

Senator Terry R. Spencer proposes to substitute the following bill:

**PROVISIONS RELATING TO HIGH-LEVEL**

**NUCLEAR WASTE**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: Terry R. Spencer**

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6 **This act modifies the Environmental Quality Code, the County Land Use Development and**  
7 **Management Act, the Labor Code regarding drug and alcohol testing, and the Water and**  
8 **Irrigation Code regarding determination of water rights. The act prohibits the placement**  
9 **of high-level nuclear waste or greater than class C radioactive waste within the exterior**  
10 **borders of the state, and prohibits governmental entities or businesses from providing**  
11 **services to facilitate the placement of the waste in the state. However, should the federal**  
12 **government authorize such placement, the act requires mandatory planning by the site**  
13 **county, including a public hearing. The act provides that an entity may not apply for a state**  
14 **license for the transportation, transfer, or storage of high-level nuclear waste or greater than**  
15 **class C radioactive waste until a final court ruling is given regarding the state provisions.**  
16 **The act also prohibits a county from providing municipal-type services to a site under**  
17 **consideration for a facility, entering into contracts to provide the services, or creating**  
18 **political subdivisions to provide the services until a license is authorized. The act provides**  
19 **that persons or organizations acting in violation of these provisions are subject to penalties.**  
20 **The act requires the Department of Environmental Quality to determine the amount of**  
21 **unfunded potential liability regarding a release of the waste from a facility. Should a facility**  
22 **gain a license, the act imposes on any organization providing municipal-type services a**  
23 **transaction fee of 75% of the value of a contract. This fee is to be applied to the unfunded**  
24 **potential liability and is to be deposited in a restricted account created by this act. In**  
25 **addition, the license applicant is required to deposit in this account not less than 75% of the**



26 **determined unfunded potential liability within 30 days of issuance of the license for the**  
27 **facility. The licensee is also required to pay an annual fee of the amount of workers'**  
28 **compensation to be paid for employees in the state, multiplied by the number of casks of**  
29 **nuclear waste brought into the state. This fee is also to be deposited in the account. The fee**  
30 **does not exempt the licensee from payments for workers' compensation, also. The act also**  
31 **requires the licensee to test employees for drug and alcohol, to protect the safety of the**  
32 **public. The act also provides for the state engineer to file an action in court to determine**  
33 **water rights for any area within the state's exterior boundaries regarding which any entity**  
34 **is actively seeking a license for a nuclear waste facility. This act takes effect upon approval.**

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

36 AMENDS:

- 37 **17-27-102**, as last amended by Chapter 93, Laws of Utah 1992
- 38 **17-27-301**, as last amended by Chapter 34, Laws of Utah 2000
- 39 **17-27-303**, as last amended by Chapter 23, Laws of Utah 1992
- 40 **17-34-1**, as repealed and reenacted by Chapter 199, Laws of Utah 2000
- 41 **19-3-301**, as last amended by Chapter 348, Laws of Utah 1998
- 42 **19-3-302**, as enacted by Chapter 348, Laws of Utah 1998
- 43 **19-3-303**, as enacted by Chapter 348, Laws of Utah 1998
- 44 **19-3-308**, as enacted by Chapter 348, Laws of Utah 1998
- 45 **19-3-309**, as enacted by Chapter 348, Laws of Utah 1998
- 46 **19-3-312**, as enacted by Chapter 348, Laws of Utah 1998
- 47 **34-38-3**, as enacted by Chapter 234, Laws of Utah 1987
- 48 **73-4-1**, Utah Code Annotated 1953

49 ENACTS:

- 50 **19-3-319**, Utah Code Annotated 1953

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

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

53 **17-27-102. Purpose.**

54 (1) To accomplish the purpose of this chapter, and in order to provide for the health,  
55 safety, and welfare, and promote the prosperity, improve the morals, peace and good order,  
56 comfort, convenience, and aesthetics of the county and its present and future inhabitants and

57 businesses, to protect the tax base, secure economy in governmental expenditures, foster the state's  
58 agricultural and other industries, protect both urban and nonurban development, and to protect  
59 property values, counties may enact all ordinances, resolutions, and rules that they consider  
60 necessary for the use and development of land within the county, including ordinances, resolutions,  
61 and rules governing uses, density, open spaces, structures, buildings, energy-efficiency, light and  
62 air, air quality, transportation and public or alternative transportation, infrastructure, public  
63 facilities, vegetation, and trees and landscaping, unless those ordinances, resolutions, or rules are  
64 expressly prohibited by law.

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

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

70 **17-27-301. General plan.**

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

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

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

77 (2) The plan may provide for:

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

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

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

83 (i) food and water; and

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

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

86 (e) the protection of urban development;

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

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

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

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

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

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

101 [~~3~~] (4) The plan may define the county's local customs, local culture, and the components  
102 necessary for the county's economic stability.

103 [~~4~~] (5) The county may determine the comprehensiveness, extent, and format of the  
104 general plan.

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

106 **17-27-303. Plan adoption.**

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

109 (b) The planning commission shall provide reasonable notice of the public hearing at least  
110 14 days before the date of the hearing.

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

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

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

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

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

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

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

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

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

137 (iv) The notice in these newspapers shall be published not fewer than 180 days prior to  
138 the date of the hearing to be held under this Subsection (4), to allow reasonable time for interested  
139 parties and the state to evaluate the information regarding the provisions of Subsection  
140 17-27-301(3).

141 ~~[(4)]~~ (5) (a) After [the] a public hearing under this section, the legislative body may make  
142 any modifications to the proposed general plan that it considers appropriate.

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

145 ~~[(5)]~~ (6) The legislative body may:

146 (a) adopt the proposed general plan without amendment;

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

148 (c) reject the proposed general plan.

149 ~~[(6)]~~ (7) (a) The general plan is an advisory guide for land use decisions, except for the

150 provision required by Subsection 17-27-301(3), which the legislative body shall adopt.

151 (b) The legislative body may adopt an ordinance mandating compliance with the general  
152 plan, and shall adopt an ordinance requiring compliance with all provisions of Subsection  
153 17-27-301(3).

154 Section 4. Section 17-34-1 is amended to read:

155 **17-34-1. Counties may provide municipal services -- First class counties required to**  
156 **provide paramedic services.**

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

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

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

161 (c) "Municipal-type services" means:

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

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

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

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

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

167 [~~(f)~~] (vi) all other services and functions that are required by law to be budgeted,

168 appropriated, and accounted for from a municipal services fund or a municipal capital projects  
169 fund as defined under Chapter 36, Uniform Fiscal Procedures Act for Counties.

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

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

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

173 (2) A county may:

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

176 (b) fund those services by:

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

178 or

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

181 (3) A county may not:

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

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

187 (i) levying a tax; or

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

190 ~~[(3)]~~ (4) Each county of the first class shall provide advanced life support and paramedic  
191 services to the area of the county outside the limits of cities and towns.

192 Section 5. Section **19-3-301** is amended to read:

193 **19-3-301. Restrictions on nuclear waste placement in state.**

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

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

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

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

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

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

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

- 212 (b) storage, including any temporary storage at a site away from the generating reactor;
- 213 (c) decay in storage;
- 214 (d) treatment; and
- 215 (e) disposal.

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

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

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

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

- 230 (A) under nuclear industry self-insurance;
- 231 (B) under federal insurance requirements; and
- 232 (C) in federal monies.

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

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

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

- 242 (a) the satisfaction of the conditions in Subsection (4); and



243 (b) the executive director of the department having certified that the requirements of  
244 Sections 19-3-304 through 19-3-308 have been met for the purposes of a license application  
245 proceeding for a storage facility or transfer facility.

246 (7) This section does not prohibit a state agency from exercising the regulatory authority  
247 granted to it by law.

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

252 (i) a cooperative;

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

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

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

257 (v) the formation of a municipality, or any authority of a municipality authorized by Title  
258 10, Utah Municipal Code.

259 (b) (i) Subsection (8)(a) shall be strictly interpreted. Any political subdivision authorized  
260 and formed under the laws of the state after the effective date of this act which subsequently  
261 contracts to, or in any manner agrees to provide, or does provide goods, services, or municipal-type  
262 services to a storage facility or transfer facility is formed in violation of Subsection (8)(a).

263 (ii) If the conditions of Subsection (8)(b)(i) apply, the persons who formed the political  
264 subdivision are considered to have knowingly violated a provision of this part, and the penalties  
265 of Section 19-3-312 apply.

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

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

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

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

274 (i) the satisfaction of the conditions in Subsection (4); and  
275 (ii) the executive director of the department having certified that the requirements of  
276 Sections 19-3-304 through 19-3-308 have been met.

277 (c) The prohibitions of Subsections (9)(a) and (b) shall be strictly applied, and:

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

282 (ii) any organization which is formed or registered after the effective date of this act, and  
283 which subsequently contracts to, or in any manner agrees to provide, or does provide goods,  
284 services, or municipal-type services to a storage facility or transfer facility has been formed or  
285 registered in violation of Subsection (9)(a) or (b) respectively; and

286 (iii) if the conditions of Subsection (9)(c)(ii) apply, the persons who formed the  
287 organization or the principals of the foreign organization, are considered to have knowingly  
288 violated a provision of this part, and are subject to the penalties in Section 19-3-312.

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

294 (ii) These contracts or agreements under Subsection (10)(a)(i), whether formal or informal,  
295 are declared to be void from inception, agreement, or execution as against public policy.

296 (b) (i) Any contract or other agreement to provide goods, services, or municipal-type  
297 services to storage or transfer facilities may not be executed within the state.

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

300 (11) (a) All contracts and agreements under Subsection (11)(b) are assessed an annual  
301 transaction fee of 75% of the gross value of the contract to the party providing the goods, services,  
302 or municipal-type services to the storage facility or transfer facility or transportation entity. The  
303 fee shall be assessed per calendar year, and is payable to the department on a prorated basis on or  
304 before the last day of each month.

305 (b) Contracts and agreements subject to the fee under Subsection (11)(a) are those  
306 contracts and agreements to provide goods, services, or municipal-type services to a storage or  
307 transfer facility, or to any organization engaged in the transportation of high-level nuclear waste  
308 or greater than class C radioactive waste to a transfer facility or storage facility, and which:

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

310 (ii) become effective notwithstanding Subsection (10)(a).

311 (c) Any governmental agency which regulates the charges to consumers for services  
312 provided by utilities or other organizations shall require the regulated utility or organization to  
313 include the fees under Subsection (11)(a) in the rates charged to the purchaser of the goods,  
314 services, or municipal-type services affected by Subsection (11)(b).

315 (d) (i) The department, in consultation with the State Tax Commission, shall establish  
316 rules for the valuation of the contracts and assessment and collection of the fees, and other rules  
317 as necessary to determine the amount of and collection of the fee under Subsection (11)(a). The  
318 department may initiate rulemaking under this subsection on or after the effective date of this act.

319 (ii) Persons and organizations holding contracts affected by Subsection (11)(b) shall make  
320 a good faith estimate of the fee under Subsection (11)(a) for calender year 2001, and remit that  
321 amount to the department on or before July 31, 2001.

322 Section 6. Section **19-3-302** is amended to read:

323 **19-3-302. Legislative intent.**

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

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

335 (2) Neither the Atomic Energy Act nor the Nuclear Waste Policy Act provides for siting

336 a large privately owned high-level nuclear waste transfer, storage, decay in storage, or treatment  
337 facility away from the vicinity of the reactors. The Atomic Energy Act and the Nuclear Waste  
338 Policy Act specifically define authorized storage and disposal programs and activities. The state  
339 of Utah in enacting this part is not preempted by federal law, since any proposed facilities that  
340 would be sited in Utah are not contemplated or authorized by federal law and, in any circumstance,  
341 this part is not contrary to or inconsistent with federal law or Congressional intent.

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

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

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

355 (6) There is no tradition of regulation by the Indian tribes in Utah of high-level nuclear  
356 waste or higher than class C radioactive waste. The state does have a long history of regulation  
357 of radioactive sources and natural resources and in the transfer, storage, treatment, and  
358 transportation of materials and wastes throughout the state. The state finds that its interests are  
359 even greater when nonmembers of an Indian tribe propose to locate a facility on tribal trust lands  
360 primarily to avoid state regulation and state authorities under federal law.

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

366 (b) Any source of air pollution proposed to be located within the state, including sources

367 located within the boundaries of an Indian reservation, which will potentially or actually have a  
368 direct and significant impact on ambient air within the state, is required to obtain an approval order  
369 and permit from the state under Section 19-2-108.

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

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

377 Section 7. Section **19-3-303** is amended to read:

378 **19-3-303. Definitions.**

379 As used in this part:

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

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

384 [(+)] (3) "Greater than class C radioactive waste" means low-level radioactive waste that  
385 has higher concentrations of specific radionuclides than allowed for class C waste.

386 [(2)] (4) "High-level nuclear waste" has the same meaning as in Section 19-3-102.

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

388 (a) fire protection service;

389 (b) waste and garbage collection and disposal;

390 (c) planning and zoning;

391 (d) street lighting;

392 (e) life support and paramedic services;

393 (f) water;

394 (g) sewer;

395 (h) electricity;

396 (i) natural gas or other fuel; or

397 (j) law enforcement.

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

401           (7) "Placement" means transportation, transfer, storage, decay in storage, treatment, or  
402 disposal.

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

406           ~~(9)~~ (9) "Rule" means a rule made by the department under Title 63, Chapter 46a, Utah  
407 Administrative Rulemaking Act.

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

410           ~~(11)~~ (11) "Storage facility" means any facility which stores, holds, or otherwise provides  
411 for the emplacement of waste regardless of the intent to recover that waste for subsequent use,  
412 processing, or disposal.

413           ~~(12)~~ (12) "Transfer facility" means any facility which transfers waste from and between  
414 transportation modes, vehicles, cars, or other units, and includes rail terminals and intermodal  
415 transfer points.

416           ~~(13)~~ (13) "Waste" or "wastes" means high-level nuclear waste and greater than class C  
417 radioactive waste.

418           Section 8. Section **19-3-308** is amended to read:

419           **19-3-308. Application fee and annual fees.**

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

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

427           (2) For the purpose of funding the state oversight and inspection of any waste transfer,  
428 storage, decay in storage, treatment, or disposal facility, and to establish state infrastructure,

429 including, but not limited to providing for state Department of Environmental Quality, state  
 430 Department of Transportation, state Department of Public Safety, and other state agencies'  
 431 technical, administrative, legal, infrastructure, maintenance, training, safety, socio-economic, law  
 432 enforcement, and emergency resources necessary to respond to these facilities, the owner or  
 433 operator shall pay to the state a fee as established by department rule under Section 63-38-3.2, to  
 434 be assessed:

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

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

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

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

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

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

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

451 Section 9. Section **19-3-309** is amended to read:

452 **19-3-309. Restricted account.**

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

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

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

459 (c) The Legislature may appropriate the funds in this oversight account to departments of

460 state government as necessary for those departments to carry out their duties to implement this  
461 part.

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

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

468 (b) The compensation account shall be funded from the fees assessed and collected under  
469 this part, except for Subsections 19-3-308(1)(a) and (b).

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

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

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

476 (4) On the date when a state license is issued in accordance with Subsection  
477 19-3-301(4)(a), the Division of Finance shall transfer all fees remaining in the oversight account  
478 attributable to that license into the compensation account.

479 Section 10. Section **19-3-312** is amended to read:

480 **19-3-312. Enforcement -- Penalties.**

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

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

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

489 (4) Any person or organization acting to facilitate a violation of any provision of this part  
490 regarding the regulation of greater than class C radioactive waste or high-level nuclear waste is



491 subject to a civil penalty of up to \$10,000 per day for each violation, in addition to being subject  
492 to injunctive relief.

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

496 Section 11. Section **19-3-319** is enacted to read:

497 **19-3-319. State response to nuclear release and hazards.**

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

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

506 (b) Due to these concerns, the state has established a restricted account under Subsection  
507 19-3-309(3), known as the Nuclear Accident and Hazard Compensation Account, and referred to  
508 in this section as the "compensation account." One of the purposes of this account is to partially  
509 or wholly compensate workers for these potential costs, as funds are available and appropriated  
510 for these purposes.

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

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

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

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

521 (i) the aggregate amount of the annual payments required by Title 34A, Chapter 2,

522 Workers' Compensation Act, of the licensee and of all parties contracted to provide goods,  
523 services, or municipal-type services to the licensee, regarding their employees who are working  
524 within the state at any time during the calendar year; and

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

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

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

530 (5) The department shall use the fees paid under Subsection (4) to provide medical or  
531 death benefits, or both, as is appropriate to the situation, to:

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

536 (b) that employee's family or beneficiaries.

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

539 (7) (a) An agreement between an employer and an employee, the employee's family, or  
540 beneficiaries requiring the employee to waive benefits under this section, requiring the employee  
541 to seek third party coverage, or requiring an employee contribution is void.

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

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

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

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

552 Section 12. Section **34-38-3** is amended to read:

553           **34-38-3. Testing for drugs or alcohol.**

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

558           (2) (a) Any organization which is operating a storage facility or transfer facility or which  
559 is engaged in the transportation of high-level nuclear waste or greater than class C radioactive  
560 waste within the exterior boundaries of the state shall establish a mandatory drug testing program  
561 regarding drugs and alcohol for prospective and existing employees as a condition of hiring any  
562 employee or the continued employment of any employee. As a part of the program, employers and  
563 management in general shall submit to the testing themselves on a periodic basis. The program  
564 shall implement testing standards and procedures established under Subsection (2)(b).

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

570           Section 13. Section **73-4-1** is amended to read:

571           **73-4-1. By engineer on petition of users.**

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

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

581           (b) The executive director, with the concurrence of the governor, may request that the state  
582 engineer file in the district court an action to determine the various water rights in the stream,  
583 water source, or basin for an area within the exterior boundaries of the state for which any person

584 or organization or the federal government is actively pursuing or processing a license application  
585 for a storage facility or transfer facility for high-level nuclear waste or greater than class C  
586 radioactive waste.

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

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

592 Section 14. **Effective date.**

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