

HB0133S01 compared with HB0133

~~{deleted text}~~ shows text that was in HB0133 but was deleted in HB0133S01.

inserted text shows text that was not in HB0133 but was inserted into HB0133S01.

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Representative David E. Lifferth proposes the following substitute bill:

CONTINGENT MANAGEMENT FOR FEDERAL FACILITIES

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David E. Lifferth

Senate Sponsor: _____

LONG TITLE

General Description:

This bill authorizes the ~~{Division of Parks and Recreation}~~governor to ~~{prepare}~~work with the federal government to operate and maintain national parks, monuments, forests, and recreation areas in the state during a fiscal emergency.

Highlighted Provisions:

This bill:

- ▶ defines the term "fiscal emergency";
- ▶ ~~{exempts the Division of Parks and Recreation from the Utah Procurement Code during a fiscal emergency};~~

→ ~~requires the director of the Division of Parks and Recreation to prepare to take over}~~authorizes the governor to work with the federal government to open and maintain the operation of one or more national parks, ~~{monuments, forests, and~~

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~~recreation areas, in the event of a fiscal emergency, and coordinate with relevant federal agencies;~~

~~—> authorizes the Division of Parks and Recreation, during a fiscal emergency, to continue charging standard fees for the use of national parks, monuments, forests, and recreation areas, and deposit the fees in the Sovereign Lands Management Account;~~

~~—> requires the director of the Outdoor Recreation Office to create a priority list of national parks, monuments, forests, and }national monuments, national forests, or national recreation areas in the state {and report to the Natural Resources, Agriculture, and Environment Interim Committee by November 30, 2014;~~

~~—> requires the Division of Parks and Recreation to open and operate one or more national parks, monuments, forests, or recreation areas during a fiscal emergency, contingent upon congressional approval, the governor's agreement with the Department of the Interior, or a presidential executive order;~~

~~—> states that a temporary state employee hired by the Division of Parks and Recreation is covered by the Governmental Immunity Act}; and~~

- ~~▶ {requires the state to indemnify a state employee against an action brought by the United States or a federal representative, under certain circumstances} makes technical changes.~~

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-6a-107, as last amended by Laws of Utah 2013, Chapter 445

~~{**63M-1-3304**}~~ **63I-2-265**, as enacted by Laws of Utah 2013, Second Special Session,

Chapter ~~{25}~~ 3

65A-5-1, as last amended by Laws of Utah 2013, Second Special Session, Chapter 3

65A-5-2, as last amended by Laws of Utah 1994, Chapter 294

~~{**79-4-202**, as renumbered and amended by Laws of Utah 2009, Chapter 344~~

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~~79-4-203, as last amended by Laws of Utah 2012, Chapter 347~~

~~79-4-204, as renumbered and amended by Laws of Utah 2009, Chapter 344~~

ENACTS:

~~79-4-1101, Utah Code Annotated 1953~~

~~79-4-1102, Utah Code Annotated 1953~~

~~79-4-1103, Utah Code Annotated 1953~~

~~{ 79-4-1104, Utah Code Annotated 1953~~

~~79-4-1105, Utah Code Annotated 1953~~

~~79-4-1106, Utah Code Annotated 1953~~

~~79-4-1107, Utah Code Annotated 1953~~

~~79-4-1108, Utah Code Annotated 1953~~

~~79-4-1109, Utah Code Annotated 1953~~

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

Section 1. Section **63G-6a-107** is amended to read:

63G-6a-107. Exemptions from chapter -- Compliance with federal law.

(1) Except for Part 23, Unlawful Conduct and Penalties, the provisions of this chapter are not applicable to:

(a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art Act;

(b) grants awarded by the state or contracts between the state and any of the following:

(i) an educational procurement unit;

(ii) a conservation district;

(iii) a local building authority;

(iv) a local district;

(v) a public corporation;

(vi) a special service district;

(vii) a public transit district; or

(viii) two or more of the entities described in Subsections (1)(b)(i) through (vii), acting under legislation that authorizes intergovernmental cooperation;

(c) medical supplies or medical equipment, including service agreements for medical

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equipment, obtained through a purchasing consortium by the Utah State Hospital, the Utah State Developmental Center, the University of Utah Hospital, or any other hospital owned by the state or a political subdivision of the state, if:

(i) the consortium uses a competitive procurement process; and

(ii) the chief administrative officer of the hospital makes a written finding that the prices for purchasing medical supplies and medical equipment through the consortium are competitive with market prices;

(d) goods purchased for resale; ~~[or]~~

(e) the Division of Parks and Recreation, during a fiscal emergency, as defined by Subsection 79-4-1102(1), if the division is acting under the authority described in Sections 79-4-1101 through ~~{79-4-1108;79-4-1103; or~~

~~[(e)]~~ (f) any action taken by a majority of both houses of the Legislature.

(2) (a) Notwithstanding Subsection (1), the provisions of Part 23, Unlawful Conduct and Penalties, are not applicable to an entity described in Subsection (1)(b)(ii), (iii), (iv), (vi), (vii), or (viii).

(b) This chapter does not prevent a procurement unit from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

(3) Notwithstanding any conflicting provision of this chapter, when a procurement involves the expenditure of federal assistance, federal contract funds, local matching funds, or federal financial participation funds, the procurement unit shall comply with mandatory applicable federal law and regulations not reflected in this chapter.

(4) This chapter does not supersede the requirements for retention or withholding of construction proceeds and release of construction proceeds as provided in Section 13-8-5.

Section 2. Section 63I-2-265 is amended to read:

63I-2-265. Repeal dates -- Title 65A.

[Subsection 65A-5-1(4) is repealed on December 2, 2013.]

~~{~~ Section 2. Section 63M-1-3304 is amended to read:

~~—~~ 63M-1-3304. Creation of office and appointment of director -- Purposes of office.

~~—~~ (1) There is created within the Governor's Office of Economic Development an Outdoor Recreation Office.

~~—~~ (2) (a) The executive director shall appoint a director of the office.

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- ~~_____ (b) The director shall report to the executive director and may appoint staff.~~
- ~~_____ (3) The purposes of the office are to:~~
 - ~~_____ (a) coordinate outdoor recreation policy, management, and promotion:~~
 - ~~_____ (i) among state and federal agencies and local government entities in the state; and~~
 - ~~_____ (ii) with the Public Lands Policy Coordinating Office created in Section 63J-4-602, if public land is involved;~~
 - ~~_____ (b) promote economic development by:~~
 - ~~_____ (i) coordinating with outdoor recreation stakeholders;~~
 - ~~_____ (ii) improving recreational opportunities; and~~
 - ~~_____ (iii) recruiting outdoor recreation business;~~
 - ~~_____ (c) recommend to the governor and Legislature policies and initiatives to enhance recreational amenities and experiences in the state and help implement those policies and initiatives;~~
 - ~~_____ (d) develop data regarding the impacts of outdoor recreation in the state; [and]~~
 - ~~_____ (e) promote the health and social benefits of outdoor recreation, especially to young people[.];~~
 - ~~_____ (f) coordinate with the Division of Parks and Recreation to fulfill the requirements of Title 79, Chapter 4, Part 11, Contingency Planning for Management of Federal Land; and~~
 - ~~_____ (g) create the priority list of national parks, national monuments, national forests, national recreation areas, and other federal lands in the state, as described in Section 79-4-1103.~~

‡ Section 3. Section **65A-5-1** is amended to read:

65A-5-1. Sovereign Lands Management Account -- Creation -- Contents -- Appropriation to fund division expenses.

(1) There is created within the General Fund a restricted account known as the Sovereign Lands Management Account.

(2) The account shall consist of the following:

- (a) all revenues derived from sovereign lands; [and]
- (b) that portion of all revenues derived from mineral leases on other lands managed by the division necessary to recover management costs[.]; and
- (c) any fees deposited by the division { ~~under Subsection 79-4-1102(4)~~.

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(3) All expenditures of the division relating directly to the management of state lands shall be funded by appropriation by the Legislature from the Sovereign Lands Management Account or other sources.

(4) The Legislature may appropriate funds in the account to reimburse one or more state government entities for money spent on the operation of national parks, national monuments, national forests, and national recreation areas, and other federal lands in the state during a fiscal emergency, as defined in Section 79-4-1102.

Section 4. Section **65A-5-2** is amended to read:

65A-5-2. Deposit and allocation of money received.

(1) (a) [~~The~~] Subject to Subsection (3), the division shall pay to the state treasurer all money received, accompanied by a statement showing the respective sources of this money.

(b) Each source shall be classified as to sales, rentals, royalties, interest, fees, penalties, and forfeitures.

(2) (a) All money received by the division as a first or down payment on applications to purchase, permit, or lease state lands or minerals shall be paid to the state treasurer and held in suspense pending final action on those applications.

(b) After final action these payments shall either be credited to the appropriate fund or account, or refunded to the applicant in accordance with the action taken.

(3) The division shall provide a separate accounting for all fees received under Subsection ~~{79-4-1102}~~65A-5-1(4).

Section 5. Section ~~{79-4-202}~~79-4-1101 is ~~{amended to read:~~

~~79-4-202. Director -- Qualifications -- Duties.~~

~~(1) The director is the executive and administrative head of the division.~~

~~(2) The director shall demonstrate:~~

~~(a) executive ability; and~~

~~(b) actual experience and training in the conduct of park and recreational systems involving both physical development and program.~~

~~(3) The director shall:~~

~~(a) enforce the policies and rules of the board; and~~

~~(b) perform the duties necessary to:~~

~~(i) properly care for and maintain any property under the jurisdiction of the division;~~

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and

~~—— (ii) carry out this chapter.~~

~~—— (4) The director shall acquire, plan, protect, develop, operate, use, and maintain park area and facilities in accordance with the policies and rules of the board.~~

~~—— (5) The director shall coordinate with relevant federal agencies, if possible and reasonable, to carry out the duties described in Sections 79-4-1101 through 79-4-1108.~~

~~—— (6) (a) If a fiscal emergency, as defined in Section 79-4-1102, becomes imminent, the director shall report to the governor, the speaker of the House, and the president of the Senate and advise them on:~~

~~—— (i) how much money is available in the division's budget to open and operate one or more national parks, national monuments, national forests, or national recreation areas in the state;~~

~~—— (ii) the division's plans to open and operate one or more national parks, national monuments, national forests, or national recreation areas in the state; and~~

~~—— (iii) how long the division will be capable of opening and operating one or more national parks, national monuments, national forests, or national recreation areas in the state.~~

~~—— (b) During a fiscal emergency, the director shall report to the governor, the speaker of the House, and the president of the Senate no less than every three days.~~

~~—— Section 6. Section 79-4-203 is amended to read:~~

~~—— **79-4-203. Powers and duties of division.**~~

~~—— (1) As used in this section, "real property" includes land under water, upland, and all other property commonly or legally defined as real property.~~

~~—— (2) The Division of Wildlife Resources shall retain the power and jurisdiction conferred upon it by law within state parks and on property controlled by the Division of Parks and Recreation with reference to fish and game.~~

~~—— (3) The division shall permit multiple use of state parks and property controlled by it for purposes such as grazing, fishing, hunting, mining, and the development and utilization of water and other natural resources.~~

~~—— (4) (a) The division may acquire real and personal property in the name of the state by all legal and proper means, including purchase, gift, devise, eminent domain, lease, exchange, or otherwise, subject to the approval of the executive director and the governor.~~

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~~—— (b) In acquiring any real or personal property, the credit of the state may not be pledged without the consent of the Legislature.~~

~~—— (5) (a) Before acquiring any real property, the division shall notify the county legislative body of the county where the property is situated of its intention to acquire the property.~~

~~—— (b) If the county legislative body requests a hearing within 10 days of receipt of the notice, the division shall hold a public hearing in the county concerning the matter.~~

~~—— (6) Acceptance of gifts or devises of land or other property is at the discretion of the division, subject to the approval of the executive director and the governor.~~

~~—— (7) The division shall acquire property by eminent domain in the manner authorized by Title 78B, Chapter 6, Part 5, Eminent Domain.~~

~~—— (8) (a) The division may make charges for special services and use of facilities, the income from which is available for park and recreation purposes.~~

~~—— (b) The division may conduct and operate those services necessary for the comfort and convenience of the public.~~

~~—— (9) (a) The division may lease or rent concessions of all lawful kinds and nature in state parks and property to persons, partnerships, and corporations for a valuable consideration upon the recommendation of the board.~~

~~—— (b) [The] Except as provided in Subsection 63G-6a-107(1)(c), the division shall comply with Title 63G, Chapter 6a, Utah Procurement Code, in selecting concessionaires.~~

~~—— (10) The division shall proceed without delay to negotiate with the federal government concerning the Weber Basin and other recreation and reclamation projects.~~

~~—— (11) The division shall receive and distribute voluntary contributions collected under Section 41-1a-422 in accordance with Section 79-4-404.~~

~~—— (12) The division shall make and implement all necessary contingency plans to carry out the requirements of Sections 79-4-1101 through 79-4-1108.~~

~~—— Section 7. Section **79-4-204** is amended to read:~~

~~—— **79-4-204. Division authorized to enter into contracts and agreements.**~~

~~—— (1) The division, with the approval of the executive director and the governor, may enter into contracts and agreements with the United States, a United States agency, any other department or agency of the state, semipublic organizations, and with private individuals to:~~

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- ~~—— (a) improve and maintain state parks and recreational grounds and the areas administered by the division; and~~
- ~~—— (b) secure labor, quarters, materials, services, or facilities according to procedures established by the Division of Finance.~~
- ~~—— (2) All departments, agencies, officers, and employees of the state shall give to the division the consultation and assistance that the division may reasonably request.~~
- ~~—— (3) Subject to Subsection (4), the division, with approval of the executive director and the governor and as funding allows, shall seek to enter into provisional contracts whenever possible with all concessionaires, vendors, and other persons who, as of May 13, 2014:~~
 - ~~—— (a) are a party to a contract with the federal government; and~~
 - ~~—— (b) provide services at national parks, national monuments, national forests, and national recreation areas in the state.~~
- ~~—— (4) The contracts described in Subsection (3) shall fulfill the requirements of Section 79-4-1105.~~
- ~~—— Section 8. Section 79-4-1101 is } enacted to read:~~

Part 11. Contingency Planning for Management of Federal Land

79-4-1101. Title.

This part is known as "Contingency Planning for Management of Federal Land."

Section ~~{9}6~~. Section **79-4-1102** is enacted to read:

79-4-1102. Contingency plan for federal property.

(1) As used in this part, "fiscal emergency" means a major disruption in the operation of one or more national parks, national monuments, national forests, or national recreation areas in the state caused by the unforeseen or sudden significant decrease or elimination of funding from the federal government.

~~(2) {The division shall, in accordance with this part, prepare to assume responsibility for operating national parks, national monuments, national forests, or national recreation areas in the state during a fiscal emergency, including:~~

~~—— (a) estimating the resources it would require to open and operate each national park, national monument, national forest, or national recreation area, or in the state for:~~

~~—— (i) one week; and~~

~~—— (ii) an undetermined amount of time;~~

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- ~~— (b) reporting the findings under Subsection (2)(a) to the Natural Resources, Agriculture, and Environment Interim Committee by November 30, 2014; and~~
- ~~— (c) identifying concessionaires contracted with the federal government and, if possible, entering into provisional contracts with concessionaires, as described in Subsection 79-4-1105(3);~~
- ~~— (3) } During a fiscal emergency, and subject to congressional approval, the governor's agreement with the United States Department of the Interior, or a presidential executive order, the {division}governor is authorized to {~~
- ~~— (a) hire a federal employee who is necessary to open, operate, and maintain federal property as a temporary state employee, as described in Section 79-4-1104;~~
- ~~— (b) assume responsibility of a federal contract with a concessionaire, as described in Section 79-4-1106;~~
- ~~— (c) } enter into {a new contract, or trigger an existing provisional contract, with a concessionaire, as described in Section 79-4-1105; and~~
- ~~— (d) at the direction of the governor, open and operate; an agreement with the federal government to ensure that one or more national parks, national monuments, national forests, or national recreation areas in the state, according to the priority set under Section 79-4-1103 {~~
- ~~— (4) If the division is operating a federally owned property, the division shall:~~
- ~~— (a) continue to charge the same fee that was charged when the federal government operated the property; and~~
- ~~— (b) collect any money received under Subsection (4)(a) and deposit that money in the Sovereign Lands Management Account created in Section 65A-5-1;~~
- ~~— Section 10}, remain open to the public.~~

Section 7. Section 79-4-1103 is enacted to read:

79-4-1103. Governor's duties -- Priority of federal property.

(1) During a fiscal emergency, the governor shall:

- (a) if financially practicable, {direct}work with the {director}federal government to open and {operate}maintain the operation of one or more national parks, national monuments, national forests, and national recreation areas in the state, in the order established under this section; and
- (b) report to the speaker of the House and the president of the Senate on the need, if

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any, for additional appropriations to assist the division in opening and operating one or more national parks, national monuments, national forests, and national recreation areas in the state.

(2) The director of the Outdoor Recreation Office, created in Section 63M-1-3304, in consultation with the executive director of the Governor's Office of Economic Development, shall determine, by rule, the priority of national parks, national monuments, national forests, and national recreation areas in the state.

(3) In determining the priority described in Subsection (2), the director of the Outdoor Recreation Office shall consider the:

(a) economic impact of the national park, national monument, national forest, or national recreation area in the state; ~~and~~

(b) recreational value offered by the national park, national monument, national forest, or national recreation area ~~}; and};~~

~~{ (c) estimates the division creates under Subsection 79-4-1102(2).~~

~~}; (4) The director of the Outdoor Recreation Office shall:~~

~~(a) report the priority determined under Subsection (2) to the Natural Resources, Agriculture, and Environment Interim Committee by November 30, 2014; and~~

~~(b) annually review the priority set under Subsection (2) to determine whether the priority list should be amended.~~

~~{ Section 11. Section ~~79-4-1104~~ is enacted to read:~~

~~—— ~~79-4-1104. Contracts -- Compensation of federal employees:~~~~

~~—— (1) The division shall, by January 1, 2015, and in conjunction with the Department of Human Resources, prepare standard contracts for temporary employees to be employed by the state during a fiscal emergency, as described in this section.~~

~~—— (2) Contracts for full- and part-time employees employed on a temporary basis for the duration of a fiscal emergency shall be for the term of one week, subject to renewal.~~

~~—— (3) The division shall, by rule, set pay scales for temporary employees during a fiscal emergency.~~

~~—— (4) During a fiscal emergency, the division may hire a federal employee as a temporary state employee and shall use the contracts described in this section.~~

~~—— (5) A federal employee who is hired as a temporary state employee as described in this part during a fiscal emergency:~~

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~~— (a) shall be paid the rate described in Subsection (3) for the temporary state employee's services;~~

~~— (b) shall be considered an employee, as defined in Section 63G-7-102, and not an independent contractor;~~

~~— (c) shall be considered to be engaged in a governmental function, as defined in Section 63G-7-102;~~

~~— (d) may not receive retirement or health benefits from the state;~~

~~— (e) is career-service exempt, as described in Subsection 67-19-15(1)(p); and~~

~~— (f) may not be considered a state employee for the purpose of Section 79-4-1107.~~

~~— Section 12. Section 79-4-1105 is enacted to read:~~

~~— **79-4-1105. Contracts with concessionaires.**~~

~~— (1) As described in this section, the division shall prepare standard contracts for concessionaires for use during a fiscal emergency.~~

~~— (2) By January 1, 2015, the division shall:~~

~~— (a) identify all concessionaires under contract with the federal government to provide services in, or relating to, national parks, national monuments, national forests, and national recreation areas in the state; and~~

~~— (b) determine a priority list of concessionaires in the event of a fiscal emergency.~~

~~— (3) (a) In anticipation of a potential fiscal emergency, the division shall seek to enter into a provisional contract, subject to the requirements of Section 79-4-203, with a concessionaire under contract with the federal government to provide services in, or relating to, national parks, national monuments, national forests, and national recreation areas in the state.~~

~~— (b) A provisional contract with a concessionaire shall include:~~

~~— (i) a provision:~~

~~— (A) triggering the contract in the event of the governor authorizing the division, during a fiscal emergency, to open and operate the national park, national forest, national monument, or national recreation area in which, or relating to, the concessionaire provides services; and~~

~~— (B) automatically terminating the contract in the event the federal government is able to resume performance of the original contract between the federal government and the concessionaire; and~~

~~— (ii) terms that are identical or, if possible, more favorable than the terms agreed to by~~

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~~the federal government:~~

~~—— (c) The division shall consider the priority list created under Subsection (2)(b) as it seeks to enter into provisional contracts with concessionaires as described in this Subsection (3):~~

~~—— (4) During a fiscal emergency, the division may seek to enter into a contract with a concessionaire if:~~

~~—— (a) the division does not already have a provisional contract, as described in Subsection (3), with the concessionaire;~~

~~—— (b) the duration of the contract is no longer than one week; and~~

~~—— (c) the terms of the contract are identical to or, if possible, more favorable than the terms agreed to by the federal government.~~

~~—— Section 13. Section ~~79-4-1106~~ is enacted to read:~~

~~—— **79-4-1106. Assuming control of federal contracts with concessionaires during a fiscal emergency.**~~

~~—— (1) During a fiscal emergency, the division may assume temporary responsibility of fulfilling an existing federal contract with a concessionaire with whom the division does not already have a provisional contract, as described in Section ~~79-4-1105~~, if:~~

~~—— (a) the concessionaire's contract includes a successor and assignment clause authorizing the division to do so; and~~

~~—— (b) the federal government has defaulted on the contract.~~

~~—— (2) The division may, if a concessionaire's contract term with the federal government expires during a fiscal emergency, negotiate with the concessionaire and enter into a new contract, subject to the requirements of Section ~~79-4-203~~.~~

~~—— Section 14. Section ~~79-4-1107~~ is enacted to read:~~

~~—— **79-4-1107. Indemnification.**~~

~~—— If the United States or a federal representative brings an action or a proceeding against a state employee for exercising a duty or obligation described in this part, the state shall indemnify, hold harmless, and defend the state employee, if the state employee:~~

~~—— (1) followed the requirements of this part; and~~

~~—— (2) acted in good faith.~~

~~—— Section 15. Section ~~79-4-1108~~ is enacted to read:~~

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~~79-4-1108. Special provisions:~~

~~In carrying out the requirements of this part, the credit of the state may not be pledged without the consent of the Legislature.~~

~~Section 16. Section 79-4-1109 is enacted to read:~~

~~79-4-1109. Applicability:~~

~~(1) The division may make all necessary rules or regulations in order to fulfill this part.~~

~~(2) Notwithstanding any other provision of this chapter, the division may not assume control of a national park, national monument, national forest, or national recreation area in the state without:~~

~~(a) congressional approval of the plan;~~

~~(b) the governor's agreement with the United States Department of the Interior; or~~

~~(c) a presidential executive order.~~

Legislative Review Note

~~as of 2-12-14 8:39 AM~~

~~Office of Legislative Research and General Counsel}~~