

**Senator Howard A. Stephenson** proposes the following substitute bill:

**OFFICE OF THE STATE BOARD OF EDUCATION**

**EMPLOYMENT AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Howard A. Stephenson**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to employees of the State Board of Education.

**Highlighted Provisions:**

This bill:

- ▶ addresses the circumstances under which the State Board of Education or the superintendent may promote certain employees;
- ▶ allows the State Board of Education to develop incentives to encourage certain employees to voluntarily convert to exempt status;
- ▶ provides that employees of the State Board of Education are exempt from state pay plans;
- ▶ provides that certain employees of the State Board of Education are exempt from the career service system; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None



26 **Utah Code Sections Affected:**

27 AMENDS:

- 28 **4-18-105**, as last amended by Laws of Utah 2015, Chapter 235
- 29 **53A-1-302**, as last amended by Laws of Utah 1990, Chapter 261
- 30 **67-19-3**, as last amended by Laws of Utah 2015, Chapter 155
- 31 **67-19-12**, as last amended by Laws of Utah 2015, Chapter 155
- 32 **67-19-15**, as last amended by Laws of Utah 2015, Chapter 401
- 33 **67-19-15.7**, as last amended by Laws of Utah 2015, Chapter 155
- 34 **73-5-1**, as last amended by Laws of Utah 2015, Chapter 401

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

37 Section 1. Section **4-18-105** is amended to read:

38 **4-18-105. Conservation Commission -- Functions and duties.**

39 (1) The commission shall:

40 (a) facilitate the development and implementation of the strategies and programs

41 necessary to:

42 (i) protect, conserve, utilize, and develop the soil, air, and water resources of the state;

43 and

44 (ii) promote the protection, integrity, and restoration of land for agricultural and other  
45 beneficial purposes;

46 (b) disseminate information regarding districts' activities and programs;

47 (c) supervise the formation, reorganization, or dissolution of districts according to the  
48 requirements of Title 17D, Chapter 3, Conservation District Act;

49 (d) prescribe uniform accounting and recordkeeping procedures for districts and  
50 require each district to submit annually an audit of its funds to the commission;

51 (e) approve and make loans for agricultural purposes, through the advisory board  
52 described in Section **4-18-106**, from the Agriculture Resource Development Fund, for:

53 (i) rangeland improvement and management projects;

54 (ii) watershed protection and flood prevention projects;

55 (iii) agricultural cropland soil and water conservation projects;

56 (iv) programs designed to promote energy efficient farming practices;

57 (v) development and implementation of coordinated resource management plans, as  
58 defined in Section 4-18-103, with conservation districts, as defined in Section 17D-3-102; and

59 (vi) programs or improvements for agriculture product storage or protections of a crop  
60 or animal resource;

61 (f) administer federal or state funds, including loan funds under this chapter, in  
62 accordance with applicable federal or state guidelines and make loans or grants from those  
63 funds to land occupiers for:

64 (i) the conservation of soil or water resources;

65 (ii) maintenance of rangeland improvement projects; and

66 (iii) the control or eradication of noxious weeds and invasive plant species:

67 (A) in cooperation and coordination with local weed boards; and

68 (B) in accordance with Section 4-2-8.7;

69 (g) seek to coordinate soil and water protection, conservation, and development  
70 activities and programs of state agencies, local governmental units, other states, special interest  
71 groups, and federal agencies;

72 (h) plan watershed and flood control projects in cooperation with appropriate local,  
73 state, and federal authorities, and coordinate flood control projects in the state;

74 (i) assist other state agencies with conservation standards for agriculture when  
75 requested; and

76 (j) when assigned by the governor, when required by contract with the Department of  
77 Environmental Quality, or when required by contract with the United States Environmental  
78 Protection Agency:

79 (i) develop programs for the prevention, control, or abatement of new or existing  
80 pollution to the soil, water, or air of the state;

81 (ii) advise, consult, and cooperate with affected parties to further the purpose of this  
82 chapter;

83 (iii) conduct studies, investigations, research, and demonstrations relating to  
84 agricultural pollution issues;

85 (iv) give reasonable consideration in the exercise of its powers and duties to the  
86 economic impact on sustainable agriculture;

87 (v) meet the requirements of federal law related to water and air pollution in the

88 exercise of its powers and duties; and

89 (vi) establish administrative penalties relating to agricultural discharges as defined in  
90 Section 4-18-103 that are proportional to the seriousness of the resulting environmental harm.

91 (2) The commission may:

92 (a) employ, with the approval of the department, an administrator and necessary  
93 technical experts and employees;

94 (b) execute contracts or other instruments necessary to exercise its powers;

95 (c) take necessary action to promote and enforce the purpose and findings of Section  
96 4-18-102;

97 (d) sue and be sued; and

98 (e) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative  
99 Rulemaking Act, necessary to carry out the powers and duties described in Subsection (1) and  
100 Subsections (2)(b) and (c).

101 (3) If, under Subsection (2)(a), the commission employs an individual who was  
102 formerly an employee of a conservation district or the Utah Association of Conservation  
103 Districts, the Department of Human Resource Management shall:

104 (a) recognize the employee's employment service credit from the conservation district  
105 or association in determining leave accrual in the employee's new position within the state; and

106 (b) set the initial wage rate for the employee at the level that the employee was  
107 receiving as an employee of the conservation district or association.

108 (4) An employee described in Subsection (3) is exempt from the career service  
109 provisions of Title 67, Chapter 19, Utah State Personnel Management Act, and shall be  
110 designated under schedule codes and parameters established by the Department of Human  
111 Resource Management under Subsection 67-19-15(1)(~~p~~)(q) until the commission, under  
112 parameters established by the Department of Human Resource Management, designates the  
113 employee under a different schedule recognized under Section 67-19-15.

114 (5) (a) For purposes of the report required by Subsection (5)(b), the commissioner shall  
115 study the organizational structure of the employees described in Subsection (3).

116 (b) The commissioner shall report to the Natural Resources, Agriculture, and  
117 Environmental Quality Appropriations Subcommittee by no later than that subcommittee's  
118 November 2015 interim meeting regarding the study required by Subsection (5)(a).

119 Section 2. Section **53A-1-302** is amended to read:

120 **53A-1-302. Compensation of state superintendent -- Other board employees.**

121 (1) The board shall establish the compensation of the state superintendent.

122 (2) (a) The board may appoint [~~other~~] or the state superintendent may hire employees  
123 as necessary for the proper administration and supervision of the public school system.

124 (b) The compensation and duties of [~~these other employees~~] an employee described in  
125 Subsection (2)(a) shall be established by the board and paid from money appropriated for that  
126 purpose.

127 (3) (a) On or after May 10, 2016, an employee of the board may voluntarily convert to  
128 exempt status under Section 67-19-15 if the employee is:

129 (i) in career service status, as defined in Section 67-19-3; and

130 (ii) in a finance or an information technology position.

131 (b) On or after July 1, 2017, an employee of the board who is in career service status,  
132 as defined in Section 67-19-3, may convert to exempt status under Section 67-19-15.

133 (c) The board may, in consultation with the Department of Human Resource  
134 Management, develop financial and other incentives to encourage an employee described in  
135 Subsection (3)(a) or (b) to voluntarily convert to exempt status.

136 (4) On or after July 1, 2018, the board or the superintendent may not promote an  
137 employee described in Subsection (3)(a), unless the employee voluntarily converts to exempt  
138 status.

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

140 **67-19-3. Definitions.**

141 As used in this chapter:

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

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

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

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

149 (5) "Classified service" means those positions subject to the classification and

150 compensation provisions of Section 67-19-12.

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

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

154 (b) "Demotion" does not mean:

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

157 (ii) a reclassification of an employee's position under the provisions of Subsection  
158 67-19-12(3) and rules made by the department.

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

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

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

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

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

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

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

169 (b) under rules of the department; and

170 (c) under other state or federal statute.

171 (14) "Market comparability adjustment" means a salary range adjustment determined  
172 necessary through a market survey of salary data and other relevant information.

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

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

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

180 (18) "Structure adjustment" means a department modification of salary ranges.

181 (19) "Temporary employee" means career service exempt employees described in  
182 Subsection 67-19-15(1)(~~p~~)(q).

183 (20) "Total compensation" means salaries and wages, bonuses, paid leave, group  
184 insurance plans, retirement, and all other benefits offered to state employees as inducements to  
185 work for the state.

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

187 **67-19-12. State pay plans -- Applicability of section -- Exemptions -- Duties of the**  
188 **executive director.**

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

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

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

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

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

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

198 (d) employees of the State Board of Education [~~who are licensed by the State Board of~~  
199 ~~Education~~];

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

201 (f) employees in a position that is specified by statute to be exempt from this  
202 Subsection (2);

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

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

205 (i) schedule AS employees as provided under Subsection 67-19-15(1)(~~t~~)(m);

206 (j) department deputy directors, division directors, and other employees designated as  
207 schedule AD as provided under Subsection 67-19-15(1)(d);

208 (k) employees that determine and execute policy designated as schedule AR as  
209 provided under Subsection 67-19-15(1)(~~s~~)(l);

210 (l) teaching staff, educational interpreters, and educators designated as schedule AH as  
211 provided under Subsection 67-19-15(1)(~~f~~)(g);

- 212 (m) temporary employees described in Subsection 67-19-15(1)(~~p~~)(q);
- 213 (n) patients and inmates designated as schedule AU as provided under Subsection
- 214 67-19-15(1)(~~n~~)(o) who are employed by state institutions; and
- 215 (o) members of state and local boards and councils and other employees designated as
- 216 schedule AQ as provided under Subsection 67-19-15(1)(~~f~~)(k).
- 217 (3) (a) The executive director shall prepare, maintain, and revise a position
- 218 classification plan for each employee position not exempted under Subsection (2) to provide
- 219 equal pay for equal work.
- 220 (b) Classification of positions shall be based upon similarity of duties performed and
- 221 responsibilities assumed, so that the same job requirements and the same salary range may be
- 222 applied equitably to each position in the same class.
- 223 (c) The executive director shall allocate or reallocate the position of each employee in
- 224 classified service to one of the classes in the classification plan.
- 225 (d) (i) The department shall conduct periodic studies and interviews to provide that the
- 226 classification plan remains reasonably current and reflects the duties and responsibilities
- 227 assigned to and performed by employees.
- 228 (ii) The executive director shall determine the need for studies and interviews after
- 229 considering factors such as changes in duties and responsibilities of positions or agency
- 230 reorganizations.
- 231 (4) (a) With the approval of the governor, the executive director shall develop and
- 232 adopt pay plans for each position in classified service.
- 233 (b) The executive director shall design each pay plan to achieve, to the degree that
- 234 funds permit, comparability of state salary ranges to the market using data obtained from
- 235 private enterprise and other public employment for similar work.
- 236 (c) The executive director shall adhere to the following in developing each pay plan:
- 237 (i) Each pay plan shall consist of sufficient salary ranges to:
- 238 (A) permit adequate salary differential among the various classes of positions in the
- 239 classification plan; and
- 240 (B) reflect the normal growth and productivity potential of employees in that class.
- 241 (ii) The executive director shall issue rules for the administration of pay plans.
- 242 (d) The establishing of a salary range is a nondelegable activity and is not appealable

243 under the grievance procedures of Sections 67-19-30 through 67-19-32, Chapter 19a,  
244 Grievance Procedures, or otherwise.

245 (e) The executive director shall issue rules providing for:

246 (i) agency approved salary adjustments within approved salary ranges, including an  
247 administrative salary adjustment;

248 (ii) legislatively approved salary adjustments within approved salary ranges, including  
249 a merit increase, subject to Subsection (4)(f), or general increase; and

250 (iii) structure adjustments that modify salary ranges, including a cost of living  
251 adjustment or market comparability adjustment.

252 (f) A merit increase shall be granted on a uniform and consistent basis to each  
253 employee who receives a rating of "successful" or higher in an annual evaluation of the  
254 employee's productivity and performance.

255 (5) (a) By October 31 of each year, the executive director shall submit an annual  
256 compensation plan to the governor for consideration in the executive budget.

257 (b) The plan described in Subsection (5)(a) may include recommendations, including:

258 (i) salary increases that generally affect employees, including a general increase or  
259 merit increase;

260 (ii) salary increases that address compensation issues unique to an agency or  
261 occupation;

262 (iii) structure adjustments, including a cost of living adjustment or market  
263 comparability adjustment; or

264 (iv) changes to employee benefits.

265 (c) (i) (A) Subject to Subsection (5)(c)(i)(B) or (C), the executive director shall  
266 incorporate the results of a salary survey of a reasonable cross section of comparable positions  
267 in private and public employment in the state into the annual compensation plan.

268 (B) The salary survey for a law enforcement officer, as defined in Section 53-13-103, a  
269 correctional officer, as defined in Section 53-13-104, or a dispatcher, as defined in Section  
270 53-6-102, shall at minimum include the three largest political subdivisions in the state that  
271 employ, respectively, comparable positions.

272 (C) The salary survey for an examiner or supervisor described in Title 7, Chapter 1,  
273 Part 2, Department of Financial Institutions, shall at minimum include the Federal Deposit

274 Insurance Corporation, Federal Reserve, and National Credit Union Administration.

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

277 (iii) The executive director shall obtain information for the purpose of constructing the  
278 survey from the Division of Workforce Information and Payment Services and shall include  
279 employer name, number of persons employed by the employer, employer contact information  
280 and job titles, county code, and salary if available.

281 (iv) The department shall acquire and protect the needed records in compliance with  
282 the provisions of Section [35A-4-312](#).

283 (d) The executive director may incorporate any other relevant information in the plan  
284 described in Subsection (5)(a), including information on staff turnover, recruitment data, or  
285 external market trends.

286 (e) The executive director shall:

287 (i) establish criteria to assure the adequacy and accuracy of data used to make  
288 recommendations described in this Subsection (5); and

289 (ii) when preparing recommendations use accepted methodologies and techniques  
290 similar to and consistent with those used in the private sector.

291 (f) (i) Upon request and subject to Subsection (5)(f)(ii), the department shall make  
292 available foundational information used by the department or director in the drafting of a plan  
293 described in Subsection (5)(a), including:

294 (A) demographic and labor market information;

295 (B) information on employee turnover;

296 (C) salary information;

297 (D) information on recruitment; and

298 (E) geographic data.

299 (ii) The department may not provide under Subsection (5)(f)(i) information or other  
300 data that is proprietary or otherwise protected under the terms of a contract or by law.

301 (g) The governor shall:

302 (i) consider salary and structure adjustments recommended under Subsection (5)(b) in  
303 preparing the executive budget and shall recommend the method of distributing the  
304 adjustments;

305 (ii) submit compensation recommendations to the Legislature; and  
306 (iii) support the recommendation with schedules indicating the cost to individual  
307 departments and the source of funds.

308 (h) If funding is approved by the Legislature in a general appropriations act, the  
309 adjustments take effect on the July 1 following the enactment unless otherwise indicated.

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

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

315 (c) In accordance with Subsection (6)(b), an agency requesting the department's  
316 approval of a market-based award shall submit a request and documentation, subject to  
317 Subsection (6)(d), to the department.

318 (d) In the documentation required in Subsection (6)(c), the requesting agency shall  
319 identify for the department:

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

321 (A) budgetary advantages; or

322 (B) recruitment advantages;

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

324 or

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

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

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

331 (i) a study conducted by a third-party consultant; or

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

333 Section 5. Section **67-19-15** is amended to read:

334 **67-19-15. Career service -- Exempt positions -- Schedules for civil service**  
335 **positions -- Coverage of career service provisions.**

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

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

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

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

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

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

346 (iii) the Public Lands Policy Coordinating Council;

347 (iv) the Office of the State Auditor; and

348 (v) the Office of the State Treasurer;

349 (d) schedule AD includes employees who:

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

351 (ii) report directly to, and are supervised by, a department head, commissioner, or  
352 deputy director of an agency or its equivalent;

353 (e) schedule AE includes each employee of the State Board of Education who:

354 (i) is:

355 (A) in a finance or an information technology position; and

356 (B) hired on or after May 10, 2016;

357 (ii) voluntarily converts to exempt status in accordance with Section [53A-1-302](#); and

358 (iii) is hired on or after July 1, 2017, for a position that the State Board of Education or  
359 the superintendent of public instruction designates as exempt from the career service provisions  
360 of this chapter;

361 [~~(e)~~] (f) schedule AG includes employees in the Office of the Attorney General who are  
362 under their own career service pay plan under Sections [67-5-7](#) through [67-5-13](#);

363 [~~(f)~~] (g) schedule AH includes:

364 (i) teaching staff of all state institutions; and

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

366 (A) educational interpreters as classified by the department; or

367 (B) educators as defined by Section [53A-25b-102](#);

368 [~~(g)~~] (h) schedule AN includes employees of the Legislature;

369 [~~(h)~~] (i) schedule AO includes employees of the judiciary;

370 [~~(i)~~] (j) schedule AP includes all judges in the judiciary;

371 [~~(j)~~] (k) schedule AQ includes:

372 (i) members of state and local boards and councils appointed by the governor and

373 governing bodies of agencies;

374 (ii) a water commissioner appointed under Section [73-5-1](#);

375 (iii) other local officials serving in an ex officio capacity; and

376 (iv) officers, faculty, and other employees of state universities and other state

377 institutions of higher education;

378 [~~(k)~~] (l) schedule AR includes employees in positions that involve responsibility:

379 (i) for determining policy;

380 (ii) for determining the way in which a policy is carried out; or

381 (iii) of a type not appropriate for career service, as determined by the agency head with

382 the concurrence of the executive director;

383 [~~(l)~~] (m) schedule AS includes any other employee:

384 (i) whose appointment is required by statute to be career service exempt;

385 (ii) whose agency is not subject to this chapter; or

386 (iii) whose agency has authority to make rules regarding the performance,

387 compensation, and bonuses for its employees;

388 [~~(m)~~] (n) schedule AT includes employees of the Department of Technology Services,

389 designated as executive/professional positions by the executive director of the Department of

390 Technology Services with the concurrence of the executive director;

391 [~~(n)~~] (o) schedule AU includes patients and inmates employed in state institutions;

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

393 AW:

394 (i) who are temporary employees that are federally funded and are required to work

395 under federally qualified merit principles as certified by the director; or

396 (ii) for whom substantially all of their work is repetitive, measurable, or transaction

397 based, and who voluntarily apply for and are accepted by the Department of Workforce

398 Services to work in a pay for performance program designed by the Department of Workforce  
399 Services with the concurrence of the executive director; and

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

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

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

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

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

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

410 (ii) positions filled through a department approved on-the-job examination intended to  
411 appoint a qualified person with a disability or a veteran as defined in Section 71-10-1.

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

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

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

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

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

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

427 (d) Unless otherwise provided by law, compensation for all other schedule A  
428 employees shall be established by their appointing authorities, within ranges approved by, and

429 after consultation with the executive director of the Department of Human Resource  
430 Management.

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

- 433 (a) remains in the position that the employee is in on June 30, 2010; and
- 434 (b) does not elect to convert to career service exempt status in accordance with a rule  
435 made by the department.

436 Section 6. Section **67-19-15.7** is amended to read:

437 **67-19-15.7. Promotion -- Reclassification -- Market adjustment.**

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

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

- 442 (i) higher than the maximum in the new salary range; and
- 443 (ii) lower than the minimum in the new salary range of the position.

444 (c) Except for an employee described in Subsection **67-19-15(1)(p)(q)**, the agency  
445 shall grant a salary increase of at least 5% to an employee who is promoted.

446 (2) An agency shall adjust the salary range for an employee whose salary range is  
447 approved by the Legislature for a market comparability adjustment consistent with Subsection  
448 **67-19-12(5)(b)(i)**:

- 449 (a) at the beginning of the next fiscal year; and
- 450 (b) consistent with appropriations made by the Legislature.

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

- 453 (a) may not be regarded as a reclassification of the position or promotion of the  
454 employee; and
- 455 (b) are exempt from the provisions of Subsection (1).

456 Section 7. Section **73-5-1** is amended to read:

457 **73-5-1. Appointment of water commissioners -- Procedure.**

458 (1) (a) If, in the judgment of the state engineer or the district court, it is necessary to  
459 appoint a water commissioner for the distribution of water from any river system or water

460 source, the commissioner shall be appointed for a four-year term by the state engineer.

461 (b) The state engineer shall determine whether all or a part of a river system or other  
462 water source shall be served by a commissioner, and if only a part is to be served, the state  
463 engineer shall determine the boundaries of that part.

464 (c) The state engineer may appoint:

465 (i) more than one commissioner to distribute water from all or a part of a water source;

466 or

467 (ii) a single commissioner to distribute water from several separate and distinct water  
468 sources.

469 (d) A water commissioner appointed by the state engineer under this section is:

470 (i) an employee of the Division of Water Rights;

471 (ii) career service exempt under Subsection 67-19-15(1)(~~g~~)(k); and

472 (iii) exempt under Subsection 67-19-12(2)(f) from the classified service provisions of  
473 Section 67-19-12.

474 (2) (a) The state engineer shall consult with the water users before appointing a  
475 commissioner. The form of consultation and notice to be given shall be determined by the state  
476 engineer so as to best suit local conditions, while providing for full expression of majority  
477 opinion.

478 (b) The state engineer shall act in accordance with the recommendation of a majority of  
479 the water users, if the majority of the water users:

480 (i) agree upon:

481 (A) a qualified individual to be appointed as a water commissioner;

482 (B) the duties the individual shall perform; and

483 (C) subject to the requirements of Title 49, Utah State Retirement and Insurance  
484 Benefit Act, the compensation the individual shall receive; and

485 (ii) submit a recommendation to the state engineer on the items described in  
486 Subsection (2)(b)(i).

487 (c) If a majority of water users do not agree on the appointment, duties, or  
488 compensation, the state engineer shall make a determination for them.

489 (3) (a) (i) The salary and expenses of the commissioner and all other expenses of  
490 distribution, including printing, postage, equipment, water users' expenses, and any other

491 expenses considered necessary by the state engineer, shall be borne pro rata by the users of  
492 water from the river system or water source in accordance with a schedule to be fixed by the  
493 state engineer.

494 (ii) The schedule shall be based on the established rights of each water user, and the  
495 pro rata share shall be paid by each water user to the state engineer on or before May 1 of each  
496 year.

497 (b) The payments shall be deposited in the Water Commissioner Fund created in  
498 Section 73-5-1.5.

499 (c) If a water user fails to pay the assessment as provided by Subsection (3)(a), the state  
500 engineer may do any or all of the following:

501 (i) create a lien upon the water right affected by filing a notice of lien in the office of  
502 the county recorder in the county where the water is diverted and bring an action to enforce the  
503 lien;

504 (ii) forbid the use of water by the delinquent water user or the delinquent water user's  
505 successors or assignees, while the default continues; or

506 (iii) bring an action in the district court for the unpaid expense and salary.

507 (d) In any action brought to collect any unpaid assessment or to enforce any lien under  
508 this section, the delinquent water user shall be liable for the amount of the assessment, interest,  
509 any penalty, and for all costs of collection, including all court costs and a reasonable attorney  
510 fee.

511 (4) (a) A commissioner may be removed by the state engineer for cause.

512 (b) The users of water from any river system or water source may petition the district  
513 court for the removal of a commissioner and after notice and hearing, the court may order the  
514 removal of the commissioner and direct the state engineer to appoint a successor.