Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

DRAFT 4/23/24

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LLS NO. 24-1184.01 Jessica Herrera x4218 **COMMITTEE BILL**

Joint Budget Committee

BILL TOPIC: Mod to the State Personnel Total Compensation

A BILL FOR AN ACT

CONCERNING MODIFICATIONS TO THE STATE EMPLOYEE TOTAL COMPENSATION PHILOSOPHY, AND, IN CONNECTION THEREWITH, REQUIRING THE DIRECTOR OF PERSONNEL TO ESTABLISH A STEP PAY SYSTEM FOR STATE EMPLOYEES IN THE STATE PERSONNEL SYSTEM.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov/.)

Joint Budget Committee. Currently, the state personnel director (director) is required to establish survey methodologies to assess total

compensation practices. Under these compensation practices, a state employee in the state personnel system (employee) may receive merit pay as part of their total compensation. The bill requires the director to establish a "step pay" structure that provides consistent salary increases for employees instead of permitting merit pay. In addition, the bill requires the state personnel director to conduct a compensation survey and to prepare a compensation report annually, rather than quadrennially.

The bill also repeals the requirement that employees of the division of worker's compensation and the division of labor standards and statistics in the department of labor and employment be paid on a monthly basis.

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

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

(a) State employees are valued partners in the work of the state;

(b) State employees should receive compensation based on a pay system that provides predictable salary increases;

(c) Pay and pay schedules for classified employees should be aligned with the state's total compensation philosophy and step pay per the partnership agreement with the certified employee organization pursuant to section 24-50-1102.

SECTION 2. In Colorado Revised Statutes, 24-50-104, **amend** (1)(a)(I), (1)(a)(II), (1)(c)(I), (1)(c)(II) introductory portion, (1)(c)(II)(C), (1)(c)(IV), (1)(c.5)(I), (1)(e), (1)(j)(II)(A), (4)(a), (4)(b)(I), (4)(c), (5)(d), (5)(e), (10)(a), and (10)(c); **repeal** (1)(c)(I.1), (1)(c)(I.2), (1)(c)(I.3), (1)(c)(I.5), (1)(c)(I.7), (1)(c)(I.9), (1)(c)(II)(D), (1)(c)(II)(F), (1)(c.5)(II), and (1)(c.7); and **add** (1)(a)(II.5) and (1)(c)(II)(H) as follows:

24-50-104. Job evaluation and compensation - state employee reserve fund - created - study - report - definitions - repeal. (1) **Total compensation philosophy.** (a) (I) It is the policy of the state to provide innovative total compensation that meets or exceeds total compensation provided by public or private sector employers or a combination of both, to officers and employees in the state personnel system to ensure the recruitment, motivation, and retention of a qualified and competent workforce. For purposes of this section, "total compensation" includes, but is not limited to, salary, group benefit plans, retirement benefits, ~~merit~~ STEP pay, incentives, premium pay practices, and leave as specified in statute or in policies of the state personnel director. For purposes of this section, "group benefit plans" means group benefit coverages as described in section 24-50-603 (9). Any monetary components of total compensation are subject to available appropriations by the general assembly.

(II) The state personnel director shall establish technically and professionally sound survey methodologies to assess total compensation practices, levels, and costs. Except as provided in subsection (1)(a)(III) of this section, for purposes of this subsection (1)(a), to determine and maintain salaries, state contributions for group benefit plans, and ~~merit~~ STEP pay that meet or exceed total compensation provided by public or private sector employment or a combination of both, the state personnel director shall ~~quadrennially~~ ANNUALLY review the results of appropriate surveys by public or private organizations, including surveys by the state personnel director set forth in subsection (4)(b)(I) of this section. 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 subsection (4)(b) of this section. The state personnel director shall adopt appropriate procedures to determine and maintain other elements of total compensation, including the payment of incentive awards to employees in the state personnel system. The state personnel director's review and determination of total compensation practices shall not be subject to appeal except as otherwise authorized by law or state personnel director procedures.

(II.5) WHEN ESTABLISHING PAY PLANS IN ACCORDANCE WITH SUBSECTION (5) OF THIS SECTION AND RECOMMENDING ANNUAL INCREASES FOR STATE EMPLOYEES IN ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION, THE STATE PERSONNEL DIRECTOR SHALL DEVELOP AN EQUITABLE PAY STRUCTURE THAT PROVIDES CONSISTENT AND PREDICTABLE SALARY INCREASES FOR CLASSIFIED AND NONCLASSIFIED EMPLOYEES WHILE REMAINING COMPLIANT WITH ANY FEDERAL OR STATE LAWS AND KEEPING THE STATE EMPLOYEE WORKFORCE COMPETITIVE WITH PREVAILING MARKET COMPENSATION.

(c) (I) The state personnel director shall establish a ~~merit~~ STEP pay system in order to provide periodic salary increases for employees in the state personnel system. The purpose of the ~~merit~~ STEP pay system is to provide salary increases for employees based on ~~performance evaluations and~~ salary placement within the appropriate salary range. ~~The state personnel director shall develop the merit pay system so that a merit pay increase is based on the relationship of performance rating distribution and salary range distribution. The merit pay system must include the following characteristics:~~

(A) ~~Salary range is divided into quartiles, except as set forth in subparagraph (I.1) of this paragraph (c);~~

(B) ~~The lowest quartile or distribution zone in relation to the midpoint has the highest rate of merit pay, and the rate for each successive quartile or distribution zone is less than the preceding quartile~~

~~or distribution zone, except as provided in sub-subparagraph (E) of this subparagraph (I);~~

(C) ~~Performance evaluations are divided into three performance categories, except as set forth in subparagraph (I.1) of this paragraph (c);~~

(D) ~~The highest performance category has the highest rate of merit pay, and the rate for each lower performance category is less than the preceding category, except as provided in sub-subparagraph (E) of this subparagraph (I); and~~

(E) ~~Employees who receive an unsatisfactory performance evaluation are not eligible for merit pay.~~

(I.1) ~~On or after September 1, 2015, the state personnel director shall review the effectiveness of the use of quartiles for salary range and three performance categories in the merit pay system. Based on the review, the state personnel director may adjust the number of distribution zones or performance categories to be used in the system. Thereafter, the state personnel director shall conduct a biennial review of the distribution zones and performance categories and may adjust the number of distribution zones or performance categories based on the review. The minimum number of distribution zones the state personnel director may establish is three, and the maximum number is six.~~

(I.2) ~~If a state department or institution of higher education has a performance review system that has a different number of performance categories than the number used by the state personnel director in the merit pay system, the state personnel director shall establish a method for converting the departmental or institutional categories into the categories used in the merit pay system.~~

(I.3) ~~Based on professionally sound survey methodologies, the~~

~~state personnel director shall establish annually one or more priority groups of employees that have priority to receive merit pay based on available moneys. The priority groups must be based on length of service, relation to the salary range midpoint, performance, recruitment, retention needs, and other factors established by the director. The amount of merit pay that an employee in the state personnel system may receive depends first on the employee's priority group and then on the amount of merit pay, if any, associated with the employee's performance category and salary range.~~

(I.5) (A) ~~Except as set forth in sub-subparagraph (B) of this subparagraph (I.5), the merit pay system applies uniformly across state departments and institutions of higher education subject to the provisions of subparagraph (I.9) of this paragraph (c). For each state fiscal year the state personnel director shall determine the appropriate merit pay rates that apply to all state departments and institutions and the priority group or groups that receive merit pay.~~

(B) ~~Notwithstanding any provision of this section to the contrary, an institution of higher education may enact its own merit pay system, so long as the system is consistent with the provisions of this subsection (1).~~

(I.7) ~~An employee who is at or above the maximum amount for his or her salary range is not eligible for a merit pay salary increase, but is eligible for a merit pay payment that is nonbase building.~~

(I.9) ~~Merit pay is subject to available appropriations. Except as set forth in subparagraph (II) of paragraph (j) of this subsection (1), the general assembly shall appropriate any moneys for merit pay in the annual general appropriation act in suitable personal services line items or other line items that include salary appropriations.~~

(II) In addition to any other requirements set forth in this ~~paragraph (c),~~ SUBSECTION (1)(c)(II), the department of personnel shall develop the ~~merit~~ STEP pay system so that it:

(C) Is developed with input from employees in the state personnel system, managers, and other affected parties; AND

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

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

(H) MINIMIZES EMPLOYEE PAY DISRUPTIONS RESULTING FROM IMPLEMENTATION OR MODIFICATION OF STEP PAY.

(IV) ~~Each state department and institution of higher education shall ensure that it has a performance review system that can be used to implement a merit pay system.~~ The state personnel director shall encourage state departments and institutions of higher education to implement performance evaluations of employees that are as objective as possible and that, as soon as possible and wherever feasible, include an assessment from multiple sources of each employee's performance. Such sources shall include, where applicable, the employee's self-assessment; the employee's superiors, subordinates, and peers; and any other applicable sources of an employee's performance. The state personnel director shall adopt procedures to establish a process to resolve employee disputes related to performance evaluations that do not result in corrective or disciplinary action against the employee. Each program established by a state department or institution of higher education pursuant to this ~~subparagraph (IV) shall be~~ SUBSECTION (1)(c)(IV) IS subject to the director's approval.

(c.5) (I) The state personnel director shall provide for the evaluation of employee performance. Each employee shall be evaluated at least once a year. ~~The evaluation of performance shall be used as a factor in compensation, promotions, demotions, removals, reduction of force, and all other transactions as determined by the state personnel director in which considerations of quality of service are properly a factor.~~

(II) ~~A supervisor, including a supervisory state employee not within the state personnel system, who does not evaluate subordinate employees in the state personnel system as required by this paragraph (c.5) on at least an annual basis shall be suspended from work without pay for a period of not less than one workday. The provisions of this subparagraph (II) shall only apply to supervisors who are state employees.~~

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

(e) The state personnel director shall sustain an employee's base salary in the event such employee's position is placed in a lower pay range due to an allocation of such employee's position, a system maintenance study of all positions in a class, a general job evaluation study of the state personnel system, or the ~~quadrennial~~ ANNUAL compensation survey for a period not to exceed three years from the effective date of such placement.

(j) (II) (A) The state employee reserve fund is hereby created in the state treasury, which consists of money transferred pursuant to subsection (1)(j)(IV) of this section. Money in the fund is continuously appropriated for the purpose ~~of providing merit pay to employees as~~ provided in this subsection (1). No money from the fund shall be expended without the approval of the director of the office of state planning and budgeting.

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

(b) (I) ~~On October 1, 2025, and on October 1 of each fourth year thereafter~~ BY OCTOBER 1, 2024, AND BY OCTOBER 1, EACH YEAR THEREAFTER, the state personnel director shall prepare ~~a quadrennial~~ AN ANNUAL compensation report based on the analysis of surveys conducted pursuant to subsection (4)(a) of this section. The purpose of the ~~quadrennial~~ ANNUAL compensation report shall be to reflect all adjustments necessary to maintain the salary structure, state contributions for group benefit plans, and ~~merit~~ STEP pay FOR THE UPCOMING FISCAL YEAR. The state personnel director shall also include a detailed analysis of salary ranges for all employees in the state personnel system and how employees' salaries are distributed within these ranges. The state personnel director shall also publish the report. Notwithstanding the requirement in section 24-1-136 (11)(a)(I), the requirement to submit the report required in this subsection (4)(b)(I) continues indefinitely. The state auditor is responsible for contracting with a private firm to conduct a performance audit of the procedures and application of data, including any survey conducted by the state personnel director. Beginning January 1, 2005, through January 1, 2021, and beginning on January 1, 2026, the audits shall be conducted every four years. A report shall be submitted to the governor and the general assembly by the December 30 immediately following the completion of the audit.

(c) By September 15, 2017, and by September 15 of each year thereafter through September 15, 2021, and on or before October 1, 2022, and on or before October 1 of each year thereafter, the state personnel director shall submit recommendations and estimated costs for state employee compensation for the next fiscal year, covering salaries, state contributions for group benefit plans, and ~~merit~~ STEP pay, to the governor and the joint budget committee of the general assembly. The recommendations shall reflect a consideration of the results of the ~~quadrennial~~ ANNUAL compensation survey, fiscal constraints, the ability to recruit and retain state employees, appropriate adjustments with respect to state employee compensation, and those costs resulting from implementation of section 24-50-110 (1)(a). The recommendations for state contributions for group benefit plans shall specify the annual group benefit plan year established pursuant to section 24-50-604 (1)(m). The ~~recommendations submitted to the governor and the joint budget committee~~ ANNUAL COMPENSATION REPORT shall include the results of the surveys of public or private employers and jobs FOR PREVAILING TOTAL COMPENSATION AND THE REASONS FOR ANY DEVIATION FROM PREVAILING TOTAL COMPENSATION IN THE RECOMMENDATIONS SUBMITTED TO THE GOVERNOR AND THE JOINT BUDGET COMMITTEE. The state personnel director shall also publish such ~~recommendations~~ REPORT. This subsection (4)(c) is exempt from the provisions of section 24-1-136 (11), and the periodic reporting requirements of this section are effective until changed by the general assembly acting by bill.

(5) **Pay plans.** (d) In the medical pay plans, there are no anniversary-based ~~merit~~ STEP increases. The salaries in such pay plans are based on the negotiation of an annual contract between the employee and the department head or the state auditor, when appropriate, and the amount of such salaries may increase, decrease, or remain unchanged from year to year. Any employee dismissed for failure to perform under such contract may only appeal directly to the state personnel board.

(e) In the pay plans for the senior executive service and those positions specified in section 13 (2)(a)(XI) of article XII of the state constitution, there are no anniversary-based ~~merit~~ STEP increases. The salaries in such pay plans are based on policies set forth by the state personnel director. The amount of such salaries may increase, decrease, or remain unchanged from year to year.

(10) **Total compensation study including retirement benefits.** (a) By January 15, 2015, by October 1, 2025, and by October 1 every fourth year thereafter, the state personnel director shall submit to the governor and the joint budget committee, along with the ~~quadrennial~~ ANNUAL compensation report required pursuant to subsection (4)(b) of this section, an addendum with a total compensation study that includes

retirement benefits. Notwithstanding the requirement in section 24-1-136 (11)(a)(I), the requirement to submit the addendum required in this subsection (10) continues indefinitely.

(c) For purposes of the addendum to the ~~quadrennial~~ ANNUAL compensation report required pursuant to this subsection (10), the public employees' retirement association created in article 51 of this title 24 shall provide access to official association member information and data under a confidentiality agreement with the third-party compensation consulting firm.

SECTION 3. In Colorado Revised Statutes, **amend** 8-47-205 as follows:

8-47-205. Salaries of employees of division. All deputies, statisticians, accountants, clerks, experts, and other employees of the division shall receive such compensation as may be fixed by law. The salaries so fixed shall be paid ~~monthly~~ from the fund appropriated for the use of the division after approval by the director.

SECTION 4. In Colorado Revised Statutes, 8-1-103, **amend** (2) as follows:

8-1-103. Division of labor standards and statistics - director - employees - qualifications - compensation - expenses. (2) All employees, except experts, shall have been for one year prior to such employment or appointment bona fide residents of this state and, while in the employ of the division, shall receive such compensation as is fixed by the state personnel system laws of this state, such compensation to be paid ~~monthly~~ from funds appropriated for the use of the division. All expenses incurred by the division and its employees pursuant to the provisions of law shall be paid from funds appropriated for its use upon the approval of the director. The traveling expenses of the director or of any employee of the division incurred while on business of the division outside this state shall be paid in the manner prescribed in this subsection (2), but only when such expenses are authorized in advance.

SECTION 5. In Colorado Revised Statutes, 24-38-103, **repeal** (1.5) as follows:

24-38-103. Agency authority and incentives for budget savings. (1.5) ~~Beginning with the 2004-05 fiscal year, an agency that achieves cost savings, as an alternative to the transfer authorized pursuant to subsection (1) of this section, may transfer fifty percent of the amount of the cost savings from one item of appropriation made to the agency in the general appropriation act or any supplemental appropriation act to the item for personal services in the appropriation made to the same agency for the purpose of paying performance-based awards to employees of the agency. The award shall be awarded in the fiscal year in which the cost savings are achieved. and shall be made consistent with the performance review done in accordance with the merit pay system identified in section 24-50-104 (1)(c.7). Prior to the end of the state fiscal year in which a transfer is made pursuant to this subsection (1.5), an agency shall submit written notice to the joint budget committee, the office of state planning and budgeting, and the state controller of the amount of the cost savings achieved by the agency during the state fiscal year.~~

SECTION 6. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.