

Representative Aaron Tilton proposes the following substitute bill:

DIVISION OF AIR QUALITY - BOND FOR

STAY OF AN ORDER

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Aaron Tilton

Senate Sponsor: Darin G. Peterson

LONG TITLE

General Description:

This bill modifies the Air Conservation Act to allow a person to obtain a stay of an order if certain requirements are met.

Highlighted Provisions:

This bill:

- ▶ allows an aggrieved person to obtain a stay if the person pays a fee, proves certain elements, and posts a bond **↔ if required ↔** ;
- ▶ authorizes the Department of Environmental Quality to establish a fee;
- ▶ establishes elements for a stay;
- ▶ authorizes the Air Quality Board to enact rules governing the bond;
- ▶ directs that the bond be paid to the order recipient and the taxing entity if the board or court finds that the order was properly issued; and
- ▶ authorizes an aggrieved person to seek judicial review of an Air Quality Board's final order.

Monies Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **19-2-111**, as renumbered and amended by Chapter 112, Laws of Utah 1991

30 ENACTS:

31 **19-2-108.5**, Utah Code Annotated 1953

32 **19-2-111.5**, Utah Code Annotated 1953

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

35 Section 1. Section **19-2-108.5** is enacted to read:

36 **19-2-108.5. Stay of an order -- Bond required.**

37 (1) An aggrieved person may obtain a stay of an order issued under Section 19-2-108

38 by:

39 (a) filing a motion for a stay with the board;

40 (b) paying the fee established under Subsection (2)(a);

41 (c) proving the elements outlined in Subsection (4); and

42 (d) posting the bond required by Subsection (5).

43 (2) (a) The department shall establish a fee for requesting a stay by following the
44 procedures and requirements of Section 63-38-3.2

45 (b) The department shall reimburse itself for the costs incurred in administering this
46 section from the fee.

47 (3) (a) By following the procedures and requirements of Title 63, Chapter 46b,
48 Administrative Procedures Act, the board shall hold a hearing to determine:

49 (i) whether to grant a stay; ~~H~~→ [and]

49a (ii) whether to require a bond described in Subsection (5); and

50 ~~[(ii)] (iii) if required, ~~H~~ the amount of the bond ~~H~~→ [required by Subsection (5)] ~~H~~ .~~

51 (b) A stay granted under Subsection (3)(a)(i) does not take effect until the bond
52 required by Subsection (5) is posted.

53 (4) The board may grant a stay if the person requesting the stay proves that:

54 (a) the person will suffer irreparable harm unless the stay is issued;

55 (b) the person's threatened injury outweighs the damage that the stay is likely to cause
56 the order recipient;

57 (c) the stay, if issued, would not be adverse to the public interest; and

58 (d) there is a substantial likelihood that the person will prevail on the merits of the
59 underlying claim.

60 (5) (a) Except as provided in Section 78-27-12, each person requesting a stay, other
61 than the order recipient, shall post a bond ~~H→~~, if required by the board, ←H after the board
61a grants the stay.

61b **H→ (b) The board may require a bond if it finds that any of the damages listed in**
61c **Subsection (5)(d) are significant.**

62 ~~(b)~~ (c) ←H The board shall enact rules governing the procedures for posting, and
62a the form of,
63 the bond.

64 **H→ ~~(c)~~ (d) ←H The board shall require that the bond amount cover:**

65 (i) the payment of the costs and damages suffered by the order recipient during the time
66 the stay is in effect, including the order recipient's:

67 (A) employees' wages, salaries, and benefits;

68 (B) lost net revenue; and

69 (C) costs associated with the delay; and

70 (ii) the lost tax revenue from any taxes imposed under Title 59, Revenue and Taxation,
71 that the order recipient would have been subject to if the stay had not been issued.

72 **H→ ~~(d)~~ (e) ←H The bond shall be paid to the order recipient and the taxing entity if the**
72a **board**
73 **determines that the order was properly issued.**

74 Section 2. Section 19-2-111 is amended to read:

75 **19-2-111. Review of orders of hearing examiner -- Procedure.**

76 ~~[Any]~~ (1) A person aggrieved by an order of a hearing examiner may file a motion for
77 review of the order with the board.

78 (2) An aggrieved person may obtain a stay of the order during the board's review by:

79 (a) filing a motion for a stay with the board;

80 (b) paying the fee established under Subsection 19-2-108.5(2)(a);

81 (c) proving the elements outlined in Subsection (4); and

82 (d) posting the bond required by Subsection (5).

83 (3) (a) By following the procedures and requirements of Title 63, Chapter 46b,
84 Administrative Procedures Act, the board shall hold a hearing to determine:

85 (i) whether to grant a stay; ~~H→~~ [and]

85a **(ii) whether to require a bond described in Subsection (5); and**

86 ~~[(ii)]~~ **(iii) if required, ←H the amount of the bond ~~H→~~ [required by Subsection (5)] ←H .**

87 (b) A stay granted under Subsection (3)(a)(i) does not take effect until the bond

88 required by Subsection (5) is posted.

89 (4) The board may grant a stay if the person requesting the stay proves that:

90 (a) the person will suffer irreparable harm unless the stay is issued;

91 (b) the person's threatened injury outweighs the damage that the stay is likely to cause
92 the order recipient;

93 (c) the stay, if issued, would not be adverse to the public interest; and

94 (d) there is a substantial likelihood that the person will prevail on the merits of the
95 underlying claim.

96 (5) (a) Except as provided in Section 78-27-12, each person requesting a stay, other
97 than the order recipient, shall post a bond ~~H→~~ ,if required by the board, ~~←H~~ after the board
97a grants the stay.

97b ~~H→~~ **(b) The board may require a bond if it finds that any of the damages listed in**
97c **Subsection (5)(d) are significant.**

98 ~~(tb)~~ ~~(c)~~ ~~←H~~ The board shall enact rules governing the procedures for posting, and
98a the form of,
99 the bond.

100 ~~H→~~ ~~(c)~~ **(d)** ~~←H~~ The board shall require that the bond amount cover:

101 (i) ~~H→~~ the payment of ~~←H~~ the costs and damages suffered by the order recipient during
101a the time the stay is in
102 effect, including the order recipient's:

103 (A) employees' wages, salaries, and benefits;

104 (B) lost net revenue; and

105 (C) costs associated with the delay; and

106 (ii) the lost tax revenue from any taxes imposed under Title 59, Revenue and Taxation,
107 that the order recipient would have been subject to if the stay had not been issued.

108 ~~H→~~ ~~(td)~~ ~~(e)~~ ~~←H~~ The bond shall be paid to the order recipient and the taxing entity if the
108a board
109 determines that the order was properly issued.

110 (6) The department shall reimburse itself for the costs incurred in administering this
111 section from the fee established under Subsection 19-2-108.5(2)(a).

112 Section 3. Section **19-2-111.5** is enacted to read:

113 **19-2-111.5. Judicial review of an agency order.**

114 (1) (a) A person aggrieved by a board's final order may obtain judicial review of the
115 order after exhausting all administrative remedies.

116 (b) Judicial review of the board's final order is governed by Title 63, Chapter 46b,
117 Administrative Procedures Act.

118 (2) An aggrieved person may obtain a stay of the order during judicial review by:

- 119 (a) filing a motion for a stay with the board;
 120 (b) paying the fee established under Subsection 19-2-108.5(2)(a);
 121 (c) proving the elements outlined in Subsection (4); and
 122 (d) posting the bond required by Subsection (5).
 123 (3) (a) By following the procedures and requirements of Title 63, Chapter 46b,
 124 Administrative Procedures Act, the board shall hold a hearing to determine:
 125 (i) whether to grant a stay; ~~H→~~ [and]
 125a (ii) whether to require a bond described in Subsection (5); and
 126 ~~(ii)~~ (iii) if required, ~~←H~~ the amount of the bond ~~H→~~ [required by Subsection (5)] ~~←H~~ .
 127 (b) A stay granted under Subsection (3)(a)(i) does not take effect until the bond
 128 required by Subsection (5) is posted.
 129 (4) The board may grant a stay if the person requesting the stay proves that:
 130 (a) the person will suffer irreparable harm unless the stay is issued;
 131 (b) the person's threatened injury outweighs the damage that the stay is likely to cause
 132 the order recipient;
 133 (c) the stay, if issued, would not be adverse to the public interest; and
 134 (d) there is a substantial likelihood that the person will prevail on the merits of the
 135 underlying claim.
 136 (5) (a) Except as provided in Section 78-27-12, each person requesting a stay, other
 137 than the order recipient, shall post a bond ~~H→~~ , if required by the board, ~~←H~~ after the board
 137a grants the stay.
 137b ~~H→~~ (b) The board may require a bond if it finds that any of the damages listed in
 137c Subsection (5)(d) are significant.
 138 ~~(b)~~ (c) ~~←H~~ The board shall enact rules governing the procedures for posting, and
 138a the form of,
 139 the bond.
 140 ~~H→~~ [~~(c)~~] (d) ~~←H~~ The board shall require that the bond amount cover:
 141 (i) the payment of the costs and damages suffered by the order recipient during the time
 142 the stay is in effect, including the order recipient's:
 143 (A) employees' wages, salaries, and benefits;
 144 (B) lost net revenue; and
 145 (C) costs associated with the delay; and
 146 (ii) the lost tax revenue from any taxes imposed under Title 59, Revenue and Taxation,
 147 that the order recipient would have been subject to if the stay had not been issued.
 148 ~~H→~~ [~~(d)~~] (e) ~~←H~~ The bond shall be paid to the order recipient and the taxing entity
 148a if the court
 149 determines that the order was properly issued.

150 (6) The department shall reimburse itself for the costs incurred in administering this
151 section from the fee established under Subsection 19-2-108.5(2)(a).

State Impact

Provisions of this bill allow a person to file a stay of the executive secretary's order and require a bond be posted. Current staff does not have the expertise to administer or evaluate those bonding requirements. It is estimated to cost \$16,900 to acquire that expertise. After the initial cost estimated annual expenses are limited to \$1,000 to oversee judicial reviews of aggrieved parties. The bill establishes that a fee be charged to offset the costs of administration. To date the Department of Environmental Quality has not had anyone request a stay of the executive secretary's orders and will not develop the expertise required to administer and evaluate bonding requirements of this bill until there is a request for a stay. At that time the Department will require an appropriation of the \$16,900 and will implement a fee to offset the cost. It is unknown at this time the related costs of projects that might be challenged and how much bond would be required.

Individual and Business Impact

Individuals and businesses that file a motion for a stay of the Air Quality Board's order will be required to pay fees and post bond for related costs of projects that might be challenged. Fees for the initial stay request will be \$16,900 and it is unknown at this time the size of bond that might be required.
