

Senator Dan R. Eastman proposes the following substitute bill:

ANTI-FLOW CONTROL AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dan R. Eastman

House Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill amends the Solid Waste Management Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits a public entity from requiring solid waste to be stored, recovered, or disposed of at a specific waste facility except in certain circumstances;
- ▶ gives a private right of action; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-6-502, as last amended by Laws of Utah 2007, Chapter 329

19-6-503, as last amended by Laws of Utah 2005, Chapter 105

ENACTS:



26 19-6-502.5, Utah Code Annotated 1953

27 19-6-507, Utah Code Annotated 1953

28

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

30 Section 1. Section 19-6-502 is amended to read:

31 **19-6-502. Definitions.**

32 As used in this part:

33 (1) "Governing body" means the governing board, commission, or council of a public
34 entity.

35 (2) "Jurisdiction" means the area within the incorporated limits of:

36 (a) a municipality[;];

37 (b) a special service district[;];

38 (c) a municipal-type service district[;];

39 (d) a service area[;]; or [~~all of~~]

40 (e) the territorial area of a county not lying within a [~~city or town~~] municipality.

41 (3) "Long-term agreement" means an agreement or contract having a term of more than
42 five years [~~and~~] but less than 50 years.

43 (4) "Municipal residential waste" means solid waste that is:

44 (a) discarded or rejected at a residence within the public entity's jurisdiction; and

45 (b) is collected at or near the residence by:

46 (i) a public entity; or

47 (ii) a person with whom the public entity has as an agreement to provide solid waste
48 management.

49 (5) "Private solid waste management facility" means a facility that is:

50 (a) owned or operated by a person who is not a public entity; and

51 (b) (i) a transfer station;

52 (ii) a landfill;

53 (iii) a facility for reducing solid waste volume; or

54 (iv) a solid waste disposal, reduction, and conversion facility.

55 [~~(4)~~] (6) "Public entity" means:

56 (a) a county[;];

57 (b) a municipality[;];

58 (c) a special service district under Title 17A, Chapter 2, Part 13, Utah Special Service
59 District Act[~~;~~or];

60 (d) a service area under Title 17B, Chapter 2a, Part 9, Service Area Act [~~and~~]; or

61 (e) a municipal-type service district created under Title 17, Chapter 34,
62 Municipal-Type Services to Unincorporated Areas.

63 (7) "Requirement" means an ordinance, policy, rule, mandate, or other directive that
64 imposes a legal duty on a person.

65 (8) "Residence" means an improvement to real property used or occupied as a primary
66 or secondary detached single-family dwelling.

67 [~~(5)~~] (9) "Resource recovery" means the separation, extraction, recycling, or recovery
68 of usable [~~materials~~] material, energy, fuel, or heat from solid waste and the disposition of it.

69 [~~(6)~~] (10) "Short-term agreement" means [~~any~~] a contract or agreement having a term
70 of five years or less.

71 [~~(7)~~] (11) (a) "Solid waste" means [~~all~~] a putrescible [~~and~~] or nonputrescible [~~materials~~
72 ~~or substances~~] material or substance discarded or rejected as being spent, useless, worthless, or
73 in excess [~~to~~] of the owner's needs at the time of discard or rejection, including:

74 (i) garbage[;];

75 (ii) refuse[;];

76 (iii) industrial and commercial waste[~~;~~sludges from];

77 (iv) sludge from an air or water control [~~facilities;~~] facility;

78 (v) rubbish[~~;~~ashes;];

79 (vi) ash;

80 (vii) contained gaseous material[;];

81 (viii) incinerator residue[;];

82 (ix) demolition[;] and construction debris[;];

83 (x) a discarded [~~automobiles~~] automobile; and

84 (xi) offal[~~;~~but not including sewage and other].

85 (b) "Solid waste" does not include sewage or another highly diluted water carried
86 [~~materials or substances~~] material or substance and those in gaseous form.

87 [~~(8)~~] (12) "Solid waste management" means the purposeful and systematic collection,

88 transportation, storage, processing, recovery, ~~and~~ or disposal of solid waste.

89 ~~(9)~~ (13) "Solid waste management facility" means ~~any~~ a facility employed for solid
90 waste management, including:

91 (a) a transfer ~~stations;~~ station;

92 (b) a transport ~~systems;~~ system;

93 (c) a baling ~~facilities, landfills;~~ facility;

94 (d) a landfill; and

95 (e) a processing ~~systems~~ system, including:

96 (i) a resource recovery ~~facilities or other facilities~~ facility;

97 (ii) a facility for reducing solid waste volume~~[-, plants and facilities]~~;

98 (iii) a plant or facility for compacting, composting, or pyrolization of solid ~~wastes;~~
99 ~~incinerators and other~~ waste;

100 (iv) an incinerator;

101 (v) a solid waste disposal, reduction, or conversion ~~facilities, and facilities~~ facility;

102 and

103 (vi) a facility for resource recovery of energy consisting of:

104 ~~(a) facilities~~ (A) a facility for the production, transmission, distribution, and sale of
105 heat and steam; ~~and~~

106 ~~(b) facilities~~ (B) a facility for the generation and sale of electric energy to a public
107 utility ~~or~~, municipality, or other public entity ~~which~~ that owns and operates an electric
108 power system on March 15, 1982~~[-];~~ and

109 (C) a facility for the generation, sale, and transmission of electric energy on an
110 emergency basis only to a military installation of the United States~~[-, provided, that solid waste~~
111 ~~management facilities are not a public utility as defined in Section 54-2-1]~~.

112 Section 2. Section **19-6-502.5** is enacted to read:

113 **19-6-502.5. Solid waste management facility not a public utility.**

114 A solid waste management facility is not a public utility as defined in Section 54-2-1.

115 Section 3. Section **19-6-503** is amended to read:

116 **19-6-503. Powers and duties of public entities.**

117 (1) Subject to the powers and rules of the department~~[-, the]~~ and except as provided by
118 Section 19-6-507, a governing body of ~~each~~ a public entity may:

- 119 [(1)] (a) supervise and regulate the collection, transportation, and disposition of [aH]
 120 solid waste generated within its jurisdiction;
- 121 [(2)] (b) provide a solid waste management [facilities] facility to adequately handle
 122 [adequately] solid waste generated or existing within or without its jurisdiction;
- 123 [(3)] (c) assume, by agreement, responsibility for the collection and disposition of solid
 124 waste whether generated within or without its [~~jurisdictional boundaries~~] jurisdiction;
- 125 [(4)] (d) enter into a short or long-term interlocal [~~agreements~~] agreement to provide
 126 for or operate a solid waste management facility with [~~other~~]:
- 127 (i) another public [~~entities, with~~] entity;
- 128 (ii) a public [~~agencies~~] agency, as defined in [~~Title 11, Chapter 13, Interlocal~~
 129 ~~Cooperation Act, with~~] Section 11-13-103;
- 130 (iii) a private [~~persons or entities,~~] person; or [~~any~~]
- 131 (iv) a combination of [~~them, to provide for or operate solid waste management~~
 132 ~~facilities~~] persons listed in Subsections (1)(d)(i) through (iii);
- 133 [(5)] (e) levy and collect [~~taxes, fees, and charges and~~] a tax, fee, or charge or require
 134 [~~licenses~~] a license as may be appropriate to discharge its responsibility for the acquisition,
 135 construction, operation, maintenance, and improvement of a solid waste management [~~facilities~~
 136 ~~or any portion of them~~] facility, including licensing a private [~~collectors~~] collector operating
 137 within its jurisdiction;
- 138 [(6)] (f) require that [aH] solid waste generated within its jurisdiction be delivered to a
 139 solid waste management facility;
- 140 [(7)] (g) control the right to collect, transport, and dispose of [aH] solid waste generated
 141 within its jurisdiction;
- 142 [(8)] (h) agree that, according to Section 19-6-505, the [~~sole and~~] exclusive right to
 143 collect, transport, and dispose of solid waste within its jurisdiction [~~shall~~] may be assumed by
 144 [~~any other~~]:
- 145 (i) another public entity [~~or entities, any~~];
- 146 (ii) a private [~~persons or entities,~~] person; or [~~any~~]
- 147 (iii) a combination of [~~them, pursuant to Section 19-6-505~~] persons listed in
 148 Subsections (1)(h)(i) through (ii);
- 149 [(9)] (i) accept and disburse funds derived from a federal or state [~~grants or from~~

150 ~~private sources or from] grant, a private source, or~~ moneys that may be appropriated by the
 151 Legislature for the acquisition, construction, ownership, operation, maintenance, and
 152 improvement of a solid waste management [facilities] facility;

153 ~~[(10)] (j) contract for the lease or purchase of land, [facilities, and vehicles] a facility,~~
 154 or a vehicle for the operation of a solid waste management [facilities] facility;

155 ~~[(11)] (k) establish one or more policies for the operation of a solid waste management~~
 156 [facilities] facility, including:

157 (i) hours of operation[;];

158 (ii) character[;] and kind of wastes accepted at a disposal [sites,] site; and [other rules]

159 (iii) another policy necessary for the safety of the operating personnel;

160 ~~[(12)] (l) sell or contract for the sale, [pursuant] according to a short or long-term~~
 161 [agreements] agreement, of [any] usable [materials] material, energy, fuel, or heat separated,
 162 extracted, recycled, or recovered from solid waste in a solid waste management facility, on
 163 terms in its best [interests, and to] interest;

164 (m) pledge, assign, or otherwise convey as security for the payment of [its] bonds
 165 [any], revenues and receipts derived from the sale or contract or from the operation and
 166 ownership of a solid waste management facility or an interest in it;

167 ~~[(13)] (n) issue [bonds pursuant] a bond according to Title 11, Chapter 14, Local~~
 168 Government Bonding Act; [and]

169 ~~[(14)] (o) issue industrial development revenue bonds [pursuant] according to Title 11,~~
 170 Chapter 17, Utah Industrial Facilities and Development Act, to pay the costs of financing
 171 [projects] a project consisting of a solid waste management [facilities, as defined in Section
 172 19-6-502,] facility on behalf of [entities] an entity that [constitute] constitutes the users of a
 173 solid waste management facility project within the meaning of Section 11-17-2[; and];

174 (p) agree to construct and operate or to provide for the construction and operation of a
 175 solid waste management facility project, which project [shall manage] manages the solid waste
 176 of [one or more public or private entities, all pursuant] a public entity or private person,
 177 according to one or more contracts and other arrangements provided for in [the proceedings
 178 pursuant] a proceeding according to which [the bonds are] a bond is issued[; In addition to the
 179 authority to issue bonds contained in Title 11, Chapter 17, Utah Industrial Facilities and
 180 Development Act, bonds may be issued pursuant to the authority contained in this subsection];

181 and

182 (q) issue a bond to pay the cost of establishing reserves to pay principal and interest on
183 the bonds as provided for in the proceedings [pursuant] according to which the bonds are
184 issued.

185 (2) The power to issue a bond under this section is in addition to the power to issue a
186 bond under Title 11, Chapter 17, Utah Industrial Facilities and Development Act.

187 Section 4. Section **19-6-507** is enacted to read:

188 **19-6-507. Flow control for solid waste prohibited.**

189 (1) Except as provided in Subsection (2), a public entity may not require solid waste
190 discarded or rejected within the public entity's jurisdiction to be stored, recovered, or disposed
191 of at a solid waste management facility owned or operated by a public entity.

192 (2) A public entity may require solid waste discarded or rejected within the public
193 entity's jurisdiction to be stored, recovered, or disposed of at a solid waste management facility
194 owned or operated by a public entity if:

195 (a) the solid waste is municipal residential waste;

196 (b) fewer than two private solid waste management facilities that are owned by
197 different entities exist within:

198 (i) the public entity's jurisdiction; and

199 (ii) 50 miles outside the public entity's jurisdiction; or

200 (c) the solid waste management facility owned or operated by the public entity receives
201 less than 75 tons of solid waste per day.

202 (3) A requirement described in Subsection (1) that is:

203 (a) in effect on January 1, 2008 is void as of January 1, 2013; and

204 (b) adopted on or after January 2, 2008 and in effect on May 4, 2008 is void as of May
205 5, 2008.

206 (4) A person aggrieved by a violation of this section may seek judicial review of the
207 violation in a court of competent jurisdiction.