

**Representative Bill Wright** proposes the following substitute bill:

**GROWING OF FOOD**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Christopher N. Herrod**

Senate Sponsor: Stephen H. Urquhart

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**LONG TITLE**

**General Description:**

This bill recognizes the right of an individual to grow food for personal use of the individual and the individual's family, without being subject to local, state, or federal regulation.

**Highlighted Provisions:**

This bill:

- ▶ recognizes the right of an individual to grow food for personal use of the individual and the individual's family, on the individual's property, without being subject to local, state, or federal regulation; and

- ▶ unless the food poses a risk to health, a risk of spreading insect infestation, a risk of spreading agricultural disease, or is unlawfully possessed, prohibits governmental confiscation of food grown for individual or family use, or food stored in an individual's dwelling.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



26 ENACTS:

27 **4-1-9**, Utah Code Annotated 1953

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

30 Section 1. Section **4-1-9** is enacted to read:

31 **4-1-9. Growing food for personal use.**

32 (1) The state recognizes the right of an individual, without federal intervention, to grow  
33 food for personal use by the individual or a member of the individual's family, on the  
34 individual's property, without being subject to local, state, or federal laws, ordinances, or rules,  
35 if the food:

36 (a) is legal for human consumption;

37 (b) is lawfully possessed;

38 (c) does not pose a health risk;

39 (d) does not negatively impact the rights of adjoining property owners; and

40 (e) complies with the food safety requirements of this title.

41 (2) A government entity may not confiscate food grown in accordance with this  
42 section, or food stored in an individual's home or dwelling, that is legal for human consumption  
43 and is lawfully possessed, unless the food poses a risk:

44 (a) to health;

45 (b) of spreading insect infestation; or

46 (c) of spreading agricultural disease.

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**Legislative Review Note**  
**as of 3-3-11 6:10 PM**

As required by legislative rules and practice, the Office of Legislative Research and General Counsel provides the following legislative review note to assist the Legislature in making its own determination as to the constitutionality of the bill. The note is based on an analysis of relevant state and federal constitutional law as applied to the bill. The note is not written for the purpose of influencing whether the bill should become law, but is written to provide information relevant to the legislators' consideration of this bill. The note is not a substitute for the judgment of the judiciary, which has authority to determine the constitutionality of a law in the context of a specific case.

This legislation recognizes the right of an individual to grow and store food for the personal use of the individual and the individual's family without being subject to local, state, or federal laws, ordinances, or rules. Furthermore, it provides that a government entity, not excluding a federal government entity, may confiscate that food only under certain circumstances. Even if this legislation is interpreted to be limited to wholly intrastate conduct, the United States Supreme Court has held that the United States Congress has broad power to regulate purely intrastate activity under the Commerce Clause of the United States Constitution. *Gonzales v. Raich*, 545 U.S. 1, 18 (2005) (“Congress can regulate purely intrastate activity . . . if it concludes that failure to regulate that class of activity would undercut the regulation of the interstate market in that commodity.”); U.S. Const. art. I, § 8, cl. 3. Moreover, even if the growing and storing of food described in this bill is not considered commercial activity, the Supreme Court has held that Congress may regulate intrastate activity if it substantially affects interstate commerce. *United States v. Lopez*, 514 U.S. 549, 559 (1995). Indeed, the regulation of agricultural commodities is a fundamental example of what Congress may regulate under the Commerce Clause. *Wickard v. Filburn*, 317 U.S. 111, 125 (1942) (holding that Congress may regulate wholly intrastate conduct—even the growing of wheat for consumption only by the grower—if “it exerts a substantial economic effect on interstate commerce.”).

Furthermore, the Supremacy Clause of the United States Constitution declares the laws of the United States to be the supreme law of the land. U.S. Const. art. VI, cl. 2. The Supreme Court has interpreted this to mean, for example, that a federal regulation properly adopted under federal law preempts state law that conflicts with the federal regulation. *Fry v. United States*, 421 U.S. 542, 547-48 (1975).

Based on this authority, there is a high probability that a court would find that this legislation is unconstitutional in that it violates the Supremacy Clause by limiting the permissible exercise of Congress’s authority under the Commerce Clause.

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 249 2nd Sub. (Gray)

SHORT TITLE: Growing of Food

SPONSOR: Wright, B.

2011 GENERAL SESSION, STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

The Legislative General Counsel has attached a detailed Legislative Review Note to this bill. If provisions in the bill are challenged in court, there will be costs associated with defending those provisions.

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.