

HB0195S02 compared with HB0195S01

~~text~~ shows text that was in HB0195S01 but was deleted in HB0195S02.

text shows text that was not in HB0195S01 but was inserted into HB0195S02.

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Representative Kera Birkeland proposes the following substitute bill:

CRIMINAL INVESTIGATIONS OF SCHOOL EMPLOYEES

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: _____

LONG TITLE

General Description:

This bill requires certain administrative leave for school employees who are the subject of a criminal investigation.

Highlighted Provisions:

This bill:

- ▶ requires paid administrative leave ~~at a portion of regular salary~~ for a school employee who is the subject of a criminal investigation;
- ▶ if the criminal investigation substantiates wrongdoing, requires:
 - the local school board to take further employment action; and
 - the employee to pay back all salary compensation that the employee received during the leave period;

~~if the criminal investigation does not substantiate wrongdoing, requires the local~~

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~~education agency to return to work with back pay;~~ and

~~{+}~~ ~~≡~~ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

53G-11-202, as renumbered and amended by Laws of Utah 2018, Chapter 3

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

Section 1. Section **53G-11-202** is amended to read:

53G-11-202. Employment of school personnel -- Length of contract --

Termination for cause -- Individual contract of employment -- Employee acknowledgment of liability protection -- Leave pending criminal investigation.

(1) A local school board may enter into a written employment contract for a term not to exceed five years.

(2) Nothing in the terms of the contract shall restrict the power of a local school board to terminate the contract for cause at any time.

(3) (a) A local school board may not enter into a collective bargaining agreement that prohibits or limits individual contracts of employment.

(b) Subsection (3)(a) does not apply to an agreement that was entered into before May 5, 2003.

(4) Each local school board shall:

(a) ensure that each employment contract complies with the requirements of Section 34-32-1.1;

(b) comply with the requirements of Section 34-32-1.1 in employing any personnel, whether by employment contract or otherwise; and

(c) ensure that at the time an employee enters into an employment contract, the employee shall sign a separate document acknowledging that the employee:

(i) has received:

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(A) the disclosure required under Subsection 63A-4-204(4)(d) if the school district participates in the Risk Management Fund; or

(B) written disclosure similar to the disclosure required under Section 63A-4-204 if the school district does not participate in the Risk Management Fund; and

(ii) understands the legal liability protection provided to the employee and what is not covered, as explained in the disclosure.

(5) If a local school board has actual or constructive knowledge that an employee is the subject of an ongoing criminal investigation of crime related to an offense against a minor described in Subsection 30-5a-103(10):

(a) the local school board shall place the employee on paid administrative leave ~~at 50%~~, while maintaining the confidentiality of the ~~employee's salary~~ reason for the leave, until the local school board alters the employment circumstances as described in Subsection (5)(b) or (c):

(b) the local school board shall:

~~(i) provide the employee the opportunity to return to regular work if the investigation:~~

~~(A) i) concludes without leading to criminal charges; ~~and~~ or~~

~~(B) ii) does not ~~substantiate wrongdoing on~~ result in the ~~part~~ conviction of the employee; and~~

~~(ii) pay the 50% of the salary that the local school board withheld during the administrative leave period under Subsection (5)(a):~~

~~(c) if the investigation ~~substantiates wrongdoing on~~ results in the ~~part~~ conviction of the employee ~~or leads to criminal charges~~:~~

(i) the local school board shall take further employment action in response to the ~~substantiated wrongdoing or criminal charges~~ conviction, including leave without pay or termination; and

(ii) the employee shall pay back all salary compensation that the employee received during the paid administrative leave period described in Subsection (5)(a).

(d) (i) Nothing in this section restricts the power of a local school board to take employment action against the employee beyond the action described in this Subsection (5) while the employee is under criminal investigation, regardless of whether the employment action is related to the basis for the criminal investigation, including termination for cause

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based on:

(A) a violation of work policies;

(B) a violation of local school board policies, state board rule, or law;

(C) a violation of standards of ethical, moral, or professional conduct; or

(D) insubordination.

(ii) If the local school board determines that the actions of the employee justify termination for cause, the local school board may terminate the employee and cease paid leave upon the termination.

Section 2. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.