

**DISASTER RECOVERY FUNDING**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis Oda**

Senate Sponsor: Sheldon L. Killpack

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to funding state and local government recovery efforts in cases of declared disasters.

**Highlighted Provisions:**

This bill:

- ▶ addresses emergency expenditures by local governments;
- ▶ transitions current loan programs for disasters to the Disaster Recovery Funding Act;
- ▶ modifies the duties of the Division of Emergency Services and Homeland Security;
- ▶ enacts the Disaster Recovery Funding Act including:
  - enacting definitions;
  - creating the State Disaster Recovery Reserve consisting of two funds;
  - providing for transfers between the funds;
  - directing the division to address state emergency disaster services;
  - authorizing local governments to create local disaster funds;



- 30           • creating the local government disaster recovery loan program; and
- 31           • requiring reporting;
- 32           ▶ addresses the governor's powers in cases of emergency;
- 33           ▶ provides for deposits into the state disaster reserve;
- 34           ▶ coordinates the state disaster reserve with funds outside the act;
- 35           ▶ addresses limitations on spending; and
- 36           ▶ makes technical and conforming amendments.

37 **Monies Appropriated in this Bill:**

38           None

39 **Other Special Clauses:**

40           None

41 **Utah Code Sections Affected:**

42 AMENDS:

- 43           **10-5-118**, as enacted by Chapter 34, Laws of Utah 1983
- 44           **10-6-129**, as last amended by Chapter 52, Laws of Utah 1981
- 45           **17-36-27**, as enacted by Chapter 22, Laws of Utah 1975
- 46           **53-2-102.5**, as last amended by Chapter 89, Laws of Utah 2006
- 47           **53-2-104**, as last amended by Chapter 214, Laws of Utah 2005
- 48           **63-5a-8**, as last amended by Chapter 14, Laws of Utah 2002
- 49           **63-38c-103**, as last amended by Chapter 1, Laws of Utah 2005, First Special Session
- 50           **63-38f-904**, as renumbered and amended by Chapter 148, Laws of Utah 2005

51 ENACTS:

- 52           **53-2-401**, Utah Code Annotated 1953
- 53           **53-2-402**, Utah Code Annotated 1953
- 54           **53-2-403**, Utah Code Annotated 1953
- 55           **53-2-404**, Utah Code Annotated 1953
- 56           **53-2-405**, Utah Code Annotated 1953
- 57           **53-2-406**, Utah Code Annotated 1953
- 58           **53-2-407**, Utah Code Annotated 1953
- 59           **63-38-2.7**, Utah Code Annotated 1953



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

62 Section 1. Section **10-5-118** is amended to read:

63 **10-5-118. Emergency expenditures.**

64 (1) The council, on determining that an emergency exists, such as widespread damage  
65 from fire, flood, or earthquake, and that the emergency necessitates the expenditure of money  
66 in excess of the budget of the general fund, may amend the budget and authorize such  
67 expenditures as may be reasonably necessary to meet the emergency.

68 (2) Except to the extent provided for in Title 53, Chapter 2, Part 4, Disaster Recovery  
69 Funding Act, a council of a town may not expend monies in the town's local fund for an  
70 emergency, if the town creates a local fund under Title 53, Chapter 2, Part 4, Disaster Recovery  
71 Funding Act.

72 Section 2. Section **10-6-129** is amended to read:

73 **10-6-129. Emergency expenditures.**

74 [~~In the event~~] (1) If the governing body of a city determines that an emergency exists,  
75 such as widespread damage from fire, flood, or earthquake, and that the emergency necessitates  
76 the expenditure of money in excess of the budget of the general fund, the governing body may  
77 by resolution amend the budget and authorize such expenditures and incur such deficits in the  
78 fund balance of the general fund as may be reasonably necessary to meet the emergency.

79 (2) Except to the extent provided for in Title 53, Chapter 2, Part 4, Disaster Recovery  
80 Funding Act, the governing body of a city may not expend monies in the city's local fund for an  
81 emergency, if the city creates a local fund under Title 53, Chapter 2, Part 4, Disaster Recovery  
82 Funding Act.

83 Section 3. Section **17-36-27** is amended to read:

84 **17-36-27. Emergency expenditures -- Deficit.**

85 (1) If the governing body determines that an emergency exists, such as widespread  
86 damage from fire, flood, or earthquake, and that the expenditure of money in excess of the  
87 general fund budget is necessary, it may make such expenditures and incur such deficits as  
88 reasonably necessary to meet the emergency.

89 (2) Except to the extent provided for in Title 53, Chapter 2, Part 4, Disaster Recovery  
90 Funding Act, the governing body of the county may not expend monies in the county's local  
91 fund for an emergency, if the county creates a local fund under Title 53, Chapter 2, Part 4,

92 Disaster Recovery Funding Act.

93 Section 4. Section **53-2-102.5** is amended to read:

94 **53-2-102.5. Loan program for disasters prior to Disaster Recovery Funding Act.**

95 [~~(1) The director may make loans to local governments as provided in this section~~  
96 ~~when:]~~

97 [~~(a) the governor has issued a proclamation declaring a state of emergency because of a~~  
98 ~~natural disaster;]~~

99 [~~(b) the Legislature has appropriated monies to the division explicitly for that purpose;~~  
100 ~~and]~~

101 [~~(c) threats to the public health and safety, or damages to flood control systems or the~~  
102 ~~transportation infrastructure exist.]~~

103 [~~(2) (a) In order to qualify for loans under this section, the county and each political~~  
104 ~~subdivision within the county shall:]~~

105 [~~(i) pass a resolution that:]~~

106 [~~(A) requests a loan;]~~

107 [~~(B) identifies the loan amount that is requested; and]~~

108 [~~(C) describes, in as much detail as possible, how the entity will spend the loan~~  
109 ~~proceeds; and]~~

110 [~~(ii) complete the application for funds provided by the director.]~~

111 [~~(b) Each political subdivision other than the county shall submit a copy of its~~  
112 ~~resolution and application to the county legislative body.]~~

113 [~~(c) The county legislative body shall file with the director:]~~

114 [~~(i) a letter identifying the total loan amount sought by the county and its political~~  
115 ~~subdivisions; and]~~

116 [~~(ii) a copy of the county's resolution and application and a copy of the resolution and~~  
117 ~~application of each political subdivision seeking loan funds.]~~

118 [~~(3) (a) To the extent appropriated funds are available, the director shall prepare a~~  
119 ~~promissory note lending the county the total amount requested by the county for itself and its~~  
120 ~~political subdivisions.]~~

121 [~~(b) Except as required in Subsections (8) and (9), the director shall ensure that the~~  
122 ~~promissory note contains:]~~

123 ~~[(i) a requirement that the principal on the note is due on the May 1 in the calendar year~~  
124 ~~two years after the year in which the note is signed;]~~

125 ~~[(ii) terms that require repayment of the principal on the note be made to the General~~  
126 ~~Fund Budget Reserve Account established in Section 63-38-2.5; and]~~

127 ~~[(iii) terms that limit the use of note proceeds to the repair and reconstruction of~~  
128 ~~infrastructures owned by local governments located within the county.]~~

129 ~~[(c) After an authorized representative of the county signs the promissory note, the~~  
130 ~~director shall disburse the loan funds to the county.]~~

131 ~~[(4) The county and any participating political subdivision may not use loan proceeds~~  
132 ~~for costs:]~~

133 ~~[(a) that could have been paid from other available funding sources if the county or~~  
134 ~~participating political subdivision had applied for those funds; or]~~

135 ~~[(b) to compensate private businesses or private persons for damages incurred in the~~  
136 ~~disaster by those private businesses or persons.]~~

137 ~~[(5) After receiving the loan proceeds from the state, the county shall, before~~  
138 ~~disbursing loan proceeds to the other county political subdivisions, obtain signed promissory~~  
139 ~~notes from each participating political subdivision that include terms substantially similar to~~  
140 ~~the terms contained in the promissory note signed by the county.]~~

141 ~~[(6) The county shall, on behalf of itself and any participating political subdivision, file~~  
142 ~~a report with the director every three months, that:]~~

143 ~~[(a) specifies each project on which loan funds were expended, classified by the name~~  
144 ~~of the local entity that expended the funds; and]~~

145 ~~[(b) identifies the amount expended for that project.]~~

146 ~~[(7) If the county or one of its participating political subdivisions has not expended or~~  
147 ~~committed the funds by the date that the promissory note is due, the county or participating~~  
148 ~~political subdivision shall return the unused or uncommitted funds to the director for redeposit~~  
149 ~~into the fund.]~~

150 ~~[(8)]~~ (1) (a) For each promissory note issued under this section that is unpaid on May  
151 1, 2006, the director shall issue a new promissory note to replace the existing promissory note:

152 ~~[(a)]~~ (i) for the principal amount of the unpaid promissory note without accrued  
153 interest, if any;

154           ~~[(b)]~~ (ii) due on or before June 30, 2007; and  
155           ~~[(c)]~~ (iii) with no interest rate.

156           (b) For a promissory note issued under this section that is unpaid as of April 30, 2007,  
157 the division shall ensure that when the principal on the promissory note is repaid, the  
158 repayment is made to the State Disaster Recovery Restricted Account created in Section  
159 53-2-403.

160           ~~[(9)]~~ (2) The director shall ensure that each promissory note issued under this section  
161 that is funded by monies appropriated and available for disaster loans as of January 1, 2006, are  
162 due on or before June 30, 2007.

163           (3) The Division of Finance shall transfer by no later than June 30, 2007, any monies  
164 repaid under this section to the General Fund Budget Reserve Account established in Section  
165 63-38-2.5 to the State Disaster Recovery Restricted Account created in Section 53-2-403.

166           Section 5. Section **53-2-104** is amended to read:

167           **53-2-104. Division duties -- Powers.**

168           (1) The division shall:

169           (a) respond to the policies of the governor and the Legislature;

170           (b) perform functions relating to emergency services and homeland security matters as  
171 directed by the commissioner;

172           (c) prepare, implement, and maintain programs and plans to provide for:

173           (i) prevention and minimization of injury and damage caused by disasters;

174           (ii) prompt and effective response to and recovery from disasters;

175           (iii) identification of areas particularly vulnerable to disasters;

176           (iv) coordination of hazard mitigation and other preventive and preparedness measures  
177 designed to eliminate or reduce disasters;

178           (v) assistance to local officials, state agencies, and the business and public sectors, in  
179 developing emergency action plans;

180           (vi) coordination of federal, state, and local emergency activities;

181           (vii) coordination of emergency operations plans with emergency plans of the federal  
182 government;

183           (viii) coordination of search and rescue activities;

184           (ix) coordination of rapid and efficient communications in times of emergency; and

185 (x) other measures necessary, incidental, or appropriate to this part; [~~and~~]  
 186 (d) coordinate with local officials, state agencies, and the business and public sectors in  
 187 developing, implementing, and maintaining a state energy emergency plan in accordance with  
 188 Section 53-2-110[-]; and

189 (e) administer Part 4, Disaster Recovery Funding Act, in accordance with that part.

190 (2) The division may consult with the Legislative Management Committee, the Judicial  
 191 Council, and legislative and judicial staff offices to assist them in preparing emergency  
 192 succession plans and procedures under Title 63, Chapter 5b, Emergency Interim Succession  
 193 Act.

194 Section 6. Section **53-2-401** is enacted to read:

**Part 4. Disaster Recovery Funding Act**

**53-2-401. Title.**

197 This part is known as the "Disaster Recovery Funding Act."

198 Section 7. Section **53-2-402** is enacted to read:

**53-2-402. Definitions.**

200 (1) Unless otherwise defined in this section, the terms defined in Part 1, Emergency  
 201 Services and Homeland Security Act, shall have the same meaning for this part.

202 (2) As used in this part:

203 (a) "Average annual deposit" means an amount calculated by a local government as  
 204 follows:

205 (i) for each fiscal year beginning with the fiscal year the local government creates a  
 206 local fund, the local government shall:

207 (A) determine the amount transferred to the local fund;

208 (B) determine the total estimated revenues of the local government for that fiscal year  
 209 that are not restricted or otherwise obligated;

210 (C) divide the amount in Subsection (2)(a)(i)(A) with the amount in Subsection  
 211 (2)(a)(i)(B); and

212 (D) round the number in Subsection (2)(a)(i)(C) up to the nearest two decimal points;

213 (ii) the local government shall add together the amounts calculated for each fiscal year  
 214 under Subsection (2)(a)(i) for each fiscal year beginning with the fiscal year the local fund is  
 215 created and ending with the fiscal year immediately preceding the day on which an application

216 for a loan filed under Section 53-2-406 is submitted; and

217 (iii) the local government shall:

218 (A) divide the number calculated under Subsection (2)(a)(ii) by the number of fiscal  
219 years counted;

220 (B) round the number calculated under this Subsection (2)(a)(iii) up to the nearest two  
221 decimal points; and

222 (C) convert the number calculated under this Subsection (2)(a)(iii) to a percentage.

223 (b) Subject to Subsections (2)(b)(i), "declared disaster" means one or more events:

224 (i) within the state;

225 (ii) that occur within a limited period of time;

226 (iii) that involve:

227 (A) a significant number of persons being at risk of bodily harm, sickness, or death; or

228 (B) a significant portion of real property at risk of loss;

229 (iv) that are sudden in nature and generally occur less frequently than every three years;

230 and

231 (v) that results in:

232 (A) the president of the United States declaring an emergency or major disaster in the  
233 state;

234 (B) the governor declaring a state of emergency under Title 63, Chapter 5a, Disaster  
235 Response and Recovery; or

236 (C) the chief executive officer of a local government declaring a local emergency under  
237 Title 63, Chapter 5a, Disaster Response and Recovery.

238 (c) "Disaster recovery fund" means the State Disaster Recovery Restricted Account  
239 created in Section 53-2-403.

240 (d) "Disaster revolving loan fund" means the Local Government Disaster Revolving  
241 Loan Fund created in Section 53-2-403.

242 (e) "Emergency preparedness" means the following done for the purpose of being  
243 prepared for an emergency as defined by the division by rule made in accordance with Title 63,  
244 Chapter 46a, Utah Administrative Rulemaking Act:

245 (i) the purchase of equipment;

246 (ii) the training of personnel; or



247 (iii) the obtaining of a certification.  
248 (f) (i) "Emergency disaster services" means the following that are of a temporary basis:  
249 (A) evacuation;  
250 (B) shelter;  
251 (C) medical triage;  
252 (D) emergency transportation;  
253 (E) repair of infrastructure;  
254 (F) safety services, including fencing or roadblocks;  
255 (G) sandbagging;  
256 (H) emergency debris removal;  
257 (I) temporary bridges;  
258 (J) procurement and distribution of food, water, or ice;  
259 (K) procurement and deployment of generators;  
260 (L) rescue or recovery; or  
261 (M) services similar to those described in Subsections (2)(f)(i)(A) through (L), as  
262 defined by the division by rule, that are generally required within the first 96 hours of a  
263 declared disaster.  
264 (ii) "Emergency disaster services" does not include:  
265 (A) emergency preparedness; or  
266 (B) notwithstanding whether or not a county participates in the Wildland Fire  
267 Suppression Fund created in Section 65A-8-6.1, any fire suppression or presuppression costs  
268 that may be paid for from the Wildland Fire Suppression Fund if the county participates in the  
269 Wildland Fire Suppression Fund.  
270 (g) "Fund," when referring to a fund in the state disaster reserve, means the:  
271 (i) disaster recovery fund; and  
272 (ii) disaster revolving loan fund.  
273 (h) "Local fund" means a local government disaster fund created in accordance with  
274 Section 53-2-405.  
275 (i) "Local government" means a county, city, or town.  
276 (j) "Percentage of allowed deposit" means a percentage calculated by dividing the  
277 average annual deposit by ten.

278 (k) "Special fund" means a fund other than a general fund of a local government that is  
279 created for a special purpose established under the uniform system of budgeting, accounting,  
280 and reporting.

281 (l) "State disaster reserve" means the State Disaster Recovery Reserve created in  
282 Section 53-2-403.

283 Section 8. Section **53-2-403** is enacted to read:

284 **53-2-403. State Disaster Recovery Reserve.**

285 (1) (a) There is created a State Disaster Recovery Reserve consisting of the following  
286 funds created by this section:

287 (i) the disaster recovery fund; and

288 (ii) the disaster revolving loan fund.

289 (b) The Legislature may, in legislation that includes an appropriation, transfer monies  
290 between the funds:

291 (i) notwithstanding any other provision of this part; and

292 (ii) except that it may not transfer monies from the disaster revolving loan fund if it  
293 would prevent the division from making payments to a local government under a loan issued  
294 under this part before the transfer under this Subsection (1)(b).

295 (2) (a) One fund in the state disaster reserve is known as the "State Disaster Recovery  
296 Restricted Account" which is created as a restricted account within the General Fund.

297 (b) The disaster recovery fund shall consist of:

298 (i) monies deposited into the disaster recovery fund in accordance with Section  
299 53-2-102.5;

300 (ii) monies deposited into the disaster recovery fund in accordance with Section  
301 63-38-2.7;

302 (iii) monies appropriated to the disaster recovery fund by the Legislature;

303 (iv) any other public or private monies received by the division that are:

304 (A) given to the division for purposes consistent with this Subsection (2); and

305 (B) deposited into the disaster recovery fund at the request of:

306 (I) the division; or

307 (II) the person giving the monies; and

308 (v) interest or other earnings derived from the disaster recovery fund.

- 309 (c) Monies in the disaster recovery fund may only be used as follows:
- 310 (i) without the monies being appropriated by the Legislature, in any fiscal year the
- 311 division may use the lesser of the following to fund, in accordance with Section 53-2-405, costs
- 312 to the state of emergency disaster services in response to a declared disaster:
- 313 (A) \$10,000,000;
- 314 (B) 33.3% of the balance in the disaster recovery fund in the fiscal year immediately
- 315 preceding that fiscal year; or
- 316 (C) the balance of disaster recovery fund in the fiscal year in which the monies are
- 317 used; and
- 318 (ii) subject to being appropriated by the Legislature, monies not described in
- 319 Subsection (2)(c)(i) may be used to fund the following related to a declared disaster:
- 320 (A) costs to the state directly related to a declared disaster that are not costs related to:
- 321 (I) emergency disaster services;
- 322 (II) emergency preparedness; or
- 323 (III) notwithstanding whether or not a county participates in the Wildland Fire
- 324 Suppression Fund created in Section 65A-8-6.1, any fire suppression or presuppression costs
- 325 that may be paid for from the Wildland Fire Suppression Fund if the county participates in the
- 326 Wildland Fire Suppression Fund; or
- 327 (B) grants to local governments as provided for under Subsection 53-2-406(8).
- 328 (3) (a) One fund in the state disaster reserve is known as the "Local Government
- 329 Disaster Revolving Loan Fund" which is created as an enterprise fund to operate as a revolving
- 330 loan fund.
- 331 (b) The division shall administer the disaster revolving loan fund in accordance with
- 332 Section 53-2-406.
- 333 (c) The disaster revolving loan fund is not subject to Section 63A-3-205.
- 334 (d) The disaster revolving loan fund shall consist of:
- 335 (i) amounts deposited into the disaster revolving loan fund in accordance with Section
- 336 63-38-2.7;
- 337 (ii) amounts paid into the disaster revolving loan fund by a local government in
- 338 accordance with Section 53-2-406, including interest, charges, or penalties;
- 339 (iii) any monies appropriated to the disaster revolving loan fund by the Legislature;

340 (iv) any other public or private monies received by the division that are:  
341 (A) given to the division for purposes consistent with this Subsection (3); and  
342 (B) deposited into the disaster revolving loan fund at the request of:  
343 (I) the division; or  
344 (II) the person giving the monies; and  
345 (v) interest or other earnings derived from the disaster revolving loan fund.  
346 (e) Monies in the disaster revolving loan fund may only be used to:  
347 (i) fund loans as provided in Section 53-2-406; and  
348 (ii) pay for administrative costs of the Division of Finance in providing for the care,  
349 custody, safekeeping, collection, and accounting of loans issued under Section 53-2-406.  
350 (4) The state treasurer shall invest monies in the funds in the state disaster reserve  
351 according to Title 51, Chapter 7, State Money Management Act, except that the state treasurer  
352 shall deposit all interest or other earnings derived from the funds into the fund that generates  
353 the interest or other earnings.  
354 (5) (a) Except as provided in Subsection (1), the monies in the state disaster reserve  
355 may not be diverted, appropriated, or used for a purpose that is not listed in this section for that  
356 fund.  
357 (b) Notwithstanding Section 63-38-3.6, the Legislature may not appropriate monies  
358 from the state disaster reserve to eliminate or otherwise reduce an operating deficit if the  
359 monies appropriated from the state disaster reserve are used for a purpose other than one listed  
360 in this section.  
361 (c) The Legislature may not amend the purposes for which monies in the state disaster  
362 reserve may be used except by the affirmative vote of two-thirds of all the members elected to  
363 each house.  
364 Section 9. Section **53-2-404** is enacted to read:  
365 **53-2-404. Emergency disaster services.**  
366 (1) Subject to this section and Section 53-2-403, the division shall use monies  
367 described in Subsection 53-2-403(2)(c)(i) to fund costs to the state of emergency disaster  
368 services.  
369 (2) Monies may be paid by the division under this section to government entities and  
370 private persons providing emergency disaster services are subject to Title 63, Chapter 56, Utah

371 Procurement Code.

372 Section 10. Section **53-2-405** is enacted to read:

373 **53-2-405. Local government disaster funds.**

374 (1) (a) Subject to this section and notwithstanding anything to the contrary contained in  
375 Title 10, Utah Municipal Code, or Title 17, Counties, the legislative body of a local  
376 government may create and maintain by ordinance a special fund known as a local government  
377 disaster fund.

378 (b) The local fund shall consist of:

379 (i) subject to the limitations of this section, monies transferred to it in accordance with  
380 Subsection (2):

381 (ii) any other public or private monies received by the local government that are:

382 (A) given to the local government for purposes consistent with this section; and

383 (B) deposited into the local fund at the request of:

384 (I) the legislative body of the local government; or

385 (II) the person giving the monies; and

386 (iii) interest or income realized from the local fund.

387 (c) Interest or income realized from the local fund shall be deposited into the local  
388 fund.

389 (d) Monies in a local fund may be:

390 (i) deposited or invested as provided in Section 51-7-11; or

391 (ii) transferred by the local government treasurer to the state treasurer under Section  
392 51-7-5 for the state treasurer's management and control under Title 51, Chapter 7, State Money  
393 Management Act.

394 (e) (i) The monies in a local fund may accumulate from year to year until the local  
395 government legislative body determines to spend any money in the local fund for one or more  
396 of the purposes specified in Subsection (3).

397 (ii) Monies in a local fund at the end of a fiscal year:

398 (A) shall remain in the local fund for future use; and

399 (B) may not be transferred to any other fund or used for any other purpose.

400 (2) The amounts transferred to a local fund may not exceed 10% of the total estimated  
401 revenues of the local government for the current fiscal period that are not restricted or

402 otherwise obligated.

403 (3) Monies in the fund may only be used to fund the services and activities of the local  
404 government creating the local fund in response to:

405 (a) a declared disaster within the boundaries of the local government;

406 (b) the aftermath of the disaster that gave rise to a declared disaster within the  
407 boundaries of the local government; and

408 (c) subject to Subsection (5), emergency preparedness.

409 (4) (a) A local fund is subject to this part and:

410 (i) in the case of a town, Title 10, Chapter 5, Uniform Fiscal Procedures Act for Utah  
411 Towns, except for:

412 (A) in addition to the funds listed in Section 10-5-106, the mayor shall prepare a  
413 budget for the local fund;

414 (B) Section 10-5-119 addressing termination of special funds does not apply to a local  
415 fund; and

416 (C) the council of the town may not authorize an interfund loan under Section  
417 10-5-120 from the local fund;

418 (ii) in the case of a city, Title 10, Chapter 6, Uniform Fiscal Procedures Act for Utah  
419 Cities, except for:

420 (A) in addition to the funds listed in Section 10-6-109, the mayor shall prepare a  
421 budget for the local fund;

422 (B) Section 10-6-131 addressing termination of special funds does not apply to a local  
423 fund; and

424 (C) the governing body of the city may not authorize an interfund loan under Section  
425 10-6-132 from the local fund; and

426 (iii) in the case of a county, Title 17, Chapter 36, Uniform Fiscal Procedures Act for  
427 Counties, except for:

428 (A) Section 17-36-29 addressing termination of special funds; and

429 (B) the governing body of the county may not authorize an interfund loan under  
430 Section 17-36-30 from the local fund.

431 (b) Notwithstanding Subsection (4)(a), transfers of monies to a local fund or the  
432 accumulation of monies in a local fund do not affect any limits on fund balances, net assets, or

433 the accumulation of retained earnings in any of the following of a local government:

434 (i) a general fund;

435 (ii) an enterprise fund;

436 (iii) an internal service fund; or

437 (iv) any other fund.

438 (5) (a) A local government may not expend during a fiscal year more than 10% of the  
439 monies budgeted to be deposited into a local fund during that fiscal year for emergency  
440 preparedness.

441 (b) The amount described in Subsection (5)(a) shall be determined before the adoption  
442 of the tentative budget.

443 Section 11. Section **53-2-406** is enacted to read:

444 **53-2-406. Local government disaster loan program -- Loans and grants.**

445 (1) (a) The division shall administer the disaster revolving loan fund in accordance  
446 with this section.

447 (b) A loan made under this section is in addition to any loan applied for by the  
448 governor from the federal government for a political subdivision under Section 63-5a-3.

449 (2) (a) The division may extend a loan funded by the disaster revolving loan fund to a  
450 local government under this section if:

451 (i) there is sufficient monies in the disaster revolving loan fund to pay for the loan at  
452 the time the loan is issued;

453 (ii) the loan is applied for in accordance with this section because of a declared disaster  
454 within the local government's boundaries; and

455 (iii) the division believes that the monies in the disaster revolving loan fund will not  
456 need to be transferred in accordance with Section 53-2-403 to the disaster recovery fund to  
457 meet state needs related to a declared disaster.

458 (b) If the division extends a loan funded by the disaster revolving loan fund under this  
459 section, the division shall extend the loan under a written contract that includes the terms  
460 required by this section.

461 (3) (a) A local government may apply for and accept a loan under this section in the  
462 case of a declared disaster within the local government's boundaries.

463 (b) To apply for a loan from the disaster revolving loan fund, the local government

464 shall:

465 (i) pass a resolution that:

466 (A) requests a loan; and

467 (B) identifies the loan amount that is requested; and

468 (ii) submit to the division:

469 (A) the resolution required by Subsection (3)(b)(i);

470 (B) a written statement of the declared disaster within the boundaries of the local

471 government that is the basis for the loan;

472 (C) a written certification that the local government does not have sufficient revenues

473 or balances in its general fund or a local fund to pay for the costs associated with the declared

474 disaster;

475 (D) documentation that the local government reasonably anticipates that it will be able

476 to pay the amounts owed under the loan under the terms of the loan;

477 (E) a written statement of the amount of the loan for which the local government is

478 applying; and

479 (F) a certification of:

480 (I) the current balance in the local government's local fund; and

481 (II) the local government's average annual deposit amount.

482 (c) The division may make rules, in accordance with Title 63, Chapter 46a, Utah

483 Administrative Rulemaking Act, concerning the form of the information required by this

484 Subsection (3).

485 (4) (a) A loan made under this section shall include the following terms:

486 (i) an interest rate determined by the division, by the division:

487 (A) obtaining from the state treasurer the rate of return the state treasurer received on

488 public monies controlled or managed by the state treasurer in the fiscal year immediately

489 preceding the day on which the loan contract is signed;

490 (B) determining the interest rate that is equal to the bank prime loan rate published by

491 the Federal Reserve Board for the month immediately preceding the day on which the division

492 approves the loan plus 10%;

493 (C) determining the local government's percentage of allowed deposit; and

494 (D) applying the local government's percentage of allowed deposit proportionately to a



495 scale that:

496 (I) begins with the amount described in Subsection (4)(a)(i)(A) being charged if the  
497 local government's percentage of allowed deposit is 100%; and

498 (II) ends with the amount described in Subsection (4)(a)(i)(B) being charged if the  
499 local government's percentage of allowed deposit is 0%;

500 (ii) a requirement that the local government may not seek and, subject to this section,  
501 the state may not waive payment of or otherwise forgive any amounts owed under the loan  
502 including principal, interest, and late payment charges or penalties;

503 (iii) a repayment schedule including payment application order, due dates, and  
504 amounts;

505 (iv) loan disbursement dates and amounts; and

506 (v) late payment terms, charges, and penalties, consistent with rules made by the  
507 division in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

508 (b) The division and Division of Finance may not impose any term not listed in  
509 Subsection (4)(a) other than one or more ministerial requirements.

510 (c) The division shall approve or deny an application for a loan within five business  
511 days of the day on which the division receives a complete application for the loan.

512 (5) Subject to this section, the division shall comply with Section 63-65-4 so that the  
513 Division of Finance may provide for the care, custody, safekeeping, collection, and accounting  
514 of a loan issued under this section.

515 (6) The payment of any amount owed under a loan made under this section may not be  
516 waived or forgiven.

517 (7) A local government may not use loan proceeds from a loan made under this section  
518 to compensate private businesses or private persons for damages incurred in a declared disaster  
519 by those private businesses or persons.

520 (8) (a) The division may issue a grant under this part to the local government to pay  
521 costs directly related to a declared disaster only if:

522 (i) the local government makes a good faith effort to apply for a loan under this  
523 section;

524 (ii) the division does not issue the local government a loan solely because the local  
525 government is unable to repay monies owed under a loan extended under this section within a

526 reasonable period of time; and

527 (iii) if the Legislature appropriates sufficient monies to the division to pay for the grant.

528 (b) The division shall by rule made in accordance with Title 63, Chapter 46a, Utah

529 Administrative Rulemaking Act, create a grant process by which a local government may apply

530 for a grant and the division may give a grant except that the grant process shall:

531 (i) require that the conditions of this Subsection (8) be met;

532 (ii) establish how the division determines whether or not a local government is unable

533 to repay monies owed under a loan within a reasonable period of time; and

534 (iii) require compliance with the reporting requirements to the Legislature in Section

535 53-2-407.

536 Section 12. Section **53-2-407** is enacted to read:

537 **53-2-407. Reporting.**

538 By no later than December 31 of each year, the division shall provide a written report to

539 the governor and the Legislature's executive appropriations committee of:

540 (1) the division's activities under this part;

541 (2) monies expended in accordance with this part;

542 (3) the balances in the funds of the state disaster reserve;

543 (4) in cooperation with the Division of Finance:

544 (a) the total dollars loaned by the disaster revolving loan fund during the last fiscal

545 year;

546 (b) a listing of each loan made from the disaster revolving loan fund that:

547 (i) is more than 90 days delinquent;

548 (ii) is in default;

549 (iii) was restructured during the last fiscal year; or

550 (iv) the amount of each loan made from the disaster revolving loan fund;

551 (c) the present value of each loan made from the disaster revolving loan fund at the end

552 of the fiscal year calculated using the average interest rate paid by the state on general

553 obligation bonds issued during the most recent fiscal year in which bonds were sold; and

554 (d) the financial position of the disaster revolving loan fund, including the disaster

555 revolving loan fund's cash investments, cash forecasts, and equity position; and

556 (5) the need for grants, if any, provided for under Subsection 53-2-406(8).

557 Section 13. Section **63-5a-8** is amended to read:

558 **63-5a-8. Acquisition of property for public use -- Compensation of owners.**

559 (1) (a) Upon proclamation of a state of emergency, the governor may purchase or lease  
560 public or private property for public use including:

561 (i) food and medical supplies;

562 (ii) clothing;

563 (iii) shelter;

564 (iv) means of transportation;

565 (v) fuels;

566 (vi) oils; or

567 (vii) buildings or lands.

568 (b) The governor may not purchase private home storage nor privately owned arms.

569 (2) (a) The governor may use property purchased under authority of this section for any  
570 purpose to meet the needs of an emergency, including its use to relieve want, distress, and  
571 disease.

572 (b) Any property used by the governor to meet the needs of an emergency is a public  
573 use.

574 (3) (a) The governor shall compensate the owner of property taken or used under  
575 authority of this section by complying with the procedures established in Title 78, Chapter 34,  
576 Eminent Domain.

577 (b) The governor shall pay for those purchases or leases from the funds available to the  
578 Division of Emergency Services and Homeland Security under:

579 (i) this chapter; or

580 (ii) Title 53, Chapter 2, Part 4, Disaster Recovery Funding Act, to the extent provided  
581 for in that chapter.

582 (4) Nothing in this section applies to or authorizes compensation for the destruction or  
583 damage of standing timber or other property in order to provide a fire break or to the release of  
584 waters or the breach of impoundments in order to reduce pressure or other danger from actual  
585 or threatened flood.

586 Section 14. Section **63-38-2.7** is enacted to read:

587 **63-38-2.7. Deposits related to the Disaster Recovery Funding Act.**

588 Beginning with the fiscal year ending June 30, 2007, at the end of each fiscal year and  
589 after the transfer of surplus General Fund revenues has been made to the General Fund Budget  
590 Reserve Account as provided in Section 63-38-2.5, the Division of Finance shall:

591 (1) determine the amount to be deposited into the State Disaster Recovery Reserve  
592 created in Title 53, Chapter 2, Part, 4, Disaster Recovery Funding Act, by:

593 (a) determining the amount of surplus General Fund revenues after the transfer to the  
594 General Fund Budget Reserve Account under Section 63-38-2.5 that is unrestricted and  
595 undesignated;

596 (b) calculating an amount equal to the lesser of:

597 (i) 25% of the amount determined under Subsection (1)(a); or

598 (ii) 6% of the total of the General Fund appropriation amount and the Uniform School  
599 Fund appropriation amount for the fiscal year in which the surplus occurs;

600 (c) add to the amount calculated under Subsection (1)(b) an amount equal to the lesser  
601 of:

602 (i) 25% more of the amount described in Subsection (1)(a); or

603 (ii) the amount necessary to replace in accordance with this Subsection (1)(c) any  
604 amount appropriated from the State Disaster Recovery Reserve within ten fiscal years before  
605 the fiscal year in which the surplus occurs if:

606 (A) a surplus exists; and

607 (B) the Legislature appropriates money from the State Disaster Recovery Reserve that  
608 is not replaced by appropriation or as provided in this Subsection (1)(c); and

609 (d) dividing the amount calculated under Subsection (1)(c) between the funds of the  
610 State Disaster Recovery Reserve as follows:

611 (i) 50% to the State Disaster Recovery Restricted Account; and

612 (ii) 50% to the Local Government Disaster Revolving Loan Fund; and

613 (2) deposit the amounts calculated under Subsection (1).

614 Section 15. Section **63-38c-103** is amended to read:

615 **63-38c-103. Definitions.**

616 As used in this chapter:

617 (1) (a) "Appropriations" means actual unrestricted capital and operating appropriations  
618 from unrestricted General Fund sources and from non-Uniform School Fund income tax

619 revenues as presented in the governor's executive budgets.

620 (b) [~~"Appropriation"~~] "Appropriations" includes appropriations that are contingent  
621 upon available surpluses in the General Fund.

622 (c) "Appropriations" does not mean:

623 (i) debt service expenditures;

624 (ii) emergency expenditures;

625 (iii) expenditures from all other fund or subfund sources presented in the executive  
626 budgets;

627 (iv) transfers into, or appropriations made to, the General Fund Budget Reserve  
628 Account established in Section 63-38-2.5;

629 (v) transfers into, or appropriations made to, the Education Budget Reserve Account  
630 established in Section 63-38-2.6;

631 (vi) transfers in accordance with Section 63-38-2.7 into, or appropriations made to the  
632 State Disaster Recovery Reserve created in Title 53, Chapter 2, Part 4, Disaster Recovery  
633 Funding Act;

634 [~~(vi)~~] (vii) monies appropriated to fund the total one-time project costs for the  
635 construction of capital developments as defined in Section 63A-5-104;

636 [~~(vii)~~] (viii) appropriations made to the Centennial Highway Fund Restricted Account  
637 created by Section 72-2-118; or

638 [~~(viii)~~] (ix) appropriations made to the Transportation Investment Fund of 2005 created  
639 by Section 72-2-124.

640 (2) "Base year real per capita appropriations" means the result obtained for the state by  
641 dividing the fiscal year 1985 actual appropriations of the state less debt monies by:

642 (a) the state's July 1, 1983 population; and

643 (b) the fiscal year 1983 inflation index divided by 100.

644 (3) "Calendar year" means the time period beginning on January 1 of any given year  
645 and ending on December 31 of the same year.

646 (4) "Fiscal emergency" means an extraordinary occurrence requiring immediate  
647 expenditures and includes the settlement under Chapter 4, Laws of Utah 1988, Fourth Special  
648 Session.

649 (5) "Fiscal year" means the time period beginning on July 1 of any given year and

650 ending on June 30 of the subsequent year.

651 (6) "Fiscal year 1985 actual base year appropriations" means fiscal year 1985 actual  
652 capital and operations appropriations from General Fund and non-Uniform School Fund  
653 income tax revenue sources, less debt monies.

654 (7) "Inflation index" means the change in the general price level of goods and services  
655 as measured by the Gross National Product Implicit Price Deflator of the Bureau of Economic  
656 Analysis, U.S. Department of Commerce calculated as provided in Section 63-38c-202.

657 (8) (a) "Maximum allowable appropriations limit" means the appropriations that could  
658 be, or could have been, spent in any given year under the limitations of this chapter.

659 (b) "Maximum allowable appropriations limit" does not mean actual appropriations  
660 spent or actual expenditures.

661 (9) "Most recent fiscal year's inflation index" means the fiscal year inflation index two  
662 fiscal years previous to the fiscal year for which the maximum allowable inflation and  
663 population appropriations limit is being computed under this chapter.

664 (10) "Most recent fiscal year's population" means the fiscal year population two fiscal  
665 years previous to the fiscal year for which the maximum allowable inflation and population  
666 appropriations limit is being computed under this chapter.

667 (11) "Population" means the number of residents of the state as of July 1 of each year  
668 as calculated by the Governor's Office of Planning and Budget according to the procedures and  
669 requirements of Section 63-38c-202.

670 (12) "Revenues" means the revenues of the state from every tax, penalty, receipt, and  
671 other monetary exaction and interest connected with it that are recorded as unrestricted revenue  
672 of the General Fund and from non-Uniform School Fund income tax revenues, except as  
673 specifically exempted by this chapter.

674 (13) "Security" means any bond, note, warrant, or other evidence of indebtedness,  
675 whether or not the bond, note, warrant, or other evidence of indebtedness is or constitutes an  
676 "indebtedness" within the meaning of any provision of the constitution or laws of this state.

677 Section 16. Section **63-38f-904** is amended to read:

678 **63-38f-904. Loans, grants, and assistance -- Repayment -- Earned credits.**

679 (1) (a) A company that qualifies under Section 63-38f-905 may receive loans, grants,  
680 or other financial assistance from the fund for expenses related to establishment, relocation, or

681 development of industry in Utah.

682 (b) A company creating an economic impediment that qualifies under Section  
683 63-38f-907 may in accordance with this part receive loans, grants, or other financial assistance  
684 from the fund for the expenses of the company creating an economic impediment related to:

685 (i) relocation to a rural area in Utah of the company creating an economic impediment;  
686 and

687 (ii) the siting of a replacement company.

688 (c) An entity offering an economic opportunity that qualifies under Section 63-38f-908  
689 may:

690 (i) receive loans, grants, or other financial assistance from the fund for expenses related  
691 to the establishment, relocation, retention, or development of industry in the state; and

692 (ii) include infrastructure or other economic development precursor activities that act  
693 as a catalyst and stimulus for economic activity likely to lead to the maintenance or  
694 enlargement of the state's tax base.

695 (2) (a) Subject to Subsection (2)(b), the administrator has authority to determine the  
696 structure, amount, and nature of any loan, grant, or other financial assistance from the fund.

697 (b) Loans made under Subsection (2)(a) shall be structured so the intended repayment  
698 or return to the state, including cash or credit, equals at least the amount of the assistance  
699 together with an annual interest charge as negotiated by the administrator.

700 (c) Payments resulting from grants awarded from the fund shall be made only after the  
701 administrator has determined that the company has satisfied the conditions upon which the  
702 payment or earned credit was based.

703 (3) (a) (i) Except as provided in Subsection (3)(b), the administrator may provide for a  
704 system of earned credits that may be used to support grant payments or in lieu of cash  
705 repayment of a fund loan obligation.

706 (ii) The value of the credits described in Subsection (3)(a)(i) shall be based on factors  
707 determined by the administrator, including:

708 (A) the number of Utah jobs created;

709 (B) the increased economic activity in Utah; or

710 (C) other events and activities that occur as a result of the fund assistance.

711 (b) (i) The administrator shall provide for a system of credits to be used to support

712 grant payments or in lieu of cash repayment of a fund loan when loans are made to a company  
713 creating an economic impediment.

714 (ii) The value of the credits described in Subsection (3)(b)(i) shall be based on factors  
715 determined by the administrator, including:

716 (A) the number of Utah jobs created;

717 (B) the increased economic activity in Utah; or

718 (C) other events and activities that occur as a result of the fund assistance.

719 (4) (a) A cash loan repayment or other cash recovery from a company receiving  
720 assistance under this section, including interest, shall be deposited into the fund.

721 (b) The administrator and the Division of Finance shall determine the manner of  
722 recognizing and accounting for the earned credits used in lieu of loan repayments or to support  
723 grant payments as provided in Subsection (3).

724 (5) (a) At the end of each fiscal year, ~~[after the transfer of surplus General Fund~~  
725 ~~revenues has been made to the General Fund Budget Reserve Account as provided in Section~~  
726 ~~63-38-2.5, any additional]~~ the unrestricted, undesignated General Fund balance after the  
727 transfers of surplus of General Fund revenues described in this Subsection (5)(a) shall be  
728 earmarked to the Industrial Assistance Fund in an amount equal to any credit that has accrued  
729 under this part. The earmark required by this Subsection (5)(a) shall be made after the transfer  
730 of surplus General Fund revenues is made:

731 (i) to the General Fund Budget Reserve Account as provided in Section 63-38-2.5; and

732 (ii) beginning with the fiscal year ending June 30, 2007, as provided in Section  
733 63-38-2.7.

734 (b) These credit amounts may not be used for purposes of the fund as provided in this  
735 part until appropriated by the Legislature.

**Legislative Review Note**  
**as of 11-16-06 10:08 AM**

**Office of Legislative Research and General Counsel**

**Interim Committee Note**  
**as of 12-13-06 3:56 PM**



**12-18-06 1:15 PM**

**H.B. 46**

The Business and Labor Interim Committee recommended this bill.

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**H.B. 46 - Disaster Recovery Funding**

**Fiscal Note**

2007 General Session  
State of Utah

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**State Impact**

Local government repayments of state loans for disasters would be deposited in the new State Disaster Recovery Restricted Account. Any repayments of outstanding loans would go to the new fund instead of the Budgetary Reserve Account (Rainy Day Fund). There is also a potential appropriation from surplus revenues which would be dependent on the undesignated and unrestricted funding available.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund Restricted	\$0	\$0	\$0	\$0	(\$17,400,000)	\$0
Restricted Funds	\$0	\$0	\$0	\$0	\$17,400,000	\$0
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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**Individual, Business and/or Local Impact**

To the extent that local governments create local disaster recovery funds they will be allowed to borrow from the State Disaster Relief Fund at reasonable interest rates.