

HB0193S01 compared with HB0193

~~text~~ shows text that was in HB0193 but was deleted in HB0193S01.

text shows text that was not in HB0193 but was inserted into HB0193S01.

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Representative Brad L. Dee proposes the following substitute bill:

UTAH STATE EMPLOYMENT AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad L. Dee

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to state employment.

Highlighted Provisions:

This bill:

- ▶ requires participating employers to maintain records indicating whether an employee is receiving certain benefits;
- ▶ modifies a provision relating to a requirement that an employer provide benefit information to specified employees;
- ▶ enacts a definition of "benefits normally provided" for purposes of the Public Employees' Contributory Retirement Act, the Public Employees' Noncontributory Retirement Act, and the New Public Employees' Tier II Contributory Retirement Act;

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- ▶ modifies a provision relating to the designation of positions that are exempt from career service provisions under the Utah State Personnel Management Act;
- ▶ enacts language relating to a hearing officer's decision relating to agency action in the context of a state employee grievance process, including requirements for the hearing officer's order;
- ▶ authorizes the executive director to adopt rules to establish the maximum number of hours of converted sick leave an employee may accrue; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill coordinates with H.B. 24, Utah Retirement System Amendments, by providing substantive and superseding amendments.

Utah Code Sections Affected:

AMENDS:

~~{49-11-616}~~ 49-11-602, as last amended by Laws of Utah ~~{2012}~~ 2011, Chapter ~~{298}~~ 439

49-11-616, as last amended by Laws of Utah 2012, Chapter 298

49-12-102, as last amended by Laws of Utah 2012, Chapter 298

49-13-102, as last amended by Laws of Utah 2012, Chapter 298

49-22-102, as last amended by Laws of Utah 2011, Chapter 439

67-19-3, as last amended by Laws of Utah 2010, Chapter 249

67-19-12, as last amended by Laws of Utah 2012, Chapter 173

67-19-14, as last amended by Laws of Utah 2010, Chapter 249

67-19-15, as last amended by Laws of Utah 2011, Chapters 340 and 427

67-19-15.6, as last amended by Laws of Utah 2010, Chapter 249

67-19-15.7, as last amended by Laws of Utah 2010, Chapter 249

67-19a-406, as last amended by Laws of Utah 2010, Chapter 249

Utah Code Sections Affected by Coordination Clause:

49-11-616, as last amended by Laws of Utah 2012, Chapter 298

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

Section 1. Section 49-11-602 is amended to read:

49-11-602. Participating employer to maintain records -- Time limit -- Penalties for failure to comply.

(1) A participating employer shall:

(a) maintain records necessary to calculate benefits under this title and other records necessary for proper administration of this title as required by the office[-]; and

(b) maintain records that indicate whether an employee is receiving:

(i) a benefit under state or federal law that, under Subsection 49-12-102(1)(b)(vi) or (vii), is excluded from the definition of benefits normally provided for purposes of Chapter 12, Public Employees' Contributory Retirement Act, Chapter 13, Public Employees' Noncontributory Retirement Act, or Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or

(ii) a benefit under a benefit package generally offered to similarly situated employees.

(2) A participating employer shall maintain the records required under Subsection (1) until the earliest of:

- (a) three years after the date of retirement of the employee from a system or plan;
- (b) three years after the date of death of the employee; or
- (c) 65 years from the date of employment with the participating employer.

(3) A participating employer shall be liable to the office for:

(a) any liabilities and expenses, including administrative expenses and the cost of increased benefits to members, resulting from the participating employer's failure to maintain records under this section; and

(b) a penalty equal to 1% of the participating employer's last month's contributions.

(4) The executive director may waive all or any part of the interest, penalties, expenses, and fees if the executive director finds there were extenuating circumstances surrounding the participating employer's failure to comply with this section.

(5) The executive director may estimate the length of service, compensation, or age of any member, if that information is not contained in the records.

(6) (a) A participating employer shall enroll an employee, make reports, submit contributions, and provide other requested information electronically in a manner approved by

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the office.

(b) A participating employer shall treat any information provided electronically or otherwise by the office as subject to the confidentiality provisions of this title.

Section ~~49-11-616~~². Section **49-11-616** is amended to read:

49-11-616. Benefits information.

(1) The office shall provide written general information to each participating employer concerning benefits available under this title.

(2) (a) A participating employer shall provide the information under Subsection (1) to each eligible employee:

(i) immediately upon ~~[(i)]~~ termination of service ~~[(ii)]~~, leave of absence ~~[(iii)]~~, commencement of long-term disability benefits ~~[(iv)]~~, or retirement ~~[-]~~; and

(ii) in person or, if the employee is unavailable to receive the information in person, by mailing the information to the employee's last known address.

(b) (i) Each participating employer shall maintain the records necessary to demonstrate that ~~[each employee has received]~~ the employer has provided the information outlined in Subsection (1) as required in Subsection (2)(a).

(ii) The records shall be made available to the office upon request.

(3) (a) The office shall provide each participating employer with a form to be signed by each employee ~~[which verifies]~~ to verify that the employee has been given in person the information required by this section.

(b) A copy of the signed form shall be immediately forwarded to the office by the participating employer or the employee.

(c) If an employer provides information under Subsection (1) by mail as provided in Subsection (2)(a)(ii), the employer shall:

(i) indicate on the form that the information was mailed to the employee and the address to which the information was mailed; and

(ii) immediately forward the form to the office.

Section 3. Section 49-12-102 is amended to read:

49-12-102. Definitions.

As used in this chapter:

(1) "Benefits normally provided":

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(a) means a benefit offered by an employer, including:

(i) a leave benefit of any kind;

(ii) insurance coverage of any kind if the employer pays some or all of the premium for the coverage; and

(iii) a retirement benefit of any kind if the employer pays some or all of the cost of the benefit; and

(b) does not include:

(i) a payment for Social Security;

(ii) workers' compensation insurance;

(iii) unemployment insurance;

(iv) a payment for Medicare;

(v) a payment or insurance required by federal or state law that is similar to a payment or insurance listed in Subsection (1)(b)(i), (ii), (iii), or (iv);

(vi) any other benefit that state or federal law requires an employer to provide an employee who would not otherwise be eligible to receive the benefit; or

(vii) any benefit that an employer provides an employee in order to avoid a penalty or tax under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal regulations, including a penalty imposed by Internal Revenue Code, Section 4980H.

~~[(1)(a) Except as provided in Subsection (1)(c), "compensation"]~~

~~{1}2~~ (a) ~~{Except}~~ "Compensation" means, except as provided in Subsection ~~{1}2~~(c), ~~"compensation" means~~ the total amount of payments made by a participating employer to a member of this system for services rendered to the participating employer, including:

(i) bonuses;

(ii) cost-of-living adjustments;

(iii) other payments currently includable in gross income and that are subject to Social Security deductions, including any payments in excess of the maximum amount subject to deduction under Social Security law;

(iv) amounts that the member authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law; and

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(v) member contributions.

(b) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code, Section 401(a)(17).

(c) "Compensation" does not include:

(i) the monetary value of remuneration paid in kind, including a residence or use of equipment;

(ii) the cost of any employment benefits paid for by the participating employer;

(iii) compensation paid to a temporary employee, an exempt employee, or an employee otherwise ineligible for service credit;

(iv) any payments upon termination, including accumulated vacation, sick leave payments, severance payments, compensatory time payments, or any other special payments; or

(v) any allowances or payments to a member for costs or expenses paid by the participating employer, including automobile costs, uniform costs, travel costs, tuition costs, housing costs, insurance costs, equipment costs, and dependent care costs.

(d) The executive director may determine if a payment not listed under this Subsection ~~[(1)]~~[(2)] falls within the definition of compensation.

~~[(2)]~~[(3)] "Final average salary" means the amount computed by averaging the highest five years of annual compensation preceding retirement subject to Subsections ~~[(2)]~~[(3)](a), (b), (c), and (d).

(a) Except as provided in Subsection ~~[(2)]~~[(3)](b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(b) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection ~~[(2)]~~[(3)](a) may be exceeded if:

(i) the member has transferred from another agency; or

(ii) the member has been promoted to a new position.

(c) If the member retires more than six months from the date of termination of employment, the member is considered to have been in service at the member's last rate of pay from the date of the termination of employment to the effective date of retirement for purposes

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of computing the member's final average salary only.

(d) If the member has less than five years of service credit in this system, final average salary means the average annual compensation paid to the member during the full period of service credit.

~~[(3)]~~[(4)] "Participating employer" means an employer which meets the participation requirements of Sections 49-12-201 and 49-12-202.

~~[(4)]~~[(5)] (a) "Regular full-time employee" means an employee whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year and whose employment normally requires an average of 20 hours or more per week, except as modified by the board, and who receives benefits normally provided by the participating employer.

(b) "Regular full-time employee" includes:

(i) a teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half-time or more;

(ii) a classified school employee whose employment normally requires an average of 20 hours per week or more for a participating employer, regardless of benefits provided;

(iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as of January 1, 1990, as provided in Section 49-12-407;

(iv) a faculty member or employee of an institution of higher education who is considered full-time by that institution of higher education; and

(v) an individual who otherwise meets the definition of this Subsection ~~[(4)]~~[(5)] who performs services for a participating employer through a professional employer organization or similar arrangement.

~~[(5)]~~[(6)] "System" means the Public Employees' Contributory Retirement System created under this chapter.

~~[(6)]~~[(7)] "Years of service credit" means:

(a) a period, consisting of 12 full months as determined by the board;

(b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as

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provided by this chapter; or

(c) the regular school year consisting of not less than eight months of full-time service for a regular full-time employee of an educational institution.

Section ~~(2)~~4. Section 49-13-102 is amended to read:

49-13-102. Definitions.

As used in this chapter:

(1) "Benefits normally provided" ~~is~~:

~~(a) means a benefit offered by an employer, including:~~

~~(i) a leave benefit of any kind;~~

~~(ii) insurance coverage of any kind if the employer pays some or all of the premium for the coverage; and~~

~~(iii) a retirement benefit of any kind if the employer pays some or all of the cost of the benefit; and~~

~~(b) does not include:~~

~~(i) a payment for Social Security;~~

~~(ii) workers' compensation insurance;~~

~~(iii) unemployment insurance;~~

~~(iv) a payment for Medicare;~~

~~(v) a payment or insurance required by federal or state law that is similar to a payment or insurance listed in Subsection (1)(b)(i), (ii), (iii), or (iv); or~~

~~(vi) any other benefit required by federal or state law to be provided to an employee who would not otherwise be eligible to receive the benefit}~~ has the same meaning as defined in

Section 49-12-102.

~~(1)~~ (2) (a) Except as provided in Subsection ~~(1)~~ (2)(c), "compensation" means the total amount of payments made by a participating employer to a member of this system for services rendered to the participating employer, including:

(i) bonuses;

(ii) cost-of-living adjustments;

(iii) other payments currently includable in gross income and that are subject to Social Security deductions, including any payments in excess of the maximum amount subject to deduction under Social Security law; and

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(iv) amounts that the member authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law.

(b) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code, Section 401(a)(17).

(c) "Compensation" does not include:

(i) the monetary value of remuneration paid in kind, including a residence or use of equipment;

(ii) the cost of any employment benefits paid for by the participating employer;

(iii) compensation paid to a temporary employee, an exempt employee, or an employee otherwise ineligible for service credit;

(iv) any payments upon termination, including accumulated vacation, sick leave payments, severance payments, compensatory time payments, or any other special payments; or

(v) any allowances or payments to a member for costs or expenses paid by the participating employer, including automobile costs, uniform costs, travel costs, tuition costs, housing costs, insurance costs, equipment costs, and dependent care costs.

(d) The executive director may determine if a payment not listed under this Subsection ~~[(1)]~~ (2) falls within the definition of compensation.

~~[(2)]~~ (3) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement subject to the following:

(a) Except as provided in Subsection ~~[(2)]~~ (3)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(b) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection ~~[(2)]~~ (3)(a) may be exceeded if:

(i) the member has transferred from another agency; or

(ii) the member has been promoted to a new position.

(c) If the member retires more than six months from the date of termination of employment and for purposes of computing the member's final average salary only, the member is considered to have been in service at his last rate of pay from the date of the

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termination of employment to the effective date of retirement.

~~[(3)]~~ (4) "Participating employer" means an employer which meets the participation requirements of Sections 49-13-201 and 49-13-202.

~~[(4)]~~ (5) (a) "Regular full-time employee" means an employee whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year and whose employment normally requires an average of 20 hours or more per week, except as modified by the board, and who receives benefits normally provided by the participating employer.

(b) "Regular full-time employee" includes:

(i) a teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half-time or more;

(ii) a classified school employee whose employment normally requires an average of 20 hours per week or more for a participating employer, regardless of benefits provided;

(iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as of January 1, 1990, as provided in Section 49-13-407;

(iv) a faculty member or employee of an institution of higher education who is considered full-time by that institution of higher education; and

(v) an individual who otherwise meets the definition of this Subsection (4) who performs services for a participating employer through a professional employer organization or similar arrangement.

~~[(5)]~~ (6) "System" means the Public Employees' Noncontributory Retirement System.

~~[(6)]~~ (7) "Years of service credit" means:

(a) a period, consisting of 12 full months as determined by the board;

(b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter; or

(c) the regular school year consisting of not less than eight months of full-time service for a regular full-time employee of an educational institution.

Section 5. Section 49-22-102 is amended to read:

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49-22-102. Definitions.

As used in this chapter:

(1) "Benefits normally provided" has the same meaning as defined in Section 49-12-102.

[(1)(a) Except as provided in Subsection (1)(c), "compensation"]

(1)(2)(a) Except "Compensation" means, except as provided in Subsection (1)(2)(c), "compensation" means the total amount of payments made by a participating employer to a member of this system for services rendered to the participating employer, including:

(i) bonuses;

(ii) cost-of-living adjustments;

(iii) other payments currently includable in gross income and that are subject to Social Security deductions, including any payments in excess of the maximum amount subject to deduction under Social Security law;

(iv) amounts that the member authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law; and

(v) member contributions.

(b) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code, Section 401(a)(17).

(c) "Compensation" does not include:

(i) the monetary value of remuneration paid in kind, including a residence or use of equipment;

(ii) the cost of any employment benefits paid for by the participating employer;

(iii) compensation paid to a temporary employee or an employee otherwise ineligible for service credit;

(iv) any payments upon termination, including accumulated vacation, sick leave payments, severance payments, compensatory time payments, or any other special payments; or

(v) any allowances or payments to a member for costs or expenses paid by the participating employer, including automobile costs, uniform costs, travel costs, tuition costs, housing costs, insurance costs, equipment costs, and dependent care costs.

(d) The executive director may determine if a payment not listed under this Subsection

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~~[(1)]~~1(2) falls within the definition of compensation.

~~[(2)]~~1(3) "Corresponding Tier I system" means the system or plan that would have covered the member if the member had initially entered employment before July 1, 2011.

~~[(3)]~~1(4) "Final average salary" means the amount computed by averaging the highest five years of annual compensation preceding retirement subject to Subsections ~~[(3)]~~1(4)(a), (b), (c), and (d).

(a) Except as provided in Subsection ~~[(3)]~~1(4)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(b) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection ~~[(3)]~~1(4)(a) may be exceeded if:

- (i) the member has transferred from another agency; or
- (ii) the member has been promoted to a new position.

(c) If the member retires more than six months from the date of termination of employment, the member is considered to have been in service at the member's last rate of pay from the date of the termination of employment to the effective date of retirement for purposes of computing the member's final average salary only.

(d) If the member has less than five years of service credit in this system, final average salary means the average annual compensation paid to the member during the full period of service credit.

~~[(4)]~~1(5) "Participating employer" means an employer which meets the participation requirements of:

- (a) Sections 49-12-201 and 49-12-202;
- (b) Sections 49-13-201 and 49-13-202;
- (c) Section 49-19-201; or
- (d) Section 49-22-201 or 49-22-202.

~~[(5)]~~1(6) (a) "Regular full-time employee" means an employee whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year and whose employment normally requires an average of 20 hours or more per

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week, except as modified by the board, and who receives benefits normally provided by the participating employer.

(b) "Regular full-time employee" includes:

(i) a teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half-time or more;

(ii) a classified school employee whose employment normally requires an average of 20 hours per week or more for a participating employer, regardless of benefits provided;

(iii) an appointive officer whose appointed position is full-time as certified by the participating employer;

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

(v) an elected official not included under Subsection ~~(5)~~(6)(b)(iv) whose elected position is full-time as certified by the participating employer;

(vi) a faculty member or employee of an institution of higher education who is considered full-time by that institution of higher education; and

(vii) an individual who otherwise meets the definition of this Subsection ~~(5)~~(6) who performs services for a participating employer through a professional employer organization or similar arrangement.

(c) "Regular full-time employee" does not include:

(i) a firefighter service employee as defined in Section 49-23-102; or

(ii) a public safety service employee as defined in Section 49-23-102.

~~(6)~~(7) "System" means the New Public Employees' Tier II Contributory Retirement System created under this chapter.

~~(7)~~(8) "Years of service credit" means:

(a) a period, consisting of 12 full months as determined by the board;

(b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter; or

(c) the regular school year consisting of not less than eight months of full-time service

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for a regular full-time employee of an educational institution.

Section ~~6~~6. 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) (a) "Demotion" means a disciplinary action resulting in a reduction of an employee's current actual wage.

(b) "Demotion" does not mean:

(i) a nondisciplinary movement of an employee to another position without a reduction in the current actual wage; or

(ii) a reclassification of an employee's position under the provisions of Subsection 67-19-12(3) and rules made by the department.

(8) "Department" means the Department of Human Resource Management.

(9) "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.

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

(11) "Examining instruments" means written or other types of proficiency tests.

(12) "Executive director," except where otherwise specified, means the executive director of the Department of Human Resource Management.

(13) "Human resource function" means those duties and responsibilities specified:

(a) under Section 67-19-6;

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(b) under rules of the department; and

(c) under other state or federal statute.

(14) "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.

(15) "Probationary employee" means an employee serving a probationary period in a career service position but who does not have career service status.

(16) "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.

(17) "Probationary status" means the status of an employee between the employee's hiring and the granting of career service status.

(18) "Temporary employee" means career service exempt employees [~~on schedule IN or TL under Section 67-19-15~~] described in Subsection 67-19-15(1)(p).

(19) "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 ~~47~~7. Section **67-19-12** is amended to read:

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

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

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

(2) The following 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 employees under schedule AC as provided under Subsection 67-19-15(1)(c);

(d) employees of the State Board of Education who are licensed by the State Board of Education;

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

(f) employees in a position that is specified by statute to be exempt from this

Subsection (2);

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

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

(i) exempt employees as provided under Subsection 67-19-15(1)(l);

(j) employees of the Utah Schools for the Deaf and the Blind who are:

(i) educators as defined by Section 53A-25b-102; or

(ii) educational interpreters as classified by the department; and

(k) temporary employees [~~under schedule IN or TL as provided under Subsections~~]

described in Subsection 67-19-15(1)~~[(o) and]~~(p).

(3) (a) The executive 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 executive 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 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 executive 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 executive director shall develop and adopt pay plans for each position in classified service.

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

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(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) (A) The executive 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.

(B) The width of the ranges need not be uniform for all classes of positions in the plan.

(iii) (A) The executive director shall issue rules for the administration of pay plans.

(B) The executive director shall issue rules providing for salary adjustments.

(iv) Merit increases shall be granted, on a uniform and consistent basis in accordance with appropriations made by the Legislature, to employees who receive a rating of "successful" or higher in an annual evaluation of their productivity and performance.

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

(vii) (A) 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.

(B) The survey may also study comparable unusual positions requiring recruitment in other states.

(C) The executive director may cooperate with other public and private employers in conducting the survey.

(viii) (A) The executive 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.

(B) Except as provided under Sections 67-19-12.1 and 67-19-12.3, the survey shall include a reasonable cross section of employers.

(C) The executive director may cooperate with or participate in any survey conducted by other public and private employers.

(D) The executive director shall obtain information for the purpose of constructing the

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survey from the Division of Workforce Information and Payment Services and shall include employer name, number of persons employed by the employer, employer contact information and job titles, county code, and salary if available.

(E) The department shall acquire and protect the needed records in compliance with the provisions of Section 35A-4-312.

(ix) The establishing of a salary range is a nondelegable activity and is not appealable under the grievance procedures of Sections 67-19-30 through 67-19-32, Chapter 19a, Grievance 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 executive director shall issue rules for the granting of incentive awards, including awards for cost saving actions, awards for commendable actions by an employee, or a market-based award to attract or retain employees.

(b) An agency may not grant a market-based award unless the award is previously approved by the department.

(c) In accordance with Subsection (5)(b), an agency requesting the department's approval of a market-based award shall submit a request and documentation, subject to Subsection (5)(d), to the department.

(d) In the documentation required in Subsection (5)(c), the requesting agency shall identify for the department:

(i) any benefit the market-based award would provide for the agency, including:

(A) budgetary advantages; or

(B) recruitment advantages;

(ii) a mission critical need to attract or retain unique or hard to find skills in the market;

or

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(iii) any other advantage the agency would gain through the utilization of a market-based award.

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

(b) The department 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.

(7) (a) The executive 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 employee compensation.

(b) The governor shall consider the executive 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 employee compensation.

Section ~~5~~8. Section **67-19-14** is amended to read:

67-19-14. Sick leave -- Definitions -- Unused sick days retirement programs -- Rulemaking.

(1) As used in this section through Section 67-19-14.4:

(a) "Continuing medical and life insurance benefits" means the state provided policy of medical insurance and the state provided portion of a policy of life insurance, each offered at the same:

(i) benefit level and the same proportion of state/member participation in the total premium costs as an active member as defined in Section 49-11-102; and

(ii) coverage level for a member, two person, or family policy as provided to the member at the time of retirement.

(b) "Converted sick leave" means leave that has been converted from unused sick leave in accordance with Section 67-19-14.1 which may be used by an employee in the same manner as:

(i) annual leave;

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(ii) sick leave; or

(iii) unused accumulated sick leave after the employee's retirement for the purchase of continuing medical and life insurance benefits under Sections 67-19-14.2, 67-19-14.3, and 67-19-14.4.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the executive director shall make rules:

(a) for the procedures to implement the provisions of this section through Section 67-19-14.4~~[-];~~ and

(b) to establish the maximum number of hours of converted sick leave an employee may accrue.

(3) The Division of Finance shall develop and maintain a system of accounting for employee sick leave and converted sick leave as necessary to implement the provisions of this section through Section 67-19-14.4.

Section ~~67-9~~9. 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 and are designated under the following schedules:

(a) schedule AA includes the governor, members of the Legislature, and all other elected state officers;

(b) schedule AB includes appointed executives and board or commission executives enumerated in Section 67-22-2;

(c) schedule AC includes all employees and officers in:

(i) the office and at the residence of the governor;

(ii) the Utah Science Technology and Research Initiative (USTAR);

(iii) the Public Lands Policy Coordinating Council;

(iv) the Office of the State Auditor; and

(v) the Office of the State Treasurer;

(d) schedule AD includes employees who:

(i) are in a confidential relationship to an agency head or commissioner; and

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- (ii) report directly to, and are supervised by, a department head, commissioner, or deputy director of an agency or its equivalent;
- (e) schedule AG includes employees in the Office of the Attorney General who are under their own career service pay plan under Sections 67-5-7 through 67-5-13;
- (f) schedule AH includes:
 - (i) teaching staff of all state institutions; and
 - (ii) employees of the Utah Schools for the Deaf and the Blind who are:
 - (A) educational interpreters as classified by the department; or
 - (B) educators as defined by Section 53A-25b-102;
- (g) schedule AN includes employees of the Legislature;
- (h) schedule AO includes employees of the judiciary;
- (i) schedule AP includes all judges in the judiciary;
- (j) schedule AQ includes:
 - (i) members of state and local boards and councils appointed by the governor and governing bodies of agencies;
 - (ii) other local officials serving in an ex officio capacity; and
 - (iii) officers, faculty, and other employees of state universities and other state institutions of higher education;
- (k) schedule AR includes employees in positions that involve responsibility:
 - (i) for determining policy;
 - (ii) for determining the way in which a policy is carried out; or
 - (iii) of a type not appropriate for career service, as determined by the agency head with the concurrence of the executive director;
- (l) schedule AS includes any other employee:
 - (i) whose appointment is required by statute to be career service exempt;
 - (ii) whose agency is not subject to this chapter; or
 - (iii) whose agency has authority to make rules regarding the performance, compensation, and bonuses for its employees;
- (m) schedule AT includes employees of the Department of Technology Services, designated as executive/professional positions by the executive director of the Department of Technology Services with the concurrence of the executive director;

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(n) schedule AU includes patients and inmates employed in state institutions;

~~[(o) schedule FN includes employees who are:]~~

~~[(i) hired to work part time on an indefinite basis; and]~~

~~[(ii) considered to be temporary noncareer employees;]~~

~~[(p) schedule TL includes employees who are:]~~

~~[(i) hired to work on a time-limited basis; and]~~

~~[(ii) considered to be temporary noncareer employees; and]~~

~~[(q)]~~ (o) employees of the Department of Workforce Services, designated as schedule

AW:

(i) who are temporary employees that are federally funded and are required to work under federally qualified merit principles as certified by the director; or

(ii) for whom substantially all of their work is repetitive, measurable, or transaction based, and who voluntarily apply for and are accepted by the Department of Workforce Services to work in a pay for performance program designed by the Department of Workforce Services with the concurrence of the executive director~~[-]; and~~ and

(p) for employees in positions that are temporary, seasonal, time limited, funding limited, or variable hour in nature, under schedule codes and parameters established by the department by administrative rule.

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

(a) (i) Schedule A is the schedule consisting of positions under 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:

(i) all positions filled through competitive selection procedures as defined by the executive director; or

(ii) positions filled through a department approved on the job examination intended to appoint a qualified person with a disability.

(3) (a) The executive 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 executive director

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before changing the schedule assignment and tenure rights of any position.

(c) Unless the executive director's decision is reversed by the governor, when the executive director denies an agency's request, the executive 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 78A-2-107.

(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, Governance, Powers, Rights, and Responsibilities, and 2, Institutions of Higher Education.

(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 executive director of the Department of Human Resource Management.

(5) An employee who is in a position designated schedule AC and who holds career service status on June 30, 2010, shall retain the career service status if the employee:

(a) remains in the position that the employee is in on June 30, 2010; and

(b) does not elect to convert to career service exempt status in accordance with a rule made by the department.

Section ~~7~~10. Section **67-19-15.6** is amended to read:

67-19-15.6. Longevity salary increases.

(1) Except for those employees in schedule AB, [~~IN, or TL~~] as provided under Section 67-19-15, and employees described in Subsection 67-19-15(1)(p), an employee shall receive an increase in salary of 2.75% if that employee:

(a) holds a position under schedule A or B as provided under Section 67-19-15;

(b) has reached the maximum of the salary range in the position classification;

(c) has been employed with the state for eight years; and

(d) is rated eligible in job performance under guidelines established by the executive director.

(2) Any employee who meets the criteria under Subsection (1) is entitled to the same increase in salary for each additional three years of employment if the employee maintains the

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eligibility standards established by the department.

Section ~~{8}~~11. Section **67-19-15.7** is amended to read:

67-19-15.7. Promotion -- Reclassification -- Market adjustment.

(1) (a) If an employee is promoted or the employee's position is reclassified to a higher salary range maximum, the agency shall place the employee within the new range of the position.

(b) An agency may not set an employee's salary:

(i) higher than the maximum in the new salary range; and

(ii) lower than the minimum in the new salary range of the position.

(c) Except for an employee [~~under schedule IN or TL under Section~~] described in Subsection 67-19-15(1)(p), the agency shall grant a salary increase of at least 5% to an employee who is promoted.

(2) An agency shall adjust the salary range for an employee whose salary range is approved by the Legislature for a market comparability adjustment consistent with Subsection 67-19-12(4)(c)(v):

(a) at the beginning of the next fiscal year; and

(b) consistent with appropriations made by the Legislature.

(3) Department-initiated revisions in the state classification system that result in consolidation or reduction of class titles or broadening of pay ranges:

(a) may not be regarded as a reclassification of the position or promotion of the employee; and

(b) are exempt from the provisions of Subsection (1).

Section ~~{9}~~12. Section **67-19a-406** is amended to read:

67-19a-406. Procedural steps to be followed by aggrieved employee -- Hearing before hearing officer -- Evidentiary and procedural rules.

(1) (a) The administrator shall employ a certified court reporter to record the hearing and prepare an official transcript of the hearing.

(b) The official transcript of the proceedings and all exhibits, briefs, motions, and pleadings received by the hearing officer are the official record of the proceeding.

(2) (a) The agency has the burden of proof in all grievances.

(b) The agency must prove the agency's case by substantial evidence.

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(3) (a) The hearing officer shall issue a written decision within 20 working days after the hearing is adjourned.

(b) If the hearing officer does not issue a decision within 20 working days, the agency that is a party to the grievance is not liable for any claimed back wages or benefits after the date the decision is due.

(4) The hearing officer may:

(a) not award attorney fees or costs to either party;

(b) close a hearing by complying with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings Act;

(c) seal the file and the evidence produced at the hearing if the evidence raises questions about an employee's character, professional competence, or physical or mental health;

(d) grant continuances according to rule; and

(e) decide a motion, an issue regarding discovery, or another issue in accordance with this chapter.

(5) (a) A hearing officer shall affirm, rescind, or modify agency action.

(b) (i) If a hearing officer does not affirm agency action, the hearing officer shall order back pay and back benefits that the grievant would have received without the agency action.

(ii) An order under Subsection (5)(b)(i) shall include:

(A) reimbursement to the grievant for premiums that the grievant paid for benefits allowed under the Consolidated Omnibus Reconciliation Act of 1985; and

(B) an offset for any state paid benefits the grievant receives because of the agency action, including unemployment compensation benefits.

(c) In an order under Subsection (5)(b)(i), a hearing officer may not reduce the amount of back pay and benefits awarded a grievant because of income that the grievant earns during the grievance process.

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~~as of 2-7-13 4:32 PM~~

Section 13. Coordinating H.B. 193 with H.B. 24 -- Substantive and superseding amendments.

If this H.B. 193 and H.B. 24, Utah Retirement System Amendments, both pass and become law, it is the intent of the Legislature that the amendments to Section 49-11-616 in this H.B. 193 supersede the amendments to Section 49-11-616 in H.B. 24, when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication.