

**EXPANSION OF DEPARTMENT OF
ADMINISTRATIVE SERVICES OVERSIGHT
TO INCLUDE HUMAN RESOURCE
MANAGEMENT**

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: D. Gregg Buxton

Senate Sponsor: John W. Hickman

LONG TITLE

General Description:

This bill modifies provisions of the Personnel Management Act to change the Department of Human Resource Management to a division under the Department of Administrative Services.

Highlighted Provisions:

This bill:

- ▶ provides that the Department of Human Resource Management shall be changed to a division within the Department of Administrative Services;
- ▶ changes the name of the Department of Human Resource Management to the Division of Human Resource Management;
- ▶ provides that the Division of Human Resource Management shall be administered by a director appointed by the governor with the consent of the Senate;
- ▶ provides that the director shall be accountable to the executive director of the Department of Administrative Services;
- ▶ removes the director's discretion to appoint division directors and program managers;
- ▶ provides that the director of the Division of Human Resource Management shall be responsible for administering the human resource program for the state and for all departments;

- ▶ provides that policies set by the Division of Human Resource Management shall take precedence over conflicting policies and practices;
- ▶ eliminates the Utah Quality Service Award program;
- ▶ terminates existing procedures for performing human resource services for various departments and permits the Division of Human Resource Management to establish field offices in departments;
 - ▶ eliminates the ability for departments to provide certain human resource management functions;
 - ▶ provides a listing of required provisions for agreements governing field offices in departments;
 - ▶ provides for allocation of the cost of department facilities, equipment, and supplies that are used by a division field office;
 - ▶ requires the director of the Division of Human Resource Management to submit an annual budget request for the approval of the governor and the Legislature;
 - ▶ provides the director of the Division of Human Resource Management with responsibility to design and administer the state recruitment and selection system;
 - ▶ changes the date for submission of market comparability adjustments to coincide with the date that the compensation package recommendation is due; and
 - ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2006.

Utah Code Sections Affected:**AMENDS:**

13-1a-3, as last amended by Chapter 79, Laws of Utah 1996

35A-1-205, as last amended by Chapter 17, Laws of Utah 2003

49-20-401, as last amended by Chapter 118, Laws of Utah 2004

53-6-104, as renumbered and amended by Chapter 234, Laws of Utah 1993

53A-24-114, as last amended by Chapter 352, Laws of Utah 2004

53C-1-201, as last amended by Chapters 41 and 63, Laws of Utah 2004

54-1-6, as last amended by Chapters 101 and 122, Laws of Utah 1988

54-4a-3, as last amended by Chapter 122, Laws of Utah 1988

61-1-18, as last amended by Chapter 145, Laws of Utah 2001

62A-15-613, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

63-5b-102, as last amended by Chapters 14 and 159, Laws of Utah 2002

63-13-2, as last amended by Chapter 306, Laws of Utah 2000

63-34-12, as last amended by Chapter 122, Laws of Utah 1988

63A-1-109, as last amended by Chapter 356, Laws of Utah 2004

63A-9-501, as last amended by Chapter 5, Laws of Utah 2003

63A-9-801, as last amended by Chapter 209, Laws of Utah 2003

67-5-7, as last amended by Chapter 122, Laws of Utah 1988

67-5-9, as last amended by Chapter 122, Laws of Utah 1988

67-5-12, as last amended by Chapter 191, Laws of Utah 1989

67-8-3, as last amended by Chapter 250, Laws of Utah 2002

67-8-5, as last amended by Chapter 214, Laws of Utah 1995

67-19-3, as last amended by Chapter 7, Laws of Utah 2002

67-19-3.1, as enacted by Chapter 322, Laws of Utah 2000

67-19-5, as last amended by Chapter 176, Laws of Utah 2002

67-19-6, as last amended by Chapter 4, Laws of Utah 2003

67-19-6.7, as last amended by Chapters 82 and 375, Laws of Utah 1997

67-19-11, as last amended by Chapter 122, Laws of Utah 1988

67-19-12, as last amended by Chapter 16, Laws of Utah 2003

67-19-12.2, as enacted by Chapter 231, Laws of Utah 2001

67-19-12.5, as enacted by Chapter 200, Laws of Utah 1989

- 67-19-12.7**, as enacted by Chapter 125, Laws of Utah 1999
- 67-19-12.9**, as last amended by Chapter 14, Laws of Utah 2002, Fifth Special Session
- 67-19-13**, as enacted by Chapter 139, Laws of Utah 1979
- 67-19-15**, as last amended by Chapter 213, Laws of Utah 1997
- 67-19-15.1**, as enacted by Chapter 128, Laws of Utah 1994
- 67-19-19**, as last amended by Chapter 122, Laws of Utah 1988
- 67-19-26**, as enacted by Chapter 139, Laws of Utah 1979
- 67-19-31**, as last amended by Chapter 7, Laws of Utah 2002
- 67-19-33**, as enacted by Chapter 280, Laws of Utah 1990
- 67-19-34**, as last amended by Chapter 259, Laws of Utah 1991
- 67-19-36**, as enacted by Chapter 280, Laws of Utah 1990
- 67-19-37**, as enacted by Chapter 280, Laws of Utah 1990
- 67-19-38**, as enacted by Chapter 280, Laws of Utah 1990
- 67-19a-303**, as last amended by Chapter 204, Laws of Utah 1991
- 67-19c-101**, as last amended by Chapters 82 and 375, Laws of Utah 1997
- 67-20-8**, as last amended by Chapter 213, Laws of Utah 1997
- 67-22-2**, as last amended by Chapters 156 and 306, Laws of Utah 2004
- 72-1-203**, as renumbered and amended by Chapter 270, Laws of Utah 1998

ENACTS:

- 67-19-6.1**, Utah Code Annotated 1953

REPEALS:

- 67-19-6.4**, as enacted by Chapter 156, Laws of Utah 1997
- 67-19-7**, as last amended by Chapter 139, Laws of Utah 1989
- 67-19-8**, as last amended by Chapter 4, Laws of Utah 2003
- 67-19-9**, as enacted by Chapter 139, Laws of Utah 1979
- 67-19-10**, as enacted by Chapter 139, Laws of Utah 1979

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-1a-3** is amended to read:

13-1a-3. Employment and compensation of personnel -- Compensation of director.

The director, with the approval of the executive director, may employ personnel necessary to carry out the duties and responsibilities of the division at salaries established by the executive director according to standards established by the [~~Department~~] Division of Human Resource Management. The executive director shall establish the salary of the director according to standards established by the [~~Department~~] Division of Human Resource Management.

Section 2. Section **35A-1-205** is amended to read:

35A-1-205. Workforce Appeals Board -- Chair -- Appointment -- Compensation -- Qualifications.

(1) There is created the Workforce Appeals Board within the department consisting of one or more panels to hear and decide appeals from the decision of an administrative law judge.

(2) (a) A panel shall consist of three impartial members appointed by the governor as follows:

(i) the board chair, appointed in accordance with Subsection (5);

(ii) one member appointed to represent employers; and in making this appointment, the governor shall consider nominations from employer organizations; and

(iii) one member appointed to represent employees; and in making this appointment, the governor shall consider nominations from employee organizations.

(b) No more than two members of a panel may belong to the same political party.

(3) (a) (i) The term of a member shall be six years beginning on March 1 of the year the member is appointed, except as otherwise provided in Subsection (3)(a)(ii).

(ii) The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members are staggered so that approximately one third of the members are appointed every two years.

(b) When a vacancy occurs in the membership for any reason, the replacement shall be

appointed for the unexpired term.

(c) The governor may remove a member for inefficiency, neglect of duty, malfeasance or misfeasance in office, or other good and sufficient cause.

(d) A member shall hold office until a successor is appointed and has qualified.

(4) (a) Except as provided in Subsection (4)(c), a member of the board may not receive compensation for the member's services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) A member may decline to receive per diem and expenses for the member's service.

(c) The member appointed as board chair in accordance with Subsection (5) shall be compensated at an hourly rate determined by the [~~Department~~] Division of Human Resource Management in accordance with Title 67, Chapter 19, Utah State Personnel Management Act.

(5) (a) The chief officer of the board shall be the chair, who shall serve as the executive and administrative head of the board.

(b) The chair shall be appointed by the governor to represent the public and may be removed from that position at the will of the governor.

(c) The chair shall be experienced in administration and possess any additional qualifications determined by the governor.

(6) (a) The chair shall designate an alternate from a panel appointed under this section:

(i) in the absence of a regular member or the chair; or

(ii) if the regular member or the chair has a conflict of interest.

(b) Each case shall be decided by a full three-member panel.

(7) The department shall provide the Workforce Appeals Board necessary staff support, except, the board may employ, retain, or appoint legal counsel.

Section 3. Section **49-20-401** is amended to read:

49-20-401. Program -- Powers and duties.

(1) The program shall:

(a) act as a self-insurer of employee benefit plans and administer those plans;

- (b) enter into contracts with private insurers or carriers to underwrite employee benefit plans as considered appropriate by the program;
- (c) indemnify employee benefit plans or purchase commercial reinsurance as considered appropriate by the program;
- (d) provide descriptions of all employee benefit plans under this chapter in cooperation with covered employers;
- (e) process claims for all employee benefit plans under this chapter or enter into contracts, after competitive bids are taken, with other benefit administrators to provide for the administration of the claims process;
- (f) obtain an annual actuarial review of all health and dental benefit plans and a periodic review of all other employee benefit plans;
- (g) consult with the covered employers to evaluate employee benefit plans and develop recommendations for benefit changes;
- (h) annually submit a budget and audited financial statements to the governor and Legislature which includes total projected benefit costs and administrative costs;
- (i) maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of the employee benefit plans as certified by the program's consulting actuary;
- (j) submit its recommended benefit adjustments for state employees to the director of the state ~~[Department]~~ Division of Human Resource Management;
- (k) determine benefits and rates, upon approval of the board, for multiemployer risk pools, retiree coverage, and conversion coverage;
- (l) determine benefits and rates, upon approval of the board and the Legislature, for state employees;
- (m) administer benefits and rates, upon ratification of the board, for single employer risk pools;
- (n) request proposals for provider networks or health and dental benefit plans administered by third party carriers at least once every three years for the purposes of:
 - (i) stimulating competition for the benefit of covered individuals;

(ii) establishing better geographical distribution of medical care services; and
(iii) providing coverage for both active and retired covered individuals;
(o) offer proposals which meet the criteria specified in a request for proposals and accepted by the program to active and retired state covered individuals and which may be offered to active and retired covered individuals of other covered employers at the option of the covered employer;

(p) perform the same functions established in Subsections (1)(a), (b), (e), and (h) for the Department of Health if the program provides program benefits to children enrolled in the Utah Children's Health Insurance Program created in Title 26, Chapter 40, Utah Children's Health Insurance Act;

(q) establish rules and procedures governing the admission of political subdivisions or educational institutions and their employees to the program;

(r) contract directly with medical providers to provide services for covered individuals;
and

(s) take additional actions necessary or appropriate to carry out the purposes of this chapter.

(2) (a) Funds budgeted and expended shall accrue from rates paid by the covered employers and covered individuals.

(b) Administrative costs shall be approved by the board and reported to the governor and the Legislature.

(3) The [~~Department~~] Division of Human Resource Management shall include the benefit adjustments described in Subsection (1)(j) in the total compensation plan recommended to the governor required under Subsection 67-19-12(6)(a).

Section 4. Section **53-6-104** is amended to read:

53-6-104. Appointment of director of division -- Qualifications -- Appointment of employees -- Term of office -- Compensation.

(1) The commissioner, upon recommendation of the council and with the approval of the governor, shall appoint a director of the division.

(2) The director is the executive and administrative head of the division and shall be experienced in administration and possess additional qualifications as determined by the commissioner and as provided by law.

(3) The director shall be a full-time officer of the state.

(4) The director may appoint deputies, consultants, clerks, and other employees from eligibility lists authorized by the [~~Department~~] Division of Human Resource Management.

(5) The director may be removed from his position at the will of the commissioner.

(6) The director shall receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.

Section 5. Section **53A-24-114** is amended to read:

53A-24-114. Governor's Committee on Employment of People with Disabilities.

(1) There is created the Governor's Committee on Employment of People with Disabilities.

(2) (a) The State Board of Education shall appoint at least twelve members to the committee.

(b) The State Board of Education shall ensure that the committee includes members from the public and private sectors who represent:

(i) business and industry;

(ii) individuals with disabilities and their advocates;

(iii) job training and placement;

(iv) [~~state agencies~~] administrative subunits of the state, such as the [~~Department~~] Division of Human Resource Management, the Department of Workforce Services, Public Education, Higher Education, and the Department of Human Services;

(v) labor;

(vi) veterans;

(vii) medical;

(viii) health;

(ix) insurance;

- (x) media; and
- (xi) the general public.

(c) (i) Except as provided in Subsection (2)(c)(ii), the State Board of Education shall appoint committee members to serve four-year terms.

(ii) In making the initial appointments to the committee, the State Board of Education shall appoint approximately 1/2 of the members to two-year terms and 1/2 of the members to four-year terms.

(d) Committee members shall serve until their successors are appointed and qualified.

(e) The State Board of Education shall fill any vacancy that occurs on the committee for any reason by appointing a person according to the procedures of this section for the unexpired term of the vacated member.

(f) The State Board of Education shall select a chair from the membership.

(g) Seven members of the committee are a quorum for the transaction of business.

(3) (a) The committee shall:

(i) promote employment opportunities for individuals with disabilities;

(ii) serve as the designated state liaison to the President's Committee on Employment of People with Disabilities;

(iii) provide training and technical assistance to employers in implementing the Americans with Disabilities Act;

(iv) develop and disseminate appropriate information through workshops, meetings, and other requests in response to needs to employers and others regarding employment of individuals with disabilities;

(v) establish contacts with various community representatives to identify and resolve barriers to full participation in employment and community life;

(vi) formally recognize exemplary contributions in the areas of employment, job placement, training, rehabilitation, support services, medicine, media or public relations, and personal achievements made by individuals with disabilities;

(vii) advise, encourage, and motivate individuals with disabilities who are preparing for

or seeking employment to reach their full potential as qualified employees;

(viii) advocate for policies and practices that promote full and equal rights for individuals with disabilities;

(ix) advise the State Board of Education and the governor on issues that affect employment and other requests for information on disability issues;

(x) prepare an annual report on the progress, accomplishments, and future goals of the committee and present the report to the State Board of Education and the governor; and

(xi) establish and maintain a cooperative liaison between the governor's office, the executive director of the committee, and the executive director of the Utah State Office of Rehabilitation to fulfill the committee's purpose.

(b) The committee may, by following the procedures and requirements of Title 63, Chapter 38e, Federal Funds Procedures, receive and accept federal funds, and may receive and accept state funds, private gifts, donations, and funds from any source to carry out its purposes.

(4) The director of the State Office of Rehabilitation shall appoint a person to staff the committee.

Section 6. Section **53C-1-201** is amended to read:

53C-1-201. Creation of administration -- Purpose -- Director.

(1) (a) There is established within state government the School and Institutional Trust Lands Administration.

(b) The administration shall manage all school and institutional trust lands and assets within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation of Revenue from Trust Lands, and Section 51-7-12.

(2) The administration is an independent state agency and not a division of any other department.

(3) (a) It is subject to the usual legislative and executive department controls except as provided in this Subsection (3).

(b) (i) The director may make rules as approved by the board that allow the administration to classify a business proposal submitted to the administration as protected under

Section 63-2-304, for as long as is necessary to evaluate the proposal.

(ii) The administration shall return the proposal to the party who submitted the proposal, and incur no further duties under Title 63, Chapter 2, Government Records Access and Management Act, if the administration determines not to proceed with the proposal.

(iii) The administration shall classify the proposal pursuant to law if it decides to proceed with the proposal.

(iv) Section 63-2-403 does not apply during the review period.

(c) The director shall make rules in compliance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, except that the director, with the board's approval, may establish a procedure for the expedited approval of rules, based on written findings by the director showing:

(i) the changes in business opportunities affecting the assets of the trust;

(ii) the specific business opportunity arising out of those changes which may be lost without the rule or changes to the rule;

(iii) the reasons the normal procedures under Section 63-46a-4 cannot be met without causing the loss of the specific opportunity;

(iv) approval by at least five board members; and

(v) that the director has filed a copy of the rule and a rule analysis, stating the specific reasons and justifications for its findings, with the Division of Administrative Rules and notified interested parties as provided in Subsection 63-46a-4(7).

(d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel Management Act, except as provided in this Subsection (3)(d).

(ii) The board may approve, upon recommendation of the director, that exemption for specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable the administration to efficiently fulfill its responsibilities under the law. The director shall consult with the director of the [~~Department~~] Division of Human Resource Management prior to making such a recommendation.

(iii) The positions of director, deputy director, associate director, assistant director, legal

counsel appointed under Section 53C-1-305, administrative assistant, and public affairs officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

(iv) Salaries for exempted positions, except for the director, shall be set by the director, after consultation with the director of the [~~Department~~] Division of Human Resource Management, within ranges approved by the board. The board and director shall consider salaries for similar positions in private enterprise and other public employment when setting salary ranges.

(v) The board may create an annual incentive and bonus plan for the director and other administration employees designated by the board, based upon the attainment of financial performance goals and other measurable criteria defined and budgeted in advance by the board.

(e) The administration shall comply with Title 63, Chapter 56, Utah Procurement Code, except where the board approves, upon recommendation of the director, exemption from the Utah Procurement Code, and simultaneous adoption of rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for procurement, which enable the administration to efficiently fulfill its responsibilities under the law.

(f) (i) The board and director shall review the exceptions under this Subsection (3) and make recommendations for any modification, if required, which the Legislature would be asked to consider during its annual general session.

(ii) The board and director may include in their recommendations any other proposed exceptions from the usual executive and legislative controls the board and director consider necessary to accomplish the purpose of this title.

(4) The administration is managed by a director of school and institutional trust lands appointed by a majority vote of the board of trustees with the consent of the governor.

(5) (a) The board of trustees shall provide policies for the management of the administration and for the management of trust lands and assets.

(b) The board shall provide policies for the ownership and control of Native American remains that are discovered or excavated on school and institutional trust lands in consultation with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4,

Native American Grave Protection and Repatriation Act. The director may make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement policies provided by the board regarding Native American remains.

(6) In connection with joint ventures for the development of trust lands and minerals approved by the board under Sections 53C-1-303 and 53C-2-401, the administration may become a member of a limited liability company under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, and is considered a person under Section 48-2c-102.

Section 7. Section **54-1-6** is amended to read:

54-1-6. Employment of staff -- Status and compensation -- Employees not to be parties or witnesses and may not appeal commission decisions.

(1) The annual budget of the Public Service Commission shall provide sufficient funds for the commission to hire, develop, and organize an advisory staff to assist the commission in performing the powers, duties, and functions committed to it by statute.

(a) The commission may hire:

(i) economists, accountants, engineers, statisticians, lawyers, law clerks, and other professional and technical experts;

(ii) court reporters, transcribers of tape recordings, clerks, secretaries, and other administrative and support staff;

(iii) additional experts as required for a particular matter; and

(iv) administrative law judges, who shall be members of the Utah State Bar, and constitute a separate organizational unit reporting directly to the commission.

(b) The commission may provide for funds in the annual budget to acquire suitable electronic recording equipment to maintain a verbatim record of proceedings before the commission, any commissioner, or any administrative law judge.

(2) (a) With the exception of clerical workers in nonconfidential positions, all staff of the Public Service Commission are exempt employees under the State Personnel Management Act and serve at the pleasure of the commission.

(b) Administrative law judges are exempt employees under the State Personnel

Management Act and may only be removed from office upon due notice and by a unanimous vote of the commission.

(c) (i) The [~~Department~~] Division of Human Resource Management shall determine pay schedules using standard techniques for determining compensation.

(ii) The [~~Department~~] Division of Human Resource Management may make its compensation determinations based upon compensation practices common to utility companies throughout the United States.

(3) (a) The staff or other employees of the commission may not appear as parties or witnesses in any proceeding before the commission, any commissioner, or any administrative law judge.

(b) The staff or other employees of the commission may not appeal any finding, order, or decision of the commission.

Section 8. Section **54-4a-3** is amended to read:

54-4a-3. Budget of division -- Employment of personnel.

(1) The annual budget of the Division of Public Utilities shall provide sufficient funds for the division to hire, develop, and organize a technical and professional staff to perform the duties, powers, and responsibilities committed to it by statute.

(2) The division director may:

(a) hire economists, accountants, engineers, inspectors, statisticians, lawyers, law clerks, and other technical and professional experts as may be required;

(b) retain additional experts as required for a particular matter, but only to the extent that it is necessary to supplement division staff in order to fulfill its duties; and

(c) employ necessary administrative and support staff.

(3) (a) The [~~Department~~] Division of Human Resource Management shall determine pay schedules using standard techniques for determining compensation.

(b) The [~~Department~~] Division of Human Resource Management may make its compensation determinations based upon compensation common to utility companies throughout the United States.

Section 9. Section **61-1-18** is amended to read:

61-1-18. Division of Securities established -- Director -- Appointment -- Functions -- Investigators.

- (1) (a) There is established within the Department of Commerce a Division of Securities.
- (b) The division shall be under the direction and control of a director, appointed by the executive director with the governor's approval.
- (c) The director shall be responsible for the administration and enforcement of this chapter.
- (d) The director shall hold office at the pleasure of the governor.
- (2) The director, with the approval of the executive director, may employ such staff as necessary to discharge the duties of the division at salaries to be fixed by the director according to standards established by the ~~[Department]~~ Division of Human Resource Management.
- (3) An investigator employed pursuant to Subsection (2) who meets the training requirements of Subsection 53-13-105(3) may be designated a special function officer, as defined in Section 53-13-105, by the director, but is not eligible for retirement benefits under the Public Safety Employee's Retirement System.

Section 10. Section **62A-15-613** is amended to read:

62A-15-613. Appointment of superintendent -- Qualifications -- Powers and responsibilities.

- (1) The director, with the advice and consent of the board and the approval of the executive director, shall appoint a superintendent of the state hospital, who shall hold office at the will of the director.
- (2) The superintendent shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in matters concerning mental health.
- (3) Subject to the rules of the board, the superintendent has general responsibility for the buildings, grounds, and property of the state hospital. The superintendent shall appoint, with the approval of the director, as many employees as necessary for the efficient and economical care

and management of the state hospital, and shall fix their compensation and administer personnel functions according to the standards of the [~~Department~~] Division of Human Resource Management.

Section 11. Section **63-5b-102** is amended to read:

63-5b-102. Definitions.

(1) (a) "Absent" means:

- (i) not physically present or not able to be communicated with for 48 hours; or
- (ii) for local government officers, as defined by local ordinances.

(b) "Absent" does not include a person who can be communicated with via telephone, radio, or telecommunications.

(2) "Attack" means a nuclear, conventional, biological, or chemical warfare action against the United States of America or this state.

(3) "Department" means the Department of Administrative Services, the Department of Agriculture and Food, the Alcoholic Beverage Control Commission, the Department of Commerce, the Department of Community and Economic Development, the Department of Corrections, the Department of Environmental Quality, the Department of Financial Institutions, the Department of Health, [~~the Department of Human Resource Management,~~] the Department of Workforce Services, the Labor Commission, the National Guard, the Department of Insurance, the Department of Natural Resources, the Department of Public Safety, the Public Service Commission, the Department of Human Services, the State Tax Commission, the Department of Transportation, any other major administrative subdivisions of state government, the State Board of Education, the State Board of Regents, the Utah Housing Corporation, the Utah Technology Finance Corporation, the Workers' Compensation Fund, the State Retirement Board, and each institution of higher education within the system of higher education.

(4) "Disaster" means a situation causing, or threatening to cause, widespread damage, social disruption, or injury or loss of life or property resulting from attack, internal disturbance, natural phenomenon, or technological hazard.

(5) "Division" means the Division of Emergency Services and Homeland Security

established in Title 53, Chapter 2, Emergency Services and Homeland Security Act.

(6) "Emergency interim successor" means a person designated by this chapter to exercise the powers and discharge the duties of an office when the person legally exercising the powers and duties of the office is unavailable.

(7) "Executive director" means the person with ultimate responsibility for managing and overseeing the operations of each department, however denominated.

(8) "Internal disturbance" means a riot, prison break, disruptive terrorism, or strike.

(9) "Natural phenomenon" means any earthquake, tornado, storm, flood, landslide, avalanche, forest or range fire, drought, epidemic, or other catastrophic event.

(10) (a) "Office" includes all state and local offices, the powers and duties of which are defined by constitution, statutes, charters, optional plans, ordinances, articles, or by-laws.

(b) "Office" does not include the office of governor or the legislative or judicial offices.

(11) "Place of governance" means the physical location where the powers of an office are being exercised.

(12) "Political subdivision" includes counties, cities, towns, townships, districts, authorities, and other public corporations and entities whether organized and existing under charter or general law.

(13) "Political subdivision officer" means a person holding an office in a political subdivision.

(14) "State officer" means the attorney general, the state treasurer, the state auditor, and the executive director of each department.

(15) "Technological hazard" means any hazardous materials accident, mine accident, train derailment, air crash, radiation incident, pollution, structural fire, or explosion.

(16) "Unavailable" means:

(a) absent from the place of governance during a disaster that seriously disrupts normal governmental operations, whether or not that absence or inability would give rise to a vacancy under existing constitutional or statutory provisions; or

(b) as otherwise defined by local ordinance.

Section 12. Section **63-13-2** is amended to read:

63-13-2. Legal holidays -- Personal preference day -- Governor authorized to declare additional days.

(1) (a) The following-named days are legal holidays in this state:

- (i) every Sunday;
- (ii) January 1, called New Year's Day;
- (iii) the third Monday of January, called Dr. Martin Luther King, Jr. Day;
- (iv) the third Monday of February, called Washington and Lincoln Day;
- (v) the last Monday of May, called Memorial Day;
- (vi) July 4, called Independence Day;
- (vii) July 24, called Pioneer Day;
- (viii) the first Monday of September, called Labor Day;
- (ix) the second Monday of October, called Columbus Day;
- (x) November 11, called Veterans' Day;
- (xi) the fourth Thursday of November, called Thanksgiving Day;
- (xii) December 25, called Christmas; and
- (xiii) all days which may be set apart by the President of the United States, or the governor of this state by proclamation as days of fast or thanksgiving.

(b) If any of the holidays under Subsection (1)(a), except the first mentioned, namely Sunday, falls on Sunday, then the following Monday shall be the holiday.

(c) If any of the holidays under Subsection (1)(a) falls on Saturday the preceding Friday shall be the holiday.

(d) Each employee may select one additional day, called Personal Preference Day, to be scheduled pursuant to rules adopted by the [~~Department~~] Division of Human Resource Management.

(2) (a) Whenever in his opinion extraordinary conditions exist justifying the action, the governor may:

- (i) declare, by proclamation, legal holidays in addition to those holidays under

Subsection (1); and

- (ii) limit the holidays to certain classes of business and activities to be designated by him.
- (b) A holiday may not extend for a longer period than 60 consecutive days.
- (c) Any holiday may be renewed for one or more periods not exceeding 30 days each as the governor may consider necessary, and any holiday may, by like proclamation, be terminated before the expiration of the period for which it was declared.

Section 13. Section **63-34-12** is amended to read:

63-34-12. Approval prerequisite to volunteer service -- Rules and regulations.

(1) Volunteers may not donate any service to the Department of Natural Resources or its divisions unless and until the work program in which volunteers would serve has first been approved, in writing, by the executive director of the Department of Natural Resources and the ~~[Department]~~ director of the Division of Human Resource Management.

(2) Volunteer services shall comply with any rules adopted by the ~~[Department]~~ Division of Human Resource Management relating to that service that are not inconsistent with the provisions of Sections 63-34-9 through 63-34-12.

Section 14. Section **63A-1-109** is amended to read:

63A-1-109. Divisions of department -- Administration.

(1) The department shall be composed of the following divisions:

- (a) administrative rules;
- (b) archives and records;
- (c) facilities construction and management;
- (d) finance;
- (e) fleet operations;
- (f) information technology services;
- (g) office of state debt collection;
- (h) state purchasing and general services;
- (i) risk management; ~~[and]~~
- (j) office of child welfare parental defense~~[-];~~ and

(k) human resource management.

(2) Each division shall be administered and managed by a division director.

Section 15. Section **63A-9-501** is amended to read:

63A-9-501. Complaints about misuse or illegal operation of state vehicles --

Disposition.

(1) The division shall refer complaints from the public about misuse or illegal operation of state vehicles to the agency that is the owner or lessor of the vehicle.

(2) Each agency head or his designee shall investigate all complaints about misuse or illegal operation of state vehicles and shall discipline each employee that is found to have misused or illegally operated a vehicle by following the procedures set forth in the rules adopted by the [~~Department~~] Division of Human Resource Management as authorized by Section 67-19-18.

(3) (a) Each agency shall report the findings of each investigation conducted as well as any action taken as a result of the investigation to the directors of the Divisions of Fleet Operations and Risk Management.

(b) Misuse or illegal operation of state vehicles may result in suspension or revocation of state vehicle driving privileges as governed in rule.

Section 16. Section **63A-9-801** is amended to read:

63A-9-801. State surplus property program -- Definitions -- Administration.

(1) As used in this section:

(a) "Agency" means:

(i) the Utah Departments of Administrative Services, Agriculture, Alcoholic Beverage Control, Commerce, Community and Economic Development, Corrections, Workforce Services, Health, [~~Human Resource Management,~~] Human Services, Insurance, Natural Resources, Public Safety, and Transportation and the Labor Commission;

(ii) the Utah Offices of the Auditor, Attorney General, Court Administrator, Crime Victim Reparations, Rehabilitation, and Treasurer;

(iii) the Public Service Commission and State Tax Commission;

(iv) the State Boards of Education, Pardons and Parole, and Regents;
(v) the Career Service Review Board;
(vi) other state agencies designated by the governor;
(vii) the legislative branch, the judicial branch, and the State Board of Regents; and
(viii) an institution of higher education, its president, and its board of trustees for purposes of Section 63A-9-802.

(b) "Division" means the Division of Fleet Operations.

(c) "Information technology equipment" means any equipment that is designed to electronically manipulate, store, or transfer any form of data.

(d) "Inventory property" means property in the possession of the division that is available for purchase by an agency or the public.

(e) "Judicial district" means the geographic districts established by Section 78-1-2.1.

(f) (i) "Surplus property" means property purchased by, seized by, or donated to, an agency that the agency wishes to dispose of.

(ii) "Surplus property" does not mean real property.

(g) "Transfer" means transfer of surplus property without cash consideration.

(2) (a) The division shall make rules establishing a state surplus property program that meets the requirements of this chapter by following the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(b) Those rules shall include:

(i) a requirement prohibiting the transfer of surplus property from one agency to another agency without written approval from the division;

(ii) procedures and requirements governing division administration requirements that an agency must follow;

(iii) requirements governing purchase priorities;

(iv) requirements governing accounting, reimbursement, and payment procedures;

(v) procedures for collecting bad debts;

(vi) requirements and procedures for disposing of firearms;

(vii) the elements of the rates or other charges assessed by the division for services and handling;

(viii) procedures governing the timing and location of public sales of inventory property; and

(ix) procedures governing the transfer of information technology equipment by state agencies directly to public schools.

(c) The division shall report all transfers of information technology equipment by state agencies to public schools to the Utah Technology Commission and to the Legislative Interim Education Committee at the end of each fiscal year.

(3) In creating and administering the program, the division shall:

(a) when conditions, inventory, and demand permit:

(i) establish facilities to store inventory property at geographically dispersed locations throughout the state; and

(ii) hold public sales of property at geographically dispersed locations throughout the state;

(b) establish, after consultation with the agency requesting the sale of surplus property, the price at which the surplus property shall be sold; and

(c) transfer proceeds arising from the sale of state surplus property to the agency requesting the sale in accordance with Title 63, Chapter 38, Budgetary Procedures Act, less an amount established by the division by rule to pay the costs of administering the surplus property program.

(4) Unless specifically exempted from this chapter by explicit reference to this chapter, each state agency shall dispose of and acquire surplus property only by participating in the division's program.

Section 17. Section **67-5-7** is amended to read:

67-5-7. Establishment of career service system.

(1) The purpose of this chapter is to establish a career service system for attorneys employed by the Office of the Attorney General that will attract and retain attorneys of proven

ability and experience who will devote their full time to the service of the state.

(2) The Office of the Attorney General may adopt rules necessary to implement this chapter, including personnel and work rules different from those promulgated by the [Department] Division of Human Resource Management.

Section 18. Section **67-5-9** is amended to read:

67-5-9. Reassignment of career status attorneys -- Additional compensation for managerial assignments -- Employment of special assistant attorneys general -- Termination of attorneys -- Salary increases.

This chapter does not affect the authority of the attorney general to:

(1) assign and reassign attorneys in a career status to different positions on his staff. The salary of an attorney reassigned to a different position shall not be decreased by reason of reassignment; except that if the attorney reassigned occupies the position of deputy attorney general, the salary may be reduced by not more than 15% upon the assignment to a different position;

(2) develop, with the assistance of the [Department] Division of Human Resource Management, a plan for additional compensation for career status attorneys who accept managerial assignments within the office. The provisions of Subsection (1) notwithstanding, the attorney general may discontinue any additional compensation if the attorney no longer holds a managerial assignment. Additional compensation provided under this section shall be determined by the attorney general pursuant to the plan developed by the Office of the Attorney General. At such time as the attorney no longer holds a managerial assignment, and the attorney general decides to discontinue any additional compensation, the reduction may not place the attorney at a salary below where the attorney would be through normal salary increases if the attorney had not been in a managerial position;

(3) employ special assistant attorneys general, who shall not be subject to this chapter, to represent the state in particular lawsuits or to handle particular legal matters for the state;

(4) terminate the employment of any attorney employed by the Office of the Attorney General who is not in a career service status;

(5) establish the salary or determine salary increases of any attorney under this chapter.

Section 19. Section **67-5-12** is amended to read:

67-5-12. Dismissal of career status attorneys -- Causes -- Procedure -- Retention roster -- Reappointment register.

(1) (a) Attorneys in a career status may be dismissed only:

(i) to advance the good of public service;

(ii) where funds have expired or work no longer exists; or

(iii) for causes such as dishonesty, inefficiency, insubordination, disloyalty to the orders of a superior, misfeasance, malfeasance, or nonfeasance in office.

(b) Attorneys in career status may not be dismissed for reasons of race, national origin, religion, or political affiliation.

(2) Except in aggravated cases of misconduct, no attorney in a career status may be demoted or dismissed without the following procedures:

(a) The attorney general shall notify the attorney of the reasons for demotion or dismissal.

(b) The attorney shall have an opportunity to reply and have the reply considered by the attorney general.

(c) The attorney shall have an opportunity to be heard by the attorney general or his designated representatives.

(d) Following a hearing, an attorney may be demoted or dismissed if the attorney general finds adequate reason.

(e) If the attorney general finds that retention of an attorney would endanger the peace and safety of others or pose a grave threat to the public interest, the attorney may be summarily suspended pending administrative hearings and a review by the Career Service Review Board.

(3) (a) An attorney in a career status who is aggrieved by a decision of the attorney general to either dismiss or demote may appeal the decision to the Career Service Review Board or its hearing officers by following the procedures in Title 67, Chapter 19a, Grievance and Appeal Procedures.

(b) Matters other than dismissal or demotion may be appealed to and reviewed by the attorney general or a designated representative whose decision is final with no right of appeal to the Career Service Review Board or its hearing officers.

(4) Disciplinary actions shall be supported by credible evidence, but the normal rules of evidence in courts of law do not apply in hearings before the attorney general or the Career Service Review Board or its hearing officers.

(5) (a) Reductions in force required by reinstatement of an attorney under Section 67-5-11, inadequate funds, change of workload, or lack of work shall be governed by a retention roster to be maintained by the director of the [~~Department~~] Division of Human Resource Management and the requirements of this Subsection (5).

(b) Attorneys not in a career status shall be separated before any attorney in a career status.

(c) Retention points for each attorney in a career status shall be based on [~~his~~] the attorney's seniority in service as an attorney in the Office of the Attorney General, including any military service fulfilled subsequent to [~~his~~] the attorney's original appointment.

(d) Attorneys in career status shall be separated in the order of their retention points, the attorney with the lowest points to be discharged first.

(e) Those attorneys who are serving in other positions under Section 67-5-11 shall:

(i) have retention points determined as if they were working for the office; and

(ii) be separated in the order of the retention points as if they were working in the Office of the Attorney General.

(f) An attorney in a career status who is separated by reason of a reduction in force shall be:

(i) placed on a reappointment register kept by the director of the [~~Department~~] Division of Human Resource Management for one year; and

(ii) offered reappointment to a position in the Office of the Attorney General before any attorney not having a career status is appointed.

Section 20. Section **67-8-3** is amended to read:

67-8-3. Compensation plan for appointive officers -- Exceptions -- Legislative approval -- Career status attorneys.

(1) (a) The director of the [~~Department~~] Division of Human Resource Management, based upon recommendations of the Executive and Judicial Compensation Commission shall, before October 31 of each year, recommend to the governor a compensation plan for appointed officers of the state except those officers whose compensation is set under Section 49-11-203, 53A-1-301, 53B-1-105, or 53C-1-301.

(b) The plan shall include salaries and wages, paid leave, group insurance plans, retirement programs, and any other benefits that may be offered to state officers.

(2) The governor shall include in each annual budget proposal to the Legislature specific recommendations on compensation for those appointed state officers in Subsection (1).

(3) (a) After consultation with the attorney general, the director of the [~~Department~~] Division of Human Resource Management shall place career status attorneys on a state salary schedule at a range comparable with salaries paid attorneys in private and other public employment.

(b) The attorney general and the director shall take into consideration the experience of the attorney, length of service with the Office of the Attorney General, quality of performance, and responsibility involved in legal assignments.

(c) The attorney general and the director shall periodically adjust the salary levels for attorneys in a career status to reasonably compensate them for full-time employment and the restrictions placed on the private practice of law.

Section 21. Section **67-8-5** is amended to read:

67-8-5. Duties of commission -- Salary recommendations.

(1) (a) The commission shall recommend to the Legislature salaries for:

(i) the governor, the lieutenant governor, the attorney general, the state auditor, and the state treasurer; and

(ii) justices of the Supreme Court and judges of the constitutional and statutory courts of record.

(b) The commission shall recommend to the Legislature salary ranges for the other state officers referred to in Article VII, Section 18, and enumerated in Title 67, Chapter 22, State Officer Compensation.

(2) As used in this section and for the purposes of compensation in Title 67, Chapter 22, State Officer Compensation, "state officer" means an individual at the executive level in state government. The term includes:

(a) the governor, the lieutenant governor, the attorney general, the state auditor, and the state treasurer;

(b) justices of the Supreme Court and judges of all constitutional and statutory courts of record; and

(c) full-time commissioners and executive directors of executive branch departments appointed by the governor or with his approval, who report directly to the governor, and who are enumerated in Section 67-22-2.

(3) The commission shall:

(a) make studies and formulate recommendations concerning the wage and salary classification plan based upon factors such as educational requirements, experience, responsibility, accountability for funds and staff, comparisons with wages paid in other comparable public and private employment within this state, and other states similarly situated, and any other factors generally used in similar comprehensive wage and salary classification plans so that the plan and its administration reflect current conditions at all times;

(b) consult and advise with, and make recommendation to, the [~~Department~~] Division of Human Resource Management regarding the plan, its administration, and the position of any officer covered by the plan;

(c) submit to the Executive Appropriations Committee not later than 60 days before commencement of each annual general session:

(i) a report briefly summarizing its activities during the calendar year immediately preceding the session;

(ii) recommendations concerning revisions, modifications, or changes, if any, which

should be made in the plan, its administration, or in the classification of any officer under the plan; and

(iii) specific recommendations regarding the office of governor, lieutenant governor, attorney general, state auditor, and state treasurer concerning adjustments, if any, that should be made in the salary or other emoluments of office so that all executive and judicial officers, elected or appointed, receive equitable and consistent treatment regardless of whether salaries are fixed by the Legislature or by the [~~Department~~] Division of Human Resource Management; and

(d) conduct a comprehensive review of judicial salary levels and make recommendations for judicial salaries in a report to the president of the Senate, the speaker of the House of Representatives, and the governor by November 1, prior to the convening of the general session of the Legislature in each odd-numbered year.

(4) (a) The recommendation under Subsection (3)(d) shall be based upon consultation with the Judicial Council and upon consideration for the career status of judges. It shall be based upon comparisons with salaries paid in other states and in comparable public and private employment within this state.

(b) In even-numbered years, the commission shall update its prior report, based upon the Consumer Price Index and other relevant factors, and shall forward its updated recommendations as prescribed in this section.

(5) The Judicial Council shall cooperate with the commission in providing information on the judicial branch of government and on the individual levels of court as requested. The director of personnel from the Office of the Court Administrator shall provide the salary comparison data referred to in this section to the legislative fiscal analyst and shall provide other staff assistance and support as requested by the legislative fiscal analyst.

Section 22. Section **67-19-3** is amended to read:

67-19-3. Definitions.

As used in this chapter:

(1) "Agency" means any department or unit of Utah state government with authority to employ personnel.

(2) "Career service" means positions under Schedule B as defined in Section 67-19-15.

(3) "Career service employee" means an employee who has successfully completed a probationary period of service in a position covered by the career service.

(4) "Career service status" means status granted to employees who successfully complete probationary periods for competitive career service positions.

(5) "Classified service" means those positions subject to the classification and compensation provisions of Section 67-19-12.

(6) "Controlled substance" means controlled substance as defined in Section 58-37-2.

~~[(7) "Department" means the Department of Human Resource Management.]~~

(7) "Director" means the director of the Division of Human Resource Management.

(8) "Disability" means a physical or mental disability as defined and protected under the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq.

(9) "Division" means the Division of Human Resource Management.

~~[(9)]~~ (10) "Employee" means any individual in a paid status covered by the career service or classified service provisions of this chapter.

~~[(10)]~~ (11) "Examining instruments" means written or other types of proficiency tests.

~~[(11)]~~ (12) "Executive director," except where otherwise specified, means the executive director of the ~~[department]~~ Department of Administrative Services.

~~[(12)]~~ (13) "Market comparability adjustment" means a salary range adjustment determined necessary through a market survey of salary ranges of a reasonable cross section of comparable benchmark positions in private and public employment.

~~[(13)]~~ (14) "Probationary employee" means an employee serving a probationary period in a career service position but who does not have career service status.

~~[(14)]~~ (15) "Probationary period" means that period of time determined by the department that an employee serves in a career service position as part of the hiring process before career service status is granted to the employee.

~~[(15)]~~ (16) "Probationary status" means the status of an employee between the employee's hiring and the granting of career service status.

[~~(16)~~] (17) "Total compensation" means salaries and wages, bonuses, paid leave, group insurance plans, retirement, and all other benefits offered to state employees as inducements to work for the state.

Section 23. Section **67-19-3.1** is amended to read:

67-19-3.1. Principles guiding interpretation of chapter and adoption of rules.

(1) The [~~department~~] division shall establish a career service system designed in a manner that will provide for the effective implementation of the following merit principles:

- (a) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;
- (b) providing for equitable and competitive compensation;
- (c) training employees as needed to assure high-quality performance;
- (d) retaining employees on the basis of the adequacy of their performance and separating employees whose inadequate performance cannot be corrected;
- (e) fair treatment of applicants and employees in all aspects of [~~personnel~~] human resource administration without regard to race, color, religion, sex, national origin, political affiliation, age, or disability, and with proper regard for their privacy and constitutional rights as citizens;
- (f) providing information to employees regarding their political rights and the prohibited practices under the Hatch Act; and
- (g) providing a formal procedure for processing the appeals and grievances of employees without discrimination, coercion, restraint, or reprisal.

(2) The principles in Subsection (1) shall govern interpretation and implementation of this chapter.

Section 24. Section **67-19-5** is amended to read:

67-19-5. Division of Human Resource Management created -- Director -- Compensation -- Staff.

(1) There is created the [~~Department~~] Division of Human Resource Management within

the Department of Administrative Services.

(2) (a) The ~~[department]~~ division shall be administered by a director appointed by the governor with the consent of the Senate.

(b) The director shall be a person with experience in ~~[personnel]~~ human resource management and shall be accountable to the ~~[governor]~~ executive director for his performance in office.

~~[(c) The governor shall establish the director's salary within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.]~~

(3) The director may~~[-(a)]~~ appoint a personal secretary and, with the approval of the ~~[governor]~~ executive director, a deputy director, both of whom shall be exempt from career service~~[-and]~~.

~~[(b) appoint division directors and program managers who may be career service exempt.]~~

(4) (a) The director shall have full responsibility and accountability for the administration of the statewide human resource management system.

(b) Except as provided in Section 67-19-6.1, an agency may not perform human resource functions without the consent of the director.

(5) Statewide human resource management rules adopted by the Division of Human Resource Management in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, shall take precedence if there is a conflict with department rules, policies, or practices.

Section 25. Section **67-19-6** is amended to read:

67-19-6. Responsibilities of director.

(1) The director shall:

(a) develop, implement, and administer a statewide program of ~~[personnel]~~ human resource management ~~[for state employees]~~ that will:

(i) aid in the efficient execution of public policy;

(ii) foster careers in public service for qualified employees; and

- (iii) render assistance to state agencies in performing their missions;
- (b) design and administer the state pay plan;
- (c) design and administer the state classification system and procedures for determining schedule assignments;
- (d) design and administer the state recruitment and selection system;
- (e) monitor agency human resource practices to determine compliance with federal law, state law, and state human resource rules, including equal employment opportunity;
- (f) maintain central personnel records;
- ~~(b)~~ (g) perform those functions necessary to implement this chapter unless otherwise assigned or prohibited;
- ~~(c)~~ (h) perform duties assigned by the governor or statute;
- ~~(d)~~ (i) adopt rules for ~~[personnel]~~ human resource management according to the procedures of Title 63, Chapter 46a, Utah Administrative Rulemaking Act;
- ~~(e)~~ (j) establish and maintain a management information system that will furnish the governor, the Legislature, and agencies with current information on authorized positions, payroll, and related matters concerning state ~~[personnel]~~ human resources;
- ~~(f)~~ (k) ~~[in cooperation with other agencies,]~~ conduct research and planning activities to:
 - (i) determine and prepare for future state ~~[personnel]~~ human resource needs;
 - (ii) develop methods for improving public ~~[personnel]~~ human resource management; and
 - (iii) propose needed policy changes to the governor;
- ~~(g)~~ (l) study the character, causes, and extent of discrimination in state employment and develop plans for its elimination through programs consistent with federal and state laws governing equal employment opportunity in employment;
- ~~(h)~~ (m) when requested by counties, municipalities, and other political subdivisions of the state, provide technical service and advice on ~~[personnel]~~ human resource management at a charge determined by the director;
- ~~(i)~~ (n) establish compensation policies and procedures for early voluntary retirement;
- ~~(j)~~ (o) confer with the heads of other agencies about human resource policies and

procedures;

~~(k)~~ (p) submit an annual report to the governor and the Legislature; and

~~(h)~~ (q) (i) develop a procedure by which each agency will:

(A) identify funded vacant positions; and

(B) report those funded vacant positions to the ~~[department]~~ division;

(ii) identify all funded employee positions in each agency that have been vacant for more than 180 consecutive days during the 18-month period prior to July 1 of each year; and

(iii) by no later than September 1 of each year, provide a report of all funded employee positions in each agency identified in Subsections (1)~~(h)~~ (q)(i) and (ii) to:

(A) the Governor's Office of Planning and Budget; and

(B) the Office of the Legislative Fiscal Analyst.

(2) (a) After consultation with the governor and the heads of other agencies, the director shall establish and coordinate statewide training programs.

(b) The programs developed under this Subsection (2) shall have application to more than one agency.

(c) The ~~[department]~~ division may not establish training programs that train employees to perform highly specialized or technical jobs and tasks.

(3) (a) (i) The ~~[department]~~ division may collect fees for training as authorized by this Subsection (3).

(ii) Training funded from General Fund appropriations shall be treated as a separate program within the ~~[department]~~ division budget.

(iii) All money received from fees under this section will be accounted for by the ~~[department]~~ division as a separate user driven training program.

(iv) The user training program includes the costs of developing, procuring, and presenting training and development programs, and other associated costs for these programs.

(b) (i) Funds remaining at the end of the fiscal year in the user training program are nonlapsing.

(ii) Each year, as part of the appropriations process, the Legislature shall review the

amount of nonlapsing funds remaining at the end of the fiscal year and may, by statute, require the [department] division to lapse a portion of the funds.

Section 26. Section **67-19-6.1** is enacted to read:

67-19-6.1. Department field offices.

(1) After consulting with an agency head, the director of the Division of Human Resource Management may establish a field office in that agency.

(2) The director shall assign an employee of the division to act as field office director.

(3) Before establishing a field office, the director and agency head shall sign an agreement, to be approved by the governor, that specifies:

(a) the scope of responsibility of the field office director and staff;

(b) the services to be provided by the field office director and staff;

(c) the relationship between the field office director and agency management;

(d) the facilities, equipment, supplies, and budget to be provided for the field office by the agency and the allocation of the cost of those facilities, equipment, and supplies;

(e) staff size;

(f) protocols to resolve discrepancies between agency practice and Division of Human Resource Management policy;

(g) the date that the agreement shall terminate if not previously terminated or renewed;

and

(h) any other issue necessary for the proper functioning of the field office within the agency.

(4) Unless otherwise provided for in the field office agreement, the agency shall:

(a) obtain field office approval for the final selection of qualified applicants for appointment and promotion to vacant positions;

(b) conduct performance appraisals;

(c) discipline employees; and

(d) maintain individual personnel records.

(5) Any field office agreement shall be subject to termination by the director with the

approval of the governor.

Section 27. Section **67-19-6.7** is amended to read:

67-19-6.7. Overtime policies for state employees.

(1) As used in this section:

(a) "Accrued overtime hours" means:

(i) for nonexempt employees, overtime hours earned during a fiscal year that, at the end of the fiscal year, have not been paid and have not been taken as time off by the nonexempt state employee who accrued them; and

(ii) for exempt employees, overtime hours earned during an overtime year.

~~[(b) "Agreement" means the agreement authorized by the FLSA by which a nonexempt employee elects the form of compensation he will receive for overtime.]~~

~~[(c)]~~ (b) "Appointed official" means:

(i) each department executive director and deputy director, each division director, and each member of a board or commission; and

(ii) any other person employed by a department who is appointed by, or whose appointment is required by law to be approved by, the governor and who:

(A) is paid a salary by the state ~~[of Utah]~~; and

(B) who exercises managerial, policy-making, or advisory responsibility.

~~[(d)]~~ (c) "Department" means the Department of Administrative Services, the Department of Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage Control, the Insurance Department, the Public Service Commission, the Labor Commission, the Department of Agriculture and Food, the Department of Human Services, the State Board of Education, the Department of Natural Resources, the Department of Transportation, the Department of Commerce, the Department of Workforce Services, the State Tax Commission, the Department of Community and Economic Development, the Department of Health, the National Guard, the Department of Environmental Quality, the Department of Public Safety, ~~[the Department of Human Resource Management,]~~ the Commission on Criminal and Juvenile Justice, all merit employees except attorneys in the Office of the Attorney General,

merit employees in the Office of the State Treasurer, and merit employees in the Office of the State Auditor.

~~[(e)]~~ (d) "Elected official" means any person who is an employee of the state ~~[of Utah]~~ because he was elected by the registered voters of Utah to a position in state government.

~~[(f)]~~ (e) "Exempt employee" means a state employee who is exempt as defined by the ~~[FLSA]~~ Fair Labor Standards Act of 1978, 29 U.S.C. Section 201 et seq.

~~[(g)]~~ (f) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. Section 201 et seq.~~[-(1978).]~~

(g) "FLSA agreement" means the agreement authorized by the Fair Labor Standards Act of 1978, 29 U.S.C. Section 201 et seq. by which a nonexempt employee elects the form of compensation he will receive for overtime.

~~[(h)]~~ ~~"Human Resource Management" means the Department of Human Resource Management.~~

~~[(i)]~~ (h) "Nonexempt employee" means a state employee who is nonexempt as defined by the Division of Human Resource Management applying FLSA requirements.

~~[(j)]~~ (i) "Overtime" means actual time worked in excess of the employee's defined work period.

~~[(k)]~~ (j) "Overtime year" means the year determined by a department under Subsection (4)(b) at the end of which an exempt employee's accrued overtime lapses.

~~[(l)]~~ (k) (i) "State employee" means every person employed by a department who is not an appointed official or an elected official.

(ii) "State employee" does not mean:

(A) certificated employees of the State Board of Education; and

(B) employees of the Department of Community and Economic Development whose positions are designated as schedule AM exempt employees under Section 67-19-15.

~~[(m)]~~ (l) "Uniform annual date" means the date when an exempt employee's accrued overtime lapses.

~~[(n)]~~ (m) "Work period" means:

(i) for all nonexempt employees, except law enforcement and hospital employees, a consecutive seven day 24 hour work period of 40 hours;

(ii) for all exempt employees, a 14 day, 80 hour payroll cycle; and

(iii) for nonexempt law enforcement and hospital employees, the period established by each department by rule for those employees according to the requirements of the [FLSA] Fair Labor Standards Act of 1978, 29 U.S.C. Section 201 et seq.

(2) Each department shall compensate each state employee who works overtime by complying with the requirements of this section.

(3) (a) Each department shall negotiate and obtain a signed FLSA agreement from each nonexempt employee.

(b) In the FLSA agreement, the nonexempt employee shall elect either to be compensated for overtime by:

(i) taking time off work at the rate of one and one-half hour off for each overtime hour worked; or

(ii) being paid for the overtime worked at the rate of one and one-half times the rate per hour that the state employee receives for nonovertime work.

(c) Any nonexempt employee who elects to take time off under this subsection shall be paid for any overtime worked in excess of the cap established by the Division of Human Resource Management.

(d) Before working any overtime, each nonexempt employee shall obtain authorization to work overtime from the employee's immediate supervisor.

(e) Each department shall:

(i) for employees who elect to be compensated with time off for overtime, allow overtime earned during a fiscal year to be accumulated; and

(ii) for employees who elect to be paid for overtime worked, pay them for overtime worked in the paycheck for the pay period in which the employee worked the overtime.

(f) If the department pays a nonexempt employee for overtime, the department shall charge that payment to the department's budget.

(g) At the end of each fiscal year, the Division of Finance shall total all the accrued overtime hours for nonexempt employees and charge that total against the appropriate fund or subfund.

(4) (a) (i) Except as provided in Subsection (4)(a)(ii), each department shall compensate exempt employees who work overtime by granting them time off at the rate of one hour off for each hour of overtime worked.

(ii) The director of the Division of Human Resource Management may grant limited exceptions to this requirement, where work circumstances dictate, by authorizing a department to pay employees for overtime worked at the rate per hour that the employee receives for nonovertime work, if the department has funds available.

(b) (i) Each department shall:

(A) establish in its written [~~personnel~~] human resource policies a uniform annual date for each division that is at the end of any pay period; and

(B) communicate the uniform annual date to its employees.

(ii) If any department fails to establish a uniform annual date as required by this Subsection (4), the director of the Division of Human Resource Management, in conjunction with the director of the Division of Finance, shall establish the date for that department.

(c) (i) Any overtime earned under this Subsection (4) is not an entitlement, is not a benefit, and is not a vested right.

(ii) A court may not construe the overtime for exempt employees authorized by this Subsection (4) as an entitlement, a benefit, or as a vested right.

(d) At the end of the overtime year, upon transfer to another department at any time, and upon termination, retirement, or other situations where the employee will not return to work before the end of the overtime year:

(i) any of an exempt employee's overtime that is more than the maximum established by the Division of Human Resource Management rule lapses; and

(ii) unless authorized by the director of the Division of Human Resource Management under Subsection (4)(a)(ii), a department may not compensate the exempt employee for that

lapsed overtime by paying the employee for the overtime or by granting the employee time off for the lapsed overtime.

(e) Before working any overtime, each exempt employee shall obtain authorization to work overtime from ~~[their]~~ the exempt employee's immediate supervisor.

(f) If the department pays an exempt employee for overtime under authorization from the director of the ~~[Department]~~ Division of Human Resource Management, the department shall charge that payment to the department's budget in the pay period earned.

(5) The Division of Human Resource Management shall:

(a) ensure that the provisions of the FLSA and this section are implemented throughout state government;

(b) determine, for each state employee, whether that employee is exempt, nonexempt, law enforcement, or has some other status under the FLSA;

(c) in coordination with modifications to the systems operated by the Division of Finance, make rules:

(i) establishing procedures for recording overtime worked that comply with FLSA requirements;

(ii) establishing requirements governing overtime worked while traveling and procedures for recording that overtime that comply with FLSA requirements;

(iii) establishing requirements governing overtime worked if the employee is "on call" and procedures for recording that overtime that comply with FLSA requirements;

(iv) establishing requirements governing overtime worked while an employee is being trained and procedures for recording that overtime that comply with FLSA requirements;

(v) subject to the FLSA, establishing the maximum number of hours that a nonexempt employee may accrue before a department is required to pay the employee for the overtime worked;

(vi) subject to the FLSA, establishing the maximum number of overtime hours for an exempt employee that do not lapse; and

(vii) establishing procedures for adjudicating appeals of any FLSA determinations made

by the Division of Human Resource Management as required by this section;

(d) monitor departments for compliance with the FLSA; and

(e) recommend to the Legislature and the governor any statutory changes necessary because of federal government action.

(6) In coordination with the procedures for recording overtime worked established in rule by the Division of Human Resource Management, the Division of Finance shall modify its payroll and [~~personnel~~] human resource systems to accommodate those procedures.

(a) Notwithstanding the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, Section 67-19-31, and Section 67-19a-301, any employee who is aggrieved by the FLSA designation made by the Division of Human Resource Management as required by this section may appeal that determination to the [~~executive~~] director of the Division of Human Resource Management by following the procedures and requirements established in Division of Human Resource Management rule.

(b) Upon receipt of an appeal under this section, the director shall notify the executive director of the employee's department that the appeal has been filed.

(c) If the employee is aggrieved by the decision of the [~~executive~~] director of the Division of Human Resource Management, he shall appeal that determination to the Department of Labor, Wage and Hour Division, according to the procedures and requirements of federal law.

Section 28. Section **67-19-11** is amended to read:

**67-19-11. Use of department facilities -- Field office facilities cost allocation --
Funding for division.**

(1) (a) All officers and employees of the state and its political subdivisions shall allow the [~~department~~] division to use public buildings under their control, and furnish heat, light, and furniture, for any examination, hearing, or investigation authorized by this chapter.

~~[(b) The department shall pay a political subdivision the reasonable cost of any facilities furnished by it.]~~

(b) (i) Allocation of the cost for any facilities, equipment, or supplies furnished by an agency for use as a field office of the division shall be governed by the field office agreement

established in Section 67-19-6.1.

(ii) If the field office agreement does not specifically provide for the allocation of a cost for the division's use of the agency's facilities, equipment, or supplies, the agency shall pay the cost of those facilities, equipment, and supplies.

(2) The director shall ~~submit~~:

(a) prepare an annual budget request for the [department] division, which is subject to the executive director's approval; and

(b) submit the budget request to the governor and the Legislature.

Section 29. Section **67-19-12** is amended to read:

67-19-12. State pay plans -- Applicability of section -- Exemptions -- Duties of director.

(1) (a) This section, and the rules adopted by the [department] division to implement this section, apply to each career and noncareer [state] employee not specifically exempted under Subsection (2).

(b) If not exempted under Subsection (2), [~~a state~~] an employee is considered to be in classified service.

(2) The following [state] employees are exempt from this section:

(a) members of the Legislature and legislative employees;

(b) members of the judiciary and judicial employees;

(c) elected members of the executive branch and their direct staff who meet career service exempt criteria as defined in Subsection 67-19-15(1)(k);

(d) certificated employees of the State Board of Education;

(e) officers, faculty, and other employees of state institutions of higher education;

(f) employees in any position that is determined by statute to be exempt from this Subsection (2);

(g) attorneys in the Office of the Attorney General;

(h) department heads and other persons appointed by the governor pursuant to statute;

(i) employees of the Department of Community and Economic Development whose

positions are designated as executive/professional positions by the executive director of the Department of Community and Economic Development with the concurrence of the director; and

(j) employees of the Medical Education Council.

(3) (a) The director shall prepare, maintain, and revise a position classification plan for each employee position not exempted under Subsection (2) to provide equal pay for equal work.

(b) Classification of positions shall be based upon similarity of duties performed and responsibilities assumed, so that the same job requirements and the same salary range may be applied equitably to each position in the same class.

(c) The director shall allocate or reallocate the position of each employee in classified service to one of the classes in the classification plan.

(d) (i) The [~~department~~] division shall conduct periodic studies and desk audits to provide that the classification plan remains reasonably current and reflects the duties and responsibilities assigned to and performed by employees.

(ii) The director shall determine the schedule for studies and desk audits after considering factors such as changes in duties and responsibilities of positions or agency reorganizations.

(4) (a) With the approval of the governor, the director shall develop and adopt pay plans for each position in classified service.

(b) The director shall design each pay plan to achieve, to the degree that funds permit, comparability of state salary ranges to salary ranges used by private enterprise and other public employment for similar work.

(c) The director shall adhere to the following in developing each pay plan:

(i) Each pay plan shall consist of sufficient salary ranges to permit adequate salary differential among the various classes of positions in the classification plan.

(ii) The director shall assign each class of positions in the classification plan to a salary range and shall set the width of the salary range to reflect the normal growth and productivity potential of employees in that class. The width of the ranges need not be uniform for all classes of positions in the plan, but each range shall contain merit steps in increments of 2.75% salary

increases.

(iii) The director shall issue rules for the administration of pay plans. The rules may provide for exceptional performance increases and for a program of incentive awards for cost-saving suggestions and other commendable acts of employees. The director shall issue rules providing for salary adjustments.

(iv) Merit step increases shall be granted, if funds are available, to employees who receive a rating of "successful" or higher in an annual evaluation of their productivity and performance.

(v) By October ~~[15]~~ 31 of each year, the director shall submit market comparability adjustments to the director of the Governor's Office of Planning and Budget for consideration to be included as part of the affected agency's base budgets.

(vi) By October 31 of each year, the director shall recommend a compensation package to the governor.

(vii) Adjustments shall incorporate the results of a total compensation market survey of salary ranges and benefits of a reasonable cross section of comparable benchmark positions in private and public employment in the state. The survey may also study comparable unusual positions requiring recruitment outside Utah in the surrounding western states. The director may cooperate with other public and private employers in conducting the survey.

(viii) The director shall establish criteria to assure the adequacy and accuracy of the survey and shall use methods and techniques similar to and consistent with those used in private sector surveys. Except as provided under Section 67-19-12.3, the survey shall include a reasonable cross section of employers. The director may cooperate with or participate in any survey conducted by other public and private employers.

(ix) The establishing of a salary range is a nondelegable activity [~~subject to Subsection 67-19-8(1)~~] and is not appealable under the grievance procedures of Sections 67-19-30 through 67-19-32, Title 67, Chapter 19a, Grievance and Appeal Procedures, or otherwise.

(x) The governor shall:

(A) consider salary adjustments recommended under Subsection (4)(c)(vi) in preparing

the executive budget and shall recommend the method of distributing the adjustments;

(B) submit compensation recommendations to the Legislature; and

(C) support the recommendation with schedules indicating the cost to individual departments and the source of funds.

(xi) If funding is approved by the Legislature in a general appropriations act, the adjustments take effect on the July 1 following the enactment.

(5) (a) The director shall regularly evaluate the total compensation program of state employees in the classified service.

(b) The [~~department~~] division shall determine if employee benefits are comparable to those offered by other private and public employers using information from:

(i) the most recent edition of the Employee Benefits Survey Data conducted by the U.S. Chamber of Commerce Research Center; or

(ii) the most recent edition of a nationally recognized benefits survey.

(6) (a) The director shall submit proposals for a state employee compensation plan to the governor by October 31 of each year, setting forth findings and recommendations affecting [~~state~~] employee compensation.

(b) The governor shall consider the director's proposals in preparing budget recommendations for the Legislature.

(c) The governor's budget proposals to the Legislature shall include a specific recommendation on [~~state~~] employee compensation.

Section 30. Section **67-19-12.2** is amended to read:

67-19-12.2. Education benefit plan for law enforcement and correctional officers.

(1) As used in this section, "law enforcement officer" has the same meaning as in Section 53-13-103 and "correctional officer" has the same meaning as in Section 53-13-104.

(2) The director shall establish a plan authorizing any [~~state~~] agency to implement an educational compensation program for law enforcement officers and correctional officers employed by that [~~state~~] agency.

(3) The program shall provide that in order for a law enforcement officer or correctional

officer to qualify for education benefits for college or university education, the law enforcement officer or correctional officer shall:

- (a) provide a certified transcript of grades, demonstrating a grade point average of 3.0 or greater, from an accredited college or university; and
 - (b) have successfully completed the probationary employment period with the employing agency.
- (4) The program shall also provide that the agency may consider a law enforcement officer or correctional officer to receive additional compensation as follows for higher education degrees earned on or after April 30, 2001, in a subject area directly related to the law enforcement officer's or correctional officer's employment with the agency:
- (a) two steps for an associate's degree;
 - (b) two steps for a bachelor's degree; and
 - (c) two steps for a master's degree.
- (5) Expenses incurred by an agency to provide additional compensation under this section may be only from the agency's existing budget.

Section 31. Section **67-19-12.5** is amended to read:

67-19-12.5. Creation of Flexible Benefit Program -- Rulemaking power granted to establish program.

- (1) The [~~department~~] division shall establish for calendar year 1990 and thereafter a Flexible Benefit Program under Section 125 of the Internal Revenue Code of 1986.
- (2) The [~~department~~] division shall establish accounts for all employees eligible for benefits which meet the nondiscrimination requirements of the Internal Revenue Code of 1986.
- (3) (a) Each account established under this section shall include employee paid premiums for health and dental services.
- (b) The account may also include, at the option of the employee, out-of-pocket employee medical and dependent care expenses.
- (c) Accounts may also include other expenses allowed under the Internal Revenue Code of 1986.

(4) In accordance with Title 63, Chapter 46a, [the] Utah Administrative Rulemaking Act, the [department] division may make rules to implement the program established under this section.

Section 32. Section **67-19-12.7** is amended to read:

67-19-12.7. Accumulated annual leave -- Conversion to deferred compensation plan.

(1) The [department] division shall implement a program whereby an employee may, upon termination of employment or retirement, elect to convert any unused annual leave into any of the employee's designated deferred compensation accounts that:

- (a) are sponsored by the Utah State Retirement Board; and
- (b) are qualified under Section 401(k) or Section 457 of the Internal Revenue Code.

(2) Any annual leave converted under Subsection (1) shall be converted into the employee's deferred compensation account at the employee's pay rate at the time of termination or retirement.

(3) No employee may convert hours of accrued annual leave to the extent that any hours so converted would exceed the maximum amount authorized by the Internal Revenue Code for each calendar year.

Section 33. Section **67-19-12.9** is amended to read:

67-19-12.9. Accumulated annual leave -- Annual conversion to deferred compensation plan.

(1) If the Legislature in an annual appropriations act with accompanying intent language specifically authorizes and fully funds the estimated costs of this use, the [department] division shall implement a program that allows an employee, in the approved calendar year, to elect to convert up to 20 hours of annual leave, in whole hour increments not to exceed \$250 in value, into any of the employee's designated deferred compensation accounts that:

- (a) are sponsored by the Utah State Retirement Board; and
- (b) are qualified under Section 401(k) or Section 457 of the Internal Revenue Code.

(2) Any annual leave converted under Subsection (1) shall be:

(a) converted into the employee's deferred compensation account at the employee's pay rate at the time of conversion; and

(b) calculated in the last pay period of the leave year as determined by the Division of Finance.

(3) An employee may not convert hours of accrued annual leave to the extent that any hours converted would:

(a) exceed the maximum amount authorized by the Internal Revenue Code for the calendar year; or

(b) cause the employee's balance of accumulated annual leave to drop below the maximum accrual limit provided by rule.

Section 34. Section **67-19-13** is amended to read:

67-19-13. Examination of payrolls and certification of employee eligibility by director.

(1) The director [~~of personnel management~~] may examine payrolls at any time to determine conformity with this chapter and the regulations.

(2) No new employee shall be hired in a position covered by this chapter, and no employee shall be changed in pay, title or status, nor shall any employee be paid unless certified by the director as eligible under the provisions of or regulations promulgated pursuant to this chapter.

Section 35. Section **67-19-15** is amended to read:

67-19-15. Career service -- Exempt positions -- Schedules for civil service positions -- Coverage of career service provisions.

(1) Except as otherwise provided by law or by rules and regulations established for federally aided programs, the following positions are exempt from the career service provisions of this chapter:

(a) the governor, members of the Legislature, and all other elected state officers, designated as Schedule AA;

(b) the agency heads enumerated in Section 67-22-2, and commissioners designated as

Schedule AB;

(c) all employees and officers in the office and at the residence of the governor, designated as Schedule AC;

(d) employees who are in a confidential relationship to an agency head or commissioner and who report directly to, and are supervised by, a department head, commissioner, or deputy director of an agency or its equivalent, designated as Schedule AD;

(e) unskilled employees in positions requiring little or no specialized skill or training, designated as Schedule AE;

(f) part-time professional noncareer persons who are paid for any form of medical and other professional service and who are not engaged in the performance of administrative duties, designated as Schedule AF;

(g) attorneys in the attorney general's office who are under their own career service pay plan, designated as Schedule AG;

(h) teaching staff of all state institutions and patients and inmates employed in state institutions, designated as Schedule AH;

(i) persons appointed to a position vacated by an employee who has a right to return under federal or state law or policy, designated as Schedule AI;

(j) noncareer employees compensated for their services on a seasonal or contractual basis who are hired for limited periods of less than nine consecutive months or who are employed on less than 1/2 time basis, designated as Schedule AJ;

(k) those employees in a personal and confidential relationship to elected officials, designated as Schedule AK;

(l) employees appointed to perform work of a limited duration not exceeding two years or to perform work with time-limited funding, designated as Schedule AL;

(m) employees of the Department of Community and Economic Development whose positions are designated as executive/professional positions by the executive director of the Department of Community and Economic Development with the concurrence of the director, designated as Schedule AM;

(n) employees of the Legislature, designated as Schedule AN;
(o) employees of the judiciary, designated as Schedule AO;
(p) all judges in the judiciary, designated as Schedule AP;
(q) members of state and local boards and councils appointed by the governor and governing bodies of agencies, other local officials serving in an ex officio capacity, officers, faculty, and other employees of state universities and other state institutions of higher education, designated as Schedule AQ;

(r) employees who make statewide policy, designated as Schedule AR; and
(s) any other employee whose appointment is required by statute to be career service exempt, designated as Schedule AS.

(2) The civil service shall consist of two schedules as follows:

(a) (i) Schedule A is the schedule consisting of positions exempted by Subsection (1).
(ii) Removal from any appointive position under Schedule A, unless otherwise regulated by statute, is at the pleasure of the appointing officers without regard to tenure.

(b) Schedule B is the competitive career service schedule, consisting of all positions filled through competitive selection procedures as defined by the director.

(3) (a) The director, after consultation with the heads of concerned executive branch departments and agencies and with the approval of the governor, shall allocate positions to the appropriate schedules under this section.

(b) Agency heads shall make requests and obtain approval from the director before changing the schedule assignment and tenure rights of any position.

(c) Unless the director's decision is reversed by the governor, when the director denies an agency's request, the director's decision is final.

(4) (a) Compensation for employees of the Legislature shall be established by the directors of the legislative offices in accordance with Section 36-12-7.

(b) Compensation for employees of the judiciary shall be established by the state court administrator in accordance with Section 78-3-24.

(c) Compensation for officers, faculty, and other employees of state universities and

institutions of higher education shall be established as provided in Title 53B, Chapters 1 and 2.

(d) Unless otherwise provided by law, compensation for all other Schedule A employees shall be established by their appointing authorities, within ranges approved by, and after consultation with the director of the [~~Department~~] Division of Human [~~Resources~~] Resource Management.

(5) All employees of the Office of State Auditor, the Office of State Treasurer, the Office of the Attorney General, excluding attorneys who are under their own career service system, and employees who are not exempt under this section are covered by the career service provisions of this chapter.

Section 36. Section **67-19-15.1** is amended to read:

67-19-15.1. Implementation of exempt status for Schedule AD and AR employees.

(1) As used in this section, "appointee" means:

(a) a deputy director;

(b) a division director;

(c) any assistant directors and administrative assistants who report directly to a department head, deputy director, or their equivalent; and

(d) any other person whose appointment is required by law to be approved by the governor.

(2) After the effective date of this [~~act~~] chapter, any new appointee is a merit exempt employee.

(3) Notwithstanding the requirements of this [~~act~~] chapter, any appointee who is currently a nonexempt employee does not lose that nonexempt status because of this [~~act~~] chapter.

(4) The [~~Department~~] Division of Human Resource Management shall develop financial and other incentives to encourage appointees who are nonexempt to voluntarily convert to merit exempt status.

Section 37. Section **67-19-19** is amended to read:

67-19-19. Political activity of employees -- Rules and regulations -- Highway patrol

-- Hatch Act.

Except as otherwise provided by law or by rules promulgated under this section for federally aided programs, the following provisions apply with regard to political activity of career service employees in all grades and positions.

(1) [~~State-career~~] Career service employees may voluntarily participate in political activity subject to the following provisions:

(a) if any [~~state~~] career service employee is elected to any partisan or full-time nonpartisan political office, that employee shall be granted a leave of absence without pay for times when monetary compensation is received for service in political office;

(b) no officer or employee in career service may engage in any political activity during the hours of employment, nor may any person solicit political contributions from employees of the executive branch during hours of employment for political purposes; and

(c) partisan political activity may not be a basis for employment, promotion, demotion, or dismissal, except that the director shall adopt rules providing for the discipline or punishment of a state officer or employee who violates any provision of this section.

(2) (a) Notwithstanding any other provision of this section, no member of the Utah Highway Patrol may use his official authority or influence for the purpose of interfering with an election or affecting the results of an election.

(b) No person may induce or attempt to induce any member of the Utah Highway Patrol to participate in any activity prohibited by this Subsection (2).

(3) Nothing contained in this section may be construed to:

(a) preclude voluntary contributions by [~~a-state~~] an employee to the party or candidate of the officer's or employee's choice; or

(b) permit partisan political activity by any [~~state~~] employee who is prevented or restricted from engaging in the political activity by the provisions of the federal Hatch Act.

Section 38. Section **67-19-26** is amended to read:

67-19-26. Severability of provisions -- Compliance with requirements for federally aided programs.

(1) If any provision of this chapter or of any regulation or order issued thereunder or the application of any provision of this chapter to any person or circumstance is held invalid, the remainder of this chapter and the application of provision of this chapter or regulation or orders issued under it to persons or circumstances other than those to which it is held invalid shall still be regarded as having the force and effect of law.

(2) If any part of this chapter is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, the conflicting part of this chapter shall be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such findings shall not affect the operation of the remainder of this chapter in its application to the agencies concerned.

(3) Notwithstanding any provisions in this chapter to the contrary, no regulation shall be adopted which would deprive the state or any of its departments or institutions of federal grants or other forms of financial assistance, and the rules and regulations promulgated hereunder shall include standards, provisions, terms, and conditions for personnel engaged in the administration of federally aided programs, which shall, in all respects, comply with the necessary requirements for a qualified [~~personnel~~] human resource system under the standards applicable to personnel engaged in the administration of federally aided programs.

Section 39. Section **67-19-31** is amended to read:

67-19-31. Position classification grievances -- Scope -- Procedure.

(1) (a) For the purpose of position classification grievances, the process that culminates in assigning a career service position to an appropriate class specification is a matter of position classification and may be grieved.

(b) The process that culminates in assigning a salary range to the class specification is not a position classification and may not be grieved as a classification grievance.

(2) (a) Upon receipt of a position classification grievance, the director shall refer the grievance to a classification panel of three or more impartial persons trained in state classification procedures.

(b) The classification panel shall determine whether or not the classification assignment

for career service positions was appropriate by applying the statutes, rules, and procedures adopted by the department that were in effect at the time of the classification change.

(c) The classification panel may:

(i) obtain access to previous audits, classification decisions, and reports;

(ii) request new or additional audits by [~~department or agency personnel~~] human resource analysts; and

(iii) consider new or additional information.

(d) The classification panel may sustain or modify the original decision and, if applicable, recommend a new classification.

(e) The classification panel shall report its recommendation to the director, who shall make the classification decision and notify the grievant.

(3) (a) Either party may appeal the director's decision to an impartial hearing officer trained in state classification procedures selected through a public bid process by a panel consisting of the following members:

(i) the [~~executive~~] director of the [~~Department~~] Division of Human Resource Management;

(ii) two department executive directors;

(iii) a private sector human resources executive appointed by the governor; and

(iv) a representative of the Utah Public Employees Association.

(b) The successful bid shall serve under contract for no more than three years. At the end of that time, the [~~Department~~] Division of Human Resource Management shall reissue the bid.

(c) The hearing officer shall review the classification and make the final decision. The final decision is subject to judicial review pursuant to the provisions of Section 63-46b-15.

Section 40. Section **67-19-33** is amended to read:

67-19-33. Controlled substances and alcohol use prohibited.

An employee may not:

(1) manufacture, dispense, possess, use, distribute, or be under the influence of a controlled substance or alcohol during work hours or on state property except where legally

permissible;

(2) manufacture, dispense, possess, use, or distribute a controlled substance or alcohol if the activity prevents:

(a) state agencies from receiving federal grants or performing under federal contracts of \$25,000 or more; or

(b) the employee to perform his services or work for state government effectively as regulated by the rules of the [executive] director in accordance with Section 67-19-34; or

(3) refuse to submit to a drug or alcohol test under Section 67-19-36.

Section 41. Section **67-19-34** is amended to read:

67-19-34. Rulemaking power to director.

In accordance with this chapter and Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the [executive] director shall make rules regulating:

(1) disciplinary actions for employees subject to discipline under Section 67-19-37;

(2) the testing of employees for the use of controlled substances or alcohol as provided in Section 67-19-36;

(3) the confidentiality of drug testing and test results performed under Section 67-19-36 in accordance with Title 63, Chapter 2, Government Records Access and Management Act; and

(4) minimum blood levels of alcohol or drug content for work effectiveness of an employee.

Section 42. Section **67-19-36** is amended to read:

67-19-36. Drug testing of state employees.

(1) Except as provided in Subsection (2), when there is reasonable suspicion that an employee is using a controlled substance or alcohol unlawfully during work hours, an employee may be required to submit to medically accepted testing procedures for a determination of whether the employee is using a controlled substance or alcohol in violation of this part.

(2) In highly sensitive positions, as identified in [department] division class specifications, random drug testing of employees may be conducted by an agency in accordance with the rules of the [executive] director.

(3) All drug or alcohol testing shall be:

(a) conducted by a federally certified and licensed physician, a federally certified and licensed medical clinic, or testing facility federally certified and licensed to conduct medically accepted drug testing;

(b) conducted in accordance with the rules of the [executive] director made under Section 67-19-34; and

(c) kept confidential in accordance with the rules of the [executive] director made in accordance with Section 67-19-34.

(4) A physician, medical clinic, or testing facility may not be held liable in any civil action brought by a party for:

(a) performing or failing to perform a test under this section;

(b) issuing or failing to issue a test result under this section; or

(c) acting or omitting to act in any other way in good faith under this section.

Section 43. Section **67-19-37** is amended to read:

67-19-37. Discipline of employees.

An employee shall be subject to the rules of discipline of the [executive] director made in accordance with Section 67-19-34, if [he] the employee:

(1) refuses to submit to testing procedures provided in Section 67-19-36;

(2) refuses to complete a drug rehabilitation program in accordance with Subsection 67-19-38(3);

(3) is convicted under a federal or state criminal statute regulating the manufacture, distribution, dispensation, possession, or use of a controlled substance; or

(4) manufactures, dispenses, possesses, uses, or distributes a controlled substance in violation of state or federal law during work hours or on state property.

Section 44. Section **67-19-38** is amended to read:

67-19-38. Violations and penalties.

In addition to other criminal penalties provided by law, an employee who:

(1) fails to notify [his] the employee's director under Section 67-19-35 is subject to

disciplinary proceedings as established by the [executive] director by rule in accordance with Section 67-19-34;

(2) refuses to submit to testing procedures provided for in Section 67-19-36, may be suspended immediately without pay pending further disciplinary action as set forth in the rules of the [executive] director in accordance with Section 67-19-34;

(3) tests positive for the presence of unlawfully used controlled substances or alcohol may be required, as part of [his] the employee's disciplinary treatment, to complete a drug rehabilitation program at [his] the employee's expense within 60 days after receiving the positive test results or be subject to further disciplinary procedures established by rule of the [executive] director in accordance with Section 67-19-34.

Section 45. Section **67-19a-303** is amended to read:

67-19a-303. Employees' rights in grievance and appeals procedure.

(1) For the purpose of processing a grievance, a career service employee may:

(a) obtain assistance by a representative of the employee's choice to act as an advocate at any level of the grievance procedure;

(b) request a reasonable amount of time during work hours to confer with the representative and prepare the grievance; and

(c) call other employees as witnesses at a grievance hearing.

(2) The state shall allow employees to attend and testify at the grievance hearing as witnesses if the employee has given reasonable advance notice to [his] the employee's immediate supervisor.

(3) No person may take any reprisals against any career service employee for use of grievance procedures specified in this chapter.

(4) (a) The employing agency of an employee who files a grievance may not place grievance forms, grievance materials, correspondence about the grievance, agency and department replies to the grievance, or other documents relating to the grievance in the employee's personnel file.

(b) The employing agency of an employee who files a grievance may place records of

disciplinary action in the employee's personnel file.

(c) If any disciplinary action against an employee is rescinded through the grievance procedures established in this chapter, the agency and the ~~[Department]~~ Division of Human Resource Management shall remove the record of the disciplinary action from the employee's agency personnel file and central personnel file.

(d) An agency may maintain a separate grievance file relating to an employee's grievance, but shall discard the file after three years.

Section 46. Section **67-19c-101** is amended to read:

67-19c-101. Department award program.

(1) As used in this section:

(a) "Department" means the Department of Administrative Services, the Department of Agriculture and Food, the Department of Alcoholic Beverage Control, the Department of Commerce, the Department of Community and Economic Development, the Department of Corrections, the Department of Workforce Services, the Department of Environmental Quality, the Department of Financial Institutions, the Department of Health, ~~[the Department of Human Resource Management,]~~ the Department of Human Services, the Insurance Department, the National Guard, the Department of Natural Resources, the Department of Public Safety, the Public Service Commission, the Labor Commission, the State Board of Education, the State Board of Regents, the State Tax Commission, and the Department of Transportation.

(b) "Department head" means the individual or body of individuals in whom the ultimate legal authority of the department is vested by law.

(2) There is created a department awards program to award an outstanding employee in each department of state government.

(3) (a) By April 1 of each year, each department head shall solicit nominations for outstanding employee of the year for his department from the employees in his department.

(b) By July 1 of each year, the department head shall:

(i) select a person from the department to receive the outstanding employee of the year award using the criteria established in Subsection (3)(c); and

(ii) announce the recipient of the award to his employees.

(c) Department heads shall make the award to a person who demonstrates:

(i) extraordinary competence in performing his function;

(ii) creativity in identifying problems and devising workable, cost-effective solutions to them;

- (iii) excellent relationships with the public and other employees;
- (iv) a commitment to serving the public as the client; and
- (v) a commitment to economy and efficiency in government.

(4) (a) The [~~Department~~] Division of Human Resource Management shall divide any appropriation for outstanding department employee awards that it receives from the Legislature equally among the departments.

(b) If the department receives monies from the [~~Department~~] Division of Human Resource Management or if the department budget allows, the department head shall provide the employee with a bonus, a plaque, or some other suitable acknowledgement of the award.

(5) (a) The department head may name the award after an exemplary present or former employee of the department.

(b) A department head may not name the award for himself or for any relative as defined in Section 52-3-1.

(c) Any awards or award programs existing in any department as of May 3, 1993, shall be modified to conform to the requirements of this section.

Section 47. Section **67-20-8** is amended to read:

67-20-8. Volunteer experience credit.

(1) State agencies shall designate positions for which approved volunteer experience satisfies the job requirements for purposes of employment.

(2) When evaluating applicants for those designated positions, state agencies shall consider documented approved volunteer experience in the same manner as similar paid employment.

(3) The [~~Department~~] Division of Human Resource Management shall make statewide

rules governing the:

- (a) designation of volunteer positions; and
- (b) a uniform process to document the approval, use, and hours worked by volunteers.

Section 48. Section **67-22-2** is amended to read:

67-22-2. Compensation -- Other state officers.

(1) The governor shall establish salaries for the following state officers within the following salary ranges fixed by the Legislature:

State Officer	Salary Range
Commissioner of Agriculture and Food	\$65,200 - \$88,400
Commissioner of Insurance	\$65,200 - \$88,400
Commissioner of the Labor Commission	\$65,200 - \$88,400
Director, Alcoholic Beverage Control Commission	\$65,200 - \$88,400
Commissioner, Department of Financial Institutions	\$65,200 - \$88,400
Members, Board of Pardons and Parole	\$65,200 - \$88,400
Executive Director, Department of Commerce	\$65,200 - \$88,400
Executive Director, Commission on Criminal and Juvenile Justice	\$65,200 - \$88,400
Adjutant General	\$65,200 - \$88,400
Chair, Tax Commission	\$70,600 - \$95,200
Commissioners, Tax Commission	\$70,600 - \$95,200
Executive Director, Department of Community and Economic Development	\$70,600 - \$95,200
Executive Director, Tax Commission	\$70,600 - \$95,200
Chair, Public Service Commission	\$70,600 - \$95,200

Commissioners, Public Service	
Commission	\$70,600 - \$95,200
Executive Director, Department of Corrections	\$76,800 - \$103,600
Commissioner, Department of Public Safety	\$76,800 - \$103,600
Executive Director, Department of Natural Resources	\$76,800 - \$103,600
Director, Governor's Office of Planning and Budget	\$76,800 - \$103,600
Executive Director, Department of Administrative Services	\$76,800 - \$103,600
[Executive Director, Department of [Human Resource Management	—————\$76,800 - \$103,600]
Executive Director, Department of Environmental Quality	\$76,800 - \$103,600
Executive Director, Department of Workforce Services	\$83,600 - \$112,900
Executive Director, Department of Health	\$83,600 - \$112,900
Executive Director, Department of Human Services	\$83,600 - \$112,900
Executive Director, Department of Transportation	\$83,600 - \$112,900
Chief Information Officer	\$83,600 - \$112,900

(2) (a) The Legislature fixes benefits for the state offices outlined in Subsection (1) as follows:

(i) the option of participating in a state retirement system established by Title 49, Utah State Retirement and Insurance Benefit Act, or in a deferred compensation plan administered by

the State Retirement Office in accordance with the Internal Revenue Code and its accompanying rules and regulations;

- (ii) health insurance;
- (iii) dental insurance;
- (iv) basic life insurance;
- (v) unemployment compensation;
- (vi) workers' compensation;
- (vii) required employer contribution to Social Security;
- (viii) long-term disability income insurance;
- (ix) the same additional state-paid life insurance available to other noncareer service employees;
- (x) the same severance pay available to other noncareer service employees;
- (xi) the same sick leave, converted sick leave, educational allowances, and holidays granted to Schedule B state employees, and the same annual leave granted to Schedule B state employees with more than ten years of state service;
- (xii) the option to convert accumulated sick leave to cash or insurance benefits as provided by law or rule upon resignation or retirement according to the same criteria and procedures applied to Schedule B state employees;
- (xiii) the option to purchase additional life insurance at group insurance rates according to the same criteria and procedures applied to Schedule B state employees; and
- (xiv) professional memberships if being a member of the professional organization is a requirement of the position.

(b) Each department shall pay the cost of additional state-paid life insurance for its executive director from its existing budget.

(3) The Legislature fixes the following additional benefits:

- (a) for the executive director of the State Tax Commission a vehicle for official and personal use;
- (b) for the executive director of the Department of Transportation a vehicle for official

and personal use;

(c) for the executive director of the Department of Natural Resources a vehicle for commute and official use;

(d) for the Commissioner of Public Safety:

(i) an accidental death insurance policy if POST certified; and

(ii) a public safety vehicle for official and personal use;

(e) for the executive director of the Department of Corrections:

(i) an accidental death insurance policy if POST certified; and

(ii) a public safety vehicle for official and personal use;

(f) for the Adjutant General a vehicle for official and personal use; and

(g) for each member of the Board of Pardons and Parole a vehicle for commute and official use.

(4) (a) The governor has the discretion to establish a specific salary for each office listed in Subsection (1), and, within that discretion, may provide salary increases within the range fixed by the Legislature.

(b) The governor shall apply the same overtime regulations applicable to other FLSA exempt positions.

(c) The governor may develop standards and criteria for reviewing the performance of the state officers listed in Subsection (1).

(5) Salaries for other Schedule A employees, as defined in Section 67-19-15, which are not provided for in this chapter, or in Title 67, Chapter 8, Utah Executive and Judicial Salary Act, shall be established as provided in Section 67-19-15.

Section 49. Section **72-1-203** is amended to read:

72-1-203. Deputy director -- Appointment -- Qualifications -- Other assistants and advisers -- Salaries.

(1) The executive director shall appoint a deputy director, who shall be a registered professional engineer in the state and shall serve at the discretion of the executive director.

(2) The deputy director is the chief engineer of the department. The deputy director shall

assist the executive director and is responsible for:

- (a) program and project development; and
- (b) operation and maintenance of the state transportation systems.

(3) The executive director may also appoint assistants to administer the divisions of the department. These assistants shall serve at the discretion of the executive director.

(4) In addition, the executive director may employ other assistants and advisers as the executive director finds necessary and fix salaries in accordance with the salary standards adopted by the [~~Department~~] Division of Human Resource Management.

Section 50. Repealer.

This bill repeals:

Section 67-19-6.4, Utah Quality Service Award program.

Section 67-19-7, State agencies contracting to perform personnel functions on own behalf.

Section 67-19-8, Functions of department not to be delegated.

Section 67-19-9, Functions for which state agencies responsible.

**Section 67-19-10, Functions which director may delegate to state agencies --
Agreements to delegate -- Contents -- Execution -- Termination.**

Section 51. Legislative intent.

It is the intent of the Legislature that the Division of Human Resource Management renumber its rules, coordinating with the Division of Administrative Rules, and correct references within its rules by the effective date of this bill.

Section 52. Effective date.

This bill takes effect on July 1, 2006.