

1 **UTAH STATE EMPLOYMENT AMENDMENTS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brad L. Dee**

5 Senate Sponsor: Jerry W. Stevenson

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to state employment.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ requires participating employers to maintain records indicating whether an
- 13 employee is receiving certain benefits;
- 14 ▶ modifies a provision relating to a requirement that an employer provide benefit
- 15 information to specified employees;
- 16 ▶ enacts a definition of "benefits normally provided" for purposes of the Public
- 17 Employees' Contributory Retirement Act, the Public Employees' Noncontributory
- 18 Retirement Act, and the New Public Employees' Tier II Contributory Retirement
- 19 Act;
- 20 ▶ modifies a provision relating to the designation of positions that are exempt from
- 21 career service provisions under the Utah State Personnel Management Act;
- 22 ▶ enacts language relating to a hearing officer's decision relating to agency action in
- 23 the context of a state employee grievance process, including requirements for the
- 24 hearing officer's order;
- 25 ▶ authorizes the executive director to adopt rules to establish the maximum number of
- 26 hours of converted sick leave an employee may accrue; and
- 27 ▶ makes technical changes.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill coordinates with H.B. 24, Utah Retirement System Amendments, by providing
32 substantive and superseding amendments.

33 **Utah Code Sections Affected:**

34 AMENDS:

- 35 **49-11-602**, as last amended by Laws of Utah 2011, Chapter 439
- 36 **49-11-616**, as last amended by Laws of Utah 2012, Chapter 298
- 37 **49-12-102**, as last amended by Laws of Utah 2012, Chapter 298
- 38 **49-13-102**, as last amended by Laws of Utah 2012, Chapter 298
- 39 **49-22-102**, as last amended by Laws of Utah 2011, Chapter 439
- 40 **67-19-3**, as last amended by Laws of Utah 2010, Chapter 249
- 41 **67-19-12**, as last amended by Laws of Utah 2012, Chapter 173
- 42 **67-19-14**, as last amended by Laws of Utah 2010, Chapter 249
- 43 **67-19-15**, as last amended by Laws of Utah 2011, Chapters 340 and 427
- 44 **67-19-15.6**, as last amended by Laws of Utah 2010, Chapter 249
- 45 **67-19-15.7**, as last amended by Laws of Utah 2010, Chapter 249
- 46 **67-19a-406**, as last amended by Laws of Utah 2010, Chapter 249

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

48 **49-11-616**, as last amended by Laws of Utah 2012, Chapter 298



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

51 Section 1. Section **49-11-602** is amended to read:

52 **49-11-602. Participating employer to maintain records -- Time limit -- Penalties**
53 **for failure to comply.**

54 (1) A participating employer shall:

55 (a) maintain records necessary to calculate benefits under this title and other records
56 necessary for proper administration of this title as required by the office[-]; and

57 (b) maintain records that indicate whether an employee is receiving:

58 (i) a benefit under state or federal law that, under Subsection 49-12-102(1)(b)(vi) or
59 (vii), is excluded from the definition of benefits normally provided for purposes of Chapter 12,
60 Public Employees' Contributory Retirement Act, Chapter 13, Public Employees'
61 Noncontributory Retirement Act, or Chapter 22, New Public Employees' Tier II Contributory
62 Retirement Act; or

63 (ii) a benefit under a benefit package generally offered to similarly situated employees.

64 (2) A participating employer shall maintain the records required under Subsection (1)
65 until the earliest of:

66 (a) three years after the date of retirement of the employee from a system or plan;

67 (b) three years after the date of death of the employee; or

68 (c) 65 years from the date of employment with the participating employer.

69 (3) A participating employer shall be liable to the office for:

70 (a) any liabilities and expenses, including administrative expenses and the cost of
71 increased benefits to members, resulting from the participating employer's failure to maintain
72 records under this section; and

73 (b) a penalty equal to 1% of the participating employer's last month's contributions.

74 (4) The executive director may waive all or any part of the interest, penalties, expenses,
75 and fees if the executive director finds there were extenuating circumstances surrounding the
76 participating employer's failure to comply with this section.

77 (5) The executive director may estimate the length of service, compensation, or age of
78 any member, if that information is not contained in the records.

79 (6) (a) A participating employer shall enroll an employee, make reports, submit
80 contributions, and provide other requested information electronically in a manner approved by
81 the office.

82 (b) A participating employer shall treat any information provided electronically or
83 otherwise by the office as subject to the confidentiality provisions of this title.

84 Section 2. Section **49-11-616** is amended to read:

85 **49-11-616. Benefits information.**

86 (1) The office shall provide written general information to each participating employer
87 concerning benefits available under this title.

88 (2) (a) A participating employer shall provide the information under Subsection (1) to
89 each eligible employee;

90 (i) immediately upon~~[-(i)]~~ termination of service~~[-(ii)]~~, leave of absence~~[-(iii)]~~,
91 commencement of long-term disability benefits~~[-or-(iv)]~~, or retirement[-]; and

92 (ii) in person or, if the employee is unavailable to receive the information in person, by
93 mailing the information to the employee's last known address.

94 (b) (i) Each participating employer shall maintain the records necessary to demonstrate
95 that ~~[each employee has received]~~ the employer has provided the information outlined in
96 Subsection (1) as required in Subsection (2)(a).

97 (ii) The records shall be made available to the office upon request.

98 (3) (a) The office shall provide each participating employer with a form to be signed by
99 each employee ~~[which verifies]~~ to verify that the employee has been given in person the
100 information required by this section.

101 (b) A copy of the signed form shall be immediately forwarded to the office by the
102 participating employer or the employee.

103 (c) If an employer provides information under Subsection (1) by mail as provided in
104 Subsection (2)(a)(ii), the employer shall:

105 (i) indicate on the form that the information was mailed to the employee and the
106 address to which the information was mailed; and

107 (ii) immediately forward the form to the office.

108 Section 3. Section **49-12-102** is amended to read:

109 **49-12-102. Definitions.**

110 As used in this chapter:

111 (1) "Benefits normally provided":

112 (a) means a benefit offered by an employer, including:

113 (i) a leave benefit of any kind;

114 (ii) insurance coverage of any kind if the employer pays some or all of the premium for
115 the coverage; and

116 (iii) a retirement benefit of any kind if the employer pays some or all of the cost of the
117 benefit; and

118 (b) does not include:

119 (i) a payment for Social Security;

120 (ii) workers' compensation insurance;

121 (iii) unemployment insurance;

122 (iv) a payment for Medicare;

123 (v) a payment or insurance required by federal or state law that is similar to a payment
124 or insurance listed in Subsection (1)(b)(i), (ii), (iii), or (iv);

125 (vi) any other benefit that state or federal law requires an employer to provide an
126 employee who would not otherwise be eligible to receive the benefit; or

127 (vii) any benefit that an employer provides an employee in order to avoid a penalty or
128 tax under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 and the Health
129 Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal
130 regulations, including a penalty imposed by Internal Revenue Code, Section 4980H.

131 ~~[(1)(a) Except as provided in Subsection (1)(c), "compensation"]~~

132 (2) (a) "Compensation" means, except as provided in Subsection (2)(c), the total
133 amount of payments made by a participating employer to a member of this system for services
134 rendered to the participating employer, including:

135 (i) bonuses;

136 (ii) cost-of-living adjustments;

137 (iii) other payments currently includable in gross income and that are subject to Social
138 Security deductions, including any payments in excess of the maximum amount subject to
139 deduction under Social Security law;

140 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
141 or other benefits authorized by federal law; and

- 142 (v) member contributions.
- 143 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed
- 144 under Internal Revenue Code, Section 401(a)(17).
- 145 (c) "Compensation" does not include:
- 146 (i) the monetary value of remuneration paid in kind, including a residence or use of
- 147 equipment;
- 148 (ii) the cost of any employment benefits paid for by the participating employer;
- 149 (iii) compensation paid to a temporary employee, an exempt employee, or an employee
- 150 otherwise ineligible for service credit;
- 151 (iv) any payments upon termination, including accumulated vacation, sick leave
- 152 payments, severance payments, compensatory time payments, or any other special payments; or
- 153 (v) any allowances or payments to a member for costs or expenses paid by the
- 154 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
- 155 housing costs, insurance costs, equipment costs, and dependent care costs.
- 156 (d) The executive director may determine if a payment not listed under this Subsection
- 157 ~~(1)~~ (2) falls within the definition of compensation.
- 158 ~~(2)~~ (3) "Final average salary" means the amount computed by averaging the highest
- 159 five years of annual compensation preceding retirement subject to Subsections ~~(2)~~ (3)(a), (b),
- 160 (c), and (d).
- 161 (a) Except as provided in Subsection ~~(2)~~ (3)(b), the percentage increase in annual
- 162 compensation in any one of the years used may not exceed the previous year's compensation by
- 163 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
- 164 of the dollar during the previous year, as measured by a United States Bureau of Labor
- 165 Statistics Consumer Price Index average as determined by the board.
- 166 (b) In cases where the participating employer provides acceptable documentation to the
- 167 office, the limitation in Subsection ~~(2)~~ (3)(a) may be exceeded if:
- 168 (i) the member has transferred from another agency; or
- 169 (ii) the member has been promoted to a new position.

170 (c) If the member retires more than six months from the date of termination of
171 employment, the member is considered to have been in service at the member's last rate of pay
172 from the date of the termination of employment to the effective date of retirement for purposes
173 of computing the member's final average salary only.

174 (d) If the member has less than five years of service credit in this system, final average
175 salary means the average annual compensation paid to the member during the full period of
176 service credit.

177 [~~(3)~~] (4) "Participating employer" means an employer which meets the participation
178 requirements of Sections 49-12-201 and 49-12-202.

179 [~~(4)~~] (5) (a) "Regular full-time employee" means an employee whose term of
180 employment for a participating employer contemplates continued employment during a fiscal
181 or calendar year and whose employment normally requires an average of 20 hours or more per
182 week, except as modified by the board, and who receives benefits normally provided by the
183 participating employer.

184 (b) "Regular full-time employee" includes:

185 (i) a teacher whose term of employment for a participating employer contemplates
186 continued employment during a school year and who teaches half-time or more;

187 (ii) a classified school employee whose employment normally requires an average of
188 20 hours per week or more for a participating employer, regardless of benefits provided;

189 (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as
190 of January 1, 1990, as provided in Section 49-12-407;

191 (iv) a faculty member or employee of an institution of higher education who is
192 considered full-time by that institution of higher education; and

193 (v) an individual who otherwise meets the definition of this Subsection [~~(4)~~] (5) who
194 performs services for a participating employer through a professional employer organization or
195 similar arrangement.

196 [~~(5)~~] (6) "System" means the Public Employees' Contributory Retirement System
197 created under this chapter.

198 ~~[(6)]~~ (7) "Years of service credit" means:

199 (a) a period, consisting of 12 full months as determined by the board;

200 (b) a period determined by the board, whether consecutive or not, during which a
201 regular full-time employee performed services for a participating employer, including any time
202 the regular full-time employee was absent on a paid leave of absence granted by a participating
203 employer or was absent in the service of the United States government on military duty as
204 provided by this chapter; or

205 (c) the regular school year consisting of not less than eight months of full-time service
206 for a regular full-time employee of an educational institution.

207 Section 4. Section **49-13-102** is amended to read:

208 **49-13-102. Definitions.**

209 As used in this chapter:

210 (1) "Benefits normally provided" has the same meaning as defined in Section
211 49-12-102.

212 ~~[(1)]~~ (2) (a) Except as provided in Subsection ~~[(1)]~~ (2)(c), "compensation" means the
213 total amount of payments made by a participating employer to a member of this system for
214 services rendered to the participating employer, including:

215 (i) bonuses;

216 (ii) cost-of-living adjustments;

217 (iii) other payments currently includable in gross income and that are subject to Social
218 Security deductions, including any payments in excess of the maximum amount subject to
219 deduction under Social Security law; and

220 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
221 or other benefits authorized by federal law.

222 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed
223 under Internal Revenue Code, Section 401(a)(17).

224 (c) "Compensation" does not include:

225 (i) the monetary value of remuneration paid in kind, including a residence or use of

226 equipment;

227 (ii) the cost of any employment benefits paid for by the participating employer;

228 (iii) compensation paid to a temporary employee, an exempt employee, or an employee
229 otherwise ineligible for service credit;

230 (iv) any payments upon termination, including accumulated vacation, sick leave
231 payments, severance payments, compensatory time payments, or any other special payments; or

232 (v) any allowances or payments to a member for costs or expenses paid by the
233 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
234 housing costs, insurance costs, equipment costs, and dependent care costs.

235 (d) The executive director may determine if a payment not listed under this Subsection
236 [~~(1)~~] (2) falls within the definition of compensation.

237 [~~(2)~~] (3) "Final average salary" means the amount computed by averaging the highest
238 three years of annual compensation preceding retirement subject to the following:

239 (a) Except as provided in Subsection [~~(2)~~] (3)(b), the percentage increase in annual
240 compensation in any one of the years used may not exceed the previous year's compensation by
241 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
242 of the dollar during the previous year, as measured by a United States Bureau of Labor
243 Statistics Consumer Price Index average as determined by the board.

244 (b) In cases where the participating employer provides acceptable documentation to the
245 office, the limitation in Subsection [~~(2)~~] (3)(a) may be exceeded if:

246 (i) the member has transferred from another agency; or

247 (ii) the member has been promoted to a new position.

248 (c) If the member retires more than six months from the date of termination of
249 employment and for purposes of computing the member's final average salary only, the
250 member is considered to have been in service at his last rate of pay from the date of the
251 termination of employment to the effective date of retirement.

252 [~~(3)~~] (4) "Participating employer" means an employer which meets the participation
253 requirements of Sections 49-13-201 and 49-13-202.

254 ~~[(4)]~~ (5) (a) "Regular full-time employee" means an employee whose term of
255 employment for a participating employer contemplates continued employment during a fiscal
256 or calendar year and whose employment normally requires an average of 20 hours or more per
257 week, except as modified by the board, and who receives benefits normally provided by the
258 participating employer.

259 (b) "Regular full-time employee" includes:

260 (i) a teacher whose term of employment for a participating employer contemplates
261 continued employment during a school year and who teaches half-time or more;

262 (ii) a classified school employee whose employment normally requires an average of
263 20 hours per week or more for a participating employer, regardless of benefits provided;

264 (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as
265 of January 1, 1990, as provided in Section 49-13-407;

266 (iv) a faculty member or employee of an institution of higher education who is
267 considered full-time by that institution of higher education; and

268 (v) an individual who otherwise meets the definition of this Subsection (4) who
269 performs services for a participating employer through a professional employer organization or
270 similar arrangement.

271 ~~[(5)]~~ (6) "System" means the Public Employees' Noncontributory Retirement System.

272 ~~[(6)]~~ (7) "Years of service credit" means:

273 (a) a period, consisting of 12 full months as determined by the board;

274 (b) a period determined by the board, whether consecutive or not, during which a
275 regular full-time employee performed services for a participating employer, including any time
276 the regular full-time employee was absent on a paid leave of absence granted by a participating
277 employer or was absent in the service of the United States government on military duty as
278 provided by this chapter; or

279 (c) the regular school year consisting of not less than eight months of full-time service
280 for a regular full-time employee of an educational institution.

281 Section 5. Section **49-22-102** is amended to read:

282 **49-22-102. Definitions.**

283 As used in this chapter:

284 (1) "Benefits normally provided" has the same meaning as defined in Section
285 49-12-102.

286 [~~(1)(a) Except as provided in Subsection (1)(c), "compensation"~~]

287 (2) (a) "Compensation" means, except as provided in Subsection (2)(c), the total
288 amount of payments made by a participating employer to a member of this system for services
289 rendered to the participating employer, including:

290 (i) bonuses;

291 (ii) cost-of-living adjustments;

292 (iii) other payments currently includable in gross income and that are subject to Social
293 Security deductions, including any payments in excess of the maximum amount subject to
294 deduction under Social Security law;

295 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
296 or other benefits authorized by federal law; and

297 (v) member contributions.

298 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed
299 under Internal Revenue Code, Section 401(a)(17).

300 (c) "Compensation" does not include:

301 (i) the monetary value of remuneration paid in kind, including a residence or use of
302 equipment;

303 (ii) the cost of any employment benefits paid for by the participating employer;

304 (iii) compensation paid to a temporary employee or an employee otherwise ineligible
305 for service credit;

306 (iv) any payments upon termination, including accumulated vacation, sick leave
307 payments, severance payments, compensatory time payments, or any other special payments; or

308 (v) any allowances or payments to a member for costs or expenses paid by the
309 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,

310 housing costs, insurance costs, equipment costs, and dependent care costs.

311 (d) The executive director may determine if a payment not listed under this Subsection
312 [~~(1)~~] (2) falls within the definition of compensation.

313 [~~(2)~~] (3) "Corresponding Tier I system" means the system or plan that would have
314 covered the member if the member had initially entered employment before July 1, 2011.

315 [~~(3)~~] (4) "Final average salary" means the amount computed by averaging the highest
316 five years of annual compensation preceding retirement subject to Subsections [~~(3)~~] (4)(a), (b),
317 (c), and (d).

318 (a) Except as provided in Subsection [~~(3)~~] (4)(b), the percentage increase in annual
319 compensation in any one of the years used may not exceed the previous year's compensation by
320 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
321 of the dollar during the previous year, as measured by a United States Bureau of Labor
322 Statistics Consumer Price Index average as determined by the board.

323 (b) In cases where the participating employer provides acceptable documentation to the
324 office, the limitation in Subsection [~~(3)~~] (4)(a) may be exceeded if:

325 (i) the member has transferred from another agency; or

326 (ii) the member has been promoted to a new position.

327 (c) If the member retires more than six months from the date of termination of
328 employment, the member is considered to have been in service at the member's last rate of pay
329 from the date of the termination of employment to the effective date of retirement for purposes
330 of computing the member's final average salary only.

331 (d) If the member has less than five years of service credit in this system, final average
332 salary means the average annual compensation paid to the member during the full period of
333 service credit.

334 [~~(4)~~] (5) "Participating employer" means an employer which meets the participation
335 requirements of:

336 (a) Sections 49-12-201 and 49-12-202;

337 (b) Sections 49-13-201 and 49-13-202;

338 (c) Section 49-19-201; or

339 (d) Section 49-22-201 or 49-22-202.

340 [~~5~~] (6) (a) "Regular full-time employee" means an employee whose term of
341 employment for a participating employer contemplates continued employment during a fiscal
342 or calendar year and whose employment normally requires an average of 20 hours or more per
343 week, except as modified by the board, and who receives benefits normally provided by the
344 participating employer.

345 (b) "Regular full-time employee" includes:

346 (i) a teacher whose term of employment for a participating employer contemplates
347 continued employment during a school year and who teaches half-time or more;

348 (ii) a classified school employee whose employment normally requires an average of
349 20 hours per week or more for a participating employer, regardless of benefits provided;

350 (iii) an appointive officer whose appointed position is full-time as certified by the
351 participating employer;

352 (iv) the governor, the lieutenant governor, the state auditor, the state treasurer, the
353 attorney general, and a state legislator;

354 (v) an elected official not included under Subsection [~~5~~] (6)(b)(iv) whose elected
355 position is full-time as certified by the participating employer;

356 (vi) a faculty member or employee of an institution of higher education who is
357 considered full-time by that institution of higher education; and

358 (vii) an individual who otherwise meets the definition of this Subsection [~~5~~] (6) who
359 performs services for a participating employer through a professional employer organization or
360 similar arrangement.

361 (c) "Regular full-time employee" does not include:

362 (i) a firefighter service employee as defined in Section 49-23-102; or

363 (ii) a public safety service employee as defined in Section 49-23-102.

364 [~~6~~] (7) "System" means the New Public Employees' Tier II Contributory Retirement
365 System created under this chapter.

366 [~~(7)~~] (8) "Years of service credit" means:

367 (a) a period, consisting of 12 full months as determined by the board;

368 (b) a period determined by the board, whether consecutive or not, during which a
369 regular full-time employee performed services for a participating employer, including any time
370 the regular full-time employee was absent on a paid leave of absence granted by a participating
371 employer or was absent in the service of the United States government on military duty as
372 provided by this chapter; or

373 (c) the regular school year consisting of not less than eight months of full-time service
374 for a regular full-time employee of an educational institution.

375 Section 6. Section **67-19-3** is amended to read:

376 **67-19-3. Definitions.**

377 As used in this chapter:

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

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

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

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

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

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

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

390 (b) "Demotion" does not mean:

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

393 (ii) a reclassification of an employee's position under the provisions of Subsection

394 67-19-12(3) and rules made by the department.

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

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

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

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

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

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

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

405 (b) under rules of the department; and

406 (c) under other state or federal statute.

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

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

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

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

417 (18) "Temporary employee" means career service exempt employees [~~on schedule IN~~
418 ~~or TL under Section 67-19-15~~] described in Subsection 67-19-15(1)(p).

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

422 Section 7. Section **67-19-12** is amended to read:

423 **67-19-12. State pay plans -- Applicability of section -- Exemptions -- Duties of the**
424 **executive director.**

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

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

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

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

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

432 (c) elected members of the executive branch and employees under schedule AC as
433 provided under Subsection 67-19-15(1)(c);

434 (d) employees of the State Board of Education who are licensed by the State Board of
435 Education;

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

437 (f) employees in a position that is specified by statute to be exempt from this
438 Subsection (2);

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

440 (h) department heads and other persons appointed by the governor under statute;

441 (i) exempt employees as provided under Subsection 67-19-15(1)(l);

442 (j) employees of the Utah Schools for the Deaf and the Blind who are:

443 (i) educators as defined by Section 53A-25b-102; or

444 (ii) educational interpreters as classified by the department; and

445 (k) temporary employees [~~under schedule IN or TL as provided under Subsections~~]
446 described in Subsection 67-19-15(1)(~~o~~) and (p).

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

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

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

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

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

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

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

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

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

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

472 (B) The width of the ranges need not be uniform for all classes of positions in the plan.

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

474 (B) The executive director shall issue rules providing for salary adjustments.

475 (iv) Merit increases shall be granted, on a uniform and consistent basis in accordance
476 with appropriations made by the Legislature, to employees who receive a rating of "successful"
477 or higher in an annual evaluation of their productivity and performance.

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

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

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

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

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

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

493 (B) Except as provided under Sections 67-19-12.1 and 67-19-12.3, the survey shall
494 include a reasonable cross section of employers.

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

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

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

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

506 (x) The governor shall:

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

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

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

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

514 (5) (a) The executive director shall issue rules for the granting of incentive awards,
515 including awards for cost saving actions, awards for commendable actions by an employee, or
516 a market-based award to attract or retain employees.

517 (b) An agency may not grant a market-based award unless the award is previously
518 approved by the department.

519 (c) In accordance with Subsection (5)(b), an agency requesting the department's
520 approval of a market-based award shall submit a request and documentation, subject to
521 Subsection (5)(d), to the department.

522 (d) In the documentation required in Subsection (5)(c), the requesting agency shall
523 identify for the department:

524 (i) any benefit the market-based award would provide for the agency, including:

525 (A) budgetary advantages; or

526 (B) recruitment advantages;

527 (ii) a mission critical need to attract or retain unique or hard to find skills in the market;

528 or

529 (iii) any other advantage the agency would gain through the utilization of a
530 market-based award.

531 (6) (a) The executive director shall regularly evaluate the total compensation program
532 of state employees in the classified service.

533 (b) The department shall determine if employee benefits are comparable to those

534 offered by other private and public employers using information from:

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

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

538 (7) (a) The executive director shall submit proposals for a state employee
539 compensation plan to the governor by October 31 of each year, setting forth findings and
540 recommendations affecting employee compensation.

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

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

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

546 **67-19-14. Sick leave -- Definitions -- Unused sick days retirement programs --**
547 **Rulemaking.**

548 (1) As used in this section through Section 67-19-14.4:

549 (a) "Continuing medical and life insurance benefits" means the state provided policy of
550 medical insurance and the state provided portion of a policy of life insurance, each offered at
551 the same:

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

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

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

559 (i) annual leave;

560 (ii) sick leave; or

561 (iii) unused accumulated sick leave after the employee's retirement for the purchase of

562 continuing medical and life insurance benefits under Sections 67-19-14.2, 67-19-14.3, and
563 67-19-14.4.

564 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
565 executive director shall make rules;

566 (a) for the procedures to implement the provisions of this section through Section
567 67-19-14.4[-]; and

568 (b) to establish the maximum number of hours of converted sick leave an employee
569 may accrue.

570 (3) The Division of Finance shall develop and maintain a system of accounting for
571 employee sick leave and converted sick leave as necessary to implement the provisions of this
572 section through Section 67-19-14.4.

573 Section 9. Section **67-19-15** is amended to read:

574 **67-19-15. Career service -- Exempt positions -- Schedules for civil service**
575 **positions -- Coverage of career service provisions.**

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

579 (a) schedule AA includes the governor, members of the Legislature, and all other
580 elected state officers;

581 (b) schedule AB includes appointed executives and board or commission executives
582 enumerated in Section 67-22-2;

583 (c) schedule AC includes all employees and officers in:

584 (i) the office and at the residence of the governor;

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

586 (iii) the Public Lands Policy Coordinating Council;

587 (iv) the Office of the State Auditor; and

588 (v) the Office of the State Treasurer;

589 (d) schedule AD includes employees who:

- 590 (i) are in a confidential relationship to an agency head or commissioner; and
- 591 (ii) report directly to, and are supervised by, a department head, commissioner, or
- 592 deputy director of an agency or its equivalent;
- 593 (e) schedule AG includes employees in the Office of the Attorney General who are
- 594 under their own career service pay plan under Sections 67-5-7 through 67-5-13;
- 595 (f) schedule AH includes:
- 596 (i) teaching staff of all state institutions; and
- 597 (ii) employees of the Utah Schools for the Deaf and the Blind who are:
- 598 (A) educational interpreters as classified by the department; or
- 599 (B) educators as defined by Section 53A-25b-102;
- 600 (g) schedule AN includes employees of the Legislature;
- 601 (h) schedule AO includes employees of the judiciary;
- 602 (i) schedule AP includes all judges in the judiciary;
- 603 (j) schedule AQ includes:
- 604 (i) members of state and local boards and councils appointed by the governor and
- 605 governing bodies of agencies;
- 606 (ii) other local officials serving in an ex officio capacity; and
- 607 (iii) officers, faculty, and other employees of state universities and other state
- 608 institutions of higher education;
- 609 (k) schedule AR includes employees in positions that involve responsibility:
- 610 (i) for determining policy;
- 611 (ii) for determining the way in which a policy is carried out; or
- 612 (iii) of a type not appropriate for career service, as determined by the agency head with
- 613 the concurrence of the executive director;
- 614 (l) schedule AS includes any other employee:
- 615 (i) whose appointment is required by statute to be career service exempt;
- 616 (ii) whose agency is not subject to this chapter; or
- 617 (iii) whose agency has authority to make rules regarding the performance,

618 compensation, and bonuses for its employees;

619 (m) schedule AT includes employees of the Department of Technology Services,
620 designated as executive/professional positions by the executive director of the Department of
621 Technology Services with the concurrence of the executive director;

622 (n) schedule AU includes patients and inmates employed in state institutions;

623 ~~[(o) schedule IN includes employees who are:]~~

624 ~~[(i) hired to work part time on an indefinite basis; and]~~

625 ~~[(ii) considered to be temporary noncareer employees;]~~

626 ~~[(p) schedule TL includes employees who are:]~~

627 ~~[(i) hired to work on a time-limited basis; and]~~

628 ~~[(ii) considered to be temporary noncareer employees; and]~~

629 ~~[(q)]~~ (o) employees of the Department of Workforce Services, designated as schedule
630 AW:

631 (i) who are temporary employees that are federally funded and are required to work
632 under federally qualified merit principles as certified by the director; or

633 (ii) for whom substantially all of their work is repetitive, measurable, or transaction
634 based, and who voluntarily apply for and are accepted by the Department of Workforce
635 Services to work in a pay for performance program designed by the Department of Workforce
636 Services with the concurrence of the executive director~~[-]; and~~

637 (p) for employees in positions that are temporary, seasonal, time limited, funding
638 limited, or variable hour in nature, under schedule codes and parameters established by the
639 department by administrative rule.

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

641 (a) (i) Schedule A is the schedule consisting of positions under Subsection (1).

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

644 (b) Schedule B is the competitive career service schedule, consisting of:

645 (i) all positions filled through competitive selection procedures as defined by the

646 executive director; or

647 (ii) positions filled through a department approved on the job examination intended to
648 appoint a qualified person with a disability.

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

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

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

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

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

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

663 (d) Unless otherwise provided by law, compensation for all other schedule A
664 employees shall be established by their appointing authorities, within ranges approved by, and
665 after consultation with the executive director of the Department of Human Resource
666 Management.

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

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

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

672 Section 10. Section **67-19-15.6** is amended to read:

673 **67-19-15.6. Longevity salary increases.**

674 (1) Except for those employees in schedule AB, [~~IN, or TL~~] as provided under Section
675 67-19-15, and employees described in Subsection 67-19-15(1)(p), an employee shall receive an
676 increase in salary of 2.75% if that employee:

- 677 (a) holds a position under schedule A or B as provided under Section 67-19-15;
- 678 (b) has reached the maximum of the salary range in the position classification;
- 679 (c) has been employed with the state for eight years; and
- 680 (d) is rated eligible in job performance under guidelines established by the executive
681 director.

682 (2) Any employee who meets the criteria under Subsection (1) is entitled to the same
683 increase in salary for each additional three years of employment if the employee maintains the
684 eligibility standards established by the department.

685 Section 11. Section **67-19-15.7** is amended to read:

686 **67-19-15.7. Promotion -- Reclassification -- Market adjustment.**

687 (1) (a) If an employee is promoted or the employee's position is reclassified to a higher
688 salary range maximum, the agency shall place the employee within the new range of the
689 position.

690 (b) An agency may not set an employee's salary:

- 691 (i) higher than the maximum in the new salary range; and
- 692 (ii) lower than the minimum in the new salary range of the position.

693 (c) Except for an employee [~~under schedule IN or TL under Section~~] described in
694 Subsection 67-19-15(1)(p), the agency shall grant a salary increase of at least 5% to an
695 employee who is promoted.

696 (2) An agency shall adjust the salary range for an employee whose salary range is
697 approved by the Legislature for a market comparability adjustment consistent with Subsection
698 67-19-12(4)(c)(v):

- 699 (a) at the beginning of the next fiscal year; and
 - 700 (b) consistent with appropriations made by the Legislature.
- 701 (3) Department-initiated revisions in the state classification system that result in

702 consolidation or reduction of class titles or broadening of pay ranges:

703 (a) may not be regarded as a reclassification of the position or promotion of the
704 employee; and

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

706 Section 12. Section **67-19a-406** is amended to read:

707 **67-19a-406. Procedural steps to be followed by aggrieved employee -- Hearing**
708 **before hearing officer -- Evidentiary and procedural rules.**

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

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

713 (2) (a) The agency has the burden of proof in all grievances.

714 (b) The agency must prove the agency's case by substantial evidence.

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

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

720 (4) The hearing officer may:

721 (a) not award attorney fees or costs to either party;

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

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

727 (d) grant continuances according to rule; and

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

730 (5) (a) A hearing officer shall affirm, rescind, or modify agency action.
731 (b) (i) If a hearing officer does not affirm agency action, the hearing officer shall order
732 back pay and back benefits that the grievant would have received without the agency action.
733 (ii) An order under Subsection (5)(b)(i) shall include:
734 (A) reimbursement to the grievant for premiums that the grievant paid for benefits
735 allowed under the Consolidated Omnibus Reconciliation Act of 1985; and
736 (B) an offset for any state paid benefits the grievant receives because of the agency
737 action, including unemployment compensation benefits.
738 (c) In an order under Subsection (5)(b)(i), a hearing officer may not reduce the amount
739 of back pay and benefits awarded a grievant because of income that the grievant earns during
740 the grievance process.

741 Section 13. **Coordinating H.B. 193 with H.B. 24 -- Substantive and superseding**
742 **amendments.**

743 If this H.B. 193 and H.B. 24, Utah Retirement System Amendments, both pass and
744 become law, it is the intent of the Legislature that the amendments to Section 49-11-616 in this
745 H.B. 193 supersede the amendments to Section 49-11-616 in H.B. 24, when the Office of
746 Legislative Research and General Counsel prepares the Utah Code database for publication.