

AMENDMENTS TO MUNICIPAL GOVERNMENT

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Thomas V. Hatch

LONG TITLE

General Description:

This bill modifies provisions of the Utah Municipal Code relating to municipal officers and employees.

Highlighted Provisions:

This bill:

► modifies the officers and employees of a municipality to whom certain provisions relating to the duration of employment and appeals from employment decisions apply;

► modifies the composition of an appeal board for employment decisions;

► modifies the process for appealing an action or decision of the appeal board;

► expands circumstances covered by provisions relating to limitations on taking negative employment action;

► requires rather than permits the appeal board to provide that an employee receive back salary if the board finds in favor of the employee; and

► makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 **10-3-1105**, as enacted by Chapter 48, Laws of Utah 1977

29 **10-3-1106**, as enacted by Chapter 48, Laws of Utah 1977

30

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

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

33 **10-3-1105. Municipal employees -- Duration and termination of employment --**

34 **Exceptions.**

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

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

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

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

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

46 (c) a police chief of the municipality;

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

48 (e) a fire chief of the municipality;

49 (f) a deputy **§ OR ASSISTANT §** fire chief of the municipality;

50 (g) a head of a municipal department;

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

52 (i) a superintendent;

53 (j) a probationary employee of the municipality; **§ [or**

53a **(k) A PART-TIME EMPLOYEE OF THE MUNICIPALITY; OR**

54 ~~(k)~~ **(l) §** a seasonal employee of the municipality.

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

56 **10-3-1106. Discharge, suspension without pay, or transfer -- Appeals -- Board --**

57 **Procedure.**

58 (1) ~~[No officer or]~~ An employee [covered by] to which Section 10-3-1105 ~~[shall]~~

59 applies may not be discharged, suspended without pay, or § INVOLUNTARILY § transferred to a
 59a position with less
 60 remuneration;

61 (a) because of ~~his~~ the employee's politics or religious belief~~;~~; or

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

64 (2) § (a) § If an employee is discharged, suspended without pay, or § INVOLUNTARILY §
 64a transferred from one

65 position to another for any reason, ~~[he shall have the right to]~~ the employee may § , SUBJECT TO
 65a SUBSECTION (2)(b), § appeal the

66 discharge, suspension without pay, or § INVOLUNTARY § transfer to a board to be known as the
 66a appeal board

67 ~~[which shall consist of five members, three of whom shall be chosen by and from the~~
 68 ~~appointive officers and employees, and two of whom shall be members of the governing body].~~
 69 established under Subsection (7).

69a § (b) IF THE MUNICIPALITY PROVIDES AN INTERNAL GRIEVANCE PROCEDURE, THE EMPLOYEE
 69b SHALL EXHAUST THE EMPLOYEE'S RIGHTS UNDER THAT GRIEVANCE PROCEDURE BEFORE
 69c APPEALING TO THE BOARD. §

70 ~~[(2) The]~~ (3) (a) Each appeal under Subsection (2) shall be taken by filing written
 71 notice of the appeal with the recorder within ten days after § :

71a (i) IF THE MUNICIPALITY PROVIDES AN INTERNAL GRIEVANCE PROCEDURE, THE
 71b EMPLOYEE RECEIVES NOTICE OF THE FINAL DISPOSITION OF THE MUNICIPALITY'S INTERNAL
 71c GRIEVANCE PROCEDURE; OR

71d (ii) IF THE MUNICIPALITY DOES NOT PROVIDE AN INTERNAL GRIEVANCE PROCEDURE, § the
 71e discharge, suspension, or § INVOLUNTARY §
 72 transfer.

73 (b) (i) Upon the filing of ~~the~~ an appeal under Subsection (3)(a), the city recorder shall
 74 forthwith refer a copy of the ~~same~~ appeal to the appeal board.

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

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

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

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

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

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

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

88 (5) [The] (a) **§ (i) §** Each decision of the appeal board shall be by secret ballot, and shall be
89 certified to the recorder **§ [with] WITHIN §** 15 days from the date the matter is referred to it

89a **§ , EXCEPT AS PROVIDED IN SUBSECTION (5)(a)(ii) §** . [The board may,

90 ~~in its decision,]~~

90a **§ (ii) FOR GOOD CAUSE, THE BOARD MAY EXTEND THE 15-DAY PERIOD UNDER SUBSECTION**
 90b **(5)(A)(I) TO A MAXIMUM OF 60 DAYS, IF THE EMPLOYEE AND MUNICIPALITY BOTH CONSENT. §**

91 (b) If it finds in favor of the employee, the board shall provide that ~~an~~ the employee
 92 shall receive ~~his~~:

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

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

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

106 (6) (a) § ~~[An employee who is the subject of a] A §~~ final action or order of the appeal board
 107 may § ~~[appeal the action or order] BE APPEALED §~~ to the Court of Appeals by filing with that court
 107a a notice of
 108 appeal.

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

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

113 (7) (a) The method and manner of choosing the members of the appeal board, ~~and~~ the
 114 number of members, the designation of their terms of office, and the procedure for conducting
 115 an appeal shall be prescribed by the governing body of each municipality by ordinance~~[-but the~~
 116 provisions for choosing the three members from the appointed officers and employees shall in
 117 no way restrict a free selection of members by the appointive officers and employees of the
 118 municipality].

119 (b) For a municipality operating under a form of government other than a
 120 council-mayor form under Part 12, Optional Forms of Municipal Government Act, an

121 ordinance adopted under Subsection (7)(a) may provide that the governing body of the
122 municipality shall serve as the appeal board.

Legislative Review Note
as of 12-2-03 3:31 PM

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

Office of Legislative Research and General Counsel