

**Senator David P. Hinkins** proposes the following substitute bill:

**CATASTROPHIC WILDFIRE AND PUBLIC NUISANCE**

**AMENDMENTS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kay J. Christofferson**

Senate Sponsor: David P. Hinkins

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**LONG TITLE**

**General Description:**

This bill addresses catastrophic public nuisances.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ states that a chief executive officer of a political subdivision or a county sheriff may determine that a catastrophic public nuisance exists;
- ▶ describes the criteria for determining whether a catastrophic public nuisance exists;
- ▶ describes the procedure for serving notice of the catastrophic public nuisance determination to the federal or state agency managing land; and
- ▶ authorizes a chief executive officer of a political subdivision or a county sheriff to abate a catastrophic public nuisance, under certain circumstances.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



26 ENACTS:

27 **11-51a-101**, Utah Code Annotated 1953

28 **11-51a-102**, Utah Code Annotated 1953

29 **11-51a-103**, Utah Code Annotated 1953

30 **11-51a-104**, Utah Code Annotated 1953

31 **11-51a-201**, Utah Code Annotated 1953



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

34 Section 1. Section **11-51a-101** is enacted to read:

35 **CHAPTER 51a. CATASTROPHIC PUBLIC NUISANCE ACT**

36 **Part 1. General Provisions**

37 **11-51a-101. Title.**

38 This chapter is known as the "Catastrophic Public Nuisance Act."

39 Section 2. Section **11-51a-102** is enacted to read:

40 **11-51a-102. Definitions.**

41 As used in this chapter:

42 (1) "Catastrophic public nuisance" means a condition on state or federal land where  
43 natural resources and biota have been managed or neglected to such an extent as to cause:

44 (a) the threat of a catastrophic wildfire demonstrated by:

45 (i) stand density, basal area, or ground fuel load greater than 150% of land health  
46 standards; or

47 (ii) an insect or disease infestation severe enough to threaten the mortality of at least  
48 20% of the trees in the area; or

49 (b) a condition in the area that threatens the:

50 (i) quantity or quality of the public water supply of a political subdivision;

51 (ii) health, safety, or welfare of the citizens of a political subdivision;

52 (iii) air quality of a nonattainment area; or

53 (iv) vegetative resources required to support land health and authorized livestock  
54 grazing.

55 (2) "Chief executive officer" means:

56 (a) for a municipality:

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

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

61 (b) for a county:

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

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

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

68 (3) "County sheriff" means an individual:

69 (a) elected to the office of county sheriff; and

70 (b) who fulfills the duties described in Subsection [17-22-1.5\(1\)](#).

71 (4) "Federal agency" means the:

72 (a) United States Bureau of Land Management;

73 (b) United States Forest Service;

74 (c) United States Fish and Wildlife Service; or

75 (d) National Park Service.

76 (5) "Federally managed land" means land that is managed by a federal agency.

77 (6) "Political subdivision" means a municipality or county.

78 Section 3. Section **11-51a-103** is enacted to read:

79 **11-51a-103. Declaration of catastrophic public nuisance -- Authority to declare**  
80 **and demand abatement.**

81 (1) The chief executive officer of a political subdivision or a county sheriff may  
82 determine that a catastrophic public nuisance exists on land within the borders of the political  
83 subdivision.

84 (2) In evaluating whether a catastrophic public nuisance exists, the chief executive  
85 officer of a political subdivision or a county sheriff may consider:

86 (a) tree density and overall health of a forested area, including the fire regime condition  
87 class;

- 88 (b) insect and disease infestation, including insect and disease hazard ratings;
- 89 (c) fuel loads;
- 90 (d) forest or range type;
- 91 (e) slope and other natural characteristics of an area;
- 92 (f) watershed protection criteria;
- 93 (g) weather and climate; and
- 94 (h) any other factor that the chief executive officer of a political subdivision or a
- 95 county sheriff reasonably considers to be relevant, under the circumstances.

96 (3) Except as provided in Section 11-51a-104, upon making the determination  
97 described in Subsection (1), the chief executive officer of a political subdivision or a county  
98 sheriff shall after consultation with the attorney general:

99 (a) serve notice of the determination described in Subsection (1), by hand or certified  
100 mail, on the federal or state agency that manages the land upon which the catastrophic nuisance  
101 exists; and

102 (b) provide a copy of the determination that is served under Subsection (3)(a) to the  
103 governor, the attorney general, and if the catastrophic public nuisance exists on federally  
104 managed land, the state's congressional delegation.

105 (4) The notice described in Subsection (3)(a) shall include:

106 (a) a detailed explanation of the basis for determination that a catastrophic public  
107 nuisance exists on the land in question;

108 (b) a demand that the federal or state agency formulate a plan to abate the catastrophic  
109 nuisance; and

110 (c) a specific date, no less than 30 days after the day on which the notice is received, by  
111 which time the federal or state agency that manages the land shall:

112 (i) abate the catastrophic public nuisance; or

113 (ii) produce a plan for mitigating the catastrophic public nuisance that is reasonably  
114 acceptable to the county or subdivision.

115 (5) The chief executive officer of a political subdivision or a county sheriff may enter  
116 into a plan with the relevant federal or state agency, or both, to abate the catastrophic public  
117 nuisance.

118 (6) If, after receiving the notice described in Subsections (3)(a) and (4), the federal or

119 state agency does not respond by the date requested in the notice or otherwise indicates that the  
120 federal or state agency is unwilling to take action to abate the catastrophic public nuisance, the  
121 chief executive officer of a political subdivision or a county sheriff shall consult with the  
122 county attorney and attorney general.

123 Section 4. Section **11-51a-104** is enacted to read:

124 **11-51a-104. Emergency abatement of a catastrophic public nuisance.**

125 (1) If a chief executive officer of a political subdivision or a county sheriff determines  
126 that a public nuisance exists on federally managed land, pursuant to Subsection [11-51a-103\(1\)](#),  
127 and the chief executive officer of a political subdivision or the county sheriff also finds that the  
128 catastrophic public nuisance in question adversely affects, or constitutes a threat to, the public  
129 health, safety, and welfare of the people of the political subdivision, the chief executive officer  
130 of the political subdivision or the county sheriff may, after consulting with the attorney general,  
131 pursue all remedies allowed by law.

132 (2) In seeking an emergency abatement of a catastrophic public nuisance, a chief  
133 executive officer of a political subdivision or a county sheriff shall attempt, as much as  
134 possible, to:

135 (a) coordinate with state and federal agencies; and

136 (b) seek the advice of professionals, including private sector professionals, with  
137 expertise in abating a catastrophic public nuisance.

138 Section 5. Section **11-51a-201** is enacted to read:

139 **Part 2. Limitations**

140 **11-51a-201. Limitation.**

141 Nothing in this chapter limits:

142 (1) the authority of the state to manage and protect wildlife under Title 23, Wildlife  
143 Resources Code of Utah; or

144 (2) the power of a municipality under Section [10-8-60](#).