

1 STATE AND POLITICAL SUBDIVISION EMPLOYMENT

2 AMENDMENTS

3 2012 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: Daniel McCay

6 Senate Sponsor: \_\_\_\_\_

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8 LONG TITLE

9 General Description:

10 This bill prohibits a state or political subdivision from considering seniority as ~~H→~~ [a  
11 primary] the sole ~~←H~~ factor when determining whether to terminate an employee while  
11a conducting a  
12 reduction in force.

13 Highlighted Provisions:

14 This bill:

15 ► prohibits the following from considering or establishing a policy requiring  
16 consideration of seniority as ~~H→~~ [a-primary] the sole ~~←H~~ factor when determining whether to  
17 terminate an employee while conducting a reduction in force:

- 18 • a civil service commission;
- 19 • a municipality;
- 20 • a County Fire Civil Service System;
- 21 • a sheriff or merit system commission;
- 22 • a county personnel director or county legislative body;
- 23 • a local district or special service district;
- 24 • a president or board of trustees of an institution of higher education;
- 25 • a campus board of directors or the Utah College of Applied Technology Board
- 26 of Trustees; or
- 27 • an office, agency, or department of the executive branch, judicial branch, or



28 legislative branch;

- 29       ▶ amends state personnel management provisions;
- 30       ▶ amends employment provisions of the Office of the Attorney General; and
- 31       ▶ makes technical corrections.

32 **Money Appropriated in this Bill:**

33       None

34 **Other Special Clauses:**

35       None

36 **Utah Code Sections Affected:**

37 AMENDS:

- 38       **10-3-1105**, as last amended by Laws of Utah 2004, Chapter 260
- 39       **17-28-2.6**, as last amended by Laws of Utah 2001, Chapter 73
- 40       **17-30-2**, as last amended by Laws of Utah 1993, Chapter 227
- 41       **17-30-16**, as enacted by Statewide Initiative A, Nov. 8, 1960
- 42       **17-33-5**, as last amended by Laws of Utah 2009, Chapter 128
- 43       **17B-1-803**, as renumbered and amended by Laws of Utah 2007, Chapter 329
- 44       **53B-2-106**, as last amended by Laws of Utah 2009, Chapter 370
- 45       **53B-2a-110**, as last amended by Laws of Utah 2009, Chapter 346
- 46       **67-5-12**, as last amended by Laws of Utah 2007, Chapter 166
- 47       **67-19-18**, as last amended by Laws of Utah 2010, Chapter 249

48 ENACTS:

- 49       **10-3-1014**, Utah Code Annotated 1953
- 50       **67-19-18.5**, Utah Code Annotated 1953



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

53       Section 1. Section **10-3-1014** is enacted to read:

54       **10-3-1014. Seniority as** ~~H~~→ [primary] sole ←~~H~~ factor prohibited when conducting  
54a **reductions in**  
55 **force.**

56       A civil service commission may not make a rule or regulation requiring that a  
57 department head conducting a reduction in force consider seniority as ~~H~~→ [a-primary] the sole ←~~H~~  
57a factor when  
58 determining whether to terminate an employee.

59 Section 2. Section **10-3-1105** is amended to read:

60 **10-3-1105. Municipal employees -- Duration and termination of employment --**

61 **Exceptions.**

62 (1) Except as provided in Subsection (2), each employee of a municipality shall hold  
63 employment without limitation of time, being subject to discharge, suspension of over two days  
64 without pay, or involuntary transfer to a position with less remuneration only as provided in  
65 Section 10-3-1106.

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

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

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

71 (c) a police chief of the municipality;

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

73 (e) a fire chief of the municipality;

74 (f) a deputy or assistant fire chief of the municipality;

75 (g) a head of a municipal department;

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

77 (i) a superintendent;

78 (j) a probationary employee of the municipality;

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

80 (l) a seasonal employee of the municipality.

81 (3) ~~Nothing~~ (a) Except as provided in Subsection (3)(b), nothing in this section or  
82 Section 10-3-1106 may be construed to limit a municipality's ability to define cause for an  
83 employee termination or reduction in force.

84 (b) While conducting a reduction in force, a municipality may not consider seniority as

85 ~~H~~→ [a primary] the sole ←~~H~~ factor when determining whether to terminate an employee.

86 Section 3. Section **17-28-2.6** is amended to read:

87 **17-28-2.6. Merit principles.**

88 The County Fire Civil Service System shall be established and administered in a  
89 manner that will provide for the effective implementation of the following merit principles:

90 (1) recruiting, selecting, and advancing employees on the basis of their relative ability,  
91 knowledge, and skills, including open consideration of qualified applicants for initial  
92 appointment;

93 (2) provision of equitable and adequate job classification and compensation systems,  
94 including pay and benefits programs;

95 (3) training of employees as needed to assure high-quality performance;

96 (4) retention of employees on the basis of the adequacy of their performance and  
97 separation of employees whose inadequate performance cannot be corrected;

98 (5) fair treatment of applicants and employees in all aspects of personal administration  
99 without regard to race, color, religion, sex, national origin, political affiliation, age, or  
100 disability, and with proper regard for their privacy and constitutional rights as citizens;

101 (6) provision of information to employees regarding their political rights and  
102 prohibited practices under the Hatch Act; [~~and~~]

103 (7) provision of a formal procedure for processing the appeals and grievances of  
104 employees without discrimination, coercion, restraint, or reprisal[-]; and

105 (8) provision of a reduction in force policy that does not consider seniority as ~~H~~→ [~~a~~  
105a **primary**] the sole ←~~H~~  
106 factor when determining whether to terminate an employee.

107 Section 4. Section 17-30-2 is amended to read:

108 **17-30-2. Subordinate officers in sheriff's office to be appointed from list --**  
109 **Officers serving on effective date considered qualified.**

110 (1) From and after the effective date of this [~~act~~] chapter the sheriff of each county with  
111 a population of 20,000 people or more which shall regularly employ one or more peace officers  
112 shall, by and with the advice and consent of the county legislative body, and subject to the rules  
113 and regulations of the merit service commission, appoint from the classified merit service list  
114 furnished by the merit service commission, all subordinate peace officers in his department and  
115 in like manner fill all vacancies in the same and shall further promote, transfer, demote,  
116 suspend or remove peace officers in accordance with the provisions of this [~~act~~] chapter.

117 (2) Every peace officer who is serving as such upon the effective date of this [~~act~~]  
118 chapter shall be [~~deemed~~] considered fully qualified for such position without examination or  
119 test and [~~deemed~~] considered to have been appointed and to hold his position and classification  
120 pursuant to the provisions of this [~~act~~] chapter.

121 (3) ~~[Counties]~~ (a) A county with a population of less than 20,000 people may  
 122 implement a deputy sheriff's merit system if approved by the county legislative body or the  
 123 people of the county through referendum or initiative.

124 (b) A county that implements a merit system approved by the county legislative body  
 125 as described in Subsection (3)(a) is subject to the provisions of Subsection 17-30-16(2).

126 Section 5. Section **17-30-16** is amended to read:

127 **17-30-16. Reductions in force -- Seniority may not be ~~H~~→ [primary] sole ←~~H~~ factor --**  
 128 **Reemployment register.**

129 (1) When necessary because of lack of funds or work [~~an officer may~~], the appointing  
 130 authority, with the approval of the commission, [~~be~~] may temporarily [~~aid~~] lay off an officer.  
 131 [~~Such layoff shall be made according to the lowest rating of the officers of the class of position~~  
 132 ~~affected, calculated upon seniority under a method prescribed by the commission.~~]

133 (2) While conducting a reduction in force, an appointing authority or the merit system  
 134 commission may not consider seniority as ~~H~~→ [a primary] the sole ←~~H~~ factor when determining  
 134a whether to  
 135 terminate an officer.

136 (3) A person serving under temporary or emergency appointment shall be laid off  
 137 before any merit system officer.

138 (4) A merit system officer who is laid off shall be placed upon a reemployment register  
 139 to be reemployed in the inverse order in which he is laid off, which register shall take  
 140 precedence over all eligible registers.

141 Section 6. Section **17-33-5** is amended to read:

142 **17-33-5. Office of personnel management -- Director -- Appointment and**  
 143 **responsibilities -- Personnel rules.**

144 (1) (a) (i) Each county executive shall:

145 (A) create an office of personnel management, administered by a director of personnel  
 146 management; and

147 (B) ensure that the director is a person with proven experience in personnel  
 148 management.

149 (ii) Except as provided in Subsection (1)(b), the position of director of personnel  
 150 management shall be:

151 (A) a merit position; and

245 and reemployment the relative ability, ~~[seniority, and]~~ merit of ~~[each employee]~~, and, subject to  
 246 Subsection (3)(c), seniority of each employee;

247 (xvi) establishment of a plan for resolving employee grievances and complaints with  
 248 final and binding decisions;

249 (xvii) establishment of disciplinary measures such as suspension, demotion in rank or  
 250 grade, or discharge, measures to provide for presentation of charges, hearing rights, and appeals  
 251 for all permanent employees in the career service to the career service council;

252 (xviii) establishment of a procedure for employee development and improvement of  
 253 poor performance;

254 (xix) establishment of hours of work, holidays, and attendance requirements in various  
 255 classes of positions in the career service;

256 (xx) establishment and publicizing of fringe benefits such as insurance, retirement, and  
 257 leave programs; and

258 (xxi) any other requirements not inconsistent with this law that are proper for its  
 259 enforcement.

260 (c) A county conducting a reduction in force may not consider seniority as ~~H~~→ **[a primary]**  
 260a **the sole** ←~~H~~  
 261 factor when determining whether to terminate an employee.

262 Section 7. Section **17B-1-803** is amended to read:

263 **17B-1-803. Merit principles.**

264 (1) A local district may establish a personnel system administered in a manner that will  
 265 provide for the effective implementation of merit principles that provide for:

266 ~~[(1)]~~ (a) recruiting, selecting, and advancing employees on the basis of their relative  
 267 ability, knowledge, and skills, including open consideration of qualified applicants for initial  
 268 appointment;

269 ~~[(2)]~~ (b) providing equitable and adequate compensation;

270 ~~[(3)]~~ (c) training employees as needed to assure high-quality performance;

271 ~~[(4)]~~ (d) retaining employees on the basis of the adequacy of their performance, and  
 272 separation of employees whose inadequate performance cannot be corrected;

273 ~~[(5)]~~ (e) fair treatment of applicants and employees in all aspects of personnel  
 274 administration without regard to race, color, religion, sex, national origin, political affiliation,  
 275 age, or disability, and with proper regard for their privacy and constitutional rights as citizens;

276           ~~[(6)]~~ (f) providing information to employees regarding their political rights and  
 277 prohibited practices under the Hatch Political Activities Act, 5 U.S.C. Sec. 1501 through 1508  
 278 et seq.; and

279           ~~[(7)]~~ (g) providing a formal procedure for processing the appeals and grievances of  
 280 employees without discrimination, coercion, restraint, or reprisal.

281           (2) Except as provided in Section 17B-2a-813, a local district conducting a reduction in  
 282 force may not consider seniority as ~~H→~~ **[a-primary]** the sole ~~←H~~ factor when determining  
 282a whether to terminate an  
 283 employee.

284           Section 8. Section **53B-2-106** is amended to read:

285           **53B-2-106. Duties and responsibilities of the president of each institution --**  
 286 **Approval by board of trustees.**

287           (1) (a) The president of each institution may exercise grants of power and authority as  
 288 delegated by the board, as well as the necessary and proper exercise of powers and authority  
 289 not specifically denied to the institution, its administration, faculty, or students by the board or  
 290 by law, to assure the effective and efficient administration and operation of the institution  
 291 consistent with the statewide master plan for higher education.

292           (b) The president of each institution may, after consultation with the institution's board  
 293 of trustees, exercise powers relating to the institution's employees, including faculty and  
 294 persons under contract with the institution, by implementing any of the following:

295           (i) furloughs;

296           (ii) subject to Subsection (1)(c), reductions in force;

297           (iii) benefit adjustments;

298           (iv) program reductions or discontinuance;

299           (v) early retirement incentives that provide cost savings to the institution; and

300           (vi) other measures that provide cost savings to the institution.

301           (c) An institution president or board of trustees may not establish a policy that requires  
 302 an institution conducting a reduction in force to consider seniority as ~~H→~~ **[a-primary]** the sole ~~←H~~  
 302a factor when  
 303 determining whether to terminate an employee.

304           (2) Except as provided by the board, the president of each institution, with the approval  
 305 of the institution's board of trustees may:

306           (a) (i) appoint a secretary, a treasurer, administrative officers, deans, faculty members,

369 (h) approve credentials for employees and assign employees to duties in accordance  
 370 with the Utah College of Applied Technology Board of Trustees policies and accreditation  
 371 guidelines;

372 (i) conduct annual program evaluations;

373 (j) appoint program advisory committees and other advisory groups to provide counsel,  
 374 support, and recommendations for updating and improving the effectiveness of training  
 375 programs and services;

376 (k) approve regulations, both regular and emergency, to be issued and executed by the  
 377 campus president;

378 (l) coordinate with local school boards, school districts, and charter schools to meet the  
 379 career and technical education needs of secondary students; and

380 (m) develop policies and procedures for the admission, classification, instruction, and  
 381 examination of students in accordance with the policies and accreditation guidelines of the  
 382 Utah College of Applied Technology and the State Board of Education.

383 (2) (a) Subsection (1)(g) does not apply to a campus president.

384 (b) The campus board of directors or the Utah College of Applied Technology Board  
 385 of Trustees may not establish a policy that requires an institution conducting a reduction in  
 386 force to consider seniority as ~~H~~→ [a-primary] the sole ←~~H~~ factor when determining  
 386a whether to terminate an  
 387 employee.

388 (3) A campus board of directors may not exercise any jurisdiction over career and  
 389 technical education provided by a school district or charter school or provided by a higher  
 390 education institution independently of a college campus.

391 (4) If a program advisory committee or other advisory group submits a printed  
 392 recommendation to the campus board of directors, the campus board of directors shall  
 393 acknowledge the recommendation with a printed response that explains the campus board of  
 394 directors' action regarding the recommendation and the reasons for the action.

395 Section 10. Section **67-5-12** is amended to read:

396 **67-5-12. Dismissal of career status employees -- Causes -- Procedure -- Retention**  
 397 **roster -- Reappointment register.**

398 (1) (a) Employees in a career status may be dismissed only:

399 (i) to advance the good of public service;



524 grievance and appeals procedure of this chapter and Chapter 19a, Grievance Procedures.

525 Section 12. Section **67-19-18.5** is enacted to read:

526 **67-19-18.5. Reductions in force -- Seniority may not be ~~H~~→ [primary] sole ←~~H~~ factor.**

527 (1) As used in this section:

528 (a) (i) "Employee" means an individual who is:

529 (A) an employee within the meaning of Chapter 24 of the Internal Revenue Code of  
530 1986; and

531 (B) employed by the executive branch, judicial branch, or legislative branch.

532 (ii) "Employee" does not include:

533 (A) the governor, members of the Legislature, or all other elected state officers; or

534 (B) an appointive position under schedule A as described in Section 67-19-15.

535 (b) "Employer" means an office, agency, or department of the executive branch,  
536 judicial branch, or legislative branch.

537 (2) Notwithstanding any other provision of law, an employer conducting a reduction in

538 force may not consider seniority as ~~H~~→ [a primary] the sole ←~~H~~ factor when determining

538a whether to terminate an

539 employee.

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**Legislative Review Note**  
as of 7-14-11 8:48 AM

**Office of Legislative Research and General Counsel**