

STATE BOARD OF EDUCATION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ann Millner

House Sponsor: Jefferson Moss

LONG TITLE**General Description:**

This bill modifies provisions relating to the State Board of Education.

Highlighted Provisions:

This bill:

- ▶ modifies a provision relating to the supervision of the director of the Division of Facilities Construction and Management over projects of the State Board of Education;
- ▶ includes the State Board of Education as an educational procurement unit that is a procurement unit with independent procurement authority;
- ▶ removes State Board of Education employees from certain overtime provisions;
- ▶ expands the category of State Board of Education employees who are exempt from certain classification provisions; and
- ▶ exempts certain State Board of Education employees from career service provisions.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

4-18-105, as last amended by Laws of Utah 2016, Chapter 19



28 **63A-2-103**, as last amended by Laws of Utah 2015, Chapter 98
29 **63A-5-206**, as last amended by Laws of Utah 2016, Chapter 298
30 **63G-6a-103**, as last amended by Laws of Utah 2016, Chapters 176, 237, 355 and last
31 amended by Coordination Clause, Laws of Utah 2016, Chapter 355
32 **67-19-3**, as last amended by Laws of Utah 2015, Chapter 155
33 **67-19-6.7**, as last amended by Laws of Utah 2016, Chapter 144
34 **67-19-12**, as last amended by Laws of Utah 2015, Chapter 155
35 **67-19-15**, as last amended by Laws of Utah 2016, Chapter 230
36 **67-19-15.6**, as last amended by Laws of Utah 2013, Chapter 109
37 **67-19-15.7**, as last amended by Laws of Utah 2015, Chapter 155
38 **73-5-1**, as last amended by Laws of Utah 2015, Chapter 401

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

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

42 **4-18-105. Conservation Commission -- Functions and duties.**

43 (1) The commission shall:

44 (a) facilitate the development and implementation of the strategies and programs
45 necessary to:

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

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

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

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

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

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

57 (i) rangeland improvement and management projects;

58 (ii) watershed protection and flood prevention projects;

- 59 (iii) agricultural cropland soil and water conservation projects;
60 (iv) programs designed to promote energy efficient farming practices; and
61 (v) programs or improvements for agriculture product storage or protections of a crop
62 or animal resource;
- 63 (f) administer federal or state funds, including loan funds under this chapter, in
64 accordance with applicable federal or state guidelines and make loans or grants from those
65 funds to land occupiers for:
- 66 (i) conservation of soil or water resources;
67 (ii) maintenance of rangeland improvement projects;
68 (iii) development and implementation of coordinated resource management plans, as
69 defined in Section 4-18-103, with conservation districts, as defined in Section 17D-3-102; and
70 (iv) control or eradication of noxious weeds and invasive plant species:
71 (A) in cooperation and coordination with local weed boards; and
72 (B) in accordance with Section 4-2-8.7;
- 73 (g) seek to coordinate soil and water protection, conservation, and development
74 activities and programs of state agencies, local governmental units, other states, special interest
75 groups, and federal agencies;
- 76 (h) plan watershed and flood control projects in cooperation with appropriate local,
77 state, and federal authorities, and coordinate flood control projects in the state;
- 78 (i) assist other state agencies with conservation standards for agriculture when
79 requested; and
- 80 (j) when assigned by the governor, when required by contract with the Department of
81 Environmental Quality, or when required by contract with the United States Environmental
82 Protection Agency:
- 83 (i) develop programs for the prevention, control, or abatement of new or existing
84 pollution to the soil, water, or air of the state;
- 85 (ii) advise, consult, and cooperate with affected parties to further the purpose of this
86 chapter;
- 87 (iii) conduct studies, investigations, research, and demonstrations relating to
88 agricultural pollution issues;
- 89 (iv) give reasonable consideration in the exercise of its powers and duties to the

90 economic impact on sustainable agriculture;

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

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

95 (2) The commission may:

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

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

99 (c) take necessary action to promote and enforce the purpose and findings of Section
100 4-18-102;

101 (d) sue and be sued; and

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

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

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

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

112 (4) An employee described in Subsection (3) is exempt from the career service
113 provisions of Title 67, Chapter 19, Utah State Personnel Management Act, and shall be
114 designated under schedule codes and parameters established by the Department of Human
115 Resource Management under Subsection 67-19-15(1)(p)(q) until the commission, under
116 parameters established by the Department of Human Resource Management, designates the
117 employee under a different schedule recognized under Section 67-19-15.

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

120 (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 **63A-2-103** is amended to read:

63A-2-103. General services provided -- Subscription by state departments, state agencies, and certain local governmental entities -- Fee schedule.

(1) The purchasing director:

(a) shall operate, manage, and maintain:

(i) a central mailing service; and

(ii) an electronic central store system for procuring goods and services;

(b) shall, except when a state surplus property contractor administers the state's program for disposition of state surplus property, operate, manage, and maintain the state surplus property program;

(c) shall, when a state surplus property contractor administers the state's program for disposition of state surplus property, oversee the state surplus property contractor's administration of the state surplus property program in accordance with Part 4, Surplus Property Services; and

(d) may establish microfilming, duplicating, printing, addressograph, and other central services.

(2) (a) Each state agency shall subscribe to all of the services described in Subsection (1)(a), unless the director delegates the director's authority to a state agency under Section [63A-2-104](#).

(b) An institution of higher education, the State Board of Education, a school district, or a political subdivision of the state may subscribe to one or more of the services described in Subsection (1)(a).

(3) (a) The purchasing director shall:

(i) prescribe a schedule of fees to be charged for all services provided by the division after the purchasing director:

(A) submits the proposed rate, fees, or other amounts for services provided by the division's internal service fund to the Rate Committee established in Section [63A-1-114](#); and

(B) obtains the approval of the Legislature, as required by Section [63J-1-504](#);

(ii) ensure that the fees are approximately equal to the cost of providing the services;

and

(iii) annually conduct a market analysis of fees.

(b) A market analysis under Subsection (3)(a)(iii) shall include a comparison of the division's rates with the fees of other public or private sector providers if comparable services and rates are reasonably available.

Section 3. Section **63A-5-206** is amended to read:

63A-5-206. Construction, alteration, and repair of state facilities -- Powers of director -- Exceptions -- Expenditure of appropriations -- Notification to local governments for construction or modification of certain facilities.

(1) As used in this section:

(a) "Capital developments" and "capital improvements" have the same meaning as provided in Section [63A-5-104](#).

(b) "Compliance agency" has the same meaning as provided in Section [15A-1-202](#).

(c) (i) "Facility" means any building, structure, or other improvement that is constructed on property owned by the state, its departments, commissions, institutions, or agencies.

(ii) "Facility" does not mean an unoccupied structure that is a component of the state highway system.

(d) "Life cycle cost-effective" means, as provided for in rules adopted by the State Building Board, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the most prudent cost of owning and operating a facility, including the initial cost, energy costs, operation and maintenance costs, repair costs, and the costs of energy conservation and renewable energy systems.

(e) "Local government" means the county, municipality, or local school district that would have jurisdiction to act as the compliance agency if the property on which the project is being constructed were not owned by the state.

(f) "Renewable energy system" means a system designed to use solar, wind, geothermal power, wood, or other replenishable energy source to heat, cool, or provide electricity to a building.

(2) (a) (i) Except as provided in Subsections (3) and (4), the director shall exercise direct supervision over the design and construction of all new facilities, and all alterations,

repairs, and improvements to existing facilities if the total project construction cost, regardless of the funding source, is greater than \$100,000, unless there is memorandum of understanding between the director and an institution of higher education or the State Board of Education that permits the institution of higher education or the State Board of Education to exercise direct supervision for a project with a total project construction cost of not greater than \$250,000.

(ii) A state entity may exercise direct supervision over the design and construction of all new facilities, and all alterations, repairs, and improvements to existing facilities if:

(A) the total project construction cost, regardless of the funding sources, is \$100,000 or less; and

(B) the state entity assures compliance with the division's forms and contracts and the division's design, construction, alteration, repair, improvements, and code inspection standards.

(b) The director shall prepare or have prepared by private firms or individuals designs, plans, and specifications for the projects administered by the division.

(c) Before proceeding with construction, the director and the officials charged with the administration of the affairs of the particular agency shall approve the location, design, plans, and specifications.

(3) Projects for the construction of new facilities and alterations, repairs, and improvements to existing facilities are not subject to Subsection (2) if the project:

(a) occurs on property under the jurisdiction of the State Capitol Preservation Board;

(b) is within a designated research park at the University of Utah or Utah State University;

(c) occurs within the boundaries of This is the Place State Park and is administered by This is the Place Foundation except that This is the Place Foundation may request the director to administer the design and construction; or

(d) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah Percent-for-Art Act.

(4) (a) (i) The State Building Board may authorize the delegation of control over design, construction, and all other aspects of any project to entities of state government on a project-by-project basis or for projects within a particular dollar range and a particular project type.

(ii) The state entity to whom control is delegated shall assume fiduciary control over

project finances, shall assume all responsibility for project budgets and expenditures, and shall receive all funds appropriated for the project, including any contingency funds contained in the appropriated project budget.

(iii) Delegation of project control does not exempt the state entity from complying with the codes and guidelines for design and construction adopted by the division and the State Building Board.

(iv) State entities that receive a delegated project may not access, for the delegated project, the division's statewide contingency reserve and project reserve authorized in Section 63A-5-209.

(b) For facilities that will be owned, operated, maintained, and repaired by an entity that is not a state agency and that are located on state property, the State Building Board may authorize the owner to administer the design and construction of the project instead of the division.

(5) Notwithstanding any other provision of this section, if a donor donates land to an eligible institution of higher education and commits to build a building or buildings on that land, and the institution agrees to provide funds for the operations and maintenance costs from sources other than state funds, and agrees that the building or buildings will not be eligible for state capital improvement funding, the higher education institution may:

(a) oversee and manage the construction without involvement, oversight, or management from the division; or

(b) arrange for management of the project by the division.

(6) (a) The role of compliance agency as provided in Title 15A, State Construction and Fire Codes Act, shall be provided by:

(i) the director, for projects administered by the division;

(ii) the entity designated by the State Capitol Preservation Board, for projects under Subsection (3)(a);

(iii) the local government, for projects exempt from the division's administration under Subsection (3)(b) or administered by This is the Place Foundation under Subsection (3)(c);

(iv) the state entity or local government designated by the State Building Board, for projects under Subsection (4); or

(v) the institution, for projects exempt from the division's administration under

Subsection (5)(a).

(b) For the installation of art under Subsection (3)(d), the role of compliance agency shall be provided by the entity that is acting in this capacity for the balance of the project as provided in Subsection (6)(a).

(c) The local government acting as the compliance agency under Subsection (6)(a)(iii) may:

(i) only review plans and inspect construction to enforce the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act; and

(ii) charge a building permit fee of no more than the amount it could have charged if the land upon which the improvements are located were not owned by the state.

(d) (i) The use of state property and any improvements constructed on state property, including improvements constructed by nonstate entities, is not subject to the zoning authority of local governments as provided in Sections 10-9a-304 and 17-27a-304.

(ii) The state entity controlling the use of the state property shall consider any input received from the local government in determining how the property shall be used.

(7) Before construction may begin, the director shall review the design of projects exempted from the division's administration under Subsection (4) to determine if the design:

(a) complies with any restrictions placed on the project by the State Building Board; and

(b) is appropriate for the purpose and setting of the project.

(8) The director shall ensure that state-owned facilities, except for facilities under the control of the State Capitol Preservation Board, are life cycle cost-effective.

(9) The director may expend appropriations for statewide projects from funds provided by the Legislature for those specific purposes and within guidelines established by the State Building Board.

(10) (a) The director, with the approval of the Office of Legislative Fiscal Analyst, shall develop standard forms to present capital development and capital improvement cost summary data.

(b) The director shall:

(i) within 30 days after the completion of each capital development project, submit cost summary data for the project on the standard form to the Office of Legislative Fiscal Analyst;

276 and

277 (ii) upon request, submit cost summary data for a capital improvement project to the
278 Office of Legislative Fiscal Analyst on the standard form.

279 (11) Notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures
280 Act, the director may:

281 (a) accelerate the design of projects funded by any appropriation act passed by the
282 Legislature in its annual general session;

283 (b) use any unencumbered existing account balances to fund that design work; and

284 (c) reimburse those account balances from the amount funded for those projects when
285 the appropriation act funding the project becomes effective.

286 (12) (a) The director, the director's designee, or the state entity to whom control has
287 been designated under Subsection (4), shall notify in writing the elected representatives of local
288 government entities directly and substantively affected by any diagnostic, treatment, parole,
289 probation, or other secured facility project exceeding \$250,000, if:

290 (i) the nature of the project has been significantly altered since prior notification;

291 (ii) the project would significantly change the nature of the functions presently
292 conducted at the location; or

293 (iii) the project is new construction.

294 (b) At the request of either the state entity or the local government entity,
295 representatives from the state entity and the affected local entity shall conduct or participate in
296 a local public hearing or hearings to discuss these issues.

297 (13) (a) (i) Before beginning the construction of student housing on property owned by
298 the state or a public institution of higher education, the director shall provide written notice of
299 the proposed construction, as provided in Subsection (13)(a)(ii), if any of the proposed student
300 housing buildings is within 300 feet of privately owned residential property.

301 (ii) Each notice under Subsection (13)(a)(i) shall be provided to the legislative body
302 and, if applicable, the mayor of:

303 (A) the county in whose unincorporated area the privately owned residential property is
304 located; or

305 (B) the municipality in whose boundaries the privately owned residential property is
306 located.

(b) (i) Within 21 days after receiving the notice required by Subsection (13)(a)(i), a county or municipality entitled to the notice may submit a written request to the director for a public hearing on the proposed student housing construction.

(ii) If a county or municipality requests a hearing under Subsection (13)(b)(i), the director and the county or municipality shall jointly hold a public hearing to provide information to the public and to allow the director and the county or municipality to receive input from the public about the proposed student housing construction.

Section 4. Section **63G-6a-103** is amended to read:

63G-6a-103. Definitions.

As used in this chapter:

(1) "Administrative law judge" means the same as that term is defined in Section [67-19c-102](#).

(2) "Administrative law judge service" means service provided by an administrative law judge.

(3) "Applicable rulemaking authority" means:

(a) for a legislative procurement unit, the Legislative Management Committee;

(b) for a judicial procurement unit, the Judicial Council;

(c) (i) only to the extent of the procurement authority expressly granted to the procurement unit by statute:

(A) for the building board or the Division of Facilities Construction and Management, created in Section [63A-5-201](#), the building board;

(B) for the Office of the Attorney General, the attorney general; and

(C) for the Department of Transportation created in Section [72-1-201](#), the executive director of the Department of Transportation; and

(ii) for each other executive branch procurement unit, the board;

(d) for a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) an individual or body designated by the legislative body of the local government procurement unit;

(e) for a school district or a public school, the board, except to the extent of a school district's own nonadministrative rules that do not conflict with the provisions of this chapter;

(f) for a state institution of higher education, the State Board of Regents;

(g) for the State Board of Education, the State Board of Education;

~~(g)~~ (h) for a public transit district, the chief executive of the public transit district;

~~(h)~~ (i) for a local district other than a public transit district or for a special service district:

(i) before January 1, 2015, the board of trustees of the local district or the governing body of the special service district; or

(ii) on or after January 1, 2015, the board, except to the extent that the board of trustees of the local district or the governing body of the special service district makes its own rules:

(A) with respect to a subject addressed by board rules; or

(B) that are in addition to board rules; or

~~(i)~~ (j) for any other procurement unit, the board.

(4) "Approved vendor" means a vendor who has been approved through the approved vendor list process.

(5) "Approved vendor list" means a list of approved vendors established under Section 63G-6a-507.

(6) "Approved vendor list process" means the procurement process described in Section 63G-6a-507.

(7) "Bidder" means a person who submits a bid or price quote in response to an invitation for bids.

(8) "Bidding process" means the procurement process described in Part 6, Bidding.

(9) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.

(10) "Building board" means the State Building Board, created in Section 63A-5-101.

(11) "Change directive" means a written order signed by the procurement officer that directs the contractor to suspend work or make changes, as authorized by contract, without the consent of the contractor.

(12) "Change order" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.

(13) "Chief procurement officer" means the chief procurement officer appointed under

Subsection 63G-6a-302(1).

(14) "Conducting procurement unit" means a procurement unit that conducts all aspects of a procurement:

(a) except:

(i) reviewing a solicitation to verify that it is in proper form; and

(ii) causing the publication of a notice of a solicitation; and

(b) including:

(i) preparing any solicitation document;

(ii) appointing an evaluation committee;

(iii) conducting the evaluation process, except as provided in Subsection

63G-6a-707(6)(b) relating to scores calculated for costs of proposals;

(iv) selecting and recommending the person to be awarded a contract;

(v) negotiating the terms and conditions of a contract, subject to the issuing procurement unit's approval; and

(vi) contract administration.

(15) "Conservation district" means the same as that term is defined in Section 17D-3-102.

(16) "Construction":

(a) means services, including work, and supplies for a project for the construction, renovation, alteration, improvement, or repair of a public facility on real property; and

(b) does not include services and supplies for the routine, day-to-day operation, repair, or maintenance of an existing public facility.

(17) "Construction manager/general contractor":

(a) means a contractor who enters into a contract:

(i) for the management of a construction project; and

(ii) that allows the contractor to subcontract for additional labor and materials that are not included in the contractor's cost proposal submitted at the time of the procurement of the contractor's services; and

(b) does not include a contractor whose only subcontract work not included in the contractor's cost proposal submitted as part of the procurement of the contractor's services is to meet subcontracted portions of change orders approved within the scope of the project.

(18) "Contract" means an agreement for a procurement.

(19) "Contract administration" means all functions, duties, and responsibilities associated with managing, overseeing, and carrying out a contract between a procurement unit and a contractor, including:

(a) implementing the contract;

(b) ensuring compliance with the contract terms and conditions by the conducting procurement unit and the contractor;

(c) executing change orders;

(d) processing contract amendments;

(e) resolving, to the extent practicable, contract disputes;

(f) curing contract errors and deficiencies;

(g) terminating a contract;

(h) measuring or evaluating completed work and contractor performance;

(i) computing payments under the contract; and

(j) closing out a contract.

(20) "Contractor" means a person who is awarded a contract with a procurement unit.

(21) "Cooperative procurement" means procurement conducted by, or on behalf of:

(a) more than one procurement unit; or

(b) a procurement unit and a cooperative purchasing organization.

(22) "Cooperative purchasing organization" means an organization, association, or alliance of purchasers established to combine purchasing power in order to obtain the best value for the purchasers by engaging in procurements in accordance with Section [63G-6a-2105](#).

(23) "Cost-plus-a-percentage-of-cost contract" means a contract under which the contractor is paid a percentage of the total actual expenses or costs in addition to the contractor's actual expenses or costs.

(24) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

(25) "Days" means calendar days, unless expressly provided otherwise.

(26) "Definite quantity contract" means a fixed price contract that provides for a specified amount of supplies over a specified period, with deliveries scheduled according to a

specified schedule.

(27) "Design-build" means the procurement of design professional services and construction by the use of a single contract.

(28) "Design professional" means:

(a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act; or

(b) an individual licensed as a professional engineer or professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(29) "Design professional procurement process" means the procurement process described in Part 15, Design Professional Services.

(30) "Design professional services" means:

(a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;

(b) professional engineering as defined in Section 58-22-102; or

(c) master planning and programming services.

(31) "Director" means the director of the division.

(32) "Division" means the Division of Purchasing and General Services, created in Section 63A-2-101.

(33) "Educational procurement unit" means:

(a) a school district;

(b) a public school, including a local school board and a charter school;

(c) the Utah Schools for the Deaf and Blind;

(d) the Utah Education and Telehealth Network; ~~or~~

(e) an institution of higher education of the state~~[-];~~ or

(f) the State Board of Education.

(34) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number

of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(35) "Executive branch procurement unit" means a department, division, office, bureau, agency, or other organization within the state executive branch.

(36) "Fixed price contract" means a contract that provides a price, for each procurement item obtained under the contract, that is not subject to adjustment except to the extent that:

(a) the contract provides, under circumstances specified in the contract, for an adjustment in price that is not based on cost to the contractor; or

(b) an adjustment is required by law.

(37) "Fixed price contract with price adjustment" means a fixed price contract that provides for an upward or downward revision of price, precisely described in the contract, that:

(a) is based on the consumer price index or another commercially acceptable index, source, or formula; and

(b) is not based on a percentage of the cost to the contractor.

(38) "Grant" means an expenditure of public funds or other assistance, or an agreement to expend public funds or other assistance, for a public purpose authorized by law, without acquiring a procurement item in exchange.

(39) "Head of a procurement unit" means:

(a) for a legislative procurement unit, any person designated by rule made by the applicable rulemaking authority;

(b) for an executive branch procurement unit:

(i) the director of the division; or

(ii) any other person designated by the board, by rule;

(c) for a judicial procurement unit:

(i) the Judicial Council; or

(ii) any other person designated by the Judicial Council, by rule;

(d) for a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) any other person designated by the local government procurement unit;

(e) for a local district other than a public transit district, the board of trustees of the

493 local district or a designee of the board of trustees;

494 (f) for a special service district, the governing body of the special service district or a
495 designee of the governing body;

496 (g) for a local building authority, the board of directors of the local building authority or
497 a designee of the board of directors;

498 (h) for a conservation district, the board of supervisors of the conservation district or a
499 designee of the board of supervisors;

500 (i) for a public corporation, the board of directors of the public corporation or a
501 designee of the board of directors;

502 (j) for a school district or any school or entity within a school district, the board of the
503 school district, or the board's designee;

504 (k) for a charter school, the individual or body with executive authority over the charter
505 school, or the individual's or body's designee;

506 (l) for an institution of higher education of the state, the president of the institution of
507 higher education, or the president's designee; [or]

508 (m) for a public transit district, the board of trustees or a designee of the board of
509 trustees[-]; or

510 (n) for the State Board of Education, the State Board of Education or a designee of the
511 State Board of Education.

512 (40) "Immaterial error":

513 (a) means an irregularity or abnormality that is:

514 (i) a matter of form that does not affect substance; or

515 (ii) an inconsequential variation from a requirement of a solicitation that has no, little,
516 or a trivial effect on the procurement process and that is not prejudicial to other vendors; and

517 (b) includes:

518 (i) a missing signature, missing acknowledgment of an addendum, or missing copy of a
519 professional license, bond, or insurance certificate;

520 (ii) a typographical error;

521 (iii) an error resulting from an inaccuracy or omission in the solicitation; and

522 (iv) any other error that the chief procurement officer or the head of a procurement unit
523 with independent procurement authority reasonably considers to be immaterial.

- 524 (41) "Indefinite quantity contract" means a fixed price contract that:
525 (a) is for an indefinite amount of procurement items to be supplied as ordered by a
526 procurement unit; and
527 (b) (i) does not require a minimum purchase amount; or
528 (ii) provides a maximum purchase limit.
- 529 (42) "Independent procurement authority" means authority granted to a procurement
530 unit under Subsection 63G-6a-106(4)(a).
- 531 (43) "Invitation for bids":
532 (a) means a document used to solicit:
533 (i) bids to provide a procurement item to a procurement unit; or
534 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
535 (b) includes all documents attached to or incorporated by reference in a document
536 described in Subsection (43)(a).
- 537 (44) "Issuing procurement unit" means a procurement unit that:
538 (a) reviews a solicitation to verify that it is in proper form;
539 (b) causes the notice of a solicitation to be published; and
540 (c) negotiates and approves the terms and conditions of a contract.
- 541 (45) "Judicial procurement unit" means:
542 (a) the Utah Supreme Court;
543 (b) the Utah Court of Appeals;
544 (c) the Judicial Council;
545 (d) a state judicial district; or
546 (e) an office, committee, subcommittee, or other organization within the state judicial
547 branch.
- 548 (46) "Labor hour contract" is a contract under which:
549 (a) the supplies and materials are not provided by, or through, the contractor; and
550 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and
551 profit for a specified number of labor hours or days.
- 552 (47) "Legislative procurement unit" means:
553 (a) the Legislature;
554 (b) the Senate;

(c) the House of Representatives;
(d) a staff office of the Legislature, the Senate, or the House of Representatives; or
(e) an office, committee, subcommittee, commission, or other organization within the state legislative branch.

(48) "Local building authority" means the same as that term is defined in Section 17D-2-102.

(49) "Local district" means the same as that term is defined in Section 17B-1-102.

(50) "Local government procurement unit" means:

(a) a county or municipality, and each office or agency of the county or municipality, unless the county or municipality adopts its own procurement code by ordinance;

(b) a county or municipality that has adopted this entire chapter by ordinance, and each office or agency of that county or municipality; or

(c) a county or municipality that has adopted a portion of this chapter by ordinance, to the extent that a term in the ordinance is used in the adopted portion of this chapter, and each office or agency of that county or municipality.

(51) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one bidder or offeror.

(52) "Multiyear contract" means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first year of the contract.

(53) "Municipality" means a city, town, or metro township.

(54) "Nonadopting local government procurement unit" means:

(a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19, General Provisions Related to Protest or Appeal; and

(b) each office or agency of a county or municipality described in Subsection (54)(a).

(55) "Offeror" means a person who submits a proposal in response to a request for proposals.

(56) "Person" means the same as that term is defined in Section 68-3-12.5, excluding a political subdivision and a government office, department, division, bureau, or other body of government.

(57) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

(58) "Procure" means to acquire a procurement item through a procurement.

(59) "Procurement":

(a) means a procurement unit's acquisition of a procurement item through an expenditure of public funds, or an agreement to expend public funds;

(b) includes all functions that pertain to the acquisition of a procurement item, including:

(i) preparing and issuing a solicitation; and

(ii) (A) conducting a standard procurement process; or

(B) conducting a procurement process that is an exception to a standard procurement process under Part 8, Exceptions to Procurement Requirements; and

(c) does not include a grant.

(60) "Procurement item" means a supply, a service, or construction.

(61) "Procurement officer" means:

(a) for a procurement unit with independent procurement authority:

(i) the head of the procurement unit;

(ii) a designee of the head of the procurement unit; or

(iii) a person designated by rule made by the applicable rulemaking authority; or

(b) for the division or a procurement unit without independent procurement authority, the chief procurement officer.

(62) "Procurement unit":

(a) means:

(i) a legislative procurement unit;

(ii) an executive branch procurement unit;

(iii) a judicial procurement unit;

(iv) an educational procurement unit;

(v) a local government procurement unit;

(vi) a local district;

(vii) a special service district;

(viii) a local building authority;

- 617 (ix) a conservation district;
- 618 (x) a public corporation; or
- 619 (xi) a public transit district; and
- 620 (b) does not include a political subdivision created under Title 11, Chapter 13,
- 621 Interlocal Cooperation Act.
- 622 (63) "Professional service" means labor, effort, or work that requires an elevated
- 623 degree of specialized knowledge and discretion, including labor, effort, or work in the field of:
- 624 (a) accounting;
- 625 (b) architecture;
- 626 (c) construction design and management;
- 627 (d) engineering;
- 628 (e) financial services;
- 629 (f) information technology;
- 630 (g) the law;
- 631 (h) medicine;
- 632 (i) psychiatry; or
- 633 (j) underwriting.
- 634 (64) "Protest officer" means:
- 635 (a) for the division or a procurement unit with independent procurement authority:
- 636 (i) the head of the procurement unit;
- 637 (ii) a designee of the head of the procurement unit; or
- 638 (iii) a person designated by rule made by the applicable rulemaking authority; or
- 639 (b) for a procurement unit without independent procurement authority, the chief
- 640 procurement officer or the chief procurement officer's designee.
- 641 (65) "Public corporation" means the same as that term is defined in Section [63E-1-102](#).
- 642 (66) "Public entity" means any government entity of the state or political subdivision of
- 643 the state, including:
- 644 (a) a procurement unit;
- 645 (b) a municipality or county, regardless of whether the municipality or county has
- 646 adopted this chapter or any part of this chapter; and
- 647 (c) any other government entity located in the state that expends public funds.

(67) "Public facility" means a building, structure, infrastructure, improvement, or other facility of a public entity.

(68) "Public funds" means money, regardless of its source, including from the federal government, that is owned or held by a procurement unit.

(69) "Public transit district" means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

(70) "Qualified vendor" means a vendor who:

(a) is responsible; and

(b) submits a responsive statement of qualifications under Section 63G-6a-410 that meets the minimum mandatory requirements, evaluation criteria, and any applicable score thresholds set forth in the request for statement of qualifications.

(71) "Real property" means land and any building, fixture, improvement, appurtenance, structure, or other development that is permanently affixed to land.

(72) "Request for information" means a nonbinding process through which a procurement unit requests information relating to a procurement item.

(73) "Request for proposals" means a document used to solicit proposals to provide a procurement item to a procurement unit, including all other documents that are attached to that document or incorporated in that document by reference.

(74) "Request for proposals process" means the procurement process described in Part 7, Request for Proposals.

(75) "Request for statement of qualifications" means a document used to solicit information about the qualifications of a person interested in responding to a potential procurement, including all other documents attached to that document or incorporated in that document by reference.

(76) "Requirements contract" means a contract:

(a) under which a contractor agrees to provide a procurement unit's entire requirements for certain procurement items at prices specified in the contract during the contract period; and

(b) that:

(i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

(77) "Responsible" means being capable, in all respects, of:

(a) meeting all the requirements of a solicitation; and

(b) fully performing all the requirements of the contract resulting from the solicitation, including being financially solvent with sufficient financial resources to perform the contract.

(78) "Responsive" means conforming in all material respects to the requirements of a solicitation.

(79) "Sealed" means manually or electronically secured to prevent disclosure.

(80) "Service":

(a) means labor, effort, or work to produce a result that is beneficial to a procurement unit;

(b) includes a professional service; and

(c) does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.

(81) "Small purchase process" means the procurement process described in Section 63G-6a-506.

(82) "Sole source contract" means a contract resulting from a sole source procurement.

(83) "Sole source procurement" means a procurement without competition pursuant to a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the procurement item.

(84) "Solicitation" means an invitation for bids, request for proposals, request for statement of qualifications, or request for information.

(85) "Solicitation response" means:

(a) a bid submitted in response to an invitation for bids;

(b) a proposal submitted in response to a request for proposals; or

(c) a statement of qualifications submitted in response to a request for statement of qualifications.

(86) "Special service district" means the same as that term is defined in Section 17D-1-102.

(87) "Specification" means any description of the physical or functional characteristics or of the nature of a procurement item included in an invitation for bids or a request for proposals, or otherwise specified or agreed to by a procurement unit, including a description of:

(a) a requirement for inspecting or testing a procurement item; or

(b) preparing a procurement item for delivery.

(88) "Standard procurement process" means:

(a) the bidding process;

(b) the request for proposals process;

(c) the approved vendor list process;

(d) the small purchase process; or

(e) the design professional procurement process.

(89) "State cooperative contract" means a contract awarded by the division for and in behalf of all public entities.

(90) "Statement of qualifications" means a written statement submitted to a procurement unit in response to a request for statement of qualifications.

(91) "Subcontractor":

(a) means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction;

(b) includes a trade contractor or specialty contractor; and

(c) does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.

(92) "Supply" means a good, material, technology, piece of equipment, or any other item of personal property.

(93) "Tie bid" means that the lowest responsive bids of responsible bidders are identical in price.

(94) "Time and materials contract" means a contract under which the contractor is paid:

(a) the actual cost of direct labor at specified hourly rates;

(b) the actual cost of materials and equipment usage; and

(c) an additional amount, expressly described in the contract, to cover overhead and profit, that is not based on a percentage of the cost to the contractor.

(95) "Transitional costs":

(a) means the costs of changing:

(i) from an existing provider of a procurement item to another provider of that procurement item; or

(ii) from an existing type of procurement item to another type;

(b) includes:

(i) training costs;

(ii) conversion costs;

(iii) compatibility costs;

(iv) costs associated with system downtime;

(v) disruption of service costs;

(vi) staff time necessary to implement the change;

(vii) installation costs; and

(viii) ancillary software, hardware, equipment, or construction costs; and

(c) does not include:

(i) the costs of preparing for or engaging in a procurement process; or

(ii) contract negotiation or drafting costs.

(96) "Trial use contract" means a contract for a procurement item that the procurement unit acquires for a trial use or testing to determine whether the procurement item will benefit the procurement unit.

(97) "Vendor":

(a) means a person who is seeking to enter into a contract with a procurement unit to provide a procurement item; and

(b) includes:

(i) a bidder;

(ii) an offeror;

(iii) an approved vendor; and

(iv) a design professional.

Section 5. Section **67-19-3** is amended to read:

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.

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

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

(1) As used in this section:

(a) "Accrued overtime hours" means:

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

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

(b) "Appointed official" means:

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

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

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

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

(c) "Department" means the Department of Administrative Services, the Department of Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage Control, the Insurance Department, the Public Service Commission, the Labor Commission, the Department of Agriculture and Food, the Department of Human Services, ~~the State Board of Education,~~ the Department of Natural Resources, the Department of Technology Services, the Department of Transportation, the Department of Commerce, the Department of Workforce Services, the State Tax Commission, the Department of Heritage and Arts, the Department of Health, the National Guard, the Department of Environmental Quality, the Department of

Public Safety, the Department of Human Resource Management, the Commission on Criminal and Juvenile Justice, all merit employees except attorneys in the Office of the Attorney General, merit employees in the Office of the State Treasurer, merit employees in the Office of the State Auditor, Department of Veterans' and Military Affairs, and the Board of Pardons and Parole.

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

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

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

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

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

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

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

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

(i) an appointed official;

(ii) an elected official; or

(iii) a member of a board or commission who is paid only for per diem or travel expenses[; ~~or~~].

~~[(iv) employed on a contractual basis by the State Board of Education.]~~

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

(m) "Work period" means:

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

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

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

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

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

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

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

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

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

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

(e) Each department shall:

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

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

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

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

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

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

(b) (i) Each department shall:

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

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

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

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

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

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

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

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

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

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

(5) The Department of Human Resource Management shall:

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

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

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

933 (i) establishing procedures for recording overtime worked that comply with FLSA
934 requirements;

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

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

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

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

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

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

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

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

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

954 (a) Notwithstanding the procedures and requirements of Title 63G, Chapter 4,
955 Administrative Procedures Act, Section 67-19-31, and Section 67-19a-301, any employee who
956 is aggrieved by the FLSA designation made by the Department of Human Resource
957 Management as required by this section may appeal that determination to the executive director

of the Department of Human Resource Management by following the procedures and requirements established in Department of Human Resource Management rule.

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

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

Section 7. 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 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)(~~h~~)(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)(~~m~~)(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)(~~f~~)(k).

(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:

(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.

(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

1051 employ, respectively, comparable positions.

1052 (C) The salary survey for an examiner or supervisor described in Title 7, Chapter 1,
1053 Part 2, Department of Financial Institutions, shall at minimum include the Federal Deposit
1054 Insurance Corporation, Federal Reserve, and National Credit Union Administration.

1055 (ii) The executive director may cooperate with or participate in any survey conducted
1056 by other public and private employers.

1057 (iii) The executive director shall obtain information for the purpose of constructing the
1058 survey from the Division of Workforce Information and Payment Services and shall include
1059 employer name, number of persons employed by the employer, employer contact information
1060 and job titles, county code, and salary if available.

1061 (iv) The department shall acquire and protect the needed records in compliance with
1062 the provisions of Section [35A-4-312](#).

1063 (d) The executive director may incorporate any other relevant information in the plan
1064 described in Subsection (5)(a), including information on staff turnover, recruitment data, or
1065 external market trends.

1066 (e) The executive director shall:

1067 (i) establish criteria to assure the adequacy and accuracy of data used to make
1068 recommendations described in this Subsection (5); and

1069 (ii) when preparing recommendations use accepted methodologies and techniques
1070 similar to and consistent with those used in the private sector.

1071 (f) (i) Upon request and subject to Subsection (5)(f)(ii), the department shall make
1072 available foundational information used by the department or director in the drafting of a plan
1073 described in Subsection (5)(a), including:

1074 (A) demographic and labor market information;

1075 (B) information on employee turnover;

1076 (C) salary information;

1077 (D) information on recruitment; and

1078 (E) geographic data.

1079 (ii) The department may not provide under Subsection (5)(f)(i) information or other
1080 data that is proprietary or otherwise protected under the terms of a contract or by law.

1081 (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 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.

1113 Section 8. Section **67-19-15** is amended to read:

1114 **67-19-15. Career service -- Exempt positions -- Schedules for civil service**
1115 **positions -- Coverage of career service provisions.**

1116 (1) Except as otherwise provided by law or by rules and regulations established for
1117 federally aided programs, the following positions are exempt from the career service provisions
1118 of this chapter and are designated under the following schedules:

1119 (a) schedule AA includes the governor, members of the Legislature, and all other
1120 elected state officers;

1121 (b) schedule AB includes appointed executives and board or commission executives
1122 enumerated in Section [67-22-2](#);

1123 (c) schedule AC includes all employees and officers in:

1124 (i) the office and at the residence of the governor;

1125 (ii) the Utah Science Technology and Research Initiative (USTAR);

1126 (iii) the Public Lands Policy Coordinating Council;

1127 (iv) the Office of the State Auditor; and

1128 (v) the Office of the State Treasurer;

1129 (d) schedule AD includes employees who:

1130 (i) are in a confidential relationship to an agency head or commissioner; and

1131 (ii) report directly to, and are supervised by, a department head, commissioner, or
1132 deputy director of an agency or its equivalent;

1133 (e) schedule AE includes each employee of the State Board of Education that the State
1134 Board of Education designates as exempt from the career service provisions of this chapter;

1135 ~~[(e)]~~ (f) schedule AG includes employees in the Office of the Attorney General who are
1136 under their own career service pay plan under Sections [67-5-7](#) through [67-5-13](#);

1137 ~~[(f)]~~ (g) schedule AH includes:

1138 (i) teaching staff of all state institutions; and

1139 (ii) employees of the Utah Schools for the Deaf and the Blind who are:

1140 (A) educational interpreters as classified by the department; or

1141 (B) educators as defined by Section [53A-25b-102](#);

1142 ~~[(g)]~~ (h) schedule AN includes employees of the Legislature;

1143 ~~[(h)]~~ (i) schedule AO includes employees of the judiciary;

1144 ~~[(j)]~~ (i) schedule AP includes all judges in the judiciary;
1145 ~~[(j)]~~ (k) schedule AQ includes:
1146 (i) members of state and local boards and councils appointed by the governor and
1147 governing bodies of agencies;
1148 (ii) a water commissioner appointed under Section 73-5-1;
1149 (iii) other local officials serving in an ex officio capacity; and
1150 (iv) officers, faculty, and other employees of state universities and other state
1151 institutions of higher education;
1152 ~~[(k)]~~ (l) schedule AR includes employees in positions that involve responsibility:
1153 (i) for determining policy;
1154 (ii) for determining the way in which a policy is carried out; or
1155 (iii) of a type not appropriate for career service, as determined by the agency head with
1156 the concurrence of the executive director;
1157 ~~[(l)]~~ (m) schedule AS includes any other employee:
1158 (i) whose appointment is required by statute to be career service exempt;
1159 (ii) whose agency is not subject to this chapter; or
1160 (iii) whose agency has authority to make rules regarding the performance,
1161 compensation, and bonuses for its employees;
1162 ~~[(m)]~~ (n) schedule AT includes employees of the Department of Technology Services,
1163 designated as executive/professional positions by the executive director of the Department of
1164 Technology Services with the concurrence of the executive director;
1165 ~~[(n)]~~ (o) schedule AU includes patients and inmates employed in state institutions;
1166 ~~[(o)]~~ (p) employees of the Department of Workforce Services, designated as schedule
1167 AW:
1168 (i) who are temporary employees that are federally funded and are required to work
1169 under federally qualified merit principles as certified by the director; or
1170 (ii) for whom substantially all of their work is repetitive, measurable, or transaction
1171 based, and who voluntarily apply for and are accepted by the Department of Workforce
1172 Services to work in a pay for performance program designed by the Department of Workforce
1173 Services with the concurrence of the executive director; and
1174 ~~[(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 in accordance with Title 71, Chapter 10, Veteran's 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, 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 9. Section **67-19-15.6** is amended to read:

67-19-15.6. Longevity salary increases.

(1) Except for those employees in schedule AB, as provided under Section **67-19-15**, and employees described in Subsection **67-19-15(1)(p)(q)**, 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.

Section 10. 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.

(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)**:

- 1237 (a) at the beginning of the next fiscal year; and
1238 (b) consistent with appropriations made by the Legislature.
1239 (3) Department-initiated revisions in the state classification system that result in
1240 consolidation or reduction of class titles or broadening of pay ranges:
1241 (a) may not be regarded as a reclassification of the position or promotion of the
1242 employee; and
1243 (b) are exempt from the provisions of Subsection (1).
1244 Section 11. Section **73-5-1** is amended to read:
1245 **73-5-1. Appointment of water commissioners -- Procedure.**
1246 (1) (a) If, in the judgment of the state engineer or the district court, it is necessary to
1247 appoint a water commissioner for the distribution of water from any river system or water
1248 source, the commissioner shall be appointed for a four-year term by the state engineer.
1249 (b) The state engineer shall determine whether all or a part of a river system or other
1250 water source shall be served by a commissioner, and if only a part is to be served, the state
1251 engineer shall determine the boundaries of that part.
1252 (c) The state engineer may appoint:
1253 (i) more than one commissioner to distribute water from all or a part of a water source;
1254 or
1255 (ii) a single commissioner to distribute water from several separate and distinct water
1256 sources.
1257 (d) A water commissioner appointed by the state engineer under this section is:
1258 (i) an employee of the Division of Water Rights;
1259 (ii) career service exempt under Subsection 67-19-15(1)(~~jj~~)(k); and
1260 (iii) exempt under Subsection 67-19-12(2)(f) from the classified service provisions of
1261 Section 67-19-12.
1262 (2) (a) The state engineer shall consult with the water users before appointing a
1263 commissioner. The form of consultation and notice to be given shall be determined by the state
1264 engineer so as to best suit local conditions, while providing for full expression of majority
1265 opinion.
1266 (b) The state engineer shall act in accordance with the recommendation of a majority of
1267 the water users, if the majority of the water users:

1268 (i) agree upon:

1269 (A) a qualified individual to be appointed as a water commissioner;

1270 (B) the duties the individual shall perform; and

1271 (C) subject to the requirements of Title 49, Utah State Retirement and Insurance

1272 Benefit Act, the compensation the individual shall receive; and

1273 (ii) submit a recommendation to the state engineer on the items described in

1274 Subsection (2)(b)(i).

1275 (c) If a majority of water users do not agree on the appointment, duties, or

1276 compensation, the state engineer shall make a determination for them.

1277 (3) (a) (i) The salary and expenses of the commissioner and all other expenses of

1278 distribution, including printing, postage, equipment, water users' expenses, and any other

1279 expenses considered necessary by the state engineer, shall be borne pro rata by the users of

1280 water from the river system or water source in accordance with a schedule to be fixed by the

1281 state engineer.

1282 (ii) The schedule shall be based on the established rights of each water user, and the

1283 pro rata share shall be paid by each water user to the state engineer on or before May 1 of each

1284 year.

1285 (b) The payments shall be deposited in the Water Commissioner Fund created in

1286 Section [73-5-1.5](#).

1287 (c) If a water user fails to pay the assessment as provided by Subsection (3)(a), the state

1288 engineer may do any or all of the following:

1289 (i) create a lien upon the water right affected by filing a notice of lien in the office of

1290 the county recorder in the county where the water is diverted and bring an action to enforce the

1291 lien;

1292 (ii) forbid the use of water by the delinquent water user or the delinquent water user's

1293 successors or assignees, while the default continues; or

1294 (iii) bring an action in the district court for the unpaid expense and salary.

1295 (d) In any action brought to collect any unpaid assessment or to enforce any lien under

1296 this section, the delinquent water user shall be liable for the amount of the assessment, interest,

1297 any penalty, and for all costs of collection, including all court costs and a reasonable attorney

1298 fee.

1299 (4) (a) A commissioner may be removed by the state engineer for cause.

1300 (b) The users of water from any river system or water source may petition the district
1301 court for the removal of a commissioner and after notice and hearing, the court may order the
1302 removal of the commissioner and direct the state engineer to appoint a successor.

1303 Section 12. **Effective date.**

1304 (1) Except as provided in Subsection (2), this bill takes effect on May 9, 2017.

1305 (2) The amendments in this bill to Section 63G-6a-103 take effect on ~~§~~ → [January 1, 2018]

1305a July 1, 2017 ← ~~§~~ .

Legislative Review Note
Office of Legislative Research and General Counsel