

**Representative Kera Birkeland** proposes the following substitute bill:

1                   **STUDENT ELIGIBILITY IN INTERSCHOLASTIC ACTIVITIES**

2                                   2022 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Kera Birkeland**

5                                   Senate Sponsor: Curtis S. Bramble

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7                   **LONG TITLE**

8                   **General Description:**

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

11                   **Highlighted Provisions:**

12                   This bill:

13                   ▶ defines terms;

14                   ▶ conditions student athlete participation in gender-designated sports in the public  
15 education system on the student's unamended birth certificate;

16                   ▶ establishes the School Activity Eligibility Commission (commission) and provides  
17 the commission's membership and duties;

18                   ▶ requires the commission to establish a baseline range of students in a given  
19 gender-designated interscholastic activity for a given age;

20                   ▶ provides that records of the commission related to a specific student are protected;

21                   ▶ provides immunity from suit for members of the commission;

22                   ▶ allows a student to participate in a gender-designated interscholastic activity that  
23 does not correspond to the sex designation on the student's birth certificate or in the  
24 case of a gender transition if the student receives the commission's eligibility  
25 approval;



- 26           ▶ provides processes for:
- 27           • an athletic association to notify the commission when a student registers to
- 28 participate in a gender-designated sport in a situation that requires the
- 29 commission's eligibility approval;
- 30           • the commission to receive information and evidence;
- 31           • the confidentiality of the proceedings, commission vote, eligibility
- 32 determination, and student's identity; and
- 33           • the commission's considerations in rendering an eligibility determination;
- 34           ▶ allows for commission meetings in which the commission discusses and votes on a
- 35 specific student's request to be closed under the Open and Public Meetings Act;
- 36           ▶ provides for reasonable accommodations in school facilities related to gender
- 37 identity for students participating in interscholastic activities;
- 38           ▶ provides for severability; and
- 39           ▶ makes technical changes.

40 **Money Appropriated in this Bill:**

41           None

42 **Other Special Clauses:**

43           This bill provides a special effective date.

44 **Utah Code Sections Affected:**

45 AMENDS:

46           **52-4-205**, as last amended by Laws of Utah 2021, Chapters 179 and 231

47 ENACTS:

48           **53G-6-901**, Utah Code Annotated 1953

49           **53G-6-902**, Utah Code Annotated 1953

50           **53G-6-903**, Utah Code Annotated 1953

51           **53G-6-904**, Utah Code Annotated 1953

52           **53G-6-905**, Utah Code Annotated 1953



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

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

56           **52-4-205. Purposes of closed meetings -- Certain issues prohibited in closed**

57 meetings.

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

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

61 (b) strategy sessions to discuss collective bargaining;

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

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

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

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

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

70 (i) public discussion of the transaction would:

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

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

73 (ii) the public body previously gave public notice that the property would be offered for  
74 sale; and

75 (iii) the terms of the sale are publicly disclosed before the public body approves the  
76 sale;

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

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

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

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

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

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

87 (l) as relates to the Utah Higher Education Assistance Authority and its appointed

88 board of directors, discussing fiduciary or commercial information as defined in Section  
89 [53B-12-102](#);

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

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

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

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

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

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

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

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

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

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

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

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

117 (2) The following meetings shall be closed:

118 (a) a meeting of the Health and Human Services Interim Committee to review a report

119 described in Subsection [62A-16-301\(1\)\(a\)](#), and the responses to the report described in  
120 Subsections [62A-16-301\(2\)](#) and (4);

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

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

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

125 (c) a meeting of the Opioid and Overdose Fatality Review Committee, created in  
126 Section [26-7-13](#), to review and discuss an individual case, as described in Subsection  
127 [26-7-13\(10\)](#);

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

132 (e) a meeting of the Compassionate Use Board established in Section [26-61a-105](#) for  
133 the purpose of reviewing petitions for a medical cannabis card in accordance with Section  
134 [26-61a-105](#); ~~and~~

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

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

138 (ii) failing to close the meeting would:

139 (A) reveal the contents of a record classified as protected under Subsection  
140 [63G-2-305\(82\)](#);

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

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

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

148 (g) a meeting of the School Activity Eligibility Commission, described in Section  
149 [53G-6-902](#), to consider, discuss, or determine, in accordance with Section [53G-6-903](#), an

150 individual student's eligibility to participate in an interscholastic activity, as that term is defined  
151 in Section 53G-6-901, including the commission's determinative vote on the student's  
152 eligibility.

153 (3) In a closed meeting, a public body may not:  
154 (a) interview a person applying to fill an elected position;  
155 (b) discuss filling a midterm vacancy or temporary absence governed by Title 20A,  
156 Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office;  
157 or

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

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

163 **Part 9. Student Eligibility in Interscholastic Activities**

164 **53G-6-901. Definitions.**

165 As used in this part:

166 (1) "Athletic association" means an association, as that term is defined in Section  
167 53G-7-11.

168 (2) "Commission" means the School Activity Eligibility Commission created in  
169 Section 53G-6-902.

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

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

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

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

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

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

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

182 **53G-6-902. School Activity Eligibility Commission -- Baseline range.**

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

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

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

186 (A) a mental health professional; and

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

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

189 appoints:

190 (A) a board-certified physician with expertise in gender identity healthcare; and

191 (B) a sports physiologist;

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

193 (A) a representative of an athletic association; and

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

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

196 (A) appointed by the athletic association in which the relevant student's school

197 competes; and

198 (B) a certified high school coach or official who coaches or officiates in a separate  
199 region or classification from the relevant student's school and in the sport in which the relevant  
200 student seeks eligibility.

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

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

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

210 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), all members of the commission  
211 constitute a quorum of the commission for a meeting to determine the eligibility of a student.

212 (ii) All members of the commission described in Subsections (2)(a)(i) through (iii)  
213 constitute a quorum for any meeting other than the meeting described in Subsection (4)(a)(i).

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

215 (5) A majority of the commission members described in Subsections (2)(a)(i) through  
216 (iii) shall elect a chair from among the members described in Subsections (2)(a)(i) through (iii)

217 to:

218 (a) schedule meetings of the commission;

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

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

221 (6) A commission member:

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

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

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

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

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

231 (8) (a) The commission shall establish a baseline range for students participating in a  
232 specific gender-designated activity at a specific age to provide the context for the evaluation of  
233 an individual student's eligibility for a given gender-designated interscholastic activity under  
234 Section [53G-6-903](#).

235 (b) In creating the baseline ranges described in Subsection (8)(a), the commission shall  
236 include the physical characteristics for the age and gender group in a given gender-designated  
237 interscholastic activity that are relevant to the specific interscholastic activity.

238 (c) The physical characteristics described in Subsection (8)(b) may include height,  
239 weight, body mass, bone density, flexibility, wingspan, hip-to-knee ratio, stride, oxygen  
240 saturation, or the extent of physical characteristics affected by puberty, giving consideration to  
241 the practicability of considering the physical characteristic when making an assessment of an  
242 individual student's eligibility under Section [53G-6-903](#).



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

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

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

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

252 **53G-6-903. Eligibility for interscholastic activities.**

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

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

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

261 (b) A student who has undergone or is undergoing a gender transition shall obtain the  
262 eligibility approval of the commission under Subsection (2) to participate in a  
263 gender-designated interscholastic activity that corresponds with the student's gender identity.

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

266 (2) (a) When a student registers with an athletic association to participate in a  
267 gender-designated interscholastic activity:

268 (i) a student who has undergone or is undergoing a gender transition shall notify the  
269 athletic association of the student's transition and the need for the commission's eligibility  
270 approval as described in Subsection (1)(b);

271 (ii) the athletic association shall notify the commission of:

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

274 designation of the gender-designated interscholastic activity in which the student seeks to  
275 participate or the student's notice of a gender transition under Subsection (1)(a)(ii); and  
276 (B) the association's ad hoc appointment to the commission described in Subsection  
277 53G-6-902(2)(a)(iv); and  
278 (iii) the commission shall notify the student described in Subsection (2)(a) regarding  
279 the process for determining the student's eligibility for the activity under this section.  
280 (b) The commission shall:  
281 (i) schedule a closed meeting to consider a student's eligibility to be held within 30  
282 days after the day on which the commission receives the notification described in Subsection  
283 (2)(a); and  
284 (ii) notify the relevant athletic association and the student's parents or legal guardians  
285 of the scheduled meeting.  
286 (c) Before the meeting described in Subsection (2)(b):  
287 (i) the student for whom the commission has scheduled the meeting or the student's  
288 parent or guardian is not required but may submit to the commission any information the  
289 student wishes to disclose to the commission that may be relevant to the commission's  
290 eligibility determination, including information regarding:  
291 (A) the gender-designated interscholastic activities for which the student seeks  
292 eligibility;  
293 (B) the gender-designated interscholastic activities in which the student has previously  
294 participated; and  
295 (C) the student's physical characteristics or medical treatments that support the  
296 student's eligibility for the specific gender-designated interscholastic activity;  
297 (ii) the commission may request additional evidence from the student that is:  
298 (A) limited to the extent possible to protect the student's privacy; and  
299 (B) only directly relevant to the commission's eligibility determination; and  
300 (iii) the commission may offer the student a voucher to cover the cost of a diagnostic  
301 assessment if the commission makes a request for medical information under Subsection  
302 (2)(c)(ii) for which the student's insurance does not provide coverage or reimbursement for the  
303 diagnostic that:  
304 (A) would provide the requested information; and

305 (B) is not free or otherwise readily available to the student.

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

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

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

309 determination;

310 (B) the student's parents or guardians;

311 (C) the members and necessary staff of the commission; and

312 (D) any medical professionals or other witnesses the student chooses to include to

313 support the student's eligibility;

314 (ii) attendees may participate in person or electronically; and

315 (iii) the commission shall:

316 (A) hear the information that supports the student's eligibility;

317 (B) deliberate the facts relevant to the student's physical characteristics and eligibility

318 in camera or otherwise after temporarily excusing from the meeting the student, the student's

319 parents or legal guardians, and any medical professionals or other witnesses whom the student

320 includes; and

321 (C) render the commission's eligibility determination in accordance with Subsection

322 (3) or request additional information and schedule an additional commission meeting to be held

323 within 30 days of the meeting and in accordance with this Subsection (2)(d) to discuss the

324 additional information and render the commission's eligibility determination.

325 (3) In making an eligibility determination, the commission, after considering whether

326 the student's assertion of a gender identity is consistent with the statutory definition of gender

327 identity as that term is defined in Section 34A-5-101, including the implications for the

328 student's mental health of participating in the gender-designated interscholastic activity, shall:

329 (a) make a determination regarding whether, when measured against the relevant

330 baseline range described in Subsection 53G-6-902(8), granting the student's eligibility would:

331 (i) present a substantial safety risk to the student or others that is significantly greater

332 than the inherent risks of the given activity; or

333 (ii) likely give the student a material competitive advantage when compared to students

334 of the same age competing in the relevant gender-designated activity, including consideration

335 of the student's previous history of participation in gender-designated interscholastic activities;

336 and

337 (b) record the commission's decision and rationale in writing and provide the written  
338 decision to the student within 30 days after the day on which the commission renders an  
339 eligibility decision under Subsection (3)(a) in a meeting described in Subsection (2)(b).

340 (4) (a) Notwithstanding any other provision of law and except as provided in  
341 Subsections (3)(b) and (4)(b), the commission may not disclose:

342 (i) the name of a student whose eligibility the commission will consider, is considering,  
343 or has considered; or

344 (ii) the commission's determination regarding a student's eligibility.

345 (b) The commission shall disclose the commission's determination of a student's  
346 eligibility for a given gender-designated interscholastic activity to the relevant athletic  
347 association, only for the purpose of confirming whether the student is eligible for the  
348 interscholastic activity.

349 (c) (i) Notwithstanding any other provision of law, an athletic association may not  
350 disclose the information described in Subsections (4)(a)(i) and (ii).

351 (ii) Nothing in this Subsection (4) prohibits an athletic association from affirming that  
352 a student is eligible if the eligibility of a student is questioned.

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

354 **53G-6-904. Reasonable accommodations.**

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

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

360 **53G-6-905. Severability.**

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

364 (2) The provisions of this part are severable.

365 Section 7. **Effective date.**

366 This bill takes effect on July 1, 2022.