PROVISIONS RELATING TO HIGH-LEVEL NUCLEAR WASTE

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Terry R. Spencer

This act modifies the Environmental Quality Code, the County Land Use Development and Management Act, the Labor Code regarding drug and alcohol testing, and the Water and Irrigation Code regarding determination of water rights. The act prohibits the placement of high-level nuclear waste or greater than class C radioactive waste within the exterior borders of the state, and prohibits governmental entities or businesses from providing services to facilitate the placement of the waste in the state. However, should the federal government authorize such placement, the act requires mandatory planning by the site county, including a public hearing. The act provides that an entity may not apply for a state license for the transportation, transfer, or storage of high-level nuclear waste or greater than class C radioactive waste until a final court ruling is given regarding the state provisions. The act also prohibits a county from providing municipal-type services to a site under consideration for a facility, entering into contracts to provide the services, or creating political subdivisions to provide the services until a license is authorized. The act provides that persons or organizations acting in violation of these provisions are subject to penalties. The act requires the Department of Environmental Quality to determine the amount of unfunded potential liability regarding a release of the waste from a facility. Should a facility gain a license, the act imposes on any organization providing municipal-type services a transaction fee of 75% of the value of a contract. This fee is to be applied to the unfunded potential liability and is to be deposited in a restricted account created by this act. In addition, the license applicant is required to deposit in this account not less than 75% of the determined unfunded potential liability within 30 days of issuance of the license for the facility. The licensee is also required to pay an annual fee of the amount of workers' compensation to be paid for employees in the state, multiplied by the number of casks of nuclear waste brought into the state. This fee is also to be deposited in the account. The fee does not exempt the licensee from payments for workers' compensation. The act also

requires the licensee to test employees for drugs and alcohol, to protect the safety of the public. The act also provides for the state engineer to file an action in court to determine water rights for any area within the state's exterior boundaries regarding which any entity is actively seeking a license for a nuclear waste facility. This act takes effect upon approval. This act provides a coordination clause to specify the effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

17-27-102, as last amended by Chapter 93, Laws of Utah 1992

17-27-301, as last amended by Chapter 34, Laws of Utah 2000

17-27-303, as last amended by Chapter 23, Laws of Utah 1992

17-34-1, as repealed and reenacted by Chapter 199, Laws of Utah 2000

17-34-3, as last amended by Chapter 199, Laws of Utah 2000

19-3-301, as last amended by Chapter 348, Laws of Utah 1998

19-3-302, as enacted by Chapter 348, Laws of Utah 1998

19-3-303, as enacted by Chapter 348, Laws of Utah 1998

19-3-308, as enacted by Chapter 348, Laws of Utah 1998

19-3-309, as enacted by Chapter 348, Laws of Utah 1998

19-3-312, as enacted by Chapter 348, Laws of Utah 1998

34-38-3, as enacted by Chapter 234, Laws of Utah 1987

73-4-1, Utah Code Annotated 1953

ENACTS:

17-27-308, Utah Code Annotated 1953

17-34-6, Utah Code Annotated 1953

19-3-319, Utah Code Annotated 1953

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

Section 1. Section **17-27-102** is amended to read:

17-27-102. Purpose.

(1) To accomplish the purpose of this chapter, and in order to provide for the health, safety,

and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of the county and its present and future inhabitants and businesses, to protect the tax base, secure economy in governmental expenditures, foster the state's agricultural and other industries, protect both urban and nonurban development, and to protect property values, counties may enact all ordinances, resolutions, and rules that they consider necessary for the use and development of land within the county, including ordinances, resolutions, and rules governing uses, density, open spaces, structures, buildings, energy-efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, public facilities, vegetation, and trees and landscaping, unless those ordinances, resolutions, or rules are expressly prohibited by law.

(2) A county shall comply with the mandatory provisions of this part before any agreement or contract to provide goods, services, or municipal-type services to any storage facility or transfer facility for high-level nuclear waste, or greater than class C radioactive waste, may be executed or implemented.

Section 2. Section **17-27-301** is amended to read:

17-27-301. General plan.

(1) In order to accomplish the purposes set forth in this chapter, each county shall prepare and adopt a comprehensive general plan for:

(a) the present and future needs of the county; and

(b) the growth and development of the land within the county or any part of the county, including uses of land for urbanization, trade, industry, residential, agricultural, wildlife habitat, and other purposes.

(2) The plan may provide for:

(a) health, general welfare, safety, energy conservation, transportation, prosperity, civic activities, aesthetics, and recreational, educational, and cultural opportunities;

(b) the reduction of the waste of physical, financial, or human resources that result from either excessive congestion or excessive scattering of population;

(c) the efficient and economical use, conservation, and production of the supply of:

(i) food and water; and

(ii) drainage, sanitary, and other facilities and resources;

(d) the use of energy conservation and solar and renewable energy resources;

(e) the protection of urban development;

(f) the protection and promotion of air quality; and

(g) an official map, pursuant to Title 72, Chapter 5, Part 4, Transportation Corridor Preservation.

(3) (a) The plan shall include specific provisions related to any areas within, or partially within, the exterior boundaries of the county, or contiguous to the boundaries of a county, which are proposed for the siting of a storage facility or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive nuclear waste, as these wastes are defined in Section 19-3-303. The provisions shall address the effects of the proposed site upon the health and general welfare of citizens of the state, and shall provide:

(i) the information identified in Section 19-3-305;

(ii) information supported by credible studies that demonstrates that the provisions of Subsection 19-3-307(2) have been satisfied; and

(iii) specific measures to mitigate the effects of high-level nuclear waste and greater than class C radioactive waste and guarantee the health and safety of the citizens of the state.

(b) A county may, in lieu of complying with Subsection (3)(a), adopt an ordinance indicating that all proposals for the siting of a storage facility or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste wholly or partially within the county are rejected.

(c) A county may adopt the ordinance listed in Subsection (3)(b) at any time.

(d) The county shall send a certified copy of the ordinance under Subsection (3)(b) to the executive director of the Department of Environmental Quality by certified mail within 30 days of enactment.

(e) If a county repeals an ordinance adopted pursuant to Subsection (3)(b) the county shall:

(i) comply with Subsection (3)(a) as soon as reasonably possible; and

(ii) send a certified copy of the repeal to the executive director of the Department of

Environmental Quality by certified mail within 30 days after the repeal.

[~~(3)~~] (4) The plan may define the county's local customs, local culture, and the components necessary for the county's economic stability.

[~~(4)~~] (5) The county may determine the comprehensiveness, extent, and format of the general plan.

Section 3. Section **17-27-303** is amended to read:

17-27-303. Plan adoption.

(1) (a) After completing a proposed general plan for all or part of the area within the county, the planning commission shall schedule and hold a public hearing on the proposed plan.

(b) The planning commission shall provide reasonable notice of the public hearing at least 14 days before the date of the hearing.

(c) After the public hearing, the planning commission may make changes to the proposed general plan.

(2) The planning commission shall then forward the proposed general plan to the legislative body.

(3) (a) The legislative body shall hold a public hearing on the proposed general plan recommended to it by the planning commission.

(b) The legislative body shall provide reasonable notice of the public hearing at least 14 days before the date of the hearing.

(4) (a) (i) In addition to the requirements of Subsections (1), (2), and (3), the legislative body shall hold a public hearing in Salt Lake City on provisions of the proposed county plan regarding Subsection 17-27-301(3). The hearing procedure shall comply with this Subsection (4).

(ii) The hearing format shall allow adequate time for public comment at the actual public hearing, and shall also allow for public comment in writing to be submitted to the legislative body for not fewer than 90 days after the date of the public hearing.

(b) (i) The legislative body shall give notice of the hearing in accordance with this Subsection (4) when the proposed plan provisions required by Subsection 17-27-301(3) are complete.

(ii) Direct notice of the hearing shall be given, in writing, to the governor, members of the state Legislature, executive director of the Department of Environmental Quality, the state planning coordinator under Section 63-28-1, the Resource Development Coordinating Committee pursuant to Section 63-28a-2, and any other citizens or entities who specifically request notice in writing.

(iii) Public notice shall be given by publication in at least one major Utah newspaper having broad general circulation in the state, and also in at least one Utah newspaper having a general circulation focused mainly on the county where the proposed high-level nuclear waste or greater than class C radioactive waste site is to be located.

(iv) The notice in these newspapers shall be published not fewer than 180 days prior to the date of the hearing to be held under this Subsection (4), to allow reasonable time for interested parties and the state to evaluate the information regarding the provisions of Subsection 17-27-301(3).

[~~(4)~~] (5) (a) After [~~the~~] a public hearing under this section, the legislative body may make any modifications to the proposed general plan that it considers appropriate.

(b) The legislative body shall respond in writing and in a substantive manner to all those providing comments as a result of the hearing required by Subsection (4).

[~~(5)~~] (6) The legislative body may:

(a) adopt the proposed general plan without amendment;

(b) amend the proposed general plan and adopt or reject it as amended; or

(c) reject the proposed general plan.

[~~(6)~~] (7) (a) The general plan is an advisory guide for land use decisions, except for the provision required by Subsection 17-27-301(3), which the legislative body shall adopt.

(b) The legislative body may adopt an ordinance mandating compliance with the general plan, and shall adopt an ordinance requiring compliance with all provisions of Subsection 17-27-301(3).

Section 4. Section **17-27-308** is enacted to read:

17-27-308. State to indemnify county regarding refusal to site nuclear waste -- Terms and conditions.

If a county is challenged in a court of law regarding its decision to deny siting of a storage

or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste or its refusal to provide municipal-type services regarding the operation of the storage or transfer facility, the state shall indemnify, defend, and hold the county harmless from any claims or damages, including court costs and attorney fees that are assessed as a result of the county's action, if:

(1) the county has complied with the provisions of Subsection 17-27-301(3)(b) by adopting an ordinance rejecting all proposals for the siting of a storage or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste wholly or partially within the boundaries of the county;

(2) the county has complied with Subsection 17-34-1(3) regarding refusal to provide municipal-type services; and

(3) the court challenge against the county addresses the county's actions in compliance with Subsection 17-27-301(3)(b) or Subsection 17-34-1(3).

Section 5. Section **17-34-1** is amended to read:

17-34-1. Counties may provide municipal services -- First class counties required to provide paramedic services.

(1) For purposes of this chapter, [~~"municipal-type~~] except as otherwise provided in Subsection (3):

(a) "Greater than class C radioactive waste" has the same meaning as in Section 19-3-303.

(b) "High-level nuclear waste" has the same meaning as in Section 19-3-303.

(c) "Municipal-type services" means:

[~~(a)~~] (i) fire protection service;

[~~(b)~~] (ii) waste and garbage collection and disposal;

[~~(c)~~] (iii) planning and zoning;

[~~(d)~~] (iv) street lighting;

[~~(e)~~] (v) in a county of the first class, advanced life support and paramedic services; and

[~~(f)~~] (vi) all other services and functions that are required by law to be budgeted, appropriated, and accounted for from a municipal services fund or a municipal capital projects fund

as defined under Chapter 36, Uniform Fiscal Procedures Act for Counties.

(d) "Placement" has the same meaning as in Section 19-3-303.

(e) "Storage facility" has the same meaning as in Section 19-3-303.

(f) "Transfer facility" has the same meaning as in Section 19-3-303.

(2) A county may:

(a) provide municipal-type services to areas of the county outside the limits of cities and towns without providing the same services to cities or towns;

(b) fund those services by:

(i) levying a tax on taxable property in the county outside the limits of cities and towns; or

(ii) charging a service charge or fee to persons benefitting from the municipal-type services.

(3) A county may not:

(a) provide, contract to provide, or agree in any manner to provide municipal-type services, as these services are defined in Section 19-3-303, to any area under consideration for a storage facility or transfer facility for the placement of high-level nuclear waste, or greater than class C radioactive waste; or

(b) seek to fund services for these facilities by:

(i) levying a tax; or

(ii) charging a service charge or fee to persons benefitting from the municipal-type services.

[~~(3)~~] (4) Each county of the first class shall provide advanced life support and paramedic services to the area of the county outside the limits of cities and towns.

Section 6. Section **17-34-3** is amended to read:

17-34-3. Taxes or service charges.

(1) (a) If a county furnishes the municipal-type services and functions described in Section 17-34-1 to areas of the county outside the limits of incorporated cities or towns, the entire cost of the services or functions so furnished shall be defrayed from funds that the county has derived from either:

(i) taxes which the county may lawfully levy or impose outside the limits of incorporated towns or cities;

(ii) service charges or fees the county may impose upon the persons benefited in any way by the services or functions; or

(iii) a combination of these sources.

(b) As the taxes or service charges or fees are levied and collected, they shall be placed in a special revenue fund of the county and shall be disbursed only for the rendering of the services or functions established in Section 17-34-1 within the unincorporated areas of the county.

(2) For the purpose of levying taxes, service charges, or fees provided in this section, the county legislative body may establish a district or districts in the unincorporated areas of the county.

(3) Nothing contained in this chapter may be construed to authorize counties to impose or levy taxes not otherwise allowed by law.

(4) (a) A county required under Subsection 17-34-1[~~(3)~~](4) to provide advanced life support and paramedic services to the unincorporated area of the county and that previously paid for those services through a countywide levy may increase its levy under Subsection (1)(a)(i) to generate in the unincorporated area of the county the same amount of revenue as the county loses from that area due to the required decrease in the countywide certified tax rate under Subsection 59-2-924(2)(h)(i).

(b) An increase in tax rate under Subsection (4)(a) is exempt from the notice and hearing requirements of Sections 59-2-918 and 59-2-919.

Section 7. Section **17-34-6** is enacted to read:

17-34-6. State to indemnify county regarding refusal to site nuclear waste -- Terms and conditions.

If a county is challenged in a court of law regarding its decision to deny siting of a storage or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste or its refusal to provide municipal-type services regarding the operation of the storage or transfer facility, the state shall indemnify, defend, and hold the county harmless from any claims or damages, including court costs and attorney fees that are assessed as a result of the county's action, if:

(1) the county has complied with the provisions of Subsection 17-27-301(3)(b) by adopting an ordinance rejecting all proposals for the siting of a storage or transfer facility for the placement

of high-level nuclear waste or greater than class C radioactive waste wholly or partially within the boundaries of the county;

(2) the county has complied with Subsection 17-34-1(3) regarding refusal to provide municipal-type services; and

(3) the court challenge against the county addresses the county's actions in compliance with Subsection 17-27-301(3)(b) or Subsection 17-34-1(3).

Section 8. Section **19-3-301** is amended to read:

19-3-301. Restrictions on nuclear waste placement in state.

(1) The [~~state may not approve the~~] placement, including transfer, storage, decay in storage, treatment, or disposal, [~~in~~] within the exterior boundaries of Utah of high-level nuclear waste or greater than class C radioactive waste [~~unless~~] is prohibited.

(2) Notwithstanding Subsection (1) the governor, after consultation with the county executive and county legislative body of the affected county and with concurrence of the Legislature, may specifically [~~approves~~] approve the placement as provided in this part[~~.~~], but only if:

(a) (i) the federal Nuclear Regulatory Commission issues a license, pursuant to the Nuclear Waste Policy Act, 42 U.S.C.A. 10101 et seq., or the Atomic Energy Act, 42 U.S.C.A. 2011 et seq., for the placement within the exterior boundaries of Utah of high-level nuclear waste or greater than class C radioactive waste; and

(ii) the authority of the federal Nuclear Regulatory Commission to grant a license under Subsection (2)(a)(i) is clearly upheld by a final judgment of a court of competent jurisdiction; or

(b) an agency of the federal government is transporting the waste, and all state and federal requirements to proceed with the transportation have been met.

(3) The requirement for the approval of a final court of competent jurisdiction shall be met in all of the following categories, in order for a state license proceeding regarding waste to begin:

(a) transfer or transportation, by rail, truck, or other mechanisms;

(b) storage, including any temporary storage at a site away from the generating reactor;

(c) decay in storage;

(d) treatment; and

(e) disposal.

(4) (a) Upon satisfaction of the requirements of Subsection (2)(a), for each category listed in Subsection (3), or satisfaction of the requirements under Subsection (2)(b), the governor, with the concurrence of the attorney general, shall certify in writing to the executive director of the Department of Environmental Quality that all of the requirements have been met, and that any necessary state licensing processes may begin.

(b) Separate certification under this Subsection (4) shall be given for each category in Subsection (3).

(5) (a) The department shall make, by rule, a determination of the dollar amount of the health and economic costs expected to result from a reasonably foreseeable accidental release of waste involving a transfer facility or storage facility, or during transportation of waste, within the exterior boundaries of the state. The department may initiate rulemaking under this Subsection (5)(a) on or after the effective date of this act.

(b) (i) The department shall also determine the dollar amount currently available to cover the costs as determined in Subsection (5)(a):

(A) under nuclear industry self-insurance;

(B) under federal insurance requirements; and

(C) in federal monies.

(ii) The department may not include any calculations of federal monies that may be appropriated in the future in determining the amount under Subsection (5)(b)(i).

(c) The department shall use the information compiled under Subsections (5)(a) and (b) to determine the amount of unfunded potential liability in the event of a release of waste from a storage or transfer facility, or a release during the transportation of waste.

(6) (a) State agencies may not, for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility, or to any organization engaged in the transportation of waste, enter into any contracts or any other agreements prior to:

(i) the satisfaction of the conditions in Subsection (4); and

(ii) the executive director of the department having certified that the requirements of

Sections 19-3-304 through 19-3-308 have been met for the purposes of a license application proceeding for a storage facility or transfer facility.

(b) Political subdivisions of the state may not enter into any contracts or any other agreements for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility, or to any organization engaged in the transportation of waste.

(c) This Subsection (6) does not prohibit a state agency from exercising the regulatory authority granted to it by law.

(7) (a) Notwithstanding any other provision of law, any political subdivision may not be formed pursuant to the laws of Utah for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to the satisfaction of the conditions in Subsection (4). These political subdivisions include:

(i) a cooperative;

(ii) a special district authorized by Title 17A, Special Districts;

(iii) a limited purpose local governmental entities authorized by Title 17, Counties;

(iv) any joint power agreement authorized by Title 11, Cities, Counties, and Local Taxing Units; and

(v) the formation of a municipality, or any authority of a municipality authorized by Title 10, Utah Municipal Code.

(b) (i) Subsection (7)(a) shall be strictly interpreted. Any political subdivision authorized and formed under the laws of the state on or after the effective date of this act which subsequently contracts to, or in any manner agrees to provide, or does provide goods, services, or municipal-type services to a storage facility or transfer facility is formed in violation of Subsection (7)(a).

(ii) If the conditions of Subsection (7)(b)(i) apply, the persons who formed the political subdivision are considered to have knowingly violated a provision of this part, and the penalties of Section 19-3-312 apply.

(8) (a) An organization may not be formed for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to:

(i) the satisfaction of the conditions in Subsection (4); and

(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met.

(b) A foreign organization may not be registered to do business in the state for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to:

(i) the satisfaction of the conditions in Subsection (4); and

(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met.

(c) The prohibitions of Subsections (8)(a) and (b) shall be strictly applied, and:

(i) the formation of a new organization or registration of a foreign organization within the state, any of whose purposes are to provide goods, services, or municipal-type services to a storage facility or transfer facility may not be licensed or registered in the state, and the local or foreign organization is void and does not have authority to operate within the state;

(ii) any organization which is formed or registered on or after the effective date of this act, and which subsequently contracts to, or in any manner agrees to provide, or does provide goods, services, or municipal-type services to a storage facility or transfer facility has been formed or registered in violation of Subsection (8)(a) or (b) respectively; and

(iii) if the conditions of Subsection (8)(c)(ii) apply, the persons who formed the organization or the principals of the foreign organization, are considered to have knowingly violated a provision of this part, and are subject to the penalties in Section 19-3-312.

(9) (a) (i) Any contract or agreement to provide any goods, services, or municipal-type services to any organization engaging in, or attempting to engage in the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state are declared to be against the greater public interest, health, and welfare of the state, by promoting an activity which has the great potential to cause extreme public harm.

(ii) These contracts or agreements under Subsection (9)(a)(i), whether formal or informal, are declared to be void from inception, agreement, or execution as against public policy.

(b) (i) Any contract or other agreement to provide goods, services, or municipal-type services

to storage or transfer facilities may not be executed within the state.

(ii) Any contract or other agreement, existing or executed on or after the effective date of this act, is considered void from the time of agreement or execution.

(10) (a) All contracts and agreements under Subsection (10)(b) are assessed an annual transaction fee of 75% of the gross value of the contract to the party providing the goods, services, or municipal-type services to the storage facility or transfer facility or transportation entity. The fee shall be assessed per calendar year, and is payable on a prorated basis on or before the last day of each month in accordance with rules established under Subsection (10)(d), and as follows:

(i) 25% of the gross value of the contract to the department; and

(ii) 50% of the gross value of the contract to the Department of Community and Economic Development, to be used by the Utah Division of Indian Affairs as provided in Subsection (11).

(b) Contracts and agreements subject to the fee under Subsection (10)(a) are those contracts and agreements to provide goods, services, or municipal-type services to a storage or transfer facility, or to any organization engaged in the transportation of high-level nuclear waste or greater than class C radioactive waste to a transfer facility or storage facility, and which:

(i) are in existence on the effective date of this act; or

(ii) become effective notwithstanding Subsection (9)(a).

(c) Any governmental agency which regulates the charges to consumers for services provided by utilities or other organizations shall require the regulated utility or organization to include the fees under Subsection (10)(a) in the rates charged to the purchaser of the goods, services, or municipal-type services affected by Subsection (10)(b).

(d) (i) The department, in consultation with the State Tax Commission, shall establish rules for the valuation of the contracts and assessment and collection of the fees, and other rules as necessary to determine the amount of and collection of the fee under Subsection (10)(a). The department may initiate rulemaking under this Subsection (d)(i) on or after the effective date of this act.

(ii) Persons and organizations holding contracts affected by Subsection (10)(b) shall make a good faith estimate of the fee under Subsection (10)(a) for calender year 2001, and remit that

amount to the department on or before July 31, 2001.

(11) (a) The portion of the fees imposed under Subsection (10) which is to be paid to the Department of Community and Economic Development for use by the Utah Division of Indian Affairs shall be used for establishment of a statewide community and economic development program for the tribes of Native American people within the exterior boundaries of the state who have by tribal procedure established a position rejecting siting of any nuclear waste facility on their reservation lands.

(b) The program under Subsection (11)(a) shall include:

(i) educational services and facilities;

(ii) health care services and facilities;

(iii) programs of economic development;

(iv) utilities;

(v) sewer;

(vi) street lighting;

(vii) roads and other infrastructure; and

(viii) oversight and staff support for the program.

(12) It is the intent of the Legislature that this part does not prohibit or interfere with a person's exercise of the rights under the First Amendment to the Constitution of the United States or under Utah Constitution Article I, Sec. 15, by an organization attempting to site a storage facility or transfer facility within the borders of the state for the placement of high-level nuclear waste or greater than class C radioactive waste.

Section 9. Section **19-3-302** is amended to read:

19-3-302. Legislative intent.

(1) (a) The state of Utah enacts this part to prevent the placement of any high-level nuclear waste or greater than class C radioactive waste in Utah. The state also recognizes that high-level nuclear waste or greater than class C radioactive waste may be placed within the exterior boundaries of the state, pursuant to a license from the federal government, or by the federal government itself, in violation of this state law.

(b) Due to this possibility, the state also enacts provisions in this part to regulate transportation, transfer, storage, decay in storage, treatment, and disposal of any high-level nuclear waste and greater than class C radioactive waste in Utah, thereby asserting and protecting the state's interests in environmental and economic resources consistent with 42 U.S.C.A. 2011 et seq., Atomic Energy Act and 42 U.S.C.A. 10101 et seq., Nuclear Waste Policy Act, should the federal government decide to authorize any entity to operate, or operate itself, in violation of this state law.

(2) Neither the Atomic Energy Act nor the Nuclear Waste Policy Act provides for siting a large privately owned high-level nuclear waste transfer, storage, decay in storage, or treatment facility away from the vicinity of the reactors. The Atomic Energy Act and the Nuclear Waste Policy Act specifically define authorized storage and disposal programs and activities. The state of Utah in enacting this part is not preempted by federal law, since any proposed facilities that would be sited in Utah are not contemplated or authorized by federal law and, in any circumstance, this part is not contrary to or inconsistent with federal law or Congressional intent.

(3) The state of Utah has environmental and economic interests which do not involve nuclear safety regulation, and which must be considered and complied with in siting a high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay in storage, treatment, or disposal facility and in transporting these wastes in the state.

(4) An additional primary purpose of this part is to ensure protection of the state from nonradiological hazards associated with any waste transportation, transfer, storage, decay in storage, treatment, or disposal.

(5) The state recognizes the sovereign rights of Indian tribes within the state of Utah. However, any proposed transfer, storage, decay in storage, treatment, or disposal facility located on a reservation which directly affects and impacts state interests by creating off-reservation effects such as potential or actual degradation of soils and groundwater, potential or actual contamination of surface water, pollution of the ambient air, emergency planning costs, impacts on development, agriculture, and ranching, and increased transportation activity, is subject to state jurisdiction.

(6) There is no tradition of regulation by the Indian tribes in Utah of high-level nuclear waste or higher than class C radioactive waste. The state does have a long history of regulation of

radioactive sources and natural resources and in the transfer, storage, treatment, and transportation of materials and wastes throughout the state. The state finds that its interests are even greater when nonmembers of an Indian tribe propose to locate a facility on tribal trust lands primarily to avoid state regulation and state authorities under federal law.

(7) (a) This part is not intended to modify existing state requirements for obtaining environmental approvals, permits, and licenses, including surface and groundwater permits and air quality permits, when the permits are necessary under state and federal law to construct and operate a high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay in storage, treatment, or disposal facility.

(b) Any source of air pollution proposed to be located within the state, including sources located within the boundaries of an Indian reservation, which will potentially or actually have a direct and significant impact on ambient air within the state, is required to obtain an approval order and permit from the state under Section 19-2-108.

(c) Any facility which will potentially or actually have a significant impact on the state's surface or groundwater resources is required to obtain a permit under Section 19-5-107 even if located within the boundaries of an Indian reservation.

(8) The state finds that the transportation, transfer, storage, decay in storage, treatment, and disposal of high-level nuclear waste and greater than class C radioactive waste within the state is an ultra-hazardous activity which carries with it the risk that any release of waste may result in enormous economic and human injury.

Section 10. Section **19-3-303** is amended to read:

19-3-303. Definitions.

As used in this part:

(1) "Final judgment" means a final ruling or judgment, including any supporting opinion, that determines the rights of the parties and concerning which all appellate remedies have been exhausted or the time for appeal has expired.

(2) "Goods" means any materials or supplies, whether raw, processed, or manufactured.

[~~(1)~~] (3) "Greater than class C radioactive waste" means low-level radioactive waste that has

higher concentrations of specific radionuclides than allowed for class C waste.

(4) "Gross value of the contract" means the totality of the consideration received for any goods, services, or municipal-type services delivered or rendered in the state without any deduction for expense paid or accrued with respect to it.

[~~(2)~~] (5) "High-level nuclear waste" has the same meaning as in Section 19-3-102.

(6) "Municipal-type services" includes, but is not limited to:

(a) fire protection service;

(b) waste and garbage collection and disposal;

(c) planning and zoning;

(d) street lighting;

(e) life support and paramedic services;

(f) water;

(g) sewer;

(h) electricity;

(i) natural gas or other fuel; or

(j) law enforcement.

(7) "Organization" means a corporation, limited liability company, partnership, limited liability partnership, joint venture, consortium, association, trust, or other entity formed to undertake an enterprise, whether or not for profit.

(8) "Placement" means transportation, transfer, storage, decay in storage, treatment, or disposal.

(9) "Political subdivision" means any county, city, town, school district, public transit district, redevelopment agency, special improvement or taxing district, or other governmental subdivision or public corporation.

[~~(3)~~] (10) "Rule" means a rule made by the department under Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(11) "Service" or "services" means any work or governmental program which provides a benefit.

[~~(4)~~] (12) "Storage facility" means any facility which stores, holds, or otherwise provides for the emplacement of waste regardless of the intent to recover that waste for subsequent use, processing, or disposal.

[~~(5)~~] (13) "Transfer facility" means any facility which transfers waste from and between transportation modes, vehicles, cars, or other units, and includes rail terminals and intermodal transfer points.

[~~(6)~~] (14) "Waste" or "wastes" means high-level nuclear waste and greater than class C radioactive waste.

Section 11. Section **19-3-308** is amended to read:

19-3-308. Application fee and annual fees.

(1) (a) Any application for a waste transfer, storage, decay in storage, treatment, or disposal facility shall be accompanied by an initial fee of $5,000,000.

(b) The applicant shall subsequently pay an additional fee to cover the costs to the state associated with review of the application, including costs to the state and the state's contractors for permitting, technical, administrative, legal, safety, and emergency response reviews, planning, training, infrastructure, and other impact analyses, studies, and services required to evaluate a proposed facility.

(2) For the purpose of funding the state oversight and inspection of any waste transfer, storage, decay in storage, treatment, or disposal facility, and to establish state infrastructure, including, but not limited to providing for state Department of Environmental Quality, state Department of Transportation, state Department of Public Safety, and other state agencies' technical, administrative, legal, infrastructure, maintenance, training, safety, socio-economic, law enforcement, and emergency resources necessary to respond to these facilities, the owner or operator shall pay to the state a fee as established by department rule under Section 63-38-3.2, to be assessed:

(a) per ton of storage cask and high level nuclear waste per year for storage, decay in storage, treatment, or disposal of high level nuclear waste;

(b) per ton of transportation cask and high level nuclear waste for each transfer of high level nuclear waste;

(c) per ton of storage cask and greater than class C radioactive waste for the storage, decay in storage, treatment, or disposal of greater than class C radioactive waste; and

(d) per ton of transportation cask and greater than class C radioactive waste for each transfer of greater than class C radioactive waste.

(3) Funds collected under Subsection (2) shall be placed in the [~~Nuclear Waste Facility Oversight Restricted~~] Nuclear Accident and Hazard Compensation Account, created in [~~Section~~] Subsection 19-3-309(3).

(4) The owner or operator of the facility shall pay the fees imposed under this section to the department on or before the 15th day of the month following the month in which the fee accrued.

(5) Annual fees due under this part accrue on July 1 of each year and shall be paid to the department by July 15 of that year.

Section 12. Section **19-3-309** is amended to read:

19-3-309. Restricted accounts.

(1) There is created within the General Fund a restricted account known as the "Nuclear Waste Facility Oversight Account[~~:~~]" and referred to in this section as the "oversight account".

(2) (a) The oversight account shall be funded from the fees imposed and collected under [~~this part~~] Subsections 19-3-308(1)(a) and(b).

(b) The department shall deposit in the oversight account all fees collected under [~~this part in the account~~] Subsections 19-3-308(1)(a) and(b).

(c) The Legislature may appropriate the funds in this oversight account to departments of state government as necessary for those departments to carry out their duties to implement this part.

(d) The [~~account shall earn interest, which shall be deposited in the account~~] department shall account separately for monies paid into the oversight account for each separate application made pursuant to Section 19-3-304.

(3) (a) There is created within the General Fund a restricted account known as the "Nuclear Accident and Hazard Compensation Account," to be referred to as the "compensation account" within this part.

(b) The compensation account shall be funded from the fees assessed and collected under

this part, except for Subsections 19-3-308(1)(a) and (b).

(c) The department shall deposit in the compensation account all fees collected under this part, except for those fees under Subsections 19-3-308(1)(a) and (b).

(d) The compensation account shall earn interest, which shall be deposited in the account.

(e) The Legislature may appropriate the funds in the compensation account to the departments of state government as necessary for those departments to comply with the requirements of this part.

(4) On the date when a state license is issued in accordance with Subsection 19-3-301(4)(a), the Division of Finance shall transfer all fees remaining in the oversight account attributable to that license into the compensation account.

Section 13. Section **19-3-312** is amended to read:

19-3-312. Enforcement -- Penalties.

(1) When the department or the governor has probable cause to believe a person is violating or is about to violate any provision of this part, the department or the governor shall direct the state attorney general to apply to the appropriate court for an order enjoining the person from engaging in or continuing to engage in the activity.

(2) In addition to being subject to injunctive relief, any person who violates any provision of this part is subject to a civil penalty of up to $10,000 per day for each violation.

(3) Any person who knowingly violates a provision of this part is guilty of a class A misdemeanor and subject to a fine of up to $10,000 per day.

(4) Any person or organization acting to facilitate a violation of any provision of this part regarding the regulation of greater than class C radioactive waste or high-level nuclear waste is subject to a civil penalty of up to $10,000 per day for each violation, in addition to being subject to injunctive relief.

(5) Any person or organization who knowingly acts to facilitate a violation of this part regarding the regulation of high-level nuclear waste or greater than class C radioactive waste is guilty of a class A misdemeanor and is subject to a fine of up to $10,000 per day.

(6) (a) This section does not impose a civil or criminal penalty on any Utah-based nonprofit

trade association due to the membership in the organization of a member that is engaging in, or attempting to engage in, the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state.

(b) Subsection (6)(a) does not apply to a nonprofit trade association if that association takes any affirmative action to promote or assist any individual or organization in efforts to conduct any activity prohibited by this part.

(c) A member of any Utah-based nonprofit trade association is not exempt from any civil or criminal liability or penalty due to membership in the association.

Section 14. Section **19-3-319** is enacted to read:

19-3-319. State response to nuclear release and hazards.

(1) The state finds that the placement of high-level nuclear waste inside the exterior boundaries of the state is an ultra-hazardous activity which may result in catastrophic economic and environmental damage and irreparable human injury in the event of a release of waste, and which may result in serious long-term health effects to workers at any transfer or storage facility, or to workers involved in the transportation of the waste.

(2) (a) The state finds that procedures for providing funding for the costs incurred by any release of waste, or for the compensation for the costs of long-term health effects are not adequately addressed by existing law.

(b) Due to these concerns, the state has established a restricted account under Subsection 19-3-309(3), known as the Nuclear Accident and Hazard Compensation Account, and referred to in this section as the compensation account. One of the purposes of this account is to partially or wholly compensate workers for these potential costs, as funds are available and appropriated for these purposes.

(3) (a) The department shall require the applicant, and parent and subsidiary organizations of the applicant, to pay to the department not less than 75% of the unfunded potential liability, as determined under Subsection 19-3-301(5), in the form of cash or cash equivalents. The payment shall be made within 30 days after the date of the issuance of a license under this part.

(b) The department shall credit the amount due under Subsection 19-3-306(10) against the

amount due under this Subsection (3).

(c) If the payments due under this Subsection (3) are not made within 30 days, as required, the executive director of the department shall cancel the license.

(4) (a) The department shall also require an annual fee from the holder of any license issued under this part. This annual fee payment shall be calculated as:

(i) the aggregate amount of the annual payments required by Title 34A, Chapter 2, Workers' Compensation Act, of the licensee and of all parties contracted to provide goods, services, or municipal-type services to the licensee, regarding their employees who are working within the state at any time during the calendar year; and

(ii) multiplied by the number of storage casks of waste present at any time and for any period of time within the exterior borders of the state during the year for which the fee is assessed.

(b) (i) The licensee shall pay the fee under Subsection (4)(a) to the department. The department shall deposit the fee in the compensation account created in Subsection 19-3-309(3).

(ii) The fee shall be paid to the department on or before March 31 of each calendar year.

(5) The department shall use the fees paid under Subsection (4) to provide medical or death benefits, or both, as is appropriate to the situation, to the following persons for death or any long term health conditions of an employee proximately caused by the presence of the high-level nuclear waste or greater than class C radioactive waste within the state, or a release of this waste within the state that affects an employee's physical health:

(a) any employee of the holder of any license issued under this part, or employees of any parties contracting to provide goods, services, transportation, or municipal-type services to the licensee, if the employee is within the state at any time during the calendar year as part of his employment; or

(b) that employee's family or beneficiaries.

(6) Payment of the fee under Subsection (4) does not exempt the licensee from compliance with any other provision of law, including Title 34A, Chapter 2, regarding workers' compensation.

(7) (a) An agreement between an employer and an employee, the employee's family, or beneficiaries requiring the employee to waive benefits under this section, requiring the employee to

seek third party coverage, or requiring an employee contribution is void.

(b) Any employer attempting to secure any agreement prohibited under Subsection (7)(a) is subject to the penalties of Section 19-3-312.

(8) (a) The department, in consultation with the Division of Industrial Accidents within the Labor Commission, shall by rule establish procedures regarding application for benefits, standards for eligibility, estimates of annual payments, and payments.

(b) Payments under this section are in addition to any other payments or benefits allowed by state or federal law, notwithstanding provisions in Title 34A, Chapter 2, regarding workers' compensation.

(c) Payments or obligations to pay under this section may not exceed funds appropriated for these purposes by the Legislature.

(9) (a) Any fee or payment imposed under this section does not apply to any Utah-based nonprofit trade association due to the membership in the organization of a member that is engaging in, or attempting to engage in, the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state.

(b) Subsection (9)(a) does not apply to a nonprofit trade association if that association takes any affirmative action to promote or assist any individual or organization in efforts to conduct any activity prohibited by this part.

(c) A member of any Utah-based nonprofit trade association is not exempt from any fee or payment under this section due to membership in the association.

Section 15. Section **34-38-3** is amended to read:

34-38-3. Testing for drugs or alcohol.

(1) It is not unlawful for an employer to test employees or prospective employees for the presence of drugs or alcohol, in accordance with the provisions of this chapter, as a condition of hiring or continued employment. However, employers and management in general [~~must~~] shall submit to the testing themselves on a periodic basis.

(2) (a) Any organization which is operating a storage facility or transfer facility or which is engaged in the transportation of high-level nuclear waste or greater than class C radioactive waste

within the exterior boundaries of the state shall establish a mandatory drug testing program regarding drugs and alcohol for prospective and existing employees as a condition of hiring any employee or the continued employment of any employee. As a part of the program, employers and management in general shall submit to the testing themselves on a periodic basis. The program shall implement testing standards and procedures established under Subsection (2)(b).

(b) The executive director of the Department of Environmental Quality, in consultation with the Labor Commission under Section 34A-1-103, shall by rule establish standards for timing of testing and dosage for impairment for the drug and alcohol testing program under this Subsection (2). The standards shall address the protection of the safety, health, and welfare of the public.

Section 16. Section **73-4-1** is amended to read:

73-4-1. By engineer on petition of users.

(1) Upon a verified petition to the state engineer, signed by five or more or a majority of water users upon any stream or water source, requesting the investigation of the relative rights of the various claimants to the waters of such stream or water source, it shall be the duty of the state engineer, if upon such investigation he finds the facts and conditions are such as to justify a determination of said rights, to file in the district court an action to determine the various rights. In any suit involving water rights the court may order an investigation and survey by the state engineer of all the water rights on the source or system involved.

(2) (a) As used in this section, "executive director" means the executive director of the Department of Environmental Quality.

(b) The executive director, with the concurrence of the governor, may request that the state engineer file in the district court an action to determine the various water rights in the stream, water source, or basin for an area within the exterior boundaries of the state for which any person or organization or the federal government is actively pursuing or processing a license application for a storage facility or transfer facility for high-level nuclear waste or greater than class C radioactive waste.

(c) Upon receipt of a request made under Subsection (2)(b), the state engineer shall file the action in the district court.

(d) If a general adjudication has been filed in the state district court regarding the area requested pursuant to Subsection (2)(b), the state engineer and the state attorney general shall join the United States as a party to the action.

Section 17. **Effective date.**

If approved by two-thirds of all the members elected to each house, this act 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.

Section 18. **Coordination clause.**

It is the intent of the Legislature that in preparing the Utah Code database for publication, the Office of Legislative Research and General Counsel is directed to replace the language, "the effective date of this act," in Section 19-3-301 with the actual effective date of this act.