

Representative David Ure proposes the following substitute bill:

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



26 **Utah Code Sections Affected:**

27 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

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 of over two days without pay, or involuntary transfer to a
40 position with less remuneration 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;

54 (k) a part-time employee of the municipality; or

55 (l) a seasonal employee of the municipality.

56 (3) Nothing in this section or Section 10-3-1106 may be construed to limit a

57 municipality's ability to define cause for an employee termination or reduction in force.

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

59 **10-3-1106. Discharge, suspension without pay, or transfer -- Appeals -- Board --**
60 **Procedure.**

61 (1) ~~[No officer or]~~ An employee [covered by] to which Section 10-3-1105 ~~[staff]~~
62 applies may not be discharged, suspended without pay, or involuntarily transferred to a position
63 with less remuneration:

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

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

67 (2) (a) If an employee is discharged, suspended for more than two days without pay, or
68 involuntarily transferred from one position to another with less remuneration for any reason,
69 ~~[he shall have the right to]~~ the employee may, subject to Subsection (2)(b), appeal the
70 discharge, suspension without pay, or involuntary transfer to a board to be known as the appeal
71 board ~~[which shall consist of five members, three of whom shall be chosen by and from the~~
72 ~~appointive officers and employees, and two of whom shall be members of the governing body],~~
73 established under Subsection (7).

74 (b) If the municipality provides an internal grievance procedure, the employee shall
75 exhaust the employee's rights under that grievance procedure before appealing to the board.

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

78 (i) if the municipality provides an internal grievance procedure, the employee receives
79 notice of the final disposition of the municipality's internal grievance procedure; or

80 (ii) if the municipality does not provide an internal grievance procedure, the discharge,
81 suspension, or involuntary transfer.

82 (b) (i) Upon the filing of ~~[the]~~ an appeal under Subsection (3)(a), the [city] municipal
83 recorder shall forthwith refer a copy of the [same] appeal to the appeal board.

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

87 ~~[(3) The]~~ (4) An employee [shall be entitled to] who is the subject of the discharge,

88 suspension, or transfer may:

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

90 (b) have a public hearing[-,to];

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

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

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

97 (5) [The] (a) (i) Each decision of the appeal board shall be by secret ballot, and shall
98 be certified to the recorder [with] within 15 days from the date the matter is referred to it[-The
99 board may, in its decision,], except as provided in Subsection (5)(a)(ii).

100 (ii) For good cause, the board may extend the 15-day period under Subsection (5)(a)(i)
101 to a maximum of 60 days, if the employee and municipality both consent.

102 (b) If it finds in favor of the employee, the board shall provide that [an] the employee
103 shall receive [his]:

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

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

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

117 (6) (a) A final action or order of the appeal board may be appealed to the Court of
118 Appeals by filing with that court a notice of appeal.

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

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

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

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