

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **63-5a-2**, as last amended by Chapter 12, Laws of Utah 1994

34 **63-5a-4**, as enacted by Chapter 253, Laws of Utah 1981

35 **63-5a-6**, as enacted by Chapter 253, Laws of Utah 1981

36 **63-5a-7**, as last amended by Chapter 67, Laws of Utah 1984

37 **63-5b-401**, as enacted by Chapter 294, Laws of Utah 1992

38 ENACTS:

39 **76-8-317**, Utah Code Annotated 1953



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

42 Section 1. Section **63-5a-2** is amended to read:

43 **63-5a-2. Definitions.**

44 [~~2~~] (1) "Attack" means a nuclear, conventional, biological, or chemical warfare action
45 against the United States of America or this state.

46 (2) "Chief executive officer" means:

47 (a) for a municipality:

48 (i) the mayor for a municipality operating under all forms of municipal government
49 except the council-manager form of government; or

50 (ii) the city manager for a municipality operating under the council-manager form of
51 government; or

52 (b) for a county:

53 (i) the chair of the county commission for a county operating under the county
54 commission or expanded county commission form of government;

55 (ii) the county executive officer for a county operating under the county-executive
56 council form of government; or

57 (iii) the county manager for a county operating under the council-manager form of
58 government.

59 [(1)] (3) "Disaster" means a situation causing, or threatening to cause, widespread
60 damage, social disruption, or injury or loss of life or property resulting from attack, internal
61 disturbance, natural phenomenon or technological hazard.

62 [(3)] (4) "Internal disturbance" means a riot, prison break, disruptive terrorism or
63 strike.

64 [(7)] (5) "Local emergency" means a condition in any political subdivision of the state
65 which requires that emergency assistance be provided by the affected political subdivision to
66 save lives and protect property within its jurisdiction in response to a disaster, or to avoid or
67 reduce the threat of a disaster.

68 [(4)] (6) "Natural phenomenon" means any earthquake, tornado, storm, flood,
69 landslide, avalanche, forest or range fire, drought, or epidemic.

70 [(8)] (7) "Political subdivision" means municipality or county.

71 [(6)] (8) "State of emergency" means a condition in any part of this state which
72 requires state government emergency assistance to supplement the local efforts of the affected
73 political subdivision to save lives and to protect property, public health, welfare, and safety in
74 the event of a disaster or to avoid or reduce the threat of a disaster.

75 [(5)] (9) "Technological hazard" means any hazardous materials accident, mine
76 accident, train derailment, truck wreck, air crash, radiation incident, pollution, structural fire or
77 explosion.

78 Section 2. Section **63-5a-4** is amended to read:

79 **63-5a-4. Authority of chief executive officers of political subdivisions -- Ordering**
80 **of evacuations.**

81 (1) (a) In order to protect life and property when a state of emergency or local
82 emergency has been declared, the ~~[governing body]~~ chief executive officer of each political
83 subdivision of the state is authorized to:

84 (i) carry out, in ~~[its]~~ the chief executive officer's jurisdiction, the measures as may be
85 ordered by the governor under this ~~[act]~~ chapter; and

86 (ii) take any additional measures the ~~[governing body]~~ chief executive officer may
87 ~~[deem]~~ consider necessary, subject to the limitations and provisions of this ~~[act; provided, that~~
88 ~~no such action shall be]~~ chapter.

89 (b) The chief executive officer may not take an action that is inconsistent with any

90 order, rule, regulation, or action of the governor.

91 (2) When a state of emergency or local emergency is declared, the authority of the chief
92 executive officer includes:

93 (a) utilizing all available resources of the political subdivision as reasonably necessary
94 to manage a state of emergency or local emergency;

95 (b) employing measures and giving direction to local officers and agencies which are
96 reasonable and necessary for the purpose of securing compliance with the provisions of this
97 chapter and with orders, rules, and regulations made under this chapter;

98 (c) if necessary for the preservation of life, issuing an order for the evacuation of all or
99 part of the population from any stricken or threatened area within the political subdivision;

100 (d) recommending routes, modes of transportation, and destinations in relation to an
101 evacuation;

102 (e) suspending or limiting the sale, dispensing, or transportation of alcoholic beverages,
103 explosives, and combustibles in relation to an evacuation, except that the chief executive
104 officer may not restrict the lawful bearing of arms;

105 (f) controlling ingress and egress to and from a disaster area, controlling the movement
106 of persons within a disaster area, and ordering the occupancy or evacuation of premises in a
107 disaster area;

108 (g) clearing or removing debris or wreckage that may threaten public health, public
109 safety, or private property from publicly or privately owned land or waters, except that where
110 there is no immediate threat to public health or safety, the chief executive officer shall not
111 exercise this authority in relation to privately owned land or waters unless:

112 (i) the owner authorizes the employees of designated local agencies to enter upon the
113 private land or waters to perform any tasks necessary for the removal or clearance; and

114 (ii) the owner provides an unconditional authorization for removal of the debris or
115 wreckage and agrees to indemnify the local and state government against any claim arising
116 from the removal; and

117 (h) invoking the provisions of any mutual aid agreement entered into by the political
118 subdivision.

119 (3) (a) If the chief executive is unavailable to issue an order for evacuation under
120 Subsection (2)(c), the chief law enforcement officer having jurisdiction for the area may issue

121 an urgent order for evacuation, for a period not to exceed 24 hours, if the order is necessary for
 122 the preservation of life.

123 (b) The chief executive officer may ratify, modify, or revoke the chief law enforcement
 124 officer's order during the 24-hour period.

125 (4) Notice of an order or the ratification, modification, or revocation of an order issued
 126 under this section shall be:

127 (a) given to the persons within the jurisdiction by the most effective and reasonable
 128 means available; and

129 (b) filed in accordance with Subsection 63-5a-7(1).

130 Section 3. Section **63-5a-6** is amended to read:

131 **63-5a-6. Local emergency -- Declarations.**

132 (1) (a) A [~~"local emergency"~~] local emergency may be declared by proclamation of the
 133 [~~principal~~] chief executive officer of a political subdivision. [~~It~~]

134 (b) A local emergency shall not be continued or renewed for a period in excess of 30
 135 days except by or with the consent of the governing body of the political subdivision.

136 (c) Any order or proclamation declaring, continuing, or terminating a [~~"local~~
 137 ~~emergency"~~] local emergency shall be filed promptly with the office of the clerk of the affected
 138 political subdivision.

139 (2) A declaration of a [~~"local emergency" is~~] local emergency:

140 (a) constitutes an official recognition that a disaster situation exists within the affected
 141 political subdivision [~~and~~];

142 (b) provides a legal basis for requesting and obtaining state or federal government
 143 disaster assistance [~~The declaration~~];

144 (c) activates the response and recovery aspects of any and all applicable local disaster
 145 emergency plans; and

146 (d) authorizes the furnishing of aid and assistance [~~pursuant thereto~~] in relation to the
 147 proclamation.

148 (3) A [~~"local emergency"~~] local emergency proclamation issued under this section shall
 149 state:

150 (a) the nature of the [~~"local emergency"~~] local emergency;

151 (b) the area or areas that are affected or threatened; and

152 (c) the conditions which caused the emergency.

153 Section 4. Section **63-5a-7** is amended to read:

154 **63-5a-7. Orders, rules, and regulations having force of law -- Filing requirements**
155 **-- Suspension of state agency rules.**

156 (1) All orders, rules, and regulations promulgated by the governor, [~~or by any~~] a
157 political subdivision, or other agency authorized by this act to make orders, rules, and
158 regulations, not in conflict with existing laws except as specifically provided herein, shall have
159 the full force and effect of law during the state of emergency, when[~~, in the event of issuance~~
160 ~~by the governor, or any state agency,~~] a copy [~~thereof~~] of the order, rule, or regulation is filed
161 with:

162 (a) the Division of Archives, if issued by the governor or a state agency; or[~~, if~~
163 ~~promulgated by~~]

164 (b) the office of the clerk of the political subdivision, if issued by the chief executive
165 officer of a political subdivision of the state or agency [~~thereof, when filed in the office of the~~
166 ~~clerk of the political subdivision or agency promulgating the same~~] of the state.

167 (2) The governor may suspend the provisions of any order [~~or~~], rule, or regulation of
168 any state agency, if the strict compliance with the provisions of [~~such~~] the order, rule, or
169 regulation would substantially prevent, hinder, or delay necessary action in coping with the
170 emergency or disaster.

171 Section 5. Section **63-5b-401** is amended to read:

172 **63-5b-401. Emergency interim successors for local officers.**

173 (1) By July 1 of each year, each political subdivision officer shall:

- 174 (a) designate three emergency interim successors;
- 175 (b) specify their order of succession; and
- 176 (c) provide a list of those designated successors to the division.

177 (2) In the event that a political subdivision does not designate emergency interim
178 successors as required under Subsection (1), the order of succession shall be as follows:

- 179 (a) the chief executive officer of the political subdivision;
- 180 (b) the chief deputy executive officer of the political subdivision;
- 181 (c) the chair of the legislative body of the political subdivision; and
- 182 (d) the chief law enforcement officer of the political subdivision.

183 ~~[(2)]~~ (3) (a) Notwithstanding any other provision of law:

184 (i) if any political subdivision officer or his legal deputy, if any, is unavailable, a
185 designated emergency interim successor shall exercise the powers and duties of the office
186 according to the order of succession specified by the political subdivision officer; or

187 (ii) counties may provide by ordinance that one member of the county legislative body
188 may act as the county legislative body if the other members are absent.

189 (b) An emergency interim successor shall exercise the powers and duties of the office
190 only until:

191 (i) the vacancy is filled in accordance with the constitution or statutes; or

192 (ii) the political subdivision officer, his deputy, or an emergency interim successor
193 earlier in the order of succession becomes available to exercise the powers and duties of the
194 office.

195 ~~[(3)]~~ (4) The legislative bodies of each political subdivision may enact resolutions or
196 ordinances consistent with this chapter and also provide for emergency interim successors to
197 officers of the political subdivision not governed by this section.

198 Section 6. Section **76-8-317** is enacted to read:

199 **76-8-317. Refusal to comply with order to evacuate or other orders issued in a**
200 **local or state emergency -- Penalties.**

201 (1) A person may not refuse to comply with an order to evacuate issued under this
202 chapter or refuse to comply with any other order issued by the governor in a state of an
203 emergency or by a chief executive officer in a local emergency under Sections 65-5a-3 or
204 65-5a-4, if notice of the order has been given to that person.

205 (2) A person who violates this section is guilty of a class B misdemeanor.

Legislative Review Note
as of 1-10-06 9:56 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel