

HIGH LEVEL NUCLEAR WASTE

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Leonard M. Blackham

AN ACT RELATING TO STATE AFFAIRS AND THE ENVIRONMENT; DENYING LIMITED LIABILITY FOR ORGANIZATIONS INVOLVED IN THE TRANSFER OR STORAGE OF HIGH LEVEL NUCLEAR WASTE OR CERTAIN RADIOACTIVE WASTE WITHIN THE STATE; AND REQUIRING THAT CERTAIN REQUESTS BY THESE ORGANIZATIONS REGARDING TRANSPORTATION, SUCH AS GRADE CROSSINGS, EMINENT DOMAIN, AND PROPERTY EASEMENTS MAY NOT BE GRANTED WITHOUT THE APPROVAL OF THE GOVERNOR WITH THE CONCURRENCE OF THE LEGISLATURE.

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

AMENDS:

19-3-315, as enacted by Chapter 348, Laws of Utah 1998

54-4-15, as last amended by Chapter 9, Laws of Utah 1975, First Special Session

78-34-6, Utah Code Annotated 1953

ENACTS:

19-3-318, Utah Code Annotated 1953

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

Section 1. Section **19-3-315** is amended to read:

19-3-315. Transportation requirements.

(1) A person may not transport wastes in the state, including on highways, roads, rail, by air, or otherwise, without:

- (a) having received approval from the state Department of Transportation; and
 - (b) having demonstrated compliance with rules of the state Department of Transportation.
- (2) The Department of Transportation may:

(a) make rules requiring a transport and route approval permit, weight restrictions, tracking systems, and state escort; and

(b) assess appropriate fees as established under Section 63-38-3.2 for each shipment of waste,

consistent with the requirements and limitations of federal law.

(3) The Department of Environmental Quality shall establish any other transportation rules as necessary to protect the public health, safety, and environment.

(4) Unless expressly authorized by the governor, with the concurrence of the Legislature, an easement or other interest in property may not be granted upon any lands within the state for a right of way for any carrier transportation system that:

(a) is not a class I common or contract rail carrier organized and doing business prior to January 1, 1999; and

(b) transports high level nuclear waste or greater than class C radioactive waste to a storage facility within the state.

Section 2. Section **19-3-318** is enacted to read:

19-3-318. No limitation of liability regarding businesses involved in high level radioactive waste.

(1) As used in this section:

(a) "Controlling interest" means:

(i) the direct or indirect possession of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting interests, by contract, or otherwise; or

(ii) the direct or indirect possession of a 10% or greater equity interest in an organization.

(b) "Equity interest holder" means a shareholder, member, partner, limited partner, trust beneficiary, or other person whose interest in an organization:

(i) is in the nature of an ownership interest;

(ii) entitles the person to participate in the profits and losses of the organization; or

(iii) is otherwise of a type generally considered to be an equity interest.

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

(d) "Parent organization" means an organization with a controlling interest in another organization.

(e) (i) "Subject activity" means:

(A) to arrange for or engage in the transportation or transfer of high level nuclear waste or greater than class C radioactive waste to or from a storage facility in the state; or

(B) to arrange for or engage in the operation or maintenance of a storage facility or a transfer facility for that waste.

(ii) "Subject activity" does not include the transportation of high level nuclear waste or greater than class C radioactive waste by a class I railroad that was doing business in the state as a common or contract carrier by rail prior to January 1, 1999.

(f) "Subsidiary organization" means an organization in which a parent organization has a controlling interest.

(2) (a) The Legislature enacts this section because of the state's compelling interest in the transportation, transfer, and storage of high level nuclear waste and greater than class C radioactive waste in this state. Legislative intent supporting this section is further described in Section 19-3-302.

(b) Limited liability for equity interest holders is a privilege, not a right, under the law and is meant to benefit the state and its citizens. An organization engaging in subject activities has significant potential to affect the health, welfare, or best interests of the state and should not have limited liability for its equity interest holders. To shield equity interest holders from the debts and obligations of an organization engaged in subject activities would have the effect of attracting capital to enterprises whose goals are contrary to the state's interests.

(c) This section has the intent of revoking any and all statutory and common law grants of limited liability for an equity interest holder of an organization that chooses to engage in a subject activity in this state.

(d) This section shall be interpreted liberally to allow the greatest possible lawful recourse against an equity interest holder of an organization engaged in a subject activity in this state for the debts and liabilities of that organization.

(e) This section does not reduce or affect any liability limitation otherwise granted to an

organization by Utah law if that organization is not engaged in a subject activity in this state.

(3) Notwithstanding any law to the contrary, if a domestic or foreign organization engages in a subject activity in this state, no equity interest holder of that organization enjoys any shield or limitation of liability for the acts, omissions, debts, and obligations of the organization incurred in this state. Each equity interest holder of the organization is strictly and jointly and severally liable for all these obligations.

(4) Notwithstanding any law to the contrary, each officer and director of an organization engaged in a subject activity in this state is individually liable for the acts, omissions, debts, and obligations of the organization incurred in this state.

(5) (a) Notwithstanding any law to the contrary, if a subsidiary organization is engaged in a subject activity in this state, then each parent organization of the subsidiary is also considered to be engaged in a subject activity in this state. Each parent organization's equity interest holders and officers and directors are subject to this section to the same degree as the subsidiary's equity interest holders and officers and directors.

(b) Subsection (5)(a) applies regardless of the number of parent organizations through which the controlling interest passes in the relationship between the subsidiary and the ultimate parent organization that controls the subsidiary.

(6) This section does not excuse or modify the requirements imposed upon an applicant for a license by Subsection 19-3-306(9).

Section 3. Section **54-4-15** is amended to read:

54-4-15. Establishment and regulation of grade crossings.

(1) No track of any railroad shall be constructed across a public road, highway or street at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade, without the permission of the Department of Transportation having first been secured; provided, that this subsection shall not apply to the replacement of lawfully existing tracks. The department shall have the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe.

(2) The department shall have the power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad and of each crossing of a public road or highway by a railroad or street railroad, and of a street by a railroad or vice versa, and to alter or abolish any such crossing, to restrict the use of such crossings to certain types of traffic in the interest of public safety and is vested with power and it shall be its duty to designate the railroad crossings to be traversed by school buses and motor vehicles carrying passengers for hire, and to require, where in its judgment it would be practicable, a separation of grades at any such crossing heretofore or hereafter established, and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the alteration or abolition of such crossings or the separation of such grades shall be divided between the railroad or street railroad corporations affected, or between such corporations and the state, county, municipality or other public authority in interest.

(3) Whenever the department shall find that public convenience and necessity demand the establishment, creation or construction of a crossing of a street or highway over, under or upon the tracks or lines of any public utility, the department may by order, decision, rule or decree require the establishment, construction or creation of such crossing, and such crossing shall thereupon become a public highway and crossing.

(4) (a) The commission [~~shall retain~~] retains exclusive jurisdiction for the resolution of any dispute upon petition by any person aggrieved by any action of the department pursuant to this section, except as provided under Subsection (4)(b).

(b) If a petition is filed by a person or entity engaged in a subject activity, as defined in Section 19-3-318, the commission's decision under Subsection (4)(a) regarding resolution of a dispute requires the concurrence of the governor and the Legislature in order to take effect.

Section 4. Section **78-34-6** is amended to read:

78-34-6. Complaint -- Contents.

The complaint must contain:

(1) the name of the corporation, association, commission or person in charge of the public

use for which the property is sought, who must be styled plaintiff[-];

(2) the names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants[-];

(3) a statement of the right of the plaintiff[-];

(4) if a right of way is sought, the complaint must show its location, general route and termini, and must be accompanied by a map thereof, so far as the same is involved in the action or proceeding[-];

(5) if any interest in land is sought for a right of way or associated facilities for a subject activity as defined in Section 19-3-318:

(a) the permission of the governor with the concurrence of the Legislature authorizing:

(i) use of the site for a subject activity; and

(ii) use of the proposed route for a subject activity; and

(b) the proposed route as required by Subsection (4); and

~~[(5)]~~ (6) a description of each piece of land sought to be taken, and whether the same includes the whole or only part of an entire parcel or tract. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties.