



2024

Spring Training

**UTAH LEAGUE OF
CITIES AND TOWNS**

General Government Update





Finance & Budget

SB 91: Local Gov't Officers Compensation

Sen. Chris Wilson and Rep. Paul Cutler

- Applies only to compensation for:
 - City or Town Manager or Chief Administrative Officer (or Assistant of any)
 - City or Town Attorney
 - Department and Division Heads (and Assistants/Deputies)
- Independent stand-alone public hearing before a final budget or final amended budget if compensation increase:
 - Salary, including salary paid under contract;
 - A budgeted bonus or budgeted incentive pay;
 - A vehicle allowance; and
 - Deferred Salary
- Requirements for noticing public hearing on compensation increases:
 - Notice must be at least 7 days before the public hearing
 - Class A notice

Why you should care:

You will need more public hearings for any compensation increases.

SB 86: Local Gov't Bonds Amendments

Sen. Lincoln Fillmore and Rep. Brady Brammer

- Lease revenue bonds limited to:
 - No limit on any individual lease revenue bond, but cannot exceed \$200 million in any consecutive three year period
- Requirement for Public Hearing:
 - Begin after 6 p.m.
 - Held separate from other public hearings
 - Can be held before or after other public hearings
 - Public comment period must give public an opportunity to be heard
 - Within reasonable time limits
 - Without unreasonable restriction on the number of individuals allowed to make comment
- Noticing Requirements on Next Slide

Why you should care:

Plan wisely with the dollar cap in mind.

SB 86: Local Gov't Bonds Amendments

Sen. Lincoln Fillmore and Rep. Brady Brammer

- Make a statement in a public meeting at least 14 days before the public hearing:
 - Intent to issue
 - Purpose and estimated amount of bond
- Indicate this statement on the public meeting agenda as a separate item
- Newspaper, Electronically, Class A notice at least 14 days before public hearing
- Statement must contain:
 - Clear statement of intent to issue bonds
 - Purpose, proposed amount, length of bond, annual amount of principal and interest
 - Identify intended lessee; Expected annual amount of lease payments required
 - Date time, place, purpose of public hearing

HB 335: State Grant Process Amendments

Rep. Val Peterson and Sen. Jerry Stevenson

- Creates reporting and process requirements for state granted funds
- State grant recipients must propose a budget and deliverables prior to receiving the grant
- State funds must be disbursed on a schedule that provides accountability and responsible oversight for the use of funds

Why you should care:

You may encounter additional requirements for state grants

HB 335: State Grant Process Amendments

Rep. Val Peterson and Sen. Jerry Stevenson

- Multiyear state grants may no longer exceed five years
- Clarifies that legislative auditor may review all state grant funds
- Provides additional guidance and requirements for state agencies



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Religion

HB 396: Workplace Discrimination Amendment

Rep. Brady Brammer and Sen. Michael Kennedy

- Prohibits compelling an employee to engage in “religiously objectionable expression” that the **employee reasonably believes** would burden or offend the employee’s **sincerely held religious beliefs**.
- Religiously objectionable expression:
 - Expression (action or inaction)
 - Examples:
 - Dress and grooming requirements
 - Speech
 - Scheduling
 - Prayer
 - Abstention
 - Abstentions relating to healthcare

Why you should care:

HR folks – Pay attention! Perhaps it’s time to revise some policies!

HB 396: Workplace Discrimination Amendment

Rep. Brady Brammer and Sen. Michael Kennedy

- Request by employee must reference this section and give the employee a reasonable opportunity to accommodate
- **Exception to Law:** If doing so would cause an **undue burden** to the employer by **substantially** interfering with the employer's:
 - Core mission or the employer's ability to conduct business in an effective or financially reasonable manner
 - Ability to provide training and safety instruction for the job.
- **Scheduling Exception:** Do not have to accommodate scheduling requests if you have less than 15 employees

SB 150: Exercise of Religion Amendments

Sen. Todd Weiler and Rep. Jordan Teuscher

- Prohibited from inhibiting the free exercise of religion.
- Free Exercise of Religion = “The right to act or refuse to act in a manner **substantially motivated** by a sincerely held religious belief, regardless of whether the exercise is **compulsory** or **central** to a larger system of religious belief”
- May substantially burden if:
 - Essential to a compelling governmental interest
 - Least restrictive means in furthering that interest
- Attorneys fees shall be awarded to prevailing party

Why you should care:

Without a deep understanding of this and other religious bills, you could get burned.

Religion

HB 396

SB 150

HB 460

HB 460: Gov't Employee Conscience Protection

Rep. Michael Peterson and Sen. Todd Weiler

- Prohibited from denying an employee's "reasonable" request to be relieved from performing a certain job, duty, or function if:
 - Performing the task would conflict with the employee's sincerely held religious beliefs **or conscience**;
 - Met all other requirements for the request (detailed – look at closely on timing)
- Prohibited from taking retaliatory action (termination, demotion, pay, etc.) for submitting a meritorious request.
- Records that include information related to the request or government's response are considered "protected" under GRAMA and subject to disclosure and penalty provisions.

Why you should care:

Three religious bills passed this session – each are quite different!

HB 460: Gov't Employee Conscience Protection

Rep. Michael Peterson and Sen. Todd Weiler

- Exceptions:
 - **Does not impose an undue hardship on the governmental entity**
 - “Substantial burden, privation, or adversity” on governmental entity that would result from granting an employee’s request to be relieved from performing a certain task when considering all relevant factors
 - If task is part of training or safety instructions directly related to the employee’s employment
 - Granting the request would create a conflict with an existing legal obligation and the governmental entity cannot avoid the conflict
 - The employee is a first responder and the request by the employee involves a task that involves protecting the safety of the public
 - Employee’s asserted religious beliefs or conscience described is being asserted for an improper purpose

Religion

HB 396

SB 150

HB 460

HB 460: Gov't Employee Conscience Protection

Rep. Michael Peterson and Sen. Todd Weiler

- Not required, but....Adopt a policy detailing the process of request, response, grievance process, and appeal rights! Must be specific to this protection/process.
 - Give notice of changes to policy
- Private right of action
 - A number of exceptions
 - Must file 180 calendar days after the day on which the employee received the governmental entity's response



Medical Cannabis & Drugs

SB 233 Medical Cannabis Amendments

Sen. Luz Escamilla and Rep. Ray Ward

- **Overriding Purpose:** Treat all medical cannabis users and medical cannabis cardholders the same as any other user of legal controlled substance user and controlled substance prescription holder.
- **Definition of “adverse employment action” includes:**
 - Dismissal;
 - Suspension;
 - Reduction in compensation;
 - Failing to increase compensation if employee is entitled to or been promised;
 - Failure to promote if employee would have otherwise been promoted;
 - Threatening adverse action

Why you should care:

You need to be prepared when an employee tests positive on the job.

SB 233 Medical Cannabis Amendments

Sen. Luz Escamilla and Rep. Ray Ward

- Before any adverse action of person who tests positive for cannabis or cardholder, municipality must have a policy:
 - Comprehensively detail when an employer can take an adverse action
 - Does not treat medical cannabis any differently than another controlled substance
- Before any adverse action of person is taken solely because the employee is a cannabis cardholder or a prescription holder of controlled substances, the government employer must:
 - Consult with the City Attorney (if they have one or contracted with one)
 - Obtain approval from the Mayor

SB 233 Medical Cannabis Amendments

Sen. Luz Escamilla and Rep. Ray Ward

- Adverse action requirement does **not** apply to:
 - Jeopardize **federal funds**, security clearance, or other federal background determination required for the employee's position
 - Employee's position is dependent on a **license or peace officer certification** that is subject to federal regulations
- BUT...exceptions above do not apply to the requirement that one must consult with the city attorney and approve through mayor before adverse action is taken solely for having a medical cannabis card.
- Effective: May 1, 2024

HB 411: Local Gov't Entity Drug – Free Workplace Policies Amendments

Rep. Cory Maloy and Sen. Michael Kennedy

- Before drug testing an employee, volunteer, a prospective employee or volunteer, you must adopt a written policy or ordinance.
- You must follow your policy or ordinance. Any deviation will leave you in a hard place to defend.
- Permits/clarifies that local governments can use oral drug tests in addition to urine drug tests
- Effective Date: May 1, 2024

Why you should care:

Lower costs by doing oral drug tests instead of urine drug tests.



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Data Privacy

HB 491: Data Privacy Amendments

Rep. Jefferson Moss and Sen. Kirk Cullimore

- High Level Descriptions! Must Read! (White paper coming soon!)
 - Controlling laws
 - Privacy Programs
 - Required Reporting
 - Data Breach Requirements
 - Noticing Requirements
 - Training Requirements
 - Contract Agreement Requirements
 - Remedies for failure to implement

Why you should care:

This will affect just about every process and department of the city.

HB 491: Data Privacy Amendments

Rep. Jefferson Moss and Sen. Kirk Cullimore

- Provisions of GRAMA control over Part 4 if they are already addressed in GRAMA
 - Given breadth of both statutes – Ask your attorney when GRAMA or Part 4 applies
- Privacy Program before May 1, 2025
 - Policies, practices, procedures for processing personal data
- “Personal Data” means “information that is linked or can be reasonably linked to an identified individual or an identifiable individual”
 - Name, phone number, social, financial, address, business address, username, email addresses, drivers license numbers, guardian’s name or minor, etc.
 - If we collect information, it is likely personal data.

HB 491: Data Privacy Amendments

Rep. Jefferson Moss and Sen. Kirk Cullimore

- Annual report to state:
 - Types of personal data currently shares or sells
 - Basis for sharing or selling personal data
 - Classes of persons and the governmental entities that receive the personal data
- Annual privacy training (and 30 days after start of employment):
 - Only employees that have access or part of their job duty to access personal data of individuals
- Contracts and renewals:
 - After May 1, 2024, contractors are bound by Part 4 in the same way that governmental entities are bound.
 - Suggestion: **Put provision in all contracts!**

HB 491: Data Privacy Amendments

Rep. Jefferson Moss and Sen. Kirk Cullimore

- Personal data request notice when requesting or collecting:
 - Reasons the request for the personal data is made
 - Intended purposes of the data
 - Consequences for refusing to provide the personal data
 - Classes of persons and entities that share the personal data or receive the personal data from the governmental entity on a regular or contractual basis
 - Record series the personal data would be included in
- Posting of Request Notice:
 - “Prominent place where the governmental entity collects the personal data”
 - Including on the actual form collecting the data; OR
 - Linking or displaying a QR code linked to an electronic version of notice.

HB 491: Data Privacy Amendments

Rep. Jefferson Moss and Sen. Kirk Cullimore

- Establish process to amend personal data after it has been collected by the government entity BUT
 - Not required to accept the amendment – just have to create the process to request
- Data Breaches:
 - Must notify Cyber Center and Attorney General of data breach no later than five days after discovery of the breach
 - Notification includes many different pieces of information – Refer to law
 - Notification to affected persons without unreasonable delay, but only have to after:
 - Determining the scope of the breach
 - Restoring the affected system
 - Notice to affected persons has a lot of requirements – Refer to law



Retirement

SB 34: Utah Retirement Systems Revisions

Sen. Wayne Harper and Rep. Cheryl Acton

- Requires URS participating employers to maintain all records and certifications under the law
- If participating employer fails to fully comply with reporting, contribution, certification, or record keeping requirements, then they bare all liability and expense.
- A penalty of an amount not to exceed 50% of the participating employers' total contributions for the time period of the error.

Why you should care:

Penalties are severe if you do not keep good records.

HB 251: Postretirement Reemployment Restrictions Amendments

Rep. Matthew Gwynn and Sen. Wayne Harper

- Optional program for URS participating retirees to enter reemployment and optional for URS-participating employers to hire public sector retirees
- Creates a new retiree reemployment track for public employees
 - Shortened cooling off period
 - 60 days for public safety, 90 for all other public employees
 - Reduced URS retirement benefits for individuals who use this track for duration of reemployment
 - 15% reduction for public safety, 20% for all other employees
 - Cost of Living Adjustment is frozen for duration of reemployment
- Public employers who choose to hire employees participating in this track pay a higher URS rate for them.
- **Existing cooling off period is maintained and program is cost neutral for all other employees, retirees, and employers.**

Why you should care:

Because you will retire one day and want to come back to your city job.



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Employee Related Matters

HB 257: Sex-based Designations for Privacy, Anti-bullying and Women's Opportunities

Rep. Kera Birkeland and Sen. Dan McCay

- Public school sex-designated **restrooms** vs. City sex-designated **changing rooms**
- **Changing rooms:** Dressing rooms, fitting rooms, locker rooms, shower room and a restroom when a changing room contains or is attached to the restroom
- Prohibits individuals from accessing sex designated changing rooms that are open to the public unless:
 1. The individual's sex at birth corresponds with the sex designation of the changing room **OR**
 2. A) The individual has legally amended their birth certificate to correspond with the sex designation of the changing room **AND**
 3. B) They have had a primary sex characteristic surgery

Why you should care:

It is important to know what circumstances HB257 applies to and what it does not.

HB 257: Sex-based Designations for Privacy, Anti-bullying and Women's Opportunities

Rep. Kera Birkeland and Sen. Dan McCay

- Exclusions:
 - City facility sex-designated bathrooms (unless that bathroom has a changing room attached to it.)
 - Employee bathrooms, changing rooms, locker rooms (because they are not open to the public)
 - A minor child that needs assistance to access or use the changing room from parent, guardian, or relative
 - Dependent minors and adults that require the assistance of their caretaker
 - Public safety personnel acting in the capacity (police, fire, ems)
 - Employee of a healthcare facility when providing health care services
 - Individuals whose employment duties include maintenance or cleaning of the changing room

HB 257: Sex-based Designations for Privacy, Anti-bullying and Women's Opportunities

Rep. Kera Birkeland and Sen. Dan McCay

- City required to **call law enforcement** if they receive a complaint or allegation of breaking laws (lewdness, lewdness involving child, voyeurism, loitering in a restroom or changing room, criminal trespass in a changing room).
- **Adopt a privacy compliance plan** that addresses compliance under this law
- **New Construction**
 - Required to include at least one single occupant facility
- **Existing bathrooms or changing rooms:**
 - “Consider” the feasibility of retrofitting or remodeling to include:
 - Floor to ceiling walls or doors or similar privacy protections
 - Curtains; or
 - Other methods of improving the privacy

HB 257: Sex-based Designations for Privacy, Anti-bullying and Women's Opportunities

Rep. Kera Birkeland and Sen. Dan McCay

- **Penalty:**
 - Fine of up to \$10,000 per day for violation (this is after a 30 day notice to cure period)
- **Protection for enforcing it – defense, indemnification, hold government harmless, including court costs and attorneys fees IF:**
 - Arise because of the law
 - Not covered by the government entity's insurance policies

HB 55: Employment Confidentiality Amendments

Rep. Kera Birkeland and Sen. Todd Weiler

- **Nondisclosure clause:** Provision that prevents or prohibits (or has that effect) an employee from **“disclosing or discussing”**:
 - Sexual assault or allegations
 - Sexual harassment or allegations
- **Non-Disparagement clause:** Provision that prohibits (or has that effect) an employee from making **negative statements about the employer** related to:
 - Allegations of sexual assault or sexual harassment (or disputes arising from the allegations)
- Retroactively effective **January 1, 2023**

Why you should care:

Sample settlement/separation
agreements may need revisions

HB 55: Employment Confidentiality Amendments

Rep. Kera Birkeland and Sen. Todd Weiler

- Before employment begins:
 - Any requirement of a prospective employee to agree to a non-disparagement clause or non-disclosure clause as a **condition of employment**. Any such provision is void and unenforceable.
- After employment has begun, retaliation is prohibited on basis that:
 - Employee makes **allegation** of sexual harassment or sexual assault;
 - Employee **refuses to enter** into a confidentiality clause or employment contract
- Three business days after agreement is signed - Cooling off period if settlement agreement has confidentiality clause.

HB 55: Employment Confidentiality Amendments

Rep. Kera Birkeland and Sen. Todd Weiler

- Useless to try to enforce settlement agreement confidentiality clause:
 - Liable for all costs and attorneys fees to enforce it (even if prevailing party);
 - Not entitled to monetary damages resulting from a breach
- Does not prohibit a clause that includes:
 - Confidentiality clause or other clause that prohibits disclosure of settlement amount
 - At request of the employee, facts that could reasonably lead to the identification of the employee
 - Non-compete clause
 - Trade secrets, other confidential, proprietary information (not otherwise illegal)

HB 55: Employment Confidentiality Amendments

Rep. Kera Birkeland and Sen. Todd Weiler

“Negative statement about employer”

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“Knowingly false statements or reckless disregard
for truth”

HB 55: Employment Confidentiality Amendments

Rep. Kera Birkeland and Sen. Todd Weiler

Unintended Consequence of Legislation:

Sexual harassment means discrimination on the basis of “race, color, religion, sex, national origin.”

HB 228: Public Employee Leave Amendments

Rep. Norman Thurston and Sen. Stephanie Pitcher

- Municipalities that employ state legislators must grant and may not interfere with (or retaliate against) individuals receiving unpaid leave for however many hours are requested on a day of the session or other required training meeting.
- **Exemption for municipalities:**
 - If legislative body determines that complying with above would cause:
 - Significant difficulty or expense when considered with the size, financial resources, nature, or structure of the municipality's operations.
 - Any agreement between the employer and legislator will override this law.

Why you should care:

Planning ahead for time-off for legislators can ease the burden...

HB 261: Equal Opportunity Initiatives

Rep. Katy Hall and Sen. Keith Grover

- Prohibits the submission, a statement, or a document that requires an individual to articulate the individual's position, view, contribution, effort, or experience regarding a policy, program, or initiative that promotes differential treatment based on an individual's race, color, ethnicity, sex, sexual orientation, national origin, religion, or gender.
- Prohibits required training that promotes prohibited discriminatory practices (Look at list in law)
- Exclusions:
 - Compliance with federal law or other state laws
 - Federal grants
 - Discrimination and harassment trainings
 - Bonafide occupational qualification for the position

Why you should care:

You do not want to be in violation –
Revise your policies and forms!

Social Media Policies

Lindke v. Freed

- City Manager's facebook personal account, but posted occasional work-related posts
- Freed deleted responses that were derogatory or "stupid"; eventually blocked completely
- Lindke sued based on prohibiting his right to free speech
- First Amendment only applies to government action to restrict free speech (not private action)

Why you should care:

So that this is not your next civil rights lawsuit! A violation is costly.

Social Media Policies

Lindke v. Freed

- Standard: “A public official’s social media activity constitutes state action under [the law] only if the official:
 1. Possessed actual authority to speak on the State’s behalf, and
 2. Purported to exercise that authority when he spoke on social media

****Word to the Wise**:**

- Be deliberate in what authority you give in job descriptions;
- Have good social media policies
- **WHITE PAPER COMING SOON!**



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School Safety

HB 84: School Safety Amendments

Rep. Ryan Wilcox and Sen. Don Ipson

- **Modifies the International Fire Code and Building Codes**
 - Building inspector must coordinate with the county security chief to ensure compliance before issuing a C of O for a school.
- **Applies to a law enforcement agency with a school resource officer unit**
 - Develop a policy that indicates the following:
 - Process for assigning and selecting school resource officer
 - Required training of a school resource officer
 - Internal reporting requirements
 - Arrest and use of force protocols
 - General oversight and accountability
 - Can adopt the State Security Chief's model policy if desired

HB 84: School Safety Amendments

Rep. Ryan Wilcox and Sen. Don Ipson

- Provides regulations concerning “School Guardians” and when, how, and for what purposes they may carry and use a gun within a school.
 - Training required
- Others may contract
- Read whole bill for details (all 85 pages of it!)