

CHAPTER 88

GOVERNMENT - STATE

HOUSE BILL 93-1071

BY REPRESENTATIVES Anderson, Kerns, Ratterree, and Foster;
also SENATORS Bishop, Gallagher, and Martinez.

AN ACT

**CONCERNING THE AUTHORITY OF OFFICIALS OF THE EXECUTIVE DEPARTMENT OF STATE
GOVERNMENT OVER LEGISLATIVE EMPLOYMENT.**

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

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

(a) Pursuant to article V, section 49 of the constitution of Colorado, the state auditor's office is within the legislative department of the state government;

(b) Pursuant to article XII, section 14 (4) of the constitution of Colorado, the department of personnel is created in the executive department of state government and the state personnel director is responsible for administering the state personnel system under the constitution, the laws enacted pursuant thereto, and the rules adopted thereunder by the state personnel board.

(c) Pursuant to article V, section 49 (3) of the constitution of Colorado, three of the employees of the state auditor's office are exempt from the state personnel system and the remaining employees thereof are within such system;

(d) Pursuant to article V, section 49 of the constitution of Colorado and part 1 of article 3 of title 2, C.R.S., the state auditor is responsible for conducting financial and performance postaudits of the various agencies of state government, and auditor independence is a well-established and recognized standard of the audit profession.

(e) The unique position of the employees of the state auditor's office as legislative employees responsible for conducting audits of executive branch agencies, while subject to the personnel policies of the executive department of state government

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

applicable to employees of the personnel system, implicates the separation of powers doctrine established by article III of the constitution of Colorado and raises concerns about the ability of the state auditor's office to perform its constitutional and statutory functions with the necessary level of independence;

(f) It is the intent of the general assembly in enacting this act to promote the adoption of personnel policies applicable to employees of the state auditor's office that recognize and preserve the separation of powers doctrine and the independence required for the state auditor's office to carry out its constitutional and statutory duties.

SECTION 2. 24-50-104 (3), Colorado Revised Statutes, 1988 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-50-104. Classification and compensation. (3) Classification system principles. (h) THE STATE PERSONNEL DIRECTOR MAY, FOLLOWING CONSULTATION WITH THE STATE AUDITOR AND CONSISTENT WITH ARTICLE III AND SECTIONS 13, 14, AND 15 OF ARTICLE XII OF THE CONSTITUTION OF COLORADO, ESTABLISH SPECIAL PROCEDURES FOR THE CLASSIFICATION OF EMPLOYEES OF THE STATE AUDITOR'S OFFICE WHO ARE WITHIN THE STATE PERSONNEL SYSTEM IN ORDER TO TAKE INTO CONSIDERATION THE SPECIAL SITUATIONS, CIRCUMSTANCES, AND DUTIES UNIQUE TO SUCH EMPLOYEES. SUCH SPECIAL PROCEDURES SHALL INCORPORATE THE DIRECTIVES, REQUIREMENTS, AND ELEMENTS OF SECTIONS 13, 14, AND 15 OF ARTICLE XII OF THE COLORADO CONSTITUTION, INCLUDING, BUT NOT LIMITED TO, THE GRADING AND COMPENSATION OF PERSONS IN THE PERSONNEL SYSTEM ACCORDING TO STANDARDS OF EFFICIENT SERVICE WHICH ARE THE SAME FOR ALL PERSONS HAVING LIKE DUTIES.

SECTION 3. 24-50-112 (3) (a), Colorado Revised Statutes, 1988 Repl. Vol., is amended, and the said 24-50-112 (3) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

24-50-112. Examinations - when held - standards - eligible list. (3) (a) The state personnel director shall establish administrative procedures governing the conditions under which applications will be accepted, the procedures by which tests will be held, the frequency with which candidates may compete in the same examination, and the standards by which candidates shall be deemed qualified. The state personnel director shall, SUBJECT TO PARAGRAPH (c) OF THIS SUBSECTION (3), establish procedures governing the selection and examination process, which shall be uniformly used by the principal departments. The state personnel director shall set procedures for appeals concerning the selection and examination process. Pursuant to board rule, the director shall set procedures for certification of a person to a position when there is an appeal pending on any part of the selection and examination process for that position. The state personnel director or, at his delegation, a three-member panel shall hear any appeal concerning the selection and examination process. The appeal shall be heard within sixty days after the written appeal has been received by the state personnel director. Said director or panel shall review the appeal in summary fashion on the basis of written material, which may be supplemented by oral argument at the discretion of the director or panel. The director or panel shall issue a written decision within thirty days after completion of the hearing. The selection and examination process action may be overturned only if the director or panel finds it to have been arbitrary, capricious, or contrary to rule or law.

If the panel or director does not issue such a decision within thirty days of completion of the hearing, the selection and examination process action shall be final. Any decision of the panel or final action of the state personnel director shall be subject to judicial review pursuant to section 24-4-106. The state personnel director's designee shall be a member of the panel and the presiding officer of such panel. One panel member shall be selected by the aggrieved employee or applicant. The third panel member shall be selected jointly by the panel member selected by the aggrieved employee or applicant and the state personnel director's designee. All members of the panel shall have demonstrable knowledge of and experience with the state examination and selection rules and procedures. The state personnel director shall maintain a list of all potential qualified panel members. Such list shall be compiled by the state personnel director from names of persons possessing the required knowledge of and experience with the state examination and selection rules and procedures as submitted to the state personnel director from appointing authorities, employee organizations, and other interested parties. All members of the panel shall be selected from such list.

(c) THE STATE PERSONNEL DIRECTOR MAY, FOLLOWING CONSULTATION WITH THE STATE AUDITOR AND CONSISTENT WITH SECTIONS 13, 14, AND 15 OF THE CONSTITUTION OF COLORADO AND PRINCIPLES OF SEPARATION OF POWERS, ESTABLISH SPECIAL PROCEDURES GOVERNING THE SELECTION AND EXAMINATION PROCESS FOR EMPLOYEES OF THE STATE AUDITOR'S OFFICE IN THE STATE PERSONNEL SYSTEM IN ORDER TO TAKE INTO CONSIDERATION THE SPECIAL SITUATIONS, CIRCUMSTANCES, AND DUTIES UNIQUE TO SUCH EMPLOYEES. SUCH PROCEDURES SHALL INCORPORATE THE DIRECTIVES, REQUIREMENTS, AND ELEMENTS OF SECTIONS 13, 14, AND 15 OF ARTICLE XII OF THE COLORADO CONSTITUTION, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

(I) THE APPOINTMENT AND PROMOTION TO OFFICES AND EMPLOYMENTS IN THE STATE PERSONNEL SYSTEM ACCORDING TO MERIT AND FITNESS, TO BE ASCERTAINED BY COMPETITIVE TESTS OF COMPETENCE WITHOUT REGARD TO RACE, CREED, OR COLOR, OR POLITICAL AFFILIATION;

(II) THE APPOINTMENT TO ANY POSITION IN THE PERSONNEL SYSTEM OF ONE OF THE THREE PERSONS RANKING HIGHEST ON THE ELIGIBLE LIST FOR SUCH POSITION, OR SUCH LESSER NUMBER AS QUALIFY, AS DETERMINED FROM COMPETITIVE TESTS OF COMPETENCE, SUBJECT TO LIMITATION IN THE STATE PERSONNEL RULES APPLICABLE TO MULTIPLE APPOINTMENTS;

(III) THE AUTHORIZATION OF TEMPORARY EMPLOYMENT OF PERSONS, NOT TO EXCEED SIX MONTHS;

(IV) THE ADDITION OF VETERANS' PREFERENCE POINTS TO THE PASSING GRADE ON EACH COMPETITIVE EXAMINATION FOR CANDIDATES FOR APPOINTMENT OR EMPLOYMENT IN THE PERSONNEL SYSTEM; AND

(V) REQUIRING THAT ALL APPOINTEES RESIDE IN THE STATE, BUT NOT LIMITING APPLICATIONS TO COLORADO RESIDENTS FOR THOSE POSITIONS FOUND BY THE STATE PERSONNEL BOARD TO REQUIRE SPECIAL EDUCATION OR TRAINING OR SPECIAL PROFESSIONAL OR TECHNICAL QUALIFICATIONS AND WHICH CANNOT BE READILY FILLED FROM AMONG SUCH RESIDENTS.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 7, 1993