

CANAL SAFETY ACT

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gene Davis

House Sponsor: Johnny Anderson

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **63G-2-305**, as last amended by Laws of Utah 2013, Chapters 12, 445, and 447

30 ENACTS:

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

32 **73-31-102**, Utah Code Annotated 1953

33 **73-31-103**, Utah Code Annotated 1953

34 **73-31-201**, Utah Code Annotated 1953

35 **73-31-202**, Utah Code Annotated 1953

36 **73-31-301**, Utah Code Annotated 1953

37 **73-31-401**, Utah Code Annotated 1953

38

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

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

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

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

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

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

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

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

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

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

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

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

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

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

69 (a) an invitation for bids;

70 (b) a request for proposals;

71 (c) a request for quotes;

72 (d) a grant; or

73 (e) other similar document;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

137 (15) records and audit workpapers that identify audit, collection, and operational
138 procedures and methods used by the State Tax Commission, if disclosure would interfere with
139 audits or collections;

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

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

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

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

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

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

- 152 (A) members of a legislative body;
- 153 (B) a member of a legislative body and a member of the legislative body's staff; or
- 154 (C) members of a legislative body's staff; and
- 155 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
- 156 legislative action or policy may not be classified as protected under this section;
- 157 (20) (a) records in the custody or control of the Office of Legislative Research and
- 158 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
- 159 legislation or contemplated course of action before the legislator has elected to support the
- 160 legislation or course of action, or made the legislation or course of action public; and
- 161 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
- 162 Office of Legislative Research and General Counsel is a public document unless a legislator
- 163 asks that the records requesting the legislation be maintained as protected records until such
- 164 time as the legislator elects to make the legislation or course of action public;
- 165 (21) research requests from legislators to the Office of Legislative Research and
- 166 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
- 167 in response to these requests;
- 168 (22) drafts, unless otherwise classified as public;
- 169 (23) records concerning a governmental entity's strategy about:
- 170 (a) collective bargaining; or
- 171 (b) imminent or pending litigation;
- 172 (24) records of investigations of loss occurrences and analyses of loss occurrences that
- 173 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
- 174 Uninsured Employers' Fund, or similar divisions in other governmental entities;
- 175 (25) records, other than personnel evaluations, that contain a personal recommendation
- 176 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
- 177 personal privacy, or disclosure is not in the public interest;
- 178 (26) records that reveal the location of historic, prehistoric, paleontological, or
- 179 biological resources that if known would jeopardize the security of those resources or of
- 180 valuable historic, scientific, educational, or cultural information;
- 181 (27) records of independent state agencies if the disclosure of the records would
- 182 conflict with the fiduciary obligations of the agency;

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

189 (29) records of the governor's office, including budget recommendations, legislative
190 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
191 policies or contemplated courses of action before the governor has implemented or rejected
192 those policies or courses of action or made them public;

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

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

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

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

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

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

213 (36) materials to which access must be limited for purposes of securing or maintaining

214 the governmental entity's proprietary protection of intellectual property rights including patents,
215 copyrights, and trade secrets;

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

220 (a) the donor requests anonymity in writing;

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

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

228 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
229 73-18-13;

230 (39) a notification of workers' compensation insurance coverage described in Section
231 34A-2-205;

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

235 (i) unpublished lecture notes;

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

237 (A) relating to research; and

238 (B) of:

239 (I) the institution within the state system of higher education defined in Section
240 53B-1-102; or

241 (II) a sponsor of sponsored research;

242 (iii) unpublished manuscripts;

243 (iv) creative works in process;

244 (v) scholarly correspondence; and

- 245 (vi) confidential information contained in research proposals;
- 246 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
247 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
- 248 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 249 (41) (a) records in the custody or control of the Office of Legislative Auditor General
250 that would reveal the name of a particular legislator who requests a legislative audit prior to the
251 date that audit is completed and made public; and
- 252 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
253 Office of the Legislative Auditor General is a public document unless the legislator asks that
254 the records in the custody or control of the Office of Legislative Auditor General that would
255 reveal the name of a particular legislator who requests a legislative audit be maintained as
256 protected records until the audit is completed and made public;
- 257 (42) records that provide detail as to the location of an explosive, including a map or
258 other document that indicates the location of:
- 259 (a) a production facility; or
- 260 (b) a magazine;
- 261 (43) information:
- 262 (a) contained in the statewide database of the Division of Aging and Adult Services
263 created by Section 62A-3-311.1; or
- 264 (b) received or maintained in relation to the Identity Theft Reporting Information
265 System (IRIS) established under Section 67-5-22;
- 266 (44) information contained in the Management Information System and Licensing
267 Information System described in Title 62A, Chapter 4a, Child and Family Services;
- 268 (45) information regarding National Guard operations or activities in support of the
269 National Guard's federal mission;
- 270 (46) records provided by any pawn or secondhand business to a law enforcement
271 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
272 Secondhand Merchandise Transaction Information Act;
- 273 (47) information regarding food security, risk, and vulnerability assessments performed
274 by the Department of Agriculture and Food;
- 275 (48) except to the extent that the record is exempt from this chapter pursuant to Section

276 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or
277 prepared or maintained by the Division of Emergency Management, and the disclosure of
278 which would jeopardize:

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

280 (b) the security of:

281 (i) governmental property;

282 (ii) governmental programs; or

283 (iii) the property of a private person who provides the Division of Emergency

284 Management information;

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

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

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

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

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

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

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

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

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

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

306 (a) conducted within the state system of higher education, as defined in Section

307 53B-1-102; and
308 (b) conducted using animals;
309 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
310 Private Proposal Program, to the extent not made public by rules made under that chapter;
311 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance
312 Evaluation Commission concerning an individual commissioner's vote on whether or not to
313 recommend that the voters retain a judge;
314 (55) information collected and a report prepared by the Judicial Performance
315 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
316 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
317 the information or report;
318 (56) records contained in the Management Information System created in Section
319 62A-4a-1003;
320 (57) records provided or received by the Public Lands Policy Coordinating Office in
321 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;
322 (58) information requested by and provided to the Utah State 911 Committee under
323 Section 53-10-602;
324 (59) recorded Children's Justice Center investigative interviews, both video and audio,
325 the release of which are governed by Section 77-37-4;
326 (60) in accordance with Section 73-10-33:
327 (a) a management plan for a water conveyance facility in the possession of the Division
328 of Water Resources or the Board of Water Resources; or
329 (b) an outline of an emergency response plan in possession of the state or a county or
330 municipality;
331 (61) the following records in the custody or control of the Office of Inspector General
332 of Medicaid Services, created in Section 63A-13-201:
333 (a) records that would disclose information relating to allegations of personal
334 misconduct, gross mismanagement, or illegal activity of a person if the information or
335 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
336 through other documents or evidence, and the records relating to the allegation are not relied
337 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation

338 report or final audit report;

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

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

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

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

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

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

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

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

360 (66) a remediation plan submitted in accordance with Title 73, Chapter 31, Canal
361 Safety Act.

362 Section 2. Section 73-31-101 is enacted to read:

363 **CHAPTER 31. CANAL SAFETY ACT**

364 **Part 1. General Provisions**

365 **73-31-101. Title.**

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

367 Section 3. Section 73-31-102 is enacted to read:

368 **73-31-102. Definitions.**

369 As used in this chapter:

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

372 (2) "Canal action list" means the list created under Section [73-31-202](#).

373 (3) "Canal owner" means a person who owns a canal, including a water company as
374 defined in Section [73-3-3.5](#).

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

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

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

378 (b) cause extensive loss to critical transportation infrastructure, utility infrastructure, or
379 buildings.

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

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

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

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

385 Section 4. Section **73-31-103** is enacted to read:

386 **73-31-103. Scope of chapter.**

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

389 Section 5. Section **73-31-201** is enacted to read:

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

391 **73-31-201. Canal assessment.**

392 (1) A canal owner shall assess the level of risk of each canal it owns:

393 (a) by no later than January 1, 2015; and

394 (b) at least once every five years thereafter.

395 (2) A canal owner shall determine the need, if any, for repairs or improvements to
396 minimize the possibility of failure of a high risk canal or area of a canal.

397 (3) As a result of the assessment and determination required by Subsections (1) and
398 (2), the canal owner shall determine whether a canal or any section of a canal is:

399 (a) high risk;

400 (b) medium risk; or

401 (c) low risk.

402 (4) The canal owner shall report to the division concerning any canal or section of a
403 canal that is high risk or in need of repairs or improvements, as described in Subsections (1)
404 and (2).

405 (5) The division shall maintain a list of canals or sections of a canal that are high risk.

406 Section 6. Section **73-31-202** is enacted to read:

407 **73-31-202. Canal action list.**

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

410 (1) are high risk; and

411 (2) require repair or improvements as described in Section [73-31-201](#).

412 Section 7. Section **73-31-301** is enacted to read:

413 **Part 3. Reduction of Risks**

414 **73-31-301. Remediation plans.**

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

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

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

422 (i) the division; and

423 (ii) the Division of Water Resources.

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

426 (3) A remediation plan submitted under this section is a protected record under Section
427 [63G-2-305](#).

428 Section 8. Section **73-31-401** is enacted to read:

429 **Part 4. Remedies**

430 **73-31-401. Prohibition on grants or loans.**

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

Legislative Review Note
as of 10-15-13 6:43 AM

Office of Legislative Research and General Counsel