

HB0099S02 compared with HB0099S01

~~deleted text~~ shows text that was in HB0099S01 but was deleted in HB0099S02.

Inserted text shows text that was not in HB0099S01 but was inserted into HB0099S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Ken Ivory proposes the following substitute bill:

CATASTROPHIC WILDFIRE AND OTHER PUBLIC NUISANCE REVISIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Catastrophic Public Nuisance Act.

Highlighted Provisions:

This bill:

- ▶ expands notification requirements; and
- ▶ provides that, under certain circumstances, the state shall indemnify, defend, and hold a chief executive officer or county sheriff harmless from any claims or damages, including court costs and attorney fees that are assessed as a result of the chief executive officer's or county sheriff's action in abating a catastrophic public nuisance subject to a cap.

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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(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 (3)(a) to together with a proposed detailed abatement plan:

(i) the governor[;];

(ii) the attorney general[~~;~~and];

(iii) if the catastrophic public nuisance exists on federally managed land, the state's congressional delegation[;];

(iv) the chairs of the Executive Appropriations Committee of the Legislature; and

(v) the Office of the Legislative Fiscal Analyst.

(4) The notice described in Subsection (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 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.

(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.

(6) If, after receiving the notice described in Subsections (3)(a) and (4), 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 2. Section **11-51a-104** is amended to read:

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

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(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 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.

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

~~(a)~~ i) the chief executive officer or county sheriff has complied with ~~the provisions of~~ this chapter;

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

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

(b) The state shall indemnify or hold harmless a chief executive officer or county sheriff under this Subsection (3) up to 90% of the claims or damages assessed against the chief executive officer or county sheriff under Subsection (3)(a).