

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 12, 2013
Date

Committee on Appropriations.

After consideration on the merits, the Committee recommends the following:

HB13-1136 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

- 1 Amend the Judiciary Committee Report, dated February 14, 2013, page
- 2 1, strike line 1 and substitute:

- 3 "Amend printed bill, page 3, strike line 10 and substitute "APPROPRIATE,
- 4 INCLUDING THE FOLLOWING RELIEF, AGAINST A RESPONDENT WHO IS
- 5 FOUND TO HAVE ENGAGED IN AN UNFAIR OR DISCRIMINATORY
- 6 EMPLOYMENT PRACTICE:".

- 7 Page 4 of the bill, line 4, after "SECTION," insert "AND EXCEPT".

- 8 Page 1 of the committee report, after line 2 insert:

- 9 "Page 4 of the bill, line 9, strike "A" and substitute "THE COMMISSION OR
- 10 COURT SHALL NOT AWARD A COMPLAINING PARTY OR PLAINTIFF".

- 11 Page 4 of the bill, strike line 10."

- 12 Page 1 of the committee report, after line 5 insert:

- 13 "Page 4 of the bill, line 17, strike "DEFENDANT" and substitute
- 14 "DEFENDANT, OTHER THAN THE STATE OR ANY POLITICAL SUBDIVISION,
- 15 COMMISSION, DEPARTMENT, INSTITUTION, OR SCHOOL DISTRICT OF THE
- 16 STATE,".

1 Page 2 of the committee report, after line 12 insert:

2 "Page 6 of the bill, after line 8 insert:

3 "(7) (a) THE PROCEDURES SET FORTH IN THIS SUBSECTION (7)
4 APPLY TO A COMPLAINT FILED BY AN APPLICANT FOR A POSITION IN THE
5 STATE PERSONNEL SYSTEM OR BY AN EMPLOYEE IN THE STATE PERSONNEL
6 SYSTEM, COLLECTIVELY REFERRED TO IN THIS SUBSECTION (7) AS THE
7 "AGGRIEVED PARTY", ALLEGING AN INTENTIONAL DISCRIMINATORY OR
8 UNFAIR EMPLOYMENT PRACTICE.

9 (b) THE STATE PERSONNEL BOARD ESTABLISHED PURSUANT TO
10 SECTION 14 OF ARTICLE XII OF THE STATE CONSTITUTION SHALL NOT
11 AWARD COMPENSATORY DAMAGES TO AN AGGRIEVED PARTY ALLEGING AN
12 INTENTIONAL DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE. AN
13 AGGRIEVED PARTY WHO IS SEEKING COMPENSATORY DAMAGES AS
14 AUTHORIZED IN SUBSECTION (3) OF THIS SECTION MUST FILE A CIVIL
15 ACTION IN A COURT OF COMPETENT JURISDICTION TO RECOVER
16 COMPENSATORY DAMAGES.

17 (c) (I) UPON ISSUANCE OF A WRITTEN DECISION BY THE STATE
18 PERSONNEL BOARD PURSUANT TO SECTION 24-50-125.4 IN WHICH THE
19 STATE PERSONNEL BOARD MAKES A FINDING OF AN INTENTIONAL
20 DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE, AN AGGRIEVED
21 PARTY MAY FILE A CIVIL ACTION IN A DISTRICT COURT IN THIS STATE
22 SEEKING COMPENSATORY DAMAGES AS AUTHORIZED IN SUBSECTION (3) OF
23 THIS SECTION.

24 (II) IF AN ADMINISTRATIVE LAW JUDGE ISSUES THE INITIAL
25 WRITTEN DECISION ON BEHALF OF THE STATE PERSONNEL BOARD, THE
26 AGGRIEVED PARTY MAY NOT FILE A CIVIL ACTION UNTIL AFTER THE
27 EXPIRATION OF THE THIRTY-DAY PERIOD SPECIFIED IN SECTION
28 24-50-125.4 (4) FOR FILING AN APPEAL. IF A PARTY DOES NOT FILE AN
29 APPEAL OF THE ADMINISTRATIVE LAW JUDGE'S INITIAL DECISION WITH THE
30 STATE PERSONNEL BOARD IN ACCORDANCE WITH SECTION 24-50-125.4 (4),
31 THE AGGRIEVED PARTY MUST FILE THE CIVIL ACTION FOR COMPENSATORY
32 DAMAGES WITHIN THIRTY DAYS AFTER THE EXPIRATION OF THE APPEAL
33 PERIOD SPECIFIED IN SECTION 24-50-125.4 (4). IF A PARTY FILES AN
34 APPEAL WITH THE STATE PERSONNEL BOARD IN ACCORDANCE WITH
35 SECTION 24-50-125.4 (4), THE AGGRIEVED PARTY MUST FILE THE CIVIL
36 ACTION FOR COMPENSATORY DAMAGES WITHIN THIRTY DAYS AFTER THE
37 DATE THE STATE PERSONNEL BOARD TRANSMITS THE NOTICE OF ITS
38 DECISION ON THE APPEAL IN ACCORDANCE WITH SECTION 24-50-125.4 (6).

39 (III) IF THE AGGRIEVED PARTY FAILS TO FILE AN ACTION FOR

1 COMPENSATORY DAMAGES WITHIN THIRTY DAYS AFTER THE APPEAL
2 PERIOD EXPIRES OR THE DATE THE STATE PERSONNEL BOARD'S NOTICE OF
3 DECISION IS TRANSMITTED, WHICHEVER IS APPLICABLE PURSUANT TO
4 SUBPARAGRAPH (II) OF THIS PARAGRAPH (c), THE ACTION FOR
5 COMPENSATORY DAMAGES IS BARRED, NO DISTRICT COURT HAS
6 JURISDICTION TO HEAR THE ACTION, AND THE STATE PERSONNEL BOARD'S
7 DECISION BECOMES FINAL AND IS SUBJECT TO JUDICIAL REVIEW PURSUANT
8 TO SECTIONS 24-50-125.4 (3) AND 24-4-106 (11).

9 (d) THE AGGRIEVED PARTY AND THE DISTRICT COURT SHALL SERVE
10 A COPY OF THE CIVIL ACTION COMPLAINT ON THE STATE PERSONNEL
11 BOARD, AND UPON RECEIPT OF THE COMPLAINT, THE STATE PERSONNEL
12 BOARD'S DECISION IS AUTOMATICALLY STAYED PENDING THE OUTCOME OF
13 THE CIVIL ACTION, IN WHICH CASE THE STATE PERSONNEL BOARD'S
14 DECISION IS NOT A FINAL ORDER SUBJECT TO JUDICIAL REVIEW PURSUANT
15 TO SECTIONS 24-50-125.4 (3) AND 24-4-106 (11) UNTIL THE DISTRICT
16 COURT ISSUES A FINAL JUDGMENT IN THE CIVIL ACTION FOR
17 COMPENSATORY DAMAGES.

18 (e) (I) IN A CIVIL ACTION BROUGHT PURSUANT TO THIS SUBSECTION
19 (7) FOR COMPENSATORY DAMAGES AFTER THE STATE PERSONNEL BOARD
20 MAKES A FINDING OF AN INTENTIONAL DISCRIMINATORY OR UNFAIR
21 EMPLOYMENT PRACTICE, THE DISTRICT COURT SHALL CONSIDER THE ISSUE
22 OF WHETHER THE AGGRIEVED PARTY IS ENTITLED TO COMPENSATORY
23 DAMAGES AND THE AMOUNT OF DAMAGES, IF AWARDED.

24 (II) THE DISTRICT COURT MAY AWARD ATTORNEY FEES AND COSTS
25 IN CONNECTION WITH THE ACTION FOR COMPENSATORY DAMAGES
26 CONSISTENT WITH SUBSECTION (5) OF THIS SECTION.

27 (III) THE DISTRICT COURT SHALL EXPEDITE THE ACTION FOR
28 COMPENSATORY DAMAGES AND SET THE MATTER FOR TRIAL AT THE
29 EARLIEST PRACTICAL TIME.

30 (f) UPON ENTERING A FINAL JUDGMENT IN A CIVIL ACTION
31 BROUGHT PURSUANT TO THIS SUBSECTION (7), THE DISTRICT COURT SHALL
32 SERVE NOTICE OF THE JUDGMENT ON THE PARTIES AND THE STATE
33 PERSONNEL BOARD. ONCE THE STATE PERSONNEL BOARD RECEIVES A
34 FINAL JUDGMENT FROM THE DISTRICT COURT, THE STATE PERSONNEL
35 BOARD SHALL INCORPORATE THE DISTRICT COURT JUDGMENT IN ITS
36 DECISION, WHICH BECOMES A FINAL ORDER SUBJECT TO JUDICIAL REVIEW
37 IN ACCORDANCE WITH SECTIONS 24-50-125.4 (3) AND 24-4-106 (11).

38 (g) A CLAIM FILED PURSUANT TO THIS SUBSECTION (7) BY AN
39 AGGRIEVED PARTY AGAINST THE STATE FOR COMPENSATORY DAMAGES
40 FOR AN INTENTIONAL UNFAIR OR DISCRIMINATORY EMPLOYMENT PRACTICE
41 IS NOT SUBJECT TO THE "COLORADO GOVERNMENTAL IMMUNITY ACT",

1 ARTICLE 10 OF THIS TITLE.

2 **SECTION 2.** In Colorado Revised Statutes, 24-30-1510, **amend**
3 (3) (a) as follows:

4 **24-30-1510. Risk management fund - creation - authorized**
5 **and unauthorized payments.** (3) Expenditures shall be made out of the
6 risk management fund in accordance with subsection (1) of this section
7 only for the following purposes:

8 (a) To pay liability claims and expenses related thereto, brought
9 against the state, its officials, or its employees pursuant to the "Colorado
10 Governmental Immunity Act", article 10 of this title; ~~and~~ claims against
11 the state, its officials, or its employees arising under federal law, which
12 the state is legally obligated to pay and which are compromised or settled
13 pursuant to section 24-30-1515 or in which a final money judgment
14 against the state has been entered; OR CLAIMS FOR COMPENSATORY
15 DAMAGES AGAINST THE STATE, ITS OFFICIALS, OR ITS EMPLOYEES
16 PURSUANT TO SECTION 24-34-405;"

17 Renumber succeeding sections accordingly."

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