

## SB0073S03 compared with SB0073S02

~~text~~ shows text that was in SB0073S02 but was deleted in SB0073S03.

text shows text that was not in SB0073S02 but was inserted into SB0073S03.

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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 advisory board for making loans ~~and grants~~ from the Agriculture Resource Development Fund;
- ▶ states that the Water Quality Board may not require a holder of an Agriculture Certificate of Environmental Stewardship to implement additional or different

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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; 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.} None~~

### 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

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 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]~~

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(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:

### **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:

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(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:

(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

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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 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

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(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 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;

(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) 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 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

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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 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.~~

~~} (v) }.~~

(4) The commission may appoint an 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.

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



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(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.

(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.

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(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 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) (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

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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.

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:~~

~~— (a) funds appropriated by the Legislature; and~~

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

~~{~~ ~~{(1) (a) [The ~~{(3) (a)}~~]~~ Subject to appropriation, the commission, as described in Subsection ~~{(6) (4)}~~, 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.

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(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)~~4 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:

### **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 certificate of 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 best management practices to control nonpoint source discharges, those best management practices 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

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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 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. **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 General Fund Restricted - Agriculture Environment Account~~

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

~~Schedule of Programs:~~

~~General Fund Restricted -~~

~~Agriculture Environment Account \$10,000~~

~~Item 2 To Department of Agriculture and Food - Administration~~

~~From General Fund Restricted -~~

~~Agriculture Environment Account \$10,000~~

~~Schedule of Programs:~~

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~~General 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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