

**COSTS ASSESSED FOR WRONGFULLY
ENJOINING A STATE PROJECT**

2002 GENERAL SESSION
STATE OF UTAH

Sponsor: Terry R. Spencer

This act adds a provision to the Judicial Code that allows an entity to bring an action in state court to recover damages from a work stoppage caused by another entity bringing a suit in federal court to stop a construction project. This act provides for retrospective operation.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

78-11-28, Utah Code Annotated 1953

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

Section 1. Section **78-11-28** is enacted to read:

78-11-28. State action for damages for disrupting federally approved project --
Action in state court to stay in state court.

(1) Any person or entity that improperly disrupts or halts progress on a federally approved permit, construction, or reconstruction project within this state shall be liable in a state action for damages to the entity overseeing the project, for all costs associated with the project which the overseeing entity is liable to continue payment on while the project is disrupted. A project shall be considered "improperly disrupted" if the party does not prevail in a federal lawsuit brought to enjoin the project.

(2) Costs shall include:

(a) wages and salaries of employees actually associated with or working on the project;

(b) material costs, including increases in those costs caused by the stoppage or delay in the project;

(c) penalties and interest costs that may accrue due to contracts entered into associated with the project;



28 (d) actual litigation costs, including attorneys' fees and court costs; and
29 (e) any other costs which the overseeing entity can prove to the court were caused directly
30 by the disruption of the project.

31 (3) An action brought in state court for damages in accordance with Subsection (1) may
32 not be removed to federal court.

33 Section 2. **Retrospective operation.**

34 This act has retrospective operation to January 1, 2001.

Legislative Review Note
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This bill raises legal concerns because of its retrospective application. Both our state and federal constitutions prohibit the enactment of *ex post facto* laws - laws which punish retroactively. Although most court decisions on this subject consider it in terms of criminal penalties, it may also apply to a civil penalty such as is found in this legislation.

Office of Legislative Research and General Counsel