

1 **CATASTROPHIC WILDFIRE AND PUBLIC NUISANCE**

2 **AMENDMENTS**

3 2015 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Kay J. Christofferson**

6 Senate Sponsor: _____

7

LONG TITLE

8 **General Description:**

9 This bill addresses catastrophic public nuisances.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ states that a chief executive officer of a political subdivision or a county sheriff may
- 14 determine that a catastrophic public nuisance exists;
- 15 ▶ describes the criteria for determining whether a catastrophic public nuisance exists;
- 16 ▶ describes the procedure for serving notice of the catastrophic public nuisance
- 17 determination to the owner of land or the federal agency managing land; and
- 18 ▶ authorizes a chief executive officer of a political subdivision or a county sheriff to
- 19 abate a catastrophic public nuisance, under certain circumstances.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 ENACTS:

26 **11-51a-101**, Utah Code Annotated 1953



- 28 [11-51a-102](#), Utah Code Annotated 1953
- 29 [11-51a-103](#), Utah Code Annotated 1953
- 30 [11-51a-104](#), Utah Code Annotated 1953
- 31 [11-51a-201](#), Utah Code Annotated 1953

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

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

35 **CHAPTER 51a. CATASTROPHIC PUBLIC NUISANCE ACT**

36 **Part 1. General Provisions**

37 **11-51a-101. Title.**

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

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

40 **11-51a-102. Definitions.**

41 As used in this chapter:

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

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

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

47 (ii) an insect or disease infestation severe enough to threaten the mortality of at least
48 20% of the trees in the area; or

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

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

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

52 (iii) air quality of a nonattainment area; or

53 (iv) vegetative resources required to support land health and authorized livestock
54 grazing.

55 (2) "Chief executive officer" means:

56 (a) for a municipality:

57 (i) the mayor, if the municipality is operating under a form of municipal government
58 other than the council-manager form of government; or

59 (ii) the city manager, if the municipality is operating under the council-manager form
60 of government;

61 (b) for a county:

62 (i) the chair of the county commission, if the county is operating under the county
63 commission or expanded county commission form of government;

64 (ii) the county executive officer, if the county is operating under the county-executive
65 form of government; or

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

68 (3) "County sheriff" means an individual:

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

70 (b) who fulfills the duties described in Subsection [17-22-1.5\(1\)](#).

71 (4) "Federal agency" means the:

72 (a) United States Bureau of Land Management;

73 (b) United States Forest Service;

74 (c) United States Fish and Wildlife Service; or

75 (d) National Park Service.

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

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

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

79 **11-51a-103. Declaration of catastrophic public nuisance -- Authority to declare**
80 **and demand abatement.**

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

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

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

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

89 (c) fuel loads;

- 90 (d) forest or range type;
- 91 (e) slope and other natural characteristics of an area;
- 92 (f) watershed protection criteria;
- 93 (g) weather and climate; and
- 94 (h) any other factor that the chief executive officer of a political subdivision or a
- 95 county sheriff reasonably considers to be relevant, under the circumstances.

96 (3) Except as provided in Subsection (4), upon making the determination described in
97 Subsection (1), the chief executive officer of a political subdivision or a county sheriff shall
98 serve, by hand or certified mail, notice of the determination to the owner of the land upon
99 which the catastrophic public nuisance exists.

100 (4) If the land upon which the catastrophic public nuisance exists is federally managed
101 land, the chief executive officer of a political subdivision or a county sheriff shall:

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

105 (b) provide to the governor, the attorney general, and the state's congressional
106 delegation a copy of the determination that is served under Subsection (4)(a).

107 (5) The notice described in Subsections (3) and (4)(a) shall include:

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

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

112 (c) a specific date, no less than 10 days after the day on which the notice is received, by
113 which time the owner of the land or the federal agency that manages the land shall:

114 (i) abate the catastrophic public nuisance;

115 (ii) if the abatement of the catastrophic public nuisance will take longer than the time
116 specified, begin abatement of the catastrophic public nuisance within the time specified and
117 continue diligently the abatement to completion; or

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

120 (6) The chief executive officer of a political subdivision or a county sheriff may enter

121 into a plan with the relevant federal agency or owner of the land, or both, to abate the
122 catastrophic public nuisance.

123 (7) If, after receiving the notice described in Subsection (3) or (4)(a), the federal
124 agency or the owner of the land upon which the catastrophic public nuisance exists does not
125 respond by the date requested in the notice or otherwise indicates that the federal agency or the
126 owner of the land is unwilling to take action to abate the catastrophic public nuisance, the chief
127 executive officer of a political subdivision or a county sheriff shall consult with the county
128 attorney and attorney general.

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

130 **11-51a-104. Emergency abatement of a catastrophic public nuisance.**

131 (1) If a chief executive officer of a political subdivision or a county sheriff determines
132 that a public nuisance exists on federally managed land, pursuant to Subsection [11-51a-103\(1\)](#),
133 and the chief executive officer of a political subdivision or the county sheriff also finds that the
134 catastrophic public nuisance in question adversely affects, or constitutes a threat to, the public
135 health, safety, and welfare of the people of the political subdivision, the chief executive officer
136 of the political subdivision or the county sheriff may pursue all remedies provided at law.

137 (2) In seeking an emergency abatement of a catastrophic public nuisance under Section
138 [10-8-6](#), a chief executive officer of a political subdivision or a county sheriff shall attempt, as
139 much as possible, to:

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

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

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

144 **Part 2. Limitations**

145 **11-51a-201. Limitation.**

146 Nothing in this chapter limits:

147 (1) the authority of the state to manage and protect wildlife under Title 23, Wildlife
148 Resources Code of Utah; or

149 (2) the power of a municipality under Section [10-8-6](#).

Legislative Review Note
as of 2-25-15 10:27 AM

Office of Legislative Research and General Counsel