

**DISASTER RESPONSE AND RECOVERY ACT AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brady Brammer**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends the Disaster Response and Recovery Act to allow the Legislature or a legislative body of a political subdivision to limit certain emergency powers during a state of emergency.

**Highlighted Provisions:**

This bill:

▶ allows the Legislature, by joint resolution, to limit certain emergency powers during a declared state of emergency, including powers exercised by:

- the Division of Emergency Management;
- the governor; and
- the chief executive officer of a political subdivision of the state;

▶ allows a local legislative body, by resolution, to limit certain local executive emergency powers during a declared state of emergency;

▶ prohibits the governor from declaring a new state of emergency in response to the same disaster or occurrence for which the Legislature has terminated or chosen not to extend; and

▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



28 This bill provides a special effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **53-2a-104**, as last amended by Laws of Utah 2020, Chapter 85

32 **53-2a-204**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 7

33 **53-2a-205**, as renumbered and amended by Laws of Utah 2013, Chapter 295

34 **53-2a-206**, as renumbered and amended by Laws of Utah 2013, Chapter 295

35 **53-2a-208**, as last amended by Laws of Utah 2015, Chapter 352



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

38 Section 1. Section **53-2a-104** is amended to read:

39 **53-2a-104. Division duties -- Powers.**

40 (1) [The] Subject to limitation by the Legislature as described in Subsection

41 53-2a-206(6), the division shall:

42 (a) respond to the policies of the governor and the Legislature;

43 (b) perform functions relating to emergency management as directed by the governor  
44 or by the commissioner, including:

45 (i) coordinating with state agencies and local governments the use of personnel and  
46 other resources of these governmental entities as agents of the state during an interstate disaster  
47 in accordance with the Emergency Management Assistance Compact described in Section  
48 **53-2a-402**;

49 (ii) coordinating the requesting, activating, and allocating of state resources during an  
50 intrastate disaster or a local state of emergency;

51 (iii) receiving and disbursing federal resources provided to the state in a declared  
52 disaster;

53 (iv) appointing a state coordinating officer who is the governor's representative and  
54 who shall work with a federal coordinating officer during a federally declared disaster; and

55 (v) appointing a state recovery officer who is the governor's representative and who  
56 shall work with a federal recovery officer during a federally declared disaster;

57 (c) prepare, implement, and maintain programs and plans to provide for:

58 (i) prevention and minimization of injury and damage caused by disasters;

- 59 (ii) prompt and effective response to and recovery from disasters;
- 60 (iii) identification of areas particularly vulnerable to disasters;
- 61 (iv) coordination of hazard mitigation and other preventive and preparedness measures  
62 designed to eliminate or reduce disasters;
- 63 (v) assistance to local officials, state agencies, and the business and public sectors, in  
64 developing emergency action plans;
- 65 (vi) coordination of federal, state, and local emergency activities;
- 66 (vii) coordination of emergency operations plans with emergency plans of the federal  
67 government;
- 68 (viii) coordination of urban search and rescue activities;
- 69 (ix) coordination of rapid and efficient communications in times of emergency; and
- 70 (x) other measures necessary, incidental, or appropriate to this part;
- 71 (d) coordinate with local officials, state agencies, and the business and public sectors in  
72 developing, implementing, and maintaining a state energy emergency plan in accordance with  
73 Section [53-2a-902](#);
- 74 (e) administer Part 6, Disaster Recovery Funding Act, in accordance with that part;
- 75 (f) conduct outreach annually to agencies and officials who have access to IPAWS; and
- 76 (g) coordinate with counties to ensure every county has the access and ability to send,  
77 or a plan to send, IPAWS messages, including Wireless Emergency Alerts and Emergency  
78 Alert System messages.
- 79 (2) Every three years, organizations that have the ability to send IPAWS messages,  
80 including emergency service agencies, public safety answering points, and emergency  
81 managers shall send verification of Federal Emergency Management Agency training to the  
82 Division.
- 83 (3) (a) The Department of Public Safety shall designate state geographical regions and  
84 allow the political subdivisions within each region to:
- 85 (i) coordinate planning with other political subdivisions, tribal governments, and as  
86 appropriate, other entities within that region and with state agencies as appropriate, or as  
87 designated by the division;
- 88 (ii) coordinate grant management and resource purchases; and
- 89 (iii) organize joint emergency response training and exercises.

90 (b) The political subdivisions within a region designated in Subsection (3)(a) may not  
91 establish the region as a new government entity in the emergency disaster declaration process  
92 under Section 53-2a-208.

93 (4) The division may make rules in accordance with Title 63G, Chapter 3, Utah  
94 Administrative Rulemaking Act, to:

95 (a) establish protocol for prevention, mitigation, preparedness, response, recovery, and  
96 the activities described in Subsection (3);

97 (b) coordinate federal, state, and local resources in a declared disaster or local  
98 emergency; and

99 (c) implement provisions of the Emergency Management Assistance Compact as  
100 provided in Section 53-2a-402 and Title 53, Chapter 2a, Part 3, Statewide Mutual Aid Act.

101 (5) The division may consult with the Legislative Management Committee, the Judicial  
102 Council, and legislative and judicial staff offices to assist the division in preparing emergency  
103 succession plans and procedures under Title 53, Chapter 2a, Part 8, Emergency Interim  
104 Succession Act.

105 (6) The division shall report annually in writing not later than October 31 to the Law  
106 Enforcement and Criminal Justice, and Political Subdivisions Interim Committees regarding  
107 the status of the emergency alert system in the state. The report shall include:

108 (a) a status summary of the number of alerting authorities in Utah;

109 (b) any changes in that number;

110 (c) administrative actions taken; and

111 (d) any other information considered necessary by the division.

112 Section 2. Section 53-2a-204 is amended to read:

113 **53-2a-204. Authority of governor -- Federal assistance -- Fraud or willful**

114 **misstatement in application for financial assistance -- Penalty.**

115 (1) In addition to any other authorities conferred upon the governor, if the governor  
116 issues an executive order declaring a state of emergency, subject to limitation by the  
117 Legislature as described in Subsection 53-2a-206(6), the governor may:

118 (a) utilize all available resources of state government as reasonably necessary to cope  
119 with a state of emergency;

120 (b) employ measures and give direction to state and local officers and agencies that are

121 reasonable and necessary for the purpose of securing compliance with the provisions of this  
122 part and with orders, rules, and regulations made pursuant to this part;

123 (c) recommend and advise the evacuation of all or part of the population from any  
124 stricken or threatened area within the state if necessary for the preservation of life;

125 (d) recommend routes, modes of transportation, and destination in connection with  
126 evacuation;

127 (e) in connection with evacuation, suspend or limit the sale, dispensing, or  
128 transportation of alcoholic beverages, explosives, and combustibles, not to include the lawful  
129 bearing of arms;

130 (f) control ingress and egress to and from a disaster area, the movement of persons  
131 within the area, and recommend the occupancy or evacuation of premises in a disaster area;

132 (g) clear or remove from publicly or privately owned land or water debris or wreckage  
133 that is an immediate threat to public health, public safety, or private property, including  
134 allowing an employee of a state department or agency designated by the governor to enter upon  
135 private land or waters and perform any tasks necessary for the removal or clearance operation if  
136 the political subdivision, corporation, organization, or individual that is affected by the removal  
137 of the debris or wreckage:

138 (i) presents an unconditional authorization for removal of the debris or wreckage from  
139 private property; and

140 (ii) agrees to indemnify the state against any claim arising from the removal of the  
141 debris or wreckage;

142 (h) enter into agreement with any agency of the United States:

143 (i) for temporary housing units to be occupied by victims of a state of emergency or  
144 persons who assist victims of a state of emergency; and

145 (ii) to make the housing units described in Subsection (1)(h)(i) available to a political  
146 subdivision of this state;

147 (i) assist any political subdivision of this state to acquire sites and utilities necessary for  
148 temporary housing units described in Subsection (1)(h)(i) by passing through any funds made  
149 available to the governor by an agency of the United States for this purpose;

150 (j) subject to Sections [53-2a-209](#) and [53-2a-214](#), temporarily suspend or modify by  
151 executive order, during the state of emergency, any public health, safety, zoning, transportation,

152 or other requirement of a statute or administrative rule within this state if such action is  
153 essential to provide temporary housing described in Subsection (1)(h)(i);

154 (k) upon determination that a political subdivision of the state will suffer a substantial  
155 loss of tax and other revenues because of a state of emergency and the political subdivision so  
156 affected has demonstrated a need for financial assistance to perform its governmental  
157 functions, in accordance with Utah Constitution, Article XIV, Sections 3 and 4, and Section  
158 10-8-6:

159 (i) apply to the federal government for a loan on behalf of the political subdivision if  
160 the amount of the loan that the governor applies for does not exceed 25% of the annual  
161 operating budget of the political subdivision for the fiscal year in which the state of emergency  
162 occurs; and

163 (ii) receive and disburse the amount of the loan to the political subdivision;

164 (l) accept funds from the federal government and make grants to any political  
165 subdivision for the purpose of removing debris or wreckage from publicly owned land or  
166 water;

167 (m) subject to Section 53-2a-217, upon determination that financial assistance is  
168 essential to meet expenses related to a state of emergency of individuals or families adversely  
169 affected by the state of emergency that cannot be sufficiently met from other means of  
170 assistance, apply for, accept, and expend a grant by the federal government to fund the financial  
171 assistance, subject to the terms and conditions imposed upon the grant;

172 (n) recommend to the Legislature other actions the governor considers to be necessary  
173 to address a state of emergency; or

174 (o) authorize the use of all water sources as necessary for fire suppression.

175 (2) A person who fraudulently or willfully makes a misstatement of fact in connection  
176 with an application for financial assistance under this section shall, upon conviction of each  
177 offense, be subject to a fine of not more than \$5,000 or imprisonment for not more than one  
178 year, or both.

179 Section 3. Section 53-2a-205 is amended to read:

180 **53-2a-205. Authority of chief executive officers of political subdivisions --**  
181 **Ordering of evacuations.**

182 (1) (a) In order to protect life and property when a state of emergency or local

183 emergency has been declared, subject to limitation by the Legislature as described in  
184 Subsection 53-2a-206(6), or the legislative body of a political subdivision as described in  
185 Subsection 53-2a-208(5), the chief executive officer of each political subdivision of the state is  
186 authorized to:

187 (i) carry out, in the chief executive officer's jurisdiction, the measures as may be  
188 ordered by the governor under this part; and

189 (ii) take any additional measures the chief executive officer may consider necessary,  
190 subject to the limitations and provisions of this part.

191 (b) The chief executive officer may not take an action that is inconsistent with any  
192 order, rule, regulation, or action of the governor.

193 (2) When a state of emergency or local emergency is declared, subject to limitation by  
194 the Legislature as described in Subsection 53-2a-206(6), or the legislative body of a political  
195 subdivision as described in Subsection 53-2a-208(5), the authority of the chief executive  
196 officer includes:

197 (a) utilizing all available resources of the political subdivision as reasonably necessary  
198 to manage a state of emergency or local emergency;

199 (b) employing measures and giving direction to local officers and agencies which are  
200 reasonable and necessary for the purpose of securing compliance with the provisions of this  
201 part and with orders, rules, and regulations made under this part;

202 (c) if necessary for the preservation of life, issuing an order for the evacuation of all or  
203 part of the population from any stricken or threatened area within the political subdivision;

204 (d) recommending routes, modes of transportation, and destinations in relation to an  
205 evacuation;

206 (e) suspending or limiting the sale, dispensing, or transportation of alcoholic beverages,  
207 explosives, and combustibles in relation to an evacuation, except that the chief executive  
208 officer may not restrict the lawful bearing of arms;

209 (f) controlling ingress and egress to and from a disaster area, controlling the movement  
210 of persons within a disaster area, and ordering the occupancy or evacuation of premises in a  
211 disaster area;

212 (g) clearing or removing debris or wreckage that may threaten public health, public  
213 safety, or private property from publicly or privately owned land or waters, except that where

214 there is no immediate threat to public health or safety, the chief executive officer shall not  
215 exercise this authority in relation to privately owned land or waters unless:

216 (i) the owner authorizes the employees of designated local agencies to enter upon the  
217 private land or waters to perform any tasks necessary for the removal or clearance; and

218 (ii) the owner provides an unconditional authorization for removal of the debris or  
219 wreckage and agrees to indemnify the local and state government against any claim arising  
220 from the removal; and

221 (h) invoking the provisions of any mutual aid agreement entered into by the political  
222 subdivision.

223 (3) (a) If the chief executive is unavailable to issue an order for evacuation under  
224 Subsection (2)(c), the chief law enforcement officer having jurisdiction for the area may issue  
225 an urgent order for evacuation, for a period not to exceed 36 hours, if the order is necessary for  
226 the preservation of life.

227 (b) The chief executive officer may ratify, modify, or revoke the chief law enforcement  
228 officer's order.

229 (4) Notice of an order or the ratification, modification, or revocation of an order issued  
230 under this section shall be:

231 (a) given to the persons within the jurisdiction by the most effective and reasonable  
232 means available; and

233 (b) filed in accordance with Subsection 53-2a-209(1).

234 Section 4. Section 53-2a-206 is amended to read:

235 **53-2a-206. State of emergency -- Declaration -- Termination -- Commander in**  
236 **chief of military forces.**

237 (1) A state of emergency may be declared by executive order of the governor if the  
238 governor finds a disaster has occurred or the occurrence or threat of a disaster is imminent in  
239 any area of the state in which state government assistance is required to supplement the  
240 response and recovery efforts of the affected political subdivision or political subdivisions.

241 (2) A state of emergency shall continue until the governor finds the threat or danger has  
242 passed or the disaster reduced to the extent that emergency conditions no longer exist.

243 (3) (a) A state of emergency may not continue for longer than 30 days unless extended  
244 by joint resolution of the Legislature, which may also terminate a state of emergency by joint



245 resolution at any time.

246 (b) If the Legislature does not extend a state of emergency as described in Subsection  
 247 (3)(a), or if the Legislature terminates a state of emergency as described in Subsection (3)(a),  
 248 the governor may not declare another state of emergency in response to the same disaster or  
 249 occurrence.

250 (4) The governor shall issue an executive order ending the state of emergency on  
 251 receipt of the Legislature's resolution.

252 (5) An executive order described in this section shall state:

253 (a) the nature of the state of emergency;

254 (b) the area or areas threatened; and

255 (c) the conditions creating such an emergency or those conditions allowing termination  
 256 of the state of emergency.

257 (6) (a) For any emergency declared as described in this section, the Legislature may, by  
 258 joint resolution, limit, restrict, or revoke certain emergency powers of:

259 (i) the division as described in Section [53-2a-104](#);

260 (ii) the governor as described in Section [53-2a-204](#);

261 (iii) a chief executive officer of a political subdivision as described in Section  
 262 [53-2a-205](#); or

263 (iv) other executive emergency powers described in this chapter.

264 (b) If the Legislature limits emergency powers as described in Subsection (6)(a), the  
 265 Legislature shall clearly enumerate and describe in the joint resolution which powers:

266 (i) are being limited, restricted, or revoked; or

267 (ii) shall remain in force.

268 [~~6~~] (7) During the continuance of any state of emergency the governor is commander  
 269 in chief of the military forces of the state in accordance with Utah Constitution Article VII,  
 270 Section 4, and Title 39, Chapter 1, State Militia.

271 Section 5. Section **53-2a-208** is amended to read:

272 **53-2a-208. Local emergency -- Declarations.**

273 (1) (a) A local emergency may be declared by proclamation of the chief executive  
 274 officer of a municipality or county.

275 (b) A local emergency shall not be continued or renewed for a period in excess of 30

276 days except by or with the consent of the governing body of the municipality or county.

277 (c) Any order or proclamation declaring, continuing, or terminating a local emergency  
278 shall be filed promptly with the office of the clerk of the affected municipality or county.

279 (2) A declaration of a local emergency:

280 (a) constitutes an official recognition that a disaster situation exists within the affected  
281 municipality or county;

282 (b) provides a legal basis for requesting and obtaining mutual aid or disaster assistance  
283 from other political subdivisions or from the state or federal government;

284 (c) activates the response and recovery aspects of any and all applicable local disaster  
285 emergency plans; and

286 (d) authorizes the furnishing of aid and assistance in relation to the proclamation.

287 (3) A local emergency proclamation issued under this section shall state:

288 (a) the nature of the local emergency;

289 (b) the area or areas that are affected or threatened; and

290 (c) the conditions which caused the emergency.

291 (4) The emergency declaration process within the state shall be as follows:

292 (a) a city, town, or metro township shall declare to the county;

293 (b) a county shall declare to the state;

294 (c) the state shall declare to the federal government; and

295 (d) a tribe, as defined in Section 23-13-12.5, shall declare as determined under the

296 Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. Sec. 5121 et seq.

297 (5) (a) For a local emergency declared by a chief executive officer of a political  
298 subdivision as described in this chapter, the legislative body of the political subdivision may,  
299 by resolution, limit, restrict, or revoke certain emergency powers described in Section  
300 53-2a-205.

301 (b) If the legislative body of a political subdivision limits emergency powers as  
302 described in Subsection (5)(a), the legislative body shall clearly enumerate and describe in the  
303 resolution which powers:

304 (i) are being limited, restricted, or revoked; or

305 (ii) shall remain in force.

306 (6) If a local legislative body does not extend a state of emergency as described in

307 Subsection (1)(b), or if the local legislative body terminates a state of emergency as described  
308 in Subsection (1)(c), the chief executive officer may not declare another state of emergency in  
309 response to the same disaster or occurrence.

310 [~~5~~] (7) Nothing in this [part] section affects:

311 (a) the governor's authority to declare a state of emergency under Section 53-2a-206; or

312 (b) the duties, requests, reimbursements, or other actions taken by a political  
313 subdivision participating in the state-wide mutual aid system pursuant to Title 53, Chapter 2a,  
314 Part 3, Statewide Mutual Aid Act.

315 Section 6. **Effective date.**

316 If approved by two-thirds of all the members elected to each house, this bill takes effect  
317 upon approval by the governor, or the day following the constitutional time limit of Utah

318 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,

319 the date of veto override.