

**RADIATION CONTROL ACT - BOND
REQUIREMENTS**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Aaron Tilton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Radiation Control Act by authorizing a person to file a motion for a stay of an order if certain requirements are met.

Highlighted Provisions:

This bill:

- ▶ authorizes a person to file a motion requesting a stay of an order if the person pays a fee and posts a bond;
- ▶ authorizes the Department of Environmental Quality to establish a fee;
- ▶ authorizes the Radiation Control Board to enact rules governing the bond;
- ▶ establishes requirements for a stay; and
- ▶ directs that the bond be paid to the order recipient if the order is determined to have been properly issued.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

19-3-108.5, Utah Code Annotated 1953



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

Section 1. Section **19-3-108.5** is enacted to read:

19-3-108.5. Stays -- Bonds.

(1) A person may seek a stay of an executive secretary's order pending an administrative proceeding, or a board's final order pending judicial review, by:

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

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

(c) filing the bond required by Subsection (2)(b).

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

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

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

(c) The board shall enact rules governing the procedures for posting, and the form of, the bond by following the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

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

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

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

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

(B) lost net revenue; and

(C) consequential damages, including increased construction costs, because of the stay;

and

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

(3) The board shall hold a formal adjudicative proceeding to determine the bond

59 amount by following the procedures and requirements of Title 63, Chapter 46b, Administrative
60 Procedures Act.

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

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

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

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

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

Legislative Review Note
as of 1-25-06 6:39 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

State Impact

Provisions of this bill allows a person to file a stay of the executive secretary's order and requires 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 Radiation Control 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.
