees on the basis
15 of merit and efficiency in accordance with rules adopted by
16 the department to secure a proper rating of each person
17 employed. The salaries of employees shall be fixed by the
18 department, and travel expenses, as provided for in 2-18-501
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5 Title 2, chapter 18, part 10, and the definitions of
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8 this act is invalid, all valid parts that are severable from
9 the invalid part remain in effect. If a part of this act is
10 invalid in one or more of its applications, the part remains
11 in effect in all valid applications that are severable from
12 the invalid applications.

13 ~~NEW SECTION.--Section--10.--Effective--date.--This--act--is~~
14 ~~effective--July--17--1985.~~

-End-

1 HOUSE BILL NO. 718

2 INTRODUCED BY ADDY, DONALDSON, HARPER, MARKS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A UNIFORM
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25 the hearing the board is of the opinion that the employee is

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 5 ~~The director may suspend without pay, reduce in rank, or~~
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 7 ~~any person who has been continuously employed for 1 year or~~
 8 ~~more immediately preceding any suspension or discharge may~~
 9 ~~demand and receive a hearing before the department on the~~
 10 ~~charges filed. The action of the department resulting from~~
 11 ~~such a hearing constitutes final administrative action for~~
 12 ~~purposes of filing a grievance with the board of personnel~~
 13 ~~appeals as provided in 87-1-205.~~

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 15 of merit and efficiency in accordance with rules adopted by
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 12 the invalid applications.

13 NEW SECTION. ~~Section 10. Effective date. This act is~~
 14 ~~effective July 17, 1985.~~

-End-