

**Representative Daniel McCay** proposes the following substitute bill:

**OFFICE OF THE STATE BOARD OF EDUCATION**

**EMPLOYMENT AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Howard A. Stephenson**

House Sponsor: Daniel McCay

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ provides that employees of the State Board of Education are exempt from state pay plans;
- ▶ designates employees of the State Board of Education who are exempt from the career service system as schedule AE; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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



- 26 [67-19-12](#), as last amended by Laws of Utah 2015, Chapter 155
  - 27 [67-19-15](#), as last amended by Laws of Utah 2015, Chapter 401
  - 28 [67-19-15.7](#), as last amended by Laws of Utah 2015, Chapter 155
  - 29 [73-5-1](#), as last amended by Laws of Utah 2015, Chapter 401
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31 *Be it enacted by the Legislature of the state of Utah:*

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

33 **4-18-105. Conservation Commission -- Functions and duties.**

34 (1) The commission shall:

35 (a) facilitate the development and implementation of the strategies and programs  
36 necessary to:

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

38 and

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

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

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

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

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

48 (i) rangeland improvement and management projects;

49 (ii) watershed protection and flood prevention projects;

50 (iii) agricultural cropland soil and water conservation projects;

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

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

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

56 (f) administer federal or state funds, including loan funds under this chapter, in

57 accordance with applicable federal or state guidelines and make loans or grants from those  
58 funds to land occupiers for:

- 59 (i) the conservation of soil or water resources;
- 60 (ii) maintenance of rangeland improvement projects; and
- 61 (iii) the control or eradication of noxious weeds and invasive plant species:
  - 62 (A) in cooperation and coordination with local weed boards; and
  - 63 (B) in accordance with Section 4-2-8.7;
- 64 (g) seek to coordinate soil and water protection, conservation, and development  
65 activities and programs of state agencies, local governmental units, other states, special interest  
66 groups, and federal agencies;
- 67 (h) plan watershed and flood control projects in cooperation with appropriate local,  
68 state, and federal authorities, and coordinate flood control projects in the state;
- 69 (i) assist other state agencies with conservation standards for agriculture when  
70 requested; and
- 71 (j) when assigned by the governor, when required by contract with the Department of  
72 Environmental Quality, or when required by contract with the United States Environmental  
73 Protection Agency:
  - 74 (i) develop programs for the prevention, control, or abatement of new or existing  
75 pollution to the soil, water, or air of the state;
  - 76 (ii) advise, consult, and cooperate with affected parties to further the purpose of this  
77 chapter;
  - 78 (iii) conduct studies, investigations, research, and demonstrations relating to  
79 agricultural pollution issues;
  - 80 (iv) give reasonable consideration in the exercise of its powers and duties to the  
81 economic impact on sustainable agriculture;
  - 82 (v) meet the requirements of federal law related to water and air pollution in the  
83 exercise of its powers and duties; and
  - 84 (vi) establish administrative penalties relating to agricultural discharges as defined in  
85 Section 4-18-103 that are proportional to the seriousness of the resulting environmental harm.
- 86 (2) The commission may:
  - 87 (a) employ, with the approval of the department, an administrator and necessary

88 technical experts and employees;

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

90 (c) take necessary action to promote and enforce the purpose and findings of Section  
91 4-18-102;

92 (d) sue and be sued; and

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

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

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

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

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

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

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

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

115 **67-19-3. Definitions.**

116 As used in this chapter:

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

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

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

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

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

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

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

129 (b) "Demotion" does not mean:

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

132 (ii) a reclassification of an employee's position under the provisions of Subsection  
133 67-19-12(3) and rules made by the department.

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

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

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

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

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

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

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

144 (b) under rules of the department; and

145 (c) under other state or federal statute.

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

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

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

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

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

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

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

161 Section 3. Section 67-19-12 is amended to read:

162 **67-19-12. State pay plans -- Applicability of section -- Exemptions -- Duties of the**  
163 **executive director.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

188 (n) patients and inmates designated as schedule AU as provided under Subsection  
189 67-19-15(1)(~~n~~)(o) who are employed by state institutions; and

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

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

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

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

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

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

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

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

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

- 212 (i) Each pay plan shall consist of sufficient salary ranges to:
- 213 (A) permit adequate salary differential among the various classes of positions in the
- 214 classification plan; and
- 215 (B) reflect the normal growth and productivity potential of employees in that class.
- 216 (ii) The executive director shall issue rules for the administration of pay plans.
- 217 (d) The establishing of a salary range is a nondelegable activity and is not appealable
- 218 under the grievance procedures of Sections 67-19-30 through 67-19-32, Chapter 19a,
- 219 Grievance Procedures, or otherwise.
- 220 (e) The executive director shall issue rules providing for:
- 221 (i) agency approved salary adjustments within approved salary ranges, including an
- 222 administrative salary adjustment;
- 223 (ii) legislatively approved salary adjustments within approved salary ranges, including
- 224 a merit increase, subject to Subsection (4)(f), or general increase; and
- 225 (iii) structure adjustments that modify salary ranges, including a cost of living
- 226 adjustment or market comparability adjustment.
- 227 (f) A merit increase shall be granted on a uniform and consistent basis to each
- 228 employee who receives a rating of "successful" or higher in an annual evaluation of the
- 229 employee's productivity and performance.
- 230 (5) (a) By October 31 of each year, the executive director shall submit an annual
- 231 compensation plan to the governor for consideration in the executive budget.
- 232 (b) The plan described in Subsection (5)(a) may include recommendations, including:
- 233 (i) salary increases that generally affect employees, including a general increase or
- 234 merit increase;
- 235 (ii) salary increases that address compensation issues unique to an agency or
- 236 occupation;
- 237 (iii) structure adjustments, including a cost of living adjustment or market
- 238 comparability adjustment; or
- 239 (iv) changes to employee benefits.
- 240 (c) (i) (A) Subject to Subsection (5)(c)(i)(B) or (C), the executive director shall
- 241 incorporate the results of a salary survey of a reasonable cross section of comparable positions
- 242 in private and public employment in the state into the annual compensation plan.



243 (B) The salary survey for a law enforcement officer, as defined in Section 53-13-103, a  
244 correctional officer, as defined in Section 53-13-104, or a dispatcher, as defined in Section  
245 53-6-102, shall at minimum include the three largest political subdivisions in the state that  
246 employ, respectively, comparable positions.

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

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

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

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

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

261 (e) The executive director shall:

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

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

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

269 (A) demographic and labor market information;

270 (B) information on employee turnover;

271 (C) salary information;

272 (D) information on recruitment; and

273 (E) geographic data.

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

276 (g) The governor shall:

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

280 (ii) submit compensation recommendations to the Legislature; and

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

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

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

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

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

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

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

296 (A) budgetary advantages; or

297 (B) recruitment advantages;

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

299 or

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

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

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

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

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

308 Section 4. Section 67-19-15 is amended to read:

309 **67-19-15. Career service -- Exempt positions -- Schedules for civil service**  
310 **positions -- Coverage of career service provisions.**

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

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

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

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

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

323 (v) the Office of the State Treasurer;

324 (d) schedule AD includes employees who:

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

328 (e) schedule AE includes each employee of the State Board of Education who is  
329 exempt from the career service provisions of this chapter;

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

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

- 333 (i) teaching staff of all state institutions; and
  - 334 (ii) employees of the Utah Schools for the Deaf and the Blind who are:
- 335 (A) educational interpreters as classified by the department; or

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

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

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

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

340 [~~j~~] (k) schedule AQ includes:

341 (i) members of state and local boards and councils appointed by the governor and

342 governing bodies of agencies;

343 (ii) a water commissioner appointed under Section [73-5-1](#);

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

345 (iv) officers, faculty, and other employees of state universities and other state

346 institutions of higher education;

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

348 (i) for determining policy;

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

350 (iii) of a type not appropriate for career service, as determined by the agency head with

351 the concurrence of the executive director;

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

353 (i) whose appointment is required by statute to be career service exempt;

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

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

356 compensation, and bonuses for its employees;

357 [~~m~~] (n) schedule AT includes employees of the Department of Technology Services,

358 designated as executive/professional positions by the executive director of the Department of

359 Technology Services with the concurrence of the executive director;

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

361 [~~o~~] (p) employees of the Department of Workforce Services, designated as schedule

362 AW:

363 (i) who are temporary employees that are federally funded and are required to work

364 under federally qualified merit principles as certified by the director; or

365 (ii) for whom substantially all of their work is repetitive, measurable, or transaction

366 based, and who voluntarily apply for and are accepted by the Department of Workforce

367 Services to work in a pay for performance program designed by the Department of Workforce  
368 Services with the concurrence of the executive director; and

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

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

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

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

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

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

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

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

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

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

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

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

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

396 (d) Unless otherwise provided by law, compensation for all other schedule A  
397 employees shall be established by their appointing authorities, within ranges approved by, and

398 after consultation with the executive director of the Department of Human Resource  
399 Management.

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

- 402 (a) remains in the position that the employee is in on June 30, 2010; and
- 403 (b) does not elect to convert to career service exempt status in accordance with a rule  
404 made by the department.

405 Section 5. Section **67-19-15.7** is amended to read:

406 **67-19-15.7. Promotion -- Reclassification -- Market adjustment.**

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

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

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

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

415 (2) An agency shall adjust the salary range for an employee whose salary range is  
416 approved by the Legislature for a market comparability adjustment consistent with Subsection  
417 **67-19-12(5)(b)(i)**:

- 418 (a) at the beginning of the next fiscal year; and
  - 419 (b) consistent with appropriations made by the Legislature.
- 420 (3) Department-initiated revisions in the state classification system that result in  
421 consolidation or reduction of class titles or broadening of pay ranges:

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

425 Section 6. Section **73-5-1** is amended to read:

426 **73-5-1. Appointment of water commissioners -- Procedure.**

427 (1) (a) If, in the judgment of the state engineer or the district court, it is necessary to  
428 appoint a water commissioner for the distribution of water from any river system or water

429 source, the commissioner shall be appointed for a four-year term by the state engineer.

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

433 (c) The state engineer may appoint:

434 (i) more than one commissioner to distribute water from all or a part of a water source;

435 or

436 (ii) a single commissioner to distribute water from several separate and distinct water  
437 sources.

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

439 (i) an employee of the Division of Water Rights;

440 (ii) career service exempt under Subsection 67-19-15(1)(~~g~~)(k); and

441 (iii) exempt under Subsection 67-19-12(2)(f) from the classified service provisions of  
442 Section 67-19-12.

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

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

449 (i) agree upon:

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

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

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

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

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

458 (3) (a) (i) The salary and expenses of the commissioner and all other expenses of  
459 distribution, including printing, postage, equipment, water users' expenses, and any other

460 expenses considered necessary by the state engineer, shall be borne pro rata by the users of  
461 water from the river system or water source in accordance with a schedule to be fixed by the  
462 state engineer.

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

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

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

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

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

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

476 (d) In any action brought to collect any unpaid assessment or to enforce any lien under  
477 this section, the delinquent water user shall be liable for the amount of the assessment, interest,  
478 any penalty, and for all costs of collection, including all court costs and a reasonable attorney  
479 fee.

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

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