

Senator Curtis S. Bramble proposes the following substitute bill:

JOINT RESOLUTION AMENDING CIVIL PROCEDURE

RULE 62

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Brad L. Dee

LONG TITLE

General Description:

This joint resolution amends Utah Rule of Civil Procedure 62 by providing that municipalities shall post a bond upon appeal.

Highlighted Provisions:

This resolution:

- ▶ states that a municipality is not a state agency for the purpose of appeals under Rule 62(e); and
- ▶ requires a bond to be posted for judgment amounts over \$5,000,000, plus interest.

Special Clauses:

This resolution provides an immediate effective date.

Utah Rules of Civil Procedure Affected:

AMENDS:

Rule 62, Utah Rules of Civil Procedure

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend



26 rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of
27 all members of both houses of the Legislature:

28 Section 1. **Rule 62**, Utah Rules of Civil Procedure is amended to read:

29 **Rule 62. Stay of proceedings to enforce a judgment.**

30 (a) Delay in execution. No execution or other writ to enforce a judgment may issue
31 until the expiration of ten days after entry of judgment, unless the court in its discretion
32 otherwise directs.

33 (b) Stay on motion for new trial or for judgment. In its discretion and on such
34 conditions for the security of the adverse party as are proper, the court may stay the execution
35 of, or any proceedings to enforce, a judgment pending the disposition of a motion for a new
36 trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a
37 judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a
38 motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the
39 findings or for additional findings made pursuant to Rule 52(b).

40 (c) Injunction pending appeal. When an appeal is taken from an interlocutory order or
41 final judgment granting, dissolving, or denying an injunction, the court in its discretion may
42 suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such
43 conditions as it considers proper for the security of the rights of the adverse party.

44 (d) Stay upon appeal. When an appeal is taken, the appellant by giving a supersedeas
45 bond may obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The
46 bond may be given at or after the time of filing the notice of appeal. The stay is effective when
47 the supersedeas bond is approved by the court.

48 (e) (1) Stay in favor of the state, or agency thereof. When an appeal is taken by the
49 United States, the state of Utah, or an officer or agency of either, or by direction of any
50 department of either, and the operation or enforcement of the judgment is stayed, no bond,
51 obligation, or other security shall be required from the appellant.

52 (e) (2) For purposes of this rule, a municipality shall not be considered a state agency
53 exempt from the requirement of posting a bond, obligation, or other security when appealing a
54 judgment for any amounts in excess of \$5,000,000. To stay the enforcement of any judgment
55 over \$5,000,000, the municipality shall be required to post security with the appellate court in
56 the amount by which the judgment exceeds the sum of \$5,000,000 and for any interest that may

57 accrue during the appeal.

58 (f) Stay in quo warranto proceedings. Where the defendant is adjudged guilty of
59 usurping, intruding into or unlawfully holding public office, civil or military, within this state,
60 the execution of the judgment shall not be stayed on an appeal.

61 (g) Power of appellate court not limited. The provisions in this rule do not limit any
62 power of an appellate court or of a judge or justice thereof to stay proceedings or to suspend,
63 modify, restore, or grant an injunction, or extraordinary relief or to make any order appropriate
64 to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

65 (h) Stay of judgment upon multiple claims. When a court has ordered a final judgment
66 on some but not all of the claims presented in the action under the conditions stated in Rule
67 54(b), the court may stay enforcement of that judgment until the entering of a subsequent
68 judgment or judgments and may prescribe such conditions as are necessary to secure the
69 benefit thereof to the party in whose favor the judgment is entered.

70 (i) Form of supersedeas bond; deposit in lieu of bond; waiver of bond; jurisdiction over
71 sureties to be set forth in undertaking.

72 (i) (1) A supersedeas bond given under Subdivision (d) may be either a commercial
73 bond having a surety authorized to transact insurance business under Title 31A, or a personal
74 bond having one or more sureties who are residents of Utah having a collective net worth of at
75 least twice the amount of the bond, exclusive of property exempt from execution. Sureties on
76 personal bonds shall make and file an affidavit setting forth in reasonable detail the assets and
77 liabilities of the surety.

78 (i) (2) Upon motion and good cause shown, the court may permit a deposit of money in
79 court or other security to be given in lieu of giving a supersedeas bond under Subdivision (d).

80 (i) (3) The parties may by written stipulation waive the requirement of giving a
81 supersedeas bond under Subdivision (d) or agree to an alternate form of security.

82 (i) (4) A supersedeas bond given pursuant to Subdivision (d) shall provide that each
83 surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as
84 the surety's agent upon whom any papers affecting the surety's liability on the bond may be
85 served, and that the surety's liability may be enforced on motion and upon such notice as the
86 court may require without the necessity of an independent action.

87 (j) Amount of supersedeas bond.

88 (j) (1) Except as provided in subsection (j)(2), a court shall set the supersedeas bond in
89 an amount that adequately protects the judgment creditor against loss or damage occasioned by
90 the appeal and assures payment in the event the judgment is affirmed. In setting the amount,
91 the court may consider any relevant factor, including:

92 (j) (1) (A) the judgment debtor's ability to pay the judgment;

93 (j) (1) (B) the existence and value of security;

94 (j) (1) (C) the judgment debtor's opportunity to dissipate assets;

95 (j) (1) (D) the judgment debtor's likelihood of success on appeal; and

96 (j) (1) (E) the respective harm to the parties from setting a higher or lower amount.

97 (j) (2) Notwithstanding subsection (j)(1):

98 (j) (2) (A) the presumptive amount of a bond for compensatory damages is the amount
99 of the compensatory damages plus costs and attorney fees, as applicable, plus 3 years of
100 interest at the applicable interest rate;

101 (j) (2) (B) the bond for compensatory damages shall not exceed \$25 million in an
102 action by plaintiffs certified as a class under Rule 23 or in an action by multiple plaintiffs in
103 which compensatory damages are not proved for each plaintiff individually; and

104 (j) (2) (C) no bond shall be required for punitive damages.

105 (j) (3) If the court permits a bond that is less than the presumptive amount of
106 compensatory damages, the court may also enter such orders as are necessary to protect the
107 judgment creditor during the appeal.

108 (j) (4) If the court finds that the judgment debtor has violated an order or has otherwise
109 dissipated assets, the court may set the bond under subsection (j)(1) without regard to the limits
110 in subsection (j)(2).

111 (k) Objecting to sufficiency or amount of security. Any party whose judgment is
112 stayed or sought to be stayed pursuant to Subdivision (d) may object to the sufficiency of the
113 sureties on the supersedeas bond or the amount thereof, or to the sufficiency or amount of other
114 security given to stay the judgment by filing and giving notice of such objection. The party so
115 objecting shall be entitled to a hearing thereon upon five days notice or such shorter time as the
116 court may order. The burden of justifying the sufficiency of the sureties or other security and
117 the amount of the bond or other security, shall be borne by the party seeking the stay, unless the
118 objecting party seeks a bond greater than the presumed limits of this rule. The fact that a

119 supersedeas bond, its surety or other security is generally permitted under this rule shall not be
120 conclusive as to its sufficiency or amount.

121 Section 2. **Effective date.**

122 This resolution takes effect upon approval by a constitutional two-thirds vote of all
123 members elected to each house.