

HB0261S03 compared with HB0261S02

~~text~~ shows text that was in HB0261S02 but was deleted in HB0261S03.

text shows text that was not in HB0261S02 but was inserted into HB0261S03.

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Senator Evan J. Vickers proposes the following substitute bill:

FIRE RELATED AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Casey Snider

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill addresses efforts to prevent and prepare for fires. ~~text~~

Highlighted Provisions:

This bill:

- ▶ addresses prescribed fires, pile burns, and nonfull suppression events on private land;
- ▶ provides for transfers to the Wildland-urban Interface Prevention, Preparedness, and Mitigation Fund;
- ▶ modifies procedures related to closed fire seasons;
- ▶ addresses when burning is allowed, including addressing when permits are required, notice requirements, criminal penalties, and liability;
- ▶ addresses the Wildland Fire Suppression Fund;

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- ▶ enacts provisions related to wildland-urban interface fire prevention, preparedness, and mitigation including:
 - defining terms;
 - creating a funding mechanism;
 - permitting the division to create criteria related to a community wildfire preparedness plan; and
 - requiring actions related to a community wildfire preparedness plan; ~~and~~

~~• requiring studies by the division;~~

- ▶ addresses rulemaking by the division;
- ▶ repeals outdated language; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2024:

- ▶ to the Wildland-urban Interface Prevention, Preparedness, and Mitigation Fund, as a one-time appropriation:
 - from the Mineral Bonus Account, One-time, \$2,000,000.

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-2a-105, as renumbered and amended by Laws of Utah 2020, Chapter 57

63I-2-265, as last amended by Laws of Utah 2022, Chapter 219

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

65A-8-204, as last amended by Laws of Utah 2021, Chapter 97

65A-8-211, as last amended by Laws of Utah 2016, Chapter 174

65A-8-213, as enacted by Laws of Utah 2019, Chapter 118

ENACTS:

65A-8-215, Utah Code Annotated 1953

REPEALS:

65A-8-214, as enacted by Laws of Utah 2022, Chapter 219

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

Section 1. Section **19-2a-105** is amended to read:

19-2a-105. Prescribed fires, pile burns, and nonfull suppression events.

(1) As used in this section:

(a) "Board" means the Air Quality Board.

(b) "Burn plan" means the plan required for each fire application ignited by a land manager.

(c) "Burn window" means the period of time during which the prescribed fire is scheduled for ignition.

(d) "Director" means the director of the division.

(e) "Division" means the Division of Air Quality created in Section 19-1-105.

(f) "Exceptional event" means one or more prescribed burning or pile burning events and the resulting emissions that affect air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation.

(g) "Land manager" means a person who administers, directs, oversees, or controls the use of public or private land, including the application of fire to the land.

(h) "Large prescribed fire" means a fire that a land manager ignites to meet a specific objective, including a resource benefit that covers 20 acres or more per burn.

(i) "Large prescribed pile fire" means a fire that a land manager ignites to meet a specific objective, including a resource benefit, that exceeds 30,000 cubic feet per day.

(j) "Nonfull suppression event" means a naturally ignited wildland fire for which a land manager secures less than full suppression to accomplish a specific prestated resource management objective in a predefined geographic area.

(k) "Pile burning" means a fire or fires that a land manager ignites for fuel mitigation designed to reduce the risk of catastrophic fire, improve ecological health, and prevent dangerous wildfires by burning piled or scattered leaves, pine needles, downed trees, natural woody debris, thick vegetation, or similar organic material left behind after logging or other forest treatments.

(l) "Prescribed burning" means the planned and controlled burning of plant material in order to minimize the risk of catastrophic wildfire or to meet specific land management objectives.

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(m) "Wildland" means an area in which development is essentially nonexistent other than the existence of a pipeline, power line, road, railroad, or other transportation or conveyance facility or one or more structures that are widely scattered.

(2) (a) The division may not permit a land manager to conduct a large prescribed fire or large prescribed pile fire if the land manager does not comply with the rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) In the rules made by the board under this Subsection (2), the board shall require the land manager to:

(i) describe the use of a state, county, or municipal resource in the large prescribed fire or large prescribed pile fire;

(ii) provide the division the burn plan for a large prescribed fire or large prescribed pile fire by no later than one week before the day of the burn window; and

(iii) notify the division of a nonfull suppression event once a fire becomes a nonfull suppression event.

(3) The director shall approve a prescribed burning or pile burning in wildland areas and the prescribed burning or pile burning may be conducted under the following conditions:

(a) the United States National Weather Service clearing index in the area of the burn is 500 or greater;

(b) the United States National Weather Service clearing index in the area of the burn is less than 500, and to maximize the opportunities for prescribed burning or pile burning the director approves a prescribed burning or pile burning after the land manager demonstrates to the director that the planned prescribed burning or pile burning will:

(i) not cause an exceedance of a national ambient air quality standard outside the wildland area;

(ii) minimize the long range transport of smoke; and

(iii) protect visibility in mandatory federal class 1 areas; or

(c) the United States National Weather Service clearing index in the burn area is less than 500 and the prescribed burning or pile burning may cause an exceedance of a national ambient air quality standard outside the wildland area if the land manager demonstrates to the director that the prescribed burning or pile burning fuel conditions are optimal to:

(i) protect safety of the public and fire staff;

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- (ii) minimize the risk of catastrophic fire;
- (iii) achieve necessary watershed and ecological conditions; and
- (iv) establish, restore, or maintain a sustainable and resilient wildland ecosystem or to preserve endangered or threatened species through a program of prescribed burning or pile burning.

(4) The director shall approve a prescribed burning or pile burning to reduce hazardous fuels for public safety in areas not defined as wildland and the prescribed burning or pile burning may be conducted under the following conditions:

- (a) the United States National Weather Service clearing index in the area of the burn is 500 or greater; or

- (b) the United States National Weather Service clearing index in the area of the burn is less than 500, and to maximize the opportunities for prescribed burning or pile burning the director approves a prescribed burning or pile burning after the land manager:

- (i) provides a demonstration that includes an assessment of the impact to local receptors;

- (ii) implements measures to notify residents; and

- (iii) minimizes residents exposure to smoke.

(5) The director shall approve a prescribed burning or pile burning for resource management purposes in areas not defined as wildland and the prescribed burning or pile burning may be conducted under the following conditions:

- (a) the United States National Weather Service clearing index in the area of the burn is 500 or greater; or

- (b) the United States National Weather Service clearing index in the area of the burn is less than 500, and to maximize the opportunities for prescribed burning or pile burning the director approves a prescribed burning or pile burning after the land manager demonstrates that the planned prescribed burning or pile burning will:

- (i) not cause an exceedance of a national ambient air quality standard;

- (ii) minimize the long range transport of smoke; and

- (iii) protect visibility in mandatory federal class 1 areas.

(6) The division shall make the necessary filings with the United States Environmental Protection Agency if a prescribed burning or pile burning approved by the director results in an

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exceptional event.

Section 2. Section **63I-2-265** is amended to read:

63I-2-265. Repeal dates: Title 65A.

~~[Section 65A-8-214, wildfire prevention and preparedness program and study, is repealed July 1, 2023.]~~

Section 3. 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 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) and~~

(b) if no money is transferred to the Wildland Fire Suppression Fund under Subsection (2)(a), to the Wildland-urban Interface Prevention, Preparedness, and Mitigation Fund created in Section 65A-8-215 an amount equal to the lesser of:

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

(ii) the amount necessary to make the balance in the Wildland-urban Interface Prevention, Preparedness, and Mitigation Fund equal to \$12,000,000; and

[(b)] (c) 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

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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)]~~ (2)(c)(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)]~~ (2)(c)(ii) an amount equal to the lesser of:

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

(B) the amount necessary to replace, in accordance with this Subsection ~~[(2)(b)(iii)]~~ (2)(c)(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)]~~ (2)(c)(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 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)]~~ (2)(c)(ii); and

(b) on and after July 1, 2020, the Division of Finance shall transfer to the Local

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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)]~~ [(2)(c)].

Section ~~{3}~~4. Section **65A-8-204** is amended to read:

65A-8-204. Wildland Fire Suppression Fund created.

(1) There is created an expendable special revenue fund known as the "Wildland Fire Suppression Fund."

(2) The ~~[fund]~~ Wildland Fire Suppression Fund shall be administered by the division to pay wildfire suppression costs on eligible lands, as wildfire suppression costs are defined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including for an eligible entity that has entered into a cooperative agreement, as described in Section 65A-8-203.

(3) Subject to Section 65A-8-213, the contents of the ~~[fund]~~ Wildland Fire Suppression Fund shall include:

~~{f}~~(a) interest and earnings from the investment of fund money; ~~{f}~~

~~{f}~~(b) ~~{f(a)}~~ money appropriated by the Legislature;

~~{c}~~ ~~costs recovered from successful investigations;~~

~~{d}~~ ~~{b}~~c federal funds received by the division for wildfire management costs;

~~{e}~~ ~~{c}~~d suppression costs billed to an eligible entity that does not participate in a cooperative agreement;

~~{f}~~ ~~{d}~~e suppression costs paid to the division by another state agency;

~~{g}~~ ~~{e}~~f costs recovered from settlements and civil or administrative actions related to wildfire suppression;

~~{h}~~ ~~{f}~~g restitution payments ordered by a court following a criminal adjudication;

~~{i}~~ ~~{g}~~h the balance of the fund as of July 1, 2016;

~~{j}~~ ~~{h}~~i money deposited by the Division of Finance, pursuant to Section 59-21-2;

and

~~{k}~~ ~~{i}~~j money transferred by the Division of Finance, pursuant to Section

63J-1-314.

(4) Fund money shall be invested by the state treasurer with the earnings and interest accruing to the ~~[fund]~~ Wildland-urban Interface Prevention, Preparedness, and Mitigation Fund created in Section 65A-8-215.

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~~(5) The Division of Finance shall transfer to the Wildland-urban Interface Prevention, Preparedness, and Mitigation Fund an amount equal to the lesser of:~~

~~(a) 10% of the amount in the Wildland Fire Suppression Fund at the end of a fiscal year; or~~

~~(b) the amount in excess of \$12,000,000 in the Wildland Fire Suppression Fund at the end of a fiscal year.~~

~~Section 4}.~~

Section 5. Section 65A-8-211 is amended to read:

65A-8-211. Closed fire season -- Notice -- Violations -- Red Flag Warnings -- Burning permits -- Personal liability -- Exemptions from burning permits.

~~1~~(1) As used in this section:

(a) "Applicable public safety answering point" means a public safety answering point or dispatch center, as those terms are defined in Section 63H-7a-103, for the jurisdiction where a burning occurs.

(b) "Cultivated land" means land that is not enrolled in a conservation reserve program that is readily identifiable as:

(i) land whose soil is loosened or broken up for the raising of crops;

(ii) land used for the raising of crops; or

(iii) pasturage that is artificially irrigated.

(c) "Field" means land where grass, grain, stubble, or hay may be burned in accordance with this section.

(d) "Red Flag Warning" means a weather forecast issued by the National Weather Service on a publicly available website or notification system indicating that weather conditions associated with the outbreak of wildfires are occurring.

~~(1)~~ (2) (a) The period from June 1 to October 31 of each year is a closed fire season throughout the state.

(b) The state forester may advance or extend the closed season wherever and whenever that action is necessary.

(c) ~~The~~ The state forester shall notify the public of the alteration of the closed season ~~[is done]~~ by posting the appropriate proclamation ~~[in the courthouse of each county seat]~~ on the division's website and on the Utah Public Notice Website, created in Section 63A-16-601, for

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at least seven days in advance of the date the change is effective.

~~[(2)]~~ (3) During the closed fire season ~~[it is]~~, an individual is guilty of a class ~~[B]~~ C misdemeanor ~~[to set]~~ if the individual sets on fire, or ~~[cause]~~ causes to be set on fire~~[, any flammable material on any]~~:

(a) (i) a forest;

(ii) brush;

(iii) range~~[, grass, grain, stubble, or hay land]~~;

(iv) a field;

(v) cultivated land; or

(vi) a debris pile; and

(b) without:

~~[(a)]~~ (i) first securing a written permit from the state forester or a ~~[designated]~~ deputy designated by the state forester; ~~[and]~~

~~[(b)]~~ (ii) complying fully with ~~[the terms and conditions prescribed by]~~ the permit~~[.]~~ described in Subsection (3)(b)(i); and

(iii) subject to Subsection (10), first notifying the state forester, the state forester's designee, or the applicable public safety answering point of the approximate time the burning will occur.

(4) During a period when a Red Flag Warning is issued, an individual is guilty of a class C misdemeanor if the individual sets on fire, or causes to be set on fire:

(a) (i) a forest;

(ii) brush;

(iii) range;

(iv) a field;

(v) cultivated land;

(vi) a fence line;

(vii) a canal; or

(viii) an irrigation ditch; and

(b) without:

(i) first securing a written permit from the state forester or a deputy designated by the state forester;

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(ii) complying fully with the permit described in Subsection (4)(b)(i); and

(iii) subject to Subsection (10), first notifying the state forester, the state forester's designee, or the applicable public safety answering point of the approximate time the burning will occur.

~~[(3)] (5) [The county fire warden, or the county sheriff in a county that has not entered into a cooperative agreement as described in Section 65A-8-203,]~~ The state forester or the state forester's designee shall issue burning permits using the form prescribed by the division.

~~[(4)] (6) (a)~~ The burning permit does not relieve an individual from personal liability [due to neglect or incompetence] as a result of damage caused by the fire.

(b) A fire escaping control of the permittee that necessitates fire control action or does injury to the property of another is prima facie evidence that due care was not used in the burning and that the fire was not safe.

~~[(5)] (7) [The state forester, the state forester's designees, and the county sheriffs]~~ The following may refuse, revoke, postpone, or cancel [permits when they find it] ~~{ }~~ a permit if the person finds that it is necessary in the interest of public safety[-]:

(a) the state forester;

(b) a state forester's designee; or

(c) a county sheriff if there is no cooperative agreement with the division as described in Section 65A-8-203.

~~[(6)] (8) (a) [A]~~ Except for during a Red Flag Warning as described in Subsection (4)(a), a burning permit is not required:

(i) for the burning within 10 feet of:

(A) fence lines on cultivated lands[-];

(B) the banks of canals[-]; or

(C) the banks of irrigation ditches; and

(ii) if:

~~[(i)]~~ (A) the burning does not pose a threat to forest, range, or watershed lands;

~~[(ii)]~~ (B) due care is used in the control of the burning; and

~~[(iii)]~~ (C) [the individual notifies the nearest fire department of the approximate time the burning will occur] subject to Subsection (10), the individual notifies the state forester, the state forester's designee, or the applicable public safety answering point of the approximate

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time the burning will occur.

(b) [~~Failure~~] For a burning with or without a permit, an individual is guilty of a class C misdemeanor if the individual fails to notify, subject to Subsection (10), the [nearest fire department] state forester, the state forester's designee, or the applicable safety answering point of [the] a burning as required by this section [is a class B misdemeanor].

[~~(7)~~] (9) A burning conducted in accordance with Subsection [~~(6)~~] (8) is not a reckless burning under Section 76-6-104 unless the fire escapes control and requires fire control action.

(10) (a) The state forester or state forester's designee shall annually determine the notification process for a jurisdiction after receiving approval from the following for the ~~fjursidiction~~ jurisdiction:

- (i) the applicable municipal chief, county fire warden, or state forester's designee; and
- (ii) the governing body of the one or more applicable public safety answering points.

(b) On June 1 of each year, beginning with June 1, 2023, the state forester or state forester's designee shall publish for each jurisdiction the notification process adopted under Subsection (10)(a) on the division's website and on the Utah Public Notice Website created in Section 63A-16-601.

(c) If the state forester or state forester's designee cannot determine the notification process for a jurisdiction, a person is required to notify the applicable public safety answering point.

Section ~~(5)~~6. Section 65A-8-213 is amended to read:

65A-8-213. Creation of the Wildland Fire Preparedness Grants Fund --

Awarding of grants -- Rulemaking.

(1) (a) There is created an expendable special revenue fund known as the "Wildland Fire Preparedness Grants Fund."

(b) The Wildland Fire Preparedness Grants Fund shall consist of:

- (i) voluntary contributions received;
- (ii) appropriations the Legislature makes to the Wildland Fire Preparedness Grants

Fund;

(iii) 10% of the costs recovered annually related to wildfire suppression described in Subsections [~~65A-8-204(3)(g) and (h)~~] 65A-8-204(3)(~~(c)~~f) and (~~(f)~~g); and

- (iv) interest or other earnings accrued in accordance with Subsection (1)(c)(ii).

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(c) The state treasurer shall:

(i) invest the money in the Wildland Fire Preparedness Grants Fund described in Subsection (1)(a) following the procedures and requirements of Title 51, Chapter 7, State Money Management Act; and

(ii) deposit all interest or other earnings derived from each investment described in Subsection (1)(c)(i) into the Wildland Fire Preparedness Grants Fund.

(2) (a) The state forester shall make one or more grants from the Wildland Fire Preparedness Grants Fund to one or more local fire departments or volunteer fire departments to assist in building capacity for the suppression of wildland fire.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules establishing criteria for receiving a grant under this section.

Section ~~63~~7. Section **65A-8-215** is enacted to read:

65A-8-215. Wildland-urban interface fire prevention, preparedness, and mitigation.

(1) As used in this section:

(a) "Prevention, preparedness, and mitigation fund" means the Wildland-urban Interface Prevention, Preparedness, and Mitigation Fund created in this section.

(b) "Suppression fund" means the Wildland Fire Suppression Fund created in Section 65A-8-204.

(c) "Wildland-urban interface" means the zone where structures and other human development meets, or intermingles with, undeveloped wildland.

(2) (a) There is created an expendable special revenue fund known as the "Wildland-urban Interface Prevention, Preparedness, and Mitigation Fund."

(b) The prevention, preparedness, and mitigation fund shall consist of:

(i) interest and earnings from the investment of money from ~~this~~the prevention, preparedness, and mitigation ~~fund and from the suppression~~ fund;

(ii) money appropriated by the Legislature; and

(iii) money transferred ~~from~~to the ~~suppression~~prevention, preparedness, and mitigation fund under ~~Subsection 65A-8-204(5)~~Section 63J-1-314.

(c) The division shall administer the prevention, preparedness, and mitigation fund to:

(i) pay costs of prevention and preparedness efforts on wildland-urban interface within

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the state, as defined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including costs of an eligible entity that has entered into a cooperative agreement, as described in Section 65A-8-203;

(ii) issue fire department assistance grants, which in the aggregate may not exceed 10% of the money in the prevention, preparedness, and mitigation fund each fiscal year; and

(iii) in cases of catastrophic need as determined by the state forester, pay costs that could be paid from the suppression fund under Section 65A-8-204.

(d) Disbursements from the prevention, preparedness, and mitigation fund may only be made upon written order of the state forester or the state forester's authorized representative.

(3) (a) The division may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish criteria for community wildfire preparedness plans addressing wildland-urban interface. The criteria shall require action that is:

(i) qualitative and quantitative; and

(ii) leads to reduced wildfire risk.

(b) An eligible entity, as defined in Section 65A-8-203, shall agree to implement prevention, preparedness, and mitigation actions identified in a community wildfire preparedness plan addressing wildland-urban interface that is approved by the division.

Section ~~7~~8. Repealer.

This bill repeals:

Section 65A-8-214, Wildfire prevention and preparedness program -- Study.

Section ~~8~~9. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2023, and ending June 30, 2024. These are additions to amounts previously appropriated for fiscal year 2024. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To Wildland-urban Interface Prevention, Preparedness, and Mitigation Fund

From Mineral Bonus Account, One-time 2,000,000

Schedule of Programs:

Wildland-urban Interface Prevention, Preparedness, and

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Mitigation Fund

2,000,000