

HUMAN RESOURCE MANAGEMENT

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad L. Dee

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah State Personnel Management Act by amending state employee compensation pay plan provisions and employee grievance procedures and by replacing the Career Service Review Board.

Highlighted Provisions:

This bill:

- ▶ amends certain definitions;
- ▶ amends vacant position report provisions for the Department of Human Resource Management executive director;
- ▶ repeals a requirement that an agency obtain field office approval for appointments to vacant positions;
- ▶ adds the attorney general or designee to the human resource management rate committee;
- ▶ requires that costs incurred by the attorney general to defend state employee grievances be submitted to the rate committee in the proposed fee schedule;
- ▶ repeals steps within pay ranges for state career service employees in the state employee compensation plans;
- ▶ repeals provisions requiring the most recently earned sick leave to be used first;
- ▶ provides that continuing medical and life insurance benefits provided at the time of



28 retirement:

- 29 • may not be suspended or deferred for future use; and
- 30 • continues in effect until exhausted;
- 31 ▶ amends and consolidates classification schedules for state employees;
- 32 ▶ amends provisions for salary increases based on employee longevity and promotion;
- 33 ▶ replaces the Career Service Review Board with the Career Service Review Office
- 34 and provides that the office is the final administrative body to review employee
- 35 grievances and appeals;
- 36 ▶ provides for the appointment, qualifications, powers, and duties of the administrator
- 37 of the office;
- 38 ▶ provides that the administrator has rulemaking authority;
- 39 ▶ amends employee grievance procedures; and
- 40 ▶ makes technical changes.

41 **Monies Appropriated in this Bill:**

42 None

43 **Other Special Clauses:**

44 This bill takes effect on July 1, 2010.

45 **Utah Code Sections Affected:**

46 AMENDS:

- 47 **67-19-3**, as last amended by Laws of Utah 2006, Chapter 139
- 48 **67-19-6**, as last amended by Laws of Utah 2008, Chapter 382
- 49 **67-19-6.1**, as last amended by Laws of Utah 2006, Chapter 139
- 50 **67-19-6.7**, as last amended by Laws of Utah 2008, Chapter 382
- 51 **67-19-11**, as last amended by Laws of Utah 2009, Chapters 104 and 183
- 52 **67-19-12**, as last amended by Laws of Utah 2009, Chapter 294
- 53 **67-19-12.2**, as last amended by Laws of Utah 2006, Chapter 139
- 54 **67-19-14**, as last amended by Laws of Utah 2008, Chapter 382
- 55 **67-19-14.2**, as last amended by Laws of Utah 2007, Chapter 130
- 56 **67-19-15**, as last amended by Laws of Utah 2009, Chapter 294
- 57 **67-19-15.6**, as last amended by Laws of Utah 2006, Chapter 139
- 58 **67-19-15.7**, as last amended by Laws of Utah 2000, Chapter 322

- 59 **67-19-18**, as last amended by Laws of Utah 2009, Chapter 9
- 60 **67-19a-101**, as last amended by Laws of Utah 1991, Chapters 101 and 204
- 61 **67-19a-201**, as last amended by Laws of Utah 1996, Chapters 194 and 243
- 62 **67-19a-202**, as last amended by Laws of Utah 2008, Chapter 382
- 63 **67-19a-203**, as last amended by Laws of Utah 2008, Chapter 382
- 64 **67-19a-204**, as last amended by Laws of Utah 1995, Chapter 215
- 65 **67-19a-301**, as last amended by Laws of Utah 1991, Chapter 101
- 66 **67-19a-302**, as last amended by Laws of Utah 1991, Chapter 204
- 67 **67-19a-401**, as last amended by Laws of Utah 1999, Chapter 21
- 68 **67-19a-402**, as last amended by Laws of Utah 1991, Chapter 204
- 69 **67-19a-403**, as last amended by Laws of Utah 1991, Chapter 204
- 70 **67-19a-404**, as enacted by Laws of Utah 1989, Chapter 191
- 71 **67-19a-406**, as last amended by Laws of Utah 2006, Chapter 14

72 REPEALS:

- 73 **67-19a-407**, as enacted by Laws of Utah 1989, Chapter 191
- 74 **67-19a-408**, as last amended by Laws of Utah 2009, Chapter 9



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

77 Section 1. Section **67-19-3** is amended to read:

78 **67-19-3. Definitions.**

79 As used in this chapter:

- 80 (1) "Agency" means any department or unit of Utah state government with authority to
- 81 employ personnel.
- 82 (2) "Career service" means positions under Schedule B as defined in Section 67-19-15.
- 83 (3) "Career service employee" means an employee who has successfully completed a
- 84 probationary period of service in a position covered by the career service.
- 85 (4) "Career service status" means status granted to employees who successfully
- 86 complete probationary periods for competitive career service positions.
- 87 (5) "Classified service" means those positions subject to the classification and
- 88 compensation provisions of Section 67-19-12.
- 89 (6) "Controlled substance" means controlled substance as defined in Section 58-37-2.

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

92 (b) "Demotion" does not mean:

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

95 (ii) a reclassification of an employee's position under the provisions of Subsection
96 67-19-12(3) and rules made by the department.

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

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

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

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

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

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

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

107 (b) under rules of the department; and

108 (c) under other state or federal statute.

109 (14) "Market comparability adjustment" means a salary range adjustment determined
110 necessary through a market survey of salary ranges of a reasonable cross section of comparable
111 benchmark positions in private and public employment.

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

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

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

119 (18) "Temporary employee" means career service exempt employees on schedule [~~AJ~~,
120 ~~AI~~, or ~~AL~~] IN or TL under Section 67-19-15.

121 (19) "Total compensation" means salaries and wages, bonuses, paid leave, group
122 insurance plans, retirement, and all other benefits offered to state employees as inducements to
123 work for the state.

124 Section 2. Section **67-19-6** is amended to read:

125 **67-19-6. Responsibilities of the executive director.**

126 (1) The executive director shall:

127 (a) develop, implement, and administer a statewide program of human resource
128 management that will:

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

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

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

132 (b) design and administer the state pay plan;

133 (c) design and administer the state classification system and procedures for determining
134 schedule assignments;

135 (d) design and administer the state recruitment and selection system;

136 (e) administer agency human resource practices and ensure compliance with federal
137 law, state law, and state human resource rules, including equal employment opportunity;

138 (f) consult with agencies on decisions concerning employee corrective action and
139 discipline;

140 (g) maintain central personnel records;

141 (h) perform those functions necessary to implement this chapter unless otherwise
142 assigned or prohibited;

143 (i) perform duties assigned by the governor or statute;

144 (j) adopt rules for human resource management according to the procedures of Title
145 63G, Chapter 3, Utah Administrative Rulemaking Act;

146 (k) establish and maintain a management information system that will furnish the
147 governor, the Legislature, and agencies with current information on authorized positions,
148 payroll, and related matters concerning state human resources;

149 (l) conduct research and planning activities to:

150 (i) determine and prepare for future state human resource needs;

151 (ii) develop methods for improving public human resource management; and

- 152 (iii) propose needed policy changes to the governor;
- 153 (m) study the character, causes, and extent of discrimination in state employment and
- 154 develop plans for its elimination through programs consistent with federal and state laws
- 155 governing equal employment opportunity in employment;
- 156 (n) when requested by counties, municipalities, and other political subdivisions of the
- 157 state, provide technical service and advice on human resource management at a charge
- 158 determined by the executive director;
- 159 (o) establish compensation policies and procedures for early voluntary retirement;
- 160 (p) confer with the heads of other agencies about human resource policies and
- 161 procedures;
- 162 (q) submit an annual report to the governor and the Legislature; and
- 163 (r) [~~(i) develop a procedure by which each agency will:~~] assist with the development of
- 164 a vacant position report required under Subsection 63J-1-201(2)(b)(v).
- 165 [~~(A) identify funded vacant positions; and]~~
- 166 [~~(B) report those funded vacant positions to the department;]~~
- 167 [~~(ii) identify all funded employee positions in each agency that have been vacant for~~
- 168 ~~more than 180 consecutive days during the 18-month period prior to July 1 of each year; and]~~
- 169 [~~(iii) by no later than September 1 of each year, provide a report of all funded employee~~
- 170 ~~positions in each agency identified in Subsections (1)(r)(i) and (ii) to:]~~
- 171 [~~(A) the Governor's Office of Planning and Budget; and]~~
- 172 [~~(B) the Office of the Legislative Fiscal Analyst.]~~
- 173 (2) (a) After consultation with the governor and the heads of other agencies, the
- 174 executive director shall establish and coordinate statewide training programs.
- 175 (b) The programs developed under this Subsection (2) shall have application to more
- 176 than one agency.
- 177 (c) The department may not establish training programs that train employees to
- 178 perform highly specialized or technical jobs and tasks.
- 179 (3) (a) (i) The department may collect fees for training as authorized by this Subsection
- 180 (3).
- 181 (ii) Training funded from General Fund appropriations shall be treated as a separate
- 182 program within the department budget.

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

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

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

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

192 Section 3. Section **67-19-6.1** is amended to read:

193 **67-19-6.1. Department field offices.**

194 (1) The executive director of the Department of Human Resource Management may
195 establish a field office in an agency.

196 (2) The executive director may assign an employee of the department to act as field
197 office staff.

198 (3) The executive director and agency head shall sign an agreement, to be reviewed
199 annually, that specifies:

200 (a) the services to be provided by the department;

201 (b) the use of agency facilities and equipment by the field office;

202 (c) protocols to resolve discrepancies between agency practice and Department of
203 Human Resource Management policy; and

204 (d) any other issue necessary for the proper functioning of the field office.

205 (4) Unless otherwise provided for in the field office agreement, the agency shall:

206 [~~(a) obtain field office approval for the final selection of qualified applicants for~~
207 ~~appointment and promotion to vacant positions;~~]

208 [~~(b)~~] (a) assign responsibilities and duties to its employees;

209 [~~(c)~~] (b) conduct performance appraisals;

210 [~~(d)~~] (c) discipline its employees in consultation with the department; and

211 [~~(e)~~] (d) maintain individual personnel records.

212 Section 4. Section **67-19-6.7** is amended to read:

213 **67-19-6.7. Overtime policies for state employees.**

- 214 (1) As used in this section:
- 215 (a) "Accrued overtime hours" means:
- 216 (i) for nonexempt employees, overtime hours earned during a fiscal year that, at the end
217 of the fiscal year, have not been paid and have not been taken as time off by the nonexempt
218 state employee who accrued them; and
- 219 (ii) for exempt employees, overtime hours earned during an overtime year.
- 220 (b) "Appointed official" means:
- 221 (i) each department executive director and deputy director, each division director, and
222 each member of a board or commission; and
- 223 (ii) any other person employed by a department who is appointed by, or whose
224 appointment is required by law to be approved by, the governor and who:
- 225 (A) is paid a salary by the state; and
- 226 (B) who exercises managerial, policy-making, or advisory responsibility.
- 227 (c) "Department" means the Department of Administrative Services, the Department of
228 Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage
229 Control, the Insurance Department, the Public Service Commission, the Labor Commission,
230 the Department of Agriculture and Food, the Department of Human Services, the State Board
231 of Education, the Department of Natural Resources, the Department of Technology Services,
232 the Department of Transportation, the Department of Commerce, the Department of Workforce
233 Services, the State Tax Commission, the Department of Community and Culture, the
234 Department of Health, the National Guard, the Department of Environmental Quality, the
235 Department of Public Safety, the Department of Human Resource Management, the
236 Commission on Criminal and Juvenile Justice, all merit employees except attorneys in the
237 Office of the Attorney General, merit employees in the Office of the State Treasurer, ~~and~~
238 merit employees in the Office of the State Auditor, Department of Veterans' Affairs, and the
239 Board of Pardons and Parole.
- 240 (d) "Elected official" means any person who is an employee of the state because the
241 person was elected by the registered voters of Utah to a position in state government.
- 242 (e) "Exempt employee" means a state employee who is exempt as defined by the Fair
243 Labor Standards Act of 1978, 29 U.S.C. Section 201 et seq.
- 244 (f) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. Section 201 et seq.

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

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

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

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

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

255 (i) an appointed official [or];

256 (ii) an elected official[-];

257 (iii) a member of a board or commission who is paid only on a per diem or travel
 258 expenses basis; or

259 (iv) employed on a contractual basis at the State Office of Education.

260 ~~[(ii) "State employee" does not mean:]~~

261 ~~[(A) certificated employees of the State Board of Education; and]~~

262 ~~[(B) employees of the Department of Community and Culture or the Governor's Office~~
 263 ~~of Economic Development, whose positions are designated as schedule AM exempt employees~~
 264 ~~under Section 67-19-15.]~~

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

267 (m) "Work period" means:

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

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

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

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

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

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

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

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

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

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

289 (e) Each department shall:

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

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

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

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

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

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

306 (b) (i) Each department shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

337 (c) in coordination with modifications to the systems operated by the Division of

338 Finance, make rules:

339 (i) establishing procedures for recording overtime worked that comply with FLSA
340 requirements;

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

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

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

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

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

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

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

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

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

360 (a) Notwithstanding the procedures and requirements of Title 63G, Chapter 4,
361 Administrative Procedures Act, Section 67-19-31, and Section 67-19a-301, any employee who
362 is aggrieved by the FLSA designation made by the Department of Human Resource
363 Management as required by this section may appeal that determination to the executive director
364 of the Department of Human Resource Management by following the procedures and
365 requirements established in Department of Human Resource Management rule.

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

368 (c) If the employee is aggrieved by the decision of the executive director of the

369 Department of Human Resource Management, the employee shall appeal that determination to
370 the Department of Labor, Wage and Hour Division, according to the procedures and
371 requirements of federal law.

372 Section 5. Section **67-19-11** is amended to read:

373 **67-19-11. Use of department facilities -- Field office facilities cost allocation --**
374 **Funding for department.**

375 (1) (a) All officers and employees of the state and its political subdivisions shall allow
376 the department to use public buildings under their control, and furnish heat, light, and furniture,
377 for any examination, training, hearing, or investigation authorized by this chapter.

378 (b) The cost of the department's use of facilities shall be paid by the agency housing a
379 field office staff.

380 (2) The executive director shall:

381 (a) prepare an annual budget request for the department;

382 (b) submit the budget request to the governor and the Legislature; and

383 (c) [~~except for fiscal year 2007,~~] before charging a fee for services provided by the
384 department's internal service fund to an executive branch agency, the executive director shall:

385 (i) submit the proposed rates, fees, and cost analysis to the Rate Committee established
386 under Subsection (3); and

387 (ii) obtain the approval of the Legislature as required under Section 63J-1-410.

388 (3) (a) There is created a Rate Committee which shall consist of:

389 (i) the director of the Governor's Office of Planning and Budget, or a designee;

390 (ii) the executive directors of three state agencies that use services and pay rates to one
391 of the department internal service funds, or their designee, appointed by the governor for a
392 two-year term;

393 (iii) the director of the Division of Finance, or a designee; [~~and~~]

394 (iv) the executive director of the Department of Human Resource Management, or a
395 designee[~~;~~]; and

396 the attorney general or designee.

397 (b) (i) The committee shall elect a chair from its members, except that the chair may
398 not be from an agency that receives payment of a rate set by the committee.

399 (ii) Members of the committee who are state government employees and who do not

400 receive salary, per diem, or expenses from their agency for their service on the committee shall
401 receive no compensation, benefits, per diem, or expenses for the members' service on the
402 committee.

403 (c) The Department of Human Resource Management shall provide staff services to the
404 committee.

405 (4) (a) The department shall submit to the committee a proposed rate and fee schedule
406 for:

407 (i) human resource management services rendered[-]; and

408 (ii) costs incurred by the Office of the Attorney General in defending the state in a
409 grievance under review by the Career Service Review Office.

410 (b) The committee shall:

411 (i) conduct meetings in accordance with Title 52, Chapter 4, Open and Public Meetings
412 Act;

413 (ii) review the proposed rate and fee schedules and may approve, increase, or decrease
414 the rate and fee;

415 (iii) recommend a proposed rate and fee schedule for the internal service fund to:

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

417 (B) the legislative appropriations subcommittees that, in accordance with Section
418 63J-1-410, approve the internal service fund rates, fees, and budget; and

419 (iv) review and approve, increase or decrease an interim rate, fee, or amount when the
420 department begins a new service or introduces a new product between annual general sessions
421 of the Legislature.

422 (c) The committee may in accordance with Subsection 63J-1-410(4) decrease a rate,
423 fee, or amount that has been approved by the Legislature.

424 Section 6. Section **67-19-12** is amended to read:

425 **67-19-12. State pay plans -- Applicability of section -- Exemptions -- Duties of the**
426 **executive director.**

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

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

- 431 (2) The following employees are exempt from this section:
- 432 (a) members of the Legislature and legislative employees;
- 433 (b) members of the judiciary and judicial employees;
- 434 (c) elected members of the executive branch and ~~[their direct staff who meet career~~
 435 ~~service exempt criteria as defined in]~~ employees under schedule AC as provided under
 436 Subsection 67-19-15(1)(~~k~~)(c);
- 437 (d) employees of the State Board of Education who are licensed by the State Board of
 438 Education;
- 439 (e) officers, faculty, and other employees of state institutions of higher education;
- 440 (f) employees in ~~[any]~~ a position that is [determined] specified by statute to be exempt
 441 from this Subsection (2);
- 442 (g) employees in the Office of the Attorney General;
- 443 (h) department heads and other persons appointed by the governor ~~[pursuant to]~~ under
 444 statute;
- 445 ~~[(i) employees of the Department of Community and Culture whose positions are~~
 446 ~~designated as executive/professional positions by the executive director of the Department of~~
 447 ~~Community and Culture with the concurrence of the executive director;]~~
- 448 ~~[(j) employees of the Governor's Office of Economic Development whose positions are~~
 449 ~~designated as executive/professional positions by the director of the office;]~~
- 450 ~~[(k)]~~ (i) exempt employees [of the Medical Education Council] as provided under
 451 Subsection 67-19-15(1)(l); [and]
- 452 ~~[(~~h~~)]~~ (j) employees of the Utah Schools for the Deaf and the Blind who are:
- 453 (i) educators as defined by Section 53A-25b-102 [who are employed by the Utah
 454 Schools for the Deaf and the Blind.]; or
- 455 (ii) educational interpreters as classified by the department; and
- 456 (k) temporary employees under schedule TL or IN as provided under Subsections
 457 67-19-15(1)(o) and (p).
- 458 (3) (a) The executive director shall prepare, maintain, and revise a position
 459 classification plan for each employee position not exempted under Subsection (2) to provide
 460 equal pay for equal work.
- 461 (b) Classification of positions shall be based upon similarity of duties performed and

462 responsibilities assumed, so that the same job requirements and the same salary range may be
463 applied equitably to each position in the same class.

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

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

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

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

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

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

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

480 (ii) (A) The executive director shall assign each class of positions in the classification
481 plan to a salary range and shall set the width of the salary range to reflect the normal growth
482 and productivity potential of employees in that class.

483 (B) The width of the ranges need not be uniform for all classes of positions in the
484 plan[~~, but each range shall contain merit steps in increments of 2.75% salary increases~~].

485 (iii) (A) The executive director shall issue rules for the administration of pay plans.

486 (B) The rules may provide for exceptional performance increases and for a program of
487 incentive awards for cost-saving suggestions and other commendable acts of employees.

488 (C) The executive director shall issue rules providing for salary adjustments.

489 (iv) Merit [step] increases shall be granted, [~~if funds are available,~~] consistent with
490 appropriations made by the Legislature, to employees who receive a rating of "successful" or
491 higher in an annual evaluation of their productivity and performance.

492 (v) By October 31 of each year, the executive director shall submit market

493 comparability adjustments to the director of the Governor's Office of Planning and Budget for
494 consideration to be included as part of the affected agency's base budgets.

495 (vi) By October 31 of each year, the executive director shall recommend a
496 compensation package to the governor.

497 (vii) (A) Adjustments shall incorporate the results of a total compensation market
498 survey of salary ranges and benefits of a reasonable cross section of comparable benchmark
499 positions in private and public employment in the state.

500 (B) The survey may also study comparable unusual positions requiring recruitment in
501 other states.

502 (C) The executive director may cooperate with other public and private employers in
503 conducting the survey.

504 (viii) (A) The executive director shall establish criteria to assure the adequacy and
505 accuracy of the survey and shall use methods and techniques similar to and consistent with
506 those used in private sector surveys.

507 (B) Except as provided under ~~[Section]~~ Sections 67-19-12.1 and 67-19-12.3, the survey
508 shall include a reasonable cross section of employers.

509 (C) The executive director may cooperate with or participate in any survey conducted
510 by other public and private employers.

511 (D) The executive director shall obtain information for the purpose of constructing the
512 survey from the Division of Workforce Information and Payment Services and shall include
513 employer name, number of persons employed by the employer, employer contact information
514 and job titles, county code, and salary if available.

515 (E) The department shall acquire and protect the needed records in compliance with the
516 provisions of Section 35A-4-312.

517 (ix) The establishing of a salary range is a nondelegable activity and is not appealable
518 under the grievance procedures of Sections 67-19-30 through 67-19-32, Title 67, Chapter 19a,
519 Grievance and Appeal Procedures, or otherwise.

520 (x) The governor shall:

521 (A) consider salary adjustments recommended under Subsection (4)(c)(vi) in preparing
522 the executive budget and shall recommend the method of distributing the adjustments;

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

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

526 (xi) If funding is approved by the Legislature in a general appropriations act, the
527 adjustments take effect on the July 1 following the enactment.

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

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

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

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

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

538 (b) The governor shall consider the executive director's proposals in preparing budget
539 recommendations for the Legislature.

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

542 Section 7. Section **67-19-12.2** is amended to read:

543 **67-19-12.2. Education benefit plan for law enforcement and correctional officers.**

544 (1) As used in this section, "law enforcement officer" has the same meaning as in
545 Section 53-13-103 and "correctional officer" has the same meaning as in Section 53-13-104.

546 (2) The executive director shall establish a plan authorizing any agency to implement
547 an educational compensation program for law enforcement officers and correctional officers
548 employed by that agency.

549 (3) The program shall provide that in order for a law enforcement officer or
550 correctional officer to qualify for education benefits for college or university education, the law
551 enforcement officer or correctional officer shall:

552 (a) provide a certified transcript of grades, demonstrating a grade point average of 3.0
553 or greater, from an accredited college or university; and

554 (b) have successfully completed the probationary employment period with the

555 employing agency.

556 (4) The program shall also provide that the agency may consider a law enforcement
557 officer or correctional officer to receive additional compensation as follows for higher
558 education degrees earned on or after April 30, 2001, in a subject area directly related to the law
559 enforcement officer's or correctional officer's employment with the agency:

560 (a) [~~two steps~~] 5.5% for an associate's degree;

561 (b) [~~two steps~~] 5.5% for a bachelor's degree; and

562 (c) [~~two steps~~] 5.5% for a master's degree.

563 (5) Expenses incurred by an agency to provide additional compensation under this
564 section may be only from the agency's existing budget.

565 Section 8. Section **67-19-14** is amended to read:

566 **67-19-14. Sick leave -- Definitions -- Unused sick days retirement programs --**

567 **Rulemaking.**

568 (1) As used in Sections 67-19-14 through 67-19-14.4:

569 (a) "Continuing medical and life insurance benefits" means the state provided policy of
570 medical insurance and the state provided portion of a policy of life insurance, each offered at
571 the same:

572 (i) benefit level and the same proportion of state/member participation in the total
573 premium costs as an active member as defined in Section 49-11-102; and

574 (ii) coverage level for a member, two person, or family policy as provided to the
575 member at the time of retirement.

576 (b) "Converted sick leave" means leave that has been converted from unused sick leave
577 in accordance with Section 67-19-14.1 which may be used by an employee in the same manner
578 as:

579 (i) annual leave;

580 (ii) sick leave; or

581 (iii) unused accumulated sick leave after the employee's retirement for the purchase of
582 continuing medical and life insurance benefits under Sections 67-19-14.2, 67-19-14.3, and
583 67-19-14.4.

584 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
585 executive director shall make rules for the procedures to implement the provisions of Sections

586 67-19-14 through 67-19-14.4.

587 ~~[(3) For purposes of Sections 67-19-14 through 67-19-14.4 the most recently earned~~
588 ~~converted sick leave or sick leave hours shall be used first when an employee uses converted~~
589 ~~sick leave or sick leave hours.]~~

590 ~~[(4)]~~ (3) The Division of Finance shall develop and maintain a system of accounting
591 for employee sick leave and converted sick leave as necessary to implement the provisions of
592 Sections 67-19-14 through 67-19-14.4.

593 Section 9. Section **67-19-14.2** is amended to read:

594 **67-19-14.2. Unused Sick Leave Retirement Option Program -- Creation -- Payout**
595 **upon eligibility for allowance -- Continuing medical and life insurance benefits after**
596 **retirement.**

597 (1) (a) There is created the "Unused Sick Leave Retirement Option Program I."

598 (b) An agency may offer the Unused Sick Leave Retirement Option Program I to an
599 employee who is eligible to receive a retirement allowance in accordance with Title 49, Utah
600 State Retirement and Insurance Benefit Act.

601 (2) The Unused Sick Leave Retirement Option Program I provides that upon becoming
602 eligible to receive a retirement allowance an employee who was employed by the state prior to
603 January 1, 2006:

604 (a) receives a contribution under Subsection (3) for 25% of the employee's unused
605 accumulated sick leave accrued prior to January 1, 2006, at the employee's rate of pay at the
606 time of retirement;

607 (b) receives continuing medical and life insurance benefits until the earlier of:

608 (i) the date the employee reaches the age eligible for Medicare; or

609 (ii) up to the following number of years:

610 (A) five years if the employee retires during calendar year 2006;

611 (B) four years if the employee retires during calendar year 2007;

612 (C) three years if the employee retires during calendar year 2008;

613 (D) two years if the employee retires during calendar year 2009;

614 (E) one year if the employee retires during calendar year 2010; or

615 (F) zero years if the employee retires after calendar year 2010; and

616 (c) may purchase additional continuing medical and life insurance benefits in

617 accordance with Subsection (4).

618 (3) (a) Subject to federal requirements and limitations, the contribution under
619 Subsection (2)(a) shall be transferred directly to the employee's defined contribution plan
620 qualified under Section 401(k) of the Internal Revenue Code which is sponsored by the Utah
621 State Retirement Board.

622 (b) If the amount calculated under Subsection (2)(a) exceeds the federal contribution
623 limitations, the employee's unused accumulated sick leave hours representing the excess shall
624 be used for the purchase of continuing medical and life insurance benefits under Subsection
625 (4).

626 (4) (a) An employee may purchase continuing medical and life insurance benefits, at
627 the rate of one month's coverage per policy for eight hours of unused sick leave remaining
628 after:

629 (i) the contribution of unused sick leave under Subsection (2)(a); and
630 (ii) an additional reduction, at the time of retirement, of unused sick leave hours as
631 follows:

632 (A) 480 hours if the employee retires during calendar year 2006;

633 (B) 384 hours if the employee retires during calendar year 2007;

634 (C) 288 hours if the employee retires during calendar year 2008;

635 (D) 192 hours if the employee retires during calendar year 2009;

636 (E) 96 hours if the employee retires during calendar year 2010; or

637 (F) 0 hours if the employee retires after calendar year 2010.

638 (b) The medical coverage level for member, two person, or family coverage that is
639 provided to the member at the time of retirement is the maximum coverage level available to
640 the member under this program.

641 (c) The purchase of continuing medical and life insurance benefits at the rate provided
642 under Subsection (4)(a) may be used by the employee to extend coverage:

643 (i) beyond the number of years provided under Subsection (2) until the employee
644 reaches the age of eligibility for Medicare; or

645 (ii) if the employee has reached the age of eligibility for Medicare, continuing medical
646 benefits for the employee's spouse may be purchased until the employee's spouse reaches the
647 age of eligibility for Medicare.

648 (d) An employee and the employee's spouse who are or who later become eligible for
 649 Medicare may purchase Medicare supplemental insurance at the rate of one month's coverage
 650 for eight hours of the employee's unused sick leave per person.

651 (5) (a) The continuing medical and life insurance benefits received under Subsection
 652 (2)(b) or purchased by an employee under Subsection (4):

653 (i) may not be suspended or deferred for future use; and

654 (ii) continues in effect until exhausted.

655 (b) An employer participating in the Program I benefits under this section may not
 656 provide medical or life insurance benefits to a person who is:

657 (i) reemployed after retirement; and

658 (ii) receiving benefits under this section.

659 Section 10. Section **67-19-15** is amended to read:

660 **67-19-15. Career service -- Exempt positions -- Schedules for civil service**
 661 **positions -- Coverage of career service provisions.**

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

665 (a) Schedule AA includes the governor, members of the Legislature, and all other
 666 elected state officers~~[-, designated as Schedule AA];~~

667 (b) Schedule AB includes appointed executives and board or commission executives
 668 enumerated in Section 67-22-2~~[-, and commissioners designated as Schedule AB];~~

669 (c) Schedule AC includes all employees and officers in:

670 (i) the office and at the residence of the governor~~[-, designated as Schedule AC];~~

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

672 (iii) the Public Lands Policy Coordinating Council;

673 (iv) the state Auditor's office; and

674 (v) the state Treasurer's office;

675 (d) Schedule AD includes employees who:

676 (i) are in a confidential relationship to an agency head or commissioner; and [who]

677 (ii) report directly to, and are supervised by, a department head, commissioner, or
 678 deputy director of an agency or its equivalent~~[-, designated as Schedule AD];~~

679 ~~[(e) unskilled employees in positions requiring little or no specialized skill or training,~~
680 ~~designated as Schedule AE;]~~

681 ~~[(f) part-time professional noncareer persons who are paid for any form of medical and~~
682 ~~other professional service and who are not engaged in the performance of administrative duties,~~
683 ~~designated as Schedule AF;]~~

684 ~~[(g)] (e) Schedule AG includes employees in the Office of the Attorney General who~~
685 ~~are under their own career service pay plan under Sections 67-5-7 through 67-5-13[; designated~~
686 ~~as Schedule AG];~~

687 ~~[(h)] (f) Schedule AH includes:~~

688 ~~(i) teaching staff of all state institutions[; including]; and~~

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

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

691 ~~(B) educators as defined by Section 53A-25b-102 [who are employed by the Utah~~
692 ~~Schools for the Deaf and the Blind, designated as Schedule AH];~~

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

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

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

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

702 ~~[(m) employees of the Department of Community and Culture whose positions are~~
703 ~~designated as executive/professional positions by the executive director of the Department of~~
704 ~~Community and Culture with the concurrence of the executive director, and employees of the~~
705 ~~Governor's Office of Economic Development whose positions are designated as~~
706 ~~executive/professional positions by the director of the office, designated as Schedule AM;]~~

707 ~~[(n)] (g) Schedule AN includes employees of the Legislature[; designated as Schedule~~
708 ~~AN];~~

709 ~~[(o)] (h) Schedule AO includes employees of the judiciary[; designated as Schedule~~

710 AΘ];

711 ~~[(p)]~~ (i) Schedule AP includes all judges in the judiciary~~[-, designated as Schedule AP];~~

712 ~~[(q)]~~ (j) Schedule AQ includes:

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

714 governing bodies of agencies~~[-];~~

715 (ii) other local officials serving in an ex officio capacity~~[-]; and~~

716 (iii) officers, faculty, and other employees of state universities and other state

717 institutions of higher education~~[-, designated as Schedule AQ];~~

718 ~~[(r)]~~ (k) Schedule AR includes employees ~~[who make statewide policy, designated as~~

719 ~~Schedule AR;]~~ in positions which involve responsibility:

720 (i) for determining policy;

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

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

723 the concurrence of the executive director;

724 ~~[(s)]~~ (l) Schedule AS includes any other employee:

725 (i) whose appointment is required by statute to be career service exempt~~[-, designated as~~

726 ~~Schedule AS];~~

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

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

729 compensation, and bonuses for its employees;

730 ~~[(t)]~~ (m) Schedule AT includes employees of the Department of Technology Services,

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

732 Technology Services with the concurrence of the executive director~~[-, designated as Schedule~~

733 ~~AT]; [and]~~

734 ~~[(u)]~~ (n) Schedule AU includes patients and inmates employed in state institutions~~[-,~~

735 ~~designated as Schedule AU];~~

736 (o) Schedule IN includes employees who are:

737 (i) hired to work part time on an indefinite basis; and

738 (ii) considered to be temporary noncareer employees; and

739 (p) Schedule TL includes employees who are:

740 (i) hired to work on a time-limited basis; and

741 (ii) considered to be temporary noncareer employees.

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

743 (a) (i) Schedule A is the schedule consisting of positions [~~exempted by~~] under
744 Subsection (1).

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

747 (b) Schedule B is the competitive career service schedule, consisting of all positions
748 filled through competitive selection procedures as defined by the executive director.

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

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

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

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

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

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

763 (d) Unless otherwise provided by law, compensation for all other Schedule A
764 employees shall be established by their appointing authorities, within ranges approved by, and
765 after consultation with the executive director of the Department of Human Resource
766 Management.

767 [~~(5) All employees of the Office of State Auditor, the Office of State Treasurer, and~~
768 ~~employees who are not exempt under this section are covered by the career service provisions~~
769 ~~of this chapter.]~~

770 Section 11. Section **67-19-15.6** is amended to read:

771 **67-19-15.6. Longevity salary increases.**

772 (1) Except for those employees [~~subject to the Executive and Judicial Compensation~~
 773 ~~Commission or Citizen's Salary Commission, any~~] in schedule AB, IN, or TL as provided
 774 under Section 67-19-15, an employee shall receive an increase in salary of 2.75% if that
 775 employee:

776 (a) holds a position under Schedule A or B as [~~defined in~~] provided under Section
 777 67-19-15;

778 (b) has reached the [~~final step in~~] maximum of the salary range in the position
 779 classification;

780 (c) has been employed with the state for eight years; and

781 (d) is rated eligible in job performance under guidelines established by the executive
 782 director.

783 (2) Any employee who meets the criteria [~~defined in~~] under Subsection (1) is entitled
 784 to the same increase in salary for each additional three years of employment [~~so long as~~] if the
 785 employee maintains the eligibility standards established by the department.

786 Section 12. Section **67-19-15.7** is amended to read:

787 **67-19-15.7. Promotion -- Reclassification -- Market adjustment.**

788 (1) (a) [~~Each employee who~~] If an employee is promoted or [whose] the employee's
 789 position is reclassified to [the next higher salary range shall be placed at the merit step within
 790 the new range corresponding to a salary increase of between 2.75% and 11%] a higher salary
 791 range maximum, the agency shall place the employee within the new range of the position.

792 (b) [~~The employee~~] An agency may not [be placed] set an employee's salary:

793 (i) higher than the [highest merit step] maximum in the new salary range; and

794 (ii) lower than the minimum in the new salary range of the position.

795 (c) Except for an employee under Schedule IN or TL under Section 67-19-15, the
 796 agency shall grant a salary increase determined by the agency to an employee who is promoted.

797 [~~(2) (a) Each employee who is promoted or whose position is reclassified to a salary~~
 798 ~~range higher than the next higher range shall be placed at the merit step within the new range~~
 799 ~~corresponding to a salary increase of between 5.5% and 11%.]~~

800 [~~(b) The employee may not be placed lower than the lowest merit step in the new salary~~
 801 ~~range.]~~

802 [~~(3) (a) Each~~] (2) An agency shall adjust the salary range for an employee whose

803 salary range is approved by the Legislature for a [~~selective salary~~] market comparability
 804 adjustment consistent with Subsection 67-19-12(4)(c)[~~(viii)~~](v) [~~shall be adjusted to the new~~
 805 ~~range~~];

806 (a) at the beginning of the next fiscal year[-]; and

807 (b) [~~Employees shall be placed at the step value on the new range~~] consistent with [~~the~~
 808 ~~appropriation authorized~~] appropriations made by the Legislature.

809 [~~(4)~~ (a)] (3) Department-initiated revisions in the state classification system that result
 810 in consolidation or reduction of class titles or broadening of pay ranges;

811 (a) may not be regarded as a reclassification of the position or promotion of the
 812 employee[-]; and

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

814 [~~(b) These revisions are exempt from the provisions of Subsections (1) and (2).~~]

815 Section 13. Section **67-19-18** is amended to read:

816 **67-19-18. Dismissals and demotions -- Grounds -- Disciplinary action --**

817 **Procedure -- Reductions in force.**

818 (1) A career service employee may be dismissed or demoted:

819 (a) to advance the good of the public service; or

820 (b) for just causes, including inefficiency, incompetency, failure to maintain skills or
 821 adequate performance levels, insubordination, disloyalty to the orders of a superior,
 822 misfeasance, malfeasance, or nonfeasance in office.

823 (2) An employee may not be dismissed because of race, sex, age, disability, national
 824 origin, religion, political affiliation, or other nonmerit factor including the exercise of rights
 825 under this chapter.

826 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 827 executive director shall establish rules governing the procedural and documentary requirements
 828 of disciplinary dismissals and demotions.

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

833 (5) (a) A career service employee may not be demoted or dismissed unless the

834 department head or designated representative has complied with this subsection.

835 (b) The department head or designated representative notifies the employee in writing
836 of the reasons for the dismissal or demotion.

837 (c) The employee has no less than five working days to reply and have the reply
838 considered by the department head.

839 (d) The employee has an opportunity to be heard by the department head or designated
840 representative.

841 (e) Following the hearing, the employee may be dismissed or demoted if the
842 department head finds adequate cause or reason.

843 (6) (a) Reductions in force required by inadequate funds, change of workload, or lack
844 of work are governed by retention points established by the executive director.

845 (b) Under those circumstances:

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

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

850 (iii) (A) [~~Career service~~] When more than one career service employee is affected, the
851 employees shall be separated in the order of their retention points, the employee with the
852 lowest points to be discharged first.

853 (B) Retention points for each career service employee shall be computed according to
854 rules established by the executive director, allowing appropriate consideration for proficiency
855 and seniority in state government, including any active duty military service fulfilled
856 subsequent to original state appointment.

857 (c) (i) A career service employee who is separated in a reduction in force under this
858 section shall be given preferential consideration when applying for a career service position.

859 (ii) Preferential consideration under Subsection (6)(c)(i) applies only until the former
860 career service employee accepts a career service position.

861 (iii) The executive director shall make rules in accordance with Title 63G, Chapter 3,
862 Utah Administrative Rulemaking Act, concerning the manner of granting preferential
863 consideration under Subsection (6)(c)(i).

864 (d) (i) An employee separated due to a reduction in force may appeal to the department

865 head for an administrative review.

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

868 (iii) The employee may appeal the decision of the department head according to the
869 grievance and appeals procedure of this ~~[act]~~ chapter.

870 Section 14. Section **67-19a-101** is amended to read:

871 **67-19a-101. Definitions.**

872 As used in this chapter:

873 (1) "Administrator" means the person ~~[employed by the board to assist in administering~~
874 ~~personnel policies]~~ appointed under Section 67-19a-201 to head the Career Service Review
875 Office.

876 ~~[(2) "Board" means the Career Service Review Board created by this chapter.]~~

877 ~~[(3)]~~ (2) "Career service employee" means a person employed in career service as
878 defined in Section 67-19-3.

879 ~~[(4)]~~ (3) "Employer" means the state of Utah and all supervisory personnel vested with
880 the authority to implement and administer the policies of ~~[the department]~~ an agency.

881 ~~[(5)]~~ (4) "Grievance" means:

882 (a) a complaint by a career service employee concerning any matter touching upon the
883 relationship between the employee and ~~[his]~~ the employer; and

884 (b) any dispute between a career service employee and ~~[his]~~ the employer.

885 (5) "Office" means the Career Service Review Office created under Section
886 67-19a-201.

887 (6) "Supervisor" means the person:

888 (a) to whom an employee reports ~~[and]; or~~

889 (b) who assigns and oversees ~~[the]~~ an employee's work.

890 Section 15. Section **67-19a-201** is amended to read:

891 **67-19a-201. Career Service Review Office created -- Appointment of an**
892 **administrator -- Reporting -- Qualifications.**

893 (1) There is created a Career Service Review ~~[Board]~~ Office.

894 (2) (a) The governor shall appoint ~~[five members to the board no more than three of~~
895 ~~which are members of the same political party]~~, with the consent of the Senate, an

896 administrator of the office.

897 ~~[(b) The governor shall appoint members whose gender and ethnicity represent the~~
898 ~~career service work force.]~~

899 (b) The administrator shall have demonstrated an ability to administer personnel
900 policies in performing the duties specified in this chapter.

901 ~~[(3) (a) The governor may remove any board member for cause.]~~

902 ~~[(b) When a vacancy occurs in the membership for any reason, the replacement shall be~~
903 ~~appointed for the unexpired term.]~~

904 ~~[(4) The governor shall ensure that appointees to the board:]~~

905 ~~[(a) are qualified by knowledge of employee relations and merit system principles in~~
906 ~~public employment; and]~~

907 ~~[(b) are not:]~~

908 ~~[(i) members of any local, state, or national committee of a political party;]~~

909 ~~[(ii) officers or members of a committee in any partisan political club; and]~~

910 ~~[(iii) holding or a candidate for a paid public office.]~~

911 ~~[(5) (a) Except as required by Subsection (b), the governor shall appoint board~~
912 ~~members to serve four-year terms beginning January 1.]~~

913 ~~[(b) Notwithstanding the requirements of Subsection (a), the governor shall, at the time~~
914 ~~of appointment or reappointment, adjust the length of terms to ensure that the terms of board~~
915 ~~members are staggered so that approximately half of the board is appointed every two years.]~~

916 ~~[(c) The members of the board shall serve until their successors are appointed and~~
917 ~~qualified.]~~

918 ~~[(6) Each year, the board shall choose a chair and vice chair from its own members.]~~

919 ~~[(7) (a) Three members of the board are a quorum for the transaction of business.]~~

920 ~~[(b) Action by a majority of members when a quorum is present is action of the board.]~~

921 ~~[(8) (a) Members shall receive no compensation or benefits for their services, but may~~
922 ~~receive per diem and expenses incurred in the performance of the member's official duties at~~
923 ~~the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.]~~

924 ~~[(b) Members may decline to receive per diem and expenses for their service.]~~

925 Section 16. Section **67-19a-202** is amended to read:

926 **67-19a-202. Powers -- Jurisdiction.**

927 (1) (a) The ~~[board]~~ office shall serve as the final administrative body to review appeals
928 from career service employees and agencies of decisions ~~[about promotions, dismissals,~~
929 ~~demotions, suspensions, written reprimands, wages, salary, violations of personnel rules, issues~~
930 ~~concerning the equitable administration of benefits, reductions in force, and disputes~~
931 ~~concerning abandonment of position that have not been resolved at an earlier stage in the~~
932 ~~grievance procedure.] regarding:~~

933 (i) a dismissal;

934 (ii) a demotion;

935 (iii) a suspension in excess of 20 hours of work time;

936 (iv) a reduction in force;

937 (v) a dispute concerning abandonment of position that has not been resolved at an
938 earlier stage in the grievance procedure; and

939 (vi) a wage grievance when an employee is not placed within the salary range of the
940 employee's current position.

941 (b) ~~[The board]~~ Except as provided under Subsection (1)(a), the office has no
942 jurisdiction to review or decide any other personnel matters.

943 (2) The time limits established in this chapter supersede the procedural time limits
944 established in Title 63G, Chapter 4, Administrative Procedures Act.

945 ~~[(3) In conjunction with any inquiry, investigation, hearing, or other proceeding, any~~
946 ~~member of the board may:]~~

947 ~~[(a) administer oaths;]~~

948 ~~[(b) certify official acts;]~~

949 ~~[(c) subpoena witnesses, documents, and other evidence; and]~~

950 ~~[(d) grant continuances pursuant to board rule.]~~

951 Section 17. Section **67-19a-203** is amended to read:

952 **67-19a-203. Rulemaking authority.**

953 ~~[The board]~~ In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
954 Act, the administrator may make rules governing:

955 (1) definitions of terms, phrases, and words used in the grievance process established
956 by this chapter;

957 (2) what matters constitute excusable neglect for purposes of the waiver of time limits

958 established by this chapter;

959 (3) the application for and service of subpoenas, the service and filing of pleadings, and
960 the issuance of rulings, orders, determinations, summary judgments, transcripts, and other legal
961 documents necessary in grievance proceedings;

962 (4) the use, calling, attendance, participation, and fees of witnesses in grievance
963 proceedings;

964 (5) continuances of grievance proceedings;

965 (6) procedures in jurisdictional and evidentiary hearings, unless governed by Title 63G,
966 Chapter 4, Administrative Procedures Act;

967 (7) the presence of media representatives at grievance proceedings; and

968 (8) procedures for sealing files or making data pertaining to a grievance unavailable to
969 the public.

970 Section 18. Section **67-19a-204** is amended to read:

971 **67-19a-204. Administrator -- Powers.**

972 [~~(1) The governor shall appoint a person with demonstrated ability to administer~~
973 ~~personnel policies to assist the board in performing the functions specified in this chapter.]~~

974 (1) In conjunction with any inquiry, investigation, hearing, or other proceeding, the
975 administrator may:

976 (a) administer an oath;

977 (b) certify an official act;

978 (c) subpoena a witness, document, and other evidence; and

979 (d) grant a continuance as provided by rule.

980 (2) (a) The administrator may:

981 (i) assign qualified, impartial hearing officers on a per case basis to adjudicate matters
982 under the jurisdiction of the [~~board~~] office;

983 (ii) subpoena witnesses, documents, and other evidence in conjunction with any
984 inquiry, investigation, hearing, or other proceeding; and

985 (iii) upon motion made by a party or person to whom the subpoena is directed and
986 upon notice to the party who issued the subpoena, quash or modify the subpoena if it is
987 unreasonable, requires an excessive number of witnesses, or requests evidence not relevant to
988 any matter in issue.

989 (b) In selecting and assigning hearing officers under authority of this section, the
990 administrator shall appoint hearing officers that have demonstrated by education, training, and
991 experience the ability to adjudicate and resolve personnel administration disputes by applying
992 employee relations principles within a large, public work force.

993 Section 19. Section **67-19a-301** is amended to read:

994 **67-19a-301. Charges submissible under grievance and appeals procedure.**

995 (1) This grievance procedure may only be used by career service employees who are
996 not:

997 (a) public applicants for a position with the state's work force;

998 (b) public employees of the state's political subdivisions;

999 (c) public employees covered by other grievance procedures; or

1000 (d) employees of state institutions of higher education.

1001 (2) (a) Whenever a question or dispute exists as to whether an employee is qualified to
1002 use this grievance procedure, the administrator or an assigned hearing officer shall resolve the
1003 question or dispute.

1004 (b) The ~~administrator's~~ decision under Subsection (2)(a) is reviewable only by the
1005 Court of Appeals.

1006 (3) Any career service employee may submit a grievance based upon a claim or charge
1007 of injustice or oppression, including dismissal from employment, resulting from an act,
1008 occurrence, omission, or condition for solution through the grievance procedures set forth in
1009 this chapter.

1010 Section 20. Section **67-19a-302** is amended to read:

1011 **67-19a-302. Levels of appealability of charges submissible under grievance and**
1012 **appeals procedure.**

1013 (1) A career service employee may grieve [~~promotions, dismissals, demotions,~~
1014 ~~suspensions, written reprimands, wages, salary, violations of personnel rules, issues concerning~~
1015 ~~the equitable administration of benefits, reductions in force, and disputes concerning~~
1016 ~~abandonment of position to all levels of grievance procedure~~] the issues specified under
1017 Subsection 67-19a-202(1)(a).

1018 (2) (a) A career service employee may grieve all other matters only to the level of [~~his~~]
1019 the department head.

1020 (b) The decision of the department head on matters under Subsection (2)(a) is final and
1021 ~~[unappealable to the board]~~ may not be appealed to the office.

1022 Section 21. Section **67-19a-401** is amended to read:

1023 **67-19a-401. Time limits for submission of appeal by aggrieved employee --**

1024 **Voluntary termination of employment -- Group grievances.**

1025 (1) Subject to the ~~[standing requirements contained in]~~ provisions of Part 3, Grievance
1026 and Appeal Procedures, and the restrictions contained in this ~~[part]~~ Part 4, Procedural Steps to
1027 Be Followed by Aggrieved Employee, a career service employee may have a grievance
1028 addressed by following the procedures specified in this part.

1029 (2) The employee and the person to whom the grievance is directed may agree in
1030 writing to waive or extend grievance steps ~~[2, 3, or 4]~~ specified under Subsection
1031 67-19a-402(1), (2), or (3) or the time limits specified for those grievance steps, as outlined in
1032 Section 67-19a-402.

1033 (3) Any writing made ~~[pursuant to]~~ under Subsection (2) must be submitted to the
1034 administrator.

1035 (4) ~~[(a) Unless the employee meets the requirements for excusable neglect established~~
1036 ~~by rule, if]~~ Except as provided under Subsection (6), if the employee fails to process the
1037 grievance to the next procedural step within the time limits established in this part~~[-, he has~~
1038 ~~waived his];~~

1039 (a) the employee waves the right to process the grievance or to obtain judicial review
1040 of the grievance[-]; and

1041 ~~[(b) Unless the employee meets the requirements for excusable neglect established by~~
1042 ~~rule, if the employee fails to process the grievance to the next step within the time limits~~
1043 ~~established in this part,]~~

1044 (b) the grievance is considered to be settled based on the decision made at the last
1045 procedural step.

1046 (5) (a) ~~[Unless the employee meets the requirements for excusable neglect established~~
1047 ~~by rule, an]~~ An employee may submit a grievance for review under this chapter only if the
1048 employee submits the grievance:

1049 (i) within 20 working days after the event giving rise to the grievance; or

1050 (ii) within 20 working days after the employee has knowledge of the event giving rise

1051 to the grievance.

1052 (b) Notwithstanding Subsection (5)(a), an employee may not submit a grievance more
1053 than one year after the event giving rise to the grievance.

1054 (6) The provisions of Subsections (4) and (5)(a) do not apply if the employee meets the
1055 requirements for excusable neglect established by rule.

1056 ~~[(6)]~~ (7) A person who has voluntarily terminated ~~[his]~~ the person's employment with
1057 the state may not submit a grievance after ~~[he]~~ the person has terminated ~~[his]~~ the employment.

1058 ~~[(7)]~~ (8) (a) ~~[When]~~ If several employees allege the same grievance, ~~[they]~~ the
1059 employees may submit a group grievance by following the procedures and requirements of this
1060 chapter.

1061 (b) In submitting a group grievance, each aggrieved employee shall sign the complaint.

1062 (c) The administrator ~~[and board]~~ may not treat a group grievance as a class action, but
1063 may select one aggrieved employee's grievance and address that grievance as a test case.

1064 Section 22. Section **67-19a-402** is amended to read:

1065 **67-19a-402. Procedural steps to be followed by aggrieved employee.**

1066 (1) (a) A career service employee who ~~[believes he has a grievance shall attempt to~~
1067 resolve the grievance through discussion with his] has a grievance shall submit the grievance in
1068 writing to:

1069 (i) the employee's supervisor; and

1070 (ii) the administrator.

1071 (b) Within five working days after ~~[the employee discusses the grievance with him]~~
1072 receiving a written grievance, the employee's supervisor may issue a ~~[verbal]~~ written decision
1073 on the grievance.

1074 (2) (a) If ~~[the grievance remains unanswered for five working days after its~~
1075 submission,] the employee's supervisor fails to respond to the grievance within five working
1076 days or if the aggrieved employee is dissatisfied with the supervisor's ~~[verbal]~~ written decision,
1077 the employee may ~~[resubmit]~~ submit the written grievance ~~[in writing]~~ to ~~[his immediate~~
1078 supervisor within five] the employee's agency or division director within 10 working days after
1079 the expiration of the period for response or receipt of the written decision, whichever is first.

1080 (b) Within five working days after receiving the written grievance, the employee's
1081 ~~[written grievance is submitted, the employee's supervisor shall]~~ agency or division director

1082 may issue a written response to the grievance stating [~~his~~] the decision and the reasons for the
1083 decision.

1084 [~~(c) Immediately after submitting the written grievance to his supervisor, the employee~~
1085 ~~shall notify the administrator of the board that he has submitted the written grievance.~~]

1086 [~~(3) (a) If the written grievance submitted to the employee's supervisor remains~~
1087 ~~unanswered for five working days after its submission, or if the aggrieved employee is~~
1088 ~~dissatisfied with the decision issued, the employee may submit the grievance in writing to his~~
1089 ~~agency or division director within 10 working days after the expiration of the period for~~
1090 ~~decision or receipt of the decision, whichever is first.~~]

1091 [~~(b) Within five working days after the employee's written grievance is submitted, the~~
1092 ~~employee's agency or division director shall issue a written response to the grievance stating his~~
1093 ~~decision and the reasons for the decision.~~]

1094 [~~(4)~~] (3) (a) If [~~the written grievance submitted to~~] the employee's agency or division
1095 director [~~remains unanswered for~~] fails to respond to the grievance within five working days
1096 after its submission, or if the aggrieved employee is dissatisfied with the agency or division
1097 director's written decision [~~issued~~], the employee may submit the written grievance [~~in writing~~
1098 ~~to his~~] to the employee's department head within 10 working days after the expiration of the
1099 period for decision or receipt of the written decision, whichever is first.

1100 (b) Within 10 working days after the employee's written grievance is submitted, the
1101 department head shall issue a written response to the grievance stating [~~his~~] the decision and
1102 the reasons for the decision.

1103 (c) The decision of the department head is final in all matters except those matters that
1104 the [~~board~~] office may review under the authority of Part 3, Grievance and Appeal Procedures.

1105 [~~(5)~~] (4) If the written grievance submitted to the employee's department head meets
1106 the subject matter requirements of Section [~~67-19a-302~~] 67-19a-202 and if the [~~grievance~~
1107 ~~remains unanswered for~~] the employee's department head fails to respond to the grievance
1108 within 10 working days after [~~its~~] submission, or if the aggrieved employee is dissatisfied with
1109 the department head's written decision [~~issued~~], the employee may submit the written grievance
1110 [~~in writing~~] to the administrator within 10 working days after the expiration of the period for
1111 decision or receipt of the written decision, whichever is first.

1112 Section 23. Section **67-19a-403** is amended to read:

1113 **67-19a-403. Appeal to administrator -- Jurisdictional hearing.**

1114 (1) At any time after a career service employee submits a written grievance to the
 1115 administrator under [~~the authority of Section 67-19a-402~~] Subsection 67-19a-402(4), the
 1116 administrator may attempt to settle the grievance informally by conference, conciliation, and
 1117 persuasion with the employee and the agency.

1118 (2) (a) When an employee submits a grievance to the administrator under [~~the authority~~
 1119 ~~of Section 67-19a-402~~] Subsection 67-19a-402(4), the administrator shall initially determine:

1120 (i) whether [~~or not~~] the employee is a career service employee and is entitled to use the
 1121 grievance system;

1122 (ii) whether [~~or not the board~~] the office has jurisdiction over the grievance; and

1123 (iii) whether [~~or not~~] the employee has been directly harmed[~~; and~~].

1124 [~~(iv) the issues to be heard.~~]

1125 (b) In order to make the determinations required by Subsection (2)(a), the administrator
 1126 may:

1127 (i) hold a jurisdictional hearing, where the parties may present oral arguments, written
 1128 arguments, or both; or

1129 (ii) conduct an administrative review of the file.

1130 (3) (a) If the administrator holds [~~a~~] an initial jurisdictional hearing, [~~he~~] the
 1131 administrator shall issue [~~his~~] a written decision within 15 days after the hearing is adjourned.

1132 (b) If the administrator chooses to conduct an administrative review of the file, [~~he~~] the
 1133 administrator shall issue [~~his~~] the written decision within 15 days after [~~he~~] the administrator
 1134 receives the grievance.

1135 Section 24. Section **67-19a-404** is amended to read:

1136 **67-19a-404. Administrator's responsibilities.**

1137 If the administrator determines that the grievance meets the jurisdictional [~~requirements~~
 1138 ~~of Part 3, he~~] requirements of Section 67-19a-202, the administrator shall:

1139 (1) appoint a hearing officer to adjudicate the [~~complaint~~] grievance; and

1140 (2) set a date for the evidentiary hearing that is either:

1141 (a) not later than 30 days after the date the administrator [~~issues his decision that the~~
 1142 ~~board~~] determines that the office has jurisdiction over the grievance; or

1143 (b) at a date;

1144 (i) agreed upon by the parties and the administrator; and
1145 (ii) not greater than 150 days after the date the administrator determines that the office
1146 has jurisdiction over the grievance.

1147 (3) After the date for the evidentiary hearing has been set, the administrator or assigned
1148 hearing officer may grant each party one extension of reasonable length for extraordinary
1149 circumstances as determined by the administrator or assigned hearing officer.

1150 Section 25. Section **67-19a-406** is amended to read:

1151 **67-19a-406. Procedural steps to be followed by aggrieved employee -- Hearing**
1152 **before hearing officer -- Evidentiary and procedural rules.**

1153 (1) (a) The administrator shall employ a certified court reporter to record the hearing
1154 and prepare an official transcript of the hearing.

1155 (b) The official transcript of the proceedings and all exhibits, briefs, motions, and
1156 pleadings received by the hearing officer are the official record of the proceeding.

1157 (2) (a) The agency has the burden of proof in all grievances resulting from [~~dismissals,~~
1158 ~~demotions, suspensions, written reprimands, reductions in force, and disputes concerning~~
1159 ~~abandonment of position]~~ the matters described under Section 67-19a-202.

1160 (b) The employee has the burden of proof in all other grievances.

1161 (c) The party with the burden of proof must prove their case by substantial evidence.

1162 (3) (a) The hearing officer shall issue a written decision within 20 working days after
1163 the hearing is adjourned.

1164 (b) If the hearing officer does not issue a decision within 20 working days, the agency
1165 that is a party to the grievance is not liable for any claimed back wages or benefits after the date
1166 the decision is due.

1167 (4) The hearing officer may:

1168 (a) not award [~~attorneys'~~] attorney fees or costs to either party;

1169 (b) close a hearing by complying with the procedures and requirements of Title 52,
1170 Chapter 4, Open and Public Meetings Act;

1171 (c) seal the file and the evidence produced at the hearing if the evidence raises
1172 questions about an employee's character, professional competence, or physical or mental
1173 health;

1174 (d) grant continuances according to [~~board~~] rule; and

1175 (e) decide questions or disputes concerning standing [~~in accordance with Section~~
1176 ~~67-19a-301~~], jurisdiction, and issues to be heard in accordance with this chapter.

1177 Section 26. **Repealer.**

1178 This bill repeals:

1179 Section **67-19a-407, Appeal to Career Service Review Board.**

1180 Section **67-19a-408, Career Service Review Board hearing -- Evidentiary and**
1181 **procedural rules.**

1182 Section 27. **Effective date.**

1183 This bill takes effect on July 1, 2010.

Legislative Review Note
as of 2-3-10 11:35 AM

Office of Legislative Research and General Counsel

H.B. 140 - Human Resource Management Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
