

Senator Kathleen Riebe proposes the following substitute bill:

EDUCATION AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kathleen Riebe

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions regarding requirements on the Utah State Board of Education and programs that the Utah State Board of Education administers.

Highlighted Provisions:

This bill:

- defines terms;
- removes language requiring a teacher to submit an annual application for a salary supplement;
- removes a requirement in the Educational Improvement Opportunities Outside of the Regular School Day Grant Program that matching funds be private;
- amends a definition regarding a waiver of immunity related to sexual battery and sexual assault against a student under certain conditions; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



AMENDS:

53E-4-401, as enacted by Laws of Utah 2018, Chapter 1

53F-2-504, as last amended by Laws of Utah 2019, Chapters 134, 186, and 283

53F-5-210, as last amended by Laws of Utah 2019, Chapter 186

63G-7-301, as last amended by Laws of Utah 2019, Chapters 229 and 248

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

Section 1. Section **53E-4-401** is amended to read:

53E-4-401. Definitions.

As used in this part, "instructional materials" means textbooks or materials used as, or in place of, textbooks and which may be used within the state curriculum framework for courses of study by students in public schools [~~to include~~], including:

- (1) textbooks;
- (2) workbooks;
- (3) computer software;
- (4) [~~laser discs or videodiscs~~] online or Internet courses; and
- (5) [~~multiple forms of communications~~] audio and video media.

Section 2. Section **53F-2-504** is amended to read:

53F-2-504. Teacher Salary Supplement Program.

(1) As used in this section:

(a) "Eligible teacher" means a teacher who:

- (i) has a qualifying educational background or qualifying teaching background;
- (ii) has a supplement-approved assignment that corresponds to the teacher's qualifying

educational background or qualifying teaching background;

(iii) qualifies for the teacher's supplement-approved assignment in accordance with state board rule; and

(iv) is a new employee or received at least a satisfactory rating on the teacher's most recent evaluation.

(b) "Field of computer science" means:

- (i) computer science; or
- (ii) computer information technology.

- 57 (c) "Field of science" means:
- 58 (i) integrated science;
- 59 (ii) chemistry;
- 60 (iii) physics;
- 61 (iv) physical science; or
- 62 (v) general science.
- 63 (d) "License" means the same as that term is defined in Section [53E-6-102](#).
- 64 (e) "Qualifying educational background" means:
- 65 (i) for a teacher who is assigned a secondary school level mathematics course:
- 66 (A) a bachelor's degree major, master's degree, or doctoral degree in mathematics; or
- 67 (B) a bachelor's degree major, master's degree, or doctoral degree that has course
- 68 requirements that are substantially equivalent to the course requirements for a bachelor's degree
- 69 major, master's degree, or doctoral degree in mathematics;
- 70 (ii) for a teacher who is assigned a grade 7 or 8 integrated science course, chemistry
- 71 course, or physics course:
- 72 (A) a bachelor's degree major, master's degree, or doctoral degree in a field of science;
- 73 or
- 74 (B) a bachelor's degree major, master's degree, or doctoral degree that has course
- 75 requirements that are substantially equivalent to the course requirements of those required for a
- 76 bachelor's degree major, master's degree, or doctoral degree in a field of science;
- 77 (iii) for a teacher who is assigned a computer science course:
- 78 (A) a bachelor's degree major, master's degree, or doctoral degree in a field of
- 79 computer science; or
- 80 (B) a bachelor's degree major, master's degree, or doctoral degree that has course
- 81 requirements that are substantially equivalent to the course requirements of those required for a
- 82 bachelor's degree major, master's degree, or doctoral degree in a field of computer science; or
- 83 (iv) for a teacher who is assigned to teach special education, a bachelor's degree major,
- 84 master's degree, or doctoral degree in special education.
- 85 (f) "Qualifying teaching background" means the teacher has been teaching the same
- 86 supplement-approved assignment in Utah public schools for at least 10 years.
- 87 (g) "Supplement-approved assignment" means an assignment to teach:

88 (i) a secondary school level mathematics course;
89 (ii) integrated science in grade 7 or 8;
90 (iii) chemistry;
91 (iv) physics;
92 (v) computer science; or
93 (vi) special education.

94 (2) (a) Subject to future budget constraints, the Legislature shall:

95 (i) annually appropriate money to the Teacher Salary Supplement Program to maintain
96 annual salary supplements for eligible teachers provided in previous years; and
97 (ii) provide salary supplements to new recipients.

98 (b) Money appropriated for the Teacher Salary Supplement Program shall include
99 money for the following employer-paid benefits:

100 (i) retirement;
101 (ii) workers' compensation;
102 (iii) Social Security; and
103 (iv) Medicare.

104 (3) (a) The annual salary supplement for an eligible teacher who is assigned full-time
105 to a supplement-approved assignment is \$4,100 and funded through an appropriation described
106 in Subsection (2).

107 (b) An eligible teacher who is assigned part-time to a supplement-approved assignment
108 shall receive a partial salary supplement based on the number of hours worked in the
109 supplement-approved assignment.

110 (4) The state board shall:

111 (a) create an online application system for a teacher to apply to receive a salary
112 supplement through the Teacher Salary Supplement Program;

113 (b) determine if a teacher is an eligible teacher;

114 (c) verify, as needed, the determinations made under Subsection (4)(b) with school
115 district and school administrators; and

116 (d) certify a list of eligible teachers.

117 (5) (a) An eligible teacher shall apply to the state board ~~[before the conclusion of a~~
118 ~~school year]~~, as provided by the board, to receive the salary supplement authorized in this

section.

(b) An eligible teacher may [~~apply to the state board~~], after verification that the requirements under this section have been satisfied, [~~to~~] receive a salary supplement after the completion of:

(i) the school year as an annual award; or

(ii) a semester or trimester as a partial award based on the portion of the school year that has been completed.

(6) (a) The state board shall establish and administer an appeal process for a teacher to follow if the teacher applies for a salary supplement and does not receive a salary supplement under Subsection (8).

(b) (i) The appeal process established in Subsection (6)(a) shall allow a teacher to appeal eligibility as an eligible teacher with a qualifying educational background on the basis that the teacher has a degree or degree major with course requirements that are substantially equivalent to the qualifying educational background associated with the teacher's supplement-approved assignment.

(ii) A teacher shall provide transcripts and other documentation to the state board in order for the state board to determine if the teacher has a degree or degree major with course requirements that are substantially equivalent to the qualifying educational background associated with the teacher's supplement-approved assignment.

(c) (i) The appeal process established under Subsection (6)(a) shall allow a teacher to appeal eligibility as an eligible teacher with a qualifying teaching background on the basis that the teacher has a qualifying teaching background.

(ii) The teacher shall provide to the state board evidence to verify that the teacher has a qualifying teaching background.

(7) (a) The state board shall distribute money appropriated to the Teacher Salary Supplement Program to school districts and charter schools for the Teacher Salary Supplement Program in accordance with the provisions of this section.

(b) The state board shall include the employer-paid benefits described under Subsection (2)(b) in the amount of each salary supplement.

(c) The employer-paid benefits described under Subsection (2)(b) are an addition to the salary supplement limits described under Subsection (3).

(8) (a) Money received from the Teacher Salary Supplement Program shall be used by a school district or charter school to provide a salary supplement equal to the amount specified in Subsection (3) for each eligible teacher.

(b) The salary supplement is part of an eligible teacher's base pay, subject to eligible teacher's qualification as an eligible teacher every year, semester, or trimester.

(9) Notwithstanding the provisions of this section, if the appropriation for the program is insufficient to cover the costs associated with salary supplements, the state board shall distribute the funds in the Teacher Salary Supplement Program on a pro rata basis.

Section 3. Section **53F-5-210** is amended to read:

53F-5-210. Educational Improvement Opportunities Outside of the Regular School Day Grant Program.

(1) As used in this section:

(a) "Applicant" means an LEA, private provider, nonprofit provider, or municipality that provides an existing program and applies for a grant under the provisions of this section.

(b) "Existing program" means a currently funded and operating program, as described in Subsections [53E-3-508](#)(1)(a) and (b).

(c) "Grant program" means the Educational Improvement Opportunities Outside of the Regular School Day Grant Program created in Subsection (2).

(d) "Grantor" means:

(i) for an LEA that receives a grant under this section, the state board; or

(ii) for a private provider, nonprofit provider, or municipality that receives a grant under this section, the Department of Workforce Services.

(e) "Local education agency" or "LEA" means a school district or charter school.

(2) There is created the Educational Improvement Opportunities Outside of the Regular School Day Grant Program to provide grant funds for an existing program to improve and develop the existing program in accordance with the high quality standards described in Section [53E-3-508](#).

(3) Subject to legislative appropriation and in accordance with Subsection (7):

(a) the state board shall:

(i) solicit LEA applications to receive a grant under this section; and

(ii) award a grant based on the criteria described in Subsection (5); and

(b) the Department of Workforce Services shall:

(i) solicit private provider, nonprofit provider, or municipality applications to receive a grant under this section; and

(ii) award a grant based on the criteria described in Subsection (5).

(4) To receive a grant under this section, an applicant shall submit a proposal to the grantor describing:

(a) how the applicant proposes to develop and improve the existing program to meet the standards described in Section 53E-3-508;

(b) information necessary for the state board to determine the impact of the applicant's program on the academic performance of participating students;

(c) the total number of students the applicant proposes to serve through the existing program;

(d) the estimated percentage of the students described in Subsection (4)(c) who qualify for free or reduced lunch; and

(e) the estimated cost of the applicant's existing program, per student.

(5) In awarding a grant under Subsection (3), the grantor shall consider:

(a) how an applicant's existing program proposes to meet the standards described in Section 53E-3-508; and

(b) the percentage of students in that program who qualify for free and reduced lunch.

(6) An applicant that receives a grant under this section shall:

(a) use the grant to improve an existing program in accordance with the standards described in Section 53E-3-508; and

(b) annually report to the grantor:

(i) the number of students served by the existing program;

(ii) the academic outcomes that the program is expected to have on participating students;

(iii) program attendance rates of participating students; and

(iv) other information required by the grantor.

(7) (a) To receive a distribution of grant money under this section, an applicant shall identify and certify the availability of [private] matching funds in the amount of the grant to be distributed to the applicant.

(b) Neither the state board nor the Department of Workforce Services shall be expected to seek [private] matching funds for this grant program.

(8) The state board shall make rules to administer this section that include:

(a) specific criteria to determine academic performance;

(b) application and reporting procedures; and

(c) criteria for an existing program to qualify for a grant under this section.

(9) The Department of Workforce Services shall make rules to administer the grant program as described in Subsection (3)(b).

(10) In accordance with 34 C.F.R. Sec. 99.35, the state board shall designate the Department of Workforce Services as an authorized representative for the purpose of sharing student data and evaluating and reporting the impact and effectiveness of the grant program.

(11) The state board and the Department of Workforce Services may utilize up to 10% of the funds appropriated for administrative costs associated with the grant program and the report described in Subsection (12).

(12) The state board shall report to the Education Interim Committee before November 30, 2019, regarding:

(a) the grant program's effect on the quality of existing programs that participate in the grant program; and

(b) the impact of the existing programs on the academic performance of participating students.

Section 4. Section **63G-7-301** is amended to read:

63G-7-301. Waivers of immunity.

(1) (a) Immunity from suit of each governmental entity is waived as to any contractual obligation.

(b) Actions arising out of contractual rights or obligations are not subject to the requirements of Sections [63G-7-401](#), [63G-7-402](#), [63G-7-403](#), or [63G-7-601](#).

(c) The Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety condition that causes a deficiency in the amount of available water.

(2) Immunity from suit of each governmental entity is waived:

(a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;

(b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;

(c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;

(d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of Utah Constitution, Article I, Section 22, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;

(e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney fees under Sections 63G-2-405 and 63G-2-802;

(f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees Act;

(g) as to any action brought to obtain relief from a land use regulation that imposes a substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious Land Use Act;

(h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

(i) a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

(ii) any defective or dangerous condition of a public building, structure, dam, reservoir, or other public improvement;

(i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment;

(j) as to any action or suit brought under Section 20A-19-301 and as to any compensation or expenses awarded under Section 20A-19-301(5); and

(k) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from a sexual battery, as provided in Section 76-9-702.1, committed:

(i) against a student of a public elementary or secondary school, including a charter school; and

(ii) by an employee of a public elementary or secondary school or charter school who:

(A) at the time of the sexual battery, held a position of special trust, as defined in Section 76-5-404.1, with respect to the student;

(B) is criminally charged in connection with the sexual battery; and

(C) the public elementary or secondary school or charter school knew or in the exercise of reasonable care should have known, at the time of the employee's hiring, to be a sex offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a background check under Section 53G-11-402.

(3) (a) As used in this Subsection (3):

(i) "[~~Appropriate behavior policy~~] Code of conduct" means a [~~policy~~] code of conduct that:

(A) is not less stringent than a model [~~policy~~] code of conduct, created by the State Board of Education, establishing a professional standard of care for preventing the conduct described in Subsection (3)(a)(i)(D);

(B) is adopted by the applicable local education governing body;

(C) regulates behavior of a school employee toward a student; and

(D) includes a prohibition against any sexual conduct between an employee and a student and against the employee and student sharing any sexually explicit or lewd communication, image, or photograph.

(ii) "Local education agency" means:

(A) a school district;

(B) a charter school; or

(C) the Utah Schools for the Deaf and the Blind.

(iii) "Local education governing board" means:

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

(B) for a charter school, the charter school governing board; or

(C) for the Utah Schools for the Deaf and the Blind, the state board.

(iv) "Public school" means a public elementary or secondary school.

(v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).

(vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering the term "child" in that section to include an individual under age 18.

(b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim against a local education agency for an injury resulting from a sexual battery or sexual abuse committed against a student of a public school by a paid employee of the public school who is criminally charged in connection with the sexual battery or sexual abuse, unless:

(i) at the time of the sexual battery or sexual abuse, the public school was subject to ~~an appropriate behavior policy~~ a code of conduct; and

(ii) before the sexual battery or sexual abuse occurred, the public school had:

(A) provided training on the ~~[policy]~~ code of conduct to the employee; and

(B) required the employee to sign a statement acknowledging that the employee has read and understands the ~~[policy]~~ code of conduct.

(4) (a) As used in this Subsection (4):

(i) "Higher education institution" means an institution included within the state system of higher education under Section 53B-1-102.

(ii) "Policy governing behavior" means a policy adopted by a higher education institution or the State Board of Regents that:

(A) establishes a professional standard of care for preventing the conduct described in Subsections (4)(a)(ii)(C) and (D);

(B) regulates behavior of a special trust employee toward a subordinate student;

(C) includes a prohibition against any sexual conduct between a special trust employee and a subordinate student; and

(D) includes a prohibition against a special trust employee and subordinate student sharing any sexually explicit or lewd communication, image, or photograph.

(iii) "Sexual battery" means the offense described in Section 76-9-702.1.

(iv) "Special trust employee" means an employee of a higher education institution who is in a position of special trust, as defined in Section 76-5-404.1, with a higher education student.

336 (v) "Subordinate student" means a student:
337 (A) of a higher education institution; and
338 (B) whose educational opportunities could be adversely impacted by a special trust
339 employee.
340 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a
341 claim for an injury resulting from a sexual battery committed against a subordinate student by a
342 special trust employee, unless:
343 (i) the institution proves that the special trust employee's behavior that otherwise would
344 constitute a sexual battery was:
345 (A) with a subordinate student who was at least 18 years old at the time of the
346 behavior; and
347 (B) with the student's consent; or
348 (ii) (A) at the time of the sexual battery, the higher education institution was subject to
349 a policy governing behavior; and
350 (B) before the sexual battery occurred, the higher education institution had taken steps
351 to implement and enforce the policy governing behavior.