

1 **STATE BOARD OF EDUCATION AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ann Millner**

5 House Sponsor: Jefferson Moss

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to the State Board of Education.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies a provision relating to the supervision of the director of the Division of
- 13 Facilities Construction and Management over projects of the State Board of
- 14 Education;
- 15 ▶ includes the State Board of Education as an educational procurement unit that is a
- 16 procurement unit with independent procurement authority;
- 17 ▶ removes State Board of Education employees from certain overtime provisions;
- 18 ▶ expands the category of State Board of Education employees who are exempt from
- 19 certain classification provisions; and
- 20 ▶ exempts certain State Board of Education employees from career service provisions.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill provides a special effective date.

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **4-18-105**, as last amended by Laws of Utah 2016, Chapter 19



- 28 **63A-2-103**, as last amended by Laws of Utah 2015, Chapter 98
- 29 **63A-5-206**, as last amended by Laws of Utah 2016, Chapter 298
- 30 **63G-6a-103**, as last amended by Laws of Utah 2016, Chapters 176, 237, 355 and last
- 31 amended by Coordination Clause, Laws of Utah 2016, Chapter 355
- 32 **67-19-3**, as last amended by Laws of Utah 2015, Chapter 155
- 33 **67-19-6.7**, as last amended by Laws of Utah 2016, Chapter 144
- 34 **67-19-12**, as last amended by Laws of Utah 2015, Chapter 155
- 35 **67-19-15**, as last amended by Laws of Utah 2016, Chapter 230
- 36 **67-19-15.6**, as last amended by Laws of Utah 2013, Chapter 109
- 37 **67-19-15.7**, as last amended by Laws of Utah 2015, Chapter 155
- 38 **73-5-1**, as last amended by Laws of Utah 2015, Chapter 401

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

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

42 **4-18-105. Conservation Commission -- Functions and duties.**

43 (1) The commission shall:

- 44 (a) facilitate the development and implementation of the strategies and programs
- 45 necessary to:
 - 46 (i) protect, conserve, utilize, and develop the soil, air, and water resources of the state;
 - 47 and
 - 48 (ii) promote the protection, integrity, and restoration of land for agricultural and other
 - 49 beneficial purposes;
 - 50 (b) disseminate information regarding districts' activities and programs;
 - 51 (c) supervise the formation, reorganization, or dissolution of districts according to the
 - 52 requirements of Title 17D, Chapter 3, Conservation District Act;
 - 53 (d) prescribe uniform accounting and recordkeeping procedures for districts and
 - 54 require each district to submit annually an audit of its funds to the commission;
 - 55 (e) approve and make loans for agricultural purposes, through the advisory board
 - 56 described in Section **4-18-106**, from the Agriculture Resource Development Fund, for:
 - 57 (i) rangeland improvement and management projects;
 - 58 (ii) watershed protection and flood prevention projects;

- 59 (iii) agricultural cropland soil and water conservation projects;
- 60 (iv) programs designed to promote energy efficient farming practices; and
- 61 (v) programs or improvements for agriculture product storage or protections of a crop
62 or animal resource;
- 63 (f) administer federal or state funds, including loan funds under this chapter, in
64 accordance with applicable federal or state guidelines and make loans or grants from those
65 funds to land occupiers for:
- 66 (i) conservation of soil or water resources;
- 67 (ii) maintenance of rangeland improvement projects;
- 68 (iii) development and implementation of coordinated resource management plans, as
69 defined in Section 4-18-103, with conservation districts, as defined in Section 17D-3-102; and
- 70 (iv) control or eradication of noxious weeds and invasive plant species:
- 71 (A) in cooperation and coordination with local weed boards; and
- 72 (B) in accordance with Section 4-2-8.7;
- 73 (g) seek to coordinate soil and water protection, conservation, and development
74 activities and programs of state agencies, local governmental units, other states, special interest
75 groups, and federal agencies;
- 76 (h) plan watershed and flood control projects in cooperation with appropriate local,
77 state, and federal authorities, and coordinate flood control projects in the state;
- 78 (i) assist other state agencies with conservation standards for agriculture when
79 requested; and
- 80 (j) when assigned by the governor, when required by contract with the Department of
81 Environmental Quality, or when required by contract with the United States Environmental
82 Protection Agency:
- 83 (i) develop programs for the prevention, control, or abatement of new or existing
84 pollution to the soil, water, or air of the state;
- 85 (ii) advise, consult, and cooperate with affected parties to further the purpose of this
86 chapter;
- 87 (iii) conduct studies, investigations, research, and demonstrations relating to
88 agricultural pollution issues;
- 89 (iv) give reasonable consideration in the exercise of its powers and duties to the

90 economic impact on sustainable agriculture;

91 (v) meet the requirements of federal law related to water and air pollution in the
92 exercise of its powers and duties; and

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

95 (2) The commission may:

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

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

99 (c) take necessary action to promote and enforce the purpose and findings of Section
100 4-18-102;

101 (d) sue and be sued; and

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

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

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

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

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

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

120 (b) The commissioner shall report to the Natural Resources, Agriculture, and

121 Environmental Quality Appropriations Subcommittee by no later than that subcommittee's
122 November 2015 interim meeting regarding the study required by Subsection (5)(a).

123 Section 2. Section **63A-2-103** is amended to read:

124 **63A-2-103. General services provided -- Subscription by state departments, state**
125 **agencies, and certain local governmental entities -- Fee schedule.**

126 (1) The purchasing director:

127 (a) shall operate, manage, and maintain:

128 (i) a central mailing service; and

129 (ii) an electronic central store system for procuring goods and services;

130 (b) shall, except when a state surplus property contractor administers the state's
131 program for disposition of state surplus property, operate, manage, and maintain the state
132 surplus property program;

133 (c) shall, when a state surplus property contractor administers the state's program for
134 disposition of state surplus property, oversee the state surplus property contractor's
135 administration of the state surplus property program in accordance with Part 4, Surplus
136 Property Services; and

137 (d) may establish microfilming, duplicating, printing, addressograph, and other central
138 services.

139 (2) (a) Each state agency shall subscribe to all of the services described in Subsection
140 (1)(a), unless the director delegates the director's authority to a state agency under Section
141 [63A-2-104](#).

142 (b) An institution of higher education, the State Board of Education, a school district,
143 or a political subdivision of the state may subscribe to one or more of the services described in
144 Subsection (1)(a).

145 (3) (a) The purchasing director shall:

146 (i) prescribe a schedule of fees to be charged for all services provided by the division
147 after the purchasing director:

148 (A) submits the proposed rate, fees, or other amounts for services provided by the
149 division's internal service fund to the Rate Committee established in Section [63A-1-114](#); and

150 (B) obtains the approval of the Legislature, as required by Section [63J-1-504](#);

151 (ii) ensure that the fees are approximately equal to the cost of providing the services;

152 and

153 (iii) annually conduct a market analysis of fees.

154 (b) A market analysis under Subsection (3)(a)(iii) shall include a comparison of the
155 division's rates with the fees of other public or private sector providers if comparable services
156 and rates are reasonably available.

157 Section 3. Section **63A-5-206** is amended to read:

158 **63A-5-206. Construction, alteration, and repair of state facilities -- Powers of**
159 **director -- Exceptions -- Expenditure of appropriations -- Notification to local**
160 **governments for construction or modification of certain facilities.**

161 (1) As used in this section:

162 (a) "Capital developments" and "capital improvements" have the same meaning as
163 provided in Section [63A-5-104](#).

164 (b) "Compliance agency" has the same meaning as provided in Section [15A-1-202](#).

165 (c) (i) "Facility" means any building, structure, or other improvement that is
166 constructed on property owned by the state, its departments, commissions, institutions, or
167 agencies.

168 (ii) "Facility" does not mean an unoccupied structure that is a component of the state
169 highway system.

170 (d) "Life cycle cost-effective" means, as provided for in rules adopted by the State
171 Building Board, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
172 Act, the most prudent cost of owning and operating a facility, including the initial cost, energy
173 costs, operation and maintenance costs, repair costs, and the costs of energy conservation and
174 renewable energy systems.

175 (e) "Local government" means the county, municipality, or local school district that
176 would have jurisdiction to act as the compliance agency if the property on which the project is
177 being constructed were not owned by the state.

178 (f) "Renewable energy system" means a system designed to use solar, wind, geothermal
179 power, wood, or other replenishable energy source to heat, cool, or provide electricity to a
180 building.

181 (2) (a) (i) Except as provided in Subsections (3) and (4), the director shall exercise
182 direct supervision over the design and construction of all new facilities, and all alterations,

183 repairs, and improvements to existing facilities if the total project construction cost, regardless
184 of the funding source, is greater than \$100,000, unless there is memorandum of understanding
185 between the director and an institution of higher education or the State Board of Education that
186 permits the institution of higher education or the State Board of Education to exercise direct
187 supervision for a project with a total project construction cost of not greater than \$250,000.

188 (ii) A state entity may exercise direct supervision over the design and construction of
189 all new facilities, and all alterations, repairs, and improvements to existing facilities if:

190 (A) the total project construction cost, regardless of the funding sources, is \$100,000 or
191 less; and

192 (B) the state entity assures compliance with the division's forms and contracts and the
193 division's design, construction, alteration, repair, improvements, and code inspection standards.

194 (b) The director shall prepare or have prepared by private firms or individuals designs,
195 plans, and specifications for the projects administered by the division.

196 (c) Before proceeding with construction, the director and the officials charged with the
197 administration of the affairs of the particular agency shall approve the location, design, plans,
198 and specifications.

199 (3) Projects for the construction of new facilities and alterations, repairs, and
200 improvements to existing facilities are not subject to Subsection (2) if the project:

201 (a) occurs on property under the jurisdiction of the State Capitol Preservation Board;

202 (b) is within a designated research park at the University of Utah or Utah State
203 University;

204 (c) occurs within the boundaries of This is the Place State Park and is administered by
205 This is the Place Foundation except that This is the Place Foundation may request the director
206 to administer the design and construction; or

207 (d) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah
208 Percent-for-Art Act.

209 (4) (a) (i) The State Building Board may authorize the delegation of control over
210 design, construction, and all other aspects of any project to entities of state government on a
211 project-by-project basis or for projects within a particular dollar range and a particular project
212 type.

213 (ii) The state entity to whom control is delegated shall assume fiduciary control over

214 project finances, shall assume all responsibility for project budgets and expenditures, and shall
215 receive all funds appropriated for the project, including any contingency funds contained in the
216 appropriated project budget.

217 (iii) Delegation of project control does not exempt the state entity from complying with
218 the codes and guidelines for design and construction adopted by the division and the State
219 Building Board.

220 (iv) State entities that receive a delegated project may not access, for the delegated
221 project, the division's statewide contingency reserve and project reserve authorized in Section
222 [63A-5-209](#).

223 (b) For facilities that will be owned, operated, maintained, and repaired by an entity
224 that is not a state agency and that are located on state property, the State Building Board may
225 authorize the owner to administer the design and construction of the project instead of the
226 division.

227 (5) Notwithstanding any other provision of this section, if a donor donates land to an
228 eligible institution of higher education and commits to build a building or buildings on that
229 land, and the institution agrees to provide funds for the operations and maintenance costs from
230 sources other than state funds, and agrees that the building or buildings will not be eligible for
231 state capital improvement funding, the higher education institution may:

232 (a) oversee and manage the construction without involvement, oversight, or
233 management from the division; or

234 (b) arrange for management of the project by the division.

235 (6) (a) The role of compliance agency as provided in Title 15A, State Construction and
236 Fire Codes Act, shall be provided by:

237 (i) the director, for projects administered by the division;

238 (ii) the entity designated by the State Capitol Preservation Board, for projects under
239 Subsection (3)(a);

240 (iii) the local government, for projects exempt from the division's administration under
241 Subsection (3)(b) or administered by This is the Place Foundation under Subsection (3)(c);

242 (iv) the state entity or local government designated by the State Building Board, for
243 projects under Subsection (4); or

244 (v) the institution, for projects exempt from the division's administration under

245 Subsection (5)(a).

246 (b) For the installation of art under Subsection (3)(d), the role of compliance agency
247 shall be provided by the entity that is acting in this capacity for the balance of the project as
248 provided in Subsection (6)(a).

249 (c) The local government acting as the compliance agency under Subsection (6)(a)(iii)
250 may:

251 (i) only review plans and inspect construction to enforce the State Construction Code
252 or an approved code under Title 15A, State Construction and Fire Codes Act; and

253 (ii) charge a building permit fee of no more than the amount it could have charged if
254 the land upon which the improvements are located were not owned by the state.

255 (d) (i) The use of state property and any improvements constructed on state property,
256 including improvements constructed by nonstate entities, is not subject to the zoning authority
257 of local governments as provided in Sections [10-9a-304](#) and [17-27a-304](#).

258 (ii) The state entity controlling the use of the state property shall consider any input
259 received from the local government in determining how the property shall be used.

260 (7) Before construction may begin, the director shall review the design of projects
261 exempted from the division's administration under Subsection (4) to determine if the design:

262 (a) complies with any restrictions placed on the project by the State Building Board;
263 and

264 (b) is appropriate for the purpose and setting of the project.

265 (8) The director shall ensure that state-owned facilities, except for facilities under the
266 control of the State Capitol Preservation Board, are life cycle cost-effective.

267 (9) The director may expend appropriations for statewide projects from funds provided
268 by the Legislature for those specific purposes and within guidelines established by the State
269 Building Board.

270 (10) (a) The director, with the approval of the Office of Legislative Fiscal Analyst,
271 shall develop standard forms to present capital development and capital improvement cost
272 summary data.

273 (b) The director shall:

274 (i) within 30 days after the completion of each capital development project, submit cost
275 summary data for the project on the standard form to the Office of Legislative Fiscal Analyst;

276 and

277 (ii) upon request, submit cost summary data for a capital improvement project to the
278 Office of Legislative Fiscal Analyst on the standard form.

279 (11) Notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures
280 Act, the director may:

281 (a) accelerate the design of projects funded by any appropriation act passed by the
282 Legislature in its annual general session;

283 (b) use any unencumbered existing account balances to fund that design work; and

284 (c) reimburse those account balances from the amount funded for those projects when
285 the appropriation act funding the project becomes effective.

286 (12) (a) The director, the director's designee, or the state entity to whom control has
287 been designated under Subsection (4), shall notify in writing the elected representatives of local
288 government entities directly and substantively affected by any diagnostic, treatment, parole,
289 probation, or other secured facility project exceeding \$250,000, if:

290 (i) the nature of the project has been significantly altered since prior notification;

291 (ii) the project would significantly change the nature of the functions presently
292 conducted at the location; or

293 (iii) the project is new construction.

294 (b) At the request of either the state entity or the local government entity,
295 representatives from the state entity and the affected local entity shall conduct or participate in
296 a local public hearing or hearings to discuss these issues.

297 (13) (a) (i) Before beginning the construction of student housing on property owned by
298 the state or a public institution of higher education, the director shall provide written notice of
299 the proposed construction, as provided in Subsection (13)(a)(ii), if any of the proposed student
300 housing buildings is within 300 feet of privately owned residential property.

301 (ii) Each notice under Subsection (13)(a)(i) shall be provided to the legislative body
302 and, if applicable, the mayor of:

303 (A) the county in whose unincorporated area the privately owned residential property is
304 located; or

305 (B) the municipality in whose boundaries the privately owned residential property is
306 located.

307 (b) (i) Within 21 days after receiving the notice required by Subsection (13)(a)(i), a
308 county or municipality entitled to the notice may submit a written request to the director for a
309 public hearing on the proposed student housing construction.

310 (ii) If a county or municipality requests a hearing under Subsection (13)(b)(i), the
311 director and the county or municipality shall jointly hold a public hearing to provide
312 information to the public and to allow the director and the county or municipality to receive
313 input from the public about the proposed student housing construction.

314 Section 4. Section **63G-6a-103** is amended to read:

315 **63G-6a-103. Definitions.**

316 As used in this chapter:

317 (1) "Administrative law judge" means the same as that term is defined in Section
318 [67-19e-102](#).

319 (2) "Administrative law judge service" means service provided by an administrative
320 law judge.

321 (3) "Applicable rulemaking authority" means:

322 (a) for a legislative procurement unit, the Legislative Management Committee;

323 (b) for a judicial procurement unit, the Judicial Council;

324 (c) (i) only to the extent of the procurement authority expressly granted to the
325 procurement unit by statute:

326 (A) for the building board or the Division of Facilities Construction and Management,
327 created in Section [63A-5-201](#), the building board;

328 (B) for the Office of the Attorney General, the attorney general; and

329 (C) for the Department of Transportation created in Section [72-1-201](#), the executive
330 director of the Department of Transportation; and

331 (ii) for each other executive branch procurement unit, the board;

332 (d) for a local government procurement unit:

333 (i) the legislative body of the local government procurement unit; or

334 (ii) an individual or body designated by the legislative body of the local government
335 procurement unit;

336 (e) for a school district or a public school, the board, except to the extent of a school
337 district's own nonadministrative rules that do not conflict with the provisions of this chapter;

- 338 (f) for a state institution of higher education, the State Board of Regents;
- 339 (g) for the State Board of Education, the State Board of Education;
- 340 ~~(g)~~ (h) for a public transit district, the chief executive of the public transit district;
- 341 ~~(h)~~ (i) for a local district other than a public transit district or for a special service
- 342 district:
- 343 (i) before January 1, 2015, the board of trustees of the local district or the governing
- 344 body of the special service district; or
- 345 (ii) on or after January 1, 2015, the board, except to the extent that the board of trustees
- 346 of the local district or the governing body of the special service district makes its own rules:
- 347 (A) with respect to a subject addressed by board rules; or
- 348 (B) that are in addition to board rules; or
- 349 ~~(i)~~ (j) for any other procurement unit, the board.
- 350 (4) "Approved vendor" means a vendor who has been approved through the approved
- 351 vendor list process.
- 352 (5) "Approved vendor list" means a list of approved vendors established under Section
- 353 [63G-6a-507](#).
- 354 (6) "Approved vendor list process" means the procurement process described in
- 355 Section [63G-6a-507](#).
- 356 (7) "Bidder" means a person who submits a bid or price quote in response to an
- 357 invitation for bids.
- 358 (8) "Bidding process" means the procurement process described in Part 6, Bidding.
- 359 (9) "Board" means the Utah State Procurement Policy Board, created in Section
- 360 [63G-6a-202](#).
- 361 (10) "Building board" means the State Building Board, created in Section [63A-5-101](#).
- 362 (11) "Change directive" means a written order signed by the procurement officer that
- 363 directs the contractor to suspend work or make changes, as authorized by contract, without the
- 364 consent of the contractor.
- 365 (12) "Change order" means a written alteration in specifications, delivery point, rate of
- 366 delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual
- 367 agreement of the parties to the contract.
- 368 (13) "Chief procurement officer" means the chief procurement officer appointed under

369 Subsection [63G-6a-302\(1\)](#).

370 (14) "Conducting procurement unit" means a procurement unit that conducts all
371 aspects of a procurement:

372 (a) except:

373 (i) reviewing a solicitation to verify that it is in proper form; and

374 (ii) causing the publication of a notice of a solicitation; and

375 (b) including:

376 (i) preparing any solicitation document;

377 (ii) appointing an evaluation committee;

378 (iii) conducting the evaluation process, except as provided in Subsection

379 [63G-6a-707\(6\)\(b\)](#) relating to scores calculated for costs of proposals;

380 (iv) selecting and recommending the person to be awarded a contract;

381 (v) negotiating the terms and conditions of a contract, subject to the issuing
382 procurement unit's approval; and

383 (vi) contract administration.

384 (15) "Conservation district" means the same as that term is defined in Section
385 [17D-3-102](#).

386 (16) "Construction":

387 (a) means services, including work, and supplies for a project for the construction,
388 renovation, alteration, improvement, or repair of a public facility on real property; and

389 (b) does not include services and supplies for the routine, day-to-day operation, repair,
390 or maintenance of an existing public facility.

391 (17) "Construction manager/general contractor":

392 (a) means a contractor who enters into a contract:

393 (i) for the management of a construction project; and

394 (ii) that allows the contractor to subcontract for additional labor and materials that are
395 not included in the contractor's cost proposal submitted at the time of the procurement of the
396 contractor's services; and

397 (b) does not include a contractor whose only subcontract work not included in the
398 contractor's cost proposal submitted as part of the procurement of the contractor's services is to
399 meet subcontracted portions of change orders approved within the scope of the project.

- 400 (18) "Contract" means an agreement for a procurement.
- 401 (19) "Contract administration" means all functions, duties, and responsibilities
- 402 associated with managing, overseeing, and carrying out a contract between a procurement unit
- 403 and a contractor, including:
 - 404 (a) implementing the contract;
 - 405 (b) ensuring compliance with the contract terms and conditions by the conducting
 - 406 procurement unit and the contractor;
 - 407 (c) executing change orders;
 - 408 (d) processing contract amendments;
 - 409 (e) resolving, to the extent practicable, contract disputes;
 - 410 (f) curing contract errors and deficiencies;
 - 411 (g) terminating a contract;
 - 412 (h) measuring or evaluating completed work and contractor performance;
 - 413 (i) computing payments under the contract; and
 - 414 (j) closing out a contract.
- 415 (20) "Contractor" means a person who is awarded a contract with a procurement unit.
- 416 (21) "Cooperative procurement" means procurement conducted by, or on behalf of:
 - 417 (a) more than one procurement unit; or
 - 418 (b) a procurement unit and a cooperative purchasing organization.
- 419 (22) "Cooperative purchasing organization" means an organization, association, or
- 420 alliance of purchasers established to combine purchasing power in order to obtain the best
- 421 value for the purchasers by engaging in procurements in accordance with Section [63G-6a-2105](#).
- 422 (23) "Cost-plus-a-percentage-of-cost contract" means a contract under which the
- 423 contractor is paid a percentage of the total actual expenses or costs in addition to the
- 424 contractor's actual expenses or costs.
- 425 (24) "Cost-reimbursement contract" means a contract under which a contractor is
- 426 reimbursed for costs which are allowed and allocated in accordance with the contract terms and
- 427 the provisions of this chapter, and a fee, if any.
- 428 (25) "Days" means calendar days, unless expressly provided otherwise.
- 429 (26) "Definite quantity contract" means a fixed price contract that provides for a
- 430 specified amount of supplies over a specified period, with deliveries scheduled according to a

431 specified schedule.

432 (27) "Design-build" means the procurement of design professional services and
433 construction by the use of a single contract.

434 (28) "Design professional" means:

435 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
436 Licensing Act; or

437 (b) an individual licensed as a professional engineer or professional land surveyor
438 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
439 Act.

440 (29) "Design professional procurement process" means the procurement process
441 described in Part 15, Design Professional Services.

442 (30) "Design professional services" means:

443 (a) professional services within the scope of the practice of architecture as defined in
444 Section [58-3a-102](#);

445 (b) professional engineering as defined in Section [58-22-102](#); or

446 (c) master planning and programming services.

447 (31) "Director" means the director of the division.

448 (32) "Division" means the Division of Purchasing and General Services, created in
449 Section [63A-2-101](#).

450 (33) "Educational procurement unit" means:

451 (a) a school district;

452 (b) a public school, including a local school board and a charter school;

453 (c) the Utah Schools for the Deaf and Blind;

454 (d) the Utah Education and Telehealth Network; [or]

455 (e) an institution of higher education of the state[-]; or

456 (f) the State Board of Education.

457 (34) "Established catalogue price" means the price included in a catalogue, price list,
458 schedule, or other form that:

459 (a) is regularly maintained by a manufacturer or contractor;

460 (b) is published or otherwise available for inspection by customers; and

461 (c) states prices at which sales are currently or were last made to a significant number

462 of any category of buyers or buyers constituting the general buying public for the supplies or
463 services involved.

464 (35) "Executive branch procurement unit" means a department, division, office,
465 bureau, agency, or other organization within the state executive branch.

466 (36) "Fixed price contract" means a contract that provides a price, for each
467 procurement item obtained under the contract, that is not subject to adjustment except to the
468 extent that:

469 (a) the contract provides, under circumstances specified in the contract, for an
470 adjustment in price that is not based on cost to the contractor; or

471 (b) an adjustment is required by law.

472 (37) "Fixed price contract with price adjustment" means a fixed price contract that
473 provides for an upward or downward revision of price, precisely described in the contract, that:

474 (a) is based on the consumer price index or another commercially acceptable index,
475 source, or formula; and

476 (b) is not based on a percentage of the cost to the contractor.

477 (38) "Grant" means an expenditure of public funds or other assistance, or an agreement
478 to expend public funds or other assistance, for a public purpose authorized by law, without
479 acquiring a procurement item in exchange.

480 (39) "Head of a procurement unit" means:

481 (a) for a legislative procurement unit, any person designated by rule made by the
482 applicable rulemaking authority;

483 (b) for an executive branch procurement unit:

484 (i) the director of the division; or

485 (ii) any other person designated by the board, by rule;

486 (c) for a judicial procurement unit:

487 (i) the Judicial Council; or

488 (ii) any other person designated by the Judicial Council, by rule;

489 (d) for a local government procurement unit:

490 (i) the legislative body of the local government procurement unit; or

491 (ii) any other person designated by the local government procurement unit;

492 (e) for a local district other than a public transit district, the board of trustees of the

493 local district or a designee of the board of trustees;

494 (f) for a special service district, the governing body of the special service district or a
495 designee of the governing body;

496 (g) for a local building authority, the board of directors of the local building authority or
497 a designee of the board of directors;

498 (h) for a conservation district, the board of supervisors of the conservation district or a
499 designee of the board of supervisors;

500 (i) for a public corporation, the board of directors of the public corporation or a
501 designee of the board of directors;

502 (j) for a school district or any school or entity within a school district, the board of the
503 school district, or the board's designee;

504 (k) for a charter school, the individual or body with executive authority over the charter
505 school, or the individual's or body's designee;

506 (l) for an institution of higher education of the state, the president of the institution of
507 higher education, or the president's designee; [~~or~~]

508 (m) for a public transit district, the board of trustees or a designee of the board of
509 trustees[~~;~~]; or

510 (n) for the State Board of Education, the State Board of Education or a designee of the
511 State Board of Education.

512 (40) "Immaterial error":

513 (a) means an irregularity or abnormality that is:

514 (i) a matter of form that does not affect substance; or

515 (ii) an inconsequential variation from a requirement of a solicitation that has no, little,
516 or a trivial effect on the procurement process and that is not prejudicial to other vendors; and

517 (b) includes:

518 (i) a missing signature, missing acknowledgment of an addendum, or missing copy of a
519 professional license, bond, or insurance certificate;

520 (ii) a typographical error;

521 (iii) an error resulting from an inaccuracy or omission in the solicitation; and

522 (iv) any other error that the chief procurement officer or the head of a procurement unit
523 with independent procurement authority reasonably considers to be immaterial.

- 524 (41) "Indefinite quantity contract" means a fixed price contract that:
525 (a) is for an indefinite amount of procurement items to be supplied as ordered by a
526 procurement unit; and
527 (b) (i) does not require a minimum purchase amount; or
528 (ii) provides a maximum purchase limit.
- 529 (42) "Independent procurement authority" means authority granted to a procurement
530 unit under Subsection [63G-6a-106\(4\)\(a\)](#).
- 531 (43) "Invitation for bids":
532 (a) means a document used to solicit:
533 (i) bids to provide a procurement item to a procurement unit; or
534 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
535 (b) includes all documents attached to or incorporated by reference in a document
536 described in Subsection (43)(a).
- 537 (44) "Issuing procurement unit" means a procurement unit that:
538 (a) reviews a solicitation to verify that it is in proper form;
539 (b) causes the notice of a solicitation to be published; and
540 (c) negotiates and approves the terms and conditions of a contract.
- 541 (45) "Judicial procurement unit" means:
542 (a) the Utah Supreme Court;
543 (b) the Utah Court of Appeals;
544 (c) the Judicial Council;
545 (d) a state judicial district; or
546 (e) an office, committee, subcommittee, or other organization within the state judicial
547 branch.
- 548 (46) "Labor hour contract" is a contract under which:
549 (a) the supplies and materials are not provided by, or through, the contractor; and
550 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and
551 profit for a specified number of labor hours or days.
- 552 (47) "Legislative procurement unit" means:
553 (a) the Legislature;
554 (b) the Senate;

555 (c) the House of Representatives;
556 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
557 (e) an office, committee, subcommittee, commission, or other organization within the
558 state legislative branch.

559 (48) "Local building authority" means the same as that term is defined in Section
560 17D-2-102.

561 (49) "Local district" means the same as that term is defined in Section 17B-1-102.

562 (50) "Local government procurement unit" means:

563 (a) a county or municipality, and each office or agency of the county or municipality,
564 unless the county or municipality adopts its own procurement code by ordinance;

565 (b) a county or municipality that has adopted this entire chapter by ordinance, and each
566 office or agency of that county or municipality; or

567 (c) a county or municipality that has adopted a portion of this chapter by ordinance, to
568 the extent that a term in the ordinance is used in the adopted portion of this chapter, and each
569 office or agency of that county or municipality.

570 (51) "Multiple award contracts" means the award of a contract for an indefinite
571 quantity of a procurement item to more than one bidder or offeror.

572 (52) "Multiyear contract" means a contract that extends beyond a one-year period,
573 including a contract that permits renewal of the contract, without competition, beyond the first
574 year of the contract.

575 (53) "Municipality" means a city, town, or metro township.

576 (54) "Nonadopting local government procurement unit" means:

577 (a) a county or municipality that has not adopted Part 16, Protests, Part 17,
578 Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19,
579 General Provisions Related to Protest or Appeal; and

580 (b) each office or agency of a county or municipality described in Subsection (54)(a).

581 (55) "Offeror" means a person who submits a proposal in response to a request for
582 proposals.

583 (56) "Person" means the same as that term is defined in Section 68-3-12.5, excluding a
584 political subdivision and a government office, department, division, bureau, or other body of
585 government.

586 (57) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference
587 under the requirements of this chapter.

588 (58) "Procure" means to acquire a procurement item through a procurement.

589 (59) "Procurement":

590 (a) means a procurement unit's acquisition of a procurement item through an
591 expenditure of public funds, or an agreement to expend public funds;

592 (b) includes all functions that pertain to the acquisition of a procurement item,
593 including:

594 (i) preparing and issuing a solicitation; and

595 (ii) (A) conducting a standard procurement process; or

596 (B) conducting a procurement process that is an exception to a standard procurement
597 process under Part 8, Exceptions to Procurement Requirements; and

598 (c) does not include a grant.

599 (60) "Procurement item" means a supply, a service, or construction.

600 (61) "Procurement officer" means:

601 (a) for a procurement unit with independent procurement authority:

602 (i) the head of the procurement unit;

603 (ii) a designee of the head of the procurement unit; or

604 (iii) a person designated by rule made by the applicable rulemaking authority; or

605 (b) for the division or a procurement unit without independent procurement authority,
606 the chief procurement officer.

607 (62) "Procurement unit":

608 (a) means:

609 (i) a legislative procurement unit;

610 (ii) an executive branch procurement unit;

611 (iii) a judicial procurement unit;

612 (iv) an educational procurement unit;

613 (v) a local government procurement unit;

614 (vi) a local district;

615 (vii) a special service district;

616 (viii) a local building authority;

- 617 (ix) a conservation district;
- 618 (x) a public corporation; or
- 619 (xi) a public transit district; and

620 (b) does not include a political subdivision created under Title 11, Chapter 13,
621 Interlocal Cooperation Act.

622 (63) "Professional service" means labor, effort, or work that requires an elevated
623 degree of specialized knowledge and discretion, including labor, effort, or work in the field of:

- 624 (a) accounting;
- 625 (b) architecture;
- 626 (c) construction design and management;
- 627 (d) engineering;
- 628 (e) financial services;
- 629 (f) information technology;
- 630 (g) the law;
- 631 (h) medicine;
- 632 (i) psychiatry; or
- 633 (j) underwriting.

634 (64) "Protest officer" means:

- 635 (a) for the division or a procurement unit with independent procurement authority:
 - 636 (i) the head of the procurement unit;
 - 637 (ii) a designee of the head of the procurement unit; or
 - 638 (iii) a person designated by rule made by the applicable rulemaking authority; or
- 639 (b) for a procurement unit without independent procurement authority, the chief
640 procurement officer or the chief procurement officer's designee.

641 (65) "Public corporation" means the same as that term is defined in Section [63E-1-102](#).

642 (66) "Public entity" means any government entity of the state or political subdivision of
643 the state, including:

- 644 (a) a procurement unit;
- 645 (b) a municipality or county, regardless of whether the municipality or county has
646 adopted this chapter or any part of this chapter; and
- 647 (c) any other government entity located in the state that expends public funds.

648 (67) "Public facility" means a building, structure, infrastructure, improvement, or other
649 facility of a public entity.

650 (68) "Public funds" means money, regardless of its source, including from the federal
651 government, that is owned or held by a procurement unit.

652 (69) "Public transit district" means a public transit district organized under Title 17B,
653 Chapter 2a, Part 8, Public Transit District Act.

654 (70) "Qualified vendor" means a vendor who:

655 (a) is responsible; and

656 (b) submits a responsive statement of qualifications under Section [63G-6a-410](#) that
657 meets the minimum mandatory requirements, evaluation criteria, and any applicable score
658 thresholds set forth in the request for statement of qualifications.

659 (71) "Real property" means land and any building, fixture, improvement, appurtenance,
660 structure, or other development that is permanently affixed to land.

661 (72) "Request for information" means a nonbinding process through which a
662 procurement unit requests information relating to a procurement item.

663 (73) "Request for proposals" means a document used to solicit proposals to provide a
664 procurement item to a procurement unit, including all other documents that are attached to that
665 document or incorporated in that document by reference.

666 (74) "Request for proposals process" means the procurement process described in Part
667 7, Request for Proposals.

668 (75) "Request for statement of qualifications" means a document used to solicit
669 information about the qualifications of a person interested in responding to a potential
670 procurement, including all other documents attached to that document or incorporated in that
671 document by reference.

672 (76) "Requirements contract" means a contract:

673 (a) under which a contractor agrees to provide a procurement unit's entire requirements
674 for certain procurement items at prices specified in the contract during the contract period; and

675 (b) that:

676 (i) does not require a minimum purchase amount; or

677 (ii) provides a maximum purchase limit.

678 (77) "Responsible" means being capable, in all respects, of:

679 (a) meeting all the requirements of a solicitation; and
680 (b) fully performing all the requirements of the contract resulting from the solicitation,
681 including being financially solvent with sufficient financial resources to perform the contract.

682 (78) "Responsive" means conforming in all material respects to the requirements of a
683 solicitation.

684 (79) "Sealed" means manually or electronically secured to prevent disclosure.

685 (80) "Service":

686 (a) means labor, effort, or work to produce a result that is beneficial to a procurement
687 unit;

688 (b) includes a professional service; and

689 (c) does not include labor, effort, or work provided under an employment agreement or
690 a collective bargaining agreement.

691 (81) "Small purchase process" means the procurement process described in Section
692 [63G-6a-506](#).

693 (82) "Sole source contract" means a contract resulting from a sole source procurement.

694 (83) "Sole source procurement" means a procurement without competition pursuant to
695 a determination under Subsection [63G-6a-802\(1\)\(a\)](#) that there is only one source for the
696 procurement item.

697 (84) "Solicitation" means an invitation for bids, request for proposals, request for
698 statement of qualifications, or request for information.

699 (85) "Solicitation response" means:

700 (a) a bid submitted in response to an invitation for bids;

701 (b) a proposal submitted in response to a request for proposals; or

702 (c) a statement of qualifications submitted in response to a request for statement of
703 qualifications.

704 (86) "Special service district" means the same as that term is defined in Section
705 [17D-1-102](#).

706 (87) "Specification" means any description of the physical or functional characteristics
707 or of the nature of a procurement item included in an invitation for bids or a request for
708 proposals, or otherwise specified or agreed to by a procurement unit, including a description of:

709 (a) a requirement for inspecting or testing a procurement item; or

- 710 (b) preparing a procurement item for delivery.
- 711 (88) "Standard procurement process" means:
- 712 (a) the bidding process;
- 713 (b) the request for proposals process;
- 714 (c) the approved vendor list process;
- 715 (d) the small purchase process; or
- 716 (e) the design professional procurement process.
- 717 (89) "State cooperative contract" means a contract awarded by the division for and in
- 718 behalf of all public entities.
- 719 (90) "Statement of qualifications" means a written statement submitted to a
- 720 procurement unit in response to a request for statement of qualifications.
- 721 (91) "Subcontractor":
- 722 (a) means a person under contract with a contractor or another subcontractor to provide
- 723 services or labor for design or construction;
- 724 (b) includes a trade contractor or specialty contractor; and
- 725 (c) does not include a supplier who provides only materials, equipment, or supplies to a
- 726 contractor or subcontractor.
- 727 (92) "Supply" means a good, material, technology, piece of equipment, or any other
- 728 item of personal property.
- 729 (93) "Tie bid" means that the lowest responsive bids of responsible bidders are
- 730 identical in price.
- 731 (94) "Time and materials contract" means a contract under which the contractor is paid:
- 732 (a) the actual cost of direct labor at specified hourly rates;
- 733 (b) the actual cost of materials and equipment usage; and
- 734 (c) an additional amount, expressly described in the contract, to cover overhead and
- 735 profit, that is not based on a percentage of the cost to the contractor.
- 736 (95) "Transitional costs":
- 737 (a) means the costs of changing:
- 738 (i) from an existing provider of a procurement item to another provider of that
- 739 procurement item; or
- 740 (ii) from an existing type of procurement item to another type;

- 741 (b) includes:
- 742 (i) training costs;
- 743 (ii) conversion costs;
- 744 (iii) compatibility costs;
- 745 (iv) costs associated with system downtime;
- 746 (v) disruption of service costs;
- 747 (vi) staff time necessary to implement the change;
- 748 (vii) installation costs; and
- 749 (viii) ancillary software, hardware, equipment, or construction costs; and
- 750 (c) does not include:
- 751 (i) the costs of preparing for or engaging in a procurement process; or
- 752 (ii) contract negotiation or drafting costs.
- 753 (96) "Trial use contract" means a contract for a procurement item that the procurement
- 754 unit acquires for a trial use or testing to determine whether the procurement item will benefit
- 755 the procurement unit.
- 756 (97) "Vendor":
- 757 (a) means a person who is seeking to enter into a contract with a procurement unit to
- 758 provide a procurement item; and
- 759 (b) includes:
- 760 (i) a bidder;
- 761 (ii) an offeror;
- 762 (iii) an approved vendor; and
- 763 (iv) a design professional.
- 764 Section 5. Section **67-19-3** is amended to read:
- 765 **67-19-3. Definitions.**
- 766 As used in this chapter:
- 767 (1) "Agency" means any department or unit of Utah state government with authority to
- 768 employ personnel.
- 769 (2) "Career service" means positions under schedule B as defined in Section [67-19-15](#).
- 770 (3) "Career service employee" means an employee who has successfully completed a
- 771 probationary period of service in a position covered by the career service.

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

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

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

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

779 (b) "Demotion" does not mean:

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

782 (ii) a reclassification of an employee's position under the provisions of Subsection
783 67-19-12(3) and rules made by the department.

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

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

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

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

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

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

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

794 (b) under rules of the department; and

795 (c) under other state or federal statute.

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

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

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

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

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

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

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

811 Section 6. Section 67-19-6.7 is amended to read:

812 **67-19-6.7. Overtime policies for state employees.**

813 (1) As used in this section:

814 (a) "Accrued overtime hours" means:

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

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

819 (b) "Appointed official" means:

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

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

824 (A) is paid a salary by the state; and

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

826 (c) "Department" means the Department of Administrative Services, the Department of
827 Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage
828 Control, the Insurance Department, the Public Service Commission, the Labor Commission,
829 the Department of Agriculture and Food, the Department of Human Services, [~~the State Board
830 of Education,~~] the Department of Natural Resources, the Department of Technology Services,
831 the Department of Transportation, the Department of Commerce, the Department of Workforce
832 Services, the State Tax Commission, the Department of Heritage and Arts, the Department of
833 Health, the National Guard, the Department of Environmental Quality, the Department of

834 Public Safety, the Department of Human Resource Management, the Commission on Criminal
835 and Juvenile Justice, all merit employees except attorneys in the Office of the Attorney
836 General, merit employees in the Office of the State Treasurer, merit employees in the Office of
837 the State Auditor, Department of Veterans' and Military Affairs, and the Board of Pardons and
838 Parole.

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

841 (e) "Exempt employee" means a state employee who is exempt as defined by the Fair
842 Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

843 (f) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

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

847 (h) "Nonexempt employee" means a state employee who is nonexempt as defined by
848 the Department of Human Resource Management applying FLSA requirements.

849 (i) "Overtime" means actual time worked in excess of the employee's defined work
850 period.

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

853 (k) "State employee" means every person employed by a department who is not:

854 (i) an appointed official;

855 (ii) an elected official; or

856 (iii) a member of a board or commission who is paid only for per diem or travel
857 expenses[~~; or~~].

858 [~~(iv) employed on a contractual basis by the State Board of Education.~~]

859 (l) "Uniform annual date" means the date when an exempt employee's accrued
860 overtime lapses.

861 (m) "Work period" means:

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

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

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

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

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

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

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

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

878 (c) Any nonexempt employee who elects to take time off under this Subsection (3)
879 shall be paid for any overtime worked in excess of the cap established by the Department of
880 Human Resource Management.

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

883 (e) Each department shall:

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

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

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

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

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

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

900 (b) (i) Each department shall:

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

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

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

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

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

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

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

917 (ii) unless authorized by the executive director of the Department of Human Resource
918 Management under Subsection (4)(a)(ii), a department may not compensate the exempt
919 employee for that lapsed overtime by paying the employee for the overtime or by granting the
920 employee time off for the lapsed overtime.

921 (e) Before working any overtime, each exempt employee shall obtain authorization to
922 work overtime from the exempt employee's immediate supervisor.

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

926 (5) The Department of Human Resource Management shall:

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

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

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

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

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

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

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

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

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

946 (vii) establishing procedures for adjudicating appeals of any FLSA determinations
947 made by the Department of Human Resource Management as required by this section;

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

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

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

954 (a) Notwithstanding the procedures and requirements of Title 63G, Chapter 4,
955 Administrative Procedures Act, Section 67-19-31, and Section 67-19a-301, any employee who
956 is aggrieved by the FLSA designation made by the Department of Human Resource
957 Management as required by this section may appeal that determination to the executive director

958 of the Department of Human Resource Management by following the procedures and
959 requirements established in Department of Human Resource Management rule.

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

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

966 Section 7. Section **67-19-12** is amended to read:

967 **67-19-12. State pay plans -- Applicability of section -- Exemptions -- Duties of the**
968 **executive director.**

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

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

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

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

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

976 (c) elected members of the executive branch and employees designated as schedule AC
977 as provided under Subsection [67-19-15\(1\)\(c\)](#);

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

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

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

982 Subsection (2);

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

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

985 (i) schedule AS employees as provided under Subsection [67-19-15\(1\)\(~~t~~\)\(m\)](#);

986 (j) department deputy directors, division directors, and other employees designated as
987 schedule AD as provided under Subsection [67-19-15\(1\)\(d\)](#);

988 (k) employees that determine and execute policy designated as schedule AR as

989 provided under Subsection 67-19-15(1)(~~k~~)(l);

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

992 (m) temporary employees described in Subsection 67-19-15(1)(~~p~~)(q);

993 (n) patients and inmates designated as schedule AU as provided under Subsection
994 67-19-15(1)(~~n~~)(o) who are employed by state institutions; and

995 (o) members of state and local boards and councils and other employees designated as
996 schedule AQ as provided under Subsection 67-19-15(1)(~~f~~)(k).

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

1000 (b) Classification of positions shall be based upon similarity of duties performed and
1001 responsibilities assumed, so that the same job requirements and the same salary range may be
1002 applied equitably to each position in the same class.

1003 (c) The executive director shall allocate or reallocate the position of each employee in
1004 classified service to one of the classes in the classification plan.

1005 (d) (i) The department shall conduct periodic studies and interviews to provide that the
1006 classification plan remains reasonably current and reflects the duties and responsibilities
1007 assigned to and performed by employees.

1008 (ii) The executive director shall determine the need for studies and interviews after
1009 considering factors such as changes in duties and responsibilities of positions or agency
1010 reorganizations.

1011 (4) (a) With the approval of the governor, the executive director shall develop and
1012 adopt pay plans for each position in classified service.

1013 (b) The executive director shall design each pay plan to achieve, to the degree that
1014 funds permit, comparability of state salary ranges to the market using data obtained from
1015 private enterprise and other public employment for similar work.

1016 (c) The executive director shall adhere to the following in developing each pay plan:

1017 (i) Each pay plan shall consist of sufficient salary ranges to:

1018 (A) permit adequate salary differential among the various classes of positions in the
1019 classification plan; and

1020 (B) reflect the normal growth and productivity potential of employees in that class.

1021 (ii) The executive director shall issue rules for the administration of pay plans.

1022 (d) The establishing of a salary range is a nondelegable activity and is not appealable

1023 under the grievance procedures of Sections 67-19-30 through 67-19-32, Chapter 19a,

1024 Grievance Procedures, or otherwise.

1025 (e) The executive director shall issue rules providing for:

1026 (i) agency approved salary adjustments within approved salary ranges, including an

1027 administrative salary adjustment;

1028 (ii) legislatively approved salary adjustments within approved salary ranges, including

1029 a merit increase, subject to Subsection (4)(f), or general increase; and

1030 (iii) structure adjustments that modify salary ranges, including a cost of living

1031 adjustment or market comparability adjustment.

1032 (f) A merit increase shall be granted on a uniform and consistent basis to each

1033 employee who receives a rating of "successful" or higher in an annual evaluation of the

1034 employee's productivity and performance.

1035 (5) (a) By October 31 of each year, the executive director shall submit an annual

1036 compensation plan to the governor for consideration in the executive budget.

1037 (b) The plan described in Subsection (5)(a) may include recommendations, including:

1038 (i) salary increases that generally affect employees, including a general increase or

1039 merit increase;

1040 (ii) salary increases that address compensation issues unique to an agency or

1041 occupation;

1042 (iii) structure adjustments, including a cost of living adjustment or market

1043 comparability adjustment; or

1044 (iv) changes to employee benefits.

1045 (c) (i) (A) Subject to Subsection (5)(c)(i)(B) or (C), the executive director shall

1046 incorporate the results of a salary survey of a reasonable cross section of comparable positions

1047 in private and public employment in the state into the annual compensation plan.

1048 (B) The salary survey for a law enforcement officer, as defined in Section 53-13-103, a

1049 correctional officer, as defined in Section 53-13-104, or a dispatcher, as defined in Section

1050 53-6-102, shall at minimum include the three largest political subdivisions in the state that

1051 employ, respectively, comparable positions.

1052 (C) The salary survey for an examiner or supervisor described in Title 7, Chapter 1,
1053 Part 2, Department of Financial Institutions, shall at minimum include the Federal Deposit
1054 Insurance Corporation, Federal Reserve, and National Credit Union Administration.

1055 (ii) The executive director may cooperate with or participate in any survey conducted
1056 by other public and private employers.

1057 (iii) The executive director shall obtain information for the purpose of constructing the
1058 survey from the Division of Workforce Information and Payment Services and shall include
1059 employer name, number of persons employed by the employer, employer contact information
1060 and job titles, county code, and salary if available.

1061 (iv) The department shall acquire and protect the needed records in compliance with
1062 the provisions of Section [35A-4-312](#).

1063 (d) The executive director may incorporate any other relevant information in the plan
1064 described in Subsection (5)(a), including information on staff turnover, recruitment data, or
1065 external market trends.

1066 (e) The executive director shall:

1067 (i) establish criteria to assure the adequacy and accuracy of data used to make
1068 recommendations described in this Subsection (5); and

1069 (ii) when preparing recommendations use accepted methodologies and techniques
1070 similar to and consistent with those used in the private sector.

1071 (f) (i) Upon request and subject to Subsection (5)(f)(ii), the department shall make
1072 available foundational information used by the department or director in the drafting of a plan
1073 described in Subsection (5)(a), including:

1074 (A) demographic and labor market information;

1075 (B) information on employee turnover;

1076 (C) salary information;

1077 (D) information on recruitment; and

1078 (E) geographic data.

1079 (ii) The department may not provide under Subsection (5)(f)(i) information or other
1080 data that is proprietary or otherwise protected under the terms of a contract or by law.

1081 (g) The governor shall:

1082 (i) consider salary and structure adjustments recommended under Subsection (5)(b) in
1083 preparing the executive budget and shall recommend the method of distributing the
1084 adjustments;

1085 (ii) submit compensation recommendations to the Legislature; and

1086 (iii) support the recommendation with schedules indicating the cost to individual
1087 departments and the source of funds.

1088 (h) If funding is approved by the Legislature in a general appropriations act, the
1089 adjustments take effect on the July 1 following the enactment unless otherwise indicated.

1090 (6) (a) The executive director shall issue rules for the granting of incentive awards,
1091 including awards for cost saving actions, awards for commendable actions by an employee, or
1092 a market-based award to attract or retain employees.

1093 (b) An agency may not grant a market-based award unless the award is previously
1094 approved by the department.

1095 (c) In accordance with Subsection (6)(b), an agency requesting the department's
1096 approval of a market-based award shall submit a request and documentation, subject to
1097 Subsection (6)(d), to the department.

1098 (d) In the documentation required in Subsection (6)(c), the requesting agency shall
1099 identify for the department:

1100 (i) any benefit the market-based award would provide for the agency, including:

1101 (A) budgetary advantages; or

1102 (B) recruitment advantages;

1103 (ii) a mission critical need to attract or retain unique or hard to find skills in the market;

1104 or

1105 (iii) any other advantage the agency would gain through the utilization of a
1106 market-based award.

1107 (7) (a) The executive director shall regularly evaluate the total compensation program
1108 of state employees in the classified service.

1109 (b) The department shall determine if employee benefits are comparable to those
1110 offered by other private and public employers using information from:

1111 (i) a study conducted by a third-party consultant; or

1112 (ii) the most recent edition of a nationally recognized benefits survey.

1113 Section 8. Section **67-19-15** is amended to read:

1114 **67-19-15. Career service -- Exempt positions -- Schedules for civil service**
 1115 **positions -- Coverage of career service provisions.**

1116 (1) Except as otherwise provided by law or by rules and regulations established for
 1117 federally aided programs, the following positions are exempt from the career service provisions
 1118 of this chapter and are designated under the following schedules:

1119 (a) schedule AA includes the governor, members of the Legislature, and all other
 1120 elected state officers;

1121 (b) schedule AB includes appointed executives and board or commission executives
 1122 enumerated in Section [67-22-2](#);

1123 (c) schedule AC includes all employees and officers in:

1124 (i) the office and at the residence of the governor;

1125 (ii) the Utah Science Technology and Research Initiative (USTAR);

1126 (iii) the Public Lands Policy Coordinating Council;

1127 (iv) the Office of the State Auditor; and

1128 (v) the Office of the State Treasurer;

1129 (d) schedule AD includes employees who:

1130 (i) are in a confidential relationship to an agency head or commissioner; and

1131 (ii) report directly to, and are supervised by, a department head, commissioner, or
 1132 deputy director of an agency or its equivalent;

1133 (e) schedule AE includes each employee of the State Board of Education that the State
 1134 Board of Education designates as exempt from the career service provisions of this chapter;

1135 ~~[(e)]~~ (f) schedule AG includes employees in the Office of the Attorney General who are
 1136 under their own career service pay plan under Sections [67-5-7](#) through [67-5-13](#);

1137 ~~[(f)]~~ (g) schedule AH includes:

1138 (i) teaching staff of all state institutions; and

1139 (ii) employees of the Utah Schools for the Deaf and the Blind who are:

1140 (A) educational interpreters as classified by the department; or

1141 (B) educators as defined by Section [53A-25b-102](#);

1142 ~~[(g)]~~ (h) schedule AN includes employees of the Legislature;

1143 ~~[(h)]~~ (i) schedule AO includes employees of the judiciary;

- 1144 ~~[(j)]~~ (j) schedule AP includes all judges in the judiciary;
- 1145 ~~[(j)]~~ (k) schedule AQ includes:
- 1146 (i) members of state and local boards and councils appointed by the governor and
- 1147 governing bodies of agencies;
- 1148 (ii) a water commissioner appointed under Section [73-5-1](#);
- 1149 (iii) other local officials serving in an ex officio capacity; and
- 1150 (iv) officers, faculty, and other employees of state universities and other state
- 1151 institutions of higher education;
- 1152 ~~[(k)]~~ (l) schedule AR includes employees in positions that involve responsibility:
- 1153 (i) for determining policy;
- 1154 (ii) for determining the way in which a policy is carried out; or
- 1155 (iii) of a type not appropriate for career service, as determined by the agency head with
- 1156 the concurrence of the executive director;
- 1157 ~~[(l)]~~ (m) schedule AS includes any other employee:
- 1158 (i) whose appointment is required by statute to be career service exempt;
- 1159 (ii) whose agency is not subject to this chapter; or
- 1160 (iii) whose agency has authority to make rules regarding the performance,
- 1161 compensation, and bonuses for its employees;
- 1162 ~~[(m)]~~ (n) schedule AT includes employees of the Department of Technology Services,
- 1163 designated as executive/professional positions by the executive director of the Department of
- 1164 Technology Services with the concurrence of the executive director;
- 1165 ~~[(n)]~~ (o) schedule AU includes patients and inmates employed in state institutions;
- 1166 ~~[(o)]~~ (p) employees of the Department of Workforce Services, designated as schedule
- 1167 AW:
- 1168 (i) who are temporary employees that are federally funded and are required to work
- 1169 under federally qualified merit principles as certified by the director; or
- 1170 (ii) for whom substantially all of their work is repetitive, measurable, or transaction
- 1171 based, and who voluntarily apply for and are accepted by the Department of Workforce
- 1172 Services to work in a pay for performance program designed by the Department of Workforce
- 1173 Services with the concurrence of the executive director; and
- 1174 ~~[(p)]~~ (q) for employees in positions that are temporary, seasonal, time limited, funding

1175 limited, or variable hour in nature, under schedule codes and parameters established by the
1176 department by administrative rule.

1177 (2) The civil service shall consist of two schedules as follows:

1178 (a) (i) Schedule A is the schedule consisting of positions under Subsection (1).

1179 (ii) Removal from any appointive position under schedule A, unless otherwise
1180 regulated by statute, is at the pleasure of the appointing officers without regard to tenure.

1181 (b) Schedule B is the competitive career service schedule, consisting of:

1182 (i) all positions filled through competitive selection procedures as defined by the
1183 executive director; or

1184 (ii) positions filled through a department approved on-the-job examination intended to
1185 appoint a qualified person with a disability, or a veteran in accordance with Title 71, Chapter
1186 10, Veteran's Preference.

1187 (3) (a) The executive director, after consultation with the heads of concerned executive
1188 branch departments and agencies and with the approval of the governor, shall allocate positions
1189 to the appropriate schedules under this section.

1190 (b) Agency heads shall make requests and obtain approval from the executive director
1191 before changing the schedule assignment and tenure rights of any position.

1192 (c) Unless the executive director's decision is reversed by the governor, when the
1193 executive director denies an agency's request, the executive director's decision is final.

1194 (4) (a) Compensation for employees of the Legislature shall be established by the
1195 directors of the legislative offices in accordance with Section [36-12-7](#).

1196 (b) Compensation for employees of the judiciary shall be established by the state court
1197 administrator in accordance with Section [78A-2-107](#).

1198 (c) Compensation for officers, faculty, and other employees of state universities and
1199 institutions of higher education shall be established as provided in Title 53B, Chapter 1,
1200 Governance, Powers, Rights, and Responsibilities, and Title 53B, Chapter 2, Institutions of
1201 Higher Education.

1202 (d) Unless otherwise provided by law, compensation for all other schedule A
1203 employees shall be established by their appointing authorities, within ranges approved by, and
1204 after consultation with the executive director of the Department of Human Resource
1205 Management.

1206 (5) An employee who is in a position designated schedule AC and who holds career
1207 service status on June 30, 2010, shall retain the career service status if the employee:

- 1208 (a) remains in the position that the employee is in on June 30, 2010; and
- 1209 (b) does not elect to convert to career service exempt status in accordance with a rule
1210 made by the department.

1211 Section 9. Section **67-19-15.6** is amended to read:

1212 **67-19-15.6. Longevity salary increases.**

1213 (1) Except for those employees in schedule AB, as provided under Section 67-19-15,
1214 and employees described in Subsection 67-19-15(1)(~~p~~)(q), an employee shall receive an
1215 increase in salary of 2.75% if that employee:

- 1216 (a) holds a position under schedule A or B as provided under Section 67-19-15;
- 1217 (b) has reached the maximum of the salary range in the position classification;
- 1218 (c) has been employed with the state for eight years; and
- 1219 (d) is rated eligible in job performance under guidelines established by the executive
1220 director.

1221 (2) Any employee who meets the criteria under Subsection (1) is entitled to the same
1222 increase in salary for each additional three years of employment if the employee maintains the
1223 eligibility standards established by the department.

1224 Section 10. Section **67-19-15.7** is amended to read:

1225 **67-19-15.7. Promotion -- Reclassification -- Market adjustment.**

1226 (1) (a) If an employee is promoted or the employee's position is reclassified to a higher
1227 salary range maximum, the agency shall place the employee within the new range of the
1228 position.

1229 (b) An agency may not set an employee's salary:

- 1230 (i) higher than the maximum in the new salary range; and
- 1231 (ii) lower than the minimum in the new salary range of the position.

1232 (c) Except for an employee described in Subsection 67-19-15(1)(~~p~~)(q), the agency
1233 shall grant a salary increase of at least 5% to an employee who is promoted.

1234 (2) An agency shall adjust the salary range for an employee whose salary range is
1235 approved by the Legislature for a market comparability adjustment consistent with Subsection
1236 67-19-12(5)(b)(i):

- 1237 (a) at the beginning of the next fiscal year; and
- 1238 (b) consistent with appropriations made by the Legislature.
- 1239 (3) Department-initiated revisions in the state classification system that result in
- 1240 consolidation or reduction of class titles or broadening of pay ranges:

1241 (a) may not be regarded as a reclassification of the position or promotion of the

1242 employee; and

1243 (b) are exempt from the provisions of Subsection (1).

1244 Section 11. Section 73-5-1 is amended to read:

1245 **73-5-1. Appointment of water commissioners -- Procedure.**

1246 (1) (a) If, in the judgment of the state engineer or the district court, it is necessary to

1247 appoint a water commissioner for the distribution of water from any river system or water

1248 source, the commissioner shall be appointed for a four-year term by the state engineer.

1249 (b) The state engineer shall determine whether all or a part of a river system or other

1250 water source shall be served by a commissioner, and if only a part is to be served, the state

1251 engineer shall determine the boundaries of that part.

1252 (c) The state engineer may appoint:

1253 (i) more than one commissioner to distribute water from all or a part of a water source;

1254 or

1255 (ii) a single commissioner to distribute water from several separate and distinct water

1256 sources.

1257 (d) A water commissioner appointed by the state engineer under this section is:

1258 (i) an employee of the Division of Water Rights;

1259 (ii) career service exempt under Subsection 67-19-15(1)(~~g~~)(k); and

1260 (iii) exempt under Subsection 67-19-12(2)(f) from the classified service provisions of

1261 Section 67-19-12.

1262 (2) (a) The state engineer shall consult with the water users before appointing a

1263 commissioner. The form of consultation and notice to be given shall be determined by the state

1264 engineer so as to best suit local conditions, while providing for full expression of majority

1265 opinion.

1266 (b) The state engineer shall act in accordance with the recommendation of a majority of

1267 the water users, if the majority of the water users:

1268 (i) agree upon:
1269 (A) a qualified individual to be appointed as a water commissioner;
1270 (B) the duties the individual shall perform; and
1271 (C) subject to the requirements of Title 49, Utah State Retirement and Insurance
1272 Benefit Act, the compensation the individual shall receive; and
1273 (ii) submit a recommendation to the state engineer on the items described in
1274 Subsection (2)(b)(i).
1275 (c) If a majority of water users do not agree on the appointment, duties, or
1276 compensation, the state engineer shall make a determination for them.
1277 (3) (a) (i) The salary and expenses of the commissioner and all other expenses of
1278 distribution, including printing, postage, equipment, water users' expenses, and any other
1279 expenses considered necessary by the state engineer, shall be borne pro rata by the users of
1280 water from the river system or water source in accordance with a schedule to be fixed by the
1281 state engineer.
1282 (ii) The schedule shall be based on the established rights of each water user, and the
1283 pro rata share shall be paid by each water user to the state engineer on or before May 1 of each
1284 year.
1285 (b) The payments shall be deposited in the Water Commissioner Fund created in
1286 Section [73-5-1.5](#).
1287 (c) If a water user fails to pay the assessment as provided by Subsection (3)(a), the state
1288 engineer may do any or all of the following:
1289 (i) create a lien upon the water right affected by filing a notice of lien in the office of
1290 the county recorder in the county where the water is diverted and bring an action to enforce the
1291 lien;
1292 (ii) forbid the use of water by the delinquent water user or the delinquent water user's
1293 successors or assignees, while the default continues; or
1294 (iii) bring an action in the district court for the unpaid expense and salary.
1295 (d) In any action brought to collect any unpaid assessment or to enforce any lien under
1296 this section, the delinquent water user shall be liable for the amount of the assessment, interest,
1297 any penalty, and for all costs of collection, including all court costs and a reasonable attorney
1298 fee.

1299 (4) (a) A commissioner may be removed by the state engineer for cause.

1300 (b) The users of water from any river system or water source may petition the district
1301 court for the removal of a commissioner and after notice and hearing, the court may order the
1302 removal of the commissioner and direct the state engineer to appoint a successor.

1303 Section 12. **Effective date.**

1304 (1) Except as provided in Subsection (2), this bill takes effect on May 9, 2017.

1305 (2) The amendments in this bill to Section [63G-6a-103](#) take effect on January 1, 2018.

Legislative Review Note
Office of Legislative Research and General Counsel