

## HB0373S02 compared with HB0373S01

~~deleted text~~ shows text that was in HB0373S01 but was deleted in HB0373S02.

Inserted text shows text that was not in HB0373S01 but was inserted into HB0373S02.

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Representative Lee B. Perry proposes the following substitute bill:

### WASTE MANAGEMENT AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lee B. Perry**

Senate Sponsor: ~~\_\_\_\_\_~~ Evan J. Vickers

Cosponsors:

Kay J. Christofferson

John R. Westwood

Carl R. Albrecht

Stephen G. Handy

Stewart E. Barlow

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#### LONG TITLE

##### General Description:

This bill deals with fees set by the Division of Waste Management and Radiation Control.

##### Highlighted Provisions:

This bill:

- ▶ creates the Division of Waste Management and Radiation Control Expendable

Special Revenue Fund and describes the uses of the fund;

- ▶ requires the Division of Waste Management and Radiation Control to upgrade

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technology;

- ▶ states that the annual fee schedule set by the Division of Waste Management and Radiation Control shall be equitable and fair, though not necessarily equal or uniform;
- ▶ provides criteria in setting the annual fee schedule;
- ▶ authorizes a landfill to conduct a self-inspection with reporting to the Division of Waste Management and Radiation Control;
- ▶ provides a repeal date; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a special effective date.

### Utah Code Sections Affected:

AMENDS:

**19-1-108**, as last amended by Laws of Utah 2013, Chapter 330

**19-6-109**, as last amended by Laws of Utah 2012, Chapter 360

**19-6-119**, as last amended by Laws of Utah 2017, Chapter 281

**19-6-307**, as last amended by Laws of Utah 2013, Chapter 400

**63I-2-219**, as last amended by Laws of Utah 2016, Chapter 369

ENACTS:

**19-6-126**, Utah Code Annotated 1953

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

Section 1. Section **19-1-108** is amended to read:

**19-1-108. Creation of Environmental Quality Restricted Account -- Purpose of restricted account -- Sources of funds -- Uses of funds.**

(1) There is created the Environmental Quality Restricted Account.

(2) The sources of money for the restricted account are:

(a) radioactive waste disposal fees collected under Sections 19-3-106 and 19-3-106.4 and other fees collected under Subsection 19-3-104(5);

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- (b) hazardous waste disposal fees collected under Section 19-6-118;
- (c) PCB waste disposal fees collected under Section 19-6-118.5;
- (d) nonhazardous solid waste disposal fees collected under Section 19-6-119; and
- (e) the investment income derived from money in the Environmental Quality

Restricted Account.

(3) In each fiscal year[;]:

(a) the first [~~\$400,000~~] \$200,000 collected from the waste disposal fees listed in Subsection (2), collectively, shall be deposited in the [~~General Fund as free revenue. The balance~~] Division of Waste Management and Radiation Control Expendable Special Revenue Fund created in Section 19-6-126; and

(b) the balance of the money collected from the waste disposal fees listed in Subsection (2), collectively, shall be deposited in the Environmental Quality Restricted Account.

(4) The Legislature may annually appropriate money from the Environmental Quality Restricted Account to the department for the costs of administering:

(a) [~~the department for the costs of administering~~] radiation control programs; and

(b) [~~the department for the costs of administering~~] solid and hazardous waste programs[; and].

[~~(c) subject to Subsection (6), the Hazardous Substances Mitigation Fund, up to \$400,000, to provide money to:~~]

(5) (a) Each fiscal year beginning July 1, 2018, and ending on June 30, 2022, the Division of

Finance shall transfer \$200,000 from the Environmental Quality Restricted Account to the ~~Hazard~~Hazardous Substances Mitigation Fund, to provide money to:

~~(i)(a)~~ meet the state's cost share requirements for cleanup under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq. as amended; and

~~(ii)(b)~~ respond to an emergency as provided in Section 19-6-309.

(b) Each fiscal year beginning July 1, 2018 and ending on June 30, 2020, the Division of Finance shall transfer \$200,000 from the Environmental Quality Restricted Account to the General Fund, to be deposited as free revenue.

[~~(5)~~] (6) After the requirements of Subsection (3) are met, sources of money for the

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restricted account described in Subsection (2)(a) may only be used for the purpose described in Subsection (4)(a).

~~[(6) An annual request for money to be appropriated from the Environmental Quality Restricted Account to the Hazardous Substances Mitigation Fund may be made by the department only after the executive director's review of the Environmental Quality Restricted Account's or the Hazardous Substances Mitigation Fund's balance as of the end of the fiscal year immediately before the general session for which the request is made.]~~

(7) In order to stabilize funding for the radiation control program and the solid and hazardous waste program, the Legislature shall in years of excess revenues reserve in the Environmental Quality Restricted Account sufficient money to meet departmental needs in years of projected shortages.

(8) The Legislature may not appropriate money from the General Fund to the department as a supplemental appropriation to cover the costs of the radiation control program and the solid and hazardous waste program in an amount exceeding 25% of the amount of waste disposal fees collected during the most recent prior fiscal year.

(9) Money appropriated under this part that is not expended at the end of the fiscal year lapses into the Environmental Quality Restricted Account.

(10) (a) The balance in the Environmental Quality Restricted Account may not exceed \$4,000,000 above the anticipated revenue need for the money in the restricted account for the fiscal year.

(b) Excess funds under Subsection (10)(a) shall be credited on a proportionate basis to each person who paid money to the fund in the previous fiscal year.

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

### **19-6-109. Inspections authorized -- Fines for a self-inspected facility.**

~~[Any]~~ (1) A duly authorized officer, employee, or representative of the director may, at any reasonable time and upon presentation of appropriate credentials, enter upon and inspect any property, premise, or place on or at which solid or hazardous wastes are generated, transported, stored, treated, or disposed of, and have access to and the right to copy any records relating to the wastes, for the purpose of ascertaining compliance with this part and the rules of the board. ~~[Those persons referred to in this section]~~

(2) An inspector may also inspect any waste and obtain waste samples, including

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samples from any vehicle in which wastes are being transported or samples of any containers or labels.

(3) Any person obtaining samples shall give to the owner, operator, or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained.

(4) If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.

(5) (a) Notwithstanding any other provision of this section, by January 1, 2019, the division shall ensure that an owner or operator of a solid waste management facility may elect to self-inspect the solid waste management facility.

(b) (i) The division shall create a training program to teach the owner or operator of a solid waste management facility how to self-inspect the owner or operator's solid waste management facility.

(ii) The training described in Subsection (5)(b)(i) shall be no longer than five hours total.

(c) An owner or operator that elects to self-inspect a solid waste management facility under Subsection (5)(a) shall:

(i) provide all information to the division that is required by this chapter and any rules issued by the board; and

(ii) conduct the self-inspection annually and send a ~~self-inspection report,~~ ~~certified~~ certified by an individual who completed the training described in Subsection (5)(b)(i), to the division upon completion.

(d) The division shall ensure that a solid waste management facility is inspected by an authorized division employee:

(i) every three to five years, if the solid waste management facility does not elect to self-inspect under Subsection (5)(a);

(ii) at least once every five years, regardless of whether the solid waste management facility elects to self-inspect under Subsection (5)(a);

(iii) promptly upon receipt of a ~~valid~~ credible complaint about the solid waste management facility; and

(iv) upon request by the solid waste management facility or upon issuance of a notice

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of violation.

(6) (a) The division shall ensure that a fine assessed against a solid waste management facility that elects to self-inspect for a violation of this chapter or a rule made by the board is higher than the fine that would be assessed against a solid waste management facility that does not elect to self-inspect.

(b) The division may determine that, upon a severe violation of this chapter or a rule made by the board by a facility that elects to self-inspect, that a facility is no longer eligible to self-inspect.

Section 3. Section **19-6-119** is amended to read:

### **19-6-119. Nonhazardous solid waste disposal fees.**

(1) (a) Through December 31, 2018, and except as provided in Subsection (4), the owner or operator of a commercial nonhazardous solid waste disposal facility or incinerator shall pay the following fees for waste received for treatment or disposal at the facility if the facility or incinerator is required to have operation plan approval under Section 19-6-108 and primarily receives waste generated by off-site sources not owned, controlled, or operated by the facility or site owner or operator:

(i) 13 cents per ton on all municipal waste and municipal incinerator ash;

(ii) 50 cents per ton on the following wastes if the facility disposes of one or more of the following wastes in a cell exclusively designated for the waste being disposed:

(A) construction waste or demolition waste;

(B) yard waste, including vegetative matter resulting from landscaping, land maintenance, and land clearing operations;

(C) dead animals;

(D) waste tires and materials derived from waste tires disposed of in accordance with Title 19, Chapter 6, Part 8, Waste Tire Recycling Act; and

(E) petroleum contaminated soils that are approved by the director; and

(iii) \$2.50 per ton on:

(A) all nonhazardous solid waste not described in Subsections (1)(a)(i) and (ii); and

(B) (I) fly ash waste;

(II) bottom ash waste;

(III) slag waste;

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(IV) flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(V) waste from the extraction, beneficiation, and processing of ores and minerals; and

(VI) cement kiln dust wastes.

(b) A commercial nonhazardous solid waste disposal facility or incinerator subject to the fees under Subsection (1)(a)(i) or (ii) is not subject to the fee under Subsection (1)(a)(iii) for those wastes described in Subsections (1)(a)(i) and (ii).

(c) The owner or operator of a facility described in Subsection 19-6-102(3)(b)(iii) shall pay a fee of 13 cents per ton on all municipal waste received for disposal at the facility.

(2) (a) Through December 31, 2018, and except as provided in Subsections (2)(c) and (4), a waste facility that is owned by a political subdivision shall pay the following annual facility fee to the department by January 15 of each year:

(i) \$800 if the facility receives 5,000 or more but fewer than 10,000 tons of municipal waste each year;

(ii) \$1,450 if the facility receives 10,000 or more but fewer than 20,000 tons of municipal waste each year;

(iii) \$3,850 if the facility receives 20,000 or more but fewer than 50,000 tons of municipal waste each year;

(iv) \$12,250 if the facility receives 50,000 or more but fewer than 100,000 tons of municipal waste each year;

(v) \$14,700 if the facility receives 100,000 or more but fewer than 200,000 tons of municipal waste each year;

(vi) \$33,000 if the facility receives 200,000 or more but fewer than 500,000 tons of municipal waste each year; and

(vii) \$66,000 if the facility receives 500,000 or more tons of municipal waste each year.

(b) The fee identified in Subsection (2)(a) for 2018 shall be paid by January 15, 2019.

(c) Through December 31, 2018, and except as provided in Subsection (4), a waste facility that is owned by a political subdivision shall pay \$2.50 per ton for:

(i) nonhazardous solid waste that is not a waste described in Subsection (1)(a)(i) or (ii) received for disposal if the waste is:

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- (A) generated outside the boundaries of the political subdivision; and
- (B) received from a single generator and exceeds 500 tons in a calendar year; and
- (ii) waste described in Subsection (1)(a)(iii)(B) received for disposal if the waste is:
  - (A) generated outside the boundaries of the political subdivision; and
  - (B) received from a single generator and exceeds 500 tons in a calendar year.
- (d) Waste received at a facility owned by a political subdivision under Subsection (2)(c) may not be counted as part of the total tonnage received by the facility under Subsection (2)(a).

(3) (a) As used in this Subsection (3):

(i) "Recycling center" means a facility that extracts valuable materials from a waste stream or transforms or remanufactures the material into a usable form that has demonstrated or potential market value.

(ii) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility that is used to deposit collected solid waste from off-site into a transfer vehicle for transport to a solid waste handling or disposal facility.

(b) Through December 31, 2018, and except as provided in Subsection (4), the owner or operator of a transfer station or recycling center shall pay to the department the following fees on waste sent for disposal to a nonhazardous solid waste disposal or treatment facility that is not subject to a fee under this section:

(i) \$1.25 per ton on:

- (A) all nonhazardous solid waste; and
- (B) waste described in Subsection (1)(a)(iii)(B);

(ii) 10 cents per ton on all construction and demolition waste; and

(iii) 5 cents per ton on all municipal waste or municipal incinerator ash.

(c) Wastes subject to fees under Subsection (3)(b)(ii) or (iii) are not subject to the fee required under Subsection (3)(b)(i).

(4) The owner or operator of a waste disposal facility that receives nonhazardous solid waste described in Subsection (1)(a)(iii)(B) is not required to pay any fee on those nonhazardous solid wastes if received solely for the purpose of recycling, reuse, or reprocessing.

(5) Through December 31, 2018, and except as provided in Subsection (2)(a), a facility



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required to pay fees under this section shall:

(a) calculate the fees by multiplying the total tonnage of nonhazardous solid waste received during the calendar month, computed to the first decimal place, by the required fee rate;

(b) pay the fees imposed by this section to the department by the 15th day of the month following the month in which the fees accrued; and

(c) with the fees required under Subsection (6)(b), submit to the department, on a form prescribed by the department, information that verifies the amount of nonhazardous solid waste received and the fees that the owner or operator is required to pay.

(6) (a) In accordance with Section 63J-1-504, on or before July 1, 2018, and each fiscal year thereafter, the department shall establish a fee schedule for the treatment, transfer, and disposal of all nonhazardous solid waste.

(b) The department shall, before establishing the annual fee schedule described in Subsection (6)(a), consult with industry and local government and complete a review of program costs and indirect costs of regulating nonhazardous solid waste in the state and use the findings of the review to create the fee schedule.

(c) The fee schedule described in Subsection (6)(a) shall:

(i) create an equitable and fair, though not necessarily equal or uniform, fee to be paid by all persons whose treatment, transfer, or disposal of nonhazardous solid waste creates a regulatory burden to the department, based on the actual cost as described in Section 19-6-126 and taking into consideration whether the owner or operator of a facility elects to self-inspect under Section 19-6-109, except as provided in Subsection (6)(d);

(ii) cover the fully burdened costs of the program and provide for reasonable and timely oversight by the department;

(iii) adequately meet the needs of industry, local government, and the department, including enabling the department to employ the appropriate number of qualified personnel to appropriately oversee industry and local government regulation;

(iv) provide stable funding for the Environmental Quality Restricted Account created in Section 19-1-108; and

(v) [~~give consideration to a fee differential regarding~~] for solid waste managed at a transfer facility, be no greater than [~~50 percent of the fee set for the treatment or disposal of the~~

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~~same solid waste]~~ the cost of regulatory services provided to the transfer facility.

(d) Any person who treats, transfers, stores, or disposes of solid waste from the extraction, beneficiation, and processing of ores and minerals on a site owned, controlled, or operated by that person may not be charged a fee under this section for the treatment, transfer, storage, or disposal of solid waste from the extraction, beneficiation, and processing of ores and minerals that are generated:

(i) on-site by the person; or

(ii) by off-site sources owned, controlled, or operated by the person.

(e) The fees in the fee schedule established by Subsection (6)(a) shall take effect on January 1, 2019.

(7) On and after January 1, 2019, a facility required to pay fees under this section shall:

(a) pay the fees imposed by this section to the department by the 15th day of the month following the quarter in which the fees accrued; and

(b) with the fees required under Subsection (7)(a), submit to the department, on a form prescribed by the department, information that verifies the amount of nonhazardous solid waste received and the fees that the owner or operator is required to pay.

(8) In setting the fee schedule described in Subsection (6)(a), the department shall ensure that a party is not charged multiple fees for the same solid waste, except the department may charge a separate fee for a transfer station.

(9) The department shall:

(a) deposit all fees received under this section into the Environmental Quality Restricted Account created in Section 19-1-108; and

(b) in preparing its budget for the governor and the Legislature, separately indicate the amount of the department's budget necessary to administer the solid and hazardous waste program established by this part.

(10) The department may contract or agree with a county to assist in performing nonhazardous solid waste management activities, including agreements for:

(a) the development of a solid waste management plan required under Section 17-15-23; and

(b) pass-through of available funding.

(11) This section does not exempt any facility from applicable regulation under the

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Atomic Energy Act, 42 U.S.C. Sec. 2014 and 2021 through 2114.

(12) The department shall report to the Natural Resources, Agriculture, and Environment Interim Committee by November 30, 2017, on the fee schedule described in Subsection (6)(a).

Section 4. Section **19-6-126** is enacted to read:

**19-6-126. Division of Waste Management and Radiation Control Expendable Special Revenue Fund.**

(1) There is created the Division of Waste Management and Radiation Control Expendable Special Revenue Fund.

(2) The fund consists of money deposited in the fund pursuant to Section 19-1-108.

(3) The Division of Waste Management and Radiation Control may expend money in the fund to upgrade technology for permitting and compliance purposes, and other expenditures that will result in increased efficiency and reduced cost, as described in this section.

(4) The technology upgrade authorized in this section shall be designed to assist the division in the following ways:

(a) allowing forms to be digitized and accessible online for:

(i) completion and submission by a division employee or the owner or operator of a facility that elects to self-inspect; and

(ii) review by a regulated facility;

(b) tracking expenses of a division employee, including travel time to inspected facilities; and

(c) increasing employee efficiency and government transparency.

(5) The Division of Waste Management and Radiation Control may use money in the fund to create training materials for the owner or operator of a solid waste management facility to learn how to self-inspect the solid waste management facility.

(6) (a) Once the technology described in this section is in place, the Division of Waste Management and Radiation Control shall implement a method for a solid waste management facility to use the technology to self-inspect as described in Section 19-6-109.

(b) Before the technology described in this section is in place, an owner or operator who elects to self-inspect shall use the standard form used by a Division of Waste Management and Radiation Control employee to conduct an inspection.

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(7) In implementing this section, the Division of Waste Management and Radiation Control shall work with the Department of Technology Services.

(8) On December 31, 2019, the Division of Finance shall transfer any money remaining in the fund to the General Fund.

Section 5. Section **19-6-307** is amended to read:

### **19-6-307. Hazardous Substances Mitigation Fund -- Uses.**

(1) There is created an expendable special revenue fund entitled the "Hazardous Substances Mitigation Fund."

(2) The fund consists of money generated from the following revenue sources:

(a) any voluntary contributions received for the cleanup of hazardous substances facilities;

(b) appropriations made to the fund by the Legislature; [~~and~~]

(c) money received by the state under Section 19-6-310 and Section 19-6-316[-]; and

(d) money from waste disposal fees, as described in Section 19-1-108.

(3) (a) The fund shall earn interest.

(b) All interest earned on fund money shall be deposited into the fund.

(4) The executive director may use fund money to:

(a) take emergency action as provided in Sections 19-6-309 and 19-6-310;

(b) conduct remedial investigations as provided in Sections 19-6-314 through 19-6-316;

(c) pay the amount required by the federal government as the state's portion of the cost of cleanups under authority of CERCLA, as appropriated by the Legislature for that purpose; and

(d) pay the amount required by the federal government as the state's portion of the cost of cleanups under 42 U.S.C. 6991 et seq., the Leaking Underground Storage Tank Trust Fund, as appropriated by the Legislature for that purpose.

Section 6. Section **63I-2-219** is amended to read:

### **63I-2-219. Repeal dates -- Title 19.**

~~[(1) Subsection 19-1-403(2)(c)(i), the language that states "minus the amount of any tax credit claimed under Section 59-7-605 or 59-10-1009" is repealed on January 1, 2017.]~~

~~[(2) Subsection 19-1-403(2)(c)(ii), the language that states "minus the amount of any~~

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~~tax credit claimed under Section 59-7-605 or 59-10-1009" is repealed on January 1, 2017.]~~

(1) (a) Subsection 19-1-108(3)(a) is repealed on June 30, 2019.

(b) When repealing Subsection 19-1-108(3)(a), the Office of Legislative Research and General Counsel shall, in addition to its authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.

(2) Section 19-6-126 is repealed on January 1, 2020.

Section 7. **Effective date.**

This bill takes effect on July 1, 2018.