

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: _____

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 an aggrieved person to obtain a stay of an order if the person pays a fee, proves certain elements, 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 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) posting the bond required by 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; and
- 45 (ii) the amount of the bond required by Subsection (5).

46 (b) A stay granted under Subsection (3)(a)(i) does not take effect until the bond
47 required by Subsection (5) is posted.

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

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

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

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

55 (5) (a) Except as provided in Section 78-27-12, each person seeking a stay, other than
56 the order recipient, shall post a bond after the board grants the stay.

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

60 (c) The board shall require that the bond amount cover:

61 (i) the payment of the costs and damages suffered by the order recipient during the time
62 the stay is in effect, including the order recipient's:

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

64 (B) lost net revenue; and

65 (C) costs associated with the delay; and

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

68 (d) The bond shall be paid to the order recipient and the taxing entity if the board or
69 court determines that the order was properly issued.