

HOUSE BILL 56

Introduced by Cocchiarella, et al.

7/13	Introduced
7/13	Referred to State Administration
7/13	First Reading
7/13	Fiscal Note Requested
7/14	Hearing
7/14	Committee Report--Bill Passed as Amended
7/15	2nd Reading Passed as Amended
7/15	Fiscal Note Received
7/15	3rd Reading Passed
	Transmitted to Senate
7/15	Referred to Finance & Claims
7/15	First Reading
7/16	Hearing
7/16	Committee Report--Bill Not Concurred
7/17	Adverse Committee Report Adopted

1 HOUSE BILL NO. 56
 2 INTRODUCED BY *Cochiella* *H* *Presnell*
 3 *Ames* *Montgomery* *McCalla* *Stark*
 4 BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING VARIOUS
 5 BUREAUS, PROGRAMS, AND POSITIONS WITHIN THE DEPARTMENT OF
 6 ADMINISTRATION; TRANSFERRING CERTAIN PROGRAMS WITHIN THAT
 7 DEPARTMENT TO THE DEPARTMENT OF LABOR AND INDUSTRY AND TO
 8 THE OFFICE OF THE BUDGET DIRECTOR; DIRECTING THE AMENDMENT
 9 OF RULE 24.26.508, ADMINISTRATIVE RULES OF MONTANA; AMENDING
 10 SECTIONS 2-18-101, 2-18-301, AND 39-31-301, MCA; AND
 11 PROVIDING EFFECTIVE DATES."

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

14 Section 1. Section 2-18-101, MCA, is amended to read:

15 "2-18-101. Definitions. As used in parts 1, through--3
 16 2, and part 10 of this chapter, the following definitions
 17 apply:

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

21 (2) "Base salary" means the amount of compensation paid
 22 to an employee, excluding:

23 (a) state contributions to group benefits provided in
 24 2-18-703;

25 (b) overtime;

1 (c) fringe benefits as defined in 39-2-903; and
 2 (d) the longevity allowance provided in 2-18-304.

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

5 (4) "Class" means one or more positions substantially
 6 similar with respect to the kind or nature of duties
 7 performed, responsibility assumed, and level of difficulty
 8 so that the same descriptive title may be used to designate
 9 each position allocated to the class, similar qualifications
 10 may be required of persons appointed to the positions in the
 11 class, and the same pay rate or pay grade may be applied
 12 with equity.

13 (5) "Class specification" means a written descriptive
 14 statement of the duties and responsibilities characteristic
 15 of a class of positions and includes the education,
 16 experience, knowledge, skills, abilities, and qualifications
 17 necessary to perform the work of the class.

18 (6) "Compensation" means the annual or hourly wage or
 19 salary and includes the state contribution to group benefits
 20 under provisions of 2-18-703.

21 (7) "Department" means the department of administration
 22 created in 2-15-1001.

23 (8) Except in 2-18-306, "employee" means any state
 24 employee other than an employee excepted under 2-18-103 or
 25 2-18-104 from the statewide classification system.



1 (9) "Entry salary" means the entry-level base salary
2 for each grade provided in 2-18-312.

3 (10) "Grade" means the number assigned to a pay range
4 within a pay schedule in part 3 of this chapter.

5 (11) "Job sharing" means the sharing by two or more
6 persons of a position that is considered an aggregate or
7 permanent position.

8 (12) "Market salary" means the average base salary that
9 other employers pay to employees in occupations comparable
10 to occupations in a grade provided in 2-18-312, as
11 determined by the department's salary survey of the relevant
12 labor market.

13 (13) "Permanent position" means a position so designated
14 on the appropriate agency list of authorized positions
15 referenced in 2-18-206 and approved as such in the biennium
16 budget.

17 (14) "Permanent status" means the state an employee
18 attains after satisfactorily completing an appropriate
19 probationary period in a permanent position.

20 (15) "Personal staff" means those positions occupied by
21 employees appointed by the elected officials enumerated in
22 Article VI, section 1, of the Montana constitution or by the
23 public service commission as a whole.

24 (16) "Position" means a collection of duties and
25 responsibilities currently assigned or delegated by

1 competent authority, requiring the full-time, part-time, or
2 intermittent employment of one person.

3 (17) "Program" means a combination of planned efforts to
4 provide a service.

5 (18) "Seasonal position" means a position so designated
6 on the appropriate agency list of authorized positions
7 referenced in 2-18-206 and which is a permanent position but
8 which is interrupted by the seasonal nature of the position.

9 (19) "Temporary position" means a position so designated
10 on the appropriate agency list of authorized positions
11 referenced in 2-18-206, created for a definite period of
12 time not to exceed 9 months."

13 **Section 2.** Section 2-18-301, MCA, is amended to read:

14 **"2-18-301. Purpose and intent of part -- rules.** (1) The
15 purpose of this part is to provide the market-based
16 compensation necessary to attract and retain competent and
17 qualified employees in order to perform the services the
18 state is required to provide to its citizens.

19 (2) It is the intent of the legislature that
20 compensation plans for state employees, excluding those
21 employees excepted under 2-18-103 or 2-18-104 and excluding
22 employees compensated under 2-18-313, 2-18-314, and
23 2-18-315, be based on an analysis of the labor market as
24 provided by the department in a salary survey report to the
25 legislature at the start of each legislative session.

1 (3) Except as provided in 2-18-110 and 2-18-305(4), pay
2 schedules provided for in 2-18-312 through 2-18-315
3 supersede any other plan or systems established through
4 collective bargaining after the adjournment of the 52nd
5 legislature.

6 (4) Pay levels provided for in 2-18-312 through
7 2-18-315 may not be increased through collective bargaining
8 after adjournment of the 52nd legislature.

9 (5) Total funds required to implement the pay schedules
10 provided for in 2-18-312 through 2-18-315 for any employee
11 group or bargaining unit may not be increased through
12 collective bargaining over the amount appropriated by the
13 52nd legislature.

14 (6) The department shall administer the pay program
15 established by the legislature on the basis of merit,
16 internal equity, and competitiveness to external labor
17 markets when fiscally able.

18 (7) The department may promulgate rules not
19 inconsistent with the provisions of this part, collective
20 bargaining statutes, or negotiated contracts to carry out
21 the purposes of this part.

22 (8) As used in this part, "department" means the
23 department of labor and industry provided for in 2-15-1701."

24 **Section 3.** Section 39-31-301, MCA, is amended to read:

25 "39-31-301. Representative of public employer. (1) The

1 chief executive officer of the state, the governing body of
2 a political subdivision, the commissioner of higher
3 education, whether elected or appointed, or the designated
4 authorized representative shall represent the public
5 employer in collective bargaining with an exclusive
6 representative.

7 (2) All collective bargaining contract negotiation and
8 administration functions of the chief executive officer of
9 the state must be performed by an employee within the office
10 of the budget director appointed pursuant to 17-7-103."

11 **Section 4.** The Board of Personnel Appeals shall amend
12 Rule 24.26.508, Administrative Rules of Montana, to read:

13 "24.26.508. GRIEVANCE PROCEDURE. (1) Step One. Any
14 employee, group of employees, or appropriately designated
15 representatives, may utilize the formal appeals procedure.
16 The individual employee must obtain a state employee
17 classification and wage appeal form BPA-C(1) and follow the
18 accompanying instructions. In the case of a group appeal, a
19 group of employees must comply with the rules governing
20 group appeals (24.26.404). Forms may be obtained from the
21 board of personnel appeals, capitol station, Helena,
22 Montana, or from the personnel offices of all departments
23 within the executive branch.

24 (a) The appropriate form when completed shall be
25 submitted to the immediate supervisor.

1 (b) To complete the form, the employee must clearly
 2 identify the issue or issues motivating the appeal. A list
 3 of appealable issues will be provided with the appeal form.
 4 The employee must explain in detail the issue and their
 5 reasons for appealing. If an issue or reason for the appeal
 6 is not adequately identified, the appeal may be returned to
 7 the employee at any step in the appeal procedure.

8 (c) Appealable issues are the following:

9 (i) The class specification doesn't adequately describe
 10 my position duties.

11 (ii) A different class specification is a better
 12 description of my position duties.

13 (iii) The class title is inappropriate for my position.

14 (iv) The minimum qualifications are not equivalent to
 15 those required to do my job.

16 (v) Other positions assigned to the same class have
 17 less difficult work than my position.

18 (vi) My position duties are more similar to positions
 19 assigned to a different class.

20 (vii) Other positions assigned to the same class perform
 21 duties significantly different than my position duties.

22 (viii) The position description for my position class
 23 does not adequately describe the duties and responsibilities
 24 assigned.

25 (ix) There are significant responsibilities assigned to

1 my position which are not included in the position
 2 description.

3 (x) There are significant duties described in the
 4 position description which are not performed by this
 5 position.

6 (xi) There is not a current position description
 7 available for my position.

8 (xii) The pay plan rules have been incorrectly applied
 9 to my position (specific rules(s) should be cited).

10 (xiii) (other) must specifically relate to position
 11 classification.

12 (d) The immediate supervisor shall have ten working
 13 days to examine the appeal, attempt to resolve the
 14 complaint, record his or her findings, record steps taken
 15 (if any) to resolve appeal, and return the form to the
 16 employee.

17 (e) If the immediate supervisor feels the employee
 18 appeal has merit, the immediate supervisor may, initiate a
 19 request for reclassification through the agency personnel
 20 office; or request an administrative review of the
 21 classification of the employee's position, or redescribe the
 22 position duties to more adequately reflect actual work
 23 performed or initiate and complete other steps to address
 24 the identified issue. The employee should continue the
 25 appeal even if administrative action is underway.

1 (f) If the employee does not accept the findings of the
2 immediate supervisor, the employee shall have five working
3 days to forward the evaluation and findings of the immediate
4 supervisor to step two.

5 (2) Step Two

6 (a) If the employee chooses to continue the appeal, the
7 employee shall submit the form with all appropriate sections
8 completed to the department head for review.

9 (b) The department head shall have five working days to
10 review the appeal, record his or her findings, record steps
11 taken to resolve the appeal, and return it to the employee.

12 (c) If the employee does not accept the findings of the
13 department head, the employee shall have ~~five~~ 10 working
14 days to forward the evaluation and findings of the
15 department head to the board under step three.

16 ~~{3}-Step-Three~~

17 ~~{a}-if-the-employee-chooses-to-continue-the-appeal, the~~
18 ~~employee shall submit the form, all appropriate sections~~
19 ~~completed, to the personnel division for review.~~

20 ~~{b}-The personnel division shall have 30 working days~~
21 ~~to review the matter, record its findings in the appropriate~~
22 ~~section of the form, and to issue its recommended adjustment~~
23 ~~and return it to the employee or the proper representative.~~

24 ~~{c}-the personnel division's review and findings shall~~
25 ~~be limited to the issue(s) identified in Step One of the~~

1 ~~appeal. Any additional issues identified at Step Three will~~
2 ~~be addressed through informal administrative procedures as~~
3 ~~determined by the personnel division.~~

4 ~~{d}-The personnel division will prepare detailed~~
5 ~~written findings in the response to the issue(s) identified~~
6 ~~at step one.~~

7 ~~{e}-If the employee accepts the personnel division's~~
8 ~~findings and recommendation, the formal appeals procedure is~~
9 ~~concluded upon the implementation of the personnel division's~~
10 ~~findings and recommendations.~~

11 ~~{f}-The employee shall have 10 working days to forward~~
12 ~~the appeal to the board for resolution.~~

13 ~~{4}{3} Step Four Three~~

14 (a) If the employee rejects the personnel division's
15 department head's findings and recommendation, the employee
16 shall submit the form BPA-C(1), with all appropriate
17 sections completed, to the board.

18 (b) The employee must identify and record where they
19 feel the Personnel Division's department head's findings are
20 in error.

21 (c) The board shall have 10 working days to accept or
22 reject the appeal for hearing at Step Four Three.

23 (i) The board shall examine the issue(s) and exceptions
24 identified by the employee. If the issue(s) and exceptions
25 are adequately described, the board will accept the appeal

1 at Step Four ~~Three~~.

2 (ii) If the board finds the issue identified at step one
3 to be inadequately described, the board shall return the
4 appeal to the employee. In such case, the employee may
5 redescribe the issue and refile the appeal at step one
6 within 10 working days.

7 (iii) If the Board feels that the ~~personnel-division's~~
8 department head's written findings or the employee's
9 exceptions to the written findings are not adequately
10 described, the board shall return the appeal to the
11 appropriate party. In such case, the party will expand its
12 findings or exceptions and refile them with the Board within
13 10 working days.

14 (d) If in the board's discretion it decides to conduct
15 a preliminary investigation in the appeal, it shall have 20
16 days to do so. The board may carry out any investigations
17 deemed necessary for resolution of the appeal or complaint.
18 The employee or group of employees and personnel division
19 shall have ten days to accept or reject the preliminary
20 decision. If the employee or group of employees and the
21 ~~personnel-division~~ department head accept the preliminary
22 decision, it shall be final and binding. The board shall
23 then implement the preliminary decision by instructing the
24 ~~personnel-division~~ department head to remedy the situation.

25 (e) If the employee, group of employees, or the

1 ~~Personnel-Division~~ department head reject the preliminary
2 decision or the board in its discretion decides not to
3 conduct a preliminary investigation, the board or an agent
4 appointed by the board shall conduct a hearing in accordance
5 with title 2, chapter 4, MCA.

6 (f) Any investigation and/or hearing conducted by the
7 board shall be restricted to the issue identified at Step
8 One.

9 (g) If the preponderance of evidence taken at the
10 hearing shows the employee is aggrieved, the board shall
11 issue an order requiring action to resolve the employee's
12 grievance.

13 (h) Upon the conclusion of the hearings process, the
14 Board shall issue its proposed findings of fact, conclusions
15 of law, and recommended order within 90 working days.

16 (i) The prescribed time limits at any step of the
17 appeals process may be modified or waived upon mutual
18 agreement of all parties."

19 NEW SECTION. Section 5. Labor relations bureau and
20 training and professional development section eliminated.
21 The labor relations bureau and the training and professional
22 development section of the personnel division of the
23 department of administration are eliminated.

24 NEW SECTION. Section 6. Saving clause. [This act] does
25 not affect rights and duties that matured, penalties that

1 were incurred, or proceedings that were begun before [the
2 effective date of this act].

3 NEW SECTION. **Section 7. Severability.** If a part of
4 [this act] is invalid, all valid parts that are severable
5 from the invalid part remain in effect. If a part of [this
6 act] is invalid in one or more of its applications, the part
7 remains in effect in all valid applications that are
8 severable from the invalid applications.

9 NEW SECTION. **Section 8. Effective dates.** (1) [Sections
10 6, 7, and this section] are effective on passage and
11 approval.

12 (2) [Sections 1 through 5] are effective November 1,
13 1992.

-End-

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

HOUSE BILL NO. 56

INTRODUCED BY COCCHIARELLA, STRIZICH, DRISCOLL,
BARNHART, DARKO, BACHINI, SCHYE, DAVIS, KILPATRICK,
STICKNEY, PECK, KIMBERLEY, SQUIRES, MCCULLOCH, G. BECK,
COHEN, PAVLOVICH, HANSEN, MCCARTHY, BROOKE, HALLIGAN,
DAILY, L. NELSON, REAM, WYATT

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING VARIOUS
BUREAUS, PROGRAMS, AND POSITIONS WITHIN THE DEPARTMENT OF
ADMINISTRATION; TRANSFERRING CERTAIN PROGRAMS WITHIN THAT
DEPARTMENT TO THE DEPARTMENT OF LABOR AND INDUSTRY AND TO
THE OFFICE OF THE BUDGET DIRECTOR; DIRECTING THE AMENDMENT
OF RULE 24.26.508, ADMINISTRATIVE RULES OF MONTANA; AMENDING
SECTIONS 2-18-101, 2-18-301, AND 39-31-301, MCA; AND
PROVIDING EFFECTIVE DATES."

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

Section 1. Section 2-18-101, MCA, is amended to read:

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

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

(2) "Base salary" means the amount of compensation paid

to an employee, excluding:

(a) state contributions to group benefits provided in
2-18-703;

(b) overtime;

(c) fringe benefits as defined in 39-2-903; and

(d) the longevity allowance provided in 2-18-304.

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

(4) "Class" means one or more positions substantially
similar with respect to the kind or nature of duties
performed, responsibility assumed, and level of difficulty
so that the same descriptive title may be used to designate
each position allocated to the class, similar qualifications
may be required of persons appointed to the positions in the
class, and the same pay rate or pay grade may be applied
with equity.

(5) "Class specification" means a written descriptive
statement of the duties and responsibilities characteristic
of a class of positions and includes the education,
experience, knowledge, skills, abilities, and qualifications
necessary to perform the work of the class.

(6) "Compensation" means the annual or hourly wage or
salary and includes the state contribution to group benefits
under provisions of 2-18-703.

(7) "Department" means the department of administration

1 created-in-2-15-1001:
 2 {8}-Except-in-2-10-306,"employee"-means-any-state
 3 employee-other-than-an-employee-excepted-under-2-10-103-or
 4 2-10-104-from-the-statewide-classification-system:
 5 {9}-"Entry-salary"-means-the-entry-level-base-salary
 6 for-each-grade-provided-in-2-10-312:
 7 {10}-"Grade"-means-the-number-assigned-to-a-pay-range
 8 within-a-pay-schedule-in-part-3-of-this-chapter:
 9 {11}-"Job-sharing"-means-the-sharing-by-two-or-more
 10 persons-of-a-position-that-is-considered-an-aggregate-or
 11 permanent-position:
 12 {12}-"Market-salary"-means-the-average-base-salary-that
 13 other-employers-pay-to-employees-in-occupations-comparable
 14 to-occupations-in-a-grade-provided-in-2-10-312,as
 15 determined-by-the-department's-salary-survey-of-the-relevant
 16 labor-market:
 17 {13}-"Permanent-position"-means-a-position-so-designated
 18 on-the-appropriate-agency-list-of-authorized-positions
 19 referenced-in-2-10-206-and-approved-as-such-in-the-biennium
 20 budget:
 21 {14}-"Permanent-status"-means-the-state-an-employee
 22 attains-after-satisfactorily-completing-an-appropriate
 23 probationary-period-in-a-permanent-position:
 24 {15}-"Personal-staff"-means-those-positions-occupied-by
 25 employees-appointed-by-the-elected-officials-enumerated-in

1 Article-VI,section-17-of-the-Montana-constitution-or-by-the
 2 public-service-commission-as-a-whole:
 3 {16}-"Position"-means-a-collection-of-duties-and
 4 responsibilities-currently-assigned-or-delegated-by
 5 competent-authority,requiring-the-full-time,part-time,or
 6 intermittent-employment-of-one-person:
 7 {17}-"Program"-means-a-combination-of-planned-efforts-to
 8 provide-a-service:
 9 {18}-"Seasonal-position"-means-a-position-so-designated
 10 on-the-appropriate-agency-list-of-authorized-positions
 11 referenced-in-2-10-206-and-which-is-a-permanent-position-but
 12 which-is-interrupted-by-the-seasonal-nature-of-the-position:
 13 {19}-"Temporary-position"-means-a-position-so-designated
 14 on-the-appropriate-agency-list-of-authorized-positions
 15 referenced-in-2-10-206,created-for-a-definite-period-of
 16 time-not-to-exceed-9-months:
 17 **Section 1.** Section 2-18-301, MCA, is amended to read:
 18 "2-18-301. Purpose and intent of part -- rules. (1) The
 19 purpose of this part is to provide the market-based
 20 compensation necessary to attract and retain competent and
 21 qualified employees in order to perform the services the
 22 state is required to provide to its citizens.
 23 (2) It is the intent of the legislature that
 24 compensation plans for state employees, excluding those
 25 employees excepted under 2-18-103 or 2-18-104 and excluding

1 employees compensated under 2-18-313, 2-18-314, and
 2 2-18-315, be based on an analysis of the labor market as
 3 provided by the department OF LABOR AND INDUSTRY in a salary
 4 survey report to the legislature at the start of each
 5 legislative session.

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 7 schedules provided for in 2-18-312 through 2-18-315
 8 supersede any other plan or systems established through
 9 collective bargaining after the adjournment of the 52nd
 10 legislature.

11 (4) Pay levels provided for in 2-18-312 through
 12 2-18-315 may not be increased through collective bargaining
 13 after adjournment of the 52nd legislature.

14 (5) Total funds required to implement the pay schedules
 15 provided for in 2-18-312 through 2-18-315 for any employee
 16 group or bargaining unit may not be increased through
 17 collective bargaining over the amount appropriated by the
 18 52nd legislature.

19 (6) The department shall administer the pay program
 20 established by the legislature on the basis of merit,
 21 internal equity, and competitiveness to external labor
 22 markets when fiscally able.

23 (7) The department may promulgate rules not
 24 inconsistent with the provisions of this part, collective
 25 bargaining statutes, or negotiated contracts to carry out

1 the purposes of this part.

2 ~~(8) As used in this part, "department" means the~~
 3 ~~department of labor and industry provided for in 2-15-1701.~~

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 5 **"39-31-301. Representative of public employer. (1)** The
 6 chief executive officer of the state, the governing body of
 7 a political subdivision, the commissioner of higher
 8 education, whether elected or appointed, or the designated
 9 authorized representative shall represent the public
 10 employer in collective bargaining with an exclusive
 11 representative.

12 (2) All collective bargaining contract negotiation and
 13 administration functions of the chief executive officer of
 14 the state must be performed by an employee within the office
 15 of the budget director appointed pursuant to 17-7-103."

16 **Section 3.** The Board of Personnel Appeals shall amend
 17 Rule 24.26.508, Administrative Rules of Montana, to read:
 18 **"24.26.508. GRIEVANCE PROCEDURE. (1) Step One.** Any
 19 employee, group of employees, or appropriately designated
 20 representatives, may utilize the formal appeals procedure.
 21 The individual employee must obtain a state employee
 22 classification and wage appeal form BPA-C(1) and follow the
 23 accompanying instructions. In the case of a group appeal, a
 24 group of employees must comply with the rules governing
 25 group appeals (24.26.404). Forms may be obtained from the

1 board of personnel appeals, capitol station, Helena,
2 Montana, or from the personnel offices of all departments
3 within the executive branch.

4 (a) The appropriate form when completed shall be
5 submitted to the immediate supervisor.

6 (b) To complete the form, the employee must clearly
7 identify the issue or issues motivating the appeal. A list
8 of appealable issues will be provided with the appeal form.
9 The employee must explain in detail the issue and their
10 reasons for appealing. If an issue or reason for the appeal
11 is not adequately identified, the appeal may be returned to
12 the employee at any step in the appeal procedure.

13 (c) Appealable issues are the following:

14 (i) The class specification doesn't adequately describe
15 my position duties.

16 (ii) A different class specification is a better
17 description of my position duties.

18 (iii) The class title is inappropriate for my position.

19 (iv) The minimum qualifications are not equivalent to
20 those required to do my job.

21 (v) Other positions assigned to the same class have
22 less difficult work than my position.

23 (vi) My position duties are more similar to positions
24 assigned to a different class.

25 (vii) Other positions assigned to the same class perform

1 duties significantly different than my position duties.

2 (viii) The position description for my position class
3 does not adequately describe the duties and responsibilities
4 assigned.

5 (ix) There are significant responsibilities assigned to
6 my position which are not included in the position
7 description.

8 (x) There are significant duties described in the
9 position description which are not performed by this
10 position.

11 (xi) There is not a current position description
12 available for my position.

13 (xii) The pay plan rules have been incorrectly applied
14 to my position (specific rules(s) should be cited).

15 (xiii) (other) must specifically relate to position
16 classification.

17 (d) The immediate supervisor shall have ten working
18 days to examine the appeal, attempt to resolve the
19 complaint, record his or her findings, record steps taken
20 (if any) to resolve appeal, and return the form to the
21 employee.

22 (e) If the immediate supervisor feels the employee
23 appeal has merit, the immediate supervisor may, initiate a
24 request for reclassification through the agency personnel
25 office; or request an administrative review of the

1 classification of the employee's position, or redescribe the
2 position duties to more adequately reflect actual work
3 performed or initiate and complete other steps to address
4 the identified issue. The employee should continue the
5 appeal even if administrative action is underway.

6 (f) If the employee does not accept the findings of the
7 immediate supervisor, the employee shall have five working
8 days to forward the evaluation and findings of the immediate
9 supervisor to step two.

10 (2) Step Two

11 (a) If the employee chooses to continue the appeal, the
12 employee shall submit the form with all appropriate sections
13 completed to the department head for review.

14 (b) The department head shall have five working days to
15 review the appeal, record his or her findings, record steps
16 taken to resolve the appeal, and return it to the employee.

17 (c) If the employee does not accept the findings of the
18 department head, the employee shall have five 10 working
19 days to forward the evaluation and findings of the
20 department head to the board under step three.

21 ~~{3} Step Three~~

22 ~~{a}--If the employee chooses to continue the appeal, the~~
23 ~~employee--shall--submit--the--form, all appropriate sections~~
24 ~~completed, to the personnel division for review.~~

25 ~~{b}--The personnel division shall have 30 working days~~

1 ~~to review the matter, record its findings in the appropriate~~
2 ~~section of the form, and to issue its recommended adjustment~~
3 ~~and return it to the employee or the proper representative.~~

4 ~~{c}--The personnel division's review and findings shall~~
5 ~~be limited to the issue(s) identified in Step One of the~~
6 ~~appeal. Any additional issues identified at Step Three will~~
7 ~~be addressed through informal administrative procedures as~~
8 ~~determined by the personnel division.~~

9 ~~{d}--The personnel division will prepare detailed~~
10 ~~written findings in the response to the issue(s) identified~~
11 ~~at step one.~~

12 ~~{e}--If the employee accepts the personnel division's~~
13 ~~findings and recommendation, the formal appeals procedure is~~
14 ~~concluded upon the implementation of the personnel division's~~
15 ~~findings and recommendations.~~

16 ~~{f}--The employee shall have 10 working days to forward~~
17 ~~the appeal to the board for resolution.~~

18 ~~{4}(3) Step Four Three~~

19 (a) If the employee rejects the personnel division's
20 department head's findings and recommendation, the employee
21 shall submit the form BPA-C(1), with all appropriate
22 sections completed, to the board.

23 (b) The employee must identify and record where they
24 feel the Personnel Division's department head's findings are
25 in error.

1 (c) The board shall have 10 working days to accept or
2 reject the appeal for hearing at Step Four Three.

3 (i) The board shall examine the issue(s) and exceptions
4 identified by the employee. If the issue(s) and exceptions
5 are adequately described, the board will accept the appeal
6 at Step Four Three.

7 (ii) If the board finds the issue identified at step one
8 to be inadequately described, the board shall return the
9 appeal to the employee. In such case, the employee may
10 redescribe the issue and refile the appeal at step one
11 within 10 working days.

12 (iii) If the Board feels that the ~~personnel-division's~~
13 department head's written findings or the employee's
14 exceptions to the written findings are not adequately
15 described, the board shall return the appeal to the
16 appropriate party. In such case, the party will expand its
17 findings or exceptions and refile them with the Board within
18 10 working days.

19 (d) If in the board's discretion it decides to conduct
20 a preliminary investigation in the appeal, it shall have 20
21 days to do so. The board may carry out any investigations
22 deemed necessary for resolution of the appeal or complaint.
23 The employee or group of employees and personnel division
24 shall have ten days to accept or reject the preliminary
25 decision. If the employee or group of employees and the

1 ~~personnel-division~~ department head accept the preliminary
2 decision, it shall be final and binding. The board shall
3 then implement the preliminary decision by instructing the
4 ~~personnel-division~~ department head to remedy the situation.

5 (e) If the employee, group of employees, or the
6 ~~Personnel-Division~~ department head reject the preliminary
7 decision or the board in its discretion decides not to
8 conduct a preliminary investigation, the board or an agent
9 appointed by the board shall conduct a hearing in accordance
10 with title 2, chapter 4, MCA.

11 (f) Any investigation and/or hearing conducted by the
12 board shall be restricted to the issue identified at Step
13 One.

14 (g) If the preponderance of evidence taken at the
15 hearing shows the employee is aggrieved, the board shall
16 issue an order requiring action to resolve the employee's
17 grievance.

18 (h) Upon the conclusion of the hearings process, the
19 Board shall issue its proposed findings of fact, conclusions
20 of law, and recommended order within 90 working days.

21 (i) The prescribed time limits at any step of the
22 appeals process may be modified or waived upon mutual
23 agreement of all parties."

24 NEW SECTION. Section 4. Labor relations bureau and
25 training and professional development section eliminated.

1 The labor relations bureau and the training and professional
2 development section of the personnel division of the
3 department of administration are eliminated.

4 NEW SECTION. **Section 5. Saving clause.** [This act] does
5 not affect rights and duties that matured, penalties that
6 were incurred, or proceedings that were begun before [the
7 effective date of this act].

8 NEW SECTION. **Section 6. Severability.** If a part of
9 [this act] is invalid, all valid parts that are severable
10 from the invalid part remain in effect. If a part of [this
11 act] is invalid in one or more of its applications, the part
12 remains in effect in all valid applications that are
13 severable from the invalid applications.

14 NEW SECTION. **Section 7. Effective dates.** (1) [Sections
15 67-7 5, 6, and this section] are effective on passage and
16 approval.

17 (2) [Sections 1 through 5 4] are effective November 1,
18 1992.

-End-

1 HOUSE BILL NO. 56

2 INTRODUCED BY COCCHIARELLA, STRIZICH, DRISCOLL,
3 BARNHART, DARKO, BACHINI, SCHYE, DAVIS, KILPATRICK,
4 STICKNEY, PECK, KIMBERLEY, SQUIRES, MCCULLOCH, G. BECK,
5 COHEN, PAVLOVICH, HANSEN, MCCARTHY, BROOKE, HALLIGAN,
6 DAILY, L. NELSON, REAM, WYATT

7
8 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING VARIOUS
9 BUREAUS, PROGRAMS, AND POSITIONS WITHIN THE DEPARTMENT OF
10 ADMINISTRATION; TRANSFERRING CERTAIN PROGRAMS WITHIN THAT
11 DEPARTMENT TO THE DEPARTMENT OF LABOR AND INDUSTRY AND TO
12 THE OFFICE OF THE BUDGET DIRECTOR; DIRECTING THE AMENDMENT
13 OF RULE 24.26.508, ADMINISTRATIVE RULES OF MONTANA; AMENDING
14 SECTIONS 2-18-101, 2-18-301, AND 39-31-301, MCA; AND
15 PROVIDING EFFECTIVE DATES."

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

18 Section 1, Section 2-18-101, MCA, is amended to read:

19 "2-18-101. Definitions. As used in parts 1 through 3
20 2 and part 10 of this chapter, the following definitions
21 apply:

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

25 (2) "Base salary" means the amount of compensation paid

1 to an employee, excluding:

2 (a) state contributions to group benefits provided in
3 2-18-703;

4 (b) overtime;

5 (c) fringe benefits as defined in 39-2-903; and

6 (d) the longevity allowance provided in 2-18-304;

7 (3) "Board" means the board of personnel appeals
8 established in 2-15-1705.

9 (4) "Class" means one or more positions substantially
10 similar with respect to the kind or nature of duties
11 performed, responsibility assumed, and level of difficulty
12 so that the same descriptive title may be used to designate
13 each position allocated to the class; similar qualifications
14 may be required of persons appointed to the positions in the
15 class, and the same pay rate or pay grade may be applied
16 with equity.

17 (5) "Class specification" means a written descriptive
18 statement of the duties and responsibilities characteristic
19 of a class of positions and includes the education,
20 experience, knowledge, skills, abilities, and qualifications
21 necessary to perform the work of the class.

22 (6) "Compensation" means the annual or hourly wage or
23 salary and includes the state contribution to group benefits
24 under provisions of 2-18-703.

25 (7) "Department" means the department of administration

1 created-in-2-15-1001:

2 {8}--Except--in--2-18-306,--"employee"--means--any-state
3 employee-other-than-an-employee-excepted-under--2-18-103--or
4 2-18-104-from-the-statewide-classification-system:

5 {9}--"Entry--salary"--means--the-entry-level-base-salary
6 for-each-grade-provided-in-2-18-312:

7 {10}--"Grade"--means-the-number-assigned-to--a--pay--range
8 within-a-pay-schedule-in-part-3-of-this-chapter:

9 {11}--"Job--sharing"--means--the--sharing--by-two-or-more
10 persons-of-a-position-that-is--considered--an--aggregate--or
11 permanent-position:

12 {12}--"Market--salary"--means-the-average-base-salary-that
13 other-employers-pay-to-employees-in-occupations--comparable
14 to--occupations--in--a--grade--provided--in--2-18-312,--as
15 determined-by-the-department's-salary-survey-of-the-relevant
16 labor-market:

17 {13}--"Permanent-position"--means-a-position-so-designated
18 on-the--appropriate--agency--list--of--authorized--positions
19 referenced--in-2-18-206-and-approved-as-such-in-the-biennium
20 budget:

21 {14}--"Permanent-status"--means--the--state--an--employee
22 attains--after--satisfactorily--completing--an--appropriate
23 probationary-period-in-a-permanent-position:

24 {15}--"Personal-staff"--means-those-positions-occupied--by
25 employees--appointed--by-the-elected-officials-enumerated-in

1 Article-VI, section 17 of the Montana constitution or by the
2 public service commission as a whole:

3 {16}--"Position"--means--a--collection--of--duties--and
4 responsibilities--currently--assigned--or--delegated--by
5 competent-authority,--requiring-the-full-time,--part-time,--or
6 intermittent-employment-of-one-person:

7 {17}--"Program"--means-a-combination-of-planned-efforts-to
8 provide-a-service:

9 {18}--"Seasonal-position"--means-a-position-so-designated
10 on-the--appropriate--agency--list--of--authorized--positions
11 referenced-in-2-18-206-and-which-is-a-permanent-position-but
12 which-is-interrupted-by-the-seasonal-nature-of-the-position:

13 {19}--"Temporary-position"--means-a-position-so-designated
14 on--the--appropriate--agency--list--of--authorized-positions
15 referenced-in-2-18-206,--created-for--a--definite--period--of
16 time-not-to-exceed-9-months:"

17 **Section 1.** Section 2-18-301, MCA, is amended to read:

18 "2-18-301. Purpose and intent of part -- rules. (1) The
19 purpose of this part is to provide the market-based
20 compensation necessary to attract and retain competent and
21 qualified employees in order to perform the services the
22 state is required to provide to its citizens.

23 (2) It is the intent of the legislature that
24 compensation plans for state employees, excluding those
25 employees excepted under 2-18-103 or 2-18-104 and excluding

1 employees compensated under 2-18-313, 2-18-314, and
 2 2-18-315, be based on an analysis of the labor market as
 3 provided by the department OF LABOR AND INDUSTRY in a salary
 4 survey report to the legislature at the start of each
 5 legislative session.

6 (3) Except as provided in 2-18-110 and 2-18-305(4), pay
 7 schedules provided for in 2-18-312 through 2-18-315
 8 supersede any other plan or systems established through
 9 collective bargaining after the adjournment of the 52nd
 10 legislature.

11 (4) Pay levels provided for in 2-18-312 through
 12 2-18-315 may not be increased through collective bargaining
 13 after adjournment of the 52nd legislature.

14 (5) Total funds required to implement the pay schedules
 15 provided for in 2-18-312 through 2-18-315 for any employee
 16 group or bargaining unit may not be increased through
 17 collective bargaining over the amount appropriated by the
 18 52nd legislature.

19 (6) The department shall administer the pay program
 20 established by the legislature on the basis of merit,
 21 internal equity, and competitiveness to external labor
 22 markets when fiscally able.

23 (7) The department may promulgate rules not
 24 inconsistent with the provisions of this part, collective
 25 bargaining statutes, or negotiated contracts to carry out

1 the purposes of this part.

2 ~~(8) As used in this part, "department" means the~~
 3 ~~department of labor and industry provided for in 2-15-1701."~~

4 **Section 2.** Section 39-31-301, MCA, is amended to read:

5 "39-31-301. **Representative of public employer.** (1) The
 6 chief executive officer of the state, the governing body of
 7 a political subdivision, the commissioner of higher
 8 education, whether elected or appointed, or the designated
 9 authorized representative shall represent the public
 10 employer in collective bargaining with an exclusive
 11 representative.

12 (2) All collective bargaining contract negotiation and
 13 administration functions of the chief executive officer of
 14 the state must be performed by an employee within the office
 15 of the budget director appointed pursuant to 17-7-103."

16 **Section 3.** The Board of Personnel Appeals shall amend
 17 Rule 24.26.508, Administrative Rules of Montana, to read:

18 "24.26.508. **GRIEVANCE PROCEDURE.** (1) Step One. Any
 19 employee, group of employees, or appropriately designated
 20 representatives, may utilize the formal appeals procedure.
 21 The individual employee must obtain a state employee
 22 classification and wage appeal form BPA-C(1) and follow the
 23 accompanying instructions. In the case of a group appeal, a
 24 group of employees must comply with the rules governing
 25 group appeals (24.26.404). Forms may be obtained from the

1 board of personnel appeals, capitol station, Helena,
 2 Montana, or from the personnel offices of all departments
 3 within the executive branch.

4 (a) The appropriate form when completed shall be
 5 submitted to the immediate supervisor.

6 (b) To complete the form, the employee must clearly
 7 identify the issue or issues motivating the appeal. A list
 8 of appealable issues will be provided with the appeal form.
 9 The employee must explain in detail the issue and their
 10 reasons for appealing. If an issue or reason for the appeal
 11 is not adequately identified, the appeal may be returned to
 12 the employee at any step in the appeal procedure.

13 (c) Appealable issues are the following:

14 (i) The class specification doesn't adequately describe
 15 my position duties.

16 (ii) A different class specification is a better
 17 description of my position duties.

18 (iii) The class title is inappropriate for my position.

19 (iv) The minimum qualifications are not equivalent to
 20 those required to do my job.

21 (v) Other positions assigned to the same class have
 22 less difficult work than my position.

23 (vi) My position duties are more similar to positions
 24 assigned to a different class.

25 (vii) Other positions assigned to the same class perform

1 duties significantly different than my position duties.

2 (viii) The position description for my position class
 3 does not adequately describe the duties and responsibilities
 4 assigned.

5 (ix) There are significant responsibilities assigned to
 6 my position which are not included in the position
 7 description.

8 (x) There are significant duties described in the
 9 position description which are not performed by this
 10 position.

11 (xi) There is not a current position description
 12 available for my position.

13 (xii) The pay plan rules have been incorrectly applied
 14 to my position (specific rules(s) should be cited).

15 (xiii) (other) must specifically relate to position
 16 classification.

17 (d) The immediate supervisor shall have ten working
 18 days to examine the appeal, attempt to resolve the
 19 complaint, record his or her findings, record steps taken
 20 (if any) to resolve appeal, and return the form to the
 21 employee.

22 (e) If the immediate supervisor feels the employee
 23 appeal has merit, the immediate supervisor may, initiate a
 24 request for reclassification through the agency personnel
 25 office; or request an administrative review of the

1 classification of the employee's position, or redescribe the
 2 position duties to more adequately reflect actual work
 3 performed or initiate and complete other steps to address
 4 the identified issue. The employee should continue the
 5 appeal even if administrative action is underway.

6 (f) If the employee does not accept the findings of the
 7 immediate supervisor, the employee shall have five working
 8 days to forward the evaluation and findings of the immediate
 9 supervisor to step two.

10 (2) Step Two

11 (a) If the employee chooses to continue the appeal, the
 12 employee shall submit the form with all appropriate sections
 13 completed to the department head for review.

14 (b) The department head shall have five working days to
 15 review the appeal, record his or her findings, record steps
 16 taken to resolve the appeal, and return it to the employee.

17 (c) If the employee does not accept the findings of the
 18 department head, the employee shall have five 10 working
 19 days to forward the evaluation and findings of the
 20 department head to the board under step three.

21 ~~(3) Step Three~~

22 ~~(a) If the employee chooses to continue the appeal, the~~
 23 ~~employee shall submit the form, all appropriate sections~~
 24 ~~completed, to the personnel division for review.~~

25 ~~(b) The personnel division shall have 30 working days~~

1 ~~to review the matter, record its findings in the appropriate~~
 2 ~~section of the form, and to issue its recommended adjustment~~
 3 ~~and return it to the employee or the proper representative.~~

4 ~~(c) The personnel division's review and findings shall~~
 5 ~~be limited to the issue(s) identified in Step One of the~~
 6 ~~appeal. Any additional issues identified at Step Three will~~
 7 ~~be addressed through informal administrative procedures as~~
 8 ~~determined by the personnel division.~~

9 ~~(d) The personnel division will prepare detailed~~
 10 ~~written findings in the response to the issue(s) identified~~
 11 ~~at step one.~~

12 ~~(e) If the employee accepts the personnel division's~~
 13 ~~findings and recommendation, the formal appeals procedure is~~
 14 ~~concluded upon the implementation of the personnel division's~~
 15 ~~findings and recommendations.~~

16 ~~(f) The employee shall have 10 working days to forward~~
 17 ~~the appeal to the board for resolution.~~

18 ~~(4)(3) Step Four Three~~

19 (a) If the employee rejects the personnel division's
 20 department head's findings and recommendation, the employee
 21 shall submit the form BPA-C(1), with all appropriate
 22 sections completed, to the board.

23 (b) The employee must identify and record where they
 24 feel the Personnel Division's department head's findings are
 25 in error.

1 (c) The board shall have 10 working days to accept or
2 reject the appeal for hearing at Step Four Three.

3 (i) The board shall examine the issue(s) and exceptions
4 identified by the employee. If the issue(s) and exceptions
5 are adequately described, the board will accept the appeal
6 at Step Four Three.

7 (ii) If the board finds the issue identified at step one
8 to be inadequately described, the board shall return the
9 appeal to the employee. In such case, the employee may
10 redescribe the issue and refile the appeal at step one
11 within 10 working days.

12 (iii) If the Board feels that the ~~personnel-division's~~
13 department head's written findings or the employee's
14 exceptions to the written findings are not adequately
15 described, the board shall return the appeal to the
16 appropriate party. In such case, the party will expand its
17 findings or exceptions and refile them with the Board within
18 10 working days.

19 (d) If in the board's discretion it decides to conduct
20 a preliminary investigation in the appeal, it shall have 20
21 days to do so. The board may carry out any investigations
22 deemed necessary for resolution of the appeal or complaint.
23 The employee or group of employees and ~~personnel-division~~
24 THE DEPARTMENT HEAD shall have ten days to accept or reject
25 the preliminary decision. If the employee or group of

1 employees and the ~~personnel-division~~ department head accept
2 the preliminary decision, it shall be final and binding. The
3 board shall then implement the preliminary decision by
4 instructing the ~~personnel-division~~ department head to remedy
5 the situation.

6 (e) If the employee, group of employees, or the
7 ~~Personnel--Division~~ department head reject the preliminary
8 decision or the board in its discretion decides not to
9 conduct a preliminary investigation, the board or an agent
10 appointed by the board shall conduct a hearing in accordance
11 with title 2, chapter 4, MCA.

12 (f) Any investigation and/or hearing conducted by the
13 board shall be restricted to the issue identified at Step
14 One.

15 (g) If the preponderance of evidence taken at the
16 hearing shows the employee is aggrieved, the board shall
17 issue an order requiring action to resolve the employee's
18 grievance.

19 (h) Upon the conclusion of the hearings process, the
20 Board shall issue its proposed findings of fact, conclusions
21 of law, and recommended order within 90 working days.

22 (i) The prescribed time limits at any step of the
23 appeals process may be modified or waived upon mutual
24 agreement of all parties."

25 NEW SECTION. Section 4. Labor relations bureau and

1 training and professional development section eliminated.,
2 The labor relations bureau and the training and professional
3 development section of the personnel division of the
4 department of administration are eliminated.

5 NEW SECTION. **Section 5. Saving clause.** [This act] does
6 not affect rights and duties that matured, penalties that
7 were incurred, or proceedings that were begun before [the
8 effective date of this act].

9 NEW SECTION. **Section 6. Severability.** If a part of
10 [this act] is invalid, all valid parts that are severable
11 from the invalid part remain in effect. If a part of [this
12 act] is invalid in one or more of its applications, the part
13 remains in effect in all valid applications that are
14 severable from the invalid applications.

15 NEW SECTION. **Section 7. Effective dates.** (1) [Sections
16 67--7 5, 6, and this section] are effective on passage and
17 approval.

18 (2) [Sections 1 through 5 4] are effective November 1,
19 1992.

-End-