

Representative Stephen H. Urquhart proposes to substitute the following bill:

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



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 provides a coordination clause to specify the effective date.**

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

37 AMENDS:

- 38 **17-27-102**, as last amended by Chapter 93, Laws of Utah 1992
- 39 **17-27-301**, as last amended by Chapter 34, Laws of Utah 2000
- 40 **17-27-303**, as last amended by Chapter 23, Laws of Utah 1992
- 41 **17-34-1**, as repealed and reenacted by Chapter 199, Laws of Utah 2000
- 42 **17-34-3**, as last amended by Chapter 199, Laws of Utah 2000
- 43 **19-3-301**, as last amended by Chapter 348, Laws of Utah 1998
- 44 **19-3-302**, as enacted by Chapter 348, Laws of Utah 1998
- 45 **19-3-303**, as enacted by Chapter 348, Laws of Utah 1998
- 46 **19-3-308**, as enacted by Chapter 348, Laws of Utah 1998
- 47 **19-3-309**, as enacted by Chapter 348, Laws of Utah 1998
- 48 **19-3-312**, as enacted by Chapter 348, Laws of Utah 1998
- 49 **34-38-3**, as enacted by Chapter 234, Laws of Utah 1987
- 50 **73-4-1**, Utah Code Annotated 1953

51 ENACTS:

- 52 **17-27-308**, Utah Code Annotated 1953
- 53 **17-34-6**, Utah Code Annotated 1953
- 54 **19-3-319**, Utah Code Annotated 1953

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

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

57 **17-27-102. Purpose.**

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

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

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

74 **17-27-301. General plan.**

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

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

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

81 (2) The plan may provide for:

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

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

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

87 (i) food and water; and

- 88 (ii) drainage, sanitary, and other facilities and resources;
- 89 (d) the use of energy conservation and solar and renewable energy resources;
- 90 (e) the protection of urban development;
- 91 (f) the protection and promotion of air quality; and
- 92 (g) an official map, pursuant to Title 72, Chapter 5, Part 4, Transportation Corridor
- 93 Preservation.

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

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

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

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

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

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

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

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

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

115 (ii) send a certified copy of the repeal to the executive director of the Department of
116 Environmental Quality by certified mail within 30 days after the repeal.

117 ~~(3)~~ (4) The plan may define the county's local customs, local culture, and the components
118 necessary for the county's economic stability.

119 ~~[(4)]~~ (5) The county may determine the comprehensiveness, extent, and format of the
120 general plan.

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

122 **17-27-303. Plan adoption.**

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

125 (b) The planning commission shall provide reasonable notice of the public hearing at least
126 14 days before the date of the hearing.

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

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

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

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

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

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

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

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

149 (iii) Public notice shall be given by publication in at least one major Utah newspaper

150 having broad general circulation in the state, and also in at least one Utah newspaper having a
151 general circulation focused mainly on the county where the proposed high-level nuclear waste or
152 greater than class C radioactive waste site is to be located.

153 (iv) The notice in these newspapers shall be published not fewer than 180 days prior to
154 the date of the hearing to be held under this Subsection (4), to allow reasonable time for interested
155 parties and the state to evaluate the information regarding the provisions of Subsection
156 17-27-301(3).

157 [~~4~~] (5) (a) After [~~the~~] a public hearing under this section, the legislative body may make
158 any modifications to the proposed general plan that it considers appropriate.

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

161 [~~5~~] (6) The legislative body may:

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

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

164 (c) reject the proposed general plan.

165 [~~6~~] (7) (a) The general plan is an advisory guide for land use decisions, except for the
166 provision required by Subsection 17-27-301(3), which the legislative body shall adopt.

167 (b) The legislative body may adopt an ordinance mandating compliance with the general
168 plan, and shall adopt an ordinance requiring compliance with all provisions of Subsection
169 17-27-301(3).

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

171 **17-27-308. State to indemnify county regarding refusal to site nuclear waste - Terms**
172 **and conditions.**

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

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

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

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

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

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

188 **17-34-1. Counties may provide municipal services -- First class counties required to**
189 **provide paramedic services.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

206 (2) A county may:

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

209 (b) fund those services by:

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

211 or

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

214 (3) A county may not:

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

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

220 (i) levying a tax; or

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

223 [~~3~~] (4) Each county of the first class shall provide advanced life support and paramedic
224 services to the area of the county outside the limits of cities and towns.

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

226 **17-34-3. Taxes or service charges.**

227 (1) (a) If a county furnishes the municipal-type services and functions described in Section
228 17-34-1 to areas of the county outside the limits of incorporated cities or towns, the entire cost of
229 the services or functions so furnished shall be defrayed from funds that the county has derived
230 from either:

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

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

235 (iii) a combination of these sources.

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

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

242 (3) Nothing contained in this chapter may be construed to authorize counties to impose

243 or levy taxes not otherwise allowed by law.

244 (4) (a) A county required under Subsection 17-34-1~~(3)~~(4) to provide advanced life
245 support and paramedic services to the unincorporated area of the county and that previously paid
246 for those services through a countywide levy may increase its levy under Subsection (1)(a)(i) to
247 generate in the unincorporated area of the county the same amount of revenue as the county loses
248 from that area due to the required decrease in the countywide certified tax rate under Subsection
249 59-2-924(2)(h)(i).

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

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

253 **17-34-6. State to indemnify county regarding refusal to site nuclear waste - Terms**
254 **and conditions.**

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

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

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

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

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

270 **19-3-301. Restrictions on nuclear waste placement in state.**

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

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

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

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

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

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

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

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

290 (c) decay in storage;

291 (d) treatment; and

292 (e) disposal.

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

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

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

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

307 (A) under nuclear industry self-insurance;

308 (B) under federal insurance requirements; and

309 (C) in federal monies.

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

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

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

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

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

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

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

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

331 (i) a cooperative;

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

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

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

336 (v) the formation of a municipality, or any authority of a municipality authorized by Title
337 10, Utah Municipal Code.

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

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

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

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

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

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

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

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

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

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

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

365 (iii) if the conditions of Subsection (8)(c)(ii) apply, the persons who formed the
366 organization or the principals of the foreign organization, are considered to have knowingly

367 violated a provision of this part, and are subject to the penalties in Section 19-3-312.

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

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

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

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

379 (10) (a) All contracts and agreements under Subsection (10)(b) are assessed an annual
380 transaction fee of 75% of the gross value of the contract to the party providing the goods, services,
381 or municipal-type services to the storage facility or transfer facility or transportation entity. The
382 fee shall be assessed per calendar year, and is payable to the department on a prorated basis on or
383 before the last day of each month.

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

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

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

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

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

398 (ii) Persons and organizations holding contracts affected by Subsection (10)(b) shall make
399 a good faith estimate of the fee under Subsection (10)(a) for calender year 2001, and remit that
400 amount to the department on or before July 31, 2001.

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

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

407 **19-3-302. Legislative intent.**

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

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

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

426 (3) The state of Utah has environmental and economic interests which do not involve
427 nuclear safety regulation, and which must be considered and complied with in siting a high-level
428 nuclear waste or greater than class C radioactive waste transfer, storage, decay in storage,

429 treatment, or disposal facility and in transporting these wastes in the state.

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

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

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

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

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

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

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

460 enormous economic and human injury.

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

462 **19-3-303. Definitions.**

463 As used in this part:

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

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

468 ~~(1)~~ (3) "Greater than class C radioactive waste" means low-level radioactive waste that
469 has higher concentrations of specific radionuclides than allowed for class C waste.

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

473 ~~(2)~~ (5) "High-level nuclear waste" has the same meaning as in Section 19-3-102.

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

475 (a) fire protection service;

476 (b) waste and garbage collection and disposal;

477 (c) planning and zoning;

478 (d) street lighting;

479 (e) life support and paramedic services;

480 (f) water;

481 (g) sewer;

482 (h) electricity;

483 (i) natural gas or other fuel; or

484 (j) law enforcement.

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

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

490 (9) "Political subdivision" means any county, city, town, school district, public transit

491 district, redevelopment agency, special improvement or taxing district, or other governmental
492 subdivision or public corporation.

493 [~~(3)~~] (10) "Rule" means a rule made by the department under Title 63, Chapter 46a, Utah
494 Administrative Rulemaking Act.

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

497 [~~(4)~~] (12) "Storage facility" means any facility which stores, holds, or otherwise provides
498 for the emplacement of waste regardless of the intent to recover that waste for subsequent use,
499 processing, or disposal.

500 [~~(5)~~] (13) "Transfer facility" means any facility which transfers waste from and between
501 transportation modes, vehicles, cars, or other units, and includes rail terminals and intermodal
502 transfer points.

503 [~~(6)~~] (14) "Waste" or "wastes" means high-level nuclear waste and greater than class C
504 radioactive waste.

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

506 **19-3-308. Application fee and annual fees.**

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

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

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

- 522 (a) per ton of storage cask and high level nuclear waste per year for storage, decay in
523 storage, treatment, or disposal of high level nuclear waste;
- 524 (b) per ton of transportation cask and high level nuclear waste for each transfer of high
525 level nuclear waste;
- 526 (c) per ton of storage cask and greater than class C radioactive waste for the storage, decay
527 in storage, treatment, or disposal of greater than class C radioactive waste; and
- 528 (d) per ton of transportation cask and greater than class C radioactive waste for each
529 transfer of greater than class C radioactive waste.

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

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

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

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

539 **19-3-309. Restricted account.**

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

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

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

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

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

552 (3) (a) There is created within the General Fund a restricted account known as the "Nuclear

553 Accident and Hazard Compensation Account, " to be referred to as the "compensation account"
554 within this part.

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

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

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

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

563 (4) On the date when a state license is issued in accordance with Subsection
564 19-3-301(4)(a), the Division of Finance shall transfer all fees remaining in the oversight account
565 attributable to that license into the compensation account.

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

567 **19-3-312. Enforcement -- Penalties.**

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

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

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

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

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

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

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

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

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

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

593 **19-3-319. State response to nuclear release and hazards.**

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

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

602 (b) Due to these concerns, the state has established a restricted account under Subsection
603 19-3-309(3), known as the Nuclear Accident and Hazard Compensation Account, and referred to
604 in this section as the "compensation account." One of the purposes of this account is to partially
605 or wholly compensate workers for these potential costs, as funds are available and appropriated
606 for these purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

652 **34-38-3. Testing for drugs or alcohol.**

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

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

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

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

670 **73-4-1. By engineer on petition of users.**

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

677 engineer of all the water rights on the source or system involved.

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

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

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

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

691 **Section 17. Effective date.**

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

696 **Section 18. Coordination clause.**

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