

**UTAH STATE EMPLOYMENT AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brad L. Dee**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to state employment.

**Highlighted Provisions:**

This bill:

- ▶ 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' Noncontributory Retirement Act;
- ▶ 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



28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 **49-11-616**, as last amended by Laws of Utah 2012, Chapter 298
- 31 **49-13-102**, as last amended by Laws of Utah 2012, Chapter 298
- 32 **67-19-3**, as last amended by Laws of Utah 2010, Chapter 249
- 33 **67-19-12**, as last amended by Laws of Utah 2012, Chapter 173
- 34 **67-19-14**, as last amended by Laws of Utah 2010, Chapter 249
- 35 **67-19-15**, as last amended by Laws of Utah 2011, Chapters 340 and 427
- 36 **67-19-15.6**, as last amended by Laws of Utah 2010, Chapter 249
- 37 **67-19-15.7**, as last amended by Laws of Utah 2010, Chapter 249
- 38 **67-19a-406**, as last amended by Laws of Utah 2010, Chapter 249

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

41 Section 1. Section **49-11-616** is amended to read:

42 **49-11-616. Benefits information.**

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

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

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

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

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

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

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

58 (b) A copy of the signed form shall be immediately forwarded to the office by the

59 participating employer or the employee.

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

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

64 (ii) immediately forward the form to the office.

65 Section 2. Section **49-13-102** is amended to read:

66 **49-13-102. Definitions.**

67 As used in this chapter:

68 (1) "Benefits normally provided":

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

70 (i) a leave benefit of any kind;

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

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

75 (b) does not include:

76 (i) a payment for Social Security;

77 (ii) workers' compensation insurance;

78 (iii) unemployment insurance;

79 (iv) a payment for Medicare;

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

82 (vi) any other benefit required by federal or state law to be provided to an employee  
83 who would not otherwise be eligible to receive the benefit.

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

87 (i) bonuses;

88 (ii) cost-of-living adjustments;

89 (iii) other payments currently includable in gross income and that are subject to Social

90 Security deductions, including any payments in excess of the maximum amount subject to  
91 deduction under Social Security law; and

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

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

96 (c) "Compensation" does not include:

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

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

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

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

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

107 (d) The executive director may determine if a payment not listed under this Subsection  
108 [~~(1)~~] (2) falls within the definition of compensation.

109 [~~(2)~~] (3) "Final average salary" means the amount computed by averaging the highest  
110 three years of annual compensation preceding retirement subject to the following:

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

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

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

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

120 (c) If the member retires more than six months from the date of termination of

121 employment and for purposes of computing the member's final average salary only, the  
122 member is considered to have been in service at his last rate of pay from the date of the  
123 termination of employment to the effective date of retirement.

124 [~~(3)~~] (4) "Participating employer" means an employer which meets the participation  
125 requirements of Sections 49-13-201 and 49-13-202.

126 [~~(4)~~] (5) (a) "Regular full-time employee" means an employee whose term of  
127 employment for a participating employer contemplates continued employment during a fiscal  
128 or calendar year and whose employment normally requires an average of 20 hours or more per  
129 week, except as modified by the board, and who receives benefits normally provided by the  
130 participating employer.

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

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

134 (ii) a classified school employee whose employment normally requires an average of  
135 20 hours per week or more for a participating employer, regardless of benefits provided;

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

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

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

143 [~~(5)~~] (6) "System" means the Public Employees' Noncontributory Retirement System.

144 [~~(6)~~] (7) "Years of service credit" means:

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

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

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

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

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

154 **67-19-3. Definitions.**

155 As used in this chapter:

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

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

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

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

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

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

166 (7) (a) "Demotion" means a disciplinary action resulting in a reduction of an  
167 employee's current actual wage.

168 (b) "Demotion" does not mean:

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

171 (ii) a reclassification of an employee's position under the provisions of Subsection  
172 67-19-12(3) and rules made by the department.

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

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

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

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

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

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

182 (a) under Section 67-19-6;

183 (b) under rules of the department; and

184 (c) under other state or federal statute.

185 (14) "Market comparability adjustment" means a salary range adjustment determined  
186 necessary through a market survey of salary ranges of a reasonable cross section of comparable  
187 benchmark positions in private and public employment.

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

190 (16) "Probationary period" means that period of time determined by the department  
191 that an employee serves in a career service position as part of the hiring process before career  
192 service status is granted to the employee.

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

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

197 (19) "Total compensation" means salaries and wages, bonuses, paid leave, group  
198 insurance plans, retirement, and all other benefits offered to state employees as inducements to  
199 work for the state.

200 Section 4. Section **67-19-12** is amended to read:

201 **67-19-12. State pay plans -- Applicability of section -- Exemptions -- Duties of the**  
202 **executive director.**

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

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

207 (2) The following employees are exempt from this section:

208 (a) members of the Legislature and legislative employees;

209 (b) members of the judiciary and judicial employees;

210 (c) elected members of the executive branch and employees under schedule AC as  
211 provided under Subsection 67-19-15(1)(c);

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

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

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

216 Subsection (2);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 245 (i) Each pay plan shall consist of sufficient salary ranges to permit adequate salary  
246 differential among the various classes of positions in the classification plan.
- 247 (ii) (A) The executive director shall assign each class of positions in the classification  
248 plan to a salary range and shall set the width of the salary range to reflect the normal growth  
249 and productivity potential of employees in that class.
- 250 (B) The width of the ranges need not be uniform for all classes of positions in the plan.
- 251 (iii) (A) The executive director shall issue rules for the administration of pay plans.
- 252 (B) The executive director shall issue rules providing for salary adjustments.
- 253 (iv) Merit increases shall be granted, on a uniform and consistent basis in accordance  
254 with appropriations made by the Legislature, to employees who receive a rating of "successful"  
255 or higher in an annual evaluation of their productivity and performance.
- 256 (v) By October 31 of each year, the executive director shall submit market  
257 comparability adjustments to the director of the Governor's Office of Planning and Budget for  
258 consideration to be included as part of the affected agency's base budgets.
- 259 (vi) By October 31 of each year, the executive director shall recommend a  
260 compensation package to the governor.
- 261 (vii) (A) Adjustments shall incorporate the results of a total compensation market  
262 survey of salary ranges and benefits of a reasonable cross section of comparable benchmark  
263 positions in private and public employment in the state.
- 264 (B) The survey may also study comparable unusual positions requiring recruitment in  
265 other states.
- 266 (C) The executive director may cooperate with other public and private employers in  
267 conducting the survey.
- 268 (viii) (A) The executive director shall establish criteria to assure the adequacy and  
269 accuracy of the survey and shall use methods and techniques similar to and consistent with  
270 those used in private sector surveys.
- 271 (B) Except as provided under Sections 67-19-12.1 and 67-19-12.3, the survey shall  
272 include a reasonable cross section of employers.
- 273 (C) The executive director may cooperate with or participate in any survey conducted  
274 by other public and private employers.
- 275 (D) The executive director shall obtain information for the purpose of constructing the

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

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

281 (ix) The establishing of a salary range is a nondelegable activity and is not appealable  
282 under the grievance procedures of Sections 67-19-30 through 67-19-32, Chapter 19a,  
283 Grievance Procedures, or otherwise.

284 (x) The governor shall:

285 (A) consider salary adjustments recommended under Subsection (4)(c)(vi) in preparing  
286 the executive budget and shall recommend the method of distributing the adjustments;

287 (B) submit compensation recommendations to the Legislature; and

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

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

292 (5) (a) The executive director shall issue rules for the granting of incentive awards,  
293 including awards for cost saving actions, awards for commendable actions by an employee, or  
294 a market-based award to attract or retain employees.

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

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

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

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

303 (A) budgetary advantages; or

304 (B) recruitment advantages;

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

306 or

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

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

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

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

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

316 (7) (a) The executive director shall submit proposals for a state employee  
317 compensation plan to the governor by October 31 of each year, setting forth findings and  
318 recommendations affecting employee compensation.

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

321 (c) The governor's budget proposals to the Legislature shall include a specific  
322 recommendation on employee compensation.

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

324 **67-19-14. Sick leave -- Definitions -- Unused sick days retirement programs --**  
325 **Rulemaking.**

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

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

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

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

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

337 (i) annual leave;

338 (ii) sick leave; or  
 339 (iii) unused accumulated sick leave after the employee's retirement for the purchase of  
 340 continuing medical and life insurance benefits under Sections 67-19-14.2, 67-19-14.3, and  
 341 67-19-14.4.

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

344 (a) for the procedures to implement the provisions of this section through Section  
 345 67-19-14.4[-]; and

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

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

351 Section 6. Section **67-19-15** is amended to read:

352 **67-19-15. Career service -- Exempt positions -- Schedules for civil service**  
 353 **positions -- Coverage of career service provisions.**

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

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

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

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

- 362 (i) the office and at the residence of the governor;
- 363 (ii) the Utah Science Technology and Research Initiative (USTAR);
- 364 (iii) the Public Lands Policy Coordinating Council;
- 365 (iv) the Office of the State Auditor; and
- 366 (v) the Office of the State Treasurer;

367 (d) schedule AD includes employees who:

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

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

400 (n) schedule AU includes patients and inmates employed in state institutions;  
 401 [~~(o) schedule IN includes employees who are:~~  
 402 [~~(i) hired to work part time on an indefinite basis; and]~~  
 403 [~~(ii) considered to be temporary noncareer employees;~~  
 404 [~~(p) schedule TL includes employees who are:~~  
 405 [~~(i) hired to work on a time-limited basis; and]~~  
 406 [~~(ii) considered to be temporary noncareer employees; and]~~  
 407 [~~(q)~~] (o) employees of the Department of Workforce Services, designated as schedule

408 AW:

409 (i) who are temporary employees that are federally funded and are required to work  
 410 under federally qualified merit principles as certified by the director; or  
 411 (ii) for whom substantially all of their work is repetitive, measurable, or transaction  
 412 based, and who voluntarily apply for and are accepted by the Department of Workforce  
 413 Services to work in a pay for performance program designed by the Department of Workforce  
 414 Services with the concurrence of the executive director~~[-]; and~~

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

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

419 (a) (i) Schedule A is the schedule consisting of positions under Subsection (1).

420 (ii) Removal from any appointive position under schedule A, unless otherwise  
 421 regulated by statute, is at the pleasure of the appointing officers without regard to tenure.

422 (b) Schedule B is the competitive career service schedule, consisting of:

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

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

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

430 (b) Agency heads shall make requests and obtain approval from the executive director

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

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

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

436 (b) Compensation for employees of the judiciary shall be established by the state court  
437 administrator in accordance with Section 78A-2-107.

438 (c) Compensation for officers, faculty, and other employees of state universities and  
439 institutions of higher education shall be established as provided in Title 53B, Chapters 1,  
440 Governance, Powers, Rights, and Responsibilities, and 2, Institutions of Higher Education.

441 (d) Unless otherwise provided by law, compensation for all other schedule A  
442 employees shall be established by their appointing authorities, within ranges approved by, and  
443 after consultation with the executive director of the Department of Human Resource  
444 Management.

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

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

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

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

451 **67-19-15.6. Longevity salary increases.**

452 (1) Except for those employees in schedule AB, [~~HN~~, or ~~TE~~] as provided under Section  
453 67-19-15, and employees described in Subsection 67-19-15(1)(p), an employee shall receive an  
454 increase in salary of 2.75% if that employee:

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

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

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

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

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

462 eligibility standards established by the department.

463 Section 8. Section **67-19-15.7** is amended to read:

464 **67-19-15.7. Promotion -- Reclassification -- Market adjustment.**

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

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

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

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

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

474 (2) An agency shall adjust the salary range for an employee whose salary range is  
475 approved by the Legislature for a market comparability adjustment consistent with Subsection  
476 67-19-12(4)(c)(v):

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

478 (b) consistent with appropriations made by the Legislature.

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

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

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

484 Section 9. Section **67-19a-406** is amended to read:

485 **67-19a-406. Procedural steps to be followed by aggrieved employee -- Hearing**  
486 **before hearing officer -- Evidentiary and procedural rules.**

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

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

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

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

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

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

498 (4) The hearing officer may:

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

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

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

505 (d) grant continuances according to rule; and

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

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

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

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

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

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

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

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**Legislative Review Note**  
as of 2-7-13 4:32 PM

**Office of Legislative Research and General Counsel**