

1                   **DEPARTMENT OF ENVIRONMENTAL QUALITY**

2                                   **AMENDMENTS**

3   2009 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Margaret Dayton**

6                                   House Sponsor: Melvin R. Brown

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8   **LONG TITLE**

9   **General Description:**

10           This bill amends provisions relating to adjudicative proceedings within the Department  
11 of Environmental Quality.

12   **Highlighted Provisions:**

13           This bill:

- 14           ▶ defines terms;
- 15           ▶ authorizes the executive director of the Department of Environmental Quality to  
16 appoint an administrative law judge;
- 17           ▶ requires an administrative law judge to conduct all adjudicative proceedings within  
18 the department, except an emergency adjudicative proceeding;
- 19           ▶ establishes powers, duties, and qualifications for an administrative law judge; and  
20           ▶ amends or repeals the powers of boards within the department regarding hearings,  
21 adjudicative proceedings, and hearing officers or examiners.

22   **Monies Appropriated in this Bill:**

23           None

24   **Other Special Clauses:**

25           None

26   **Utah Code Sections Affected:**

27   AMENDS:



- 28           **19-1-202**, as last amended by Laws of Utah 2005, Chapter 200
- 29           **19-1-301**, as last amended by Laws of Utah 2008, Chapter 382
- 30           **19-2-104**, as last amended by Laws of Utah 2008, Chapters 68 and 382
- 31           **19-2-108**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 32           **19-2-109.1**, as last amended by Laws of Utah 2008, Chapter 382
- 33           **19-2-109.5**, as last amended by Laws of Utah 2008, Chapter 382
- 34           **19-2-110**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 35           **19-2-112**, as last amended by Laws of Utah 2008, Chapter 382
- 36           **19-3-103.5**, as last amended by Laws of Utah 1995, Chapter 90
- 37           **19-4-104**, as last amended by Laws of Utah 2008, Chapter 382
- 38           **19-5-111**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 39           **19-5-112**, as last amended by Laws of Utah 1995, Chapter 114
- 40           **19-6-104**, as last amended by Laws of Utah 2007, Chapter 72
- 41           **19-6-704**, as last amended by Laws of Utah 2008, Chapter 382

42 REPEALS:

- 43           **19-2-111**, as renumbered and amended by Laws of Utah 1991, Chapter 112



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

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

47           **19-1-202. Duties and powers of the executive director.**

48           (1) The executive director shall:

49           (a) administer and supervise the department;

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

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

54           (d) approve all applications for federal grants or assistance in support of any  
55 department program; [~~and~~]

56           (e) with the governor's specific, prior approval, expend funds appropriated by the  
57 Legislature necessary for participation by the state in any fund, property, or service provided by  
58 the federal government[~~;~~ and

59           (f) in accordance with Section 19-1-301, appoint one or more administrative law  
60 judges to hear an adjudicative proceeding within the department.

61           (2) The executive director may:

62           (a) issue orders to enforce state laws and rules established by the department except  
63 where the enforcement power is given to a board created under Section 19-1-106, unless the  
64 executive director finds that a condition exists [~~which~~] that creates a clear and present hazard to  
65 the public health or the environment and [~~which~~] requires immediate action, and if the  
66 enforcement power is vested with a board created under Section 19-1-106, the executive  
67 director may with the concurrence of the governor order any person causing or contributing to  
68 the condition to reduce, mitigate, or eliminate the condition;

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

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

75           (d) make policies not inconsistent with law for the internal administration and  
76 government of the department, the conduct of its employees, and the custody, use, and  
77 preservation of the records, papers, books, documents, and property of the department;

78           (e) create advisory committees as necessary to assist in carrying out the provisions of  
79 this title;

80           (f) appoint division directors who may be removed at the will of the executive director  
81 and who shall be compensated in an amount fixed by the executive director;

82           (g) advise, consult, and cooperate with other agencies of the state, the federal  
83 government, other states and interstate agencies, affected groups, political subdivisions, and  
84 industries in carrying out the purposes of this title;

85           (h) consistent with Title 67, Chapter 19, Utah State Personnel Management Act,  
86 employ employees necessary to meet the requirements of this title;

87           (i) authorize any employee or representative of the division to conduct inspections as  
88 permitted in this title;

89           (j) encourage, participate in, or conduct any studies, investigations, research, and

90 demonstrations relating to hazardous materials or substances releases necessary to meet the  
91 requirements of this title;

92 (k) collect and disseminate information about hazardous materials or substances  
93 releases;

94 (l) review plans, specifications, or other data relating to hazardous substances releases  
95 as provided in this title; and

96 (m) maintain, update not less than annually, and make available to the public a record  
97 of sites, by name and location, at which response actions for the protection of the public health  
98 and environment under Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act, or  
99 under Title 19, Chapter 8, Voluntary Cleanup Program, have been completed in the previous  
100 calendar year, and those that the department plans to address in the upcoming year pursuant to  
101 this title, including if upon completion of the response action the site:

102 (i) will be suitable for unrestricted use; or

103 (ii) will be suitable only for restricted use, stating the institutional controls identified in  
104 the remedy to which use of the site is subject.

105 Section 2. Section **19-1-301** is amended to read:

106 **19-1-301. Adjudicative proceedings.**

107 (1) As used in this section, "dispositive action" is a final agency action that:

108 (a) a board takes following an adjudicative proceeding on a request for agency action;

109 and

110 (b) is subject to judicial review under Section 63G-4-403.

111 (2) (a) The department and its boards shall comply with the procedures and  
112 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

113 (b) The procedures for an adjudicative proceeding conducted by an administrative law  
114 judge are governed by:

115 (i) Title 63G, Chapter 4, Administrative Procedures Act;

116 (ii) rules adopted by a board as authorized by:

117 (A) Subsection 63G-4-102(6); and

118 (B) this title; and

119 (iii) the Utah Rules of Civil Procedure, in the absence of a procedure established under  
120 Subsection (2)(b)(i) or (ii).

121 (3) An administrative law judge shall hear a party's request for agency action made to a  
122 board created in Section 19-1-106.

123 (4) The executive director shall appoint an administrative law judge who:

124 (a) is a member in good standing of the Utah State Bar;

125 (b) has a minimum of:

126 (i) ten years of experience practicing law; and

127 (ii) five years of experience practicing in the field of:

128 (A) environmental compliance;

129 (B) natural resources;

130 (C) regulation by an administrative agency; or

131 (D) a field related to a field listed in Subsections (4)(b)(ii)(A) through (C); and

132 (c) has a working knowledge of the federal laws and regulations and state statutes and  
133 rules applicable to a request for agency action.

134 (5) In appointing an administrative law judge who meets the qualifications listed in  
135 Subsection (4), the executive director may:

136 (a) compile a list of persons who may be engaged as an administrative law judge pro  
137 tempore by mutual consent of the parties to an adjudicative proceeding;

138 (b) appoint an assistant attorney general as an administrative law judge pro tempore; or

139 (c) (i) appoint an administrative law judge as an employee of the department; and

140 (ii) assign the administrative law judge responsibilities in addition to conducting an  
141 adjudicative proceeding.

142 (6) (a) An administrative law judge shall:

143 (i) conduct an adjudicative proceeding;

144 (ii) take any action that is not a dispositive action; and

145 (iii) submit to the board a proposed dispositive action, including:

146 (A) written findings of fact;

147 (B) written conclusions of law; and

148 (C) a recommended order.

149 (b) A board may:

150 (i) approve, approve with modifications, or disapprove a proposed dispositive action  
151 submitted to the board under Subsection (6)(a); or

152 (ii) return the proposed dispositive action to the administrative law judge for further  
153 action as directed.

154 (7) To conduct an adjudicative proceeding, an administrative law judge may:

155 (a) compel:

156 (i) the attendance of a witness; and

157 (ii) the production of a document or other evidence;

158 (b) administer an oath;

159 (c) take testimony; and

160 (d) receive evidence as necessary.

161 (8) A party may appear before an administrative law judge in person, through an agent  
162 or employee, or as provided by a board rule.

163 (9) (a) An administrative law judge or board member may not communicate with a  
164 party to an adjudicative proceeding regarding the merits of the adjudicative proceeding unless  
165 notice and an opportunity to be heard are afforded to all parties.

166 (b) An administrative law judge or board member who receives an ex parte  
167 communication shall place the communication into the public record of the proceedings and  
168 afford all parties an opportunity to comment on the information.

169 (10) Nothing in this section limits a party's right to an adjudicative proceeding under  
170 Title 63G, Chapter 4, Administrative Procedures Act.

171 Section 3. Section **19-2-104** is amended to read:

172 **19-2-104. Powers of board.**

173 (1) The board may make rules in accordance with Title 63G, Chapter 3, Utah  
174 Administrative Rulemaking Act:

175 (a) regarding the control, abatement, and prevention of air pollution from all sources  
176 and the establishment of the maximum quantity of air contaminants that may be emitted by any  
177 air contaminant source;

178 (b) establishing air quality standards;

179 (c) requiring persons engaged in operations which result in air pollution to:

180 (i) install, maintain, and use emission monitoring devices, as the board finds necessary;

181 (ii) file periodic reports containing information relating to the rate, period of emission,  
182 and composition of the air contaminant; and

183 (iii) provide access to records relating to emissions which cause or contribute to air  
184 pollution;

185 (d) implementing 15 U.S.C.A. 2601 et seq. Toxic Substances Control Act, Subchapter  
186 II - Asbestos Hazard Emergency Response, and reviewing and approving asbestos management  
187 plans submitted by local education agencies under that act;

188 (e) establishing a requirement for a diesel emission opacity inspection and maintenance  
189 program for diesel-powered motor vehicles;

190 (f) implementing an operating permit program as required by and in conformity with  
191 Titles IV and V of the federal Clean Air Act Amendments of 1990;

192 (g) establishing requirements for county emissions inspection and maintenance  
193 programs after obtaining agreement from the counties that would be affected by the  
194 requirements;

195 (h) with the approval of the governor, implementing in air quality nonattainment areas  
196 employer-based trip reduction programs applicable to businesses having more than 100  
197 employees at a single location and applicable to federal, state, and local governments to the  
198 extent necessary to attain and maintain ambient air quality standards consistent with the state  
199 implementation plan and federal requirements under the standards set forth in Subsection (2);  
200 and

201 (i) implementing lead-based paint remediation training, certification, and performance  
202 requirements in accordance with 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act,  
203 Subchapter IV -- Lead Exposure Reduction, Sections 402 and 406.

204 (2) When implementing Subsection (1)(h) the board shall take into consideration:

205 (a) the impact of the business on overall air quality; and

206 (b) the need of the business to use automobiles in order to carry out its business  
207 purposes.

208 (3) The board may:

209 (a) (i) hold [hearings] a hearing that is not an adjudicative proceeding relating to any  
210 aspect of or matter in the administration of this chapter and compel the attendance of witnesses  
211 and the production of documents and other evidence, administer oaths and take testimony, and  
212 receive evidence as necessary;

213 (ii) receive a proposed dispositive action from an administrative law judge as provided

214 by Section 19-1-301; and

215 (iii) (A) approve, approve with modifications, or disapprove a proposed dispositive  
216 action; or

217 (B) return the proposed dispositive action to the administrative law judge for further  
218 action as directed;

219 (b) issue orders necessary to enforce the provisions of this chapter, enforce the orders  
220 by appropriate administrative and judicial proceedings, and institute judicial proceedings to  
221 secure compliance with this chapter;

222 (c) settle or compromise any civil action initiated to compel compliance with this  
223 chapter and the rules made under this chapter;

224 (d) secure necessary scientific, technical, administrative, and operational services,  
225 including laboratory facilities, by contract or otherwise;

226 (e) prepare and develop a comprehensive plan or plans for the prevention, abatement,  
227 and control of air pollution in this state;

228 (f) encourage voluntary cooperation by persons and affected groups to achieve the  
229 purposes of this chapter;

230 (g) encourage local units of government to handle air pollution within their respective  
231 jurisdictions on a cooperative basis and provide technical and consultative assistance to them;

232 (h) encourage and conduct studies, investigations, and research relating to air  
233 contamination and air pollution and their causes, effects, prevention, abatement, and control;

234 (i) determine by means of field studies and sampling the degree of air contamination  
235 and air pollution in all parts of the state;

236 (j) monitor the effects of the emission of air contaminants from motor vehicles on the  
237 quality of the outdoor atmosphere in all parts of this state and take appropriate action with  
238 respect to them;

239 (k) collect and disseminate information and conduct educational and training programs  
240 relating to air contamination and air pollution;

241 (l) advise, consult, contract, and cooperate with other agencies of the state, local  
242 governments, industries, other states, interstate or interlocal agencies, the federal government,  
243 and with interested persons or groups;

244 (m) consult, upon request, with any person proposing to construct, install, or otherwise



245 acquire an air contaminant source in the state concerning the efficacy of any proposed control  
246 device, or system for this source, or the air pollution problem which may be related to the  
247 source, device, or system, but a consultation does not relieve any person from compliance with  
248 this chapter, the rules adopted under it, or any other provision of law;

249 (n) accept, receive, and administer grants or other funds or gifts from public and  
250 private agencies, including the federal government, for the purpose of carrying out any of the  
251 functions of this chapter;

252 (o) require the owner and operator of each new source which directly emits or has the  
253 potential to emit 100 tons per year or more of any air contaminant or the owner or operator of  
254 each existing source which by modification will increase emissions or have the potential of  
255 increasing emissions by 100 tons per year or more of any air contaminant, to pay a fee  
256 sufficient to cover the reasonable costs of:

257 (i) reviewing and acting upon the notice required under Section 19-2-108; and

258 (ii) implementing and enforcing requirements placed on the sources by any approval  
259 order issued pursuant to notice, not including any court costs associated with any enforcement  
260 action;

261 (p) assess and collect noncompliance penalties as required in Section 120 of the federal  
262 Clean Air Act, 42 U.S.C. Sec. 7420;

263 (q) meet the requirements of federal air pollution laws;

264 (r) establish work practice, certification, and clearance air sampling requirements for  
265 persons who:

266 (i) contract for hire to conduct demolition, renovation, salvage, encapsulation work  
267 involving friable asbestos-containing materials, or asbestos inspections;

268 (ii) conduct work described in Subsection (3)(r)(i) in areas to which the general public  
269 has unrestrained access or in school buildings that are subject to the federal Asbestos Hazard  
270 Emergency Response Act of 1986;

271 (iii) conduct asbestos inspections in facilities subject to 15 U.S.C.A. 2601 et seq.,  
272 Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response; or

273 (iv) conduct lead paint inspections in facilities subject to 15 U.S.C.A. 2601 et seq.,  
274 Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction;

275 (s) establish certification requirements for persons required under 15 U.S.C.A. 2601 et

276 seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, to  
277 be accredited as inspectors, management planners, abatement project designers, asbestos  
278 abatement contractors and supervisors, or asbestos abatement workers;

279 (t) establish certification requirements for asbestos project monitors, which shall  
280 provide for experience-based certification of persons who, prior to establishment of the  
281 certification requirements, had received relevant asbestos training, as defined by rule, and had  
282 acquired at least 1,000 hours of experience as project monitors;

283 (u) establish certification procedures and requirements for certification of the  
284 conversion of a motor vehicle to a clean-fuel vehicle, certifying the vehicle is eligible for the  
285 tax credit granted in Section 59-7-605 or 59-10-1009;

286 (v) establish a program to certify private sector air quality permitting professionals  
287 (AQPP), as described in Section 19-2-109.5;

288 (w) establish certification requirements for persons required under 15 U.S.C.A. 2601 et  
289 seq., Toxic Control Act, Subchapter IV -- Lead Exposure Reduction, to be accredited as  
290 inspectors, risk assessors, supervisors, project designers, or abatement workers; and

291 (x) assist the State Board of Education in adopting school bus idling reduction  
292 standards and implementing an idling reduction program in accordance with Section  
293 41-6a-1308.

294 (4) Any rules adopted under this chapter shall be consistent with provisions of federal  
295 laws, if any, relating to control of motor vehicles or motor vehicle emissions.

296 (5) Nothing in this chapter authorizes the board to require installation of or payment for  
297 any monitoring equipment by the owner or operator of a source if the owner or operator has  
298 installed or is operating monitoring equipment that is equivalent to equipment which the board  
299 would require under this section.

300 Section 4. Section **19-2-108** is amended to read:

301 **19-2-108. Notice of construction or modification of installations required --**  
302 **Authority of executive secretary to prohibit construction -- Hearings -- Limitations on**  
303 **authority of board -- Inspections authorized.**

304 (1) The board shall require that notice be given to the executive secretary by any person  
305 planning to construct a new installation which will or might reasonably be expected to be a  
306 source or indirect source of air pollution or to make modifications to an existing installation

307 which will or might reasonably be expected to increase the amount of or change the character  
308 or effect of air contaminants discharged, so that the installation may be expected to be a source  
309 or indirect source of air pollution, or by any person planning to install an air cleaning device or  
310 other equipment intended to control emission of air contaminants.

311 (2) (a) (i) The executive secretary may require, as a condition precedent to the  
312 construction, modification, installation, or establishment of the air contaminant source or  
313 indirect source, the submission of plans, specifications, and other information as he finds  
314 necessary to determine whether the proposed construction, modification, installation, or  
315 establishment will be in accord with applicable rules in force under this chapter.

316 (ii) Plan approval for an indirect source may be delegated by the executive secretary to  
317 a local authority when requested and upon assurance that the local authority has and will  
318 maintain sufficient expertise to insure that the planned installation will meet the requirements  
319 established by law.

320 (b) If within 90 days after the receipt of plans, specifications, or other information  
321 required under this subsection, the executive secretary determines that the proposed  
322 construction, installation, or establishment or any part of it will not be in accord with the  
323 requirements of this chapter or applicable rules or that further time, not exceeding three  
324 extensions of 30 days each, is required by the board to adequately review the plans,  
325 specifications, or other information, he shall issue an order prohibiting the construction,  
326 installation, or establishment of the air contaminant source or sources in whole or in part.

327 (3) In addition to any other remedies, any person aggrieved by the issuance of an order  
328 either granting or denying a request for the construction of a new installation, and prior to  
329 invoking any such other remedies shall, upon request, in accordance with the rules of the board,  
330 be entitled to a hearing conducted by an administrative law judge as provided by Section  
331 19-1-301. Following the hearing~~[, the]~~ and the receipt by the board of the proposed dispositive  
332 action from the administrative law judge, the board may affirm, modify, or withdraw the permit  
333 ~~[may be affirmed, modified, or withdrawn]~~.

334 (4) Any features, machines, and devices constituting parts of or called for by plans,  
335 specifications, or other information submitted under Subsection (1) shall be maintained in good  
336 working order.

337 (5) This section does not authorize the board to require the use of machinery, devices,

338 or equipment from a particular supplier or produced by a particular manufacturer if the required  
339 performance standards may be met by machinery, devices, or equipment otherwise available.

340 (6) (a) Any authorized officer, employee, or representative of the board may enter and  
341 inspect any property, premise, or place on or at which an air contaminant source is located or is  
342 being constructed, modified, installed, or established at any reasonable time for the purpose of  
343 ascertaining the state of compliance with this chapter and the rules adopted under it.

344 (b) (i) A person may not refuse entry or access to any authorized representative of the  
345 board who requests entry for purposes of inspection and who presents appropriate credentials.

346 (ii) A person may not obstruct, hamper, or interfere with any inspection.

347 (c) If requested, the owner or operator of the premises shall receive a report setting  
348 forth all facts found which relate to compliance status.

349 Section 5. Section **19-2-109.1** is amended to read:

350 **19-2-109.1. Operating permit required -- Emissions fee -- Implementation.**

351 (1) As used in this section and Sections 19-2-109.2 and 19-2-109.3:

352 (a) "EPA" means the federal Environmental Protection Agency.

353 (b) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.

354 (c) "Operating permit" means a permit issued by the executive secretary to sources of  
355 air pollution that meet the requirements of Titles IV and V of the 1990 Clean Air Act.

356 (d) "Program" means the air pollution operating permit program established under this  
357 section to comply with Title V of the 1990 Clean Air Act.

358 (e) "Regulated pollutant" has the same meaning as defined in Title V of the 1990 Clean  
359 Air Act and implementing federal regulations.

360 (2) (a) A person may not operate any source of air pollution required to have a permit  
361 under Title V of the 1990 Clean Air Act without having obtained an operating permit from the  
362 executive secretary under procedures the board establishes by rule.

363 (b) A person is not required to submit an operating permit application until the  
364 governor has submitted an operating permit program to the EPA.

365 (c) Any operating permit issued under this section may not become effective until the  
366 day after the EPA issues approval of the permit program or November 15, 1995, whichever  
367 occurs first.

368 (3) (a) Operating permits issued under this section shall be for a period of five years

369 unless the board makes a written finding, after public comment and hearing, and based on  
370 substantial evidence in the record, that an operating permit term of less than five years is  
371 necessary to protect the public health and the environment of the state.

372 (b) The executive secretary may issue, modify, or renew an operating permit only after  
373 providing public notice, an opportunity for public comment, and an opportunity for a public  
374 hearing.

375 (c) The executive secretary shall, in conformity with the 1990 Clean Air Act and  
376 implementing federal regulations, revise the conditions of issued operating permits to  
377 incorporate applicable federal regulations in conformity with Section 502(b)(9) of the 1990  
378 Clean Air Act, if the remaining period of the permit is three or more years.

379 (d) The executive secretary may terminate, modify, revoke, or reissue an operating  
380 permit for cause.

381 (4) (a) The board shall establish a proposed annual emissions fee that conforms with  
382 Title V of the 1990 Clean Air Act for each ton of regulated pollutant, applicable to all sources  
383 required to obtain a permit. The emissions fee established under this section is in addition to  
384 fees assessed under Section 19-2-108 for issuance of an approval order.

385 (b) In establishing the fee the board shall comply with the provisions of Section  
386 63J-1-303 that require a public hearing and require the established fee to be submitted to the  
387 Legislature for its approval as part of the department's annual appropriations request.

388 (c) The fee shall cover all reasonable direct and indirect costs required to develop and  
389 administer the program and the small business assistance program established under Section  
390 19-2-109.2. The board shall prepare an annual report of the emissions fees collected and the  
391 costs covered by those fees under this Subsection (4).

392 (d) The fee shall be established uniformly for all sources required to obtain an  
393 operating permit under the program and for all regulated pollutants.

394 (e) The fee may not be assessed for emissions of any regulated pollutant if the  
395 emissions are already accounted for within the emissions of another regulated pollutant.

396 (f) An emissions fee may not be assessed for any amount of a regulated pollutant  
397 emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

398 (5) Emissions fees for the period:

399 (a) of July 1, 1992, through June 30, 1993, shall be based on the most recent emissions

400 inventory prepared by the executive secretary; and

401 (b) on and after July 1, 1993, but prior to issuance of an operating permit, shall be  
402 based on the most recent emissions inventory, unless a source elects prior to July 1, 1992, to  
403 base the fee on allowable emissions, if applicable for a regulated pollutant.

404 (6) After an operating permit is issued the emissions fee shall be based on actual  
405 emissions for a regulated pollutant unless a source elects, prior to the issuance or renewal of a  
406 permit, to base the fee during the period of the permit on allowable emissions for that regulated  
407 pollutant.

408 (7) If the owner or operator of a source subject to this section fails to timely pay an  
409 annual emissions fee, the executive secretary may:

410 (a) impose a penalty of not more than 50% of the fee, in addition to the fee, plus  
411 interest on the fee computed at 12% annually; or

412 (b) revoke the operating permit.

413 (8) The owner or operator of a source subject to this section may contest an emissions  
414 fee assessment or associated penalty in an adjudicative hearing under the Title 63G, Chapter 4,  
415 Administrative Procedures Act, and Section 19-1-301, as provided in this Subsection (8).

416 (a) The owner or operator must pay the fee under protest prior to being entitled to a  
417 hearing. Payment of an emissions fee or penalty under protest is not a waiver of the right to  
418 contest the fee or penalty under this section.

419 (b) A request for a hearing under this subsection shall be made after payment of the  
420 emissions fee and within six months after the emissions fee was due.

421 (9) To reinstate an operating permit revoked under Subsection (7) the owner or  
422 operator shall pay all outstanding emissions fees, a penalty of not more than 50% of all  
423 outstanding fees, and interest on the outstanding emissions fees computed at 12% annually.

424 (10) All emissions fees and penalties collected by the department under this section  
425 shall be deposited in the General Fund as the Air Pollution Operating Permit Program  
426 dedicated credit to be used solely to pay for the reasonable direct and indirect costs incurred by  
427 the department in developing and administering the program and the small business assistance  
428 program under Section 19-2-109.2.

429 (11) Failure of the executive secretary to act on any operating permit application or  
430 renewal is a final administrative action only for the purpose of obtaining judicial review by any

431 of the following persons to require the executive secretary to take action on the permit or its  
432 renewal without additional delay:

- 433 (a) the applicant;
- 434 (b) any person who participated in the public comment process; or
- 435 (c) any other person who could obtain judicial review of that action under applicable  
436 law.

437 Section 6. Section **19-2-109.5** is amended to read:

438 **19-2-109.5. Private sector air quality permitting professionals certification**  
439 **program.**

440 (1) As used in this section, "AQPP" means an air quality permitting professional.

441 (2) The board may establish a program to certify private sector AQPPs, including  
442 consultants and employees of companies that may seek air quality permits from the division.

443 Any program established under this section shall include:

444 (a) a training program established and operated by the department, which describes and  
445 explains the state law and rules regarding the air quality permit application and approval  
446 procedure under this chapter;

447 (b) the requirement to pass an exam to measure qualifications of AQPP applicants;

448 (c) an option for certification of an AQPP by passing the exam without undergoing any  
449 training required under the program;

450 (d) an application process, including a fee established under Section 63J-1-303 that  
451 covers the costs of the training, testing, and application process and the department's  
452 maintenance of a list of certified AQPPs;

453 (e) certification of qualified AQPP applicants;

454 (f) maintenance by the department of a current list of certified AQPPs, which is  
455 available to the public;

456 (g) procedures for the expedited review by the department of air quality permit  
457 applications submitted by certified AQPPs; and

458 (h) professional standards for AQPPs.

459 (3) The board may not require AQPP certification as a condition of preparing or  
460 submitting a notice of intent or operating permit application under this chapter.

461 (4) Any program under this section shall provide for revocation of any certification

462 issued under this section if the department determines, through an administrative hearing  
463 conducted under Title 63G, Chapter 4, Administrative Procedures Act, and Section 19-1-301,  
464 that the AQPP:

465 (a) knowingly or negligently submitted false information or data as part of an air  
466 quality permit application;

467 (b) prepared more than three air quality permit applications in one calendar year in a  
468 manner that each did not substantially comply with department application requirements; or

469 (c) prepared any air quality permit application in violation of the professional standards  
470 defined by department rule.

471 Section 7. Section **19-2-110** is amended to read:

472 **19-2-110. Violations -- Notice to violator -- Corrective action orders --**  
473 **Conference, conciliation, and persuasion by board.**

474 (1) (a) Whenever the executive secretary has reason to believe that a violation of any  
475 provision of this chapter or any rule issued under it has occurred, he may serve written notice  
476 of the violation upon the alleged violator. The notice shall specify the provision of this chapter  
477 or rule alleged to be violated, the facts alleged to constitute the violation, and may include an  
478 order that necessary corrective action be taken within a reasonable time.

479 (b) In lieu of beginning an adjudicative proceeding under Subsection (1)(a), the board  
480 may initiate an action pursuant to Section 19-2-115.

481 (2) Nothing in this chapter prevents the board from making efforts to obtain voluntary  
482 compliance through warning, conference, conciliation, persuasion, or other appropriate means.

483 (3) Hearings may be held before[:] an administrative law judge as provided by Section  
484 19-1-301.

485 [~~(a) the board;~~]

486 [~~(b) a hearing examiner of the board; or~~]

487 [~~(c) a board member especially appointed by the board to hold the hearing.~~]

488 Section 8. Section **19-2-112** is amended to read:

489 **19-2-112. Generalized condition of air pollution creating emergency -- Sources**  
490 **causing imminent danger to health -- Powers of executive director -- Declaration of**  
491 **emergency.**

492 (1) (a) Title 63G, Chapter 4, Administrative Procedures Act, and any other provision of



493 law to the contrary notwithstanding, if the executive director finds that a generalized condition  
494 of air pollution exists and that it creates an emergency requiring immediate action to protect  
495 human health or safety, the executive director, with the concurrence of the governor, shall  
496 order persons causing or contributing to the air pollution to reduce or discontinue immediately  
497 the emission of air contaminants.

498 (b) The order shall fix a place and time, not later than 24 hours after its issuance, for a  
499 hearing to be held before the governor.

500 (c) Not more than 24 hours after the commencement of this hearing, and without  
501 adjournment of it, the governor shall affirm, modify, or set aside the order of the executive  
502 director.

503 (2) (a) In the absence of a generalized condition of air pollution referred to in  
504 Subsection (1), but if the executive director finds that emissions from the operation of one or  
505 more air contaminant sources is causing imminent danger to human health or safety, the  
506 executive director may commence adjudicative proceedings under Section 63G-4-502.

507 (b) Notwithstanding Section 19-1-301, the executive director may conduct the  
508 emergency adjudicative proceeding in place of an administrative law judge.

509 (3) Nothing in this section limits any power that the governor or any other officer has  
510 to declare an emergency and act on the basis of that declaration.

511 Section 9. Section **19-3-103.5** is amended to read:

512 **19-3-103.5. Board authority and duties.**

513 (1) The board may:

514 (a) require submittal of specifications or other information relating to licensing  
515 applications for radioactive materials or registration of radiation sources for review, approval,  
516 disapproval, or termination;

517 (b) issue orders necessary to enforce the provisions of this part, enforce the orders by  
518 appropriate administrative and judicial proceedings, and institute judicial proceedings to secure  
519 compliance with this part;

520 (c) (i) hold ~~hearings~~ a hearing that is not an adjudicative proceeding and compel the  
521 attendance of witnesses, the production of documents, and other evidence, administer oaths and  
522 take testimony, and receive evidence it finds proper, or appoint hearing officers to conduct a  
523 hearing that is not an adjudicative proceeding and authorize them to exercise the powers under

524 this Subsection (1);  
525       (ii) receive a proposed dispositive action from an administrative law judge as provided  
526 by Section 19-1-301; and  
527       (iii) (A) approve, approve with modifications, or disapprove a proposed dispositive  
528 action; or  
529       (B) return the proposed dispositive action to the administrative law judge for further  
530 action as directed;  
531       (d) settle or compromise any administrative or civil action initiated to compel  
532 compliance with this part or any rules adopted under this part;  
533       (e) advise, consult, cooperate with, and provide technical assistance to other agencies  
534 of the state and federal government, other states, interstate agencies, and affected groups,  
535 political subdivisions, industries, and other persons in carrying out the provisions of this part;  
536       (f) promote the planning and application of pollution prevention and radioactive waste  
537 minimization measures to prevent the unnecessary waste and depletion of natural resources;  
538       (g) cooperate with any persons in studies, research, or demonstration projects regarding  
539 radioactive waste management or control of radiation sources;  
540       (h) accept, receive, and administer grants or other funds or gifts from public and  
541 private agencies, including the federal government, for the purpose of carrying out any of the  
542 functions of this part;  
543       (i) exercise all incidental powers necessary to carry out the purposes of this part;  
544       (j) submit an application to the U.S. Food and Drug Administration for approval as an  
545 accrediting body in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of  
546 1992;  
547       (k) accredit mammography facilities, pursuant to approval as an accrediting body from  
548 the U.S. Food and Drug Administration, in accordance with 42 U.S.C. 263b, Mammography  
549 Quality Standards Act of 1992; and  
550       (l) review the qualifications of and issue certificates of approval to individuals who  
551 survey mammography equipment and oversee quality assurance practices at mammography  
552 facilities.  
553       (2) The board shall:  
554       (a) [~~hear appeals~~] receive a proposed dispositive action from an administrative law

555 ~~judge on an appeal~~ of final decisions made by the executive secretary [~~or appoint a hearing~~  
556 ~~officer to hear the appeal and make recommendations to the board~~] as provided by Section  
557 19-1-301;

558 (b) prepare a radioactive waste management plan in compliance with Section 19-3-107  
559 as soon as practicable; and

560 (c) impound radioactive material as authorized in Section 19-3-111.

561 (3) Representatives of the board upon presentation of appropriate credentials may enter  
562 at reasonable times upon the premises of public and private properties subject to regulation  
563 under this part to perform inspections to insure compliance with this part and rules made by the  
564 board.

565 Section 10. Section **19-4-104** is amended to read:

566 **19-4-104. Powers of board.**

567 (1) The board may:

568 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative

569 Rulemaking Act:

570 (i) establishing standards that prescribe the maximum contaminant levels in any public  
571 water system and provide for monitoring, record-keeping, and reporting of water quality related  
572 matters;

573 (ii) governing design, construction, operation, and maintenance of public water  
574 systems;

575 (iii) granting variances and exemptions to the requirements established under this  
576 chapter that are not less stringent than those allowed under federal law;

577 (iv) protecting watersheds and water sources used for public water systems; and

578 (v) governing capacity development in compliance with Section 1420 of the federal  
579 Safe Drinking Water Act, 42 U.S.C.A. 300f et seq.;

580 (b) issue orders necessary to enforce the provisions of this chapter, enforce the orders  
581 by appropriate administrative and judicial proceedings, and institute judicial proceedings to  
582 secure compliance with this chapter;

583 (c) (i) hold ~~hearings~~ a hearing that is not an adjudicative proceeding relating to the  
584 administration of this chapter and compel the attendance of witnesses, the production of  
585 documents and other evidence, administer oaths and take testimony, and receive evidence as

586 necessary; [~~or~~]

587 (ii) appoint hearing officers to conduct a hearing that is not an adjudicative proceeding  
588 and authorize them to exercise powers under [~~this~~] Subsection (1)(c)(i);

589 (iii) receive a proposed dispositive action from an administrative law judge as provided  
590 by Section 19-1-301; and

591 (iv) (A) approve, approve with modifications, or disapprove a proposed dispositive  
592 action; or

593 (B) return the proposed dispositive action to the administrative law judge for further  
594 action as directed;

595 (d) require the submission to the executive secretary of plans and specifications for  
596 construction of, substantial addition to, or alteration of public water systems for review and  
597 approval by the board before that action begins and require any modifications or impose any  
598 conditions that may be necessary to carry out the purposes of this chapter;

599 (e) advise, consult, cooperate with, provide technical assistance to, and enter into  
600 agreements, contracts, or cooperative arrangements with state, federal, or interstate agencies,  
601 municipalities, local health departments, educational institutions, or others necessary to carry  
602 out the purposes of this chapter and to support the laws, ordinances, rules, and regulations of  
603 local jurisdictions;

604 (f) request and accept financial assistance from other public agencies, private entities,  
605 and the federal government to carry out the purposes of this chapter;

606 (g) develop and implement an emergency plan to protect the public when declining  
607 drinking water quality or quantity creates a serious health risk and issue emergency orders if a  
608 health risk is imminent;

609 (h) authorize employees or agents of the department, after reasonable notice and  
610 presentation of credentials, to enter any part of a public water system at reasonable times to  
611 inspect the facilities and water quality records required by board rules, conduct sanitary  
612 surveys, take samples, and investigate the standard of operation and service delivered by public  
613 water systems;

614 (i) meet the requirements of federal law related or pertaining to drinking water; and

615 (j) exercise all other incidental powers necessary to carry out the purpose of this  
616 chapter.

617 (2) (a) The board may adopt and enforce standards and establish fees for certification  
618 of operators of any public water system.

619 (b) The board may not require certification of operators for a water system serving a  
620 population of 800 or less except:

621 (i) to the extent required for compliance with Section 1419 of the federal Safe Drinking  
622 Water Act, 42 U.S.C.A. 300f et seq.; and

623 (ii) for a system that is required to treat its drinking water.

624 (c) The certification program shall be funded from certification and renewal fees.

625 (3) Routine extensions or repairs of existing public water systems that comply with the  
626 rules and do not alter the system's ability to provide an adequate supply of water are exempt  
627 from the provisions of Subsection (1)(d).

628 (4) (a) The board may adopt and enforce standards and establish fees for certification  
629 of persons engaged in administering cross connection control programs or backflow prevention  
630 assembly training, repair, and maintenance testing.

631 (b) The certification program shall be funded from certification and renewal fees.

632 Section 11. Section **19-5-111** is amended to read:

633 **19-5-111. Notice of violations -- Hearings.**

634 (1) Whenever the board determines there are reasonable grounds to believe that there  
635 has been a violation of this chapter or any order of the board, it may give written notice to the  
636 alleged violator specifying the provisions that have been violated and the facts that constitute  
637 the violation.

638 (2) The notice shall require that the matters complained of be corrected.

639 (3) The notice may order the alleged violator to appear before ~~[the board]~~ an  
640 administrative law judge as provided by Section 19-1-301 at a time and place specified in the  
641 notice and answer the charges.

642 Section 12. Section **19-5-112** is amended to read:

643 **19-5-112. Hearings conducted by an administrative law judge -- Decisions on**  
644 **denial or revocation of permit conducted by executive director.**

645 (1) (a) ~~[The]~~ Except as provided by Subsection (2), an administrative law judge shall  
646 conduct hearings authorized by Section 19-5-111~~[, except hearings for a person who is denied a~~  
647 ~~permit or whose permit has been revoked, may be conducted by the board at a regular or~~

648 ~~special meeting, or by an examining officer designated by the board] in accordance with~~

649 Section 19-1-301.

650 (b) All decisions shall be rendered by a majority of the board.

651 ~~[(2) (a) A hearing for a person who has been denied a permit, or who has had a permit~~

652 ~~revoked, shall be conducted before the executive director or his designee.]~~

653 (2) (a) An administrative law judge shall conduct, on the executive director's behalf, a

654 hearing regarding an appeal of a permit decision for which the state has assumed primacy under

655 the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq.

656 (b) Notwithstanding Subsection 19-1-301(6), the administrative law judge shall submit

657 to the executive director a proposed dispositive action.

658 (c) The executive director may:

659 (i) approve, approve with modifications, or disapprove a proposed dispositive action

660 submitted to the executive director under Subsection (2)(b); or

661 (ii) return the proposed dispositive action to the administrative law judge for further

662 action as directed.

663 ~~[(b)]~~ (d) The decision of the executive director is final and binding on all parties as a

664 final determination of the board unless stayed or overturned on appeal.

665 Section 13. Section **19-6-104** is amended to read:

666 **19-6-104. Powers of board -- Creation of statewide solid waste management plan.**

667 (1) The board shall:

668 (a) survey solid and hazardous waste generation and management practices within this

669 state and, after public hearing and after providing opportunities for comment by local

670 governmental entities, industry, and other interested persons, prepare and revise, as necessary, a

671 waste management plan for the state;

672 (b) carry out inspections pursuant to Section 19-6-109;

673 (c) (i) hold ~~hearings~~ a hearing that is not an adjudicative proceeding and compel the

674 attendance of witnesses, the production of documents, and other evidence, administer oaths and

675 take testimony, and receive evidence it finds proper, or appoint hearing officers to conduct a

676 hearing that is not an adjudicative proceeding who shall be delegated these powers;

677 (ii) receive a proposed dispositive action from an administrative law judge as provided

678 by Section 19-1-301; and

679 (iii) (A) approve, approve with modifications, or disapprove a proposed dispositive  
680 action; or

681 (B) return the proposed dispositive action to the administrative law judge for further  
682 action as directed;

683 (d) issue orders necessary to effectuate the provisions of this part and implementing  
684 rules and enforce them by administrative and judicial proceedings, and cause the initiation of  
685 judicial proceedings to secure compliance with this part;

686 (e) settle or compromise any administrative or civil action initiated to compel  
687 compliance with this part and any rules adopted under this part;

688 (f) require submittal of specifications or other information relating to hazardous waste  
689 plans for review, and approve, disapprove, revoke, or review the plans;

690 (g) advise, consult, cooperate with, and provide technical assistance to other agencies  
691 of the state and federal government, other states, interstate agencies, and affected groups,  
692 political subdivisions, industries, and other persons in carrying out the purposes of this part;

693 (h) promote the planning and application of resource recovery systems to prevent the  
694 unnecessary waste and depletion of natural resources;

695 (i) meet the requirements of federal law related to solid and hazardous wastes to insure  
696 that the solid and hazardous wastes program provided for in this part is qualified to assume  
697 primacy from the federal government in control over solid and hazardous waste;

698 (j) (i) require any facility, including those listed in Subsection (1)(j)(ii), that is intended  
699 for disposing of nonhazardous solid waste or wastes listed in Subsection (1)(j)(ii)(B) to submit  
700 plans, specifications, and other information required by the board to the board prior to  
701 construction, modification, installation, or establishment of a facility to allow the board to  
702 determine whether the proposed construction, modification, installation, or establishment of the  
703 facility will be in accordance with rules made under this part;

704 (ii) facilities referred to in Subsection (1)(j)(i) include:

705 (A) any incinerator that is intended for disposing of nonhazardous solid waste; and

706 (B) except for facilities that receive the following wastes solely for the purpose of  
707 recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal,  
708 and with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas  
709 emission control waste generated primarily from the combustion of coal or other fossil fuels;

710 wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln  
711 dust wastes; and

712 (k) exercise all other incidental powers necessary to carry out the purposes of this part.

713 (2) (a) The board shall establish a comprehensive statewide solid waste management  
714 plan by January 1, 1994.

715 (b) The plan shall:

716 (i) incorporate the solid waste management plans submitted by the counties;

717 (ii) provide an estimate of solid waste capacity needed in the state for the next 20  
718 years;

719 (iii) assess the state's ability to minimize waste and recycle;

720 (iv) evaluate solid waste treatment, disposal, and storage options, as well as solid waste  
721 needs and existing capacity;

722 (v) evaluate facility siting, design, and operation;

723 (vi) review funding alternatives for solid waste management; and

724 (vii) address other solid waste management concerns that the board finds appropriate  
725 for the preservation of the public health and the environment.

726 (c) The board shall consider the economic viability of solid waste management  
727 strategies prior to incorporating them into the plan and shall consider the needs of population  
728 centers.

729 (d) The board shall review and modify the comprehensive statewide solid waste  
730 management plan no less frequently than every five years.

731 (3) (a) The board shall determine the type of solid waste generated in the state and  
732 tonnage of solid waste disposed of in the state in developing the comprehensive statewide solid  
733 waste management plan.

734 (b) The board shall review and modify the inventory no less frequently than once every  
735 five years.

736 (4) Subject to the limitations contained in Subsection 19-6-102(18)(b), the board shall  
737 establish siting criteria for nonhazardous solid waste disposal facilities, including incinerators.

738 Section 14. Section **19-6-704** is amended to read:

739 **19-6-704. Powers and duties of the board.**

740 (1) The board shall make rules under Title 63G, Chapter 3, Utah Administrative



741 Rulemaking Act, as necessary to administer this part and to comply with 40 CFR 279,  
742 Standards for the Management of Used Oil, to ensure the state's primacy to manage used oil  
743 under 40 CFR 279. For these purposes the board shall:

744 ~~[(a) conduct adjudicative hearings as required in this part under Title 63G, Chapter 4,~~  
745 ~~Administrative Procedures Act;]~~

746 (a) (i) receive a proposed dispositive action from an administrative law judge as  
747 provided by Section 19-1-301; and

748 (ii) (A) approve, approve with modifications, or disapprove a proposed dispositive  
749 action; or

750 (B) return the proposed dispositive action to the administrative law judge for further  
751 action as directed;

752 (b) establish by rule conditions and procedures for registration and revocation of  
753 registration as a used oil collection center, used oil aggregation point, or DIYer used oil  
754 collection center;

755 (c) provide by rule that used oil aggregation points that do not accept DIYer used oil  
756 are required to comply with used oil collection standards under this part, but are not required to  
757 be permitted or registered;

758 (d) establish by rule conditions and fees required to obtain permits and operate as used  
759 oil transporters, used oil transfer facilities, used oil processors and rerefiners, and used oil fuel  
760 marketers;

761 (e) establish by rule the amount of liability insurance or other financial responsibility  
762 the applicant shall have to qualify for a permit under Subsection (1)(d);

763 (f) establish by rule the form and amount of reclamation surety required for  
764 reclamation of any site or facility required to be permitted under this part;

765 (g) after public notice and opportunity for a public hearing, hear and act on permit  
766 issues appealed under Subsection 19-6-712(2);

767 (h) establish by rule standards for tracking, analysis, and recordkeeping regarding used  
768 oil subject to regulation under this part, including:

769 (i) manifests for handling and transferring used oil;

770 (ii) analyses necessary to determine if used oil is on-specification or off-specification;

771 (iii) records documenting date, quantities, and character of used oil transported,

772 processed, transferred, or sold;

773 (iv) records documenting persons between whom transactions under this subsection  
774 occurred; and

775 (v) exemption of DIYer used oil collection centers from this subsection except as  
776 necessary to verify volumes of used oil picked up by a permitted transporter and the  
777 transporter's name and federal EPA identification number;

778 (i) authorize inspections and audits of facilities, centers, and operations subject to  
779 regulation under this part;

780 (j) establish by rule standards for:

781 (i) used oil generators;

782 (ii) used oil collection centers;

783 (iii) DIYer used oil collection centers;

784 (iv) aggregation points;

785 (v) curbside used oil collection programs;

786 (vi) used oil transporters;

787 (vii) used oil transfer facilities;

788 (viii) used oil burners;

789 (ix) used oil processors and rerefiners; and

790 (x) used oil marketers;

791 (k) establish by rule standards for determining on-specification and off-specification  
792 used oil and specified mixtures of used oil, subject to Section 19-6-707 regarding rebuttable  
793 presumptions;

794 (l) establish by rule standards for closure, remediation, and response to releases  
795 involving used oil; and

796 (m) establish a public education program to promote used oil recycling and use of used  
797 oil collection centers.

798 (2) The board may:

799 (a) (i) hold ~~hearings~~ a hearing that is not an adjudicative proceeding relating to any  
800 aspect of or matter in the administration of this part and compel the attendance of witnesses  
801 and the production of documents and other evidence, administer oaths and take testimony, and  
802 receive evidence as necessary;

803            (ii) receive a proposed dispositive action from an administrative law judge as provided  
804 by Section 19-1-301; and

805            (iii) (A) approve, approve with modifications, or disapprove a proposed dispositive  
806 action; or

807            (B) return the proposed dispositive action to the administrative law judge for further  
808 action as directed;

809            (b) require retention and submission of records required under this part; and

810            (c) require audits of records and recordkeeping procedures required under this part and  
811 rules made under this part, except that audits of records regarding the fee imposed and  
812 collected by the commission under Sections 19-6-714 and 19-6-715 are the responsibility of the  
813 commission under Section 19-6-716.

814            Section 15. **Repealer.**

815            This bill repeals:

816            Section **19-2-111, Review of orders of hearing examiner -- Procedure.**

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**Legislative Review Note**  
as of 2-12-09 10:19 AM

**Office of Legislative Research and General Counsel**

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**S.B. 70 - Department of Environmental Quality Amendments**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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