

ENVIRONMENTAL LITIGATION BOND

2006 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill requires entities that do business in the state to file a bond with the Division of Corporations and Commercial Code when it begins the environmental litigation.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires an entity doing business in Utah to file a bond with the division when it requests a stay or injunction in environmental litigation;
- ▶ authorizes the division to:
 - establish a fee for the bond filing;

- 35 • hold a hearing to establish the bond amount;
- 36 • make rules for posting the bond; and
- 37 • administratively dissolve an entity or revoke its authority to do business for
- 38 failure to post a bond;
- 39 ▶ requires the division to dissolve an entity or revoke its authority to do business if
- 40 another state with a similar law has revoked an entity's certificate of existence;
- 41 ▶ provides for revocation of licenses an entity holds, including professional licenses;
- 42 and
- 43 ▶ makes technical changes.

44 **Monies Appropriated in this Bill:**

45 None

46 **Other Special Clauses:**

47 None

48 **Utah Code Sections Affected:**

49 AMENDS:

50 **16-6a-1410**, as enacted by Chapter 300, Laws of Utah 2000

51 **16-6a-1515**, as enacted by Chapter 300, Laws of Utah 2000

52 **16-10a-1420**, as enacted by Chapter 277, Laws of Utah 1992

53 **48-2a-802**, as enacted by Chapter 233, Laws of Utah 1990

54 **48-2c-1206**, as enacted by Chapter 260, Laws of Utah 2001

55 ENACTS:

56 **13-1a-10**, Utah Code Annotated 1953



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

59 Section 1. Section **13-1a-10** is enacted to read:

60 **13-1a-10. Bond required for environmental litigation -- Bond hearing.**

61 (1) As used in this section:

62 (a) "Division" means the Division of Corporations and Commercial Code created in

63 Section 13-1a-1.

64 (b) "Environmental litigation" means any action or complaint filed in a United States
65 court or state court:

66 (i) with a cause of action arising after May 1, 2006; and

67 (ii) requesting a stay or injunction to a new permit or approval of a new project under:

68 (A) the Acid Precipitation Act of 1980, 42 U.S.C. Sec. 8901 through 8912;

69 (B) the Toxic Substances Control Act, 15 U.S.C. Sec. 2601 through 2692;

70 (C) the Atomic Energy Act of 1954, 42 U.S.C. Sec. 2014, 2021, 2022, 2111, 2113, and
71 2114;

72 (D) the Clean Air Act, 42 U.S.C. Sec. 7401 through 7671q;

73 (E) the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 through 1387;

74 (F) the Comprehensive Environmental Response, Compensation, and Liability Act of
75 1980, 42 U.S.C. Sec. 9601 through 9675;

76 (G) the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C.
77 Sec. 11001 through 11050;

78 (H) the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 through 1544;

79 (I) the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. Sec.
80 791 through 798;

81 (J) the Federal Land Policy and Management Act of 1976, 43 U.S.C. Sec. 1701 through
82 1785;

83 (K) the Forest and Rangeland Renewable Resources Planning Act of 1974, 16 U.S.C.
84 Sec. 1600 through 1614;

85 (L) the Forest and Rangeland Renewable Resources Planning Act of 1978, 16 U.S.C.
86 Sec. 1641 through 1649;

87 (M) the Healthy Forest Restoration Act of 2003, 16 U.S.C. Sec. 6501 through 6591;

88 (N) the Low-Level Radioactive Waste Policy Act, 42 U.S.C. Sec. 2021b through
89 2021j;

90 (O) the Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. Sec. 528 through 531;

- 91 (P) the National Environmental Policy Act of 1969, 42 U.S.C. Sec. 4321 through
- 92 4370f;
- 93 (Q) the Noise Control Act of 1972, 42 U.S.C. Sec. 4901 through 4918;
- 94 (R) the Nuclear Waste Policy Act of 1982, 42 U.S.C. Sec. 10101 through 10270;
- 95 (S) the Public Health Service Act, 42 U.S.C. Sec. 300f through 300j-26;
- 96 (T) the Solid Waste Disposal Act, 42 U.S.C. Sec. 6901 through 6992k;
- 97 (U) the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Sec. 1201
- 98 through 1328;
- 99 (V) Title 19, Chapter 2, Air Conservation Act;
- 100 (W) Title 19, Chapter 3, Radiation Control Act;
- 101 (X) Title 19, Chapter 4, Safe Drinking Water Act;
- 102 (Y) Title 19, Chapter 5, Water Quality Act;
- 103 (Z) Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act;
- 104 (AA) Title 19, Chapter 6, Part 2, Hazardous Waste Facility Siting Act;
- 105 (BB) Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act;
- 106 (CC) Title 19, Chapter 6, Part 6, Solid Waste Management Act;
- 107 (DD) the Administrative Procedures Act, 5 U.S.C. Sec. 701 through 706, when the
- 108 action or complaint requests judicial review of any federal agency action by the:
- 109 (I) Environmental Protection Agency;
- 110 (II) U.S. Army Corps of Engineers;
- 111 (III) U.S. Department of the Interior;
- 112 (IV) U.S. Department of Agriculture; or
- 113 (V) U.S. Department of Transportation; or
- 114 (EE) Title 63, Chapter 46b, Administrative Procedures Act, when the action or
- 115 complaint requests judicial review of any agency action by the:
- 116 (I) Utah Department of Environmental Quality;
- 117 (II) Utah Department of Natural Resources;
- 118 (III) Utah Department of Transportation; or

119 (IV) Utah School and Institutional Trust Lands Administration.
120 (2) The division shall require an entity registered with the division to post a corporate
121 surety bond or cash equivalent:
122 (a) in an amount that will cover the payment of the reasonably foreseeable costs and
123 damages suffered in Utah by any person because of the delay caused by the environmental
124 litigation, including:
125 (i) employees' lost wages, salaries, and benefits; and
126 (ii) lost net revenue, including local and state tax revenues;
127 (b) written by a surety licensed to do business within the state;
128 (c) in favor of the state, for the benefit of any person injured in Utah by the
129 environmental litigation; and
130 (d) conditioned upon:
131 (i) the payment of court costs and reasonable attorney's fees to the prevailing party
132 incident to any suit upon the bond; and
133 (ii) the unsuccessful environmental litigation.
134 (3) The division may establish a fee to be paid when posting the bond by following the
135 procedures and requirements of Section 63-38-3.2.
136 (4) By following the procedures and requirements of Title 63, Chapter 46a, Utah
137 Administrative Rulemaking Act, the division shall make rules governing the procedures for
138 posting the bond.
139 (5) The division shall hold a formal adjudicative proceeding to determine the bond
140 amount by following the procedures and requirements of Title 63, Chapter 46b, Administrative
141 Procedures Act.
142 (6) If an entity fails to file the bond required by Subsection (2):
143 (a) the division shall administratively dissolve the entity or revoke its authority to do
144 business;
145 (b) the entity is no longer authorized to transact business in Utah; and
146 (c) any license held by the entity, including a professional license, shall be revoked by

147 the appropriate state or local authority.

148 (7) A person, as defined in Section 68-3-12, claiming damages as a result of any
149 environmental litigation pursued by an entity registered with the division may file a claim upon
150 the bond for damages against both the principal and the surety.

151 (8) The total aggregate liability on the bond to all persons making claims may not
152 exceed the amount of the bond.

153 (9) If any other state has a provision of law substantially similar to this section, and the
154 other state has administratively dissolved an entity, revoked an entity's certificate of existence
155 or license, or revoked the entity's authority to transact business in that state:

156 (a) the division shall administratively dissolve the entity or revoke its authority to do
157 business; and

158 (b) the entity is no longer authorized to transact business in Utah.

159 Section 2. Section **16-6a-1410** is amended to read:

160 **16-6a-1410. Grounds for administrative dissolution.**

161 The division may commence a proceeding under Section 16-6a-1411 for administrative
162 dissolution of a nonprofit corporation if:

163 (1) the nonprofit corporation does not pay when they are due any taxes, fees, or
164 penalties imposed by this chapter or other applicable laws of this state;

165 (2) the nonprofit corporation does not deliver its annual report to the division when it is
166 due;

167 (3) the nonprofit corporation is without:

168 (a) a registered agent; or

169 (b) a registered office;

170 (4) the nonprofit corporation does not give notice to the division that:

171 (a) its registered agent or registered office has been changed;

172 (b) its registered agent has resigned;

173 (c) its registered office has been discontinued; or

174 (d) the nonprofit corporation's period of duration stated in its articles of incorporation

175 expires[-]; or

176 (5) the nonprofit corporation does not post a bond required by Section 13-1a-10.

177 Section 3. Section **16-6a-1515** is amended to read:

178 **16-6a-1515. Grounds for revocation.**

179 The division may commence a proceeding under Section 16-6a-1516 to revoke the
180 authority of a foreign nonprofit corporation to conduct affairs in this state if:

181 (1) the foreign nonprofit corporation does not deliver its annual report to the division
182 when it is due;

183 (2) the foreign nonprofit corporation does not pay when they are due any taxes, fees, or
184 penalties imposed by this chapter or other applicable laws of this state;

185 (3) the foreign nonprofit corporation is without a registered agent or registered office in
186 this state;

187 (4) the foreign nonprofit corporation does not inform the division under Section
188 16-6a-1509 or 16-6a-1510 that:

189 (a) its registered agent or registered office has changed;

190 (b) its registered agent has resigned; or

191 (c) its registered office has been discontinued;

192 (5) an incorporator, director, officer, or agent of the foreign nonprofit corporation signs
193 a document knowing it is false in any material respect with intent that the document be
194 delivered to the division for filing; [or]

195 (6) the division receives a duly authenticated certificate from the division or other
196 official having custody of corporate records in the state or country under whose law the foreign
197 nonprofit corporation is incorporated stating that the foreign nonprofit corporation has
198 dissolved or disappeared as the result of a merger[-]; or

199 (7) the foreign nonprofit corporation does not post a bond required by Section
200 13-1a-10.

201 Section 4. Section **16-10a-1420** is amended to read:

202 **16-10a-1420. Grounds for administrative dissolution.**

203 The division may commence a proceeding under Section 16-10a-1421 for
204 administrative dissolution of a corporation if:

205 (1) the corporation does not pay when they are due any taxes, fees, or penalties
206 imposed by this chapter or other applicable laws of this state;

207 (2) the corporation does not deliver a corporate or annual report to the division when it
208 is due;

209 (3) the corporation is without a registered agent or registered office in this state;

210 (4) the corporation does not give notice to the division that its registered agent or
211 registered office has been changed, that its registered agent has resigned, or that its registered
212 office has been discontinued; [or]

213 (5) the corporation's period of duration stated in its articles of incorporation expires[-];
214 or

215 (6) the corporation does not post a bond required by Section 13-1a-10.

216 Section 5. Section **48-2a-802** is amended to read:

217 **48-2a-802. Judicial dissolution.**

218 On application by or for a partner or the director of the division, a district court having
219 competent jurisdiction may decree dissolution of the limited partnership:

220 (1) whenever it is not reasonably practicable to carry on the business in conformity
221 with the partnership agreement [or];

222 (2) for failure to comply with the requirements of this chapter[-]; or

223 (3) the partnership does not post a bond required by Section 13-1a-10.

224 Section 6. Section **48-2c-1206** is amended to read:

225 **48-2c-1206. Grounds for administrative dissolution.**

226 The division may dissolve a company under Section 48-2c-1207 if:

227 (1) the company does not pay when due, any taxes, fees, or penalties imposed by this
228 chapter or other applicable laws of this state;

229 (2) the company does not file its annual report with the division when it is due;

230 (3) the company is without a registered agent or registered office in this state; [or]

- 231 (4) the company fails to give notice to the division that:
232 (a) its registered agent or registered office has been changed;
233 (b) its registered agent has resigned;
234 (c) its registered office has been discontinued; or
235 (d) the company's period of duration has expired[-]; or
236 (5) the company does not post a bond required by Section 13-1a-10.