

28 **78B-5-828. Bond required in an environmental action.**

29 (1) As used in this section:

30 (a) "Administrative stay" means a stay or other temporary remedy issued by an agency
31 under Section 63G-4-405.

32 (b) "Environmental action" means a cause of action that:

33 (i) is filed on or after May 10, 2011; and

34 (ii) seeks judicial review of a final agency action to issue a permit by:

35 ~~H→ [(A) the Department of Environmental Quality;]~~

36 ~~[(B)] (A) ←H~~ the Department of Natural Resources;

37 ~~H→ [(C)] (B) ←H~~ the Department of Transportation; or

38 ~~H→ [(D)] (C) ←H~~ the School and Institutional Trust Lands Administration.

39 (c) "Ultimately prevail on the merits" means, in the final judgment, the court rules in
40 the plaintiff's favor on at least one cause of action.

41 (2) A plaintiff who obtains a preliminary injunction or administrative stay in an
42 environmental action, but does not ultimately prevail on the merits of the environmental action,
43 is liable for damages sustained by a defendant who:

44 (a) opposed the preliminary injunction or administrative stay; and

45 (b) was harmed by the preliminary injunction.

46 (3) A court may not issue a preliminary injunction and an agency may not grant an
47 administrative stay in an environmental action until the plaintiff posts with the court or the
48 agency a surety bond or cash equivalent:

49 (a) in an amount the court or agency considers sufficient to compensate each defendant
50 opposing the preliminary injunction or administrative stay for damages that each defendant
51 may sustain as a result of the preliminary injunction or administrative stay;

52 (b) written by a surety licensed to do business in the state; and

53 (c) payable to each defendant opposing the preliminary injunction or administrative
54 stay in the event the plaintiff does not prevail on the merits of the environmental action.

55 (4) If there is more than one plaintiff, the court or agency shall establish the amount of
56 the bond required by Subsection (3) for each plaintiff in a fair and equitable manner.

57 (5) (a) If the plaintiff does not ultimately prevail on the merits of the environmental
58 action, the court shall execute the bond and award damages to each defendant who: