

EMERGENCY RELATED AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Sheryl L. Allen

LONG TITLE

General Description:

This bill modifies the State Affairs and Public Safety titles to address emergency issues including energy emergencies.

Highlighted Provisions:

This bill:

- ▶ defines and modifies terms;
- ▶ changes the requirement that the Office of Energy prepare an energy emergency plan to a requirement that the Division of Emergency Services and Homeland Security coordinate the development of an energy emergency plan;
- ▶ modifies duties of the Division of Emergency Services and Homeland Security;
- ▶ establishes the requirements for an energy emergency plan;
- ▶ makes certain emergency related records protected records;
- ▶ modifies the process for the governor issuing a proclamation declaring a state of emergency related to energy; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-2-102, as last amended by Chapter 14, Laws of Utah 2002

53-2-104, as last amended by Chapter 14, Laws of Utah 2002

63-2-304, as last amended by Chapters 223, 299 and 358, Laws of Utah 2004

63-34-101, as last amended by Chapter 352, Laws of Utah 2004

63-53a-6, as enacted by Chapter 23, Laws of Utah 1980

ENACTS:

53-2-110, Utah Code Annotated 1953

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

Section 1. Section **53-2-102** is amended to read:

53-2-102. Definitions.

As used in this part:

(1) "Attack" means a nuclear, conventional, biological, or chemical warfare action against the United States of America or this state.

(2) "Director" means the division director appointed under Section 53-2-103.

(3) "Disaster" means a situation causing, or threatening to cause, widespread damage, social disruption, or injury or loss of life or property resulting from attack, internal disturbance, natural phenomena, or technological hazard.

(4) "Division" means the Division of Emergency Services and Homeland Security created in Section 53-2-103.

(5) "Energy" includes the energy resources defined in Section 63-53a-1.

~~[(5)]~~ (6) "Expenses" means actual labor costs of government and volunteer personnel, including workers compensation benefits, fringe benefits, administrative overhead, cost of equipment, cost of equipment operation, cost of materials, and the cost of any contract labor and materials.

~~[(6)]~~ (7) "Hazardous materials emergency" means a sudden and unexpected release of any substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics presents a direct and immediate threat to public safety or the environment and requires immediate action to mitigate the threat.

~~[(7)]~~ (8) "Internal disturbance" means a riot, prison break, disruptive terrorism, or strike.

~~[(8)]~~ (9) "Natural phenomena" means any earthquake, tornado, storm, flood, landslide, avalanche, forest or range fire, drought, or epidemic.

~~[(9)]~~ (10) "State of emergency" means a condition in any part of this state that requires state government emergency assistance to supplement the local efforts of the affected political subdivision to save lives and to protect property, public health, welfare, ~~[and]~~ or safety in the event of a disaster, or to avoid or reduce the threat of a disaster.

~~[(10)]~~ (11) "Technological hazard" means any hazardous materials accident, mine accident, train derailment, air crash, radiation incident, pollution, structural fire, or explosion.

Section 2. Section **53-2-104** is amended to read:

53-2-104. Division duties -- Powers.

(1) The division shall:

(a) respond to the policies of the governor and the Legislature;

(b) perform functions relating to emergency services and homeland security matters as directed by the commissioner;

(c) prepare, implement, and maintain programs and plans to provide for:

(i) prevention and minimization of injury and damage caused by disasters;

(ii) prompt and effective response to and recovery from disasters;

(iii) identification of areas particularly vulnerable to disasters;

(iv) coordination of hazard mitigation and other preventive and preparedness measures designed to eliminate or reduce disasters;

(v) assistance to local officials ~~[in designing local]~~, state agencies, and the business and public sectors, in developing emergency action plans;

(vi) coordination of federal, state, and local emergency activities;

(vii) coordination of emergency operations plans with emergency plans of the federal government;

(viii) coordination of search and rescue activities;

(ix) coordination of rapid and efficient communications in times of emergency; and

(x) other measures necessary, incidental, or appropriate to this part~~[-];~~ and

(d) coordinate with local officials, state agencies, and the business and public sectors in developing, implementing, and maintaining a state energy emergency plan in accordance with Section 53-2-110.

(2) The division may consult with the Legislative Management Committee, the Judicial Council, and legislative and judicial staff offices to assist them in preparing emergency succession plans and procedures under Title 63, Chapter 5b, Emergency Interim Succession Act.

Section 3. Section **53-2-110** is enacted to read:

53-2-110. Energy emergency plan.

(1) The division shall develop an energy emergency plan consistent with Title 63, Chapter 53a, Energy Emergency Powers of Governor.

(2) In developing the energy emergency plan, the division shall coordinate with:

(a) the Division of Public Utilities;

(b) the Utah Energy Office;

(c) the Division of Oil, Gas, and Mining;

(d) the Division of Air Quality; and

(e) the Department of Agriculture and Food with regard to weights and measures.

(3) The energy emergency plan shall:

(a) designate the division as the entity that will coordinate the implementation of the energy emergency plan;

(b) provide for annual review of the energy emergency plan;

(c) provide for cooperation with public utilities and other relevant private sector persons;

(d) provide a procedure for maintaining a current list of contact persons required under the energy emergency plan; and

(e) provide that the energy emergency plan may only be implemented if the governor declares:

(i) a state of emergency as provided in Title 63, Chapter 5a, Disaster Response and Recovery; or

(ii) a state of emergency related to energy as provided in Title 63, Chapter 53a, Energy

Emergency Powers of Governor.

(4) If an event requires the implementation of the energy emergency plan, the division shall report on that event and the implementation of the energy emergency plan to:

(a) the governor; and

(b) the Public Utilities and Technology Interim Committee.

(5) If the energy emergency plan includes a procedure for obtaining information, the energy emergency plan shall incorporate reporting procedures that conform to existing requirements of federal, state, and local regulatory authorities wherever possible.

Section 4. Section **63-2-304** is amended to read:

63-2-304. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63-2-308;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63-2-308;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as

defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except that this Subsection (6) does not restrict the right of a person to see bids submitted to or by a governmental entity after bidding has closed;

(7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78-34-4.5;

(8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(9) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(10) records the disclosure of which would jeopardize the life or safety of an individual;

(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board

of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78-24-8;

(19) personal files of a legislator, including personal correspondence to or from a member of the Legislature, provided that correspondence that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in

response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about collective bargaining or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of a public institution of higher education regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state

that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-7;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including a public institution of higher education, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for public institutions of higher education, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of his immediate family, or any

entity owned or controlled by the donor or his immediate family;

(38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of a public institution of education, which have been developed, discovered, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished research notes and data;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals; and

(b) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information contained in the database described in Section 62A-3-311.1;

(44) information contained in the Management Information System and Licensing

Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawnbroker or pawnshop to a law enforcement agency in compliance with Title 13, Chapter 32a, Pawnshop Transaction Information Act; [~~and~~]

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food[-]; and

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63-2-106, records related to an emergency plan or program prepared or maintained by the Division of Emergency Services and Homeland Security the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Emergency Services and Homeland Security information.

Section 5. Section **63-34-101** is amended to read:

63-34-101. Utah Energy Office created -- Utah Energy Office duties.

(1) There is created within the department the Utah Energy Office.

(2) The Utah Energy Office shall:

(a) by following the procedures and requirements of Title 63, Chapter 38e, Federal Funds Procedures, seek federal grants, loans, or participation in federal programs, and, in accordance with applicable federal program guidelines, administer federally funded state programs regarding:

(i) renewable energy;

(ii) energy efficiency; and

(iii) energy conservation;

(b) coordinate and facilitate the development and implementation of programs:

(i) for state buildings; and

(ii) relating to:

(A) procurement of energy;

(B) consumption of energy;

(C) conservation of energy; and

(D) efficient use of energy;

~~[(e) if requested by the governor, prepare a state energy emergency plan in accordance with Title 63, Chapter 53a, Energy Emergency Powers of Governor;]~~

(c) participate in the development of a state energy emergency plan developed in accordance with Section 53-2-110;

(d) participate in regulatory proceedings as appropriate to promote the development, conservation, and efficient use of energy;

(e) coordinate state governmental functions regarding energy development and use;

(f) facilitate the development and implementation of policies and programs in the state related to:

(i) energy production;

(ii) processing of energy;

(iii) use of energy; and

(iv) energy related technology;

(g) monitor federal laws and regulations related to:

(i) energy development;

(ii) processing of energy; or

(iii) use of energy;

(h) recommend state policy positions regarding energy to:

(i) the governor; or

(ii) the Legislature;

(i) represent the state on regional and national energy matters:

- (i) at the initiative of the office; or
- (ii) as requested by the governor;
- (j) coordinate and consolidate energy resource data collection throughout state government;
- (k) provide the Legislature and the governor with:
 - (i) an annual report addressing the current status of energy markets in the state; and
 - (ii) an independent assessment of energy issues; and
 - (l) perform forecasts of state-level:
 - (i) energy production;
 - (ii) energy consumption; and
 - (iii) energy prices.

Section 6. Section **63-53a-6** is amended to read:

63-53a-6. Proclamation of emergency -- Effective period -- Extension of renewal by Legislature.

(1) (a) The governor may~~[-, with the consent of the Legislature, or when not in session the advice of the Legislative Management Committee, and when he]~~ issue a proclamation declaring that a state of emergency exists with regard to one or more energy resources if the governor determines that an existing or imminent severe disruption or impending shortage in the supply of one or more energy resources, in this state or elsewhere[;];

(i) threatens;

(A) the availability of essential services[;] or transportation[;]; or

(B) the operation of the economy[; ~~jeopardizing~~]; and

(ii) because of the threats described in Subsection (1)(a)(i), jeopardizes the peace, health, safety, and welfare of the people of this state[; issue a proclamation declaring that a state of emergency exists with regard to these resources, which].

(b) The proclamation declaring a state of emergency described in Subsection (1)(a) shall [also] state with specificity the nature of the disruption or shortage in an energy resource.

(c) (i) Within seven calendar days of the day on which the governor issues a

proclamation declaring a state of emergency under this section, the Legislative Management Committee shall:

(A) review the proclamation; and

(B) advise the governor on the proclamation.

(ii) The failure of the Legislative Management Committee to meet as required by Subsection (1)(c)(i) does not affect the validity of the proclamation declaring a state of emergency.

(2) (a) A proclamation issued under this section, and any order or rule issued as a result [~~thereof;~~] of the proclamation shall continue in effect until 60 days from the date of the proclamation of the state of emergency unless the governor rescinds [~~it~~] the proclamation and declares the emergency ended prior to the expiration of this 60-day period.

(b) A proclamation issued within 30 days of the expiration of a prior proclamation for the same emergency shall be considered a renewal or extension subject to Subsection (3).

(3) A proclamation may be renewed or extended only by joint resolution of the Legislature.