

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: Kevin S. Garn

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 unless the public entity has physical custody of the solid waste;
- ▶ 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



26 ENACTS:

27 **19-6-502.5**, Utah Code Annotated 1953

28 **19-6-507**, Utah Code Annotated 1953

29

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

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

32 **19-6-502. Definitions.**

33 As used in this part:

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

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

37 (a) a municipality[;];

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

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

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

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

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

44 (4) "Public entity" means:

45 (a) a county[;];

46 (b) a municipality[;];

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

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

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

51 Municipal-Type Services to Unincorporated Areas.

52 (5) "Requirement" means an ordinance, policy, rule, mandate, or other directive that
53 imposes a legal duty on a person.

54 ~~(5)~~ (6) "Resource recovery" means the separation, extraction, recycling, or recovery
55 of usable ~~materials~~ material, energy, fuel, or heat from solid waste and the disposition of it.

56 ~~(6)~~ (7) "Short-term agreement" means ~~any~~ a contract or agreement having a term of

57 five years or less.

58 ~~[(7)]~~ (8) (a) "Solid waste" means ~~[aH]~~ a putrescible ~~[and]~~ or nonputrescible ~~[materials~~
59 ~~or substances]~~ material or substance discarded or rejected as being spent, useless, worthless, or
60 in excess ~~[to]~~ of the owner's needs at the time of discard or rejection, including:

- 61 (i) garbage~~[-];~~;
- 62 (ii) refuse~~[-];~~;
- 63 (iii) industrial and commercial waste~~[-, sludges from];~~;
- 64 (iv) sludge from an air or water control ~~[facilities,]~~ facility;
- 65 (v) rubbish~~[-, ashes,];~~;
- 66 (vi) ash;
- 67 (vii) contained gaseous material~~[-];~~;
- 68 (viii) incinerator residue~~[-];~~;
- 69 (ix) demolition~~[-]~~ and construction debris~~[-];~~;
- 70 (x) a discarded ~~[automobiles]~~ automobile; and
- 71 (xi) offal~~[-, but not including sewage and other]~~.

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

74 ~~[(8)]~~ (9) "Solid waste management" means the purposeful and systematic collection,
75 transportation, storage, processing, recovery, ~~[and]~~ or disposal of solid waste.

76 ~~[(9)]~~ (10) "Solid waste management facility" means ~~[any]~~ a facility employed for solid
77 waste management, including:

- 78 (a) a transfer ~~[stations,]~~ station;
- 79 (b) a transport ~~[systems,]~~ system;
- 80 (c) a baling ~~[facilities, landfills,]~~ facility;
- 81 (d) a landfill; and
- 82 (e) a processing ~~[systems]~~ system, including:
 - 83 (i) a resource recovery ~~[facilities or other facilities]~~ facility;
 - 84 (ii) a facility for reducing solid waste volume~~[-, plants and facilities];~~;
 - 85 (iii) a plant or facility for compacting, composting, or pyrolyzation of solid ~~[wastes,~~
86 ~~incinerators and other]~~ waste;
 - 87 (iv) an incinerator;

88 (v) a solid waste disposal, reduction, or conversion [~~facilities, and facilities~~] facility;
 89 and

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

91 [~~(a) facilities~~] (A) a facility for the production, transmission, distribution, and sale of
 92 heat and steam; [~~and~~]

93 [~~(b) facilities~~] (B) a facility for the generation and sale of electric energy to a public
 94 utility [~~or~~], municipality, or other public entity [~~which~~] that owns and operates an electric
 95 power system on March 15, 1982[~~;~~]; and

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

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

100 **19-6-502.5. Solid waste management facility not a public utility.**

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

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

103 **19-6-503. Powers and duties of public entities.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

144 (i) hours of operation[;];

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

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

147 [~~(12)~~] (l) sell or contract for the sale, [~~pursuant~~] according to a short or long-term
 148 [~~agreements~~] agreement, of [~~any~~] usable [~~materials~~] material, energy, fuel, or heat separated,
 149 extracted, recycled, or recovered from solid waste in a solid waste management facility, on

150 terms in its best ~~[interests, and to]~~ interest;

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

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

156 ~~[(14)]~~ (o) issue industrial development revenue bonds ~~[pursuant]~~ according to Title 11,
 157 Chapter 17, Utah Industrial Facilities and Development Act, to pay the costs of financing
 158 ~~[projects]~~ a project consisting of a solid waste management ~~[facilities, as defined in Section~~
 159 ~~19-6-502;]~~ facility on behalf of ~~[entities]~~ an entity that ~~[constitute]~~ constitutes the users of a
 160 solid waste management facility project within the meaning of Section 11-17-2~~[-, and]~~;

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

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

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

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

175 **19-6-507. Flow control for solid waste prohibited.**

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

179 (2) A public entity may require solid waste discarded or rejected within the public
 180 entity's jurisdiction to be stored, recovered, or disposed of at a solid waste management facility

181 owned or operated by a public entity if the solid waste is in the physical custody of:

182 (a) the public entity; or

183 (b) a person with whom the public entity has an agreement to provide solid waste
184 management.

185 (3) A requirement described in Subsection (1) that is in effect on May 4, 2008 is void as
186 of May 5, 2008.

187 (4) A person aggrieved by a violation of this section may seek judicial review of the
188 violation in a court of competent jurisdiction.

S.B. 46 1st Sub. (Green) - 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.
