

ADOPTION OF CANAL SAFETY ACT

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gene Davis

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Canal Safety Act and amends related provisions to address assessment of risks associated with canals and efforts to remediate risks.

Highlighted Provisions:

This bill:

- ▶ modifies the provision listing what records constitute protected records;
- ▶ enacts the Canal Safety Act, including:
 - defining terms;
 - providing for the scope of the chapter;
 - requiring the Division of Water Rights to take certain acts;
 - providing for the creation of a canal action list;
 - requiring certain persons to create remediation plans and imposing related requirements; and
 - prohibiting the issuance of grants and loans under certain circumstances; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **63G-2-305**, as last amended by Laws of Utah 2009, Chapters 64 and 121

30 ENACTS:

31 **73-29-101**, Utah Code Annotated 1953

32 **73-29-102**, Utah Code Annotated 1953

33 **73-29-103**, Utah Code Annotated 1953

34 **73-29-201**, Utah Code Annotated 1953

35 **73-29-202**, Utah Code Annotated 1953

36 **73-29-301**, Utah Code Annotated 1953

37 **73-29-401**, Utah Code Annotated 1953

38

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

40 Section 1. Section **63G-2-305** is amended to read:

41 **63G-2-305. Protected records.**

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

43 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
44 has provided the governmental entity with the information specified in Section 63G-2-309;

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

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

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

52 (c) the person submitting the information has provided the governmental entity with
53 the information specified in Section 63G-2-309;

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

58 (4) records the disclosure of which could cause commercial injury to, or confer a

59 competitive advantage upon a potential or actual competitor of, a commercial project entity as
60 defined in Subsection 11-13-103(4);

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

63 (6) records the disclosure of which would impair governmental procurement
64 proceedings or give an unfair advantage to any person proposing to enter into a contract or
65 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
66 Subsection (6) does not restrict the right of a person to have access to, once the contract or
67 grant has been awarded, a bid, proposal, or application submitted to or by a governmental
68 entity in response to:

69 (a) a request for bids;

70 (b) a request for proposals;

71 (c) a grant; or

72 (d) other similar document;

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

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

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

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

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

85 (e) the property under consideration for public acquisition is a single family residence
86 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
87 the property as required under Section 78B-6-505;

88 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
89 compensated transaction of real or personal property including intellectual property, which, if

90 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
91 of the subject property, unless:

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

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

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

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

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

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

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

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

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

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

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

121 (13) records that, if disclosed, would reveal recommendations made to the Board of
122 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
123 Board of Pardons and Parole, or the Department of Human Services that are based on the
124 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
125 jurisdiction;

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

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

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

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

136 (18) records of communications between a governmental entity and an attorney
137 representing, retained, or employed by the governmental entity if the communications would be
138 privileged as provided in Section 78B-1-137;

139 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
140 from a member of the Legislature; and

141 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
142 legislative action or policy may not be classified as protected under this section; and

143 (b) (i) an internal communication that is part of the deliberative process in connection
144 with the preparation of legislation between:

145 (A) members of a legislative body;

146 (B) a member of a legislative body and a member of the legislative body's staff; or

147 (C) members of a legislative body's staff; and

148 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
149 legislative action or policy may not be classified as protected under this section;

150 (20) (a) records in the custody or control of the Office of Legislative Research and
151 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated

152 legislation or contemplated course of action before the legislator has elected to support the
153 legislation or course of action, or made the legislation or course of action public; and

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

158 (21) research requests from legislators to the Office of Legislative Research and
159 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
160 in response to these requests;

161 (22) drafts, unless otherwise classified as public;

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

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

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

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

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

175 (28) records of an institution within the state system of higher education defined in
176 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
177 retention decisions, and promotions, which could be properly discussed in a meeting closed in
178 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
179 the final decisions about tenure, appointments, retention, promotions, or those students
180 admitted, may not be classified as protected under this section;

181 (29) records of the governor's office, including budget recommendations, legislative
182 proposals, and policy statements, that if disclosed would reveal the governor's contemplated

183 policies or contemplated courses of action before the governor has implemented or rejected
184 those policies or courses of action or made them public;

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

188 (31) records provided by the United States or by a government entity outside the state
189 that are given to the governmental entity with a requirement that they be managed as protected
190 records if the providing entity certifies that the record would not be subject to public disclosure
191 if retained by it;

192 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
193 except as provided in Section 52-4-206;

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

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

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

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

208 (37) the name of a donor or a prospective donor to a governmental entity, including an
209 institution within the state system of higher education defined in Section 53B-1-102, and other
210 information concerning the donation that could reasonably be expected to reveal the identity of
211 the donor, provided that:

212 (a) the donor requests anonymity in writing;

213 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be

214 classified protected by the governmental entity under this Subsection (37); and
215 (c) except for an institution within the state system of higher education defined in
216 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
217 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
218 over the donor, a member of the donor's immediate family, or any entity owned or controlled
219 by the donor or the donor's immediate family;

220 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
221 73-18-13;

222 (39) a notification of workers' compensation insurance coverage described in Section
223 34A-2-205;

224 (40) (a) the following records of an institution within the state system of higher
225 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
226 or received by or on behalf of faculty, staff, employees, or students of the institution:

227 (i) unpublished lecture notes;

228 (ii) unpublished notes, data, and information:

229 (A) relating to research; and

230 (B) of:

231 (I) the institution within the state system of higher education defined in Section
232 53B-1-102; or

233 (II) a sponsor of sponsored research;

234 (iii) unpublished manuscripts;

235 (iv) creative works in process;

236 (v) scholarly correspondence; and

237 (vi) confidential information contained in research proposals;

238 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
239 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

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

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

244 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the

245 Office of the Legislative Auditor General is a public document unless the legislator asks that
246 the records in the custody or control of the Office of Legislative Auditor General that would
247 reveal the name of a particular legislator who requests a legislative audit be maintained as
248 protected records until the audit is completed and made public;

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

251 (a) a production facility; or

252 (b) a magazine;

253 (43) information:

254 (a) contained in the statewide database of the Division of Aging and Adult Services
255 created by Section 62A-3-311.1; or

256 (b) received or maintained in relation to the Identity Theft Reporting Information
257 System (IRIS) established under Section 67-5-22;

258 (44) information contained in the Management Information System and Licensing
259 Information System described in Title 62A, Chapter 4a, Child and Family Services;

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

262 (46) records provided by any pawn or secondhand business to a law enforcement
263 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
264 Secondhand Merchandise Transaction Information Act;

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

267 (48) except to the extent that the record is exempt from this chapter pursuant to Section
268 63G-2-106, records related to an emergency plan or program prepared or maintained by the
269 Division of Homeland Security the disclosure of which would jeopardize:

270 (a) the safety of the general public; or

271 (b) the security of:

272 (i) governmental property;

273 (ii) governmental programs; or

274 (iii) the property of a private person who provides the Division of Homeland Security
275 information;

276 (49) records of the Department of Agriculture and Food relating to the National
277 Animal Identification System or any other program that provides for the identification, tracing,
278 or control of livestock diseases, including any program established under Title 4, Chapter 24,
279 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
280 Quarantine;

281 (50) as provided in Section 26-39-501:

282 (a) information or records held by the Department of Health related to a complaint
283 regarding a child care program or residential child care which the department is unable to
284 substantiate; and

285 (b) information or records related to a complaint received by the Department of Health
286 from an anonymous complainant regarding a child care program or residential child care;

287 (51) unless otherwise classified as public under Section 63G-2-301 and except as
288 provided under Section 41-1a-116, an individual's home address, home telephone number, or
289 personal mobile phone number, if:

290 (a) the individual is required to provide the information in order to comply with a law,
291 ordinance, rule, or order of a government entity; and

292 (b) the subject of the record has a reasonable expectation that this information will be
293 kept confidential due to:

294 (i) the nature of the law, ordinance, rule, or order; and

295 (ii) the individual complying with the law, ordinance, rule, or order;

296 (52) the name, home address, work addresses, and telephone numbers of an individual
297 that is engaged in, or that provides goods or services for, medical or scientific research that is:

298 (a) conducted within the state system of higher education, as defined in Section
299 53B-1-102; and

300 (b) conducted using animals;

301 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
302 Private Proposal Program, to the extent not made public by rules made under that chapter;

303 (54) information collected and a report prepared by the Judicial Performance
304 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
305 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
306 the information or report;

- 307 (55) (a) records of the Utah Educational Savings Plan Trust created under Section
- 308 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;
- 309 (b) proposals submitted to the Utah Educational Savings Plan Trust; and
- 310 (c) contracts entered into by the Utah Educational Savings Plan Trust and the related
- 311 payments;
- 312 (56) records contained in the Management Information System created in Section
- 313 62A-4a-1003;
- 314 (57) records provided or received by the Public Lands Policy Coordinating Office in
- 315 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;
- 316 [and]
- 317 (58) information requested by and provided to the Utah State 911 Committee under
- 318 Section 53-10-602[-]; and
- 319 (59) a remediation plan submitted in accordance with Title 73, Chapter 29, Canal
- 320 Safety Act.

321 Section 2. Section **73-29-101** is enacted to read:

322 **CHAPTER 29. CANAL SAFETY ACT**

323 **Part 1. General Provisions**

324 **73-29-101. Title.**

325 This chapter is known as the "Canal Safety Act."

326 Section 3. Section **73-29-102** is enacted to read:

327 **73-29-102. Definitions.**

328 As used in this chapter:

329 (1) "Canal" means a water conveyance system that is used for transporting water at a
330 flow of more than 10 cubic feet per second.

331 (2) "Canal action list" means the list created under Section 73-29-202.

332 (3) "Canal owner" means a person who owns a canal, including a water company, as
333 defined in Section 73-3-3.5.

334 (4) "Division" means the Division of Water Rights.

335 (5) "High risk" means a condition when, if a canal fails, the failure would:

336 (a) create a high probability of loss of human life; or

337 (b) cause extensive loss to critical transportation infrastructure, utility infrastructure, or

338 buildings.

339 (6) "Low risk" means a condition when, if a canal fails, the only impact is to land in an
340 undeveloped condition, such as farm or range land.

341 (7) "Medium risk" means a condition when, if a canal fails, the failure would:

342 (a) create or cause loss less than that of a high risk canal; and

343 (b) create or cause more impact than that of a low risk canal.

344 Section 4. Section **73-29-103** is enacted to read:

345 **73-29-103. Scope of chapter.**

346 Nothing in this chapter may be construed to relieve a canal owner of the legal duties,
347 obligations, or liabilities incident to the ownership or operation of a canal.

348 Section 5. Section **73-29-201** is enacted to read:

349 **Part 2. Risk Assessment of Canals**

350 **73-29-201. Division to conduct assessment -- Evaluation of high risk canals.**

351 (1) (a) The division shall assess the level of risk of each canal in the state:

352 (i) by no later than January 1, 2012; and

353 (ii) at least once every five years thereafter.

354 (b) As a result of the assessment, the division shall determine whether a canal or any
355 section of a canal is:

356 (i) high risk;

357 (ii) medium risk; or

358 (iii) low risk.

359 (c) The division shall maintain a list of canals for which the division has determined
360 the canal or a section of the canal is high risk.

361 (2) If the division determines that a canal or section of a canal is high risk, the division
362 shall evaluate the canal to determine if repairs or improvements are necessary to appropriately
363 minimize the possibility of failure.

364 (3) The division may not complete an assessment of a canal under Subsection (1) or an
365 evaluation under Subsection (2) until after the division consults with one or more of the canal's
366 owners.

367 Section 6. Section **73-29-202** is enacted to read:

368 **73-29-202. Canal action list.**

369 The division shall create a list to be known as the "canal action list" that lists the canals
370 that:

371 (1) are high risk; and

372 (2) the division determines requires repair or improvements as described in Subsection
373 73-29-201(2).

374 Section 7. Section **73-29-301** is enacted to read:

375 **Part 3. Reduction of Risks**

376 **73-29-301. Remediation plans.**

377 (1) (a) A canal owner whose canal is on the canal action list shall develop a
378 remediation plan to make repairs and improvements necessary to reduce failure risk to an
379 acceptable level.

380 (b) A canal owner is required to file a new remediation plan after each assessment
381 under this chapter that results in the canal being placed on the canal action list.

382 (2) (a) A canal owner shall submit a remediation plan to the division for approval in
383 accordance with this section by both:

384 (i) the division; and

385 (ii) the Division of Water Resources.

386 (b) The division shall develop with the Division of Water Resources a procedure for
387 reviewing and approving a remediation plan submitted under this section.

388 (3) A remediation plan submitted under this section is a protected record under Section
389 63G-2-305.

390 Section 8. Section **73-29-401** is enacted to read:

391 **Part 4. Remedies**

392 **73-29-401. Prohibition on grants or loans.**

393 The Division of Water Resources or the Board of Water Resources may not provide a
394 grant or loan to a canal owner for a project related to a canal that is on the canal action list if
395 the canal owner does not have an approved remediation plan.

Legislative Review Note
as of 2-16-10 3:30 PM

Office of Legislative Research and General Counsel

S.B. 185 - Adoption of Canal Safety Act

Fiscal Note

2010 General Session
State of Utah

State Impact

Enactment of this bill will require the following appropriation from the General Fund to the Division of Water Rights: \$130,500 for FY 2010, \$543,000 for FY 2011, and \$271,500 for FY 2012. Further, the bill will require an ongoing appropriation of \$65,000 from the General Fund to the Division of Water Resources beginning in FY 2011.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	\$336,000	\$336,000	\$0	\$0	\$0
General Fund, One-Time	\$130,500	\$272,000	\$0	\$0	\$0	\$0
Total	\$130,500	\$608,000	\$336,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

This bill requires certain persons to create remediation plans, the cost of which may vary based on the physical, topological, and individual complexities of the canal system.
