

**LEGISLATIVE APPROVAL OF STATE OR
REGIONAL AIR QUALITY PLAN**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Chad E. Bennion

This act modifies the Environmental Quality Code by defining the state implementation plan and requiring the Air Quality Board to annually report to the Legislature any additions or modifications to the state implementation plan for air quality. This act also requires that the Legislature approve any additions or modifications to the state implementation plan. This act requires the governor or the governor's designee to provide an annual report of the Western Regional Air Partnership activities to the Legislature and requires legislative approval of any Grand Canyon Visibility Transport Commission or Western Regional Air Partnership recommendations or actions that impose new or different requirements on Utah citizens. This act makes technical changes.

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

AMENDS:

19-1-103, as enacted by Chapter 112, Laws of Utah 1991

19-2-104, as last amended by Chapter 177, Laws of Utah 1998

ENACTS:

19-2-104.1, Utah Code Annotated 1953

19-2-109.7, Utah Code Annotated 1953

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

Section 1. Section **19-1-103** is amended to read:

19-1-103. Definitions.

As used in this title:

(1) "Department" means the Department of Environmental Quality.



(2) "Executive director" means the executive director of the department appointed pursuant to Section 19-1-104.

(3) "Local health department" means a local health department as defined in Title 26A, Chapter 1, ~~[Part 1]~~ Local Health Department Act.

(4) "Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state.

(5) "State implementation plan" means the state plan demonstrating attainment of national air quality standards required under Section 110 of the federal Clean Air Act, 42 U.S.C. 7410.

Section 2. Section **19-2-104** is amended to read:

19-2-104. Powers of board.

(1) The board may make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

(a) regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source;

(b) establishing air quality standards;

(c) requiring persons engaged in operations which result in air pollution to:

(i) install, maintain, and use emission monitoring devices, as the board finds necessary;

(ii) file periodic reports containing information relating to the rate, period of emission, and composition of the air contaminant; and

(iii) provide access to records relating to emissions which cause or contribute to air pollution;

(d) implementing 15 U.S.C.A. 2601 et seq. Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, and reviewing and approving asbestos management plans submitted by local education agencies under that act;

(e) establishing a requirement for a diesel emission opacity inspection and maintenance program for diesel-powered motor vehicles;

(f) implementing an operating permit program as required by and in conformity with Titles IV and V of the federal Clean Air Act Amendments of 1990;

(g) establishing requirements for county emissions inspection and maintenance programs after obtaining agreement from the counties that would be affected by the requirements;

(h) with the approval of the governor, implementing in air quality nonattainment areas employer-based trip reduction programs applicable to businesses having more than 100 employees at a single location and applicable to federal, state, and local governments to the extent necessary to attain and maintain ambient air quality standards consistent with the state implementation plan and federal requirements under the standards set forth in Subsection (2); and

(i) implementing lead-based paint remediation training, certification, and performance requirements in accordance with 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction, Section 402 and 404.

(2) When implementing Subsection (1)(h) the board shall take into consideration:

(a) the impact of the business on overall air quality; and

(b) the need of the business to use automobiles in order to carry out its business purposes.

(3) The board may:

(a) hold hearings relating to any aspect of or matter in the administration of this chapter and compel the attendance of witnesses and the production of documents and other evidence, administer oaths and take testimony, and receive evidence as necessary;

(b) issue orders necessary to enforce the provisions of this chapter, enforce the orders by appropriate administrative and judicial proceedings, and institute judicial proceedings to secure compliance with this chapter;

(c) settle or compromise any civil action initiated to compel compliance with this chapter and the rules made under this chapter;

(d) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(e) prepare and develop a comprehensive plan or plans for the prevention, abatement, and control of air pollution in this state;

(f) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(g) encourage local units of government to handle air pollution within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance to them;

(h) encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(i) determine by means of field studies and sampling the degree of air contamination and air pollution in all parts of the state;

(j) monitor the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere in all parts of this state and take appropriate action with respect to them;

(k) collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(l) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, the federal government, and with interested persons or groups;

(m) consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source in the state concerning the efficacy of any proposed control device, or system for this source, or the air pollution problem which may be related to the source, device, or system, but a consultation does not relieve any person from compliance with this chapter, the rules adopted under it, or any other provision of law;

(n) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this chapter;

(o) require the owner and operator of each new source which directly emits or has the potential to emit 100 tons per year or more of any air contaminant or the owner or operator of each existing source which by modification will increase emissions or have the potential of increasing emissions by 100 tons per year or more of any air contaminant, to pay a fee sufficient to cover the reasonable costs of:

(i) reviewing and acting upon the notice required under Section 19-2-108; and

(ii) implementing and enforcing requirements placed on the sources by any approval order issued pursuant to notice, not including any court costs associated with any enforcement action;

(p) assess and collect noncompliance penalties as required in Section 120 of the federal Clean Air Act, 42 U.S.C. Sec. 7420;

(q) meet the requirements of federal air pollution laws;

(r) establish work practice, certification, and clearance air sampling requirements for persons who:

(i) contract for hire to conduct demolition, renovation, salvage, encapsulation work involving friable asbestos-containing materials, or asbestos inspections; or

(ii) conduct work described in Subsection (3)(r)(i) in areas to which the general public has unrestrained access or in school buildings that are subject to the federal Asbestos Hazard Emergency Response Act of 1986;

(iii) conduct asbestos inspections in facilities subject to 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response; or

(iv) conduct lead paint inspections in facilities subject to 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction;

(s) establish certification requirements for persons required under 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, to be accredited as inspectors, management planners, abatement project designers, asbestos abatement contractors and supervisors, or asbestos abatement workers;

(t) establish certification requirements for asbestos project monitors, which shall provide for experience-based certification of persons who, prior to establishment of the certification requirements, had received relevant asbestos training, as defined by rule, and had acquired at least 1,000 hours of experience as project monitors;

(u) establish certification procedures and requirements for certification of the conversion of a motor vehicle to a clean-fuel vehicle, certifying the vehicle is eligible for the tax credit granted in Section 59-7-605 or 59-10-127;

(v) establish a program to certify private sector air quality permitting professionals (AQPP), as described in Section 19-2-109.5; and

(w) establish certification requirements for persons required under 15 U.S.C.A. 2601 et seq., Toxic Control Act, Subchapter IV -- Lead Exposure Reduction, to be accredited as inspectors, risk assessors, supervisors, project designers, or abatement workers.

(4) Any rules adopted under this chapter shall be consistent with provisions of federal

laws, if any, relating to control of motor vehicles or motor vehicle emissions.

(5) Nothing in this chapter authorizes the board to require installation of or payment for any monitoring equipment by the owner or operator of a source if the owner or operator has installed or is operating monitoring equipment that is equivalent to equipment which the board would require under this section.

(6) Any rules established under this part that are incorporated into the state implementation plan are subject to the provisions of Section 19-2-104.1.

Section 3. Section **19-2-104.1** is enacted to read:

19-2-104.1. Legislative approval of state implementation plan.

(1) No later than November 1 of each year, the board shall report to the Legislature any additions or modifications to the state implementation plan adopted by the board under Section 19-2-104 during the previous year.

(2) (a) Prior to submission to the administrator as required in Section 110 of the Clean Air Act, 42 U.S.C. 7410, for federal enforceability, the Legislature shall either approve or disapprove, by a joint resolution, any additions or modifications to the state implementation plan adopted by the board under Subsection (1).

(b) If the Legislature does not approve the additions or modifications to the state implementation plan under Subsection (2)(a), the board shall reconsider the additions or modifications that are in dispute and resubmit its report to the Legislature.

(c) The process under Subsection (2)(b) shall continue until an agreement is reached and the Legislature gives its approval under Subsection (2)(a).

Section 4. Section **19-2-109.7** is enacted to read:

19-2-109.7. Definitions -- Purpose -- Annual report required -- Legislative approval required.

(1) As used in this section:

(a) "1990 Clean Air Act" has the same meaning as provided in Section 19-2-109.1.

(b) "Grand Canyon Visibility Transport Commission" means the commission created pursuant to Section 169B of the 1990 Clean Air Act to issue a report directed toward protecting visibility in the Grand Canyon National Park.

(c) "Western Regional Air Partnership" means the appointed organization that is performing the role as successor body under the 1990 Clean Air Act implementing the

183 recommendations of the Grand Canyon Visibility Transport Commission.

184 (2) The purpose of this section is to preserve Utah sovereignty, to enhance public
185 notice and awareness, and to ensure public confidence in the fairness of the implementation of
186 any Utah requirements of the Western Regional Air Partnership's advisory recommendations,
187 reports, or interpretations.

188 (3) No later than November 1 of each year, the governor or the governor's designee
189 shall provide an annual report of the Western Regional Air Partnership activities to the
190 Legislature. This requirement shall continue until:

191 (a) the Western Regional Air Partnership ceases operation; and

192 (b) the governor has forwarded to the federal Environmental Protection Agency
193 notification that the state complies with the final unappealable provisions of Title 40, Code of
194 Federal Regulations, implementing a visibility protection plan, adopted in accordance with the
195 1990 Clean Air Act.

196 (4) Any final recommendation, report, or other action of the Grand Canyon Visibility
197 Transport Commission or the Western Regional Air Partnership may not impose any new or
198 different requirements upon private entities or citizens of Utah unless approved by a joint
199 resolution of the Legislature or by statute.

Legislative Review Note

as of 2-7-03 1:47 PM

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

Office of Legislative Research and General Counsel

Fiscal Note**Legislative Approval of State or Regional Air Quality Plan** 18-Feb-03**Bill Number HB0125**5:07 PM

State Impact

Provisions of this bill require implementation of different sections of the federal clean air rules than is currently being implemented. It is estimated to require an increase of 4.7 FTE at a cost of \$377,500 from the General Fund in FY 2004. The bill further provides that the Legislature approve additions or modifications to the state implementation plan. It is assumed that will be done during the annual general session. If the Legislature is called into special session for approval of additions or modifications to the state implementation plan it is estimated to cost \$29,900 per day.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
General Fund	\$377,500	\$377,500	\$0	\$0
TOTAL	\$377,500	\$377,500	\$0	\$0

Individual and Business Impact

Individuals and businesses could be impacted if they are required to wait for Legislative approval in relationship to when DEQ finishes their permitting process and when the Legislature is scheduled to meet.

Office of the Legislative Fiscal Analyst