

Senator Gene Davis proposes the following substitute bill:

ADOPTION OF CANAL SAFETY ACT

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gene Davis

House Sponsor: _____

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.

Monies Appropriated in this Bill:

None

Other Special Clauses:



None

Utah Code Sections Affected:

AMENDS:

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

ENACTS:

73-29-101, Utah Code Annotated 1953

73-29-102, Utah Code Annotated 1953

73-29-103, Utah Code Annotated 1953

73-29-201, Utah Code Annotated 1953

73-29-202, Utah Code Annotated 1953

73-29-301, Utah Code Annotated 1953

73-29-401, Utah Code Annotated 1953

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

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

63G-2-305. Protected records.

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

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

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

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

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

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

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause

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, once the contract or
67 grant has been awarded, a bid, proposal, or application submitted to or by a governmental
68 entity in response to:

69 (a) a request for bids;

70 (b) a request for proposals;

71 (c) a grant; or

72 (d) other similar document;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) members of a legislative body;

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

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

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

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

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

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

(22) drafts, unless otherwise classified as public;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

212 (a) the donor requests anonymity in writing;

213 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be

214 classified protected by the governmental entity under this Subsection (37); and

215 (c) except for an institution within the state system of higher education defined in

216 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged

217 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority

218 over the donor, a member of the donor's immediate family, or any entity owned or controlled

219 by the donor or the donor's immediate family;

220 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and

221 73-18-13;

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

223 34A-2-205;

224 (40) (a) the following records of an institution within the state system of higher

225 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,

226 or received by or on behalf of faculty, staff, employees, or students of the institution:

227 (i) unpublished lecture notes;

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

229 (A) relating to research; and

230 (B) of:

231 (I) the institution within the state system of higher education defined in Section

232 53B-1-102; or

233 (II) a sponsor of sponsored research;

234 (iii) unpublished manuscripts;

235 (iv) creative works in process;

236 (v) scholarly correspondence; and

237 (vi) confidential information contained in research proposals;

238 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public

239 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

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

241 (41) (a) records in the custody or control of the Office of Legislative Auditor General

242 that would reveal the name of a particular legislator who requests a legislative audit prior to the

date that audit is completed and made public; and

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

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

(a) a production facility; or

(b) a magazine;

(43) information:

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

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

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

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

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

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

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

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

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

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

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

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

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

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

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

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

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

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

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

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

(b) conducted using animals;

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

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

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

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

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

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

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

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

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

(59) a remediation plan submitted in accordance with Title 73, Chapter 29, Canal Safety Act.

Section 2. Section **73-29-101** is enacted to read:

CHAPTER 29. CANAL SAFETY ACT

Part 1. General Provisions

73-29-101. Title.

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

Section 3. Section **73-29-102** is enacted to read:

73-29-102. Definitions.

As used in this chapter:

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

(2) "Canal action list" means the list created under Section 73-29-202.

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

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

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

(a) create a high probability of loss of human life; or
(b) cause extensive loss to critical transportation infrastructure, utility infrastructure, or
buildings.

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

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

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

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

Section 4. Section **73-29-103** is enacted to read:

73-29-103. Scope of chapter.

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

Section 5. Section **73-29-201** is enacted to read:

Part 2. Risk Assessment of Canals

73-29-201. Canal assessment.

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

(a) by no later than January 1, 2012; and

(b) at least once every five years thereafter.

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

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

(a) high risk;

(b) medium risk; or

(c) low risk.

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

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

Section 6. Section **73-29-202** is enacted to read:

73-29-202. Canal action list.

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

369 (1) are high risk; and

370 (2) require repair or improvements as described in Section 73-29-201.

371 Section 7. Section **73-29-301** is enacted to read:

372 **Part 3. Reduction of Risks**

373 **73-29-301. Remediation plans.**

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

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

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

381 (i) the division; and

382 (ii) the Division of Water Resources.

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

385 (3) A remediation plan submitted under this section is a protected record under Section
386 63G-2-305.

387 Section 8. Section **73-29-401** is enacted to read:

388 **Part 4. Remedies**

389 **73-29-401. Prohibition on grants or loans.**

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

S.B. 185 1st Sub. (Green) - Adoption of Canal Safety Act

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will require the following appropriation from the General Fund to the Division of Water Rights: 12,000 for FY 2011 and \$28,000 for FY 2012. Further, the bill will require an ongoing appropriation of \$65,000 from the General Fund to the Division of Water Resources beginning in FY 2011.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	\$73,000	\$73,000	\$0	\$0	\$0
General Fund, One-Time	\$0	\$4,000	\$20,000	\$0	\$0	\$0
Total	\$0	\$77,000	\$93,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.