

IN THE SENATE

SENATE BILL NO. 1338

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

1 RELATING TO ABATEMENT OF PUBLIC NUISANCES; AMENDING CHAPTER 8, TITLE 31,
2 IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 31-831 THROUGH 31-834, IDAHO
3 CODE, TO DEFINE TERMS, TO PROVIDE FOR DECLARATION OF A CATASTROPHIC PUB-
4 LIC NUISANCE AND TO PROVIDE AUTHORITY TO DECLARE AND DEMAND ABATEMENT,
5 TO PROVIDE FOR EMERGENCY ABATEMENT OF A CATASTROPHIC PUBLIC NUISANCE
6 AND TO PROVIDE FOR LIMITATIONS.
7

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Chapter 8, Title 31, Idaho Code, be, and the same is
10 hereby amended by the addition thereto of NEW SECTIONS, to be known and des-
11 ignated as Sections 31-831 through 31-834, Idaho Code, and to read as fol-
12 lows:

13 31-831. ABATEMENT OF CATASTROPHIC PUBLIC NUISANCE -- DEFINITIONS. As
14 used in sections 31-831 through 31-834, Idaho Code:

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

18 (a) The threat of a catastrophic wildfire demonstrated by stand den-
19 sity, basal area or ground fuel load greater than one hundred fifty per-
20 cent (150%) of land health standards or an insect or disease infestation
21 severe enough to threaten the mortality of at least twenty percent (20%)
22 of the trees in the forestation area; or

23 (b) A condition in the area that threatens the quality or quantity of
24 the public water supply of a county, the health, safety or welfare of
25 the citizens of a county, the air quality of a nonattainment area, or
26 the vegetative resources required to support land health and authorized
27 livestock grazing.

28 (2) "Chief executive officer" means for a county, the chair of the
29 county commission, if the county is operating under the county commission
30 or expanded county commission form of government; the county executive
31 officer, if the county is operating under the county-executive form of
32 government; or the county manager, if the county is operating under the coun-
33 cil-manager form of government.

34 (3) "County sheriff" means an individual elected to the office of
35 county sheriff and who fulfills the duties described in section 31-2202,
36 Idaho Code.

37 (4) "Federal agency" means the United States bureau of land management,
38 the United States forest service, the United States fish and wildlife ser-
39 vice or the national park service.

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

1 31-832. DECLARATION OF CATASTROPHIC PUBLIC NUISANCE -- AUTHORITY TO
2 DECLARE AND DEMAND ABATEMENT. (1) The chief executive officer of a county or
3 the county sheriff may determine that a catastrophic public nuisance exists
4 on land within the borders of the county.

5 (2) In evaluating whether a catastrophic public nuisance exists, the
6 chief executive officer of a county or a county sheriff may consider: tree
7 density and overall health of a forested area, including the fire regime con-
8 dition class; insect and disease infestation, including insect and disease
9 hazard ratings; fuel loads; forest or range type; slope and other natural
10 characteristics of an area; watershed protection criteria; weather and cli-
11 mate; and any other factor that the chief executive officer of a county or a
12 county sheriff considers to be relevant under the circumstances.

13 (3) The chief executive officer of a county or a county sheriff shall
14 after consultation with the attorney general:

15 (a) Serve notice of the determination described in subsection (1) of
16 this section, by hand or certified mail, on the federal agency that man-
17 aged the land upon which the catastrophic nuisance exists; and

18 (b) Provide a copy of the determination that is served under paragraph
19 (a) of this subsection to the governor, the attorney general, and the
20 state's congressional delegation.

21 (4) The notice described in subsection (3) (a) of this section shall in-
22 clude: a detailed explanation for determination that a catastrophic pub-
23 lic nuisance exists on the land in question; a demand that the federal agency
24 formulate a plan to abate the catastrophic nuisance; and a specific date, no
25 less than thirty (30) days after the day on which the notice is received, by
26 which time the federal agency that managed the land shall abate the public
27 nuisance or produce a plan for mitigating the catastrophic public nuisance
28 that is acceptable to the county or other county.

29 (5) The chief executive officer of a county or a county sheriff may en-
30 ter into a plan with the relevant federal agency to abate the catastrophic
31 public nuisance.

32 (6) If, after receiving the notice described in subsections (3) (a)
33 and (4) of this section, the federal agency does not respond by the date
34 requested in the notice or otherwise indicates that the federal agency is
35 unwilling to take action to abate the catastrophic public nuisance, the
36 chief executive officer of a county or a county sheriff shall consult with
37 the county prosecuting attorney and attorney general.

38 31-833. EMERGENCY ABATEMENT OF A CATASTROPHIC PUBLIC NUISANCE. (1) If
39 a chief executive officer of a county or a county sheriff determines that a
40 public nuisance exists on federally managed land, and the chief executive
41 officer of a county or the county sheriff also finds that the catastrophic
42 public nuisance in question adversely affects, or constitutes a threat to,
43 the public health, safety, and welfare of the people of the county, the chief
44 executive officer of the county or the county sheriff may, after consulting
45 with the attorney general, pursue all remedies allowed by law.

46 (2) In seeking an emergency abatement of a catastrophic public nui-
47 sance, a chief executive officer of a county or a county sheriff shall
48 attempt, as much as possible, to coordinate with federal agencies and seek

1 the advice of professionals, including private sector professionals, with
2 expertise in abating a catastrophic public nuisance.

3 31-834. LIMITATIONS. Nothing in this act shall limit the authority of
4 the state to manage and protect wildlife under title 36, Idaho Code, or the
5 power of a county.