



**REPORT OF
THE
STATE AUDITOR**

**Higher Education
Personnel Exemption Process**

**Performance Audit
September 2002**

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September 18, 2002

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Higher Education Personnel Exemption Process. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The report presents our findings, conclusions, and recommendations, and the responses of the Department of Personnel & Administration and the Department of Higher Education.

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**STATE OF COLORADO
OFFICE OF THE STATE AUDITOR**

REPORT SUMMARY

**JOANNE HILL, CPA
State Auditor**

**Higher Education
Personnel Exemption Process
Performance Audit
September 2002**

Authority, Purpose, and Scope

This performance audit of the Higher Education Personnel Exemption Process was conducted under the authority of Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The audit was conducted according to generally accepted auditing standards. The audit work, which included gathering information through interviews, reviewing documents, and analyzing data, was performed between May and August 2002.

The purpose of this audit was to review the exemption process for higher education staff. We gratefully acknowledge the assistance and cooperation of staff at the Department of Personnel & Administration, the Department of Higher Education, and the higher education institutions and governing boards in completing this audit. The following summary provides highlights of the comments contained in the report.

Overview

The Colorado Constitution requires employees of the State's higher education institutions to be classified state employees with the exception of faculty members and those administrators specifically exempted by law. According to Section 24-50-135, C.R.S., administrators include the following:

- Officers of an educational institution and their professional staff assistants.
- Heads of administrative units directly responsible to officers of an educational institution.
- Heads of administrative units and their professional staff assistants who relate directly to the educational function of an educational institution and whose qualifications include training and experience comparable to that required for a faculty member.
- Heads of those functions of an educational institution which are supported primarily by student fees and charges, including heads of residence halls.

For further information on this report, contact the Office of the State Auditor at (303) 869-2800.

SUMMARY

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Higher Education Personnel Exemption Process Performance Audit - September 2002

- Heads of, and professional staff members of, departments of intercollegiate athletics.
- Professional officers and professional staff of the Department of Higher Education, including the professional staff members of any governing board of an institution of higher education.

The statute also states that the State Personnel Director, in consultation with the officers of the educational institutions, is responsible for determining which administrative positions are exempt from the state personnel system. In 1977 the Department established guidelines for its staff to use when reviewing institutional requests to exempt positions from the state personnel system.

Exemption Process

Before a position is exempted from the state personnel system, institutions and governing boards must submit an exemption application to the Department of Personnel & Administration. Department staff review the applications to determine if the position meets the exemption criteria established in statute and guidelines. We found that, over the past six years, 98 percent of the 1,600 exemption applications submitted for review have been approved. In addition, since Section 24-50-135, C.R.S., was enacted in 1972 and the Department's guidelines were developed in 1977, there have only been four appeals related to the process. It appears that the extra layer of review has added little value. We question whether the Department's current role is necessary to the exemption process. We believe that the exemption process would be more efficient and as effective if higher education institutions and governing boards were allowed to make their own exemption decisions. For purposes of maintaining statewide oversight, the General Assembly could consider changing the Department's role to maintaining the guidelines, serving as a central repository of exemption information, and monitoring exemption decisions through its audit process.

Exemption Statutes and Guidelines

Section 24-50-135, C.R.S., and the Department's guidelines define the types of higher education positions that should be exempt from the state personnel system. We compared a variety of positions among the higher education institutions to determine the consistency with which the exemption standards are applied. We found that the categorization of some positions varies across institutions. Although some inconsistencies across institutions are to be expected, we believe many of these inconsistencies are due to problems with the current statutory language and department guidelines. We found that the statutes and guidelines are outdated and, as a result, may no longer adequately address the needs of the higher education system. Specifically, we found that statutory and guideline language does not address positions that are funded with temporary or limited funding sources. These include positions such as research assistants. In addition, the language needs to be clarified to further define the types of positions that should be exempt from the state personnel system. For example, statutes exempt certain positions that are considered to be the "head" of a particular unit or function. It is not always clear, however, which positions meet this criteria. Clarifying

the language would help ensure that the appropriate positions are exempted and legal requirements are met. Finally, the language exempts many positions on the basis of reporting structure. We believe that an employee's actual duties are a more relevant criterion to the exemption decision-making process than to whom that person reports.

Record Keeping

Higher education institutions and governing boards must submit exemption applications and supporting documentation to the Department of Personnel & Administration for review and approval. The Department then enters this information into a database. We reviewed a sample of 25 exemption applications as well as the information contained in the database for the 1,600 exemption applications received over the past five years. We found that several improvements can be made in the accuracy and completeness of the data. Specifically, we found missing or incomplete exemption applications and supporting documentation. Currently department staff will process an exemption application even if they are missing some of the required documentation. In addition, we found that the Department's database contains duplicate entries and inaccurate information regarding the date the exemption application was received and processed. The Department has not established standards for entering information into the database and does not review the information once it has been entered to ensure it is correct. The accuracy of the database affects the Department's ability to analyze statewide information and oversee the exemption process.

Higher Education Personnel System

Overall, we concluded that the higher education personnel system is fragmented and that there is dissatisfaction with the system itself. We found that administering multiple personnel systems is costly; the status of positions funded with temporary or limited funding sources is not addressed by the current guidelines and statutes; similar positions are categorized differently in the classified and exempt systems; and the system does not account for a developing work force. The General Assembly could consider either improving the current system or evaluating exempting all higher education employees from the state personnel system. Of the ten states surveyed, only two have systems similar to Colorado's. For the remaining eight states, higher education employees are completely separate from the states' personnel systems.

Our recommendations and the responses of the Departments of Personnel & Administration and Higher Education can be found in the Recommendation Locator.

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
1	14	Improve the efficiency of the exemption process by proposing statutory changes to allow higher education governing boards and/or institutions to determine which positions should be exempt, and require them to report exemption decisions to the Department of Personnel & Administration.	Department of Personnel & Administration	Agree	July 1, 2003
			Department of Higher Education	Agree	July 1, 2003
2	15	Revise guidelines to clarify the types of positions that should be exempt from the state personnel system and routinely monitor exemption decisions through the internal audit process.	Department of Personnel & Administration	Agree	August 1, 2003
3	18	Improve the consistency of decisions made related to the exemption process by proposing statutory changes to clarify the types of positions that should be exempted from the state personnel system and revising the guidelines to reflect statutory changes.	Department of Personnel & Administration	Agree	August 1, 2003
			Department of Higher Education	Agree	July 1, 2003
4	20	Improve the accuracy and completeness of data related to the exemption process by requiring governing boards and institutions to submit all appropriate supporting documentation and complete exemption applications, establishing standards for entering information into the database, and periodically reviewing information entered into the database.	Department of Personnel & Administration	Agree	December 31, 2002
5	28	Evaluate the current higher education personnel system, as well as alternatives to this system, to identify the arrangement that best meets the needs of higher education and the State as a whole; seek statutory and constitutional changes as needed. Options include maintaining the current structure and exempting all higher education employees from the state personnel system.	Department of Personnel & Administration	Agree	July 1, 2003
			Department of Higher Education	Agree	December 2004

Description of Higher Education Exemption Process

Background

The state personnel system was established in 1918 by the Colorado Constitution. According to Section 24-50-101(3)(a), C.R.S., the purpose of establishing the system as a merit system was to:

Assure that a qualified and competent work force is serving the residents of Colorado and that any person has an equal opportunity to apply and compete for state employment.

According to Article 12, Section 13 of the Constitution, the state personnel system is comprised of all appointive public officers and state employees, except for those positions specifically exempted. Some of the positions exempted include the following:

- Members, officers, and employees of the Legislative and Judicial Departments, with some exceptions.
- Assistant attorneys general within the Attorney General's Office.
- Employees of the Governor's and Lieutenant Governor's Offices whose functions are limited to those offices and whose duties are concerned only with the administration of those offices.
- Members of the Public Utilities Commission, the State Board of Land Commissioners, the Colorado Tax Commission, the State Parole Board, and the State Personnel Board.

In Fiscal Year 2002 the Department reports on the basis of paycheck data that there were approximately 75,500 state employees. Of those, about 34,000 were classified employees within the state personnel system. The remaining 41,500 employees were exempt from the state personnel system. It is important to note that paycheck data may contain some duplication. Because there is no single source for this information, these are the best estimates the Department was able to provide. (Other sources estimate the number of full- and part-time state employees between 70,000 and 80,000.)

Higher Education

In addition to the positions described above, the Constitution exempts higher education faculty members and those higher education administrators specifically exempted by law from the state personnel system. According to Section 24-50-135, C.R.S., which was established in 1972, administrators include the following:

- Officers of an educational institution and their professional staff assistants.
- Heads of administrative units directly responsible to officers of an educational institution.
- Heads of administrative units and their professional staff assistants who relate directly to the educational function of an educational institution and whose qualifications include training and experience comparable to that required for a faculty member.
- Heads of those functions of an educational institution which are supported primarily by student fees and charges, including heads of residence halls.
- Heads of and professional staff members of departments of intercollegiate athletics.
- Professional officers and professional staff of the Department of Higher Education, including the professional staff members of any governing board of an institution of higher education.

In Fiscal Year 2002 there were about 10,000 classified state employees, 4,500 exempt administrators, and 13,000 full- and part-time faculty within the higher education system.

Section 24-50-135, C.R.S., also states that the State Personnel Director, in consultation with the officers of the educational institutions, is responsible for interpreting statute and further defining which administrative positions are exempt from the state personnel system. Before a position is exempted, higher education institutions and governing boards must submit an exemption application to the Department. In 1977 the Department established guidelines for its staff to use when reviewing institutional requests to exempt positions. These guidelines are still in existence today and attempt to clarify and further define the various exempt categories listed in statute and the types of positions that fall within these categories. Department staff review applications to determine if positions meet the exemption criteria established in statute and department guidelines and then either approve or deny the exemption.

Audit Scope

The Department of Personnel & Administration requested that the Office of the State Auditor review the policies and related processes for exempting higher education staff positions from the state personnel system. This request resulted from the significant dissatisfaction that has been expressed by all parties regarding the exemption system overall, as well as the specific processes for designating a particular position as exempt. Our report addresses this request, makes recommendations for improving the exemption process, and presents alternatives for the General Assembly's consideration.

Current Exemption Process

Chapter 1

Background

As mentioned previously, Section 24-50-135, C.R.S., states that the State Personnel Director, in conjunction with officers of higher education institutions, is responsible for determining which higher education positions should be exempt from the state personnel system. Before a position is exempted, the human resources administrator for an institution or governing board must submit an exemption application to the Department of Personnel & Administration. An application must include an exemption request form, a complete job description, and an organizational chart. Department staff review the request forms and other supporting documentation to determine if the position meets the exemption criteria established in statute and department guidelines. After the review, the Department notifies the human resources administrator at the institution or governing board of its decision to approve or deny the exemption request. The human resources administrator is responsible for notifying classified incumbents of their appeal rights should the exemption decision affect them.

According to department guidelines, institutions and governing boards must complete an exemption application for the following situations:

- An exempt position has been newly created.
- A request for reconsideration when a previous exemption request has been denied.
- A request for reexemption of a previously exempted position when there has been a change in job duties, job title, or reporting relationship.
- A request to exempt an encumbered position when the duties or reporting relationship has changed.

In this Chapter we discuss issues with the current exemption process that need to be addressed unless structural changes as outlined in Chapter 2 are implemented.

Exemption Process

During the audit we reviewed the Department of Personnel & Administration's current role in the position exemption process. We found that the majority of exemption requests are approved and that there have only been a small number of appeals related to the exemption process. Therefore, we question whether the Department's current role in the exemption process is necessary.

Specifically, we reviewed the Department's database of 1,600 exemption applications that have been received over the past six calendar years (through mid-May 2002). We found that the Department denied an exemption request in only 28 of those 1,600 applications (1.8 percent). Overall, the Department approved 98 percent of the exemption applications it received over the past six years. According to the Department, the exemption requests that were not granted were denied because the position duties were more clerical than professional in nature.

Incumbents in classified positions proposed for exemption have a right of appeal to the State Personnel Board and other employees claiming to be affected by an exemption may file grievances or other actions that are reviewable by the Board in its discretion. Board decisions may be appealed to the state court system.

We reviewed the number of appeals and/or grievances that have occurred within the past five calendar years related to the exemption process. Only one institution reported litigating an exemption during this time period. In that case the State Personnel Board upheld the exemption decision and no court appeal followed. Overall, we found that since Section 24-50-135, C.R.S., was enacted in 1972 and the Department's guidelines were developed in 1977, there have only been four appeals related to exemptions that have been heard by the State Personnel Board or the state court system, including the case noted above.

On the basis of our review and on information provided by the institutions, it appears that one reason there have been so few appeals is that most exempt positions are new positions or that institutions wait until a position becomes vacant to apply for an exemption. As a result, there are no classified incumbents in these positions to contest the exemption decisions. This also indicates that, in most cases, individual classified employees are not directly affected by exemption decisions.

We also surveyed ten other western states (Arizona, California, Kansas, Nebraska, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming) to determine how their higher education personnel systems are organized. We found that two of those states (Kansas and Washington) have systems similar to Colorado's. Both of these states, however, allow the individual institutions and governing boards to decide which positions should be exempt from their state personnel systems on the basis of statutory and regulatory guidance. Colorado is the only state of those surveyed that leaves these decisions with the State Personnel Director.

We believe the exemption process in Colorado would be more efficient if higher education institutions and governing boards were allowed to make their own exemption decisions. Over the years, management of the personnel system has become increasingly decentralized. Decentralization allows state agencies and higher education institutions to perform their own personnel functions, such as selection and classification, instead of having the Department perform these functions for them. Allowing governing boards and/or institutions to make their own exemption decisions appears to be consistent with the emphasis on greater decentralization of the personnel system. The General Assembly could choose to take the Department out of the process altogether, or it could have the Department maintain some level of involvement. If the General Assembly chooses to maintain the Department's involvement with the process, the following could be considered:

- **Revise the guidelines to help ensure exemption decisions are consistent with statutory and constitutional provisions.** Unless statutes are revised to more clearly define the types of positions that should be exempt from the state personnel system, higher education institutions would still need the guidelines to assist them in the decision-making process. Therefore, the Department should revise the guidelines to clarify statutory provisions.
- **Require that governing boards and institutions report all exemption decisions to the Department of Personnel & Administration.** Although the governing boards and/or the institutions would be able to decide which positions should be exempt according to the statute and guidelines, they should still report this information to the Department. The Department then could continue to maintain a central database of all exempt positions. Department staff could use this information to provide policy makers with one complete source of data regarding exemptions. In addition, the Department could use this information to monitor the number and types of positions that are exempted overall and at each governing board or institution and to develop an audit plan and schedule as discussed below.

- **Monitor exemption decisions made by the governing boards and/or the institutions through its audit process.** According to Section 24-50-101, C.R.S., the State Personnel Director is responsible for providing post-audit review of each state agency's and higher education institution's operation and management of the state personnel system. The Department currently audits all state agencies and higher education institutions to ensure they are complying with the Constitution, statutes, and personnel rules and procedures. Reviewing exemption decisions could be included in the audit process.
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Recommendation No. 1:

The Department of Personnel & Administration should work with the Department of Higher Education to improve the efficiency of the exemption process by proposing statutory changes to:

- a. Allow higher education governing boards and/or the institutions to determine which positions should be exempt from the state personnel system according to the Constitution and statute.
- b. Require governing boards and institutions to report exemption decisions to the Department of Personnel & Administration, which will maintain this information in a database.

Department of Personnel & Administration Response:

Agree.

- a. The Department of Personnel & Administration will work with the Department of Higher Education to propose constitutional and statutory changes that will allow higher education boards and institutions to determine which positions should be exempt.
- b. These proposed reforms will also require institutions to report changes of exempt decisions to the Department of Personnel & Administration.

Estimated implementation: July 1, 2003

Department of Higher Education Response:

Agree. This recommendation would create a more efficient process for the Governing Boards as each manages and classifies positions to meet institutional needs. Working with the Department of Personnel & Administration, we would envision statutory clarification to be implemented by July 1, 2003.

Recommendation No. 2:

If Recommendation No. 1 is implemented, the Department of Personnel & Administration should ensure that higher education governing boards and institutions comply with statutory requirements and department guidelines by:

- a. Maintaining the guidelines to be consistent with the Constitution and statute and making revisions as needed.
- b. Routinely monitoring governing boards' and institutions' exemption decisions through its internal audit process.

Department of Personnel & Administration Response:

Agree.

- a. Pending implementation of Recommendation No. 1, the Department of Personnel & Administration will update and maintain the exemption guidelines consistent with Constitution and statute.

Estimated implementation: August 1, 2003

- b. The Department of Personnel & Administration further agrees to monitor boards' and institutions' exemption decisions on an ongoing basis. This function has already been incorporated into the audit schedule.

Estimated implementation: ongoing

Exemption Statutes and Guidelines

During the audit we compared a variety of positions among the higher education institutions to determine the consistency with which the exemption standards are applied. Specifically, we selected ten different positions and surveyed 15 institutions to determine if those positions are classified or exempt. We found that the categorization of some positions varies across institutions. For example:

- 11 of 15 institutions have only exempt staff as counselors and advisors. Three institutions have both exempt and classified counselors and advisors, and one institution has only classified advisors.
- 4 of 15 institutions have only classified information systems staff. The remaining 11 institutions have both classified and exempt information systems staff.
- 3 of 15 institutions have only classified assistants to human resources directors. Two institutions have only exempt assistants to human resources directors, and one institution has both classified and exempt assistants. Nine institutions do not have an assistant human resources director position.
- 5 of 15 institutions have only exempt assistants to deans. Three institutions have only classified assistants to deans and one institution has both exempt and classified assistants. Six institutions do not have an assistant to dean position.

Although some inconsistencies across institutions are to be expected, we believe many of these inconsistencies are due to current statutory and guideline language. During the audit we reviewed the provisions of Section 24-50-135, C.R.S., related to which positions should be exempt from the state personnel system, as well as the Department's guidelines that attempt to clarify and define these statutory provisions. We found that the statutes and guidelines are outdated and, as a result, may no longer adequately address the needs of the higher education system. Specifically, we found:

- **Statutes and guidelines do not address positions that are funded with temporary or limited funding sources.** Many of the institutions conduct research projects that are funded with grants or other limited-term resources. Currently institutions must hire permanent, classified employees to staff these projects unless the project positions qualify for exemption. When a project ends and the funding runs out, however, classified employees have retention rights and may be entitled to another position within the institution. Specifically, according

to State Personnel Rules, classified state employees have “bumping rights” and can displace other more junior employees if the original position for which they were hired is terminated. Ultimately, numerous classified positions can be affected when a temporary project ends. The issues surrounding temporary positions need to be addressed through either constitutional or statutory change. Constitutional change is addressed later in the report.

- **Some statutory and guideline language needs to be clarified.** For example, the language of Section 24-50-135, C.R.S., describes many of the exempt positions as the “head” of an administrative unit or function. The guidelines go on to define “head of” as those administrators who report directly to an officer and who are charged with the management of a program or administrators who coordinate, manage, and/or direct a particular function. These definitions, however, do not address the relevance of the level of the function that is being managed. For example, an individual could be Head of Library Services or they could be head of a smaller, specific function within Library Services. From the guidelines it is difficult to determine if both positions would be exempt or if only the “head” of the major function— Library Services—would be exempt. Further defining in statutes and in the guidelines the types of positions that should be exempt from the state personnel system would help ensure that the appropriate positions are exempted and voter and legislative intent are met.
- **Some statutory and guideline language exempts positions on the basis of reporting structure.** For example, Section 24-50-135, C.R.S., specifically exempts “heads of administrative units directly responsible to officers of an educational institution.” In addition, the guidelines define a “professional staff assistant” as an individual who is directly responsible to an officer. Organizational and reporting structures, however, vary across institutions. As a result, similar positions at different institutions may be categorized as either exempt or classified. That is, a position may be exempt at one institution because that position reports to an officer, while the same position at another institution may be classified because that position does not report to an officer. We believe that actual position duties are a more relevant criterion to the exemption decision-making process than whether a position reports to an officer. Revising statutory and guideline language to better define the types of duties that should qualify a position for exemption would help ensure consistent exemption decisions are made for all institutions.

Recommendation No. 3:

The Department of Personnel & Administration should work with the Department of Higher Education to improve the consistency of decisions made related to the exemption process by:

- a. Proposing statutory changes to clarify the types of positions that should be exempted from the state personnel system.
- b. Revising the Department of Personnel & Administration's guidelines to reflect any statutory changes.

Issues that need to be addressed by statute and/or the guidelines include:

- Positions funded with temporary and/or limited funding sources.
- Vague language such as "head" of a unit or function.
- The relevance and/or importance of reporting structures in exemption decisions.

**Department of Personnel & Administration
Response:**

Agree.

- a. The Department of Personnel & Administration will work with the Department of Higher Education to propose clarifying statutes for exempting positions from the state personnel system. The Department notes, however, that to comply fully with the Committee's directives might also require constitutional changes.

Estimated implementation: July 1, 2003

- b. The Department of Personnel & Administration will also revise the exemption guidelines accordingly.

Estimated implementation: August 1, 2003

Department of Higher Education Response:

Agree. We agree that statutory clarification is needed to address the issues identified by the auditors. We would anticipate that these statutory clarifications could be accomplished by July 1, 2003.

Record Keeping

As mentioned previously, higher education governing boards and institutions must submit exemption applications and supporting documentation to the Department of Personnel & Administration for review and approval. The Department then enters information for each exemption application into a database. The database contains information on the date of the exemption request, the date the request was processed, the position title, whether the position was approved for exemption, and the relevant statutory criteria.

We reviewed a sample of 25 exemption applications as well as the information contained in the database for the past five years. We found that several improvements can be made in the accuracy and completeness of the data that the Department keeps on exemptions. First, we found nine of the application forms were incomplete. Currently department staff will process an exemption application even if they are missing some of the required documentation. Second, we found that the Department's exemption database contains duplicate entries. For example, we found numerous instances in which the same position was entered into the system twice because the position title was spelled or abbreviated differently each time. We also found that the database often contained inaccurate information regarding the date the exemption application was received and the date the application was processed. In many cases the dates in the database showed that the application was processed before it was received. This makes it difficult to accurately determine the Department's timeliness in processing exemption applications. The Department has not established standards for staff to follow when entering information into the database. In addition, department staff do not review the information once it has been entered into the database to ensure it is correct. Without standards and a review process, the Department cannot ensure that the information contained in the database is complete and accurate. It is important for this information to be accurate if the Department uses it to audit the exemption process.

Recommendation No. 4:

The Department of Personnel & Administration should improve the accuracy and the completeness of its data related to the exemption process by:

- a. Requiring higher education governing boards and institutions to submit all of the appropriate supporting documentation along with exemption applications and by requiring them to fully complete the application before the exemption review process begins.
- b. Establishing standards for staff to use when entering information into the database.
- c. Periodically reviewing information entered into the database to ensure it is correct.

**Department of Personnel & Administration
Response:**

Agree.

- a. The Department of Personnel & Administration will require all appropriate documentation received be complete before taking action on exemption requests.
- b. The Department of Personnel & Administration will also develop data entry procedures for all information entered into the exemptions database.
- c. The Department of Personnel & Administration will also include quality control standards for information in the database and audit it at least annually.

Estimated implementation: December 31, 2002

Structure of the Higher Education Personnel System

Chapter 2

Background

The purpose of this audit was to evaluate the higher education position exemption process. In order to complete our review of the process, we also looked at the structure of the higher education personnel system. Overall, it appears that the General Assembly needs to evaluate this system to determine if changes are needed. When doing so, the General Assembly should consider what impact changes to the higher education system would have on the state personnel system as a whole. The General Assembly should also consider to what extent the issues we found related to the higher education personnel system are the result of larger issues with the state personnel system overall. As mentioned previously, the state personnel system was established to help ensure the State has a quality work force selected on the basis of merit and fitness. Some of the issues that were of concern when the state personnel system was originally established may be of lesser concern today when balanced against current government operations and labor needs.

Overview

Under the current structure of the higher education personnel system, higher education institutions and their governing boards must maintain separate personnel systems for each classification of employee. Each personnel system must have established policies related to hiring, evaluating, promoting, and terminating employees. Provisions for benefits, such as salary, leave time, and health insurance, must also be developed for each system. Currently the higher education personnel system is comprised of the following classifications of employees:

- **Classified state employees** are part of the state personnel system, and the institutions must adhere to the state constitutional, statutory, and administrative provisions related to this system, as well as personnel rules and procedures. For example, institutions and governing boards must follow the state personnel rules when hiring, evaluating, and terminating classified state employees. Unlike other

state employees, those in the state personnel system have the right to grieve or appeal most employer actions affecting their employment to a third party, the State Personnel Board. In addition, the Department establishes salary ranges for each type of classified position. By law, all classified employee salaries must be within those ranges. Classified employees are covered under the State's recently implemented pay for performance system and the annual total compensation survey.

- **Exempt employees** are considered to be “at will” contract employees and are subject to personnel rules and policies that have been established by the individual institutions or governing boards for these types of positions. These policies address issues such as selection, evaluation, promotion, and termination. In addition, higher education institutions and governing boards have the flexibility to set salaries at levels consistent with their own analyses of market and work force needs.
- **Faculty members** are contract employees subject to the specific personnel rules and policies that have been established by the institutions and governing boards to insulate these individuals from academic and political pressure. As with exempt employees, these policies address issues such as selection, evaluation, promotion, and termination. In addition, higher education institutions have the flexibility to set salaries at levels consistent with their own analyses of market and work force needs.
- **Student employees** are students at the higher education institutions who are employed through a work-study type of program and are subject to any policies established by the individual institutions for these types of positions.

As part of our audit, we focused on classified state employees and exempt employees. Our evaluation of the current composition of the higher education personnel system in terms of employee status (i.e., classified versus exempt) found that the system is slowly moving toward an exempt work force. As mentioned previously, Section 24-50-135, C.R.S., exempts some higher-level, professional positions within the higher education system such as officers, administrative heads, and some of their professional staff from the state personnel system. We found that the percentage of exempt positions within the higher education system has been steadily increasing over the past five years while the percentage of classified positions has been decreasing. Since 1997, almost 1,600 higher education positions have been exempted from the state personnel system. There are no data on how many of these were new or existing positions. The following table compares the number of exempt and classified positions within the higher education system and the

changes in the number of those positions over the past five years. The total number of classified and exempt higher education staff has grown by about 10 percent over the past five years, with exempt growing at 20.3 percent and classified at 6.7 percent.

Breakdown of Classified and Exempt Staff Within the Higher Education System					
		Percen		Percen	
1998	9,427 ¹	71%	3,772 ²	29%	13,199
1999	9,723 ³	71%	4,015	29%	13,738
2000	9,813	70%	4,160	30%	13,973
2001	10,391	70%	4,387	30%	14,778
2002	10,063	69%	4,538	31%	14,601
Percent Change	6.7%		20.3%		10.6%
<p>Source: Office of the State Auditor analysis of data provided by higher education institutions.</p> <p>¹ Does not include data from Community College of Denver, Pikes Peak Community College, or Otero Junior College.</p> <p>² Does not include data from Pikes Peak Community College or Otero Junior College.</p> <p>³ Does not include data from Community College of Denver.</p>					

From our review, we found that only two institutions in the higher education system saw a greater percentage increase in the number of their classified employees over the last five years than in the number of their exempt employees. At all other institutions, the growth in exempt employees outpaced classified employees.

We also reviewed the number of exemption requests received by the Department over the past six years, as well as the approval rate for these requests. As the following table shows, the number of exemption requests increased significantly in 1999 and has remained relatively steady since then. The approval rate for all of these requests has remained at 98 percent or above.

Position Exemption Requests Received by the Department of Personnel & Administration			
Calendar Year	Number of Requests	Number Approved	Percent Approved
1997	177	177	100%
1998	175	171	98%
1999	381	373	98%
2000	364	357	98%
2001	375	369	99%
2002	128*	125	98%

Source: Office of the State Auditor analysis of Department of Personnel & Administration data.
*This represents the number of requests received January - May 2002.

In addition to reviewing the total number of requests, we looked at specific requests received within the past six years to determine the types of positions for which exemptions were most commonly requested. They include the following:

- **Director** (e.g., Director of Budget, Director of Human Resources)
- **Coordinator** (e.g., Media Resource Coordinator, Technology Coordinator)
- **Assistant** (e.g., Assistant Registrar, Learning Lab Assistant)
- **Manager** (e.g., Grants Manager, Child Care Site Manager)
- **Professional** (e.g., Deputy Controller, Policy/Budget Analyst)
- **Associate** (e.g., Associate Registrar, Associate Director of Admissions)
- **Advisor** (e.g., Academic Advisor, Financial Aid Advisor)
- **General** (e.g., Dance Accompanist, Computer Lab Technician)
- **Specialist** (e.g., Information Tech Specialist, Marketing Specialist)
- **Administrative** (e.g., Administrative Aide to President, Web Administrator)

Although most of the exemption requests we reviewed appeared to be within the intent of the statute, which is aimed at exempting higher-level, professional positions from the state personnel system, others did not. For example, from their titles, the Dance Accompanist and Computer Lab Technician positions, which were approved for exemption, do not appear to be higher-level, professional positions as described in statute. These anomalies are evidence of a lack of clarity in statute and in the Department's guidelines.

Evaluation of Multiple Systems

Our review of the current structure of the higher education personnel system found that it is fragmented and that there is an overall dissatisfaction with the system itself. Although the exemption process appears to be functioning as originally intended, (i.e., the appropriate conversion of administrative positions from classified to exempt status), there are some issues with the overall system that indicate it needs to be evaluated to determine if it is still the best approach to meet the needs of the higher education system. For example:

- **Administering multiple personnel systems is costly.** As discussed previously, higher education institutions may have up to four separate classifications of employees and personnel systems. Each system has its own set of rules and policies that must be followed. Although we were not able to quantify the cost of maintaining these separate systems, most human resources directors with whom we spoke believe it is more expensive to maintain multiple personnel systems than it would be to maintain fewer systems under the control of a single governing board due to issues such as increased overhead, training, and conflict resolution. In addition, we attempted to quantify the cost of the exemption process itself. Depending on variables such as staff time spent determining which positions should be exempted, the costs associated with that time, and the number of position exemptions requested at one time, using a conservative approach and based on institution-reported data, we estimate the position exemption process has cost the State anywhere between \$500,000 and \$1 million over the past six years.
- **Positions funded with temporary or limited funding sources are not addressed.** As discussed in Chapter 1, many institutions conduct research projects that are funded with grants or other limited-term resources. Institutions must hire permanent, classified employees for these positions unless the position qualifies for exemption. When the project ends, the institution must find another position for the classified employee.
- **The general perception is that classified and exempt employees are treated inequitably with respect to salary increases.** As mentioned previously, with the newly established pay for performance system, classified employees will be eligible for merit-based, as well as salary survey, increases annually. Higher education institutions and governing boards are required by law to pay these increases each year. With exempt employees, institutions and governing boards have the flexibility to implement pay increases that are within their budgets and that are competitive with appropriate market rates. During the

course of the audit, we heard many anecdotal comments related to the differences in annual salary increases between classified and exempt employees. The general perception is that classified employees receive larger annual increases than exempt staff. Although we attempted to compare the increases that classified and exempt employees received over the past few years, we were unable to do so due to a lack of reliable data. We found a recent example, though, where classified and exempt staff were treated differently with respect to whether they would receive a salary increase at all. According to Department of Higher Education staff, three of the State's institutions were unable to pay increases this year for exempt employees and faculty due to a lack of funds. Classified staff at these institutions, however, received their pay for performance and salary survey increases as required by law. Overall, we found that while the exempt system has flexibility with respect to salary increases, the classified system does not, and there may not be a meaningful basis for the distinction.

- **Similar positions are categorized differently in different systems.** We found that many of the higher education positions that have been exempted from the state personnel system are similar, if not identical, to classified positions at other state agencies. These positions are not necessarily unique to the higher education system. We were unable to determine why statutes should exempt these positions for the higher education system, but have them be part of the classified system for state agencies. In addition, as discussed in Chapter 1, we found that the categorization of similar positions varies across institutions.
- **Multiple systems and categorization of employees leaves the State open to challenge.** Although there have been few appeals related to the position exemption process, the nature of the process lends itself to dispute.
- **The system does not account for a developing work force.** The current higher education personnel system was originally established about 30 years ago. Since that time the needs of the State with respect to recruiting, hiring, retaining, and managing resources have changed. For example, some positions (e.g., information technology positions) require an expertise that may or may not be found within the State. In those instances, out-of-state recruiting is a necessity. If a position does not qualify for exemption, out-of-state recruiting is generally not an option unless a waiver is granted by the State Personnel Board.

Options

When evaluating the current higher education personnel system, the General Assembly should also consider alternative systems to determine which would best meet the needs of the higher education system and the State overall. In some instances, the challenges faced by institutions operating within the state personnel system may not be unique to higher education. For example, the above-described inability of the state personnel system to adequately address particular labor needs may be common to all agencies operating under the system. A comprehensive reexamination of how the state personnel system as a whole serves needs common to both general government and higher education may be appropriate, although the effort may be significantly hindered by the fact that so much of its structure is embedded in the Colorado Constitution. Previous audits have concluded that the Colorado Constitution contains excessive details that should be in statute. In addition, a 1984 study commissioned by the 1983 Interim Legislative Committee on Personnel concluded that Colorado and Louisiana are the only two states in the nation with such detail in their constitutions rather than in statute.

Given both current and previous audit findings, the following options for the General Assembly's consideration appear most viable in addressing higher education exemptions. The discussion includes some of the pros and cons associated with each option.

- **Maintain the current “mixed” structure.** This structure includes both classified and exempt employees within the higher education system. We surveyed ten other western states and found that only two (Kansas and Washington) have higher education personnel systems similar to Colorado's (i.e., systems with both classified and exempt staff). One of the advantages of this type of “mixed” system is that it strikes a balance within the higher education system between the need for flexibility and the need for a politically insulated merit system. Higher education institutions and governing boards are able to exempt higher-level, professional positions, but all other employees remain a part of the state classified system. On the other hand, as mentioned previously, maintaining several separate personnel systems is more costly than maintaining one system. In addition, employees within the different systems may be treated differently, which can result in tension and conflict between the two groups.

The current structure could also be modified slightly by revising the criteria for exempting higher education staff from the state personnel system. These revisions could either expedite or reverse the transition to an exempt work force without the need for constitutional or statutory change. If the “mixed” structure continues,

however, we believe the changes recommended in Chapter 1 should be implemented to improve the system.

- **Exempt all higher education employees from the state personnel system.** Moving to this structure would require statutory and, possibly, constitutional changes. With this structure, the General Assembly would need to take into account how the system would be administered. For example, would there be one personnel system for the entire higher education system or would each institution or governing board be responsible for developing its own personnel system? We found examples of both types of structures within the eight states surveyed that have higher education employees completely separate from their state's personnel system.

One of the advantages of exempting all higher education employees may be lower costs to the State in the long run, although there would be initial start-up costs. The cost of administering fewer personnel systems should be less than the current cost of administering several separate systems. In addition, the State could redirect the money it currently spends each year on the exemption process. Since the higher education personnel system appears to be moving slowly toward an exempt system, expediting this process could result in certain efficiencies. It could also help eliminate disparities in position classifications (i.e., exempt versus classified) within the higher education system, as well as in the state personnel system, which would in turn help eliminate the tension and conflict that sometimes occurs between classified and exempt employees. A completely exempt system would also eliminate legal challenges and provide the higher education system with greater flexibility to meet its staffing needs. Many higher education administrators prefer an exempt system over a classified one because of greater salary and staffing flexibility. On the other hand, exempting all higher education employees does not eliminate the public interest in having the State maintain a well-qualified workforce. Any new system in higher education must be grounded in merit principles in order to ensure the taxpayers continue to receive high-quality government services.

Recommendation No. 5:

The Department of Personnel & Administration and the Department of Higher Education should work with the General Assembly to evaluate the current higher education personnel system, as well as alternatives to this system, to determine which would best meet the

needs of higher education and the State as a whole, and seek statutory and constitutional changes as needed. Options include:

- Maintaining the current structure (i.e., some higher education employees are part of the state personnel system, while others are exempt).
- Exempting all higher education employees from the state personnel system.

Department of Personnel & Administration Response:

Agree. The Department of Personnel & Administration will work with the Department of Higher Education to explore alternatives to the current higher education personnel systems of classified and exempt employees. Pending development of a proposal, the Department of Personnel & Administration will collaborate with the Department of Higher Education to work with the General Assembly to seek constitutional and statutory changes as needed.

Estimated initiation of effort: July 1, 2003. Implementation is dependent upon the direction of the proposal.

Department of Higher Education Response:

Agree. The Department of Higher Education is willing to work with the Department of Personnel & Administration, the Governor's Office, and the General Assembly to explore alternatives to the current system of operating four personnel "systems" including considering statutory or constitutional changes that might be necessary to improve the system. Such a process could be underway by July 2003 along with a directive to pursue one or more of the options in this recommendation and could be accomplished by December 2004.

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