

1 HOUSE BILL NO. 172

2 INTRODUCED BY SOFT

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DEFINITIONS RELATED TO PERMANENT,
6 TEMPORARY, AND SEASONAL POSITIONS; PROVIDING FOR A CATEGORY OF EMPLOYEE CALLED A
7 SHORT-TERM WORKER; DEFINING "SHORT-TERM WORKER"; CLARIFYING PROVISIONS FROM WHICH
8 CERTAIN EMPLOYEES ARE EXEMPT; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF
9 ADMINISTRATION ADMINISTER A STATE SICK-PAY PLAN; AMENDING SECTIONS 2-18-101, 2-18-102,
10 2-18-103, 2-18-104, 2-18-111, 2-18-304, 2-18-601, 2-18-603, 2-18-611, 2-18-618, 39-29-101, AND
11 39-30-103, MCA; REPEALING SECTION 2-18-605, MCA; AND PROVIDING AN EFFECTIVE DATE."
12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14

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

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

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

20 (2) "Anniversary date", except as modified in part 3 of this chapter, means the month and day on
21 which an employee began the most recent period of uninterrupted state service.

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

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

24 (b) overtime;

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

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

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

28 (5) "Class" means one or more positions substantially similar with respect to the kind or nature of
29 duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be
30 used to designate each position allocated to the class, similar qualifications may be required of persons

1 appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

2 (6) "Class series benchmark" means a representative position within a class series that is used to
3 illustrate the application of the job evaluation factors that are used to classify positions in the classification
4 plan. A benchmark description describes the duties and responsibilities assigned and the factors applied to
5 the class series benchmark.

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

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

11 (9) "Department" means the department of administration created in 2-15-1001.

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

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

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

17 (13) "Job sharing" means the sharing by two or more persons of a position ~~that is considered an~~
18 ~~aggregate or permanent position.~~

19 (14) "Market ratio" means an employee's base salary divided by the market salary for the
20 employee's pay grade.

21 (15) "Market salary" means the midpoint in a pay grade provided in 2-18-312, based on the average
22 base salary that other employers pay to employees in comparable occupations as determined by the
23 department's salary survey of the relevant labor market.

24 (16) "Permanent position employee" means ~~a position so designated on the appropriate agency list~~
25 ~~of authorized positions referenced in 2-18-206 and approved as such in the biennium budget~~ an employee
26 who is designated by an agency as permanent and who has attained or is eligible to attain permanent
27 status.

28 (17) "Permanent status" means the state an employee attains after satisfactorily completing an
29 appropriate probationary period ~~in a permanent position.~~

30 (18) "Personal staff" means those positions occupied by employees appointed by the elected

1 officials enumerated in Article VI, section 1, of the Montana constitution or by the public service
2 commission as a whole.

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

5 (20) "Program" means a combination of planned efforts to provide a service.

6 (21) "~~Seasonal position employee~~" means a ~~position so designated on the appropriate agency list~~
7 ~~of authorized positions referenced in 2-18-206 and that is a permanent position but that is interrupted by~~
8 ~~the seasonal nature of the position~~ permanent employee who is designated by an agency as seasonal, who
9 performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits
10 accrued during the preceding season.

11 (22) "Short-term worker" means a person who:

12 (a) is hired by an agency for an hourly wage established by the agency;

13 (b) may not work for the agency for more than 90 days in a continuous 12-month period;

14 (c) is not eligible for permanent status;

15 (d) may not be hired into another position by the agency without a competitive selection process;

16 and

17 (e) is not eligible to earn the leave and holiday benefits provided in part 6 or the group insurance
18 benefits provided in part 7.

19 (23) "~~Temporary position employee~~" means a ~~position so designated on the appropriate agency list~~
20 ~~of authorized positions referenced in 2-18-206, created an employee who:~~

21 (a) is designated as temporary by an agency for a definite period of time not to exceed 9 12
22 months;

23 (b) performs temporary duties or permanent duties on a temporary basis;

24 (c) is not eligible for permanent status;

25 (d) is terminated at the end of the employment period; and

26 (e) is not eligible to become a permanent employee without a competitive selection process."

27

28 **Section 2.** Section 2-18-102, MCA, is amended to read:

29 **"2-18-102. Personnel administration -- general policy setting.** (1) Except as otherwise provided
30 by law or collective bargaining agreement, the department shall:

1 (a) encourage and exercise leadership in the development of effective personnel administration
2 within the several agencies in the state and make available the facilities of the department to this end;

3 (b) foster and develop programs for recruitment and selection of capable persons for ~~permanent,~~
4 ~~seasonal, temporary, and other types of positions~~ employment and for the improvement of employee
5 effectiveness, including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances,
6 and evaluation for productivity and retention in permanent status;

7 (c) foster, develop, and promote job sharing in agencies;

8 (d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the
9 policies made under those parts and report the findings and recommendations to the governor;

10 (e) establish policies, procedures, and forms for the maintenance of records of all employees in the
11 state service;

12 (f) apply and carry out parts 1 and 2 and the policies under those parts and perform any other
13 lawful acts that may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

14 (2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the
15 state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided
16 that the agencies remain in compliance with policies, procedures, timetables, and standards established by
17 the department.

18 (3) The department shall develop and issue personnel policies for the state and shall adopt rules
19 to implement this part, except 2-18-111. Adequate public notice must be given to all interested parties of
20 proposed changes or additions to the personnel policies before the date on which they are to take effect.
21 If requested by any of the affected parties, the department shall schedule a public hearing on proposed
22 changes or additions to the personnel policies before the date on which they are to take effect.

23 (4) The department shall develop model rules of conduct for all state employees based upon the
24 provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the
25 provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional
26 rules appropriate to the specific circumstances of the agency."

27
28 **Section 3.** Section 2-18-103, MCA, is amended to read:

29 "**2-18-103. Officers and employees excepted.** (1) Parts 1 ~~and 2~~ through 3 and 10 do not apply
30 to the following ~~positions~~ officers and employees in state government:

- 1 (a) elected officials;
- 2 (b) county assessors and their chief ~~deputy~~ deputies;
- 3 (c) employees of the office of consumer counsel;
- 4 (d) judges and employees of the judicial branch;
- 5 (e) members of boards and commissions appointed by the governor, the legislature, or other elected
- 6 state officials;
- 7 (f) officers or members of the militia;
- 8 (g) agency heads appointed by the governor;
- 9 (h) academic and professional administrative personnel with individual contracts under the authority
- 10 of the board of regents of higher education;
- 11 (i) academic and professional administrative personnel and live-in houseparents who have entered
- 12 into individual contracts with the state school for the deaf and blind under the authority of the state board
- 13 of public education;
- 14 (j) teachers under the authority of the department of corrections or the department of public health
- 15 and human services;
- 16 (k) investment officer, assistant investment officer, executive director, and three professional staff
- 17 positions of the board of investments;
- 18 (l) four professional staff positions under the board of oil and gas conservation;
- 19 (m) assistant director for security of the Montana state lottery;
- 20 (n) executive director and senior investment officer of the Montana board of science and
- 21 technology development;
- 22 (o) executive director and employees of the state compensation insurance fund;
- 23 (p) state racing stewards employed by the executive secretary of the Montana board of
- 24 horseracing;
- 25 (q) executive director of the Montana wheat and barley committee;
- 26 (r) commissioner of banking and financial institutions; and
- 27 (s) training coordinator for county attorneys.
- 28 (2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are
- 29 exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative
- 30 branch, other than the office of consumer counsel:

1 (a) as used in parts 1 through 3 of this chapter, references to the "department of administration"
 2 or "department" apply to the legislative council established by 5-11-101, which may delegate administrative
 3 duties to the legislative services division established by 5-11-111;

4 (b) as used in 2-18-102, the term "governor" applies to the legislature; and

5 (c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined
 6 in 17-7-102."

7
 8 **Section 4.** Section 2-18-104, MCA, is amended to read:

9 **"2-18-104. Exemption for personal staff -- limit.** (1) Subject to the limitations in subsections (2)
 10 and (3), members of a personal staff are exempt from ~~the application of 2-18-204, 2-18-206, 2-18-207,~~
 11 ~~and 2-18-1011 through 2-18-1013~~ parts 1 through 3 and 10.

12 (2) The personal staff who are exempted by subsection (1) may not exceed 10 unless otherwise
 13 approved by the department according to criteria developed by the department. Under no circumstances
 14 may the total exemptions of each elected official exceed 15.

15 (3) The number of members of the personal staff of the public service commission who are
 16 exempted by subsection (1) may not exceed 10."

17
 18 **Section 5.** Section 2-18-111, MCA, is amended to read:

19 **"2-18-111. Hiring preference for residents of Indian reservations for state jobs within reservation**
 20 **-- rules.** (1) A state agency that operates within an Indian reservation shall give a preference in hiring for
 21 ~~a position of~~ employment with the state agency to an Indian resident of the reservation who has
 22 substantially equal qualifications for the position.

23 (2) The commissioner of labor and industry shall enforce this section, and investigate complaints
 24 of its violation, and may adopt rules to implement this section.

25 (3) For the purposes of this section, the following definitions apply:

26 (a) "Employment" means being employed as a permanent, temporary, or seasonal employee as
 27 defined in 2-18-101 for a state position. The term does not include:

28 (i) a state elected official;

29 (ii) appointment by an elected official to a body, such as a board, commission, committee, or
 30 council;

1 (iii) appointment by an elected official to a public office if the appointment is provided for by law;

2 or

3 (iv) engagement as an independent contractor or employment by an independent contractor.

4 (b) "Indian" means a person who is enrolled or who is a lineal descendant of a person enrolled upon
5 an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian
6 tribe, domiciled in the United States.

7 ~~(b) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a~~
8 ~~state position. The term does not include:~~

9 ~~(i) a state elected office;~~

10 ~~(ii) appointment by an elected official to a body, such as a board, commission, committee, or~~
11 ~~council;~~

12 ~~(iii) appointment by an elected official to a public office if the appointment is provided for by law;~~

13 ~~or~~

14 ~~(iv) engagement as an independent contractor or employment by an independent contractor.~~

15 (c) "State agency" means a department, office, board, bureau, commission, agency, or other
16 instrumentality of the executive or judicial branches of the government of this state."
17

18 **Section 6.** Section 2-18-304, MCA, is amended to read:

19 **"2-18-304. Longevity allowance.** (1) (a) (i) Effective July 1, 1995, through the last day of the pay
20 period immediately preceding the pay period that includes October 1, 1995, in addition to the compensation
21 provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed
22 5 years of uninterrupted state service must receive 9/10 of 1% of the employee's base salary multiplied
23 by the number of completed, contiguous 5-year periods of uninterrupted state service.

24 (ii) Effective on the first day of the pay period that includes October 1, 1995, in addition to the
25 compensation provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who
26 has completed 5 years of uninterrupted state service must receive 1.5% of the employee's base salary
27 multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

28 (b) Service to the state is not interrupted by authorized leaves of absence.

29 (2) (a) For the purpose of determining years of service under this section, an employee must be
30 credited with 1 year of service for each period of:

1 (i) 2,080 hours of service following the employee's date of employment; an employee must be
 2 credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or
 3 on an authorized leave of absence without pay, regardless of the number of hours of service in the pay
 4 period; or

5 (ii) 12 uninterrupted calendar months following the employee's date of employment in which the
 6 employee was in a pay status or on an authorized leave of absence without pay, regardless of the number
 7 of hours of service in any month. An employee of a school at a state institution or the university system
 8 must be credited with 1 year of service if the employee is employed for an entire academic year.

9 (b) State agencies, other than the university system and a school at a state institution, shall use
 10 the method provided in subsection (2)(a)(i) to calculate years of service under this section.

11 (3) For the purposes of calculating longevity, employment as a short-term worker does not apply
 12 toward years of service.

13
 14 **Section 7.** Section 2-18-601, MCA, is amended to read:

15 **"2-18-601. Definitions.** For the purpose of this part, except 2-18-620, the following definitions
 16 apply:

17 (1) "Agency" means any legally constituted department, board, or commission of state, county,
 18 or city government or any political subdivision thereof.

19 (2) "Break in service" means a period of time in excess of 5 working days when the person is not
 20 employed and that severs continuous employment.

21 (3) "Continuous employment" means working within the same jurisdiction without a break in
 22 service of more than 5 working days or without a continuous absence without pay of more than 15 working
 23 days.

24 (4) "Employee" means any person employed by an agency except elected state, county, and city
 25 officials, schoolteachers, and persons contracted as independent contractors or hired under personal
 26 services contracts.

27 (5) "Full-time employee" means an employee who normally works 40 hours a week.

28 (6) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in
 29 1-1-216 or 20-1-305, except Sundays.

30 (7) "Part-time employee" means an employee who normally works less than 40 hours a week.

1 (8) "Permanent employee" means ~~an employee who is assigned to a position designated as~~
 2 ~~permanent on the appropriate list of authorized positions referenced in 2-18-206 and approved as such in~~
 3 ~~the biennium budget~~ a permanent employee as defined in 2-18-101.

4 (9) "Seasonal employee" means ~~an employee assigned to a position designated as seasonal on the~~
 5 ~~appropriate agency list of authorized positions referenced in 2-18-206 and for which the agency has a~~
 6 ~~permanent need but which is interrupted by the seasonal nature of the assignment~~ a seasonal employee
 7 as defined in 2-18-101.

8 (10) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or ~~his~~
 9 a member of the employee's immediate family or for a permanent state employee who is eligible for parental
 10 leave under the provisions of 2-18-606.

11 (11) ~~"Sick pay plan" means a plan that:~~

12 ~~(a) provides for an agency to make payments in lieu of wages to employees on account of sickness~~
 13 ~~or accident disability; and~~

14 ~~(b) meets the requirements of 42 U.S.C. 409(b) or (d).~~

15 ~~(12) "Temporary employee" means an employee assigned to a position designated as temporary~~
 16 ~~on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period~~
 17 ~~of time not to exceed 9 months~~ a temporary employee as defined in 2-18-101.

18 ~~(13)~~ (12) "Transfer" means a change of employment from one agency to another agency in the same
 19 jurisdiction without a break in service.

20 ~~(14)~~ (13) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation,
 21 or personal business at the request of the employee and with the concurrence of the employer."

22
 23 **Section 8.** Section 2-18-603, MCA, is amended to read:

24 **"2-18-603. Holidays -- observance when falling on employee's day off.** (1) ~~(a) Any~~ A full-time
 25 employee who is scheduled for a day off on a day ~~which~~ that is observed as a legal holiday, except
 26 Sundays, ~~shall be~~ is entitled to receive a day off with pay either on the day preceding the holiday or on
 27 another day following the holiday in the same pay period or as scheduled by the employee and ~~his~~ the
 28 employee's supervisor, whichever allows a day off in addition to the employee's regularly scheduled days
 29 off, provided the employee is in a pay status on ~~his~~ the employee's last regularly scheduled working day
 30 immediately before the holiday or on ~~his~~ the employee's first regularly scheduled working day immediately

1 after the holiday.

2 (b) Part-time employees receive pay for the holiday on a prorated basis according to rules adopted
3 by the department of administration or appropriate administrative officer under 2-18-604.

4 (c) A short-term worker may not receive holiday pay.

5 (2) For purposes of this section, the term "employee" does not include nonteaching school district
6 employees."

7

8 **Section 9.** Section 2-18-611, MCA, is amended to read:

9 "2-18-611. **Annual vacation leave.** (1) Each permanent full-time employee shall earn annual
10 vacation leave credits from the first day of employment. Vacation leave credits earned ~~shall~~ must be
11 credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay
12 until they have been continuously employed for a period of 6 calendar months.

13 (2) Seasonal employees ~~shall~~ earn vacation credits. However, ~~such persons~~ seasonal employees
14 must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify,
15 ~~such seasonal~~ employees ~~must~~ shall immediately report back for work when operations resume in order to
16 avoid a break in service.

17 (3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have
18 worked the qualifying period.

19 (4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

20 (5) Temporary employees ~~do not~~ earn vacation leave credits, ~~except that a temporary employee~~
21 ~~who is subsequently hired into a permanent position within the same jurisdiction without a break in service~~
22 ~~and temporary employees who are employed continuously longer than 6 months may count as earned leave~~
23 ~~credits for the immediate term of temporary employment~~ but may not use the credits until after working
24 for 6 qualifying months.

25 (6) A short-term worker, as defined in 2-18-101, may not earn vacation leave credits, and time
26 worked as a short-term worker does not apply toward the person's rate of earning vacation leave credits."

27

28 **Section 10.** Section 2-18-618, MCA, is amended to read:

29 "2-18-618. **Sick leave.** (1) A permanent full-time employee earns sick leave credits from the first
30 day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year.

1 Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate
 2 of 12 working days for each year of service without restriction as to the number of working days that may
 3 be accumulated. Employees are not entitled to be paid sick leave until they have been continuously
 4 employed 90 days.

5 (2) An employee may not accrue sick leave credits while in a leave-without-pay status.

6 (3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the
 7 qualifying period.

8 (4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they
 9 work the qualifying period.

10 (5) A short-term worker may not earn sick leave credits.

11 (6) An employee who terminates employment with the agency is entitled to a lump-sum payment
 12 equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the
 13 accumulated sick leave must be computed on the basis of the employee's salary or wage at the time ~~he~~
 14 the employee terminates ~~his~~ employment with the state, county, or city. Accrual of sick leave credits for
 15 calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the
 16 responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any
 17 sick leave rights or benefits ~~he had~~ accrued prior to July 1, 1971. However, when an employee transfers
 18 between agencies within the same jurisdiction, ~~he~~ the employee is not entitled to a lump-sum payment. In
 19 a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave
 20 credits earned after July 1, 1971, and transferred with the employee.

21 ~~(6)(7)~~ An employee who receives a lump-sum payment pursuant to this section and who is again
 22 employed by any agency may not be credited with ~~any~~ sick leave for which the employee has previously
 23 been compensated.

24 ~~(7)(8)~~ Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided
 25 for in this section.

26 ~~(8)(9)~~ An employee may contribute any portion of ~~his~~ the employee's accumulated sick leave to
 27 a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an
 28 extensive illness or accident exhausts ~~his~~ the employee's accumulated sick leave. The department of
 29 administration shall, in consultation with the state employee group benefits advisory council, provided for
 30 in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

1 ~~(9)(10)~~ A local government may establish and administer through local rule a sick leave fund into
 2 which its employees may contribute a portion of their accumulated sick leave."
 3

4 **Section 11.** Section 39-29-101, MCA, is amended to read:

5 "**39-29-101. Definitions.** For the purposes of this chapter, the following definitions apply:

6 (1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except
 7 for training, determining physical fitness, or service in the reserve or national guard.

8 (2) "Armed forces" means the United States:

9 (a) army, navy, air force, marine corps, and coast guard; and

10 (b) merchant marine for service recognized by the United States department of defense as active
 11 military service for the purpose of laws administered by the department of veterans affairs.

12 (3) "Disabled veteran" means a person:

13 (a) whether or not the person is a veteran as defined in this section, who was separated under
 14 honorable conditions from active duty in the armed forces and has established the present existence of a
 15 service-connected disability or is receiving compensation, disability retirement benefits, or pension because
 16 of a law administered by the department of veterans affairs or a military department; or

17 (b) who has received a purple heart medal.

18 (4) "Eligible relative" means:

19 (a) the unmarried surviving spouse of a veteran or disabled veteran;

20 (b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

21 (c) the mother of a veteran who died under honorable conditions while serving in the armed forces

22 if:

23 (i) the mother's spouse is totally and permanently disabled; or

24 (ii) the mother is the widow of the father of the veteran and has not remarried;

25 (d) the mother of a service-connected permanently and totally disabled veteran if:

26 (i) the mother's spouse is totally and permanently disabled; or

27 (ii) the mother is the widow of the father of the veteran and has not remarried.

28 (5) "Position" means a position occupied by a permanent, temporary, or seasonal position employee
 29 as defined in 2-18-101 for a the state position or a similar permanent, temporary, or seasonal position
 30 employee with a public employer other than the state. The term does not include:

- 1 (a) a state or local elected office;
- 2 (b) appointment by an elected official to a body such as a board, commission, committee, or
3 council;
- 4 (c) appointment by an elected official to a public office if the appointment is provided for by law;
- 5 (d) a department head appointment by the governor or an executive department head appointment
6 by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local
7 government; or
- 8 (e) engagement as an independent contractor or employment by an independent contractor.
- 9 (6) "Public employer" means:
- 10 (a) a department, office, board, bureau, commission, agency, or other instrumentality of the
11 executive, legislative, or judicial branches of the government of this state;
- 12 (b) a unit of the Montana university system;
- 13 (c) a school district or community college; and
- 14 (d) a county, city, or town.
- 15 (7) "Scored procedure" means a written test, structured oral interview, performance test, or other
16 selection procedure or a combination of these procedures that results in a numerical score to which
17 percentage points may be added.
- 18 (8) "Under honorable conditions" means a discharge or separation from active duty characterized
19 by the armed forces as under honorable conditions. The term includes honorable discharges and general
20 discharges but does not include dishonorable discharges or other administrative discharges characterized
21 as other than honorable.
- 22 (9) "Veteran" means a person who:
- 23 (a) was separated under honorable conditions from active duty in the armed forces after having
24 served more than 180 consecutive days, other than for training; or
- 25 (b) as a member of a reserve component under an order of active duty pursuant to 10 U.S.C.
26 672(a), (d), or (g), 10 U.S.C. 673, or 10 U.S.C. 673b served on active duty during a period of war or in
27 a campaign or expedition for which a campaign badge is authorized and was discharged or released from
28 duty under honorable conditions."

29

30 **Section 12.** Section 39-30-103, MCA, is amended to read:

1 **"39-30-103. Definitions.** For the purposes of this chapter, the following definitions apply:

2 (1) "Eligible spouse" means the spouse of a handicapped person determined by the department of
3 public health and human services to have a 100% disability who is unable to use the employment
4 preference because of the person's disability.

5 (2) "Handicapped person" means an individual certified by the department of public health and
6 human services to have a physical or mental impairment that substantially limits one or more major life
7 activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to
8 obtain, retain, or advance in employment.

9 (3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the
10 ranks of the current employees of:

11 (i) a department, as defined in 2-15-102, for a position within the executive branch;

12 (ii) a legislative agency for a position within the legislative branch;

13 (iii) a judicial agency, such as the office of supreme court administrator, office of supreme court
14 clerk, state law library, or similar office in a state district court for a position within the judicial branch;

15 (iv) a city or town for a municipal position, including a city or municipal court position; and

16 (v) a county for a county position, including a justice's court position.

17 (b) A personnel action limited to current employees of a specific public entity identified in
18 ~~subsections~~ subsection (3)(a)(i) through (3)(a)(v), current employees in a reduction-in-force pool who have
19 been laid off from a specific public entity identified in ~~subsections~~ subsection (3)(a)(i) through (3)(a)(v), or
20 current participants in a federally authorized employment program is not an initial hiring.

21 (4) (a) "Mental impairment" means:

22 (i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or
23 any other neurologically handicapping condition closely related to mental retardation and requiring treatment
24 similar to that required by mentally retarded individuals; or

25 (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive
26 or volitional functions.

27 (b) The term mental impairment does not include alcoholism or drug addiction and does not include
28 any mental impairment, disease, or defect that has been asserted by the individual claiming the preference
29 as a defense to any criminal charge.

30 (5) "Position" means a position occupied by a permanent or seasonal position employee as defined

1 in 2-18-101 for a ~~the state position~~ or a position occupied by a similar permanent or seasonal ~~position~~
 2 employee with a public employer other than the state. However, the term does not include:

3 (a) a position occupied by a temporary position employee as defined in 2-18-101 for a ~~the state~~
 4 ~~position~~ or a similar temporary ~~position employee~~ with a public employer other than the state;

5 (b) a state or local elected official;

6 (c) employment as an elected official's immediate secretary, legal advisor, court reporter, or
 7 administrative, legislative, or other immediate or first-line aide;

8 (d) appointment by an elected official to a body such as a board, commission, committee, or
 9 council;

10 (e) appointment by an elected official to a public office if the appointment is provided for by law;

11 (f) a department head appointment by the governor or an executive department head appointment
 12 by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local
 13 government; or

14 (g) engagement as an independent contractor or employment by an independent contractor.

15 (6) (a) "Public employer" means:

16 (i) any department, office, board, bureau, commission, agency, or other instrumentality of the
 17 executive, judicial, or legislative branch of the government of the state of Montana; and

18 (ii) any county, city, or town.

19 (b) The term does not include a school district, a vocational-technical program, a community
 20 college, the board of regents of higher education, the Montana university system, a special purpose district,
 21 an authority, or any political subdivision of the state other than a county, city, or town.

22 (7) "Substantially equal qualifications" means the qualifications of two or more persons among
 23 whom the public employer cannot make a reasonable determination that the qualifications held by one
 24 person are significantly better suited for the position than the qualifications held by the other persons."
 25

26 **NEW SECTION. Section 13. Repealer.** Section 2-18-605, MCA, is repealed.

27
 28 **NEW SECTION. Section 14. Effective date.** [This act] is effective July 1, 1997.

29 -END-

STATE OF MONTANA - FISCAL NOTE

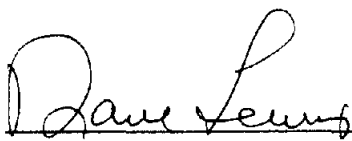
Fiscal Note for HB0172, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:


A bill revising definitions related to permanent, temporary, and seasonal positions, and creating a new category known as the short-term worker.

FISCAL IMPACT:

Passage of HB0172 will not fiscally impact the state.

 1-9-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning



LOREN SOFT, PRIMARY SPONSOR DATE
Fiscal Note for HB0172, as introduced

HB 172

1 HOUSE BILL NO. 172

2 INTRODUCED BY SOFT

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DEFINITIONS RELATED TO PERMANENT,
6 TEMPORARY, AND SEASONAL POSITIONS; PROVIDING FOR A CATEGORY OF EMPLOYEE CALLED A
7 SHORT-TERM WORKER; DEFINING "SHORT-TERM WORKER"; CLARIFYING PROVISIONS FROM WHICH
8 CERTAIN EMPLOYEES ARE EXEMPT; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF
9 ADMINISTRATION ADMINISTER A STATE SICK-PAY PLAN; AMENDING SECTIONS 2-18-101, 2-18-102,
10 2-18-103, 2-18-104, 2-18-111, 2-18-304, 2-18-601, 2-18-603, 2-18-611, 2-18-618, 39-29-101, AND
11 39-30-103, MCA; REPEALING SECTION 2-18-605, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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

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

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

20 (2) "Anniversary date", except as modified in part 3 of this chapter, means the month and day on
21 which an employee began the most recent period of uninterrupted state service.

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

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

24 (b) overtime;

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

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

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

28 (5) "Class" means one or more positions substantially similar with respect to the kind or nature of
29 duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be
30 used to designate each position allocated to the class, similar qualifications may be required of persons

1 appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

2 (6) "Class series benchmark" means a representative position within a class series that is used to
3 illustrate the application of the job evaluation factors that are used to classify positions in the classification
4 plan. A benchmark description describes the duties and responsibilities assigned and the factors applied to
5 the class series benchmark.

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

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

11 (9) "Department" means the department of administration created in 2-15-1001.

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

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

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

17 (13) "Job sharing" means the sharing by two or more persons of a position ~~that is considered an~~
18 ~~aggregate or permanent position.~~

19 (14) "Market ratio" means an employee's base salary divided by the market salary for the
20 employee's pay grade.

21 (15) "Market salary" means the midpoint in a pay grade provided in 2-18-312, based on the average
22 base salary that other employers pay to employees in comparable occupations as determined by the
23 department's salary survey of the relevant labor market.

24 (16) "Permanent position employee" means ~~a position so designated on the appropriate agency list~~
25 ~~of authorized positions referenced in 2-18-206 and approved as such in the biennium budget~~ an employee
26 who is designated by an agency as permanent and who has attained or is eligible to attain permanent
27 status.

28 (17) "Permanent status" means the state an employee attains after satisfactorily completing an
29 appropriate probationary period ~~in a permanent position.~~

30 (18) "Personal staff" means those positions occupied by employees appointed by the elected

1 officials enumerated in Article VI, section 1, of the Montana constitution or by the public service
2 commission as a whole.

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

5 (20) "Program" means a combination of planned efforts to provide a service.

6 (21) "~~Seasonal position employee~~" means a ~~position so designated on the appropriate agency list~~
7 ~~of authorized positions referenced in 2-18-206 and that is a permanent position but that is interrupted by~~
8 ~~the seasonal nature of the position~~ permanent employee who is designated by an agency as seasonal, who
9 performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits
10 accrued during the preceding season.

11 (22) "Short-term worker" means a person who:

12 (a) is hired by an agency for an hourly wage established by the agency;

13 (b) may not work for the agency for more than 90 days in a continuous 12-month period;

14 (c) is not eligible for permanent status;

15 (d) may not be hired into another position by the agency without a competitive selection process;

16 and

17 (e) is not eligible to earn the leave and holiday benefits provided in part 6 or the group insurance
18 benefits provided in part 7.

19 (23) "~~Temporary position employee~~" means a ~~position so designated on the appropriate agency list~~
20 ~~of authorized positions referenced in 2-18-206, created~~ an employee who:

21 (a) is designated as temporary by an agency for a definite period of time not to exceed 9 12
22 months;

23 (b) performs temporary duties or permanent duties on a temporary basis;

24 (c) is not eligible for permanent status;

25 (d) is terminated at the end of the employment period; and

26 (e) is not eligible to become a permanent employee without a competitive selection process."

27

28 **Section 2.** Section 2-18-102, MCA, is amended to read:

29 **"2-18-102. Personnel administration -- general policy setting.** (1) Except as otherwise provided
30 by law or collective bargaining agreement, the department shall:

1 (a) encourage and exercise leadership in the development of effective personnel administration
2 within the several agencies in the state and make available the facilities of the department to this end;

3 (b) foster and develop programs for recruitment and selection of capable persons for ~~permanent,~~
4 ~~seasonal, temporary, and other types of positions~~ employment and for the improvement of employee
5 effectiveness, including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances,
6 and evaluation for productivity and retention in permanent status;

7 (c) foster, develop, and promote job sharing in agencies;

8 (d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the
9 policies made under those parts and report the findings and recommendations to the governor;

10 (e) establish policies, procedures, and forms for the maintenance of records of all employees in the
11 state service;

12 (f) apply and carry out parts 1 and 2 and the policies under those parts and perform any other
13 lawful acts that may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

14 (2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the
15 state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided
16 that the agencies remain in compliance with policies, procedures, timetables, and standards established by
17 the department.

18 (3) The department shall develop and issue personnel policies for the state and shall adopt rules
19 to implement this part, except 2-18-111. Adequate public notice must be given to all interested parties of
20 proposed changes or additions to the personnel policies before the date on which they are to take effect.
21 If requested by any of the affected parties, the department shall schedule a public hearing on proposed
22 changes or additions to the personnel policies before the date on which they are to take effect.

23 (4) The department shall develop model rules of conduct for all state employees based upon the
24 provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the
25 provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional
26 rules appropriate to the specific circumstances of the agency."
27

28 **Section 3.** Section 2-18-103, MCA, is amended to read:

29 "**2-18-103. Officers and employees excepted.** (1) Parts 1 ~~and 2~~ through 3 and 10 do not apply
30 to the following ~~positions~~ officers and employees in state government:

- 1 (a) elected officials;
- 2 (b) county assessors and their chief ~~deputy~~ deputies;
- 3 (c) employees of the office of consumer counsel;
- 4 (d) judges and employees of the judicial branch;
- 5 (e) members of boards and commissions appointed by the governor, the legislature, or other elected
- 6 state officials;
- 7 (f) officers or members of the militia;
- 8 (g) agency heads appointed by the governor;
- 9 (h) academic and professional administrative personnel with individual contracts under the authority
- 10 of the board of regents of higher education;
- 11 (i) academic and professional administrative personnel and live-in houseparents who have entered
- 12 into individual contracts with the state school for the deaf and blind under the authority of the state board
- 13 of public education;
- 14 (j) teachers under the authority of the department of corrections or the department of public health
- 15 and human services;
- 16 (k) investment officer, assistant investment officer, executive director, and three professional staff
- 17 positions of the board of investments;
- 18 (l) four professional staff positions under the board of oil and gas conservation;
- 19 (m) assistant director for security of the Montana state lottery;
- 20 (n) executive director and senior investment officer of the Montana board of science and
- 21 technology development;
- 22 (o) executive director and employees of the state compensation insurance fund;
- 23 (p) state racing stewards employed by the executive secretary of the Montana board of
- 24 horseracing;
- 25 (q) executive director of the Montana wheat and barley committee;
- 26 (r) commissioner of banking and financial institutions; and
- 27 (s) training coordinator for county attorneys.
- 28 (2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are
- 29 exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative
- 30 branch, other than the office of consumer counsel:

1 (a) as used in parts 1 through 3 of this chapter, references to the "department of administration"
 2 or "department" apply to the legislative council established by 5-11-101, which may delegate administrative
 3 duties to the legislative services division established by 5-11-111;

4 (b) as used in 2-18-102, the term "governor" applies to the legislature; and

5 (c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined
 6 in 17-7-102."

7
 8 **Section 4.** Section 2-18-104, MCA, is amended to read:

9 **"2-18-104. Exemption for personal staff -- limit.** (1) Subject to the limitations in subsections (2)
 10 and (3), members of a personal staff are exempt from ~~the application of 2-18-204, 2-18-205, 2-18-207,~~
 11 ~~and 2-18-1011 through 2-18-1013~~ parts 1 through 3 and 10.

12 (2) The personal staff who are exempted by subsection (1) may not exceed 10 unless otherwise
 13 approved by the department according to criteria developed by the department. Under no circumstances
 14 may the total exemptions of each elected official exceed 15.

15 (3) The number of members of the personal staff of the public service commission who are
 16 exempted by subsection (1) may not exceed 10."

17
 18 **Section 5.** Section 2-18-111, MCA, is amended to read:

19 **"2-18-111. Hiring preference for residents of Indian reservations for state jobs within reservation**
 20 **-- rules.** (1) A state agency that operates within an Indian reservation shall give a preference in hiring for
 21 ~~a position of~~ employment with the state agency to an Indian resident of the reservation who has
 22 substantially equal qualifications for the position.

23 (2) The commissioner of labor and industry shall enforce this section, and investigate complaints
 24 of its violation, and may adopt rules to implement this section.

25 (3) For the purposes of this section, the following definitions apply:

26 (a) "Employment" means being employed as a permanent, temporary, or seasonal employee as
 27 defined in 2-18-101 for a state position. The term does not include:

28 (i) a state elected official;

29 (ii) appointment by an elected official to a body, such as a board, commission, committee, or
 30 council;

1 (iii) appointment by an elected official to a public office if the appointment is provided for by law;

2 or

3 (iv) engagement as an independent contractor or employment by an independent contractor.

4 (b) "Indian" means a person who is enrolled or who is a lineal descendant of a person enrolled upon
5 an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian
6 tribe, domiciled in the United States.

7 ~~(b) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a~~
8 ~~state position. The term does not include:~~

9 ~~(i) a state elected office;~~

10 ~~(ii) appointment by an elected official to a body, such as a board, commission, committee, or~~
11 ~~council;~~

12 ~~(iii) appointment by an elected official to a public office if the appointment is provided for by law;~~

13 ~~or~~

14 ~~(iv) engagement as an independent contractor or employment by an independent contractor.~~

15 (c) "State agency" means a department, office, board, bureau, commission, agency, or other
16 instrumentality of the executive or judicial branches of the government of this state."

17

18 **Section 6.** Section 2-18-304, MCA, is amended to read:

19 **"2-18-304. Longevity allowance.** (1) (a) (i) Effective July 1, 1995, through the last day of the pay
20 period immediately preceding the pay period that includes October 1, 1995, in addition to the compensation
21 provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed
22 5 years of uninterrupted state service must receive 9/10 of 1% of the employee's base salary multiplied
23 by the number of completed, contiguous 5-year periods of uninterrupted state service.

24 (ii) Effective on the first day of the pay period that includes October 1, 1995, in addition to the
25 compensation provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who
26 has completed 5 years of uninterrupted state service must receive 1.5% of the employee's base salary
27 multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

28 (b) Service to the state is not interrupted by authorized leaves of absence.

29 (2) (a) For the purpose of determining years of service under this section, an employee must be
30 credited with 1 year of service for each period of:

1 (i) 2,080 hours of service following the employee's date of employment; an employee must be
2 credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or
3 on an authorized leave of absence without pay, regardless of the number of hours of service in the pay
4 period; or

5 (ii) 12 uninterrupted calendar months following the employee's date of employment in which the
6 employee was in a pay status or on an authorized leave of absence without pay, regardless of the number
7 of hours of service in any month. An employee of a school at a state institution or the university system
8 must be credited with 1 year of service if the employee is employed for an entire academic year.

9 (b) State agencies, other than the university system and a school at a state institution, shall use
10 the method provided in subsection (2)(a)(i) to calculate years of service under this section.

11 (3) For the purposes of calculating longevity, employment as a short-term worker does not apply
12 toward years of service."

13
14 **Section 7.** Section 2-18-601, MCA, is amended to read:

15 **"2-18-601. Definitions.** For the purpose of this part, except 2-18-620, the following definitions
16 apply:

17 (1) "Agency" means any legally constituted department, board, or commission of state, county,
18 or city government or any political subdivision thereof.

19 (2) "Break in service" means a period of time in excess of 5 working days when the person is not
20 employed and that severs continuous employment.

21 (3) "Continuous employment" means working within the same jurisdiction without a break in
22 service of more than 5 working days or without a continuous absence without pay of more than 15 working
23 days.

24 (4) "Employee" means any person employed by an agency except elected state, county, and city
25 officials, schoolteachers, and persons contracted as independent contractors or hired under personal
26 services contracts.

27 (5) "Full-time employee" means an employee who normally works 40 hours a week.

28 (6) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in
29 1-1-216 or 20-1-305, except Sundays.

30 (7) "Part-time employee" means an employee who normally works less than 40 hours a week.

1 (8) "Permanent employee" means ~~an employee who is assigned to a position designated as~~
 2 ~~permanent on the appropriate list of authorized positions referenced in 2-18-206 and approved as such in~~
 3 ~~the biennium budget~~ a permanent employee as defined in 2-18-101.

4 (9) "Seasonal employee" means ~~an employee assigned to a position designated as seasonal on the~~
 5 ~~appropriate agency list of authorized positions referenced in 2-18-206 and for which the agency has a~~
 6 ~~permanent need but which is interrupted by the seasonal nature of the assignment~~ a seasonal employee
 7 as defined in 2-18-101.

8 (10) "SHORT-TERM WORKER" MEANS A SHORT-TERM WORKER AS DEFINED IN 2-18-101.

9 ~~(10)(11)~~ (11) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee
 10 or ~~his~~ a member of the employee's immediate family or for a permanent state employee who is eligible for
 11 parental leave under the provisions of 2-18-606.

12 ~~(11)(12)~~ (12) "Sick pay plan" means ~~a plan that:~~

13 ~~(a) provides for an agency to make payments in lieu of wages to employees on account of sickness~~
 14 ~~or accident disability; and~~

15 ~~(b) meets the requirements of 42 U.S.C. 409(b) or (d).~~

16 ~~(12)~~ (12) "Temporary employee" means ~~an employee assigned to a position designated as temporary~~
 17 ~~on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period~~
 18 ~~of time not to exceed 9 months~~ a temporary employee as defined in 2-18-101.

19 ~~(13)(12)~~ (13) "Transfer" means a change of employment from one agency to another agency in the
 20 same jurisdiction without a break in service.

21 ~~(14)(13)~~ (14) "Vacation leave" means a leave of absence with pay for the purpose of rest,
 22 relaxation, or personal business at the request of the employee and with the concurrence of the employer."
 23

24 **Section 8.** Section 2-18-603, MCA, is amended to read:

25 **"2-18-603. Holidays -- observance when falling on employee's day off.** (1) (a) ~~Any~~ A full-time
 26 employee who is scheduled for a day off on a day ~~which~~ that is observed as a legal holiday, except
 27 Sundays, ~~shall be~~ is entitled to receive a day off with pay either on the day preceding the holiday or on
 28 another day following the holiday in the same pay period or as scheduled by the employee and ~~his~~ the
 29 employee's supervisor, whichever allows a day off in addition to the employee's regularly scheduled days
 30 off, provided the employee is in a pay status on ~~his~~ the employee's last regularly scheduled working day

1 immediately before the holiday or on ~~his~~ the employee's first regularly scheduled working day immediately
2 after the holiday.

3 (b) Part-time employees receive pay for the holiday on a prorated basis according to rules adopted
4 by the department of administration or appropriate administrative officer under 2-18-604.

5 (c) A short-term worker may not receive holiday pay.

6 (2) For purposes of this section, the term "employee" does not include nonteaching school district
7 employees."

8

9 **Section 9.** Section 2-18-611, MCA, is amended to read:

10 **"2-18-611. Annual vacation leave.** (1) Each permanent full-time employee shall earn annual
11 vacation leave credits from the first day of employment. Vacation leave credits earned ~~shall~~ must be
12 credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay
13 until they have been continuously employed for a period of 6 calendar months.

14 (2) Seasonal employees ~~shall~~ earn vacation credits. However, ~~such persons~~ seasonal employees
15 must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify,
16 ~~such~~ seasonal employees ~~must~~ shall immediately report back for work when operations resume in order to
17 avoid a break in service.

18 (3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have
19 worked the qualifying period.

20 (4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

21 (5) Temporary employees ~~do not~~ earn vacation leave credits, ~~except that a temporary employee~~
22 ~~who is subsequently hired into a permanent position within the same jurisdiction without a break in service~~
23 ~~and temporary employees who are employed continuously longer than 6 months may count as earned leave~~
24 ~~credits for the immediate term of temporary employment~~ but may not use the credits until after working
25 for 6 qualifying months.

26 (6) A short-term worker, as defined in 2-18-101, may not earn vacation leave credits, and time
27 worked as a short-term worker does not apply toward the person's rate of earning vacation leave credits."

28

29 **Section 10.** Section 2-18-618, MCA, is amended to read:

30 **"2-18-618. Sick leave.** (1) A permanent full-time employee earns sick leave credits from the first

1 day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year.
2 Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate
3 of 12 working days for each year of service without restriction as to the number of working days that may
4 be accumulated. Employees are not entitled to be paid sick leave until they have been continuously
5 employed 90 days.

6 (2) An employee may not accrue sick leave credits while in a leave-without-pay status.

7 (3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the
8 qualifying period.

9 (4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they
10 work the qualifying period.

11 (5) A short-term worker may not earn sick leave credits.

12 (6) An employee who terminates employment with the agency is entitled to a lump-sum payment
13 equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the
14 accumulated sick leave must be computed on the basis of the employee's salary or wage at the time ~~he~~
15 the employee terminates ~~his~~ employment with the state, county, or city. Accrual of sick leave credits for
16 calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the
17 responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any
18 sick leave rights or benefits ~~he had~~ accrued prior to July 1, 1971. However, when an employee transfers
19 between agencies within the same jurisdiction, ~~he~~ the employee is not entitled to a lump-sum payment. In
20 a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave
21 credits earned after July 1, 1971, and transferred with the employee.

22 (6)(7) An employee who receives a lump-sum payment pursuant to this section and who is again
23 employed by any agency may not be credited with ~~any~~ sick leave for which the employee has previously
24 been compensated.

25 (7)(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided
26 for in this section.

27 (8)(9) An employee may contribute any portion of ~~his~~ the employee's accumulated sick leave to
28 a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an
29 extensive illness or accident exhausts ~~his~~ the employee's accumulated sick leave. The department of
30 administration shall, in consultation with the state employee group benefits advisory council, provided for

1 in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

2 ~~(9)(10)~~ A local government may establish and administer through local rule a sick leave fund into
3 which its employees may contribute a portion of their accumulated sick leave."

4
5 **Section 11.** Section 39-29-101, MCA, is amended to read:

6 **"39-29-101. Definitions.** For the purposes of this chapter, the following definitions apply:

7 (1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except
8 for training, determining physical fitness, or service in the reserve or national guard.

9 (2) "Armed forces" means the United States:

10 (a) army, navy, air force, marine corps, and coast guard; and

11 (b) merchant marine for service recognized by the United States department of defense as active
12 military service for the purpose of laws administered by the department of veterans affairs.

13 (3) "Disabled veteran" means a person:

14 (a) whether or not the person is a veteran as defined in this section, who was separated under
15 honorable conditions from active duty in the armed forces and has established the present existence of a
16 service-connected disability or is receiving compensation, disability retirement benefits, or pension because
17 of a law administered by the department of veterans affairs or a military department; or

18 (b) who has received a purple heart medal.

19 (4) "Eligible relative" means:

20 (a) the unmarried surviving spouse of a veteran or disabled veteran;

21 (b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

22 (c) the mother of a veteran who died under honorable conditions while serving in the armed forces
23 if:

24 (i) the mother's spouse is totally and permanently disabled; or

25 (ii) the mother is the widow of the father of the veteran and has not remarried;

26 (d) the mother of a service-connected permanently and totally disabled veteran if:

27 (i) the mother's spouse is totally and permanently disabled; or

28 (ii) the mother is the widow of the father of the veteran and has not remarried.

29 (5) "Position" means a position occupied by a permanent, temporary, or seasonal position employee
30 as defined in 2-18-101 for a the state position or a similar permanent, temporary, or seasonal position

1 employee with a public employer other than the state. The term does not include:

2 (a) a state or local elected office;

3 (b) appointment by an elected official to a body such as a board, commission, committee, or
4 council;

5 (c) appointment by an elected official to a public office if the appointment is provided for by law;

6 (d) a department head appointment by the governor or an executive department head appointment
7 by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local
8 government; or

9 (e) engagement as an independent contractor or employment by an independent contractor.

10 (6) "Public employer" means:

11 (a) a department, office, board, bureau, commission, agency, or other instrumentality of the
12 executive, legislative, or judicial branches of the government of this state;

13 (b) a unit of the Montana university system;

14 (c) a school district or community college; and

15 (d) a county, city, or town.

16 (7) "Scored procedure" means a written test, structured oral interview, performance test, or other
17 selection procedure or a combination of these procedures that results in a numerical score to which
18 percentage points may be added.

19 (8) "Under honorable conditions" means a discharge or separation from active duty characterized
20 by the armed forces as under honorable conditions. The term includes honorable discharges and general
21 discharges but does not include dishonorable discharges or other administrative discharges characterized
22 as other than honorable.

23 (9) "Veteran" means a person who:

24 (a) was separated under honorable conditions from active duty in the armed forces after having
25 served more than 180 consecutive days, other than for training; or

26 (b) as a member of a reserve component under an order of active duty pursuant to 10 U.S.C.
27 672(a), (d), or (g), 10 U.S.C. 673, or 10 U.S.C. 673b served on active duty during a period of war or in
28 a campaign or expedition for which a campaign badge is authorized and was discharged or released from
29 duty under honorable conditions."

30

1 **Section 12.** Section 39-30-103, MCA, is amended to read:

2 **"39-30-103. Definitions.** For the purposes of this chapter, the following definitions apply:

3 (1) "Eligible spouse" means the spouse of a handicapped person determined by the department of
4 public health and human services to have a 100% disability who is unable to use the employment
5 preference because of the person's disability.

6 (2) "Handicapped person" means an individual certified by the department of public health and
7 human services to have a physical or mental impairment that substantially limits one or more major life
8 activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to
9 obtain, retain, or advance in employment.

10 (3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the
11 ranks of the current employees of:

12 (i) a department, as defined in 2-15-102, for a position within the executive branch;

13 (ii) a legislative agency for a position within the legislative branch;

14 (iii) a judicial agency, such as the office of supreme court administrator, office of supreme court
15 clerk, state law library, or similar office in a state district court for a position within the judicial branch;

16 (iv) a city or town for a municipal position, including a city or municipal court position; and

17 (v) a county for a county position, including a justice's court position.

18 (b) A personnel action limited to current employees of a specific public entity identified in
19 ~~subsections~~ subsection (3)(a)(i) through (3)(a)(v), current employees in a reduction-in-force pool who have
20 been laid off from a specific public entity identified in ~~subsections~~ subsection (3)(a)(i) through (3)(a)(v), or
21 current participants in a federally authorized employment program is not an initial hiring.

22 (4) (a) "Mental impairment" means:

23 (i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or
24 any other neurologically handicapping condition closely related to mental retardation and requiring treatment
25 similar to that required by mentally retarded individuals; or

26 (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive
27 or volitional functions.

28 (b) The term mental impairment does not include alcoholism or drug addiction and does not include
29 any mental impairment, disease, or defect that has been asserted by the individual claiming the preference
30 as a defense to any criminal charge.

1 (5) "Position" means a position occupied by a permanent or seasonal ~~position~~ employee as defined
 2 in 2-18-101 for a the state ~~position~~ or a position occupied by a similar permanent or seasonal ~~position~~
 3 employee with a public employer other than the state. However, the term does not include:

4 (a) a position occupied by a temporary ~~position~~ employee as defined in 2-18-101 for a the state
 5 position or a similar temporary ~~position~~ employee with a public employer other than the state;

6 (b) a state or local elected official;

7 (c) employment as an elected official's immediate secretary, legal advisor, court reporter, or
 8 administrative, legislative, or other immediate or first-line aide;

9 (d) appointment by an elected official to a body such as a board, commission, committee, or
 10 council;

11 (e) appointment by an elected official to a public office if the appointment is provided for by law;

12 (f) a department head appointment by the governor or an executive department head appointment
 13 by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local
 14 government; or

15 (g) engagement as an independent contractor or employment by an independent contractor.

16 (6) (a) "Public employer" means:

17 (i) any department, office, board, bureau, commission, agency, or other instrumentality of the
 18 executive, judicial, or legislative branch of the government of the state of Montana; and

19 (ii) any county, city, or town.

20 (b) The term does not include a school district, a vocational-technical program, a community
 21 college, the board of regents of higher education, the Montana university system, a special purpose district,
 22 an authority, or any political subdivision of the state other than a county, city, or town.

23 (7) "Substantially equal qualifications" means the qualifications of two or more persons among
 24 whom the public employer cannot make a reasonable determination that the qualifications held by one
 25 person are significantly better suited for the position than the qualifications held by the other persons."
 26

27 **NEW SECTION. Section 13. Repealer.** Section 2-18-605, MCA, is repealed.

28
 29 **NEW SECTION. Section 14. Effective date.** [This act] is effective July 1, 1997.

30 -END-

1
2
3
4
5
6
7
8
9
10
11
12
13

HOUSE BILL NO. 172
INTRODUCED BY SOFT
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DEFINITIONS RELATED TO PERMANENT, TEMPORARY, AND SEASONAL POSITIONS; PROVIDING FOR A CATEGORY OF EMPLOYEE CALLED A SHORT-TERM WORKER; DEFINING "SHORT-TERM WORKER"; CLARIFYING PROVISIONS FROM WHICH CERTAIN EMPLOYEES ARE EXEMPT; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION ADMINISTER A STATE SICK-PAY PLAN; AMENDING SECTIONS 2-18-101, 2-18-102, 2-18-103, 2-18-104, 2-18-111, 2-18-304, 2-18-601, 2-18-603, 2-18-611, 2-18-618, 39-29-101, AND 39-30-103, MCA; REPEALING SECTION 2-18-605, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

1 HOUSE BILL NO. 172

2 INTRODUCED BY SOFT

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DEFINITIONS RELATED TO PERMANENT,
6 TEMPORARY, AND SEASONAL POSITIONS; PROVIDING FOR A CATEGORY OF EMPLOYEE CALLED A
7 SHORT-TERM WORKER; DEFINING "SHORT-TERM WORKER"; CLARIFYING PROVISIONS FROM WHICH
8 CERTAIN EMPLOYEES ARE EXEMPT; REMOVING THE EXEMPT STATUS OF TEACHERS UNDER THE
9 AUTHORITY OF THE DEPARTMENTS OF CORRECTIONS AND PUBLIC HEALTH AND HUMAN SERVICES;
10 ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION ADMINISTER A STATE
11 SICK-PAY PLAN; AMENDING SECTIONS 2-18-101, 2-18-102, 2-18-103, 2-18-104, 2-18-111, 2-18-304,
12 2-18-601, 2-18-603, 2-18-611, 2-18-618, 39-29-101, AND 39-30-103, MCA; REPEALING SECTION
13 2-18-605, MCA; AND PROVIDING AN EFFECTIVE DATE."

14

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

16

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

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

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

22 (2) "Anniversary date", except as modified in part 3 of this chapter, means the month and day on
23 which an employee began the most recent period of uninterrupted state service.

24 (3) "Base salary" means the amount of compensation paid to an employee, excluding:

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

26 (b) overtime;

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

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

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

30 (5) "Class" means one or more positions substantially similar with respect to the kind or nature of

1 duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be
2 used to designate each position allocated to the class, similar qualifications may be required of persons
3 appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

4 (6) "Class series benchmark" means a representative position within a class series that is used to
5 illustrate the application of the job evaluation factors that are used to classify positions in the classification
6 plan. A benchmark description describes the duties and responsibilities assigned and the factors applied to
7 the class series benchmark.

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

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

13 (9) "Department" means the department of administration created in 2-15-1001.

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

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

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

19 (13) "Job sharing" means the sharing by two or more persons of a position ~~that is considered an~~
20 ~~aggregate or permanent position.~~

21 (14) "Market ratio" means an employee's base salary divided by the market salary for the
22 employee's pay grade.

23 (15) "Market salary" means the midpoint in a pay grade provided in 2-18-312, based on the average
24 base salary that other employers pay to employees in comparable occupations as determined by the
25 department's salary survey of the relevant labor market.

26 (16) "Permanent position employee" means ~~a position so designated on the appropriate agency list~~
27 ~~of authorized positions referenced in 2-18-206 and approved as such in the biennium budget~~ an employee
28 who is designated by an agency as permanent and who has attained or is eligible to attain permanent
29 status.

30 (17) "Permanent status" means the state an employee attains after satisfactorily completing an

1 appropriate probationary period ~~in a permanent position.~~

2 (18) "Personal staff" means those positions occupied by employees appointed by the elected
3 officials enumerated in Article VI, section 1, of the Montana constitution or by the public service
4 commission as a whole.

5 (19) "Position" means a collection of duties and responsibilities currently assigned or delegated by
6 competent authority, requiring the full-time, part-time, or intermittent employment of one person.

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

8 (21) "Seasonal ~~position~~ employee" means a ~~position so designated on the appropriate agency list~~
9 ~~of authorized positions referenced in 2-18-206 and that is a permanent position but that is interrupted by~~
10 ~~the seasonal nature of the position~~ permanent employee who is designated by an agency as seasonal, who
11 performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits
12 accrued during the preceding season.

13 (22) "Short-term worker" means a person who:

14 (a) is hired by an agency for an hourly wage established by the agency;

15 (b) may not work for the agency for more than 90 days in a continuous 12-month period;

16 (c) is not eligible for permanent status;

17 (d) may not be hired into another position by the agency without a competitive selection process;

18 and

19 (e) is not eligible to earn the leave and holiday benefits provided in part 6 or the group insurance
20 benefits provided in part 7.

21 (23) "Temporary position employee" means a ~~position so designated on the appropriate agency list~~
22 ~~of authorized positions referenced in 2-18-206, created an employee who:~~

23 (a) is designated as temporary by an agency for a definite period of time not to exceed 9 12
24 months;

25 (b) performs temporary duties or permanent duties on a temporary basis;

26 (c) is not eligible for permanent status;

27 (d) is terminated at the end of the employment period; and

28 (e) is not eligible to become a permanent employee without a competitive selection process."

29

30 **Section 2.** Section 2-18-102, MCA, is amended to read:

1 **"2-18-102. Personnel administration -- general policy setting.** (1) Except as otherwise provided
2 by law or collective bargaining agreement, the department shall:

3 (a) encourage and exercise leadership in the development of effective personnel administration
4 within the several agencies in the state and make available the facilities of the department to this end;

5 (b) foster and develop programs for recruitment and selection of capable persons for ~~permanent,~~
6 ~~seasonal, temporary, and other types of positions~~ employment and for the improvement of employee
7 effectiveness, including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances,
8 and evaluation for productivity and retention in permanent status;

9 (c) foster, develop, and promote job sharing in agencies;

10 (d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the
11 policies made under those parts and report the findings and recommendations to the governor;

12 (e) establish policies, procedures, and forms for the maintenance of records of all employees in the
13 state service;

14 (f) apply and carry out parts 1 and 2 and the policies under those parts and perform any other
15 lawful acts that may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

16 (2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the
17 state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided
18 that the agencies remain in compliance with policies, procedures, timetables, and standards established by
19 the department.

20 (3) The department shall develop and issue personnel policies for the state and shall adopt rules
21 to implement this part, except 2-18-111. Adequate public notice must be given to all interested parties of
22 proposed changes or additions to the personnel policies before the date on which they are to take effect.
23 If requested by any of the affected parties, the department shall schedule a public hearing on proposed
24 changes or additions to the personnel policies before the date on which they are to take effect.

25 (4) The department shall develop model rules of conduct for all state employees based upon the
26 provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the
27 provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional
28 rules appropriate to the specific circumstances of the agency."

29
30 **Section 3.** Section 2-18-103, MCA, is amended to read:

- 1 **"2-18-103. Officers and employees excepted.** (1) Parts 1 ~~and 2~~ through 3 and 10 do not apply
 2 to the following ~~positions~~ officers and employees in state government:
- 3 (a) elected officials;
- 4 (b) county assessors and their chief ~~deputy~~ deputies;
- 5 (c) employees of the office of consumer counsel;
- 6 (d) judges and employees of the judicial branch;
- 7 (e) members of boards and commissions appointed by the governor, the legislature, or other elected
 8 state officials;
- 9 (f) officers or members of the militia;
- 10 (g) agency heads appointed by the governor;
- 11 (h) academic and professional administrative personnel with individual contracts under the authority
 12 of the board of regents of higher education;
- 13 (i) academic and professional administrative personnel and live-in houseparents who have entered
 14 into individual contracts with the state school for the deaf and blind under the authority of the state board
 15 of public education;
- 16 ~~(j) teachers under the authority of the department of corrections or the department of public health
 17 and human services;~~
- 18 ~~(k)~~(J) investment officer, assistant investment officer, executive director, and three professional
 19 staff positions of the board of investments;
- 20 ~~(l)~~(K) four professional staff positions under the board of oil and gas conservation;
- 21 ~~(m)~~(L) assistant director for security of the Montana state lottery;
- 22 ~~(n)~~(M) executive director and senior investment officer of the Montana board of science and
 23 technology development;
- 24 ~~(o)~~(N) executive director and employees of the state compensation insurance fund;
- 25 ~~(p)~~(O) state racing stewards employed by the executive secretary of the Montana board of
 26 horseracing;
- 27 ~~(q)~~(P) executive director of the Montana wheat and barley committee;
- 28 ~~(r)~~(Q) commissioner of banking and financial institutions; and
- 29 ~~(s)~~(R) training coordinator for county attorneys.
- 30 (2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are

1 exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative
2 branch, other than the office of consumer counsel:

3 (a) as used in parts 1 through 3 of this chapter, references to the "department of administration"
4 or "department" apply to the legislative council established by 5-11-101, which may delegate administrative
5 duties to the legislative services division established by 5-11-111;

6 (b) as used in 2-18-102, the term "governor" applies to the legislature; and

7 (c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined
8 in 17-7-102."

9

10 **Section 4.** Section 2-18-104, MCA, is amended to read:

11 **"2-18-104. Exemption for personal staff -- limit.** (1) Subject to the limitations in subsections (2)
12 and (3), members of a personal staff are exempt from ~~the application of 2-18-204, 2-18-205, 2-18-207,~~
13 ~~and 2-18-1011 through 2-18-1013~~ parts 1 through 3 and 10.

14 (2) The personal staff who are exempted by subsection (1) may not exceed 10 unless otherwise
15 approved by the department according to criteria developed by the department. Under no circumstances
16 may the total exemptions of each elected official exceed 15.

17 (3) The number of members of the personal staff of the public service commission who are
18 exempted by subsection (1) may not exceed 10."

19

20 **Section 5.** Section 2-18-111, MCA, is amended to read:

21 **"2-18-111. Hiring preference for residents of Indian reservations for state jobs within reservation**
22 **-- rules.** (1) A state agency that operates within an Indian reservation shall give a preference in hiring for
23 ~~a position~~ of employment with the state agency to an Indian resident of the reservation who has
24 substantially equal qualifications for the position.

25 (2) The commissioner of labor and industry shall enforce this section, and investigate complaints
26 of its violation, and may adopt rules to implement this section.

27 (3) For the purposes of this section, the following definitions apply:

28 (a) "Employment" means being employed as a permanent, temporary, or seasonal employee as
29 defined in 2-18-101 for a state position. The term does not include:

30 (i) a state elected official;

1 (ii) appointment by an elected official to a body, such as a board, commission, committee, or
 2 council;

3 (iii) appointment by an elected official to a public office if the appointment is provided for by law;
 4 or

5 (iv) engagement as an independent contractor or employment by an independent contractor.

6 (b) "Indian" means a person who is enrolled or who is a lineal descendant of a person enrolled upon
 7 an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian
 8 tribe, domiciled in the United States.

9 ~~(b) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a~~
 10 ~~state position. The term does not include:~~

11 ~~(i) a state elected office;~~

12 ~~(ii) appointment by an elected official to a body, such as a board, commission, committee, or~~
 13 ~~council;~~

14 ~~(iii) appointment by an elected official to a public office if the appointment is provided for by law;~~
 15 ~~or~~

16 ~~(iv) engagement as an independent contractor or employment by an independent contractor.~~

17 (c) "State agency" means a department, office, board, bureau, commission, agency, or other
 18 instrumentality of the executive or judicial branches of the government of this state."

19

20 **Section 6.** Section 2-18-304, MCA, is amended to read:

21 **"2-18-304. Longevity allowance.** (1) (a) (i) Effective July 1, 1995, through the last day of the pay
 22 period immediately preceding the pay period that includes October 1, 1995, in addition to the compensation
 23 provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed
 24 5 years of uninterrupted state service must receive 9/10 of 1% of the employee's base salary multiplied
 25 by the number of completed, contiguous 5-year periods of uninterrupted state service.

26 (ii) Effective on the first day of the pay period that includes October 1, 1995, in addition to the
 27 compensation provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who
 28 has completed 5 years of uninterrupted state service must receive 1.5% of the employee's base salary
 29 multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

30 (b) Service to the state is not interrupted by authorized leaves of absence.

1 (2) (a) For the purpose of determining years of service under this section, an employee must be
2 credited with 1 year of service for each period of:

3 (i) 2,080 hours of service following the employee's date of employment; an employee must be
4 credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or
5 on an authorized leave of absence without pay, regardless of the number of hours of service in the pay
6 period; or

7 (ii) 12 uninterrupted calendar months following the employee's date of employment in which the
8 employee was in a pay status or on an authorized leave of absence without pay, regardless of the number
9 of hours of service in any month. An employee of a school at a state institution or the university system
10 must be credited with 1 year of service if the employee is employed for an entire academic year.

11 (b) State agencies, other than the university system and a school at a state institution, shall use
12 the method provided in subsection (2)(a)(i) to calculate years of service under this section.

13 (3) For the purposes of calculating longevity, employment as a short-term worker does not apply
14 toward years of service."

15

16 **Section 7.** Section 2-18-601, MCA, is amended to read:

17 **"2-18-601. Definitions.** For the purpose of this part, except 2-18-620, the following definitions
18 apply:

19 (1) "Agency" means any legally constituted department, board, or commission of state, county,
20 or city government or any political subdivision thereof.

21 (2) "Break in service" means a period of time in excess of 5 working days when the person is not
22 employed and that severs continuous employment.

23 (3) "Continuous employment" means working within the same jurisdiction without a break in
24 service of more than 5 working days or without a continuous absence without pay of more than 15 working
25 days.

26 (4) "Employee" means any person employed by an agency except elected state, county, and city
27 officials, schoolteachers, and persons contracted as independent contractors or hired under personal
28 services contracts.

29 (5) "Full-time employee" means an employee who normally works 40 hours a week.

30 (6) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in

1 1-1-216 or 20-1-305, except Sundays.

2 (7) "Part-time employee" means an employee who normally works less than 40 hours a week.

3 (8) "Permanent employee" means ~~an employee who is assigned to a position designated as~~
4 ~~permanent on the appropriate list of authorized positions referenced in 2-18-206 and approved as such in~~
5 ~~the biennium budget~~ a permanent employee as defined in 2-18-101.

6 (9) "Seasonal employee" means ~~an employee assigned to a position designated as seasonal on the~~
7 ~~appropriate agency list of authorized positions referenced in 2-18-206 and for which the agency has a~~
8 ~~permanent need but which is interrupted by the seasonal nature of the assignment~~ a seasonal employee
9 as defined in 2-18-101.

10 (10) "SHORT-TERM WORKER" MEANS A SHORT-TERM WORKER AS DEFINED IN 2-18-101.

11 ~~(10)(11)~~ "Sick leave" means a leave of absence with pay for a sickness suffered by an employee
12 or ~~his~~ a member of the employee's immediate family or for a permanent state employee who is eligible for
13 parental leave under the provisions of 2-18-606.

14 ~~(11)(12)~~ "Sick pay plan" means a plan that:

15 ~~(a) provides for an agency to make payments in lieu of wages to employees on account of sickness~~
16 ~~or accident disability; and~~

17 ~~(b) meets the requirements of 42 U.S.C. 409(b) or (d).~~

18 ~~(12)~~ "Temporary employee" means ~~an employee assigned to a position designated as temporary~~
19 ~~on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period~~
20 ~~of time not to exceed 9 months~~ a temporary employee as defined in 2-18-101.

21 ~~(13)(12)(13)~~ "Transfer" means a change of employment from one agency to another agency in the
22 same jurisdiction without a break in service.

23 ~~(14)(13)(14)~~ "Vacation leave" means a leave of absence with pay for the purpose of rest,
24 relaxation, or personal business at the request of the employee and with the concurrence of the employer."
25

26 **Section 8.** Section 2-18-603, MCA, is amended to read:

27 **"2-18-603. Holidays -- observance when falling on employee's day off.** (1) (a) Any A full-time
28 employee who is scheduled for a day off on a day ~~which~~ that is observed as a legal holiday, except
29 Sundays, ~~shall be~~ is entitled to receive a day off with pay either on the day preceding the holiday or on
30 another day following the holiday in the same pay period or as scheduled by the employee and ~~his~~ the

1 employee's supervisor, whichever allows a day off in addition to the employee's regularly scheduled days
 2 off, provided the employee is in a pay status on his the employee's last regularly scheduled working day
 3 immediately before the holiday or on his the employee's first regularly scheduled working day immediately
 4 after the holiday.

5 (b) Part-time employees receive pay for the holiday on a prorated basis according to rules adopted
 6 by the department of administration or appropriate administrative officer under 2-18-604.

7 (c) A short-term worker may not receive holiday pay.

8 (2) For purposes of this section, the term "employee" does not include nonteaching school district
 9 employees."

10

11 **Section 9.** Section 2-18-611, MCA, is amended to read:

12 "**2-18-611. Annual vacation leave.** (1) Each permanent full-time employee shall earn annual
 13 vacation leave credits from the first day of employment. Vacation leave credits earned ~~shall~~ must be
 14 credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay
 15 until they have been continuously employed for a period of 6 calendar months.

16 (2) Seasonal employees ~~shall~~ earn vacation credits. However, ~~such persons~~ seasonal employees
 17 must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify,
 18 ~~such seasonal employees must~~ shall immediately report back for work when operations resume in order to
 19 avoid a break in service.

20 (3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have
 21 worked the qualifying period.

22 (4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

23 (5) Temporary employees ~~do not~~ earn vacation leave credits, ~~except that a temporary employee~~
 24 ~~who is subsequently hired into a permanent position within the same jurisdiction without a break in service~~
 25 ~~and temporary employees who are employed continuously longer than 6 months may count as earned leave~~
 26 ~~credits for the immediate term of temporary employment~~ but may not use the credits until after working
 27 for 6 qualifying months.

28 (6) A short-term worker, as defined in 2-18-101, may not earn vacation leave credits, and time
 29 worked as a short-term worker does not apply toward the person's rate of earning vacation leave credits."

30

1 **Section 10.** Section 2-18-618, MCA, is amended to read:

2 **"2-18-618. Sick leave.** (1) A permanent full-time employee earns sick leave credits from the first
3 day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year.
4 Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate
5 of 12 working days for each year of service without restriction as to the number of working days that may
6 be accumulated. Employees are not entitled to be paid sick leave until they have been continuously
7 employed 90 days.

8 (2) An employee may not accrue sick leave credits while in a leave-without-pay status.

9 (3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the
10 qualifying period.

11 (4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they
12 work the qualifying period.

13 (5) A short-term worker may not earn sick leave credits.

14 (6) An employee who terminates employment with the agency is entitled to a lump-sum payment
15 equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the
16 accumulated sick leave must be computed on the basis of the employee's salary or wage at the time ~~he~~
17 the employee terminates ~~his~~ employment with the state, county, or city. Accrual of sick leave credits for
18 calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the
19 responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any
20 sick leave rights or benefits ~~he had~~ accrued prior to July 1, 1971. However, when an employee transfers
21 between agencies within the same jurisdiction, ~~he~~ the employee is not entitled to a lump-sum payment. In
22 a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave
23 credits earned after July 1, 1971, and transferred with the employee.

24 ~~(6)(7)~~ (7) An employee who receives a lump-sum payment pursuant to this section and who is again
25 employed by any agency may not be credited with ~~any~~ sick leave for which the employee has previously
26 been compensated.

27 ~~(7)(8)~~ (8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided
28 for in this section.

29 ~~(8)(9)~~ (9) An employee may contribute any portion of ~~his~~ the employee's accumulated sick leave to
30 a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an

1 extensive illness or accident exhausts ~~his~~ the employee's accumulated sick leave. The department of
 2 administration shall, in consultation with the state employee group benefits advisory council, provided for
 3 in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

4 ~~(9)(10)~~ A local government may establish and administer through local rule a sick leave fund into
 5 which its employees may contribute a portion of their accumulated sick leave."
 6

7 **Section 11.** Section 39-29-101, MCA, is amended to read:

8 **"39-29-101. Definitions.** For the purposes of this chapter, the following definitions apply:

9 (1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except
 10 for training, determining physical fitness, or service in the reserve or national guard.

11 (2) "Armed forces" means the United States:

12 (a) army, navy, air force, marine corps, and coast guard; and

13 (b) merchant marine for service recognized by the United States department of defense as active
 14 military service for the purpose of laws administered by the department of veterans affairs.

15 (3) "Disabled veteran" means a person:

16 (a) whether or not the person is a veteran as defined in this section, who was separated under
 17 honorable conditions from active duty in the armed forces and has established the present existence of a
 18 service-connected disability or is receiving compensation, disability retirement benefits, or pension because
 19 of a law administered by the department of veterans affairs or a military department; or

20 (b) who has received a purple heart medal.

21 (4) "Eligible relative" means:

22 (a) the unmarried surviving spouse of a veteran or disabled veteran;

23 (b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

24 (c) the mother of a veteran who died under honorable conditions while serving in the armed forces

25 if:

26 (i) the mother's spouse is totally and permanently disabled; or

27 (ii) the mother is the widow of the father of the veteran and has not remarried;

28 (d) the mother of a service-connected permanently and totally disabled veteran if:

29 (i) the mother's spouse is totally and permanently disabled; or

30 (ii) the mother is the widow of the father of the veteran and has not remarried.

1 (5) "Position" means a position occupied by a permanent, temporary, or seasonal ~~position~~ employee
2 as defined in 2-18-101 for a the state ~~position~~ or a similar permanent, temporary, or seasonal position
3 employee with a public employer other than the state. The term does not include:

4 (a) a state or local elected office;

5 (b) appointment by an elected official to a body such as a board, commission, committee, or
6 council;

7 (c) appointment by an elected official to a public office if the appointment is provided for by law;

8 (d) a department head appointment by the governor or an executive department head appointment
9 by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local
10 government; or

11 (e) engagement as an independent contractor or employment by an independent contractor.

12 (6) "Public employer" means:

13 (a) a department, office, board, bureau, commission, agency, or other instrumentality of the
14 executive, legislative, or judicial branches of the government of this state;

15 (b) a unit of the Montana university system;

16 (c) a school district or community college; and

17 (d) a county, city, or town.

18 (7) "Scored procedure" means a written test, structured oral interview, performance test, or other
19 selection procedure or a combination of these procedures that results in a numerical score to which
20 percentage points may be added.

21 (8) "Under honorable conditions" means a discharge or separation from active duty characterized
22 by the armed forces as under honorable conditions. The term includes honorable discharges and general
23 discharges but does not include dishonorable discharges or other administrative discharges characterized
24 as other than honorable.

25 (9) "Veteran" means a person who:

26 (a) was separated under honorable conditions from active duty in the armed forces after having
27 served more than 180 consecutive days, other than for training; or

28 (b) as a member of a reserve component under an order of active duty pursuant to 10 U.S.C.
29 672(a), (d), or (g), 10 U.S.C. 673, or 10 U.S.C. 673b served on active duty during a period of war or in
30 a campaign or expedition for which a campaign badge is authorized and was discharged or released from

1 duty under honorable conditions."

2

3 **Section 12.** Section 39-30-103, MCA, is amended to read:

4 **"39-30-103. Definitions.** For the purposes of this chapter, the following definitions apply:

5 (1) "Eligible spouse" means the spouse of a handicapped person determined by the department of
6 public health and human services to have a 100% disability who is unable to use the employment
7 preference because of the person's disability.

8 (2) "Handicapped person" means an individual certified by the department of public health and
9 human services to have a physical or mental impairment that substantially limits one or more major life
10 activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to
11 obtain, retain, or advance in employment.

12 (3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the
13 ranks of the current employees of:

14 (i) a department, as defined in 2-15-102, for a position within the executive branch;

15 (ii) a legislative agency for a position within the legislative branch;

16 (iii) a judicial agency, such as the office of supreme court administrator, office of supreme court
17 clerk, state law library, or similar office in a state district court for a position within the judicial branch;

18 (iv) a city or town for a municipal position, including a city or municipal court position; and

19 (v) a county for a county position, including a justice's court position.

20 (b) A personnel action limited to current employees of a specific public entity identified in
21 ~~subsections subsection (3)(a)(i) through (3)(a)(v)~~, current employees in a reduction-in-force pool who have
22 been laid off from a specific public entity identified in ~~subsections subsection (3)(a)(i) through (3)(a)(v)~~, or
23 current participants in a federally authorized employment program is not an initial hiring.

24 (4) (a) "Mental impairment" means:

25 (i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or
26 any other neurologically handicapping condition closely related to mental retardation and requiring treatment
27 similar to that required by mentally retarded individuals; or

28 (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive
29 or volitional functions.

30 (b) The term mental impairment does not include alcoholism or drug addiction and does not include

1 any mental impairment, disease, or defect that has been asserted by the individual claiming the preference
2 as a defense to any criminal charge.

3 (5) "Position" means a position occupied by a permanent or seasonal ~~position~~ employee as defined
4 in 2-18-101 for a ~~the state position~~ or a position occupied by a similar permanent or seasonal ~~posi~~
5 employee with a public employer other than the state. However, the term does not include:

6 (a) a position occupied by a temporary ~~position~~ employee as defined in 2-18-101 for a ~~the state~~
7 ~~position~~ or a similar temporary ~~position~~ employee with a public employer other than the state;

8 (b) a state or local elected official;

9 (c) employment as an elected official's immediate secretary, legal advisor, court reporter, or
10 administrative, legislative, or other immediate or first-line aide;

11 (d) appointment by an elected official to a body such as a board, commission, committee, or
12 council;

13 (e) appointment by an elected official to a public office if the appointment is provided for by law;

14 (f) a department head appointment by the governor or an executive department head appointment
15 by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local
16 government; or

17 (g) engagement as an independent contractor or employment by an independent contractor.

18 (6) (a) "Public employer" means:

19 (i) any department, office, board, bureau, commission, agency, or other instrumentality of the
20 executive, judicial, or legislative branch of the government of the state of Montana; and

21 (ii) any county, city, or town.

22 (b) The term does not include a school district, a vocational-technical program, a community
23 college, the board of regents of higher education, the Montana university system, a special purpose district,
24 an authority, or any political subdivision of the state other than a county, city, or town.

25 (7) "Substantially equal qualifications" means the qualifications of two or more persons among
26 whom the public employer cannot make a reasonable determination that the qualifications held by one
27 person are significantly better suited for the position than the qualifications held by the other persons."
28

29 **NEW SECTION. Section 13. Repealer.** Section 2-18-605, MCA, is repealed.
30

1 HOUSE BILL NO. 172

2 INTRODUCED BY SOFT

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DEFINITIONS RELATED TO PERMANENT,
6 TEMPORARY, AND SEASONAL POSITIONS; PROVIDING FOR A CATEGORY OF EMPLOYEE CALLED A
7 SHORT-TERM WORKER; DEFINING "SHORT-TERM WORKER"; CLARIFYING PROVISIONS FROM WHICH
8 CERTAIN EMPLOYEES ARE EXEMPT; REMOVING THE EXEMPT STATUS OF TEACHERS UNDER THE
9 AUTHORITY OF THE DEPARTMENTS OF CORRECTIONS AND PUBLIC HEALTH AND HUMAN SERVICES;
10 ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION ADMINISTER A STATE
11 SICK-PAY PLAN; AMENDING SECTIONS 2-18-101, 2-18-102, 2-18-103, 2-18-104, 2-18-111, 2-18-304,
12 2-18-601, 2-18-603, 2-18-611, 2-18-618, 39-29-101, AND 39-30-103, MCA; REPEALING SECTION
13 2-18-605, MCA; AND PROVIDING AN EFFECTIVE DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **Section 1.** Section 2-18-101, MCA, is amended to read:

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

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

22 (2) "Anniversary date", except as modified in part 3 of this chapter, means the month and day on
23 which an employee began the most recent period of uninterrupted state service.

24 (3) "Base salary" means the amount of compensation paid to an employee, excluding:

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

26 (b) overtime;

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

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

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

30 (5) "Class" means one or more positions substantially similar with respect to the kind or nature of

1 duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be
2 used to designate each position allocated to the class, similar qualifications may be required of persons
3 appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

4 (6) "Class series benchmark" means a representative position within a class series that is used to
5 illustrate the application of the job evaluation factors that are used to classify positions in the classification
6 plan. A benchmark description describes the duties and responsibilities assigned and the factors applied to
7 the class series benchmark.

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

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

13 (9) "Department" means the department of administration created in 2-15-1001.

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

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

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

19 (13) "Job sharing" means the sharing by two or more persons of a position ~~that is considered an~~
20 ~~aggregate or permanent position.~~

21 (14) "Market ratio" means an employee's base salary divided by the market salary for the
22 employee's pay grade.

23 (15) "Market salary" means the midpoint in a pay grade provided in 2-18-312, based on the average
24 base salary that other employers pay to employees in comparable occupations as determined by the
25 department's salary survey of the relevant labor market.

26 (16) "Permanent position employee" means ~~a position so designated on the appropriate agency list~~
27 ~~of authorized positions referenced in 2-18-206 and approved as such in the biennium budget~~ an employee
28 who is designated by an agency as permanent and who has attained or is eligible to attain permanent
29 status.

30 (17) "Permanent status" means the state an employee attains after satisfactorily completing an

1 appropriate probationary period ~~in a permanent position.~~

2 (18) "Personal staff" means those positions occupied by employees appointed by the elected
3 officials enumerated in Article VI, section 1, of the Montana constitution or by the public service
4 commission as a whole.

5 (19) "Position" means a collection of duties and responsibilities currently assigned or delegated by
6 competent authority, requiring the full-time, part-time, or intermittent employment of one person.

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

8 (21) "~~Seasonal position employee~~" means a ~~position so designated on the appropriate agency list~~
9 ~~of authorized positions referenced in 2-18-206 and that is a permanent position but that is interrupted by~~
10 ~~the seasonal nature of the position~~ permanent employee who is designated by an agency as seasonal, who
11 performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits
12 accrued during the preceding season.

13 (22) "Short-term worker" means a person who:

14 (a) is hired by an agency for an hourly wage established by the agency;

15 (b) may not work for the agency for more than 90 days in a continuous 12-month period;

16 (c) is not eligible for permanent status;

17 (d) may not be hired into another position by the agency without a competitive selection process;

18 and

19 (e) is not eligible to earn the leave and holiday benefits provided in part 6 or the group insurance
20 benefits provided in part 7.

21 (23) "Temporary position employee" means a position so designated on the appropriate agency list
22 of authorized positions referenced in 2-18-206, created an employee who:

23 (a) is designated as temporary by an agency for a definite period of time not to exceed 9 12
24 months;

25 (b) performs temporary duties or permanent duties on a temporary basis;

26 (c) is not eligible for permanent status;

27 (d) is terminated at the end of the employment period; and

28 (e) is not eligible to become a permanent employee without a competitive selection process."

29

30 **Section 2.** Section 2-18-102, MCA, is amended to read:

1 **"2-18-102. Personnel administration -- general policy setting.** (1) Except as otherwise provided
2 by law or collective bargaining agreement, the department shall:

3 (a) encourage and exercise leadership in the development of effective personnel administration
4 within the several agencies in the state and make available the facilities of the department to this end;

5 (b) foster and develop programs for recruitment and selection of capable persons for ~~permanent,~~
6 ~~seasonal, temporary, and other types of positions~~ employment and for the improvement of employee
7 effectiveness, including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances,
8 and evaluation for productivity and retention in permanent status;

9 (c) foster, develop, and promote job sharing in agencies;

10 (d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the
11 policies made under those parts and report the findings and recommendations to the governor;

12 (e) establish policies, procedures, and forms for the maintenance of records of all employees in the
13 state service;

14 (f) apply and carry out parts 1 and 2 and the policies under those parts and perform any other
15 lawful acts that may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

16 (2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the
17 state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided
18 that the agencies remain in compliance with policies, procedures, timetables, and standards established by
19 the department.

20 (3) The department shall develop and issue personnel policies for the state and shall adopt rules
21 to implement this part, except 2-18-111. Adequate public notice must be given to all interested parties of
22 proposed changes or additions to the personnel policies before the date on which they are to take effect.
23 If requested by any of the affected parties, the department shall schedule a public hearing on proposed
24 changes or additions to the personnel policies before the date on which they are to take effect.

25 (4) The department shall develop model rules of conduct for all state employees based upon the
26 provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the
27 provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional
28 rules appropriate to the specific circumstances of the agency."

29

30 **Section 3.** Section 2-18-103, MCA, is amended to read:

1 **"2-18-103. Officers and employees excepted.** (1) Parts 1 ~~and 2~~ through 3 and 10 do not apply
2 to the following ~~positions~~ officers and employees in state government:

3 (a) elected officials;

4 (b) county assessors and their chief ~~deputy~~ deputies;

5 (c) employees of the office of consumer counsel;

6 (d) judges and employees of the judicial branch;

7 (e) members of boards and commissions appointed by the governor, the legislature, or other elected
8 state officials;

9 (f) officers or members of the militia;

10 (g) agency heads appointed by the governor;

11 (h) academic and professional administrative personnel with individual contracts under the authority
12 of the board of regents of higher education;

13 (i) academic and professional administrative personnel and live-in houseparents who have entered
14 into individual contracts with the state school for the deaf and blind under the authority of the state board
15 of public education;

16 ~~(j) teachers under the authority of the department of corrections or the department of public health
17 and human services;~~

18 ~~(k)~~(J) investment officer, assistant investment officer, executive director, and three professional
19 staff positions of the board of investments;

20 ~~(l)~~(K) four professional staff positions under the board of oil and gas conservation;

21 ~~(m)~~(L) assistant director for security of the Montana state lottery;

22 ~~(n)~~(M) executive director and senior investment officer of the Montana board of science and
23 technology development;

24 ~~(o)~~(N) executive director and employees of the state compensation insurance fund;

25 ~~(p)~~(O) state racing stewards employed by the executive secretary of the Montana board of
26 horseracing;

27 ~~(q)~~(P) executive director of the Montana wheat and barley committee;

28 ~~(r)~~(Q) commissioner of banking and financial institutions; and

29 ~~(s)~~(R) training coordinator for county attorneys.

30 (2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are

1 exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative
2 branch, other than the office of consumer counsel:

3 (a) as used in parts 1 through 3 of this chapter, references to the "department of administration"
4 or "department" apply to the legislative council established by 5-11-101, which may delegate administrative
5 duties to the legislative services division established by 5-11-111;

6 (b) as used in 2-18-102, the term "governor" applies to the legislature; and

7 (c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined
8 in 17-7-102."

9

10 **Section 4.** Section 2-18-104, MCA, is amended to read:

11 **"2-18-104. Exemption for personal staff -- limit.** (1) Subject to the limitations in subsections (2)
12 and (3), members of a personal staff are exempt from ~~the application of 2-18-204, 2-18-205, 2-18-207,~~
13 ~~and 2-18-1011 through 2-18-1013~~ parts 1 through 3 and 10.

14 (2) The personal staff who are exempted by subsection (1) may not exceed 10 unless otherwise
15 approved by the department according to criteria developed by the department. Under no circumstances
16 may the total exemptions of each elected official exceed 15.

17 (3) The number of members of the personal staff of the public service commission who are
18 exempted by subsection (1) may not exceed 10."

19

20 **Section 5.** Section 2-18-111, MCA, is amended to read:

21 **"2-18-111. Hiring preference for residents of Indian reservations for state jobs within reservation**
22 **-- rules.** (1) A state agency that operates within an Indian reservation shall give a preference in hiring for
23 ~~a position~~ of employment with the state agency to an Indian resident of the reservation who has
24 substantially equal qualifications for the position.

25 (2) The commissioner of labor and industry shall enforce this section, and investigate complaints
26 of its violation, and may adopt rules to implement this section.

27 (3) For the purposes of this section, the following definitions apply:

28 (a) "Employment" means being employed as a permanent, temporary, or seasonal employee as
29 defined in 2-18-101 for a state position. The term does not include:

30 (i) a state elected official;

1 (ii) appointment by an elected official to a body, such as a board, commission, committee, or
 2 council;

3 (iii) appointment by an elected official to a public office if the appointment is provided for by law;
 4 or

5 (iv) engagement as an independent contractor or employment by an independent contractor.

6 (b) "Indian" means a person who is enrolled or who is a lineal descendant of a person enrolled upon
 7 an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian
 8 tribe, domiciled in the United States.

9 ~~(b) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a~~
 10 ~~state position. The term does not include:~~

11 ~~(i) a state elected office;~~

12 ~~(ii) appointment by an elected official to a body, such as a board, commission, committee, or~~
 13 ~~council;~~

14 ~~(iii) appointment by an elected official to a public office if the appointment is provided for by law;~~
 15 ~~or~~

16 ~~(iv) engagement as an independent contractor or employment by an independent contractor.~~

17 (c) "State agency" means a department, office, board, bureau, commission, agency, or other
 18 instrumentality of the executive or judicial branches of the government of this state."
 19

20 **Section 6.** Section 2-18-304, MCA, is amended to read:

21 **"2-18-304. Longevity allowance.** (1) (a) (i) Effective July 1, 1995, through the last day of the pay
 22 period immediately preceding the pay period that includes October 1, 1995, in addition to the compensation
 23 provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed
 24 5 years of uninterrupted state service must receive 9/10 of 1% of the employee's base salary multiplied
 25 by the number of completed, contiguous 5-year periods of uninterrupted state service.

26 (ii) Effective on the first day of the pay period that includes October 1, 1995, in addition to the
 27 compensation provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who
 28 has completed 5 years of uninterrupted state service must receive 1.5% of the employee's base salary
 29 multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

30 (b) Service to the state is not interrupted by authorized leaves of absence.

1 (2) (a) For the purpose of determining years of service under this section, an employee must be
2 credited with 1 year of service for each period of:

3 (i) 2,080 hours of service following the employee's date of employment; an employee must be
4 credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or
5 on an authorized leave of absence without pay, regardless of the number of hours of service in the pay
6 period; or

7 (ii) 12 uninterrupted calendar months following the employee's date of employment in which the
8 employee was in a pay status or on an authorized leave of absence without pay, regardless of the number
9 of hours of service in any month. An employee of a school at a state institution or the university system
10 must be credited with 1 year of service if the employee is employed for an entire academic year.

11 (b) State agencies, other than the university system and a school at a state institution, shall use
12 the method provided in subsection (2)(a)(i) to calculate years of service under this section.

13 (3) For the purposes of calculating longevity, employment as a short-term worker does not apply
14 toward years of service.

15

16 **Section 7.** Section 2-18-601, MCA, is amended to read:

17 **"2-18-601. Definitions.** For the purpose of this part, except 2-18-620, the following definitions
18 apply:

19 (1) "Agency" means any legally constituted department, board, or commission of state, county,
20 or city government or any political subdivision thereof.

21 (2) "Break in service" means a period of time in excess of 5 working days when the person is not
22 employed and that severs continuous employment.

23 (3) "Continuous employment" means working within the same jurisdiction without a break in
24 service of more than 5 working days or without a continuous absence without pay of more than 15 working
25 days.

26 (4) "Employee" means any person employed by an agency except elected state, county, and city
27 officials, schoolteachers, and persons contracted as independent contractors or hired under personal
28 services contracts.

29 (5) "Full-time employee" means an employee who normally works 40 hours a week.

30 (6) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in

1 1-1-216 or 20-1-305, except Sundays.

2 (7) "Part-time employee" means an employee who normally works less than 40 hours a week.

3 (8) "Permanent employee" means ~~an employee who is assigned to a position designated as~~
4 ~~permanent on the appropriate list of authorized positions referenced in 2-18-206 and approved as such in~~
5 ~~the biennium budget~~ a permanent employee as defined in 2-18-101.

6 (9) "Seasonal employee" means ~~an employee assigned to a position designated as seasonal on the~~
7 ~~appropriate agency list of authorized positions referenced in 2-18-206 and for which the agency has a~~
8 ~~permanent need but which is interrupted by the seasonal nature of the assignment~~ a seasonal employee
9 as defined in 2-18-101.

10 (10) "SHORT-TERM WORKER" MEANS A SHORT-TERM WORKER AS DEFINED IN 2-18-101.

11 ~~(10)(11)~~ "Sick leave" means a leave of absence with pay for a sickness suffered by an employee
12 or ~~his~~ a member of the employee's immediate family or for a permanent state employee who is eligible for
13 parental leave under the provisions of 2-18-606.

14 ~~(11)(12)~~ "Sick pay plan" means a plan that:

15 ~~(a) provides for an agency to make payments in lieu of wages to employees on account of sickness~~
16 ~~or accident disability; and~~

17 ~~(b) meets the requirements of 42 U.S.C. 409(b) or (d).~~

18 ~~(12)~~ "Temporary employee" means ~~an employee assigned to a position designated as temporary~~
19 ~~on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period~~
20 ~~of time not to exceed 9 months~~ a temporary employee as defined in 2-18-101.

21 ~~(13)(12)(13)~~ "Transfer" means a change of employment from one agency to another agency in the
22 same jurisdiction without a break in service.

23 ~~(14)(13)(14)~~ "Vacation leave" means a leave of absence with pay for the purpose of rest,
24 relaxation, or personal business at the request of the employee and with the concurrence of the employer."

25

26 **Section 8.** Section 2-18-603, MCA, is amended to read:

27 **"2-18-603. Holidays -- observance when falling on employee's day off.** (1) (a) ~~Any~~ A full-time
28 employee who is scheduled for a day off on a day ~~which~~ that is observed as a legal holiday, except
29 Sundays, ~~shall be~~ is entitled to receive a day off with pay either on the day preceding the holiday or on
30 another day following the holiday in the same pay period or as scheduled by the employee and ~~his~~ the

1 employee's supervisor, whichever allows a day off in addition to the employee's regularly scheduled days
2 off, provided the employee is in a pay status on ~~his~~ the employee's last regularly scheduled working day
3 immediately before the holiday or on ~~his~~ the employee's first regularly scheduled working day immediately
4 after the holiday.

5 (b) Part-time employees receive pay for the holiday on a prorated basis according to rules adopted
6 by the department of administration or appropriate administrative officer under 2-18-604.

7 (c) A short-term worker may not receive holiday pay.

8 (2) For purposes of this section, the term "employee" does not include nonteaching school district
9 employees."

10

11 **Section 9.** Section 2-18-611, MCA, is amended to read:

12 "**2-18-611. Annual vacation leave.** (1) Each permanent full-time employee shall earn annual
13 vacation leave credits from the first day of employment. Vacation leave credits earned ~~shall~~ must be
14 credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay
15 until they have been continuously employed for a period of 6 calendar months.

16 (2) Seasonal employees ~~shall~~ earn vacation credits. However, ~~such persons~~ seasonal employees
17 must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify,
18 ~~each~~ seasonal employees ~~must~~ shall immediately report back for work when operations resume in order to
19 avoid a break in service.

20 (3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have
21 worked the qualifying period.

22 (4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

23 (5) Temporary employees ~~do not~~ earn vacation leave credits, ~~except that a temporary employee~~
24 ~~who is subsequently hired into a permanent position within the same jurisdiction without a break in service~~
25 ~~and temporary employees who are employed continuously longer than 6 months may count as earned leave~~
26 ~~credits for the immediate term of temporary employment~~ but may not use the credits until after working
27 for 6 qualifying months.

28 (6) A short-term worker, as defined in 2-18-101, may not earn vacation leave credits, and time
29 worked as a short-term worker does not apply toward the person's rate of earning vacation leave credits."

30

1 **Section 10.** Section 2-18-618, MCA, is amended to read:

2 "**2-18-618. Sick leave.** (1) A permanent full-time employee earns sick leave credits from the first
3 day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year.
4 Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate
5 of 12 working days for each year of service without restriction as to the number of working days that may
6 be accumulated. Employees are not entitled to be paid sick leave until they have been continuously
7 employed 90 days.

8 (2) An employee may not accrue sick leave credits while in a leave-without-pay status.

9 (3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the
10 qualifying period.

11 (4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they
12 work the qualifying period.

13 (5) A short-term worker may not earn sick leave credits.

14 ~~(6)~~ (6) An employee who terminates employment with the agency is entitled to a lump-sum payment
15 equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the
16 accumulated sick leave must be computed on the basis of the employee's salary or wage at the time ~~he~~
17 the employee terminates ~~his~~ employment with the state, county, or city. Accrual of sick leave credits for
18 calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the
19 responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any
20 sick leave rights or benefits ~~he had~~ accrued prior to July 1, 1971. However, when an employee transfers
21 between agencies within the same jurisdiction, ~~he~~ the employee is not entitled to a lump-sum payment. In
22 a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave
23 credits earned after July 1, 1971, and transferred with the employee.

24 ~~(6)(7)~~ (7) An employee who receives a lump-sum payment pursuant to this section and who is again
25 employed by any agency may not be credited with ~~any~~ sick leave for which the employee has previously
26 been compensated.

27 ~~(7)(8)~~ (8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided
28 for in this section.

29 ~~(8)(9)~~ (9) An employee may contribute any portion of ~~his~~ the employee's accumulated sick leave to
30 a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an

1 extensive illness or accident exhausts ~~his~~ the employee's accumulated sick leave. The department of
 2 administration shall, in consultation with the state employee group benefits advisory council, provided for
 3 in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

4 ~~(9)(10)~~ A local government may establish and administer through local rule a sick leave fund into
 5 which its employees may contribute a portion of their accumulated sick leave."

6

7 **Section 11.** Section 39-29-101, MCA, is amended to read:

8 **"39-29-101. Definitions.** For the purposes of this chapter, the following definitions apply:

9 (1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except
 10 for training, determining physical fitness, or service in the reserve or national guard.

11 (2) "Armed forces" means the United States:

12 (a) army, navy, air force, marine corps, and coast guard; and

13 (b) merchant marine for service recognized by the United States department of defense as active
 14 military service for the purpose of laws administered by the department of veterans affairs.

15 (3) "Disabled veteran" means a person:

16 (a) whether or not the person is a veteran as defined in this section, who was separated under
 17 honorable conditions from active duty in the armed forces and has established the present existence of a
 18 service-connected disability or is receiving compensation, disability retirement benefits, or pension because
 19 of a law administered by the department of veterans affairs or a military department; or

20 (b) who has received a purple heart medal.

21 (4) "Eligible relative" means:

22 (a) the unmarried surviving spouse of a veteran or disabled veteran;

23 (b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

24 (c) the mother of a veteran who died under honorable conditions while serving in the armed forces

25 if:

26 (i) the mother's spouse is totally and permanently disabled; or

27 (ii) the mother is the widow of the father of the veteran and has not remarried;

28 (d) the mother of a service-connected permanently and totally disabled veteran if:

29 (i) the mother's spouse is totally and permanently disabled; or

30 (ii) the mother is the widow of the father of the veteran and has not remarried.

1 (5) "Position" means a position occupied by a permanent, temporary, or seasonal ~~position~~ employee
2 as defined in 2-18-101 for a the state ~~position~~ or a similar permanent, temporary, or seasonal ~~position~~
3 employee with a public employer other than the state. The term does not include:

4 (a) a state or local elected office;

5 (b) appointment by an elected official to a body such as a board, commission, committee, or
6 council;

7 (c) appointment by an elected official to a public office if the appointment is provided for by law;

8 (d) a department head appointment by the governor or an executive department head appointment
9 by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local
10 government; or

11 (e) engagement as an independent contractor or employment by an independent contractor.

12 (6) "Public employer" means:

13 (a) a department, office, board, bureau, commission, agency, or other instrumentality of the
14 executive, legislative, or judicial branches of the government of this state;

15 (b) a unit of the Montana university system;

16 (c) a school district or community college; and

17 (d) a county, city, or town.

18 (7) "Scored procedure" means a written test, structured oral interview, performance test, or other
19 selection procedure or a combination of these procedures that results in a numerical score to which
20 percentage points may be added.

21 (8) "Under honorable conditions" means a discharge or separation from active duty characterized
22 by the armed forces as under honorable conditions. The term includes honorable discharges and general
23 discharges but does not include dishonorable discharges or other administrative discharges characterized
24 as other than honorable.

25 (9) "Veteran" means a person who:

26 (a) was separated under honorable conditions from active duty in the armed forces after having
27 served more than 180 consecutive days, other than for training; or

28 (b) as a member of a reserve component under an order of active duty pursuant to 10 U.S.C.
29 672(a), (d), or (g), 10 U.S.C. 673, or 10 U.S.C. 673b served on active duty during a period of war or in
30 a campaign or expedition for which a campaign badge is authorized and was discharged or released from

1 duty under honorable conditions."

2

3 **Section 12.** Section 39-30-103, MCA, is amended to read:

4 "**39-30-103. Definitions.** For the purposes of this chapter, the following definitions apply:

5 (1) "Eligible spouse" means the spouse of a handicapped person determined by the department of
6 public health and human services to have a 100% disability who is unable to use the employment
7 preference because of the person's disability.

8 (2) "Handicapped person" means an individual certified by the department of public health and
9 human services to have a physical or mental impairment that substantially limits one or more major life
10 activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to
11 obtain, retain, or advance in employment.

12 (3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the
13 ranks of the current employees of:

14 (i) a department, as defined in 2-15-102, for a position within the executive branch;

15 (ii) a legislative agency for a position within the legislative branch;

16 (iii) a judicial agency, such as the office of supreme court administrator, office of supreme court
17 clerk, state law library, or similar office in a state district court for a position within the judicial branch;

18 (iv) a city or town for a municipal position, including a city or municipal court position; and

19 (v) a county for a county position, including a justice's court position.

20 (b) A personnel action limited to current employees of a specific public entity identified in
21 ~~subsections subsection (3)(a)(i) through (3)(a)(v)~~, current employees in a reduction-in-force pool who have
22 been laid off from a specific public entity identified in ~~subsections subsection (3)(a)(i) through (3)(a)(v)~~, or
23 current participants in a federally authorized employment program is not an initial hiring.

24 (4) (a) "Mental impairment" means:

25 (i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or
26 any other neurologically handicapping condition closely related to mental retardation and requiring treatment
27 similar to that required by mentally retarded individuals; or

28 (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive
29 or volitional functions.

30 (b) The term mental impairment does not include alcoholism or drug addiction and does not include

1 any mental impairment, disease, or defect that has been asserted by the individual claiming the preference
2 as a defense to any criminal charge.

3 (5) "Position" means a position occupied by a permanent or seasonal ~~position~~ employee as defined
4 in 2-18-101 for a the state ~~position~~ or a position occupied by a similar permanent or seasonal ~~position~~
5 employee with a public employer other than the state. However, the term does not include:

6 (a) a position occupied by a temporary ~~position~~ employee as defined in 2-18-101 for a the state
7 position or a similar temporary ~~position~~ employee with a public employer other than the state;

8 (b) a state or local elected official;

9 (c) employment as an elected official's immediate secretary, legal advisor, court reporter, or
10 administrative, legislative, or other immediate or first-line aide;

11 (d) appointment by an elected official to a body such as a board, commission, committee, or
12 council;

13 (e) appointment by an elected official to a public office if the appointment is provided for by law;

14 (f) a department head appointment by the governor or an executive department head appointment
15 by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local
16 government; or

17 (g) engagement as an independent contractor or employment by an independent contractor.

18 (6) (a) "Public employer" means:

19 (i) any department, office, board, bureau, commission, agency, or other instrumentality of the
20 executive, judicial, or legislative branch of the government of the state of Montana; and

21 (ii) any county, city, or town.

22 (b) The term does not include a school district, a vocational-technical program, a community
23 college, the board of regents of higher education, the Montana university system, a special purpose district,
24 an authority, or any political subdivision of the state other than a county, city, or town.

25 (7) "Substantially equal qualifications" means the qualifications of two or more persons among
26 whom the public employer cannot make a reasonable determination that the qualifications held by one
27 person are significantly better suited for the position than the qualifications held by the other persons."

28

29 **NEW SECTION. Section 13. Repealer.** Section 2-18-605, MCA, is repealed.

30

