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₵ 02-01-05 11:55 AM ₵

S.B. 24
1st Sub. (Green)

Senator Curtis S. Bramble proposes the following substitute bill:

WASTE AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Curtis S. Bramble

Ron Allen	Beverly Ann Evans	Mark B. Madsen
Gregory S. Bell	Thomas V. Hatch	L. Alma Mansell
D. Chris Buttars	Parley G. Hellewell	Ed Mayne
Allen M. Christensen	John W. Hickman	Darin G. Peterson
Gene Davis	Scott K. Jenkins	David L. Thomas
Mike Dmitrich	Sheldon L. Killpack	John L. Valentine
Dan R. Eastman	Peter C. Knudson	Carlene M. Walker

LONG TITLE

General Description:

This bill modifies the Environmental Quality Code and the Radioactive Waste Tax Act to amend provisions relating to waste.

Highlighted Provisions:

This bill:

- prohibits any entity in the state from accepting class B or C low-level radioactive waste or radioactive waste having a higher radionuclide concentration than allowed under existing licenses;
- directs the Utah member of the Northwest low-level waste compact committee not to bring to the compact committee for approval and to vote against any arrangement with persons outside the compact area to access a Utah facility for storage, treatment, incineration, or disposal of certain low-level radioactive wastes;
- requires the Solid and Hazardous Waste Control Board to review and report to the Legislature every five years:

- the adequacy of the amount of financial assurance required for closure and postclosure care of a commercial hazardous waste treatment, storage, or disposal facility;
- whether funds or financial assurance are necessary for perpetual care and maintenance of a commercial hazardous waste treatment, storage, or disposal facility and the adequacy of those funds or financial assurance, if found necessary; and
- the adequacy of any funds or financial assurance required to cover certain costs;

▸ expands the scope of the Radiation Control Board's review of the Radioactive Waste Perpetual Care and Maintenance Fund to include:

- a review of the adequacy of the fund to cover certain costs; and
- a review of the amount of financial assurance required for closure and postclosure of a commercial radioactive waste treatment or disposal facility;

▸ increases the penalty amount per day for violating a provision of the Solid and Hazardous Waste Act;

▸ provides that the owner or operator of certain waste facilities, rather than the generator, is liable for certain fees;

▸ clarifies that fees for certain waste shall be determined by multiplying the fee amount by the waste volume or curie calculated to the first decimal place;

▸ clarifies that certain wastes are subject to only one fee if multiple fees apply;

▸ requires the owner or operator of a facility receiving waste containing PCBs to submit a form with the disposal fees and requires the Department of Environmental Quality to make rules specifying the information required in the form;

▸ imposes gross receipts taxes on mixed waste disposal received from certain governmental entity or agent contracts; and

▸ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:

19-3-103.7, as enacted by Chapter 73, Laws of Utah 2003

19-3-104, as last amended by Chapter 73, Laws of Utah 2003

19-3-105, as last amended by Chapter 334, Laws of Utah 2004

19-3-106, as last amended by Chapter 295, Laws of Utah 2003

19-3-106.2, as enacted by Chapter 314, Laws of Utah 2001

19-6-113, as last amended by Chapter 198, Laws of Utah 1996

19-6-118, as last amended by Chapter 311, Laws of Utah 2004

19-6-118.5, as enacted by Chapter 200, Laws of Utah 1993

19-6-119, as last amended by Chapter 311, Laws of Utah 2003

59-24-103.5, as last amended by Chapter 334, Laws of Utah 2004

ENACTS:

19-1-307, Utah Code Annotated 1953

19-3-206, Utah Code Annotated 1953

19-6-117.5, Utah Code Annotated 1953

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

Section 1. Section **19-1-307** is enacted to read:

19-1-307. Evaluation of closure, postclosure, and perpetual care and maintenance for hazardous waste and radioactive waste treatment and disposal facilities -- Report.

(1) (a) Beginning in 2006, the Solid and Hazardous Waste Control Board created in Section 19-1-106 shall direct an evaluation every five years of:

(i) the adequacy of the amount of financial assurance required for closure and postclosure care under 40 C.F.R. subpart H, Sections 264.140 through 264.151 submitted pursuant to a hazardous waste operation plan for a commercial hazardous waste treatment, storage, or disposal facility under Section 19-6-108; and

(ii) the adequacy of the amount of financial assurance or funds required for perpetual care and maintenance following the closure and postclosure period of a commercial hazardous waste treatment, storage, or disposal facility, if found necessary following the evaluation under Subsection (1)(c).

(b) The evaluation shall determine:

(i) whether the amount of financial assurance required is adequate for closure and postclosure care of hazardous waste treatment, storage, or disposal facilities;

(ii) whether the amount of financial assurance or funds required is adequate for perpetual care and maintenance following the closure and postclosure period of a commercial hazardous waste treatment, storage, or disposal facility, if found necessary following the evaluation under Subsection (1)(c); and

(iii) the costs above the minimal maintenance and monitoring for reasonable risks that may occur during closure, postclosure, and perpetual care and maintenance of commercial hazardous waste treatment, storage, or disposal facilities including:

(A) groundwater corrective action;

(B) differential settlement failure; or

(C) major maintenance of a cell or cells.

(c) The Solid and Hazardous Waste Control Board shall evaluate in 2006 whether financial assurance or funds are necessary for perpetual care and maintenance following the closure and postclosure period of a commercial hazardous waste treatment, storage, or disposal facility to protect human health and the environment.

(2) (a) Beginning in 2006, the Radiation Control Board created in Section 19-1-106 shall direct an evaluation every five years of:

(i) the adequacy of the Radioactive Waste Perpetual Care and Maintenance Fund; and

(ii) the adequacy of the amount of financial assurance required for closure and postclosure care of commercial radioactive waste treatment or disposal facilities under Subsection 19-3-104(12).

(b) The evaluation shall determine:

(i) whether the fund is adequate to provide for perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities;

(ii) whether the amount of financial assurance required is adequate to provide for closure and postclosure care of commercial radioactive waste treatment or disposal facilities;

(iii) the costs under Subsection 19-3-106.2(5)(b) of using the Radioactive Waste Perpetual Care and Maintenance Fund during the period before the end of 100 years following final closure of the facility for maintenance, monitoring, or corrective action in the event that

the owner or operator is unwilling or unable to carry out the duties of postclosure maintenance, monitoring, or corrective action; and

(iv) the costs above the minimal maintenance and monitoring for reasonable risks that may occur during closure, postclosure, and perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities including:

(A) groundwater corrective action;

(B) differential settlement failure; or

(C) major maintenance of a cell or cells.

(3) The boards under Subsections (1) and (2) shall submit a joint report on the evaluations to the Legislative Management Committee on or before October 1 of the year in which the report is due.

Section 2. Section **19-3-103.7** is amended to read:

19-3-103.7. Prohibition of certain radioactive wastes.

[~~On and after May 3, 2003, through February 15, 2005, there is a moratorium prohibiting any entity in the state from accepting~~]

No entity may accept in the state or apply for a license to accept in the state for commercial storage, decay in storage, treatment, incineration, or disposal:

(1) class B or class C low-level radioactive waste [~~for commercial storage, decay in storage, treatment, incineration, or disposal.~~]; or

(2) radioactive waste having a higher radionuclide concentration than the highest radionuclide concentration allowed under licenses existing on the effective date of this section that have met all the requirements of Section 19-3-105.

Section 3. Section **19-3-104** is amended to read:

19-3-104. Registration and licensing of radiation sources by department -- Assessment of fees -- Rulemaking authority and procedure -- Siting criteria.

(1) As used in this section:

(a) "Decommissioning" includes financial assurance.

(b) "Source material" and "byproduct material" have the same definitions as in 42 U.S.C.A. 2014, Atomic Energy Act of 1954, as amended.

(2) The board may require the registration or licensing of radiation sources that constitute a significant health hazard.

(3) All sources of ionizing radiation, including ionizing radiation producing machines, shall be registered or licensed by the department.

(4) The board may make rules:

(a) necessary for controlling exposure to sources of radiation that constitute a significant health hazard;

(b) to meet the requirements of federal law relating to radiation control to ensure the radiation control program under this part is qualified to maintain primacy from the federal government;

(c) to establish:

(i) board accreditation requirements and procedures for mammography facilities; and

(ii) certification procedure and qualifications for persons who survey mammography equipment and oversee quality assurance practices at mammography facilities; and

(d) as necessary regarding the possession, use, transfer, or delivery of source and byproduct material and the disposal of byproduct material to establish requirements for:

(i) the licensing, operation, decontamination, and decommissioning, including financial assurances; and

(ii) the reclamation of sites, structures, and equipment used in conjunction with the activities described in this Subsection (4).

(5) (a) On and after January 1, 2003, a fee is imposed for the regulation of source and byproduct material and the disposal of byproduct material at uranium mills or commercial waste facilities, as provided in this Subsection (5).

(b) On and after January 1, 2003 through March 30, 2003:

(i) $6,667 per month for uranium mills or commercial sites disposing of or reprocessing byproduct material; and

(ii) $4,167 per month for those uranium mills the executive secretary has determined are on standby status.

(c) On and after March 31, 2003 through June 30, 2003 the same fees as in Subsection (5)(b) apply, but only if the federal Nuclear Regulatory Commission grants to Utah an amendment for agreement state status for uranium recovery regulation on or before March 30, 2003.

(d) If the Nuclear Regulatory Commission does not grant the amendment for state

agreement status on or before March 30, 2003, fees under Subsection (5)(e) do not apply and are not required to be paid until on and after the later date of:

(i) October 1, 2003; or

(ii) the date the Nuclear Regulatory Commission grants to Utah an amendment for agreement state status for uranium recovery regulation.

(e) For the payment periods beginning on and after July 1, 2003, the department shall establish the fees required under Subsection (5)(a) under Section 63-38-3.2, subject to the restrictions under Subsection (5)(d).

(f) The department shall deposit fees it receives under this Subsection (5) into the Environmental Quality Restricted Account created in Section 19-1-108.

(6) (a) The department shall assess fees for registration, licensing, and inspection of radiation sources under this section.

(b) The department shall comply with the requirements of Section 63-38-3.2 in assessing fees for licensure and registration.

(7) The department shall coordinate its activities with the Department of Health rules made under Section 26-21a-203.

(8) (a) Except as provided in Subsection (9), the board may not adopt rules, for the purpose of the state assuming responsibilities from the United States Nuclear Regulatory Commission with respect to regulation of sources of ionizing radiation, that are more stringent than the corresponding federal regulations which address the same circumstances.

(b) In adopting those rules, the board may incorporate corresponding federal regulations by reference.

(9) (a) The board may adopt rules more stringent than corresponding federal regulations for the purpose described in Subsection (8) only if it makes a written finding after public comment and hearing and based on evidence in the record that corresponding federal regulations are not adequate to protect public health and the environment of the state.

(b) Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the board's conclusion.

(10) (a) The board shall by rule:

(i) authorize independent qualified experts to conduct inspections required under this

chapter of x-ray facilities registered with the division; and

(ii) establish qualifications and certification procedures necessary for independent experts to conduct these inspections.

(b) Independent experts under this Subsection (10) are not considered employees or representatives of the division or the state when conducting the inspections.

(11) (a) The board may by rule establish criteria for siting commercial low-level radioactive waste treatment or disposal facilities, subject to the [~~moratorium regarding class B and C low-level radioactive waste~~] prohibition imposed by Section 19-3-103.7.

(b) Any facility under Subsection (11)(a) for which a radioactive material license is required by this section shall comply with those criteria.

(c) A facility may not receive a radioactive material license until siting criteria have been established by the board. The criteria also apply to facilities that have applied for but not received a radioactive material license.

(12) The board shall by rule establish financial assurance requirements for closure and postclosure care of radioactive waste land disposal facilities, taking into account existing financial assurance requirements.

Section 4. Section **19-3-105** is amended to read:

19-3-105. Definitions -- Legislative and gubernatorial approval required for radioactive waste license -- Class B and C and other radioactive waste prohibition.

(1) As used in this section:

(a) "Alternate feed material" has the same definition as provided in Section 59-24-102.

(b) (i) "Class A low-level radioactive waste" means:

(A) radioactive waste that is classified as class A waste under 10 C.F.R. 61.55; and

(B) radium-226 up to a maximum radionuclide concentration level of 10,000 picocuries per gram.

(ii) "Class A low-level radioactive waste" does not include:

(A) uranium mill tailings;

(B) naturally-occurring radioactive materials; or

(C) the following radionuclides if classified as "special nuclear material" under the Atomic Energy Act of 1954, 42 U.S.C. 2014:

(I) uranium-233; and

(II) uranium-235 with a radionuclide concentration level greater than the concentration limits for specific conditions and enrichments established by an order of the Nuclear Regulatory Commission:

(Aa) to ensure criticality safety for a radioactive waste facility in the state; and

(Bb) in response to a request, submitted prior to January 1, 2004, from a radioactive waste facility in the state to the Nuclear Regulatory Commission to amend the facility's special nuclear material exemption order.

(c) (i) "Radioactive waste facility" or "facility" means a facility that receives, transfers, stores, decays in storage, treats, or disposes of radioactive waste:

(A) commercially for profit; or

(B) generated at locations other than the radioactive waste facility.

(ii) "Radioactive waste facility" does not include a facility that receives:

(A) alternate feed material for reprocessing; or

(B) radioactive waste from a location in the state designated as a processing site under 42 U.S.C. 7912(f).

(d) "Radioactive waste license" or "license" means a radioactive material license issued by the executive secretary under Subsection 19-3-108(2)(c)(i), to own, construct, modify, or operate a radioactive waste facility.

(2) The provisions of this section are subject to the [~~moratorium regarding class B and C low-level radioactive waste~~] prohibition under Section 19-3-103.7.

(3) A person may not own, construct, modify, or operate a radioactive waste facility without:

(a) having received a radioactive waste license for the facility;

(b) meeting the requirements established by rule under Section 19-3-104;

(c) the approval of the governing body of the municipality or county responsible for local planning and zoning where the radioactive waste is or will be located; and

(d) subsequent to meeting the requirements of Subsections (3)(a) through (c), the approval of the governor and the Legislature.

(4) A new radioactive waste license application, or an application to renew or amend an existing radioactive waste license, is subject to the requirements of Subsections (3)(b) through (d) if the application, renewal, or amendment:

(a) specifies a different geographic site than a previously submitted application;

(b) would cost 50% or more of the cost of construction of the original radioactive waste facility or the modification would result in an increase in capacity or throughput of a cumulative total of 50% of the total capacity or throughput which was approved in the facility license as of January 1, 1990, or the initial approval facility license if the initial license approval is subsequent to January 1, 1990; or

(c) requests approval to receive, transfer, store, decay in storage, treat, or dispose of[~~: (i) class B or class C low-level radioactive waste; or (ii)~~] radioactive waste having a higher radionuclide concentration limit than allowed, under an existing approved license held by the facility, for the specific type of waste to be received, transferred, stored, decayed in storage, treated, or disposed of.

(5) The requirements of Subsection (4)(c)[~~(ii)~~] do not apply to an application to renew or amend an existing radioactive waste license if:

(a) the radioactive waste facility requesting the renewal or amendment has received a license prior to January 1, 2004; and

(b) the application to renew or amend its license is limited to a request to approve the receipt, transfer, storage, decay in storage, treatment, or disposal of class A low-level radioactive waste.

(6) A radioactive waste facility which receives a new radioactive waste license after May 3, 2004, is subject to the requirements of Subsections (3)(b) through (d) for any license application, renewal, or amendment that requests approval to receive, transfer, store, decay in storage, treat, or dispose of radioactive waste not previously approved under an existing license held by the facility.

(7) If the board finds that approval of additional radioactive waste license applications, renewals, or amendments will result in inadequate oversight, monitoring, or licensure compliance and enforcement of existing and any additional radioactive waste facilities, the board shall suspend acceptance of further applications for radioactive waste licenses. The board shall report the suspension to the Legislative Management Committee.

(8) The board shall review each proposed radioactive waste license application to determine whether the application complies with the provisions of this chapter and the rules of the board.

(9) (a) If the radioactive waste license application is determined to be complete, the board shall issue a notice of completeness.

(b) If the board determines that the radioactive waste license application is incomplete, the board shall issue a notice of deficiency, listing the additional information to be provided by the applicant to complete the application.

Section 5. Section **19-3-106** is amended to read:

19-3-106. Fee for commercial radioactive waste disposal or treatment.

(1) (a) An owner or operator of a commercial radioactive waste treatment or disposal facility that receives radioactive waste shall [~~collect~~] pay a fee [~~from the generator of the waste~~] as provided in Subsection (1)(b).

[~~(b) (i) On and after July 1, 1994 through June 30, 2001, the fee is $2.50 per ton, or fraction of a ton, of radioactive waste, other than byproduct material, received at the facility for disposal or treatment.~~]

[~~(ii) On and after July 1, 2001 through June 30, 2003, the fee is equal to the sum of the following amounts:~~]

[~~(A) 10 cents per cubic foot, or fraction of a cubic foot, of radioactive waste, other than byproduct material, received at the facility for disposal or treatment; and~~]

[~~(B) $1 per curie, or fraction of a curie, of radioactive waste, other than byproduct material, received at the facility for disposal or treatment.~~]

[~~(iii)~~] (b) (i) On and after July 1, 2003 through June 30, 2005, the fee is equal to the sum of the following amounts:

(A) 15 cents per cubic foot, or fraction of a cubic foot, of radioactive waste, other than byproduct material, received at the facility for disposal or treatment; and

(B) $1 per curie, or fraction of a curie, of radioactive waste, other than byproduct material, received at the facility for disposal or treatment.

(ii) On and after July 1, 2005, the fee is equal to the sum of the following amounts:

(A) 15 cents per cubic foot of radioactive waste, other than 11e.(2) byproduct material, received at the facility for disposal or treatment; and

(B) $1 per curie of radioactive waste, other than 11e.(2) byproduct material, received at the facility for disposal or treatment.

(2) (a) The portion of the fee required under Subsection (1)(b)(ii)(A) shall be

calculated by multiplying the total cubic feet of waste, computed to the first decimal place, received during the calendar month by 15 cents.

(b) The portion of the fee required in Subsection (1)(b)(ii)(B) shall be calculated by multiplying the total curies of waste, computed to the first decimal place, received during the calendar month by $1.

[~~(2)~~] (3) (a) The owner or operator shall remit the fees imposed under this section to the department on or before the 15th day of the month following the month in which the fee accrued.

(b) The department shall deposit all fees received under this section into the Environmental Quality Restricted Account created in Section 19-1-108.

(c) The owner or operator shall submit to the department with the payment of the fee under this Subsection [~~(2)~~] (3) a completed form as prescribed by the department that provides information the department requires to verify the amount of waste received and the fee amount for which the owner or operator is liable.

[~~(3)~~] (4) The Legislature shall appropriate to the department funds to cover the cost of radioactive waste disposal supervision.

(5) Radioactive waste that is subject to a fee under this section is not subject to a fee under Section 19-6-119.

Section 6. Section **19-3-106.2** is amended to read:

19-3-106.2. Fee for perpetual care and maintenance of commercial radioactive waste disposal facilities -- Radioactive Waste Perpetual Care and Maintenance Fund created -- Contents -- Use of fund monies -- Evaluation.

(1) As used in this section, "perpetual care and maintenance" means perpetual care and maintenance of a commercial radioactive waste treatment or disposal facility, excluding sites within the facility used for the disposal of byproduct material, as required by applicable laws, rules, and license requirements beginning 100 years after the date of final closure of the facility.

(2) (a) On and after July 1, 2002, the owner or operator of an active commercial radioactive waste treatment or disposal facility shall pay an annual fee of $400,000 to provide for the perpetual care and maintenance of the facility.

(b) The owner or operator shall remit the fee to the department on or before July 1.

(3) The department shall deposit fees received under Subsection (2) into the Radioactive Waste Perpetual Care and Maintenance Fund created in Subsection (4).

(4) (a) There is created the Radioactive Waste Perpetual Care and Maintenance Fund to finance perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities, excluding sites within those facilities used for the disposal of byproduct material.

(b) The sources of revenue for the fund are:

(i) the fee imposed under this section; and

(ii) investment income derived from money in the fund.

(c) (i) The revenues for the fund shall be segregated into subaccounts for each commercial radioactive waste treatment or disposal facility covered by the fund.

(ii) Each subaccount shall contain:

(A) the fees paid by each owner or operator of a commercial radioactive waste treatment or disposal facility; and

(B) the associated investment income.

(5) The Legislature may appropriate money from the Radioactive Waste Perpetual Care and Maintenance Fund for:

(a) perpetual care and maintenance of a commercial radioactive waste treatment or disposal facility, excluding sites within the facility used for the disposal of byproduct material, beginning 100 years after the date of final closure of the facility; or

(b) maintenance or monitoring of, or implementing corrective action at, a commercial radioactive waste treatment or disposal facility, excluding sites within the facility used for the disposal of byproduct material, before the end of 100 years after the date of final closure of the facility, if:

(i) the owner or operator is unwilling or unable to carry out postclosure maintenance, monitoring, or corrective action; and

(ii) the financial surety arrangements made by the owner or operator, including any required under applicable law, are insufficient to cover the costs of postclosure maintenance, monitoring, or corrective action.

(6) The money appropriated from the Radioactive Waste Perpetual Care and Maintenance Fund for the purposes specified in Subsection (5)(a) or (5)(b) at a particular commercial radioactive waste treatment or disposal facility may be appropriated only from the

subaccount established under Subsection (4)(c) for the facility.

(7) The attorney general shall bring legal action against the owner or operator or take other steps to secure the recovery or reimbursement of the costs of maintenance, monitoring, or corrective action, including legal costs, incurred pursuant to Subsection (5)(b).

(8) [~~(a)~~] The board shall direct an evaluation of the adequacy of the [~~Radioactive Waste Perpetual Care and Maintenance Fund every five years, beginning in 2006. The evaluation shall determine whether the fund is adequate to provide for perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities~~] fund as required under Section 19-1-307.

[~~(b) The board shall submit a report on the evaluation to the Legislative Management Committee on or before October 1 of the year in which the report is due.~~]

(9) This section does not apply to a uranium mill licensed under 10 C.F.R. Part 40, Domestic Licensing of Source Material.

Section 7. Section **19-3-206** is enacted to read:

19-3-206. Direction to compact committee member.

The Utah compact committee member designated under Section 19-3-204 may not bring to the committee for approval and shall vote to disapprove any arrangement under Subsection 19-3-204(4) for a facility to receive class B or class C low-level radioactive waste for commercial storage, decay in storage, treatment, incineration, or disposal within the state.

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

19-6-113. Violations -- Penalties -- Reimbursement for expenses.

(1) As used in this section, "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.

(2) Any person who violates any order, plan, rule, or other requirement issued or adopted under this part is subject in a civil proceeding to a penalty of not more than [~~$10,000~~] $13,000 per day for each day of violation.

(3) On or after July 1, 1990, no person shall knowingly:

(a) transport or cause to be transported any hazardous waste identified or listed under this part to a facility that does not have a hazardous waste operation plan or permit under this part or RCRA;

(b) treat, store, or dispose of any hazardous waste identified or listed under this part:

(i) without having obtained a hazardous waste operation plan or permit as required by this part or RCRA;

(ii) in knowing violation of any material condition or requirement of a hazardous waste operation plan or permit; or

(iii) in knowing violation of any material condition or requirement of any rules or regulations under this part or RCRA;

(c) omit material information or make any false material statement or representation in any application, label, manifest, record, report, permit, operation plan, or other document filed, maintained, or used for purposes of compliance with this part or RCRA or any rules or regulations made under this part or RCRA; and

(d) transport or cause to be transported without a manifest, any hazardous waste identified or listed under this part and required by rules or regulations made under this part or RCRA to be accompanied by a manifest.

(4) (a) (i) Any person who knowingly violates any provision of Subsection (3)(a) or (b) is guilty of a felony.

(ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of a felony under Subsection (3)(a) or (b) is subject to a fine of not more than $50,000 for each day of violation, or imprisonment for a term not to exceed five years, or both.

(iii) If a person is convicted of a second or subsequent violation under Subsection (3)(a) or (b), the maximum punishment is double both the fine and the term of imprisonment authorized in Subsection (4)(a)(ii).

(b) (i) Any person who knowingly violates any of the provisions of Subsection (3)(c) or (d) is guilty of a felony.

(ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of a felony for a violation of Subsection (3)(c) or (d) is subject to a fine of not more than $50,000 for each day of violation, or imprisonment for a term not to exceed two years, or both.

(iii) If a person is convicted of a second or subsequent violation under Subsection (3)(c) or (d), the maximum punishment is double both the fine and the imprisonment authorized in Subsection (4)(b)(ii).

(c) (i) Any person who knowingly transports, treats, stores, or disposes of any hazardous waste identified or listed under this part in violation of Subsection (3)(a), (b), (c), or

(d), who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury is guilty of a felony.

(ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of a felony described in Subsection (4)(c)(i) is subject to a fine of not more than $250,000 or imprisonment for a term not to exceed 15 years, or both.

(iii) A corporation, association, partnership, or governmental instrumentality, upon conviction of violating Subsection (4)(c)(i), is subject to a fine of not more than $1,000,000.

(5) (a) Except as provided in Subsections (5)(b) and (c) and Section 19-6-722, all penalties assessed and collected under authority of this section shall be deposited in the General Fund.

(b) The department may reimburse itself and local governments from monies collected from civil penalties for qualifying extraordinary expenses incurred in qualifying environmental enforcement activities.

(c) Notwithstanding the provisions of Section 78-3-14.5, the department may reimburse itself and local governments from monies collected from criminal fines for qualifying extraordinary expenses incurred in prosecutions for violations of this part.

(d) The department shall regulate reimbursements by making rules that define:

(i) qualifying environmental enforcement activities; and

(ii) qualifying extraordinary expenses.

(6) Prosecution for criminal violations of this part may be commenced by the attorney general, the county attorney, or the district attorney as appropriate under Section 17-18-1 or 17-18-1.7 in any county where venue is proper.

Section 9. Section **19-6-117.5** is enacted to read:

19-6-117.5. Applicability of fees for treatment or disposal of waste.

Waste that is subject to more than one fee under Section 19-6-118, 19-6-118.5, or 19-6-119 is subject only to the highest applicable fee.

Section 10. Section **19-6-118** is amended to read:

19-6-118. Hazardous waste and treated hazardous waste disposal fees.

(1) (a) An owner or operator of any commercial hazardous waste or mixed waste disposal or treatment facility that primarily receives hazardous or mixed wastes generated by off-site sources not owned, controlled, or operated by the facility or site owner or operator, and

that is subject to the requirements of Section 19-6-108, shall [~~collect~~] pay the fee under Subsection (2) [~~from the generator~~].

(b) The owner or operator of each cement kiln, aggregate kiln, boiler, blender, or industrial furnace that receives for burning hazardous waste generated by off-site sources not owned, controlled, or operated by the owner or operator [~~is subject to~~] shall pay the fee under Subsection (2).

(2) (a) [~~The~~] Through June 30, 2005, the owner or operator of each facility under Subsection (1) shall collect from the generators of hazardous waste and mixed waste a fee of $28 per ton or fraction of a ton on all hazardous waste and mixed waste received at the facility or site for disposal, treatment, or both.

(b) On and after July 1, 2005, the owner or operator of each facility under Subsection (1) shall pay a fee of $28 per ton on all hazardous waste and mixed waste received at the facility for disposal, treatment, or both.

(c) The fee required under Subsection (2)(b) shall be calculated by multiplying the total tonnage of waste, computed to the first decimal place, received during the calendar month by $28.

[~~(b)~~] (d) When hazardous waste or mixed waste is received at a facility for treatment or disposal and the fee required under this Subsection (2) is paid for that treatment or disposal, any subsequent treatment or disposal of the waste is not subject to additional fees under this Subsection (2).

[~~(c)~~] (e) (i) On and after July 1, 1997 through June 30, 2003, and on and after April 1, 2004 through June 30, 2005, hazardous waste received at a land disposal facility is subject to a fee of $14 per ton or fraction of a ton, rather than the $28 fee under Subsection (2)(a), if the waste is treated so that it:

(A) meets the state treatment standards required for land disposal at the facility; or

(B) is no longer a hazardous waste at the time of disposal at that facility.

(ii) On and after July 1, 2003, through March 31, 2004, hazardous waste received at a land disposal facility for treatment and disposal is subject to the $28 fee imposed under Subsection (2)(a).

(f) (i) On and after July 1, 2005, hazardous waste received at a land disposal facility is subject to a fee of $14 per ton if the waste is treated so that it:

(A) meets the state treatment standards required for land disposal at the facility; or

(B) is no longer a hazardous waste at the time of disposal at that facility.

(ii) The fee required under Subsection (2)(f)(i) shall be calculated by multiplying the tonnage of waste, computed to the first decimal place, received during the calendar month by $14.

[~~(d)~~] (g) (i) The department shall allocate at least 10% of the fees received from a facility under this section to the county in which the facility is located.

(ii) The county may use fees allocated under [~~Subsection~~] Subsections (2)[~~(c)~~] (e) and (f) to carry out its hazardous waste monitoring and response programs.

[~~(c)~~] (h) The department shall deposit the state portion of the fees received under this section into the restricted account created in Section 19-1-108.

(3) (a) The owner or operator shall pay the fees imposed under [~~Subsection (1)~~] this section to the department on or before the 15th day of the month following the month in which the fee accrued.

(b) With the monthly fee, the owner or operator shall submit a completed form, as prescribed by the department, specifying information required by the department to verify the amount of waste received and the fee amount for which the owner or operator is liable.

(4) (a) The department shall oversee and monitor hazardous waste treatment, disposal, and incineration facilities, including federal government facilities located within the state.

(b) The department may determine facility oversight priorities.

(5) (a) The department, in preparing its budget for the governor and the Legislature, shall separately indicate the amount necessary to administer the hazardous waste program established by this part.

(b) The Legislature shall appropriate the costs of administering this program.

(6) The Office of Legislative Fiscal Analyst shall monitor the fees collected under this part.

(7) Mixed waste subject to a fee under this section is not subject to a fee under Section 19-3-106.

Section 11. Section **19-6-118.5** is amended to read:

19-6-118.5. PCB disposal fee.

(1) On and after July 1, 1993 through June 30, 2005, a fee of $4.75 per ton or fraction

of a ton is imposed on all wastes containing polychlorinated biphenyls (PCBs) that are regulated under 15 U.S.C.A. 2605, and that are received at a facility for disposal or treatment.

[~~(2) This section regarding waste containing PCBs and the fee imposed in this section is in lieu of any fee imposed on nonhazardous solid waste under Section 19-6-119, as described in Subsection (1).~~]

(2) On and after July 1, 2005, a fee of $4.75 per ton is imposed on all wastes containing polychlorinated biphenyls (PCBs) that are:

(a) regulated under 15 U.S.C.A. 2605; and

(b) received at a facility for disposal or treatment.

(3) (a) The owner or operator of a facility receiving PCBs for disposal or treatment shall pay the fees imposed under Subsection (1) or (2) to the department on or before the 15th day of the calendar month following the month in which the fee accrued.

(b) The owner or operator shall submit a completed form, as prescribed by the department, with the monthly fee under Subsection (3)(a).

(c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department shall make rules specifying the information required to verify the amount of waste received and the fee amount for which the owner or operator is liable on the form required under Subsection (3)(b).

[~~(3)~~] (4) The fees collected under this section shall be managed by the same procedure as under Subsection 19-6-119(3) regarding nonhazardous solid waste.

[~~(4)~~] (5) The Legislature shall appropriate to the department the cost of administering the program.

(6) Waste that is subject to a fee under this section is not subject to a fee under Section 19-3-106 even if the waste also contains radioactive materials.

Section 12. Section **19-6-119** is amended to read:

19-6-119. Nonhazardous solid waste disposal fee.

(1) (a) An owner or operator of any commercial nonhazardous solid waste disposal facility or incinerator, or any commercial facility, except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, that accepts for treatment or disposal, and with the intent to make a profit, fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil

fuels; waste from the extraction, beneficiation, and processing of ores and minerals, or cement kiln dust wastes for treatment or disposal, that is required to have a plan approval under Section 19-6-108, and that primarily receives waste generated by off-site sources not owned, controlled, or operated by the facility or site owner or operator, shall pay the following fees per ton or fraction of a ton, on all nonhazardous solid waste that is received at the facility or site for disposal:

[~~(i) on and after July 1, 1992, through June 30, 1993, a fee of $1.50 per ton or fraction of a ton on all nonhazardous solid waste received at the facility or site for disposal or treatment;~~]

[~~(ii) on and after July 1, 1993, through June 30, 1994, a fee of $2.00 per ton or fraction of a ton on all nonhazardous solid waste received at the facility or site for disposal or treatment; and~~]

[~~(iii)~~] (i) on and after July 1, 1994 through June 30, 2005, a fee of $2.50 per ton or fraction of a ton on all nonhazardous solid waste received at the facility or site for disposal or treatment[~~.~~]; and

(ii) on and after July 1, 2005, a fee of $2.50 per ton on all nonhazardous solid waste received at the facility or site for disposal or treatment.

(b) When nonhazardous solid waste, fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; waste from the extraction, beneficiation, and processing of ores and minerals, or cement kiln dust wastes, is received at a facility for treatment or disposal and the fee required under Subsection (1)(a) is paid for that treatment or disposal, any subsequent treatment or disposal of the waste is not subject to additional fees under Subsection (1)(a).

(c) (i) On and after January 1, 2004 through June 30, 2005, an owner or operator of any commercial nonhazardous solid waste disposal facility that receives only construction and demolition waste shall pay a fee of 50 cents per ton, or fraction of a ton, on any construction and demolition waste received at the facility or site for disposal.

(ii) On and after July 1, 2005, an owner or operator of any commercial nonhazardous solid waste disposal facility that receives only construction and demolition waste shall pay a fee of 50 cents per ton on any construction and demolition waste received at the facility or site for disposal.

[~~(ii) An~~] (iii) Through June 30, 2005, an owner or operator of any commercial nonhazardous solid waste disposal facility that receives municipal waste, including municipal incinerator ash shall pay a fee of 50 cents per ton, or fraction of a ton, on all municipal waste, including municipal incinerator ash, that is received at the facility or site for disposal.

(iv) On and after July 1, 2005, an owner or operator of any commercial nonhazardous solid waste disposal facility that receives municipal waste, including municipal incinerator ash, shall pay a fee of 50 cents per ton on all municipal waste, including municipal incinerator ash, that is received at the facility or site for disposal.

[~~(iii)~~] (v) On and after January 1, 2004 through June 30, 2005, the owner or operator of any facility under Subsection 19-6-102(3)[~~(a)~~](b)(iii) shall pay a fee of 50 cents per ton, or fraction of a ton, on all municipal waste received at the facility or site for disposal.

(vi) On and after July 1, 2005, the owner or operator of any facility under Subsection 19-6-102(3)(b)(iii) shall pay a fee of 50 cents per ton on all municipal waste received at the facility or site for disposal.

(d) Facilities subject to the fee under Subsections (1)(c)(i)[~~, (ii), and (iii)~~] through (iv) are not subject to the fee under Subsection (1)(a).

(e) On and after July 1, 2005, the fees due under this Subsection (1) shall be calculated by multiplying the total tonnage of waste, computed to the first decimal place, received during the calendar month by the required fee rate.

(2) (a) The owner or operator of a commercial nonhazardous solid waste disposal facility or incinerator shall pay to the department all fees imposed under this section on or before the 15th day of the month following the month in which the fee accrued.

(b) With the monthly fee, the owner or operator shall submit a completed form, as prescribed by the department, specifying information required by the department to verify the amount of waste received and the fee amount for which the owner or operator is liable.

(c) The department shall deposit all fees received under this section into the restricted account created in Section 19-1-108.

(3) (a) The department, in preparing its budget for the governor and the Legislature, shall separately indicate the amount necessary to administer the solid waste program established by this part.

(b) The Legislature shall appropriate the costs of administering this program.

(c) The department may contract or agree with a county to assist in performing nonhazardous solid waste management activities, including agreements for:

(i) the development of a solid waste management plan required under Section 17-15-23; and

(ii) pass-through of available funding.

(4) This section may not be construed to exempt any facility from applicable regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through 2114.

(5) (a) Each waste facility that is owned by a political subdivision and operated solely for the purpose of receiving waste generated within that political subdivision shall pay an annual facility fee. The fee shall be paid to the department on or before January 15 of each year. The fee is:

(i) $800 if the facility receives 5,000 or more but fewer than 10,000 tons of municipal waste each year;

(ii) $1,450 if the facility receives10,000 or more but fewer than 20,000 tons of municipal waste each year;

(iii) $3,850 if the facility receives 20,000 or more but fewer than 50,000 tons of municipal waste each year;

(iv) $12,250 if the facility receives 50,000 or more but fewer than 100,000 tons of municipal waste each year;

(v) $14,700 if the facility receives 100,000 or more but fewer than 200,000 tons of municipal waste each year;

(vi) $33,000 if the facility receives 200,000 or more but fewer than 500,000 tons of municipal waste each year; and

(vii) $66,000 if the facility receives 500,000 or more tons of municipal waste each year.

(b) The department shall deposit all fees received under this Subsection (5) into the Environmental Quality Restricted Account created in Section 19-1-108.

(c) Municipal waste subject to the facility fee under this Subsection (5) is not subject to the fee under Subsection [~~9-6-119~~](1)(c).

Section 13. Section **59-24-103.5** is amended to read:

59-24-103.5. Radioactive waste disposal, processing, and recycling facility tax.

(1) On and after July 1, 2003, there is imposed a tax on a radioactive waste facility, or a processing or recycling facility, as provided in this chapter.

(2) The tax is equal to the sum of the following amounts:

(a) 12% of the gross receipts of a radioactive waste facility derived from the disposal of containerized class A waste;

(b) 10% of the gross receipts of a radioactive waste facility derived from the disposal of processed class A waste;

(c) 5% of the gross receipts of a radioactive waste facility derived from the disposal of uncontainerized, unprocessed class A waste from a governmental entity or an agent of a governmental entity:

(i) pursuant to a contract entered into on or after April 30, 2001;

(ii) pursuant to a contract substantially modified on or after April 30, 2001;

(iii) pursuant to a contract renewed or extended on or after April 30, 2001; or

(iv) not pursuant to a contract;

(d) 5% of the gross receipts of a radioactive waste facility derived from the disposal of uncontainerized, unprocessed class A waste received by the facility from an entity other than a governmental entity or an agent of a governmental entity;

(e) [~~(i)~~] 5% of the gross receipts of a radioactive waste facility derived from the disposal of mixed waste, other than the mixed waste described in Subsection (2)[~~(e)(ii)~~](f), received from:

(i) an entity other than a governmental entity or an agent of a governmental entity; or

(ii) a governmental entity or an agent of a governmental entity:

(A) pursuant to a contract entered into on or after April 30, 2005;

(B) pursuant to a contract substantially modified on or after April 30, 2005;

(C) pursuant to a contract renewed or extended on or after April 30, 2005; or

(D) not pursuant to a contract;

[~~(ii)~~] (f) 10% of the gross receipts of a radioactive waste facility derived from the disposal of mixed waste:

(i) (A) received from an entity other than a governmental entity or an agent of a governmental entity; [~~and~~] or

(B) received from a governmental entity or an agent of a governmental entity:

(I) pursuant to a contract entered into on or after April 30, 2005;

(II) pursuant to a contract substantially modified on or after April 30, 2005;

(III) pursuant to a contract renewed or extended on or after April 30, 2005; or

(IV) not pursuant to a contract; and

[~~(B)~~] (ii) that contains a higher radionuclide concentration level than the mixed waste received by any radioactive waste facility in the state prior to April 1, 2004;

[~~(f)~~] (g) 10 cents per cubic foot of alternate feed material received at a radioactive waste facility for disposal or reprocessing; and

[~~(g)~~] (h) 10 cents per cubic foot of byproduct material received at a radioactive waste facility for disposal.

(3) For purposes of the tax imposed by this section, a fraction of a cubic foot is considered to be a full cubic foot.

(4) Except as provided in [~~Subsection~~] Subsections (2)(e) and (2)(f), the tax imposed by this section does not apply to radioactive waste containing material classified as hazardous waste under 40 C.F.R. Part 261.

Section 14. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Section 15. **Revisor instructions.**

It is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the database for publication, delete "the effective date of this section" where it appears in this bill and replace it with the actual date on which the bill takes effect.

Fiscal Note

Bill Number SB0024s01

Waste Amendments

04-Feb-05
9:08 AM

State Impact

Based on average tonage accepted at Utah hazardous and low level nuclear waste facilities in previous years, it is estimated that as provisions of this bill are enacted ongoing revenue to the Uniform School Fund will increase by $139,000 in FY 2006. It is also estimated that revenue collect in the General Fund Restricted - Environmental Quality Account will decrease by $104,500 annually. It is unknown at this time how much revenue will be collected through provisions of the bill that increases statute violations by $3,000 per day.

	FY 2006 Approp.	FY 2007 Approp.	FY 2006 Revenue	FY 2007 Revenue
General Fund Restricted	$0	$0	($104,500)	($104,500)
Uniform School Fund	$0	$0	$139,000	$139,000
TOTAL	**$0**	**$0**	**$34,500**	**$34,500**

Individual and Business Impact

Hazardous waste and low level nuclear disposal facilities in the state will pay for increased expenses and realize any savings with enactment of this bill.

Office of the Legislative Fiscal Analyst