

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. _____

Environmental Litigation Bond

Sponsored by: Joint Minerals, Business and Economic
Development Interim Committee

A BILL

for

1 AN ACT relating to environmental litigation; requiring a
2 plaintiff requesting a preliminary injunction or an
3 administrative stay to post a surety bond as specified;
4 providing for distribution of the surety bond proceeds as
5 specified; providing an immediate appeal of a refusal to
6 require the bond as specified; imposing restrictions on
7 administrative appeals; providing damages; providing
8 definitions; specifying applicability; and providing for an
9 effective date.

10

11 *Be It Enacted by the Legislature of the State of Wyoming:*

12

13 **Section 1.** W.S. 30-1-134 is created to read:

1

2 **30-1-134. Damages in an environmental action; bond**
3 **required.**

4

5 (a) A plaintiff who obtains a preliminary injunction
6 or administrative stay in an environmental action, but does
7 not ultimately prevail on the merits of the environmental
8 action, is liable for damages sustained by a defendant who:

9

10 (i) Opposed the preliminary injunction or
11 administrative stay; and

12

13 (ii) Was harmed by the preliminary injunction.

14

15 (b) A court may not issue a preliminary injunction
16 and an agency may not grant an administrative stay in an
17 environmental action until the plaintiff posts with the
18 court or the agency a surety bond or cash equivalent:

19

20 (i) In an amount the court or agency considers
21 sufficient to compensate each defendant opposing the
22 preliminary injunction or administrative stay for damages

1 that each defendant may sustain as a result of the
2 preliminary injunction or administrative stay;

3
4 (ii) Written by a surety licensed to do business
5 in the state; and

6
7 (iii) Payable to each defendant opposing the
8 preliminary injunction or administrative stay in the event
9 the plaintiff does not prevail on the merits of the
10 environmental action.

11
12 (c) If there is more than one plaintiff in an
13 environmental action requesting a preliminary injunction or
14 administrative stay, the court or agency shall establish
15 the amount of the bond required by subsection (b) for each
16 plaintiff in a fair and equitable manner.

17
18 (d) Subject to subsection (e) of this section if the
19 plaintiff does not ultimately prevail on the merits of the
20 environmental action in which a preliminary injunction was
21 issued, the court shall execute the bond and award damages
22 to each defendant who:

1 (i) Opposed the preliminary injunction or
2 administrative stay; and

3
4 (ii) Was harmed as a result of the issuance of
5 the preliminary injunction or administrative stay.

6
7 (e) If the amount of money secured by the surety bond
8 or cash equivalent exceeds the damages awarded under
9 subsection (a) of this section, the court or agency shall
10 return the excess to the plaintiff. If the amount of money
11 secured by the surety bond or cash equivalent is less than
12 the damages awarded, the court or agency shall order the
13 plaintiff to pay the remaining damages.

14
15 (f) Notwithstanding any other provision of law, a
16 court's or agency's refusal to require the posting of a
17 surety bond or cash equivalent as required by this section
18 is subject to immediate appeal.

19
20 (g) The bonding requirements of this section do not
21 apply to an indigent person.

22
23 (h) As used in this section:

1

2 (i) "Administrative stay" means a stay or other
3 temporary remedy issued by an agency which delays the
4 issuance or renewal of a permit or the implementation of an
5 agency action or decision;

6

7 (ii) "Environmental action" means an action
8 contesting the grant, denial, suspension, revocation,
9 violation or renewal of any permit, license, certification
10 or variance authorized or required by this act:

11

12 (iii) "Ultimately prevail on the merits" means,
13 in the final judgment, the court rules in the plaintiff's
14 favor on at least one cause of action.

15

16 **Section 2.** W.S. 30-5-101(a)(x) and by creating a new
17 paragraph (xi), 30-5-113 by creating new subsections (g)
18 through (k) and 35-11-904 by creating new subsections (h)
19 through (k) are amended to read:

20

21 **30-5-101. Definitions.**

22

1 (a) As used in this act unless the context otherwise
2 requires:

3
4 (x) The term "surety bond or other guaranty"
5 means a surety bond, a first priority security interest in
6 a deposit of the proceeds of a collected cashier's check, a
7 first priority security interest in a certificate of
8 deposit or an irrevocable letter of credit, all in an
9 amount and including other terms, conditions and
10 requirements determined by the commission ~~or the court;~~

11
12 **30-5-113. Time within which suit to be brought by**
13 **person adversely affected; appeals; procedure.**

14
15 (g) The court, in issuing a final order in any action
16 brought pursuant to this section, may award costs of
17 litigation, including attorney and expert witness fees, to
18 any party whenever the court determines that such an award
19 is appropriate. A defendant's total damages recovered
20 under this subsection shall be reduced by the amount of any
21 recovery under subsection (h) of this section.

1 (h) If a plaintiff in an action contesting the grant,
2 denial, suspension, revocation, violation or renewal of any
3 permit, license, certification or variance authorized or
4 required by this chapter obtains a preliminary injunction
5 or administrative stay in an environmental action, but does
6 not ultimately prevail on the merits of the environmental
7 action, is liable for damages sustained by a defendant who:

8
9 (i) Opposed the preliminary injunction or
10 administrative stay; and

11
12 (ii) Was harmed by the preliminary injunction.

13
14 (j) A court may not issue a preliminary injunction
15 and the commission may not grant an administrative stay in
16 an action arising from any rule, regulation, or order made
17 or issued under this chapter until the plaintiff posts with
18 the court or the commission a surety bond or cash
19 equivalent:

20
21 (i) In an amount the court or commission
22 considers sufficient to compensate each defendant opposing
23 the preliminary injunction or administrative stay for

1 damages that each defendant may sustain as a result of the
2 preliminary injunction or administrative stay;

3
4 (ii) Written by a surety licensed to do business
5 in the state; and

6
7 (iii) Payable to each defendant opposing the
8 preliminary injunction or administrative stay in the event
9 the plaintiff does not prevail on the merits of the action.

10
11 (k) If there is more than one plaintiff in an
12 environmental action requesting a preliminary injunction or
13 administrative stay, the court or agency shall establish
14 the amount of the bond required by subsection (j) for each
15 plaintiff in a fair and equitable manner.

16
17 (l) Subject to subsection (m) of this section if the
18 plaintiff does not ultimately prevail on the merits of the
19 environmental action in which a preliminary injunction was
20 issued, the court shall execute the bond and award damages
21 to each defendant who:

1 (i) Opposed the preliminary injunction or
2 administrative stay; and

3
4 (ii) Was harmed as a result of the issuance of
5 the preliminary injunction or administrative stay.

6
7 (m) If the amount of money secured by the surety bond
8 or cash equivalent exceeds the damages awarded under
9 subsection (a) of this section, the court or agency shall
10 return the excess to the plaintiff. If the amount of money
11 secured by the surety bond or cash equivalent is less than
12 the damages awarded, the court or agency shall order the
13 plaintiff to pay the remaining damages.

14
15 (n) Notwithstanding any other provision of law, a
16 court's or agency's refusal to require the posting of a
17 surety bond or cash equivalent as required by this section
18 is subject to immediate appeal.

19
20 (p) The bonding requirements of this section do not
21 apply to an indigent person.

22
23 **35-11-901. Violations of provisions; penalties.**

1

2 (a) Any person who violates, or any director, officer
3 or agent of a corporate permittee who willfully and
4 knowingly authorizes, orders or carries out the violation
5 of any provision of this act, or any rule, regulation,
6 standard or permit adopted hereunder or who violates any
7 determination or order of the council pursuant to this act
8 or any rule, regulation, standard, permit, license or
9 variance is subject to a penalty not to exceed ten thousand
10 dollars (\$10,000.00) for each violation for each day during
11 which violation continues, a temporary or permanent
12 injunction, or both a penalty and an injunction subject to
13 the following:

14

15 (ii) Penalties and injunctive relief under this
16 subsection are to be determined by a court of competent
17 jurisdiction in a civil action subject to W.S. 35-11-904(h)
18 & (j), provided that nothing herein shall preclude the
19 department from negotiating stipulated settlements
20 involving the payment of a penalty, implementation of
21 compliance schedules or other settlement conditions in lieu
22 of litigation.

23

1 **35-11-904. Civil or criminal remedy.**

2

3 (h) If a plaintiff in an action contesting the grant,
4 denial, suspension, revocation, violation or renewal of any
5 permit, license, certification or variance authorized or
6 required this act obtains a preliminary injunction or
7 administrative stay in an environmental action, but does
8 not ultimately prevail on the merits of the environmental
9 action, is liable for damages sustained by a defendant who:

10

11 (i) Opposed the preliminary injunction or
12 administrative stay; and

13

14 (ii) Was harmed by the preliminary injunction.

15

16 (j) A court may not issue a preliminary injunction
17 and the commission may not grant an administrative stay in
18 an action arising from any rule, regulation, or order made
19 or issued under this act until the plaintiff posts with the
20 court or the commission a surety bond or cash equivalent:

21

22 (i) In an amount the court or commission
23 considers sufficient to compensate each defendant opposing

1 the preliminary injunction or administrative stay for
2 damages that each defendant may sustain as a result of the
3 preliminary injunction or administrative stay;

4
5 (ii) Written by a surety licensed to do business
6 in the state; and

7
8 (iii) Payable to each defendant opposing the
9 preliminary injunction or administrative stay in the event
10 the plaintiff does not prevail on the merits of the action.

11
12 (k) If there is more than one plaintiff in an
13 environmental action requesting a preliminary injunction or
14 administrative stay, the court or agency shall establish
15 the amount of the bond required by subsection (j) for each
16 plaintiff in a fair and equitable manner.

17
18 (l) Subject to subsection (m) of this section if the
19 plaintiff does not ultimately prevail on the merits of the
20 environmental action in which a preliminary injunction was
21 issued, the court shall execute the bond and award damages
22 to each defendant who:

1 (i) Opposed the preliminary injunction or
2 administrative stay; and

3
4 (ii) Was harmed as a result of the issuance of
5 the preliminary injunction or administrative stay.

6
7 (m) If the amount of money secured by the surety bond
8 or cash equivalent exceeds the damages awarded under
9 subsection (a) of this section, the court or agency shall
10 return the excess to the plaintiff. If the amount of money
11 secured by the surety bond or cash equivalent is less than
12 the damages awarded, the court or agency shall order the
13 plaintiff to pay the remaining damages.

14
15 (n) Notwithstanding any other provision of law, a
16 court's or agency's refusal to require the posting of a
17 surety bond or cash equivalent as required by this section
18 is subject to immediate appeal.

19
20 (p) The bonding requirements of this section do not
21 apply to an indigent person.

1 **Section 3.** This act is applicable to all actions
2 initially commenced on or after July 1, 2012.

4 **Section 4.** This act is effective July 1, 2013.

7 (END)