

**DIVISION OF AIR QUALITY - BOND FOR  
STAY OF AN ORDER**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Aaron Tilton**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Air Conservation Act by authorizing an aggrieved person to file a motion for a stay of an order of the Air Quality Board if the person also posts a bond.

**Highlighted Provisions:**

This bill:

- ▶ authorizes aggrieved parties to file a motion requesting a stay if they post a bond;
- ▶ establishes standing requirements for a stay;
- ▶ authorizes the Board of Air Quality to enact rules governing the bond;
- ▶ directs that the bond be paid to the order recipient if the order is determined to have been properly issued; and
- ▶ authorizes aggrieved parties to seek judicial review of a final order of the Board of Air Quality.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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



28 ENACTS:

29 **19-2-108.5**, Utah Code Annotated 1953

30 **19-2-111.5**, Utah Code Annotated 1953

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

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

34 **19-2-108.5. Stays -- Bonds.**

35 (1) An aggrieved person may seek a stay of an order issued under Section 19-2-108 by:

36 (a) filing a motion for a stay with the board; and

37 (b) filing the bond required by Subsection (3).

38 (2) After notice and a hearing, the board shall order a stay if the person seeking the stay  
39 demonstrates that:

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

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

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

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

46 (3) (a) Except as provided in Section 78-27-12, each person, other than the order  
47 recipient, shall post a bond when filing a motion for a stay of the order.

48 (b) The board shall enact rules governing the procedures for posting, and the form of,  
49 the bond.

50 (c) The rules enacted by the board shall require that:

51 (i) the bond be paid to the order recipient and the taxing entity if the board determines  
52 that the order was properly issued;

53 (ii) the bond amount cover the payment of the costs and damages suffered by the order  
54 recipient during the time the stay is in effect, including the order recipient's:

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

56 (B) lost net revenue; and

57 (C) consequential damages, including increased construction costs, because of the  
58 delay; and

59 (iii) the bond amount cover the lost tax revenue from any taxes imposed under Title 59,  
60 Revenue and Taxation, that the order recipient would have been subject to if the stay had not  
61 been issued.

62 Section 2. Section **19-2-111** is amended to read:

63 **19-2-111. Review of orders of hearing examiner -- Procedure.**

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

66 (b) An aggrieved person who files a motion for review may seek a stay of the order by:

67 (i) filing a motion for a stay with the board; and

68 (ii) filing the bond required by Subsection (3).

69 (2) After notice and a hearing, the board shall order a stay if the person seeking the stay  
70 demonstrates that:

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

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

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

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

77 (3) (a) Except as provided in Section 78-27-12, each person, other than the order  
78 recipient, shall post a bond when filing a motion for a stay of the order.

79 (b) The board shall enact rules governing the procedures for posting, and the form of,  
80 the bond.

81 (c) The rules enacted by the board shall require that:

82 (i) the bond be paid to the order recipient and the taxing entity if the board determines  
83 that the order was properly issued;

84 (ii) the bond amount cover the payment of the costs and damages suffered by the order  
85 recipient during the time the stay will be in effect, including the order recipient's:

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

87 (B) lost net revenue; and

88 (C) consequential damages, including increased construction costs, because of the  
89 delay; and

90 (iii) the bond amount cover the lost tax revenue from any taxes imposed under Title 59,  
91 Revenue and Taxation, that the order recipient would have been subject to if the stay had not  
92 been issued.

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

94 **19-2-111.5. Judicial review of approval orders.**

95 (1) (a) A person aggrieved by a final order of the board may obtain judicial review of  
96 the order after exhausting all administrative remedies.

97 (b) Judicial review of the board's order shall be governed by Title 63, Chapter 46b,  
98 Administrative Procedures Act.

99 (c) An aggrieved person who files a motion for judicial review may seek a stay of the  
100 order by:

101 (i) filing a motion for a stay with the board; and

102 (ii) filing the bond required by Subsection (3).

103 (2) After notice and a hearing, the board shall order a stay if the person seeking the stay  
104 demonstrates that:

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

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

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

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

111 (3) (a) Except as provided in Section 78-27-12, each person, other than the order  
112 recipient, shall post a bond when filing a motion for a stay of the order.

113 (b) The board shall enact rules governing the procedures for posting, and the form of,  
114 the bond.

115 (c) The rules enacted by the board shall require that:

116 (i) the bond be paid to the order recipient and the taxing entity if the court determines  
117 that the order was properly issued;

118 (ii) the bond amount cover the payment of the costs and damages suffered by the order  
119 recipient during the time the stay will be in effect including the order recipient's:

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

121           (B) lost net revenue; and  
122           (C) consequential damages, including increased construction costs, because of the  
123 delay; and  
124           (iii) the bond amount cover the lost tax revenue from any taxes imposed under Title 59,  
125 Revenue and Taxation, that the order recipient would have been subject to if the stay had not  
126 been issued.

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**Legislative Review Note**  
**as of 9-26-05 3:09 PM**

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**

**State Impact**

The bill adds a bonding provision that current staff does not have the expertise to administer or evaluate. It is estimated to cost \$16,900 from the General Fund in FY 2007 to acquire that expertise. Second year expenses are limited to \$1,000 from the General Fund to oversee judicial reviews of aggrieved parties. It is unknown at this time the related costs of projects that might be challenged and how much bond would be required.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
General Fund	\$16,900	\$1,000	\$0	\$0
<b>TOTAL</b>	<b>\$16,900</b>	<b>\$1,000</b>	<b>\$0</b>	<b>\$0</b>

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**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 post bond for related costs of projects that might be challenged. It is unknown at this time the size of bond that might be required.

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