

## SB0073S01 compared with SB0073

~~{deleted text}~~ shows text that was in SB0073 but was deleted in SB0073S01.

inserted text shows text that was not in SB0073 but was inserted into SB0073S01.

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Senator Ralph Okerlund proposes the following substitute bill:

### AGRICULTURAL ENVIRONMENTAL AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ralph Okerlund**

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

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#### LONG TITLE

##### General Description:

This bill modifies the Utah Agriculture Certificate of Environmental Stewardship Program.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends legislative findings;
- ▶ amends definitions;
- ▶ creates an ~~{authority}~~advisory board for making loans and grants from the Agriculture Resource Development Fund;

~~{ } requires the Conservation Commission, with the assistance of the Office of the Attorney General, to defend the holder of an Agriculture Certificate of~~

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~~Environmental Stewardship if the holder is legally challenged regarding the holder's environmental management, so long as the Conservation Commission determines that the holder is in compliance with the requirements of certification;~~

- ‡ ▶ states that the Water Quality Board may not require a holder of an Agriculture Certificate of Environmental Stewardship to implement additional or different practices during the life of the certification, except in certain conditions;
- ▶ states that the Division of Water Quality shall consider an agriculture operation's compliance with a certification under an approved agriculture environmental stewardship program as a mitigating factor for any penalty purposes;
- ▶ states that certain records related to the certification of a farm or ranch under the Agriculture Certificate of Environmental Stewardship Program are protected under the Government Records Access and Management Act; and
- ▶ makes technical changes.

### **Money Appropriated in this Bill:**

This bill appropriates, for fiscal year 2014-15 only:

- ▶ to the Agriculture Environment Account:
  - from the General Fund, \$10,000.

### **Other Special Clauses:**

None

### **Utah Code Sections Affected:**

AMENDS:

**4-18-102**, as renumbered and amended by Laws of Utah 2013, Chapter 227

**4-18-103**, as renumbered and amended by Laws of Utah 2013, Chapter 227

**4-18-105**, as renumbered and amended by Laws of Utah 2013, Chapter 227

**4-18-106**, as renumbered and amended by Laws of Utah 2013, Chapter 227

**4-18-107**, as enacted by Laws of Utah 2013, Chapter 227

**63G-2-305**, as last amended by Laws of Utah 2013, Chapters 12, 445, and 447

ENACTS:

**19-5-105.6**, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

**4-18-108**, (Renumbered from 4-18-6.5, as last amended by Laws of Utah 2008, Chapter

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382)

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

Section 1. Section **4-18-102** is amended to read:

**4-18-102. Purpose declaration.**

(1) The Legislature finds and declares that:

(a) the soil and water resources of this state constitute one of its basic assets; and ~~[that]~~

(b) the preservation of these resources requires planning and programs to ensure;

(i) the development and utilization of these resources; and ~~[to protect them]~~

(ii) their protection 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~~[-];~~ and

(g) helping to stabilize the state economy.

(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 administer the Utah Agriculture Certificate of Environmental Stewardship ~~[Certification]~~ Program, created in Section 4-18-107.

Section 2. Section **4-18-103** is amended to read:

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### 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.

(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.

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

(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~~] normal growing season.

(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:

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- (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 Agriculture Certificate of Environmental Stewardship [~~Certification~~] Program in accordance with Section 4-18-107.

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

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

(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.

(11) "Coordinated resource management plan" means a plan of action created at a local level with broad participation of land owners, natural resource agencies, and interested stakeholders to protect or enhance the environment, human health, humane treatment of animals, and financial viability in the community.

~~(11)~~ (12) "District" or "conservation district" has the same meaning as "conservation district" as defined in Section 17D-3-102.

~~(12)~~ (13) "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.

~~(13)~~ (14) "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.

~~(14)~~ (15) "Sustainable agriculture" means agriculture production and practices that promote:

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

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feedlots; and

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

Section 3. Section **4-18-105** is amended to read:

### **4-18-105. Conservation Commission -- Functions and duties.**

(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 and grants for agricultural purposes, through the ~~authority~~ advisory board described in Section 4-18-106, 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;

(v) development and implementation of coordinated resource management plans, as defined in Section 4-18-103, with conservation districts, as defined in Section 17D-3-102; and

(vi) programs or improvements for agriculture product storage or protections of a crop or animal resource;

(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;

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- (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;
- (i) assist other state agencies with conservation standards for agriculture when requested; and
- (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 4-18-103 that are proportional to the seriousness of the resulting environmental harm.
- (2) The commission may:
  - (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

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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 4. Section **4-18-106** is amended to read:

**4-18-106. Agriculture Resource Development Fund -- Contents -- Use of fund money -- Authority board.**

(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 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) (a) The commission shall ~~at the direction of the authority board described in Subsection (4),~~ make:

(i) loans from the Agriculture Resource Development Fund as provided by [Section 4-18-105-] Subsections 4-18-105(1)(e)(i) through (iii); and

(ii) grants from the Agriculture Resource Development Fund as provided by Subsections 4-18-105(1)(e)(iv) and (v).

(b) Total grants awarded under Subsection (3)(a)(ii) may not exceed the amount described in Subsection (2)(b) for a fiscal year.

(4) The commission may appoint an ~~authority~~ advisory board that shall:

(a) oversee the award process for loans and grants, as described in this section;

(b) make recommendations to the commission regarding loans and grants; and

(c) recommend the policies and procedures for the Agriculture Resource Development Fund, consistent with statute.

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Section 5. Section **4-18-107** is amended to read:

### **4-18-107. Utah Agriculture Certificate of Environmental Stewardship Program.**

(1) There is created the Utah Agriculture Certificate of 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:

(a) (i) best management practices;

(ii) state technical standards; and

(iii) guidelines for nutrient management plans;

(b) requirements for qualification under the Utah Agriculture Certificate of 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 Agriculture Certificate of 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 Agriculture Certificate of 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 Agriculture Certificate of Environmental Stewardship [~~Certification~~] Program in accordance with this section.

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(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 conservation planner shall certify each qualifying agricultural operation that applies to the Utah Agriculture Certificate of 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 Agriculture Certificate of 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 Agriculture Certificate of 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) If, for a certification renewal under Subsection (4)(b), or an investigation 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 a certified agricultural operation denies the department access as described in Subsection (7)(a), the commission may revoke the agricultural operation's certification.

(8) If the commission changes a requirement of the Utah Agriculture Certificate of

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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.

(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).

~~{ (10) The commission, with the assistance of the Office of the Attorney General, shall defend the position of the state certification if:~~

~~—— (a) the holder of the certificate is legally challenged by the federal government regarding the holder's environmental management; and~~

~~—— (b) the commission determines the holder is in compliance with the requirements of certification.~~

‡ ~~(11)~~10 (a) Except as provided in Subsections 19-5-105.6(2) and (3), a certified agriculture operation may not be required to implement additional projects or best management practices to address nonpoint source discharges.

(b) The Division of Water Quality shall consider an agriculture operation's compliance with certification under an approved agriculture environmental stewardship program a mitigating factor for penalty purposes, as provided in Section 19-5-105.6.

(c) (i) As provided in Section 63G-2-305, the workbook of a farm or ranch certified under this section in the possession of the department, and any other records kept by the department to demonstrate compliance with certification requirements, are protected records.

(ii) Section 63G-2-305 does not apply to records that contain only contact information, verification signature, or date of certification.

Section 6. Section ~~4-18-108~~, which is renumbered from Section 4-18-6.5 is renumbered and amended to read:

~~[4-18-6.5].~~ **4-18-108. Agriculture Environment Account -- Contents -- Use of fund money.**

(1) There is created a restricted account within the General Fund known as the Agriculture Environment Account.

(2) The Agriculture Environment Account shall consist of:

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(a) funds appropriated by the Legislature; and

(b) grants received from other state or federal agencies, or private sources.

~~[(1)(a) The]~~ (3)(a) ~~{The}~~ Subject to appropriation, the commission, as described in Subsection (6), may make ~~[grants to owners or operators of animal feeding operations]~~ a grant to an owner or operator of a farm or ranch to pay for costs of plans or projects to improve manure management, ~~[or]~~ control surface water runoff or other environmental issues on the farm or ranch operation, including costs of preparing or implementing ~~[comprehensive]~~ a nutrient management [plans] plan.

(b) The commission shall make [the grants] a grant described in Subsection [(1)(a) from funds appropriated by the Legislature for that purpose] (3)(a) from the Agriculture Environment Account.

~~[(2)(a)]~~ (4)(a) In awarding ~~[grants]~~ a grant, the commission shall consider the following criteria:

(i) the ability of the grantee to pay for costs of plans or projects to improve manure management or control surface water runoff;

(ii) the availability of:

(A) matching funds provided by the grantee or another source; or

(B) material, labor, or other items of value provided in lieu of money by the grantee or another source; and

(iii) the benefits that accrue to the general public by the awarding of a grant.

(b) The commission may establish by rule additional criteria for the awarding of [grants] a grant.

~~[(3)]~~ (5) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this section.

(6) The commission:

(a) shall be responsible for awarding a grant or loan for water quality or other environmental issues; and

(b) may appoint an advisory board to:

(i) assist with the award process; and

(ii) make recommendations to the commission regarding awards.

Section 7. Section **19-5-105.6** is enacted to read:

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### **19-5-105.6. Agriculture Certificate of Environmental Stewardship.**

(1) As used in this section:

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

(b) "Approved agriculture environmental stewardship program" means a program:

(i) created under Section 4-18-107;

(ii) that is approved by the board; and

(iii) that includes practices and other requirements sufficient to prevent violations of the Utah Pollutant Discharge Elimination System program, statute, or rules.

(c) "Certified agriculture operation" means an agriculture operation that has current certification under an approved agriculture environmental stewardship program and that is in compliance with the requirements of that certification.

(2) (a) The division may not require a certified agriculture operation to implement additional or different practices to control nonpoint source discharges for the purpose of meeting total maximum daily load requirements.

(b) If the division implements additional or different rules to control nonpoint source discharges, those rules shall be effective on a certified agriculture operation upon the expiration of the operation's certificate, as described in Subsection 4-18-107(4).

(3) Notwithstanding Subsection (2), a certified agriculture operation may be required to undertake projects or additional best management practices for the purpose of meeting the total maximum daily load requirements under the following conditions:

(a) the certified agriculture operation has nonpoint source discharges to surface waters in an impaired watershed that is covered by an approved total maximum daily load;

(b) the board, in consultation with the Conservation Commission, has determined that the best management practice or project is necessary to restore water quality in the affected watershed; and

(c) the project or best management practice is funded:

(i) at least 75% by the state, federal government sources, or private sources other than the certified agriculture operation; or

(ii) at least 90% by the state, federal government sources, or private sources other than the certified agriculture operation if the director, commissioner of the Department of Agriculture and Food, and director of the Utah State University Extension service, or their

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designees, determine by majority vote that the requirements of Subsection (3)(b) pose a serious financial hardship to the certified agriculture operation.

(4) The division shall consider an agriculture operation's compliance with certification under an approved agriculture environmental stewardship program as a mitigating factor for any penalty purposes.

Section 8. 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 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

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Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties, a bid, proposal, application, or other information submitted to or by a governmental entity in response to:

- (a) an invitation for bids;
- (b) a request for proposals;
- (c) a request for quotes;
- (d) a grant; or
- (e) other similar document;

(7) information submitted to or by a governmental entity in response to a request for information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a person to have access to the information, after:

(a) a contract directly relating to the subject of the request for information has been awarded and signed by all parties; or

(b) (i) a final determination is made not to enter into a contract that relates to the subject of the request for information; and

(ii) at least two years have passed after the day on which the request for information is issued;

(8) 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 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

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the property as required under Section 78B-6-505;

(9) 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;

(10) 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;

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

(12) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft,

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or other appropriation or use contrary to law or public policy;

(13) 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;

(14) 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;

(15) 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;

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

(17) records that are subject to the attorney client privilege;

(18) 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;

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

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

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

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

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

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

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about:

(a) collective bargaining; or

(b) imminent or pending litigation;

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

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

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

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

(28) records of 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 the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative

## **SB0073S01 compared with SB0073**

proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

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

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

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

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

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

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

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

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

(a) the donor requests anonymity in writing;

## **SB0073S01 compared with SB0073**

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

(c) except for 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;

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

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

(40) (a) the following records of 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 (40)(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 (40)(a) may not be construed to affect the ownership of a record;

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

## **SB0073S01 compared with SB0073**

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

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

(a) a production facility; or

(b) a magazine;

(43) information:

(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;

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

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

(46) records provided by any 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;

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

(48) 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

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

## **SB0073S01 compared with SB0073**

(iii) the property of a private person who provides the Division of Emergency Management information;

(49) 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;

(50) 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;

(51) 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;

(52) 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;

(53) 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;

(54) 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;

## **SB0073S01 compared with SB0073**

(55) 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;

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

(57) 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;

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

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

(60) 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;

(61) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:

(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 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;

**SB0073S01 compared with SB0073**

(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;

(62) 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;

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

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

(65) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003[-]; and

(66) the workbook of a farm or ranch and any other records maintained or retained by the department to demonstrate the farm's or ranch's certification, or compliance with certification requirements, under Section 4-18-107, not including the:

(a) contact information of the holder of a certificate;

(b) verification signature of the holder of a certificate; or

(c) date of certification.

**Section 9. Appropriation.**

Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the following sums of money are appropriated for the fiscal year beginning July 2, 2014 and ending June 30, 2015 from resources not otherwise appropriated out of funds or accounts indicated.

These sums of money are in addition to amounts previously appropriated for fiscal year 2015.

Item 1 To Department of Agriculture and Food

From General Fund, One-time \$10,000

Schedule of Programs:

Agriculture Environment Account \$10,000

Item 2 To Agriculture Environment Account

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From Department of Agriculture and Food, One-time

\$10,000

Schedule of Programs:

Administration

\$10,000

The Legislature intends that the appropriation under this section be used by the Conservation Commission within the Department of Agriculture and Food to provide grants as described in Section 4-18-108.

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**Legislative Review Note**

~~as of 2-20-14 4:06 PM~~

~~Office of Legislative Research and General Counsel}~~