

Representative Kera Birkeland proposes the following substitute bill:

INTERSCHOLASTIC STUDENT ATHLETICS PARTICIPATION

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill addresses student athlete participation in gender-designated sports in the public education system.

Highlighted Provisions:

This bill:

- defines terms;
- conditions student athlete participation in gender-designated sports in the public education system on the student's unamended birth certificate;
- imposes a hormone treatment requirement for a student athlete whose birth certificate is amended to reflect a male-to-female transition;
- requires a female student on testosterone therapy for a female-to-male transition to participate in male-designated sports;
- allows a female student to participate in male-designated sports when a female-designated equivalent is not available; and
- provides for severability.

Money Appropriated in this Bill:

None

Other Special Clauses:



None

Utah Code Sections Affected:

AMENDS:

52-4-205, as last amended by Laws of Utah 2021, Chapters 179 and 231

ENACTS:

53G-6-901, Utah Code Annotated 1953

53G-6-902, Utah Code Annotated 1953

53G-6-903, Utah Code Annotated 1953

53G-6-904, Utah Code Annotated 1953

53G-6-905, Utah Code Annotated 1953

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

Section 1. Section **52-4-205** is amended to read:

52-4-205. Purposes of closed meetings -- Certain issues prohibited in closed meetings.

(1) A closed meeting described under Section **52-4-204** may only be held for:

(a) except as provided in Subsection (3), discussion of the character, professional competence, or physical or mental health of an individual;

(b) strategy sessions to discuss collective bargaining;

(c) strategy sessions to discuss pending or reasonably imminent litigation;

(d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, if public discussion of the transaction would:

(i) disclose the appraisal or estimated value of the property under consideration; or

(ii) prevent the public body from completing the transaction on the best possible terms;

(e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares, if:

(i) public discussion of the transaction would:

(A) disclose the appraisal or estimated value of the property under consideration; or

(B) prevent the public body from completing the transaction on the best possible terms;

(ii) the public body previously gave public notice that the property would be offered for

57 sale; and

58 (iii) the terms of the sale are publicly disclosed before the public body approves the
59 sale;

60 (f) discussion regarding deployment of security personnel, devices, or systems;

61 (g) investigative proceedings regarding allegations of criminal misconduct;

62 (h) as relates to the Independent Legislative Ethics Commission, conducting business
63 relating to the receipt or review of ethics complaints;

64 (i) as relates to an ethics committee of the Legislature, a purpose permitted under
65 Subsection 52-4-204(1)(a)(iii)(C);

66 (j) as relates to the Independent Executive Branch Ethics Commission created in
67 Section 63A-14-202, conducting business relating to an ethics complaint;

68 (k) as relates to a county legislative body, discussing commercial information as
69 defined in Section 59-1-404;

70 (l) as relates to the Utah Higher Education Assistance Authority and its appointed
71 board of directors, discussing fiduciary or commercial information as defined in Section
72 53B-12-102;

73 (m) deliberations, not including any information gathering activities, of a public body
74 acting in the capacity of:

75 (i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code,
76 during the process of evaluating responses to a solicitation, as defined in Section 63G-6a-103;

77 (ii) a protest officer, defined in Section 63G-6a-103, during the process of making a
78 decision on a protest under Title 63G, Chapter 6a, Part 16, Protests; or

79 (iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement
80 Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17,
81 Procurement Appeals Board;

82 (n) the purpose of considering information that is designated as a trade secret, as
83 defined in Section 13-24-2, if the public body's consideration of the information is necessary in
84 order to properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;

85 (o) the purpose of discussing information provided to the public body during the
86 procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of
87 the meeting:

(i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be disclosed to a member of the public or to a participant in the procurement process; and

(ii) the public body needs to review or discuss the information in order to properly fulfill its role and responsibilities in the procurement process;

(p) as relates to the governing board of a governmental nonprofit corporation, as that term is defined in Section 11-13a-102, the purpose of discussing information that is designated as a trade secret, as that term is defined in Section 13-24-2, if:

(i) public knowledge of the discussion would reasonably be expected to result in injury to the owner of the trade secret; and

(ii) discussion of the information is necessary for the governing board to properly discharge the board's duties and conduct the board's business; or

(q) a purpose for which a meeting is required to be closed under Subsection (2).

(2) The following meetings shall be closed:

(a) a meeting of the Health and Human Services Interim Committee to review a report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4);

(b) a meeting of the Child Welfare Legislative Oversight Panel to:

(i) review a report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4); or

(ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5);

(c) a meeting of the Opioid and Overdose Fatality Review Committee, created in Section 26-7-13, to review and discuss an individual case, as described in Subsection 26-7-13(10);

(d) a meeting of a conservation district as defined in Section 17D-3-102 for the purpose of advising the Natural Resource Conservation Service of the United States Department of Agriculture on a farm improvement project if the discussed information is protected information under federal law;

(e) a meeting of the Compassionate Use Board established in Section 26-61a-105 for the purpose of reviewing petitions for a medical cannabis card in accordance with Section 26-61a-105; [and]

(f) a meeting of the Colorado River Authority of Utah if:

(i) the purpose of the meeting is to discuss an interstate claim to the use of the water in the Colorado River system; and

(ii) failing to close the meeting would:

(A) reveal the contents of a record classified as protected under Subsection [63G-2-305](#)(82);

(B) reveal a legal strategy relating to the state's claim to the use of the water in the Colorado River system;

(C) harm the ability of the Colorado River Authority of Utah or river commissioner to negotiate the best terms and conditions regarding the use of water in the Colorado River system; or

(D) give an advantage to another state or to the federal government in negotiations regarding the use of water in the Colorado River system[-]; and

(g) a meeting of the School Activity Eligibility Commission, described in Section [53G-6-902](#), to consider, discuss, or determine, in accordance with Section [53G-6-903](#), an individual student's eligibility to participate in an interscholastic activity, as that term is defined in Section [53G-6-901](#).

(3) In a closed meeting, a public body may not:

(a) interview a person applying to fill an elected position;

(b) discuss filling a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office; or

(c) discuss the character, professional competence, or physical or mental health of the person whose name was submitted for consideration to fill a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office.

Section 2. Section **53G-6-901** is enacted to read:

53G-6-901. Definitions.

As used in this part:

(1) "Athletic association" means an association, as that term is defined in Section [53G-7-11](#).

(2) "Commission" means the School Activity Eligibility Commission created in

Section [53G-6-902](#).

(3) "Female-designated" means that an interscholastic activity is designated specifically for female students.

(4) "Gender-designated" means that an interscholastic activity or facility is designated specifically for female or male students.

(5) "Gender identity" means the same as that term is defined in Section [34A-5-101](#).

(6) "Interscholastic activity" means an activity in which a student represents the student's school in the activity in competition against another school.

(7) "Male-designated" means that an interscholastic activity is designated specifically for male students.

(8) "Student" means a student who is enrolled in a public school that participates in interscholastic activities.

Section 3. Section **53G-6-902** is enacted to read:

53G-6-902. School Activity Eligibility Commission -- Baseline range.

(1) There is created the School Activity Eligibility Commission.

(2) (a) The commission shall consist of the following members:

(i) the following two members whom the president of the Senate appoints:

(A) a mental health professional; and

(B) a statistician with expertise in the analysis of medical data;

(ii) the following two members whom the speaker of the House of Representatives appoints:

(A) a board-certified physician with expertise in the treatment of transgender youth;
and

(B) a sports physiologist;

(iii) the following two members whom the governor appoints:

(A) a representative of an athletic association; and

(B) an athletic trainer who serves student athletes on the collegiate level; and

(iv) one ad hoc member, serving on a case-by-case basis, who is:

(A) appointed by the athletic association in which the relevant student's school competes; and

(B) a certified high school coach or official who coaches or officiates in a separate

181 region or classification from the relevant student's school and in the sport in which the relevant
182 student seeks eligibility.

183 (b) An athletic association may prepare and communicate the association's
184 sport-specific appointments described in Subsection (2)(a)(iv) in preparation for student
185 requests in a given sport.

186 (3) (a) A member of the commission described in Subsections (2)(a)(i) through (iii)
187 shall serve an initial term of one year, subject to reappointment for subsequent terms of two
188 years.

189 (b) If a vacancy occurs in the membership of the commission, the individual
190 responsible for the appointment of the vacant seat as described in Subsection (2) shall fill the
191 vacancy in the same manner as the original appointment.

192 (4) (a) A majority of the commission constitutes a quorum of the commission.

193 (b) An action of a majority of a quorum constitutes an action of the commission.

194 (5) A majority of the commission members described in Subsections (2)(a)(i) through
195 (iii) shall elect a chair from among the members described in Subsections (2)(a)(i) through (iii)
196 to:

197 (a) schedule meetings of the commission;

198 (b) set the agenda of commission meetings; and

199 (c) facilitate discussion among the commission's members.

200 (6) A commission member:

201 (a) may not receive compensation or benefits for the member's service on the
202 commission; and

203 (b) may receive per diem and reimbursement for travel expenses that the commission
204 member incurs as a commission member at the rates that the Division of Finance establishes
205 under:

206 (i) Sections [63A-3-106](#) and [63A-3-107](#); and

207 (ii) rules that the Division of Finance makes under Sections [63A-3-106](#) and [63A-3-107](#).

208 (7) The commission may enter into an agreement with an athletic association to
209 provide staff support to the commission.

210 (8) (a) The commission shall establish a baseline range for students participating in a
211 specific gender-designated activity at a specific age to provide the context for the evaluation of

an individual student's eligibility under Section [53G-6-903](#).

(b) In creating the baseline ranges described in Subsection (8)(a), the commission shall include physical characteristics for the age and gender group in a given gender-designated sport, which may include height, weight, muscle mass, bone density, flexibility, wingspan, hip-to-knee ratio, stride, oxygen saturation, or the extent of physical characteristics affected by puberty.

(9) Any record of the commission, including any communication between an athletic association and the commission, that relates to a specific student shall be classified as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(10) Members of the commission are immune from suit with respect to all acts done and actions taken in good faith in carrying out the purposes of this part.

(11) The commission has no authority in relation to eligibility questions other than participation in a gender-designated interscholastic activity under this part.

Section 4. Section **53G-6-903** is enacted to read:

53G-6-903. Eligibility for interscholastic activities.

(1) (a) Notwithstanding any state board rule or policy of an athletic association, and except as provided in Subsection (1)(b):

(i) once a student has obtained the eligibility approval of the commission under Subsection (2), the student may participate in a gender-designated interscholastic activity that does not correspond with the sex designation on the student's unamended birth certificate; and

(ii) if a student does not obtain the eligibility approval of the commission under Subsection (2), the student may not participate in a gender-designated interscholastic activity that does not correspond with the sex designation on the student's unamended birth certificate.

(b) Nothing in this subsection prohibits a student from participating in a gender-designated interscholastic activity in accordance with 34 C.F.R. Sec. 106.41(b).

(2) (a) When registering a student to participate in an interscholastic activity, an athletic association shall notify:

(i) the commission of:

(A) a student for whom an eligibility determination of the commission is required due to the sex designation on the student's unamended birth certificate not corresponding with the

gender designation of the gender-designated interscholastic activity in which the student seeks to participate; and

(B) the association's ad hoc appointment to the commission described in Subsection 53G-6-902(2)(a)(iv); and

(ii) the student described in Subsection (2)(a) regarding the process for determining the student's eligibility for the activity under this section.

(b) The commission shall:

(i) schedule a closed meeting to consider a student's eligibility to be held within 30 days after the day on which the commission receives the notification described in Subsection (2)(a); and

(ii) notify the relevant athletic association and the student's parents or legal guardians of the scheduled meeting.

(c) Before the meeting described in Subsection (2)(b):

(i) the student for whom the commission has scheduled the meeting or the student's parent or guardian is not required but may submit to the commission any information the student wishes to disclose to the commission that may be relevant to the commission's eligibility determination, including information regarding:

(A) the gender-designated interscholastic activities for which the student seeks eligibility;

(B) the gender-designated interscholastic activities in which the student has previously participated; and

(C) the student's physical characteristics or medical treatments that support the student's eligibility; and

(ii) the commission may request additional evidence from the student that is:

(A) limited to the extent possible to protect the student's privacy; and

(B) only directly relevant to the commission's eligibility determination.

(d) During the meeting described in Subsection (2)(b):

(i) only the following individuals may be present or participate electronically:

(A) the student for whom the commission is meeting to make an eligibility determination;

(B) the student's parents or guardians;

274 (C) the members and necessary staff of the commission; and
275 (D) any medical professionals or other witnesses the student chooses to include to
276 support the student's eligibility;
277 (ii) attendees may participate in person or electronically; and
278 (iii) the commission shall:
279 (A) hear the information that supports the student's eligibility;
280 (B) deliberate the facts relevant to the student's physical characteristics and eligibility
281 in camera or otherwise after temporarily excusing from the meeting the student, the student's
282 parents or legal guardians, and any medical professionals or other witnesses whom the student
283 includes; and
284 (C) render the commission's eligibility determination in accordance with Subsection
285 (3) or request additional information and schedule an additional commission meeting to be held
286 within 30 days of the meeting and in accordance with this Subsection (2)(d) to discuss the
287 additional information and render the commission's eligibility determination.
288 (3) In making an eligibility determination, the commission, after considering whether
289 the student's assertion of a gender identity is consistent with the statutory definition of gender
290 identity under this part, including through medical history, care, or treatment of the gender
291 identity, consistent and uniform assertion of the gender identity, and other evidence that the
292 gender identity is sincerely held, and after considering the importance to the student's mental
293 health of participating in the gender-designated interscholastic activity, part of the student's
294 core identity, and not being asserted for an improper purpose, shall:
295 (a) make a determination regarding whether granting the student's eligibility would:
296 (i) present a substantial safety risk to the student or others that is significantly greater
297 than the inherent risks of the given activity; or
298 (ii) likely give the student a material competitive advantage when compared to students
299 of the same age competing in the relevant gender-designated activity, including consideration
300 of the student's previous history of participation in gender-designated interscholastic activities;
301 and
302 (b) record the commission's decision and rationale in writing within 30 days after the
303 day on which the commission renders an eligibility decision under Subsection (3)(a) in a
304 meeting described in Subsection (2)(b).

Section 5. Section **53G-6-904** is enacted to read:

53G-6-904. Reasonable accommodations.

Nothing in this part prohibits an athletic association, LEA, or school from adopting reasonable rules and policies that designate facilities, including restrooms, shower facilities, and dressing facilities, provided that the rules and policies described in this section afford reasonable accommodations based on gender identity to all students.

Section 6. Section **53G-6-905** is enacted to read:

53G-6-905. Severability.

(1) If any provision of this part or the application of any provision of this part to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of this part shall be given effect without the invalidated provision or application.

(2) The provisions of this part are severable.