

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 18-0042.01 Jason Gelender x4330

SENATE BILL 18-043

SENATE SPONSORSHIP

Grantham,

HOUSE SPONSORSHIP

Lundeen,

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE LEGAL EFFECTS THAT THE REJECTION BY THE**
102 **SENATE OF AN INDIVIDUAL NOMINATED BY THE GOVERNOR FOR**
103 **APPOINTMENT TO A STATE OFFICE HAVE ON THE SUBSEQUENT**
104 **NOMINATION OR TEMPORARY APPOINTMENT OF THE SAME**
105 **INDIVIDUAL TO OR HOLDOVER OF THE INDIVIDUAL IN THE SAME**
106 **STATE OFFICE.**

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>.)

The bill specifies that if the governor nominates an individual for

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
April 9, 2018

appointment to a state office and the senate rejects the nomination, the rejected individual is deemed legally unfit for and ineligible to hold the office. The governor is prohibited from nominating the rejected individual a second time for the same office or, if the senate is not in session, appointing the rejected individual to temporarily discharge the duties of the office. However, rejection by the senate of the nomination of an individual for any state office does not preclude the governor from nominating the rejected individual for an opening in the same office that occurs after an individual other than the rejected individual has filled the immediate opening.

The bill also provides that if the governor nominates a state officer whose term is expiring for reappointment to the same office and the senate rejects the nomination, the state officer is removed from office upon the expiration of his or her term and shall not thereafter exercise the duties of the office whether or not the individual's successor has been duly qualified. If, as of the effective date of the bill, the term of office of a state officer has expired, the senate has rejected a nomination for reappointment of the state officer to the same office, and the individual is continuing to exercise the duties of the office because the individual's successor has not yet been qualified, the state officer is deemed to have been removed from office on the date that his or her term expired and shall immediately stop exercising the duties of the office.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) Section 6 of article IV of the state constitution grants the
5 governor the power to appoint state officers subject to a legislative branch
6 check on that power and requires both executive branch and legislative
7 branch participation in the appointment process by:

8 (I) Requiring the governor to nominate, and, by and with the
9 consent of the senate, appoint all state officers whose offices are created
10 by the state constitution or state law and whose appointment or election
11 is not otherwise provided for; and

12 (II) Specifying that if a vacancy in any such office occurs while
13 the senate is not in session, the governor must appoint some fit person to

1 discharge the duties of the office until the senate reconvenes, at which
2 time the governor must nominate, and, by and with the consent of the
3 senate, appoint some fit person to fill the office;

4 (b) Section 1 of article XII of the state constitution guards against
5 the interruption of state business resulting from vacancies in state office
6 by providing that a person holding a state office shall, unless removed
7 according to law, exercise the duties of the office until his or her
8 successor is duly qualified;

9 (c) Notwithstanding the legislative branch check of senate
10 confirmation on the power of the governor to appoint state officers
11 provided for in section 6 of article IV of the state constitution, if the
12 governor nominates an individual whose term as a state officer is expiring
13 for reappointment to the same office and the senate deems the individual
14 unfit for reappointment to the office and rejects the nomination, the
15 individual may, nonetheless, continue to exercise the duties of the office
16 until his or her successor is duly qualified. In such a situation, if the
17 governor delays in nominating another individual to hold the office or, if
18 the senate is not in session, to discharge the duties of the office until the
19 senate reconvenes, the individual who the senate has deemed unfit to hold
20 the office continues to exercise the duties of the office.

21 (d) It is necessary and appropriate to preserve the constitutional
22 legislative branch check on the governor's appointment power and ensure
23 that an individual who the senate has deemed unfit for reappointment to
24 a state office cannot, nonetheless, continue to exercise the duties of the
25 office by changing state law so that, if the governor nominates an
26 individual whose term as a state officer is expiring for reappointment to
27 the same office and the senate rejects the nomination, the individual is

1 automatically removed from office upon the expiration of his or her term;
2 and

3 (e) It is also necessary and appropriate to preserve the
4 constitutional legislative branch check on the governor's appointment
5 power by changing state law so that, if the governor nominates an
6 individual for appointment to a state office and the senate rejects the
7 nomination, the individual is deemed legally unfit for the office and the
8 governor is temporarily prohibited from nominating the individual a
9 second time for appointment to the office or, if the senate is not in
10 session, appointing the individual for the purpose of discharging the
11 duties of the office.

12 **SECTION 2.** In Colorado Revised Statutes, **add** 24-20-115 as
13 follows:

14 **24-20-115. Appointments - effect of rejection of nominated**
15 **individual on future nominations or temporary appointments of the**
16 **individual. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF**
17 **THIS SECTION, AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF,**
18 **IN ACCORDANCE WITH SECTION 6 OF ARTICLE IV OF THE STATE**
19 **CONSTITUTION, THE GOVERNOR NOMINATES AN INDIVIDUAL FOR**
20 **APPOINTMENT TO A STATE OFFICE AND THE SENATE REJECTS THE**
21 **NOMINATION, THE REJECTED INDIVIDUAL IS DEEMED LEGALLY UNFIT FOR**
22 **AND INELIGIBLE TO HOLD THE OFFICE. THE GOVERNOR SHALL NOT**
23 **NOMINATE THE REJECTED INDIVIDUAL A SECOND TIME FOR THE SAME**
24 **OFFICE, AND, IF THE SENATE IS NOT IN SESSION, SHALL NOT APPOINT THE**
25 **REJECTED INDIVIDUAL TO TEMPORARILY DISCHARGE THE DUTIES OF THE**
26 **OFFICE. FOR PURPOSES OF THIS SUBSECTION (1), REJECTION BY THE SENATE**
27 **OF THE NOMINATION OF AN INDIVIDUAL FOR ANY STATE OFFICE, DOES NOT**

1 PRECLUDE THE GOVERNOR FROM NOMINATING THE REJECTED INDIVIDUAL
2 FOR AN OPENING IN THE SAME OFFICE THAT OCCURS AFTER AN INDIVIDUAL
3 OTHER THAN THE REJECTED INDIVIDUAL HAS FILLED THE IMMEDIATE
4 OPENING.

5 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
6 SECTION, AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF, IN
7 ACCORDANCE WITH SECTION 6 OF ARTICLE IV OF THE STATE
8 CONSTITUTION, THE GOVERNOR NOMINATES A STATE OFFICER WHOSE TERM
9 IS EXPIRING FOR REAPPOINTMENT TO THE SAME OFFICE AND THE SENATE
10 REJECTS THE NOMINATION, THE STATE OFFICER IS REMOVED FROM OFFICE
11 UPON THE EXPIRATION OF HIS OR HER TERM. FOR PURPOSES OF SECTION 1
12 OF ARTICLE XII OF THE STATE CONSTITUTION, THE REMOVAL OF AN
13 INDIVIDUAL FROM STATE OFFICE BY OPERATION OF THIS SUBSECTION (2)
14 IS REMOVAL ACCORDING TO LAW AND THE INDIVIDUAL SHALL NOT
15 THEREAFTER EXERCISE THE DUTIES OF THE OFFICE WHETHER OR NOT THE
16 INDIVIDUAL'S SUCCESSOR HAS BEEN DULY QUALIFIED. ACCORDINGLY, IF,
17 AS OF THE EFFECTIVE DATE OF THIS SUBSECTION (2), THE TERM OF OFFICE
18 OF A STATE OFFICER HAS EXPIRED, THE SENATE HAS REJECTED A
19 NOMINATION FOR REAPPOINTMENT OF THE STATE OFFICER TO THE SAME
20 OFFICE, AND THE INDIVIDUAL IS CONTINUING TO EXERCISE THE DUTIES OF
21 THE OFFICE IN ACCORDANCE WITH SECTION 1 OF ARTICLE XII OF THE
22 STATE CONSTITUTION BECAUSE THE INDIVIDUAL'S SUCCESSOR HAS NOT
23 YET BEEN QUALIFIED, THE STATE OFFICER IS DEEMED TO HAVE BEEN
24 REMOVED FROM OFFICE ON THE DATE THAT HIS OR HER TERM EXPIRED AND
25 SHALL IMMEDIATELY STOP EXERCISING THE DUTIES OF THE OFFICE.

26 (3) THE PROVISIONS OF SUBSECTIONS (1) AND (2) OF THIS SECTION
27 THAT PROHIBIT THE GOVERNOR FROM NOMINATING AN INDIVIDUAL FOR

1 APPOINTMENT OR REAPPOINTMENT TO A STATE OFFICE FOR A SECOND TIME
2 AFTER THE INDIVIDUAL'S FIRST NOMINATION FOR APPOINTMENT OR
3 REAPPOINTMENT TO THE STATE OFFICE HAS BEEN REJECTED BY THE
4 SENATE AND FROM APPOINTING THE REJECTED INDIVIDUAL TO
5 TEMPORARILY DISCHARGE THE DUTIES OF THE OFFICE ONLY APPLY FOR THE
6 TERM OF THE SENATE THAT REJECTED THE INDIVIDUAL. THE REJECTED
7 INDIVIDUAL BECOMES ELIGIBLE FOR NOMINATION FOR APPOINTMENT OR
8 REAPPOINTMENT TO THE STATE OFFICE ON THE DATE WHEN A NEW SENATE
9 CONVENES FOR ITS FIRST REGULAR SESSION AND BECOMES ELIGIBLE FOR
10 APPOINTMENT TO DISCHARGE THE DUTIES OF THE OFFICE ON THE DATE
11 FOLLOWING THE DAY ON WHICH THE NEW SENATE ADJOURNS ITS FIRST
12 REGULAR SESSION SINE DIE.

13 **SECTION 3. Applicability.** Except as otherwise provided in
14 section 24-20-115 (2), Colorado Revised Statutes, enacted in section 2 of
15 this act, this act applies to nominations for appointment to state office and
16 interim appointments to state office made by the governor on or after the
17 effective date of this act.

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