

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

- (1) As used in this section:
 - (a) "Administrative stay" means a stay or other temporary remedy issued by an agency under Section 63G-4-405.
 - (b) "Environmental action" means a cause of action that:
 - (i) is filed on or after May 10, 2011; and
 - (ii) seeks judicial review of a final agency action to issue a permit by:
 - (A) the Department of Natural Resources;
 - (B) the Department of Transportation; or
 - (C) the School and Institutional Trust Lands Administration.
 - (c) "Ultimately prevail on the merits" means, in the final judgment, the court rules in the plaintiff's favor on at least one cause of action.
- (2) A plaintiff who obtains a preliminary injunction or administrative stay in an environmental action, but does not ultimately prevail on the merits of the environmental action, is liable for damages sustained by a defendant who:
 - (a) opposed the preliminary injunction or administrative stay; and
 - (b) was harmed by the preliminary injunction.
- (3) A court may not issue a preliminary injunction and an agency may not grant an administrative stay in an environmental action until the plaintiff posts with the court or the agency a surety bond or cash equivalent:
 - (a) in an amount the court or agency considers sufficient to compensate each defendant opposing the preliminary injunction or administrative stay for damages that each defendant may sustain as a result of the preliminary injunction or administrative stay;
 - (b) written by a surety licensed to do business in the state; and
 - (c) payable to each defendant opposing the preliminary injunction or administrative stay in the event the plaintiff does not prevail on the merits of the environmental action.
- (4) If there is more than one plaintiff, the court or agency shall establish the amount of the bond required by Subsection (3) for each plaintiff in a fair and equitable manner.
- (5)
 - (a) If the plaintiff does not ultimately prevail on the merits of the environmental action, the court shall execute the bond and award damages to each defendant who:
 - (i) opposed the preliminary injunction or administrative stay; and
 - (ii) was harmed as a result of its issuance.
 - (b) If the amount of money secured by the surety bond or cash equivalent:
 - (i) exceeds the damages awarded, the court or agency shall return the excess to the plaintiff; and
 - (ii) is less than the damages awarded, the court or agency shall order the plaintiff to pay the remaining damages.
- (6) Notwithstanding any other provision of law, a court's or agency's refusal to require the posting of a surety bond or cash equivalent as required by this section is subject to immediate appeal.

Enacted by Chapter 116, 2011 General Session