

CHAPTER 361

GOVERNMENT - STATE

HOUSE BILL 04-1373

BY REPRESENTATIVE(S) Marshall, Jahn, Miller, Borodkin, Coleman, Fairbank, Hall, Harvey, Hefley, Lundberg, May M., Mitchell, Spence, Crane, Lee, Paccione, Ragsdale, and Weddig;
also SENATOR(S) Anderson, McElhany, and Teck.

AN ACT

CONCERNING MODIFICATIONS TO THE "STATE PERSONNEL SYSTEM ACT".

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

SECTION 1. 24-1-108, Colorado Revised Statutes, is amended to read:

24-1-108. Appointment of officers and employees. ~~Any provisions~~ NOTWITHSTANDING ANY OTHER PROVISION of law ~~to the contrary notwithstanding~~ and subject to the provisions of the constitution of the state of Colorado, the head of a principal department shall be appointed by the governor, with the consent of the senate. The head of a principal department shall appoint all subordinate officers and employees of his office and the head of each division under his THE department. ~~and the head of each division shall appoint all employees in his division, but all appointments made by the head of a principal department and heads of divisions shall be made in accordance with section 24-2-102.~~

SECTION 2. 24-1-128, Colorado Revised Statutes, is amended to read:

24-1-128. Department of personnel and administration - creation.

(1) ~~Pursuant to the provisions of section 14 of article XII of the state constitution,~~ There is hereby created a department of personnel AND ADMINISTRATION, the head of which shall be the ~~state personnel~~ EXECUTIVE director, ~~also referred to as the executive director of personnel,~~ who shall be appointed by the governor, with the consent of the senate, and who shall serve at the pleasure of the governor.

(2) The state personnel board, created by section 14 of article XII of the state constitution, and its powers, duties, and functions are transferred by a **type 1** transfer to the department of personnel AND ADMINISTRATION, subject to the provisions of the

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

state constitution.

(3) The civil service commission and its powers, duties, and functions are transferred by a **type 3** transfer to the department of personnel AND ADMINISTRATION and allocated to the state personnel board and the state personnel director, pursuant to the provisions of the state constitution and laws enacted pursuant thereto, and the civil service commission is abolished.

~~(4) The state employees' and officials' group insurance board of administration, created by part 2 of article 8 of title 10, C.R.S., and its powers, duties, and functions are transferred by a **type 3** transfer to the department of personnel and allocated to the state personnel director, pursuant to the provisions of the state constitution and laws enacted pursuant thereto, and the state employees' and officials' group insurance board of administration is abolished.~~

(5) The state deferred compensation committee, created by article 52 of this title, shall exercise its powers and perform its duties and functions as if it were transferred by a **type 1** transfer to the department of personnel AND ADMINISTRATION.

(6) The powers, duties, and functions of the department of administration are transferred by a **type 3** transfer to the department of personnel AND ADMINISTRATION, and the department of administration is hereby abolished.

(7) The department of personnel AND ADMINISTRATION shall include the following administrative support services:

(a) The powers, duties, and functions concerning purchasing, specified in part 2 of article 102 of this title, shall be administered as if transferred by a **type 2** transfer to the department of personnel AND ADMINISTRATION.

(b) The powers, duties, and functions concerning state archives and public records, specified in part 1 of article 80 of this title, shall be administered as if transferred by a **type 2** transfer to the department of personnel AND ADMINISTRATION.

(c) The powers, duties, and functions of the general government computer center, specified ~~in this article and~~ in part 16 of article 30 of this title concerning the center, shall be administered as if transferred by a **type 2** transfer to the department of personnel AND ADMINISTRATION. The powers, duties, and functions concerning the operation of automated data processing equipment, including the data entry, systems development and programming, and computer functions thereof, are transferred by a **type 2** transfer to the general government computer center.

(d) The powers, duties, and functions concerning accounts and control and the office of controller, specified in part 2 of article 30 of this title, except those powers, duties, and functions transferred by paragraph (c) of this subsection (7), shall be administered as if transferred by a **type 2** transfer to the department of personnel AND ADMINISTRATION.

(e) The powers, duties, and functions concerning telecommunications, specified in part 9 of article 30 of this title, shall be administered as if transferred by **type 2** transfer to the department of personnel AND ADMINISTRATION.

(f) Division of administrative hearings, the head of which shall be the executive director of the department of personnel AND ADMINISTRATION. The division of administrative hearings, created by part 10 of article 30 of this title, and its powers, duties, and functions are transferred by a **type 2** transfer to the department of personnel AND ADMINISTRATION as a division thereof.

(g) The powers, duties, and functions concerning central services, specified in part 11 of article 30 of this title, shall be administered as if transferred by a **type 2** transfer to the department of personnel AND ADMINISTRATION.

(h) The powers, duties, and functions concerning the risk management system, specified in part 15 of article 30 of this title, shall be administered as if transferred by a **type 2** transfer to the department of personnel AND ADMINISTRATION.

(i) (Deleted by amendment, L. 96, p. 1493, § 1, effective June 1, 1996.)

(j) The incentive award suggestion system board, ~~Such board~~, created by part 8 of article 30 of this title, and its powers, duties, and functions are transferred by a **type 2** transfer to the department of personnel AND ADMINISTRATION.

(k) The powers, duties, and functions concerning state buildings, ~~Such powers, duties, and functions~~, specified by part 13 of article 30 of this title and formerly vested in the office of state planning and budgeting, are transferred by a **type 2** transfer to the department of personnel AND ADMINISTRATION.

(l) The state claims board, created by part 15 of article 30 of this title, and its powers, duties, and functions are transferred by a **type 1** transfer to the department of personnel AND ADMINISTRATION.

(m) Repealed.

SECTION 3. 24-33.5-205, Colorado Revised Statutes, is amended to read:

24-33.5-205. Chief - appointment - qualifications. ~~Pursuant to section 13 of article XII of the state constitution and state personnel system laws,~~ The executive director shall appoint a chief, ~~The chief~~ WHO shall be the executive head and senior administrative officer of the Colorado state patrol. ~~He~~ THE CHIEF shall supervise and direct the administration and all activities of the Colorado state patrol. ~~The chief~~ AND shall set forth, with the approval of the executive director, rules ~~and regulations~~ governing all operating procedures of the Colorado state patrol and courtesies and customs for the good order of the service. ~~He~~ THE CHIEF shall have been an officer of the Colorado state patrol for at least seven years immediately preceding his OR HER appointment, four years of which must have been served in an administrative capacity as a commissioned officer. The chief may designate an officer ~~as acting~~ TO ACT AS chief ~~to act in his stead~~ at any time he OR SHE is unable to perform his OR HER duties. ~~He~~ THE CHIEF shall fulfill all requirements ~~which~~ THAT are in effect at the time of his OR HER appointment, as are set forth in the job specification for the position by the state personnel EXECUTIVE director. ~~He~~ THE CHIEF shall receive such compensation ~~as is commensurate with the specific grade assigned his position by the state personnel director~~ BE AN EXEMPT OFFICER PURSUANT TO SECTION 24-50-135 (3).

SECTION 4. 24-50-101 (1), (2), (3) (c), and (3) (d), Colorado Revised Statutes, are amended to read:

24-50-101. Short title - legislative declaration - terminology. (1) This article shall be known and may be cited as the "State Personnel System Act". It is the purpose of this article and the personnel rules adopted pursuant to this article to provide a sound, comprehensive, and uniform system of personnel management and administration for the employees within the state personnel system as defined by the constitution of the state of Colorado and laws enacted pursuant thereto, including all employees of the state colleges and universities not otherwise exempted by law AND ALL CERTIFIED EMPLOYEES OF THE OFFICE OF THE STATE AUDITOR.

(2) Whenever, in any law of this state relating to state employees, reference is made to the civil service, the state civil service, or the classified service, such terms shall be deemed to refer to the state personnel system. Whenever reference is made to ~~the civil service commission in any law of this state relating to the administration of the state personnel system, such term shall be deemed to refer to the state personnel director. Whenever reference is made to the civil service commission in any law of this state relating to rule-making powers, administrative appeals, or any power vested by the state constitution in the state personnel board, such term shall be deemed to refer to the state personnel board.~~ EITHER THE DEPARTMENT OF PERSONNEL OR THE DEPARTMENT OF ADMINISTRATION, SUCH REFERENCE SHALL BE DEEMED TO REFER TO THE DEPARTMENT OF PERSONNEL AND ADMINISTRATION CREATED IN SECTION 24-1-128 (1).

(3) (c) It is the duty of the state personnel director to establish the general criteria for adherence to the merit principles and for fair treatment of individuals within the state personnel system. It is the responsibility of the state personnel director to provide leadership in the areas of policy and operation of the state personnel system as well as to provide consultant services to executive branch ~~agencies~~ DEPARTMENTS and institutions of higher education to further their professional management of human resources in state government. The state personnel director ~~pursuant to~~ SHALL ADOPT RULES IN ACCORDANCE WITH the "State Administrative Procedure Act", article 4 of this title ~~shall provide~~ AND ESTABLISH DIRECTIVES necessary ~~directives and oversight~~ for the management of the state personnel system and in the discharge of his OR HER constitutional duty to administer the state personnel system.

(d) The heads of principal departments and presidents of colleges and universities shall be responsible and accountable for the actual operation and management of the state personnel system for their respective departments, colleges, or universities. Such operation and management shall be in accordance with RULES AND directives ~~promulgated by~~ OF the state personnel director, who shall provide postaudit review of such operation and management. Presidents of colleges and universities OR THEIR DESIGNEES shall be the appointing authorities for employees of their respective institutions. UNLESS OTHERWISE PROVIDED BY LAW, THE HEADS OF PRINCIPAL DEPARTMENTS OR THEIR DESIGNEES SHALL BE THE APPOINTING AUTHORITIES FOR OFFICERS AND EMPLOYEES OF THEIR RESPECTIVE DEPARTMENTS.

SECTION 5. 24-50-102 (1), (2), (3), and (4), Colorado Revised Statutes, are amended to read:

24-50-102. Department of personnel and administration - executive director.

(1) Pursuant to section 14 of article XII of the state constitution, there is hereby created the department of personnel, the head of which shall be the state personnel director, who shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The state personnel EXECUTIVE director OF THE DEPARTMENT OF PERSONNEL AND ADMINISTRATION CREATED IN SECTION 24-1-128 (1) shall be qualified by education and experience in the field of public or private personnel administration or industrial relations and shall be of known sympathy with the merit principle. THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE SHALL DISCHARGE THE DUTIES OF THE STATE PERSONNEL DIRECTOR AS PROVIDED IN SECTION 14 (4) OF ARTICLE XII OF THE STATE CONSTITUTION AND THIS ARTICLE.

(2) Subject to the provisions of the state constitution, the ~~state personnel~~ EXECUTIVE director shall have those powers, duties, and functions prescribed for heads of principal departments in the "Administrative Organization Act of 1968". Any ~~assistants~~ OFFICERS and employees of the department shall be appointed pursuant to the provisions of section 13 of article XII of the state constitution.

(3) The ~~state personnel~~ EXECUTIVE director shall prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-136, a report accounting to the governor for the efficient discharge of all responsibilities assigned by law or directive to the department of personnel AND ADMINISTRATION.

(4) Publications by the ~~state personnel~~ EXECUTIVE director circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

SECTION 6. 24-50-103 (1), (2), (3) (a), (5), (6), (7), (8), and (9), Colorado Revised Statutes, are amended to read:

24-50-103. State personnel board. (1) 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 of five members to be selected in the manner provided in 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~~ SERVE STAGGERED TERMS OF 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~~ AND SHALL NOT SERVE MORE THAN TWO CONSECUTIVE TERMS OF OFFICE.

(2) The board shall exercise its powers and perform its duties and functions ~~under~~ WITHIN the department of personnel and ~~the state personnel director~~ ADMINISTRATION

as if the same were transferred to the department by a **type 1** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of this title.

(3) (a) In the ~~year 1975~~ YEAR 2005 and every fifth year thereafter and in the ~~year 1976~~ YEAR 2006 and every fifth year thereafter, an election shall be held for a member of the board in the manner provided in this subsection (3).

(5) Any member of the board may be removed by the governor for willful misconduct in office, ~~for willful~~ failure or inability to perform his OR HER duties, including, but not limited to, failure to attend three consecutive regular board meetings, ~~for~~ OR 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~~ AS SPECIFIED IN LAW. Removal shall be subject to judicial review.

(6) An action of the state personnel director or an appointing authority ~~which~~ THAT is appealable to the board pursuant to this article or the state constitution may be reversed or modified on appeal to the board only if at least three members of the board find the action to have been arbitrary, capricious, or contrary to rule or law. Unless otherwise limited by this article or the state constitution, a decision of the board shall be subject to review pursuant to section 24-50-125.4. IF THE DECISION APPEALED TO THE BOARD IS MODIFIED OR REVERSED BASED ONLY ON THE FAILURE TO SATISFY PROCEDURAL REQUIREMENTS, THE REMEDY SHALL BE LIMITED TO PLACING THE EMPLOYEE IN THE SAME SITUATION HE OR SHE WOULD HAVE BEEN IN IF THE PROCEDURAL REQUIREMENTS HAD BEEN SATISFIED. NOTWITHSTANDING THE PROVISIONS OF THIS SUBSECTION (6), RECOVERIES FOR IMPROPER PERSONNEL ACTIONS ARE PERMITTED UNDER SECTION 24-50-125.5.

(7) The board may ~~employ~~ AUTHORIZE administrative law judges, who shall be lawyers with at least five years' experience, TO CONDUCT HEARINGS ON ANY MATTER WITHIN THE JURISDICTION OF THE BOARD UPON TERMS AND CONDITIONS DETERMINED BY THE BOARD AND SUBJECT TO THE PROVISIONS OF ARTICLE 4 OF THIS TITLE. THE BOARD shall employ such personnel as may be necessary for the performance of its duties, including an administrator who shall serve as secretary to the board with such duties as the board may assign. Funds for these purposes shall be appropriated by the general assembly.

(8) Members of the board shall be compensated at the rate of seventy-five dollars per day for each day in which they are actually engaged in the performance of their duties plus reimbursement for actual and necessary expenses incurred in the performance of their duties. The board shall meet as often as necessary to conduct its business. The board shall elect a ~~chairman~~ CHAIR and a ~~vice-chairman~~ VICE-CHAIR, one of whom shall be a gubernatorial appointee, from among its members. Meetings shall be called by the ~~chairman~~ CHAIR or a majority of the board. All members of the board shall be given reasonable notice of all meetings, and three members of the board shall constitute a quorum for the transaction of business. The affirmative vote of at least three members of the board shall be necessary to reverse or modify any action of the state personnel director or appointing authority.

(9) ~~The board and any political subdivision of the state may contract for the furnishing of personnel services by the department of personnel to such subdivision~~

ANY DEPARTMENT OR INSTITUTION OF HIGHER EDUCATION MAY ENTER INTO AGREEMENTS TO PROVIDE OR OBTAIN PERSONNEL TO OR FROM ANY POLITICAL SUBDIVISION OF THE STATE.

SECTION 7. 24-50-103.5 (1) and (3) (a), the introductory portion to 24-50-103.5 (3) (b), and 24-50-103.5 (3) (b) (I) and (3) (b) (III), Colorado Revised Statutes, are amended to read:

24-50-103.5. Department of personnel and administration - review. (1) The general assembly finds that state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules, ~~and regulations~~ and that the whole process developed without sufficient legislative oversight, regulatory accountability, or a system of checks and balances. The general assembly further finds that by establishing a system for review, it will be in a better position to evaluate the need for modification of the department of personnel ~~referred to in this section as the "department"~~ AND ADMINISTRATION, and for modification of the rules ~~and regulations~~ of the board AND THE STATE PERSONNEL DIRECTOR.

(3) (a) Committees of reference in each house of the general assembly shall hold public hearings, receiving testimony from the public, the state personnel director, and the ~~chairman~~ CHAIR of the board. ~~and in such a hearing~~ IN THE HEARINGS, the department OF PERSONNEL AND ADMINISTRATION and the board shall have the burden of demonstrating the extent to which a change in the administration, rules, ~~and regulations~~ or operations of the department or the board may increase the efficiency of administration or operation of the department or the board.

(b) In ~~such~~ THE hearing, the committee shall take into consideration the following factors, among others:

(I) The extent to which the department OF PERSONNEL AND ADMINISTRATION and the board have operated in the public interest and economy, and the extent to which their operations have been impeded or enhanced by existing statutes, RULES, POLICIES, PRACTICES, procedures, and any other circumstances, including budgetary, resource, and personnel matters;

(III) The extent to which the board ~~has~~ AND THE STATE PERSONNEL DIRECTOR HAVE adopted rules, ~~and regulations~~ POLICIES, procedures, or practices ~~which~~ THAT enhance or impede the efficiency or economy of state government;

SECTION 8. 24-50-104 (1) (a) (II) and (1) (c) (I), the introductory portion to 24-50-104 (1) (c) (II), and 24-50-104 (1) (c) (IV), (1) (c.5) (IV), (1) (g), (1) (h), (5), (7) (b), and (7) (c), Colorado Revised Statutes, are amended to read:

24-50-104. Job evaluation and compensation - repeal. (1) **Total compensation philosophy.** (a) (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 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~~ RULES IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE AND ESTABLISH DIRECTIVES 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~~ RULES.

(c) (I) Based on a system of performance management and evaluation, the state personnel director shall adopt ~~procedures~~ RULES IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE for periodic salary increases for employees in the state personnel system based on performance.

(II) The department of personnel AND ADMINISTRATION shall ~~develop guidelines~~ ESTABLISH DIRECTIVES and coordinate a performance system pursuant to the provisions of subparagraph (I) of this paragraph (c) that:

(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 to implement the performance system prepared by the department of personnel AND ADMINISTRATION 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, peers, and any other applicable sources of an employee's performance. The ~~state personnel~~ director shall adopt ~~procedures~~ RULES IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE AND ESTABLISH DIRECTIVES to ~~establish~~ CREATE 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) (IV) The state personnel director shall adopt ~~procedures~~ RULES IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE AND ESTABLISH DIRECTIVES for the implementation of the provisions of this paragraph (c.5). Nothing in this paragraph (c.5) shall be construed to limit the ability of the ~~state personnel~~ director to provide for additional sanctions for noncompliance with the provisions of this paragraph (c.5).

(g) Benefits shall include insurance, retirement, and leaves of absence with or without pay and may include jury duty, military duty, or educational leaves. The state personnel director shall ~~prescribe procedures~~ ADOPT RULES IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE AND ESTABLISH DIRECTIVES for the types, amounts, and conditions for all leave benefits that are typically consistent with prevailing practices,

subject to the provisions governing the benefits provided in subsection (7) of this section. The general assembly shall approve any changes to leave benefits granted by statute before such changes are implemented. The ~~state personnel~~ director shall prescribe ~~by procedure~~ any nonstatutory benefits BY RULE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE.

(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 state constitution, ~~establish special procedures for classifying~~ ADOPT RULES IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE AND ESTABLISH DIRECTIVES FOR those employees of the state auditor's office who are within the state personnel system ~~in order to~~ THAT 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 state constitution, including, but not limited to, the grading and compensation of persons in the state personnel system according to standards of efficient service that are the same for all persons having like duties.~~

(5) **Pay plans.** (a) The state personnel director shall establish pay plans AND PAY RANGES as technically and professionally necessary. ~~and~~ THE DIRECTOR shall ~~establish any procedures and directives~~ ADOPT RULES IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE AND ESTABLISH DIRECTIVES THAT ARE required to implement the state's prevailing total compensation philosophy as defined in subsection (1) of this section.

(b) No employee in any pay plan may exceed an established maximum salary amount for such plan, except as provided in paragraph (e) of subsection (1) of this section. The maximum monthly salary for any employee whose position is assigned to a nonmedical pay plan in effect prior to July 1, 1991, shall be calculated based on the 1991 maximum of five thousand seven hundred ninety-four dollars, plus the subsequent adjustments made under this paragraph (b) since July 1, 1991; except that classes in the medical pay plan requiring licensure as a physician or dentist shall be subject to a maximum monthly salary calculated on the basis of the 1991 maximum of seven thousand eight hundred twelve dollars, plus the subsequent adjustments made under this paragraph (b) since July 1, 1991. Such amounts shall be adjusted by the state personnel director in accordance with the change in the consumer price index for the Denver-Boulder metropolitan statistical area for the preceding calendar year or the percentage increase in state general fund appropriations in relation to such appropriations for the preceding fiscal year, whichever is less. ~~The maximum monthly salary for the senior executive service plan shall not exceed the maximum monthly salary of any nonmedical pay plan by more than twenty-five percent.~~

(c) ~~The senior executive service shall be limited to one hundred twenty-five positions. The state personnel director shall establish criteria for inclusion in the senior executive service and shall review each nominated position before it is placed in the pay plan for the senior executive service. The head of the department or agency or state auditor for employees of the state auditor's office shall make appointments to the senior executive service based on competitive selection and is responsible for the management of the employees in such plan. Any person in the senior executive service shall have no right to a position outside of the senior executive service.~~

(d) In the MEDICAL pay ~~plans for medical and the senior executive service~~ PLAN, there shall be no anniversary-based merit increases. The salaries in ~~such pay plans~~ THE MEDICAL PAY PLAN shall be based on the negotiation of an annual contract between the employee and the department head or ~~the state auditor, when appropriate~~ PRESIDENT OF AN INSTITUTION OF HIGHER EDUCATION, and the amount of ~~such~~ THE salaries may increase, decrease, or remain unchanged from year to year. Any employee dismissed for failure to perform under ~~such~~ THE contract may only appeal directly to the ~~state personnel~~ board.

(7) **Leaves.** (b) The ~~procedures~~ RULES of the state personnel director, WHICH SHALL BE ADOPTED IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE, shall provide that no more than two days of paid leave per fiscal year shall be granted for organ, tissue, or bone marrow donation for transplants. Such leave may not be accumulated.

(c) The state personnel director may ~~establish procedures~~ ADOPT RULES IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE AND ESTABLISH DIRECTIVES to allow the transfer of annual leave between employees when one employee, or an immediate family member of such employee, experiences a catastrophic, life threatening health condition. The recipient of any annual leave shall have a minimum of one year of state service and exhausted all accrued annual and sick leave.

SECTION 9. 24-50-112.5 (1), (2) (b), (3), (4) (c), (5) (b), and (6), Colorado Revised Statutes, are amended to read:

24-50-112.5. Selection system. (1) (a) The state personnel director shall ~~establish procedures and directives~~ ADOPT RULES IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE AND ESTABLISH DIRECTIVES THAT ARE necessary to implement a merit-based statewide selection system to be used uniformly by all principal departments ~~Such procedures and directives~~ AND INSTITUTIONS OF HIGHER EDUCATION. THE RULES AND DIRECTIVES shall include, but are not limited to, procedures for acceptance of applications, job qualification standards for candidates, extension of eligible lists, and examination development and administration standards.

(b) Appointments and promotions to positions IN THE STATE PERSONNEL SYSTEM shall be based on job-related knowledge, skills, abilities, competencies, behaviors, and quality of performance as demonstrated by fair, ~~and~~ open, ~~competitive examinations~~ AND OBJECTIVE COMPARATIVE ASSESSMENT PROCESSES. Selections shall be made without regard to race, color, creed, religion, national origin, ancestry, ~~age~~, or political affiliation and without regard to sex, AGE, or disability except as otherwise ~~provided~~ PERMITTED by law.

(c) A CERTIFIED EMPLOYEE SHALL RESIDE IN THE UNITED STATES, AND SHALL RESIDE IN THE STATE UNLESS:

(I) THE POSITION IS IN AN INSTITUTION OF HIGHER EDUCATION AND IS FUNDED THROUGH RESEARCH GRANTS OR FEDERAL FUNDS;

(II) THE POSITION IS FOR A PERSON TO PERFORM FIELD AUDITS OUTSIDE THE STATE;
OR

(III) THE STATE PERSONNEL DIRECTOR DETERMINES THAT, UNDER THE CIRCUMSTANCES, THE USE OF A RESIDENT WOULD BE IMPRACTICAL OR WOULD OTHERWISE PREVENT ACCOMPLISHMENT OF THE WORK.

(2) **Employment lists.** (b) ~~Candidates receiving a final passing score~~ APPLICANTS DETERMINED TO BE MOST QUALIFIED at the completion of the ~~examination~~ COMPARATIVE ASSESSMENT process shall be RANKED AND placed on an eligible list. ~~and ranked.~~ Qualified ~~candidates~~ APPLICANTS 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 MOST QUALIFIED persons ~~ranking highest on~~ REFERRED FROM 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 assessment of qualifications.** (a) ~~Examinations~~ COMPARATIVE ASSESSMENTS OF QUALIFICATIONS shall be FAIR, OPEN, AND OBJECTIVE AND based on specific job-related knowledge, skills, abilities, behaviors, and other competencies. ~~Examinations~~ ASSESSMENTS shall be conducted as needed. Only qualified applicants shall be included in the ~~examination~~ ASSESSMENT 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~~ ASSESSMENTS shall be limited to qualified employees, including persons on reemployment lists. Performance evaluations may be ~~utilized~~ USED as part of a promotional ~~examination~~ ASSESSMENT plan.

(4) **Appeals.** (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 ~~board~~ DIRECTOR shall establish rules IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE for certification of a person to a position when an appeal is pending relative to the selection and ~~examination~~ ASSESSMENT process for that position.

(5) **Appointments.** (b) The board shall establish probationary periods for all persons who are initially appointed or promoted into a different ~~position~~ CLASS or who are in a ~~position~~ CLASS reallocated to a higher pay grade. The probationary period shall not exceed twelve months for any class. ~~or position.~~ The person shall be certified to ~~such~~ THE class ~~or position~~ after satisfactory completion of any probationary period as demonstrated by performance evaluations. Unsatisfactory performance shall be grounds for dismissal of the person by the appointing authority during ~~such~~ THE probationary period without right of appeal. Any certified employee who is promoted to a different class ~~or position~~ and who fails to perform satisfactorily during the probationary period shall be reverted to ~~a position in~~ the former certified class or be disciplined.

(6) **State auditor's employees.** The state personnel director may, following consultation with the state auditor and consistent with the principles of separation of powers, ~~establish special procedures~~ ADOPT RULES IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE AND ESTABLISH DIRECTIVES governing appointment and promotion of

CERTIFIED employees of the state auditor's office. ~~The procedures~~ RULES AND DIRECTIVES shall address the ~~special~~ situations, circumstances, and duties unique to CERTIFIED employees of the state auditor's office. ~~All procedures~~ THE RULES AND DIRECTIVES shall be consistent with sections 13, 14, and 15 of article XII of the state constitution.

SECTION 10. 24-50-114 (1), (2), (4), and (5), Colorado Revised Statutes, are amended to read:

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~~ AN 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 OR A QUALIFIED PERSON from ~~without~~ OUTSIDE the state personnel system. ~~Such~~ Temporary appointments shall not exceed ~~six months in length~~ TWO HUNDRED SEVENTY CONSECUTIVE CALENDAR DAYS IN A TWELVE-MONTH PERIOD COMMENCING ON THE DATE OF THE APPOINTMENT, except for personal services contracts as permitted by part 5 of this article. ~~If the vacancy is for a permanent position,~~ An eligible list FOR THE POSITION shall be established within ~~the six-month period~~ THREE MONTHS following the INITIAL HIRE DATE OF THE TEMPORARY appointment. IN NO EVENT SHALL A PERMANENT POSITION BE FILLED THROUGH A SUCCESSION OF TEMPORARY EMPLOYEES.

(2) The state personnel director may, by rule ADOPTED IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE, authorize principal department heads and presidents of ~~colleges and universities~~ INSTITUTIONS OF HIGHER EDUCATION to employ persons from outside the state personnel system on a temporary basis ~~while an eligible list is being provided or~~ in emergency, ~~or reasonable~~ SEASONAL, OR OTHER situations nonpermanent in nature, but in each case the period of employment shall not exceed ~~six months~~ TWO HUNDRED SEVENTY CONSECUTIVE CALENDAR DAYS IN A TWELVE-MONTH PERIOD COMMENCING ON THE DATE OF THE APPOINTMENT, except for personal services contracts as permitted by part 5 of this article. THE DIRECTOR SHALL ADOPT RULES IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE REGARDING THE APPOINTMENT OF PERMANENT, PART-TIME EMPLOYEES TO PERFORM SERVICES THAT ARE SEASONAL OR OTHERWISE ANNUALLY RECURRING.

(4) ~~In case of emergency threatening the public health, welfare, or safety, a temporary appointment may be made without prior approval of the state personnel director, but such appointment may not continue without such approval for more than fifteen days.~~

(5) ~~Except as provided in subsection (4) of this section, the prior approval of all temporary appointments to permanent positions shall be obtained from the state personnel director before such temporary appointments are made. The director may not delegate the authority to approve such temporary appointments. If any such appointment is made before the prior approval of the director is obtained, the appointment shall be considered void from the beginning and the person appointed to such position shall be immediately terminated.~~

SECTION 11. 24-50-116, Colorado Revised Statutes, is amended to read:

24-50-116. Standards of performance and conduct. Each employee shall perform his OR HER duties and conduct himself OR HERSELF in accordance with generally accepted standards and with specific standards prescribed by law, rule of the ~~board~~ STATE PERSONNEL DIRECTOR, or ~~any~~ THE appointing authority. FOR PURPOSES OF SECTION 13 (8) OF ARTICLE XII OF THE STATE CONSTITUTION AND THIS PART 1, "EFFICIENT SERVICE" AND "PERFORMANCE" SHALL HAVE THE SAME MEANING.

SECTION 12. 24-50-117, Colorado Revised Statutes, is amended to read:

24-50-117. Prohibited activities of employees. No employee shall engage in any employment or activity ~~which~~ THAT creates a conflict of interest with his OR HER duties as a state employee. The board shall promulgate general rules IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE on incompatible activities, conflicts of interest, and employment outside the normal course of duties of state employees.

SECTION 13. Part 1 of article 50 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-50-123.5. Separation for cause. EMPLOYEES IN THE STATE PERSONNEL SYSTEM MAY BE SEPARATED FOR CAUSE PURSUANT TO SECTION 13 (8) OF ARTICLE XII OF THE STATE CONSTITUTION THROUGH EITHER A REDUCTION IN FORCE IN ACCORDANCE WITH SECTION 24-50-124 OR A DISCIPLINARY PROCEEDING IN ACCORDANCE WITH SECTION 24-50-125.

SECTION 14. 24-50-124 (1), Colorado Revised Statutes, is amended, and the said 24-50-124 is further amended BY THE ADDITION OF A NEW SUBSECTION CONTAINING RELOCATED PROVISIONS, WITH AMENDMENTS, to read:

24-50-124. Reduction in force - retention rights - voluntary separation incentives. (1) When certified employees 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~~ ADOPTED BY THE BOARD IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE. THE PROCEDURES shall require that ORDINARY ATTRITION AND VACANT POSITIONS BE TAKEN INTO ACCOUNT BEFORE EMPLOYEES ARE DISPLACED AND THAT consideration be given to performance evaluations of the employees and seniority within the ~~total state service~~ ~~Such~~ STATE PERSONNEL SYSTEM AS WELL AS ANY OTHER STATE SERVICE. THE 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, MAJOR GEOGRAPHIC REGIONS, institutions, or colleges within the principal department. CERTIFIED EMPLOYEES HIRED ON OR AFTER JULY 1, 2005, WITH FEWER THAN FIVE YEARS OF STATE SERVICE SHALL HAVE RETENTION RIGHTS ONLY WITH RESPECT TO VACANT POSITIONS AND POSITIONS OCCUPIED BY PROBATIONARY EMPLOYEES.

(3) ~~[Formerly 24-50-208]~~ The state personnel director may adopt ~~procedures establishing a program for~~ RULES IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE AUTHORIZING voluntary separation incentives available to all state employees ~~in lieu~~

~~of layoffs based on a determination by the head of a principal department or institution of higher education that the program is necessitated by a shortage of work, shortage~~ INCENTIVES ARE NECESSARY BECAUSE OF LACK OF WORK, LACK OF FUNDS, OR A REORGANIZATION. ~~Any program established pursuant to this section~~ SUBJECT TO AMOUNTS AUTHORIZED BY THE STATE PERSONNEL DIRECTOR FOR THE INCENTIVES. THE RULES SHALL NOT CONFLICT WITH LAWS OR RULES ~~OR PROCEDURES~~ GOVERNING THE STATE PERSONNEL SYSTEM OR THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION. A VOLUNTARY SEPARATION INCENTIVE SHALL NOT BE CONSIDERED A PREREQUISITE FOR PURPOSES OF SECTION 24-30-202 (22).

SECTION 15. 24-50-125 (1), (2), (3), (4), (5), and (7), Colorado Revised Statutes, are amended, and the said 24-50-125 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-50-125. Disciplinary proceedings - appeals - hearings - procedure.

(1) PURSUANT TO SECTION 13 (8) OF ARTICLE XII OF THE STATE CONSTITUTION, a ~~person certified to any class or position in the state personnel system~~ EMPLOYEE MAY BE DISMISSED, SUSPENDED, OR OTHERWISE DISCIPLINED BY THE APPOINTING AUTHORITY UPON WRITTEN FINDINGS OF FAILURE TO ~~comply with standards of efficient service or competence~~ OR FOR PERFORM, WILLFUL MISCONDUCT, ~~willful failure or inability to perform his duties,~~ OR FINAL CONVICTION OF A FELONY OR ANY OTHER OFFENSE ~~which involves moral turpitude,~~ OR WRITTEN CHARGES THEREOF MAY BE FILED BY ANY PERSON WITH THE APPOINTING AUTHORITY, ~~which shall be promptly determined~~ SPECIFIED IN LAW. IN CONSIDERING THE CONVICTION OF A CRIME, THE BOARD SHALL BE GOVERNED BY THE PROVISIONS OF SECTION 24-5-101. FOR PURPOSES OF THIS SECTION, A CONVICTION IS NOT FINAL UNTIL JUDICIAL REVIEW OF THE CONVICTION IS FINAL AND THE CONVICTION IS UPHOLD OR THE TIME FOR SEEKING JUDICIAL REVIEW OF THE CONVICTION HAS ELAPSED.

(1.5) PRIOR TO MAKING A FINAL DECISION TO DISCIPLINE A CERTIFIED EMPLOYEE, THE APPOINTING AUTHORITY OR THE APPOINTING AUTHORITY'S DESIGNEE SHALL MEET WITH THE EMPLOYEE TO PRESENT INFORMATION PERTAINING TO THE REASON FOR THE POTENTIAL DISCIPLINARY ACTION, DISCLOSE THE SOURCE OF THE INFORMATION UNLESS PROHIBITED BY LAW, AND PROVIDE THE EMPLOYEE AN OPPORTUNITY TO RESPOND. IN ORDER TO ENSURE A FAIR DETERMINATION, THE APPOINTING AUTHORITY MAY REFER THE MATTER TO ANOTHER APPOINTING AUTHORITY IN THE SAME DEPARTMENT OR INSTITUTION OF HIGHER EDUCATION FOR RESOLUTION. DURING THE MEETING REQUIRED BY THIS SUBSECTION (1.5), THE APPOINTING AUTHORITY AND THE EMPLOYEE SHALL BE ALLOWED TO HAVE ONE INDIVIDUAL OF THEIR CHOOSING PRESENT AT THE MEETING. STATEMENTS MADE DURING THE MEETING SHALL NOT BE PRIVILEGED COMMUNICATIONS.

(2) Any certified employee disciplined under subsection (1) of this section shall be notified IN WRITING by the appointing authority, by certified letter OR HAND DELIVERY, no later than five days following the effective date of the action, of the action taken, the specific charges giving rise to such action, and the employee's right of appeal to the board. ~~A copy of such notification shall also be sent to the board.~~ THE NOTICE SHALL INCLUDE A STATEMENT SETTING FORTH THE TIME LIMIT FOR FILING AN APPEAL WITH THE BOARD, THE ADDRESS OF THE BOARD, THE REQUIREMENT THAT THE APPEAL BE IN WRITING, AND THE AVAILABILITY OF ANY STANDARD APPEAL FORM. Upon failure of the appointing authority to ~~so~~ notify the employee IN ACCORDANCE WITH THIS SUBSECTION (2), the employee shall be compensated in full for the five-day

period and until proper notification is received.

(3) Within ten days after the receipt of the notification required by subsection (2) of this section, WITHIN TEN DAYS OF ANY OTHER ACTION THAT ADVERSELY AFFECTS THE EMPLOYEE'S CURRENT BASE PAY, STATUS, OR TENURE, or within such additional time as may be permitted by the board in unusual cases for good cause shown, the employee may ~~petition~~ APPEAL to the board, ~~for~~ AND THE BOARD SHALL GRANT a hearing upon the action taken. ~~Upon receipt of such petition, the board shall grant a hearing to the employee~~ THE APPEAL SHALL ALLEGE WITH PARTICULARITY THE SPECIFIC ACTION BEING APPEALED AND THE REASONS FOR THE APPEAL. If the employee fails to ~~petition~~ APPEAL TO the board within ten days or within such additional time granted by the board, the action of the appointing authority shall be final and not further reviewable.

(4) ~~At such~~ THE hearing ~~which~~ shall be held within ~~forty-five~~ NINETY days of receipt of the employee's ~~petition~~ APPEAL OR THE GRANTING OF A PETITION FOR REVIEW PURSUANT TO SECTION 24-50-123 (3). The employee shall be entitled to representation of his OR HER own choosing at his OR HER own expense, CONSISTENT WITH THE RULES OF THE COLORADO SUPREME COURT CONCERNING THE UNAUTHORIZED PRACTICE OF LAW. The board shall cause a verbatim record of the proceedings to be taken and shall maintain ~~such~~ THE record. At the conclusion of ~~such~~ THE hearing, but not later than forty-five days after the conclusion of ~~such~~ THE hearing, the board shall make public written findings of fact and conclusions of law affirming, modifying, or reversing the action of the appointing authority, and the appointing authority shall thereupon promptly execute the findings of the board.

(5) ~~In addition, the board shall hold a hearing within forty-five days of the appeal, upon request by the employee or the employee's representative, for any certified employee in the state personnel system who protests any action taken which adversely affects the employee's current base pay as defined by board rule, status, or tenure. A probationary employee shall be entitled to all HAVE the same rights to a hearing as a certified employee, except that such probationary employee shall not have FOR the right to a hearing to review any disciplinary action. taken pursuant to subsection (1) of this section while a probationary employee. This subsection (5) shall not apply to appeals brought pursuant to section 24-50-104.~~

(7) Failure, without good cause, of an employee or ~~his~~ THE EMPLOYEE'S representative to appear at a hearing shall be deemed a withdrawal of ~~his~~ THE EMPLOYEE'S appeal, and the action of the appointing authority shall be final. Failure, without good cause, of the appointing authority or ~~his~~ THE APPOINTING AUTHORITY'S representative to appear at a hearing shall be deemed cause to dismiss the case and to award the employee all rights, salaries, and benefits as though the employee had won the appeal.

SECTION 16. 24-50-126, Colorado Revised Statutes, is amended to read:

24-50-126. Resignation - procedure and effect. (1) An employee may resign by filing his OR HER reasons in writing with the appointing authority. THE STATE PERSONNEL DIRECTOR MAY ADOPT RULES IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE REGARDING RESIGNATIONS.

(2) Qualified employees who have resigned in good standing may be reinstated under conditions ~~which~~ THAT the ~~board~~ STATE PERSONNEL DIRECTOR shall prescribe by rule ADOPTED IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE.

(3) The ~~board~~ STATE PERSONNEL DIRECTOR shall ~~by rule~~ prescribe BY RULE ADOPTED IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE the conditions under which absence without leave will be construed to be an automatic resignation.

SECTION 17. 24-50-129, Colorado Revised Statutes, is amended to read:

24-50-129. Appointing authority's liability for improper appointment. If ~~any~~ AN appointment is willfully made contrary to the provisions of this part 1, the appointing authority shall be:

(1) Personally responsible for any salary liability incurred;

(2) SUBJECT TO PROSECUTION PURSUANT TO SECTION 18-8-405, C.R.S., FOR SECOND DEGREE OFFICIAL MISCONDUCT; AND

(3) UPON FINAL CONVICTION OF SECOND DEGREE OFFICIAL MISCONDUCT, SUBJECT TO DISCIPLINE PURSUANT TO SECTION 13 (8) OF ARTICLE XII OF THE STATE CONSTITUTION.

SECTION 18. 24-50-135, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-50-135. Exemptions from state personnel system. (3) (a) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL AND ADMINISTRATION MAY DESIGNATE OR RESCIND THE DESIGNATION OF A POSITION AS AN OFFICER OR EMPLOYEE EXEMPT FROM THE STATE PERSONNEL SYSTEM IN ACCORDANCE WITH SECTION 13 (2) OF ARTICLE XII OF THE STATE CONSTITUTION. A CERTIFIED EMPLOYEE WHOSE POSITION IS DESIGNATED AS EXEMPT MAY DECLINE THE APPOINTMENT AND REMAIN IN A STATE PERSONNEL SYSTEM POSITION WITH NO LOSS OF RIGHTS OR PROTECTIONS UNDER THE SYSTEM. ANY EXEMPT OFFICER OR EMPLOYEE MAY BE DISMISSED WITH OR WITHOUT CAUSE UPON SIXTY DAYS' WRITTEN NOTICE BY THE HEAD OF THE PRINCIPAL DEPARTMENT.

(b) THE TOTAL NUMBER OF EXEMPTIONS AUTHORIZED BY THIS SUBSECTION (3) SHALL NOT EXCEED ONE EXEMPT POSITION FOR EVERY FIFTY AUTHORIZED STATE PERSONNEL SYSTEM POSITIONS IN THE PRINCIPAL DEPARTMENT. HOWEVER, EACH HEAD OF A PRINCIPAL DEPARTMENT MAY APPOINT NO MORE THAN FIFTEEN EXEMPT OFFICERS AND EMPLOYEES.

(c) THE PROVISIONS OF THIS SUBSECTION (3) SHALL NOT APPLY TO THE DEPARTMENT OF HIGHER EDUCATION OR TO ANY INSTITUTION OF HIGHER EDUCATION.

SECTION 19. 24-50-138 (1), Colorado Revised Statutes, is amended to read:

24-50-138. Effect of transfer of powers, duties, and functions. (1) The department of personnel AND ADMINISTRATION to which powers, duties, and functions of the civil service commission are transferred shall be the successor in every way

with respect to such powers, duties, and functions, subject to the provisions of the state constitution. Every act performed in the exercise of such powers, duties, and functions by the department of personnel AND ADMINISTRATION shall be deemed to have the same force and effect as if performed by the civil service commission prior to July 1, 1971. ~~Whenever the civil service commission is referred to or designated by any law, contract, insurance policy, bond, or other document, such reference or designation shall be deemed to apply to the state personnel board or the state personnel director, as the case may be, in which the powers, duties, and functions of the civil service commission are vested.~~

SECTION 20. The introductory portion to 24-50-141 (1) and 24-50-141 (2), Colorado Revised Statutes, are amended to read:

24-50-141. Rules - limitations - affirmative action corrective remedies - implementation. (1) It is the intent of the general assembly to encourage the implementation of equal employment opportunities and affirmative action corrective remedies within the state personnel system ~~which~~ THAT preserve the merit principles contained in section 13 of article XII of the state constitution and this article and ~~which~~ THAT disavow and prohibit the imposition of a mandatory quota system. Until January 1, 1980, and while underutilization of and invidious discrimination against members of ethnic and racial minorities and women exist and continue to exist within the state personnel system, the board is authorized to adopt and implement rules ~~and regulations~~ ~~which~~ IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE THAT carry out the intent of this section. ~~Such~~ THE rules ~~and regulations~~ shall be implemented only upon written findings by the state personnel director in each instance that the following conditions exist with reference to specific appointments and promotions within the state personnel system:

(2) Rules ~~and regulations~~ of the state personnel system adopted and implemented in accordance with this section, except rules ~~and regulations~~ relating to grievance and appeal procedures within the state personnel system and based on allegations of discrimination, are repealed, effective January 1, 1980, and the authority of the board to adopt and implement any affirmative action corrective remedy or rule, which allows or provides for, or incorporates by reference, requisitions or referrals ~~which~~ THAT are in addition to the names of the ~~three~~ SIX persons ~~ranking highest~~ on the appropriate ~~eligible~~ REFERRAL list or combination of such lists, is terminated on such date.

SECTION 21. 24-50-145 (3), Colorado Revised Statutes, is amended to read:

24-50-145. Agency-based human resource innovation and management processes - legislative declaration - definitions - guidelines and goals. (3) Each agency is hereby authorized to develop with the state personnel director or the personnel board, as appropriate, and subject to the Colorado constitution, applicable statutes, ~~personnel~~ AND DIRECTOR AND board rules, ~~and procedures of the state personnel director~~ processes for human resource innovation and management applicable to such agency. The state personnel director or the personnel board, as appropriate, shall provide assistance to any agency with implementation and coordination of agency processes for human resource innovation and management and shall consult with agencies to ensure that such processes are administered in adherence to the Colorado constitution, applicable statutes, ~~personnel~~ AND DIRECTOR

AND board rules. ~~and procedures of the state personnel director.~~ The agency processes for human resource innovation and management shall be formulated utilizing the input of the agency's management and nonmanagement employees. The head of an agency developing processes for human resource innovation and management shall be responsible for implementing such processes in that agency and submitting to the ~~state personnel director or the personnel board~~, as appropriate, a written statement describing any human resource innovation and management processes implemented by the agency. Such written statement shall be submitted to the ~~state personnel director or the personnel board~~ commensurate with the implementation of the processes by the agency. The written statement shall be updated by the head of the agency upon modification or revision of the agency's human resource innovation and management processes.

SECTION 22. Part 1 of article 50 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-50-146. Veterans' preference. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ELIGIBLE APPLICANT" MEANS AN APPLICANT FOR APPOINTMENT OR PROMOTION IN THE STATE PERSONNEL SYSTEM WHO:

(I) IS SERVING OR WAS SEPARATED UNDER HONORABLE CONDITIONS AND SERVED IN ANY BRANCH OF THE ARMED FORCES OF THE UNITED STATES, INCLUDING THE NATIONAL GUARD OR ARMED FORCES RESERVE, DURING ANY PERIOD OF DECLARED WAR OR UNDECLARED WAR OR OTHER ARMED HOSTILITIES AGAINST AN ARMED FOREIGN ENEMY;

(II) IS SERVING OR WAS SEPARATED UNDER HONORABLE CONDITIONS AND SERVED ON ACTIVE DUTY IN ANY SUCH BRANCH IN ANY CAMPAIGN OR EXPEDITION FOR WHICH A CAMPAIGN BADGE IS AUTHORIZED; OR

(III) HAS COMPLETED AT LEAST TWENTY-FOUR MONTHS OF SERVICE IN THE NATIONAL GUARD OR ARMED FORCES RESERVE, AND A PORTION OF THAT SERVICE WAS DURING A PERIOD AS DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a).

(b) "VETERANS' PREFERENCE" MEANS THE PREFERENCE TO BE AWARDED TO ELIGIBLE APPLICANTS FOR APPOINTMENT OR PROMOTION IN THE STATE PERSONNEL SYSTEM PURSUANT TO SECTION 15 OF ARTICLE XII OF THE STATE CONSTITUTION.

(2) EACH ELIGIBLE APPLICANT FOR APPOINTMENT OR PROMOTION IN THE STATE PERSONNEL SYSTEM SHALL BE AWARDED THE APPROPRIATE VETERANS' PREFERENCE AS SET FORTH IN SECTION 15 OF ARTICLE XII OF THE STATE CONSTITUTION.

SECTION 23. 24-50-511, Colorado Revised Statutes, is amended to read:

24-50-511. State personnel director rules and directives. The state personnel director shall promulgate ~~procedures to implement the policies of this part 5. Such procedures shall include, but not be limited to, provisions for consideration of contractors that utilize a preference for hiring veterans of military service and an annual certification process for ongoing personal services contracts. In promulgating~~

~~procedures governing the analysis of cost savings pursuant to section 24-50-503 (1), the state personnel director shall consider the recommendations of the office of state planning and budgeting~~ RULES IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE AND ESTABLISH DIRECTIVES GOVERNING PERSONAL SERVICES CONTRACTS CONSISTENT WITH THE PROVISIONS OF THIS PART 5.

SECTION 24. 24-50-604 (1) (k) (IV) and (2), Colorado Revised Statutes, are amended to read:

24-50-604. Powers and duties of the director. (1) The director shall administer and manage the state employees group benefit plans and, subject to the provisions of this part 6, has the following powers and duties:

(k) (IV) Any employee assistance program established and operated pursuant to this paragraph (k) shall be set forth in ~~procedures~~ RULES adopted in accordance with the provisions of article 4 of this title. ~~and such procedures~~ THE RULES shall specify, without limitation, the services to be offered by the program, the eligibility guidelines for participation in the program, and the sources of funding for the program, which, for the 2003-04 fiscal year and any fiscal year thereafter, may include, but need not be limited to, the group benefit plans reserve fund created in section 24-50-613, the risk management fund created in section 24-30-1510, and interest derived from the investment of said funds.

(2) The director, pursuant to the provisions of article 4 of this title, shall adopt ~~such procedures~~ RULES consistent with the provisions of this part 6 ~~as~~ THAT the director deems necessary to carry out his or her statutory duties and responsibilities.

SECTION 25. 24-50-607, Colorado Revised Statutes, is amended to read:

24-50-607. Employees - eligibility - election of coverage. (1) Any state employee eligible as determined by the director for membership in a group benefit plan contracted for pursuant to section 24-50-604 (1) (b) upon the effective date of such plan shall be enrolled in the plan by making application according to the director's ~~procedures~~ RULES.

(2) The manner and form of election and acceptance by state employees of group benefit plans contracted for pursuant to section 24-50-604 (1) (b) shall be in compliance with ~~procedures established~~ RULES ADOPTED IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE for that purpose by the director.

SECTION 26. 24-50-608, Colorado Revised Statutes, is amended to read:

24-50-608. Dependents - eligibility - election of coverage. (1) Any eligible employee may elect to have the employee's dependents covered by the group benefit plans. Such election shall be made at the time the employee becomes enrolled in the plan under ~~such procedures as the director shall establish~~ RULES ADOPTED BY THE DIRECTOR IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE. If dependent coverage is not elected at the time that an employee becomes enrolled in an appropriate plan, any subsequent election of dependent coverage shall be made under such conditions as the director may impose.

(2) Any employee who elects coverage, as provided in subsection (1) of this section, and who has a change in the number of dependents may, at the time of such change, increase or decrease the number of dependents covered by the group benefit plans under ~~procedures established~~ RULES ADOPTED IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE by and subject to the approval of the director.

(3) Any employee who has no eligible dependents at the time the employee becomes enrolled in the group benefit plans and who later has an eligible dependent may, at the time the dependency status changes, elect appropriate coverage for such dependent under ~~procedures established~~ RULES ADOPTED IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE by and subject to the approval of the director.

SECTION 27. 25-3.5-704 (1), Colorado Revised Statutes, is amended to read:

25-3.5-704. Statewide emergency medical and trauma care system - development and implementation - duties of the department - rules adopted by board. (1) The department shall develop, implement, and monitor a statewide emergency medical and trauma care system in accordance with the provisions of this part 7 and with rules adopted by the ~~state~~ board. The system shall be implemented statewide no later than July 1, 1997. In addition, the board shall cooperate with the department of personnel AND ADMINISTRATION in adopting criteria for adequate communications systems that counties shall be required to identify in regional emergency medical and trauma system plans in accordance with subsection (2) of this section. Pursuant to ~~section 24-50-504 (2)~~ SECTION 24-50-503.5, C.R.S., the department may contract with any public or private entity in performing any of its duties concerning education, the statewide trauma registry, and the verification process as set forth in this part 7.

SECTION 28. Repeal of provision being relocated in this act. 24-50-208, Colorado Revised Statutes, is repealed.

SECTION 29. 24-2-102 (1) and (2), Colorado Revised Statutes, are amended to read:

24-2-102. Appointment of officers and employees. (1) Except as otherwise provided by law, such officers ~~assistants~~; and employees as may be necessary in each principal department OR INSTITUTION OF HIGHER EDUCATION shall be appointed by the head of each such department OR INSTITUTION in conformity with section 13 of article XII of the constitution of the state and the laws enacted in accordance therewith. ~~Before any such appointment shall be effective, the head of the principal department making the appointment shall make and sign a certificate stating the position to be thus filled by appointment and the necessity for each such appointment, which certificate shall be delivered to the governor who within ten days thereafter shall approve or disapprove the same in writing. It shall not be necessary for the head of any such department to reveal the name or affiliation in such certificate of any appointee, the approval or disapproval of the governor being limited expressly to the necessity for such appointment in the public service. In the event such appointment is disapproved by the governor in writing within said ten-day period, such disapproval shall be final. The failure of the governor to approve or disapprove any such appointment within said period shall be deemed a disapproval thereof and shall be in all respects as final as if disapproved in writing.~~

(2) ~~Thirty days prior to the commencement of each fiscal year,~~ The head of each principal department shall certify to the governor the number of OFFICERS AND employees needed or required for the operation of his OR HER department for the ensuing twelve-month period ~~The governor, within said thirty-day period, in his discretion, shall approve or disapprove said certified list and, if he disapproves the same, shall certify in writing the number of employees deemed by him to be necessary or advisable for the efficient operation of the department, and no employees in excess of the number so certified by the governor shall be appointed or so employed IN ACCORDANCE WITH ARTICLE 37 OF THIS TITLE.~~

SECTION 30. 24-50-123, Colorado Revised Statutes, is amended to read:

24-50-123. Grievances - review. (1) The board shall, by rule PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE, adopt uniform ~~grievance~~ procedures to be used by all principal departments and ~~agencies~~ INSTITUTIONS OF HIGHER EDUCATION in developing grievance processes for THEIR employees. ~~of such principal departments and agencies.~~ The grievance procedures shall provide an orderly system of review for all grievances and shall define matters that are subject to such grievance procedures.

(2) Matters arising under sections 24-50-125 and 24-50-104 (1) (c) shall not be subject to a grievance procedure under this section.

(3) The decision of the appointing authority shall be final; except that AN EMPLOYEE MAY PETITION the board ~~may~~ FOR review. THE BOARD MAY GRANT THE PETITION ONLY WHEN IT APPEARS THAT the decision of the appointing authority ~~and, upon such review~~ VIOLATES AN EMPLOYEE'S RIGHTS UNDER THE FEDERAL OR STATE CONSTITUTION, PART 4 OF ARTICLE 34 OF THIS TITLE, ARTICLE 50.5 OF THIS TITLE, OR THE GRIEVANCE PROCEDURES ADOPTED PURSUANT TO SUBSECTION (1) OF THIS SECTION. THE BOARD shall ~~uphold the decision unless the board finds that the decision was made arbitrarily or capriciously~~ REVIEW AND SUMMARILY GRANT OR DENY A PETITION WITHIN NINETY DAYS OF RECEIPT OF THE PETITION. ANY PETITION GRANTED SHALL BE DETERMINED IN ACCORDANCE WITH SECTION 24-50-125.4.

SECTION 31. 24-50-125.4 (1), (2), and (5), Colorado Revised Statutes, are amended to read:

24-50-125.4. Hearings. (1) Except for discrimination appeals ~~which~~ THAT may also be filed with the Colorado civil rights division in the department of regulatory agencies, all appeals from actions of the state personnel director, appointing authorities, and agencies ~~which~~ THAT are specifically appealable to the board under the state constitution or this article shall be filed with the board within ten days of receipt of notice of such action. ~~All such appeals shall allege with particularity the specific acts being appealed and the reasons for the appeal.~~

(2) ~~If The board is required or decides to hold a hearing,~~ it shall give written notice of the time and place ~~for the~~ OF A hearing to the ~~employee or applicant and the agency~~ PARTIES involved at least twenty days before the date set for the hearing. ~~and such~~ THE hearing shall commence not later than ~~forty-five~~ NINETY calendar days after submission of the appeal to the board ~~The hearing date~~ AND may be continued only once for good cause for no longer than ~~forty-five~~ THIRTY days with the approval of

the board.

(5) ~~If an applicant or employee~~ ANY PARTY is responsible for any inexcusable delay in conducting the hearing or in the issuance of a decision, ~~that person shall not receive back pay or any other award for the period of delay. If an agency or an appointing authority is responsible for a similar inexcusable delay in the proceedings, an applicant or an employee, if successful on appeal, shall have his~~ THE RESPONSIBLE PARTY SHALL PAY THE OPPOSING PARTY'S costs, including attorney fees. ~~paid for by the agency or the appointing authority.~~

SECTION 32. 24-50-136, Colorado Revised Statutes, is amended to read:

24-50-136. Persons brought into the state personnel system. (1) Whenever ~~persons~~ A PERSON CURRENTLY OR PREVIOUSLY employed by the state of Colorado, not within the state personnel system, ~~enter~~ ENTERS or ~~are~~ IS brought into the state personnel system, ~~such persons~~ THE PERSON shall be credited with ~~their~~ HIS OR HER former state service for purposes of accumulated leave, leave earning rates, ~~longevity~~ SENIORITY, and other benefits, excluding retirement credit, afforded ~~employees within~~ AN EMPLOYEE IN the state personnel system. PREVIOUS EMPLOYMENT WITH THE STATE SHALL INCLUDE ANY PERIOD OF EMPLOYMENT FOR WHICH AN OFFICER OR EMPLOYEE RECEIVED COMPENSATION NOT LIMITED SOLELY TO EXPENSE REIMBURSEMENT. CREDIT FOR PREVIOUS STATE EMPLOYMENT SHALL NOT BE GIVEN FOR TEMPORARY EMPLOYMENT, INCLUDING STUDENT EMPLOYMENT AT AN INSTITUTION OF HIGHER EDUCATION OR SERVICE AS A MEMBER OF A PART-TIME BOARD OR COMMISSION.

(2) Whenever, by reason of constitutional amendment, legislative enactment, executive order, or action of an executive department functions outside state government are assumed by state government, persons performing such functions shall be credited with the years of service in their former positions for purposes of accumulated leave, leave earning rates, ~~longevity~~ SENIORITY, and other benefits, excluding retirement credit, afforded ~~employees within~~ AN EMPLOYEE IN the state personnel system.

(3) Whenever employees enter the state personnel system from political subdivisions of the state with merit systems similar to the state personnel system as a result of a formal arrangement with that merit system, the state personnel director shall, by rule ADOPTED IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE, establish rates and conditions of accumulated leave carry-over, leave earning rates, ~~longevity~~ SENIORITY, and other benefits, excluding retirement credit, afforded ~~persons~~ AN EMPLOYEE in the state personnel system. Such rates and conditions shall ~~be such as will~~ fairly recognize ~~such~~ THE employees' prior employment and provide a recruitment incentive to those persons who might benefit state government.

SECTION 33. Repeal. 24-50-139, Colorado Revised Statutes, is repealed as follows:

24-50-139. Administrative law judges - duties - qualifications. ~~The board may authorize administrative law judges to conduct hearings on any matter within the jurisdiction of the board upon such conditions and terms as the board may determine and subject to the provisions of section 24-50-103 (7) and article 4 of this title.~~

SECTION 34. 24-50-401 (4), Colorado Revised Statutes, is amended to read:

24-50-401. Office hours of state offices. (4) Employees in the STATE personnel system of the state who are required to work on general election day during the hours the polls are open pursuant to section 1-7-101, C.R.S., shall be granted two hours' administrative leave in which to vote pursuant to the provisions of section 1-7-102, C.R.S. The state personnel director shall promulgate rules ~~and regulations~~ IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE for the implementation of this subsection (4).

SECTION 35. 24-50-501, Colorado Revised Statutes, is amended to read:

24-50-501. Legislative declaration. Recognizing that ~~the adoption of section 20 of article X of the state constitution at the 1992 general election has imposed~~ IMPOSES strict ~~new~~ constraints on state government, it is ~~hereby declared to be the policy of this state~~ THE INTENT OF THE GENERAL ASSEMBLY to encourage the use of ~~private contractors for personal services to achieve increased efficiency in the delivery of government services;~~ CONTRACTS without undermining the principles of the state personnel system requiring competence in state government and the avoidance of political patronage. The general assembly recognizes that such contracting may result in variances from legislatively mandated pay scales and other employment practices that apply to the state personnel system. In order to ensure that ~~such privatization~~ OUTSOURCING of government services does not subvert the policies underlying the ~~civil service~~ STATE PERSONNEL system, the purpose of this part 5 is to balance the benefits of ~~privatization~~ OUTSOURCING of personal services against its impact upon the state personnel system as a whole. STATE GOVERNMENT PERSONAL SERVICES SHOULD BE PROVIDED BY STATE EMPLOYEES UNLESS OTHERWISE AUTHORIZED BY THIS PART 5 OR OTHER PROVISION OF LAW. The general assembly finds and declares that, in the use of ~~private contractors for personal services~~ CONTRACTS, the dangers of arbitrary and capricious political action or patronage and the promotion of competence in the provision of government services are adequately safeguarded by existing laws on public procurement, public contracts, financial administration, employment practices, ethics in government, licensure, certification, open meetings, open records, and the provisions of this part 5. ~~Recognizing that the ultimate beneficiaries of all government services are the citizens of the state of Colorado~~ It is the intent of the general assembly that ~~privatization of government services~~ THE USE OF PERSONAL SERVICES CONTRACTS not result in diminished quality in order to save money.

SECTION 36. 24-50-502, Colorado Revised Statutes, is amended to read:

24-50-502. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Contract" means any type of state agreement, regardless of what it may be called, for the acquisition of services.

(2) ~~"Personal services" means services acquired for the state's direct benefit in its operations.~~

(3) ~~"Purchased services" means the acquisition of services which directly benefit~~

~~specific groups or individuals in the public at large as defined by law, from public or private entities licensed, certified, or otherwise authorized by statute to provide such services.~~

~~(4) "Services" means the furnishing of labor, time, or effort.~~

(2) "DEPARTMENT" MEANS ANY STATE DEPARTMENT, AGENCY, BOARD, COMMISSION, DIVISION, OFFICE, OR SECTION, OR ANY INSTITUTION OF HIGHER EDUCATION.

(3) "DEPARTMENT HEAD" MEANS THE EXECUTIVE DIRECTOR OF A PRINCIPAL DEPARTMENT, AS SPECIFIED IN SECTION 24-1-110 (1), OR THE PRESIDENT OF AN INSTITUTION OF HIGHER EDUCATION.

(4) "DIRECTOR" MEANS THE STATE PERSONNEL DIRECTOR.

(5) "PERSONAL SERVICES" MEANS THE FURNISHING OF LABOR, TIME, OR EXPERTISE ACQUIRED FOR THE STATE'S DIRECT BENEFIT IN ITS OPERATIONS.

SECTION 37. Part 5 of article 50 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

24-50-503.5. Contracting requirements. (1) A CONTRACT FOR PERSONAL SERVICES OR AN AMENDMENT TO SUCH CONTRACT MAY BE AUTHORIZED UNDER THIS PART 5 ONLY IF THE DEPARTMENT HEAD DETERMINES THAT:

(a) DUE TO THE NATURE OF THE PERSONAL SERVICES TO BE PROVIDED, THE PROPOSED CONTRACT DOES NOT POSE A LOCAL, NATIONAL, OR INTERNATIONAL INFORMATION TECHNOLOGY SECURITY RISK;

(b) ACCOUNTABILITY CAN BE MAINTAINED BY THE GOVERNMENT BASED ON THE FOLLOWING:

(I) THERE ARE ADEQUATE SAFEGUARDS TO ENSURE THAT GOVERNMENT AUTHORITY IS NOT IMPROPERLY DELEGATED;

(II) THE EXTENT TO WHICH THE FUNCTION REQUIRES DIRECT, DAY-TO-DAY CONTROL OVER INDIVIDUAL WORKERS IN ORDER TO EFFECTIVELY ESTABLISH AND IMPLEMENT STATE POLICY REGARDING PUBLIC HEALTH, WELFARE, PEACE, AND SAFETY;

(III) THE EXTENT TO WHICH THE SERVICE CAN BE PROVIDED THROUGH ALTERNATIVE MEANS SHOULD THE CONTRACTOR FAIL TO PERFORM;

(IV) THE EXTENT TO WHICH THE SERVICE IS INDEPENDENT OF OTHER PROGRAM SERVICES AND IS NOT PART OF A LARGER SERVICE DELIVERY SYSTEM; AND

(V) THE EXTENT TO WHICH THE DEPARTMENT HAS SUFFICIENT RESOURCES AND EXPERTISE TO MONITOR, MEASURE, AND ENFORCE PERFORMANCE OF THE CONTRACT.

(c) (I) THE CONTRACT PROVIDES THE BEST VALUE IN THE DELIVERY OF

GOVERNMENT SERVICES AS DETERMINED BY THE ACTUAL COSTS SAVINGS AND IMPROVED QUALITY OVER THE TERM OF THE CONTRACT.

(II) THE DEPARTMENT HEAD SHALL CONSIDER THE FOLLOWING IN DETERMINING COST:

(A) THE EXTENT TO WHICH CAPITAL IMPROVEMENTS OR EQUIPMENT THAT ARE NOT FULLY DEPRECIATED AT THE TIME OF CONTRACTING WILL BE ABANDONED OR DEPRECIATED;

(B) A COMPARISON OF STATE COSTS TO THE CONTRACT PRICE, INCLUDING ANY FIXED AND VARIABLE COSTS SOLELY ATTRIBUTABLE TO THE PARTICULAR FUNCTION, AS WELL AS INSPECTION, SUPERVISION, AND MONITORING;

(C) WHETHER ANY PRICE INCREASES WILL OFFSET THE COST SAVINGS;

(D) WHETHER THE SAVINGS ARE ATTRIBUTABLE SOLELY TO LOWER HEALTH INSURANCE COSTS; AND

(E) THE EXTENT TO WHICH THE DEPARTMENT HAS UNDERTAKEN SPECIFIC MEASURES TO IMPROVE QUALITY OR REDUCE COSTS DURING THE PRECEDING YEAR.

(III) THE DEPARTMENT HEAD SHALL EVALUATE TIMELINESS, FUNCTIONALITY, DURABILITY, EFFICIENCY, EFFECTIVENESS, AND FLEXIBILITY IN DETERMINING QUALITY.

(2) A PERSONAL SERVICES CONTRACT SHALL NOT CREATE AN EMPLOYMENT RELATIONSHIP.

(3) A DEPARTMENT CONTRACTING FOR PERSONAL SERVICES SHALL ENSURE THAT THE CONTRACT IS PERFORMANCE-BASED AND FOCUSES ON THE OVERALL EXPECTATIONS AND RESULTS OF THE CONTRACT. THE DEPARTMENT SHALL ESTABLISH A WRITTEN IMPLEMENTATION PLAN REGARDING HOW PERFORMANCE WILL BE MONITORED, INCLUDING COST AND QUALITY.

(4) PERSONAL SERVICES CONTRACTS SHALL CONTAIN:

(a) NONDISCRIMINATION LANGUAGE THAT IS CONSISTENT WITH THE REQUIREMENTS OF FEDERAL AND STATE LAW;

(b) PROVISIONS ADDRESSING THE TERMINATION OF THE CONTRACT FOR BREACH OF CONTRACT;

(c) PROVISIONS ADDRESSING THE CONSEQUENCES AND POTENTIAL MITIGATION OF IMPROPER OR FAILED PERFORMANCE BY THE CONTRACTOR, SUCH AS BONDING REQUIREMENTS OR OTHER APPROPRIATE MEASURES;

(d) QUALIFICATIONS OF THE INDIVIDUALS PERFORMING THE WORK UNDER CONTRACT;

(e) CLEARLY DEFINED MEASUREMENTS OF PERFORMANCE OUTCOMES;

(f) SANCTIONS FOR UNTIMELY OR POOR PERFORMANCE, SUCH AS LIQUIDATED DAMAGES OR OTHER APPROPRIATE MEASURES;

(g) PROVISIONS CONCERNING THE ORDERLY TRANSITION OF FUNCTIONS BETWEEN THE DEPARTMENT AND THE CONTRACTOR DURING IMPLEMENTATION OR FOLLOWING TERMINATION OF THE CONTRACT;

(h) PROVISIONS REQUIRING THE CONTRACTOR TO CERTIFY THAT THE CONTRACTOR OFFERS ITS EMPLOYEES THAT ARE PROVIDING THE PERSONAL SERVICES TO THE STATE UNDER THE CONTRACT A HEALTH INSURANCE PLAN WITH BENEFITS THAT ARE AT LEAST COMPARABLE TO OR BETTER THAN THE BENEFITS THAT ARE AVAILABLE IN A BASIC PLAN UNDER THE SMALL GROUP MARKET PURSUANT TO SECTION 10-16-105 (7.2) (b), C.R.S.; AND

(i) PROVISIONS RESERVING THE RIGHT TO THE STATE TO AUDIT THE CONTRACTOR'S BOOKS AND RECORDS FOR UP TO THREE YEARS AFTER THE EXPIRATION OR TERMINATION OF THE CONTRACT TO VALIDATE THE PERMISSIBILITY OF COSTS PAID UNDER THE CONTRACT.

(5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 5, NO DEPARTMENT SHALL ENTER INTO A PERSONAL SERVICES CONTRACT THAT HAS BEEN DETERMINED, PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION, TO POSE A LOCAL, NATIONAL, OR INTERNATIONAL INFORMATION TECHNOLOGY SECURITY RISK.

(6) (a) THE DEPARTMENT SHALL MAKE ALL DATA AND OTHER INFORMATION RELEVANT TO THE CONTRACT AND THE APPLICATION OF THE STANDARDS OF THIS PART 5 AVAILABLE TO THE PUBLIC, INCLUDING INFORMATION FROM THE CONTRACTOR'S BOOKS AND RECORDS, CONSISTENT WITH SECTION 24-72-204.

(b) THE DIRECTOR SHALL MAINTAIN A CURRENT, CENTRAL LISTING OF ALL NOTICES OF CONTRACTS AND IMPLEMENTATION PLANS ISSUED PURSUANT TO SECTION 24-50-504.5 (5) (a) DURING THE PAST TWELVE MONTHS AND SHALL MAKE THE LISTING AVAILABLE TO THE PUBLIC.

24-50-504.5. Implications of personal services contracts. (1) CONTRACTS FOR PERSONAL SERVICES TO PERFORM FUNCTIONS THAT ARE CURRENTLY, COMMONLY, OR HISTORICALLY PERFORMED BY EMPLOYEES IN THE STATE PERSONNEL SYSTEM ARE PERMISSIBLE.

(2) A DEPARTMENT MAY CONTRACT FOR PERSONAL SERVICES THAT WILL BE PERFORMED AT A SITE OUTSIDE THE UNITED STATES IF:

(a) THE DEPARTMENT CLEARLY DEMONSTRATES THAT THE CONTRACT WILL NOT RESULT IN A REDUCTION IN THE QUALITY OF SERVICES OFFERED OR PROVIDED BY THE DEPARTMENT TO COLORADO RESIDENTS.

(b) THE CONTRACT CONTAINS SAFEGUARDS TO ENSURE THE CONFIDENTIALITY AND RIGHT TO PRIVACY OF ANY NONMEDICAL PERSONAL INFORMATION CONCERNING COLORADO RESIDENTS THAT IS PROVIDED BY THE CONTRACTING DEPARTMENT TO THE CONTRACTOR IN CONNECTION WITH THE PERSONAL SERVICES TO BE PERFORMED UNDER THE CONTRACT.

(c) THE CONTRACT CONTAINS SAFEGUARDS TO ENSURE THE CONFIDENTIALITY AND RIGHT TO PRIVACY OF ANY MEDICAL INFORMATION CONCERNING COLORADO RESIDENTS THAT IS PROVIDED BY THE CONTRACTING DEPARTMENT TO THE CONTRACTOR IN CONNECTION WITH THE PERSONAL SERVICES TO BE PERFORMED UNDER THE CONTRACT, CONSISTENT WITH THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", 42 U.S.C. SEC. 1320d TO 1320d-8.

(d) THE CONTRACTOR DISCLOSES TO THE DEPARTMENT THE PORTION OF THE PERSONAL SERVICES TO BE PROVIDED TO THE STATE THAT WILL BE PERFORMED OUTSIDE OF THE UNITED STATES.

(3) POSITIONS IN THE STATE PERSONNEL SYSTEM MAY BE ABOLISHED AS A RESULT OF A PERSONAL SERVICES CONTRACT IF THERE IS NO DIRECT ADVERSE IMPACT ON A CERTIFIED EMPLOYEE IN THE STATE PERSONNEL SYSTEM. FOR PURPOSES OF THIS SECTION, "DIRECT ADVERSE IMPACT" MEANS ANY LOSS OF BASE PAY, STATUS, OR TENURE. A TRANSFER OR REASSIGNMENT OF A CERTIFIED EMPLOYEE SHALL NOT BE DEEMED A DIRECT ADVERSE IMPACT IF THE TRANSFER OR REASSIGNMENT OCCURS PURSUANT TO A WRITTEN PLAN SUPPLEMENTING THE IMPLEMENTATION PLAN REQUIRED BY SECTION 24-50-503.5 (3). THE SUPPLEMENTAL PLAN SHALL LIMIT EMPLOYEE RELOCATIONS, ADDRESS THE SUITABILITY OF THE EMPLOYEE'S NEW JOB DUTIES, AND PROVIDE FOR NECESSARY RETRAINING.

(4) NOTWITHSTANDING SECTION 24-18-201 (1), A STATE PERSONNEL SYSTEM EMPLOYEE WHO IS AFFECTED BY A PERSONAL SERVICES CONTRACT MAY VOLUNTARILY ACCEPT EMPLOYMENT WITH A CONTRACTOR PURSUANT TO THIS SECTION.

(5) (a) IF A DEPARTMENT IS CONSIDERING ELIMINATING STATE PERSONNEL SYSTEM POSITIONS IN CONNECTION WITH A PERSONAL SERVICES CONTRACT, THE CONTRACTING DEPARTMENT SHALL NOTIFY ITS EMPLOYEES, THE DIRECTOR, AND THE PUBLIC OF THE PROPOSED CONTRACT AND IMPLEMENTATION PLAN AT LEAST THIRTY DAYS BEFORE THE CONTRACT IS EXECUTED.

(b) THE CONTRACTING DEPARTMENT SHALL ACCEPT WRITTEN COMMENTS REGARDING THE PROPOSED CONTRACT AND IMPLEMENTATION PLAN FOR TWENTY DAYS AFTER THE NOTICE IS PROVIDED. THE CONTRACTING DEPARTMENT SHALL REVIEW AND CONSIDER THE COMMENTS SUBMITTED FOR AT LEAST TEN DAYS BEFORE THE EXECUTION OF THE CONTRACT. THE CONTRACTING DEPARTMENT SHALL PROMPTLY NOTIFY ITS EMPLOYEES AND THE DIRECTOR IF THE CONTRACT IS EXECUTED. THE CONTRACT SHALL BE EFFECTIVE NO SOONER THAN TEN DAYS AFTER IT IS EXECUTED.

(c) WITHIN TEN DAYS OF EXECUTION OF THE CONTRACT, ANY EMPLOYEE OF THE CONTRACTING DEPARTMENT MAY REQUEST THE DIRECTOR TO REVIEW THE CONTRACT AND IMPLEMENTATION PLAN TO DETERMINE WHETHER THE CONTRACT AND IMPLEMENTATION PLAN SUBSTANTIALLY COMPLY WITH THE REQUIREMENTS OF THIS PART 5. THE DIRECTOR SHALL PROMPTLY DETERMINE REVIEWS REQUESTED PURSUANT TO THIS PARAGRAPH (c). THE DIRECTOR'S DETERMINATION SHALL BE SUBJECT TO JUDICIAL REVIEW PURSUANT TO SECTION 24-4-106 (4). ANY REMEDIES PROVIDED SHALL BE CONSISTENT WITH SECTION 24-109-403.

(6) PERSONAL SERVICES CONTRACTS ARE NOT SUBJECT TO THE PROVISIONS OF THIS PART 5 WHEN THE SERVICES CONTRACTED:

(a) ARE OTHERWISE PROVIDED BY PERSONS EXEMPT FROM THE STATE PERSONNEL SYSTEM PURSUANT TO SECTION 13 OF ARTICLE XII OF THE STATE CONSTITUTION OR STATUTES ENACTED IN FURTHERANCE OF SECTION 13 OF ARTICLE XII OF THE STATE CONSTITUTION;

(b) INVOLVE THE MAINTENANCE OR PROVISION OF EQUIPMENT, MATERIALS, FACILITIES, OR SUPPORT SERVICES THAT CANNOT REASONABLY BE PROVIDED THROUGH THE STATE PERSONNEL SYSTEM;

(c) ARE FOR AN EXISTING STATE PROGRAM THAT HAS NEVER BEEN PERFORMED BY EMPLOYEES IN THE STATE PERSONNEL SYSTEM;

(d) ARE FOR A STATE PROGRAM THAT INVOLVES A COMBINATION OF DUTIES THAT HAVE NEVER BEEN PERFORMED BY CERTIFIED EMPLOYEES AND DUTIES THAT ARE SIMILAR TO DUTIES CURRENTLY OR PREVIOUSLY PERFORMED BY CERTIFIED EMPLOYEES; HOWEVER, THE DEPARTMENT HEAD SHALL MAKE THE DETERMINATIONS REQUIRED BY SECTION 24-50-503.5 (1) (a) AND (1) (b); OR

(e) ARE OF AN URGENT, TEMPORARY, OR OCCASIONAL NATURE.

(7) IF THE STATE PERSONNEL DIRECTOR DETERMINES THAT CERTAIN STANDARD PERSONAL SERVICES CONTRACTS MEET THE REQUIREMENTS OF THIS PART 5, THE CONTRACTS MAY BE USED WITHOUT BEING INDIVIDUALLY REVIEWED AND APPROVED.

SECTION 38. 24-50-505 (2), Colorado Revised Statutes, is amended to read:

24-50-505. Liability and immunity. (2) The sovereign immunity and governmental immunity of the contracting ~~agency~~ DEPARTMENT shall not extend to the contractor, except as otherwise provided by law. Neither the contractor nor the insurer of the contractor may plead the defense of sovereign immunity or governmental immunity in any action arising out of the performance of the contract.

SECTION 39. The introductory portion to 24-50-507 (2) (a) and 24-50-507 (2) (a) (I), Colorado Revised Statutes, are amended to read:

24-50-507. Conflict of interest. (2) (a) The following individuals shall not solicit or accept, directly or indirectly, any personal benefit or promise of a benefit from an entity or a person negotiating, doing business with, or planning, within the individual's knowledge, to negotiate or do business with the contracting ~~agency~~ DEPARTMENT:

(I) A member of, or any other person or entity under contract with any governmental body that exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project, including but not limited to any employee of the contracting ~~agency~~ DEPARTMENT or any person serving as the monitor of a personal services contract; or

SECTION 40. 24-50-510, Colorado Revised Statutes, is amended to read:

24-50-510. Annual report of personal services contracts. ~~Using forms supplied~~ IN THE FORM AND MANNER PRESCRIBED by the state personnel director, every ~~state agency~~ DEPARTMENT shall submit to the state personnel director a report no later than September 30 of each year setting forth the types and dollar values of PERSONAL SERVICES contracts ~~for services~~ approved during the preceding fiscal year. ~~Such~~ THE report shall include information on any changes to the types or number of ~~classified~~ STATE PERSONNEL SYSTEM positions in the ~~state agency~~ DEPARTMENT as a direct result of THE contracts. ~~entered into by the agency. As used in this section, "state agency" means every board, bureau, commission, department, institution, division, or section of state government, including institutions of higher education.~~

SECTION 41. Repeal. 24-50-503, 24-50-504, 24-50-509, 24-50-512, and 24-50-513, Colorado Revised Statutes, are repealed.

SECTION 42. 24-109-105 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-109-105. Debarment and suspension. (2) A person may be debarred for any of the following reasons:

(f) VIOLATION OF THE PROVISIONS OF SECTION 7-108-401, C.R.S.

SECTION 43. 24-50.3-104 (3) (a) and (3) (e), Colorado Revised Statutes, are amended to read:

24-50.3-104. Powers and duties of executive director. (3) In order to perform these duties, the executive director shall have the power to:

(a) Promulgate rules ~~and regulations~~ IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE;

(e) After consultation with other state ~~agencies~~ DEPARTMENTS AND INSTITUTIONS OF HIGHER EDUCATION, promulgate rules ~~and regulations which~~ IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE THAT set out the methods to be employed by state ~~agencies~~ DEPARTMENTS AND INSTITUTIONS OF HIGHER EDUCATION in the collection of debts due the state. THE rules ~~and regulations~~ shall be uniform wherever possible for all state ~~agencies~~ DEPARTMENTS AND INSTITUTIONS OF HIGHER EDUCATION and shall include such things as the classification of debts by type, amount, time status as to delinquency, circumstances of debtor, possibility of error, and any other method of classification ~~which~~ THAT aids ~~an agency~~ A DEPARTMENT OR INSTITUTION OF HIGHER EDUCATION in efficient efforts to recover amounts due the state. ~~Such~~ THE rules ~~and regulations~~ shall also specify the requirements for a debt to be classified as "referable to controller" for further collection.

SECTION 44. 26-4-120 (2) and (4) (b), Colorado Revised Statutes, are amended to read:

26-4-120. State department - outsourcing. (2) ~~To that end, pursuant to section 24-50-504 (2) (a), C.R.S.,~~ The state department shall enter into personal services contracts PURSUANT TO SECTION 24-50-503.5, C.R.S., that create an independent contractor relationship for the administration of not less than twenty percent of the

statewide managed care system. The state department shall enter into personal service contracts for the administration of the managed care system according to the implementation of the statewide managed care system in accordance with section 26-4-113.

(4) The implementation of this section is contingent upon:

(b) A finding by the state personnel director that ~~any of the conditions of section 24-50-504(2), C.R.S., have been met or that the conditions of section 24-50-503(1)~~ SECTION 24-50-503.5, C.R.S., have been met.

SECTION 45. 26-19-111 (2) (a) (I) and (3), Colorado Revised Statutes, are amended to read:

26-19-111. Department - administration - outsourcing. (2) (a) The department may:

(I) Pursuant to ~~section 24-50-504(2)(a)~~ SECTION 24-50-503.5, C.R.S., enter into personal services contracts for the administration of the children's basic health plan. Any contracts established pursuant to this section shall contain performance measures that shall be monitored by the department.

(3) The implementation of subparagraph (I) of paragraph (a) of subsection (2) of this section is contingent upon a finding by the state personnel director that ~~any of the conditions of section 24-50-504(2), C.R.S., have been met or that the conditions of section 24-50-503(1)~~ SECTION 24-50-503.5, C.R.S., have been met.

SECTION 46. 33-1-112.5 (2) (c) (IV), Colorado Revised Statutes, is amended to read:

33-1-112.5. Search and rescue fund - transfer of duties. (2) (c) (IV) ~~The general assembly finds and declares that the Colorado outdoor recreation search and rescue card program is a new program.~~ The department of local affairs is ~~therefore~~ authorized to contract, pursuant to ~~section 24-50-504(2)(b)~~ SECTION 24-50-503.5, C.R.S., with a person, corporation, or entity for any elements of the administration of the program created by this paragraph (c).

SECTION 47. 39-3-112 (6), Colorado Revised Statutes, is amended to read:

39-3-112. Definitions - residential property - orphanage - low-income elderly or disabled - homeless or abused - low-income households - charitable purposes - exemption - limitations. (6) For purposes of processing applications received for the exemption authorized by subsection (2) of this section for low-income household residential facilities, the department of local affairs shall contract with an independent contractor for the performance of the application processing services in accordance with ~~section 24-50-504~~ SECTION 24-50-503.5, C.R.S. Said contract shall be limited to a term of one year and shall commence when the exemption for low-income household residential facilities first becomes available.

SECTION 48. 40-15-302.5 (4), Colorado Revised Statutes, is amended to read:

40-15-302.5. Resellers of toll services - registration required. (4) Pursuant to ~~section 24-50-504(2)(a)~~ SECTION 24-50-503.5, C.R.S., the commission shall enter into personal services contracts that create an independent contractor relationship for the administration of this section and section 40-15-112. ~~C.R.S.~~

SECTION 49. Effective date. (1) 29 through 34 of this act shall take effect July 1, 2005. The remainder of this act shall take effect on July 1, 2005, only if House Concurrent Resolution 04-1005 is enacted at the Second Regular Session of the Sixty-fourth General Assembly, is approved by the people at the next biennial regular general election, and becomes law.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the 90-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

Approved: June 4, 2004