

1 **EMPLOYEE CLASSIFICATION AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Scott H. Chew**

5 Senate Sponsor: Kevin T. Van Tassell

7 **LONG TITLE**

8 **General Description:**

9 This bill classifies a water commissioner as an employee of the state.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ classifies a water commissioner as a career service exempt employee of the state;
- 13 ▶ makes the Water Commissioner Fund an expendable special revenue fund; and
- 14 ▶ makes technical and conforming changes.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 This bill provides a special effective date.

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **67-19-15**, as last amended by Laws of Utah 2014, Chapter 154

22 **73-5-1**, as last amended by Laws of Utah 2006, Chapter 193

23 **73-5-1.5**, as last amended by Laws of Utah 2002, Chapter 256

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

26 Section 1. Section **67-19-15** is amended to read:

27 **67-19-15. Career service -- Exempt positions -- Schedules for civil service**
28 **positions -- Coverage of career service provisions.**

29 (1) Except as otherwise provided by law or by rules and regulations established for

30 federally aided programs, the following positions are exempt from the career service provisions
31 of this chapter and are designated under the following schedules:

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

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

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

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

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

39 (iii) the Public Lands Policy Coordinating Council;

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

41 (v) the Office of the State Treasurer;

42 (d) schedule AD includes employees who:

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

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

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

48 (f) schedule AH includes:

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

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

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

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

53 (g) schedule AN includes employees of the Legislature;

54 (h) schedule AO includes employees of the judiciary;

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

56 (j) schedule AQ includes:

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

58 governing bodies of agencies;

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

60 ~~[(ii)]~~ (iii) other local officials serving in an ex officio capacity; and

61 ~~[(iii)]~~ (iv) officers, faculty, and other employees of state universities and other state

62 institutions of higher education;

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

64 (i) for determining policy;

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

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

67 the concurrence of the executive director;

68 (l) schedule AS includes any other employee:

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

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

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

72 compensation, and bonuses for its employees;

73 (m) schedule AT includes employees of the Department of Technology Services,

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

75 Technology Services with the concurrence of the executive director;

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

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

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

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

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

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

82 Services to work in a pay for performance program designed by the Department of Workforce

83 Services with the concurrence of the executive director; and

84 (p) for employees in positions that are temporary, seasonal, time limited, funding

85 limited, or variable hour in nature, under schedule codes and parameters established by the

86 department by administrative rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

114 Management.

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

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

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

120 Section 2. Section **73-5-1** is amended to read:

121 **73-5-1. Appointment of water commissioners -- Procedure.**

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

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

128 (c) The state engineer may appoint:

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

130 or

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

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

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

135 (ii) career service exempt under Subsection 67-19-15(1)(j); and

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

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

142 ~~[(b) If a majority of the water users agree upon a qualified person to be appointed as~~
143 ~~water commissioner, the duties the person shall perform, and the compensation the person shall~~
144 ~~receive, and they make recommendations to the state engineer on the appointment, duties, and~~
145 ~~compensation, the state engineer shall act in accordance with their recommendations.]~~

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

148 (i) agree upon:

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

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

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

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

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

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

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

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

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

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

170 the county recorder in the county where the water is diverted and bring an action to enforce the
171 lien;

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

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

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

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

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

183 Section 3. Section **73-5-1.5** is amended to read:

184 **73-5-1.5. Water Commissioner Fund.**

185 (1) There is created [~~a private-purpose trust fund~~] an expendable special revenue fund
186 known as the "Water Commissioner Fund."

187 (2) The fund consists of assessments paid to the state engineer by water users pursuant
188 to Subsection **73-5-1(3)**.

189 (3) (a) The fund shall earn interest.

190 (b) Interest earned on fund money shall be deposited into the fund.

191 (4) The state engineer shall use fund money to pay for salary and expenses of water
192 commissioners and other expenses related to the distribution of water specified in Subsection
193 **73-5-1(3)**.

194 Section 4. **Effective date.**

195 This bill takes effect on January 1, 2016.