

**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: \_\_\_\_\_

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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;
- ▶ authorizes the Department of Environmental Quality to establish a fee;
- ▶ 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



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **19-2-111**, as renumbered and amended by Chapter 112, Laws of Utah 1991

29 ENACTS:

30 **19-2-108.5**, Utah Code Annotated 1953

31 **19-2-111.5**, Utah Code Annotated 1953



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

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

35 **19-2-108.5. Stays -- Bonds.**

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

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

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

39 (c) filing the bond required by Subsection (3).

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

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

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

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

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

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

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

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

54 (B) lost net revenue; and

55 (C) costs associated with the delay; and

56 (iii) the bond amount cover the lost tax revenue from any taxes imposed under Title 59,

57 Revenue and Taxation, that the order recipient would have been subject to if the stay had not  
58 been issued.

59 (d) The board shall hold a formal adjudicative proceeding to determine the bond  
60 amount by following the procedures and requirements of Title 63, Chapter 46b, Administrative  
61 Procedures Act.

62 (4) After notice and a hearing, the board shall order a stay if the person seeking the stay  
63 demonstrates that:

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

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

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

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

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

71 **19-2-111. Review of orders of hearing examiner -- Procedure.**

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

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

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

76 (ii) paying the fee established under Subsection 19-2-108.5(2)(a); and

77 (iii) filing the bond required by Subsection (2).

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

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

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

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

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

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

88 (B) lost net revenue; and  
89 (C) costs associated with the 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 (d) The board shall hold a formal adjudicative proceeding to determine the bond  
94 amount by following the procedures and requirements of Title 63, Chapter 46b, Administrative  
95 Procedures Act.

96 (3) After notice and a hearing, the board shall order a stay if the person seeking the stay  
97 demonstrates that:

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

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

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

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

104 (4) The department shall reimburse itself for the costs incurred in administering this  
105 section from the fee authorized by Subsection 19-2-108.5(2)(a).

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

107 **19-2-111.5. Judicial review of approval orders.**

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

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

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

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

115 (ii) paying the fee established under Subsection 19-2-108.5(2)(a); and

116 (iii) filing the bond required by Subsection (2).

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

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

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

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

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

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

127           (B) lost net revenue; and

128           (C) costs associated with the delay; and

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

132           (d) The board shall hold a formal adjudicative proceeding to determine the bond  
133 amount by following the procedures and requirements of Title 63, Chapter 46b, Administrative  
134 Procedures Act.

135           (3) After notice and a hearing, the board shall order a stay if the person seeking the stay  
136 demonstrates that:

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

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

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

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

143           (4) The department shall reimburse itself for the costs incurred in administering this  
144 section from the fee authorized by 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.

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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 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.

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