

Senator Ralph Okerlund proposes the following substitute bill:

AGRICULTURAL ENVIRONMENTAL AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Agriculture Certificate of Environmental Stewardship Program.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends legislative findings;
- ▶ amends definitions;
- ▶ creates an advisory board for making loans and grants from the Agriculture Resource Development Fund;
- ▶ states that the Water Quality Board may not require a holder of an Agriculture Certificate of Environmental Stewardship to implement additional or different practices during the life of the certification, except in certain conditions;
- ▶ states that the Division of Water Quality shall consider an agriculture operation's compliance with a certification under an approved agriculture environmental stewardship program as a mitigating factor for any penalty purposes; and
- ▶ makes technical changes.

Money Appropriated in this Bill:



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

27 ▶ to the Agriculture Environment Account:

28 • from the General Fund, \$10,000.

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 4-18-102, as renumbered and amended by Laws of Utah 2013, Chapter 227

34 4-18-103, as renumbered and amended by Laws of Utah 2013, Chapter 227

35 4-18-105, as renumbered and amended by Laws of Utah 2013, Chapter 227

36 4-18-106, as renumbered and amended by Laws of Utah 2013, Chapter 227

37 4-18-107, as enacted by Laws of Utah 2013, Chapter 227

38 ENACTS:

39 19-5-105.6, Utah Code Annotated 1953

40 RENUMBERS AND AMENDS:

41 4-18-108, (Renumbered from 4-18-6.5, as last amended by Laws of Utah 2008, Chapter
42 382)



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

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

46 **4-18-102. Purpose declaration.**

47 (1) The Legislature finds and declares that:

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

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

50 (i) the development and utilization of these resources; and ~~[to protect them]~~

51 (ii) their protection from the adverse effects of wind and water erosion, sediment, and
52 sediment related pollutants.

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

54 (a) the security of the state's food supply; and

55 (b) the self-sufficiency of the state's citizens.

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

- 57 (a) the success of rural communities;
- 58 (b) the historical culture of the state;
- 59 (c) maintaining healthy farmland;
- 60 (d) maintaining high water quality;
- 61 (e) maintaining abundant wildlife; [~~and~~]
- 62 (f) high-quality recreation for citizens of the state[-]; and
- 63 (g) helping to stabilize the state economy.

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

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

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

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

73 **4-18-103. Definitions.**

74 As used in this chapter:

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

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

81 (b) "Agricultural discharge" does not include:

82 (i) runoff from a farm, ranch, or feedlot, or the return flow of water from an irrigated
83 field onto land that is not part of a body of water; or

84 (ii) a release of water from a farm, ranch, or feedlot into a normally dry water
85 conveyance leading to an active body of water, if the release does not reach the water of a lake,
86 pond, stream, marshland, river, or other active body of water.

87 (2) "Agricultural operation" means a farm, ranch, or animal feeding operation.

- 88 (3) "Agriculture water" means:
- 89 (a) water used by a farm, ranch, or feedlot for the production of food, fiber, or fuel;
- 90 (b) the return flow of water from irrigated agriculture; or
- 91 (c) agricultural storm water runoff.
- 92 (4) "Alternate" means a substitute for a district supervisor if the district supervisor
- 93 cannot attend a meeting.
- 94 (5) (a) "Animal feeding operation" means a facility where animals, other than aquatic
- 95 animals, are stabled or confined and fed or maintained for a total of 45 days or more in any
- 96 12-month period.
- 97 (b) "Animal feeding operation" does not include an operation where animals are in
- 98 areas such as pastures or rangeland that sustain crops or forage growth during the ~~[entire time~~
- 99 ~~the animals are present]~~ normal growing season.
- 100 (6) "Best management practices" means practices, including management policies and
- 101 the use of technology, used by each sector of agriculture in the production of food and fiber
- 102 that are commonly accepted practices, or that are at least as effective as commonly accepted
- 103 practices, and that:
- 104 (a) protect the environment;
- 105 (b) protect human health;
- 106 (c) ensure the humane treatment of animals; and
- 107 (d) promote the financial viability of agricultural production.
- 108 (7) "Certified agricultural operation" means an agricultural operation that is certified
- 109 under the Utah Agriculture Certificate of Environmental Stewardship ~~[Certification]~~ Program
- 110 in accordance with Section [4-18-107](#).
- 111 (8) "Certified conservation planner" means a planner of a state conservation district, or
- 112 other qualified planner, that is approved by the commission to certify an agricultural operation
- 113 under the Utah Agriculture Certificate of Environmental Stewardship ~~[Certification]~~ Program,
- 114 created in Section [4-18-107](#).
- 115 (9) "Commission" means the Conservation Commission created in Section [4-18-104](#).
- 116 (10) "Comprehensive nutrient management plan" or "nutrient management plan"
- 117 means a plan to properly store, handle, and spread manure and other agricultural byproducts to:
- 118 (a) protect the environment; and

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

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

124 [~~11~~] (12) "District" or "conservation district" has the same meaning as "conservation
125 district" as defined in Section 17D-3-102.

126 [~~12~~] (13) "Pollution" means a harmful human-made or human-induced alteration to
127 the water of the state, including an alteration to the chemical, physical, biological, or
128 radiological integrity of water that harms the water of the state.

129 [~~13~~] (14) "State technical standards" means a collection of best management practices
130 that will protect the environment in a reasonable and economical manner for each sector of
131 agriculture as required by this chapter.

132 [~~14~~] (15) "Sustainable agriculture" means agriculture production and practices that
133 promote:

134 (a) the environmental responsibility of owners and operators of farms, ranches, and
135 feedlots; and

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

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

138 **4-18-105. Conservation Commission -- Functions and duties.**

139 (1) The commission shall:

140 (a) facilitate the development and implementation of the strategies and programs
141 necessary to:

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

144 (ii) promote the protection, integrity, and restoration of land for agricultural and other
145 beneficial purposes;

146 (b) disseminate information regarding districts' activities and programs;

147 (c) supervise the formation, reorganization, or dissolution of districts according to the
148 requirements of Title 17D, Chapter 3, Conservation District Act;

149 (d) prescribe uniform accounting and recordkeeping procedures for districts and

150 require each district to submit annually an audit of its funds to the commission;

151 (e) approve and make loans and grants for agricultural purposes, through the advisory
152 board described in Section 4-18-106, from the Agriculture Resource Development Fund, for:

153 (i) rangeland improvement and management projects;

154 (ii) watershed protection and flood prevention projects;

155 (iii) agricultural cropland soil and water conservation projects; [~~and~~]

156 (iv) programs designed to promote energy efficient farming practices;

157 (v) development and implementation of coordinated resource management plans, as
158 defined in Section 4-18-103, with conservation districts, as defined in Section 17D-3-102; and

159 (vi) programs or improvements for agriculture product storage or protections of a crop
160 or animal resource;

161 (f) administer federal or state funds, including loan funds under this chapter, in
162 accordance with applicable federal or state guidelines and make loans or grants from those
163 funds to land occupiers for:

164 (i) the conservation of soil or water resources;

165 (ii) maintenance of rangeland improvement projects; and

166 (iii) the control or eradication of noxious weeds and invasive plant species:

167 (A) in cooperation and coordination with local weed boards; and

168 (B) in accordance with Section 4-2-8.7;

169 (g) seek to coordinate soil and water protection, conservation, and development
170 activities and programs of state agencies, local governmental units, other states, special interest
171 groups, and federal agencies;

172 (h) plan watershed and flood control projects in cooperation with appropriate local,
173 state, and federal authorities, and coordinate flood control projects in the state;

174 (i) assist other state agencies with conservation standards for agriculture when
175 requested; and

176 (j) when assigned by the governor, when required by contract with the Department of
177 Environmental Quality, or when required by contract with the United States Environmental
178 Protection Agency:

179 (i) develop programs for the prevention, control, or abatement of new or existing
180 pollution to the soil, water, or air of the state;

181 (ii) advise, consult, and cooperate with affected parties to further the purpose of this
182 chapter;

183 (iii) conduct studies, investigations, research, and demonstrations relating to
184 agricultural pollution issues;

185 (iv) give reasonable consideration in the exercise of its powers and duties to the
186 economic impact on sustainable agriculture;

187 (v) meet the requirements of federal law related to water and air pollution in the
188 exercise of its powers and duties; and

189 (vi) establish administrative penalties relating to agricultural discharges as defined in
190 Section 4-18-103 that are proportional to the seriousness of the resulting environmental harm.

191 (2) The commission may:

192 (a) employ, with the approval of the department, an administrator and necessary
193 technical experts and employees;

194 (b) execute contracts or other instruments necessary to exercise its powers;

195 (c) take necessary action to promote and enforce the purpose and findings of Section
196 4-18-102;

197 (d) sue and be sued; and

198 (e) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative
199 Rulemaking Act, necessary to carry out the powers and duties described in Subsection (1) and
200 Subsections (2)(b) and (c).

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

202 **4-18-106. Agriculture Resource Development Fund -- Contents -- Use of fund**
203 **money -- Authority board.**

204 (1) There is created a revolving loan fund known as the Agriculture Resource
205 Development Fund.

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

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

208 (b) sales and use tax receipts transferred to the fund in accordance with Section
209 59-12-103;

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

211 (d) money made available to the state for agriculture resource development from any

212 source; and

213 (e) interest earned on the fund.

214 (3) (a) The commission shall make:

215 (i) loans from the Agriculture Resource Development Fund as provided by [~~Section~~
216 ~~4-18-105~~] Subsections 4-18-105(1)(e)(i) through (iii); and

217 (ii) grants from the Agriculture Resource Development Fund as provided by
218 Subsections 4-18-105(1)(e)(iv) and (v).

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

221 (4) The commission may appoint an advisory board that shall:

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

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

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

226 Section 5. Section ~~4-18-107~~ is amended to read:

227 **4-18-107. Utah Agriculture Certificate of Environmental Stewardship Program.**

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

230 (2) The commission, with the assistance of the department and with the advice of the
231 Water Quality Board, created in Section ~~19-1-106~~, shall make rules in accordance with Title
232 63G, Chapter 3, Utah Administrative Rulemaking Act that establish:

233 (a) (i) best management practices;

234 (ii) state technical standards; and

235 (iii) guidelines for nutrient management plans;

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

238 (i) are consistent with sustainable agriculture;

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

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

242 (A) best management practices; and

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

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

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

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

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

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

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

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

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

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

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

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

272 (b) If, after completing an investigation described in Subsection (6)(a), the department
273 determines that a certified agricultural operation has committed a significant violation of the

274 requirements for the Utah Agriculture Certificate of Environmental Stewardship [Certification]
275 Program, the department shall report the violation to the commission.

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

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

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

- 283 (i) inspect the agricultural operation; or
- 284 (ii) review the records of the agricultural operation.

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

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

293 (9) Nothing in this section exempts an agricultural discharge made by a certified
294 agricultural operation from the provisions of Subsection 19-5-105.5(3)(b).

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

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

301 Section 6. Section **4-18-108**, which is renumbered from Section 4-18-6.5 is
302 renumbered and amended to read:

303 **[4-18-6.5]. 4-18-108. Agriculture Environment Account -- Contents -- Use of**
304 **fund money.**

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

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

308 (a) funds appropriated by the Legislature; and

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

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

316 (b) The commission shall make ~~[the grants]~~ a grant described in Subsection ~~[(1)(a)]~~
317 ~~from funds appropriated by the Legislature for that purpose]~~ (3)(a) from the Agriculture
318 Environment Account.

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

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

323 (ii) the availability of:

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

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

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

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

330 ~~[(3)]~~ (5) The commission shall make rules in accordance with Title 63G, Chapter 3,
331 Utah Administrative Rulemaking Act, to implement this section.

332 (6) The commission:

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

335 (b) may appoint an advisory board to:

- 336 (i) assist with the award process; and
- 337 (ii) make recommendations to the commission regarding awards.

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

339 **19-5-105.6. Agriculture Certificate of Environmental Stewardship.**

340 (1) As used in this section:

- 341 (a) "Agriculture operation" means a farm, ranch, or animal feeding operation.
- 342 (b) "Approved agriculture environmental stewardship program" means a program:

- 343 (i) created under Section [4-18-107](#);
- 344 (ii) that is approved by the board; and
- 345 (iii) that includes practices and other requirements sufficient to prevent violations of

346 the Utah Pollutant Discharge Elimination System program, statute, or rules.

- 347 (c) "Certified agriculture operation" means an agriculture operation that has current
- 348 certification under an approved agriculture certificate of environmental stewardship program
- 349 and that is in compliance with the requirements of that certification.

350 (2) (a) The division may not require a certified agriculture operation to implement

351 additional or different practices to control nonpoint source discharges for the purpose of

352 meeting total maximum daily load requirements.

353 (b) If the division implements additional or different best management practices to

354 control nonpoint source discharges, those best management practices shall be effective on a

355 certified agriculture operation upon the expiration of the operation's certificate, as described in

356 Subsection [4-18-107](#)(4).

357 (3) Notwithstanding Subsection (2), a certified agriculture operation may be required to

358 undertake projects or additional best management practices for the purpose of meeting the total

359 maximum daily load requirements under the following conditions:

360 (a) the certified agriculture operation has nonpoint source discharges to surface waters

361 in an impaired watershed that is covered by an approved total maximum daily load;

362 (b) the board, in consultation with the Conservation Commission, has determined that

363 the best management practice or project is necessary to restore water quality in the affected

364 watershed; and

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

- 366 (i) at least 75% by the state, federal government sources, or private sources other than

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

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

376 Section 8. **Appropriation.**

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

381 Item 1 To General Fund Restricted - Agriculture Environment Account

From General Fund, One-time	<u>\$10,000</u>
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383 Schedule of Programs:

384 General Fund Restricted -

Agriculture Environment Account	<u>\$10,000</u>
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386 Item 2 To Department of Agriculture and Food - Administration

387 From General Fund Restricted -

Agriculture Environment Account	<u>\$10,000</u>
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389 Schedule of Programs:

General Administration	<u>\$10,000</u>
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391 The Legislature intends that the appropriation under this section be used by the
 392 Conservation Commission within the Department of Agriculture and Food to provide grants as
 393 described in Section [4-18-108](#).