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ANTI-FLOW CONTROL AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dan R. Eastman

House Sponsor: _____

LONG TITLE

Committee Note:

The Government Competition and Privatization Subcommittee recommended this bill.

General Description:

This bill amends the Solid Waste Management Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits a public entity from requiring a private waste management service for commercial solid waste to use a specific waste facility unless the public entity:
 - holds a public hearing; and
 - finds that private waste management service is inadequate or endangering the public health; 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



28 19-6-503, as last amended by Laws of Utah 2005, Chapter 105

29 ENACTS:

30 19-6-502.5, Utah Code Annotated 1953

31 19-6-507, Utah Code Annotated 1953



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

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

35 **19-6-502. Definitions.**

36 As used in this part:

37 (1) "Commercial solid waste" means solid waste that is not residential solid waste.

38 ~~(1)~~ (2) "Governing body" means the governing board, commission, or council of a
39 public entity.

40 ~~(2)~~ (3) "Jurisdiction" means the area within the incorporated limits of:

41 (a) a municipality[;];

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

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

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

45 (e) the territorial area of a county not lying within a ~~city or town~~ municipality.

46 ~~(3)~~ (4) "Long-term agreement" means an agreement or contract having a term of more
47 than five years ~~and~~ but less than 50 years.

48 ~~(4)~~ (5) "Public entity" means:

49 (a) a county[;];

50 (b) a municipality[;];

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

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

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

55 Municipal-Type Services to Unincorporated Areas.

56 (6) "Requirement" means an ordinance, policy, rule, mandate, or other directive that
57 imposes a legal duty on a person.

58 (7) "Residence" means an improvement to real property used or occupied as:

59 (a) a primary or secondary detached single-family dwelling; or

60 (b) a multifamily dwelling of up to four units.

61 (8) "Residential solid waste" means solid waste that is discarded or rejected at a
62 residence.

63 ~~[(5)]~~ (9) "Resource recovery" means the separation, extraction, recycling, or recovery
64 of usable [materials] material, energy, fuel, or heat from solid waste and the disposition of it.

65 ~~[(6)]~~ (10) "Short-term agreement" means [any] a contract or agreement having a term
66 of five years or less.

67 ~~[(7)]~~ (11) (a) "Solid waste" means [all] a putrescible [and] or nonputrescible [materials
68 or substances] material or substance discarded or rejected as being spent, useless, worthless, or
69 in excess [to] of the owner's needs at the time of discard or rejection, including:

70 (i) garbage[;];

71 (ii) refuse[;];

72 (iii) industrial and commercial waste[; sludges from];

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

74 (v) rubbish[; ashes;];

75 (vi) ash;

76 (vii) contained gaseous material[;];

77 (viii) incinerator residue[;];

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

79 (x) a discarded [automobiles] automobile; and

80 (xi) offal[; but not including sewage and other].

81 (b) "Solid waste" does not include sewage or another highly diluted water carried
82 [materials or substances] material or substance and those in gaseous form.

83 ~~[(8)]~~ (12) "Solid waste management" means the purposeful and systematic collection,
84 transportation, storage, processing, recovery, [and] or disposal of solid waste.

85 ~~[(9)]~~ (13) "Solid waste management facility" means [any] a facility employed for solid
86 waste management, including:

87 (a) a transfer [stations;] station;

88 (b) a transport [systems;] system;

89 (c) a baling [facilities, landfills,] facility;

- 90 (d) a landfill; and
- 91 (e) a processing [systems] system, including:
- 92 (i) a resource recovery [facilities or other facilities] facility;
- 93 (ii) a facility for reducing solid waste volume[, plants and facilities];
- 94 (iii) a plant or facility for compacting, composting, or pyrolysis of solid [wastes,
- 95 incinerators and other] waste;
- 96 (iv) an incinerator;
- 97 (v) a solid waste disposal, reduction, or conversion [facilities, and facilities] facility;

98 and

- 99 (vi) a facility for resource recovery of energy consisting of:
- 100 [(a) facilities] (A) a facility for the production, transmission, distribution, and sale of
- 101 heat and steam; [and]
- 102 [(b) facilities] (B) a facility for the generation and sale of electric energy to a public
- 103 utility [or], municipality, or other public entity [which] that owns and operates an electric
- 104 power system on March 15, 1982[;]; and

105 (C) a facility for the generation, sale, and transmission of electric energy on an
 106 emergency basis only to a military installation of the United States[; provided, that solid waste
 107 management facilities are not a public utility as defined in Section 54-2-1].

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

109 **19-6-502.5. Solid waste management facility not a public utility.**

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

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

112 **19-6-503. Powers and duties of public entities.**

113 (1) Subject to the powers and rules of the department[; the] and except as provided by
 114 Section 19-6-507, a governing body of [each] a public entity may:

115 [(1)] (a) supervise and regulate the collection, transportation, and disposition of [all]
 116 solid waste generated within its jurisdiction;

117 [(2)] (b) provide a solid waste management [facilities] facility to adequately handle
 118 [adequately] solid waste generated or existing within or without its jurisdiction;

119 [(3)] (c) assume, by agreement, responsibility for the collection and disposition of solid
 120 waste whether generated within or without its [jurisdictional boundaries] jurisdiction;

121 ~~[(4)]~~ (d) enter into a short or long-term interlocal ~~[agreements]~~ agreement to provide
 122 for or operate a solid waste management facility with [other]:

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

124 (ii) a public ~~[agencies]~~ agency, as defined in ~~[Title 11, Chapter 13, Interlocal~~
 125 ~~Cooperation Act, with]~~ Section 11-13-103;

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

127 (iv) a combination of ~~[them, to provide for or operate solid waste management~~
 128 ~~facilities]~~ persons listed in Subsections (1)(d)(i) through (iii);

129 ~~[(5)]~~ (e) levy and collect ~~[taxes, fees, and charges and]~~ a tax, fee, or charge or require
 130 ~~[licenses]~~ a license as may be appropriate to discharge its responsibility for the acquisition,
 131 construction, operation, maintenance, and improvement of a solid waste management ~~[facilities~~
 132 ~~or any portion of them]~~ facility, including licensing a private ~~[collectors]~~ collector operating
 133 within its jurisdiction;

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

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

138 ~~[(8)]~~ (h) agree that, according to Section 19-6-505, the ~~[sole and]~~ exclusive right to
 139 collect, transport, and dispose of solid waste within its jurisdiction ~~[shall]~~ may be assumed by
 140 ~~[any other]:~~

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

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

143 (iii) a combination of ~~[them, pursuant to Section 19-6-505]~~ persons listed in
 144 Subsections (1)(h)(i) through (ii);

145 ~~[(9)]~~ (i) accept and disburse funds derived from a federal or state ~~[grants or from~~
 146 ~~private sources or from]~~ grant, a private source, or moneys that may be appropriated by the
 147 Legislature for the acquisition, construction, ownership, operation, maintenance, and
 148 improvement of a solid waste management ~~[facilities]~~ facility;

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

151 ~~[(11)]~~ (k) establish one or more policies for the operation of a solid waste management

152 [facilities] facility, including:

153 (i) hours of operation[;];

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

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

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

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

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

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

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

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

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

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

184 **19-6-507. Flow control for solid waste prohibited.**

185 (1) Except as provided in Subsection (2), a governing body of a public entity may not
186 require a private person providing a solid waste management service for commercial solid
187 waste in its jurisdiction to use a solid waste management facility owned or operated by a public
188 entity.

189 (2) A governing body of a public entity may require a private person providing a solid
190 waste management service for commercial solid waste in its jurisdiction to use a solid waste
191 management facility owned or operated by a public entity after the governing body:

192 (a) provides public notice of the requirement, including:

193 (i) the date of the hearing required by Subsection (2)(b);

194 (ii) the beginning date of the comment period required by Subsection (2)(c); and

195 (iii) the written findings required by Subsection (2)(d);

196 (b) holds a public hearing on the requirement no sooner than ten calendar days after the
197 public notice and at least ten calendar days before the end of the comment period required by
198 Subsection (2)(c);

199 (c) provides a 60-calendar day public comment period on the requirement that ends no
200 sooner than five days before the enactment of the requirement to use a solid waste management
201 facility owned or operated by a public entity; and

202 (d) makes a written finding supported by clear and convincing evidence that a solid
203 waste management facility owned or operated by a private person or another public entity:

204 (i) is not adequate or available within or without its jurisdiction;

205 (ii) substantially endangers the public health; or

206 (iii) creates a public nuisance.

207 (3) A requirement described by Subsection (1) that is in effect on May 4, 2008 is:

208 (a) valid until the sooner of:

209 (i) September 1, 2008; or

210 (ii) the day on which the governing body repeals the requirement; and

211 (b) valid on or after September 2, 2008 only if the public entity complies with

212 Subsection (2) before September 2, 2008, as if the requirement were a new requirement.

Legislative Review Note
as of 11-28-07 9:50 AM

Office of Legislative Research and General Counsel

S.B. 46 - 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.
