

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: _____

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 without the monies being appropriated by the Legislature to address costs to the state of emergency disaster services in response to a declared disaster;
- ▶ addresses the governor's powers during a state of emergency including:
 - suspending or modifying a statute or administrative rule during a state of emergency under certain circumstances;
 - repealing a requirement that the president of the United States declare an emergency or major disaster before the governor may exercise certain powers;



26 and

- 27 • addressing the removal of debris or wreckage;
- 28 ▶ requires certain reports to the Legislative Management Committee or the Executive
- 29 Appropriations Committee; and
- 30 ▶ makes technical and conforming changes.

31 **Monies Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

- 37 **26-49-102**, as enacted by Laws of Utah 2008, Chapter 242
- 38 **53-2-403**, as last amended by Laws of Utah 2009, Chapters 3 and 183
- 39 **53-2-404**, as last amended by Laws of Utah 2009, Chapters 183 and 368
- 40 **53-2-406**, as enacted by Laws of Utah 2007, Chapter 328
- 41 **63J-5-103**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 42 **63J-7-102**, as enacted by Laws of Utah 2008, Chapter 195
- 43 **63K-4-201**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 44 **63K-4-203**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 45 **63K-4-401**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 46 **76-8-317**, as last amended by Laws of Utah 2008, Chapter 382

47 ENACTS:

48 **63K-4-406**, Utah Code Annotated 1953



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

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

52 **26-49-102. Definitions.**

53 As used in this chapter:

- 54 (1) "Department of Health" shall have the meaning provided for in Section 26-1-4.
- 55 (2) "Disaster relief organization" means an entity that:
 - 56 (a) provides emergency or disaster relief services that include health or veterinary

57 services provided by volunteer health practitioners;

58 (b) is designated or recognized as a provider of the services described in Subsection

59 (2)(a) under a disaster response and recovery plan adopted by:

60 (i) an agency of the federal government;

61 (ii) the state Department of Health; or

62 (iii) a local health department; and

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

64 (i) an agency of the federal government;

65 (ii) the Department of Health; or

66 (iii) a local health department.

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

68 (4) "Emergency declaration" [~~shall have the meaning provided for in Sections~~] means a

69 declaration made in accordance with Section 63K-4-203 [and] or 63K-4-301.

70 (5) "Emergency Management Assistance Compact" means the interstate compact

71 approved by Congress by Public Law No. 104-321, 110 Stat. 3877 and adopted by Utah in Title

72 53, Chapter 2, Part 2, Emergency Management Assistance Compact.

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

74 (7) "Health facility" means an entity licensed under the laws of this or another state to

75 provide health or veterinary services.

76 (8) "Health practitioner" means an individual licensed under Utah law or another state

77 to provide health or veterinary services.

78 (9) "Health services" means the provision of treatment, care, advice, guidance, other

79 services, or supplies related to the health or death of individuals or human populations, to the

80 extent necessary to respond to an emergency, including:

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

83 (i) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; or

84 (ii) counseling, assessment, procedures, or other services;

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

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

- 88 (10) "Host entity":
89 (a) means an entity operating in Utah that:
90 (i) uses volunteer health practitioners to respond to an emergency; and
91 (ii) is responsible during an emergency, for actually delivering health services to
92 individuals or human populations, or veterinary services to animals or animal populations; and
93 (b) may include disaster relief organizations, hospitals, clinics, emergency shelters,
94 health care provider offices, or any other place where volunteer health practitioners may
95 provide health or veterinary services.
- 96 (11) (a) "License" means authorization by a state to engage in health or veterinary
97 services that are unlawful without authorization.
98 (b) "License" includes authorization under this title to an individual to provide health
99 or veterinary services based upon a national or state certification issued by a public or private
100 entity.
- 101 (12) "Local health department" shall have the meaning provided for in Subsection
102 26A-1-102(5).
- 103 (13) "Person" means an individual, corporation, business trust, trust, partnership,
104 limited liability company, association, joint venture, public corporation, government or
105 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- 106 (14) "Scope of practice" means the extent of the authorization to provide health or
107 veterinary services granted to a health practitioner by a license issued to the practitioner in the
108 state in which the principal part of the practitioner's services are rendered, including any
109 conditions imposed by the licensing authority.
- 110 (15) "State" means:
111 (a) a state of the United States;
112 (b) the District of Columbia;
113 (c) Puerto Rico;
114 (d) the United States Virgin Islands; or
115 (e) any territory or insular possession subject to the jurisdiction of the United States.
- 116 (16) "Veterinary services" shall have the meaning provided for in Subsection
117 58-28-102(11).
- 118 (17) (a) "Volunteer health practitioner" means a health practitioner who provides health

119 or veterinary services, whether or not the practitioner receives compensation for those services.

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

123 (i) not a Utah resident; and

124 (ii) employed by a disaster relief organization providing services in Utah while an
125 emergency declaration is in effect.

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

127 **53-2-403. State Disaster Recovery Restricted Account.**

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

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

131 (i) monies deposited into the disaster recovery fund in accordance with Section
132 63J-1-314;

133 (ii) monies appropriated to the disaster recovery fund by the Legislature; and

134 (iii) any other public or private monies received by the division that are:

135 (A) given to the division for purposes consistent with this section; and

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

137 (I) the division; or

138 (II) the person giving the monies.

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

141 (d) Monies in the disaster recovery fund may only be ~~used~~ expended or committed to
142 be expended as follows:

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

147 (B) subject to Section 53-2-406, without the monies being appropriated by the
148 Legislature, in any fiscal year the division may expend or commit to expend an amount that
149 exceeds \$250,000, but does not exceed \$1,000,000, in accordance with Section 53-2-404, to

150 fund costs to the state of emergency disaster services in response to a declared disaster if the
151 division:

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

154 (II) subject to Subsection (4), provides written notice of the expenditure or
155 commitment to expend to the speaker of the House of Representatives, the president of the
156 Senate, the Division of Finance, and the Office of the Legislative Fiscal Analyst no later than
157 72 hours after making the expenditure or commitment to expend; and

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

159 (C) subject to Section 53-2-406, without the monies being appropriated by the
160 Legislature, in any fiscal year the division may expend or commit to expend an amount that
161 exceeds \$1,000,000, but does not exceed \$3,000,000, in accordance with Section 53-2-404, to
162 fund costs to the state of emergency disaster services in response to a declared disaster if,
163 before making the expenditure or commitment to expend, the division:

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

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

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

171 (A) emergency disaster services;

172 (B) emergency preparedness; or

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

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

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

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

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

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

191 (4) The division:

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

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

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

196 **53-2-404. State costs for emergency disaster services.**

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

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

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

204 **53-2-406. Reporting.**

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

207 ~~(1)~~ (a) the division's activities under this part;

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

209 and

210 ~~(3)~~ (c) the balances in the disaster recovery fund.

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

212 Management Committee an expenditure or commitment to expend made in accordance with
213 Subsection 53-2-403(1)(d)(i)(B).

214 (b) The governor and the Department of Public Safety shall make the report required
215 by this Subsection (2) on or before the sooner of:

216 (i) the day on which the governor calls the Legislature into session in accordance with
217 Section 63K-1-302; or

218 (ii) 15 days after the division makes the expenditure or commitment to expend
219 described in Subsection 53-2-403(1)(d)(i)(B).

220 (3) (a) Subject to Subsection (3)(b), before the division makes an expenditure or
221 commitment to expend described in Subsection 53-2-403(1)(d)(i)(C), the governor and the
222 Department of Public Safety shall submit the expenditure or commitment to expend to the
223 Executive Appropriations Committee for its review and recommendations.

224 (b) The Executive Appropriations Committee shall review the expenditure or
225 commitment to expend and may:

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

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

228 or

229 (iii) recommend to the governor that the governor call a special session of the
230 Legislature to review and approve or reject the expenditure or commitment to expend.

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

232 **63J-5-103. Scope and applicability of chapter.**

233 (1) Except as provided in Subsection (2), and except as otherwise provided by a statute
234 superseding provisions of this chapter by explicit reference to this chapter, the provisions of
235 this chapter apply to each agency and govern each federal funds request.

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

237 (a) the Medical Assistance Program, commonly known as Medicaid;

238 (b) the Children's Health Insurance Program;

239 (c) the Women, Infant, and Children program;

240 (d) the Temporary Assistance to Needy Families program;

241 (e) Social Security Act monies;

242 (f) the Substance Abuse Prevention and Treatment program;

- 243 (g) Child Care Block grants;
- 244 (h) Food Stamp Administration and Training monies;
- 245 (i) Unemployment Insurance Operations monies;
- 246 (j) Federal Highway Administration monies;
- 247 (k) the Utah National Guard; or
- 248 (l) pass-through federal funds.

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

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

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

255 **63J-7-102. Scope and applicability of chapter.**

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

259 (2) This chapter does not govern:

- 260 (a) a grant deposited into a General Fund restricted account;
- 261 (b) a grant deposited into a Trust and Agency Fund as defined in Section 51-5-4;
- 262 (c) a grant deposited into an Enterprise Fund as defined in Section 51-5-4;
- 263 (d) a grant made to the state without a restriction or other designated purpose that is
 264 deposited into the General Fund as free revenue;
- 265 (e) a grant made to the state that is restricted only to "education" and that is deposited
 266 into the Education Fund or Uniform School Fund as free revenue;
- 267 (f) in-kind donations;
- 268 (g) a tax, fees, penalty, fine, surcharge, money judgment, or other monies due the state
 269 when required by state law or application of state law;
- 270 (h) a contribution made under Title 59, Chapter 10, Part 13, Individual Income Tax
 271 Contribution Act;
- 272 (i) a grant received by an agency from another agency or political subdivision;
- 273 (j) a grant to the Dairy Commission created in Title 4, Chapter 22, Dairy Promotion

274 Act;

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

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

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

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

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

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

287 (q) a grant to the School and Institutional Trust Lands Administration created in Title
288 53C, Chapter 1, Part 2, School and Institutional Trust Lands Administration;

289 (r) a grant to the Utah Communications Agency Network created in Title 63C, Chapter
290 7, Utah Communications Agency Network Act;

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

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

294 (u) a grant to the State Charter School Finance Authority created in Section
295 53A-20b-103;

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

297 (w) a grant to the Utah Comprehensive Health Insurance Pool created in Section
298 31A-29-104; or

299 (x) a grant to the Military Installation Development Authority created in Section
300 63H-1-201.

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

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

304 (b) the grant is donated to the agency to assist [~~disaster~~] victims of the state of

305 emergency under Subsection 63K-4-201[~~(2)~~](1).

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

307 **63K-4-201. Authority of governor -- Federal assistance -- Fraud in application**
308 **for financial assistance -- Penalty.**

309 (1) In addition to any other authorities conferred upon the governor, if the governor
310 ~~[during the declared]~~ issues an executive order declaring a state of emergency ~~[is authorized~~
311 ~~and empowered to]~~ the governor may:

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

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

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

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

321 (e) in connection with evacuation suspend or limit the sale, dispensing, or
322 transportation of alcoholic beverages, explosives, and combustibles, not to include the lawful
323 bearing of arms;

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

326 (g) clear or remove from publicly or privately owned land or water ~~[through the use of~~
327 ~~state departments or agencies]~~, debris or wreckage ~~[which may threaten]~~ that is an immediate
328 threat to public health, public safety, or private property ~~[as hereinafter provided: (i) whenever~~
329 ~~the governor provides for clearance of debris or wreckage pursuant to this subsection,~~
330 ~~employees of the designated state agencies are authorized]~~ including allowing an employee of a
331 state department or agency designated by the governor to enter upon private land or waters and
332 perform any tasks necessary for the removal or clearance operation~~[; (ii) authority under this~~
333 ~~subsection shall not be exercised unless the affected]~~ if the political subdivision, corporation,
334 organization, or individual ~~[shall first present]~~ that is affected by the removal of the debris or
335 wreckage:

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

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

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

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

345 [~~(a)~~] (h) to enter into agreement with any agency of the United States;

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

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

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

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

360 [~~(d)~~] (k) upon determination that a political subdivision of the state will suffer a
361 substantial loss of tax and other revenues because of a [~~disaster~~] state of emergency and the
362 political subdivision so affected has demonstrated a need for financial assistance to perform its
363 governmental functions, in accordance with [~~the provisions of the~~] Utah Constitution, Article
364 XIV, Sections 3 and 4, and Section 10-8-6, to;

365 (i) apply to the federal government for a loan on behalf of the political subdivision[;
366 and to] if the amount of the loan that the governor applies for does not exceed 25% of the

367 annual operating budget of the political subdivision for the fiscal year in which the state of
 368 emergency occurs; and

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

372 [(e)] (l) to accept funds from the federal government and make grants to any political
 373 subdivision for the purpose of removing debris or wreckage from publicly owned land or
 374 water;

375 [(f)] (m) upon determination that financial assistance is essential to meet [disaster
 376 related] expenses related to a state of emergency of individuals or families adversely affected
 377 by [a disaster which] the state of emergency that cannot be sufficiently met from other means
 378 of assistance, to apply for, accept and expend a grant by the federal government to fund [such]
 379 the financial assistance, subject to the terms and conditions imposed upon the grant[-]; or

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

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

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

387 **63K-4-203. State of emergency -- Declaration -- Termination --**
 388 **Commander-in-chief of military forces.**

389 (1) A ["state of emergency[" may be declared by [proclamation] executive order of
 390 the governor after a proclamation of local emergency as provided under Section 63K-4-301 if
 391 the governor finds a disaster has occurred or the occurrence or threat of a disaster is imminent
 392 in any area of the state in which state government assistance is required to supplement the
 393 response and recovery efforts of the affected political subdivision or political subdivisions.
 394 [The "state]

395 (2) A state of emergency[" shall continue until the governor finds the threat or danger
 396 has passed or the disaster reduced to the extent that emergency conditions no longer exist. [No
 397 "state]

398 (3) A state of emergency^[a] may not continue for longer than 30 days unless extended
399 by joint resolution of the Legislature, which may also terminate a ^[a]state of emergency^[a] by
400 joint resolution at any time.

401 (4) The governor shall issue an executive order ~~[or proclamation]~~ ending the ^[a]state of
402 emergency^[a] on receipt of the Legislature's resolution. ~~[All executive orders or proclamations~~
403 ~~issued under this subsection shall state:]~~

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

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

406 (b) the area or areas threatened; and

407 (c) the conditions creating such an emergency or those conditions allowing termination
408 of the ^[a]state of emergency.^[a]

409 ~~[(2)]~~ (6) During the continuance of any ^[a]state of emergency^[a] the governor is
410 commander-in-chief of the military forces of the state in accordance with ~~[the provisions of]~~
411 Utah Constitution Article VII, Section 4, ~~[of the Constitution of Utah,]~~ and Title 39, Chapter 1,
412 State Militia.

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

414 **63K-4-401. Orders, rules, and regulations having force of law -- Filing**
415 **requirements -- Suspension of state agency rules -- Suspension of certain statutes during**
416 **a state of emergency.**

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

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

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

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

429 (3) (a) Except as provided in Subsection (3)(b) and subject to Subsections (3)(c) and
430 (d), the governor may by executive order suspend the enforcement of a statute if:
431 (i) the governor declares a state of emergency in accordance with Section 63K-4-203;
432 (ii) the governor determines that suspending the enforcement of the statute is:
433 (A) directly related to the state of emergency described in Subsection (3)(a)(i); and
434 (B) necessary to address the state of emergency described in Subsection (3)(a)(i);
435 (iii) the executive order:
436 (A) describes how the suspension of the enforcement of the statute is:
437 (I) directly related to the state of emergency described in Subsection (3)(a)(i); and
438 (II) necessary to address the state of emergency described in Subsection (3)(a)(i); and
439 (B) provides the citation of the statute that is the subject of suspended enforcement;
440 (iv) the governor acts in good faith;
441 (v) the governor provides written notice of the suspension of the enforcement of the
442 statute to the speaker of the House of Representatives and the president of the Senate no later
443 than 24 hours after suspending the enforcement of the statute; and
444 (vi) the governor makes the report required by Section 63K-4-406.
445 (b) (i) Except as provided in Subsection (3)(b)(ii), the governor may not suspend the
446 enforcement of a criminal penalty created in statute.
447 (ii) The governor may suspend the enforcement of a misdemeanor or infraction if:
448 (A) the misdemeanor or infraction relates to food, health, or transportation; and
449 (B) the requirements of Subsection (3)(a) are met.
450 (c) A suspension described in this Subsection (3) terminates no later than the date the
451 governor terminates the state of emergency in accordance with Section 63K-4-203 to which the
452 suspension relates.
453 (d) The governor:
454 (i) shall provide the notice required by Subsection (3)(a)(v) using the best available
455 method under the circumstances as determined by the governor; and
456 (ii) may provide the notice required by Subsection (3)(a)(v) in electronic format.
457 Section 10. Section **63K-4-406** is enacted to read:
458 **63K-4-406. Reporting on the suspension or modification of certain statutes or**
459 **rules.**

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

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

463 or

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

465 (2) The governor and the Department of Public Safety shall make the report required
466 by this section on or before the sooner of:

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

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

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

474 (a) recommend:

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

477 (ii) the length of the suspension or modification of the statute or rule or the suspension
478 of the enforcement of the statute;

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

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

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

485 **76-8-317. Refusal to comply with order to evacuate or other orders issued in a**
486 **local or state emergency -- Penalties.**

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

491 person.

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

H.B. 139 1st Sub. (Buff) - Emergency and Disaster Management Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

This bill allows the Division of Homeland Security to spend as much as \$2.9 million from the Disaster Recovery Fund without appropriation by the Legislature.

Individual, Business and/or Local Impact

Enactment of this bill may result in benefits to local governments, businesses, and individuals in the event of a disaster or emergency.
