

## SB0176S01 compared with SB0176

~~text~~ shows text that was in SB0176 but was deleted in SB0176S01.

text shows text that was not in SB0176 but was inserted into SB0176S01.

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Senator Howard A. Stephenson proposes the following substitute bill:

### OFFICE OF THE STATE BOARD OF EDUCATION EMPLOYMENT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Howard A. Stephenson**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill modifies provisions related to employees of the State Board of Education.

##### Highlighted Provisions:

This bill:

- ▶ addresses the circumstances under which the State Board of Education or the superintendent may promote ~~}, transfer, or increase the pay of an employee}~~ certain employees;
- ▶ allows the State Board of Education to develop incentives to encourage certain employees to voluntarily convert to exempt status;
- ▶ provides that employees of the State Board of Education are exempt from state pay

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### plans;

- ▶ provides that certain employees of the State Board of Education are exempt from the career service system; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**4-18-105**, as last amended by Laws of Utah 2015, Chapter 235

**53A-1-302**, as last amended by Laws of Utah 1990, Chapter 261

**67-19-3**, as last amended by Laws of Utah 2015, Chapter 155

**67-19-12**, as last amended by Laws of Utah 2015, Chapter 155

**67-19-15**, as last amended by Laws of Utah 2015, Chapter 401

**67-19-15.7**, as last amended by Laws of Utah 2015, Chapter 155

**73-5-1**, as last amended by Laws of Utah 2015, Chapter 401

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

Section 1. Section **4-18-105** is amended to read:

**4-18-105. Conservation Commission -- Functions and duties.**

(1) The commission shall:

(a) facilitate the development and implementation of the strategies and programs

necessary to:

(i) protect, conserve, utilize, and develop the soil, air, and water resources of the state;

and

(ii) promote the protection, integrity, and restoration of land for agricultural and other beneficial purposes;

(b) disseminate information regarding districts' activities and programs;

(c) supervise the formation, reorganization, or dissolution of districts according to the requirements of Title 17D, Chapter 3, Conservation District Act;

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(d) prescribe uniform accounting and recordkeeping procedures for districts and require each district to submit annually an audit of its funds to the commission;

(e) approve and make loans for agricultural purposes, through the advisory board described in Section 4-18-106, from the Agriculture Resource Development Fund, for:

(i) rangeland improvement and management projects;

(ii) watershed protection and flood prevention projects;

(iii) agricultural cropland soil and water conservation projects;

(iv) programs designed to promote energy efficient farming practices;

(v) development and implementation of coordinated resource management plans, as defined in Section 4-18-103, with conservation districts, as defined in Section 17D-3-102; and

(vi) programs or improvements for agriculture product storage or protections of a crop or animal resource;

(f) administer federal or state funds, including loan funds under this chapter, in accordance with applicable federal or state guidelines and make loans or grants from those funds to land occupiers for:

(i) the conservation of soil or water resources;

(ii) maintenance of rangeland improvement projects; and

(iii) the control or eradication of noxious weeds and invasive plant species:

(A) in cooperation and coordination with local weed boards; and

(B) in accordance with Section 4-2-8.7;

(g) seek to coordinate soil and water protection, conservation, and development activities and programs of state agencies, local governmental units, other states, special interest groups, and federal agencies;

(h) plan watershed and flood control projects in cooperation with appropriate local, state, and federal authorities, and coordinate flood control projects in the state;

(i) assist other state agencies with conservation standards for agriculture when requested; and

(j) when assigned by the governor, when required by contract with the Department of Environmental Quality, or when required by contract with the United States Environmental Protection Agency:

(i) develop programs for the prevention, control, or abatement of new or existing

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pollution to the soil, water, or air of the state;

(ii) advise, consult, and cooperate with affected parties to further the purpose of this chapter;

(iii) conduct studies, investigations, research, and demonstrations relating to agricultural pollution issues;

(iv) give reasonable consideration in the exercise of its powers and duties to the economic impact on sustainable agriculture;

(v) meet the requirements of federal law related to water and air pollution in the exercise of its powers and duties; and

(vi) establish administrative penalties relating to agricultural discharges as defined in Section 4-18-103 that are proportional to the seriousness of the resulting environmental harm.

(2) The commission may:

(a) employ, with the approval of the department, an administrator and necessary technical experts and employees;

(b) execute contracts or other instruments necessary to exercise its powers;

(c) take necessary action to promote and enforce the purpose and findings of Section 4-18-102;

(d) sue and be sued; and

(e) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to carry out the powers and duties described in Subsection (1) and Subsections (2)(b) and (c).

(3) If, under Subsection (2)(a), the commission employs an individual who was formerly an employee of a conservation district or the Utah Association of Conservation Districts, the Department of Human Resource Management shall:

(a) recognize the employee's employment service credit from the conservation district or association in determining leave accrual in the employee's new position within the state; and

(b) set the initial wage rate for the employee at the level that the employee was receiving as an employee of the conservation district or association.

(4) An employee described in Subsection (3) is exempt from the career service provisions of Title 67, Chapter 19, Utah State Personnel Management Act, and shall be designated under schedule codes and parameters established by the Department of Human

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Resource Management under Subsection 67-19-15(1)~~(p)~~(q) until the commission, under parameters established by the Department of Human Resource Management, designates the employee under a different schedule recognized under Section 67-19-15.

(5) (a) For purposes of the report required by Subsection (5)(b), the commissioner shall study the organizational structure of the employees described in Subsection (3).

(b) The commissioner shall report to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee by no later than that subcommittee's November 2015 interim meeting regarding the study required by Subsection (5)(a).

Section 2. Section **53A-1-302** is amended to read:

### **53A-1-302. Compensation of state superintendent -- Other board employees.**

(1) The board shall establish the compensation of the state superintendent.

(2) (a) The board may appoint ~~other~~ or the state superintendent may hire employees as necessary for the proper administration and supervision of the public school system.

(b) The compensation and duties of ~~these other employees~~ an employee described in Subsection (2)(a) shall be established by the board and paid from money appropriated for that purpose.

(3) ~~Notwithstanding the provisions of Section 67-19-15.7, on~~ (a) On or after May 10, 2016, an employee of the board may voluntarily convert to exempt status under Section 67-19-15 if the employee is:

(i) in career service status, as defined in Section 67-19-3; and

(ii) in a finance or an information technology position.

(b) On or after July 1, 2017, an employee of the board who is in career service status, as defined in Section 67-19-3, may convert to exempt status under Section 67-19-15.

(c) The board may, in consultation with the Department of Human Resource Management, develop financial and other incentives to encourage an employee described in Subsection (3)(a) or (b) to voluntarily convert to exempt status.

(4) On or after July 1, 2018, the board or the superintendent may not promote, transfer, or increase the pay of ~~an employee of the board~~ described in Subsection (3)(a), unless the employee is or agrees to become an employee designated as schedule AE as described in Section 67-19-15 voluntarily converts to exempt status.

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

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### **67-19-3. Definitions.**

As used in this chapter:

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

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

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

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

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

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

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

(b) "Demotion" does not mean:

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

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

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

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

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

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

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

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

(a) under Section 67-19-6;

(b) under rules of the department; and

(c) under other state or federal statute.

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(14) "Market comparability adjustment" means a salary range adjustment determined necessary through a market survey of salary data and other relevant information.

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

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

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

(18) "Structure adjustment" means a department modification of salary ranges.

(19) "Temporary employee" means career service exempt employees described in Subsection 67-19-15(1)~~(p)~~(q).

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

Section 4. Section **67-19-12** is amended to read:

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

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

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

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

(a) members of the Legislature and legislative employees;

(b) members of the judiciary and judicial employees;

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

(d) employees of the State Board of Education ~~[who are licensed by the State Board of Education]~~;

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

(f) employees in a position that is specified by statute to be exempt from this

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Subsection (2);

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

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

(i) schedule AS employees as provided under Subsection 67-19-15(1)(~~(f)~~)(m);

(j) department deputy directors, division directors, and other employees designated as schedule AD as provided under Subsection 67-19-15(1)(d);

(k) employees that determine and execute policy designated as schedule AR as provided under Subsection 67-19-15(1)(~~(k)~~)(l);

(l) teaching staff, educational interpreters, and educators designated as schedule AH as provided under Subsection 67-19-15(1)(~~(f)~~)(g);

(m) temporary employees described in Subsection 67-19-15(1)(~~(p)~~)(q);

(n) patients and inmates designated as schedule AU as provided under Subsection 67-19-15(1)(~~(n)~~)(o) who are employed by state institutions; ~~(f)~~ and ~~(f)~~

(o) members of state and local boards and councils and other employees designated as schedule AQ as provided under Subsection 67-19-15(1)(~~(j)~~)(~~(k)~~); ~~and~~;

~~(p) schedule AE employees as described in Subsection 67-19-15(1)(c).~~

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

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

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

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

(ii) The executive director shall determine the need for studies and interviews after considering factors such as changes in duties and responsibilities of positions or agency reorganizations.

(4) (a) With the approval of the governor, the executive director shall develop and



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adopt pay plans for each position in classified service.

(b) The executive director shall design each pay plan to achieve, to the degree that funds permit, comparability of state salary ranges to the market using data obtained from private enterprise and other public employment for similar work.

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

(i) Each pay plan shall consist of sufficient salary ranges to:

(A) permit adequate salary differential among the various classes of positions in the classification plan; and

(B) reflect the normal growth and productivity potential of employees in that class.

(ii) The executive director shall issue rules for the administration of pay plans.

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

(e) The executive director shall issue rules providing for:

(i) agency approved salary adjustments within approved salary ranges, including an administrative salary adjustment;

(ii) legislatively approved salary adjustments within approved salary ranges, including a merit increase, subject to Subsection (4)(f), or general increase; and

(iii) structure adjustments that modify salary ranges, including a cost of living adjustment or market comparability adjustment.

(f) A merit increase shall be granted on a uniform and consistent basis to each employee who receives a rating of "successful" or higher in an annual evaluation of the employee's productivity and performance.

(5) (a) By October 31 of each year, the executive director shall submit an annual compensation plan to the governor for consideration in the executive budget.

(b) The plan described in Subsection (5)(a) may include recommendations, including:

(i) salary increases that generally affect employees, including a general increase or merit increase;

(ii) salary increases that address compensation issues unique to an agency or occupation;

(iii) structure adjustments, including a cost of living adjustment or market

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comparability adjustment; or

(iv) changes to employee benefits.

(c) (i) (A) Subject to Subsection (5)(c)(i)(B) or (C), the executive director shall incorporate the results of a salary survey of a reasonable cross section of comparable positions in private and public employment in the state into the annual compensation plan.

(B) The salary survey for a law enforcement officer, as defined in Section 53-13-103, a correctional officer, as defined in Section 53-13-104, or a dispatcher, as defined in Section 53-6-102, shall at minimum include the three largest political subdivisions in the state that employ, respectively, comparable positions.

(C) The salary survey for an examiner or supervisor described in Title 7, Chapter 1, Part 2, Department of Financial Institutions, shall at minimum include the Federal Deposit Insurance Corporation, Federal Reserve, and National Credit Union Administration.

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

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

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

(d) The executive director may incorporate any other relevant information in the plan described in Subsection (5)(a), including information on staff turnover, recruitment data, or external market trends.

(e) The executive director shall:

(i) establish criteria to assure the adequacy and accuracy of data used to make recommendations described in this Subsection (5); and

(ii) when preparing recommendations use accepted methodologies and techniques similar to and consistent with those used in the private sector.

(f) (i) Upon request and subject to Subsection (5)(f)(ii), the department shall make available foundational information used by the department or director in the drafting of a plan described in Subsection (5)(a), including:

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- (A) demographic and labor market information;
- (B) information on employee turnover;
- (C) salary information;
- (D) information on recruitment; and
- (E) geographic data.

(ii) The department may not provide under Subsection (5)(f)(i) information or other data that is proprietary or otherwise protected under the terms of a contract or by law.

(g) The governor shall:

(i) consider salary and structure adjustments recommended under Subsection (5)(b) in preparing the executive budget and shall recommend the method of distributing the adjustments;

(ii) submit compensation recommendations to the Legislature; and

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

(h) If funding is approved by the Legislature in a general appropriations act, the adjustments take effect on the July 1 following the enactment unless otherwise indicated.

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

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

(c) In accordance with Subsection (6)(b), an agency requesting the department's approval of a market-based award shall submit a request and documentation, subject to Subsection (6)(d), to the department.

(d) In the documentation required in Subsection (6)(c), the requesting agency shall identify for the department:

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

(A) budgetary advantages; or

(B) recruitment advantages;

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

or

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

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

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

- (i) a study conducted by a third-party consultant; or
- (ii) the most recent edition of a nationally recognized benefits survey.

Section 5. Section **67-19-15** is amended to read:

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

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

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

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

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

- (i) the office and at the residence of the governor;
- (ii) the Utah Science Technology and Research Initiative (USTAR);
- (iii) the Public Lands Policy Coordinating Council;
- (iv) the Office of the State Auditor; and
- (v) the Office of the State Treasurer;

(d) schedule AD includes employees who:

- (i) are in a confidential relationship to an agency head or commissioner; and
- (ii) report directly to, and are supervised by, a department head, commissioner, or deputy director of an agency or its equivalent;

(e) schedule AE includes each employee of the State Board of Education who:

(i) is:

(A) in a finance or an information technology position; and

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~~(f) B~~ ~~is~~ hired on or after May 10, 2016; ~~or~~

~~(ii) on or after May 10, 2016, voluntarily elects to be:~~

~~(A) removed from a career service status; and~~

~~(B)~~

(ii) voluntarily converts to exempt status in accordance with Section 53A-1-302; and

(iii) is hired on or after July 1, 2017, for a position that the State Board of Education or the superintendent of public instruction designates as exempt from the career service provisions of this chapter;

~~(f)~~ ~~(f)~~ schedule AG includes employees in the Office of the Attorney General who are under their own career service pay plan under Sections 67-5-7 through 67-5-13;

~~(f)~~ ~~(g)~~ schedule AH includes:

(i) teaching staff of all state institutions; and

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

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

(B) educators as defined by Section 53A-25b-102;

~~(g)~~ ~~(h)~~ schedule AN includes employees of the Legislature;

~~(h)~~ ~~(i)~~ schedule AO includes employees of the judiciary;

~~(i)~~ ~~(j)~~ schedule AP includes all judges in the judiciary;

~~(j)~~ ~~(k)~~ schedule AQ includes:

(i) members of state and local boards and councils appointed by the governor and governing bodies of agencies;

(ii) a water commissioner appointed under Section 73-5-1;

(iii) other local officials serving in an ex officio capacity; and

(iv) officers, faculty, and other employees of state universities and other state institutions of higher education;

~~(k)~~ ~~(l)~~ schedule AR includes employees in positions that involve responsibility:

(i) for determining policy;

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

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

~~(l)~~ ~~(m)~~ schedule AS includes any other employee:

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- (i) whose appointment is required by statute to be career service exempt;
- (ii) whose agency is not subject to this chapter; or
- (iii) whose agency has authority to make rules regarding the performance,

compensation, and bonuses for its employees;

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

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

~~(o)~~ (p) employees of the Department of Workforce Services, designated as schedule AW:

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

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

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

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

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

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

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

(i) all positions filled through competitive selection procedures as defined by the executive director; or

(ii) positions filled through a department approved on-the-job examination intended to appoint a qualified person with a disability or a veteran as defined in Section 71-10-1.

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

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

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

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

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

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

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

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

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

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

Section 6. Section **67-19-15.7** is amended to read:

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

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

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

(i) higher than the maximum in the new salary range; and

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

(c) Except for an employee described in Subsection 67-19-15(1)~~(p)~~(q), the agency shall grant a salary increase of at least 5% to an employee who is promoted.

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(2) An agency shall adjust the salary range for an employee whose salary range is approved by the Legislature for a market comparability adjustment consistent with Subsection 67-19-12(5)(b)(i):

- (a) at the beginning of the next fiscal year; and
- (b) consistent with appropriations made by the Legislature.

(3) Department-initiated revisions in the state classification system that result in consolidation or reduction of class titles or broadening of pay ranges:

- (a) may not be regarded as a reclassification of the position or promotion of the employee; and
- (b) are exempt from the provisions of Subsection (1).

Section 7. Section **73-5-1** is amended to read:

### **73-5-1. Appointment of water commissioners -- Procedure.**

(1) (a) If, in the judgment of the state engineer or the district court, it is necessary to appoint a water commissioner for the distribution of water from any river system or water source, the commissioner shall be appointed for a four-year term by the state engineer.

(b) The state engineer shall determine whether all or a part of a river system or other water source shall be served by a commissioner, and if only a part is to be served, the state engineer shall determine the boundaries of that part.

(c) The state engineer may appoint:

- (i) more than one commissioner to distribute water from all or a part of a water source;
- or
- (ii) a single commissioner to distribute water from several separate and distinct water sources.

(d) A water commissioner appointed by the state engineer under this section is:

- (i) an employee of the Division of Water Rights;
- (ii) career service exempt under Subsection 67-19-15(1)(~~j~~)(k); and
- (iii) exempt under Subsection 67-19-12(2)(f) from the classified service provisions of Section 67-19-12.

(2) (a) The state engineer shall consult with the water users before appointing a commissioner. The form of consultation and notice to be given shall be determined by the state engineer so as to best suit local conditions, while providing for full expression of majority



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opinion.

(b) The state engineer shall act in accordance with the recommendation of a majority of the water users, if the majority of the water users:

(i) agree upon:

(A) a qualified individual to be appointed as a water commissioner;

(B) the duties the individual shall perform; and

(C) subject to the requirements of Title 49, Utah State Retirement and Insurance Benefit Act, the compensation the individual shall receive; and

(ii) submit a recommendation to the state engineer on the items described in Subsection (2)(b)(i).

(c) If a majority of water users do not agree on the appointment, duties, or compensation, the state engineer shall make a determination for them.

(3) (a) (i) The salary and expenses of the commissioner and all other expenses of distribution, including printing, postage, equipment, water users' expenses, and any other expenses considered necessary by the state engineer, shall be borne pro rata by the users of water from the river system or water source in accordance with a schedule to be fixed by the state engineer.

(ii) The schedule shall be based on the established rights of each water user, and the pro rata share shall be paid by each water user to the state engineer on or before May 1 of each year.

(b) The payments shall be deposited in the Water Commissioner Fund created in Section 73-5-1.5.

(c) If a water user fails to pay the assessment as provided by Subsection (3)(a), the state engineer may do any or all of the following:

(i) create a lien upon the water right affected by filing a notice of lien in the office of the county recorder in the county where the water is diverted and bring an action to enforce the lien;

(ii) forbid the use of water by the delinquent water user or the delinquent water user's successors or assignees, while the default continues; or

(iii) bring an action in the district court for the unpaid expense and salary.

(d) In any action brought to collect any unpaid assessment or to enforce any lien under

## **SB0176S01 compared with SB0176**

this section, the delinquent water user shall be liable for the amount of the assessment, interest, any penalty, and for all costs of collection, including all court costs and a reasonable attorney fee.

(4) (a) A commissioner may be removed by the state engineer for cause.

(b) The users of water from any river system or water source may petition the district court for the removal of a commissioner and after notice and hearing, the court may order the removal of the commissioner and direct the state engineer to appoint a successor.

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**Legislative Review Note**

**Office of Legislative Research and General Counsel**