

## SB0057S01 compared with SB0057

~~text~~ shows text that was in SB0057 but was deleted in SB0057S01.

text shows text that was not in SB0057 but was inserted into SB0057S01.

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Senator Ralph Okerlund proposes the following substitute bill:

### AGRICULTURE ENVIRONMENTAL STEWARD AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ralph Okerlund**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

#### General Description:

This bill creates the Utah Environmental Stewardship Certification Program.

#### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the Utah Environmental Stewardship Certification Program;
- ▶ allows a farm, ranch, or animal feeding operation to qualify under the Utah Environmental Stewardship Certification program;
- ▶ requires the Conservation Commission to make rules to establish standards and procedures for administering the Utah Environmental Stewardship Certification Program; and
- ▶ makes technical changes.

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### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides an effective date.

### Utah Code Sections Affected:

#### AMENDS:

**4-20-1.5**, as last amended by Laws of Utah 2010, Chapters 278 and 286

**17D-3-102**, as renumbered and amended by Laws of Utah 2008, Chapter 360

**19-5-102**, as last amended by Laws of Utah 2012, Chapter 360

**59-12-103 (Superseded 07/01/14)**, as last amended by Laws of Utah 2012, Chapters 207, 212, 254, and 255

**59-12-103 (Effective 07/01/14)**, as last amended by Laws of Utah 2012, Chapters 207, 212, 254, 255, and 424

**63A-3-205**, as last amended by Laws of Utah 2012, Chapter 212

**63B-1b-102**, as last amended by Laws of Utah 2012, Chapter 212

**63B-1b-202**, as last amended by Laws of Utah 2012, Chapter 212

~~{ **63G-2-305**, as last amended by Laws of Utah 2012, Chapters 331 and 377~~

#### ENACTS:

**4-18-107**, Utah Code Annotated 1953

#### RENUMBERS AND AMENDS:

**4-18-101**, (Renumbered from 4-18-1, as last amended by Laws of Utah 2007, Chapter 179)

**4-18-102**, (Renumbered from 4-18-2, as last amended by Laws of Utah 2011, Chapter 383)

**4-18-103**, (Renumbered from 4-18-3, as last amended by Laws of Utah 2011, Chapter 383)

**4-18-104**, (Renumbered from 4-18-4, as last amended by Laws of Utah 2010, Chapter 286)

**4-18-105**, (Renumbered from 4-18-5, as last amended by Laws of Utah 2012, Chapter 331)

**4-18-106**, (Renumbered from 4-18-6, as last amended by Laws of Utah 2007, Chapter

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179)

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

Section 1. Section **4-18-101**, which is renumbered from Section 4-18-1 is renumbered and amended to read:

### **CHAPTER 18. CONSERVATION COMMISSION ACT**

~~[4-18-1].~~      **4-18-101. Title.**

This chapter is known as the "Conservation Commission Act."

Section 2. Section **4-18-102**, which is renumbered from Section 4-18-2 is renumbered and amended to read:

~~[4-18-2].~~      **4-18-102. Purpose declaration.**

(1) The Legislature finds and declares that the soil and water resources of this state constitute one of its basic assets and that the preservation of these resources requires planning and programs to ensure the development and utilization of these resources and to protect them from the adverse effects of wind and water erosion, sediment, and sediment related pollutants.

(2) The Legislature finds that local production of food is essential for:

- (a) the security of the state's food supply; and
- (b) the self-sufficiency of the state's citizens.

(3) The Legislature finds that sustainable agriculture is critical to:

- (a) the success of rural communities;
- (b) the historical culture of the state;
- (c) maintaining healthy farmland;
- (d) maintaining high water quality;
- (e) maintaining abundant wildlife; and
- (f) high-quality recreation for citizens of the state.

(4) The Legislature finds that livestock grazing on public lands is important for the proper management, maintenance, and health of public lands in the state.

(5) The Legislature encourages each agricultural producer in the state to operate in a reasonable and responsible manner to maintain the integrity of land, soil, water, and air.

(6) To encourage each agricultural producer in this state to operate in a reasonable and responsible manner to maintain the integrity of the state's resources, the state shall ~~offer a~~

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~~certification of environmental stewardship as defined in Section 4-18-3]~~ administer the Utah Environmental Stewardship Certification Program, created in Section 4-18-107.

Section 3. Section **4-18-103**, which is renumbered from Section 4-18-3 is renumbered and amended to read:

~~[4-18-3].~~      **4-18-103. Definitions.**

As used in this chapter:

(1) (a) "Agricultural discharge" means the release of agriculture water from the property of a farm, ranch, or feedlot that:

(i) pollutes a surface body of water, including a stream, lake, pond, marshland, watercourse, waterway, river, ditch, or other water conveyance system;

(ii) pollutes ground water; or

(iii) constitutes a significant nuisance to urban land.

(b) "Agricultural discharge" does not include:

(i) runoff from a farm, ranch, or feedlot, or the return flow of water from an irrigated field onto land that is not part of a body of water; or

(ii) a release of water from a farm, ranch, or feedlot into a normally dry water conveyance leading to an active body of water, if the release does not reach the water of a lake, pond, stream, marshland, river, or other active body of water.

(2) "Agricultural operation" means a farm, ranch, or animal feeding operation.

~~[(2)]~~ (3) "Agriculture water" means:

(a) water used by a farm, ranch, or feedlot for the production of food, fiber, or fuel;

(b) the return flow of water from irrigated agriculture; or

(c) agricultural storm water runoff.

~~[(3)]~~ (4) "Alternate" means a substitute for a district supervisor if the district supervisor cannot attend a meeting.

~~[(4)]~~ (5) (a) "Animal feeding operation" means a facility where animals, other than aquatic animals, are stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period.

(b) "Animal feeding operation" does not include an operation where animals are in areas such as pastures or rangeland that sustain crops or forage growth during the entire time the animals are present.

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~~[(5)]~~ (6) "Best management practices" means practices, including management policies and the use of technology, used by each sector of agriculture in the production of food and fiber that are commonly accepted practices, or that are at least as effective as commonly accepted practices, and that:

- (a) protect the environment;
- (b) protect human health;
- (c) ensure the humane treatment of animals; and
- (d) promote the financial viability of agricultural production.

(7) "Certified agricultural operation" means an agricultural operation that is certified under the Utah Environmental Stewardship Certification Program in accordance with Section 4-18-107.

~~[(6)]~~ (8) "Certified conservation planner" means a planner of a state conservation district, or other qualified planner, that is approved by the commission to ~~[issue a certification of environmental stewardship]~~ certify an agricultural operation under the Utah Environmental Stewardship Certification Program, created in Section 4-18-107.

~~[(7) "Certification of environmental stewardship" means an official recognition by the state that an owner or operator of a farm, ranch, or feedlot meets the requirements established by the commission:]~~

~~[(a) to prevent harm to the environment, including the prevention of an agricultural discharge;]~~

~~[(b) for following best management practices; and]~~

~~[(c) for following nutrient management plans that meet the state technical standards appropriate for the given type of agricultural operation.]~~

~~[(8)]~~ (9) "Commission" means the Conservation Commission created in Section ~~[4-18-4]~~ 4-18-104.

~~[(9)]~~ (10) "Comprehensive nutrient management plan" or "nutrient management plan" means a plan to properly store, handle, and spread manure and other agricultural byproducts to:

- (a) protect the environment; and
- (b) provide nutrients for the production of crops.

~~[(10)]~~ (11) "District" or "conservation district" has the same meaning as "conservation district" as defined in Section 17D-3-102.

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~~[(11)]~~ (12) "Pollution" means a harmful human-made or human-induced alteration to the water of the state, including an alteration to the chemical, physical, biological, or radiological integrity of water that harms the water of the state.

~~[(12)]~~ (13) "State technical standards" means a collection of best management practices that will protect the environment in a reasonable and economical manner for each sector of agriculture as required by this chapter.

~~[(13)]~~ (14) "Sustainable agriculture" means agriculture production and practices that promote:

(a) the environmental responsibility of owners and operators of farms, ranches, and feedlots; and

(b) the profitability of owners and operators of farms, ranches, and feedlots.

Section 4. Section **4-18-104**, which is renumbered from Section 4-18-4 is renumbered and amended to read:

~~[4-18-4].~~      **4-18-104. Conservation Commission created -- Composition -- Appointment -- Terms -- Compensation -- Attorney general to provide legal assistance.**

(1) There is created within the department the Conservation Commission to perform the functions specified in this chapter.

(2) The Conservation Commission shall be comprised of 16 members, including:

(a) the director of the Extension Service at Utah State University or the director's designee;

(b) the president of the Utah Association of Conservation Districts or the president's designee;

(c) the commissioner or the commissioner's designee;

(d) the executive director of the Department of Natural Resources or the executive director's designee;

(e) the executive director of the Department of Environmental Quality or the executive director's designee;

(f) the chair and the vice chair of the State Grazing Advisory Board, created in Section 4-20-1.5;

(g) the president of the County Weed Supervisors Association;

(h) seven district supervisors who provide district representation on the commission on

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a multicounty basis; and

(i) the director of the School and Institutional Trust Lands Administration or the director's designee.

(3) If a district supervisor is unable to attend a meeting, an alternate may serve in the place of the district supervisor for that meeting.

(4) The members of the commission specified in Subsection (2)(h) shall:

(a) be recommended by the commission to the governor; and

(b) be appointed by the governor with the consent of the Senate.

(5) (a) Except as required by Subsection (5)(b), as terms of current commission members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

(6) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(7) The commissioner is chair of the commission.

(8) Attendance of a majority of the commission members at a meeting constitutes a quorum.

(9) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(10) The commission shall keep a record of its actions.

(11) The attorney general shall provide legal services to the commission upon request.

Section 5. Section **4-18-105**, which is renumbered from Section 4-18-5 is renumbered and amended to read:

~~[4-18-5]~~. **4-18-105. Conservation commission -- Functions and duties.**

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(1) The commission shall:

(a) facilitate the development and implementation of the strategies and programs

necessary to:

(i) protect, conserve, utilize, and develop the soil, air, and water resources of the state;

and

(ii) promote the protection, integrity, and restoration of land for agricultural and other beneficial purposes;

(b) disseminate information regarding districts' activities and programs;

(c) supervise the formation, reorganization, or dissolution of districts according to the requirements of Title 17D, Chapter 3, Conservation District Act;

(d) prescribe uniform accounting and recordkeeping procedures for districts and require each district to submit annually an audit of its funds to the commission;

(e) approve and make loans for agricultural purposes, from the Agriculture Resource Development Fund, for:

(i) rangeland improvement and management projects;

(ii) watershed protection and flood prevention projects;

(iii) agricultural cropland soil and water conservation projects; and

(iv) programs designed to promote energy efficient farming practices;

(f) administer federal or state funds, including loan funds under this chapter, in accordance with applicable federal or state guidelines and make loans or grants from those funds to land occupiers for:

(i) the conservation of soil or water resources;

(ii) maintenance of rangeland improvement projects; and

(iii) the control or eradication of noxious weeds and invasive plant species:

(A) in cooperation and coordination with local weed boards; and

(B) in accordance with Section 4-2-8.7;

(g) seek to coordinate soil and water protection, conservation, and development activities and programs of state agencies, local governmental units, other states, special interest groups, and federal agencies;

(h) plan watershed and flood control projects in cooperation with appropriate local, state, and federal authorities, and coordinate flood control projects in the state;



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~~[(i) develop the requirements for:]~~

~~[(i) a certification of environmental stewardship, including best management practices, technical standards, and nutrient management plans, as applicable to each agricultural sector; and]~~

~~[(ii) providing the certification to each owner or operator of a farm, ranch, or feedlot that:]~~

~~[(A) requests certification; and]~~

~~[(B) qualifies for certification;]~~

~~[(j) develop best management practices and state technical standards when requested by governmental agencies or agricultural producer groups;]~~

~~[(k) develop the requirements and certification process for an individual to be a certified conservation planner as defined in Section 4-18-3;]~~

~~[(h)] (i) assist other state agencies with conservation standards for agriculture when requested; and~~

~~[(m)] (j) when assigned by the governor, when required by contract with the Department of Environmental Quality, or when required by contract with the United States Environmental Protection Agency:~~

~~(i) develop programs for the prevention, control, or abatement of new or existing pollution to the soil, water, or air of the state;~~

~~(ii) advise, consult, and cooperate with affected parties to further the purpose of this chapter;~~

~~(iii) conduct studies, investigations, research, and demonstrations relating to agricultural pollution issues;~~

~~(iv) give reasonable consideration in the exercise of its powers and duties to the economic impact on sustainable agriculture;~~

~~(v) meet the requirements of federal law related to water and air pollution in the exercise of its powers and duties; and~~

~~(vi) establish administrative penalties relating to agricultural discharges as defined in Section ~~[4-18-3]~~ 4-18-103 that are proportional to the seriousness of the resulting environmental harm.~~

(2) The commission may:

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- (a) employ, with the approval of the department, an administrator and necessary technical experts and employees;
- (b) execute contracts or other instruments necessary to exercise its powers;
- (c) take necessary action to promote and enforce the purpose and findings of Section ~~[4-18-2]~~ 4-18-102;
- (d) sue and be sued; and
- (e) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to carry out the powers and duties described in Subsection (1) and Subsections (2)(b) and (c).

Section 6. Section **4-18-106**, which is renumbered from Section 4-18-6 is renumbered and amended to read:

~~[4-18-6].~~     **4-18-106. Agriculture Resource Development Fund -- Contents --**  
**Use of fund money.**

- (1) There is created a revolving loan fund known as the Agriculture Resource Development Fund.
- (2) The Agriculture Resource Development Fund shall consist of:
  - (a) money appropriated to it by the Legislature;
  - (b) sales and use tax receipts transferred to the fund ~~[pursuant to]~~ in accordance with Section 59-12-103;
  - (c) money received for the repayment of loans made from the fund;
  - (d) money made available to the state for agriculture resource development from any source; and
  - (e) interest earned on the fund.
- (3) The commission shall make loans from the Agriculture Resource Development Fund as provided by Section ~~[4-18-5]~~ 4-18-105.

Section 7. Section **4-18-107** is enacted to read:

**4-18-107. Utah Environmental Stewardship Certification Program.**

- (1) There is created the Utah Environmental Stewardship Certification Program.
- (2) The commission, with the assistance of the department and with the advice of the Water Quality Board, created in Section 19-1-106, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act that establish:

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(a) (i) best management practices;

(ii) state technical standards; and

(iii) guidelines for nutrient management plans;

(b) requirements for qualification under the Utah Environmental Stewardship

Certification Program that:

(i) are consistent with sustainable agriculture;

(ii) help prevent harm to the environment, including prevention of an agricultural discharge; and

(iii) encourage agricultural operations in the state to follow:

(A) best management practices; and

(B) nutrient management plans that meet the state technical standards appropriate for each type of agricultural operation;

(c) the procedure for qualification under the Utah Environmental Stewardship

Certification Program;

(d) the requirements and certification process for an individual to become a certified conservation planner; and

(e) standards and procedures for administering the Utah Environmental Stewardship

Certification Program, including:

(i) renewal of a certification under Subsection (4)(b);

(ii) investigation and revocation of a certification under Subsection (6); and

(iii) revocation of a certification under Subsection (7)(b).

(3) An owner or operator of an agricultural operation may apply to certify the agricultural operation under the Utah Environmental Stewardship Certification Program in accordance with this section.

(4) (a) Except as provided in Subsection (6) or (7), a certified agricultural operation remains certified for a period of five years after the day on which the agricultural operation becomes certified.

(b) A certified agricultural operation may, in accordance with commission rule, renew the certification for an additional five years to keep the certification for a total period of 10 years after the day on which the agricultural operation becomes certified.

(5) Subject to review by the commissioner or the commissioner's designee, a certified

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conservation planner shall certify each qualifying agricultural operation that applies to the Utah Environmental Stewardship Certification Program.

(6) (a) Upon request of the Department of Environmental Quality or upon receipt by the department of a citizen environmental complaint, the department shall, with the assistance of certified conservation planners as necessary, investigate a certified agricultural operation to determine whether the agricultural operation has committed a significant violation of the requirements of the Utah Environmental Stewardship Certification Program.

(b) If, after completing an investigation described in Subsection (6)(a), the department determines that a certified agricultural operation has committed a significant violation of the requirements for the Utah Environmental Stewardship Certification Program, the department shall report the violation to the commission.

(c) Upon receipt of a report described in Subsection (6)(b), the commission shall review the report and:

- (i) revoke the agricultural operation's certification; or
- (ii) set terms and conditions for the agricultural operation to maintain its certification.

(7) (a) ~~A certified agricultural operation shall, upon request of the department, provide records to the department relevant to:~~

- ~~(i) If, for~~ a certification renewal under Subsection (4)(b) ~~};~~, or ~~;~~
- ~~(ii) an investigation described in~~ under Subsection (6)(a), the department requests access to a certified agricultural operation, the certified agricultural operation shall, at a reasonable time, allow access for the department to:

- (i) inspect the agricultural operation; or
- (ii) review the records of the agricultural operation.

(b) If ~~an~~ a certified agricultural operation ~~fails to provide records requested by~~ denies the department ~~under~~ access as described in Subsection (7)(a), the commission may revoke the agricultural operation's certification.

~~(8) A record provided by, obtained from, or containing information provided by or obtained from, an owner or operator of an agricultural operation under this section in relation to an application to become a certified agricultural operation, an application for renewal of certification as a certified agricultural operation, or an investigation of a certified agricultural operation is a protected record under Section 63G-2-305.~~

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~~(9)8~~ (9)8 If the commission changes a requirement of the Utah Environmental Stewardship Certification Program after an agricultural operation is certified in accordance with former requirements, during the certification and renewal periods described in Subsections (4)(a) and (b) the agricultural operation may choose whether to abide by a new requirement, but the agricultural operation is not subject to the new requirement until the agricultural operation reapplies for certification.

~~(10)9~~ (10)9 Nothing in this section exempts an agricultural discharge made by a certified agricultural operation from the provisions of Subsection 19-5-105.5(3)(b).

Section 8. Section ~~4-20-1.5~~ is amended to read:

### **4-20-1.5. State Grazing Advisory Board -- Duties.**

(1) (a) There is created within the department the State Grazing Advisory Board.

(b) The commissioner shall appoint the following members:

(i) one member from each regional board;

(ii) one member from the Conservation Commission, created in Section ~~[4-18-4]~~

4-18-104;

(iii) one representative of the Department of Natural Resources;

(iv) two livestock producers at-large; and

(v) one representative of the oil, gas, or mining industry.

(2) The term of office for a state board member is four years.

(3) Members of the state board shall elect a chair, who shall serve for two years.

(4) A member may not receive compensation or benefits for the member's service~~[-]~~

but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(5) The state board shall:

(a) receive:

(i) advice and recommendations from a regional board concerning:

(A) management plans for public lands, state lands, and school and institutional trust lands as defined in Section 53C-1-103, within the regional board's region; and

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(B) any issue that impacts grazing on private lands, public lands, state lands, or school and institutional trust lands as defined in Section 53C-1-103, in its region; and

(ii) requests for restricted account money from the entities described in Subsections (5)(c)(i) through (iv);

(b) recommend state policy positions and cooperative agency participation in federal and state land management plans to the department and to the Public Lands Policy Coordinating Office, created under Section 63J-4-602; and

(c) advise the department on the requests and recommendations of:

(i) regional boards;

(ii) county weed control boards, created ~~[under]~~ in Section 4-17-4;

(iii) cooperative weed management associations; and

(iv) conservation districts created under the authority of Title 17D, Chapter 3,

Conservation District Act.

Section 9. Section **17D-3-102** is amended to read:

### **17D-3-102. Definitions.**

As used in this chapter:

(1) "Commission" means the Conservation Commission, created ~~[under]~~ in Section ~~[4-18-4]~~ 4-18-104.

(2) "Conservation district" means a limited purpose local government entity, as described in Section 17D-3-103, that operates under, is subject to, and has the powers set forth in this chapter.

(3) "Department" means the Department of Agriculture and Food, created ~~[under]~~ in Section 4-2-1.

Section 10. Section **19-5-102** is amended to read:

### **19-5-102. Definitions.**

As used in this chapter:

(1) "Agriculture discharge":

(a) means the release of agriculture water from the property of a farm, ranch, or feed lot that:

(i) pollutes a surface body of water, including a stream, lake, pond, marshland, watercourse, waterway, river, ditch, and other water conveyance system of the state;

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(ii) pollutes the ground water of the state; or

(iii) constitutes a significant nuisance on urban land; and

(b) does not include:

(i) runoff from a farm, ranch, or feed lot or return flows from irrigated fields onto land that is not part of a body of water; or

(ii) a release into a normally dry water conveyance to an active body of water, unless the release reaches the water of a lake, pond, stream, marshland, river, or other active body of water.

(2) "Agriculture water" means:

(a) water used by a farmer, rancher, or feed lot for the production of food, fiber, or fuel;

(b) return flows from irrigated agriculture; and

(c) agricultural storm water runoff.

(3) "Board" means the Water Quality Board created in Section 19-1-106.

(4) "Commission" means the Conservation Commission, created in Section ~~[4-18-4]~~ 4-18-104.

(5) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(6) "Director" means the director of the Division of Water Quality or, for purposes of groundwater quality at a facility licensed by and under the jurisdiction of the Division of Radiation Control, the director of the Division of Radiation Control.

(7) "Discharge" means the addition of any pollutant to any waters of the state.

(8) "Discharge permit" means a permit issued to a person who:

(a) discharges or whose activities would probably result in a discharge of pollutants into the waters of the state; or

(b) generates or manages sewage sludge.

(9) "Disposal system" means a system for disposing of wastes~~[;]~~ and includes sewerage systems and treatment works.

(10) "Division" means the Division of Water Quality, created in Subsection 19-1-105(1)(f).

(11) "Effluent limitations" means any restrictions, requirements, or prohibitions, including schedules of compliance established under this chapter, which apply to discharges.

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(12) "Point source":

(a) means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged; and

(b) does not include return flows from irrigated agriculture.

(13) "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for the public health and safety.

(14) "Publicly owned treatment works" means any facility for the treatment of pollutants owned by the state, its political subdivisions, or other public entity.

(15) "Schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with this chapter.

(16) "Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage.

(17) "Sewerage system" means pipelines or conduits, pumping stations, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to a point of ultimate disposal.

(18) "Total maximum daily load" means a calculation of the maximum amount of a pollutant that a body of water can receive and still meet water quality standards.

(19) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing, or holding wastes.

(20) "Underground injection" means the subsurface emplacement of fluids by well injection.

(21) "Underground wastewater disposal system" means a system for disposing of domestic wastewater discharges as defined by the board and the executive director.

(22) "Waste" or "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

(23) "Waters of the state":



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(a) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state; and

(b) does not include bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, a public health hazard, or a menace to fish or wildlife.

Section 11. Section **59-12-103 (Superseded 07/01/14)** is amended to read:

**59-12-103 (Superseded 07/01/14). Sales and use tax base -- Rates -- Effective dates -- Use of sales and use tax revenues.**

(1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

(a) retail sales of tangible personal property made within the state;

(b) amounts paid for:

(i) telecommunications service, other than mobile telecommunications service, that originates and terminates within the boundaries of this state;

(ii) mobile telecommunications service that originates and terminates within the boundaries of one state only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

(iii) an ancillary service associated with a:

(A) telecommunications service described in Subsection (1)(b)(i); or

(B) mobile telecommunications service described in Subsection (1)(b)(ii);

(c) sales of the following for commercial use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(d) sales of the following for residential use:

(i) gas;

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(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(e) sales of prepared food;

(f) except as provided in Section 59-12-104, amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

(g) amounts paid or charged for services for repairs or renovations of tangible personal property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

(i) the tangible personal property; and

(ii) parts used in the repairs or renovations of the tangible personal property described in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations of that tangible personal property;

(h) except as provided in Subsection 59-12-104(7), amounts paid or charged for assisted cleaning or washing of tangible personal property;

(i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services that are regularly rented for less than 30 consecutive days;

(j) amounts paid or charged for laundry or dry cleaning services;

(k) amounts paid or charged for leases or rentals of tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) otherwise consumed;

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(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) consumed; and

(m) amounts paid or charged for a sale:

(i) (A) of a product transferred electronically; or

(B) of a repair or renovation of a product transferred electronically; and

(ii) regardless of whether the sale provides:

(A) a right of permanent use of the product; or

(B) a right to use the product that is less than a permanent use, including a right:

(I) for a definite or specified length of time; and

(II) that terminates upon the occurrence of a condition.

(2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

(i) a state tax imposed on the transaction at a tax rate equal to the sum of:

(A) 4.70%; and

(B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and

(II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

(i) a state tax imposed on the transaction at a tax rate of 2%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the

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transaction under this chapter other than this part.

(c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on amounts paid or charged for food and food ingredients equal to the sum of:

(i) a state tax imposed on the amounts paid or charged for food and food ingredients at a tax rate of 1.75%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the amounts paid or charged for food and food ingredients under this chapter other than this part.

(d) (i) For a bundled transaction that is attributable to food and food ingredients and tangible personal property other than food and food ingredients, a state tax and a local tax is imposed on the entire bundled transaction equal to the sum of:

(A) a state tax imposed on the entire bundled transaction equal to the sum of:

(I) the tax rate described in Subsection (2)(a)(i)(A); and

(II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and

(Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

(B) a local tax imposed on the entire bundled transaction at the sum of the tax rates described in Subsection (2)(a)(ii).

(ii) If an optional computer software maintenance contract is a bundled transaction that consists of taxable and nontaxable products that are not separately itemized on an invoice or similar billing document, the purchase of the optional computer software maintenance contract is 40% taxable under this chapter and 60% nontaxable under this chapter.

(iii) Subject to Subsection (2)(d)(iv), for a bundled transaction other than a bundled transaction described in Subsection (2)(d)(i) or (ii):

(A) if the sales price of the bundled transaction is attributable to tangible personal property, a product, or a service that is subject to taxation under this chapter and tangible personal property, a product, or service that is not subject to taxation under this chapter, the

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entire bundled transaction is subject to taxation under this chapter unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is not subject to taxation under this chapter from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise; or

(B) if the sales price of a bundled transaction is attributable to two or more items of tangible personal property, products, or services that are subject to taxation under this chapter at different rates, the entire bundled transaction is subject to taxation under this chapter at the higher tax rate unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is subject to taxation under this chapter at the lower tax rate from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise.

(iv) For purposes of Subsection (2)(d)(iii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(e) Subject to Subsections (2)(f) and (g), a tax rate repeal or tax rate change for a tax rate imposed under the following shall take effect on the first day of a calendar quarter:

(i) Subsection (2)(a)(i)(A);

(ii) Subsection (2)(b)(i);

(iii) Subsection (2)(c)(i); or

(iv) Subsection (2)(d)(i)(A)(I).

(f) (i) A tax rate increase takes effect on the first day of the first billing period that begins on or after the effective date of the tax rate increase if the billing period for the transaction begins before the effective date of a tax rate increase imposed under:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

(ii) The repeal of a tax or a tax rate decrease applies to a billing period if the billing statement for the billing period is rendered on or after the effective date of the repeal of the tax

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or the tax rate decrease imposed under:

- (A) Subsection (2)(a)(i)(A);
- (B) Subsection (2)(b)(i);
- (C) Subsection (2)(c)(i); or
- (D) Subsection (2)(d)(i)(A)(I).

(g) (i) For a tax rate described in Subsection (2)(g)(ii), if a tax due on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal or change in a tax rate takes effect:

- (A) on the first day of a calendar quarter; and
- (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

(ii) Subsection (2)(g)(i) applies to the tax rates described in the following:

- (A) Subsection (2)(a)(i)(A);
- (B) Subsection (2)(b)(i);
- (C) Subsection (2)(c)(i); or
- (D) Subsection (2)(d)(i)(A)(I).

(iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

(3) (a) The following state taxes shall be deposited into the General Fund:

- (i) the tax imposed by Subsection (2)(a)(i)(A);
- (ii) the tax imposed by Subsection (2)(b)(i);
- (iii) the tax imposed by Subsection (2)(c)(i); or
- (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(b) The following local taxes shall be distributed to a county, city, or town as provided in this chapter:

- (i) the tax imposed by Subsection (2)(a)(ii);
- (ii) the tax imposed by Subsection (2)(b)(ii);
- (iii) the tax imposed by Subsection (2)(c)(ii); and
- (iv) the tax imposed by Subsection (2)(d)(i)(B).

(4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b) through (g):

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(i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

(A) by a 1/16% tax rate on the transactions described in Subsection (1); and

(B) for the fiscal year; or

(ii) \$17,500,000.

(b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount described in Subsection (4)(a) shall be transferred each year as dedicated credits to the Department of Natural Resources to:

(A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species; or

(B) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

(ii) Money transferred to the Department of Natural Resources under Subsection (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(iii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund created in Section ~~[4-18-6]~~ 4-18-106.

(d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(ii) At the end of each fiscal year:

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(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

(ii) In addition to the uses allowed of the Water Resources Conservation and Development Fund under Section 73-10-24, the Water Resources Conservation and Development Fund may also be used to:

(A) conduct hydrologic and geotechnical investigations by the Division of Water Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(B) fund state required dam safety improvements; and

(C) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

(g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(i) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(ii) develop underground sources of water, including springs and wells; and

(iii) develop surface water sources.

(5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,



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2006, the difference between the following amounts shall be expended as provided in this Subsection (5), if that difference is greater than \$1:

(i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

(ii) \$17,500,000.

(b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

(A) transferred each fiscal year to the Department of Natural Resources as dedicated credits; and

(B) expended by the Department of Natural Resources for watershed rehabilitation or restoration.

(ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the remaining difference described in Subsection (5)(a) shall be:

(A) transferred each fiscal year to the Division of Water Resources as dedicated credits; and

(B) expended by the Division of Water Resources for cloud-seeding projects authorized by Title 73, Chapter 15, Modification of Weather.

(ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(d) After making the transfers required by Subsections (5)(b) and (c), 94% of the remaining difference described in Subsection (5)(a) shall be deposited into the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources for:

(i) preconstruction costs:

(A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter 26, Bear River Development Act; and

(B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

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(ii) the cost of employing a civil engineer to oversee any project authorized by Title 73, Chapter 26, Bear River Development Act;

(iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

(iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

(e) After making the transfers required by Subsections (5)(b) and (c) and subject to Subsection (5)(f), 6% of the remaining difference described in Subsection (5)(a) shall be transferred each year as dedicated credits to the Division of Water Rights to cover the costs incurred for employing additional technical staff for the administration of water rights.

(f) At the end of each fiscal year, any unexpended dedicated credits described in Subsection (5)(e) over \$150,000 lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16% tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in the Transportation Fund created by Section 72-2-102.

(7) Notwithstanding Subsection (3)(a), beginning on July 1, 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created in Section 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable transactions under Subsection (1).

(8) (a) Notwithstanding Subsection (3)(a), in addition to the amounts deposited in Subsection (7), and subject to Subsection (8)(b), for a fiscal year beginning on or after July 1, 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124:

(i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of the revenues collected from the following taxes, which represents a portion of the approximately 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

(A) the tax imposed by Subsection (2)(a)(i)(A);

(B) the tax imposed by Subsection (2)(b)(i);

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(C) the tax imposed by Subsection (2)(c)(i); and

(D) the tax imposed by Subsection (2)(d)(i)(A)(I); plus

(ii) an amount equal to 30% of the growth in the amount of revenues collected in the current fiscal year from the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) that exceeds the amount collected from the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) in the 2010-11 fiscal year.

(b) (i) Subject to Subsections (8)(b)(ii) and (iii), in any fiscal year that the portion of the sales and use taxes deposited under Subsection (8)(a) represents an amount that is a total lower percentage of the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) generated in the current fiscal year than the total percentage of sales and use taxes deposited in the previous fiscal year, the Division of Finance shall deposit an amount under Subsection (8)(a) equal to the product of:

(A) the total percentage of sales and use taxes deposited under Subsection (8)(a) in the previous fiscal year; and

(B) the total sales and use tax revenue generated by the taxes described in Subsections (8)(a)(i)(A) through (D) in the current fiscal year.

(ii) In any fiscal year in which the portion of the sales and use taxes deposited under Subsection (8)(a) would exceed 17% of the revenues collected from the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) in the current fiscal year, the Division of Finance shall deposit 17% of the revenues collected from the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) for the current fiscal year under Subsection (8)(a).

(iii) In all subsequent fiscal years after a year in which 17% of the revenues collected from the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) was deposited under Subsection (8)(a), the Division of Finance shall annually deposit 17% of the revenues collected from the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) in the current fiscal year under Subsection (8)(a).

(9) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under Subsections (7) and (8), for a fiscal year beginning on or after July 1, 2012, the Division of Finance shall annually deposit \$90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

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(10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund created by Section 35A-8-1009 and expended as provided in Section 35A-8-1009.

(11) (a) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b), and in addition to any amounts deposited under Subsections (7), (8), and (9), beginning on July 1, 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of tax revenue generated by a .025% tax rate on the transactions described in Subsection (1).

(b) For purposes of Subsection (11)(a), the Division of Finance may not deposit into the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or charged for food and food ingredients, except for tax revenue generated by a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients described in Subsection (2)(d).

(12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a .025% tax rate on the transactions described in Subsection (1) to be expended to address chokepoints in construction management.

(b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into the Transportation Fund any tax revenue generated by amounts paid or charged for food and food ingredients, except for tax revenue generated by a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients described in Subsection (2)(d).

Section 12. Section **59-12-103 (Effective 07/01/14)** is amended to read:

**59-12-103 (Effective 07/01/14). Sales and use tax base -- Rates -- Effective dates -- Use of sales and use tax revenues.**

(1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

- (a) retail sales of tangible personal property made within the state;
- (b) amounts paid for:
  - (i) telecommunications service, other than mobile telecommunications service, that

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originates and terminates within the boundaries of this state;

(ii) mobile telecommunications service that originates and terminates within the boundaries of one state only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

(iii) an ancillary service associated with a:

(A) telecommunications service described in Subsection (1)(b)(i); or

(B) mobile telecommunications service described in Subsection (1)(b)(ii);

(c) sales of the following for commercial use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(d) sales of the following for residential use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(e) sales of prepared food;

(f) except as provided in Section 59-12-104, amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

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(g) amounts paid or charged for services for repairs or renovations of tangible personal property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

(i) the tangible personal property; and

(ii) parts used in the repairs or renovations of the tangible personal property described in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations of that tangible personal property;

(h) except as provided in Subsection 59-12-104(7), amounts paid or charged for assisted cleaning or washing of tangible personal property;

(i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services that are regularly rented for less than 30 consecutive days;

(j) amounts paid or charged for laundry or dry cleaning services;

(k) amounts paid or charged for leases or rentals of tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) otherwise consumed;

(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) consumed; and

(m) amounts paid or charged for a sale:

(i) (A) of a product transferred electronically; or

(B) of a repair or renovation of a product transferred electronically; and

(ii) regardless of whether the sale provides:

(A) a right of permanent use of the product; or

(B) a right to use the product that is less than a permanent use, including a right:

(I) for a definite or specified length of time; and

(II) that terminates upon the occurrence of a condition.

(2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

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(i) a state tax imposed on the transaction at a tax rate equal to the sum of:

(A) 4.70%; and

(B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and

(II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

(i) a state tax imposed on the transaction at a tax rate of 2%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on amounts paid or charged for food and food ingredients equal to the sum of:

(i) a state tax imposed on the amounts paid or charged for food and food ingredients at a tax rate of 1.75%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the amounts paid or charged for food and food ingredients under this chapter other than this part.

(d) (i) For a bundled transaction that is attributable to food and food ingredients and tangible personal property other than food and food ingredients, a state tax and a local tax is imposed on the entire bundled transaction equal to the sum of:

(A) a state tax imposed on the entire bundled transaction equal to the sum of:

(I) the tax rate described in Subsection (2)(a)(i)(A); and

(II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18,

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Additional State Sales and Use Tax Act; and

(Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

(B) a local tax imposed on the entire bundled transaction at the sum of the tax rates described in Subsection (2)(a)(ii).

(ii) If an optional computer software maintenance contract is a bundled transaction that consists of taxable and nontaxable products that are not separately itemized on an invoice or similar billing document, the purchase of the optional computer software maintenance contract is 40% taxable under this chapter and 60% nontaxable under this chapter.

(iii) Subject to Subsection (2)(d)(iv), for a bundled transaction other than a bundled transaction described in Subsection (2)(d)(i) or (ii):

(A) if the sales price of the bundled transaction is attributable to tangible personal property, a product, or a service that is subject to taxation under this chapter and tangible personal property, a product, or service that is not subject to taxation under this chapter, the entire bundled transaction is subject to taxation under this chapter unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is not subject to taxation under this chapter from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise; or

(B) if the sales price of a bundled transaction is attributable to two or more items of tangible personal property, products, or services that are subject to taxation under this chapter at different rates, the entire bundled transaction is subject to taxation under this chapter at the higher tax rate unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is subject to taxation under this chapter at the lower tax rate from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise.

(iv) For purposes of Subsection (2)(d)(iii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular



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course of business for nontax purposes.

(e) (i) Except as otherwise provided in this chapter and subject to Subsections (2)(e)(ii) and (iii), if a transaction consists of the sale, lease, or rental of tangible personal property, a product, or a service that is subject to taxation under this chapter, and the sale, lease, or rental of tangible personal property, other property, a product, or a service that is not subject to taxation under this chapter, the entire transaction is subject to taxation under this chapter unless the seller, at the time of the transaction:

(A) separately states the portion of the transaction that is not subject to taxation under this chapter on an invoice, bill of sale, or similar document provided to the purchaser; or

(B) is able to identify by reasonable and verifiable standards, from the books and records the seller keeps in the seller's regular course of business, the portion of the transaction that is not subject to taxation under this chapter.

(ii) A purchaser and a seller may correct the taxability of a transaction if:

(A) after the transaction occurs, the purchaser and the seller discover that the portion of the transaction that is not subject to taxation under this chapter was not separately stated on an invoice, bill of sale, or similar document provided to the purchaser because of an error or ignorance of the law; and

(B) the seller is able to identify by reasonable and verifiable standards, from the books and records the seller keeps in the seller's regular course of business, the portion of the transaction that is not subject to taxation under this chapter.

(iii) For purposes of Subsections (2)(e)(i) and (ii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(f) (i) If the sales price of a transaction is attributable to two or more items of tangible personal property, products, or services that are subject to taxation under this chapter at different rates, the entire purchase is subject to taxation under this chapter at the higher tax rate unless the seller, at the time of the transaction:

(A) separately states the items subject to taxation under this chapter at each of the different rates on an invoice, bill of sale, or similar document provided to the purchaser; or

(B) is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is subject to taxation under this chapter at the lower tax rate

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from the books and records the seller keeps in the seller's regular course of business.

(ii) For purposes of Subsection (2)(f)(i), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(g) Subject to Subsections (2)(h) and (i), a tax rate repeal or tax rate change for a tax rate imposed under the following shall take effect on the first day of a calendar quarter:

- (i) Subsection (2)(a)(i)(A);
- (ii) Subsection (2)(b)(i);
- (iii) Subsection (2)(c)(i); or
- (iv) Subsection (2)(d)(i)(A)(I).

(h) (i) A tax rate increase takes effect on the first day of the first billing period that begins on or after the effective date of the tax rate increase if the billing period for the transaction begins before the effective date of a tax rate increase imposed under:

- (A) Subsection (2)(a)(i)(A);
- (B) Subsection (2)(b)(i);
- (C) Subsection (2)(c)(i); or
- (D) Subsection (2)(d)(i)(A)(I).

(ii) The repeal of a tax or a tax rate decrease applies to a billing period if the billing statement for the billing period is rendered on or after the effective date of the repeal of the tax or the tax rate decrease imposed under:

- (A) Subsection (2)(a)(i)(A);
- (B) Subsection (2)(b)(i);
- (C) Subsection (2)(c)(i); or
- (D) Subsection (2)(d)(i)(A)(I).

(i) (i) For a tax rate described in Subsection (2)(i)(ii), if a tax due on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal or change in a tax rate takes effect:

- (A) on the first day of a calendar quarter; and
- (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

(ii) Subsection (2)(i)(i) applies to the tax rates described in the following:

- (A) Subsection (2)(a)(i)(A);

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- (B) Subsection (2)(b)(i);
- (C) Subsection (2)(c)(i); or
- (D) Subsection (2)(d)(i)(A)(I).

(iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

(3) (a) The following state taxes shall be deposited into the General Fund:

- (i) the tax imposed by Subsection (2)(a)(i)(A);
- (ii) the tax imposed by Subsection (2)(b)(i);
- (iii) the tax imposed by Subsection (2)(c)(i); or
- (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(b) The following local taxes shall be distributed to a county, city, or town as provided in this chapter:

- (i) the tax imposed by Subsection (2)(a)(ii);
- (ii) the tax imposed by Subsection (2)(b)(ii);
- (iii) the tax imposed by Subsection (2)(c)(ii); and
- (iv) the tax imposed by Subsection (2)(d)(i)(B).

(4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b) through (g):

- (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:
  - (A) by a 1/16% tax rate on the transactions described in Subsection (1); and
  - (B) for the fiscal year; or
- (ii) \$17,500,000.

(b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount described in Subsection (4)(a) shall be transferred each year as dedicated credits to the Department of Natural Resources to:

(A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species; or

(B) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

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(ii) Money transferred to the Department of Natural Resources under Subsection (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(iii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund created in Section [~~4-18-6~~] 4-18-106.

(d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(ii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

(ii) In addition to the uses allowed of the Water Resources Conservation and Development Fund under Section 73-10-24, the Water Resources Conservation and Development Fund may also be used to:

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(A) conduct hydrologic and geotechnical investigations by the Division of Water Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(B) fund state required dam safety improvements; and

(C) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

(g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(i) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(ii) develop underground sources of water, including springs and wells; and

(iii) develop surface water sources.

(5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2006, the difference between the following amounts shall be expended as provided in this Subsection (5), if that difference is greater than \$1:

(i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

(ii) \$17,500,000.

(b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

(A) transferred each fiscal year to the Department of Natural Resources as dedicated credits; and

(B) expended by the Department of Natural Resources for watershed rehabilitation or restoration.

(ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund

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created in Section 73-10-24.

(c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the remaining difference described in Subsection (5)(a) shall be:

(A) transferred each fiscal year to the Division of Water Resources as dedicated credits; and

(B) expended by the Division of Water Resources for cloud-seeding projects authorized by Title 73, Chapter 15, Modification of Weather.

(ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(d) After making the transfers required by Subsections (5)(b) and (c), 94% of the remaining difference described in Subsection (5)(a) shall be deposited into the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources for:

(i) preconstruction costs:

(A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter 26, Bear River Development Act; and

(B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

(ii) the cost of employing a civil engineer to oversee any project authorized by Title 73, Chapter 26, Bear River Development Act;

(iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

(iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

(e) After making the transfers required by Subsections (5)(b) and (c) and subject to Subsection (5)(f), 6% of the remaining difference described in Subsection (5)(a) shall be transferred each year as dedicated credits to the Division of Water Rights to cover the costs incurred for employing additional technical staff for the administration of water rights.

(f) At the end of each fiscal year, any unexpended dedicated credits described in Subsection (5)(e) over \$150,000 lapse to the Water Resources Conservation and Development

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Fund created in Section 73-10-24.

(6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16% tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in the Transportation Fund created by Section 72-2-102.

(7) Notwithstanding Subsection (3)(a), beginning on July 1, 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created in Section 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable transactions under Subsection (1).

(8) (a) Notwithstanding Subsection (3)(a), in addition to the amounts deposited in Subsection (7), and subject to Subsection (8)(b), for a fiscal year beginning on or after July 1, 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124:

(i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of the revenues collected from the following taxes, which represents a portion of the approximately 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

- (A) the tax imposed by Subsection (2)(a)(i)(A);
- (B) the tax imposed by Subsection (2)(b)(i);
- (C) the tax imposed by Subsection (2)(c)(i); and
- (D) the tax imposed by Subsection (2)(d)(i)(A)(I); plus

(ii) an amount equal to 30% of the growth in the amount of revenues collected in the current fiscal year from the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) that exceeds the amount collected from the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) in the 2010-11 fiscal year.

(b) (i) Subject to Subsections (8)(b)(ii) and (iii), in any fiscal year that the portion of the sales and use taxes deposited under Subsection (8)(a) represents an amount that is a total lower percentage of the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) generated in the current fiscal year than the total percentage of sales and use taxes deposited in the previous fiscal year, the Division of Finance shall deposit an amount under Subsection (8)(a) equal to the product of:

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(A) the total percentage of sales and use taxes deposited under Subsection (8)(a) in the previous fiscal year; and

(B) the total sales and use tax revenue generated by the taxes described in Subsections (8)(a)(i)(A) through (D) in the current fiscal year.

(ii) In any fiscal year in which the portion of the sales and use taxes deposited under Subsection (8)(a) would exceed 17% of the revenues collected from the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) in the current fiscal year, the Division of Finance shall deposit 17% of the revenues collected from the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) for the current fiscal year under Subsection (8)(a).

(iii) In all subsequent fiscal years after a year in which 17% of the revenues collected from the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) was deposited under Subsection (8)(a), the Division of Finance shall annually deposit 17% of the revenues collected from the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) in the current fiscal year under Subsection (8)(a).

(9) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under Subsections (7) and (8), for a fiscal year beginning on or after July 1, 2012, the Division of Finance shall annually deposit \$90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

(10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund created by Section 35A-8-1009 and expended as provided in Section 35A-8-1009.

(11) (a) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b), and in addition to any amounts deposited under Subsections (7), (8), and (9), beginning on July 1, 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of tax revenue generated by a .025% tax rate on the transactions described in Subsection (1).

(b) For purposes of Subsection (11)(a), the Division of Finance may not deposit into the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or charged for food and food ingredients, except for tax revenue generated by a bundled transaction attributable to food and food ingredients and tangible personal property other than



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food and food ingredients described in Subsection (2)(d).

(12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a .025% tax rate on the transactions described in Subsection (1) to be expended to address chokepoints in construction management.

(b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into the Transportation Fund any tax revenue generated by amounts paid or charged for food and food ingredients, except for tax revenue generated by a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients described in Subsection (2)(d).

Section 13. Section **63A-3-205** is amended to read:

### **63A-3-205. Revolving loan funds -- Standards and procedures -- Annual report.**

(1) As used in this section, "revolving loan fund" means:

(a) the Water Resources Conservation and Development Fund, created in Section 73-10-24;

(b) the Water Resources Construction Fund, created in Section 73-10-8;

(c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;

(d) the Clean Fuel Conversion Funds, created in Title 19, Chapter 1, Part 4, Clean Fuels and Vehicle Technology Program Act;

(e) the Water Development Security Fund and its subaccounts, created in Section 73-10c-5;

(f) the Agriculture Resource Development Fund, created in Section [~~4-18-6~~] 4-18-106;

(g) the Utah Rural Rehabilitation Fund, created in Section 4-19-4;

(h) the Permanent Community Impact Fund, created in Section 35A-8-603;

(i) the Petroleum Storage Tank Loan Fund, created in Section 19-6-405.3;

(j) the Uintah Basin Revitalization Fund, created in Section 35A-8-1602;

(k) the Navajo Revitalization Fund, created in Section 35A-8-1704; and

(l) the Energy Efficiency Fund, created in Section 11-45-201.

(2) The division shall for each revolving loan fund:

(a) make rules establishing standards and procedures governing:

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- (i) payment schedules and due dates;
- (ii) interest rate effective dates;
- (iii) loan documentation requirements; and
- (iv) interest rate calculation requirements; and
- (b) make an annual report to the Legislature containing:
  - (i) the total dollars loaned by that fund during the last fiscal year;
  - (ii) a listing of each loan currently more than 90 days delinquent, in default, or that was restructured during the last fiscal year;
  - (iii) a description of each project that received money from that revolving loan fund;
  - (iv) the amount of each loan made to that project;
  - (v) the specific purpose for which the proceeds of the loan were to be used, if any;
  - (vi) any restrictions on the use of the loan proceeds;
  - (vii) the present value of each loan at the end of the fiscal year calculated using the interest rate paid by the state on the bonds providing the revenue on which the loan is based or, if that is unknown, on the average interest rate paid by the state on general obligation bonds issued during the most recent fiscal year in which bonds were sold; and
  - (viii) the financial position of each revolving loan fund, including the fund's cash investments, cash forecasts, and equity position.

Section 14. Section **63B-1b-102** is amended to read:

### **63B-1b-102. Definitions.**

As used in this chapter:

- (1) "Agency bonds" means any bond, note, contract, or other evidence of indebtedness representing loans or grants made by an authorizing agency.
- (2) "Authorized official" means the state treasurer or other person authorized by a bond document to perform the required action.
- (3) "Authorizing agency" means the board, person, or unit with legal responsibility for administering and managing revolving loan funds.
- (4) "Bond document" means:
  - (a) a resolution of the commission; or
  - (b) an indenture or other similar document authorized by the commission that authorizes and secures outstanding revenue bonds from time to time.

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- (5) "Commission" means the State Bonding Commission, created in Section 63B-1-201.
- (6) "Revenue bonds" means any special fund revenue bonds issued under this chapter.
- (7) "Revolving Loan Funds" means:
- (a) the Water Resources Conservation and Development Fund, created in Section 73-10-24;
  - (b) the Water Resources Construction Fund, created in Section 73-10-8;
  - (c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;
  - (d) the Clean Fuel Conversion Funds, created in Title 19, Chapter 1, Part 4, Clean Fuels and Vehicle Technology Program Act;
  - (e) the Water Development Security Fund and its subaccounts, created in Section 73-10c-5;
  - (f) the Agriculture Resource Development Fund, created in Section [~~4-18-6~~] 4-18-106;
  - (g) the Utah Rural Rehabilitation Fund, created in Section 4-19-4;
  - (h) the Permanent Community Impact Fund, created in Section 35A-8-303;
  - (i) the Petroleum Storage Tank Loan Fund, created in Section 19-6-405.3; and
  - (j) the Transportation Infrastructure Loan Fund, created in Section 72-2-202.

Section 15. Section **63B-1b-202** is amended to read:

### **63B-1b-202. Custodial officer -- Powers and duties.**

(1) (a) There is created within the Division of Finance an officer responsible for the care, custody, safekeeping, collection, and accounting of all bonds, notes, contracts, trust documents, and other evidences of indebtedness:

- (i) owned or administered by the state or any of its agencies; and
- (ii) except as provided in Subsection (1)(b), relating to revolving loan funds.

(b) Notwithstanding Subsection (1)(a), the officer described in Subsection (1)(a) is not responsible for the care, custody, safekeeping, collection, and accounting of a bond, note, contract, trust document, or other evidence of indebtedness relating to the:

- (i) Agriculture Resource Development Fund, created in Section [~~4-18-6~~] 4-18-106;
- (ii) Utah Rural Rehabilitation Fund, created in Section 4-19-4;
- (iii) Petroleum Storage Tank Loan Fund, created in Section 19-6-405.3;
- (iv) Olene Walker Housing Loan Fund, created in Section 35A-8-502;

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(v) Business Development for Disadvantaged Rural Communities Restricted Account, created in Section 63M-1-2003; and

(vi) Brownfields Fund, created in Section 19-8-120.

(2) (a) Each authorizing agency shall deliver to this officer for the officer's care, custody, safekeeping, collection, and accounting all bonds, notes, contracts, trust documents, and other evidences of indebtedness:

(i) owned or administered by the state or any of its agencies; and

(ii) except as provided in Subsection (1)(b), relating to revolving loan funds.

(b) This officer shall:

(i) establish systems, programs, and facilities for the care, custody, safekeeping, collection, and accounting for the bonds, notes, contracts, trust documents, and other evidences of indebtedness submitted to the officer under this Subsection (2); and

(ii) shall make available updated reports to each authorizing agency as to the status of loans under their authority.

(3) The officer described in Section 63B-1b-201 shall deliver to the officer described in Subsection (1)(a) for the care, custody, safekeeping, collection, and accounting by the officer described in Subsection (1)(a) of all bonds, notes, contracts, trust documents, and other evidences of indebtedness closed as provided in Subsection 63B-1b-201(2)(b).

Section 16. ~~Section 63G-2-305 is amended to read:~~

~~63G-2-305. 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 63G-2-309;~~

~~(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~~

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~~the information specified in Section 63G-2-309;~~

~~—— (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, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, once the contract or grant has been awarded, a bid, proposal, or application submitted to or by a governmental entity in response to:~~

~~—— (a) a request for bids;~~

~~—— (b) a request for proposals;~~

~~—— (c) a grant; or~~

~~—— (d) other similar document;~~

~~—— (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 is greater than or equal to 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~~

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~~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 78B-6-505;~~

~~—— (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 is greater than or equal to 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~~

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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 that are subject to the attorney-client privilege;~~

~~—— (17) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;~~

~~—— (18) (a) (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and~~

~~—— (ii) notwithstanding Subsection (18)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and~~

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

~~—— (A) members of a legislative body;~~

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

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

~~—— (ii) notwithstanding Subsection (18)(b)(i), a communication that gives notice of~~

## SB0057S01 compared with SB0057

~~legislative action or policy may not be classified as protected under this section;~~

~~—— (19) (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 (19)(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;~~

~~—— (20) 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;~~

~~—— (21) drafts, unless otherwise classified as public;~~

~~—— (22) records concerning a governmental entity's strategy about:~~

~~—— (a) collective bargaining; or~~

~~—— (b) imminent or pending litigation;~~

~~—— (23) 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;~~

~~—— (24) 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;~~

~~—— (25) 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;~~

~~—— (26) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;~~

~~—— (27) records of an institution within the state system of higher education defined in Section 53B-1-102 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 Act, provided that records of~~



## **SB0057S01 compared with SB0057**

~~the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;~~

~~—— (28) 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;~~

~~—— (29) 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;~~

~~—— (30) 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;~~

~~—— (31) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;~~

~~—— (32) 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;~~

~~—— (33) 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;~~

~~—— (34) 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;~~

~~—— (35) 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;~~

~~—— (36) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other~~

## SB0057S01 compared with SB0057

~~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 (36); and~~

~~—— (c) except for an institution within the state system of higher education defined in Section 53B-1-102, 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 the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;~~

~~—— (37) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;~~

~~—— (38) a notification of workers' compensation insurance coverage described in Section 34A-2-205;~~

~~—— (39) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:~~

~~—— (i) unpublished lecture notes;~~

~~—— (ii) unpublished notes, data, and information:~~

~~—— (A) relating to research; and~~

~~—— (B) of:~~

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

~~—— (II) a sponsor of sponsored research;~~

~~—— (iii) unpublished manuscripts;~~

~~—— (iv) creative works in process;~~

~~—— (v) scholarly correspondence; and~~

~~—— (vi) confidential information contained in research proposals;~~

~~—— (b) Subsection (39)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and~~

~~—— (c) Subsection (39)(a) may not be construed to affect the ownership of a record;~~

## **SB0057S01 compared with SB0057**

~~—— (40) (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 (40)(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;~~

~~—— (41) 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;~~

~~—— (42) information:~~

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

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

~~—— (43) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;~~

~~—— (44) information regarding National Guard operations or activities in support of the National Guard's federal mission;~~

~~—— (45) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;~~

~~—— (46) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;~~

~~—— (47) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:~~

~~—— (a) the safety of the general public; or~~

## SB0057S01 compared with SB0057

- ~~\_\_\_\_\_ (b) the security of:~~
- ~~\_\_\_\_\_ (i) governmental property;~~
- ~~\_\_\_\_\_ (ii) governmental programs; or~~
- ~~\_\_\_\_\_ (iii) the property of a private person who provides the Division of Emergency Management information;~~
- ~~\_\_\_\_\_ (48) records of the Department of Agriculture and Food that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Control of Animal Disease;~~
- ~~\_\_\_\_\_ (49) as provided in Section 26-39-501:~~
- ~~\_\_\_\_\_ (a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and~~
- ~~\_\_\_\_\_ (b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;~~
- ~~\_\_\_\_\_ (50) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:~~
- ~~\_\_\_\_\_ (a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and~~
- ~~\_\_\_\_\_ (b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:~~
- ~~\_\_\_\_\_ (i) the nature of the law, ordinance, rule, or order; and~~
- ~~\_\_\_\_\_ (ii) the individual complying with the law, ordinance, rule, or order;~~
- ~~\_\_\_\_\_ (51) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:~~
- ~~\_\_\_\_\_ (a) conducted within the state system of higher education, as defined in Section 53B-1-102; and~~
- ~~\_\_\_\_\_ (b) conducted using animals;~~
- ~~\_\_\_\_\_ (52) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program, to the extent not made public by rules made under that chapter;~~

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~~—— (53) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote on whether or not to recommend that the voters retain a judge;~~

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

~~—— (55) records contained in the Management Information System created in Section 62A-4a-1003;~~

~~—— (56) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;~~

~~—— (57) information requested by and provided to the Utah State 911 Committee under Section 53-10-602;~~

~~—— (58) recorded Children's Justice Center investigative interviews, both video and audio, the release of which are governed by Section 77-37-4;~~

~~—— (59) in accordance with Section 73-10-33;~~

~~—— (a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or~~

~~—— (b) an outline of an emergency response plan in possession of the state or a county or municipality;~~

~~—— (60) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63J-4a-201:~~

~~—— (a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;~~

~~—— (b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or~~

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~~regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;~~

~~—— (c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;~~

~~—— (d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or~~

~~—— (e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;~~

~~—— (61) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or abuse;~~

~~—— (62) information provided to the Department of Health or the Division of Occupational and Professional Licensing under Subsection 58-68-304(3) or (4); [and]~~

~~—— (63) a record described in Section 63G-12-210[.]; and~~

~~—— (64) a record provided by, obtained from, or containing information provided by or obtained from, an owner or operator of an agricultural operation under Section 4-18-107 in relation to an application to become a certified agricultural operation, an application for renewal of certification as a certified agricultural operation, or an investigation of a certified agricultural operation.~~

~~—— Section 17.} **Effective dates.**~~

~~(1) Except as provided in Subsection (2), this bill takes effect on May 14, 2013.~~

~~(2) The actions affecting Section 59-12-103 (Effective 07/01/14) take effect on July 1, 2014.~~

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### Legislative Review Note

~~—— as of 1-31-13 1:02 PM~~

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~~Office of Legislative Research and General Counsel~~