

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: Daniel McCay

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 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; 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:



26 [53G-11-202](#), as renumbered and amended by Laws of Utah 2018, Chapter 3



27
28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section [53G-11-202](#) is amended to read:

30 **[53G-11-202. Employment of school personnel -- Length of contract --](#)**
31 **[Termination for cause -- Individual contract of employment -- Employee](#)**
32 **[acknowledgment of liability protection -- Leave pending criminal investigation.](#)**

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

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

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

39 (b) Subsection (3)(a) does not apply to an agreement that was entered into before May
40 5, 2003.

41 (4) Each local school board shall:

42 (a) ensure that each employment contract complies with the requirements of Section
43 [34-32-1.1](#);

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

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

48 (i) has received:

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

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

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

55 (5) If a local school board has actual or constructive knowledge that an employee is the
56 subject of an ongoing criminal investigation of crime related to an offense against a minor

57 described in Subsection 30-5a-103(10):

58 (a) the local school board shall place the employee on ~~paid~~ administrative leave,
 58a ~~in accordance with Subsection (5)(d) and~~ while
 59 maintaining the confidentiality of the reason for the leave, until the local school board alters the
 60 employment circumstances as described in Subsection (5)(b) or (c);

61 (b) the local school board shall provide the employee the opportunity to return to
 62 regular work if the investigation:

63 (i) concludes without leading to criminal charges; or

64 (ii) does not result in the conviction of the employee; and

65 (c) if the investigation results in the conviction of the employee:

66 (i) the local school board shall take further employment action in response to the
 67 conviction, including leave without pay or termination; and

68 (ii) the employee shall pay back all salary compensation that the employee received
 69 during the paid administrative leave period described in Subsection (5)(a) ~~is~~ ; and

69a **(d) there is a rebuttable presumption that the administrative leave described in Subsection**
 69b **(5)(a) is paid leave, unless the local school board has established criteria regarding the**
 69c **circumstances under which the administrative leave may be unpaid leave. ~~is~~**

70 ~~(d)(i)~~ (6) ~~is~~ Nothing in this section restricts the power of a local school board to take
 71 employment action against the employee beyond the action described in this Subsection (5)
 72 while the employee is under criminal investigation, regardless of whether the employment
 73 action is related to the basis for the criminal investigation, including termination for cause
 74 based on:

75 (A) a violation of work policies;

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

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

78 (D) insubordination.

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

82 **Section 2. Effective date.**

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