

AGRICULTURAL ENVIRONMENTAL AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: _____

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 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 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



28 stewardship program as a mitigating factor for any penalty purposes;

29 ▶ states that certain records related to the certification of a farm or ranch under the
30 Agriculture Certificate of Environmental Stewardship Program are protected under
31 the Government Records Access and Management Act; and

32 ▶ makes technical changes.

33 **Money Appropriated in this Bill:**

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

35 ▶ to the Agriculture Environment Account:

36 • from the General Fund, \$10,000.

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **4-18-102**, as renumbered and amended by Laws of Utah 2013, Chapter 227

42 **4-18-103**, as renumbered and amended by Laws of Utah 2013, Chapter 227

43 **4-18-105**, as renumbered and amended by Laws of Utah 2013, Chapter 227

44 **4-18-106**, as renumbered and amended by Laws of Utah 2013, Chapter 227

45 **4-18-107**, as enacted by Laws of Utah 2013, Chapter 227

46 **63G-2-305**, as last amended by Laws of Utah 2013, Chapters 12, 445, and 447

47 ENACTS:

48 **19-5-105.6**, Utah Code Annotated 1953

49 RENUMBERS AND AMENDS:

50 **4-18-108**, (Renumbered from 4-18-6.5, as last amended by Laws of Utah 2008, Chapter
51 382)



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

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

55 **4-18-102. Purpose declaration.**

56 (1) The Legislature finds and declares that:

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

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

59 (i) the development and utilization of these resources; and [~~to protect them~~]
 60 (ii) their protection from the adverse effects of wind and water erosion, sediment, and
 61 sediment related pollutants.

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

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

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

- 66 (a) the success of rural communities;
- 67 (b) the historical culture of the state;
- 68 (c) maintaining healthy farmland;
- 69 (d) maintaining high water quality;
- 70 (e) maintaining abundant wildlife; [~~and~~]
- 71 (f) high-quality recreation for citizens of the state[:]; and
- 72 (g) helping to stabilize the state economy.

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

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

77 (6) To encourage each agricultural producer in this state to operate in a reasonable and
 78 responsible manner to maintain the integrity of the state's resources, the state shall administer
 79 the Utah Agriculture Certificate of Environmental Stewardship [~~Certification~~] Program, created
 80 in Section [4-18-107](#).

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

82 **4-18-103. Definitions.**

83 As used in this chapter:

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

- 86 (i) pollutes a surface body of water, including a stream, lake, pond, marshland,
 87 watercourse, waterway, river, ditch, or other water conveyance system;
- 88 (ii) pollutes ground water; or
- 89 (iii) constitutes a significant nuisance to urban land.

- 90 (b) "Agricultural discharge" does not include:
- 91 (i) runoff from a farm, ranch, or feedlot, or the return flow of water from an irrigated
- 92 field onto land that is not part of a body of water; or
- 93 (ii) a release of water from a farm, ranch, or feedlot into a normally dry water
- 94 conveyance leading to an active body of water, if the release does not reach the water of a lake,
- 95 pond, stream, marshland, river, or other active body of water.
- 96 (2) "Agricultural operation" means a farm, ranch, or animal feeding operation.
- 97 (3) "Agriculture water" means:
- 98 (a) water used by a farm, ranch, or feedlot for the production of food, fiber, or fuel;
- 99 (b) the return flow of water from irrigated agriculture; or
- 100 (c) agricultural storm water runoff.
- 101 (4) "Alternate" means a substitute for a district supervisor if the district supervisor
- 102 cannot attend a meeting.
- 103 (5) (a) "Animal feeding operation" means a facility where animals, other than aquatic
- 104 animals, are stabled or confined and fed or maintained for a total of 45 days or more in any
- 105 12-month period.
- 106 (b) "Animal feeding operation" does not include an operation where animals are in
- 107 areas such as pastures or rangeland that sustain crops or forage growth during the [~~entire time~~
- 108 ~~the animals are present~~] normal growing season.
- 109 (6) "Best management practices" means practices, including management policies and
- 110 the use of technology, used by each sector of agriculture in the production of food and fiber
- 111 that are commonly accepted practices, or that are at least as effective as commonly accepted
- 112 practices, and that:
- 113 (a) protect the environment;
- 114 (b) protect human health;
- 115 (c) ensure the humane treatment of animals; and
- 116 (d) promote the financial viability of agricultural production.
- 117 (7) "Certified agricultural operation" means an agricultural operation that is certified
- 118 under the Utah Agriculture Certificate of Environmental Stewardship [~~Certification~~] Program
- 119 in accordance with Section [4-18-107](#).
- 120 (8) "Certified conservation planner" means a planner of a state conservation district, or

121 other qualified planner, that is approved by the commission to certify an agricultural operation
 122 under the Utah Agriculture Certificate of Environmental Stewardship [~~Certification~~] Program,
 123 created in Section 4-18-107.

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

125 (10) "Comprehensive nutrient management plan" or "nutrient management plan"
 126 means a plan to properly store, handle, and spread manure and other agricultural byproducts to:

127 (a) protect the environment; and

128 (b) provide nutrients for the production of crops.

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

133 [~~(11)~~] (12) "District" or "conservation district" has the same meaning as "conservation
 134 district" as defined in Section 17D-3-102.

135 [~~(12)~~] (13) "Pollution" means a harmful human-made or human-induced alteration to
 136 the water of the state, including an alteration to the chemical, physical, biological, or
 137 radiological integrity of water that harms the water of the state.

138 [~~(13)~~] (14) "State technical standards" means a collection of best management practices
 139 that will protect the environment in a reasonable and economical manner for each sector of
 140 agriculture as required by this chapter.

141 [~~(14)~~] (15) "Sustainable agriculture" means agriculture production and practices that
 142 promote:

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

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

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

147 **4-18-105. Conservation Commission -- Functions and duties.**

148 (1) The commission shall:

149 (a) facilitate the development and implementation of the strategies and programs
 150 necessary to:

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

- 152 and
- 153 (ii) promote the protection, integrity, and restoration of land for agricultural and other
154 beneficial purposes;
- 155 (b) disseminate information regarding districts' activities and programs;
- 156 (c) supervise the formation, reorganization, or dissolution of districts according to the
157 requirements of Title 17D, Chapter 3, Conservation District Act;
- 158 (d) prescribe uniform accounting and recordkeeping procedures for districts and
159 require each district to submit annually an audit of its funds to the commission;
- 160 (e) approve and make loans and grants for agricultural purposes, through the authority
161 board described in Section 4-18-106, from the Agriculture Resource Development Fund, for:
- 162 (i) rangeland improvement and management projects;
- 163 (ii) watershed protection and flood prevention projects;
- 164 (iii) agricultural cropland soil and water conservation projects; [~~and~~]
- 165 (iv) programs designed to promote energy efficient farming practices;
- 166 (v) development and implementation of coordinated resource management plans, as
167 defined in Section 4-18-103, with conservation districts, as defined in Section 17D-3-102; and
- 168 (vi) programs or improvements for agriculture product storage or protections of a crop
169 or animal resource;
- 170 (f) administer federal or state funds, including loan funds under this chapter, in
171 accordance with applicable federal or state guidelines and make loans or grants from those
172 funds to land occupiers for:
- 173 (i) the conservation of soil or water resources;
- 174 (ii) maintenance of rangeland improvement projects; and
- 175 (iii) the control or eradication of noxious weeds and invasive plant species:
- 176 (A) in cooperation and coordination with local weed boards; and
- 177 (B) in accordance with Section 4-2-8.7;
- 178 (g) seek to coordinate soil and water protection, conservation, and development
179 activities and programs of state agencies, local governmental units, other states, special interest
180 groups, and federal agencies;
- 181 (h) plan watershed and flood control projects in cooperation with appropriate local,
182 state, and federal authorities, and coordinate flood control projects in the state;

- 183 (i) assist other state agencies with conservation standards for agriculture when
- 184 requested; and
- 185 (j) when assigned by the governor, when required by contract with the Department of
- 186 Environmental Quality, or when required by contract with the United States Environmental
- 187 Protection Agency:
- 188 (i) develop programs for the prevention, control, or abatement of new or existing
- 189 pollution to the soil, water, or air of the state;
- 190 (ii) advise, consult, and cooperate with affected parties to further the purpose of this
- 191 chapter;
- 192 (iii) conduct studies, investigations, research, and demonstrations relating to
- 193 agricultural pollution issues;
- 194 (iv) give reasonable consideration in the exercise of its powers and duties to the
- 195 economic impact on sustainable agriculture;
- 196 (v) meet the requirements of federal law related to water and air pollution in the
- 197 exercise of its powers and duties; and
- 198 (vi) establish administrative penalties relating to agricultural discharges as defined in
- 199 Section 4-18-103 that are proportional to the seriousness of the resulting environmental harm.
- 200 (2) The commission may:
- 201 (a) employ, with the approval of the department, an administrator and necessary
- 202 technical experts and employees;
- 203 (b) execute contracts or other instruments necessary to exercise its powers;
- 204 (c) take necessary action to promote and enforce the purpose and findings of Section
- 205 4-18-102;
- 206 (d) sue and be sued; and
- 207 (e) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative
- 208 Rulemaking Act, necessary to carry out the powers and duties described in Subsection (1) and
- 209 Subsections (2)(b) and (c).

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

211 **4-18-106. Agriculture Resource Development Fund -- Contents -- Use of fund**
212 **money -- Authority board.**

- 213 (1) There is created a revolving loan fund known as the Agriculture Resource

214 Development Fund.

215 (2) The Agriculture Resource Development Fund shall consist of:

216 (a) money appropriated to it by the Legislature;

217 (b) sales and use tax receipts transferred to the fund in accordance with Section

218 [59-12-103](#);

219 (c) money received for the repayment of loans made from the fund;

220 (d) money made available to the state for agriculture resource development from any
221 source; and

222 (e) interest earned on the fund.

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

225 (i) loans from the Agriculture Resource Development Fund as provided by [Section
226 4-18-105]; Subsections [4-18-105](#)(1)(e)(i) through (iii); and

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

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

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

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

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

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

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

237 **4-18-107. Utah Agriculture Certificate of Environmental Stewardship Program.**

238 (1) There is created the Utah Agriculture Certificate of Environmental Stewardship
239 [Certification] Program.

240 (2) The commission, with the assistance of the department and with the advice of the
241 Water Quality Board, created in Section [19-1-106](#), shall make rules in accordance with Title
242 63G, Chapter 3, Utah Administrative Rulemaking Act that establish:

243 (a) (i) best management practices;

244 (ii) state technical standards; and

245 (iii) guidelines for nutrient management plans;

246 (b) requirements for qualification under the Utah Agriculture Certificate of
247 Environmental Stewardship [~~Certification~~] Program that:

248 (i) are consistent with sustainable agriculture;

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

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

252 (A) best management practices; and

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

255 (c) the procedure for qualification under the Utah Agriculture Certificate of
256 Environmental Stewardship [~~Certification~~] Program;

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

259 (e) standards and procedures for administering the Utah Agriculture Certificate of
260 Environmental Stewardship [~~Certification~~] Program, including:

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

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

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

264 (3) An owner or operator of an agricultural operation may apply to certify the
265 agricultural operation under the Utah Agriculture Certificate of Environmental Stewardship
266 [~~Certification~~] Program in accordance with this section.

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

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

273 (5) Subject to review by the commissioner or the commissioner's designee, a certified
274 conservation planner shall certify each qualifying agricultural operation that applies to the Utah
275 Agriculture Certificate of Environmental Stewardship [~~Certification~~] Program.

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

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

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

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

290 (7) (a) If, for a certification renewal under Subsection (4)(b), or an investigation under
291 Subsection (6)(a), the department requests access to a certified agricultural operation, the
292 certified agricultural operation shall, at a reasonable time, allow access for the department to:

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

295 (b) If a certified agricultural operation denies the department access as described in
296 Subsection (7)(a), the commission may revoke the agricultural operation's certification.

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

303 (9) Nothing in this section exempts an agricultural discharge made by a certified
304 agricultural operation from the provisions of Subsection [19-5-105.5\(3\)\(b\)](#).

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

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

309 (b) the commission determines the holder is in compliance with the requirements of
 310 certification.

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

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

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

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

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

324 ~~[4-18-6.5].~~ **4-18-108. Agriculture Environment Account -- Contents -- Use of**
 325 **fund money.**

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

328 (2) The Agriculture Environment Account shall consist of:

329 (a) funds appropriated by the Legislature; and

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

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

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

338 Environment Account.

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

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

343 (ii) the availability of:

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

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

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

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

350 ~~[(3)]~~ (5) The commission shall make rules in accordance with Title 63G, Chapter 3,
351 Utah Administrative Rulemaking Act, to implement this section.

352 (6) The commission:

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

355 (b) may appoint an advisory board to:

356 (i) assist with the award process; and

357 (ii) make recommendations to the commission regarding awards.

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

359 **19-5-105.6. Agriculture Certificate of Environmental Stewardship.**

360 (1) As used in this section:

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

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

363 (i) created under Section [4-18-107](#);

364 (ii) that is approved by the board; and

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

367 (c) "Certified agriculture operation" means an agriculture operation that has current
368 certification under an approved agriculture environmental stewardship program and that is in

369 compliance with the requirements of that certification.

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

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

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

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

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

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

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

387 (ii) at least 90% by the state, federal government sources, or private sources other than
388 the certified agriculture operation if the director, commissioner of the Department of
389 Agriculture and Food, and director of the Utah State University Extension service, or their
390 designees, determine by majority vote that the requirements of Subsection (3)(b) pose a serious
391 financial hardship to the certified agriculture operation.

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

395 Section 8. Section **63G-2-305** is amended to read:

396 **63G-2-305. Protected records.**

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

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

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

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

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

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

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

413 (4) records, the disclosure of which could cause commercial injury to, or confer a
414 competitive advantage upon a potential or actual competitor of, a commercial project entity as
415 defined in Subsection 11-13-103(4);

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

418 (6) records, the disclosure of which would impair governmental procurement
419 proceedings or give an unfair advantage to any person proposing to enter into a contract or
420 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
421 Subsection (6) does not restrict the right of a person to have access to, after the contract or
422 grant has been awarded and signed by all parties, a bid, proposal, application, or other
423 information submitted to or by a governmental entity in response to:

424 (a) an invitation for bids;

425 (b) a request for proposals;

426 (c) a request for quotes;

427 (d) a grant; or

428 (e) other similar document;

429 (7) information submitted to or by a governmental entity in response to a request for
430 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict

431 the right of a person to have access to the information, after:

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

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

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

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

441 (a) public interest in obtaining access to the information is greater than or equal to the
442 governmental entity's need to acquire the property on the best terms possible;

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

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

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

450 (e) the property under consideration for public acquisition is a single family residence
451 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
452 the property as required under Section [78B-6-505](#);

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

457 (a) the public interest in access is greater than or equal to the interests in restricting
458 access, including the governmental entity's interest in maximizing the financial benefit of the
459 transaction; or

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

462 under a duty of confidentiality to the entity;

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

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

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

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

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

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

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

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

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

487 (14) records that, if disclosed, would reveal recommendations made to the Board of
488 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
489 Board of Pardons and Parole, or the Department of Human Services that are based on the
490 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
491 jurisdiction;

492 (15) records and audit workpapers that identify audit, collection, and operational

493 procedures and methods used by the State Tax Commission, if disclosure would interfere with
494 audits or collections;

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

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

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

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

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

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

507 (A) members of a legislative body;

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

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

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

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

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

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

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

- 524 (23) records concerning a governmental entity's strategy about:
525 (a) collective bargaining; or
526 (b) imminent or pending litigation;
- 527 (24) records of investigations of loss occurrences and analyses of loss occurrences that
528 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
529 Uninsured Employers' Fund, or similar divisions in other governmental entities;
- 530 (25) records, other than personnel evaluations, that contain a personal recommendation
531 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
532 personal privacy, or disclosure is not in the public interest;
- 533 (26) records that reveal the location of historic, prehistoric, paleontological, or
534 biological resources that if known would jeopardize the security of those resources or of
535 valuable historic, scientific, educational, or cultural information;
- 536 (27) records of independent state agencies if the disclosure of the records would
537 conflict with the fiduciary obligations of the agency;
- 538 (28) records of an institution within the state system of higher education defined in
539 Section [53B-1-102](#) regarding tenure evaluations, appointments, applications for admissions,
540 retention decisions, and promotions, which could be properly discussed in a meeting closed in
541 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
542 the final decisions about tenure, appointments, retention, promotions, or those students
543 admitted, may not be classified as protected under this section;
- 544 (29) records of the governor's office, including budget recommendations, legislative
545 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
546 policies or contemplated courses of action before the governor has implemented or rejected
547 those policies or courses of action or made them public;
- 548 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
549 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
550 recommendations in these areas;
- 551 (31) records provided by the United States or by a government entity outside the state
552 that are given to the governmental entity with a requirement that they be managed as protected
553 records if the providing entity certifies that the record would not be subject to public disclosure
554 if retained by it;

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

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

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

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

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

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

575 (a) the donor requests anonymity in writing;

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

578 (c) except for an institution within the state system of higher education defined in
579 Section [53B-1-102](#), the governmental unit to which the donation is made is primarily engaged
580 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
581 over the donor, a member of the donor's immediate family, or any entity owned or controlled
582 by the donor or the donor's immediate family;

583 (38) accident reports, except as provided in Sections [41-6a-404](#), [41-12a-202](#), and
584 [73-18-13](#);

585 (39) a notification of workers' compensation insurance coverage described in Section

586 34A-2-205;

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

590 (i) unpublished lecture notes;

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

592 (A) relating to research; and

593 (B) of:

594 (I) the institution within the state system of higher education defined in Section
595 53B-1-102; or

596 (II) a sponsor of sponsored research;

597 (iii) unpublished manuscripts;

598 (iv) creative works in process;

599 (v) scholarly correspondence; and

600 (vi) confidential information contained in research proposals;

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

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

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

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

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

614 (a) a production facility; or

615 (b) a magazine;

616 (43) information:

617 (a) contained in the statewide database of the Division of Aging and Adult Services
618 created by Section [62A-3-311.1](#); or
619 (b) received or maintained in relation to the Identity Theft Reporting Information
620 System (IRIS) established under Section [67-5-22](#);

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

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

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

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

630 (48) except to the extent that the record is exempt from this chapter pursuant to Section
631 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or
632 prepared or maintained by the Division of Emergency Management, and the disclosure of
633 which would jeopardize:

634 (a) the safety of the general public; or
635 (b) the security of:
636 (i) governmental property;
637 (ii) governmental programs; or
638 (iii) the property of a private person who provides the Division of Emergency
639 Management information;

640 (49) records of the Department of Agriculture and Food that provides for the
641 identification, tracing, or control of livestock diseases, including any program established under
642 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act or Title 4, Chapter 31, Control
643 of Animal Disease;

644 (50) as provided in Section [26-39-501](#):

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

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

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

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

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

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

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

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

661 (a) conducted within the state system of higher education, as defined in Section
662 53B-1-102; and

663 (b) conducted using animals;

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

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

669 (55) information collected and a report prepared by the Judicial Performance
670 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
671 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
672 the information or report;

673 (56) records contained in the Management Information System created in Section
674 62A-4a-1003;

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

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

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

681 (60) in accordance with Section 73-10-33:

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

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

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

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

694 (b) records and audit workpapers to the extent they would disclose the identity of a
695 person who, during the course of an investigation or audit, communicated the existence of any
696 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or
697 regulation adopted under the laws of this state, a political subdivision of the state, or any
698 recognized entity of the United States, if the information was disclosed on the condition that
699 the identity of the person be protected;

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

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

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

707 (62) records that reveal methods used by the Office of Inspector General of Medicaid
708 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or
709 abuse;

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

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

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

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

- 718 (a) contact information of the holder of a certificate;
- 719 (b) verification signature of the holder of a certificate; or
- 720 (c) date of certification.

721 Section 9. **Appropriation.**

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

726 Item 1 To Department of Agriculture and Food

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

728 Schedule of Programs:

729 Agriculture Environment Account \$10,000

730 Item 2 To Agriculture Environment Account

731 From Department of Agriculture and Food, One-time \$10,000

732 Schedule of Programs:

733 Administration \$10,000

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

Legislative Review Note
as of 2-20-14 4:06 PM

Office of Legislative Research and General Counsel