

1 **REAL PROPERTY VOLUNTARY**
2 **ENVIRONMENTAL RESTRICTIVE COVENANTS**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Bill Wright**

6 **This act modifies the Environmental Quality Code by creating a new chapter,**
7 **"Environmental Institutional Control Act." The act allows for creation of environmental**
8 **institutional controls which limit or otherwise affect the use of real property which has**
9 **been affected by a cleanup or risk assessment. The act includes procedures for**
10 **establishment and enforcement of the institutional controls, removal of the controls, and**
11 **appeal of the executive director's decision regarding the controls.**

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

13 ENACTS:

14 **19-9-101**, Utah Code Annotated 1953

15 **19-9-102**, Utah Code Annotated 1953

16 **19-9-103**, Utah Code Annotated 1953

17 **19-9-104**, Utah Code Annotated 1953

18 **19-9-105**, Utah Code Annotated 1953

19 **19-9-106**, Utah Code Annotated 1953

20 **19-9-107**, Utah Code Annotated 1953

21 **19-9-108**, Utah Code Annotated 1953

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

23 Section 1. Section **19-9-101** is enacted to read:

24 **CHAPTER 9. ENVIRONMENTAL INSTITUTIONAL CONTROL ACT**

25 **19-9-101. Title.**

26 This chapter is known as the "Environmental Institutional Control Act."

27 Section 2. Section **19-9-102** is enacted to read:



28 **19-9-102. Definitions.**

29 As used in this chapter:

30 (1) "Environmental institutional control" or "institutional control" means with respect
31 to real property, any deed restriction, restrictive covenant, easement, reservation, environmental
32 notice, engineering control, or other restriction or obligation that is designed to protect human
33 health or the environment and:

34 (a) is established in connection with a cleanup or risk assessment that is reviewed,
35 overseen, conducted, or administered by the department; and

36 (b) (i) limits the use of the real property, groundwater, or surface water;

37 (ii) limits activities that may be performed on or at the property; or

38 (iii) requires maintenance of any engineering or other control.

39 (2) "Executive director" means the executive director of the state Department of
40 Environment Quality or the executive director's designated representative.

41 Section 3. Section **19-9-103** is enacted to read:

42 **19-9-103. Establishment of environmental institutional controls.**

43 An owner of real property may, with the approval of the executive director, restrict the
44 use of the real property by imposing on the real property appropriate environmental
45 institutional controls to mitigate the risk posed to the public health, safety, or welfare, or the
46 environment.

47 Section 4. Section **19-9-104** is enacted to read:

48 **19-9-104. Requirements for creation of institutional control.**

49 An environmental institutional control shall:

50 (1) be in writing and shall be recorded by § THE OWNER OF THE REAL PROPERTY IN § the
50a county recorder's office in the county

51 where the real property is located;

52 (2) contain a legal description of the area of the real property that is subject to the
53 institutional control;

54 (3) include a statement documenting any requirements for maintenance of the
55 institutional control, including a description of the institutional control and the reason it must
56 remain in place to protect the public health, safety, or welfare, or the environment;

57 (4) include a statement that the institutional control runs with the land and is binding
58 on all successors in interest unless or until the institutional control is removed as provided in

59 Section 19-9-105:

60 (5) include a statement acknowledging the department's right of access to the property
61 at all reasonable times to verify that the institutional controls are being maintained;

62 (6) include a statement explaining how the institutional control can be modified or
63 terminated and stating that if any person desires to cancel or modify the institutional control in
64 the future, the person must obtain prior written approval from the executive director pursuant
65 to this chapter;

66 (7) include a notarized signature of the executive director indicating approval of the
67 environmental institutional control; and

68 (8) include the notarized signature of the property owner indicating approval of the
69 environmental institutional control.

70 Section 5. Section **19-9-105** is enacted to read:

71 **19-9-105. Termination of institutional control.**

72 (1) An owner may request in writing that the executive director approve termination or
73 modification of the environmental institutional control.

74 (2) An environmental institutional control may be terminated or modified, in whole or
75 in part, if the executive director determines an unacceptable risk is not posed to public health,
76 safety, or welfare, or the environment.

77 (3) (a) The executive director shall review the request and provide to the owner a
78 written decision approving or denying the request within 120 days from the executive director's
79 receipt of the request.

80 (b) If the executive director denies the request, the executive director shall send the
81 owner a written explanation for the denial.

82 (c) If the executive director approves an owner's request to terminate or modify all or a
83 portion of the environmental institutional controls, the owner shall file the approval with the
84 county recorder in the county in which the real property is located.

85 Section 6. Section **19-9-106** is enacted to read:

86 **19-9-106. Enforcement and inspection regarding institutional controls.**

87 (1) An environmental institutional control may be enforced or protected by a temporary
88 restraining order or an injunction obtained in a court of competent jurisdiction by the
89 department or other affected parties.

90 (2) In addition to injunctive relief, the department is entitled to recover costs for
91 actions which, in its discretion, it may take in enforcing and protecting the institutional
92 controls.

93 (3) The department may enter the property at reasonable times to ensure compliance
94 with the environmental institutional controls.

95 Section 7. Section **19-9-107** is enacted to read:

96 **19-9-107. Records regarding institutional controls.**

97 The department shall maintain a record of the properties subject to environmental
98 institutional controls established under this chapter. The department may archive the records.

99 Section 8. Section **19-9-108** is enacted to read:

100 **19-9-108. Appeals of institutional control decisions.**

101 Any determination by the executive director under this chapter may be appealed as
102 provided in Title 63, Chapter 46b, Administrative Procedures Act.

Legislative Review Note
as of 10-15-02 4:20 PM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0084

Real Property Voluntary Environmental Restrictive Covenants

20-Jan-03

3:12 PM

State Impact

Enactment of provisions of this bill can be handled with existing budgets.

Individual and Business Impact

Impact to individuals and businesses will be increased by the cost of recording the required documents with respective county recorders.

Office of the Legislative Fiscal Analyst