

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

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**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:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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



26 [35A-2-203](#), as last amended by Laws of Utah 2011, Chapter 188  
27 [63G-6a-1202](#), as last amended by Laws of Utah 2013, Chapter 445  
28 [67-19-15](#), as last amended by Laws of Utah 2013, Chapter 109

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

31 Section 1. Section [35A-1-102](#) is amended to read:

32 **[35A-1-102. Definitions.](#)**

33 Unless otherwise specified, as used in this title:

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

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

38 (2) "Department" means the Department of Workforce Services created in Section  
39 [35A-1-103](#).

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

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

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

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

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

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

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

56 (8) "Executive director" means the executive director of the department appointed

57 under Section [35A-1-201](#).

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

61 [~~9~~] (10) "Public assistance" means:

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

69 [~~10~~] (11) "SNAP" means the federal "Supplemental Nutrition Assistance Program"  
70 under Title 7, U.S.C. Chapter 51, Supplemental Nutrition Assistance Program, formerly known  
71 as the federal Food Stamp Program.

72 [~~11~~] (12) "SNAP benefit" or "SNAP benefits" means a financial benefit, coupon, or  
73 privilege available under SNAP.

74 [~~12~~] (13) "Stabilization" means addressing the basic living, family care, and social or  
75 psychological needs of the client so that the client may take advantage of training or  
76 employment opportunities provided under this title or through other agencies or institutions.

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

78 **35A-2-203. Employment centers.**

79 (1) In each county within an economic service area, the executive director shall:

- 80 (a) designate the location of one or more employment centers, as defined in Section
- 81 [35A-1-102](#), in which the services are provided by the department; or
- 82 (b) coordinate with the department to establish access to the services provided by the
- 83 department by means other than an employment center.

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

87 (3) The department may make services that are provided through employment centers

88 under this section accessible through electronic linkage.

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

91 (5) (a) A government entity shall post each job vacancy within the government entity  
92 on the department's website.

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

99 (c) A faculty related job vacancy and a job vacancy for a part-time wage related job  
100 typically filled by students at state institutions of higher education as defined in Section  
101 53B-2-1010 are exempt from the requirements of (5)(a).

102 Section 3. Section **63G-6a-1202** is amended to read:

103 **63G-6a-1202. Required contract clauses -- Computation of price adjustments --**  
104 **Use of rules and regulations.**

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

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

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

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

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

118 (i) the contract is negotiated;

119 (ii) the contractor provides the site or design; or  
120 (iii) the parties have otherwise agreed with respect to the risk of differing site  
121 conditions.

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

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

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

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

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

130 (e) in the absence of agreement by the parties, by a unilateral determination by the  
131 procurement officer of the costs attributable to the events or situations under the clauses with  
132 adjustment of profit or fee, all as computed by the procurement officer in accordance with  
133 applicable rules and subject to the provisions of Part 17, Procurement Appeals Board, and Part  
134 18, Appeals to Court and Court Proceedings.

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

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

140 (a) liquidated damages as appropriate;

141 (b) specified excuses for delay or nonperformance;

142 (c) termination of the contract for default; and

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

145 (5) The rules of the applicable rulemaking authority for the governmental entity shall  
146 require, for each contract and request for proposals, the inclusion of a clause that requires the  
147 issuing procurement unit, for the duration of the contract, to make available contact  
148 information of the winning contractor to the Department of Workforce Services in accordance  
149 with Section [35A-2-203](#). This requirement does not preclude a contractor from advertising job

150 openings in other forums throughout the state.

151 [~~(5)~~] (6) The contract clauses described in this section shall be established by rule.

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

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

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

159 [~~(6)~~] (7) A contract for construction entered into by a procurement unit shall contain a  
160 clause that addresses the rights of the parties when, after the contract is executed, site  
161 conditions are discovered that:

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

164 (b) materially impacts the costs of construction.

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

166 **67-19-15. Career service -- Exempt positions -- Schedules for civil service**  
167 **positions -- Coverage of career service provisions.**

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

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

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

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

176 (i) the office and at the residence of the governor;

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

178 (iii) the Public Lands Policy Coordinating Council;

179 (iv) the Office of the State Auditor; and

180 (v) the Office of the State Treasurer;

- 181 (d) schedule AD includes employees who:
- 182 (i) are in a confidential relationship to an agency head or commissioner; and
- 183 (ii) report directly to, and are supervised by, a department head, commissioner, or
- 184 deputy director of an agency or its equivalent;
- 185 (e) schedule AG includes employees in the Office of the Attorney General who are
- 186 under their own career service pay plan under Sections 67-5-7 through 67-5-13;
- 187 (f) schedule AH includes:
- 188 (i) teaching staff of all state institutions; and
- 189 (ii) employees of the Utah Schools for the Deaf and the Blind who are:
- 190 (A) educational interpreters as classified by the department; or
- 191 (B) educators as defined by Section 53A-25b-102;
- 192 (g) schedule AN includes employees of the Legislature;
- 193 (h) schedule AO includes employees of the judiciary;
- 194 (i) schedule AP includes all judges in the judiciary;
- 195 (j) schedule AQ includes:
- 196 (i) members of state and local boards and councils appointed by the governor and
- 197 governing bodies of agencies;
- 198 (ii) other local officials serving in an ex officio capacity; and
- 199 (iii) officers, faculty, and other employees of state universities and other state
- 200 institutions of higher education;
- 201 (k) schedule AR includes employees in positions that involve responsibility:
- 202 (i) for determining policy;
- 203 (ii) for determining the way in which a policy is carried out; or
- 204 (iii) of a type not appropriate for career service, as determined by the agency head with
- 205 the concurrence of the executive director;
- 206 (l) schedule AS includes any other employee:
- 207 (i) whose appointment is required by statute to be career service exempt;
- 208 (ii) whose agency is not subject to this chapter; or
- 209 (iii) whose agency has authority to make rules regarding the performance,
- 210 compensation, and bonuses for its employees;
- 211 (m) schedule AT includes employees of the Department of Technology Services,

212 designated as executive/professional positions by the executive director of the Department of  
213 Technology Services with the concurrence of the executive director;

214 (n) schedule AU includes patients and inmates employed in state institutions;

215 (o) employees of the Department of Workforce Services, designated as schedule AW:

216 (i) who are temporary employees that are federally funded and are required to work  
217 under federally qualified merit principles as certified by the director; or

218 (ii) for whom substantially all of their work is repetitive, measurable, or transaction  
219 based, and who voluntarily apply for and are accepted by the Department of Workforce  
220 Services to work in a pay for performance program designed by the Department of Workforce  
221 Services with the concurrence of the executive director; and

222 (p) for employees in positions that are temporary, seasonal, time limited, funding  
223 limited, or variable hour in nature, under schedule codes and parameters established by the  
224 department by administrative rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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