

An Act

HOUSE BILL 12-1321

BY REPRESENTATIVE(S) Ferrandino and Vaad, Bradford, Court, Fields, Fischer, Gardner B., Gerou, Hullinghorst, Kerr A., Kerr J., Labuda, Levy, Looper, Massey, Murray, Pabon, Pace, Priola, Ramirez, Ryden, Schafer S., Summers, Szabo, Todd, Vigil, Wilson, Young, McNulty, Jones, Kagan, Lee, Nikkel, Scott, Tyler;
also SENATOR(S) Johnston and King K., Bacon, Boyd, Cadman, Foster, Giron, Harvey, Heath, Hudak, Jahn, King S., Lambert, Lundberg, Mitchell, Morse, Newell, Scheffel, Spence, Steadman, Shaffer B.

CONCERNING THE STATE PERSONNEL SYSTEM, AND, IN CONNECTION THEREWITH, ENACTING THE "MODERNIZATION OF THE STATE PERSONNEL SYSTEM ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Short title. This act shall be known and may be cited as the "Modernization of the State Personnel System Act".

SECTION 2. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) It is essential for the state to be able to recruit, retain, and reward a qualified state work force in order to compete for and employ top talent

and provide the highest quality of service to the people of Colorado;

(b) In order to attract a qualified state work force, it is necessary to modernize and create flexibility in a rigid personnel system that has not seen significant change in over forty years; and

(c) In an effort to reward our veterans for their commitment to this country and to our state, Colorado veterans should be given preference within the state personnel system after their military service.

(2) The general assembly further finds and declares that, within the state personnel system:

(a) Since the establishment of a pay-for-performance system a decade ago, the state has failed to adequately compensate state employees for the work they perform;

(b) Today, more than half of all state employees are at the bottom of their salary range, and there is an urgent need to restructure the pay system;

(c) The goal of the state's pay system should be to move deserving employees through a salary range that is comparable to the equivalent private-sector range, with the cumulative result of individual employee movement being a work force that is concentrated at the mid-point of employee salary ranges with smaller groups of employees at the bottom and top of the ranges;

(d) In times of fiscal strain, the state of Colorado should use performance, position in salary range, and longevity of service to determine which groups of employees are most in need of salary range movement;

(e) Through prioritization, the state can advance employees most acutely in need of salary range movement even when resources are scarce; and

(f) The state can provide an incentive for employees to achieve efficiencies and savings from appropriated amounts, which currently revert back to their original fund, by transferring that amount to a reserve fund, which can be used to help supplement the funds available to provide merit

pay for the employees.

(3) Therefore, it is in the best interests of the state to make the significant changes to the state personnel system included in this act and House Concurrent Resolution 12-1001 in order to better recruit, retain, and reward qualified state employees and to bring our state work force into the twenty-first century.

SECTION 3. In Colorado Revised Statutes, 24-19-108, **amend** (1) (b) and (1) (c); and **add** (1) (d) as follows:

24-19-108. Exceptions. (1) The provisions of this article shall not apply to the following:

(b) Any tenured or tenure track faculty member whose primary job assignment is teaching, research, or both teaching and research and who is employed at a state institution of higher education or any specialty track faculty member whose primary job assignment is clinical care and who is employed at a state institution of higher education; ~~or~~

(c) Any employee employed by a unit of local government whose governing body is directly elected by the electors of such local government;
OR

(d) ANY CERTIFIED EMPLOYEE WHO IS SEPARATED FROM STATE SERVICE DUE TO LACK OF WORK, LACK OF FUNDS, OR REORGANIZATION AND WHO RECEIVES POSTEMPLOYMENT COMPENSATION OR OTHER BENEFITS AUTHORIZED BY A LAYOFF PLAN ESTABLISHED BY THE STATE PERSONNEL DIRECTOR PURSUANT TO SECTION 24-50-124 (1) (d) (I).

SECTION 4. In Colorado Revised Statutes, 24-38-103, **amend** (1.5) as follows:

24-38-103. Agency authority and incentives for budget savings.
(1.5) Beginning with the 2004-05 fiscal year, an agency that achieves cost savings, as an alternative to the transfer authorized pursuant to subsection (1) of this section, may transfer fifty percent of the amount of the cost savings from one item of appropriation made to the agency in the general appropriation act or any supplemental appropriation act to the item for personal services in the appropriation made to the same agency for the

purpose of paying performance-based ~~bonuses~~ AWARDS to employees of the agency. The ~~bonus~~ AWARD shall be awarded in the fiscal year in which the cost savings are achieved and shall be made consistent with the performance REVIEW DONE IN ACCORDANCE WITH THE MERIT PAY system identified in section 24-50-104 (1) (c.7). Prior to the end of the state fiscal year in which a transfer is made pursuant to this subsection (1.5), an agency shall submit written notice to the joint budget committee, the office of state planning and budgeting, and the state controller of the amount of the cost savings achieved by the agency during the state fiscal year.

SECTION 5. In Colorado Revised Statutes, 24-50-103, **amend** (1), (3) (a), and (5) as follows:

24-50-103. State personnel board. (1) ~~THE STATE PERSONNEL BOARD, REFERRED TO IN THIS ARTICLE AS THE "BOARD", IS CREATED pursuant to the provisions of section 14 of article XII of the state constitution. there is hereby created the state personnel board, referred to in this article as the "board", which shall consist~~ THE BOARD CONSISTS of five members to be selected in the manner provided in THE STATE CONSTITUTION AND this section. ~~Three members of the board shall be appointed by the governor, with the consent of the senate, and two members of the board shall be elected by persons certified to classes and positions in the state personnel system in the manner prescribed by subsection (3) of this section. Each member of the board shall be a qualified elector of the state but shall not be otherwise an officer or employee of the state or of any state employee organization. The terms of office of members of the board shall be five years; except that of the members appointed by the governor to take office on July 1, 1971, one shall be appointed for a one-year term, one shall be appointed for a two-year term, and one shall be appointed for a three-year term, and of the members elected to take office on July 1, 1971, one shall be elected for a four-year term, and one shall be elected for a five-year term. Members of the board may succeed themselves in office.~~

(3) (a) In the year ~~1975~~ 2015 and every ~~fifth~~ THIRD year thereafter and in the year ~~1976~~ 2016 and every ~~fifth~~ THIRD year thereafter, an election shall be held for a member of the board in the manner provided in this subsection (3).

(5) ~~Any~~ A member of the board may be removed by the governor for willful misconduct in office, for willful failure or inability to perform his

~~duties, including, but not limited to, failure to attend three consecutive regular board meetings, for final conviction of a felony or of any other offense involving moral turpitude, or by reason of permanent disability interfering with the performance of his duties. Removal shall be subject to judicial review~~ IN ACCORDANCE WITH SECTION 14 (2) OF ARTICLE XII OF THE STATE CONSTITUTION.

SECTION 6. In Colorado Revised Statutes, 24-50-104, **amend** (1) (a) (I), (1) (a) (II), (1) (c) (I), (1) (c) (II) introductory portion, (1) (c) (II) (D), (1) (c) (II) (F), (1) (c) (IV), (1) (c.5) (V), (1) (c.7), (4) (a), (4) (b) (I), and (4) (c); **repeal** (1) (c) (II) (E) and (1) (c) (II) (G); and **add** (1) (c) (I.1), (1) (c) (I.2), (1) (c) (I.3), (1) (c) (I.5), (1) (c) (I.7), (1) (c) (I.9), and (1) (j) as follows:

24-50-104. Job evaluation and compensation - state employee reserve fund - created - definitions. (1) **Total compensation philosophy.** (a) (I) It is the policy of the state to provide prevailing total compensation to officers and employees in the state personnel system to ensure the recruitment, motivation, and retention of a qualified and competent work force. For purposes of this section, "total compensation" includes, but is not limited to, salary, group benefit plans, retirement benefits, ~~performance awards~~ MERIT PAY, incentives, premium pay practices, and leave. For purposes of this section, "group benefit plans" means group benefit coverages as described in section 24-50-603 (9).

(II) The state personnel director shall establish technically and professionally sound survey methodologies to assess prevailing total compensation practices, levels, and costs. Except as provided in subparagraph (III) of this paragraph (a), for purposes of this paragraph (a), to determine and maintain salaries, state contributions for group benefit plans, and ~~performance awards~~ MERIT PAY that are comparable to public and private employment, the state personnel director shall annually review the results of appropriate surveys by public or private organizations, including surveys by the state personnel director. Any surveys provided on a confidential basis shall not be revealed except to the state auditor's office and the private firm conducting the audit required in paragraph (b) of subsection (4) of this section. The state personnel director shall adopt appropriate procedures to determine and maintain other elements of total compensation, including the payment of incentive awards to employees in the state personnel system. The state personnel director's review and

determination of total compensation practices shall not be subject to appeal except as otherwise authorized by law or state personnel director procedures.

(c) (I) ~~Based on a system of performance management and evaluation,~~ The state personnel director shall ~~adopt procedures for~~ ESTABLISH A MERIT PAY SYSTEM IN ORDER TO PROVIDE periodic salary increases for employees in the state personnel system. ~~based on performance~~ THE PURPOSE OF THE MERIT PAY SYSTEM IS TO PROVIDE SALARY INCREASES FOR EMPLOYEES BASED ON PERFORMANCE EVALUATIONS AND SALARY PLACEMENT WITHIN THE APPROPRIATE SALARY RANGE. THE STATE PERSONNEL DIRECTOR SHALL DEVELOP THE MERIT PAY SYSTEM SO THAT A MERIT PAY INCREASE IS BASED ON THE RELATIONSHIP OF PERFORMANCE RATING DISTRIBUTION AND SALARY RANGE DISTRIBUTION. THE MERIT PAY SYSTEM MUST INCLUDE THE FOLLOWING CHARACTERISTICS:

(A) SALARY RANGE IS DIVIDED INTO QUARTILES, EXCEPT AS SET FORTH IN SUBPARAGRAPH (I.1) OF THIS PARAGRAPH (c);

(B) THE LOWEST QUARTILE OR DISTRIBUTION ZONE IN RELATION TO THE MIDPOINT HAS THE HIGHEST RATE OF MERIT PAY, AND THE RATE FOR EACH SUCCESSIVE QUARTILE OR DISTRIBUTION ZONE IS LESS THAN THE PRECEDING QUARTILE OR DISTRIBUTION ZONE, EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (E) OF THIS SUBPARAGRAPH (I);

(C) PERFORMANCE EVALUATIONS ARE DIVIDED INTO THREE PERFORMANCE CATEGORIES, EXCEPT AS SET FORTH IN SUBPARAGRAPH (I.1) OF THIS PARAGRAPH (c);

(D) THE HIGHEST PERFORMANCE CATEGORY HAS THE HIGHEST RATE OF MERIT PAY, AND THE RATE FOR EACH LOWER PERFORMANCE CATEGORY IS LESS THAN THE PRECEDING CATEGORY, EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (E) OF THIS SUBPARAGRAPH (I); AND

(E) EMPLOYEES WHO RECEIVE AN UNSATISFACTORY PERFORMANCE EVALUATION ARE NOT ELIGIBLE FOR MERIT PAY.

(I.1) ON OR AFTER SEPTEMBER 1, 2015, THE STATE PERSONNEL DIRECTOR SHALL REVIEW THE EFFECTIVENESS OF THE USE OF QUARTILES FOR SALARY RANGE AND THREE PERFORMANCE CATEGORIES IN THE MERIT PAY

SYSTEM. BASED ON THE REVIEW, THE STATE PERSONNEL DIRECTOR MAY ADJUST THE NUMBER OF DISTRIBUTION ZONES OR PERFORMANCE CATEGORIES TO BE USED IN THE SYSTEM. THEREAFTER, THE STATE PERSONNEL DIRECTOR SHALL CONDUCT A BIENNIAL REVIEW OF THE DISTRIBUTION ZONES AND PERFORMANCE CATEGORIES AND MAY ADJUST THE NUMBER OF DISTRIBUTION ZONES OR PERFORMANCE CATEGORIES BASED ON THE REVIEW. THE MINIMUM NUMBER OF DISTRIBUTION ZONES THE STATE PERSONNEL DIRECTOR MAY ESTABLISH IS THREE, AND THE MAXIMUM NUMBER IS SIX.

(I.2) IF A STATE DEPARTMENT OR INSTITUTION OF HIGHER EDUCATION HAS A PERFORMANCE REVIEW SYSTEM THAT HAS A DIFFERENT NUMBER OF PERFORMANCE CATEGORIES THAN THE NUMBER USED BY THE STATE PERSONNEL DIRECTOR IN THE MERIT PAY SYSTEM, THE STATE PERSONNEL DIRECTOR SHALL ESTABLISH A METHOD FOR CONVERTING THE DEPARTMENTAL OR INSTITUTIONAL CATEGORIES INTO THE CATEGORIES USED IN THE MERIT PAY SYSTEM.

(I.3) BASED ON PROFESSIONALLY SOUND SURVEY METHODOLOGIES, THE STATE PERSONNEL DIRECTOR SHALL ESTABLISH ANNUALLY ONE OR MORE PRIORITY GROUPS OF EMPLOYEES THAT HAVE PRIORITY TO RECEIVE MERIT PAY BASED ON AVAILABLE MONEYS. THE PRIORITY GROUPS MUST BE BASED ON LENGTH OF SERVICE, RELATION TO THE SALARY RANGE MIDPOINT, PERFORMANCE, RECRUITMENT, RETENTION NEEDS, AND OTHER FACTORS ESTABLISHED BY THE DIRECTOR. THE AMOUNT OF MERIT PAY THAT AN EMPLOYEE IN THE STATE PERSONNEL SYSTEM MAY RECEIVE DEPENDS FIRST ON THE EMPLOYEE'S PRIORITY GROUP AND THEN ON THE AMOUNT OF MERIT PAY, IF ANY, ASSOCIATED WITH THE EMPLOYEE'S PERFORMANCE CATEGORY AND SALARY RANGE.

(I.5) (A) EXCEPT AS SET FORTH IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (I.5), THE MERIT PAY SYSTEM APPLIES UNIFORMLY ACROSS STATE DEPARTMENTS AND INSTITUTIONS OF HIGHER EDUCATION SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (I.9) OF THIS PARAGRAPH (c). FOR EACH STATE FISCAL YEAR THE STATE PERSONNEL DIRECTOR SHALL DETERMINE THE APPROPRIATE MERIT PAY RATES THAT APPLY TO ALL STATE DEPARTMENTS AND INSTITUTIONS AND THE PRIORITY GROUP OR GROUPS THAT RECEIVE MERIT PAY.

(B) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE

CONTRARY, AN INSTITUTION OF HIGHER EDUCATION MAY ENACT ITS OWN MERIT PAY SYSTEM, SO LONG AS THE SYSTEM IS CONSISTENT WITH THE PROVISIONS OF THIS SUBSECTION (1).

(I.7) AN EMPLOYEE WHO IS AT OR ABOVE THE MAXIMUM AMOUNT FOR HIS OR HER SALARY RANGE IS NOT ELIGIBLE FOR A MERIT PAY SALARY INCREASE, BUT IS ELIGIBLE FOR A MERIT PAY PAYMENT THAT IS NONBASE BUILDING.

(I.9) MERIT PAY IS SUBJECT TO AVAILABLE APPROPRIATIONS. EXCEPT AS SET FORTH IN SUBPARAGRAPH (II) OF PARAGRAPH (j) OF THIS SUBSECTION (1), THE GENERAL ASSEMBLY SHALL APPROPRIATE ANY MONEYS FOR MERIT PAY IN THE ANNUAL GENERAL APPROPRIATION ACT IN SUITABLE PERSONAL SERVICES LINE ITEMS OR OTHER LINE ITEMS THAT INCLUDE SALARY APPROPRIATIONS.

(II) IN ADDITION TO ANY OTHER REQUIREMENTS SET FORTH IN THIS PARAGRAPH (c), the department of personnel shall develop ~~guidelines and coordinate a performance~~ THE MERIT PAY system pursuant to the provisions of ~~subparagraph (f) of this paragraph (c)~~ SO that IT:

(D) Emphasizes planning, management, and evaluation of employee performance; AND

(E) ~~Includes uniform and consistent guidelines for all state departments and institutions of higher education;~~

(F) Prohibits a forced distribution of performance ratings. ~~and~~

(G) ~~Authorizes individual and group performance awards.~~

(IV) ~~The state personnel director may authorize state departments and institutions of higher education to establish a program for the particular state department or institution~~ EACH STATE DEPARTMENT AND INSTITUTION OF HIGHER EDUCATION SHALL ENSURE THAT IT HAS A PERFORMANCE REVIEW SYSTEM THAT CAN BE USED to implement ~~the performance~~ A MERIT PAY system. ~~prepared by the department of personnel in accordance with the provisions of this paragraph (c).~~ The state personnel director shall encourage state departments and institutions of higher education to implement performance evaluations of employees that are as objective as

possible and that, as soon as possible and wherever feasible, include an assessment from multiple sources of each employee's performance. Such sources shall include, where applicable, the employee's self-assessment; the employee's superiors, subordinates, AND peers; and any other applicable sources of an employee's performance. The state personnel director shall adopt procedures to establish a process to resolve employee disputes related to performance evaluations that do not result in corrective or disciplinary action against the employee. Each program established by a state department or institution of higher education pursuant to this subparagraph (IV) shall be subject to the director's approval. ~~Except as provided in paragraph (d) of subsection (5) of this section, salaries may be increased or left unchanged subject to available appropriations for the performance system; except that no annual increase shall be guaranteed.~~

(c.5) (V) The state personnel director shall monitor compliance with the requirements of this paragraph (c.5) and paragraph (c) of this subsection (1) and shall annually report the director's findings pertaining to the prior fiscal year no later than January 1 of the following fiscal year to the joint budget committee of the general assembly. The report shall include, by department or institution, the number of supervisors who were suspended or demoted, the percentage of all supervisors who complied with the requirements of this paragraph (c.5), ~~the total amount of dollars appropriated for performance awards,~~ the total amount of such dollars that were awarded to employees for ~~performance awards,~~ and MERIT PAY, the total amount of those dollars awarded for each PRIORITY GROUP AND EACH SALARY RANGE AND performance category, ANY REVERSION AMOUNTS THAT WERE TRANSFERRED FOR THE PRIOR STATE FISCAL YEAR PURSUANT TO SUBPARAGRAPH (IV) OF PARAGRAPH (j) OF THIS SUBSECTION (1), THE LINE ITEM APPROPRIATION RELATED TO EACH REVERSION AMOUNT, AND THE BALANCE IN THE DEPARTMENT'S ACCOUNT WITHIN THE STATE EMPLOYEE RESERVE FUND AS OF THE DATE OF THE REPORT.

(c.7) In addition to the periodic salary increases authorized by paragraph (c) of this subsection (1), the performance REVIEW COMPONENT OF THE MERIT PAY system established pursuant to subparagraph ~~(H)~~ or (IV) of paragraph (c) of this subsection (1) shall be used for the purpose of determining eligibility for a performance-based ~~bonus~~ AWARD permitted pursuant to section 24-38-103 (1.5). The ~~bonus~~ AWARD shall be in addition to any other compensation authorized by law, and it shall not affect the compensation that the employee is entitled to receive in subsequent years.

(j) (I) AS USED IN THIS PARAGRAPH (j), UNLESS THE CONTEXT OTHERWISE REQUIRES:

(A) "DEPARTMENT" MEANS A PRINCIPAL DEPARTMENT OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT SPECIFIED IN SECTION 24-1-110.

(B) "ELIGIBLE DEPARTMENT" MEANS A DEPARTMENT THAT RECEIVED AN APPROPRIATION FOR WHICH THERE IS A REVERSION AMOUNT.

(C) "FUND" MEANS THE STATE EMPLOYEE RESERVE FUND CREATED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (j).

(D) "PERSONAL SERVICES-RELATED LINE ITEM" MEANS A LINE ITEM ENTITLED "PERSONAL SERVICES", "GROUP HEALTH, LIFE, AND DENTAL INSURANCE", "SHORT-TERM DISABILITY INSURANCE", "AMORTIZATION EQUALIZATION DISBURSEMENTS", "SUPPLEMENTAL AMORTIZATION EQUALIZATION DISBURSEMENTS", "SALARY SURVEY", OR "SHIFT DIFFERENTIAL".

(E) "QUALIFYING CASH FUND" MEANS A CASH FUND FOR WHICH THERE IS EXPRESS AUTHORIZATION FOR A REVERSION PURSUANT TO THIS PARAGRAPH (j) FROM THE CASH FUND TO THE STATE EMPLOYEE RESERVE FUND.

(F) "REVERSION AMOUNT" MEANS THE FINAL, ADJUSTED AMOUNT OF STATE MONEYS APPROPRIATED FROM THE GENERAL FUND OR A QUALIFYING CASH FUND FOR A STATE FISCAL YEAR IN A PERSONAL SERVICES-RELATED LINE ITEM, A LINE ITEM ENTITLED "OPERATING EXPENSES", OR ANY SUCCESSOR LINE ITEM DESIGNATED BY THE JOINT BUDGET COMMITTEE FOR THE SAME PURPOSES IN THE ANNUAL GENERAL APPROPRIATION ACT TO A DEPARTMENT THAT IS UNEXPENDED AND UNENCUMBERED AS OF THE DATE THE STATE CONTROLLER PUBLISHES THE COMPREHENSIVE ANNUAL FINANCIAL REPORT OF THE STATE FOR THE STATE FISCAL YEAR. THE JOINT BUDGET COMMITTEE SHALL NOTIFY THE STATE CONTROLLER AND STATE TREASURER OF A SUCCESSOR LINE ITEM FROM WHICH THERE MAY BE A REVERSION AMOUNT. THERE IS NO "REVERSION AMOUNT" RELATED TO ANY LINE ITEM THAT MONEYS ARE TRANSFERRED FROM OR TO PURSUANT TO SECTION 24-75-108.

(II) THE STATE EMPLOYEE RESERVE FUND IS HEREBY CREATED IN THE

STATE TREASURY. WITHIN THE FUND THERE IS AN ACCOUNT DEDICATED TO EACH DEPARTMENT. A DEPARTMENT'S ACCOUNT CONSISTS OF MONEYS TRANSFERRED PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH (j) AND ANY TRANSFERS DIRECTED BY THE GOVERNOR PURSUANT TO SUBPARAGRAPH (VI) OF THIS PARAGRAPH (j). MONEYS WITHIN A DEPARTMENT'S ACCOUNT ARE CONTINUOUSLY APPROPRIATED TO SUCH DEPARTMENT FOR THE PURPOSE OF PROVIDING MERIT PAY TO CERTIFIED EMPLOYEES AS PROVIDED IN THIS SUBSECTION (1). A DEPARTMENT MAY NOT EXPEND ANY MONEYS FROM ITS ACCOUNT WITHOUT THE APPROVAL OF THE DIRECTOR OF THE OFFICE OF STATE PLANNING AND BUDGETING.

(III) ANY MONEYS IN THE FUND NOT EXPENDED AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (j) MAY BE INVESTED BY THE STATE TREASURER AS PROVIDED BY LAW. ALL INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN A DEPARTMENT'S ACCOUNT SHALL BE CREDITED TO THE SAME ACCOUNT. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND.

(IV) ON THE DATE THE STATE CONTROLLER PUBLISHES THE COMPREHENSIVE ANNUAL FINANCIAL REPORT OF THE STATE, THE STATE CONTROLLER AND STATE TREASURER SHALL TRANSFER AN AMOUNT OF MONEYS EQUAL TO A REVERSION AMOUNT FROM THE GENERAL FUND OR A QUALIFYING CASH FUND TO THE STATE EMPLOYEE RESERVE FUND TO BE ALLOCATED TO THE ELIGIBLE DEPARTMENT'S ACCOUNT.

(V) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, THE STATE TREASURER SHALL NOT TRANSFER ANY MONEYS FROM A QUALIFYING FUND IF:

(A) THE REVERSION IS REQUIRED PURSUANT TO SECTION 24-37.5-112 (2); OR

(B) THERE ARE INSUFFICIENT MONEYS IN THE FUND FOR THE FULL TRANSFER. IN SUCH CASE, THE STATE TREASURER SHALL TRANSFER AS MUCH AS IS AVAILABLE.

(VI) IN ORDER TO PROVIDE MONEYS TO A DEPARTMENT THAT IS UNABLE TO GENERATE SUBSTANTIAL REVERSION AMOUNTS BECAUSE OF THE

MANNER IN WHICH MONEYS ARE APPROPRIATED TO THE DEPARTMENT OR OTHER FACTORS, THE GOVERNOR MAY DIRECT THE STATE TREASURER TO REALLOCATE MONEYS AMONG DEPARTMENT ACCOUNTS IN THE FUND. THE TOTAL AMOUNT REALLOCATED PURSUANT TO THIS SUBPARAGRAPH (VI) DURING A STATE FISCAL YEAR SHALL NOT EXCEED TWO MILLION DOLLARS. NO OTHER REALLOCATION OF MONEYS AMONG ACCOUNTS IS PERMITTED.

(4) **Annual compensation process.** (a) The purpose of the annual compensation process is to determine any necessary adjustments to state employee salaries, state contributions for group benefit plans, and ~~performance awards~~ MERIT PAY. The annual compensation survey, based on an analysis of surveys by public or private organizations, including surveys by the state personnel director, shall include a fair sample of public and private sector employers and jobs, including areas outside the Denver metropolitan area. In order to establish confidence in the selection of surveys, the state personnel director shall meet and confer in good faith with management and state employee representatives.

(b) (I) The state personnel director shall prepare an annual compensation report based on the analysis of surveys conducted pursuant to paragraph (a) of this subsection (4). The purpose of the annual compensation report shall be to reflect all adjustments necessary to maintain the salary structure, state contributions for group benefit plans, and ~~performance awards~~ MERIT PAY for the upcoming fiscal year. FOR THE MERIT PAY COMPONENT, THE STATE PERSONNEL DIRECTOR SHALL INCLUDE A DESCRIPTION OF THE AMOUNT NECESSARY FOR MERIT PAY FOR ALL ELIGIBLE STATE EMPLOYEES, AS WELL AS THE AMOUNT NECESSARY FOR EACH PRIORITY GROUP OF STATE EMPLOYEES. THE STATE PERSONNEL DIRECTOR SHALL ALSO INCLUDE A DETAILED ANALYSIS OF SALARY RANGES FOR ALL EMPLOYEES IN THE STATE PERSONNEL SYSTEM AND HOW EMPLOYEES' SALARIES ARE DISTRIBUTED WITHIN THESE RANGES. EACH DEPARTMENT MAY PROVIDE THE STATE PERSONNEL DIRECTOR WITH A RECOMMENDATION REGARDING THE AMOUNT OF MONEYS THAT SHOULD BE APPROPRIATED TO THE DEPARTMENT FOR MERIT PAY FOR THE UPCOMING FISCAL YEAR. THE STATE PERSONNEL DIRECTOR SHALL ESTABLISH DEADLINES FOR THE RECOMMENDATIONS AND SHALL INCLUDE A SUMMARY OF ALL THE RECOMMENDATIONS HE OR SHE RECEIVES IN THE ANNUAL COMPENSATION REPORT. The state auditor is responsible for contracting with a private firm to conduct a performance audit of the procedures and application of data, including any survey conducted by the state personnel

director. ~~Beginning January 1, 2003, such audits shall be conducted every two years, and Beginning January 1, 2005, the audits shall be conducted every four years.~~ A report shall be submitted to the governor and the general assembly by the June 30 immediately following the completion of the audit.

(c) By August 1, 2003, and by August 1 of each year thereafter, the state personnel director shall submit the annual compensation report and recommendations and estimated costs for state employee compensation for the next fiscal year, covering salaries, state contributions for group benefit plans, and ~~performance awards~~ MERIT PAY, to the governor and the joint budget committee of the general assembly. The recommendations shall reflect a consideration of the results of the annual compensation survey, fiscal constraints, the ability to recruit and retain state employees, appropriate adjustments with respect to state employee compensation, and those costs resulting from implementation of section 24-50-110 (1) (a). The recommendations for state contributions for group benefit plans shall specify the annual group benefit plan year established pursuant to section 24-50-604 (1) (m). The annual compensation report shall include the results of the surveys of public or private employers and jobs for prevailing total compensation and the reasons for any deviation from prevailing total compensation in the recommendations submitted to the governor and the joint budget committee. The state personnel director shall also publish such report. THIS PARAGRAPH (c) IS EXEMPT FROM THE PROVISIONS OF SECTION 24-1-136 (11), AND THE PERIODIC REPORTING REQUIREMENTS OF THIS SECTION ARE EFFECTIVE UNTIL CHANGED BY THE GENERAL ASSEMBLY ACTING BY BILL.

SECTION 7. In Colorado Revised Statutes, 24-50-109.5, **amend** (2) as follows:

24-50-109.5. Fiscal emergencies - emergency orders. (2) With the advice and assistance of the state personnel director, the governor shall take such actions as necessary to be utilized by each principal department and each institution of higher education to reduce state personnel expenditures in the event of a fiscal emergency. Such actions shall include, but need not be limited to, separations, voluntary furloughs, mandatory furloughs, suspension of increases in salary and state contributions for group benefit plans, suspension of ~~performance awards~~ MERIT PAY, job-sharing, hiring freezes, forced reallocation of vacant positions, or a combination thereof. Any suspension of salary increases OR increases in state contributions for

group benefit plans ~~or performance awards~~ shall apply statewide to all employees in the state personnel system. If mandatory furloughs are utilized in any principal department or institution of higher education, such furloughs shall be implemented by each appointing authority so that all employees under such authority, regardless of status, position, or level of employment, are furloughed for the same length of time, consistent with section 24-2-103 (2). Employees of the following agencies and employees with duties as described shall not be subject to mandatory furlough: The Colorado state patrol, correctional officers, police officers, employees of the department of human services providing hands-on care, and employees providing hands-on nursing care.

SECTION 8. In Colorado Revised Statutes, 24-50-110, **amend** (1) (b) as follows:

24-50-110. Budget control - personal services. (1) In order to provide controls and proper identification of personal services costs necessary to carry out the policy of the state regarding compensation of state employees, the following administrative and fiscal procedures shall apply:

(b) In their annual budget requests, the heads of all principal departments of state government shall set forth separately the projected costs of personal services arising from anticipated classification reviews, promotions, and other increases in compensation or bonuses for employees in their departments. THE COSTS OF PERSONAL SERVICES SHALL INCLUDE ANY MERIT PAY.

SECTION 9. In Colorado Revised Statutes, 24-50-112.5, **amend** (1), (2) (b), (3), (4) (a), (4) (b), and (4) (c); and **add** (4) (e) as follows:

24-50-112.5. Selection system. (1) (a) The state personnel director shall establish procedures and directives necessary to implement a merit-based statewide selection system to be used uniformly by all principal departments. Such procedures and directives shall include, but are not limited to, procedures for acceptance of applications, job qualification standards for candidates, extension of eligible lists, CONSISTENT EVALUATION AND EXAMINATION PROCEDURES FOR EQUIVALENT JOB CLASSIFICATIONS, and ~~examination~~ development and administration standards FOR THE COMPARATIVE ANALYSIS PROCESS.

(b) Appointments and promotions to positions shall be based on ~~job-related knowledge, skills, abilities, competencies, behaviors, and quality of performance as demonstrated by~~ A fair and open competitive ~~examinations~~ COMPARATIVE ANALYSIS OF CANDIDATES BASED ON OBJECTIVE CRITERIA. Selections shall be made without regard to race, color, creed, religion, national origin, ancestry, age, sexual orientation, marital status, or political affiliation and without regard to sex or disability except as otherwise provided by law.

(2) **Employment lists.** (b) Candidates ~~receiving a final passing score at the completion of the examination process~~ shall be placed on an eligible list and ranked BASED ON THE COMPARATIVE ANALYSIS. Qualified candidates shall receive veterans' preference as prescribed by section 15 of article XII of the state constitution. The person to be appointed to any position under the state personnel system shall be one of the ~~three~~ SIX persons ranking highest on the eligible list or such lesser number as qualify. ~~The duration of an eligible list shall be six months but may be extended by the state personnel director.~~

(3) **Comparative analysis of candidates.** (a) ~~Examinations~~ EACH APPOINTING AUTHORITY shall ~~be based on~~ DEVELOP THE COMPARATIVE ANALYSIS OF CANDIDATES BASED ON OBJECTIVE CRITERIA TO BE USED BY THE APPOINTING AUTHORITY. A COMPARATIVE ANALYSIS MUST BE A PROFESSIONALLY ACCEPTED STANDARD THAT COMPARES specific job-related knowledge, skills, abilities, behaviors, and other competencies. ~~Examinations shall be conducted as needed.~~ A COMPARATIVE ANALYSIS MAY INCLUDE, BUT IS NOT LIMITED TO, A WRITTEN EXAMINATION, ORAL BOARD, OR SEARCH COMMITTEE. Only qualified applicants shall be included in ~~the examination~~ A COMPARATIVE ANALYSIS process. Applicants shall not be rejected solely because they do not have the education required, except where education is a prerequisite for a profession or is required by law. Where education is not a prerequisite or is not required by law, an applicant's experience shall be considered.

(b) Promotional ~~examinations~~ COMPARATIVE ANALYSIS shall be limited to qualified employees, including persons on reemployment lists. Performance evaluations may be utilized as part of a promotional ~~examination~~ COMPARATIVE ANALYSIS plan.

(4) **Appeals.** (a) Any person directly affected by the selection and

~~examination~~ COMPARATIVE ANALYSIS process action may file a written appeal with the state personnel director. The appeal must be filed within ten days after the administration of the ~~examination~~ COMPARATIVE ANALYSIS. The director or a designee of the director shall review the appeal in summary fashion on the basis of written material submitted in connection with such appeal, which may be supplemented by oral argument at the discretion of the director or designee.

(b) The state personnel director may convene an advisory panel of qualified human resource selection professionals, with one member selected by the aggrieved person, to assist the director in making a decision. Except as otherwise provided in paragraph (d) of this subsection (4), the director shall issue a written decision within ninety days after receipt of a timely appeal. The selection and ~~examination~~ COMPARATIVE ANALYSIS process action may be overturned only if the director finds the action to have been arbitrary, capricious, or contrary to rule or law. If the director fails to issue a decision within said ninety-day period, the original ~~examination~~ COMPARATIVE ANALYSIS and outcome shall be final. A written decision on any appeal filed pursuant to this subsection (4) or the outcome of an appeal resulting from the failure to issue such a decision shall be subject to judicial review pursuant to section 24-4-106, UNLESS THE MATTER IS APPEALED TO THE STATE PERSONNEL BOARD PURSUANT TO PARAGRAPH (e) OF THIS SUBSECTION (4).

(c) The state personnel director shall establish a process for timely resolving appeals within the ninety-day period and criteria for advisory panel selection and service. The process for resolving appeals shall specify that if an employee who has filed an appeal with the state personnel director also files an appeal with the state personnel board pursuant to section 24-50-123 or the Colorado civil rights division pursuant to section 24-50-125.3, only if the appeal filed with the board or the civil rights division arises out of the same incident as the appeal filed with the director, and if the appeal is filed before the expiration of the ninety-day period and before the director has issued a written decision, the ninety-day period shall be tolled until there is a final agency action by the board. The board shall establish rules for certification of a person to a position when an appeal is pending relative to the selection and ~~examination~~ COMPARATIVE ANALYSIS process for that position.

(e) AFTER THE STATE PERSONNEL DIRECTOR'S FINAL DECISION

PURSUANT TO THIS SUBSECTION (4), ANY PERSON DIRECTLY AFFECTED BY THE COMPARATIVE ANALYSIS PROCESS MAY FILE A WRITTEN APPEAL WITH THE STATE PERSONNEL BOARD. THE PETITION MUST BE FILED WITHIN TEN DAYS AFTER THE STATE PERSONNEL DIRECTOR'S FINAL DECISION HAS BEEN RECEIVED BY THE AFFECTED PERSON. THE BOARD MAY GRANT THE PETITION ONLY WHEN IT APPEARS THAT THE DECISION OF THE APPOINTING AUTHORITY VIOLATES THE COMPARATIVE ANALYSIS STANDARDS SET FORTH IN THIS SECTION, IN ANY OTHER PROVISION OF LAW, OR IN ANY RULES OR PROCEDURES RELATING TO THE COMPARATIVE ANALYSIS PROCESS. THE BOARD SHALL REVIEW AND SUMMARILY GRANT OR DENY A PETITION WITHIN ONE HUNDRED TWENTY DAYS OF RECEIPT OF THE PETITION. ANY PETITION GRANTED SHALL BE DETERMINED IN ACCORDANCE WITH SECTION 24-50-125.4.

SECTION 10. In Colorado Revised Statutes, 24-50-114, **amend** (1) and (2) as follows:

24-50-114. Temporary appointments - term - tenure. (1) Pending the availability of an eligible list determined by the state personnel director to be appropriate for a class, the appointing authority, with the prior approval of the state personnel director, may fill a vacancy for a permanent position by temporary appointment of a qualified, certified employee in accordance with the promotional policy established by the board. In the absence of such an eligible employee, temporary appointments of qualified persons may be made from without the state personnel system. ~~Such temporary appointments~~ A TEMPORARY APPOINTMENT shall not exceed ~~six~~ NINE months in length, except for personal services contracts as permitted by part 5 of this article. AN APPOINTING AUTHORITY MUST WAIT AT LEAST FOUR MONTHS BETWEEN TEMPORARY APPOINTMENTS FOR THE SAME POSITION THAT ARE MADE PURSUANT TO THIS SUBSECTION (1). If the vacancy is for a permanent position, an eligible list shall be established within the ~~six-month~~ NINE-MONTH period following the TEMPORARY appointment.

(2) The state personnel director may, by rule, authorize principal department heads and presidents of colleges and universities to employ persons from outside the state personnel system on a temporary basis while an eligible list is being provided or in emergency or seasonable situations nonpermanent in nature, but in each case the period of employment shall not exceed ~~six~~ NINE months, except for personal services contracts as permitted by part 5 of this article.

SECTION 11. In Colorado Revised Statutes, **amend** 24-50-124 as follows:

24-50-124. Reduction of employees - definition. (1) (a) When certified employees WHO, AS OF JANUARY 1, 2013, ARE WITHIN FIVE YEARS FROM BEING ELIGIBLE FOR FULL RETIREMENT PURSUANT TO SECTION 24-51-602 (1) (a) are separated from state service, ~~due to lack of work, lack of funds, or reorganization~~, they shall be separated or demoted according to procedures established by rule. Such ~~procedure~~ PROCEDURES shall require that consideration be given to performance evaluations of the employees and seniority within the total state service. Such employees shall have retention rights throughout the principal department in which they are employed unless the head of the department requests, and the board approves, in advance, limitation of retention rights to major divisions, institutions, or colleges within the principal department.

(b) THE STATE PERSONNEL DIRECTOR SHALL ESTABLISH PROCEDURES, BY RULE, FOR THE SEPARATION OR DEMOTION OF ANY CERTIFIED EMPLOYEES NOT COVERED BY PARAGRAPH (a) OF THIS SUBSECTION (1) FROM STATE SERVICE DUE TO LACK OF WORK, LACK OF FUNDS, OR REORGANIZATION. SUCH PROCEDURES SHALL REQUIRE THAT CONSIDERATION BE GIVEN TO PERFORMANCE EVALUATIONS OF AN EMPLOYEE AND SENIORITY WITHIN THE TOTAL STATE SERVICE.

(c) THE APPOINTING AUTHORITIES FROM ALL DEPARTMENTS SHALL CONSIDER PLACING A CERTIFIED EMPLOYEE WHO HAS BEEN IDENTIFIED PURSUANT TO THE PROCEDURES ESTABLISHED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1) AS A PERSON TO BE SEPARATED FROM STATE SERVICE INTO A FUNDED, VACANT POSITION FOR WHICH THE EMPLOYEE IS QUALIFIED. THE STATE PERSONNEL DIRECTOR SHALL ESTABLISH BY RULE PROCEDURES FOR SUCH PLACEMENTS.

(d) (I) THE STATE PERSONNEL DIRECTOR SHALL ESTABLISH BY RULE A LAYOFF PLAN THAT MAY BE USED BY A DEPARTMENT TO PROVIDE POSTEMPLOYMENT COMPENSATION OR OTHER BENEFITS FOR CERTIFIED EMPLOYEES SEPARATED FROM STATE SERVICE. THE PLAN MAY INCLUDE, BUT IS NOT LIMITED TO, A HIRING PREFERENCE, PAYMENT TOWARDS THE CONTINUATION OF HEALTH BENEFITS FOR A SPECIFIED TIME AFTER SEPARATION, TUITION OR EDUCATIONAL TRAINING VOUCHERS, SEVERANCE PAY, OR PLACEMENT ON A DEPARTMENTAL REEMPLOYMENT LIST.

(II) THE POSTEMPLOYMENT COMPENSATION OR OTHER BENEFITS MAY BE OFFERED THROUGH A SEPARATION AGREEMENT.

(III) IN NO CASE SHALL THE TOTAL VALUE OF THE POSTEMPLOYMENT COMPENSATION AND OTHER BENEFITS AUTHORIZED PURSUANT TO THIS PARAGRAPH (d) EXCEED AN AMOUNT EQUAL TO ONE WEEK OF AN EMPLOYEE'S SALARY FOR EVERY YEAR OF HIS OR HER SERVICE, UP TO A MAXIMUM OF EIGHTEEN WEEKS OF THE EMPLOYEE'S SALARY.

(IV) A CERTIFIED EMPLOYEE IS NOT ENTITLED TO RECEIVE ANY POSTEMPLOYMENT COMPENSATION OR OTHER BENEFITS PURSUANT TO THIS PARAGRAPH (d).

(2) A certified employee who is separated FROM STATE SERVICE shall be placed on a departmental reemployment list for a period of not less than one year, UNLESS THE EMPLOYEE WAIVES THE RIGHT TO BE SO PLACED AS PART OF A SEPARATION AGREEMENT.

(3) AS USED IN THIS SECTION, "SEPARATED FROM STATE SERVICE" MEANS SEPARATED FROM STATE SERVICE DUE TO LACK OF WORK, LACK OF FUNDS, OR REORGANIZATION.

SECTION 12. In Colorado Revised Statutes, 24-50-135, **add** (4) as follows:

24-50-135. Exemptions from personnel system. (4) THE STATE PERSONNEL DIRECTOR SHALL ESTABLISH PROCEDURES TO APPROVE THE EXEMPTION OF AN EMPLOYEE FROM THE STATE PERSONNEL SYSTEM PURSUANT TO SECTION 13 (2) (a) (XI) AND (2) (a) (XII) OF ARTICLE XII OF THE STATE CONSTITUTION.

SECTION 13. In Colorado Revised Statutes, 24-75-112, **amend** (1) (b) as follows:

24-75-112. Annual general appropriation act - headnote definitions - general provisions - footnotes. (1) As used in the annual general appropriation act, the following definitions and general provisions shall apply for the headnote terms preceding and specifying the purpose of certain line items of appropriation:

(b) "Centralized appropriation" means the appropriation of funds to an executive director of a department or a central administrative program intended for subsequent allocation and expenditure at and among a department's divisions, programs, agencies, or long bill groups in order to reflect the amount of such resources actually used in each program or division. Such centralized appropriations may include salary survey, ~~performance-based~~ MERIT pay or anniversary increases, senior executive service, shift differential, group health and life insurance, capital outlay, ADP capital outlay, information technology asset maintenance, legal services, purchase of services from computer center, multiuse network payments, vehicle lease payments, leased space, lease purchase, payment to risk management and property funds, short-term disability insurance, utilities, communications services payments, amortization equalization disbursements, supplemental amortization equalization disbursements, administrative law judge services, and centralized ADP. As provided in paragraph (1) of this subsection (1), capital outlay is included within the appropriation for "operating expenses".

SECTION 14. Act subject to petition - effective date - contingent on House Concurrent Resolution 12-1001. (1) Except as set forth in subsection (2) of this section, this act takes effect September 1, 2012; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act subject to the provisions of this subsection (1) within the ninety-day period after final adjournment of the general assembly, then the item, section, or part subject to the provisions of this subsection (1) will not take effect unless approved by the people at the general election to be held in November 2012 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) Sections 5, 9, 10, and 12 of this act take effect only if House Concurrent Resolution 12-1001 is approved by the people at the next general election and becomes law, and, in such case, such sections of this act take effect on the date of the official declaration of the vote thereon by the governor; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against section 5, 9, 10, or 12 of this act within such period, then such section or any item, section, or

part thereof will not take effect unless approved by the people at the general election to be held in November 2012.

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO