

SB0022S02 compared with SB0022S01

~~text~~ shows text that was in SB0022S01 but was deleted in SB0022S02.

text shows text that was not in SB0022S01 but was inserted into SB0022S02.

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Senator Peter C. Knudson proposes the following substitute bill:

WORKFORCE SERVICES JOB LISTING AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Peter C. Knudson

House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill requires that all government entities advertise job openings on the state website and that the Division of Purchasing provide contact information for companies that contract with the state.

Highlighted Provisions:

This bill:

- ▶ requires all government entities to advertise job openings on the state's website; and
- ▶ adds a provision to the procurement code requiring that language be added into contracts and requests for proposals that require the Division of Purchasing to provide employment contact information to the Department of Workforce Services for private contractors that contract with state entities.

Money Appropriated in this Bill:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

35A-1-102, as last amended by Laws of Utah 2012, Chapter 41

35A-2-203, as last amended by Laws of Utah 2011, Chapter 188

~~{63G-6a-1202}~~ **63G-6a-402**, as last amended by Laws of Utah 2013, Chapter 445

~~{ 67-19-15, as last amended by Laws of Utah 2013, Chapter 109~~

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

Section 1. Section **35A-1-102** is amended to read:

35A-1-102. Definitions.

Unless otherwise specified, as used in this title:

(1) "Client" means an individual who the department has determined to be eligible for services or benefits under:

- (a) Chapter 3, Employment Support Act; and
- (b) Chapter 5, Training and Workforce Improvement Act.

(2) "Department" means the Department of Workforce Services created in Section 35A-1-103.

(3) "Economic service area" means an economic service area established in accordance with Chapter 2, Economic Service Areas.

(4) "Employment assistance" means services or benefits provided by the department under:

- (a) Chapter 3, Employment Support Act; and
- (b) Chapter 5, Training and Workforce Improvement Act.

(5) "Employment center" is a location in an economic service area where the services provided by an economic service area under Section 35A-2-201 may be accessed by a client.

(6) "Employment counselor" means an individual responsible for developing an employment plan and coordinating the services and benefits under this title in accordance with Chapter 2, Economic Service Areas.

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(7) "Employment plan" means a written agreement between the department and a client that describes:

- (a) the relationship between the department and the client;
- (b) the obligations of the department and the client; and
- (c) the result if an obligation is not fulfilled by the department or the client.

(8) "Executive director" means the executive director of the department appointed under Section 35A-1-201.

(9) "Government entity" means the state or any county, municipality, local district, special service district, or other political subdivision or administrative unit of the state, including state institutions of higher education as defined in Section ~~53B-2-1010~~ 53B-2-101.

~~(9)~~ (10) "Public assistance" means:

- (a) services or benefits provided under Chapter 3, Employment Support Act;
- (b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;
- (c) foster care maintenance payments provided from the General Fund or under Title IV-E of the Social Security Act;
- (d) SNAP benefits; and
- (e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.

~~(10)~~ (11) "SNAP" means the federal "Supplemental Nutrition Assistance Program" under Title 7, U.S.C. Chapter 51, Supplemental Nutrition Assistance Program, formerly known as the federal Food Stamp Program.

~~(11)~~ (12) "SNAP benefit" or "SNAP benefits" means a financial benefit, coupon, or privilege available under SNAP.

~~(12)~~ (13) "Stabilization" means addressing the basic living, family care, and social or psychological needs of the client so that the client may take advantage of training or employment opportunities provided under this title or through other agencies or institutions.

Section 2. Section **35A-2-203** is amended to read:

35A-2-203. Employment centers.

- (1) In each county within an economic service area, the executive director shall:
 - (a) designate the location of one or more employment centers, as defined in Section 35A-1-102, in which the services are provided by the department; or

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(b) coordinate with the department to establish access to the services provided by the department by means other than an employment center.

(2) An employment center shall provide a comprehensive program of employment services including job placement, job development, stabilization, assessment, and job training through its employment counselors as part of a system of unified case management.

(3) The department may make services that are provided through employment centers under this section accessible through electronic linkage.

(4) The department shall develop and maintain a website dedicated to providing information regarding employment opportunities available throughout the state.

(5) (a) ~~{A}~~ Except when filling a job vacancy with a current employee, a government entity shall ~~{post}~~ list each public job ~~{vacancy within the government entity}~~ posting on the department's website.

(b) Information regarding job vacancies with private contractors that have contracted with a government entity shall be made available to the department for posting on the department's website by the department. ~~{The}~~ Posted information ~~{made available by the issuing procurement unit}~~ shall include the name and ~~{phone number of the contact person for inquiries and the start and end dates of the contract}~~ contact information for job inquiries. This information shall be available for the duration of the contract.

(c) ~~{A faculty}~~ Faculty related job ~~{vacancy}~~ vacancies and ~~{a}~~ job ~~{vacancy}~~ vacancies for ~~{a}~~ part-time wage related ~~{job}~~ jobs typically filled by students at state institutions of higher education ~~{as defined in Section 53B-2-1010}~~ are exempt from the requirements of Subsection (5)(a).

Section 3. Section 63G-6a-402 is amended to read:

63G-6a-402. Procurement unit required to comply with Utah Procurement Code and applicable rules -- Rulemaking authority -- Reporting.

(1) Except as otherwise provided in Section 63G-6a-107, Section 63G-6a-403, Part 8, Exceptions to Procurement Requirements, or elsewhere in this chapter, a procurement unit may not obtain a procurement item, unless:

(a) if the procurement unit is the division or a procurement unit with independent procurement authority, the procurement unit:

(i) uses a standard procurement process or an exception to a standard procurement

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process, described in Part 8, Exceptions to Procurement Requirements; and

(ii) complies with:

(A) the requirements of this chapter; and

(B) the rules made pursuant to this chapter by the applicable rulemaking authority;

(b) if the procurement unit is a county, a municipality, or the Utah Housing

Corporation, the procurement unit complies with:

(i) the requirements of this chapter that are adopted by the procurement unit; and

(ii) all other procurement requirements that the procurement unit is required to comply with; or

(c) if the procurement unit is not a procurement unit described in Subsections (1)(a) or (b), the procurement unit:

(i) obtains the procurement item under the direction and approval of the division, unless otherwise provided by a rule made by the board;

(ii) uses a standard procurement process; and

(iii) complies with:

(A) the requirements of this chapter; and

(B) the rules made pursuant to this chapter by the applicable rulemaking authority.

(2) Subject to Subsection (3), the applicable rulemaking authority shall make rules relating to the management and control of procurements and procurement procedures by a procurement unit.

(3) (a) Rules made under Subsection (2) shall ensure compliance with the federal contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub. L. No. 110-174) that prohibit contracting with a person doing business in Sudan.

(b) The State Building Board rules governing procurement of construction, architect-engineer services, and leases apply to the procurement of construction, architect-engineer services, and leases of real property by the Division of Facilities Construction and Management.

(4) An applicable rulemaking authority that is subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall make the rules described in this chapter in accordance with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(5) The State Building Board shall make a report on or before July 1 of each year to a

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legislative interim committee, designated by the Legislative Management Committee created under Section 36-12-6, on the establishment, implementation, and enforcement of the rules made by the State Building Board under this chapter.

~~{ Section 3. Section 63G-6a-1202 is amended to read:~~

~~63G-6a-1202. Required contract clauses -- Computation of price adjustments --~~
Use of rules and regulations:

~~(1) The rules of the applicable rulemaking authority shall require for state construction contracts, and may permit or require for contracts for supplies and services, the inclusion of clauses providing for adjustments in prices, time of performance, or other appropriate contract provisions, and covering the following subjects:~~

~~(a) the unilateral right of the procurement officer to order in writing changes in the work within the scope of the contract and changes in the time of performance of the contract that do not alter the scope of the contract work;~~

~~(b) variations occurring between estimated quantities of work in a contract and actual quantities;~~

~~(c) suspension of work ordered by the procurement officer; and~~

~~(d) site conditions differing from those indicated in the construction contract, or ordinarily encountered, except that differing site conditions clauses required by the rules need not be included in a construction contract when:~~

~~(i) the contract is negotiated;~~

~~(ii) the contractor provides the site or design; or~~

~~(iii) the parties have otherwise agreed with respect to the risk of differing site conditions.~~

~~(2) Adjustments in price pursuant to clauses described in Subsection (1) shall be computed in one or more of the following ways:~~

~~(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;~~

~~(b) by unit prices specified in the contract or subsequently agreed upon;~~

~~(c) by the costs attributable to the events or situations under the clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;~~

~~(d) in any other manner as the contracting parties may mutually agree; or~~

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~~—— (e) in the absence of agreement by the parties, by a unilateral determination by the procurement officer of the costs attributable to the events or situations under the clauses with adjustment of profit or fee, all as computed by the procurement officer in accordance with applicable rules and subject to the provisions of Part 17, Procurement Appeals Board, and Part 18, Appeals to Court and Court Proceedings.~~

~~—— (3) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 63G-6a-1206.~~

~~—— (4) The rules of the applicable rulemaking authority shall require for construction contracts, and may permit or require for contracts for supplies and services, the inclusion of clauses providing for appropriate remedies and covering at least the following subjects:~~

~~—— (a) liquidated damages as appropriate;~~

~~—— (b) specified excuses for delay or nonperformance;~~

~~—— (c) termination of the contract for default; and~~

~~—— (d) termination of the contract in whole or in part for the convenience of the procurement unit.~~

‡ (5)(6) The rules of the applicable rulemaking authority for the governmental entity shall require, for each contract and request for proposals, the inclusion of a clause that requires the issuing procurement unit, for the duration of the contract, to make available contact information of the winning contractor to the Department of Workforce Services in accordance with Section 35A-2-203. This requirement does not preclude a contractor from advertising job openings in other forums throughout the state.

~~{ —— [(5)] (6) The contract clauses described in this section shall be established by rule.~~

~~However, the procurement officer or the head of an issuing procurement unit may modify the clauses for inclusion in any particular contract. The applicable rulemaking authority may, by rule, require that:~~

~~—— (a) variations be supported by a written determination that describes the circumstances justifying the variations; and~~

~~—— (b) notice of any material variation shall be included in the invitation for bids or request for proposals.~~

~~—— [(6)] (7) A contract for construction entered into by a procurement unit shall contain a clause that addresses the rights of the parties when, after the contract is executed, site~~

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~~conditions are discovered that:~~

~~—— (a) the contractor did not know existed, and should not have known existed, at the time that the contract was executed; and~~

~~—— (b) materially impacts the costs of construction.~~

~~—— Section 4. Section 67-19-15 is amended to read:~~

~~—— **67-19-15. Career service -- Exempt positions -- Schedules for civil service positions -- Coverage of career service provisions:**~~

~~—— (1) Except as otherwise provided by law or by rules and regulations established for federally aided programs, the following positions are exempt from the career service provisions of this chapter and are designated under the following schedules:~~

~~—— (a) schedule AA includes the governor, members of the Legislature, and all other elected state officers;~~

~~—— (b) schedule AB includes appointed executives and board or commission executives enumerated in Section 67-22-2;~~

~~—— (c) schedule AC includes all employees and officers in:~~

~~—— (i) the office and at the residence of the governor;~~

~~—— (ii) the Utah Science Technology and Research Initiative (USTAR);~~

~~—— (iii) the Public Lands Policy Coordinating Council;~~

~~—— (iv) the Office of the State Auditor; and~~

~~—— (v) the Office of the State Treasurer;~~

~~—— (d) schedule AD includes employees who:~~

~~—— (i) are in a confidential relationship to an agency head or commissioner; and~~

~~—— (ii) report directly to, and are supervised by, a department head, commissioner, or deputy director of an agency or its equivalent;~~

~~—— (e) schedule AG includes employees in the Office of the Attorney General who are under their own career service pay plan under Sections 67-5-7 through 67-5-13;~~

~~—— (f) schedule AH includes:~~

~~—— (i) teaching staff of all state institutions; and~~

~~—— (ii) employees of the Utah Schools for the Deaf and the Blind who are:~~

~~—— (A) educational interpreters as classified by the department; or~~

~~—— (B) educators as defined by Section 53A-25b-102;~~

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- ~~—— (g) schedule AN includes employees of the Legislature;~~
- ~~—— (h) schedule AO includes employees of the judiciary;~~
- ~~—— (i) schedule AP includes all judges in the judiciary;~~
- ~~—— (j) schedule AQ includes:~~
 - ~~—— (i) members of state and local boards and councils appointed by the governor and governing bodies of agencies;~~
 - ~~—— (ii) other local officials serving in an ex officio capacity; and~~
 - ~~—— (iii) officers, faculty, and other employees of state universities and other state institutions of higher education;~~
- ~~—— (k) schedule AR includes employees in positions that involve responsibility:~~
 - ~~—— (i) for determining policy;~~
 - ~~—— (ii) for determining the way in which a policy is carried out; or~~
 - ~~—— (iii) of a type not appropriate for career service, as determined by the agency head with the concurrence of the executive director;~~
- ~~—— (l) schedule AS includes any other employee:~~
 - ~~—— (i) whose appointment is required by statute to be career service exempt;~~
 - ~~—— (ii) whose agency is not subject to this chapter; or~~
 - ~~—— (iii) whose agency has authority to make rules regarding the performance, compensation, and bonuses for its employees;~~
- ~~—— (m) schedule AT includes employees of the Department of Technology Services, designated as executive/professional positions by the executive director of the Department of Technology Services with the concurrence of the executive director;~~
- ~~—— (n) schedule AU includes patients and inmates employed in state institutions;~~
- ~~—— (o) employees of the Department of Workforce Services, designated as schedule AW:~~
 - ~~—— (i) who are temporary employees that are federally funded and are required to work under federally qualified merit principles as certified by the director; or~~
 - ~~—— (ii) for whom substantially all of their work is repetitive, measurable, or transaction based, and who voluntarily apply for and are accepted by the Department of Workforce Services to work in a pay for performance program designed by the Department of Workforce Services with the concurrence of the executive director; and~~
 - ~~—— (p) for employees in positions that are temporary, seasonal, time limited, funding~~

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~~limited, or variable hour in nature, under schedule codes and parameters established by the department by administrative rule.~~

~~—— (2) The civil service shall consist of two schedules as follows:~~

~~—— (a) (i) Schedule A is the schedule consisting of positions under Subsection (1).~~

~~—— (ii) Removal from any appointive position under schedule A, unless otherwise regulated by statute, is at the pleasure of the appointing officers without regard to tenure.~~

~~—— (b) Schedule B is the competitive career service schedule, consisting of:~~

~~—— (i) all positions filled through competitive selection procedures as defined by the executive director; or~~

~~—— (ii) positions filled through a department approved on the job examination intended to appoint a qualified person with a disability or a veteran as defined in Section 71-10-1.~~

~~—— (3) (a) The executive director, after consultation with the heads of concerned executive branch departments and agencies and with the approval of the governor, shall allocate positions to the appropriate schedules under this section.~~

~~—— (b) Agency heads shall make requests and obtain approval from the executive director before changing the schedule assignment and tenure rights of any position.~~

~~—— (c) Unless the executive director's decision is reversed by the governor, when the executive director denies an agency's request, the executive director's decision is final.~~

~~—— (4) (a) Compensation for employees of the Legislature shall be established by the directors of the legislative offices in accordance with Section 36-12-7.~~

~~—— (b) Compensation for employees of the judiciary shall be established by the state court administrator in accordance with Section 78A-2-107.~~

~~—— (c) Compensation for officers, faculty, and other employees of state universities and institutions of higher education shall be established as provided in Title 53B, Chapters 1, Governance, Powers, Rights, and Responsibilities, and 2, Institutions of Higher Education.~~

~~—— (d) Unless otherwise provided by law, compensation for all other schedule A employees shall be established by their appointing authorities, within ranges approved by, and after consultation with the executive director of the Department of Human Resource Management.~~

~~—— (5) An employee who is in a position designated schedule AC and who holds career service status on June 30, 2010, shall retain the career service status if the employee:~~

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~~—— (a) remains in the position that the employee is in on June 30, 2010; and~~

~~—— (b) does not elect to convert to career service exempt status in accordance with a rule made by the department.~~

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