

1 WATER CONVEYANCE FACILITIES SAFETY

2 ACT

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: Fred R Hunsaker

6 Senate Sponsor: _____

7

8 LONG TITLE

9 Committee Note:

10 The State Water Development Commission recommended this bill.

11 Membership: 10 legislators 14 non-legislators

12 Legislative Vote: 9 voting for 0 voting against 1 absent

13 General Description:

14 This bill addresses the safety and management of water conveyance facilities.

15 Highlighted Provisions:

16 This bill:

- 17 ▶ defines terms;
- 18 ▶ provides for the creation of a management plan for certain water conveyance
- 19 facilities;
- 20 ▶ allows the Division of Water Resources and an association of conservation districts
- 21 to provide assistance in the creation of a management plan for a water conveyance
- 22 facility;
- 23 ▶ requires a report to a legislative committee concerning management plans;
- 24 ▶ allows the Division of Water Resources to make rules concerning management
- 25 plans for water conveyance facilities;
- 26 ▶ addresses the effect of a management plan on civil actions against a water
- 27 conveyance facility owner or operator;



- 28 ▶ provides that a management plan and certain related records are protected records
- 29 under Title 63G, Chapter 2, Government Records Access and Management Act; and
- 30 ▶ makes technical changes.

31 **Monies Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **63G-2-305**, as last amended by Laws of Utah 2009, Chapters 64 and 121

38 ENACTS:

39 **73-10-33**, Utah Code Annotated 1953



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

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

43 **63G-2-305. Protected records.**

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

45 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret

46 has provided the governmental entity with the information specified in Section 63G-2-309;

47 (2) commercial information or nonindividual financial information obtained from a

48 person if:

49 (a) disclosure of the information could reasonably be expected to result in unfair

50 competitive injury to the person submitting the information or would impair the ability of the

51 governmental entity to obtain necessary information in the future;

52 (b) the person submitting the information has a greater interest in prohibiting access

53 than the public in obtaining access; and

54 (c) the person submitting the information has provided the governmental entity with

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

56 (3) commercial or financial information acquired or prepared by a governmental entity

57 to the extent that disclosure would lead to financial speculations in currencies, securities, or

58 commodities that will interfere with a planned transaction by the governmental entity or cause

59 substantial financial injury to the governmental entity or state economy;

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

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

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

71 (a) a request for bids;

72 (b) a request for proposals;

73 (c) a grant; or

74 (d) other similar document;

75 (7) records that would identify real property or the appraisal or estimated value of real
76 or personal property, including intellectual property, under consideration for public acquisition
77 before any rights to the property are acquired unless:

78 (a) public interest in obtaining access to the information outweighs the governmental
79 entity's need to acquire the property on the best terms possible;

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

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

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

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

90 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
91 compensated transaction of real or personal property including intellectual property, which, if
92 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
93 of the subject property, unless:

94 (a) the public interest in access outweighs the interests in restricting access, including
95 the governmental entity's interest in maximizing the financial benefit of the transaction; or

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

99 (9) records created or maintained for civil, criminal, or administrative enforcement
100 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
101 release of the records:

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

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

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

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

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

115 (10) records the disclosure of which would jeopardize the life or safety of an
116 individual;

117 (11) records the disclosure of which would jeopardize the security of governmental
118 property, governmental programs, or governmental recordkeeping systems from damage, theft,
119 or other appropriation or use contrary to law or public policy;

120 (12) records that, if disclosed, would jeopardize the security or safety of a correctional

121 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
122 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

123 (13) records that, if disclosed, would reveal recommendations made to the Board of
124 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
125 Board of Pardons and Parole, or the Department of Human Services that are based on the
126 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
127 jurisdiction;

128 (14) records and audit workpapers that identify audit, collection, and operational
129 procedures and methods used by the State Tax Commission, if disclosure would interfere with
130 audits or collections;

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

133 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
134 litigation that are not available under the rules of discovery;

135 (17) records disclosing an attorney's work product, including the mental impressions or
136 legal theories of an attorney or other representative of a governmental entity concerning
137 litigation;

138 (18) records of communications between a governmental entity and an attorney
139 representing, retained, or employed by the governmental entity if the communications would be
140 privileged as provided in Section 78B-1-137;

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

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

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

147 (A) members of a legislative body;

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

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

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

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

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

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

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

164 (23) records concerning a governmental entity's strategy about collective bargaining or
165 pending litigation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

214 (a) the donor requests anonymity in writing;

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

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

222 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
223 73-18-13;

224 (39) a notification of workers' compensation insurance coverage described in Section
225 34A-2-205;

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

229 (i) unpublished lecture notes;

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

231 (A) relating to research; and

232 (B) of:

233 (I) the institution within the state system of higher education defined in Section
234 53B-1-102; or

235 (II) a sponsor of sponsored research;

236 (iii) unpublished manuscripts;

237 (iv) creative works in process;

238 (v) scholarly correspondence; and

239 (vi) confidential information contained in research proposals;

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

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

243 (41) (a) records in the custody or control of the Office of Legislative Auditor General
244 that would reveal the name of a particular legislator who requests a legislative audit prior to the

245 date that audit is completed and made public; and

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

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

253 (a) a production facility; or

254 (b) a magazine;

255 (43) information:

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

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

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

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

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

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

269 (48) except to the extent that the record is exempt from this chapter pursuant to Section
270 63G-2-106, records related to an emergency plan or program prepared or maintained by the
271 Division of Homeland Security the disclosure of which would jeopardize:

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

273 (b) the security of:

274 (i) governmental property;

275 (ii) governmental programs; or

276 (iii) the property of a private person who provides the Division of Homeland Security
277 information;

278 (49) records of the Department of Agriculture and Food relating to the National
279 Animal Identification System or any other program that provides for the identification, tracing,
280 or control of livestock diseases, including any program established under Title 4, Chapter 24,
281 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
282 Quarantine;

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

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

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

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

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

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

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

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

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

300 (a) conducted within the state system of higher education, as defined in Section
301 53B-1-102; and

302 (b) conducted using animals;

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

305 (54) information collected and a report prepared by the Judicial Performance
306 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter

307 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
308 the information or report;

309 (55) (a) records of the Utah Educational Savings Plan Trust created under Section
310 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

311 (b) proposals submitted to the Utah Educational Savings Plan Trust; and

312 (c) contracts entered into by the Utah Educational Savings Plan Trust and the related
313 payments;

314 (56) records contained in the Management Information System created in Section
315 62A-4a-1003;

316 (57) records provided or received by the Public Lands Policy Coordinating Office in
317 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;
318 [~~and~~]

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

321 (59) a management plan for a water conveyance facility and review documents in the
322 possession of the Division of Water Resources, in accordance with Section 73-10-33.

323 Section 2. Section **73-10-33** is enacted to read:

324 **73-10-33. Management plan for water conveyance facilities.**

325 (1) As used in this section:

326 (a) "Board" means the Board of Water Resources created by Section 73-10-1.5.

327 (b) "Conservation district" means a conservation district created under Title 17D,
328 Chapter 3, Conservation District Act.

329 (c) "Division" means the Division of Water Resources created by Section 73-10-18.

330 (d) "Facility owner or operator" means:

331 (i) a water company as defined in Subsection 73-3-3.5(1)(b); or

332 (ii) an owner or operator of a water conveyance facility for which a management plan
333 is required under Subsection (2).

334 (e) "Hazard" means a condition where, if a water conveyance facility fails, the failure
335 would create a high probability of:

336 (i) causing loss of human life;

337 (ii) causing extensive economic loss, including damage to critical transportation or

338 utility facilities, or a public building; or

339 (iii) causing appreciable damage to private property, to transportation or utility
340 facilities, or to a public building.

341 (f) "Management plan" means a written document prepared under Subsection (2).

342 (g) (i) "Water conveyance facility" means a water conveyance defined in Section
343 57-13a-101.

344 (ii) "Water conveyance facility" does not include:

345 (A) a pipeline conveying water for industrial use, or municipal use within a public
346 water system as defined in Section 19-4-102;

347 (B) a natural channel used to convey water for use within a water conveyance facility;

348 or

349 (C) a fully piped, pressurized irrigation system.

350 (2) The owner or operator of a canal or other water conveyance facility shall prepare a
351 written management plan for each segment of a water conveyance facility that due to location,
352 elevation, soil conditions, structural instability, water volume or pressure, or other conditions
353 constitutes a hazard.

354 (3) A management plan required by Subsection (2) shall include at least the following:

355 (a) a GIS coverage or drawing of the location of each water conveyance facility for
356 which a management plan is required, identifying any:

357 (i) existing canal and lateral alignment of the canal facility;

358 (ii) point of diversion;

359 (iii) bridge;

360 (iv) culvert;

361 (v) screen or trash rack; and

362 (vi) spill point;

363 (b) an evaluation of any potential slope instability that may cause a hazard, including:

364 (i) failure of the facility; or

365 (ii) land movement that might result from failure of the facility;

366 (c) (i) proof of insurance coverage against liability resulting from failure of the water
367 conveyance facility; or

368 (ii) a statement that the facility owner or operator has no insurance coverage against

- 369 liability resulting from failure of the water conveyance facility;
370 (d) a maintenance and improvement plan;
371 (e) a schedule for implementation of a maintenance and improvement plan;
372 (f) an emergency response plan developed after consultation with local emergency
373 response officials and updated annually;
374 (g) any potential source of financing for maintenance and improvements under a
375 maintenance and improvement plan;
376 (h) identification of each municipality or county through which water is conveyed or
377 delivered by the water conveyance facility;
378 (i) a statement concerning whether storm water enters the water conveyance facility;
379 and
380 (j) if storm water enters the water conveyance facility:
381 (i) an estimate of the maximum volume and flow of all water present in the water
382 conveyance facility as a result of a six-hour, 25-year storm event;
383 (ii) identification of the points at which any storm structures introduce water into the
384 water conveyance facility and the anticipated flow that may occur at each structure; and
385 (iii) the name of each governmental agency that has responsibility for storm water
386 management within the area from which storm water drains into the water conveyance facility.
387 (4) A facility owner or operator shall give notice to the planning and zoning
388 department of each municipality and county identified in Subsection (3)(h) outlining the
389 information provided in Subsections (3)(f), (i), and (j).
390 (5) The division or an association comprised of conservation districts may provide
391 information and technical resources for a facility owner or operator to comply with this section,
392 including:
393 (a) engaging state and local water users in voluntary compliance with this section and
394 completion of a management plan;
395 (b) developing standard guidelines, checklists, or templates that may be used by a
396 facility owner or operator;
397 (c) utilizing conservation districts as points of contact with facility owners;
398 (d) providing training to help a facility owner or operator comply with this section; and
399 (e) assisting, at the request and under the direction of, a facility owner or operator with

400 efforts to comply with this section or to implement a management plan.

401 (6) (a) A facility owner or operator shall:

402 (i) register with the division on or before December 31, 2010, using a form created by
403 the division by rule;

404 (ii) prepare and adopt a management plan and file a certification of the approved
405 management plan with the division on or before May 1, 2013;

406 (iii) make the management plan available for division review; and

407 (iv) update its canal management plan no less frequently than every 10 years.

408 (b) A plan prepared and reviewed under this section is a protected record under Section
409 63G-2-305.

410 (7) The board shall report concerning compliance with this section to the Natural
411 Resources, Agriculture, and Environment Interim Committee of the Legislature before
412 November 30, 2013.

413 (8) A water conveyance facility owner or operator may not receive loans from the
414 board or other state funds for water development or water conveyance facility repair or
415 improvements, if it does not have a management plan that complies with this section.

416 (9) The division and board may make rules, in accordance with Title 63G, Chapter 3,
417 Utah Administrative Rulemaking Act, concerning this section's requirements.

418 (10) This section does not:

419 (a) create a private right of action for a violation of this section; or

420 (b) limit, impair, or enlarge a person's right to sue and recover damages from a facility
421 owner or operator in a civil action for a cause of action that is not based on a violation of this
422 section.

423 (11) The following may not be introduced as evidence in any civil litigation on the
424 issue of negligence, injury, or the calculation of damages:

425 (a) a management plan prepared in accordance with this section;

426 (b) the failure to prepare or adopt a management plan in accordance with this section;

427 or

428 (c) the failure to update a management plan in accordance with this section.

Legislative Review Note
as of 12-15-09 10:31 AM

Office of Legislative Research and General Counsel

H.B. 60 - Water Conveyance Facilities Safety Act

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or local governments. The bill will likely result in additional costs to the owners or operators of hazardous canals as defined in the bill.
