

REUSE OF INDUSTRIAL BYPRODUCT

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Gregory H. Hughes

LONG TITLE

General Description:

This bill enacts provisions relating to the reuse of an industrial byproduct.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ authorizes the Solid and Hazardous Waste Control Board to makes rules;
- ▶ authorizes the executive secretary to:
 - receive reports from the Department of Transportation; and
 - receive and act upon an application for reuse of an industrial byproduct; and
- ▶ requires the Department of Transportation to:
 - allow and encourage the reuse of an industrial byproduct in the construction of department projects;
 - consider applying a preference for the reuse of an industrial byproduct in certain circumstances; and
 - submit reports to the executive secretary.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 ENACTS:

29 **19-6-1101**, Utah Code Annotated 1953

30 **19-6-1102**, Utah Code Annotated 1953

31 **19-6-1103**, Utah Code Annotated 1953

32 **19-6-1104**, Utah Code Annotated 1953

33 **72-6-106.5**, Utah Code Annotated 1953



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

36 Section 1. Section **19-6-1101** is enacted to read:

37 **Part 11. Industrial Byproduct Reuse**

38 **19-6-1101. Title.**

39 This part is known as "Industrial Byproduct Reuse."

40 Section 2. Section **19-6-1102** is enacted to read:

41 **19-6-1102. Definitions.**

42 As used in this part:

43 (1) "Executive secretary" means the executive secretary of the Solid and Hazardous

44 Waste Control Board.

45 (2) (a) "Industrial byproduct" means an industrial residual, including:

46 (i) inert construction debris;

47 (ii) fly ash;

48 (iii) bottom ash;

49 (iv) slag;

50 (v) flue gas emission control residuals generated primarily from the combustion of coal

51 or other fossil fuel;

52 (vi) residual from the extraction, beneficiation, and processing of an ore or mineral;

53 (vii) cement kiln dust; or

54 (viii) contaminated soil extracted as a result of a corrective action at a permitted

55 hazardous waste facility.

56 (b) "Industrial byproduct" does not include material that:

57 (i) causes a public nuisance or public health hazard; or

58 (ii) is a hazardous waste under Part 1, Solid and Hazardous Waste Act.

- 59 (3) "Public project" means a project of the Department of Transportation to construct:
- 60 (a) a highway or road;
- 61 (b) a curb;
- 62 (c) a gutter;
- 63 (d) a walkway;
- 64 (e) a parking facility;
- 65 (f) a public transportation facility; or
- 66 (g) a facility, infrastructure, or transportation improvement that benefits the public.

67 (4) "Reuse" means to use an industrial byproduct in place of a raw material.

68 Section 3. Section **19-6-1103** is enacted to read:

69 **19-6-1103. Rulemaking -- Reporting.**

70 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
71 Solid and Hazardous Waste Control Board may make rules to implement this part, including:

72 (a) a streamlined application procedure designed to encourage reuse of an industrial
73 byproduct in a public project; and

74 (b) reasonable standards for demonstrating, without regard to the industrial byproduct's
75 source, the safety of the reuse and future reuse of an industrial byproduct.

76 (2) (a) Except as provided by Subsection (2)(b), the board may not require a report
77 regarding the management of an industrial byproduct that is reused as provided by this part and
78 Section 72-6-106.5.

79 (b) The board may adopt a rule requiring a report described in Subsection (2)(a) if the
80 board demonstrates that the report is reasonably required to meet a compelling public safety
81 interest.

82 (3) The executive secretary shall receive reports from the Department of Transportation
83 as required by Section 72-6-106.5.

84 Section 4. Section **19-6-1104** is enacted to read:

85 **19-6-1104. Applications for industrial byproduct reuse -- Approval by the**
86 **executive secretary.**

87 (1) A person may submit to the executive secretary an application for reuse of an
88 industrial byproduct.

89 (2) The executive secretary shall respond to an application submitted under Subsection

90 (1) within 60 days of the day on which the executive secretary determines the application is
91 complete.

92 (3) The executive secretary shall approve an application submitted under Subsection
93 (1) if the applicant shows:

94 (a) the industrial byproduct meets the applicable health risk standard;

95 (b) the industrial byproduct satisfies the applicable toxicity characteristic leaching
96 procedure;

97 (c) the proposed method of installation and type of reuse meet the applicable health
98 risk standard; and

99 (d) that future reuse of the industrial byproduct, including maintenance work, will be:

100 (i) in the same general geographic location; and

101 (ii) for the same or similar purpose.

102 Section 5. Section **72-6-106.5** is enacted to read:

103 **72-6-106.5. Reuse of industrial byproducts.**

104 (1) As used in this section:

105 (a) "Executive secretary" has the same meaning as defined in Section 19-6-1102.

106 (b) "Industrial byproduct" has the same meaning as defined in Section 19-6-1102.

107 (c) "Public project" has the same meaning as defined in Section 19-6-1102.

108 (d) "Reuse" has the same meaning as defined in Section 19-6-1102.

109 (2) Consistent with the protection of public health and the environment and generally
110 accepted engineering practices, the department, shall, to the maximum extent possible:

111 (a) allow and encourage the reuse of an industrial byproduct in:

112 (i) a plan, specification, and estimate for a public project; and

113 (ii) advertising for a bid for a public project;

114 (b) use and contract for the reuse of an industrial byproduct in:

115 (i) landscaping;

116 (ii) a general geotechnical fill;

117 (iii) a structural fill;

118 (iv) concrete or asphalt;

119 (v) a base or subbase; and

120 (vi) geotechnical drainage materials;

121 (c) promulgate and apply public project specifications that allow reuse of an industrial
122 byproduct based upon:

123 (i) cost;

124 (ii) performance; and

125 (iii) engineered equivalency in lifespan, durability, and maintenance;

126 (d) consider applying a preference for the reuse of an industrial byproduct, unless it is
127 demonstrated that the reuse of an industrial byproduct is not cost effective based on lifespan,
128 durability, and maintenance costs of the pavement, structure, fill area, or another area that
129 could contain an industrial byproduct; and

130 (e) consider applying a preference even if the industrial byproduct may result in a
131 modest additional cost where it can be shown that the benefit to the state or community from
132 the reduced energy and disposal costs for the industrial byproduct would merit an additional
133 public project expense.

134 (3) After an approval by the executive secretary under Section 19-6-1104:

135 (a) the department is responsible for the management of the industrial byproduct; and

136 (b) the generator or originator of the industrial byproduct is not responsible for the
137 industrial byproduct under Title 19, Environmental Quality Code.

138 (4) The department shall submit a written report within 60 days to the executive
139 secretary describing the location and type of reuse, if applicable, of an industrial byproduct if:

140 (a) the reuse takes place at a location that is different from the location in the
141 application approved under Section 19-6-1104;

142 (b) the industrial byproduct is moved to a location different than the location in the
143 application approved under Section 16-6-1104; or

144 (c) the industrial byproduct is removed to a permitted solid waste disposal facility.

Legislative Review Note
as of 2-26-09 9:06 AM

Office of Legislative Research and General Counsel

S.B. 224 - Reuse of Industrial Byproduct

Fiscal Note

2009 General Session

State of Utah

State Impact

The cost to enact provisions of this bill are estimated to be \$1,600 one time from the General Fund to the Department of Environmental Quality for administrative rule making; and \$116,200 to the Department of Transportation from the Transportation Fund for 1 FTE to manage industrial byproduct use on DOT projects. Provisions of the bill also requires that the Department of Transportation consider use of the industrial byproduct even if the byproduct increases the cost of DOT's project. It is unknown at this time what those additional costs would be. The bill further transfers the responsibility of the byproduct to the Department of Transportation from the generator or originator of the byproduct. It is unknown at this time if expenditures would be required to handle any unused byproduct from UDOT's projects based on provisions of Title 19, Environmental Quality Code.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund, One-Time	\$0	\$1,600	\$0	\$0	\$0	\$0
Transportation Fund	\$0	\$116,200	\$116,200	\$0	\$0	\$0
Total	\$0	\$117,800	\$116,200	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Individuals and businesses could benefit from provisions of this bill if they are not required to dispose of their industrial byproducts. It is unknown at this time how much of the industrial byproducts generate in the state would qualify under provisions of this bill, and therefore unknown what cost savings would benefit individual or business generators of the waste.