

1 **PERSONNEL MANAGEMENT ACT AMENDMENTS**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Terry R. Spencer**

5 AN ACT RELATING TO STATE OFFICERS AND EMPLOYEES; AMENDING THE
6 PERSONNEL MANAGEMENT ACT; OUTLINING PRINCIPLES GOVERNING THE
7 CAREER SERVICE SYSTEM; MODIFYING CERTAIN PROVISIONS GOVERNING THE
8 CONTRACTUAL PERFORMANCE AND DELEGATION OF PERSONNEL FUNCTIONS;
9 ALLOCATING PERSONNEL RESPONSIBILITIES; MODIFYING CERTAIN EXEMPT
10 POSITIONS; AMENDING PROVISIONS FOR VOLUNTARY ACCEPTANCE OF LOWER
11 POSITIONS AND DISMISSALS AND DEMOTIONS; MAKING TECHNICAL
12 CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

13 This act affects sections of Utah Code Annotated 1953 as follows:

14 AMENDS:

15 **35A-1-205**, as last amended by Chapter 116, Laws of Utah 1998

16 **49-8-401**, as last amended by Chapter 360, Laws of Utah 1998

17 **63A-9-501**, as enacted by Chapter 334, Laws of Utah 1996

18 **67-19-1**, as enacted by Chapter 139, Laws of Utah 1979

19 **67-19-3**, as last amended by Chapter 192, Laws of Utah 1996

20 **67-19-6**, as last amended by Chapter 271, Laws of Utah 1999

21 **67-19-6.7**, as last amended by Chapters 82 and 375, Laws of Utah 1997

22 **67-19-7**, as last amended by Chapter 139, Laws of Utah 1989

23 **67-19-8**, as last amended by Chapter 130, Laws of Utah 1995

24 **67-19-9**, as enacted by Chapter 139, Laws of Utah 1979

25 **67-19-10**, as enacted by Chapter 139, Laws of Utah 1979

26 **67-19-12**, as last amended by Chapters 10, 202 and 213, Laws of Utah 1997

27 **67-19-15**, as last amended by Chapter 213, Laws of Utah 1997

28 **67-19-15.7**, as last amended by Chapter 213, Laws of Utah 1997

29 **67-19-18**, as last amended by Chapter 130, Laws of Utah 1995

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

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

32 **35A-1-205. Workforce Appeals Board -- Chair -- Appointment -- Compensation --**
33 **Qualifications.**

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

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

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

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

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

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

44 (3) (a) The term of a member shall be six years beginning on March 1 of the year the
45 member is appointed, except that the governor shall, at the time of appointment or reappointment,
46 adjust the length of terms to ensure that the terms of members are staggered so that approximately
47 one third of the members are appointed every two years.

48 (b) When a vacancy occurs in the membership for any reason, the replacement shall be
49 appointed for the unexpired term.

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

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

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

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

58 (c) The member appointed as board chair in accordance with Subsection (5) shall be a

59 part-time employee designated under Subsection 67-19-15(1)[~~(q)~~] (m) and compensated for up to
60 40 hours of work in a two-week pay period at an hourly rate determined by the Department of
61 Human Resource Management in accordance with Title 67, Chapter 19, Utah State Personnel
62 Management Act.

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

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

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

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

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

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

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

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

75 Section 2. Section **49-8-401** is amended to read:

76 **49-8-401. Group insurance division -- Powers and duties.**

77 (1) The group insurance division of the retirement office shall:

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

79 (b) enter into contracts with private insurers to underwrite employee group benefit plans
80 and to reinsure any appropriate self-insured plans;

81 (c) publish and disseminate descriptions of all employee benefit plans under this chapter
82 in cooperation with the Department of Human Resource Management and political subdivisions;

83 (d) administer the process of claims administration of all employee benefit plans under this
84 chapter or enter into contracts, after competitive bids are taken, with other benefit administrators
85 to provide for the administration of the claims process;

86 (e) obtain an annual actuarial evaluation of all self-insured benefit plans and prepare an
87 annual report for the governor and the Legislature describing the employee benefit plans being
88 administered by the retirement office detailing historical and projected program costs and the status
89 of reserve funds;

90 (f) consult with the Department of Human Resource Management and the executive bodies
91 of other political subdivisions to evaluate employee benefit plans and develop recommendations
92 for new or improved benefit plans;

93 (g) submit annually a budget which includes total projected benefit and administrative
94 costs;

95 (h) maintain reserves sufficient to liquidate the unrevealed claims liability and other
96 liabilities of the self-funded employee group benefit plans as estimated by the board's consulting
97 actuary;

98 (i) submit its recommended benefit adjustments for state employees upon approval of the
99 board to the director of the Department of Human Resource Management. The Department of
100 Human Resource Management shall ensure that state agencies include the benefit adjustments in
101 the ~~[total]~~ agency's compensation plan recommended to the governor ~~[required by Subsection~~
102 ~~67-19-12(6)(a)]~~;

103 (j) adjust benefits, upon approval of the board, and upon appropriate notice to the state,
104 its educational institutions, and political subdivisions;

105 (k) for the purposes of stimulating competition, establishing better geographical
106 distribution of medical care services, and providing alternative health and dental plan coverage for
107 both active and retired employees, request proposals for alternative health and dental coverage at
108 least once every three years, proposals which meet the criteria specified in the request shall be
109 offered to active and retired state employees and may be offered to active and retired employees
110 of political subdivisions at the option of the political subdivision; and

111 (l) perform the same functions established in Subsections (1)(a), (b), (d), and (g) for the
112 Department of Health if the group insurance division provides program benefits to children
113 enrolled in the Utah Children's Health Insurance Program created in Title 26, Chapter 40.

114 (2) Funds budgeted and expended shall accrue from premiums paid by the various
115 employers. Administrative costs may not exceed that percentage of premium income which is
116 recommended by the board and approved by the governor and the Legislature.

117 Section 3. Section **63A-9-501** is amended to read:

118 **63A-9-501. Complaints about misuse or illegal operation of state vehicles --**
119 **Disposition.**

120 (1) The division shall refer complaints from the public about misuse or illegal operation

121 of state vehicles to the agency that is the owner or lessor of the vehicle.

122 (2) Each agency head or his designee shall;

123 (a) investigate all complaints about misuse or illegal operation of state vehicles; and ~~[shall]~~

124 (b) discipline each employee that is found to have misused or illegally operated a vehicle

125 by following the procedures set forth in the rules adopted by the ~~[Division of Personnel~~

126 ~~Management]~~ Department of Human Resource Management as authorized by Section 67-19-18.

127 Section 4. Section **67-19-1** is amended to read:

128 **67-19-1. Short title.**

129 This chapter ~~[shall be known and may be cited]~~ is known as the "Utah State ~~[Personnel]~~

130 Human Resource Management Act."

131 Section 5. Section **67-19-3** is amended to read:

132 **67-19-3. Definitions.**

133 As used in this chapter:

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

136 (2) "Agency head" means the executive director of a department, the director of a division,
137 the director or manager of an office.

138 ~~[(2)]~~ (3) "Career service" means positions under Schedule B as defined in Section
139 67-19-15.

140 ~~[(3)]~~ (4) "Career service employee" means an employee who has successfully completed
141 a probationary period of service in a position covered by the career service.

142 ~~[(4)]~~ (5) "Career service status" means status granted to employees who successfully
143 complete probationary periods for competitive career service positions.

144 ~~[(5)]~~ (6) "Classified service" means those positions subject to the classification and
145 compensation provisions of Section 67-19-12.

146 ~~[(6)]~~ (7) "Committee" means the Human Resources Advisory Committee created by this
147 chapter.

148 ~~[(7)]~~ (8) "Controlled substance" means controlled substance as defined in Section 58-37-2.

149 ~~[(8)]~~ (9) "Department" means the Department of Human Resource Management.

150 ~~[(9)]~~ (10) "Disability" means a physical or mental disability as defined and protected under
151 the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq.

152 ~~[(10)]~~ (11) "Employee" means any individual in a paid status covered by the career service
153 or classified service provisions of this chapter.

154 ~~[(11)]~~ (12) "Examining instruments" means written or other types of proficiency tests.

155 ~~[(12)]~~ (13) "Executive director," except where otherwise specified, means the executive
156 director of the department.

157 ~~[(13)]~~ (14) "Market comparability adjustment" means a salary range adjustment
158 determined necessary through a market survey of salary ranges of a reasonable cross section of
159 comparable benchmark positions in private and public employment.

160 ~~[(14)]~~ (15) "Probationary employee" means an employee serving a probationary period in
161 a career service position but who does not have career service status.

162 ~~[(15)]~~ (16) "Probationary period" means that period of time determined by the department,
163 not to exceed six months from the date of hire, that an employee serves in a career service position
164 as part of the hiring process before career service status is granted to the employee.

165 ~~[(16)]~~ (17) "Probationary status" means the status of an employee between the employee's
166 hiring and the granting of career service status.

167 ~~[(17)]~~ (18) "Total compensation" means salaries and wages, bonuses, paid leave, group
168 insurance plans, retirement, and all other benefits offered to state employees as inducements to
169 work for the state.

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

171 **67-19-6. Responsibilities of director.**

172 (1) The department shall establish a career service system designed to provide for the
173 effective implementation, by agencies, of the following merit principles:

174 (a) recruiting, selecting, and advancing employees on the basis of their relative ability,
175 knowledge, and skills, including open consideration of qualified applicants for initial appointment;

176 (b) providing for equitable and competitive compensation;

177 (c) training employees as needed to assure high-quality performance;

178 (d) retaining employees on the basis of the adequacy of their performance and separating
179 employees whose inadequate performance cannot be corrected;

180 (e) fair treatment of applicants and employees in all aspects of personnel administration
181 without regard to race, color, religion, sex, national origin, political affiliation, age, or disability,
182 and with proper regard for their privacy and constitutional rights as citizens;

183 (f) providing information to employees regarding their political rights and prohibited
184 practices under the Hatch Act; and

185 (g) providing a formal procedure for processing the appeals and grievances of employees
186 without discrimination, coercion, restraint, or reprisal.

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

189 [~~1~~] (3) The director shall:

190 (a) develop, implement, and administer a statewide program of personnel management for
191 state employees that will:

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

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

194 (iii) render assistance to state agencies in performing their missions;

195 (b) perform those functions necessary to implement this chapter unless otherwise assigned
196 or prohibited;

197 (c) perform duties assigned by the governor or statute;

198 (d) adopt rules for personnel management according to the procedures of Title 63, Chapter
199 46a, Utah Administrative Rulemaking Act;

200 (e) establish and maintain a management information system that will furnish the
201 governor, the Legislature, and agencies with current information on authorized positions, payroll,
202 and related matters concerning state personnel;

203 (f) in cooperation with other agencies, conduct research and planning activities to:

204 (i) determine and prepare for future state personnel needs;

205 (ii) develop methods for improving public personnel management; and

206 (iii) propose needed policy changes to the governor;

207 (g) study the character, causes, and extent of discrimination in state employment and
208 develop plans for its elimination through programs consistent with federal and state laws
209 governing equal employment opportunity and affirmative action in employment;

210 (h) when requested by counties, municipalities, and other political subdivisions of the
211 state, provide technical service and advice on personnel management at a charge determined by
212 the director;

213 (i) establish compensation policies and procedures for early voluntary retirement;

214 (j) confer with the heads of other agencies about human resource policies and procedures;
215 and

216 [~~(k)~~ submit an annual report to the governor and the Legislature; and]

217 [~~(H)~~ (k) (i) identify all employee positions in each agency that have been vacant for more
218 than 90 days as of August 1 of each year; and

219 (ii) by no later than September 1, of each year, provide a report of all employee positions
220 in each agency identified in Subsection (1)(l)(i) to:

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

222 (B) the Office of the Legislative Fiscal Analyst.

223 [~~(2)~~ (4) (a) After consultation with the governor and the heads of other agencies, the
224 director shall establish and coordinate statewide training programs.

225 (b) The programs developed under this Subsection [~~(2)~~ (4)] shall have application to more
226 than one agency.

227 (c) The department may not establish training programs that train employees to perform
228 highly specialized or technical jobs and tasks.

229 [~~(3)~~ (5) (a) (i) The department may collect fees for training as authorized by this
230 Subsection [~~(3)~~ (5)].

231 (ii) Training funded from General Fund appropriations shall be treated as a separate
232 program within the department budget.

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

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

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

239 (ii) Each year, as part of the appropriations process, the Legislature shall review the
240 amount of nonlapsing funds remaining at the end of the fiscal year and may, by statute, require the
241 department to lapse a portion of the funds.

242 Section 7. Section **67-19-6.7** is amended to read:

243 **67-19-6.7. Overtime policies for state employees.**

244 (1) As used in this section:

245 (a) "Accrued overtime hours" means:

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

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

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

252 (c) "Appointed official" means:

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

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

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

258 (B) who exercises managerial, policymaking, or advisory responsibility.

259 (d) "Department" means the Department of Administrative Services, the Department of
260 Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage
261 Control, the Insurance Department, the Public Service Commission, the Labor Commission, the
262 Department of Agriculture and Food, the Department of Human Services, the State Board of
263 Education, the Department of Natural Resources, the Department of Transportation, the
264 Department of Commerce, the Department of Workforce Services, the State Tax Commission, the
265 Department of Community and Economic Development, the Department of Health, the National
266 Guard, the Department of Environmental Quality, the Department of Public Safety, the Department
267 of Human Resource Management, the Commission on Criminal and Juvenile Justice, all merit
268 employees except attorneys in the Office of the Attorney General, merit employees in the Office
269 of the State Treasurer, and merit employees in the Office of the State Auditor.

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

272 (f) "Exempt employee" means a state employee who is exempt as defined by the FLSA.

273 (g) "FLSA" means the Fair Labor Standards Act, 29 U.S.C. Section 201 et seq. (1978).

274 (h) "Human Resource Management" means the Department of Human Resource
275 Management.

276 (i) "Nonexempt employee" means a state employee who is nonexempt as defined by
277 Human Resource Management applying FLSA requirements.

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

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

281 (l) (i) "State employee" means every person employed by a department who is not an
282 appointed official or an elected official.

283 (ii) "State employee" does not mean~~[(A)]~~ certificated employees of the State Board of
284 Education~~[, and]~~.

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

287 (m) "Uniform annual date" means the date when an exempt employee's accrued overtime
288 lapses.

289 (n) "Work period" means:

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

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

293 (iii) for nonexempt law enforcement and hospital employees, the period established by
294 each department by rule for those employees according to the requirements of the FLSA.

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

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

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

301 (i) taking time off work at the rate of one ~~[and one-half]~~ 1-1/2 hour off for each overtime
302 hour worked; or

303 (ii) being paid for the overtime worked at the rate of ~~[and one-half]~~ 1-1/2 times the rate
304 per hour that the state employee receives for nonovertime work.

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

307 Management.

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

310 (e) Each department shall:

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

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

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

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

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

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

327 (b) (i) Each department shall:

328 (A) establish in its written personnel policies a uniform annual date for each division that
329 is at the end of any pay period; and

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

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

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

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

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

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

343 (ii) unless authorized by the director of Human Resource Management under Subsection
344 (4)(a)(ii), a department may not compensate the exempt employee for that lapsed overtime by
345 paying the employee for the overtime or by granting the employee time off for the lapsed overtime.

346 (e) Before working any overtime, each exempt employee shall obtain authorization to work
347 overtime from their immediate supervisor.

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

351 (5) Human Resource Management shall:

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

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

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

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

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

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

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

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

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

371 (vii) establishing procedures for adjudicating appeals of any FLSA determinations made
 372 by Human Resource Management as required by this section;

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

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

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

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

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

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

389 Section 8. Section **67-19-7** is amended to read:

390 **67-19-7. State agencies contracting to perform personnel functions on own behalf.**

391 (1) ~~[The director may]~~ Except as provided in Section 67-19-8, the director shall contract
 392 with ~~[any agency to allow the]~~ each agency to perform ~~[specified]~~ all personnel functions ~~[on its~~
 393 ~~own behalf]~~.

394 ~~[(2) In evaluating whether or not to allow any agency to perform its own personnel~~
 395 ~~functions, the director shall consider:]~~

396 ~~[(a) the size of the agency;]~~

397 ~~[(b) the nature of the work performed by the agency; and]~~

398 ~~[(c) the type of recruitment necessary to attract applicants for available positions in the~~
 399 ~~agency:]~~

400 ~~[(3) If the director contracts with an agency to allow the agency to perform its own~~
401 ~~personnel functions, the director shall ensure that the contract requires:]~~

402 ~~[(a) the director to submit the names of at least three candidates qualified to fill the~~
403 ~~position of personnel manager for the agency's personnel division or section to the agency's~~
404 ~~director;]~~

405 ~~[(b) the director to write a performance appraisal for the person hired to manage the agency~~
406 ~~personnel division or section and submit it to the agency's director to be included in the~~
407 ~~performance evaluation of that individual;]~~

408 ~~[(c) the director to review any recommendations for merit pay increases for the person~~
409 ~~hired to manage the agency personnel division or section with the agency's director;]~~

410 ~~[(d) that any person hired to manage the agency's personnel division or section shall~~
411 ~~perform the duties required of that person by the agency head and by the contract; and]~~

412 ~~[(e)]~~ (2) When the director contracts with an agency to perform personnel functions, the
413 director shall ensure that the contract requires that[-;] if there is any conflict between the personnel
414 policies required by the agency head and the personnel policies required by the state policies, those
415 required by state policies take precedence.

416 Section 9. Section **67-19-8** is amended to read:

417 **67-19-8. Functions of department not to be delegated.**

418 (1) The department shall perform the following functions and may not contract or
419 otherwise delegate those functions to another state agency:

420 ~~[(1)]~~ (a) design [and administration] of the state pay plan;

421 ~~[(2)]~~ (b) design [and administration] of the state classification system and procedures for
422 determining schedule assignments;

423 ~~[(3)]~~ (c) position classification studies, including periodic desk audits, except that an
424 agency may conduct classification studies and desk audits as necessary under [Subsection] Section
425 67-19-9[(2)] consistent with a delegation agreement approved by the department;

426 (d) market salary surveys as requested by each agency;

427 ~~[(4)]~~ (e) monitoring of state agency personnel practices to determine compliance with
428 applicable federal and state personnel guidelines, including equal opportunity and affirmative
429 action; and

430 ~~[(5)]~~ (f) maintenance of central personnel records.

431 (2) In making a request for a market salary survey under Subsection (1)(d), the agency
 432 shall provide the department with information concerning the following:

433 (a) the agency's recruitment experience;

434 (b) retention of existing employees; and

435 (c) prevention or resolution of pay inequities, including circumstances when an employee
 436 is paid an equivalent or lesser salary than a similarly situated employee.

437 Section 10. Section **67-19-9** is amended to read:

438 **67-19-9. Functions for which state agencies responsible.**

439 (1) State agencies shall ~~[be responsible for]~~ perform the following ~~[personnel]~~ human
 440 resource functions:

441 ~~[(1)]~~ (a) initial written job descriptions;

442 ~~[(2)]~~ recommending position classifications and grade allocations;

443 (b) proposing market comparability adjustments to the state pay plan;

444 (c) administering classification systems;

445 ~~[(3)]~~ (d) selecting qualified applicants for appointment and promotion to vacant positions;

446 ~~[(4)]~~ (e) conducting performance evaluations;

447 ~~[(5)]~~ (f) disciplining employees; ~~[and]~~

448 ~~[(6)]~~ (g) maintaining individual ~~[personnel]~~ human resource records[-]; and

449 (h) conducting new employee orientation jointly with, and cosponsored by, the largest
 450 employee organization.

451 (2) In proposing market comparability adjustments, each agency director shall:

452 (a) by October 15 of each year, submit market comparability adjustments to the state
 453 budget officer for consideration as part of the agency's base budget;

454 (b) by October 31 of each year, recommend necessary compensation adjustments to the
 455 governor; and

456 (c) incorporate the results of a market survey of salary ranges in salary adjustments.

457 Section 11. Section **67-19-10** is amended to read:

458 **67-19-10. Functions which agencies may delegate to state director -- Agreements to**
 459 **delegate -- Contents -- Execution -- Termination.**

460 (1) All ~~[other]~~ agency personnel functions ~~[are the responsibility of the director of~~
 461 personnel management but] may be delegated to ~~[state agencies]~~ the director as provided ~~[herein]~~

462 in Subsection (2).

463 (2) An agreement to delegate functions to ~~[a state agency]~~ the director shall be in writing
464 and shall contain the following:

465 ~~[(1)]~~ (a) a precise definition of each function to be delegated;

466 ~~[(2)]~~ (b) clear descriptions of standards to be met in performance of each function;

467 ~~[(3)]~~ (c) provision for periodic administrative audits by the office; and

468 ~~[(4)]~~ (d) a date on which the agreement shall terminate if not previously terminated or
469 renewed.

470 (3) (a) The agreement shall be signed by the director and the head of the agency with
471 whom the agreement is entered into and approved by the governor.

472 (b) Any agreement ~~[by the director to delegate functions to a state agency shall be]~~ is
473 subject to termination by the ~~[director based upon the results of administrative audits conducted~~
474 ~~by the office to review compliance with the terms of the agreement]~~ agency for good cause.

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

476 **67-19-12. State pay plans -- Applicability of section -- Exemptions from section --**
477 **Duties of director.**

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

480 (b) If not exempted under Subsection (2), a state employee is considered to be in classified
481 service.

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

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

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

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

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

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

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

490 Subsection (2);

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

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

493 (i) employees of the Department of Community and Economic Development whose
494 positions are designated as executive/professional positions by the executive director of the
495 Department of Community and Economic Development with the concurrence of the director; and

496 (j) employees of the Medical Education Council.

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

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

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

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

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

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

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

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

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

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

522 (iii) The director shall issue rules for the administration of pay plans. The rules may
523 provide for exceptional performance increases and for a program of incentive awards for

524 cost-saving suggestions and other commendable acts of employees. The director shall issue rules
525 providing for salary adjustments.

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

528 ~~[(v) By October 15 of each year, the director shall submit market comparability~~
529 ~~adjustments to the state budget officer for consideration to be included as part of the affected~~
530 ~~agency's base budgets.]~~

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

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

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

543 ~~[(ix) The establishing of a salary range is a nondelegable activity subject to Subsection~~
544 ~~67-19-8(1) and is not appealable under the grievance procedures of Sections 67-19-30 through~~
545 ~~67-19-32, Title 67, Chapter 19a, Grievance and Appeal Procedures, or otherwise.]~~

546 ~~[(x)]~~ (v) The governor shall:

547 (A) consider salary adjustments recommended under ~~[Subsection (4)(c)(vi)]~~ Section
548 67-19-9 in preparing the executive budget and shall recommend the method of distributing the
549 adjustments;

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

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

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

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

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

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

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

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

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

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

569 Section 13. Section **67-19-15** is amended to read:

570 **67-19-15. Career service -- Exempt positions -- Schedules for civil service positions**
571 **-- Coverage of career service provisions.**

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

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

577 (b) the agency heads enumerated in Section 67-22-2, and commissioners designated as
578 Schedule AB;

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

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

584 (e) [~~unskilled employees in positions requiring little or no specialized skill or training;~~]
585 teaching staff of all state institutions designated as Schedule AE;

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

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

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

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

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

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

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

602 ~~[(m) employees of the Department of Community and Economic Development whose
 603 positions are designated as executive/professional positions by the executive director of the
 604 Department of Community and Economic Development with the concurrence of the director,
 605 designated as Schedule AM;]~~

606 ~~[(n) (k) employees of the Legislature, designated as Schedule [AN] AK;~~

607 ~~[(o) employees of the judiciary, designated as Schedule AO;]~~

608 ~~[(p) (l) all judges in the judiciary, designated as Schedule [AP] AL;~~

609 ~~[(q) (m) members of state and local boards and councils appointed by the governor and
 610 governing bodies of agencies, and other local officials serving in an ex officio capacity, [officers,
 611 faculty, and other employees of state universities and other state institutions of higher education;]
 612 designated as Schedule [AQ;] AM; and~~

613 ~~[(r) employees who make statewide policy, designated as Schedule AR; and]~~

614 ~~[(s) (n) any other employee whose appointment is required by statute to be career service
 615 exempt, designated as Schedule [AS] AN.~~

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

617 (a) (i) Schedule A is the schedule consisting of positions exempted by Subsection (1).

618 (ii) Removal from any appointive position under Schedule A, unless otherwise regulated
619 by statute, is ~~[at]~~ at-will and subject to the pleasure of the appointing ~~[officers without regard to~~
620 tenure] officer or elected official.

621 (b) Schedule B is the competitive career service schedule, consisting of all full or
622 permanent part-time positions filled through competitive selection procedures as defined by the
623 director.

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

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

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

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

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

635 (c) Compensation for officers, faculty, and other employees of state universities and
636 institutions of higher education shall be established as provided in Title 53B, Chapters 1 and 2.

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

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

644 Section 14. Section **67-19-15.7** is amended to read:

645 **67-19-15.7. Promotion -- Reclassification -- Market adjustment.**

646 (1) (a) Each employee who is promoted or whose position is reclassified to the next higher
647 salary range shall be placed at the merit step within the new range corresponding to a salary

648 increase of between 2.75% and 11%.

649 (b) The employee may not be placed higher than the highest merit step in the new salary
650 range.

651 (2) Each employee who is promoted or whose position is reclassified to a salary range
652 higher than the next higher range shall be placed at the merit step within the new range
653 corresponding to a salary increase of between 5.5% and 11%. The employee may not be placed
654 lower than the lowest merit step in the new salary range.

655 [~~(3) Each employee who voluntarily accepts a position in the next lower salary range shall~~
656 ~~be placed at the merit step within the new range corresponding to a salary decrease of 2.75% or~~
657 ~~as close to 2.75% as possible. The employee may not be placed lower than the lowest merit step~~
658 ~~in the new salary range.]~~

659 [~~(4) Each employee who voluntarily accepts a position in a salary range lower than the~~
660 ~~next lower range shall be placed at the merit step within the new range corresponding to a salary~~
661 ~~decrease of 5.5% or as close to 5.5% as possible. The employee may not be placed higher than the~~
662 ~~highest merit step in the new salary range.]~~

663 [(5)] (3) (a) Each employee whose salary range is approved by the Legislature for a
664 selective salary adjustment consistent with [~~Subsection 67-19-12(4)(c)(viii)] Section 67-19-9 shall
665 be adjusted to the new range at the beginning of the next fiscal year.~~

666 (b) Employees shall be placed at the step value on the new range consistent with the
667 appropriation authorized by the Legislature.

668 [(6)] (4) (a) Department-initiated revisions in the state classification system that result in
669 consolidation or reduction of class titles or broadening of pay ranges may not be regarded as a
670 reclassification of the position or promotion of the employee.

671 (b) These revisions are exempt from the provisions of Subsections (1) and (2).

672 Section 15. Section **67-19-18** is amended to read:

673 **67-19-18. Dismissals and demotions -- Grounds -- Disciplinary action -- Procedure**
674 **-- Reductions in force.**

675 (1) Career service employees may be dismissed or demoted[~~:(a) to advance the good of~~
676 ~~the public service; or (b)] only for just causes such as inefficiency, incompetency, failure to
677 maintain skills or adequate performance levels, insubordination, disloyalty to the orders of a
678 superior, misfeasance, malfeasance, or nonfeasance in office.~~

679 (2) [~~Employees~~] Career service employees may not be dismissed because of race, sex, age,
680 disability, national origin, religion, political affiliation, or other nonmerit factor including the
681 exercise of rights under this chapter.

682 (3) The director shall establish rules governing the procedural and documentary
683 requirements of disciplinary dismissals and demotions that are consistent with Subsection (2).

684 (4) If an agency head finds that a career service employee is charged with aggravated
685 misconduct or that retention of a career service employee would endanger the peace and safety of
686 others or pose a grave threat to the public interest, the employee may be suspended pending the
687 administrative appeal to the department head as provided in Subsection (5).

688 (5) (a) A career service employee may not be demoted or dismissed unless the
689 [~~department~~] agency head or designated representative has complied with this Subsection (5)(a).

690 (b) The [~~department~~] agency head or designated representative notifies the employee in
691 writing of the reasons for the dismissal or demotion.

692 (c) The employee has no less than five working days to reply and have the reply considered
693 by the [~~department~~] agency head.

694 (d) The employee has an opportunity to be heard by the [~~department~~] agency head or
695 designated representative.

696 (e) Following the hearing, the employee may be dismissed or demoted if the [~~department~~]
697 agency head finds [~~adequate~~] just cause [~~or reason~~] for the dismissal or demotion of the employee.

698 (6) (a) Reductions in force required by inadequate funds, change of workload, or lack of
699 work are governed by retention rosters established by the director.

700 (b) Under those circumstances:

701 (i) The agency head shall designate the category of work to be eliminated, subject to
702 review by the director.

703 (ii) Temporary and probationary employees shall be separated before any career service
704 employee.

705 (iii) (A) Career service employees shall be separated in the order of their retention points,
706 the employee with the lowest points to be discharged first.

707 (B) Retention points for each career service employee shall be computed according to rules
708 established by the director, allowing appropriate consideration for proficiency and for seniority in
709 state government, including any active duty military service fulfilled subsequent to original state

710 appointment.

711 (iv) A career service employee who is separated in a reduction in force shall be:

712 (A) placed on the reappointment roster provided for in Subsection 67-19-17(2); and

713 (B) reappointed without examination to any vacancy for which the employee is qualified

714 which occurs within one year of the date of the separation.

715 (c) (i) An employee separated due to a reduction in force may appeal to the [department]

716 agency head for [an administrative review] a hearing held in accordance with the provisions of

717 Subsection (5).

718 (ii) The notice of appeal must be submitted within 20 working days after the employee's
719 receipt of written notification of separation.

720 (iii) The employee may appeal the decision of the [department] agency head according to
721 the grievance and appeals procedure of this act.

722 Section 16. **Effective date.**

723 This act takes effect on July 1, 2000.

Legislative Review Note

as of 2-10-00 6:21 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel