

# HB0400S01 compared with HB0400

~~text~~ shows text that was in HB0400 but was deleted in HB0400S01.

inserted text shows text that was not in HB0400 but was inserted into HB0400S01.

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Representative Val L. Peterson proposes the following substitute bill:

## NATIONAL GUARD TRAINING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Val L. Peterson**

Senate Sponsor: \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill modifies provisions related to public ~~officers and employees in military service~~ officials who are deployed.

#### Highlighted Provisions:

This bill:

- ▶ ~~defines "active military service" for a public employee, public officer, or legislative employee~~ sets out the requirements for a public official who is deployed with the armed forces.

#### Money Appropriated in this Bill:

None

#### Other Special Clauses:

None

## HB0400S01 compared with HB0400

### Utah Code Sections Affected:

AMENDS:

~~{39-3-1}~~ 20A-1-513, as ~~{repealed and reenacted}~~ last amended by Laws of Utah  
~~{1991}~~ 2019, Chapter ~~{65}~~ 255

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

Section 1. Section 20A-1-513 is amended to read:

**20A-1-513. Temporary absence in elected office of a political subdivision for military service.**

(1) As used in this section:

(a) "Armed forces" means:

(i) the Army of the United States;

(ii) the United States Navy;

(iii) the United States Air Force;

(iv) the Marine Corps;

(v) the Coast Guard;

(vi) the National Guard; or

(vii) a reserve or auxiliary of an entity listed in Subsections (1)(a)(i) through (vi).

(b) (i) "Elected official" is a person who holds an office of a political subdivision that is required by law to be filled by an election.

(ii) "Elected official" includes a person who is appointed to fill a vacancy in an office described in Subsection (1)(b)(i).

(c) (i) "Military leave" means the temporary absence from an office:

(A) by an elected official called to active, full-time duty in the armed forces; and

(B) for a period of time that exceeds 30 days and does not exceed 400 days.

(ii) "Military leave" includes the time a person described in Subsection (1)(c)(i) spends for:

(A) out processing;

(B) an administrative delay;

(C) accrued leave; and

(D) on rest and recuperation leave program of the armed forces.

## HB0400S01 compared with HB0400

(d) "Political subdivision's governing body" means:

(i) for a county, city, or town, the legislative body of the county, city, or town;

(ii) for a local district, the board of trustees of the local district;

(iii) for a local school district, the local school board;

(iv) for a special service district:

(A) the legislative body of the county, city, or town that established the special service district, if no administrative control board has been appointed under Section 17D-1-301; or

(B) the administrative control board of the special service district, if an administrative control board has been appointed under Section 17D-1-301; and

(v) for a political subdivision not listed in Subsections (1)(d)(i) through (iv), the body that governs the affairs of the political subdivision.

(e) "Temporary replacement" means the person appointed by the political subdivision's governing body in accordance with this section to exercise the powers and duties of the office of the elected official who takes military leave.

(2) An elected official creates a vacancy in the elected official's office if the elected official is called to active, full-time duty in the armed forces in accordance with Title 10, U.S.C.A. unless the elected official takes military leave as provided by this section.

(3) (a) An elected official who is called to active, full-time duty in the armed forces in a status other than in accordance with Title 10, U.S.C.A. shall notify the political subdivision's governing body of the elected official's orders not later than five days after receipt of orders.

(b) The elected official described in Subsection (3)(a) may:

(i) continue to carry out the official's duties if possible while on active, full-time duty;

or

(ii) take military leave if the elected official submits to the political subdivision's governing body written notice of the intent to take military leave and the expected duration of the military leave~~[, by the later of: ]~~

~~[ (a) 21 days before the military leave begins; or ]~~

~~[ (b) the next business day after which the elected official receives an order from the armed forces calling the elected official to active, full-time duty. ]~~

~~(4) ]~~

(4) (a) An elected official who chooses to continue to carry out the official's duties

## HB0400S01 compared with HB0400

while on active, full-time duty shall, within 10 days after arrival at the official's place of deployment, confirm in writing to the political subdivision's governing body that the official has the ability to carry out the official's duties.

(b) If no confirmation is received by the political subdivision within the time period described in Subsection (4)(a), the elected official shall be placed in a military leave status and a temporary replacement appointed in accordance with Subsection (6).

~~[(4)] (5)~~ An elected official's military leave:

(a) begins the later of:

(i) the day after the day on which the elected official notifies the political subdivision's governing body of the intent to take military leave;

(ii) day 11 after the elected official's deployment if no confirmation is received in accordance with Subsection (4)(a); or

(ii) the day on which the elected official begins active, full-time duty in the armed forces; and

(b) ends the sooner of:

(i) the expiration of the elected official's term of office; or

(ii) the day on which the elected official ends active, full-time duty in the armed forces.

~~[(5)] (6)~~ A temporary replacement shall:

(a) meet the qualifications required to hold the office; and

(b) be appointed:

~~[(i) before the day on which the military leave begins; and]~~

~~[(ii)(A)] (i)~~ in the same manner as provided by this part for a midterm vacancy if a registered political party nominated the elected official who takes military leave as a candidate for the office; or

~~[(B)] (ii)~~ by the political subdivision's governing body after submitting an application in accordance with Subsection ~~[(7)] (8)~~(b) if a registered political party did not nominate the elected official who takes military leave as a candidate for office.

~~[(6)] (7)~~ (a) A temporary replacement shall exercise the powers and duties of the office for which the temporary replacement is appointed for the duration of the elected official's military leave.

(b) An elected official may not exercise the powers or duties of the office while on

## HB0400S01 compared with HB0400

military leave.

(c) If a temporary replacement is not appointed ~~[before the day on which the military leave begins]~~ as required by Subsection ~~[(5)(b)(i)]~~ [(6)(b)], no person may exercise the powers and duties of the elected official's office during the elected official's military leave.

~~[(7)]~~ [(8)] The political subdivision's governing body shall establish:

(a) the distribution of the emoluments of the office between the elected official and the temporary replacement; and

(b) an application form and the date and time before which a person shall submit the application to be considered by the political subdivision's governing body for appointment as a temporary replacement.

~~{~~ ~~Section 1. Section 39-3-1 is amended to read:~~

~~39-3-1. Public officers and employees in military service -- Not to be prejudiced thereby -- Refusal to reinstate -- Procedure -- Motion -- Hearing and determination.~~

~~(1) As used in this section:~~

~~(a) "Active military service" means full-time duty performed by a member of the Utah National Guard.~~

~~(b) "Active military service" includes:~~

~~(i) temporary duty assignments;~~

~~(ii) attendance at military occupational specialty schools, Air Force specialty schools, and basic branch schools;~~

~~(iii) professional military education; and~~

~~(iv) other assignments determined necessary by the Adjutant General.~~

~~[(1)] (2) A public employee, public officer, or legislative employee, as defined in Section 67-16-3, who enters active military service in any branch of the armed forces of this state or of the United States shall be granted a leave of absence during that service.~~

~~[(2)] (3) (a) A person entitled to a leave of absence under this section shall be restored to the same position, or to a position equivalent to the same position, which the person held immediately prior to the commencement of active military service.~~

~~(b) A request for restoration of employment under this section must be submitted within 40 days after release from active military service.~~

~~(c) Restoration of employment shall be made within 20 days after submission of the~~

## HB0400S01 compared with HB0400

request to the employer:

~~—— (d) A person returning from active military service may not, without cause, be discharged or subjected to reduction of compensation for a period of one year following a return to employment under this section.~~

~~—— [(3)] (4) A person returning to employment under this section:~~

~~—— (a) shall retain all personal, sick, and other leave to which the person was entitled immediately prior to the commencement of active military service;~~

~~—— (b) shall receive and earn benefits and compensation at a level not less than that to which the person would have been entitled had the officer or employee not been absent due to active military service; and~~

~~—— (c) may not be prejudiced, by the preservice employer or that employer's successor in interest, as to employment, appointment, reappointment, reemployment, or promotion by reason of the employee's active military service.~~

~~—— [(4)] (5) (a) No public employee, public officer, or legislative employee may be required to resign from, vacate, or forfeit a governmental office or position as a consequence of entering into active military service.~~

~~—— (b) A person in active military service is not considered to be holding an office or position of trust or employment under the United States government for purposes of determining whether that person is disqualified or prohibited from retaining a position or serving as a public employee, public officer, or legislative employee.~~

~~—— (c) Nothing in this section shall serve to extend a period of employment or term of office beyond that to which the affected person was elected or appointed. A person who is a legislator or public officer for a specific term by virtue of election or appointment is entitled to a leave of absence under this section for a period not to exceed the applicable term.~~

~~—— [(5)] (6) A person denied restoration of employment or benefits given under this section may petition the district court of the county in which the person resides, or in which the denial occurs, to require the public employer to comply with the provisions of this section without delay. Fees or court costs may not be assessed against the petitioner. The court shall order a speedy hearing in the case and advance it on the calendar so far as reasonably possible. If the court determines that the petitioner is entitled to relief, the court shall order all appropriate relief, to include compensation for loss of wages and benefits and an award of~~

## HB0400S01 compared with HB0400

~~attorneys' fees and costs.~~

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