ENVIRONMENTAL LITIGATION BOND
2009 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Michael E. Noel
Senate Sponsor: Stephen H. Urquhart
LONG TITLE
General Description:
This bill requires a plaintiff requesting a preliminary injunction or an administrative
stay to post a bond.
Highlighted Provisions:
This bill:
 requires a plaintiff to post a bond before receiving a preliminary injunction or
administrative stay;
 requires an unsuccessful plaintiff to pay damages to defendants who are harmed by
a preliminary injunction or administrative stay; and
 provides for an immediate appeal of a court's or agency's refusal to require the bond.
Monies Appropriated in this Bill:
None
Other Special Clauses:
None
Utah Code Sections Affected:
ENACTS:
78B-5-828 , Utah Code Annotated 1953



28	78B-5-828. Bond required in an environmental action.
29	(1) As used in this section:
30	(a) "Administrative stay" means a stay or other temporary remedy issued by an agency
31	under Section 63G-4-405.
32	(b) "Environmental action" means a cause of action that:
33	(i) is filed on or after May 12, 2009; and
34	(ii) seeks judicial review of a final agency action to issue a permit by:
35	(A) the Department of Environmental Quality;
36	(B) the Department of Natural Resources;
37	(C) the Department of Transportation; or
38	(D) the School and Institutional Trust Lands Administration.
39	(c) "Ultimately prevail on the merits" means in the final judgment, the court rules in
40	the plaintiff's favor on at least one cause of action.
41	(2) A plaintiff who obtains a preliminary injunction or administrative stay in an
42	environmental action, but does not ultimately prevail on the merits of the environmental action
43	is liable for damages sustained by any defendant who:
44	(a) opposed the preliminary injunction or administrative stay; and
45	(b) was harmed by the preliminary injunction.
46	(3) A court may not issue a preliminary injunction and an agency may not grant an
47	administrative stay in an environmental action until the plaintiff posts with the court or the
48	agency a surety bond or cash equivalent:
49	(a) in an amount the court or agency considers sufficient to compensate each defendant
50	opposing the preliminary injunction or administrative stay for damages that each defendant
51	may sustain as a result of the preliminary injunction or administrative stay;
52	(b) written by a surety licensed to do business in the state; and
53	(c) payable to each defendant opposing the preliminary injunction or administrative
54	stay in the event the plaintiff does not prevail on the merits of the environmental action.
55	(4) If there is more than one plaintiff, the court or agency shall establish the amount of
56	the bond required by Subsection (3) for each plaintiff in a fair and equitable manner.
57	(5) (a) If the plaintiff does not ultimately prevail on the merits of the environmental
58	action, the court shall execute the bond and award damages to each defendant who:

59	(i) opposed the preliminary injunction or administrative stay; and
60	(ii) was harmed as a result of its issuance.
61	(b) If the amount of money secured by the surety bond or cash equivalent:
62	(i) exceeds the damages awarded, the court or agency shall return the excess to the
63	plaintiff; and
64	(ii) is less than the damages awarded, the court or agency shall order the plaintiff to pay
65	the remaining damages.
66	(6) Notwithstanding any other provision of law, a court's or agency's refusal to require
67	the posting of a surety bond or cash equivalent as required by this section is subject to

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immediate appeal.

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Office of Legislative Research and General Counsel

H.B. 379

H.B. 379 - Environmental Litigation Bond

Fiscal Note

2009 General Session State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill will impact parties involved in certain environmental legal actions.

2/26/2009, 4:45:55 PM, Lead Analyst: Syphus, G.

Office of the Legislative Fiscal Analyst