

HB3009S01 compared with HB3009

~~text~~ shows text that was in HB3009 but was deleted in HB3009S01.

text shows text that was not in HB3009 but was inserted into HB3009S01.

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Representative Timothy D. Hawkes proposes the following substitute bill:

LOCAL GOVERNMENT EMERGENCY RESPONSE

2020 THIRD SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: Jacob L. Anderegg

LONG TITLE

General Description:

This bill enacts provisions related to local government response during a declared emergency.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides ~~for local chief executives, rather than local health departments, to issue generally applicable orders of constraint~~ certain limits on jurisdiction-wide orders responding to a declared emergency with legislative body and, in certain circumstances, gubernatorial oversight;
- ▶ provides for electronic meetings, in certain circumstances, for a local legislative body to take actions regarding a ~~local order of constraint~~;

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→ addresses state preemption of a local order of constraint;

jurisdiction-wide local order:

- ▶ provides certain flexibility in local government budgetary and fiscal procedures in response to a declared emergency;
- ▶ allows for extensions for certain local government receipt and deposit requirements;
- ▶ ~~provides for~~ prohibits a county auditor ~~to give notice of and conduct~~ from conducting a tax sale ~~electronically~~ during a declared emergency ~~in certain circumstances~~;
- ▶ allows a local government to conduct certain transactions electronically;
- ▶ provides for additional extraordinary circumstances that allow a local governmental entity to delay responding to a records request;
- ▶ extends deadlines for posting minutes of public local meetings;
- ▶ restricts ~~a~~ certain local health department ~~to~~ authority during a declared emergency ~~to~~ to cosigning ~~a~~ jurisdiction-wide local ~~order of constraint~~ orders that a local chief executive issues rather than independently issuing an order; and
- ▶ requires a local health department to consult with and make recommendations to local chief executives and legislative bodies regarding jurisdiction-wide local orders ~~of constraint; and~~

→ ~~allows a local health department to impose a civil penalty for a violation of a chief executive's stay-at-home order in certain circumstances~~.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:

ENACTS:

11-65-101, Utah Code Annotated 1953

11-65-102, Utah Code Annotated 1953

11-65-103, Utah Code Annotated 1953

~~11-65-201~~ **11-65-104**, Utah Code Annotated 1953

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~~{11-65-202}~~11-65-201, Utah Code Annotated 1953

11-65-301, Utah Code Annotated 1953

11-65-302, Utah Code Annotated 1953

11-65-303, Utah Code Annotated 1953

11-65-401, Utah Code Annotated 1953

11-65-402, Utah Code Annotated 1953

11-65-403, Utah Code Annotated 1953

26A-2-101, Utah Code Annotated 1953

26A-2-102, Utah Code Annotated 1953

26A-2-103, Utah Code Annotated 1953

26A-2-201, Utah Code Annotated 1953

~~{26A-2-202, Utah Code Annotated 1953}~~

~~{~~Utah Code Sections Affected by Revisor Instructions:

11-65-201, Utah Code Annotated 1953

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

Section 1. Section **11-65-101** is enacted to read:

CHAPTER 65. LOCAL GOVERNMENT EMERGENCY RESPONSE

Part 1. General Provisions

11-65-101. Title.

This chapter is known as "Local Government Emergency Response."

Section 2. Section **11-65-102** is enacted to read:

11-65-102. Definitions.

As used in this chapter:

(1) "Chief executive" means:

(a) for a municipality:

(i) except for a municipality ~~{operating under the council-manager form of government}~~described in Subsection (1)(a)(ii), the mayor; or

(ii) for a municipality operating under the council-manager form of government described in Subsection 10-3b-103(7), the city manager; or

(b) for a county ~~{, the person or body that exercises the executive powers of the~~

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county:

(i) the chair of the county commission for a county operating under the county commission or expanded county commission form of government under Section 17-52a-201 or 17-52a-202;

(ii) the county executive officer for a county operating under the county-executive council form of government under Section 17-52a-203; or

(iii) the county manager for a county operating under the council-manager form of government under Section 17-52a-204.

(2) "Declared emergency" means, in accordance with Title 53, Chapter 2a, Emergency Management Act:

(a) a local emergency that the chief executive officer of a municipality or county declares; or

(b) a state of emergency that the governor declares.

(3) (a) "Jurisdiction-wide local order" means an order, rule, or regulation, issued for the protection of the public health in response to a declared emergency, that applies:

(i) (A) for a municipality, municipality-wide; or

(B) for a county, county-wide; and

(ii) to all or substantially all:

(A) individuals or a certain class of individuals; or

(B) public places or a certain class of public places.

(b) (i) "Jurisdiction-wide local order" does not mean an order, rule, or regulation that:

(A) is not generally applicable as described in Subsection (3)(a); or

(B) does not respond to the declared emergency; or

(ii) the governor issues.

~~(3)~~(4) "Legislative body" means:

(a) for a municipality, the council of the municipality; or

(b) for a county:

(i) the county commission, for a county operating under the county commission ~~form~~ of government under Section ~~17-52a-201~~ or the expanded county commission form of government under Section ~~17-52a-201~~ or 17-52a-202; or

(ii) the county council, for a county operating under the county executive and council

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form of government under Section 17-52a-203 or the council-manager form of government under Section 17-52a-204.

~~(4)5~~ "Local emergency" means the same as that term is defined in Section 53-2a-203.

~~(5)6~~ "Local health department" means the same as that term is defined in Section 26A-1-102.

~~{ (6) (a) "Local order of constraint" means an order, rule, or regulation issued in response to a declared emergency that:~~

~~— (i) applies:~~

~~— (A) for a municipality, municipality-wide, or~~

~~— (B) for a county, county-wide;~~

~~— (ii) applies to all or substantially all:~~

~~— (A) individuals or a certain class of individuals, or~~

~~— (B) public places or a certain class of public places; and~~

~~— (iii) for the protection of the public health and in response to the declared emergency:~~

~~— (A) establishes, maintains, or enforces isolation or quarantine;~~

~~— (B) establishes, maintains, or enforces a stay-at-home order;~~

~~— (C) exercises physical control over property and over individuals; or~~

~~— (D) closes theaters, schools, or other public places or prohibits gatherings of people to protect the public health.~~

~~— (b) "Local order of constraint" includes a stay-at-home order.~~

~~— (c) "Local order of constraint" does not mean an order, rule, or regulation that a chief executive, legislative body, or local health department issues that:~~

~~— (i) is not generally applicable as described in Subsections (6)(a)(i) and (ii); or~~

~~— (ii) does not respond to the declared emergency.~~

~~‡ (7) "Municipality" means a city, town, or metrotownship.~~

~~(8) "Political subdivision" means a municipality or a county.~~

~~(9) "State of emergency" means a state of emergency that the governor declares by executive order in accordance with Title 53, Chapter 2a, Emergency Management Act.~~

~~{ (10) "Stay-at-home order" means a local order of constraint that:~~

~~— (a) restricts movement of the general population to suppress or mitigate an epidemic or~~

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~~pandemic by directing individuals within a defined geographic area to remain in their respective residences; and~~

~~_____ (b) may include exceptions for certain essential tasks.~~

‡ Section 3. Section **11-65-103** is enacted to read:

11-65-103. ~~‡ Relation to other law -- Suspension.~~

~~_____ (1) This chapter supersedes any conflicting provision of Utah law.~~

~~_____ (2) Notwithstanding any other provision of law, the governor may not suspend the application or enforcement of Immunity.~~

The immunity described in Subsection 63G-7-201(2)(a) includes immunity from suit for any injury or damage resulting from the implementation of or the failure to implement measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in this chapter.

Section 4. Section ~~{11-65-201}~~**11-65-104** is enacted to read:

11-65-104. Relation to other law -- Suspension.

(1) This chapter supersedes any conflicting provision of the Utah Code.

(2) Notwithstanding any other provision of law, the governor may not suspend the application or enforcement of this chapter.

Section 5. Section 11-65-201 is enacted to read:

Part 2. Jurisdiction-Wide Local Orders{of Constraint}

11-65-201. ~~‡ Local~~ Jurisdiction-wide local order {of constraint issuance} review process during a declared emergency.

(1) During a declared emergency, a ~~{chief executive may issue a local order of constraint.~~

~~_____ (2) A local order of constraint}~~jurisdiction-wide local order may not be issued unless the issuer's legal counsel has reviewed the proposed order and approved the order as to form and legality.

(2) A jurisdiction-wide local order expires:

(a) immediately upon the governor's veto or the legislative body's revocation; or

(b) unless the order specifies an earlier expiration date, 14 days after:

(i) the day on which the ~~{chief executive issues the order}~~order is issued; or

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(ii) if the legislative body reauthorizes the order, the day on which the legislative body makes the reauthorization.

(3) If the governor declares a state of emergency in accordance with Title 53, Chapter 2a, Emergency Management Act, and a ~~{chief executive issues a}~~ jurisdiction-wide local order ~~{of constraint}~~ is issued in response to the declared emergency, the governor may veto the jurisdiction-wide local order, in whole or in part, only to promote consistency with state-wide or other ~~{state or}~~ jurisdiction-wide local orders ~~{of constraint}~~ responding to the declared emergency~~†~~.

~~—— (a) modify the local order of constraint, at any time, including after a legislative body has modified or reauthorized the order~~†~~; or~~

~~—— (b) veto the local order of constraint.~~

(4) (a) The relevant legislative body may:

(i) unless the governor has ~~{modified or}~~ vetoed the order, modify or revoke ~~{the}~~ a jurisdiction-wide local order ~~{of constraint}~~ at any time; and

(ii) reauthorize a jurisdiction-wide local order ~~{of constraint}~~ expiring under Subsection (2)(b).

~~{ —— (b) A legislative body may not issue a local order of constraint.~~

~~† (c) (b)~~ If the relevant legislative body is unable to physically meet due to the declared emergency, the legislative body may convene a meeting electronically to take an action described in Subsection (4)(a), notwithstanding:

(i) if the declared emergency necessitates immediate action, the 24-hour notice requirement in Subsection 52-4-202(1)(a)(i);

(ii) the physical posting requirement in Subsections 52-4-202(3)(a)(i)(A) and 52-4-207(3)(a)(ii) or any other physical posting requirement under Utah law if:

(A) the required posting is impracticable due to the declared emergency; and

(B) the legislative body takes reasonable steps to provide equivalent notice;

(iii) the electronic meetings policy requirement in Subsection 52-4-207(2); or

(iv) the anchor location requirements in Subsections 52-4-207(3)(a)(ii), (c), (d), and

(e).

(5) (a) Without the governor's authorization, a ~~{chief executive may not re-issue a}~~ jurisdiction-wide local order ~~{of constraint}~~ that the governor vetoes under Subsection (3)

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may not be re-issued.

(b) Without the relevant legislative body's authorization, a ~~{chief executive may not re-issue a}~~jurisdiction-wide local order~~{ of constraint}~~ that the legislative body revoked or did not reauthorize under Subsection (4) may not be re-issued.

(6) In response to a declared emergency, the following shall consult with the relevant local health department regarding jurisdiction-wide local orders:

(a) a chief executive~~{ in issuing a local order of constraint}~~; and

(b) a legislative body, including in reauthorizing, modifying, or revoking a jurisdiction-wide local order~~{ of constraint}~~.

(7) Any jurisdiction-wide order, rule, or regulation issued in response to a declared emergency by a chief executive, legislative body, or local health department on or before the effective date of this bill:

(a) expires on May 1, 2020, unless the order specifies an earlier expiration date; and

(b) is subject to the relevant legislative body's reauthorization, modification, or revocation in accordance with Subsection (4).

~~{~~ ~~Section 5. Section 11-65-202 is enacted to read:~~

~~11-65-202. State preemption of local orders of constraint.~~

~~If the governor declares a state of emergency in accordance with Title 53, Chapter 2a, Emergency Management Act, and issues any order, rule, or regulation that has the full force and effect of law, as described in Section 53-2a-209, the governor's order, rule, or regulation preempts, for the duration of the state of emergency, any local order of constraint, previously or subsequently issued in response to the emergency, except to the extent that:~~

~~(1) the governor expressly allows for specific exceptions to the governor's preemption in the governor's order, rule, or regulation; and~~

~~(2) provisions of the otherwise preempted order satisfy the governor's expressly allowed exceptions.~~

~~†~~ Section 6. Section 11-65-301 is enacted to read:

Part 3. Budgets and Fiscal Procedures

11-65-301. Budget flexibility.

(1) (a) Subject to constitutional restrictions on the use of a tax and except as provided in Subsection (1)(b), a legislative body may respond to a declared emergency, in the same

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fiscal year in which the declaration of the emergency is issued, by transferring, increasing, or decreasing an appropriation in a budget or fund of the respective political subdivision.

(b) Subsection (1)(a) does not apply to revenue derived from the imposition of a tax that the voters of the respective political subdivision approved in an election.

(c) In responding to a declared emergency under this Subsection (1), the relevant town or council or county legislative body shall prioritize payments on bond obligations as the first priority.

(2) Subject to constitutional restrictions on the use of revenue derived from a tax, a legislative body may respond to a declared emergency by increasing the accumulation of a general fund balance above the limit described in Section 10-6-116 or 17-36-16 during:

(a) the declared emergency; and

(b) the subsequent two fiscal periods after the declared emergency has ended.

(3) (a) Notwithstanding Subsection 10-6-111(1)(a) and for calendar year 2020, the legislative body by resolution may authorize that on or before the last regularly scheduled meeting of the governing body in May, the budget officer shall, in accordance with Subsection 10-6-111(1)(b), prepare for fiscal year beginning July 1, 2020, and file with the governing body, a tentative budget for each fund for which a budget is required.

(b) Notwithstanding Subsection 10-5-107(1)(a) and for calendar year 2020, the legislative body by resolution may authorize that on or before the last scheduled meeting of the governing body in May, the mayor shall, in accordance with Subsection 10-5-107(1)(b):

(i) prepare for the ensuing year a tentative budget for each fund for which a budget is required;

(ii) make the budget available for public inspection; and

(iii) submit the tentative budget to the town council.

Section 7. Section **11-65-302** is enacted to read:

11-65-302. Extension of receipt and deposit requirements.

(1) (a) During a declared emergency, if an officer of a political subdivision submits a request to the political subdivision legislative body or chief executive to extend the deposit requirement described in Section 51-4-2, the legislative body or chief executive may issue an emergency or similar proclamation that:

(i) declares the reason the declared emergency necessitates an extension of the deposit

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requirement; and

(i) establishes the duration of the extension, not to exceed three months.

(b) The requirement for an officer of a political subdivision to make deposits described in Subsection 51-4-2(2)(a) is extended from three to five banking days if the legislative body or chief executive issues a proclamation described in Subsection (1)(a).

(2) (a) During a declared emergency, if a city treasurer submits a request to the political subdivision legislative body or chief executive to extend the receipt requirement described in Subsection 10-6-141(2)(b), the city council or chief executive may issue an emergency or similar proclamation that:

(i) declares the reason the declared emergency necessitates an extension of the receipt requirement; and

(ii) establishes the duration of the extension, not to exceed three months.

(b) The requirement for a city treasurer to receive public funds described in Subsection 10-6-141(2)(b) is extended from three to five banking days if the city council or chief executive issues a proclamation described in Subsection (2)(a).

Section 8. Section **11-65-303** is enacted to read:

11-65-303. County tax sale during a declared emergency.

During a declared emergency in which a county auditor is unable to ~~{physically}~~safely conduct a tax sale in person at a public auction due to the declared emergency~~;~~

—— (1) the notice of the tax sale described in Section 59-2-1351 shall be in substantially the following form:

"NOTICE OF TAX SALE

—— Notice is hereby given that on _____ (month\day\year), at ___ o'clock __. m., the county courthouse in _____ County, Utah, or at the following virtual meeting, I will offer for sale ~~at public or remote electronic auction and sell to the highest bidder for cash, under the provisions of Section 59-2-1351.1, the following described real property located in the county and now delinquent and subject to tax sale. A bid for less than the total amount of taxes, tax notice charges, interest, penalty, and administrative costs which are a charge upon the real estate will not be accepted.~~

(Here describe the real estate)

—— IN WITNESS WHEREOF I have hereunto set my hand and official seal on

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(ii) the political subdivision may conduct personal appearances related to administering oaths or similar appearances through two-way video.

(4) ~~{A}~~ During a declared emergency ~~{ does not limit or otherwise alter the fulfillment of}~~, the plat signature requirements described in Section 10-9a-604 or 17-27a-604 and any local requirements for condominium plat signatures described in Title 57, Chapter 8, Condominium Ownership Act, may be satisfied by an electronic signature as stated in Section 46-4-201.

Section 10. Section **11-65-402** is enacted to read:

11-65-402. Responding to records requests.

(1) As used in this section, "record" means the same as that term is defined in Section 63G-2-103.

(2) During a declared emergency, the following constitute "extraordinary circumstances" described in Subsection 63G-2-204(6) that allow a political subdivision to delay approval or denial of a records request if the political subdivision determines that due to the extraordinary circumstances the political subdivision cannot respond within the time limits provided in Subsection 63G-2-204(4):

(a) a jurisdiction-wide local order ~~{ of constraint}~~ that imposes isolation, quarantine, or a stay-at-home order;

(b) the closure of the political subdivision's office to comply with:

(i) a jurisdiction-wide local order ~~{ of constraint}~~ issued in response to the declared emergency; or

(ii) a directive from the governor or a political subdivision chief executive or legislative body regarding isolation or quarantine; or

(c) other circumstances directly related to the declared emergency that limit personnel access to equipment, records, or offices necessary to respond to the records request.

(3) For the extraordinary circumstances described in Subsection (2), the political subdivision shall disclose the requested records as soon as reasonably possible.

Section 11. Section **11-65-403** is enacted to read:

11-65-403. Making meeting minutes publicly available.

During a declared emergency:

(1) the requirement under Subsection 52-4-203(4)(f)(i) for a political subdivision to

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make pending minutes available to the public is extended from within 30 days to within 60 days after holding the open meeting that is the subject of the pending minutes;

(2) the requirement under Subsection 52-4-203(4)(f)(ii) for a political subdivision to post and make available a copy of the approved minutes is extended from within three business days to within 10 business days after approving written minutes of an open meeting; and

(3) a political subdivision is not subject to the requirement under Subsection 52-4-203(4)(e)(ii)(B) to make approved minutes and public materials available to the public at the political subdivision's primary office.

Section 12. Section **26A-2-101** is enacted to read:

CHAPTER 2. DECLARED EMERGENCIES

Part 1. General Provisions

26A-2-101. Title.

This chapter is known as "Declared Emergencies."

Section 13. Section **26A-2-102** is enacted to read:

26A-2-102. Definitions.

As used in this chapter:

(1) "Chief executive" means the same as that term is defined in Section 11-65-102.

(2) "Declared emergency" means the same as that term is defined in Section 11-65-102.

(3) "~~{Legislative body}~~ **Jurisdiction-wide local order**" means the same as that term is defined in Section 11-65-102.

(4) "~~{Local order of constraint}~~ **Legislative body**" means the same as that term is defined in Section 11-65-102.

Section 14. Section **26A-2-103** is enacted to read:

26A-2-103. Relation to other law -- Suspension.

(1) This chapter supersedes any conflicting provision of ~~the~~ Utah ~~{law}~~ **Code**.

(2) Notwithstanding any other provision of law, the governor may not suspend the application or enforcement of this chapter.

Section 15. Section **26A-2-201** is enacted to read:

Part 2. **Jurisdiction-Wide Local** Orders During a Declared Emergency

26A-2-201. Local health department role during a declared emergency.

During a declared emergency, a local health department:

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(1) may ~~only issue a local order of constraint by cosigning the local order of constraint that a~~ ~~not issue a jurisdiction-wide local order without the co-signature of the~~ chief executive ~~issues~~ ~~for the political subdivision which the order will impact~~; and

(2) shall consult with and make recommendations to the chief executive and legislative body of a political subdivision included in the area that the local health department serves regarding the declared emergency and any contemplated or issued ~~jurisdiction-wide~~ local order ~~of constraint~~ in the political subdivision.

~~Section 16. Section 26A-2-202 is enacted to read:~~

~~26A-2-202. Stay-at-home order enforcement during a pandemic or epidemic.~~

~~(1) In the case of a declared emergency related to a pandemic or epidemic, in addition to imposing and enforcing an order of restriction in accordance with Title 26, Chapter 6b, Communicable Diseases - Treatment, Isolation, and Quarantine Procedures, except as provided in Subsection (2), a local health department may impose a civil penalty of up to \$1,000 for a violation of a chief executive's local order of constraint that constitutes a stay-at-home order if:~~

~~(a) the individual has tested positive for the pandemic or epidemic disease;~~

~~(b) the chief executive or local health department has expressly directed the individual, in writing, to comply with the stay-at-home order; and~~

~~(c) the individual violates the stay-at-home order.~~

~~(2) A local health department may not impose the penalty described in Subsection (1) if the individual leaves the individual's residence to seek necessary medical attention.~~

~~Section 17~~ **16. Effective date.**

~~If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.~~

~~Section 18~~ **17. Revisor instructions.**

~~The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, replace the references in Section 11-65-201 from "the effective date of this bill" to the bill's actual effective date.~~