

BROWNFIELDS REVISION

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: L. Alma Mansell

LONG TITLE

General Description:

This bill amends the Environmental Quality Code regarding cleanup of contaminated sites. This bill requires the Department of Environmental Quality (DEQ) to maintain a public list of environmental cleanup sites, including the action taken at those sites. This bill authorizes DEQ to provide written assurance to specified parties such as bona fide purchasers that they will not be held liable for costs of cleanup of contamination of property. This bill requires a release of cost liability for persons who have completed a voluntary cleanup of property and have received a certificate of completion of the cleanup. This bill provides a right of contribution for any party who incurs excess costs under a voluntary agreement. This bill provides for apportionment of cleanup cost liability regarding costs incurred under a voluntary cleanup agreement. This bill creates the Brownfields Fund, to provide grants and loans for brownfield site cleanups.

Highlighted Provisions:

This bill:

- ▶ requires that DEQ keep a public list of sites subject to response action regarding The Hazardous Substances Mitigation Act or the Voluntary Cleanup Program, including completed sites and the suitable use of the property after cleanup;
- ▶ authorizes DEQ to provide written assurance regarding real property to bona fide purchasers, contiguous landowners, and innocent landowners ensuring these parties will not be subject to any enforcement or cost recovery for cleanup of the property;
- ▶ establishes a release of liability for state law contribution claims against persons



28 who have entered into a voluntary cleanup agreement and have been issued a certificate of
29 completion by DEQ;

30 ▶ establishes a release of liability for state law contribution claims for new owners
31 and lending institutions issuing loans regarding property subject to voluntary
32 cleanup and regarding which a certificate of completion has been issued by DEQ;

33 ▶ provides a right of contribution for any party who incurs costs in excess of his
34 liability under a voluntary agreement;

35 ▶ provides procedures for court action to claim excess costs incurred by a party in
36 carrying out a voluntary cleanup agreement;

37 ▶ establishes the Brownfields Fund, providing that:

- 38 • federal monies constitute the fund; and
- 39 • procedures for making and repaying loans and giving grants are in accordance

40 with the terms of the federal monies in the fund;

41 ▶ amends the secured creditors liability exemption to conform with changes in federal
42 law; and

43 ▶ provides definitions as necessary regarding the provisions of the bill.

44 **Monies Appropriated in this Bill:**

45 None

46 **Other Special Clauses:**

47 None

48 **Utah Code Sections Affected:**

49 **AMENDS:**

50 **19-1-202**, as renumbered and amended by Chapter 112, Laws of Utah 1991

51 **19-6-302**, as last amended by Chapter 170, Laws of Utah 1996

52 **19-6-402**, as last amended by Chapter 172, Laws of Utah 1997

53 **19-8-105**, as enacted by Chapter 247, Laws of Utah 1997

54 **19-8-113**, as last amended by Chapter 21, Laws of Utah 1999

55 **19-8-116**, as enacted by Chapter 247, Laws of Utah 1997

56 **63-65-4**, as last amended by Chapter 313, Laws of Utah 2003

57 **ENACTS:**

58 **19-6-326**, Utah Code Annotated 1953

59 **19-8-119**, Utah Code Annotated 1953

60 **19-8-120**, Utah Code Annotated 1953

61

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

63 Section 1. Section **19-1-202** is amended to read:

64 **19-1-202. Duties and powers of the executive director.**

65 (1) The executive director shall:

66 (a) administer and supervise the department;

67 (b) coordinate policies and program activities conducted through boards, divisions, and
68 offices of the department;

69 (c) approve the proposed budget of each board, division, and office within the
70 department;

71 (d) approve all applications for federal grants or assistance in support of any
72 department program; and

73 (e) with the governor's specific, prior approval, expend funds appropriated by the
74 Legislature necessary for participation by the state in any fund, property, or service provided by
75 the federal government.

76 (2) The executive director may:

77 (a) issue orders to enforce state laws and rules established by the department except
78 where the enforcement power is given to a board created under Section 19-1-106, unless the
79 executive director finds that a condition exists which creates a clear and present hazard to the
80 public health or the environment and which requires immediate action, and if the enforcement
81 power is vested with a board created under Section 19-1-106, the executive director may with
82 the concurrence of the governor order any person causing or contributing to the condition to
83 reduce, mitigate, or eliminate the condition;

84 (b) with the approval of the governor, participate in the distribution, disbursement, or
85 administration of any fund or service, advanced, offered, or contributed by the federal
86 government for purposes consistent with the powers and duties of the department;

87 (c) accept and receive funds and gifts available from private and public groups for the
88 purposes of promoting and protecting the public health and the environment and expend the
89 funds as appropriated by the Legislature;

- 90 (d) make policies not inconsistent with law for the internal administration and
- 91 government of the department, the conduct of its employees, and the custody, use, and
- 92 preservation of the records, papers, books, documents, and property of the department;
- 93 (e) create advisory committees as necessary to assist in carrying out the provisions of
- 94 this title;
- 95 (f) appoint division directors who may be removed at the will of the executive director
- 96 and who shall be compensated in an amount fixed by the executive director;
- 97 (g) advise, consult, and cooperate with other agencies of the state, the federal
- 98 government, other states and interstate agencies, affected groups, political subdivisions, and
- 99 industries in carrying out the purposes of this title;
- 100 (h) consistent with Title 67, Chapter 19, Utah State Personnel Management Act,
- 101 employ employees necessary to meet the requirements of this title;
- 102 (i) authorize any employee or representative of the division to conduct inspections as
- 103 permitted in this title;
- 104 (j) encourage, participate in, or conduct any studies, investigations, research, and
- 105 demonstrations relating to hazardous materials or substances releases necessary to meet the
- 106 requirements of this title;
- 107 (k) collect and disseminate information about hazardous materials or substances
- 108 releases; [~~and~~]
- 109 (l) review plans, specifications, or other data relating to hazardous substances releases
- 110 as provided in this title[-]; and
- 111 (m) maintain, update not less than annually, and make available to the public a record
- 112 of sites, by name and location, at which response actions for the protection of the public health
- 113 and environment under Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act or
- 114 under Title 19, Chapter 8, Voluntary Cleanup Program, have been completed in the previous
- 115 calendar year, and those that the department plans to address in the upcoming year pursuant to
- 116 this title, including if upon completion of the response action the site:
- 117 (i) will be suitable for unrestricted use; or
- 118 (ii) will be suitable only for restricted use, stating the institutional controls identified in
- 119 the remedy to which use of the site is subject.

120 Section 2. Section **19-6-302** is amended to read:

121 **19-6-302. Definitions.**

122 As used in this part:

123 (1) (a) "Abatement action" means to take steps or contract with someone to take steps
124 to eliminate or mitigate the direct or immediate threat to the public health or the environment
125 caused by a hazardous materials release.

126 (b) "Abatement action" includes control of the source of the contamination.

127 (2) "Bona fide prospective purchaser" has the meaning given in 42 U.S.C. Sec. 9601(4)
128 of CERCLA, but with the substitution of "executive director" for "President" and "part" for
129 "chapter," and including "hazardous materials" where the term "hazardous substances" appears.130 [~~2~~] (3) "CERCLA" means 42 U.S.C. 9601 et seq., the Comprehensive Environmental
131 Response, Compensation, and Liability Act.132 [~~3~~] (4) "Cleanup action" means action taken according to the procedures established
133 in this part to prevent, eliminate, minimize, mitigate, or clean up the release of a hazardous
134 material from a facility.135 (5) "Contiguous property owner" means a person who qualifies for the exemption from
136 liability in 42 U.S.C. Sec. 9607(q)(1) of CERCLA, but with the substitution of "executive
137 director" for "President" and "part" for "chapter".138 [~~4~~] (6) "Enforcement action" means the procedures contained in Section 19-6-306 to
139 enforce orders, rules, and agreements authorized by this part.140 [~~5~~] (7) (a) "Facility" means:141 (i) any building, structure, installation, equipment, pipe, or pipeline, including any pipe
142 into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch,
143 landfill, storage container, motor vehicle, rolling stock, or aircraft; or144 (ii) any site or area where a hazardous material or substance has been deposited, stored,
145 disposed of, or placed, or otherwise come to be located.

146 (b) "Facility" does not mean any consumer product in consumer use or any vessel.

147 [~~6~~] (8) "Fund" means the Hazardous Substances Mitigation Fund created by Section
148 19-6-307.149 [~~7~~] (9) "Hazardous materials" means hazardous waste as defined in the Utah
150 Hazardous Waste Management Regulations, PCBs, dioxin, asbestos, or a substance regulated
151 under 42 U.S.C., Section 6991(2).

152 ~~[(8)]~~ (10) "Hazardous substances" means the definition of hazardous substances
153 contained in CERCLA.

154 ~~[(9)]~~ (11) "Hazardous substances priority list" means a list of facilities meeting the
155 criteria established by Section 19-6-311 that may be addressed under the authority of this part.

156 (12) "Innocent landowner" means a person who qualifies for the exemption from
157 liability in 42 U.S.C. Sec. 9607(b)(3) of CERCLA.

158 ~~[(10)]~~ (13) "National Contingency Plan" means the National Oil and Hazardous
159 Substance Contingency plan established by CERCLA.

160 ~~[(11)]~~ (14) "National Priority List" means the list established by CERCLA.

161 ~~[(12)]~~ (15) "National priority list site" means a site in Utah that is listed on the National
162 Priority List.

163 ~~[(13)]~~ (16) "Proposed national priority list site" means a site in Utah that has been
164 proposed by the Environmental Protection Agency for listing on the National Priority List.

165 ~~[(14)]~~ (17) (a) "Release" means a spilling, leaking, pumping, pouring, emitting,
166 emptying, discharging, injecting, escaping, leaching, dumping, or disposing of substances into
167 the environment that is not authorized under state or federal law, rule, or regulation.

168 (b) "Release" includes abandoning or discarding barrels, containers, and other closed
169 receptacles containing any hazardous material or substance, unless the discard or abandonment
170 is authorized under state or federal law, rule, or regulation.

171 ~~[(15)]~~ (18) "Remedial action" means action taken consistent with the substantive
172 requirements of CERCLA according to the procedures established by this part to prevent,
173 eliminate, minimize, mitigate, or clean up the release of a hazardous substance from a facility
174 on the hazardous substances priority list.

175 ~~[(16)]~~ (19) "Remedial action plan" means a plan for remedial action consistent with the
176 substantive requirements of CERCLA and approved by the executive director.

177 ~~[(17)]~~ (20) "Remedial investigation" means a remedial investigation and feasibility
178 study as defined in the National Contingency Plan established by CERCLA.

179 ~~[(18)]~~ (21) (a) "Responsible party" means:

180 (i) the owner or operator of a facility;

181 (ii) any person who, at the time any hazardous substance or material was disposed of at
182 the facility, owned or operated the facility;

183 (iii) any person who arranged for disposal or treatment, or arranged with a transporter
 184 for transport, for disposal, or treatment of hazardous materials or substances owned or
 185 possessed by the person, at any facility owned or operated by another person and containing the
 186 hazardous materials or substances; or

187 (iv) any person who accepts or accepted any hazardous materials or substances for
 188 transport to a facility selected by that person from which there is a release that causes the
 189 incurrence of response costs.

190 (b) For hazardous materials or substances that were delivered by a motor carrier to any
 191 facility, "responsible party" does not include the motor carrier, and the motor carrier may not be
 192 considered to have caused or contributed to any release at the facility that results from
 193 circumstances or conditions beyond its control.

194 (c) "Responsible party" under Subsections ~~[(18)]~~ (21)(a)(i) and (ii) does not include:

195 (i) any person who does not participate in the management of a facility and who holds
 196 indicia of ownership:

197 (A) primarily to protect a security interest in a facility; or

198 (B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an
 199 employee benefit plan; ~~[or]~~

200 (ii) governmental ownership or control of property by involuntary transfers as provided
 201 in CERCLA Section 101(20)(D) and 40 CFR 300.1105, National Contingency Plan~~[-];~~ or

202 (iii) any person, including a fiduciary or custodian under Title 75, Utah Uniform
 203 Probate Code, or under an employee benefit plan who holds indicia of ownership and did not
 204 participate in the management of a facility prior to foreclosure in accordance with 42 U.S.C.
 205 Sec. 9601(20)(E)(ii) of CERCLA.

206 (d) The exemption created by Subsection (21)(c)(i)(B) does not apply to actions taken
 207 by the state or its officials or agencies under this part.

208 (e) The terms ~~[and activities "indicia of ownership," "primarily to protect a]~~ "security
 209 interest," ~~"[participation] participate in management," "foreclose," and "foreclosure [on~~
 210 ~~property and postforeclosure activities;]"~~ are defined in accordance
 211 with ~~[40 CFR 300.1100, National Contingency Plan]~~ 42 U.S.C. Sec. 9601(20)(E), (F), and (G)
 212 of CERCLA.

213 ~~[(f) The terms "participation in management" and "indicia of ownership" as defined in~~

214 ~~40 CFR 300.1100, National Contingency Plan, include and apply to the fiduciaries listed in~~
215 ~~Subsection (18)(c)(i)(B):]~~

216 [(19)] (22) "Scored site" means a facility in Utah that meets the requirements of
217 scoring established by the National Contingency Plan for placement on the National Priority
218 List.

219 Section 3. Section **19-6-326** is enacted to read:

220 **19-6-326. Written assurances.**

221 (1) Based upon risk to human health or the environment from potential exposure to
222 hazardous substances or materials, the executive director may issue enforceable written
223 assurances to a bona fide prospective purchaser, contiguous property owner, or innocent
224 landowner of real property that no enforcement action under this part may be initiated
225 regarding that real property against the person to whom the assurances are issued.

226 (2) An assurance granted under Subsection (1) grants the person to whom the
227 assurance is issued protection from imposition of any state law cost recovery and contribution
228 actions under this part.

229 (3) The executive director may make rules in accordance with Title 63, Chapter 46a,
230 Utah Administrative Rulemaking Act, as necessary for the administration of this section.

231 Section 4. Section **19-6-402** is amended to read:

232 **19-6-402. Definitions.**

233 As used in this part:

234 (1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate a
235 release from an underground storage tank or petroleum storage tank, or to limit or reduce,
236 mitigate, or eliminate the damage caused by that release.

237 (2) "Board" means the Solid and Hazardous Waste Control Board created in Section
238 19-1-106.

239 (3) "Bodily injury" means bodily harm, sickness, disease, or death sustained by any
240 person.

241 (4) "Certificate of compliance" means a certificate issued to a facility by the executive
242 secretary:

243 (a) demonstrating that an owner or operator of a facility containing one or more
244 petroleum storage tanks has met the requirements of this part; and

245 (b) listing all tanks at the facility, specifying which tanks may receive petroleum and
246 which tanks have not met the requirements for compliance.

247 (5) "Certificate of registration" means a certificate issued to a facility by the executive
248 secretary demonstrating that an owner or operator of a facility containing one or more
249 underground storage tanks has:

250 (a) registered the tanks; and

251 (b) paid the annual underground storage tank fee.

252 (6) (a) "Certified underground storage tank consultant" means any person who:

253 (i) meets the education and experience standards established by the board under
254 Subsection 19-6-403(1)(a)(vi) in order to provide or contract to provide information, opinions,
255 or advice relating to underground storage tank management, release abatement, investigation,
256 corrective action, or evaluation for a fee, or in connection with the services for which a fee is
257 charged; and

258 (ii) has submitted an application to the board and received a written statement of
259 certification from the board.

260 (b) "Certified underground storage tank consultant" does not include:

261 (i) an employee of the owner or operator of the underground storage tank, or an
262 employee of a business operation that has a business relationship with the owner or operator of
263 the underground storage tank, and that markets petroleum products or manages underground
264 storage tanks; or

265 (ii) persons licensed to practice law in this state who offer only legal advice on
266 underground storage tank management, release abatement, investigation, corrective action, or
267 evaluation.

268 (7) "Closed" means an underground storage tank no longer in use that has been:

269 (a) emptied and cleaned to remove all liquids and accumulated sludges; and

270 (b) either removed from the ground or filled with an inert solid material.

271 (8) "Corrective action plan" means a plan for correcting a release from a petroleum
272 storage tank that includes provisions for all or any of the following:

273 (a) cleanup or removal of the release;

274 (b) containment or isolation of the release;

275 (c) treatment of the release;

- 276 (d) correction of the cause of the release;
- 277 (e) monitoring and maintenance of the site of the release;
- 278 (f) provision of alternative water supplies to persons whose drinking water has become
279 contaminated by the release; or
- 280 (g) temporary or permanent relocation, whichever is determined by the executive
281 secretary to be more cost-effective, of persons whose dwellings have been determined by the
282 executive secretary to be no longer habitable due to the release.
- 283 (9) "Costs" means any monies expended for:
 - 284 (a) investigation;
 - 285 (b) abatement action;
 - 286 (c) corrective action;
 - 287 (d) judgments, awards, and settlements for bodily injury or property damage to third
288 parties;
 - 289 (e) legal and claims adjusting costs incurred by the state in connection with judgments,
290 awards, or settlements for bodily injury or property damage to third parties; or
 - 291 (f) costs incurred by the state risk manager in determining the actuarial soundness of
292 the fund.
- 293 (10) "Covered by the fund" means the requirements of Section 19-6-424 have been
294 met.
- 295 (11) "Dwelling" means a building that is usually occupied by a person lodging there at
296 night.
- 297 (12) "Enforcement proceedings" means a civil action or the procedures to enforce
298 orders established by Section 19-6-425.
- 299 (13) "Executive secretary" means the executive secretary of the board.
- 300 (14) "Facility" means all underground storage tanks located on a single parcel of
301 property or on any property adjacent or contiguous to that parcel.
- 302 (15) "Fund" means the Petroleum Storage Tank Trust Fund created in Section
303 19-6-409.
- 304 (16) "Loan fund" means the Petroleum Storage Tank Loan Fund created in Section
305 19-6-405.3.
- 306 (17) "Operator" means any person in control of or who is responsible on a daily basis

307 for the maintenance of an underground storage tank that is in use for the storage, use, or
308 dispensing of a regulated substance.

309 (18) "Owner" means:

310 (a) in the case of an underground storage tank in use on or after November 8, 1984, any
311 person who owns an underground storage tank used for the storage, use, or dispensing of a
312 regulated substance; and

313 (b) in the case of any underground storage tank in use before November 8, 1984, but
314 not in use on or after November 8, 1984, any person who owned the tank immediately before
315 the discontinuance of its use for the storage, use, or dispensing of a regulated substance.

316 (19) "Petroleum" includes crude oil or any fraction of crude oil that is liquid at 60
317 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute.

318 (20) "Petroleum storage tank" means a tank that:

319 (a) (i) is underground;

320 (ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42
321 U.S.C. Section 6991c, et seq.; and

322 (iii) contains petroleum; or

323 (b) is a tank that the owner or operator voluntarily submits for participation in the
324 Petroleum Storage Tank Trust Fund under Section 19-6-415.

325 (21) "Petroleum Storage Tank Restricted Account" means the account created in
326 Section 19-6-405.5.

327 (22) "Program" means the Environmental Assurance Program under Section
328 19-6-410.5.

329 (23) "Property damage" means physical injury to or destruction of tangible property
330 including loss of use of that property.

331 (24) "Regulated substance" means petroleum and petroleum-based substances
332 comprised of a complex blend of hydrocarbons derived from crude oil through processes of
333 separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate
334 fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

335 (25) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching,
336 or disposing from an underground storage tank or petroleum storage tank. The entire release is
337 considered a single release.

338 (26) (a) "Responsible party" means any person who:
339 (i) is the owner or operator of a facility;
340 (ii) owns or has legal or equitable title in a facility or an underground storage tank;
341 (iii) owned or had legal or equitable title in the facility at the time any petroleum was
342 received or contained at the facility;
343 (iv) operated or otherwise controlled activities at the facility at the time any petroleum
344 was received or contained at the facility; or
345 (v) is an underground storage tank installation company.
346 (b) "Responsible party" as defined in Subsections (26)(a)(i), (ii), and (iii) does not
347 include:
348 (i) any person who is not an operator and, without participating in the management of a
349 facility and otherwise not engaged in petroleum production, refining, and marketing, holds
350 indicia of ownership:
351 (A) primarily to protect his security interest in the facility; or
352 (B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an
353 employee benefit plan; or
354 (ii) governmental ownership or control of property by involuntary transfers as provided
355 in CERCLA Section 101(20)(D), 42 U.S.C. [~~Section~~] Sec. 9601(20)(D).
356 (c) The exemption created by Subsection (b)(i)(B) does not apply to actions taken by
357 the state or its officials or agencies under this part.
358 (d) The terms and activities "indicia of ownership," "primarily to protect a security
359 interest," "participation in management," and [~~"foreclosure on property and postforeclosure~~
360 ~~activities,"~~] "security interest" under this part [~~shall be~~] are in accordance with 40 CFR
361 [~~300.1100, National Contingency Plan~~] Part 280, Subpart I, as amended, and 42 U.S.C. Sec.
362 6991B(h)(9).
363 (e) The terms "[~~participation~~] participate in management" and "indicia of ownership"
364 as defined in 40 CFR [~~300.1100, National Contingency Plan,~~] Part 280, Subpart I, as amended,
365 and 42 U.S.C. Sec. 6991B(h)(9) include and apply to the fiduciaries listed in Subsection
366 (26)(b)(i)(B).
367 (27) "Soil test" means a test, established or approved by board rule, to detect the
368 presence of petroleum in soil.

369 (28) "State cleanup appropriation" means the money appropriated by the Legislature to
370 the department to fund the investigation, abatement, and corrective action regarding releases
371 not covered by the fund.

372 (29) "Underground storage tank" means any tank regulated under Subtitle I, Resource
373 Conservation and Recovery Act, 42 U.S.C. [Section] Sec. 6991c, et seq., including:

374 (a) a petroleum storage tank;

375 (b) underground pipes and lines connected to a storage tank; and

376 (c) any underground ancillary equipment and containment system.

377 (30) "Underground storage tank installation company" means any person, firm,
378 partnership, corporation, governmental entity, association, or other organization who installs
379 underground storage tanks.

380 (31) "Underground storage tank installation company permit" means a permit issued to
381 an underground storage tank installation company by the executive secretary.

382 (32) "Underground storage tank technician" means a person employed by and acting
383 under the direct supervision of a certified underground storage tank consultant to assist in
384 carrying out the functions described in Subsection (6)(a).

385 Section 5. Section **19-8-105** is amended to read:

386 **19-8-105. Eligibility and exceptions -- Grounds for application rejection by**
387 **executive director.**

388 Subject to Section 19-8-106, any site is eligible for participation in the voluntary
389 cleanup program created under this chapter except:

390 (1) a treatment, storage, or disposal facility regulated under 42 U.S.C. 6901 et seq.;

391 (2) that portion of a site that is on the national priorities list; or

392 (3) that portion of a site for which [~~an administrative;~~] a state[;] or federal enforcement
393 action is existing or pending against the applicant for remediation of the contaminants
394 described in the application.

395 Section 6. Section **19-8-113** is amended to read:

396 **19-8-113. Applicant's release from liability.**

397 (1) (a) An applicant who is not responsible for the contaminant or contamination under
398 the provisions listed in Subsection (1)(b) at the time the applicant applies to enter into a
399 voluntary cleanup agreement under this chapter[;] is released by issuance of a certificate of

400 completion under Section 19-8-111 from all liability to the state for cleanup of property
401 covered by the certificate[;] and from all liability for claims arising under state law for
402 contribution regarding matters addressed by the certificate of completion, except for any
403 releases or consequences the applicant causes.

404 (b) Provisions referred to in Subsection (1)(a) are: Title 19, Chapter 5, Water Quality
405 Act; Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act; Title 19, Chapter 6, Part 3,
406 Hazardous Substances Mitigation Act; or Title 19, Chapter 6, Part 4, Underground Storage
407 Tank Act.

408 (2) There is no release from liability under this chapter if a certificate of completion is
409 obtained by fraud, misrepresentation, or the knowing failure to disclose material information.

410 (3) (a) After a certificate of completion is issued under this chapter, an owner who then
411 acquires property covered by the certificate, or a lender who then makes a loan secured by
412 property covered by the certificate, is released from all liability to the state regarding property
413 covered by the certificate for cleanup of contamination released before the date of the
414 certificate, and from all liability for claims arising under state law for contribution regarding
415 matters addressed by the certificate of completion, except under Subsection (3)(b).

416 (b) A release of liability under Subsection (3)(a) is not available to an owner or lender
417 under Subsection (3)(a) who:

418 (i) was originally responsible for a release or contamination under Title 19, Chapter 5,
419 Water Quality Act; Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act; Title 19,
420 Chapter 6, Part 3, Hazardous Substances Mitigation Act; or Title 19, Chapter 6, Part 4,
421 Underground Storage Tank Act;

422 (ii) changes the land use from the use specified in the certificate of completion if the
423 changed use or uses may reasonably be expected to result in increased risks to human health or
424 the environment; or

425 (iii) causes further releases on the property covered by the certification.

426 (c) A release under this Subsection (3) is subject to the limitations of Subsection (2).

427 (4) The executive director may issue enforceable written assurances to a contiguous
428 property owner of real property stating that no enforcement action under this part may be
429 initiated against the contiguous property owner and providing the owner protection from state
430 law cost recovery and contribution actions.

431 Section 7. Section **19-8-116** is amended to read:

432 **19-8-116. Reservation of applicant's and department's causes of action.**

433 (1) This chapter does not release, discharge, or in any way affect any claims, causes of
434 action, or demands in law or equity the applicant or the department may have against any
435 person not a party to the agreement, for any liability it may have arising out of or relating in any
436 way to the generation, storage, treatment, handling, transportation, release, or disposal of any
437 contaminants, including transportation to or from the site covered by the agreement.

438 (2) ~~[This]~~ Subject to Section 19-8-119, this chapter does not affect the applicant's right
439 to seek contribution, indemnity, or any other available remedy against any party other than the
440 department[;] who is responsible or liable for contribution, indemnity, or otherwise for any
441 amounts which have been or will be expended by the applicant in connection with the site.

442 Section 8. Section **19-8-119** is enacted to read:

443 **19-8-119. Apportionment or contribution.**

444 (1) Any party who incurs costs under a voluntary agreement entered into under this part
445 in excess of his liability may seek contribution in an action in district court from any other
446 party who is or may be liable under Subsection 19-6-302(18) or 19-6-402(26) for the excess
447 costs after providing written notice to any other party that the party bringing the action has
448 entered into a voluntary agreement and will incur costs.

449 (2) In resolving claims made under Subsection (1), the court shall allocate costs using
450 the standards in Subsection 19-6-310(2).

451 Section 9. Section **19-8-120** is enacted to read:

452 **19-8-120. Creation of Brownfields ~~Ŝ→~~ [Revolving Loan] ~~←Ŝ~~ Fund -- Purposes -- Loan**
452a **~~Ŝ→~~ and Grant ~~←Ŝ~~**
453 **Eligibility -- Loan restrictions -- Rulemaking.**

454 (1) As used in this section, "brownfield" has the same meaning as in 42 U.S.C. Sec.
455 9601(39).

456 (2) There is created ~~Ŝ→~~ [a] an enterprise ~~←Ŝ~~ fund known as the Brownfields Fund.

457 (3) The fund is created to enable the state to use federal funding as available to provide
458 capital for a revolving loan fund and to provide funds for grants to carry out cleanup activities
459 at brownfield sites.

460 (4) The sources of fund monies are:

461 (a) federal grant monies;

462 (b) principal and interest received from the repayment of loans made under this
463 section; and

464 (c) all investment income derived from fund monies.

465 (5) The executive director may make loans and grants in accordance with this section
466 from the fund to applicants who meet the criteria under the terms of the federal grant monies in
467 the fund.

468 (6) The executive director shall consider loan and grant applications under Subsection
469 (5) to determine whether the application meets the objectives established by the federal grant.

470 (7) Loans made under this section shall:

471 (a) be for no greater amount than allowed by the federal grant;

472 (b) have a fixed annual interest rate as allowed by the federal grant;

473 (c) have a term as allowed by the federal grant;

474 (d) be made on the condition the loan applicant obtains adequate security for the loan
475 as established by administrative rules made under Subsection (9); and

476 (e) comply with administrative rules made under Subsection (9).

477 (8) Grants made under this section shall:

478 (a) be for no greater amount than allowed by the federal grant; and

479 (b) comply with administrative rules made under Subsection (9).

480 (9) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
481 executive director shall make rules establishing:

482 (a) form, content, and procedure for loan and grant applications;

483 (b) criteria and procedures for prioritizing loan and grant applications;

484 (c) requirements and procedures for securing loans and grants;

485 (d) procedures for making the loans;

486 (e) procedures for administering and ensuring repayment of loans, including late
487 payment penalties; and

488 (f) procedures for recovering on defaulted loans.

489 (10) The decisions of the executive director in loaning money from the fund, making
490 grants, and otherwise administering the fund are not subject to Title 63, Chapter 46b,
491 Administrative Procedures Act.

492 (11) Funding for the cost of administration of the fund shall be consistent with the

493 terms of the federal grant.

494 (12) The executive director may enter into agreements with public entities or private
495 funding organizations to perform any task associated with administration of the fund.

496 Section 10. Section **63-65-4** is amended to read:

497 **63-65-4. Custodial officer -- Powers and duties.**

498 (1) There is created within the Division of Finance an officer responsible for the care,
499 custody, safekeeping, collection, and accounting of all bonds, notes, contracts, trust documents,
500 and other evidences of indebtedness owned or administered by:

501 (a) the state or any of its agencies; and

502 (b) revolving loan funds except the:

503 (i) Agriculture Resource Development Fund, created in Section 4-18-6;

504 (ii) Utah Rural Rehabilitation Fund, created in Section 4-19-4;

505 (iii) Petroleum Storage Tank Loan Fund, created in Section 19-6-405.3; [~~and~~]

506 (iv) Olene Walker Housing Loan Fund, created in Section 9-4-702[-]; and

507 (v) Brownfields Fund, created in Section 19-8-120.

508 (2) (a) Each authorizing agency shall deliver to this officer for his care, custody,
509 safekeeping, collection, and accounting all bonds, notes, contracts, trust documents, and other
510 evidences of indebtedness owned or administered by:

511 (i) the state or any of its agencies; and

512 (ii) revolving loan funds.

513 (b) This officer shall:

514 (i) establish systems, programs, and facilities for the care, custody, safekeeping,
515 collection, and accounting for the bonds, notes, contracts, trust documents, and other evidences
516 of indebtedness submitted to him under this Subsection (2); and

517 (ii) shall make available updated reports to each authorizing agency as to the status of
518 loans under their authority.

519 (3) The officer described in Section 63-65-3 shall deliver to this officer for his care,
520 custody, safekeeping, collection, and accounting all bonds, notes, contracts, trust documents,
521 and other evidences of indebtedness closed as provided in Subsection 63-65-3(2)(b).

Legislative Review Note

as of 2-8-05 9:55 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

Provisions of this bill creates a fund known as the Brownfields Fund. It is unknown at this time how much revenue will be deposited to this account. It is estimated the other provisions of the bill can be handled within existing budgets.

Individual and Business Impact

Individuals and businesses may benefit from provisions of this bill dependent upon how much funding they might qualify for under the loan program created in the bill.
