

HB0280S01 compared with HB0280

~~deleted text~~ shows text that was in HB0280 but was deleted in HB0280S01.

inserted text shows text that was not in HB0280 but was inserted into HB0280S01.

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Representative Kay J. Christofferson proposes the following substitute bill:

STATE EMPLOYMENT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay J. Christofferson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the Utah State Personnel Management Act.

Highlighted Provisions:

This bill:

- ▶ exempts a state employee in a supervisor position from state pay plan requirements;
- ▶ provides that a state employee hired in a supervisor position on or after ~~May~~ July 1, 2021, is exempt from the career service system;
- ▶ allows a state employee in a supervisor position who holds career service status on ~~May 5~~ July 1, 2021, to retain the employee's career service status ~~under~~ in certain circumstances; and
- ▶ makes conforming changes.

Money Appropriated in this Bill:

HB0280S01 compared with HB0280

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

67-19-12, as last amended by Laws of Utah 2017, Chapter 463

67-19-15, as last amended by Laws of Utah 2020, Chapter 360

67-19-15.6, as last amended by Laws of Utah 2020, Chapter 109

67-19-15.7, as last amended by Laws of Utah 2017, Chapter 463

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

Section 1. 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;

(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

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)(m);

(j) department deputy directors, division directors, and other employees designated as

HB0280S01 compared with HB0280

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)(l);

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

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

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

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

(p) schedule AX employees as provided under Subsection 67-19-15(1)(q).

(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 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:

HB0280S01 compared with HB0280

(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 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.

HB0280S01 compared with HB0280

(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:

(A) demographic and labor market information;

(B) information on employee turnover;

(C) salary information;

(D) information on recruitment; and

(E) geographic data.

HB0280S01 compared with HB0280

(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

(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

HB0280S01 compared with HB0280

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 ~~67-19-2~~. 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 Public Lands Policy Coordinating Council;
- (iii) the Office of the State Auditor; and
- (iv) 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 that the State Board of Education designates as exempt from the career service provisions of this chapter;

(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;

(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 53E-8-102;

HB0280S01 compared with HB0280

- (h) schedule AN includes employees of the Legislature;
- (i) schedule AO includes employees of the judiciary;
- (j) schedule AP includes all judges in the judiciary;
- (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;
- (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;
- (m) schedule AS includes any other employee:
 - (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;
- (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;
- (o) schedule AU includes patients and inmates employed in state institutions;
- (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~~]

HB0280S01 compared with HB0280

(q) subject to Subsection (6), schedule AX includes employees in positions that:

(i) require the regular supervision and performance evaluation of one or more other employees; and

(ii) are not designated exempt from the career service under any other schedule described in Subsection (1); and

~~(q)~~ (r) 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 in accordance with Title 71, Chapter 10, Veterans Preference.

(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.

(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,

HB0280S01 compared with HB0280

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.

(6) An employee who is in a position on July 1, 2021, designated schedule AX and who holds career service status ~~{on May 5, 2021, }~~ shall retain the career service status if the employee ~~;~~:

~~—— (a) ;~~ remains in the position that the employee is in on ~~{May 5, 2021, and~~

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

~~—— Section 2} July 1, 2021.~~

Section 3. Section **67-19-15.6** is amended to read:

67-19-15.6. Longevity salary increases.

(1) Except for those employees in schedules AB and AN, as provided under Section 67-19-15, and employees described in Subsection 67-19-15(1)~~(q)~~(r), an employee shall receive an increase in salary of 2.75% if that employee:

(a) holds a position under schedule A or B as provided under Section 67-19-15;

(b) has reached the maximum of the salary range in the position classification;

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

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

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

HB0280S01 compared with HB0280

Section ~~3~~4. 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)~~(t)~~(r), the agency shall grant a salary increase of at least 5% to an employee who is promoted.

(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).