

HB0408S02 compared with HB0408S01

~~text~~ shows text that was in HB0408S01 but was deleted in HB0408S02.

text shows text that was not in HB0408S01 but was inserted into HB0408S02.

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~~Representative Kay J.~~Senator David P.~~Christofferson~~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: ~~Christofferson~~David P. Hinkins

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

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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:

ENACTS:

11-51a-101, Utah Code Annotated 1953

11-51a-102, Utah Code Annotated 1953

11-51a-103, Utah Code Annotated 1953

11-51a-104, Utah Code Annotated 1953

11-51a-201, Utah Code Annotated 1953

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

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

CHAPTER 51a. CATASTROPHIC PUBLIC NUISANCE ACT

Part 1. General Provisions

11-51a-101. Title.

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

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

11-51a-102. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

(iii) air quality of a nonattainment area; or

(iv) vegetative resources required to support land health and authorized livestock

grazing.

(2) "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;

(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 form of government; or

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

(3) "County sheriff" means an individual:

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

(b) who fulfills the duties described in Subsection 17-22-1.5(1).

(4) "Federal agency" means the:

(a) United States Bureau of Land Management;

(b) United States Forest Service;

(c) United States Fish and Wildlife Service; or

(d) National Park Service.

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

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

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

11-51a-103. Declaration of catastrophic public nuisance -- Authority to declare

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and demand abatement.

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

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

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

(b) insect and disease infestation, including insect and disease hazard ratings;

(c) fuel loads;

(d) forest or range type;

(e) slope and other natural characteristics of an area;

(f) watershed protection criteria;

(g) weather and climate; and

(h) any other factor that the chief executive officer of a political subdivision or a county sheriff reasonably considers to be relevant, under the circumstances.

(3) Except as provided in ~~Subsection (4)~~ [Section 11-51a-104](#), upon making the determination described in Subsection (1), the chief executive officer of a political subdivision or a county sheriff shall [after consultation with the attorney general](#):

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

(b) provide a copy of the determination that is served under Subsection ~~(4)~~³(a) to the governor, the attorney general, and if the catastrophic public nuisance exists on federally managed land, the state's congressional delegation.

~~(5)~~⁴ The notice described in ~~Subsections~~ [Subsection](#) ~~(3)~~ and ~~(4)~~³(a) shall include:

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

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

(c) a specific date, no less than 30 days after the day on which the notice is received, by

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which time the federal or state agency that manages the land shall:

(i) abate the catastrophic public nuisance; or

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

(~~f6~~5) The chief executive officer of a political subdivision or a county sheriff may enter into a plan with the relevant federal or state agency, or both, to abate the catastrophic public nuisance.

(~~f7~~6) If, after receiving the notice described in ~~fSubsection~~Subsections (3)~~f or~~(a) and (4)~~f(a)~~, the federal or state agency does not respond by the date requested in the notice or otherwise indicates that the federal or state agency is unwilling to take action to abate the catastrophic public nuisance, the chief executive officer of a political subdivision or a county sheriff shall consult with the county attorney and attorney general.

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

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

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

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

(a) coordinate with state and federal agencies; and

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

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

Part 2. Limitations

11-51a-201. Limitation.

Nothing in this chapter limits:

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- (1) the authority of the state to manage and protect wildlife under Title 23, Wildlife Resources Code of Utah; or
- (2) the power of a municipality under Section 10-8-60.