

1                                   **ENVIRONMENTAL LITIGATION BOND**

2   2006 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Aaron Tilton**

5                                   Senate Sponsor: Curtis S. Bramble

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7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12           This bill:

- 13           ▶ defines terms;
- 14           ▶ requires an entity doing business in Utah to file a bond with the division when it  
15 begins environmental litigation;
- 16           ▶ authorizes the division to:
- 17           • establish a fee for the bond filing;
  - 18           • hold a hearing to establish the bond amount;
  - 19           • make rules for posting the bond; and
  - 20           • revoke a certificate of existence for failure to post a bond; and
- 21           ▶ requires the division to revoke a certificate of existence if another state with a  
22 similar law has revoked an entity's certificate of existence.

23 **Monies Appropriated in this Bill:**

24           None

25 **Other Special Clauses:**

26           None

27 **Utah Code Sections Affected:**



28 ENACTS:

29 **13-1a-10**, Utah Code Annotated 1953



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

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

33 **13-1a-10. Bond required for environmental litigation -- Bond hearing.**

34 (1) As used in this section:

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

36 Section 13-1a-1.

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

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

40 (ii) requesting relief under:

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

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

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

44 2114;

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

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

47 (F) the Comprehensive Environmental Response, Compensation, and Liability Act of

48 1980, 42 U.S.C. Sec. 9601 through 9675;

49 (G) the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C.

50 Sec. 11001 through 11050;

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

52 (I) the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. Sec.

53 791 through 798;

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

55 1785;

56 (K) the Forest and Rangeland Renewable Resources Planning Act of 1974, 16 U.S.C.

57 Sec. 1600 through 1614;

58 (L) the Forest and Rangeland Renewable Resources Planning Act of 1978, 16 U.S.C.

59 Sec. 1641 through 1649;  
60 (M) the Healthy Forest Restoration Act of 2003, 16 U.S.C. Sec. 6501 through 6591;  
61 (N) the Low-Level Radioactive Waste Policy Act, 42 U.S.C. Sec. 2021b through  
62 2021j;  
63 (O) the Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. Sec. 528 through 531;  
64 (P) the National Environmental Policy Act of 1969, 42 U.S.C. Sec. 4321 through  
65 4370f;  
66 (Q) the Noise Control Act of 1972, 42 U.S.C. Sec. 4901 through 4918;  
67 (R) the Nuclear Waste Policy Act of 1982, 42 U.S.C. Sec. 10101 through 10270;  
68 (S) the Public Health Service Act, 42 U.S.C. Sec. 300f through 300j-26;  
69 (T) the Solid Waste Disposal Act, 42 U.S.C. Sec. 6901 through 692k;  
70 (U) the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Sec. 1201  
71 through 1328;  
72 (V) Title 19, Chapter 2, Air Conservation Act;  
73 (W) Title 19, Chapter 3, Radiation Control Act;  
74 (X) Title 19, Chapter 4, Safe Drinking Water Act;  
75 (Y) Title 19, Chapter 5, Water Quality Act;  
76 (Z) Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act;  
77 (AA) Title 19, Chapter 6, Part 2, Hazardous Waste Facility Siting Act;  
78 (BB) Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act;  
79 (CC) Title 19, Chapter 6, Part 6, Solid Waste Management Act;  
80 (DD) the Administrative Procedures Act, 5 U.S.C. Sec. 701 through 706, when the  
81 action or complaint requests judicial review of any federal agency action by the:  
82 (I) Environmental Protection Agency;  
83 (II) U.S. Army Corps of Engineers;  
84 (III) U.S. Department of the Interior;  
85 (IV) U.S. Department of Agriculture; or  
86 (V) U.S. Department of Transportation; or  
87 (EE) Title 63, Chapter 46b, Administrative Procedures Act, when the action or  
88 complaint requests judicial review of any agency action by the:  
89 (I) Utah Department of Environmental Quality;

90 (II) Utah Department of Natural Resources; or  
91 (III) Utah Department of Transportation.

92 (2) The division shall require an entity registered with the division to post a corporate  
93 surety bond:

94 (a) in an amount that will cover the payment of the reasonably foreseeable costs and  
95 damages suffered in Utah by any person because of the environmental litigation, including:

96 (i) employees' lost wages, salaries, and benefits;

97 (ii) lost net revenue; and

98 (iii) consequential damages, including increased construction costs, because of the  
99 litigation;

100 (b) written by a surety licensed to do business within the state;

101 (c) in favor of the state, for the benefit of any person injured in Utah by the  
102 environmental litigation; and

103 (d) conditioned upon:

104 (i) the payment of court costs and reasonable attorney's fees to the prevailing party  
105 incident to any suit upon the bond; and

106 (ii) the unsuccessful environmental litigation.

107 (3) The division may establish a fee to be paid when posting the bond by following the  
108 procedures and requirements of Section 63-38-3.2.

109 (4) By following the procedures and requirements of Title 63, Chapter 46a, Utah  
110 Administrative Rulemaking Act, the division shall make rules governing the procedures for  
111 posting the bond.

112 (5) The division shall hold a formal adjudicative proceeding to determine the bond  
113 amount by following the procedures and requirements of Title 63, Chapter 46b, Administrative  
114 Procedures Act.

115 (6) If an entity fails to file the bond required by Subsection (2):

116 (a) the division shall revoke the certificate of existence or license; and

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

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

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

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

126           (a) the division shall revoke any existing certificate of existence or license; and

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

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**Legislative Review Note**  
**as of 1-9-06 7:50 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0100**

**Environmental Litigation Bond**

*24-Jan-06*

*8:02 AM*

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**State Impact**

Costs of implementing this bill will be paid by fees authorized in the bill. Actual annual costs will be both sporadic and variable in amount.

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**Individual and Business Impact**

Individual and business impacts will vary according to individual circumstances.

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**Office of the Legislative Fiscal Analyst**