

**HAZARDOUS WASTE FACILITIES
MANAGEMENT AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: David N. Cox

This act renumbers the sections constituting the Hazardous Waste Facilities Management Act and makes technical changes.

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

AMENDS:

17A-1-301, as last amended by Chapter 1, Laws of Utah 2000

RENUMBERS AND AMENDS:

19-9-101, (Renumbered from 17A-2-1701, as renumbered and amended by Chapter 186, Laws of Utah 1990)

19-9-102, (Renumbered from 17A-2-1702, as last amended by Chapters 5 and 112, Laws of Utah 1991)

19-9-103, (Renumbered from 17A-2-1703, as renumbered and amended by Chapter 186, Laws of Utah 1990)

19-9-104, (Renumbered from 17A-2-1704, as last amended by Chapter 176, Laws of Utah 2002)

19-9-105, (Renumbered from 17A-2-1705, as renumbered and amended by Chapter 186, Laws of Utah 1990)

19-9-106, (Renumbered from 17A-2-1706, as renumbered and amended by Chapter 186, Laws of Utah 1990)

19-9-107, (Renumbered from 17A-2-1707, as renumbered and amended by Chapter 186, Laws of Utah 1990)

19-9-108, (Renumbered from 17A-2-1708, as renumbered and amended by Chapter 186, Laws of Utah 1990)



28 **19-9-109**, (Renumbered from 17A-2-1709, as last amended by Chapter 1, Laws of Utah
29 2000)

30 **19-9-110**, (Renumbered from 17A-2-1710, as renumbered and amended by Chapter
31 186, Laws of Utah 1990)

32 **19-9-111**, (Renumbered from 17A-2-1711, as renumbered and amended by Chapter
33 186, Laws of Utah 1990)

34 **19-9-112**, (Renumbered from 17A-2-1712, as renumbered and amended by Chapter
35 186, Laws of Utah 1990)

36 **19-9-113**, (Renumbered from 17A-2-1713, as renumbered and amended by Chapter
37 186, Laws of Utah 1990)

38 **19-9-114**, (Renumbered from 17A-2-1714, as renumbered and amended by Chapter
39 186, Laws of Utah 1990)

40 **19-9-115**, (Renumbered from 17A-2-1715, as renumbered and amended by Chapter
41 186, Laws of Utah 1990)

42 **19-9-116**, (Renumbered from 17A-2-1716, as renumbered and amended by Chapter
43 186, Laws of Utah 1990)

44 **19-9-117**, (Renumbered from 17A-2-1717, as renumbered and amended by Chapter
45 186, Laws of Utah 1990)

46 **19-9-118**, (Renumbered from 17A-2-1718, as renumbered and amended by Chapter
47 186, Laws of Utah 1990)

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

49 Section 1. Section **17A-1-301** is amended to read:

50 **17A-1-301. Exemptions.**

51 This part does not apply to:

52 (1) public transit districts established under authority of Title 17A, Chapter 2, Part 10,
53 Utah Public Transit District Act;

54 (2) water conservancy districts established under Title 17A, Chapter 2, Part 14, Water
55 Conservancy Districts;

56 (3) soil conservation districts created under the authority of Title 17A, Chapter 3, Part
57 8, Soil Conservation Districts;

58 ~~[(4) neighborhood redevelopment agencies established under authority of Title 17A,~~

59 Chapter 2, Part 12, Utah Neighborhood Development Act;]

60 [~~(5)~~] (4) metropolitan water districts established under authority of Title 17A, Chapter
61 2, Part 8, Metropolitan Water District Act; and

62 [~~(6)~~] (5) any dependent special district established under the authority of Title 17A,
63 Chapter 3, Dependent Special Districts[~~;~~ and].

64 [~~(7)~~] a hazardous waste facilities authority established under authority of Chapter 2, Part
65 17, Hazardous Waste Facilities Management Act.]

66 Section 2. Section **19-9-101**, which is renumbered from Section 17A-2-1701 is
67 renumbered and amended to read:

68 **CHAPTER 9. HAZARDOUS WASTE FACILITIES MANAGEMENT ACT**

69 [~~17A-2-1701~~]. **19-9-101. Title.**

70 This [~~act shall be~~] chapter is known [~~and may be cited~~] as the "Hazardous Waste
71 Facilities Management Act."

72 Section 3. Section **19-9-102**, which is renumbered from Section 17A-2-1702 is
73 renumbered and amended to read:

74 [~~17A-2-1702~~]. **19-9-102. Definitions.**

75 As used in this [~~part~~] chapter:

76 (1) "Authority" means the Hazardous Waste Facilities Authority created pursuant to
77 Section [~~17A-2-1704~~] 19-9-104.

78 (2) "Board" means the Solid and Hazardous Waste Control Board created pursuant to
79 Section 19-1-106.

80 (3) "Disposal" means the final disposition of hazardous wastes into or onto the lands,
81 waters, and air of this state.

82 (4) "Hazardous [~~wastes~~] waste" [~~means wastes~~] has the same meaning as defined in
83 Section 19-6-102.

84 (5) "Hazardous waste treatment, disposal, and storage facility" means a facility or site
85 used or intended to be used for the treatment, storage, or disposal of hazardous waste
86 [~~materials~~], including physical, chemical, or thermal processing systems, incinerators, and
87 secure landfills.

88 (6) "Obligations" means any notes, debentures, interim certificates, mortgage
89 certificates, revenue bonds, or other evidence of financial indebtedness, but does not mean any

90 general obligation bonds.

91 (7) "Site" means land used for the treatment, disposal, or storage of hazardous [~~wastes~~]
92 waste.

93 (8) "Storage" means the containment of hazardous [~~wastes~~] waste for a period of more
94 than 90 days.

95 (9) "Treatment" means any method, technique, or process designed to change the
96 physical, chemical, or biological character or composition of any hazardous waste to neutralize
97 or render it nonhazardous, safer for transport, amenable to recovery or storage, convertible to
98 another usable material, or reduced in volume and suitable for ultimate disposal.

99 Section 4. Section **19-9-103**, which is renumbered from Section 17A-2-1703 is
100 renumbered and amended to read:

101 [~~17A-2-1703~~]. **19-9-103. Petition for creation of hazardous waste facilities**
102 **authority -- Recommendation to governor -- Action by governor.**

103 (1) Any person who believes that the treatment, storage, and disposal of hazardous
104 [~~wastes~~] waste within the state are not being adequately serviced by private industry may file a
105 petition with the **h [committee] BOARD h** seeking the creation and establishment of a hazardous
105a waste
106 facilities authority.

107 (2) The petition shall be signed by the petitioner and set forth with particularity the
108 reasons petitioner is relying upon in support of the petitioner's conclusion that the hazardous
109 waste needs are not being satisfied.

110 (3) Upon the receipt of a petition, and after such public notice of the date and place of
111 hearing as the **h [committee] BOARD h** [~~deems~~] considers appropriate is given, the **h [committee]**
111a **BOARD h** shall conduct
112 at least one public hearing on the issues raised by the petitioner.

113 (4) At the conclusion of the hearing or hearings, the **h [committee] BOARD h** shall approve
113a or
114 disapprove the petition. The action of the **h [committee] BOARD h** shall be supported by written
114a findings of
115 fact which shall be served upon the petitioner by certified mail.

116 (5) If the **h [committee] BOARD h** approves the petition, it shall make a written
116a recommendation to
117 the governor that action be taken to create and establish the authority. The governor, within 30
118 days after receipt of the recommendation, shall affirm it or remand the recommendation to the
119 **h [committee] BOARD h** for its reconsideration.

120 (6) If the recommendation is remanded, the **h [committee] BOARD h** shall reconsider its
120a action and

121 either reapprove or disapprove the petition. If the petition is reapproved, it shall forward a
 122 notice of its reapproval to the governor who shall proceed to create and establish the authority;
 123 otherwise, the ~~h~~ **[committee]** **BOARD** ~~h~~ shall forward notice of its disapproval to the petitioner by
 123a certified
 124 mail.

125 Section 5. Section **19-9-104**, which is renumbered from Section 17A-2-1704 is
 126 renumbered and amended to read:

127 ~~[17A-2-1704].~~ **19-9-104. Creation of authority -- Members.**

128 (1) (a) The authority comprises ten members. If the requirements of Section
 129 ~~[17A-2-1703]~~ 19-9-103 are met, the governor shall, with the consent of the Senate, appoint six
 130 members of the authority from the public-at-large.

131 (b) The remaining four members of the authority are:

132 (i) the executive director of the Department of Environmental Quality;

133 (ii) the executive director of the Department of Community and Economic
 134 Development;

135 (iii) the executive director of the Department of Natural Resources; and

136 (iv) the executive director of the Department of Transportation.

137 (2) Public-at-large members, no more than three of whom shall be from the same
 138 political party, shall be appointed to six-year terms of office, subject to removal by the
 139 governor with or without cause.

140 (3) The governor shall name one public-at-large member as chairman of the authority
 141 responsible for the call and conduct of authority meetings.

142 (4) The authority may elect other officers as necessary.

143 (5) Five members of the authority present at a properly noticed meeting constitute a
 144 quorum for the transaction of official authority business.

145 (6) Public-at-large members are entitled to per diem and expenses for each day devoted
 146 to authority business at the rates established by the director of the Division of Finance under
 147 Sections 63A-3-106 and 63A-3-107.

148 Section 6. Section **19-9-105**, which is renumbered from Section 17A-2-1705 is
 149 renumbered and amended to read:

150 ~~[17A-2-1705].~~ **19-9-105. Powers of authority.**

151 The authority is a body corporate and politic that may:

- 152 (1) sue and be sued in its own name;
- 153 (2) have a seal and alter the seal at will;
- 154 (3) borrow money and issue obligations, including refunding obligations, and provide
155 for the rights of holders of those obligations;
- 156 (4) establish hazardous waste treatment, disposal, or storage surcharge schedules for
157 facilities operated by, or under authority of, the authority, and require all private facility
158 operators who contract with the authority to collect fees for all hazardous [~~wastes~~] waste
159 received for treatment, disposal, or storage by those private facilities;
- 160 (5) promulgate rules pursuant to Title 63, Chapter 46a, [~~the~~] Utah Administrative
161 Rulemaking Act, governing the exercise of its powers and fulfillment of its purposes;
- 162 (6) enter into contracts and leases and execute all instruments necessary, convenient, or
163 desirable;
- 164 (7) acquire, purchase, hold, lease, use, or dispose of any property or any interest in
165 property that is necessary, convenient, or desirable to carry out the purposes of this [~~part~~]
166 chapter, and sell, lease, transfer, and dispose of any property or interest in property at any time
167 required in the exercise of its power, including, but not limited to, the sale, transfer, or disposal
168 of any materials, substances, or sources or forms of energy derived from any activity engaged
169 in by the authority;
- 170 (8) contract with experts, advisers, consultants, and agents for needed services;
- 171 (9) appoint officers and employees required for the performance of its duties, and fix
172 and determine their qualifications and duties;
- 173 (10) make, or contract for, plans, surveys, and studies necessary, convenient, or
174 desirable to effectuate its purposes and powers and prepare any recommendations with respect
175 to those plans, surveys, or studies;
- 176 (11) receive and accept aid or contributions from any source, including the United
177 States or [~~this~~] the state, in the form of money, property, labor, or other things of value to be
178 held, used, and applied to carry out the purposes of this [~~part~~] chapter, subject to the conditions
179 imposed upon that aid or contributions consistent with this [~~part~~] chapter;
- 180 (12) enter into agreements with any department, agency, or instrumentality of the
181 United States or this state, or any financial institution, or contractor for the purpose of leasing
182 and operating any facility;

183 (13) consent to the modification of any obligation with the holder of that obligation, to
 184 the extent permitted by the obligation, relating to rates of interest or to the time and payment of
 185 any installment of principal or interest, or to the modification of any other contract, mortgage,
 186 mortgage loan, mortgage loan commitment, or agreement of any kind to which it is a party;

187 (14) pledge revenues from any hazardous waste treatment, disposal, and storage facility
 188 to secure payment of any obligations relating to that facility, including interest on, and
 189 redemption of, those obligations;

190 (15) execute or cause to be executed, mortgages, trust deeds, indentures, pledge
 191 agreements, assignments, security agreements, and financing statements that encumber
 192 property acquired, constructed, reconstructed, renovated, or repaired with the proceeds from the
 193 sale of such obligations;

194 (16) exercise the power of eminent domain;

195 (17) do all other things necessary to comply with the requirements of 42 U.S.C.
 196 Sections 6901-6986, the Resource Conservation and Recovery Act of 1976, and this part;

197 (18) contract for the construction, operation, and maintenance of hazardous waste
 198 treatment, storage, and disposal facilities, including plants, works, instrumentalities, or parts
 199 thereof, for the collection, conveyance, treatment, exchange, storage, and disposal of hazardous
 200 ~~wastes~~ waste, subject to approval by the ~~h~~ **[committee]** **BOARD** ~~h~~ ; and

201 (19) exercise any other powers or duties necessary or appropriate to carry out and
 202 effectuate this ~~part~~ chapter.

203 Section 7. Section **19-9-106**, which is renumbered from Section 17A-2-1706 is
 204 renumbered and amended to read:

205 ~~[17A-2-1706]~~. **19-9-106. Acquisition of sites by authority -- Property vested**
 206 **in state on disincorporation of authority.**

207 (1) The authority is authorized, pursuant to Title 78, Chapter 34, Eminent Domain, to
 208 acquire sites sufficient in number to meet the hazardous waste treatment, storage, and disposal
 209 needs of the state if, in the judgment of the authority, private operators are not adequately
 210 meeting such needs. Exercise of the power of eminent domain to acquire such sites is declared
 211 to be for a public purpose and use.

212 (2) Before the purchase or condemnation of any site by the authority, the ~~h~~ **[committee]**
 212a **BOARD** ~~h~~
 213 shall certify that the site meets the standards for eventual incorporation into an approved

214 hazardous [~~wastes~~] waste operations plan.

215 (3) If the authority is disincorporated for any reason, all its property shall vest in, and
216 become the property of, the state, which shall succeed to all the rights and liabilities of the
217 authority which exist at the time of vestiture in the state.

218 Section 8. Section **19-9-107**, which is renumbered from Section 17A-2-1707 is
219 renumbered and amended to read:

220 ~~[17A-2-1707]~~. **19-9-107. Fees.**

221 Fees for the treatment, disposal, and storage of hazardous [~~wastes~~] waste at facilities
222 operated by, or under subcontract with the authority shall be set by the authority based upon the
223 following considerations:

224 (1) the quantity of hazardous [~~wastes~~] waste processed;

225 (2) the difficulty encountered in the treatment, disposal or storage of such [~~wastes~~]
226 waste;

227 (3) the maintenance expense and the expense of other legal obligations incurred
228 pursuant to post-closure monitoring and liability requirements related to the long-term disposal
229 or storage;

230 (4) the operation and maintenance expense incident to the facility and to the debt
231 retirement obligations of the authority; and

232 (5) any other considerations [~~deemed~~] that the authority considers relevant [~~by the~~
233 authority].

234 Section 9. Section **19-9-108**, which is renumbered from Section 17A-2-1708 is
235 renumbered and amended to read:

236 ~~[17A-2-1708]~~. **19-9-108. Obligations of authority -- Limitation -- Issuance.**

237 (1) All obligations of the authority shall plainly state that they are limited and that
238 neither the credit of the state nor its taxing authority is pledged in whole or in part in payment
239 of such obligations.

240 (2) All obligations, before issuance, shall be authorized by resolution of the authority
241 and may:

242 (a) be executed and delivered from time to time, as the authority determines;

243 (b) be sold at public or private sale in such manner as the authority determines;

244 (c) be in such form and denominations as the authority determines;

- 245 (d) be of such tenor as the authority determines;
- 246 (e) be in registered or bearer form either as to principal, interest, or both;
- 247 (f) be payable in such installments and at such times as the authority determines;
- 248 (g) be payable at such places, either within or without this state, as the authority
- 249 determines;
- 250 (h) bear interest at such rate or rates, payable at such place or places, and evidenced in
- 251 such manner, as the authority determines;
- 252 (i) be redeemable prior to maturity, with or without premium;
- 253 (j) contain any other provisions the authority [~~deems~~] considers in its best interest that
- 254 are not inconsistent with this part; and
- 255 (k) bear facsimile signatures and seals.
- 256 (3) Any or all expenses, premiums, or commissions incurred in the issuance and sale of
- 257 its obligations may be paid either from the proceeds of the sale of such obligations or from
- 258 revenues generated by the projects involved.

259 Section 10. Section **19-9-109**, which is renumbered from Section 17A-2-1709 is

260 renumbered and amended to read:

261 [~~17A-2-1709~~]. **19-9-109. Security for obligations -- Provisions of security**

262 **instruments.**

263 (1) The principal and interest on any obligation issued pursuant to this [~~part~~] chapter

264 shall be secured by:

265 (a) a pledge and assignment of the proceeds earned by the facility built and acquired

266 with the proceeds of the obligations;

267 (b) a mortgage or trust deed on the facility built and acquired with the proceeds from

268 the obligations; and

269 (c) such other security on the facility as is deemed most advantageous by the authority.

270 (2) Obligations authorized for issuance under this [~~part~~] chapter and any mortgage or

271 other security given to secure such obligations may contain any provisions customarily

272 contained in security instruments, including, but not limited to:

273 (a) the fixing and collection of fees from the facility;

274 (b) the maintenance of insurance on the facility;

275 (c) the creation and maintenance of special funds to receive revenues earned by the

276 facility; and

277 (d) the rights and remedies available to obligation holders in the event of default.

278 (3) All mortgages, trust deeds, security agreements, or trust indentures on a facility
279 shall provide, in the event of foreclosure, that no deficiency judgment may be entered against
280 the authority, the state, or any of the state's political subdivisions.

281 (4) Any mortgage or other security instrument securing such obligations may provide
282 that in the event of a default in the payment of principal or interest or in the performance of any
283 agreement, that payment or performance may be enforced by the appointment of a receiver with
284 power to charge and collect fees and to apply the revenues from the facility in accordance with
285 the provisions of the security instrument.

286 (5) Any mortgage or other security instrument made pursuant to this ~~[part]~~ chapter may
287 also provide that in the event of default in payment or breach of a condition, that the mortgage
288 may be foreclosed or otherwise satisfied in any manner permitted by law, and that the trustee
289 under the mortgage or the holder of any obligation secured by such mortgage may, if the
290 highest bidder, purchase the security at foreclosure sale.

291 Section 11. Section **19-9-110**, which is renumbered from Section 17A-2-1710 is
292 renumbered and amended to read:

293 ~~[17A-2-1710].~~ **19-9-110. Application of proceeds from sale of obligations.**

294 Proceeds from the sale of obligations shall be applied solely to the purposes for which
295 they were issued. Accrued interest and premiums received upon such sale and any proceeds
296 not needed for the purposes for which the obligations were issued, however, shall be applied to
297 payment of principal or interest on such obligations.

298 Section 12. Section **19-9-111**, which is renumbered from Section 17A-2-1711 is
299 renumbered and amended to read:

300 ~~[17A-2-1711].~~ **19-9-111. Cost of acquisition or improvement of facility.**

301 The cost of acquisition or improvement of any facility ~~[is deemed]~~ shall be considered
302 to include:

- 303 (1) the actual cost of land acquisition and improvements to the land; and
- 304 (2) the actual cost of construction, alteration, or remodeling of a facility, including
- 305 maintenance and the cost of equipping it; the cost of architectural and engineering fees; the cost
- 306 of legal and accounting fees incurred incident to issuance of such obligations; the cost of fees

307 for financial advisors and printing; and the interest on such obligations for a reasonable period
308 of time.

309 Section 13. Section **19-9-112**, which is renumbered from Section 17A-2-1712 is
310 renumbered and amended to read:

311 ~~[17A-2-1712].~~ **19-9-112. Validity of signatures on obligations.**

312 If, at the time of delivery of an obligation, the member or officer who signed the
313 obligation no longer occupies such position, the signature or facsimile is nevertheless valid and
314 sufficient for all purposes.

315 Section 14. Section **19-9-113**, which is renumbered from Section 17A-2-1713 is
316 renumbered and amended to read:

317 ~~[17A-2-1713].~~ **19-9-113. Obligations as negotiable instruments.**

318 All obligations of the authority are negotiable instruments within the purpose and
319 meaning of ~~[the Utah]~~ Title 70A, Uniform Commercial Code, subject to any provision of such
320 obligations that relate to registration.

321 Section 15. Section **19-9-114**, which is renumbered from Section 17A-2-1714 is
322 renumbered and amended to read:

323 ~~[17A-2-1714].~~ **19-9-114. Personal liability on obligations.**

324 No person who executes an obligation issued pursuant to this ~~[part]~~ chapter is
325 personally liable on account of such action.

326 Section 16. Section **19-9-115**, which is renumbered from Section 17A-2-1715 is
327 renumbered and amended to read:

328 ~~[17A-2-1715].~~ **19-9-115. Tax exemption of property, income, and**
329 **obligations of authority.**

330 All property acquired or held by the authority is declared to be public property used for
331 essential public and governmental purposes. All property owned by the authority and all
332 income derived from it is exempt from taxation by the state or its political subdivisions. All
333 principal and income derived by holders of obligations issued by the authority is also exempt
334 from taxation by the state or its political subdivisions, except for the corporate franchise tax.

335 Section 17. Section **19-9-116**, which is renumbered from Section 17A-2-1716 is
336 renumbered and amended to read:

337 ~~[17A-2-1716].~~ **19-9-116. Obligations as authorized investments and**

338 securities.

339 Obligations issued pursuant to this [part] chapter are securities in which all persons and
340 organizations authorized to invest in obligations of this state may properly and legally invest.

341 These obligations are also declared to be securities which may properly and legally be
342 deposited with, and received by, any state, county, or municipal officer.

343 Section 18. Section **19-9-117**, which is renumbered from Section 17A-2-1717 is
344 renumbered and amended to read:

345 ~~[17A-2-1717].~~ **19-9-117. Publication of resolution authorizing obligations --**
346 **Contesting validity -- Action to compel signing of obligations.**

347 (1) Each resolution adopted by the authority authorizing the issuance of obligations
348 shall be published in a newspaper with general circulation in the state. For a period of 30 days
349 after the date of publication, any interested person may contest the legality of the resolution, the
350 obligations authorized by it, or any provision made for the security and payment of the
351 proposed obligations. At the expiration of the 30-day period, no person, except as otherwise
352 provided in Subsection (2) [~~of this section~~], has standing to contest the validity of such action.

353 (2) If any official required to sign obligations refuses to sign them, alleging that the
354 obligations are illegal, the authority may bring an original action in the state Supreme Court for
355 a writ of mandamus to compel the official to sign the obligations.

356 Section 19. Section **19-9-118**, which is renumbered from Section 17A-2-1718 is
357 renumbered and amended to read:

358 ~~[17A-2-1718].~~ **19-9-118. Legal, accounting, and auditing services for**
359 **authority.**

360 (1) The attorney general shall provide all legal services, and the state auditor, all
361 accounting and auditing services, for the authority without reimbursement.

362 (2) Subsection (1) [~~of this section~~] is inapplicable to the opinions of attorneys or
363 accountants necessitated before issuance of any obligations.

Legislative Review Note

as of 11-21-02 2:42 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Interim Committee Note

as of 12-12-02 3:50 PM

The Political Subdivisions Interim Committee recommended this bill.

Fiscal Note**Hazardous Waste Facilities Management Amendments***17-Jan-03***Bill Number HB0024***4:17 PM*

State Impact

Any fiscal impact required to enact provisions of this bill can be handled within existing budgets.

Individual and Business Impact

No significant fiscal impact.

Office of the Legislative Fiscal Analyst