

Senator Ralph Okerlund proposes the following substitute bill:

AGRICULTURAL ENVIRONMENTAL AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: John G. Mathis

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 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 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **4-18-102**, as renumbered and amended by Laws of Utah 2013, Chapter 227

32 **4-18-103**, as renumbered and amended by Laws of Utah 2013, Chapter 227

33 **4-18-105**, as renumbered and amended by Laws of Utah 2013, Chapter 227

34 **4-18-106**, as renumbered and amended by Laws of Utah 2013, Chapter 227

35 **4-18-107**, as enacted by Laws of Utah 2013, Chapter 227

36 ENACTS:

37 **19-5-105.6**, Utah Code Annotated 1953

38 RENUMBERS AND AMENDS:

39 **4-18-108**, (Renumbered from 4-18-6.5, as last amended by Laws of Utah 2008, Chapter
40 382)



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

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

44 **4-18-102. Purpose declaration.**

45 (1) The Legislature finds and declares that:

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

47 (b) the preservation of these resources requires planning and programs to ensure:

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

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

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

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

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

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

55 (a) the success of rural communities;

56 (b) the historical culture of the state;

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

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

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

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

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

71 **4-18-103. Definitions.**

72 As used in this chapter:

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

75 (i) pollutes a surface body of water, including a stream, lake, pond, marshland,
76 watercourse, waterway, river, ditch, or other water conveyance system;

77 (ii) pollutes ground water; or

78 (iii) constitutes a significant nuisance to urban land.

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

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

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

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

86 (3) "Agriculture water" means:

87 (a) water used by a farm, ranch, or feedlot for the production of food, fiber, or fuel;

88 (b) the return flow of water from irrigated agriculture; or

89 (c) agricultural storm water runoff.

90 (4) "Alternate" means a substitute for a district supervisor if the district supervisor
91 cannot attend a meeting.

92 (5) (a) "Animal feeding operation" means a facility where animals, other than aquatic
93 animals, are stabled or confined and fed or maintained for a total of 45 days or more in any
94 12-month period.

95 (b) "Animal feeding operation" does not include an operation where animals are in
96 areas such as pastures or rangeland that sustain crops or forage growth during the [~~entire time~~
97 ~~the animals are present~~] normal growing season.

98 (6) "Best management practices" means practices, including management policies and
99 the use of technology, used by each sector of agriculture in the production of food and fiber
100 that are commonly accepted practices, or that are at least as effective as commonly accepted
101 practices, and that:

102 (a) protect the environment;

103 (b) protect human health;

104 (c) ensure the humane treatment of animals; and

105 (d) promote the financial viability of agricultural production.

106 (7) "Certified agricultural operation" means an agricultural operation that is certified
107 under the Utah Agriculture Certificate of Environmental Stewardship [~~Certification~~] Program
108 in accordance with Section [4-18-107](#).

109 (8) "Certified conservation planner" means a planner of a state conservation district, or
110 other qualified planner, that is approved by the commission to certify an agricultural operation
111 under the Utah Agriculture Certificate of Environmental Stewardship [~~Certification~~] Program,
112 created in Section [4-18-107](#).

113 (9) "Commission" means the Conservation Commission created in Section [4-18-104](#).

114 (10) "Comprehensive nutrient management plan" or "nutrient management plan"

115 means a plan to properly store, handle, and spread manure and other agricultural byproducts to:

116 (a) protect the environment; and

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

118 (11) "Coordinated resource management plan" means a plan of action created at a local

119 level with broad participation of land owners, natural resource agencies, and interested
120 stakeholders to protect or enhance the environment, human health, humane treatment of
121 animals, and financial viability in the community.

122 [~~(11)~~] (12) "District" or "conservation district" has the same meaning as "conservation
123 district" as defined in Section 17D-3-102.

124 [~~(12)~~] (13) "Pollution" means a harmful human-made or human-induced alteration to
125 the water of the state, including an alteration to the chemical, physical, biological, or
126 radiological integrity of water that harms the water of the state.

127 [~~(13)~~] (14) "State technical standards" means a collection of best management practices
128 that will protect the environment in a reasonable and economical manner for each sector of
129 agriculture as required by this chapter.

130 [~~(14)~~] (15) "Sustainable agriculture" means agriculture production and practices that
131 promote:

132 (a) the environmental responsibility of owners and operators of farms, ranches, and
133 feedlots; and

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

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

136 **4-18-105. Conservation Commission -- Functions and duties.**

137 (1) The commission shall:

138 (a) facilitate the development and implementation of the strategies and programs

139 necessary to:

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

141 and

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

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

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

147 (d) prescribe uniform accounting and recordkeeping procedures for districts and
148 require each district to submit annually an audit of its funds to the commission;

149 (e) approve and make loans for agricultural purposes, through the advisory board

150 described in Section 4-18-106, from the Agriculture Resource Development Fund, for:

151 (i) rangeland improvement and management projects;

152 (ii) watershed protection and flood prevention projects;

153 (iii) agricultural cropland soil and water conservation projects; ~~and~~

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

155 (v) development and implementation of coordinated resource management plans, as

156 defined in Section 4-18-103, with conservation districts, as defined in Section 17D-3-102; and

157 (vi) programs or improvements for agriculture product storage or protections of a crop

158 or animal resource;

159 (f) administer federal or state funds, including loan funds under this chapter, in

160 accordance with applicable federal or state guidelines and make loans or grants from those

161 funds to land occupiers for:

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

163 (ii) maintenance of rangeland improvement projects; and

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

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

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

167 (g) seek to coordinate soil and water protection, conservation, and development

168 activities and programs of state agencies, local governmental units, other states, special interest

169 groups, and federal agencies;

170 (h) plan watershed and flood control projects in cooperation with appropriate local,

171 state, and federal authorities, and coordinate flood control projects in the state;

172 (i) assist other state agencies with conservation standards for agriculture when

173 requested; and

174 (j) when assigned by the governor, when required by contract with the Department of

175 Environmental Quality, or when required by contract with the United States Environmental

176 Protection Agency:

177 (i) develop programs for the prevention, control, or abatement of new or existing

178 pollution to the soil, water, or air of the state;

179 (ii) advise, consult, and cooperate with affected parties to further the purpose of this

180 chapter;

- 181 (iii) conduct studies, investigations, research, and demonstrations relating to
182 agricultural pollution issues;
- 183 (iv) give reasonable consideration in the exercise of its powers and duties to the
184 economic impact on sustainable agriculture;
- 185 (v) meet the requirements of federal law related to water and air pollution in the
186 exercise of its powers and duties; and
- 187 (vi) establish administrative penalties relating to agricultural discharges as defined in
188 Section 4-18-103 that are proportional to the seriousness of the resulting environmental harm.
- 189 (2) The commission may:
- 190 (a) employ, with the approval of the department, an administrator and necessary
191 technical experts and employees;
- 192 (b) execute contracts or other instruments necessary to exercise its powers;
- 193 (c) take necessary action to promote and enforce the purpose and findings of Section
194 4-18-102;
- 195 (d) sue and be sued; and
- 196 (e) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative
197 Rulemaking Act, necessary to carry out the powers and duties described in Subsection (1) and
198 Subsections (2)(b) and (c).
- 199 Section 4. Section 4-18-106 is amended to read:
- 200 **4-18-106. Agriculture Resource Development Fund -- Contents -- Use of fund**
201 **money -- Authority board.**
- 202 (1) There is created a revolving loan fund known as the Agriculture Resource
203 Development Fund.
- 204 (2) The Agriculture Resource Development Fund shall consist of:
- 205 (a) money appropriated to it by the Legislature;
- 206 (b) sales and use tax receipts transferred to the fund in accordance with Section
207 59-12-103;
- 208 (c) money received for the repayment of loans made from the fund;
- 209 (d) money made available to the state for agriculture resource development from any
210 source; and
- 211 (e) interest earned on the fund.

212 (3) The commission shall make loans from the Agriculture Resource Development
213 Fund as provided by [~~Section 4-18-105.~~] Subsections 4-18-105(1)(e)(i) through (v).

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

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

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

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

219 Section 5. Section **4-18-107** is amended to read:

220 **4-18-107. Utah Agriculture Certificate of Environmental Stewardship Program.**

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

223 (2) The commission, with the assistance of the department and with the advice of the
224 Water Quality Board, created in Section 19-1-106, shall make rules in accordance with Title
225 63G, Chapter 3, Utah Administrative Rulemaking Act that establish:

226 (a) (i) best management practices;

227 (ii) state technical standards; and

228 (iii) guidelines for nutrient management plans;

229 (b) requirements for qualification under the Utah Agriculture Certificate of

230 Environmental Stewardship [Certification] Program that:

231 (i) are consistent with sustainable agriculture;

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

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

235 (A) best management practices; and

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

238 (c) the procedure for qualification under the Utah Agriculture Certificate of
239 Environmental Stewardship [Certification] Program;

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

242 (e) standards and procedures for administering the Utah Agriculture Certificate of

243 Environmental Stewardship [~~Certification~~] Program, including:

- 244 (i) renewal of a certification under Subsection (4)(b);
245 (ii) investigation and revocation of a certification under Subsection (6); and
246 (iii) revocation of a certification under Subsection (7)(b).

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

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

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

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

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

265 (b) If, after completing an investigation described in Subsection (6)(a), the department
266 determines that a certified agricultural operation has committed a significant violation of the
267 requirements for the Utah Agriculture Certificate of Environmental Stewardship [~~Certification~~]
268 Program, the department shall report the violation to the commission.

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

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

273 (7) (a) If, for a certification renewal under Subsection (4)(b), or an investigation under

274 Subsection (6)(a), the department requests access to a certified agricultural operation, the
275 certified agricultural operation shall, at a reasonable time, allow access for the department to:

- 276 (i) inspect the agricultural operation; or
277 (ii) review the records of the agricultural operation.

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

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

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

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

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

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

296 **[4-18-6.5]. 4-18-108. Agriculture Environment Account -- Contents -- Use of**
297 **fund money.**

298 (1) (a) ~~[The]~~ Subject to appropriation, the commission, as described in Subsection (4),
299 may make [grants to owners or operators of animal feeding operations] a grant to an owner or
300 operator of a farm or ranch to pay for costs of plans or projects to improve manure
301 management, [or] control surface water runoff or other environmental issues on the farm or
302 ranch operation, including costs of preparing or implementing [comprehensive] a nutrient
303 management [plans] plan.

304 (b) The commission shall make ~~[the grants]~~ a grant described in Subsection (1)(a) from

305 funds appropriated by the Legislature for that purpose.

306 (2) (a) In awarding [~~grants~~] a grant, the commission shall consider the following
307 criteria:

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

310 (ii) the availability of:

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

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

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

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

317 (3) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
318 Administrative Rulemaking Act, to implement this section.

319 (4) The commission:

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

322 (b) may appoint an advisory board to:

323 (i) assist with the award process; and

324 (ii) make recommendations to the commission regarding awards.

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

326 **19-5-105.6. Agriculture Certificate of Environmental Stewardship.**

327 (1) As used in this section:

328 (a) "Agriculture operation" means a farm, ranch, or animal feeding operation.

329 (b) "Approved agriculture environmental stewardship program" means a program:

330 (i) created under Section [4-18-107](#);

331 (ii) that is approved by the board; and

332 (iii) that includes practices and other requirements sufficient to prevent violations of
333 the Utah Pollutant Discharge Elimination System program, statute, or rules.

334 (c) "Certified agriculture operation" means an agriculture operation that has current
335 certification under an approved agriculture certificate of environmental stewardship program

336 and that is in compliance with the requirements of that certification.

337 (2) (a) The division may not require a certified agriculture operation to implement
338 additional or different practices to control nonpoint source discharges for the purpose of
339 meeting total maximum daily load requirements.

340 (b) If the division implements additional or different best management practices to
341 control nonpoint source discharges, those best management practices shall be effective on a
342 certified agriculture operation upon the expiration of the operation's certificate, as described in
343 Subsection 4-18-107(4).

344 (3) Notwithstanding Subsection (2), a certified agriculture operation may be required to
345 undertake projects or additional best management practices for the purpose of meeting the total
346 maximum daily load requirements under the following conditions:

347 (a) the certified agriculture operation has nonpoint source discharges to surface waters
348 in an impaired watershed that is covered by an approved total maximum daily load;

349 (b) the board, in consultation with the Conservation Commission, has determined that
350 the best management practice or project is necessary to restore water quality in the affected
351 watershed; and

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

353 (i) at least 75% by the state, federal government sources, or private sources other than
354 the certified agriculture operation; or

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

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