

COUNTY PERSONNEL MANAGEMENT ACT

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: Gregory H. Hughes

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 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

Other Special Clauses:

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

30 amendments contained in H.B. 235 with the amendments contained in this bill.

31 **Utah Code Sections Affected:**

32 AMENDS:

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

34 **17-33-5**, as last amended by Laws of Utah 2006, Chapter 255

35 **17-33-8**, as last amended by Laws of Utah 2007, Chapter 211



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

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

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

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

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

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

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

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

58 the threshold requirements of Subsection (4).

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

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

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

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

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

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

69 (A) a merit position; and

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

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

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

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

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

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

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

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

85 (iii) A director of personnel management appointed under this Subsection (1)(b) may be

86 terminated by the county executive with the consent of the county legislative body.

87 (2) The director of personnel management shall:

88 (a) encourage and exercise leadership in the development of expertise in personnel
89 administration within the several departments, offices, and agencies in the county service and
90 make available the facilities of the office of personnel management to this end;

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

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

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

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

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

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

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

103 (ii) The county legislative body may:

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

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

106 (b) The rules shall provide for:

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

113 (ii) the establishment of job related minimum requirements wherever practical, that all

114 successful candidates shall be required to meet in order to be eligible for consideration for
115 appointment or promotion;

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

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

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

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

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

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

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

139 (x) lists of eligible applicants normally to be used, if available, for filling temporary
140 positions, and short term emergency appointments to be made without regard to the other
141 provisions of law to provide for maintenance of essential services in an emergency situation

142 where normal procedures are not practical, these emergency appointments not to exceed 90
143 days, with that period extendable for a period not to exceed an additional 90 days for good
144 cause;

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

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

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

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

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

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

168 (xvii) establishment of disciplinary measures such as suspension, demotion in rank or
169 grade, or discharge, measures to provide for presentation of charges, hearing rights, and appeals

170 for all permanent employees in the career service to the career service council;

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

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

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

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

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

180 **17-33-8. Career service -- Exempt positions.**

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

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

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

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

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

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

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

197 ~~[(3) An]~~ (iii) an administrative assistant to the county executive, each member of the

198 county legislative body, and ~~[to]~~ each elected official, if ~~[one]~~ an administrative assistant is
199 assigned[-];

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

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

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

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

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

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

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

212 (A) compensated for [their] the employee's services on a seasonal or contractual basis
213 [who are]; and

214 (B) hired on emergency or seasonal appointment basis, as approved by the council[-;
215 and];

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

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

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

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

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

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

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

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

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

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

- 238 (i) job title; and
- 239 (ii) department, office, or agency[; and any].

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

243 **Section 4. Coordinating S.B. 78 with H.B. 235 -- Technically superseding**
244 **amendments -- Substantively and technically merging the amendments.**

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

248 (1) the amendments to Section 17-33-1 in this bill supersede the amendments to Section
249 17-33-1 in H.B. 235; and

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

252 **"17-33-8. Career service -- Exempt positions.**

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

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

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

258 (i) subject to Subsection (2):

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

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

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

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

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

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

276 (A) appointed by an elected county officer to be a division director, to administer
277 division functions in furtherance of the performance of the elected officer's professional duties;

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

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

280 [(5) Persons] (vi) each person employed to make or conduct a temporary and special
281 inquiry, investigation, or examination on behalf of the county legislative body or one of its

282 committees[-];

283 ~~[(6) Noncareer employees]~~ (vii) each noncareer employee:

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

285 ~~[who are];~~ and

286 (B) hired on emergency or seasonal appointment basis, as approved by the council[-;

287 and]; and

288 (viii) each provisional ~~[employees]~~ employee, as defined by the county's policies and

289 procedures or its rules and regulations[-];

290 ~~[(7) Part-time employees]~~ (ix) each part-time employee, as defined by the county's

291 policies and procedures or its rules and regulations[-];

292 ~~[(8) Employees]~~ (x) each employee appointed to perform:

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

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

295 ~~[(9) Positions which by their nature --]~~

296 (xi) each position that, by its confidential or key policy-determining ~~[or both ==]~~ nature,

297 cannot or should not be appropriately included in the career service. ~~[All positions designated~~

298 ~~as being exempt under this Subsection shall be listed in the rules]~~

299 (2) Before a position under Subsection (1)(b)(i) may be changed from its current status

300 to exempt or tenured, the career service council shall, after giving due notice, hold a public

301 hearing on the proposed change of status.

302 (3) (a) Subsection (1)(b)(v) may not be construed to cause a person serving as a

303 nonexempt employee on May 5, 2008 in a position described in that subsection to lose the

304 nonexempt status.

305 (b) The elected county officer in a supervisory position over an employee described in

306 Subsection (3)(a) shall work with the county's office of personnel management to develop

307 financial and other incentives to encourage a nonexempt employee to convert voluntarily to

308 exempt status.

309 (4) (a) Rules and regulations promulgated under this [act] chapter shall list by job title

310 and department, office or agency, [~~and any~~] each position designated as exempt under
311 Subsection (1)(b)(xi).
312 (b) A change in exempt status [~~shall constitute~~] of a position designated as being
313 exempt under Subsection (1)(b)(xi) constitutes an amendment to the rules and regulations
314 promulgated under this chapter."