

SB0033S01 compared with SB0033

~~{deleted text}~~ shows text that was in SB0033 but was deleted in SB0033S01.

inserted text shows text that was not in SB0033 but was inserted into SB0033S01.

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Senator Ronald M. Winterton proposes the following substitute bill:

DISASTER AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronald M. Winterton

House Sponsor: _____

LONG TITLE

~~{Committee Note:~~

~~_____The Economic Development and Workforce Services Interim Committee recommended this bill.~~

~~_____Legislative Vote: 12 voting for 0 voting against _____ 4 absent~~

~~{General Description:~~

~~This bill concerns funding for a disaster.~~

Highlighted Provisions:

This bill:

- ▶ creates and modifies definitions;
- ▶ modifies provisions related to the State Disaster Recovery Restricted Account, including to:

- allow for certain emergency management expenses under certain conditions;

SB0033S01 compared with SB0033

and

- provide funding for the Local Response, Recovery, and Post-disaster Mitigation Restricted Account;
- ▶ renames the Post Disaster and Mitigation Restricted Account as Local Response, Recovery, and Post-disaster Mitigation Restricted Account;
- ▶ modifies the procedures and requirements for funds in the Local Response, Recovery, and Post-disaster Mitigation Restricted Account;
- ▶ modifies standards and requirements for receiving a grant from funds originating from the Local Response, Recovery, and Post-disaster Mitigation Restricted Account;
- ▶ grants rulemaking authority to the Division of Emergency Management; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

53-2a-603, as last amended by Laws of Utah 2022, Chapters 111, 373

53-2a-1301, as enacted by Laws of Utah 2019, Chapter 306

53-2a-1302, as enacted by Laws of Utah 2019, Chapter 306

53-2a-1303, as enacted by Laws of Utah 2019, Chapter 306

53-2a-1305, as enacted by Laws of Utah 2019, Chapter 306

63J-1-314, as last amended by Laws of Utah 2017, Chapter 210

REPEALS AND REENACTS:

53-2a-1304, as enacted by Laws of Utah 2019, Chapter 306

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

Section 1. Section **53-2a-603** is amended to read:

53-2a-603. State Disaster Recovery Restricted Account.

(1) (a) There is created a restricted account in the General Fund known as the "State

SB0033S01 compared with SB0033

Disaster Recovery Restricted Account."

(b) The disaster recovery account consists of:

(i) money deposited into the disaster recovery account in accordance with Section 63J-1-314;

(ii) money appropriated to the disaster recovery account by the Legislature; and

(iii) any other public or private money received by the division that is:

(A) given to the division for purposes consistent with this section; and

(B) deposited into the disaster recovery account at the request of:

(I) the division; or

(II) the person or entity giving the money.

(c) The Division of Finance shall deposit interest or other earnings derived from investment of account money into the General Fund.

(2) [~~Subject to being appropriated by the Legislature, money~~] Money in the disaster recovery account may only be expended or committed to be expended as follows:

(a) (i) subject to Section 53-2a-606, in any fiscal year the division may expend or commit to expend an amount that does not exceed \$500,000, in accordance with Section 53-2a-604, to fund costs to the state of emergency disaster services in response to a declared disaster;

(ii) subject to Section 53-2a-606, in any fiscal year the division may expend or commit to expend an amount that exceeds \$500,000, but does not exceed \$3,000,000, in accordance with Section 53-2a-604, to fund costs to the state of emergency disaster services in response to a declared disaster if the division:

(A) before making the expenditure or commitment to expend, obtains approval for the expenditure or commitment to expend from the governor;

(B) subject to Subsection (5), provides written notice of the expenditure or commitment to expend to the speaker of the House of Representatives, the president of the Senate, the Division of Finance, the Executive Offices and Criminal Justice Appropriations Subcommittee, the Legislative Management Committee, and the Office of the Legislative Fiscal Analyst no later than 72 hours after making the expenditure or commitment to expend; and

(C) makes the report required by Subsection 53-2a-606(2);

SB0033S01 compared with SB0033

(iii) subject to Section 53-2a-606, in any fiscal year the division may expend or commit to expend an amount that exceeds \$3,000,000, but does not exceed \$5,000,000, in accordance with Section 53-2a-604, to fund costs to the state of emergency disaster services in response to a declared disaster if, before making the expenditure or commitment to expend, the division:

(A) obtains approval for the expenditure or commitment to expend from the governor;

and

(B) submits the expenditure or commitment to expend to the Executive Appropriations Committee in accordance with Subsection 53-2a-606(3); and

(iv) in any fiscal year the division may expend or commit to expend an amount that does not exceed \$500,000 to fund expenses incurred by the National Guard if:

(A) in accordance with Section 39A-3-103, the governor orders into active service the National Guard in response to a declared disaster; and

(B) the money is not used for expenses that qualify for payment as emergency disaster services;

(v) in any fiscal year, the division may expend an amount that does not exceed \$750,000 to fund expenses incurred to develop or enhance emergency management capabilities if:

(A) the money is used for personnel, equipment, supplies, contracts, training, exercises, or other expenses deemed reasonable and necessary to:

(I) promote and strengthen the state's level of resiliency through mitigation, preparedness, response, or recovery activities; or

(II) meet federal grant matching requirements; and

(B) the disaster recovery account has a balance of funds available to be utilized while maintaining a minimum balance of \$5,000,000;

(b) money not described in Subsections (2)(a)(i), (ii), and (iii) may be expended or committed to be expended to fund costs to the state directly related to a declared disaster that are not costs related to:

(i) emergency disaster services;

(ii) emergency preparedness; or

(iii) notwithstanding whether a county participates in the Wildland Fire Suppression Fund created in Section 65A-8-204, any fire suppression or presuppression costs that may be

SB0033S01 compared with SB0033

paid for from the Wildland Fire Suppression Fund if the county participates in the Wildland Fire Suppression Fund;

(c) to fund:

(i) the Local Government Emergency Response Loan Fund created in Section 53-2a-607; and

(ii) the Local Response, Recovery, and Post-disaster Mitigation Restricted Account created in Section 53-2a-1302;

(d) the division may provide advanced funding from the disaster recovery account to recognized agents of the state when:

(i) Utah has agreed, through the division, to enact the Emergency Management Assistance Compact with another member state that has requested assistance during a declared disaster;

(ii) Utah agrees to provide resources to the requesting member state;

(iii) the agent of the state who represents the requested resource has no other funding source available at the time of the Emergency Management Assistance Compact request; and

(iv) the disaster recovery account has a balance of funds available to be utilized while maintaining a minimum balance of \$5,000,000; and

(e) to fund up to \$500,000 for the governor's emergency appropriations described in Subsection 63J-1-217(4).

(3) All funding provided in advance to an agent of the state and subsequently reimbursed shall be credited to the account.

(4) The state treasurer shall invest money in the disaster recovery account according to Title 51, Chapter 7, State Money Management Act.

(5) (a) Except as provided in Subsections (1) and (2), the money in the disaster recovery account may not be diverted, appropriated, expended, or committed to be expended for a purpose that is not listed in this section.

(b) Notwithstanding Section 63J-1-410, the Legislature may not appropriate money from the disaster recovery account to eliminate or otherwise reduce an operating deficit if the money appropriated from the disaster recovery account is expended or committed to be expended for a purpose other than one listed in this section.

(c) The Legislature may not amend the purposes for which money in the disaster

SB0033S01 compared with SB0033

recovery account may be expended or committed to be expended except by the affirmative vote of two-thirds of all the members elected to each house.

(6) The division:

(a) shall provide the notice required by Subsection (2)(a)(ii) using the best available method under the circumstances as determined by the division; and

(b) may provide the notice required by Subsection (2)(a)(ii) in electronic format.

Section 2. Section **53-2a-1301** is amended to read:

Part 13. Local Response, Recovery, and Post-Disaster Mitigation Restricted Account

53-2a-1301. Definitions.

As used in the part:

(1) "Account" means the ~~[Post Disaster Recovery and]~~ Local Response, Recovery, and Post-disaster Mitigation Restricted Account created in Section 53-2a-1302.

(2) "Affected community" means a community directly affected by an ongoing or recent disaster.

(3) "Affected community member" means a resident, property owner, business, nonprofit, or other individual or entity that is:

(a) located within an affected community; and

(b) suffered damage due to the ongoing or recent disaster in the affected community.

~~[(3) "Chief executive officer" means the same as that term is defined in Section 53-2a-203.]~~

(4) "Community" means a county, municipality, local district, or special service district.

~~[(5) "Costs not recoverable" include:]~~

~~[(a) the county threshold; and]~~

~~[(b) costs covered by insurance or federal government grants, including funding provided to the state by FEMA's Public Assistance grant program described in 44 C.F.R. Chapter 1, Subchapter D, Part 206.]~~

~~[(6) "County threshold" means, for each county, the countywide per capita indicator established by FEMA for the state, multiplied by the population of the county as determined by the division.]~~

~~[(7)]~~ (5) "Disaster response and recovery" means:

SB0033S01 compared with SB0033

(a) action taken to respond to and recover from a disaster, including action taken to remove debris, implement life-saving emergency protective measures, or repair, replace, or restore facilities in response to a disaster; and[-]

(b) post-disaster hazard mitigation directly related to the recovery from the disaster described in Subsection (5)(a).

~~[(8)] (6) "Disaster response and recovery grant" means money granted to an affected community for disaster response and recovery [that amounts to not more than 75% of the difference between the cost of disaster recovery, as determined by the division after reviewing the official damage assessment, and costs not recoverable].~~

~~[(9) "FEMA" means the Federal Emergency Management Agency.]~~

(7) "Minimum threshold payment amount" means the amount of costs that an affected community or an affected community member shall pay before the affected community or affected community member is eligible to receive money from a disaster response and recovery grant.

~~[(10)] (8) "Post-disaster hazard mitigation" means action taken, after a natural disaster, to reduce or eliminate risk to people or property that may occur as a result of the long-term effects of the natural disaster or a subsequent natural disaster, including action to prevent damage caused by flooding, earthquake, dam failure, wildfire, landslide, severe weather, drought, and problem soil.~~

~~[(11) "Post hazard mitigation grant" means money granted to a community for post hazard mitigation that amounts to not more than 75% of the costs deemed necessary by the division to complete the post hazard mitigation.]~~

~~[(12)] (9) "Official damage assessment" means a financial assessment of the damage to an affected community, caused by a disaster, that is conducted under the direction of the governing body of the affected community, in accordance with the rules described in Section 53-2a-1305.~~

Section 3. Section **53-2a-1302** is amended to read:

53-2a-1302. Local Response, Recovery, and Post-Disaster Mitigation Restricted Account.

(1) There is created a restricted account in the General Fund known as the [~~"Post Disaster Recovery and~~] "Local Response, Recovery, and Post-disaster Mitigation Restricted

SB0033S01 compared with SB0033

Account."

(2) The account consists of:

(a) money appropriated to the account by the Legislature;

(b) money deposited into the account in accordance with Section 63J-1-314;

~~[(b)]~~ (c) income and interest derived from the deposit and investment of money in the account; and

~~[(c)]~~ (d) private donations, grants, gifts, bequests, or money made available from any other source to implement this section.

(3) (a) At the close of a fiscal year, money in the account exceeding [~~\$10,000,000~~] \$50,000,000, excluding money granted to the account under [~~Subsection~~] ~~[(2)(c)]~~ Subsection (2)(d), shall be transferred to the [~~General Fund~~] State Disaster Recovery Restricted Account.

(b) Except as provided by Subsection (3)(a), money in the Local Response, Recovery, and Post-disaster Mitigation Restricted Account may only be used for the purposes set forth in this part.

(4) Subject to the requirements described in this part, and upon appropriation by the Legislature, the division may grant money appropriated from the account~~[-(a)]~~ to an affected community for the affected community's disaster response and~~[-]~~ recovery efforts as described in Section 53-2a-1303~~[-or]~~.

~~[(b) to a community for post hazard mitigation as described in Section 53-2a-1304. [-]]~~

Section 4. Section **53-2a-1303** is amended to read:

53-2a-1303. Disaster Response and Recovery Grant.

(1) The division may grant money under Subsection [~~53-2a-1302(4)(a)]~~ 53-2a-1302(4) appropriated from the account after receiving an application from an affected community for a disaster response and recovery grant.

(2) An affected community is eligible to receive a disaster response and recovery grant appropriated from the account if:

(a) the affected community submits an application described in Subsection (1) that includes the information required by the rules described in Section 53-2a-1305;

(b) the occurrence of a disaster in the affected community results in:

(i) the president of the United States declaring an emergency or major disaster in the state; ~~[-or]~~

SB0033S01 compared with SB0033

- (ii) the governor declaring a state of emergency under Section 53-2a-206; or
- (iii) the local municipality or county declaring an emergency under Section 53-2a-208;
- (c) the governing body of the affected community conducts an official damage assessment of the disaster;
- (d) ~~[the cost of disaster recovery, as determined by]~~ the division, after reviewing the application described in Subsection (2)(a), the official damage assessment~~[, exceeds the county threshold for the county in which the affected community is located, and]~~ described in Subsection (2)(c), and other information relevant to the division's determination, determines that a grant to the affected community would be an appropriate and necessary use of account funds;
- (e) the division ~~[maintains]~~ determines there is sufficient money for the grant~~[-]; and~~
- (f) the affected community agrees to grant funding requirements as determined by the division, including the affected community's minimum threshold payment amount and cost-sharing requirements.

Section 5. Section **53-2a-1304** is repealed and reenacted to read:

53-2a-1304. Allowed uses for disaster response and recovery grant funds.

(1) An affected community may use or distribute grant funds provided under Section 53-2a-1303 in accordance with funding guidelines provided by the division, which may include providing funds for disaster response and recovery to:

- (a) an affected community member;
- (b) a publicly owned facility in the affected community; or
- (c) publicly owned infrastructure in the affected community.

(2) The director may expend money from the account to pay necessary costs of evaluating and administering grants under this part.

(3) In accordance with Section 53-2a-1305, the division shall establish standards and procedures for the distribution of grant funds under this section, including standards and procedures for determining:

- (a) when an individual or entity described in Subsection (1)(a), (b), or (c) may receive grant funds;
- (b) which costs are eligible for grant funds, including administration costs; and
- (c) minimum threshold payment amounts and cost-sharing requirements.

SB0033S01 compared with SB0033

Section 6. Section **53-2a-1305** is amended to read:

53-2a-1305. Rulemaking authority and division responsibilities.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules to:

(a) designate the requirements and procedures~~[:(f)]~~ for the governing body of an affected community to:

~~[(A)]~~ (i) apply for a disaster response and recovery grant; and

~~[(B)]~~ (ii) conduct an official damage assessment; ~~[and]~~

~~[(ii) for the governing body of a community to apply for a post hazard mitigation grant; and]~~

(b) establish standards to determine:

(i) the categories of and criteria for entities and costs that are eligible for grant funds;
and

(ii) minimum threshold payment amounts and cost-sharing requirements; and

~~[(b)]~~ (c) establish standards and procedures to ensure that ~~[projects completed]~~ funds distributed in accordance with this ~~[section]~~ part are ~~[completed]~~ distributed in a cost effective and equitable manner, are reasonably necessary for disaster response and recovery ~~[or post hazard mitigation]~~, are an appropriate and necessary use of public funds, and that all receipts and invoices are documented.

(2) No later than December 31 of each year, the division shall provide the governor and the Criminal Justice Appropriations Subcommittee a written report of the division's activities under this part, including:

(a) an accounting of the money expended or committed to be expended under this part;
and

(b) the balance of the account.

Section 7. Section **63J-1-314** is amended to read:

63J-1-314. Deposits related to the Wildland Fire Suppression Fund and the Disaster Recovery Funding Act.

(1) As used in this section, "operating deficit" means that, at the end of the fiscal year, the unassigned fund balance in the General Fund is less than zero.

(2) Except as provided under Subsections (3) and (4), at the end of each fiscal year, the

SB0033S01 compared with SB0033

Division of Finance shall, after the transfer of General Fund revenue surplus has been made to the Medicaid Growth Reduction and Budget Stabilization Account, as provided in Section 63J-1-315, and the General Fund Budget Reserve Account, as provided in Section 63J-1-312, transfer:

(a) to the Wildland Fire Suppression Fund created in Section 65A-8-204 an amount equal to the lesser of:

(i) \$4,000,000; or

(ii) an amount necessary to make the balance in the Wildland Fire Suppression Fund equal to \$12,000,000; and

(b) an amount into the State Disaster Recovery Restricted Account, created in Section 53-2a-603, from the General Fund revenue surplus as defined in Section 63J-1-312, calculated by:

(i) determining the amount of General Fund revenue surplus after the transfer to the Medicaid Growth Reduction and Budget Stabilization Account under Section 63J-1-315, the General Fund Budget Reserve Account under Section 63J-1-312, and the transfer to the Wildland Fire Suppression Fund as described in Subsection (2)(a);

(ii) calculating an amount equal to the lesser of:

(A) 25% of the amount determined under Subsection (2)(b)(i); or

(B) 6% of the total of the General Fund appropriation amount for the fiscal year in which the surplus occurs; and

(iii) adding to the amount calculated under Subsection (2)(b)(ii) an amount equal to the lesser of:

(A) 25% more of the amount described in Subsection (2)(b)(i); or

(B) the amount necessary to replace, in accordance with this Subsection (2)(b)(iii), any amount appropriated from the State Disaster Recovery Restricted Account within 10 fiscal years before the fiscal year in which the surplus occurs if:

(I) a surplus exists; and

(II) the Legislature appropriates money from the State Disaster Recovery Restricted Account that is not replaced by appropriation or as provided in this Subsection (2)(b)(iii).

(3) (a) Notwithstanding Subsection (2), if, at the end of a fiscal year, the Division of Finance determines that an operating deficit exists, the division shall reduce the transfer to the

SB0033S01 compared with SB0033

State Disaster Recovery Restricted Account by an amount necessary to eliminate the operating deficit, up to the full amount of the transfer.

(b) If, after reducing the transfer to the State Disaster Recovery Account to zero under Subsection (3)(a), the Division of Finance determines that an operating deficit still exists, the division shall reduce the transfer to the Wildland Fire Suppression Fund by an amount necessary to eliminate the operating deficit, up to the full amount of the transfer.

(4) Notwithstanding Subsection (2):

(a) for the period beginning July 1, 2015, and ending June 30, 2020, the Division of Finance shall transfer to the Local Government Emergency Response Loan Fund 25% of the amount to be transferred into the State Disaster Recovery Restricted Account as provided in Subsection (2)(b)(ii); ~~and~~

(b) on and after July 1, 2020, the Division of Finance shall transfer to the Local Government Emergency Response Loan Fund 10% of the amount to be transferred into the State Disaster Recovery Restricted Account as provided in Subsection (2)(b); and

(c) on and after July 1, 2023, the Division of Finance shall transfer to the Local Response, Recovery, and Post-disaster Mitigation Restricted Account 25% of the amount to be transferred into the State Disaster Recovery Restricted Account as provided in Subsection (2)(b).

Section 8. Effective date and two-thirds majority required to pass.

(1) If approved by two-thirds of all the members elected to each house, this bill takes effect on May 3, 2023.

(2) In accordance with Subsection 53-2a-603(5)(c), if this bill is not approved by two-thirds of all the members elected to each house, this bill will not go into effect.