

**Representative Ken Ivory** proposes the following substitute bill:

**CATASTROPHIC WILDFIRE AND OTHER PUBLIC**

**NUISANCE REVISIONS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ken Ivory**

Senate Sponsor: Ronald Winterton

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**LONG TITLE**

**General Description:**

This bill modifies the Catastrophic Public Nuisance Act.

**Highlighted Provisions:**

This bill:

- ▶ expands notification requirements; and
- ▶ provides that, under certain circumstances, the state shall indemnify, defend, and

hold a chief executive officer or county sheriff harmless from any claims or damages, including court costs and attorney fees that are assessed as a result of the chief executive officer's or county sheriff's action in abating a catastrophic public nuisance ~~§~~ **[subject to a cap]** ~~§~~ .

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**11-51a-103**, as enacted by Laws of Utah 2015, Chapter 419

**2nd Sub. H.B. 99**



26 **11-51a-104**, as enacted by Laws of Utah 2015, Chapter 419



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

29 Section 1. Section **11-51a-103** is amended to read:

30 **11-51a-103. Declaration of catastrophic public nuisance -- Authority to declare**  
31 **and demand abatement.**

32 (1) The chief executive officer of a political subdivision or a county sheriff may  
33 determine that a catastrophic public nuisance exists on land within the borders of the political  
34 subdivision.

35 (2) In evaluating whether a catastrophic public nuisance exists, the chief executive  
36 officer of a political subdivision or a county sheriff may consider:

37 (a) tree density and overall health of a forested area, including the fire regime condition  
38 class;

39 (b) insect and disease infestation, including insect and disease hazard ratings;

40 (c) fuel loads;

41 (d) forest or range type;

42 (e) slope and other natural characteristics of an area;

43 (f) watershed protection criteria;

44 (g) weather and climate; and

45 (h) any other factor that the chief executive officer of a political subdivision or a  
46 county sheriff reasonably considers to be relevant, under the circumstances.

47 (3) Except as provided in Section **11-51a-104**, upon making the determination  
48 described in Subsection (1), the chief executive officer of a political subdivision or a county  
49 sheriff shall after consultation with the attorney general:

50 (a) serve notice of the determination described in Subsection (1), by hand or certified  
51 mail, on the federal or state agency that manages the land upon which the catastrophic nuisance  
52 exists; and

53 (b) provide a copy of the determination that is served under Subsection (3)(a) to,  
54 together with a proposed detailed abatement plan:

55 (i) the governor<sup>[;]</sup><sub>2</sub>;

56 (ii) the attorney general<sup>[; and]</sup><sub>2</sub>;

57            (iii) if the catastrophic public nuisance exists on federally managed land, the state's  
58 congressional delegation[-];

59            (iv) the chairs of the Executive Appropriations Committee of the Legislature; and

60            (v) the Office of the Legislative Fiscal Analyst.

61            (4) The notice described in Subsection (3)(a) shall include:

62            (a) a detailed explanation of the basis for determination that a catastrophic public  
63 nuisance exists on the land in question;

64            (b) a demand that the federal or state agency formulate a plan to abate the catastrophic  
65 nuisance; and

66            (c) a specific date, no less than 30 days after the day on which the notice is received, by  
67 which time the federal or state agency that manages the land shall:

68            (i) abate the catastrophic public nuisance; or

69            (ii) produce a plan for mitigating the catastrophic public nuisance that is reasonably  
70 acceptable to the county or subdivision.

71            (5) The chief executive officer of a political subdivision or a county sheriff may enter  
72 into a plan with the relevant federal or state agency, or both, to abate the catastrophic public  
73 nuisance.

74            (6) If, after receiving the notice described in Subsections (3)(a) and (4), the federal or  
75 state agency does not respond by the date requested in the notice or otherwise indicates that the  
76 federal or state agency is unwilling to take action to abate the catastrophic public nuisance, the  
77 chief executive officer of a political subdivision or a county sheriff shall consult with the  
78 county attorney and attorney general.

79            Section 2. Section **11-51a-104** is amended to read:

80            **11-51a-104. Emergency abatement of a catastrophic public nuisance.**

81            (1) If a chief executive officer of a political subdivision or a county sheriff determines  
82 that a public nuisance exists on federally managed land, pursuant to Subsection **11-51a-103(1)**,  
83 and the chief executive officer of a political subdivision or the county sheriff also finds that the  
84 catastrophic public nuisance in question adversely affects, or constitutes a threat to, the public  
85 health, safety, and welfare of the people of the political subdivision, the chief executive officer  
86 of the political subdivision or the county sheriff may, after consulting with the attorney general,  
87 pursue all remedies allowed by law.

88 (2) In seeking an emergency abatement of a catastrophic public nuisance, a chief  
89 executive officer of a political subdivision or a county sheriff shall attempt, as much as  
90 possible, to:

91 (a) coordinate with state and federal agencies; and

92 (b) seek the advice of professionals, including private sector professionals, with  
93 expertise in abating a catastrophic public nuisance.

94 (3) ~~Ŝ→ [(a) Subject to Subsection (3)(b), the]~~ ~~The~~ ~~←Ŝ~~ state shall indemnify, defend, and  
94a hold a chief  
95 executive officer or county sheriff harmless from any claims or damages, including court costs  
96 and attorney fees, that are assessed as a result of the chief executive officer's or county sheriff's  
97 action, if:

98 ~~Ŝ→ [(i)] (a) ←Ŝ~~ the chief executive officer or county sheriff has complied with this chapter;

99 ~~Ŝ→ [(ii)] (b) ←Ŝ~~ the court challenge against the chief executive officer or county sheriff  
99a addresses  
100 the chief executive officer's or county sheriff's action in abating a catastrophic public nuisance;  
101 and

102 ~~Ŝ→ [(iii)] (c) ←Ŝ~~ the chief executive officer's or county sheriff's action abating the  
102a catastrophic  
103 public nuisance were in reasonable furtherance of the detailed proposed abatement plan  
104 described in Subsection [11-51a-103\(3\)\(b\)](#).

105 ~~Ŝ→ [(b) The state shall indemnify or hold harmless a chief executive officer or county~~  
106 ~~sheriff under this Subsection (3) up to 90% of the claims or damages assessed against the chief~~  
107 ~~executive officer or county sheriff under Subsection (3)(a).]~~ ~~←Ŝ~~