

Senator Dan R. Eastman proposes the following substitute bill:

ANTI-FLOW CONTROL AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dan R. Eastman

House Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill amends the Solid Waste Management Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits a public entity from requiring solid waste to be stored, recovered, or disposed of at a specific waste facility except in certain circumstances;
- ▶ gives a private right of action; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-6-502, as last amended by Laws of Utah 2007, Chapter 329

19-6-503, as last amended by Laws of Utah 2005, Chapter 105

ENACTS:



26 19-6-502.5, Utah Code Annotated 1953
27 19-6-507, Utah Code Annotated 1953



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

30 Section 1. Section 19-6-502 is amended to read:

31 **19-6-502. Definitions.**

32 As used in this part:

33 (1) "Governing body" means the governing board, commission, or council of a public
34 entity.

35 (2) "Jurisdiction" means the area within the incorporated limits of:

36 (a) a municipality[;];

37 (b) a special service district[;];

38 (c) a municipal-type service district[;];

39 (d) a service area[;]; or [all of]

40 (e) the territorial area of a county not lying within a [city or town] municipality.

41 (3) "Long-term agreement" means an agreement or contract having a term of more than
42 five years [and] but less than 50 years.

43 (4) "Municipal residential waste" means solid waste that is:

44 (a) discarded or rejected at a residence within the public entity's jurisdiction; and

45 (b) ~~H~~→ [is] ←~~H~~ collected at or near the residence by:

46 (i) a public entity; or

47 (ii) a person with whom the public entity has as an agreement to provide solid waste
48 management.

49 ~~H~~→ [(5) "Private solid waste management facility" means a facility that is:

50 ~~(a) owned or operated by a person who is not a public entity; and~~

51 ~~(b) a solid waste disposal, reduction, transfer, or conversion facility.] ←~~H~~~~

52 [(4)] ~~H~~→ [(6)] (5) ←~~H~~ "Public entity" means:

53 (a) a county[;];

54 (b) a municipality[;];

55 (c) a special service district under Title 17A, Chapter 2, Part 13, Utah Special Service
56 District Act[; or];

57 (d) a service area under Title 17B, Chapter 2a, Part 9, Service Area Act ~~[and]~~; or

58 (e) a municipal-type service district created under Title 17, Chapter 34,

59 Municipal-Type Services to Unincorporated Areas.

60 ~~H~~→ ~~(7)~~ (6) ←~~H~~ "Requirement" means an ordinance, policy, rule, mandate, or other

60a directive that

61 imposes a legal duty on a person.

62 ~~H~~→ ~~(8)~~ (7) ←~~H~~ "Residence" means an improvement to real property used or occupied as a

62a primary

63 or secondary detached single-family dwelling.

64 ~~(5)~~ ~~H~~→ ~~(9)~~ (8) ←~~H~~ "Resource recovery" means the separation, extraction, recycling, or
64a recovery

65 of usable ~~[materials]~~ material, energy, fuel, or heat from solid waste and the disposition of it.

66 ~~(6)~~ ~~H~~→ ~~(10)~~ (9) ←~~H~~ "Short-term agreement" means ~~[any]~~ a contract or agreement having
66a a term

67 of five years or less.

68 ~~(7)~~ ~~H~~→ ~~(11)~~ (10) ←~~H~~ (a) "Solid waste" means ~~[all]~~ a putrescible ~~[and]~~ or nonputrescible
68a ~~[materials~~

69 ~~or substances]~~ material or substance discarded or rejected as being spent, useless, worthless, or

70 in excess ~~[to]~~ of the owner's needs at the time of discard or rejection, including:

71 (i) garbage[;];

72 (ii) refuse[;];

73 (iii) industrial and commercial waste~~[-sludges from]~~;

74 (iv) sludge from an air or water control ~~[facilities;]~~ facility;

75 (v) rubbish~~[-ashes;]~~;

76 (vi) ash;

77 (vii) contained gaseous material[;];

78 (viii) incinerator residue[;];

79 (ix) demolition[;] and construction debris[;];

80 (x) a discarded ~~[automobiles]~~ automobile; and

81 (xi) offal~~[-but not including sewage and other]~~.

82 (b) "Solid waste" does not include sewage or another highly diluted water carried

83 ~~[materials or substances]~~ material or substance and those in gaseous form.

84 ~~(8)~~ ~~H~~→ ~~(12)~~ (11) ←~~H~~ "Solid waste management" means the purposeful and systematic
84a collection,

85 transportation, storage, processing, recovery, ~~[and]~~ or disposal of solid waste.

86 ~~(9)~~ ~~H~~→ ~~(13)~~ (12) ←~~H~~ "Solid waste management facility" means ~~[any]~~ a facility
86a employed for solid

87 waste management, including:

- 88 (a) a transfer [~~stations,;~~] station;
- 89 (b) a transport [~~systems,;~~] system;
- 90 (c) a baling [~~facilities, landfills,;~~] facility;
- 91 (d) a landfill; and
- 92 (e) a processing [~~systems~~] system, including:
- 93 (i) a resource recovery [~~facilities or other facilities~~] facility;
- 94 (ii) a facility for reducing solid waste volume[~~, plants and facilities~~];
- 95 (iii) a plant or facility for compacting, composting, or pyrolyzation of solid [~~wastes,~~
- 96 ~~incinerators and other~~] waste;
- 97 (iv) an incinerator;
- 98 (v) a solid waste disposal, reduction, or conversion [~~facilities, and facilities~~] facility;
- 99 and

100 (vi) a facility for resource recovery of energy consisting of:

101 ~~[(a) facilities]~~ (A) a facility for the production, transmission, distribution, and sale of

102 heat and steam; [~~and~~]

103 ~~[(b) facilities]~~ (B) a facility for the generation and sale of electric energy to a public

104 utility [~~or~~], municipality, or other public entity [~~which~~] that owns and operates an electric

105 power system on March 15, 1982[~~;~~]; and

106 (C) a facility for the generation, sale, and transmission of electric energy on an

107 emergency basis only to a military installation of the United States[~~;~~ ~~provided, that solid waste~~

108 ~~management facilities are not a public utility as defined in Section 54-2-1~~].

109 Section 2. Section **19-6-502.5** is enacted to read:

110 **19-6-502.5. Solid waste management facility not a public utility.**

111 A solid waste management facility is not a public utility as defined in Section 54-2-1.

112 Section 3. Section **19-6-503** is amended to read:

113 **19-6-503. Powers and duties of public entities.**

114 (1) Subject to the powers and rules of the department[~~, the~~] and except as provided by

115 Section 19-6-507, a governing body of [~~each~~] a public entity may:

116 ~~[(1)]~~ (a) supervise and regulate the collection, transportation, and disposition of [~~all~~]

117 solid waste generated within its jurisdiction;

118 ~~[(2)]~~ (b) provide a solid waste management [~~facilities~~] facility to adequately handle

119 ~~[adequately]~~ solid waste generated or existing within or without its jurisdiction;

120 ~~[(3)]~~ (c) assume, by agreement, responsibility for the collection and disposition of solid

121 waste whether generated within or without its ~~[jurisdictional boundaries]~~ jurisdiction;

122 ~~[(4)]~~ (d) enter into a short or long-term interlocal ~~[agreements]~~ agreement to provide

123 for or operate a solid waste management facility with ~~[other]~~;

124 (i) another public ~~[entities, with]~~ entity;

125 (ii) a public ~~[agencies]~~ agency, as defined in ~~[Title 11, Chapter 13, Interlocal~~

126 Cooperation Act, with] Section 11-13-103;

127 (iii) a private ~~[persons or entities,]~~ person; or ~~[any]~~

128 (iv) a combination of ~~[them, to provide for or operate solid waste management~~

129 facilities] persons listed in Subsections (1)(d)(i) through (iii);

130 ~~[(5)]~~ (e) levy and collect ~~[taxes, fees, and charges and]~~ a tax, fee, or charge or require

131 ~~[licenses]~~ a license as may be appropriate to discharge its responsibility for the acquisition,

132 construction, operation, maintenance, and improvement of a solid waste management ~~[facilities~~

133 or any portion of them] facility, including licensing a private ~~[collectors]~~ collector operating

134 within its jurisdiction;

135 ~~[(6)]~~ (f) require that ~~[all]~~ solid waste generated within its jurisdiction be delivered to a

136 solid waste management facility;

137 ~~[(7)]~~ (g) control the right to collect, transport, and dispose of ~~[all]~~ solid waste generated

138 within its jurisdiction;

139 ~~[(8)]~~ (h) agree that, according to Section 19-6-505, the ~~[sole and]~~ exclusive right to

140 collect, transport, and dispose of solid waste within its jurisdiction ~~[shall]~~ may be assumed by

141 ~~[any other]~~;

142 (i) another public entity ~~[or entities, any]~~;

143 (ii) a private ~~[persons or entities,]~~ person; or ~~[any]~~

144 (iii) a combination of ~~[them, pursuant to Section 19-6-505]~~ persons listed in

145 Subsections (1)(h)(i) through (ii);

146 ~~[(9)]~~ (i) accept and disburse funds derived from a federal or state ~~[grants or from~~

147 private sources or from] grant, a private source, or moneys that may be appropriated by the

148 Legislature for the acquisition, construction, ownership, operation, maintenance, and

149 improvement of a solid waste management ~~[facilities]~~ facility;

150 ~~[(10)]~~ (j) contract for the lease or purchase of land, ~~[facilities, and vehicles]~~ a facility,
151 or a vehicle for the operation of a solid waste management ~~[facilities]~~ facility;

152 ~~[(11)]~~ (k) establish one or more policies for the operation of a solid waste management
153 ~~[facilities]~~ facility, including:

154 (i) hours of operation~~[-];~~

155 (ii) character~~[-]~~ and kind of wastes accepted at a disposal ~~[sites,]~~ site; and ~~[other rules]~~

156 (iii) another policy necessary for the safety of the operating personnel;

157 ~~[(12)]~~ (l) sell or contract for the sale, ~~[pursuant]~~ according to a short or long-term
158 ~~[agreements]~~ agreement, of ~~[any]~~ usable ~~[materials]~~ material, energy, fuel, or heat separated,
159 extracted, recycled, or recovered from solid waste in a solid waste management facility, on
160 terms in its best ~~[interests, and to]~~ interest;

161 (m) pledge, assign, or otherwise convey as security for the payment of ~~[its]~~ bonds
162 ~~[any]~~, revenues and receipts derived from the sale or contract or from the operation and
163 ownership of a solid waste management facility or an interest in it;

164 ~~[(13)]~~ (n) issue ~~[bonds pursuant]~~ a bond according to Title 11, Chapter 14, Local
165 Government Bonding Act; ~~[and]~~

166 ~~[(14)]~~ (o) issue industrial development revenue bonds ~~[pursuant]~~ according to Title 11,
167 Chapter 17, Utah Industrial Facilities and Development Act, to pay the costs of financing
168 ~~[projects]~~ a project consisting of a solid waste management ~~[facilities, as defined in Section~~
169 ~~19-6-502,]~~ facility on behalf of ~~[entities]~~ an entity that ~~[constitute]~~ constitutes the users of a
170 solid waste management facility project within the meaning of Section 11-17-2~~[-, and];~~

171 (p) agree to construct and operate or to provide for the construction and operation of a
172 solid waste management facility project, which project ~~[shall manage]~~ manages the solid waste
173 of ~~[one or more public or private entities, all pursuant]~~ a public entity or private person,
174 according to one or more contracts and other arrangements provided for in ~~[the proceedings~~
175 ~~pursuant]~~ a proceeding according to which ~~[the bonds are]~~ a bond is issued~~[- In addition to the~~
176 ~~authority to issue bonds contained in Title 11, Chapter 17, Utah Industrial Facilities and~~
177 ~~Development Act, bonds may be issued pursuant to the authority contained in this subsection];~~
178 and

179 (q) issue a bond to pay the cost of establishing reserves to pay principal and interest on
180 the bonds as provided for in the proceedings ~~[pursuant]~~ according to which the bonds are

181 issued.

182 (2) The power to issue a bond under this section is in addition to the power to issue a
 183 bond under Title 11, Chapter 17, Utah Industrial Facilities and Development Act.

184 Section 4. Section **19-6-507** is enacted to read:

185 **19-6-507. Flow control for solid waste prohibited.**

186 (1) Except as provided in Subsection (2), a public entity may not require solid waste
 187 discarded or rejected within the public entity's jurisdiction to be stored, recovered, or disposed
 188 of at a solid waste management facility owned or operated by a public entity.

189 (2) A public entity may require solid waste discarded or rejected within the public
 190 entity's jurisdiction to be stored, recovered, or disposed of at a solid waste management facility
 191 owned or operated by a public entity if:

192 (a) the solid waste is municipal residential waste;

193 (b) ~~§~~→ [fewer than two] ~~¶~~→ [one business entity operates all the ~~←~~§ private solid waste
 193a management facilities] ~~←~~¶ ~~§~~→ [that are owned by
 194 different entities exist] ~~←~~§ ~~¶~~→ no more than one landfill that may take the solid waste
 194a exists ~~←~~¶ within:

195 (i) the public entity's jurisdiction; and

196 (ii) ~~¶~~→ [50] 125 ~~←~~¶ miles outside the public entity's jurisdiction ~~¶~~→ , as measured from
 196a the landfill's primary entrance by following the shortest route of ordinary travel by motor
 196b vehicle ~~←~~¶ ; or

197 (c) the solid waste management facility owned or operated by the public entity receives
 198 less than 75 tons of solid waste per day.

199 (3) A requirement described in Subsection (1) that is:

200 (a) in effect on January 1, 2008 is void as of January 1, 2013; and

201 (b) adopted on or after January 2, 2008 and in effect on May 4, 2008 is void as of May
 202 5, 2008.

203 (4) A person ~~¶~~→ [that is] ~~←~~¶ engaged in solid waste management ~~¶~~→ [and] that ~~←~~¶ is
 203a aggrieved by a violation
 204 of this section may seek judicial review of the violation in a court of competent jurisdiction.

S.B. 46 3rd Sub. (Ivory) - Anti-flow Control Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

There may be impact on individuals, businesses, and local governments based on competition or lack thereof to landfills that accept the solid wastes effected by provision of this bill. Any judicial review that might happen through provision of the bill are anticipated to be civil actions.
