

HB0432S01 compared with HB0432

~~{deleted text}~~ shows text that was in HB0432 but was deleted in HB0432S01.

Inserted text shows text that was not in HB0432 but was inserted into HB0432S01.

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Representative Scott D. Sandall proposes the following substitute bill:

AGRICULTURE REVISIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. Sandall

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to beef promotion.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the Utah Beef Council as an independent state agency;
- ▶ describes the Utah Beef Council's composition, organization, and duties; and
- ▶ modifies provisions related to setting the beef promotion fee.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

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Utah Code Sections Affected:

AMENDS:

63E-1-102, as last amended by Laws of Utah 2017, Chapters 181, 345, and 363

ENACTS:

4-21-101, Utah Code Annotated 1953

4-21-103, Utah Code Annotated 1953

4-21-104, Utah Code Annotated 1953

4-21-105, Utah Code Annotated 1953

4-21-106, Utah Code Annotated 1953

4-21-107, Utah Code Annotated 1953

4-21-301, Utah Code Annotated 1953

4-21-302, Utah Code Annotated 1953

4-21-303, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

4-21-102, (Renumbered from 4-21-2, as enacted by Laws of Utah 1979, Chapter 2)

4-21-201, (Renumbered from 4-21-3, as last amended by Laws of Utah 2011, Chapter 383)

4-21-202, (Renumbered from 4-21-4, as last amended by Laws of Utah 1986, Second Special Session, Chapter 10)

4-21-203, (Renumbered from 4-21-5, as last amended by Laws of Utah 2004, Chapter 128)

REPEALS:

4-21-1, as enacted by Laws of Utah 1979, Chapter 2

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

Section 1. Section **4-21-101** is enacted to read:

CHAPTER 21. BEEF PROMOTION

Part 1. Organization

4-21-101. Title.

This chapter is known as "Beef Promotion."

Section 2. Section **4-21-102**, which is renumbered from Section 4-21-2 is renumbered

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and amended to read:

~~[4-21-2].~~ **4-21-102. Definitions.**

As used in this chapter:

(1) "Council" means the Utah Beef Council created in Section 4-21-103.

(2) "Department" means the Utah Department of Agriculture and Food created in Section 4-2-102.

~~[(1)]~~ (3) "Marketing agency" means [any transaction in which the seller is represented by] a person who acts as an agent of the seller in the sale of cattle in that [such] the person issues payment to the seller and is entitled to a commission based upon the sale[;].

~~[(2)]~~ (4) "Producer" means [any] a person who owns and raises or owns and feeds cattle[;].

~~[(3)]~~ (5) "Purchaser" means [any] a person who buys cattle[;].

~~[(4)]~~ (6) "Seller" means [any] a person who offers cattle for sale.

Section 3. Section **4-21-103** is enacted to read:

4-21-103. Utah Beef Council created -- Composition -- Nomination and selection of appointed members -- Terms of appointed members -- Qualifications for nomination.

(1) There is created an independent state agency known as the Utah Beef Council.

(2) The Utah Beef Council consists of 10 members as follows:

(a) the commissioner of the Utah Department of Agriculture and Food, or the commissioner's designee;

(b) the president of the Utah Cattlemen's Association;

(c) the vice president of the Utah Cattlemen's Association;

(d) a member of the Utah Cattlemen's Association board of directors, chosen by the Utah Cattlemen's Association;

(e) the appointee from Utah on the national beef checkoff Cattlemen's Beef Promotion and Research Board, appointed by the United States Secretary of Agriculture;

(f) the president of the Utah Cattlewomen's Association;

(g) a member of the Utah Dairy Commission, chosen by the Utah Dairy Commission;

and

(h) three at-large producers from the state of Utah, appointed as described in Subsection (4).

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(3) In addition to the members listed in Subsection (2), the council may appoint nonvoting members.

(4) (a) At-large candidates for appointment to the council shall be nominated by a formal written request signed by two or more producers and submitted to the council no later than October 1.

(b) A membership committee, consisting of the commissioner or the commissioner's designee, the council member representing the Utah Dairy Commission, and the president of the Utah Cattlemen's Association shall:

(i) select candidates for appointment to the council from the nominees submitted by producers; and

(ii) present the candidates to the governor for review and appointment on or before December 1.

(5) (a) The governor shall appoint the at-large members to three-year terms beginning on January 1 of the year following appointment to the council.

(b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of at-large members are staggered so that one at-large member is appointed each year.

(6) Each at-large member shall be:

(a) a citizen of the United States;

(b) ~~21~~18 years of age or older;

(c) an active producer; and

(d) a resident of Utah.

Section 4. Section **4-21-104** is enacted to read:

4-21-104. Council -- Organization -- Quorum to transact business -- Removal for cause -- Vacancies -- Ineligibility to serve -- Compensation.

(1) (a) The council members shall elect a chair, vice chair, and secretary annually from the voting members of the council.

(b) At least two of the members elected pursuant to Subsection (1)(a) shall be members listed in Subsection 4-21-103(2)(a), (e), or (h).

(2) (a) A majority of voting members shall constitute a quorum.

(b) A majority vote of the quorum is necessary for the council to act.

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(3) The council shall meet:

(a) at the time and place designated by the chair; and

(b) no less than once every three months.

(4) The commissioner, or the commissioner's designee, may, in consultation with the other members of the membership committee, remove a member for cause.

(5) Vacancies that occur on the council for any reason shall be filled by appointment for the unexpired term of the vacated member.

(6) If an at-large member ceases to act as a producer during the member's term, the member shall resign from the council within 30 days after ceasing production.

(7) Subject to Subsection (8), a member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(8) A nonvoting member may not receive compensation or benefits for the member's service and may not receive per diem or travel expenses.

Section 5. Section **4-21-105** is enacted to read:

4-21-105. Council powers, duties, and functions -- Reporting requirements.

(1) The council has the following powers, duties, and functions:

(a) hire and fix the salary of an administrator and staff, who may not be members of the council, to administer the policies adopted and perform the duties assigned by the council;

(b) promote the beef industry of the state;

(c) encourage local, national, and international use of Utah beef, through advertising or otherwise;

(d) investigate and participate in studies of problems unique to Utah producers;

(e) take actions consistent with this chapter to promote, protect, and stabilize the state's beef industry;

(f) enter into contracts and incur indebtedness in furtherance of the council's business activities;

(g) cooperate with local, state, or national organizations engaged in activities similar to

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those of the council;

(h) accept grants, donations, or gifts for use consistent with this chapter; and

(i) do other things necessary for the efficient and effective management and operation

of the council's business.

(2) The council shall:

(a) submit ~~{, on an annual basis,}~~ the council's proposed budget ~~and an end-of-year audited financial statement~~ to the department ~~{for review}~~ and the Office of the State Auditor within 180 days of the end of each fiscal year;

(b) provide the department, on an annual basis, with a detailed outline of the council's plans for future publications and messaging; and

(c) report, by October 1 of each year, to the Retirement and Independent Entities Interim Committee on the operations and activities of the council.

Section 6. Section **4-21-106** is enacted to read:

4-21-106. Exemption from certain operational requirements.

(1) The council is exempt from:

(a) Title 51, Chapter 5, Funds Consolidation Act;

(b) Title 51, Chapter 7, State Money Management Act;

(c) Title 63A, Utah Administrative Services Code, except as provided in Subsection

(2)(c);

(d) Title 63J, Chapter 1, Budgetary Procedures Act; and

(e) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The council is subject to:

(a) Title 51, Public Funds and Accounts, except as provided in Subsections

4-21-106(1)(a) and (b);

(b) Title 52, Chapter 4, Open and Public Meetings Act;

(c) Title 63A, Chapter 3, Part 4, Utah Public Finance Website;

(d) Title 63G, Chapter 2, Government Records Access and Management Act;

(e) other Utah Code provisions not specifically exempted under Subsection

4-21-106(1); and

(f) audit by the state auditor pursuant to Title 67, Chapter 3, Auditor, and by the legislative auditor pursuant to Section 36-12-15.

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Section 7. Section **4-21-107** is enacted to read:

4-21-107. Council may require surety bond -- Payment of premium.

(1) The council may require the administrator or a council employee to post a surety bond conditioned for the faithful performance of the council's official duties.

(2) The amount and type of bond shall be fixed by the council and each bond premium shall be paid by the council.

Section 8. Section **4-21-201**, which is renumbered from Section 4-21-3 is renumbered and amended to read:

Part 2. Revenue

~~[4-21-3].~~ **4-21-201. Beef promotion fee -- Deposit of revenue.**

(1) (a) The department shall collect a fee established as required by Subsection (2) on all fee brand inspected cattle upon change of ownership or slaughter in an amount not more than \$1 or less than 25 cents.

(b) The fee is collected by the local brand inspector at the time of inspection of cattle, or deducted and collected by the marketing agency or the purchaser.

(c) All revenue collected under this section shall be paid to the department, which shall deposit the revenue in ~~[an agency]~~ a fund that is hereby created and is known as the "Beef Promotion Fund."

~~[(2) Before a fee assessed under Subsection (1) becomes effective, the department shall give notice of the proposed fee to all known beef and dairy cattle producers in the state, invite all beef and dairy cattle producers to register to vote in a referendum, conduct a hearing on the proposed fee change, and conduct a referendum where at least 50% of the registered producers cast a vote with a majority of those voting casting an affirmative vote on the proposed fee level.]~~

~~[(3)]~~ (2) Any fee currently assessed by the department continues in effect until modified by the department under ~~[Subsections (1) and (2)]~~ Subsection (1).

~~[(4)]~~ (3) The fee assessed under this section is in addition to the amount of any assessment required to be paid pursuant to the Beef Promotion and Research Act of 1985, 7 U.S.C. Sec. 2901 et seq.

Section 9. Section **4-21-202**, which is renumbered from Section 4-21-4 is renumbered and amended to read:

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~~[4-21-4].~~ **4-21-202. Refund of fees allowed -- Claim for refund to be filed with department -- Payment of refunds.**

(1) A person who objects to payment of the assessed fee may file a claim with the department within 60 days after the fee is collected. ~~[No]~~

(2) A claim for refund~~[, however,]~~ is not allowed if it is filed more than 60 days after the date the fee is collected.

(3) Each claim for a refund shall be certified by the department to the state treasurer for payment from the beef promotion account, subject to ~~[any]~~ applicable provisions of the Beef Promotion and Research Act of 1985, 7 U.S.C. Sec. 2901 et seq.

Section 10. Section ~~4-21-203~~, which is renumbered from Section 4-21-5 is renumbered and amended to read:

~~[4-21-5].~~ **4-21-203. Revenue from fees to be used to promote beef industry -- Payment of revenue monthly to Utah Beef Council -- Deduction of costs of administration and processing funds -- Annual audit of books, records, and accounts -- Financial statement of audit published.**

(1) (a) All revenue derived from the collection of fees authorized by this chapter shall be paid to the council and used to promote the beef industry of the state ~~[and the revenue shall be paid to:]~~.

~~[(i) the Utah Beef Council, a Utah nonprofit corporation organized to promote Utah beef; or]~~

~~[(ii) an agency, acceptable to the department, with the concurrence of the Utah Cattlemen's Association.]~~

(b) The revenue shall be paid monthly, as requested by the council ~~[or appointed agency]~~, and the actual costs of administration for processing the funds shall be deducted before disbursing the funds.

(2) (a) The books, records, and accounts of the ~~[Utah Beef Council or appointed agency]~~ council shall be audited at least once annually by a licensed accountant approved by the Office of the State Auditor.

(b) The results of the audit shall be submitted to the commissioner, and a financial statement of the audit and a general statement of operations and promotional and advertising activities shall be published by the council ~~[or appointed agency]~~ in a major livestock

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publication having general circulation in Utah.

(3) Upon receipt of the funds, the council may deposit revenue from the collection of fees in one or more accounts in one or more banks approved by the state as depositories.

(4) The books, records, and accounts of the council's activities are public records.

Section 11. Section **4-21-301** is enacted to read:

Part 3. Liability and Enforcement

4-21-301. State disclaimer of liability.

The state is not liable for the acts or omissions of the council, council officers, agents, or employees.

Section 12. Section **4-21-302** is enacted to read:

4-21-302. Council not eligible for coverage under Risk Management Fund.

The council is not eligible to receive coverage under the Risk Management Fund created by Section 63A-4-201.

Section 13. Section **4-21-303** is enacted to read:

4-21-303. Representation by the attorney general.

(1) The attorney general is not the legal advisor for the council and has no obligation to defend the council or the council's members in an action or proceeding brought against the council.

(2) The attorney general may choose, at its sole discretion, to represent the council or its members if requested to do so and pursuant to reimbursement by contract.

Section 14. Section **63E-1-102** is amended to read:

63E-1-102. Definitions -- List of independent entities.

As used in this title:

(1) "Authorizing statute" means the statute creating an entity as an independent entity.

(2) "Committee" means the Retirement and Independent Entities Committee created by Section 63E-1-201.

(3) "Independent corporation" means a corporation incorporated in accordance with Chapter 2, Independent Corporations Act.

(4) (a) "Independent entity" means an entity having a public purpose relating to the state or its citizens that is individually created by the state or is given by the state the right to exist and conduct its affairs as an:

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(i) independent state agency; or

(ii) independent corporation.

(b) "Independent entity" includes the:

(i) Utah Beef Council, created by Section 4-21-103;

~~(ii)~~ (ii) Utah Dairy Commission created by Section 4-22-103;

~~(iii)~~ (iii) Heber Valley Historic Railroad Authority created by Section 63H-4-102;

~~(iv)~~ (iv) Utah State Railroad Museum Authority created by Section 63H-5-102;

~~(v)~~ (v) Utah Housing Corporation created by Section 63H-8-201;

~~(vi)~~ (vi) Utah State Fair Corporation created by Section 63H-6-103;

~~(vii)~~ (vii) Utah State Retirement Office created by Section 49-11-201;

~~(viii)~~ (viii) School and Institutional Trust Lands Administration created by Section 53C-1-201;

~~(ix)~~ (ix) School and Institutional Trust Fund Office created by Section 53D-1-201;

~~(x)~~ (x) Utah Communications Authority created by Section 63H-7a-201;

~~(xi)~~ (xi) Utah Energy Infrastructure Authority created by Section 63H-2-201;

~~(xii)~~ (xii) Utah Capital Investment Corporation created by Section 63N-6-301; and

~~(xiii)~~ (xiii) Military Installation Development Authority created by Section 63H-1-201.

(c) Notwithstanding this Subsection (4), "independent entity" does not include:

(i) the Public Service Commission of Utah created by Section 54-1-1;

(ii) an institution within the state system of higher education;

(iii) a city, county, or town;

(iv) a local school district;

(v) a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts; or

(vi) a special service district under Title 17D, Chapter 1, Special Service District Act.

(5) "Independent state agency" means an entity that is created by the state, but is independent of the governor's direct supervisory control.

(6) "Money held in trust" means money maintained for the benefit of:

(a) one or more private individuals, including public employees;

(b) one or more public or private entities; or

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(c) the owners of a quasi-public corporation.

(7) "Public corporation" means an artificial person, public in ownership, individually created by the state as a body politic and corporate for the administration of a public purpose relating to the state or its citizens.

(8) "Quasi-public corporation" means an artificial person, private in ownership, individually created as a corporation by the state, which has accepted from the state the grant of a franchise or contract involving the performance of a public purpose relating to the state or its citizens.

Section 15. **Repealer.**

This bill repeals:

Section **4-21-1, Purpose declaration.**

Section 16. **Effective date.**

~~{If approved by two-thirds of all the members elected to each house, this}~~ This bill takes effect ~~{upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.~~

Legislative Review Note

Office of Legislative Research and General Counsel, on July 1, 2018.