

POLITICAL SUBDIVISIONS EMPLOYMENT REVISIONS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Rebecca P. Edwards

LONG TITLE

General Description:

This bill amends provisions governing municipality or county employment contracts.

Highlighted Provisions:

This bill:

▶ removes provisions that prohibit a municipality or county from entering into certain employment contracts that contain an automatic renewal provision; and

▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-3b-103, as last amended by Laws of Utah 2011, Chapter 209

10-3b-202, as last amended by Laws of Utah 2011, Chapter 209

10-3b-303, as last amended by Laws of Utah 2011, Chapter 209

10-3b-403, as last amended by Laws of Utah 2011, Chapter 209

17-52-505, as last amended by Laws of Utah 2011, Chapter 209

17-53-317, as last amended by Laws of Utah 2011, Chapter 209



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

29 Section 1. Section **10-3b-103** is amended to read:

30 **10-3b-103. Forms of municipal government -- Form of government for towns --**
31 **Former council-manager form.**

32 (1) A municipality operating on May 4, 2008, under the council-mayor form of
33 government:

34 (a) shall, on and after May 5, 2008:

35 (i) operate under a council-mayor form of government, as defined in Section
36 10-3b-102; and

37 (ii) be subject to:

38 (A) this part;

39 (B) Part 2, Council-mayor Form of Municipal Government;

40 (C) Part 5, Changing to Another Form of Municipal Government; and

41 (D) except as provided in Subsection (1)(b), other applicable provisions of this title;

42 and

43 (b) is not subject to:

44 (i) Part 3, Six-member Council Form of Municipal Government; or

45 (ii) Part 4, Five-member Council Form of Municipal Government.

46 (2) A municipality operating on May 4, 2008, under a form of government known
47 under the law then in effect as the six-member council form:

48 (a) shall, on and after May 5, 2008, and whether or not the council has adopted an
49 ordinance appointing a manager for the municipality:

50 (i) operate under a six-member council form of government, as defined in Section
51 10-3b-102;

52 (ii) be subject to:

53 (A) this part;

54 (B) Part 3, Six-member Council Form of Municipal Government;

55 (C) Part 5, Changing to Another Form of Municipal Government; and

56 (D) except as provided in Subsection (2)(b), other applicable provisions of this title;

57 and

58 (b) is not subject to:

- 59 (i) Part 2, Council-mayor Form of Municipal Government; or
- 60 (ii) Part 4, Five-member Council Form of Municipal Government.
- 61 (3) A municipality operating on May 4, 2008, under a form of government known
- 62 under the law then in effect as the five-member council form:
- 63 (a) shall, on and after May 5, 2008:
- 64 (i) operate under a five-member council form of government, as defined in Section
- 65 10-3b-102;
- 66 (ii) be subject to:
- 67 (A) this part;
- 68 (B) Part 4, Five-member Council Form of Municipal Government;
- 69 (C) Part 5, Changing to Another Form of Municipal Government; and
- 70 (D) except as provided in Subsection (3)(b), other applicable provisions of this title;
- 71 and
- 72 (b) is not subject to:
- 73 (i) Part 2, Council-mayor Form of Municipal Government; or
- 74 (ii) Part 3, Six-member Council Form of Municipal Government.
- 75 (4) Subject to Subsection (5), each municipality incorporated on or after May 5, 2008,
- 76 shall operate under:
- 77 (a) the council-mayor form of government, with a five-member council;
- 78 (b) the council-mayor form of government, with a seven-member council;
- 79 (c) the six-member council form of government; or
- 80 (d) the five-member council form of government.
- 81 (5) Each town shall operate under a five-member council form of government unless:
- 82 (a) before May 5, 2008, the town has changed to another form of municipal
- 83 government; or
- 84 (b) on or after May 5, 2008, the town changes its form of government as provided in
- 85 Part 5, Changing to Another Form of Municipal Government.
- 86 (6) (a) As used in this Subsection (6), "council-manager form of government" means
- 87 the form of municipal government:
- 88 (i) provided for in Laws of Utah 1977, Chapter 48;
- 89 (ii) that cannot be adopted without voter approval; and

90 (iii) that provides for, subject to [~~Subsections (7) and (8)~~] Subsection (7), an appointed
91 manager with duties and responsibilities established in Laws of Utah 1977, Chapter 48.

92 (b) A municipality operating on May 4, 2008, under the council-manager form of
93 government:

94 (i) shall:

95 (A) continue to operate, on and after May 5, 2008, under the council-manager form of
96 government according to the applicable provisions of Laws of Utah 1977, Chapter 48; and

97 (B) be subject to:

98 (I) this Subsection (6) and other applicable provisions of this part;

99 (II) Part 5, Changing to Another Form of Municipal Government; and

100 (III) except as provided in Subsection (6)(b)(ii), other applicable provisions of this
101 title; and

102 (ii) is not subject to:

103 (A) Part 2, Council-mayor Form of Municipal Government;

104 (B) Part 3, Six-member Council Form of Municipal Government; or

105 (C) Part 4, Five-member Council Form of Municipal Government.

106 (7) (a) As used in this Subsection (7), "interim vacancy period" means the period of
107 time that:

108 (i) begins on the day on which a municipal general election described in Section
109 10-3-201 is held to elect a council member; and

110 (ii) ends on the day on which the council member-elect begins the council member's
111 term.

112 (b) (i) The council may not appoint a manager during an interim vacancy period.

113 (ii) Notwithstanding Subsection (7)(b)(i):

114 (A) the council may appoint an interim manager during an interim vacancy period; and

115 (B) the interim manager's term shall expire once a new manager is appointed by the
116 new administration after the interim vacancy period has ended.

117 (c) Subsection (7)(b) does not apply if all the council members who held office on the
118 day of the municipal general election whose term of office was vacant for the election are
119 re-elected to the council for the following term.

120 [~~(8) A council that appoints a manager in accordance with this section may not, on or~~

121 ~~after May 10, 2011, enter into an employment contract that contains an automatic renewal~~
122 ~~provision with the manager.]~~

123 ~~[(9)] (8)~~ Nothing in this section may be construed to prevent or limit a municipality
124 operating under any form of municipal government from changing to another form of
125 government as provided in Part 5, Changing to Another Form of Municipal Government.

126 Section 2. Section **10-3b-202** is amended to read:

127 **10-3b-202. Mayor in council-mayor form of government.**

128 (1) The mayor in a municipality operating under the council-mayor form of
129 government:

130 (a) is the chief executive and administrative officer of the municipality;

131 (b) exercises the executive and administrative powers and performs or supervises the
132 performance of the executive and administrative duties and functions of the municipality;

133 (c) shall:

134 (i) keep the peace and enforce the laws of the municipality;

135 (ii) execute the policies adopted by the council;

136 (iii) appoint, with the council's advice and consent, a qualified person for each of the
137 following positions:

138 (A) subject to Subsection (3), chief administrative officer, if required under the
139 resolution or petition under Subsection 10-3b-503(1)(a) that proposed the change to a
140 council-mayor form of government;

141 (B) recorder;

142 (C) treasurer;

143 (D) engineer; and

144 (E) attorney;

145 (iv) provide to the council, at intervals provided by ordinance, a written report to the
146 council setting forth:

147 (A) the amount of budget appropriations;

148 (B) total disbursements from the appropriations;

149 (C) the amount of indebtedness incurred or contracted against each appropriation,
150 including disbursements and indebtedness incurred and not paid; and

151 (D) the percentage of the appropriations encumbered;

- 152 (v) report to the council the condition and needs of the municipality;
- 153 (vi) report to the council any release granted under Subsection (1)(d)(xiii);
- 154 (vii) if the mayor remits a fine or forfeiture under Subsection (1)(d)(xi), report the
155 remittance to the council at the council's next meeting after the remittance;
- 156 (viii) perform each other duty:
 - 157 (A) prescribed by statute; or
 - 158 (B) required by a municipal ordinance that is not inconsistent with statute;
- 159 (d) may:
 - 160 (i) subject to budget constraints:
 - 161 (A) appoint:
 - 162 (I) subject to [~~Subsections~~] Subsection (3)(b) [~~and (4)~~], a chief administrative officer;
 - 163 and
 - 164 (II) one or more deputies or administrative assistants to the mayor; and
 - 165 (B) (I) create any other administrative office that the mayor considers necessary for
166 good government of the municipality; and
 - 167 (II) appoint a person to the office;
 - 168 (ii) with the council's advice and consent and except as otherwise specifically limited
169 by statute, appoint:
 - 170 (A) each department head of the municipality;
 - 171 (B) each statutory officer of the municipality; and
 - 172 (C) each member of a statutory commission, board, or committee of the municipality;
 - 173 (iii) dismiss any person appointed by the mayor;
 - 174 (iv) as provided in Section 10-3b-204, veto an ordinance, tax levy, or appropriation
175 passed by the council;
 - 176 (v) exercise control of and supervise each executive or administrative department,
177 division, or office of the municipality;
 - 178 (vi) within the general provisions of statute and ordinance, regulate and prescribe the
179 powers and duties of each other executive or administrative officer or employee of the
180 municipality;
 - 181 (vii) attend each council meeting, take part in council meeting discussions, and freely
182 give advice to the council;

183 (viii) appoint a budget officer to serve in place of the mayor to comply with and fulfill
184 in all other respects the requirements of, as the case may be:

185 (A) Chapter 5, Uniform Fiscal Procedures Act for Utah Towns; or

186 (B) Chapter 6, Uniform Fiscal Procedures Act for Utah Cities;

187 (ix) execute an agreement on behalf of the municipality, or delegate, by written
188 executive order, the authority to execute an agreement on behalf of the municipality:

189 (A) if the obligation under the agreement is within certified budget appropriations; and

190 (B) subject to Section 10-6-138;

191 (x) at any reasonable time, examine and inspect the official books, papers, records, or
192 documents of:

193 (A) the municipality; or

194 (B) any officer, employee, or agent of the municipality;

195 (xi) remit fines and forfeitures;

196 (xii) if necessary, call on residents of the municipality over the age of 21 years to assist
197 in enforcing the laws of the state and ordinances of the municipality; and

198 (xiii) release a person imprisoned for a violation of a municipal ordinance; and

199 (e) may not vote on any matter before the council.

200 (2) (a) The first mayor elected under a newly established mayor-council form of
201 government shall, within six months after taking office, draft and submit to the council a
202 proposed ordinance:

203 (i) providing for the division of the municipality's administrative service into
204 departments, divisions, and bureaus; and

205 (ii) defining the functions and duties of each department, division, and bureau.

206 (b) Before the council adopts an ordinance on the municipality's administrative service,
207 the mayor may establish temporary rules and regulations to ensure efficiency and effectiveness
208 in the divisions of the municipal government.

209 (3) (a) As used in this Subsection (3), "interim vacancy period" means the period of
210 time that:

211 (i) begins on the day on which a municipal general election described in Section
212 10-3-201 is held to elect a mayor; and

213 (ii) ends on the day on which the mayor-elect begins the mayor's term.

- 214 (b) Each person appointed as chief administrative officer under Subsection
- 215 (1)(c)(iii)(A) shall be appointed on the basis of:
- 216 (i) the person's ability and prior experience in the field of public administration; and
- 217 (ii) any other qualification prescribed by ordinance.
- 218 (c) (i) The mayor may not appoint a chief administrative officer during an interim
- 219 vacancy period.
- 220 (ii) Notwithstanding Subsection (3)(c)(i):
- 221 (A) the mayor may appoint an interim chief administrative officer during an interim
- 222 vacancy period; and
- 223 (B) the interim chief administrative officer's term shall expire once a new chief
- 224 administrative officer is appointed by the new mayor after the interim vacancy period has
- 225 ended.
- 226 (d) Subsection (3)(c) does not apply if the mayor who holds office on the day of the
- 227 municipal general election is re-elected to the mayor's office for the following term.

228 ~~[(4) A mayor who appoints a chief administrative officer in accordance with this~~

229 ~~section may not, on or after May 10, 2011, enter into an employment contract that contains an~~

230 ~~automatic renewal provision with the chief administrative officer.]~~

231 Section 3. Section **10-3b-303** is amended to read:

232 **10-3b-303. Council in six-member council form of government.**

233 (1) The council in a municipality operating under a six-member council form of

234 government:

235 (a) exercises any executive or administrative power and performs or supervises the

236 performance of any executive or administrative duty or function that:

- 237 (i) has not been given to the mayor under Section 10-3b-104; or
- 238 (ii) has been given to the mayor under Section 10-3b-104 but is removed from the
- 239 mayor under Subsection (1)(b)(i)(A);

240 (b) may:

241 (i) subject to Subsections (1)(c) and (2), adopt an ordinance:

242 (A) removing from the mayor any power, duty, or function of the mayor under Section

243 10-3b-104; or

244 (B) reinstating to the mayor any power, duty, or function previously removed under

245 Subsection (1)(b)(i)(A);
246 (ii) adopt an ordinance delegating to the mayor any executive or administrative power,
247 duty, or function that the council has under Subsection (1)(a);
248 (iii) subject to Subsection 10-3b-302(1)(b)(ii)(A):
249 (A) appoint, subject to [~~Subsections (3) and (4)~~] Subsection (3), a manager to perform
250 executive and administrative duties or functions that the council by ordinance delegates to the
251 manager, subject to Subsection (1)(c); and
252 (B) dismiss a manager appointed under Subsection (1)(b)(iii)(A); and
253 (iv) assign any or all council members, including the mayor, to supervise one or more
254 administrative departments of the municipality; and
255 (c) may not remove from the mayor or delegate to a manager appointed by the council:
256 (i) any of the mayor's legislative or judicial powers or ceremonial functions;
257 (ii) the mayor's position as chair of the council; or
258 (iii) any ex officio position that the mayor holds.
259 (2) Adopting an ordinance under Subsection (1)(b)(i) removing from or reinstating to
260 the mayor a power, duty, or function provided for in Section 10-3b-104 requires the affirmative
261 vote of:
262 (a) the mayor and a majority of all other council members; or
263 (b) all council members except the mayor.
264 (3) (a) As used in this Subsection (3), "interim vacancy period" means the period of
265 time that:
266 (i) begins on the day on which a municipal general election described in Section
267 10-3-201 is held to elect a council member; and
268 (ii) ends on the day on which the council member-elect begins the council member's
269 term.
270 (b) (i) The council may not appoint a manager during an interim vacancy period.
271 (ii) Notwithstanding Subsection (3)(b)(i):
272 (A) the council may appoint an interim manager during an interim vacancy period; and
273 (B) the interim manager's term shall expire once a new manager is appointed by the
274 new administration after the interim vacancy period has ended.
275 (c) Subsection (3)(b) does not apply if all the council members who held office on the

276 day of the municipal general election whose term of office was vacant for the election are
277 re-elected to the council for the following term.

278 ~~[(4) A council that appoints a manager in accordance with this section may not, on or~~
279 ~~after May 10, 2011, enter into an employment contract that contains an automatic renewal~~
280 ~~provision with the manager.]~~

281 Section 4. Section **10-3b-403** is amended to read:

282 **10-3b-403. Council in a five-member council form of government.**

283 (1) The council in a municipality operating under a five-member council form of
284 municipal government:

285 (a) exercises any executive or administrative power and performs or supervises the
286 performance of any executive or administrative duty or function that:

287 (i) has not been given to the mayor under Section 10-3b-104; or

288 (ii) has been given to the mayor under Section 10-3b-104 but is removed from the
289 mayor under Subsection (1)(b)(i)(A);

290 (b) may:

291 (i) subject to Subsections (1)(c) and (2), adopt an ordinance:

292 (A) removing from the mayor any power, duty, or function of the mayor under Section
293 10-3b-104; and

294 (B) reinstating to the mayor any power, duty, or function previously removed under
295 Subsection (1)(b)(i)(A);

296 (ii) adopt an ordinance delegating to the mayor any executive or administrative power,
297 duty, or function that the council has under Subsection (1)(a);

298 (iii) subject to ~~Subsections~~ Subsection (3) ~~and (4)~~, appoint a manager to perform
299 executive and administrative duties or functions that the council by ordinance delegates to the
300 manager, subject to Subsection (1)(c);

301 (iv) dismiss a manager appointed under Subsection (1)(b)(iii); and

302 (v) assign any or all council members, including the mayor, to supervise one or more
303 administrative departments of the municipality; and

304 (c) may not remove from the mayor or delegate to a manager appointed by the council:

305 (i) any of the mayor's legislative or judicial powers or ceremonial functions;

306 (ii) the mayor's position as chair of the council; or

307 (iii) any ex officio position that the mayor holds.

308 (2) Adopting an ordinance under Subsection (1)(b)(i) removing from or reinstating to
309 the mayor a power, duty, or function provided for in Section 10-3b-104 requires the affirmative
310 vote of:

311 (a) the mayor and a majority of all other council members; or

312 (b) all council members except the mayor.

313 (3) (a) As used in this Subsection (3), "interim vacancy period" means the period of
314 time that:

315 (i) begins on the day on which a municipal general election described in Section
316 10-3-201 is held to elect a council member; and

317 (ii) ends on the day on which the council member-elect begins the council member's
318 term.

319 (b) (i) The council may not appoint a manager during an interim vacancy period.

320 (ii) Notwithstanding Subsection (3)(b)(i):

321 (A) the council may appoint an interim manager during an interim vacancy period; and

322 (B) the interim manager's term shall expire once a new manager is appointed by the
323 new administration after the interim vacancy period has ended.

324 (c) Subsection (3)(b) does not apply if all the council members who held office on the
325 day of the municipal general election whose term of office was vacant for the election are
326 re-elected to the council for the following term.

327 [~~(4) A council that appoints a manager in accordance with this section may not, on or
328 after May 10, 2011, enter into an employment contract that contains an automatic renewal
329 provision with the manager.~~]

330 Section 5. Section **17-52-505** is amended to read:

331 **17-52-505. Council-manager form of county government.**

332 (1) (a) A county operating under the form of government known as the
333 "council-manager" form shall be governed by an elected county council, a county manager
334 appointed by the council, and such other officers and employees as are authorized by law.

335 (b) The optional plan shall provide for the qualifications, time and manner of
336 appointment subject to [~~Subsections (6) and (7)~~] Subsection (6), term of office, compensation,
337 and removal of the county manager.

338 (2) The county manager shall be the administrative head of the county government and
339 shall have the powers, functions, and duties of a county executive, except:

340 (a) as the county legislative body otherwise provides by ordinance; and

341 (b) that the county manager may not veto any ordinances enacted by the council.

342 (3) (a) No member of the council shall directly or indirectly, by suggestion or
343 otherwise, attempt to influence or coerce the manager in the making of any appointment or
344 removal of any officer or employee or in the purchase of supplies, attempt to exact any promise
345 relative to any appointment from any candidate for manager, or discuss directly or indirectly
346 with him the matter of specific appointments to any county office or employment.

347 (b) (i) A person who violates the provisions of this Subsection (3) shall forfeit the
348 office of the offending member of the council.

349 (ii) Nothing in this section shall be construed, however, as prohibiting the council
350 while in open session from fully and freely discussing with or suggesting to the manager
351 anything pertaining to county affairs or the interests of the county.

352 (iii) Neither manager nor any person in the employ of the county shall take part in
353 securing, or contributing any money toward, the nomination or election of any candidate for a
354 county office.

355 (iv) The optional plan may provide procedures for implementing this Subsection (3).

356 (4) In the council-manager form of county government, the legislative powers of the
357 county shall be vested in the county council, and the executive powers of the county shall be
358 vested in the county manager.

359 (5) A reference in statute or state rule to the "governing body" or the "board of county
360 commissioners" of the county, in the council-manager form of county government, means:

361 (a) the county council, with respect to legislative functions, duties, and powers; and

362 (b) the county manager, with respect to executive functions, duties, and powers.

363 (6) (a) As used in this Subsection (6), "interim vacancy period" means the period of
364 time that:

365 (i) begins on the day on which a general election described in Section 17-16-6 is held
366 to elect a council member; and

367 (ii) ends on the day on which the council member-elect begins the council member's
368 term.

369 (b) (i) The county council may not appoint a county manager during an interim vacancy
370 period.

371 (ii) Notwithstanding Subsection (6)(b)(i):

372 (A) the county council may appoint an interim county manager during an interim
373 vacancy period; and

374 (B) the interim county manager's term shall expire once a new county manager is
375 appointed by the new administration after the interim vacancy period has ended.

376 (c) Subsection (6)(b) does not apply if all the county council members who held office
377 on the day of the county general election whose term of office was vacant for the election are
378 re-elected to the council for the following term.

379 ~~[(7) A county council that appoints a county manager in accordance with this section
380 may not, on or after May 10, 2011, enter into an employment contract that contains an
381 automatic renewal provision with the county manager.]~~

382 Section 6. Section **17-53-317** is amended to read:

383 **17-53-317. Executive appointment with advice and consent of county legislative**
384 **body.**

385 (1) The appointment of a person to fill a position on a board, committee, or similar
386 body whose membership is appointed by the county shall be by the county executive, with the
387 advice and consent of the county legislative body.

388 (2) (a) As used in this Subsection (2), "interim vacancy period" means:

389 (i) for a county commission form or expanded county commission form of
390 government, the period of time that:

391 (A) begins on the day on which a general election described in Section 17-16-6 is held
392 to elect a commission member; and

393 (B) ends on the day on which the commission member-elect begins the council
394 member's term; or

395 (ii) for a county executive-council form of government, the period of time that:

396 (A) begins on the day on which a general election described in Section 17-16-6 is held
397 to elect a county executive; and

398 (B) ends on the day on which the county executive-elect begins the county executive's
399 term.

400 (b) (i) A county commission in a county commission form of government, or a county
401 commission in an expanded county commission form of government, may not appoint during
402 an interim period vacancy a manager, a chief executive officer, a chief administrative officer,
403 or a similar position to perform executive and administrative duties or functions.

404 (ii) Notwithstanding Subsection (2)(b)(i):

405 (A) a county commission in a county commission form of government, or a county
406 commission in an expanded county commission form of government, may appoint an interim
407 manager, a chief executive officer, a chief administrative officer, or a similar position during an
408 interim vacancy period; and

409 (B) the interim appointee's term shall expire once a new manager, a chief executive
410 officer, a chief administrative officer, or a similar position is appointed by the new
411 administration after the interim vacancy period has ended.

412 (c) Subsection (2)(b) does not apply if all the county commission members who held
413 office on the day of the county general election whose term of office was vacant for the
414 election are re-elected to the county commission for the following term.

415 (d) (i) A county executive in a county executive-council form of government may not
416 appoint during an interim vacancy period a manager, a chief executive officer, a chief
417 administrative officer, or a similar position to perform executive and administrative duties or
418 functions.

419 (ii) Notwithstanding Subsection (2)(d)(i):

420 (A) a county executive in a county executive-council form of government may appoint
421 an interim manager, a chief executive officer, a chief administrative officer, or a similar
422 position during an interim vacancy period; and

423 (B) the interim appointee's term shall expire once a new manager, a chief executive
424 officer, a chief administrative officer, or a similar position is appointed by the new county
425 executive after the interim vacancy period has ended.

426 (e) Subsection (2)(d) does not apply if the county executive who held office on the day
427 of the county general election is re-elected to the office of county executive for the following
428 term.

429 ~~[(3) A county commission in a county commission form of government, a county~~
430 ~~commission in an expanded county commission form of government, or a county executive in a~~

431 ~~county executive-council form of government that appoints a manager, a chief executive~~
432 ~~officer, a chief administrative officer, or a similar position in accordance with this section may~~
433 ~~not, on or after May 10, 2011, enter into an employment contract that contains an automatic~~
434 ~~renewal provision with the manager, chief executive officer, chief administrative officer, or~~
435 ~~similar position.]~~

Legislative Review Note
as of 1-31-13 1:46 PM

Office of Legislative Research and General Counsel