

Representative Brad L. Dee proposes the following substitute bill:

HUMAN RESOURCE MANAGEMENT

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad L. Dee

Senate Sponsor: Daniel R. Liljenquist

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;



- 26 ▶ repeals provisions requiring the most recently earned sick leave to be used first;
- 27 ▶ 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 ▶ prohibits an employer participating in certain benefit programs from providing
- 32 certain benefits to a person reemployed after retirement;
- 33 ▶ amends and consolidates classification schedules for state employees;
- 34 ▶ amends provisions for salary increases based on employee longevity and promotion;
- 35 ▶ replaces the Career Service Review Board with the Career Service Review Office
- 36 and provides that the office is the final administrative body to review certain
- 37 employee grievances;
- 38 ▶ provides for the appointment, qualifications, powers, and duties of the administrator
- 39 of the office;
- 40 ▶ provides that the administrator has rulemaking authority;
- 41 ▶ amends employee grievance procedures;
- 42 ▶ amends the burden of proof for certain grievances;
- 43 ▶ prohibits an employee from making certain dispositive motions and certain motions
- 44 for discovery in a formal adjudicative proceeding on a grievance; and
- 45 ▶ makes technical changes.

46 **Monies Appropriated in this Bill:**

47 None

48 **Other Special Clauses:**

49 This bill takes effect on July 1, 2010.

50 This bill provides revisor instructions.

51 This bill coordinates with H.B. 27, Per Diem and Travel Expense Modifications, by

52 providing superseding and substantive amendments.

53 **Utah Code Sections Affected:**

54 AMENDS:

55 **63I-2-267**, as renumbered and amended by Laws of Utah 2008, Chapter 382

56 **67-19-3**, as last amended by Laws of Utah 2006, Chapter 139

- 57 **67-19-3.1**, as last amended by Laws of Utah 2006, Chapter 139
- 58 **67-19-6**, as last amended by Laws of Utah 2008, Chapter 382
- 59 **67-19-6.1**, as last amended by Laws of Utah 2006, Chapter 139
- 60 **67-19-6.7**, as last amended by Laws of Utah 2008, Chapter 382
- 61 **67-19-11**, as last amended by Laws of Utah 2009, Chapters 104 and 183
- 62 **67-19-12**, as last amended by Laws of Utah 2009, Chapter 294
- 63 **67-19-12.2**, as last amended by Laws of Utah 2006, Chapter 139
- 64 **67-19-14**, as last amended by Laws of Utah 2008, Chapter 382
- 65 **67-19-14.2**, as last amended by Laws of Utah 2007, Chapter 130
- 66 **67-19-15**, as last amended by Laws of Utah 2009, Chapter 294
- 67 **67-19-15.6**, as last amended by Laws of Utah 2006, Chapter 139
- 68 **67-19-15.7**, as last amended by Laws of Utah 2000, Chapter 322
- 69 **67-19-16**, as last amended by Laws of Utah 2006, Chapter 139
- 70 **67-19-18**, as last amended by Laws of Utah 2009, Chapter 9
- 71 **67-19-30**, as last amended by Laws of Utah 2008, Chapter 382
- 72 **67-19a-101**, as last amended by Laws of Utah 1991, Chapters 101 and 204
- 73 **67-19a-201**, as last amended by Laws of Utah 1996, Chapters 194 and 243
- 74 **67-19a-203**, as last amended by Laws of Utah 2008, Chapter 382
- 75 **67-19a-204**, as last amended by Laws of Utah 1995, Chapter 215
- 76 **67-19a-301**, as last amended by Laws of Utah 1991, Chapter 101
- 77 **67-19a-302**, as last amended by Laws of Utah 1991, Chapter 204
- 78 **67-19a-303**, as last amended by Laws of Utah 2006, Chapter 139
- 79 **67-19a-401**, as last amended by Laws of Utah 1999, Chapter 21
- 80 **67-19a-402**, as last amended by Laws of Utah 1991, Chapter 204
- 81 **67-19a-403**, as last amended by Laws of Utah 1991, Chapter 204
- 82 **67-19a-404**, as enacted by Laws of Utah 1989, Chapter 191
- 83 **67-19a-406**, as last amended by Laws of Utah 2006, Chapter 14

84 ENACTS:

- 85 **67-19a-101.5**, Utah Code Annotated 1953

86 REPEALS AND REENACTS:

- 87 **67-19a-202**, as last amended by Laws of Utah 2008, Chapter 382

88 REPEALS:

89 **67-19a-407**, as enacted by Laws of Utah 1989, Chapter 191

90 **67-19a-408**, as last amended by Laws of Utah 2009, Chapter 9

91 **Utah Code Sections Affected by Coordination Clause:**

92 **67-19a-201**, as last amended by Laws of Utah 1996, Chapters 194 and 243



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

95 Section 1. Section **63I-2-267** is amended to read:

96 **63I-2-267. Repeal dates -- Title 67.**

97 Section 67-19a-101.5 is repealed July 1, 2011.

98 Section 2. Section **67-19-3** is amended to read:

99 **67-19-3. Definitions.**

100 As used in this chapter:

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

103 (2) "Career service" means positions under Schedule B as defined in Section 67-19-15.

104 (3) "Career service employee" means an employee who has successfully completed a
105 probationary period of service in a position covered by the career service.

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

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

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

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

113 (b) "Demotion" does not mean:

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

116 (ii) a reclassification of an employee's position under the provisions of Subsection
117 67-19-12(3) and rules made by the department.

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

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

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

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

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

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

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

128 (b) under rules of the department; and

129 (c) under other state or federal statute.

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

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

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

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

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

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

145 Section 3. Section **67-19-3.1** is amended to read:

146 **67-19-3.1. Principles guiding interpretation of chapter and adoption of rules.**

147 (1) The department shall establish a career service system designed in a manner that
148 will provide for the effective implementation of the following merit principles:

149 (a) recruiting, selecting, and advancing employees on the basis of their relative ability,

- 150 knowledge, and skills, including open consideration of qualified applicants for initial
151 appointment;
- 152 (b) providing for equitable and competitive compensation;
 - 153 (c) training employees as needed to assure high-quality performance;
 - 154 (d) retaining employees on the basis of the adequacy of their performance and
155 separating employees whose inadequate performance cannot be corrected;
 - 156 (e) fair treatment of applicants and employees in all aspects of human resource
157 administration without regard to race, color, religion, sex, national origin, political affiliation,
158 age, or disability, and with proper regard for their privacy and constitutional rights as citizens;
 - 159 (f) providing information to employees regarding their political rights and the
160 prohibited practices under the Hatch Act; and
 - 161 (g) providing a formal procedure for [~~processing the appeals and~~] advancing grievances
162 of employees:
 - 163 (i) without discrimination, coercion, restraint, or reprisal; and
 - 164 (ii) in a manner that is fair, expeditious, and inexpensive for the employee and the
165 agency.

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

168 Section 4. Section **67-19-6** is amended to read:

169 **67-19-6. Responsibilities of the executive director.**

170 (1) The executive director shall:

- 171 (a) develop, implement, and administer a statewide program of human resource
172 management that will:
 - 173 (i) aid in the efficient execution of public policy;
 - 174 (ii) foster careers in public service for qualified employees; and
 - 175 (iii) render assistance to state agencies in performing their missions;
- 176 (b) design and administer the state pay plan;
- 177 (c) design and administer the state classification system and procedures for determining
178 schedule assignments;
- 179 (d) design and administer the state recruitment and selection system;
- 180 (e) administer agency human resource practices and ensure compliance with federal

- 181 law, state law, and state human resource rules, including equal employment opportunity;
- 182 (f) consult with agencies on decisions concerning employee corrective action and
183 discipline;
- 184 (g) maintain central personnel records;
- 185 (h) perform those functions necessary to implement this chapter unless otherwise
186 assigned or prohibited;
- 187 (i) perform duties assigned by the governor or statute;
- 188 (j) adopt rules for human resource management according to the procedures of Title
189 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 190 (k) establish and maintain a management information system that will furnish the
191 governor, the Legislature, and agencies with current information on authorized positions,
192 payroll, and related matters concerning state human resources;
- 193 (l) conduct research and planning activities to:
- 194 (i) determine and prepare for future state human resource needs;
- 195 (ii) develop methods for improving public human resource management; and
- 196 (iii) propose needed policy changes to the governor;
- 197 (m) study the character, causes, and extent of discrimination in state employment and
198 develop plans for its elimination through programs consistent with federal and state laws
199 governing equal employment opportunity in employment;
- 200 (n) when requested by counties, municipalities, and other political subdivisions of the
201 state, provide technical service and advice on human resource management at a charge
202 determined by the executive director;
- 203 (o) establish compensation policies and procedures for early voluntary retirement;
- 204 (p) confer with the heads of other agencies about human resource policies and
205 procedures;
- 206 (q) submit an annual report to the governor and the Legislature; and
- 207 (r) ~~[(i) develop a procedure by which each agency will:]~~ assist with the development of
208 a vacant position report required under Subsection 63J-1-201(2)(b)(v).
- 209 ~~[(A) identify funded vacant positions; and]~~
- 210 ~~[(B) report those funded vacant positions to the department;]~~
- 211 ~~[(ii) identify all funded employee positions in each agency that have been vacant for~~

212 ~~more than 180 consecutive days during the 18-month period prior to July 1 of each year; and]~~
213 ~~[(iii) by no later than September 1 of each year, provide a report of all funded employee~~
214 ~~positions in each agency identified in Subsections (1)(r)(i) and (ii) to:]~~

215 ~~[(A) the Governor's Office of Planning and Budget; and]~~

216 ~~[(B) the Office of the Legislative Fiscal Analyst.]~~

217 (2) (a) After consultation with the governor and the heads of other agencies, the
218 executive director shall establish and coordinate statewide training programs.

219 (b) The programs developed under this Subsection (2) shall have application to more
220 than one agency.

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

223 (3) (a) (i) The department may collect fees for training as authorized by this Subsection
224 (3).

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

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

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

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

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

236 Section 5. Section **67-19-6.1** is amended to read:

237 **67-19-6.1. Department field offices.**

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

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

242 (3) The executive director and agency head shall sign an agreement, to be reviewed

243 annually, that specifies:

- 244 (a) the services to be provided by the department;
- 245 (b) the use of agency facilities and equipment by the field office;
- 246 (c) protocols to resolve discrepancies between agency practice and Department of
- 247 Human Resource Management policy; and
- 248 (d) any other issue necessary for the proper functioning of the field office.

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

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

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

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

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

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

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

257 **67-19-6.7. Overtime policies for state employees.**

258 (1) As used in this section:

259 (a) "Accrued overtime hours" means:

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

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

264 (b) "Appointed official" means:

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

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

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

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

271 (c) "Department" means the Department of Administrative Services, the Department of
272 Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage
273 Control, the Insurance Department, the Public Service Commission, the Labor Commission,

274 the Department of Agriculture and Food, the Department of Human Services, the State Board
 275 of Education, the Department of Natural Resources, the Department of Technology Services,
 276 the Department of Transportation, the Department of Commerce, the Department of Workforce
 277 Services, the State Tax Commission, the Department of Community and Culture, the
 278 Department of Health, the National Guard, the Department of Environmental Quality, the
 279 Department of Public Safety, the Department of Human Resource Management, the
 280 Commission on Criminal and Juvenile Justice, all merit employees except attorneys in the
 281 Office of the Attorney General, merit employees in the Office of the State Treasurer, ~~and~~
 282 merit employees in the Office of the State Auditor, Department of Veterans' Affairs, and the
 283 Board of Pardons and Parole.

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

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

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

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

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

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

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

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

299 (i) an appointed official ~~or~~;

300 (ii) an elected official~~[-]~~;

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

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

304 ~~[(i) "State employee" does not mean:]~~

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

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

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

311 (m) "Work period" means:

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

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

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

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

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

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

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

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

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

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

333 (e) Each department shall:

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

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

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

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

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

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

350 (b) (i) Each department shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

383 (i) establishing procedures for recording overtime worked that comply with FLSA
384 requirements;

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

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

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

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

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

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

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

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

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

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

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

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

416 Section 7. Section **67-19-11** is amended to read:

417 **67-19-11. Use of department facilities -- Field office facilities cost allocation --**
418 **Funding for department.**

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

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

424 (2) The executive director shall:

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

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

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

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

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

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

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

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

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

438 (iv) the executive director of the Department of Human Resource Management, or a
439 designee[-]; and

440 (v) the attorney general or designee.

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

443 (ii) Members of the committee who are state government employees and who do not
444 receive salary, per diem, or expenses from their agency for their service on the committee shall
445 receive no compensation, benefits, per diem, or expenses for the members' service on the
446 committee.

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

449 (4) (a) The department shall submit to the committee a proposed rate and fee schedule
450 for;

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

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

454 (b) The committee shall:

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

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

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

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

461 (B) the legislative appropriations subcommittees that, in accordance with Section
462 63J-1-410, approve the internal service fund rates, fees, and budget; and

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

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

468 Section 8. Section **67-19-12** is amended to read:

469 **67-19-12. State pay plans -- Applicability of section -- Exemptions -- Duties of the**
470 **executive director.**

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

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

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

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

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

478 (c) elected members of the executive branch and [~~their direct staff who meet career~~
479 ~~service exempt criteria as defined in~~] employees under schedule AC as provided under

480 Subsection 67-19-15(1)[~~(k)~~](c);

481 (d) employees of the State Board of Education who are licensed by the State Board of
482 Education;

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

484 (f) employees in [~~any~~] a position that is [~~determined~~] specified by statute to be exempt
485 from this Subsection (2);

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

487 (h) department heads and other persons appointed by the governor [~~pursuant to~~] under
488 statute;

489 [~~(i) employees of the Department of Community and Culture whose positions are~~
490 ~~designated as executive/professional positions by the executive director of the Department of~~

491 Community and Culture with the concurrence of the executive director;]
492 [~~(j)~~ employees of the Governor's Office of Economic Development whose positions are
493 designated as executive/professional positions by the director of the office;]
494 [~~(k)~~ (i) exempt employees [~~of the Medical Education Council~~] as provided under
495 Subsection 67-19-15(1)(l); [and]
496 [~~(j)~~ (j) employees of the Utah Schools for the Deaf and the Blind who are:
497 (i) educators as defined by Section 53A-25b-102 [~~who are employed by the Utah~~
498 ~~Schools for the Deaf and the Blind.~~]; or
499 (ii) educational interpreters as classified by the department; and
500 (k) temporary employees under schedule TL or IN as provided under Subsections
501 67-19-15(1)(o) and (p).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

537 (v) By October 31 of each year, the executive director shall submit market
538 comparability adjustments to the director of the Governor's Office of Planning and Budget for
539 consideration to be included as part of the affected agency's base budgets.

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

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

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

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

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

552 (B) Except as provided under ~~[Section]~~ Sections 67-19-12.1 and 67-19-12.3, the survey

553 shall include a reasonable cross section of employers.

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

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

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

562 (ix) The establishing of a salary range is a nondelegable activity and is not appealable
563 under the grievance procedures of Sections 67-19-30 through 67-19-32, Title 67, Chapter 19a,
564 Grievance [~~and Appeal~~] Procedures, or otherwise.

565 (x) The governor shall:

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

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

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

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

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

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

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

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

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

583 (b) The governor shall consider the executive director's proposals in preparing budget

584 recommendations for the Legislature.

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

587 Section 9. Section **67-19-12.2** is amended to read:

588 **67-19-12.2. Education benefit plan for law enforcement and correctional officers.**

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

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

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

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

599 (b) have successfully completed the probationary employment period with the
600 employing agency.

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

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

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

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

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

610 Section 10. Section **67-19-14** is amended to read:

611 **67-19-14. Sick leave -- Definitions -- Unused sick days retirement programs --**

612 **Rulemaking.**

613 (1) As used in [~~Sections 67-19-14~~] this section through Section 67-19-14.4:

614 (a) "Continuing medical and life insurance benefits" means the state provided policy of

615 medical insurance and the state provided portion of a policy of life insurance, each offered at
616 the same:

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

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

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

624 (i) annual leave;

625 (ii) sick leave; or

626 (iii) unused accumulated sick leave after the employee's retirement for the purchase of
627 continuing medical and life insurance benefits under Sections 67-19-14.2, 67-19-14.3, and
628 67-19-14.4.

629 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
630 executive director shall make rules for the procedures to implement the provisions of [~~Sections~~
631 ~~67-19-14~~] this section through Section 67-19-14.4.

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

635 [~~(4)~~] (3) The Division of Finance shall develop and maintain a system of accounting
636 for employee sick leave and converted sick leave as necessary to implement the provisions of
637 [~~Sections 67-19-14~~] this section through Section 67-19-14.4.

638 Section 11. Section **67-19-14.2** is amended to read:

639 **67-19-14.2. Unused Sick Leave Retirement Option Program -- Creation -- Payout**
640 **upon eligibility for allowance -- Continuing medical and life insurance benefits after**
641 **retirement.**

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

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

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

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

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

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

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

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

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

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

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

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

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

661 (c) may purchase additional continuing medical and life insurance benefits in
662 accordance with Subsection (4).

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

667 (b) If the amount calculated under Subsection (2)(a) exceeds the federal contribution
668 limitations, the employee's unused accumulated sick leave hours representing the excess shall
669 be used for the purchase of continuing medical and life insurance benefits under Subsection
670 (4).

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

674 (i) the contribution of unused sick leave under Subsection (2)(a); and

675 (ii) an additional reduction, at the time of retirement, of unused sick leave hours as
676 follows:

- 677 (A) 480 hours if the employee retires during calendar year 2006;
- 678 (B) 384 hours if the employee retires during calendar year 2007;
- 679 (C) 288 hours if the employee retires during calendar year 2008;
- 680 (D) 192 hours if the employee retires during calendar year 2009;
- 681 (E) 96 hours if the employee retires during calendar year 2010; or
- 682 (F) 0 hours if the employee retires after calendar year 2010.

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

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

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

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

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

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

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

699 (ii) continues in effect until exhausted.

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

702 (i) reemployed after retirement; and

703 (ii) receiving benefits under this section.

704 Section 12. Section **67-19-15** is amended to read:

705 **67-19-15. Career service -- Exempt positions -- Schedules for civil service**
706 **positions -- Coverage of career service provisions.**

707 (1) Except as otherwise provided by law or by rules and regulations established for

708 federally aided programs, the following positions are exempt from the career service provisions
709 of this chapter and are designated under the following schedules:

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

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

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

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

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

717 (iii) the Public Lands Policy Coordinating Council;

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

719 (v) the state Treasurer's office;

720 (d) Schedule AD includes employees who:

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

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

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

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

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

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

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

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

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

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

738 ~~[(i) persons appointed to a position vacated by an employee who has a right to return~~

739 ~~under federal or state law or policy, designated as Schedule AI;]~~

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

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

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

747 ~~[(m) employees of the Department of Community and Culture whose positions are~~
 748 ~~designated as executive/professional positions by the executive director of the Department of~~
 749 ~~Community and Culture with the concurrence of the executive director, and employees of the~~
 750 ~~Governor's Office of Economic Development whose positions are designated as~~
 751 ~~executive/professional positions by the director of the office, designated as Schedule AM;]~~

752 ~~[(n) (g) Schedule AN includes employees of the Legislature[~~, designated as Schedule~~~~
 753 ~~AN];~~

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

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

757 ~~[(q) (j) Schedule AQ includes:~~

758 ~~(i) members of state and local boards and councils appointed by the governor and~~
 759 ~~governing bodies of agencies[~~;~~];~~

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

761 ~~(iii) officers, faculty, and other employees of state universities and other state~~
 762 ~~institutions of higher education[~~, designated as Schedule AQ];~~~~

763 ~~[(r) (k) Schedule AR includes employees [~~who make statewide policy, designated as~~~~
 764 ~~Schedule AR;] in positions which involve responsibility:~~

765 ~~(i) for determining policy;~~

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

767 ~~(iii) of a type not appropriate for career service, as determined by the agency head with~~
 768 ~~the concurrence of the executive director;~~

769 ~~[(s) (l) Schedule AS includes any other employee;~~

770 (i) whose appointment is required by statute to be career service exempt[, designated as
771 Schedule AS];

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

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

774 compensation, and bonuses for its employees;

775 [(†)] (m) Schedule AT includes employees of the Department of Technology Services,
776 designated as executive/professional positions by the executive director of the Department of
777 Technology Services with the concurrence of the executive director[, designated as Schedule
778 AT]; [and]

779 [(†)] (n) Schedule AU includes patients and inmates employed in state institutions[,
780 designated as Schedule AU.];

781 (o) Schedule IN includes employees who are:

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

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

784 (p) Schedule TL includes employees who are:

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

786 (ii) considered to be temporary noncareer employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

817 (a) remains in the position that the employee is in on June 30, 2010; and

818 (b) does not elect to convert to career service exempt status in accordance with a rule
819 made by the department.

820 Section 13. Section **67-19-15.6** is amended to read:

821 **67-19-15.6. Longevity salary increases.**

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

826 (a) holds a position under Schedule A or B as [~~defined in]~~ provided under Section
827 67-19-15;

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

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

831 (d) is rated eligible in job performance under guidelines established by the executive

832 director.

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

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

837 **67-19-15.7. Promotion -- Reclassification -- Market adjustment.**

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

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

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

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

845 (c) Except for an employee under Schedule IN or TL under Section 67-19-15, the
846 agency shall grant a salary increase of at least 5% to an employee who is promoted.

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

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

852 [~~(3)(a) Each~~] (2) An agency shall adjust the salary range for an employee whose
853 salary range is approved by the Legislature for a [selective salary] market comparability
854 adjustment consistent with Subsection 67-19-12(4)(c)[(viii)](v) [shall be adjusted to the new
855 range];

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

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

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

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

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

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

865 Section 15. Section **67-19-16** is amended to read:

866 **67-19-16. Appointments to Schedule B positions -- Examinations -- Hiring lists --**
867 **Probationary service -- Dismissal.**

868 (1) Each appointment to a position under Schedule B shall be made from hiring lists of
869 applicants who have been selected by competitive procedures as defined by the executive
870 director.

871 (2) The executive director shall publicly announce information regarding career service
872 positions:

873 (a) for periods of time to be determined by the executive director; and

874 (b) in a manner designed to attract the highest number of qualified applicants.

875 (3) The executive director shall make rules establishing standards for the development,
876 approval, and implementation of examining instruments.

877 (4) Applicants for employment to Schedule B positions shall be eligible for
878 appointment based upon rules established by the executive director.

879 (5) (a) The agency head shall make appointments to fill vacancies from hiring lists for
880 probationary periods as defined by rule.

881 (b) The executive director shall make rules establishing probationary periods.

882 (6) A person serving a probationary period may not use the grievance procedures
883 provided in this chapter and in Title 67, Chapter 19a, Grievance [~~and Appeal~~] Procedures, and
884 may be dismissed at any time by the appointing officer without hearing or appeal.

885 (7) Career service status shall be granted upon the successful completion of the
886 probationary period.

887 Section 16. Section **67-19-18** is amended to read:

888 **67-19-18. Dismissals and demotions -- Grounds -- Disciplinary action --**
889 **Procedure -- Reductions in force.**

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

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

892 (b) for just causes, including inefficiency, incompetency, failure to maintain skills or
893 adequate performance levels, insubordination, disloyalty to the orders of a superior,

894 misfeasance, malfeasance, or nonfeasance in office.

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

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

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

905 (5) (a) A career service employee may not be demoted or dismissed unless the
906 department head or designated representative has complied with this subsection.

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

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

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

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

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

917 (b) Under those circumstances:

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

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

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

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

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

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

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

936 (d) (i) An employee separated due to a reduction in force may appeal to the department
937 head for an administrative review.

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

940 (iii) The employee may appeal the decision of the department head according to the
941 grievance and appeals procedure of this ~~act~~ chapter and Chapter 19a, Grievance Procedures.

942 Section 17. Section **67-19-30** is amended to read:

943 **67-19-30. Grievance resolution -- Jurisdiction.**

944 (1) Employees shall comply with the procedural and jurisdictional requirements of this
945 section, Title 63G, Chapter 4, Administrative Procedures Act, and Title 67, Chapter 19a,
946 Grievance ~~and Appeal~~ Procedures, in seeking resolution of grievances.

947 (2) All grievances based upon a claim or charge of injustice or oppression, including
948 dismissal from employment, resulting from an act, occurrence, commission, or condition shall
949 be governed by Title 67, Chapter 19a, Grievance ~~and Appeal~~ Procedures, and Title 63G,
950 Chapter 4, Administrative Procedures Act.

951 (3) All grievances involving classification shall be governed by Section 67-19-31 and
952 are designated as informal adjudicative proceedings as defined by Title 63G, Chapter 4,
953 Administrative Procedures Act.

954 (4) All grievances by applicants for positions in state government involving an alleged
955 discriminatory or prohibited employment practice shall be governed by Section 67-19-32 and

956 Title 63G, Chapter 4, Administrative Procedures Act.

957 (5) A "grievance" under this chapter is a request for agency action for purposes of Title
958 63G, Chapter 4, Administrative Procedures Act.

959 Section 18. Section **67-19a-101** is amended to read:

960 **CHAPTER 19a. GRIEVANCE PROCEDURES**

961 **67-19a-101. Definitions.**

962 As used in this chapter:

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

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

967 [~~(3)~~] (2) "Career service employee" means a person employed in career service as
968 defined in Section 67-19-3.

969 [~~(4)~~] (3) "Employer" means the state of Utah and all supervisory personnel vested with
970 the authority to implement and administer the policies of [~~the department~~] an agency.

971 [~~(5)~~] (4) "Grievance" means:

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

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

975 (5) "Office" means the Career Service Review Office created under Section
976 67-19a-201.

977 (6) "Supervisor" means the person:

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

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

980 Section 19. Section **67-19a-101.5** is enacted to read:

981 **67-19a-101.5. Transition**

982 (1) The board that is repealed by this bill on July 1, 2010 shall:

983 (a) continue to exist until June 30, 2011, with the same membership, duties, and
984 procedures only for the purpose of addressing a grievance submitted to the employee's
985 supervisor on or before June 30, 2010; and

986 (b) shall apply the law in effect on June 30, 2010 to a grievance described in

987 Subsection (1)(a).

988 (2) The amendments to Title 67, Chapter 19a, Grievance Procedures made by this bill
989 apply only to a grievance submitted to the employee's supervisor on or after July 1, 2010.

990 Section 20. Section **67-19a-201** is amended to read:

991 **Part 2. Career Service Review Office**

992 **67-19a-201. Career Service Review Office created -- Appointment of an**
993 **administrator -- Reporting -- Qualifications.**

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

995 (2) (a) The governor shall appoint ~~[five members to the board no more than three of~~
996 ~~which are members of the same political party],~~ with the consent of the Senate, an
997 administrator of the office.

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

1000 (b) The administrator shall have demonstrated an ability to administer personnel
1001 policies in performing the duties specified in this chapter.

1002 ~~[(3) (a) The governor may remove any board member for cause.]~~

1003 ~~[(b) When a vacancy occurs in the membership for any reason, the replacement shall be~~
1004 ~~appointed for the unexpired term.]~~

1005 ~~[(4) The governor shall ensure that appointees to the board:]~~

1006 ~~[(a) are qualified by knowledge of employee relations and merit system principles in~~
1007 ~~public employment; and]~~

1008 ~~[(b) are not:]~~

1009 ~~[(i) members of any local, state, or national committee of a political party;]~~

1010 ~~[(ii) officers or members of a committee in any partisan political club; and]~~

1011 ~~[(iii) holding or a candidate for a paid public office.]~~

1012 ~~[(5) (a) Except as required by Subsection (b), the governor shall appoint board~~
1013 ~~members to serve four-year terms beginning January 1.]~~

1014 ~~[(b) Notwithstanding the requirements of Subsection (a), the governor shall, at the time~~
1015 ~~of appointment or reappointment, adjust the length of terms to ensure that the terms of board~~
1016 ~~members are staggered so that approximately half of the board is appointed every two years.]~~

1017 ~~[(c) The members of the board shall serve until their successors are appointed and~~

1018 qualified.]

1019 ~~[(6) Each year, the board shall choose a chair and vice chair from its own members.]~~

1020 ~~[(7) (a) Three members of the board are a quorum for the transaction of business.]~~

1021 ~~[(b) Action by a majority of members when a quorum is present is action of the board.]~~

1022 ~~[(8) (a) Members shall receive no compensation or benefits for their services, but may~~

1023 ~~receive per diem and expenses incurred in the performance of the member's official duties at~~

1024 ~~the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.]~~

1025 ~~[(b) Members may decline to receive per diem and expenses for their service.]~~

1026 Section 21. Section ~~67-19a-202~~ is repealed and reenacted to read:

1027 **67-19a-202. Powers -- Scope of Authority.**

1028 (1) (a) The office shall serve as the final administrative body to review a grievance

1029 from a career service employee and agency of decision regarding:

1030 (i) a dismissal;

1031 (ii) a demotion;

1032 (iii) a suspension without pay;

1033 (iv) a reduction in force;

1034 (v) a dispute concerning abandonment of position;

1035 (vi) a wage grievance if an employee is not placed within the salary range of the

1036 employee's current position;

1037 (vii) a violation of a rule adopted Title 67, Chapter 19, Utah State Personnel

1038 Management Act; or

1039 (viii) equitable administration of the following benefits:

1040 (A) medicare;

1041 (B) social security;

1042 (C) unemployment insurance;

1043 (D) worker's compensation insurance;

1044 (E) long term disability insurance;

1045 (F) medical insurance;

1046 (G) dental insurance;

1047 (H) post-retirement health insurance;

1048 (I) post-retirement life insurance;

1049 (J) life insurance;
1050 (K) defined contribution retirement;
1051 (L) defined benefit retirement; and
1052 (M) a leave benefit.
1053 (b) The office may not review or take action on:
1054 (i) a personnel matter not listed in Subsection (1)(a); or
1055 (ii) a grievance that alleges:
1056 (A) discrimination;
1057 (B) retaliation; or
1058 (C) (I) a violation of a state or federal law; and
1059 (II) enforcement by the office of the state or federal law is preempted; or
1060 (iii) an allegation described in Subsection (1)(b)(ii) that is the basis of:
1061 (A) a request for agency action filed with the Division of Antidiscrimination and Labor
1062 in accordance with Title 34A, Chapter 5, Utah Antidiscrimination Act;
1063 (B) a charge filed with Equal Employment Opportunity Commission; or
1064 (C) an action in district court or a United States District Court.
1065 (2) The time limits established in this chapter supersede the procedural time limits
1066 established in Title 63G, Chapter 4, Administrative Procedures Act.
1067 Section 22. Section **67-19a-203** is amended to read:
1068 **67-19a-203. Rulemaking authority.**
1069 ~~[The board]~~ (1) In accordance with Title 63G, Chapter 3, Utah Administrative
1070 Rulemaking Act, the administrator may make rules governing:
1071 ~~[(1)]~~ (a) definitions of terms, phrases, and words used in the grievance process
1072 established by this chapter;
1073 ~~[(2)]~~ (b) what matters constitute excusable neglect for purposes of the waiver of time
1074 limits established by this chapter;
1075 ~~[(3)]~~ (c) the application for and service of subpoenas, the service and filing of
1076 pleadings, and the issuance of rulings, orders, determinations, summary judgments, transcripts,
1077 and other legal documents necessary in grievance proceedings;
1078 ~~[(4)]~~ (d) the use, calling, attendance, participation, and fees of witnesses in grievance
1079 proceedings;

1080 ~~[(5)]~~ (e) continuances of grievance proceedings;

1081 ~~[(6)]~~ (f) procedures in ~~[jurisdictional and evidentiary]~~ hearings, unless governed by

1082 Title 63G, Chapter 4, Administrative Procedures Act;

1083 ~~[(7)]~~ (g) the presence of media representatives at grievance proceedings; ~~[and]~~

1084 ~~[(8)]~~ (h) procedures for sealing files or making data pertaining to a grievance

1085 unavailable to the public~~[-]; and~~

1086 (i) motions that will assist the parties in meeting the 150 day time limit.

1087 (2) The rule made under Subsection (1)(i) shall:

1088 (a) prohibit a party from filing a dispositive motion under Utah Rules of Civil

1089 Procedure, Rule 12(b)(6) or Rule 56 before an evidentiary hearing; and

1090 (b) authorize a party to file a motion before an evidentiary hearing to:

1091 (i) dismiss for lack of authority to review the grievance under Utah Rules of Civil

1092 Procedure, Rule 12(b)(1) or Rule 12(b)(2); or

1093 (ii) limit the introduction of evidence.

1094 Section 23. Section **67-19a-204** is amended to read:

1095 **67-19a-204. Administrator -- Powers.**

1096 ~~[(1) The governor shall appoint a person with demonstrated ability to administer~~

1097 ~~personnel policies to assist the board in performing the functions specified in this chapter.]~~

1098 (1) In conjunction with any inquiry, investigation, hearing, or other proceeding, the

1099 administrator may:

1100 (a) administer an oath;

1101 (b) certify an official act;

1102 (c) subpoena a witness, document, and other evidence; and

1103 (d) grant a continuance as provided by rule.

1104 (2) (a) The administrator may:

1105 (i) assign qualified, impartial hearing officers on a per case basis to adjudicate matters

1106 under the ~~[jurisdiction]~~ authority of the ~~[board]~~ office;

1107 (ii) subpoena witnesses, documents, and other evidence in conjunction with any

1108 inquiry, investigation, hearing, or other proceeding; and

1109 (iii) upon motion made by a party or person to whom the subpoena is directed and

1110 upon notice to the party who issued the subpoena, quash or modify the subpoena if it is

1111 unreasonable, requires an excessive number of witnesses, or requests evidence not relevant to
1112 any matter in issue.

1113 (b) In selecting and assigning hearing officers under authority of this section, the
1114 administrator shall appoint hearing officers that have demonstrated by education, training, and
1115 experience the ability to adjudicate and resolve personnel administration disputes by applying
1116 employee relations principles within a large, public work force.

1117 Section 24. Section **67-19a-301** is amended to read:

1118 **Part 3. Grievance Procedures**

1119 **67-19a-301. Charges submissible under grievance procedure.**

1120 (1) This grievance procedure may only be used by career service employees who are
1121 not:

- 1122 (a) public applicants for a position with the state's work force;
- 1123 (b) public employees of the state's political subdivisions;
- 1124 (c) public employees covered by other grievance procedures; or
- 1125 (d) employees of state institutions of higher education.

1126 (2) (a) Whenever a question or dispute exists as to whether an employee is qualified to
1127 use this grievance procedure, the administrator shall resolve the question or dispute.

1128 (b) The administrator's decision under Subsection (2)(a) is reviewable only by the
1129 Court of Appeals.

1130 (3) Any career service employee may submit a grievance based upon a claim or charge
1131 of injustice or oppression, including dismissal from employment, resulting from an act,
1132 occurrence, omission, or condition for solution through the grievance procedures set forth in
1133 this chapter.

1134 Section 25. Section **67-19a-302** is amended to read:

1135 **67-19a-302. Levels of procedure.**

1136 (1) A career service employee may grieve [~~promotions, dismissals, demotions,~~
1137 ~~suspensions, written reprimands, wages, salary, violations of personnel rules, issues concerning~~
1138 ~~the equitable administration of benefits, reductions in force, and disputes concerning~~
1139 ~~abandonment of position to all levels of grievance procedure]~~ the issues specified under
1140 Subsection 67-19a-202(1)(a) to all levels of the grievance procedure described in Section
1141 67-19a-402.

1142 (2) (a) A career service employee may grieve all other matters only to the level of [his]
1143 the department head.

1144 (b) The decision of the department head on a matter under Subsection (2)(a) is final
1145 and [~~unappealable to the board~~] may not be advanced to the office.

1146 Section 26. Section **67-19a-303** is amended to read:

1147 **67-19a-303. Employees' rights in grievance procedure.**

1148 (1) For the purpose of [~~processing~~] submitting and advancing a grievance, a career
1149 service employee may:

1150 (a) obtain assistance by a representative of the employee's choice to act as an advocate
1151 at any level of the grievance procedure;

1152 (b) request a reasonable amount of time during work hours to confer with the
1153 representative and prepare the grievance; and

1154 (c) call other employees as witnesses at a grievance hearing.

1155 (2) The state shall allow employees to attend and testify at the grievance hearing as
1156 witnesses if the employee has given reasonable advance notice to the employee's immediate
1157 supervisor.

1158 (3) No person may take any reprisals against any career service employee for use of
1159 grievance procedures specified in this chapter.

1160 (4) (a) The employing agency of an employee who files a grievance may not place
1161 grievance forms, grievance materials, correspondence about the grievance, agency and
1162 department replies to the grievance, or other documents relating to the grievance in the
1163 employee's personnel file.

1164 (b) The employing agency of an employee who files a grievance may place records of
1165 disciplinary action in the employee's personnel file.

1166 (c) If any disciplinary action against an employee is rescinded through the grievance
1167 procedures established in this chapter, the agency and the Department of Human Resource
1168 Management shall remove the record of the disciplinary action from the employee's agency
1169 personnel file and central personnel file.

1170 (d) An agency may maintain a separate grievance file relating to an employee's
1171 grievance, but shall discard the file after three years.

1172 Section 27. Section **67-19a-401** is amended to read:

1173 **67-19a-401. Time limits for submission and advancement of grievance by**
1174 **aggrieved employee -- Voluntary termination of employment -- Group grievances.**

1175 (1) Subject to the ~~[standing requirements contained in]~~ provisions of Part 3, Grievance
1176 Procedures, and the restrictions contained in this ~~[part]~~ Part 4, Procedural Steps to Be Followed
1177 by Aggrieved Employee, a career service employee may have a grievance addressed by
1178 following the procedures specified in this part.

1179 (2) The employee and the person to whom the grievance is directed may agree in
1180 writing to waive or extend grievance steps ~~[2, 3, or 4]~~ specified under Subsection
1181 67-19a-402(1), (2), or (3) or the time limits specified for those grievance steps, as outlined in
1182 Section 67-19a-402.

1183 (3) Any writing made ~~[pursuant to]~~ under Subsection (2) ~~[must]~~ shall be submitted to
1184 the administrator.

1185 (4) ~~[(a) Unless the employee meets the requirements for excusable neglect established~~
1186 ~~by rule, if]~~ Except as provided under Subsection (6), if the employee fails to ~~[process]~~ advance
1187 the grievance to the next procedural step within the time limits established in this part~~[-he has~~
1188 ~~waived his]~~:

1189 (a) the employee waives the right to [process] advance the grievance or to obtain
1190 judicial review of the grievance~~[-]; and~~

1191 ~~[(b) Unless the employee meets the requirements for excusable neglect established by~~
1192 ~~rule, if the employee fails to process the grievance to the next step within the time limits~~
1193 ~~established in this part,]~~

1194 (b) the grievance is considered to be settled based on the decision made at the last
1195 procedural step.

1196 (5) (a) ~~[Unless the employee meets the requirements for excusable neglect established~~
1197 ~~by rule, an]~~ An employee may submit a grievance for review under this chapter only if the
1198 employee submits the grievance:

1199 (i) within 20 working days after the event giving rise to the grievance; or

1200 (ii) within 20 working days after the employee has knowledge of the event giving rise
1201 to the grievance.

1202 (b) Notwithstanding Subsection (5)(a), an employee may not submit a grievance more
1203 than one year after the event giving rise to the grievance.

1204 (6) The provisions of Subsections (4) and (5)(a) do not apply if the employee meets the
1205 requirements for excusable neglect established by rule.

1206 ~~[(6)]~~ (7) A person who has voluntarily terminated ~~[his]~~ the person's employment with
1207 the state may not submit a grievance after ~~[he]~~ the person has terminated ~~[his]~~ the employment.

1208 ~~[(7)]~~ (8) (a) ~~[When]~~ If several employees allege the same grievance, ~~[they]~~ the
1209 employees may submit a group grievance by following the procedures and requirements of this
1210 chapter.

1211 (b) In submitting a group grievance, each aggrieved employee shall sign the
1212 ~~[complaint]~~ grievance.

1213 (c) The administrator ~~[and board]~~ may not treat a group grievance as a class action, but
1214 may select one aggrieved employee's grievance and address that grievance as a test case.

1215 Section 28. Section **67-19a-402** is amended to read:

1216 **67-19a-402. Procedural steps to be followed by aggrieved employee.**

1217 (1) (a) A career service employee who ~~[believes he has a grievance shall attempt to~~
1218 ~~resolve the grievance through discussion with his]~~ has a grievance shall submit the grievance in
1219 writing to:

1220 (i) the employee's supervisor; and

1221 (ii) the administrator.

1222 (b) Within five working days after ~~[the employee discusses the grievance with him]~~
1223 receiving a written grievance, the employee's supervisor may issue a ~~[verbal]~~ written decision
1224 on the grievance.

1225 (2) (a) If ~~[the grievance remains unanswered for five working days after its~~
1226 ~~submission;]~~ the employee's supervisor fails to respond to the grievance within five working
1227 days or if the aggrieved employee is dissatisfied with the supervisor's ~~[verbal]~~ written decision,
1228 the employee may ~~[resubmit]~~ advance the written grievance ~~[in writing]~~ to ~~[his immediate~~
1229 ~~supervisor within five]~~ the employee's agency or division director within 10 working days after
1230 the expiration of the period for response or receipt of the written decision, whichever is first.

1231 (b) Within five working days after receiving the written grievance, the employee's
1232 ~~[written grievance is submitted, the employee's supervisor shall]~~ agency or division director
1233 may issue a written response to the grievance stating ~~[his]~~ the decision and the reasons for the
1234 decision.

1235 ~~[(c) Immediately after submitting the written grievance to his supervisor, the employee~~
 1236 ~~shall notify the administrator of the board that he has submitted the written grievance.]~~

1237 ~~[(3) (a) If the written grievance submitted to the employee's supervisor remains~~
 1238 ~~unanswered for five working days after its submission, or if the aggrieved employee is~~
 1239 ~~dissatisfied with the decision issued, the employee may submit the grievance in writing to his~~
 1240 ~~agency or division director within 10 working days after the expiration of the period for~~
 1241 ~~decision or receipt of the decision, whichever is first.]~~

1242 ~~[(b) Within five working days after the employee's written grievance is submitted, the~~
 1243 ~~employee's agency or division director shall issue a written response to the grievance stating his~~
 1244 ~~decision and the reasons for the decision.]~~

1245 ~~[(4)]~~ (3) (a) If ~~[the written grievance submitted to]~~ the employee's agency or division
 1246 director ~~[remains unanswered for]~~ fails to respond to the grievance within five working days
 1247 after its submission, or if the aggrieved employee is dissatisfied with the agency or division
 1248 director's written decision ~~[issued]~~, the employee may ~~[submit]~~ advance the written grievance
 1249 ~~[in writing to his]~~ to the employee's department head within 10 working days after the
 1250 expiration of the period for decision or receipt of the written decision, whichever is first.

1251 (b) Within 10 working days after the employee's written grievance is submitted, the
 1252 department head ~~[shall]~~ may issue a written response to the grievance stating ~~[his]~~ the decision
 1253 and the reasons for the decision.

1254 (c) The decision of the department head is final in all matters except those matters that
 1255 the ~~[board]~~ office may review under the authority of Part 3, Grievance Procedures.

1256 ~~[(5)]~~ (4) If the written grievance submitted to the employee's department head meets
 1257 the subject matter requirements of Section ~~[67-19a-302]~~ 67-19a-202 and if the ~~[grievance~~
 1258 ~~remains unanswered for]~~ the employee's department head fails to respond to the grievance
 1259 within 10 working days after ~~[its]~~ submission, or if the aggrieved employee is dissatisfied with
 1260 the department head's written decision ~~[issued]~~, the employee may ~~[submit]~~ advance the written
 1261 grievance ~~[in writing]~~ to the administrator within 10 working days after the expiration of the
 1262 period for decision or receipt of the written decision, whichever is first.

1263 Section 29. Section **67-19a-403** is amended to read:

1264 **67-19a-403. Advancement of grievance to administrator -- Initial hearing.**

1265 (1) At any time after a career service employee submits a written grievance to the

1266 administrator under ~~[the authority of Section 67-19a-402]~~ Subsection 67-19a-402(4), the
 1267 administrator may attempt to settle the grievance informally by conference, conciliation, and
 1268 persuasion with the employee and the agency.

1269 (2) (a) When an employee ~~[submits]~~ advances a grievance to the administrator under
 1270 ~~[the authority of Section 67-19a-402]~~ Subsection 67-19a-402(4), the administrator shall
 1271 initially determine:

1272 (i) whether ~~[or not]~~ the employee is a career service employee and is entitled to use the
 1273 grievance system;

1274 (ii) whether ~~[or not the board]~~ the office has ~~[jurisdiction over]~~ authority to review the
 1275 grievance; and

1276 (iii) whether ~~[or not]~~ the employee has been directly harmed~~[-and]~~.

1277 ~~[(iv) the issues to be heard.]~~

1278 (b) In order to make the determinations required by Subsection (2)(a), the administrator
 1279 may:

1280 (i) hold ~~[a jurisdictional]~~ an initial hearing, where the parties may present oral
 1281 arguments, written arguments, or both; or

1282 (ii) conduct an administrative review of the file.

1283 (3) (a) If the administrator holds ~~[a jurisdictional]~~ an initial hearing, ~~[he]~~ the
 1284 administrator shall issue ~~[his]~~ a written decision within 15 days after the hearing is adjourned.

1285 (b) If the administrator chooses to conduct an administrative review of the file, ~~[he]~~ the
 1286 administrator shall issue ~~[his]~~ the written decision within 15 days after ~~[he]~~ the administrator
 1287 receives the grievance.

1288 Section 30. Section **67-19a-404** is amended to read:

1289 **67-19a-404. Evidentiary hearing.**

1290 (1) If the administrator determines that the ~~[grievance meets the jurisdictional~~
 1291 requirements of Part 3, he] office has authority to review the grievance, the administrator shall:

1292 ~~[(1)]~~ (a) appoint a hearing officer to adjudicate the ~~[complaint]~~ grievance; and

1293 ~~[(2)]~~ (b) set a date for the evidentiary hearing that is either:

1294 ~~[(a)]~~ (i) not later than 30 days after the date the administrator ~~[issues his decision that~~
 1295 the board] determines that the office has [jurisdiction over] authority to review the grievance;

1296 or

- 1297 ~~[(b)]~~ (ii) at a date;
- 1298 (A) agreed upon by the parties and the administrator; and
- 1299 (B) not greater than 150 days after the date the administrator determines that the office
- 1300 has authority to review over the grievance.
- 1301 (2) After the date for the evidentiary hearing has been set, the administrator or assigned
- 1302 hearing officer may grant each party one extension of reasonable length for extraordinary
- 1303 circumstances as determined by the administrator or assigned hearing officer.
- 1304 (3) Notwithstanding Section 63G-4-205, and in order to accommodate the 150 day
- 1305 time limit, the administrator may only allow a motion for discovery for production of
- 1306 documents, records, and things under Utah Rules of Civil Procedure, Rule 34.
- 1307 Section 31. Section **67-19a-406** is amended to read:
- 1308 **67-19a-406. Procedural steps to be followed by aggrieved employee -- Hearing**
- 1309 **before hearing officer -- Evidentiary and procedural rules.**
- 1310 (1) (a) The administrator shall employ a certified court reporter to record the hearing
- 1311 and prepare an official transcript of the hearing.
- 1312 (b) The official transcript of the proceedings and all exhibits, briefs, motions, and
- 1313 pleadings received by the hearing officer are the official record of the proceeding.
- 1314 (2) (a) The agency has the burden of proof in all grievances [~~resulting from dismissals,~~
- 1315 ~~demotions, suspensions, written reprimands, reductions in force, and disputes concerning~~
- 1316 ~~abandonment of position].~~
- 1317 ~~[(b) The employee has the burden of proof in all other grievances.]~~
- 1318 ~~[(c)]~~ (b) The [~~party with the burden of proof~~] agency must prove [~~their~~] the agency's
- 1319 case by substantial evidence.
- 1320 (3) (a) The hearing officer shall issue a written decision within 20 working days after
- 1321 the hearing is adjourned.
- 1322 (b) If the hearing officer does not issue a decision within 20 working days, the agency
- 1323 that is a party to the grievance is not liable for any claimed back wages or benefits after the date
- 1324 the decision is due.
- 1325 (4) The hearing officer may:
- 1326 (a) not award [~~attorneys'~~] attorney fees or costs to either party;
- 1327 (b) close a hearing by complying with the procedures and requirements of Title 52,

1328 Chapter 4, Open and Public Meetings Act;

1329 (c) seal the file and the evidence produced at the hearing if the evidence raises
1330 questions about an employee's character, professional competence, or physical or mental
1331 health;

1332 (d) grant continuances according to [board] rule; and
1333 [~~e) decide questions or disputes concerning standing in accordance with Section~~
1334 ~~67-19a-301.~~]

1335 (e) decide a motion, an issue regarding discovery, or another issue in accordance with
1336 this chapter.

1337 Section 32. **Repealer.**

1338 This bill repeals:

1339 Section **67-19a-407, Appeal to Career Service Review Board.**

1340 Section **67-19a-408, Career Service Review Board hearing -- Evidentiary and**
1341 **procedural rules.**

1342 Section 33. **Effective date.**

1343 This bill takes effect on July 1, 2010.

1344 Section 34. **Revisor instructions.**

1345 It is the intent of the Legislature that, in preparing the Utah Code database for
1346 publication, the Office of Legislative Research and General Counsel shall replace the reference
1347 in Section 67-19a-101.5 from "this bill" to the bill's designated chapter number in the Laws of
1348 Utah.

1349 Section 35. **Coordinating H.B. 140 with H.B. 27 -- Superseding and substantive**
1350 **amendments.**

1351 If this H.B. 140 and H.B. 27, Per Diem and Travel Expense Modifications, both pass, it
1352 is the intent of the Legislature that the amendments to Section 67-19a-201 in this H.B. 140
1353 supersede the amendments to Section 67-19a-201 in H.B. 27, when the Office of Legislative
1354 Research and General Counsel prepares the Utah Code database for publication.

H.B. 140 1st Sub. (Buff) - Human Resource Management Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will result in savings to the state sick leave program and reduced legal costs for Career Service Review. However there is insufficient data to make a reliable estimate.

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.
