

Representative Aaron Tilton proposes the following substitute bill:

RADIATION CONTROL ACT - BOND

REQUIREMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Aaron Tilton

Senate Sponsor: Darin G. Peterson

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ allows a person to obtain a stay of an order if the person pays a fee, proves certain elements, and posts a bond if required;
- ▶ authorizes the Department of Environmental Quality to establish a fee;
- ▶ authorizes the Radiation Control Board to enact rules governing the bond;
- ▶ establishes elements for a stay; and
- ▶ directs that the bond be paid to the order recipient and the taxing entity if the order is determined to have been properly issued.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 ENACTS:

27 **19-3-108.5**, Utah Code Annotated 1953



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

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

31 **19-3-108.5. Stays -- Bonds.**

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

- 34 (a) filing a motion for a stay with the board;
- 35 (b) paying the fee established under Subsection (2)(a);
- 36 (c) proving the elements outlined in Subsection (4); and
- 37 (d) if required, posting the bond described in Subsection (5).

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

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

42 (3) (a) By following the procedures and requirements of Title 63, Chapter 46b,
43 Administrative Procedures Act, the board shall hold a hearing to determine:

- 44 (i) whether to grant a stay;
- 45 (ii) whether to require a bond described in Subsection (5); and
- 46 (iii) if required, the amount of the bond.

47 (b) If the board requires a bond, a stay granted under Subsection (3)(a)(i) does not take
48 effect until the bond is posted.

49 (4) The board may grant a stay if the person requesting the stay proves that:

- 50 (a) the person will suffer irreparable harm unless the stay is issued;
- 51 (b) the person's threatened injury outweighs the damage that the stay is likely to cause
52 the order recipient;

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

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

56 (5) (a) Except as provided in Section 78-27-12, each person seeking a stay, other than

57 the order recipient, shall post a bond, if required by the board, after the board grants the stay.

58 (b) The board may require a bond if it finds that any of the damages listed in

59 Subsection (5)(d) are significant.

60 (c) The board shall enact rules governing the procedures for posting, and the form of,

61 the bond by following the procedures and requirements of Title 63, Chapter 46a, Utah

62 Administrative Rulemaking Act.

63 (d) The board shall require that the bond amount cover:

64 (i) the payment of the costs and damages suffered by the order recipient during the time

65 the stay is in effect, including the order recipient's:

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

67 (B) lost net revenue; and

68 (C) costs associated with the delay; and

69 (ii) the lost tax revenue from any taxes imposed under Title 59, Revenue and Taxation,

70 that the order recipient would have been subject to if the stay had not been issued.

71 (e) The bond shall be paid to the order recipient and the taxing entity if the board or

72 court determines that the order was properly issued.

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.
