

ENVIRONMENTAL LITIGATION BOND

2011 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.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78B-5-828, Utah Code Annotated 1953

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

Section 1. Section **78B-5-828** is enacted to read:



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 10, 2011; 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 a 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
68 immediate appeal.

Legislative Review Note
as of 2-10-11 1:00 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 399

SHORT TITLE: Environmental Litigation Bond

SPONSOR: Noel, M.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.