

HB0175S03 compared with HB0175S02

~~{deleted text}~~ shows text that was in HB0175S02 but was deleted in HB0175S03.

inserted text shows text that was not in HB0175S02 but was inserted into HB0175S03.

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~~{Representative Kraig Powell}~~Senator Kevin T. Van Tassell proposes the following substitute bill:

PUBLIC EDUCATION EMPLOYMENT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kraig Powell

Senate Sponsor: ~~{~~Kevin T. Van Tassell

LONG TITLE

General Description:

This bill amends and enacts provisions related to employment and licensing in the public education system.

Highlighted Provisions:

This bill:

- ▶ repeals provisions requiring a public school to provide or obtain certain information about a public school employee;
- ▶ enacts provisions requiring a school district, charter school, or the Utah Schools for the Deaf and the Blind to solicit information about certain employee applicants and certain volunteers;
- ▶ addresses the career service status of employees of the State Board of Education;

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- ▶ designates employees of the State Board of Education who are exempt from the career service system as schedule AY; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

53A-6-402, as last amended by Laws of Utah 2015, Chapter 311

63I-2-267, as last amended by Laws of Utah 2013, Chapter 278

67-19-15, as last amended by Laws of Utah 2015, Chapter 401

ENACTS:

53A-15-1511, Utah Code Annotated 1953

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

Section 1. Section **53A-6-402** is amended to read:

53A-6-402. Board-required licensing or employment recommendations -- Local public school-required licensing recommendations -- Notice requirements for affected parties -- Exemption from liability.

(1) (a) The board shall provide the appropriate administrator of a public or private school or of an agency outside the state that is responsible for licensing or certifying educational personnel with a recommendation or other information possessed by the board that has significance in evaluating the employment or license of:

- (i) a current or prospective school employee;
 - (ii) an educator or education license holder; or
 - (iii) a license applicant.
- (b) Information supplied under Subsection (1)(a) shall include:
- (i) the complete record of a hearing; and
 - (ii) the investigative report for matters that:
 - (A) the educator has had an opportunity to contest; and

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(B) did not proceed to a hearing.

(2) At the request of the board, an administrator of a public school or school district shall, and an administrator of a private school may, provide the board with a recommendation or other information possessed by the school or school district that has significance in evaluating the [~~employment or licensure of~~]:

(a) [~~a current or prospective school employee~~] license of an educator or education license holder; or

(b) [~~an educator or education license holder; or (c)~~] potential licensure of a license applicant.

(3) [~~If a decision is made~~] If the board decides to deny licensure[~~; to not hire a prospective employee;~~] or to take action against [~~a current employee or educator~~] an educator's license based upon information provided under this section, [~~the affected individual shall receive notice of the information and be given an opportunity to respond to the information;~~] the board shall:

(a) give notice of the information to the educator or license applicant; and

(b) afford the educator or license applicant an opportunity to respond to the information.

[~~(4) A local school board, a charter school governing board, or the Utah Schools for the Deaf and the Blind shall obtain references and a discipline record from prior employers of an individual before hiring the individual to work:~~]

[~~(a) as an educator; or~~]

[~~(b) in a public school, if the individual would have significant unsupervised access to students.~~]

[~~(5)~~] (4) A person who, in good faith, provides a recommendation or discloses or receives information under this section is exempt from civil and criminal liability relating to that recommendation, receipt, or disclosure.

[~~(6) For purposes of this section, "employee" includes a volunteer.~~]

Section 2. Section **53A-15-1511** is enacted to read:

53A-15-1511. Reference check requirements for LEA applicants and volunteers.

(1) As used in this section:

(a) "Child" means an individual who is younger than 18 years old.

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(b) "LEA applicant" means an applicant for employment by an LEA.

(c) "Physical abuse" means the same as that term is defined in Section 78A-6-105.

(d) "Potential volunteer" means an individual who:

(i) has volunteered for but not yet fulfilled an unsupervised volunteer assignment; and

(ii) during the last three years, has worked in a qualifying position.

(e) "Qualifying position" means paid employment that requires the employee to directly care for, supervise, control, or have custody of a child.

(f) "Sexual abuse" means the same as that term is defined in Section 78A-6-105.

(g) "Student" means an individual who:

(i) is enrolled in an LEA in any grade from preschool through grade 12; or

(ii) receives special education services from an LEA under the Individuals with Disabilities Education Act, 20 U.S.C. §§Sec. §§ 1400 et seq.

(h) "Unsupervised volunteer assignment" means a volunteer assignment at an LEA that allows the volunteer significant unsupervised access to a student.

(2) (a) Before hiring an LEA applicant or giving an unsupervised volunteer assignment to a potential volunteer, an LEA shall:

(i) require the LEA applicant or potential volunteer to sign a release authorizing the LEA applicant or potential volunteer's previous qualifying position employers to disclose information regarding any employment action taken or discipline imposed for the physical abuse or sexual abuse of a child or student by the LEA applicant or potential volunteer;

(ii) for an LEA applicant, request that the LEA applicant's most recent qualifying position employer disclose information regarding any employment action taken or discipline imposed for the physical abuse or sexual abuse of a child or student by the LEA applicant;

(iii) for a potential volunteer, request that the potential volunteer's most recent qualifying position employer disclose information regarding any employment action taken or discipline imposed for the physical abuse or sexual abuse of a child or student by the potential volunteer; and

(iv) document the efforts taken to make a request described in Subsection (2)(a)(ii) or (iii).

(b) An LEA may not hire an LEA applicant who does not sign a release described in Subsection (2)(a)(i).

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(c) An LEA may not give an unsupervised volunteer assignment to a potential volunteer who does not sign a release described in Subsection (2)(a)(i).

(d) An LEA shall use the LEA's best efforts to request information under Subsection (2)(a)(ii) or (iii) before:

(i) hiring an LEA applicant; or

(ii) giving an unsupervised volunteer assignment to a potential volunteer.

(e) In accordance with state and federal law, an LEA may request from an LEA applicant or potential volunteer other information the LEA determines is relevant.

(3) (a) An LEA that receives a request described in Subsection (2)(a)(ii) or (iii) shall use the LEA's best efforts to respond to the request within 20 business days after the day on which the LEA received the request.

(b) If an LEA or other employer in good faith discloses information that is within the scope of a request described in Subsection (2)(a)(ii) or (iii), the LEA or other employer is immune from civil and criminal liability for the disclosure.

Section 3. Section **63I-2-267** is amended to read:

63I-2-267. Repeal dates -- Title 67.

Subsection 67-19-15(1)(q)(iii) is repealed on October 1, 2016.

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;

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- (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;
- (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) a water commissioner appointed under Section 73-5-1;
 - (iii) other local officials serving in an ex officio capacity; and
 - (iv) 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

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(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 limited, or variable hour in nature, under schedule codes and parameters established by the department by administrative rule[-]; and

(q) schedule AY includes each employee of the State Board of Education who:

(i) is exempt from the career service provisions of this chapter;

(ii) is not in a position designated as schedule AH; and

(iii) is not an employee of the State Office of Rehabilitation.

(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

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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, Chapter 1, Governance, Powers, Rights, and Responsibilities, and Title 53B, Chapter 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:

(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.

(6) An employee who is in a position designated as schedule AY and holds career service status on June 30, 2016, shall retain the career service status if the employee does not elect to convert to career service exempt status in accordance with rules made by the State Board of Education.

Section 5. **Effective date.**

This bill takes effect on July 1, 2016.