

Representative Curtis Oda proposes the following substitute bill:

EMERGENCY AND DISASTER MANAGEMENT

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis Oda

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill amends the Disaster Recovery Funding Act, the Disaster Response and Recovery Act, and related provisions to address the expenditure of monies relating to a declared disaster, the governor's powers during a state of emergency, and related reporting requirements to the Legislative Management Committee or the Executive Appropriations Committee.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ increases the monies that the Division of Homeland Security may expend from the State Disaster Recovery Restricted Account to address costs to the state of emergency disaster services in response to a declared disaster;
- ▶ provides that the monies that the Division of Homeland Security may expend from the State Disaster Recovery Restricted Account are subject to appropriation by the Legislature;
- ▶ repeals obsolete language;
- ▶ addresses the governor's powers during a state of emergency including:



- 26 • suspending or modifying a statute or administrative rule during a state of
- 27 emergency under certain circumstances;
- 28 • repealing a requirement that the president of the United States declare an
- 29 emergency or major disaster before the governor may exercise certain powers;
- 30 • addressing the removal of debris or wreckage; and
- 31 • declaring a state of emergency;
- 32 ▶ requires certain reports to the Legislative Management Committee or the Executive
- 33 Appropriations Committee; and
- 34 ▶ makes technical and conforming changes.

35 Monies Appropriated in this Bill:

- 36 This bill appropriates:
- 37 ▶ \$3,000,000 from the State Disaster Recovery Restricted Account for fiscal year
 - 38 2010-11 only, to the Department of Public Safety - Division of Homeland Security -
 - 39 Emergency and Disaster Management line item.

40 Other Special Clauses:

41 This bill provides effective dates.

42 Utah Code Sections Affected:

43 AMENDS:

- 44 **26-49-102**, as enacted by Laws of Utah 2008, Chapter 242
- 45 **53-2-403**, as last amended by Laws of Utah 2009, Chapters 3 and 183
- 46 **53-2-404**, as last amended by Laws of Utah 2009, Chapters 183 and 368
- 47 **53-2-406**, as enacted by Laws of Utah 2007, Chapter 328
- 48 **63J-5-103**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 49 **63J-7-102**, as enacted by Laws of Utah 2008, Chapter 195
- 50 **63K-4-201**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 51 **63K-4-203**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 52 **63K-4-401**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 53 **76-8-317**, as last amended by Laws of Utah 2008, Chapter 382

54 ENACTS:

- 55 **63K-4-406**, Utah Code Annotated 1953

56

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

58 Section 1. Section **26-49-102** is amended to read:

59 **26-49-102. Definitions.**

60 As used in this chapter:

61 (1) "Department of Health" shall have the meaning provided for in Section 26-1-4.

62 (2) "Disaster relief organization" means an entity that:

63 (a) provides emergency or disaster relief services that include health or veterinary
64 services provided by volunteer health practitioners;

65 (b) is designated or recognized as a provider of the services described in Subsection
66 (2)(a) under a disaster response and recovery plan adopted by:

67 (i) an agency of the federal government;

68 (ii) the state Department of Health; or

69 (iii) a local health department; and

70 (c) regularly plans and conducts its activities in coordination with:

71 (i) an agency of the federal government;

72 (ii) the Department of Health; or

73 (iii) a local health department.

74 (3) "Emergency" means a "state of emergency" as defined in Section 63K-4-103.

75 (4) "Emergency declaration" [~~shall have the meaning provided for in Sections~~] means a
76 declaration made in accordance with Section 63K-4-203 [and] or 63K-4-301.

77 (5) "Emergency Management Assistance Compact" means the interstate compact
78 approved by Congress by Public Law No. 104-321, 110 Stat. 3877 and adopted by Utah in Title
79 53, Chapter 2, Part 2, Emergency Management Assistance Compact.

80 (6) "Entity" means a person other than an individual.

81 (7) "Health facility" means an entity licensed under the laws of this or another state to
82 provide health or veterinary services.

83 (8) "Health practitioner" means an individual licensed under Utah law or another state
84 to provide health or veterinary services.

85 (9) "Health services" means the provision of treatment, care, advice, guidance, other
86 services, or supplies related to the health or death of individuals or human populations, to the
87 extent necessary to respond to an emergency, including:

88 (a) the following, concerning the physical or mental condition or functional status of an
89 individual or affecting the structure or function of the body:

90 (i) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; or
91 (ii) counseling, assessment, procedures, or other services;

92 (b) selling or dispensing a drug, a device, equipment, or another item to an individual
93 in accordance with a prescription; and

94 (c) funeral, cremation, cemetery, or other mortuary services.

95 (10) "Host entity":

96 (a) means an entity operating in Utah that:

97 (i) uses volunteer health practitioners to respond to an emergency; and

98 (ii) is responsible during an emergency, for actually delivering health services to
99 individuals or human populations, or veterinary services to animals or animal populations; and

100 (b) may include disaster relief organizations, hospitals, clinics, emergency shelters,
101 health care provider offices, or any other place where volunteer health practitioners may
102 provide health or veterinary services.

103 (11) (a) "License" means authorization by a state to engage in health or veterinary
104 services that are unlawful without authorization.

105 (b) "License" includes authorization under this title to an individual to provide health
106 or veterinary services based upon a national or state certification issued by a public or private
107 entity.

108 (12) "Local health department" shall have the meaning provided for in Subsection
109 26A-1-102(5).

110 (13) "Person" means an individual, corporation, business trust, trust, partnership,
111 limited liability company, association, joint venture, public corporation, government or
112 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

113 (14) "Scope of practice" means the extent of the authorization to provide health or
114 veterinary services granted to a health practitioner by a license issued to the practitioner in the
115 state in which the principal part of the practitioner's services are rendered, including any
116 conditions imposed by the licensing authority.

117 (15) "State" means:

118 (a) a state of the United States;

- 119 (b) the District of Columbia;
- 120 (c) Puerto Rico;
- 121 (d) the United States Virgin Islands; or
- 122 (e) any territory or insular possession subject to the jurisdiction of the United States.

123 (16) "Veterinary services" shall have the meaning provided for in Subsection
 124 58-28-102(11).

125 (17) (a) "Volunteer health practitioner" means a health practitioner who provides health
 126 or veterinary services, whether or not the practitioner receives compensation for those services.

127 (b) "Volunteer health practitioner" does not include a practitioner who receives
 128 compensation under a preexisting employment relationship with a host entity or affiliate that
 129 requires the practitioner to provide health services in Utah, unless the practitioner is:

- 130 (i) not a Utah resident; and
- 131 (ii) employed by a disaster relief organization providing services in Utah while an
 132 emergency declaration is in effect.

133 Section 2. Section **53-2-403** is amended to read:

134 **53-2-403. State Disaster Recovery Restricted Account.**

135 (1) (a) There is created a restricted account in the General Fund known as the "State
 136 Disaster Recovery Restricted Account."

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

- 138 (i) monies deposited into the disaster recovery fund in accordance with Section
 139 63J-1-314;
- 140 (ii) monies appropriated to the disaster recovery fund by the Legislature; and
- 141 (iii) any other public or private monies received by the division that are:
 - 142 (A) given to the division for purposes consistent with this section; and
 - 143 (B) deposited into the disaster recovery fund at the request of:
 - 144 (I) the division; or
 - 145 (II) the person giving the monies.

146 (c) The Division of Finance shall deposit interest or other earnings derived from
 147 investment of fund monies into the General Fund.

148 (d) ~~[Monies]~~ Subject to being appropriated by the Legislature, monies in the disaster
 149 recovery fund may only be ~~[used]~~ expended or committed to be expended as follows:

150 (i) (A) ~~[without the monies being appropriated by the Legislature]~~ subject to Section
151 53-2-406, in any fiscal year the division may ~~[use \$100,000 to fund]~~ expend or commit to
152 expend an amount that does not exceed \$250,000, in accordance with Section 53-2-404, to
153 fund costs to the state of emergency disaster services in response to a declared disaster;

154 (B) subject to Section 53-2-406, in any fiscal year the division may expend or commit
155 to expend an amount that exceeds \$250,000, but does not exceed \$1,000,000, in accordance
156 with Section 53-2-404, to fund costs to the state of emergency disaster services in response to a
157 declared disaster if the division:

158 (I) before making the expenditure or commitment to expend, obtains approval for the
159 expenditure or commitment to expend from the governor;

160 (II) subject to Subsection (4), provides written notice of the expenditure or
161 commitment to expend to the speaker of the House of Representatives, the president of the
162 Senate, the Division of Finance, and the Office of the Legislative Fiscal Analyst no later than
163 72 hours after making the expenditure or commitment to expend; and

164 (III) makes the report required by Subsection 53-2-406(2); and

165 (C) subject to Section 53-2-406, in any fiscal year the division may expend or commit
166 to expend an amount that exceeds \$1,000,000, but does not exceed \$3,000,000, in accordance
167 with Section 53-2-404, to fund costs to the state of emergency disaster services in response to a
168 declared disaster if, before making the expenditure or commitment to expend, the division:

169 (I) obtains approval for the expenditure or commitment to expend from the governor;
170 and

171 (II) submits the expenditure or commitment to expend to the Executive Appropriations
172 Committee in accordance with Subsection 53-2-406(3); and

173 (ii) subject to being appropriated by the Legislature, monies not described in
174 Subsection (1)(d)(i) may be ~~[used]~~ expended or committed to be expended to fund costs to the
175 state directly related to a declared disaster that are not costs related to:

176 (A) emergency disaster services;

177 (B) emergency preparedness; or

178 (C) notwithstanding whether or not a county participates in the Wildland Fire
179 Suppression Fund created in Section 65A-8-204, any fire suppression or presuppression costs
180 that may be paid for from the Wildland Fire Suppression Fund if the county participates in the

181 Wildland Fire Suppression Fund~~;~~ and].

182 ~~[(iii) for fiscal years 2009 and 2010 only, to address a General Fund budget deficit as~~
183 ~~defined in Section 63J-1-312.]~~

184 (2) The state treasurer shall invest monies in the disaster recovery fund according to
185 Title 51, Chapter 7, State Money Management Act.

186 (3) (a) Except as provided in Subsection (1), the monies in the disaster recovery fund
187 may not be diverted, appropriated, ~~[or used]~~ expended, or committed to be expended for a
188 purpose that is not listed in this section.

189 (b) Notwithstanding Section 63J-1-410, the Legislature may not appropriate monies
190 from the disaster recovery fund to eliminate or otherwise reduce an operating deficit if the
191 monies appropriated from the disaster recovery fund are ~~[used]~~ expended or committed to be
192 expended for a purpose other than one listed in this section.

193 (c) The Legislature may not amend the purposes for which monies in the disaster
194 recovery fund may be ~~[used]~~ expended or committed to be expended except by the affirmative
195 vote of two-thirds of all the members elected to each house.

196 (4) The division:

197 (a) shall provide the notice required by Subsection (1)(d)(i)(B) using the best available
198 method under the circumstances as determined by the division; and

199 (b) may provide the notice required by Subsection (1)(d)(i)(B) in electronic format.

200 Section 3. Section **53-2-404** is amended to read:

201 **53-2-404. State costs for emergency disaster services.**

202 (1) Subject to this section and Section 53-2-403, the division shall ~~[use]~~ expend or
203 commit to expend monies described in Subsection 53-2-403(1)(d)(i) to fund costs to the state
204 of emergency disaster services.

205 (2) Monies paid by the division under this section to government entities and private
206 persons providing emergency disaster services are subject to Title 63G, Chapter 6, Utah
207 Procurement Code.

208 Section 4. Section **53-2-406** is amended to read:

209 **53-2-406. Reporting.**

210 (1) By no later than December 31 of each year, the division shall provide a written
211 report to the governor and the ~~[Legislature's]~~ Executive Appropriations Committee of:

212 ~~[(1)]~~ (a) the division's activities under this part;

213 ~~[(2)]~~ (b) monies expended or committed to be expended in accordance with this part;

214 ~~[and]~~

215 ~~[(3)]~~ (c) the balances in the disaster recovery fund~~[-];~~ and

216 (d) any unexpended balance of appropriations from the disaster recovery fund.

217 (2) (a) The governor and the Department of Public Safety shall report to the Legislative

218 Management Committee an expenditure or commitment to expend made in accordance with

219 Subsection 53-2-403(1)(d)(i)(B).

220 (b) The governor and the Department of Public Safety shall make the report required

221 by this Subsection (2) on or before the sooner of:

222 (i) the day on which the governor calls the Legislature into session in accordance with

223 Section 63K-1-302; or

224 (ii) 15 days after the division makes the expenditure or commitment to expend

225 described in Subsection 53-2-403(1)(d)(i)(B).

226 (3) (a) Subject to Subsection (3)(b), before the division makes an expenditure or

227 commitment to expend described in Subsection 53-2-403(1)(d)(i)(C), the governor and the

228 Department of Public Safety shall submit the expenditure or commitment to expend to the

229 Executive Appropriations Committee for its review and recommendations.

230 (b) The Executive Appropriations Committee shall review the expenditure or

231 commitment to expend and may:

232 (i) recommend that the division make the expenditure or commitment to expend;

233 (ii) recommend that the division not make the expenditure or commitment to expend;

234 or

235 (iii) recommend to the governor that the governor call a special session of the

236 Legislature to review and approve or reject the expenditure or commitment to expend.

237 Section 5. Section **63J-5-103** is amended to read:

238 **63J-5-103. Scope and applicability of chapter.**

239 (1) Except as provided in Subsection (2), and except as otherwise provided by a statute

240 superseding provisions of this chapter by explicit reference to this chapter, the provisions of

241 this chapter apply to each agency and govern each federal funds request.

242 (2) This chapter does not govern federal funds requests for:

- 243 (a) the Medical Assistance Program, commonly known as Medicaid;
- 244 (b) the Children's Health Insurance Program;
- 245 (c) the Women, Infant, and Children program;
- 246 (d) the Temporary Assistance to Needy Families program;
- 247 (e) Social Security Act monies;
- 248 (f) the Substance Abuse Prevention and Treatment program;
- 249 (g) Child Care Block grants;
- 250 (h) Food Stamp Administration and Training monies;
- 251 (i) Unemployment Insurance Operations monies;
- 252 (j) Federal Highway Administration monies;
- 253 (k) the Utah National Guard; or
- 254 (l) pass-through federal funds.

255 (3) The governor need not seek legislative review or approval of federal funds received
 256 by the state ~~[when]~~ if:

- 257 (a) the governor has declared a state of emergency; and
- 258 (b) the federal funds are received to assist ~~[disaster]~~ victims of the state of emergency
 259 under Subsection 63K-4-201~~[(2)]~~(1).

260 Section 6. Section **63J-7-102** is amended to read:

261 **63J-7-102. Scope and applicability of chapter.**

262 (1) Except as provided in Subsection (2), and except as otherwise provided by a statute
 263 superseding provisions of this chapter by explicit reference to this chapter, the provisions of
 264 this chapter apply to each agency and govern each grant received on or after May 5, 2008.

265 (2) This chapter does not govern:

- 266 (a) a grant deposited into a General Fund restricted account;
- 267 (b) a grant deposited into a Trust and Agency Fund as defined in Section 51-5-4;
- 268 (c) a grant deposited into an Enterprise Fund as defined in Section 51-5-4;
- 269 (d) a grant made to the state without a restriction or other designated purpose that is
 270 deposited into the General Fund as free revenue;
- 271 (e) a grant made to the state that is restricted only to "education" and that is deposited
 272 into the Education Fund or Uniform School Fund as free revenue;
- 273 (f) in-kind donations;

274 (g) a tax, fees, penalty, fine, surcharge, money judgment, or other monies due the state
275 when required by state law or application of state law;

276 (h) a contribution made under Title 59, Chapter 10, Part 13, Individual Income Tax
277 Contribution Act;

278 (i) a grant received by an agency from another agency or political subdivision;

279 (j) a grant to the Dairy Commission created in Title 4, Chapter 22, Dairy Promotion
280 Act;

281 (k) a grant to the Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3,
282 Heber Valley Historic Railroad Authority;

283 (l) a grant to the Utah Science Center Authority created in Title 9, Chapter 3, Part 4,
284 Utah Science Center Authority;

285 (m) a grant to the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah
286 Housing Corporation Act;

287 (n) a grant to the Utah State Fair Corporation created in Title 9, Chapter 4, Part 11,
288 Utah State Fair Corporation Act;

289 (o) a grant to the Workers' Compensation Fund created in Title 31A, Chapter 33,
290 Workers' Compensation Fund;

291 (p) a grant to the Utah State Retirement Office created in Title 49, Chapter 11, Utah
292 State Retirement Systems Administration;

293 (q) a grant to the School and Institutional Trust Lands Administration created in Title
294 53C, Chapter 1, Part 2, School and Institutional Trust Lands Administration;

295 (r) a grant to the Utah Communications Agency Network created in Title 63C, Chapter
296 7, Utah Communications Agency Network Act;

297 (s) a grant to the Medical Education Program created in Section 63C-8-102;

298 (t) a grant to the Utah Capital Investment Corporation created in Title 63M, Chapter 1,
299 Part 12, Utah Venture Capital Enhancement Act;

300 (u) a grant to the State Charter School Finance Authority created in Section
301 53A-20b-103;

302 (v) a grant to the State Building Ownership Authority created in Section 63B-1-304;

303 (w) a grant to the Utah Comprehensive Health Insurance Pool created in Section
304 31A-29-104; or

305 (x) a grant to the Military Installation Development Authority created in Section
306 63H-1-201.

307 (3) An agency need not seek legislative review or approval of grants under Part 2,
308 Grant Approval Requirements, [~~when~~] if:

309 (a) the governor has declared a state of emergency; and

310 (b) the grant is donated to the agency to assist [~~disaster~~] victims of the state of
311 emergency under Subsection 63K-4-201[~~(2)~~](1).

312 Section 7. Section **63K-4-201** is amended to read:

313 **63K-4-201. Authority of governor -- Federal assistance -- Fraud in application**
314 **for financial assistance -- Penalty.**

315 (1) In addition to any other authorities conferred upon the governor, if the governor
316 [~~during the declared~~] issues an executive order declaring a state of emergency ~~§→, ←§~~ [is
316a authorized
317 and empowered to] the governor may:

318 (a) utilize all available resources of state government as reasonably necessary to cope
319 with a ["state of emergency"];

320 (b) employ measures and give direction to state and local officers and agencies which
321 are reasonable and necessary for the purpose of securing compliance with the provisions of this
322 act and with orders, rules and regulations made pursuant to this act;

323 (c) recommend and advise the evacuation of all or part of the population from any
324 stricken or threatened area within the state if necessary for the preservation of life;

325 (d) recommend routes, modes of transportation, and destination in connection with
326 evacuation;

327 (e) in connection with evacuation ~~§→, ←§~~ suspend or limit the sale, dispensing, or
328 transportation of alcoholic beverages, explosives, and combustibles, not to include the lawful
329 bearing of arms;

330 (f) control ingress and egress to and from a disaster area, the movement of persons
331 within the area, and recommend the occupancy or evacuation of premises in a disaster area;

332 (g) clear or remove from publicly or privately owned land or water [~~through the use of~~
333 ~~state departments or agencies~~] ~~§→, ←§~~ debris or wreckage [~~which may threaten~~] that is an
333a immediate

334 threat to public health, public safety, or private property [~~as hereinafter provided: (i) whenever~~
335 ~~the governor provides for clearance of debris or wreckage pursuant to this subsection;~~

336 ~~employees of the designated state agencies are authorized]~~ including allowing an employee of a
 337 state department or agency designated by the governor to enter upon private land or waters and
 338 perform any tasks necessary for the removal or clearance operation[; (ii) authority under this
 339 ~~subsection shall not be exercised unless the affected]~~ if the political subdivision, corporation,
 340 organization, or individual ~~[shall first present]~~ that is affected by the removal of the debris or
 341 wreckage:

342 (i) presents an unconditional authorization for removal of ~~[such]~~ the debris or
 343 wreckage from private property; and ~~[agree]~~

344 (ii) agrees to indemnify the state ~~[government]~~ against any claim arising from ~~[such~~
 345 ~~removal]~~ the removal of the debris or wreckage;

346 ~~[(h) recommend to the legislature additional action the governor deems necessary to~~
 347 ~~carry out the provisions of this act.]~~

348 ~~[(2) When the governor has proclaimed a "state of emergency" under this act and when~~
 349 ~~the president of the United States, at the request of the governor, has declared an "emergency"~~
 350 ~~or a "major disaster" to exist in this state, the governor is authorized:]~~

351 ~~[(a)]~~ (h) ~~§→ [to] ←§~~ enter into agreement with any agency of the United States;

352 (i) for temporary housing units to be occupied by ~~[disaster victims and to make such~~
 353 ~~units]~~ victims of a state of emergency or persons who assist victims of a state of emergency;
 354 and

355 (ii) to make the housing units described in Subsection (1)(h)(i) available to [any] a
 356 political subdivision of this state;

357 ~~[(b)]~~ (i) ~~§→ [to] ←§~~ assist any political subdivision of this state to acquire sites and utilities
 358 necessary for ~~[such]~~ temporary housing units described in Subsection (1)(h)(i) by passing
 359 through any funds made available to the governor by an agency of the United States for this
 360 purpose;

361 ~~[(c)]~~ (j) subject to Sections 63K-4-401 and 63K-4-406, §→ [to] ←§ temporarily suspend or
 362 modify by ~~[proclamation]~~ executive order, during the ~~[period of the]~~ state of emergency, any
 363 public health, safety, zoning, transportation ~~§→, ←§~~ or other requirement of ~~[the law or regulation]~~ a
 364 statute or administrative rule within this state if such action is essential to provide temporary
 365 housing ~~[for disaster victims]~~ described in Subsection (1)(h)(i);

366 ~~[(d)]~~ (k) upon determination that a political subdivision of the state will suffer a

367 substantial loss of tax and other revenues because of a [~~disaster~~] state of emergency and the
 368 political subdivision so affected has demonstrated a need for financial assistance to perform its
 369 governmental functions, in accordance with [~~the provisions of the~~] Utah Constitution, Article
 370 XIV, Sections 3 and 4, and Section 10-8-6 ~~§~~ → [;to] ← ~~§~~ :

371 (i) apply to the federal government for a loan on behalf of the political subdivision[;
 372 ~~and to~~] if the amount of the loan that the governor applies for does not exceed 25% of the
 373 annual operating budget of the political subdivision for the fiscal year in which the state of
 374 emergency occurs; and

375 (ii) receive and disburse the [~~proceeds to the applicant~~] amount of the loan to the
 376 political subdivision[. ~~No application amount shall exceed 25% of the annual operating budget~~
 377 ~~of the applicant political subdivision for the fiscal year in which the disaster occurs~~];

378 [~~(e)~~] (l) ~~§~~ → [to] ← ~~§~~ accept funds from the federal government and make grants to any
 378a political
 379 subdivision for the purpose of removing debris or wreckage from publicly owned land or
 380 water;

381 [~~(f)~~] (m) upon determination that financial assistance is essential to meet [~~disaster~~
 382 ~~related~~] expenses related to a state of emergency of individuals or families adversely affected
 383 by [~~a disaster which~~] the state of emergency that cannot be sufficiently met from other means
 384 of assistance, ~~§~~ → [to] ← ~~§~~ apply for, accept and expend a grant by the federal government to fund
 384a [~~such~~]

385 the financial assistance, subject to the terms and conditions imposed upon the grant[-]; or

386 (n) recommend to the Legislature other actions the governor considers to be necessary
 387 to address a state of emergency.

388 [~~(3) Any~~] (2) A person who fraudulently or willfully makes a misstatement of fact in
 389 connection with an application for financial assistance under this section shall, upon conviction
 390 of each offense, be subject to a fine of not more than \$5,000 or imprisonment for not more than
 391 one year, or both.

392 Section 8. Section **63K-4-203** is amended to read:

393 **63K-4-203. State of emergency -- Declaration -- Termination --**
 394 **Commander-in-chief of military forces.**

395 (1) A ["]state of emergency["] may be declared by [~~proclamation~~] executive order of
 396 the governor [~~after a proclamation of local emergency as provided under Section 63K-4-301~~] if
 397 the governor finds a disaster has occurred or the occurrence or threat of a disaster is imminent

398 in any area of the state in which state government assistance is required to supplement the
399 response and recovery efforts of the affected political subdivision or political subdivisions.

400 [~~The "state]~~

401 (2) A state of emergency<sup>["]] shall continue until the governor finds the threat or danger
402 has passed or the disaster reduced to the extent that emergency conditions no longer exist. [~~No~~
403 "state]</sup>

404 (3) A state of emergency<sup>["]] may not continue for longer than 30 days unless extended
405 by joint resolution of the Legislature, which may also terminate a ["]state of emergency^["]] by
406 joint resolution at any time.</sup>

407 (4) The governor shall issue an executive order [~~or proclamation]~~ ending the ["]state of
408 emergency<sup>["]] on receipt of the Legislature's resolution. [~~All executive orders or proclamations~~
409 ~~issued under this subsection shall state:]~~</sup>

410 (5) An executive order described in this section shall state:

411 (a) the nature of the ["]state of emergency^["]];

412 (b) the area or areas threatened; and

413 (c) the conditions creating such an emergency or those conditions allowing termination
414 of the ["]state of emergency.^["]

415 [~~(2)~~] (6) During the continuance of any ["]state of emergency^["]] the governor is
416 commander-in-chief of the military forces of the state in accordance with [~~the provisions of]~~
417 Utah Constitution Article VII, Section 4, [~~of the Constitution of Utah,~~] and Title 39, Chapter 1,
418 State Militia.

419 Section 9. Section **63K-4-401** is amended to read:

420 **63K-4-401. Orders, rules, and regulations having force of law -- Filing**
421 **requirements -- Suspension of state agency rules -- Suspension of certain statutes during**
422 **a state of emergency.**

423 (1) All orders, rules, and regulations promulgated by the governor, a political
424 subdivision, or other agency authorized by this act to make orders, rules, and regulations, not in
425 conflict with existing laws except as specifically provided herein, shall have the full force and
426 effect of law during the state of emergency, when a copy of the order, rule, or regulation is filed
427 with:

428 (a) the Division of Administrative Rules, if issued by the governor or a state agency; or

429 (b) the office of the clerk of the political subdivision, if issued by the chief executive
430 officer of a political subdivision of the state or agency of the state.

431 (2) The governor may suspend the provisions of any order, rule, or regulation of any
432 state agency, if the strict compliance with the provisions of the order, rule, or regulation would
433 substantially prevent, hinder, or delay necessary action in coping with the emergency or
434 disaster.

435 (3) (a) Except as provided in Subsection (3)(b) and subject to Subsections (3)(c) and
436 (d), the governor may by executive order suspend the enforcement of a statute if:

437 (i) the governor declares a state of emergency in accordance with Section 63K-4-203;

438 (ii) the governor determines that suspending the enforcement of the statute is:

439 (A) directly related to the state of emergency described in Subsection (3)(a)(i); and

440 (B) necessary to address the state of emergency described in Subsection (3)(a)(i);

441 (iii) the executive order:

442 (A) describes how the suspension of the enforcement of the statute is:

443 (I) directly related to the state of emergency described in Subsection (3)(a)(i); and

444 (II) necessary to address the state of emergency described in Subsection (3)(a)(i); and

445 (B) provides the citation of the statute that is the subject of suspended enforcement;

446 (iv) the governor acts in good faith;

447 (v) the governor provides written notice of the suspension of the enforcement of the
448 statute to the speaker of the House of Representatives and the president of the Senate no later
449 than 24 hours after suspending the enforcement of the statute; and

450 (vi) the governor makes the report required by Section 63K-4-406.

451 (b) (i) Except as provided in Subsection (3)(b)(ii), the governor may not suspend the
452 enforcement of a criminal penalty created in statute.

453 (ii) The governor may suspend the enforcement of a misdemeanor or infraction if:

454 (A) the misdemeanor or infraction relates to food, health, or transportation; and

455 (B) the requirements of Subsection (3)(a) are met.

456 (c) A suspension described in this Subsection (3) terminates no later than the date the
457 governor terminates the state of emergency in accordance with Section 63K-4-203 to which the
458 suspension relates.

459 (d) The governor:

460 (i) shall provide the notice required by Subsection (3)(a)(v) using the best available
461 method under the circumstances as determined by the governor; and

462 (ii) may provide the notice required by Subsection (3)(a)(v) in electronic format.

463 Section 10. Section **63K-4-406** is enacted to read:

464 **63K-4-406. Reporting on the suspension or modification of certain statutes or**
465 **rules.**

466 (1) The governor and the Department of Public Safety shall report the following to the
467 Legislative Management Committee:

468 (a) a suspension or modification of a statute or rule under Subsection 63K-4-201(1)(j);

469 or

470 (b) a suspension of the enforcement of a statute under Subsection 63K-4-401(3).

471 (2) The governor and the Department of Public Safety shall make the report required

472 by this section on or before the sooner of:

473 (a) the day on which the governor calls the Legislature into session in accordance with
474 Section 63K-1-302; or

475 (b) seven days after the date the governor declares the state of emergency to which the
476 suspension or modification relates.

477 (3) The Legislative Management Committee shall review the suspension or
478 modification of a statute or rule or the suspension of the enforcement of a statute described in
479 Subsection (1) and may:

480 (a) recommend:

481 (i) that the governor continue the suspension or modification of the statute or rule or
482 the suspension of the enforcement of the statute; and

483 (ii) the length of the suspension or modification of the statute or rule or the suspension
484 of the enforcement of the statute;

485 (b) recommend that the governor terminate the suspension or modification of the
486 statute or rule or the suspension of the enforcement of the statute; or

487 (c) recommend to the governor that the governor call a special session of the
488 Legislature to review and approve or reject the suspension or modification of the statute or rule
489 or the suspension of the enforcement of the statute.

490 Section 11. Section **76-8-317** is amended to read:

491 **76-8-317. Refusal to comply with order to evacuate or other orders issued in a**
492 **local or state emergency -- Penalties.**

493 (1) A person may not refuse to comply with an order to evacuate issued under this
494 chapter or refuse to comply with any other order issued by the governor in a state of an
495 emergency under Section 63K-4-201 or by a chief executive officer in a local emergency under
496 [~~Sections 63K-4-201 or~~] Section 63K-4-202, if notice of the order has been given to that
497 person.

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

499 **Section 12. Appropriation.**

500 (1) To Department of Public Safety - Division of Homeland Security - Emergency and

501 Disaster Management

502 From General Fund Restricted - State Disaster Recovery

503 Restricted Account \$3,000,000

504 Schedule of Programs:

505 Emergency and Disaster Management \$3,000,000

506 (2) The Legislature intends that the appropriation under Subsection (1):

507 (a) is for fiscal year 2010-11 only; and

508 (b) does not lapse at the close of fiscal year 2010-11.

509 **Section 13. Effective dates.**

510 (1) The amendments in this bill to the following sections take effect on May 11, 2010:

511 (a) Section 26-49-102;

512 (b) Section 63J-5-103;

513 (c) Section 63J-7-102;

514 (d) Section 63K-4-201;

515 (e) Section 63K-4-203;

516 (f) Section 63K-4-401; and

517 (g) Section 76-8-317.

518 (2) The enactment of Section 63K-4-406 takes effect on May 11, 2010.

519 (3) The amendments in this bill to the following sections take effect on July 1, 2010:

520 (a) Section 53-2-403;

521 (b) Section 53-2-404; and

522 (c) Section 53-2-406.

523 (4) The enactment of uncodified Section 12, Appropriation, takes effect on July 1,

524 2010.

Fiscal Note**H.B. 139 2nd Sub. (Gray) - Emergency and Disaster Management
Amendments**

2010 General Session

State of Utah

State Impact

This bill appropriates \$3,000,000 from the State Disaster Recovery Restricted Account to a discrete appropriations line-item where it remains unspent until needed for disaster response, at which time the appropriation can be expended only subject to reporting and approval thresholds in the bill.

	<u>FY 2010 Approp.</u>	<u>FY 2011 Approp.</u>	<u>FY 2012 Approp.</u>	<u>FY 2010 Revenue</u>	<u>FY 2011 Revenue</u>	<u>FY 2012 Revenue</u>
Restricted Funds	\$0	\$3,000,000	\$0	\$0	\$0	\$0
Nonlapsing Funds	\$0	(\$3,000,000)	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.