

**AMENDMENTS TO MUNICIPAL GOVERNMENT**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Thomas V. Hatch**

**This act modifies the Utah Municipal Code. The act modifies the officers and employees of a municipality to whom certain provisions relating to the duration of employment and appeals from employment decisions apply. The act modifies the composition of an appeal board for employment decisions and the process for appealing an action or decision of the appeal board. The act expands circumstances covered by provisions relating to limitations on taking negative employment action. The act requires rather than permits the appeal board to provide that an employee receive back salary if the board finds in favor of the employee. The act also makes technical changes.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**10-3-1105**, as enacted by Chapter 48, Laws of Utah 1977

**10-3-1106**, as enacted by Chapter 48, Laws of Utah 1977

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

Section 1. Section **10-3-1105** is amended to read:

**10-3-1105. Appointive officers and employees -- Duration and termination of term of office.**

~~[All appointive officers and employees of municipalities, other than members of the police departments, fire departments, heads of departments, and superintendents,]~~

(1) Except as provided in Subsection (2), each employee of a municipality shall hold [their] employment without limitation of time, being subject to discharge [or dismissal only as hereinafter provided.], suspension without pay, or transfer to a position with less remuneration only as provided in Section 10-3-1106.

(2) Subsection (1) does not apply to:



28 (a) an officer appointed by the mayor or other person or body exercising executive  
29 power in the municipality;

30 (b) a member of the municipality's police department or fire department who is a  
31 member of the classified civil service in a first or second class city;

32 (c) a police chief of the municipality;

33 (d) a deputy police chief of the municipality;

34 (e) a fire chief of the municipality;

35 (f) a deputy fire chief of the municipality;

36 (g) a head of a municipal department;

37 (h) a deputy of a head of a municipal department;

38 (i) a superintendent;

39 (j) a probationary employee of the municipality; or

40 (k) a seasonal employee of the municipality.

41 Section 2. Section **10-3-1106** is amended to read:

42 **10-3-1106. Discharge or transfer -- Appeals -- Board -- Procedure.**

43 (1) ~~[No officer or]~~ An employee ~~[covered by]~~ to which Section 10-3-1105 ~~[shall]~~  
44 applies may not be discharged, suspended without pay, or transferred to a position with less  
45 remuneration;

46 (a) because of [his] the employee's politics or religious belief[;]; or

47 (b) incident to, or through changes, either in the elective officers, governing body, or  
48 heads of departments. ~~[In all cases where any officer or]~~

49 (2) If an employee is discharged, suspended without pay, or transferred from one  
50 position to another for any reason, ~~[he shall have the right to]~~ the employee may appeal the  
51 discharge, suspension without pay, or transfer to a board to be known as the appeal board  
52 ~~[which shall consist of five members, three of whom shall be chosen by and from the~~  
53 ~~appointive officers and employees, and two of whom shall be members of the governing body],~~  
54 established under Subsection (7).

55 ~~[(2) The]~~ (3) (a) Each appeal under Subsection (2) shall be taken by filing written  
56 notice of the appeal with the recorder within ten days after the discharge, suspension, or  
57 transfer.

58 (b) (i) Upon the filing of [the] an appeal under Subsection (3)(a), the city recorder shall

59 forthwith refer a copy of the ~~[same]~~ appeal to the appeal board.

60 (ii) Upon receipt of the referral from the municipal recorder, the appeal board shall  
61 forthwith commence its investigation, take and receive evidence, and fully hear and determine  
62 the matter which relates to the cause for the discharge, suspension, or transfer.

63 ~~[(3) The]~~ (4) An employee [shall be entitled to] who is the subject of the discharge,  
64 suspension, or transfer may:

65 (a) appear in person and ~~[to]~~ be represented by counsel~~[-to]~~;

66 (b) have a public hearing~~[-to]~~;

67 (c) confront the witness whose testimony is to be considered~~[-]~~; and ~~[to]~~

68 (d) examine the evidence to be considered by the appeal board.

69 ~~[(4) In the event the appeal board upholds the discharge or transfer, the officer or~~  
70 ~~employee may have 14 days thereafter to appeal to the governing body whose decision shall be~~  
71 ~~final. In the event the appeal board does not uphold the discharge or transfer the case shall be~~  
72 ~~closed and no further proceedings shall be had.]~~

73 (5) ~~[The]~~ (a) Each decision of the appeal board shall be by secret ballot, and shall be  
74 certified to the recorder with 15 days from the date the matter is referred to it. ~~[The board may,~~  
75 ~~in its decision,]~~

76 (b) If it finds in favor of the employee, the board shall provide that ~~[an]~~ the employee  
77 shall receive ~~[his]~~;

78 (i) the employee's salary for the period of time during which ~~[he]~~ the employee is  
79 discharged~~[-]~~ or suspended without pay; or

80 (ii) any deficiency in salary for the period ~~[he]~~ during which the employee was  
81 transferred to a position of less remuneration ~~[but not to exceed a 15 day period. In no case~~  
82 ~~shall the appointive officer or employee be discharged or transferred, where an appeal is taken,~~  
83 ~~except upon a concurrence of at least a majority of the membership of the governing body of~~  
84 ~~the municipality].~~

85 ~~[(6) In the event that the appeal board does not uphold the discharge, or transfer, the~~  
86 ~~recorder shall certify the decision to the employee affected, and also to the head of the~~  
87 ~~department from whose order the appeal was taken. The employee shall be paid his salary,~~  
88 ~~commencing with the next working day following the certification by the recorder of the appeal~~  
89 ~~board's decision, provided that the employee, or officer, concerned reports for his assigned~~

90 ~~duties during that next working day.]~~

91 (6) (a) An employee who is the subject of a final action or order of the appeal board  
92 may appeal the action or order to the Court of Appeals by filing with that court a notice of  
93 appeal.

94 (b) Each notice of appeal under Subsection (6)(a) shall be filed within 30 days after the  
95 issuance of the final action or order of the appeal board.

96 (c) The Court of Appeals' review shall be on the record of the appeal board and for the  
97 purpose of determining if the appeal board abused its discretion or exceeded its authority.

98 (7) (a) The method and manner of choosing the members of the appeal board, [and] the  
99 number of members, the designation of their terms of office, and the procedure for conducting  
100 an appeal shall be prescribed by the governing body of each municipality by ordinance[~~, but the~~  
101 ~~provisions for choosing the three members from the appointed officers and employees shall in~~  
102 ~~no way restrict a free selection of members by the appointive officers and employees of the~~  
103 ~~municipality].~~

104 (b) For a municipality operating under a form of government other than a  
105 council-mayor form under Part 12, Optional Forms of Municipal Government Act, an  
106 ordinance adopted under Subsection (7)(a) may provide that the governing body of the  
107 municipality shall serve as the appeal board.

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**Legislative Review Note**  
**as of 2-25-03 3:10 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**State Impact**

No fiscal impact to the State. Any impact to municipalities should be minimal.

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**Individual and Business Impact**

An individual employee of a municipality who wins an appeal of an employment action will now be entitled to receive back any loss of pay.

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**Office of the Legislative Fiscal Analyst**