

1                                   **COMPETENCY BASED HIRING AMENDMENTS**

2   2021 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Norman K. Thurston**

5                                   Senate Sponsor: Daniel W. Thatcher

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7 **LONG TITLE**

8 **General Description:**

9           This bill amends provisions related to hiring principles for certain state and local  
10 government employees.

11 **Highlighted Provisions:**

12           This bill:

13           ▶ precludes certain state and local government entities from requiring a minimum  
14 educational requirement for employment, except where educational qualifications  
15 are legally required to perform the duties of the position;

16           ▶ requires certain state and local government entities to:

17                   • consider comparable experience or ability as equal to education when  
18 determining a candidate's satisfaction of minimum qualifications, with specific  
19 exceptions; and

20                   • ensure that job descriptions and job postings are based on the skills and  
21 competencies required to perform each job; and

22           ▶ makes technical and conforming changes.

23 **Money Appropriated in this Bill:**

24           None

25 **Other Special Clauses:**

26           None

27 **Utah Code Sections Affected:**



28 AMENDS:

29 10-3-1105, as last amended by Laws of Utah 2012, Chapter 321

30 11-13-225, as last amended by Laws of Utah 2018, Chapter 200

31 17-28-2.4, as enacted by Laws of Utah 1992, Chapter 115

32 17-28-2.6, as last amended by Laws of Utah 2001, Chapter 73

33 17-33-3, as last amended by Laws of Utah 2001, Chapter 73

34 17-33-5, as last amended by Laws of Utah 2009, Chapter 128

35 17B-1-803, as renumbered and amended by Laws of Utah 2007, Chapter 329

36 67-19-3.1, as last amended by Laws of Utah 2010, Chapter 249



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

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

40 **10-3-1105. Municipal employees -- Duration and termination of employment --**

41 **Exceptions -- Merit principles.**

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

46 (b) Subsection (1)(a) does not apply to an employee who is discharged or involuntarily  
47 transferred to a position with less remuneration if the discharge or involuntary transfer is the  
48 result of a layoff or reorganization.

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

50 (a) subject to Subsection (3), a person appointed by the mayor, city manager, or other  
51 person or body with the power to appoint in the municipality if:

52 (i) the appointment is made in writing;

53 (ii) the person's written job description identifies the person's position as exempt from  
54 the protections described in Subsection (1)(a); and

55 (iii) the position is described in an ordinance as exempt from the protections described --  
56 in Subsection (1)(a);

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

59 (c) a person who holds a position described in Subsections (2)(c)(i) through (xii) or an  
60 equivalent position designated in a municipal ordinance or personnel policy:

- 61 (i) a police chief of the municipality;
- 62 (ii) a deputy or assistant police chief of the municipality;
- 63 (iii) a fire chief of the municipality;
- 64 (iv) a deputy or assistant fire chief of the municipality;
- 65 (v) a head of a municipal department or division;
- 66 (vi) a deputy of a head of a municipal department or division;
- 67 (vii) a superintendent;
- 68 (viii) a probationary employee of the municipality;
- 69 (ix) a part-time employee of the municipality, including paid call firefighters;
- 70 (x) a seasonal or temporary employee of the municipality;
- 71 (xi) a person who works in the office of an elected official; or
- 72 (xii) a secretarial or administrative assistant support position that is specifically  
73 designated as a position to assist an elected official or the head or deputy head of a municipal  
74 department;

75 (d) an individual appointed to a position under Part 9, Appointed Officials and Their  
76 Duties, including:

- 77 (i) the city engineer;
- 78 (ii) the city recorder;
- 79 (iii) the city treasurer; or
- 80 (iv) the city attorney; or
- 81 (e) an employee who has:
  - 82 (i) acknowledged in writing that the employee's employment status is appointed or  
83 at-will; or
  - 84 (ii) voluntarily waived the procedures required by Section [10-3-1106](#).

85 (3) In addition to the persons described in Subsections (2)(b) through (e), a  
86 municipality may appoint up to 5% of the municipality's workforce in accordance with  
87 Subsection (2)(a).

88 (4) Nothing in this section or Section [10-3-1106](#) may be construed to limit a  
89 municipality's ability to define cause for an employee termination or reduction in force.

90 (5) A municipality may not prescribe a minimum educational requirement for  
91 employment except when a minimum educational qualification is legally required to perform  
92 the duties of the position.

93 (6) A municipality shall:

94 (a) consider comparable experience or ability as equal to education in determining a  
95 candidate's satisfaction of minimum qualifications, except when a minimum educational  
96 qualification is legally required to perform the duties of the position; and

97 (b) ensure that the municipality's position descriptions and job postings for employee  
98 positions are based on the specific skills and competencies required to perform those jobs.

99 Section 2. Section **11-13-225** is amended to read:

100 **11-13-225. Establishment of interlocal entity personnel system -- Merit principles.**

101 (1) An interlocal entity shall establish a system of personnel administration for the  
102 interlocal entity as provided in this section.

103 (2) The interlocal entity shall administer the system described in Subsection (1) in a  
104 manner that will effectively provide for:

105 (a) recruiting, selecting, and advancing employees on the basis of the employee's  
106 relative ability, knowledge, and skills, including open consideration of qualified applicants for  
107 initial appointment;

108 (b) equitable and adequate compensation;

109 (c) employee training as needed to assure high-quality performance;

110 (d) (i) retaining an employee on the basis of the adequacy of the employee's  
111 performance; and

112 (ii) separation of an employee whose inadequate performance cannot be corrected;

113 (e) fair treatment of an applicant or employee in all aspects of personnel administration  
114 without regard to race, color, religion, sex, national origin, political affiliation, age, or  
115 disability, and with proper regard for the applicant's or employee's privacy and constitutional  
116 rights; and

117 (f) a formal procedure for processing the appeals and grievances of an employee  
118 without discrimination, coercion, restraint, or reprisal.

119 (3) An interlocal entity may not prescribe a minimum educational requirement for  
120 employment, except when a minimum educational qualification is legally required to perform

121 the duties of the position.

122 (4) An interlocal entity shall:

123 (a) consider comparable experience or ability as equal to education in determining a  
124 candidate's satisfaction of minimum qualifications, except when a minimum educational  
125 qualification is legally required to perform the duties of the position; and

126 (b) ensure that position descriptions and job postings published for employee positions  
127 are based on the specific skills and competencies required to perform those jobs.

128 ~~[(3)]~~ (5) An interlocal entity shall ensure that any employee training described in  
129 Subsection (2)(c) complies with Title 63G, Chapter 22, State Training and Certification  
130 Requirements.

131 Section 3. Section 17-28-2.4 is amended to read:

132 **17-28-2.4. County Fire Civil Service System rules and policies.**

133 (1) The executive director shall recommend rules and policies for the County Fire Civil  
134 Service System, which shall be subject to approval by the county legislative body.

135 (2) ~~[The]~~ Subject to Section 17-28-2.6, the County Fire Civil Service System rules  
136 shall provide for recruiting activities, including the recruiting of minorities and women,  
137 job-related minimum requirements, selection procedures, certification procedures,  
138 appointments, probationary periods, promotion, position classification, recordkeeping,  
139 reductions in force, grievances and complaints, disciplinary action, work hours, holidays, and  
140 other necessary and proper requirements not inconsistent with this chapter.

141 (3) The executive director shall publish or cause to be published these rules and  
142 policies in a manual form, to be updated regularly and made available to fire department  
143 employees.

144 Section 4. Section 17-28-2.6 is amended to read:

145 **17-28-2.6. Merit principles.**

146 (1) The County Fire Civil Service System shall be established and administered in a  
147 manner that will provide for the effective implementation of the following merit principles:

148 ~~[(+)]~~ (a) recruiting, selecting, and advancing employees on the basis of their relative  
149 ability, knowledge, and skills, including open consideration of qualified applicants for initial  
150 appointment;

151 ~~[(2)]~~ (b) provision of equitable and adequate job classification and compensation

152 systems, including pay and benefits programs;

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

154 ~~[(4)]~~ (d) retention of employees on the basis of the adequacy of their performance and  
155 separation of employees whose inadequate performance cannot be corrected;

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

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

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

163 (2) The County Fire Civil Service System may not prescribe a minimum educational  
164 requirement for employment, except when a minimum educational qualification is legally  
165 required to perform the duties of the position.

166 (3) The County Fire Civil Service System shall:

167 (a) consider comparable experience or ability as equal to education in determining a  
168 candidate's satisfaction of minimum qualifications, except when a minimum educational  
169 qualification is legally required to perform the duties of the position; and

170 (b) ensure that position descriptions and job postings published for employee positions  
171 are based on the specific skills and competencies required to perform those jobs.

172 (4) The principles in Subsections (1) through (3) shall govern the creation of rules and  
173 policies under Section [17-28-2.4](#).

174 Section 5. Section 17-33-3 is amended to read:

175 **17-33-3. Merit principles.**

176 (1) It is the policy of this state that each county may establish a personnel system  
177 administered in a manner that will provide for the effective implementation of the following  
178 merit principles:

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

182 ~~[(2)]~~ (b) provision of equitable and adequate compensation;

- 183           ~~[(3)]~~ (c) training of employees as needed to assure high-quality performance;
- 184           ~~[(4)]~~ (d) retention of employees on the basis of the adequacy of their performance, and
- 185 separation of employees whose inadequate performance cannot be corrected;
- 186           ~~[(5)]~~ (e) fair treatment of applicants and employees in all aspects of personnel
- 187 administration without regard to race, color, religion, sex, national origin, political affiliation,
- 188 age, or disability, and with proper regard for their privacy and constitutional rights as citizens;
- 189           ~~[(6)]~~ (f) provision of information to employees regarding their political rights and
- 190 prohibited practices under the Hatch Act; and
- 191           ~~[(7)]~~ (g) provision of a formal procedure for processing the appeals and grievances of
- 192 employees without discrimination, coercion, restraint, or reprisal.

193           (2) A county may not prescribe a minimum educational requirement for employment,

194 except when a minimum educational qualification is legally required to perform the duties of

195 the position.

196           (3) A county shall:

197           (a) consider comparable experience or ability as equal to education in determining a

198 candidate's satisfaction of minimum qualifications, except when a minimum educational

199 qualification is legally required to perform the duties of the position; and

200           (b) ensure that the county's position descriptions and job postings for employee

201 positions are based on the specific skills and competencies required to perform those jobs.

202           (4) The principles in Subsections (1) through (3) shall govern the creation of personnel

203 rules under Section [17-33-5](#).

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

205           **17-33-5. Office of personnel management -- Director -- Appointment and**

206 **responsibilities -- Personnel rules.**

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

208           (A) create an office of personnel management, administered by a director of personnel

209 management; and

210           (B) ensure that the director is a person with proven experience in personnel

211 management.

212           (ii) Except as provided in Subsection (1)(b), the position of director of personnel

213 management shall be:

- 214 (A) a merit position; and
- 215 (B) filled as provided in Subsection (1)(a)(iii).
- 216 (iii) Except as provided in Subsection (1)(b), the career service council shall:
- 217 (A) advertise and recruit for the director position in the same manner as for merit
- 218 positions;
- 219 (B) select three names from a register; and
- 220 (C) submit those names as recommendations to the county legislative body.
- 221 (iv) Except as provided in Subsection (1)(b), the county legislative body shall select a
- 222 person to serve as director of the office of personnel management from the names submitted to
- 223 it by the career service council.
- 224 (b) (i) Effective for appointments made after May 1, 2006, and as an alternative to the
- 225 procedure under Subsections (1)(a)(ii), (iii), and (iv) and at the county executive's discretion,
- 226 the county executive may appoint a director of personnel management with the advice and
- 227 consent of the county legislative body.
- 228 (ii) The position of each director of personnel management appointed under this
- 229 Subsection (1)(b) shall be a merit exempt position.
- 230 (iii) A director of personnel management appointed under this Subsection (1)(b) may
- 231 be terminated by the county executive with the consent of the county legislative body.
- 232 (2) The director of personnel management shall:
- 233 (a) encourage and exercise leadership in the development of expertise in personnel
- 234 administration within the several departments, offices, and agencies in the county service and
- 235 make available the facilities of the office of personnel management to this end;
- 236 (b) advise the county legislative and executive bodies on the use of human resources;
- 237 (c) develop and implement programs for the improvement of employee effectiveness,
- 238 such as training, safety, health, counseling, and welfare;
- 239 (d) investigate periodically the operation and effect of this law and of the policies made
- 240 under it and report findings and recommendations to the county legislative body;
- 241 (e) establish and maintain records of all employees in the county service, setting forth
- 242 as to each employee class, title, pay or status, and other relevant data;
- 243 (f) make an annual report to the county legislative body and county executive regarding
- 244 the work of the department; and



245 (g) apply and carry out this law and the policies under it and perform any other lawful  
246 acts that are necessary to carry out the provisions of this law.

247 (3) (a) (i) The director shall recommend personnel rules for the county.

248 (ii) The county legislative body may:

249 (A) recommend personnel rules for the county; and

250 (B) approve, amend, or reject personnel rules before they are adopted.

251 (b) ~~[The]~~ Subject to Section 17-33-3, the rules shall provide for:

252 (i) recruiting efforts to be planned and carried out in a manner that assures open  
253 competition, with special emphasis to be placed on recruiting efforts to attract minorities,  
254 women, persons with a disability as defined by and covered under the Americans with  
255 Disabilities Act of 1990, 42 U.S.C. 12102, or other groups that are substantially  
256 underrepresented in the county work force to help assure they will be among the candidates  
257 from whom appointments are made;

258 (ii) the establishment of job related minimum requirements wherever practical, that all  
259 successful candidates shall be required to meet in order to be eligible for consideration for  
260 appointment or promotion;

261 (iii) selection procedures that include consideration of the relative merit of each  
262 applicant for employment, a job related method of determining the eligibility or ineligibility of  
263 each applicant, and a valid, reliable, and objective system of ranking eligible applicants  
264 according to their qualifications and merit;

265 (iv) certification procedures that ~~[insure]~~ ensure equitable consideration of an  
266 appropriate number of the most qualified eligible applicants based on the ranking system;

267 (v) appointments to positions in the career service by selection from the most qualified  
268 eligible applicants certified on eligible lists established in accordance with Subsections  
269 (3)(b)(iii) and (iv);

270 (vi) noncompetitive appointments in the occasional instance where there is evidence  
271 that open or limited competition is not practical, such as for unskilled positions that have no  
272 minimum job requirements;

273 (vii) limitation of competitions at the discretion of the director for appropriate positions  
274 to facilitate employment of qualified applicants with a substantial physical or mental  
275 impairment, or other groups protected by Title VII of the Civil Rights Act;

276 (viii) permanent appointment for entry to the career service that shall be contingent  
277 upon satisfactory performance by the employee during a period of six months, with the  
278 probationary period extendable for a period not to exceed six months for good cause, but with  
279 the condition that the probationary employee may appeal directly to the council any undue  
280 prolongation of the period designed to thwart merit principles;

281 (ix) temporary, provisional, or other noncareer service appointments, which may not be  
282 used as a way of defeating the purpose of the career service and may not exceed 270 days;

283 (x) lists of eligible applicants normally to be used, if available, for filling temporary  
284 positions, and short term emergency appointments to be made without regard to the other  
285 provisions of law to provide for maintenance of essential services in an emergency situation  
286 where normal procedures are not practical, these emergency appointments not to exceed 270  
287 days;

288 (xi) promotion and career ladder advancement of employees to higher level positions  
289 and assurance that all persons promoted are qualified for the position;

290 (xii) recognition of the equivalency of other merit processes by waiving, at the  
291 discretion of the director, the open competitive examination for placement in the career service  
292 positions of those who were originally selected through a competitive examination process in  
293 another governmental entity, the individual in those cases, to serve a probationary period;

294 (xiii) preparation, maintenance, and revision of a position classification plan for all  
295 positions in the career service, based upon similarity of duties performed and responsibilities  
296 assumed, so that the same qualifications may reasonably be required for, and the same schedule  
297 of pay may be equitably applied to, all positions in the same class, the compensation plan, in  
298 order to maintain a high quality public work force, to take into account the responsibility and  
299 difficulty of the work, the comparative pay and benefits needed to compete in the labor market  
300 and to stay in proper alignment with other similar governmental units, and other factors;

301 (xiv) keeping records of performance on all employees in the career service and  
302 requiring consideration of performance records in determining salary increases, any benefits for  
303 meritorious service, promotions, the order of layoffs and reinstatements, demotions, discharges,  
304 and transfers;

305 (xv) establishment of a plan governing layoffs resulting from lack of funds or work,  
306 abolition of positions, or material changes in duties or organization, and governing

307 reemployment of persons so laid off, taking into account with regard to layoffs and  
308 reemployment the relative ability, seniority, and merit of each employee;

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

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

314 (xviii) establishment of a procedure for employee development and improvement of  
315 poor performance;

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

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

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

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

323 **17B-1-803. Merit principles.**

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

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

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

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

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

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

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

338 et seq.; and

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

341 (2) A local district may not prescribe a minimum educational requirement for  
342 employment, except when a minimum educational qualification is legally required to perform  
343 the duties of the position.

344 (3) A local district shall:

345 (a) consider comparable experience or ability as equal to education in determining a  
346 candidate's satisfaction of minimum qualifications, except when a minimum educational  
347 qualification is legally required to perform the duties of the position; and

348 (b) ensure that the local district's position descriptions and job postings for employee  
349 positions are based on the specific skills and competencies required to perform those jobs.

350 Section 8. Section **67-19-3.1** is amended to read:

351 **67-19-3.1. Principles guiding interpretation of chapter and adoption of rules --**  
352 **Merit principles.**

353 (1) The department shall establish a career service system designed in a manner that  
354 will provide for the effective implementation of the following merit principles:

355 (a) recruiting, selecting, and advancing employees on the basis of their relative ability,  
356 knowledge, and skills, including open consideration of qualified applicants for initial  
357 appointment;

358 (b) providing for equitable and competitive compensation;

359 (c) training employees as needed to assure high-quality performance;

360 (d) retaining employees on the basis of the adequacy of their performance and  
361 separating employees whose inadequate performance cannot be corrected;

362 (e) fair treatment of applicants and employees in all aspects of human resource  
363 administration without regard to race, color, religion, sex, national origin, political affiliation,  
364 age, or disability, and with proper regard for their privacy and constitutional rights as citizens;

365 (f) providing information to employees regarding their political rights and the  
366 prohibited practices under the Hatch Act; and

367 (g) providing a formal procedure for advancing grievances of employees:

368 (i) without discrimination, coercion, restraint, or reprisal; and

369 (ii) in a manner that is fair, expeditious, and inexpensive for the employee and the  
370 agency.

371 (2) The career service system described in Subsection (1) may not prescribe a  
372 minimum educational requirement for employment, except when a minimum educational  
373 qualification is legally required to perform the duties of the position.

374 (3) As part of the career service system described in Subsection (1), the department  
375 shall:

376 (a) consider comparable experience or ability as equal to education in determining a  
377 candidate's satisfaction of minimum qualifications, except when a minimum educational  
378 qualification is legally required to perform the duties of the position; and

379 (b) ensure that position descriptions and job postings published by agencies for career  
380 service positions are based on the specific skills and competencies required to perform those  
381 jobs.

382 [~~2~~] (4) The principles in [~~Subsection~~] Subsections (1) through (3) shall govern  
383 interpretation and implementation of this chapter.