

HB0067S01 compared with HB0067

~~text~~ shows text that was in HB0067 but was deleted in HB0067S01.

text shows text that was not in HB0067 but was inserted into HB0067S01.

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Representative Marc K. Roberts proposes the following substitute bill:

POLITICAL SUBDIVISION JURISDICTION AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marc K. Roberts

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions of Title 11, Chapter 51, Local Jurisdiction Related to Federally Managed Land Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ authorizes a chief executive officer of a political subdivision or county sheriff to exercise jurisdiction over a federally managed national monument or recreation area in the state that is encompassed by or adjacent to the political subdivision;
- ▶ provides that the ~~state shall indemnify~~ attorney general shall take certain actions if a legal action is filed by the United States or a federal representative against a chief executive officer, a county sheriff, or an employee or agent of the chief executive

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officer or county sheriff ~~{ against an action brought by the United States or a federal representative, if the indemnified person followed the requirements of this act }~~; and

- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-51-102, as enacted by Laws of Utah 2013, Chapter 342

11-51-103, as enacted by Laws of Utah 2013, Chapter 342

ENACTS:

11-51-104, Utah Code Annotated 1953

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

Section 1. Section **11-51-102** is amended to read:

11-51-102. Definitions.

As used in this chapter:

(1) "Chief executive officer" means:

(a) for a municipality:

(i) the mayor, if the municipality is operating under a form of municipal government other than the council-manager form of government; or

(ii) the city manager, if the municipality is operating under the council-manager form of government; or

(b) for a county:

(i) the chair of the county commission, if the county is operating under the county commission or expanded county commission form of government;

(ii) the county executive officer, if the county is operating under the county-executive council form of government; or

(iii) the county manager, if the county is operating under the council-manager form of government.

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(2) "County sheriff" means an individual elected to the office of county sheriff in the state who meets the qualifications described in Section 17-22-1.5.

(3) "Federal agency" means the United States Bureau of Land Management ~~[or]~~, the United States Forest Service, the United States Fish and Wildlife Service, or the National Park Service.

(4) "Federally managed land" means land that is managed by the United States Bureau of Land Management ~~[or]~~, the United States Forest Service, or the National Park Service.

(5) "National monument" means a national monument designated or declared in accordance with the Antiquities Act of 1906, 16 U.S.C. Sec. 431 et seq.

(6) "National recreation area" means a recreation area designated by an act of Congress.

~~[(5)]~~ (7) "Political subdivision" means a municipality or county.

Section 2. Section 11-51-103 is amended to read:

11-51-103. Local jurisdiction related to federally managed land -- Written notice -- Mitigation action.

(1) (a) The authority of a chief executive officer of a political subdivision or county sheriff to exercise jurisdiction ~~[over]~~ on federally managed land, a national monument, or a national recreation area in the state that is ~~[encompassed by or adjacent to the]~~ wholly or partially situated within a political subdivision includes the following:

~~[(+)]~~ (i) if the action or inaction of a federal agency related to federally managed land, the national monument, or the national recreation area threatens to adversely ~~[affects or constitutes an imminent threat to]~~ affect the health, safety, or welfare of the people of the political subdivision, the chief executive officer or county sheriff may, after consulting with the attorney general, provide written notice to the federal agency, which notice shall:

~~[(a)]~~ (ii) be delivered to the federal agency by hand or by certified mail and a copy provided by certified mail to the governor, the ~~[state]~~ attorney general, and the state's Congressional delegation;

~~[(b)]~~ (iii) include a detailed explanation of how the action or inaction of the federal agency related to federally managed land, the national monument, or the national recreation area threatens to adversely ~~[affects or constitutes an imminent threat to]~~ affect the health, safety, or welfare of the people of the political subdivision;

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~~[(e)]~~ (iv) include a detailed description of the action the federal agency should take to mitigate the risk to the health, safety, or welfare of the people of the political subdivision; and

~~[(d)]~~ (v) provide a specific date by which time the federal agency should respond to the notice; and

~~[(2)]~~ (b) if after receiving notice as described in Subsection (1)(a)~~(ii)~~, the federal agency does not respond by the date requested in the notice, or otherwise indicates that it is unwilling to take action to mitigate the risk to the health, safety, or welfare of the people of the political subdivision described in the notice~~[-]~~:

(i) the chief executive officer or county sheriff ~~[~~may take action to mitigate the risk to the health, safety, or welfare of the people of the political subdivision. ~~]~~ shall consult with the county attorney and attorney general; and

(ii) the attorney general shall send within 20 days of consulting with the chief executive officer or county sheriff a written notice to the federal agency stating what legal steps, if any, the attorney general will take to protect the people of the political subdivision from the threat to their health, safety, or welfare.

(2) (a) If an action or inaction of a federal agency related to federally managed land, a national monument, or a national recreation area constitutes an imminent threat to the health, safety, or welfare of the people of the political subdivision, the chief executive officer or county sheriff may, after consulting with the attorney general, provide written notice to the federal agency.

(b) The chief executive officer or county sheriff shall:

(i) deliver the notice described in Subsection (2)(a) to the federal agency in person or by certified mail;

(ii) provide a copy of the notice by certified mail to the governor, the attorney general, and the state's Congressional delegation; and

(iii) include in the notice:

(A) a detailed explanation of how the federal agency's action or inaction constitutes an imminent threat to the health, safety, or welfare of the people of the political subdivision;

(B) a detailed description of the action that the federal agency should take to eliminate the imminent threat; and

(C) provide a specific date by which the federal agency should respond to the notice,

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either with action or by written communication.

(3) If a federal agency does not respond, either with action or in written communication, to a notice described in Subsection (2)(b) by the date described in Subsection (2)(b)(iii)(C), or otherwise indicates that the agency is unwilling to take action, the chief executive officer or county sheriff may, after additional consultation with the county attorney and attorney general, take action and exercise necessary jurisdictional authority to mitigate the risk to the health, safety, or welfare of the people of the political subdivision.

Section 3. Section 11-51-104 is enacted to read:

11-51-104. ~~{ Indemnification }~~ **Attorney general duties.**

(1) If the United States or a federal representative brings ~~an~~ a legal action or a proceeding against a chief executive officer, a county sheriff, or an employee or agent of a chief executive officer or county sheriff for ~~exercising~~ taking action to exercise the jurisdictional authority described in this chapter, ~~the state shall indemnify, hold harmless, and defend the chief executive officer, the county sheriff, or the employee or agent, if the chief executive officer, the county sheriff, or the employee or agent:~~

~~—— (1) followed the requirements of this chapter;~~

~~—— (2) acted in good faith in responding to a risk}~~ and that action is taken to mitigate an imminent threat to the health, safety, or welfare of the people of a political subdivision in accordance with Section 11-51-103, the attorney general shall:

(a) review the legal action brought by the United States or federal representative;

(b) investigate the matter, including conducting interviews of the chief executive officer, county sheriff, or employees or agents of the political subdivision; and

~~{3} for an employee or agent, acted in good faith to follow the express direction of the chief executive officer or county sheriff in any entry, or mitigation action performed, on federally managed land, a national monument, or a national recreation area.~~

Legislative Review Note

~~—— as of 11-19-13 1:51 PM~~

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~~Office of Legislative Research and General Counsel~~ c) decide in the attorney general's discretion whether to provide a defense for a person named as a defendant in the legal action.

(2) If the attorney general determines to provide or not provide a defense to a person named as a defendant in a legal action described in Subsection (1), that determination does not imply:

(a) a position or opinion by the attorney general as to the merits of the legal action; and

(b) a duty or agreement by the state to pay a monetary judgment for the United States or federal representative that may be obtained against a person named in the legal action.

(3) Subsections (1) and (2) may not be interpreted to prohibit a county from:

(a) reviewing a legal action described in Subsection (1);

(b) investigating the matter, including conducting interviews;

(c) providing a defense for a person named as a defendant in the legal action; or

(d) assisting the attorney general with a duty described in this section.