

1 **LOCAL GOVERNMENT EMERGENCY RESPONSE**

2 2020 THIRD SPECIAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Timothy D. Hawkes**

5 Senate Sponsor: Jacob L. Anderegg

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ provides for local chief executives, rather than local health departments, to issue
15 generally applicable orders of constraint responding to a declared emergency with
16 legislative body and, in certain circumstances, gubernatorial oversight;
- 17 ▶ provides for electronic meetings, in certain circumstances, for a local legislative
18 body to take actions regarding a local order of constraint;
- 19 ▶ addresses state preemption of a local order of constraint;
- 20 ▶ provides certain flexibility in local government budgetary and fiscal procedures in
21 response to a declared emergency;
- 22 ▶ allows for extensions for certain local government receipt and deposit requirements;
- 23 ▶ provides for a county auditor to give notice of and conduct a tax sale electronically
24 during a declared emergency in certain circumstances;
- 25 ▶ allows a local government to conduct certain transactions electronically;
- 26 ▶ provides for additional extraordinary circumstances that allow a local governmental
27 entity to delay responding to a records request;



- 28 ▶ extends deadlines for posting minutes of public local meetings;
- 29 ▶ restricts a local health department, during a declared emergency, to cosigning a local
- 30 order of constraint that a local chief executive issues rather than independently
- 31 issuing an order;
- 32 ▶ requires a local health department to consult with and make recommendations to
- 33 local chief executives and legislative bodies regarding local orders of constraint;
- 34 and
- 35 ▶ allows a local health department to impose a civil penalty for a violation of a chief
- 36 executive's stay-at-home order in certain circumstances.

37 **Money Appropriated in this Bill:**

38 None

39 **Other Special Clauses:**

40 This bill provides a special effective date.

41 This bill provides revisor instructions.

42 **Utah Code Sections Affected:**

43 ENACTS:

- 44 **11-65-101**, Utah Code Annotated 1953
- 45 **11-65-102**, Utah Code Annotated 1953
- 46 **11-65-103**, Utah Code Annotated 1953
- 47 **11-65-201**, Utah Code Annotated 1953
- 48 **11-65-202**, Utah Code Annotated 1953
- 49 **11-65-301**, Utah Code Annotated 1953
- 50 **11-65-302**, Utah Code Annotated 1953
- 51 **11-65-303**, Utah Code Annotated 1953
- 52 **11-65-401**, Utah Code Annotated 1953
- 53 **11-65-402**, Utah Code Annotated 1953
- 54 **11-65-403**, Utah Code Annotated 1953
- 55 **26A-2-101**, Utah Code Annotated 1953
- 56 **26A-2-102**, Utah Code Annotated 1953
- 57 **26A-2-103**, Utah Code Annotated 1953
- 58 **26A-2-201**, Utah Code Annotated 1953

59 [26A-2-202](#), Utah Code Annotated 1953

60 **Utah Code Sections Affected by Revisor Instructions:**

61 [11-65-201](#), Utah Code Annotated 1953



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

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

65 **CHAPTER 65. LOCAL GOVERNMENT EMERGENCY RESPONSE**

66 **Part 1. General Provisions**

67 **11-65-101. Title.**

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

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

70 **11-65-102. Definitions.**

71 As used in this chapter:

72 (1) "Chief executive" means:

73 (a) for a municipality:

74 (i) except for a municipality operating under the council-manager form of government,
75 the mayor; or

76 (ii) for a municipality operating under the council-manager form of government, the
77 city manager; or

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

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

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

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

84 (3) "Legislative body" means:

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

86 (b) for a county:

87 (i) the county commission, for a county operating under the county commission form
88 of government under Section [17-52a-201](#) or the expanded county commission form of
89 government under Section [17-52a-202](#); or

90 (ii) the county council, for a county operating under the county executive and council
91 form of government under Section 17-52a-203 or the council-manager form of government
92 under Section 17-52a-204.

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

94 (5) "Local health department" means the same as that term is defined in Section
95 26A-1-102.

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

98 (i) applies:

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

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

101 (ii) applies to all or substantially all:

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

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

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

105 (A) establishes, maintains, or enforces isolation or quarantine;

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

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

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

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

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

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

114 (ii) does not respond to the declared emergency.

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

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

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

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

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

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

123 (b) may include exceptions for certain essential tasks.

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

125 **11-65-103. Relation to other law -- Suspension.**

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

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

129 Section 4. Section **11-65-201** is enacted to read:

130 **Part 2. Local Orders of Constraint**

131 **11-65-201. Local order of constraint issuance process during a declared**
132 **emergency.**

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

135 (2) A local order of constraint expires:

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

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

138 (i) the day on which the chief executive issues the order; or

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

141 (3) If the governor declares a state of emergency in accordance with Title 53, Chapter
142 2a, Emergency Management Act, and a chief executive issues a local order of constraint in
143 response to the declared emergency, the governor may, to promote consistency with other state
144 or local orders of constraint responding to the declared emergency:

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

147 (b) veto the local order of constraint.

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

149 (i) unless the governor has modified or vetoed the order, modify or revoke the local
150 order of constraint at any time; and

151 (ii) reauthorize a local order of constraint expiring under Subsection (2)(b).

152 (b) A legislative body may not issue a local order of constraint.
153 (c) If the relevant legislative body is unable to physically meet due to the declared
154 emergency, the legislative body may convene a meeting electronically to take an action
155 described in Subsection (4)(a), notwithstanding:
156 (i) if the declared emergency necessitates immediate action, the 24-hour notice
157 requirement in Subsection 52-4-202(1)(a)(i);
158 (ii) the physical posting requirement in Subsections 52-4-202(3)(a)(i)(A) and
159 52-4-207(3)(a)(ii);
160 (iii) the electronic meetings policy requirement in Subsection 52-4-207(2); or
161 (iv) the anchor location requirements in Subsections 52-4-207(3)(a)(ii), (c), (d), and
162 (e).
163 (5) (a) Without the governor's authorization, a chief executive may not re-issue a local
164 order of constraint that the governor vetoes under Subsection (3).
165 (b) Without the relevant legislative body's authorization, a chief executive may not
166 re-issue a local order of constraint that the legislative body revoked or did not reauthorize
167 under Subsection (4).
168 (6) In response to a declared emergency, the following shall consult with the relevant
169 local health department:
170 (a) a chief executive in issuing a local order of constraint; and
171 (b) a legislative body in reauthorizing, modifying, or revoking a local order of
172 constraint.
173 (7) Any jurisdiction-wide order, rule, or regulation issued in response to a declared
174 emergency by a chief executive, legislative body, or local health department on or before the
175 effective date of this bill:
176 (a) expires on May 1, 2020, unless the order specifies an earlier expiration date; and
177 (b) is subject to the relevant legislative body's reauthorization, modification, or
178 revocation in accordance with Subsection (4).
179 Section 5. Section **11-65-202** is enacted to read:
180 **11-65-202. State preemption of local orders of constraint.**
181 If the governor declares a state of emergency in accordance with Title 53, Chapter 2a,
182 Emergency Management Act, and issues any order, rule, or regulation that has the full force

183 and effect of law, as described in Section 53-2a-209, the governor's order, rule, or regulation
184 preempts, for the duration of the state of emergency, any local order of constraint, previously or
185 subsequently issued in response to the emergency, except to the extent that:

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

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

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

191 **Part 3. Budgets and Fiscal Procedures**

192 **11-65-301. Budget flexibility.**

193 (1) (a) Subject to constitutional restrictions on the use of a tax and except as provided
194 in Subsection (1)(b), a legislative body may respond to a declared emergency, in the same
195 fiscal year in which the declaration of the emergency is issued, by transferring, increasing, or
196 decreasing an appropriation in a budget or fund of the respective political subdivision.

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

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

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

205 (a) the declared emergency; and

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

207 (3) (a) Notwithstanding Subsection 10-6-111(1)(a) and for calendar year 2020, the
208 legislative body by resolution may authorize that on or before the last regularly scheduled
209 meeting of the governing body in May, the budget officer shall, in accordance with Subsection
210 10-6-111(1)(b), prepare for fiscal year beginning July 1, 2020, and file with the governing
211 body, a tentative budget for each fund for which a budget is required.

212 (b) Notwithstanding Subsection 10-5-107(1)(a) and for calendar year 2020, the
213 legislative body by resolution may authorize that on or before the last scheduled meeting of the

214 governing body in May, the mayor shall, in accordance with Subsection [10-5-107\(1\)\(b\)](#):

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

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

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

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

220 **11-65-302. Extension of receipt and deposit requirements.**

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

225 (i) declares the reason the declared emergency necessitates an extension of the deposit
226 requirement; and

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

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

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

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

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

238 (b) The requirement for a city treasurer to receive public funds described in Subsection
239 [10-6-141\(2\)\(b\)](#) is extended from three to five banking days if the city council or chief executive
240 issues a proclamation described in Subsection (2)(a).

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

242 **11-65-303. County tax sale during a declared emergency.**

243 During a declared emergency in which a county auditor is unable to physically conduct
244 a tax sale at a public auction due to the declared emergency:

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

247 "NOTICE OF TAX SALE

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

255 (Here describe the real estate)

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

257 _____ (month\day\year).

258 _____

259 County Auditor

260 _____

261 County"; and

262 (2) at the time specified in the notice, the county auditor shall personally attend or
263 electronically attend at the place or remote electronic meeting appointed, offer for sale, and sell
264 all real property for which an acceptable bid is made.

265 Section 9. Section 11-65-401 is enacted to read:

266 **Part 4. Local Government Operation**

267 **11-65-401. Electronic transactions.**

268 (1) During a declared emergency, a political subdivision that administers a transaction
269 described in Subsection 46-4-503(1) may conduct the transaction electronically.

270 (2) A political subdivision described in Subsection (1):

271 (a) is subject to the requirements described in Subsection 46-4-503(3); and

272 (b) is not required to conduct a transaction electronically in the circumstances

273 described in Subsection 46-4-503(4).

274 (3) (a) During a declared emergency in which in-person interaction is contrary to a
275 local order of constraint, the chief executive of a political subdivision may, for a period of up to

276 30 days and in accordance with a written policy, waive any of the political subdivision's
277 requirements for a person to appear physically in person to complete a transaction related to the
278 provision of a government good or service that can otherwise be conducted remotely via
279 electronic means.

280 (b) The legislative body of a political subdivision may adopt a resolution to extend the
281 waiver described in Subsection (3)(a) for a period beyond the initial 30 days.

282 (c) For purposes of this Subsection (3):

283 (i) services that the political subdivision may conduct may include marriage
284 ceremonies; and

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

287 (4) A declared emergency does not limit or otherwise alter the fulfillment of the plat
288 signature requirements described in Section [10-9a-604](#) or [17-27a-604](#) by an electronic
289 signature as stated in Section [46-4-201](#).

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

291 **11-65-402. Responding to records requests.**

292 (1) As used in this section, "record" means the same as that term is defined in Section
293 [63G-2-103](#).

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

299 (a) a local order of constraint that imposes isolation, quarantine, or a stay-at-home
300 order;

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

302 (i) a local order of constraint issued in response to the declared emergency; or

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

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

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

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

310 **11-65-403. Making meeting minutes publicly available.**

311 During a declared emergency:

312 (1) the requirement under Subsection 52-4-203(4)(f)(i) for a political subdivision to
313 make pending minutes available to the public is extended from within 30 days to within 60
314 days after holding the open meeting that is the subject of the pending minutes;

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

318 (3) a political subdivision is not subject to the requirement under Subsection
319 52-4-203(4)(e)(ii)(B) to make approved minutes and public materials available to the public at
320 the political subdivision's primary office.

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

322 **CHAPTER 2. DECLARED EMERGENCIES**

323 **Part 1. General Provisions**

324 **26A-2-101. Title.**

325 This chapter is known as "Declared Emergencies."

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

327 **26A-2-102. Definitions.**

328 As used in this chapter:

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

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

331 (3) "Legislative body" means the same as that term is defined in Section 11-65-102.

332 (4) "Local order of constraint" means the same as that term is defined in Section
333 11-65-102.

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

335 **26A-2-103. Relation to other law -- Suspension.**

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

337 (2) Notwithstanding any other provision of law, the governor may not suspend the

338 application or enforcement of this chapter.

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

340 **Part 2. Orders During a Declared Emergency**

341 **26A-2-201. Local health department role during a declared emergency.**

342 During a declared emergency, a local health department:

343 (1) may only issue a local order of constraint by cosigning the local order of constraint
344 that a chief executive issues; and

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

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

350 **26A-2-202. Stay-at-home order enforcement during a pandemic or epidemic.**

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

356 (a) the individual has tested positive for the pandemic or epidemic disease;
357 (b) the chief executive or local health department has expressly directed the individual,
358 in writing, to comply with the stay-at-home order; and

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

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

362 Section 17. **Effective date.**

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

367 Section 18. **Revisor instructions.**

368 The Legislature intends that the Office of Legislative Research and General Counsel, in

369 preparing the Utah Code database for publication, replace the references in Section [11-65-201](#)
370 from "the effective date of this bill" to the bill's actual effective date.