

**Senator Wayne L. Niederhauser** proposes the following substitute bill:

**COUNTY PERSONNEL MANAGEMENT ACT**

**AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne L. Niederhauser**

House Sponsor: Gregory H. Hughes

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**LONG TITLE**

**General Description:**

This bill modifies provisions of the County Personnel Management Act.

**Highlighted Provisions:**

This bill:

▶ adds an exception to tenured positions included within the career service system for persons appointed by an elected county officer to ~~to~~ **be division directors, to** administer division functions in

furtherance of the performance of the elected officer's professional duties;

▶ clarifies that a person currently serving in a nonexempt position does not lose that status because of the enactment of the provision adding an exception;

▶ requires elected county officers to work with the office of personnel management to develop incentives to encourage certain nonexempt employees to convert voluntarily to exempt status;

▶ authorizes county legislative bodies to recommend personnel rules for the county;

and

▶ makes technical changes.

**Monies Appropriated in this Bill:**

None



26 **Other Special Clauses:**

27 This bill coordinates with H.B. 235, County Merit System Amendments, by providing  
28 which technical amendments supersede and by substantively and technically merging  
29 the amendments contained in H.B. 235 with the amendments contained in this bill.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **17-33-1**, as last amended by Laws of Utah 2002, Chapter 83

33 **17-33-5**, as last amended by Laws of Utah 2006, Chapter 255

34 **17-33-8**, as last amended by Laws of Utah 2007, Chapter 211



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

37 Section 1. Section **17-33-1** is amended to read:

38 **17-33-1. Title -- Establishment of merit system -- Separate systems for peace**  
39 **officers and firemen recognized -- Options of small counties.**

40 (1) This chapter shall be known and may be cited as the "County Personnel  
41 Management Act."

42 (2) A merit system of personnel administration for the counties of the state of Utah,  
43 their departments, offices, and agencies, except as otherwise specifically provided, is  
44 established.

45 (3) This chapter recognizes the existence of the merit systems for peace officers of the  
46 several counties as provided for in Chapter 30, Deputy Sheriffs - Merit System, and for firemen  
47 of the several counties as provided for in Chapter 28, Firemen's Civil Service Commission, and  
48 is intended to give county commissions the option of using the provisions of this chapter as a  
49 single merit system for all county employees or in combination with these existing systems for  
50 firemen and peace officers.

51 (4) On or after May 6, 2002, any county that has fewer than 200 employees not covered  
52 by other merit systems or not exempt under Subsections 17-33-8(1)(b)(i) through [~~(v)~~] (vii)  
53 may, at its option, comply with the provisions of this chapter.

54 (5) Notwithstanding the provisions of Subsection (4), any county which was in  
55 compliance with the provisions of this chapter prior to May 6, 2002, shall continue to comply  
56 with the provisions of this chapter even though the county may not thereafter meet or exceed

57 the threshold requirements of Subsection (4).

58 Section 2. Section **17-33-5** is amended to read:

59 **17-33-5. Office of personnel management -- Director -- Appointment and**  
60 **responsibilities -- Personnel rules.**

61 (1) (a) (i) Each county executive shall:

62 (A) create an office of personnel management, administered by a director of personnel  
63 management; and

64 (B) ensure that the director is a person with proven experience in personnel  
65 management.

66 (ii) Except as provided in Subsection (1)(b), the position of director of personnel  
67 management shall be:

68 (A) a merit position; and

69 (B) filled as provided in Subsection (1) (a)(iii).

70 (iii) Except as provided in Subsection (1)(b), the career service council shall:

71 (A) advertise and recruit for the director position in the same manner as for merit  
72 positions;

73 (B) select three names from a register; and

74 (C) submit those names as recommendations to the county legislative body.

75 (iv) Except as provided in Subsection (1)(b), the county legislative body shall select a  
76 person to serve as director of the office of personnel management from the names submitted to  
77 it by the career service council.

78 (b) (i) Effective for appointments made after May 1, 2006, and as an alternative to the  
79 procedure under Subsections (1)(a)(ii), (iii), and (iv) and at the county executive's discretion,  
80 the county executive may appoint a director of personnel management with the advice and  
81 consent of the county legislative body.

82 (ii) The position of each director of personnel management appointed under this  
83 Subsection (1)(b) shall be a merit exempt position.

84 (iii) A director of personnel management appointed under this Subsection (1)(b) may  
85 be terminated by the county executive with the consent of the county legislative body.

86 (2) The director of personnel management shall:

87 (a) encourage and exercise leadership in the development of expertise in personnel

88 administration within the several departments, offices, and agencies in the county service and  
89 make available the facilities of the office of personnel management to this end;

90 (b) advise the county legislative and executive bodies on the use of human resources;

91 (c) develop and implement programs for the improvement of employee effectiveness,  
92 such as training, safety, health, counseling, and welfare;

93 (d) investigate periodically the operation and effect of this law and of the policies made  
94 under it and report findings and recommendations to the county legislative body;

95 (e) establish and maintain records of all employees in the county service, setting forth  
96 as to each employee class, title, pay or status, and other relevant data;

97 (f) make an annual report to the county legislative body and county executive regarding  
98 the work of the department; and

99 (g) apply and carry out this law and the policies under it and perform any other lawful  
100 acts that are necessary to carry out the provisions of this law.

101 (3) (a) (i) The director shall recommend personnel rules for the county.

102 (ii) The county legislative body may:

103 (A) recommend personnel rules for the county; and

104 (B) approve, amend, or reject [~~those~~] personnel rules before they are adopted.

105 (b) The rules shall provide for:

106 (i) recruiting efforts to be planned and carried out in a manner that assures open  
107 competition, with special emphasis to be placed on recruiting efforts to attract minorities,  
108 women, persons with a disability as defined by and covered under the Americans with  
109 Disabilities Act of 1990, 42 U.S.C. 12102, or other groups that are substantially  
110 underrepresented in the county work force to help assure they will be among the candidates  
111 from whom appointments are made;

112 (ii) the establishment of job related minimum requirements wherever practical, that all  
113 successful candidates shall be required to meet in order to be eligible for consideration for  
114 appointment or promotion;

115 (iii) selection procedures that include consideration of the relative merit of each  
116 applicant for employment, a job related method of determining the eligibility or ineligibility of  
117 each applicant, and a valid, reliable, and objective system of ranking eligible applicants  
118 according to their qualifications and merit;

119 (iv) certification procedures that insure equitable consideration of an appropriate  
120 number of the most qualified eligible applicants based on the ranking system;

121 (v) appointments to positions in the career service by selection from the most qualified  
122 eligible applicants certified on eligible lists established in accordance with Subsections  
123 (3)(b)(iii) and (iv);

124 (vi) noncompetitive appointments in the occasional instance where there is evidence  
125 that open or limited competition is not practical, such as for unskilled positions that have no  
126 minimum job requirements;

127 (vii) limitation of competitions at the discretion of the director for appropriate positions  
128 to facilitate employment of qualified applicants with a substantial physical or mental  
129 impairment, or other groups protected by Title VII of the Civil Rights Act;

130 (viii) permanent appointment for entry to the career service that shall be contingent  
131 upon satisfactory performance by the employee during a period of six months, with the  
132 probationary period extendable for a period not to exceed six months for good cause, but with  
133 the condition that the probationary employee may appeal directly to the council any undue  
134 prolongation of the period designed to thwart merit principles;

135 (ix) temporary, provisional, or other noncareer service appointments, which may not be  
136 used as a way of defeating the purpose of the career service and may not exceed 90 days, with  
137 the period extendable for a period not to exceed an additional 90 days for good cause;

138 (x) lists of eligible applicants normally to be used, if available, for filling temporary  
139 positions, and short term emergency appointments to be made without regard to the other  
140 provisions of law to provide for maintenance of essential services in an emergency situation  
141 where normal procedures are not practical, these emergency appointments not to exceed 90  
142 days, with that period extendable for a period not to exceed an additional 90 days for good  
143 cause;

144 (xi) promotion and career ladder advancement of employees to higher level positions  
145 and assurance that all persons promoted are qualified for the position;

146 (xii) recognition of the equivalency of other merit processes by waiving, at the  
147 discretion of the director, the open competitive examination for placement in the career service  
148 positions of those who were originally selected through a competitive examination process in  
149 another governmental entity, the individual in those cases, to serve a probationary period;

150 (xiii) preparation, maintenance, and revision of a position classification plan for all  
151 positions in the career service, based upon similarity of duties performed and responsibilities  
152 assumed, so that the same qualifications may reasonably be required for, and the same schedule  
153 of pay may be equitably applied to, all positions in the same class, the compensation plan, in  
154 order to maintain a high quality public work force, to take into account the responsibility and  
155 difficulty of the work, the comparative pay and benefits needed to compete in the labor market  
156 and to stay in proper alignment with other similar governmental units, and other factors;

157 (xiv) keeping records of performance on all employees in the career service and  
158 requiring consideration of performance records in determining salary increases, any benefits for  
159 meritorious service, promotions, the order of layoffs and reinstatements, demotions, discharges,  
160 and transfers;

161 (xv) establishment of a plan governing layoffs resulting from lack of funds or work,  
162 abolition of positions, or material changes in duties or organization, and governing  
163 reemployment of persons so laid off, taking into account with regard to layoffs and  
164 reemployment the relative ability, seniority, and merit of each employee;

165 (xvi) establishment of a plan for resolving employee grievances and complaints with  
166 final and binding decisions;

167 (xvii) establishment of disciplinary measures such as suspension, demotion in rank or  
168 grade, or discharge, measures to provide for presentation of charges, hearing rights, and appeals  
169 for all permanent employees in the career service to the career service council;

170 (xviii) establishment of a procedure for employee development and improvement of  
171 poor performance;

172 (xix) establishment of hours of work, holidays, and attendance requirements in various  
173 classes of positions in the career service;

174 (xx) establishment and publicizing of fringe benefits such as insurance, retirement, and  
175 leave programs; and

176 (xxi) any other requirements not inconsistent with this law that are proper for its  
177 enforcement.

178 Section 3. Section **17-33-8** is amended to read:

179 **17-33-8. Career service -- Exempt positions.**

180 (1) The career service [~~shall be~~]:

181 (a) is a permanent service to which this ~~[law shall apply]~~ chapter applies; and ~~[shall~~  
182 ~~comprise]~~

183 (b) comprises all tenured county positions in the public service ~~[now existing or~~  
184 ~~hereafter established]~~, except ~~[the following]~~:

185 ~~[(1) The]~~ (i) subject to Subsection (2):

186 (A) the county executive, members of the county legislative body, and other elected  
187 officials~~[-];~~ and

188 (B) each major department ~~[heads]~~ head charged directly by the county legislative  
189 body, or by a board appointed by the county legislative body, with the responsibility of  
190 assisting ~~[in the formulation and carrying]~~ to formulate and carry out ~~[of]~~ policy matters ~~[of~~  
191 ~~policy; and if it is sought that any position which differs from its present status be exempted or~~  
192 ~~tenured after the effective date of this act, a public hearing on the proposed exemption or tenure~~  
193 ~~shall be held upon due notice and the concurrence of the council.];~~

194 ~~[(2) One]~~ (ii) one confidential secretary for each elected county officer and major  
195 department head, if ~~[one]~~ a confidential secretary is assigned~~[-];~~

196 ~~[(3) An]~~ (iii) an administrative assistant to the county executive, each member of the  
197 county legislative body, and ~~[to]~~ each elected official, if ~~[one]~~ an administrative assistant is  
198 assigned~~[-];~~

199 ~~[(4) The]~~ (iv) the duly appointed chief deputy of any elected county officer who  
200 ~~[would take]~~ takes over and ~~[discharge]~~ discharges the duties of the elected county officer in  
201 the absence or disability of the ~~[originally responsible]~~ elected county officer~~[-];~~

202 (v) subject to Subsection (3), a person who is:

203 (A) appointed by an elected county officer ~~Ĥ→~~ **to be a division director,** ~~←Ĥ~~ to  
203a administer division functions in  
204 furtherance of the performance of the elected officer's professional duties;

205 (B) in a confidential relationship with the elected county officer; and

206 (C) not in a law enforcement rank position of captain or below;

207 ~~[(5) Persons]~~ (vi) a person employed to make or conduct a temporary and special  
208 inquiry, investigation, or examination on behalf of the county legislative body or one of its  
209 committees~~[-];~~

210 ~~[(6) Noncareer employees]~~ (vii) a noncareer employee:

211 (A) compensated for ~~[their]~~ the employee's services on a seasonal or contractual basis

212 ~~[who are]; and~~  
213 (B) hired on emergency or seasonal appointment basis, as approved by the council[;  
214 and];

215 (viii) a provisional ~~[employees] employee,~~ as defined by the county's policies and  
216 procedures or its rules and regulations[-];

217 ~~[(7) Part-time employees]~~ (ix) a part-time employee, as defined by the county's  
218 policies and procedures or its rules and regulations[-];

219 ~~[(8) Employees]~~ (x) an employee appointed to perform:

220 ~~[(a)]~~ (A) work that does not exceed three years in duration; or

221 ~~[(b)]~~ (B) work with limited funding[-]; and

222 ~~[(9) Positions which]~~ (xi) a position that, by ~~[their]~~ its confidential or key  
223 policy-determining nature [==confidential or key policy-determining or both==], cannot or  
224 should not be appropriately included in the career service. ~~[All positions]~~

225 (2) Before a position under Subsection (1)(b)(i) may be changed from its current status  
226 to exempt or tenured, the career service council shall, after giving due notice, hold a public  
227 hearing on the proposed change of status.

228 (3) (a) Subsection (1)(b)(v) may not be construed to cause a person serving as a  
229 nonexempt employee on May 5, 2008 in a position described in that subsection from losing the  
230 nonexempt status.

231 (b) The elected county officer in a supervisory position over an employee described in  
232 Subsection (3)(a) shall work with the county's office of personnel management to develop  
233 financial and other incentives to encourage a nonexempt employee to convert voluntarily to  
234 exempt status.

235 (4) (a) Each position designated as being exempt under ~~[this]~~ Subsection (1)(b)(xi)  
236 shall be listed in the rules and regulations promulgated under this ~~[act]~~ chapter by:

237 (i) job title; and

238 (ii) department, office, or agency[,-and any].

239 (b) A change in exempt status [shall constitute] of a position designated as being  
240 exempt under Subsection (1)(b)(xi) constitutes an amendment to the rules and regulations  
241 promulgated under this chapter.

242 Section 4. **Coordinating S.B. 78 with H.B. 235 -- Technically superseding**



243 **amendments -- Substantively and technically merging the amendments.**

244 If this S.B. 78 and H.B. 235, County Merit System Amendments, both pass, it is the  
 245 intent of the Legislature that when the Office of Legislative Research and General Counsel  
 246 prepares the Utah Code database for publication:

247 (1) the amendments to Section 17-33-1 in this bill supersede the amendments to  
 248 Section 17-33-1 in H.B. 235; and

249 (2) the amendments in this bill to Section 17-33-8 be merged with the amendments in  
 250 H.B. 235 so that Section 17-33-8 reads:

251 **"17-33-8. Career service -- Exempt positions.**

252 (1) The career service [shall be]:

253 (a) is a permanent service to which this [law shall apply and shall comprise] chapter  
 254 applies; and

255 (b) comprises all tenured county positions in the public service [now existing or  
 256 hereafter established], except [the following]:

257 (i) subject to Subsection (2):

258 [(1) The] (A) the county executive, members of the county legislative body, and other  
 259 elected officials[, and]; and

260 (B) each major department [heads] head charged directly by the county legislative  
 261 body, or by a board appointed by the county legislative body, with the responsibility of  
 262 assisting [in the formulation and carrying out of matters of policy; and if it is sought that any  
 263 position which differs from its present status be exempted or tenured after the effective date of  
 264 this act, a public hearing on the proposed exemption or tenure shall be held upon due notice  
 265 and the concurrence of the council.] to formulate and carry out policy matters;

266 [(2) One] (ii) one confidential secretary for each elected county officer and major  
 267 department head, if [one] a confidential secretary is assigned[-];

268 [(3) An] (iii) an administrative assistant to the county executive, each member of the  
 269 county legislative body, and [to] each elected official, if [one] an administrative assistant is  
 270 assigned[-];

271 [(4) The] (iv) each duly appointed chief deputy of any elected county officer who  
 272 [would take] takes over and [discharge] discharges the duties of the elected county officer in  
 273 the absence or disability of the [originally responsible] elected county officer[-];

274 (v) subject to Subsection (3), a person who is:  
 275 (A) appointed by an elected county officer ~~H~~→ **to be a division director**, ←~~H~~ to  
 275a administer division functions in  
 276 furtherance of the performance of the elected officer's professional duties;  
 277 (B) in a confidential relationship with the elected county officer; and  
 278 (C) not in a law enforcement rank position of captain or below;  
 279 ~~[(5) Persons]~~ (vi) each person employed to make or conduct a temporary and special  
 280 inquiry, investigation, or examination on behalf of the county legislative body or one of its  
 281 committees[.];  
 282 ~~[(6) Noncareer employees]~~ (vii) each noncareer employee:  
 283 (A) compensated for [their] the employee's services on a seasonal or contractual basis  
 284 [who are]; and  
 285 (B) hired on emergency or seasonal appointment basis, as approved by the council[;  
 286 and]; and  
 287 (viii) each provisional [employees] employee, as defined by the county's policies and  
 288 procedures or its rules and regulations[.];  
 289 ~~[(7) Part-time employees]~~ (ix) each part-time employee, as defined by the county's  
 290 policies and procedures or its rules and regulations[.];  
 291 ~~[(8) Employees]~~ (x) each employee appointed to perform:  
 292 [(a)] (A) work that does not exceed three years in duration; or  
 293 [(b)] (B) work with limited funding[.]; and  
 294 ~~[(9) Positions which by their nature ==]~~  
 295 (xi) each position that, by its confidential or key policy-determining [or both ==] nature,  
 296 cannot or should not be appropriately included in the career service. [All positions designated  
 297 as being exempt under this Subsection shall be listed in the rules]  
 298 (2) Before a position under Subsection (1)(b)(i) may be changed from its current status  
 299 to exempt or tenured, the career service council shall, after giving due notice, hold a public  
 300 hearing on the proposed change of status.  
 301 (3) (a) Subsection (1)(b)(v) may not be construed to cause a person serving as a  
 302 nonexempt employee on May 5, 2008 in a position described in that subsection to lose the  
 303 nonexempt status.  
 304 (b) The elected county officer in a supervisory position over an employee described in

305 Subsection (3)(a) shall work with the county's office of personnel management to develop  
306 financial and other incentives to encourage a nonexempt employee to convert voluntarily to  
307 exempt status.

308 (4) (a) Rules and regulations promulgated under this [act] chapter shall list by job title  
309 and department, office or agency, [and any] each position designated as exempt under  
310 Subsection (1)(b)(xi).

311 (b) A change in exempt status [shall constitute] of a position designated as being  
312 exempt under Subsection (1)(b)(xi) constitutes an amendment to the rules and regulations  
313 promulgated under this chapter."

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**S.B. 78 1st Sub. (Green) - County Personnel Management Act Amendments**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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