

1 **CATASTROPHIC WILDFIRE AND OTHER PUBLIC**
2 **NUISANCE REVISIONS**

3 2019 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Ken Ivory**

6 Senate Sponsor: Ronald Winterton

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Catastrophic Public Nuisance Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ expands notification requirements; and
- 14 ▶ provides that, under certain circumstances, the state shall indemnify, defend, and

15 hold a chief executive officer or county sheriff harmless from any claims or
16 damages, including court costs and attorney fees that are assessed as a result of the
17 chief executive officer's or county sheriff's action in abating a catastrophic public
18 nuisance.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **11-51a-103**, as enacted by Laws of Utah 2015, Chapter 419

26 **11-51a-104**, as enacted by Laws of Utah 2015, Chapter 419

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

29 Section 1. Section **11-51a-103** is amended to read:

30 **11-51a-103. Declaration of catastrophic public nuisance -- Authority to declare**
31 **and demand abatement.**

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

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

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

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

40 (c) fuel loads;

41 (d) forest or range type;

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

43 (f) watershed protection criteria;

44 (g) weather and climate; and

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

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

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

53 (b) provide a copy of the determination that is served under Subsection (3)(a) to,
54 together with a proposed detailed abatement plan:

55 (i) the governor[;];

- 56 (ii) the attorney general~~[, and]~~;
- 57 (iii) if the catastrophic public nuisance exists on federally managed land, the state's
- 58 congressional delegation[-];
- 59 (iv) the chairs of the Executive Appropriations Committee of the Legislature; and
- 60 (v) the Office of the Legislative Fiscal Analyst.
- 61 (4) The notice described in Subsection (3)(a) shall include:
- 62 (a) a detailed explanation of the basis for determination that a catastrophic public
- 63 nuisance exists on the land in question;
- 64 (b) a demand that the federal or state agency formulate a plan to abate the catastrophic
- 65 nuisance; and
- 66 (c) a specific date, no less than 30 days after the day on which the notice is received, by
- 67 which time the federal or state agency that manages the land shall:
- 68 (i) abate the catastrophic public nuisance; or
- 69 (ii) produce a plan for mitigating the catastrophic public nuisance that is reasonably
- 70 acceptable to the county or subdivision.
- 71 (5) The chief executive officer of a political subdivision or a county sheriff may enter
- 72 into a plan with the relevant federal or state agency, or both, to abate the catastrophic public
- 73 nuisance.
- 74 (6) If, after receiving the notice described in Subsections (3)(a) and (4), the federal or
- 75 state agency does not respond by the date requested in the notice or otherwise indicates that the
- 76 federal or state agency is unwilling to take action to abate the catastrophic public nuisance, the
- 77 chief executive officer of a political subdivision or a county sheriff shall consult with the
- 78 county attorney and attorney general.

79 Section 2. Section **11-51a-104** is amended to read:

80 **11-51a-104. Emergency abatement of a catastrophic public nuisance --**
81 **Indemnify, defend, hold harmless.**

- 82 (1) If a chief executive officer of a political subdivision or a county sheriff determines

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

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

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

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

95 (3) The state shall indemnify, defend, and hold a chief executive officer or county
96 sheriff harmless from any claims or damages, including court costs and attorney fees, that are
97 assessed as a result of the chief executive officer's or county sheriff's action, if:

98 (a) the chief executive officer or county sheriff has complied with this chapter;

99 (b) the court challenge against the chief executive officer or county sheriff addresses
100 the chief executive officer's or county sheriff's action in abating a catastrophic public nuisance;
101 and

102 (c) the chief executive officer's or county sheriff's action abating the catastrophic public
103 nuisance were in reasonable furtherance of the detailed proposed abatement plan described in
104 Subsection [11-51a-103\(3\)\(b\)](#).