

SB0277S01 compared with SB0277

~~text~~ shows text that was in SB0277 but was deleted in SB0277S01.

text shows text that was not in SB0277 but was inserted into SB0277S01.

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Senator Scott D. Sandall proposes the following substitute bill:

WATER CONSERVATION AND AUGMENTATION

AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. Sandall

House Sponsor: ~~_____~~ Casey Snider

LONG TITLE

General Description:

This bill addresses the optimal use of water in the state.

Highlighted Provisions:

This bill:

- ▶ modifies the purposes for which money in the Water Infrastructure Restricted Account may be used;
- ▶ provides for transfer of certain loan payments from the Water Resources Conservation and Development Fund to the Water Infrastructure Restricted Account;
- ▶ codifies a grant program for agricultural water optimization, including:

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- defining terms;
- creating the Agricultural Water Optimization Committee;
- providing powers and duties of the committee which includes rulemaking;
- directing the process by which grants are to be issued; and
- providing a sunset date;
- ▶ provides for public information and reporting regarding the grant program;
- ▶ addresses agricultural water optimization change applications and water savings;
- ▶ repeals provisions related to the Agricultural Water Optimization Task Force; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2024:

- ▶ to General Fund Restricted – Agricultural Water Optimization Account, as a one-time appropriation:
 - from General Fund, One-time, ~~(\$200,000,000)~~ and ~~\$170,000,000~~;
 - ▶ to General Fund Restricted – Agricultural Water Optimization Account, as a one-time appropriation:
 - from Federal Funds - American Rescue Plan, One-time, \$30,000,000;
- ▶ to Department of Agriculture and Food – Resource Conservation, as a one-time appropriation:
 - from Agricultural Water Optimization Account, One-time, \$125,000,000~~(\$125,000,000)~~ and
 - ▶ to Department of Natural Resources – Water Resources Conservation and Development Fund, as an ongoing appropriation:
 - from General Fund Restricted – Water Infrastructure Restricted Account, \$50,000,000.

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

63I-1-273, as last amended by Laws of Utah 2022, Chapters 68, 79

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73-10-25, as last amended by Laws of Utah 1991, First Special Session, Chapter 4

73-10g-103, as enacted by Laws of Utah 2015, Chapter 458

73-10g-104, as last amended by Laws of Utah 2016, Chapter 309

73-10g-204, as last amended by Laws of Utah 2022, Chapter 79

ENACTS:

73-10g-203.5, Utah Code Annotated 1953

73-10g-205, Utah Code Annotated 1953

73-10g-206, Utah Code Annotated 1953

73-10g-207, Utah Code Annotated 1953

73-10g-208, Utah Code Annotated 1953

REPEALS:

73-10g-202, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 4

73-10g-203, as last amended by Laws of Utah 2020, Chapter 33

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

Section 1. Section **63I-1-273** is amended to read:

63I-1-273. Repeal dates: Title 73.

(1) Title 73, Chapter 27, Legislative Water Development Commission, is repealed January 1, 2031.

(2) Title 73, Chapter 10g, Part 2, Agricultural Water Optimization, is repealed July 1, 2028.

~~[(2) In relation to Title 73, Chapter 10g, Part 2, Agricultural Water Optimization, on July 1, 2025:]~~

~~[(a) Section 73-10g-202 is repealed; and]~~

~~[(b) Section 73-10g-203 is repealed.]~~

(3) Section 73-18-3.5, which authorizes the Division of Outdoor Recreation to appoint an advisory council that includes in the advisory council's duties advising on boating policies, is repealed July 1, 2024.

(4) Title 73, Chapter 30, Great Salt Lake Advisory Council Act, is repealed July 1, 2027.

(5) In relation to Title 73, Chapter 31, Water Banking Act, on December 31, 2030:

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- (a) Subsection 73-1-4(2)(e)(xi) is repealed;
- (b) Subsection 73-10-4(1)(h) is repealed; and
- (c) Title 73, Chapter 31, Water Banking Act, is repealed.

Section 2. Section 73-10-25 is amended to read:

73-10-25. Contents of fund -- Investment -- Contributions.

(1) The Water Resources Conservation and Development Fund consists of:

- (a) money appropriated to it by the Legislature;
- (b) money received from the sale of project water and power, less operating and

maintenance costs;

(c) annual payments on contracts for projects constructed under Section 73-10-24 or the State Water Conservation Program; and

(d) other money or tax revenues designated by the Legislature to be credited to the Water Resources Conservation and Development Fund.

(2) ~~[All money]~~ Money deposited into the Water Resources Conservation and Development Fund shall be invested by the state treasurer with interest accruing to the Water Resources Conservation and Development Fund, except for payments, if any, necessary to comply with Section 148(f), Internal Revenue Code of 1986.

(3) ~~[Contributions]~~ A contribution of money, property, or equipment may be received from ~~[any]~~ a political subdivision of the state, federal agency, water users' association, or person ~~[, or corporation]~~ for use in carrying out the purposes of Section 73-10-24.

(4) Notwithstanding Subsection (1), the division shall transfer a payment on a loan to the Water Infrastructure Restricted Account, created in Section 73-10g-103, if the loan:

(a) is issued from the Water Resources Conservation and Development Fund on or after July 1, 2023; and

(b) relates to a project described in Subsection 73-10g-104(4).

Section 3. Section 73-10g-103 is amended to read:

73-10g-103. Creation of the Water Infrastructure Restricted Account.

(1) (a) There is created a restricted account in the General Fund known as the "Water Infrastructure Restricted Account."

(b) The restricted account shall earn interest.

(2) The restricted account consists of money generated from the following sources:

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(a) voluntary contributions made to the division for the construction, operation, or maintenance of state water projects;

(b) appropriations made to the [fund] restricted account by the Legislature; [and]

(c) interest earned on the restricted account~~[-]; and~~

(d) money transferred to the restricted account under Section 73-10-25.

(3) Subject to appropriation, the division and the board shall manage the restricted account created in Subsection (1) in accordance with this chapter.

Section ~~{2}~~4. Section **73-10g-104** is amended to read:

73-10g-104. Authorized use of the Water Infrastructure Restricted Account.

Money in the restricted account is to be used for:

(1) the development of the state's undeveloped share of the Bear and Colorado rivers, pursuant to existing interstate compacts governing both rivers as described in Chapter 26, Bear River Development Act, and Chapter 28, Lake Powell Pipeline Development Act;

(2) repair, replacement, or improvement of federal water projects for local sponsors in the state [of Utah] when federal funds are not available; [and]

(3) study and development of rules, criteria, targets, processes, and plans, as described in Subsection 73-10g-105(3)~~[-]; and~~

(4) ~~{projects}~~a project that ~~{benefit}~~benefits the Colorado River drainage in Utah, including projects for water reuse, desalinization, building of dams, or water conservation, if a county or municipality that benefits from the project:

(a) requires a new residential subdivision follow the regional conservation level of .59 acre-feet regardless of whether the outside water is potable, reuse, or secondary water;

(b) adopts and implements the local water conservancy district's emergency drought contingency plan;

(c) adopts and implements the local water conservancy district's grass rebate program's maximum grass restrictions;

(d) prohibits grass in new retail, industrial, or commercial facility landscaping;

(e) has reuse water be managed by the local water conservancy district;

(f) does not withdraw water from an aquifer in excess of the safe yield of the aquifer as defined in Section 73-5-15;

(g) adopts and implements excess water use surcharges;

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(h) prohibits private water features in new development, such as a fountain, pond, or ski lake; and

(i) prohibits large grassy areas in new development, unless the large grassy area is open to the general public.

Section ~~{3}~~5. Section 73-10g-203.5 is enacted to read:

73-10g-203.5. Definitions.

As used in this part:

(1) "Account" means the Agricultural Water Optimization Account created in Section 73-10g-204.

(2) "Agricultural water optimization" means the implementation of agricultural and water management practices that maintain viable agriculture while reducing water depletion to enhance water availability and minimize impacts on water supply, water quality, and the environment.

(3) "Change application" means an application filed under Section 73-3-3.

(4) "Committee" means the Agricultural Water Optimization Committee created in Section 73-10g-205.

(5) "Conservation commission" means the conservation commission created in Section 4-18-104.

(6) "Department" means the Department of Agriculture and Food.

(7) "Depletion reduction" means a net decrease in water consumed accomplished by implementing water optimization practices during beneficial use of water under an approved water right.

(8) "Diversion reduction" means a decrease in net diversion amount from that allowed under a water right accomplished by implementation of water optimization practices ~~{ from that allowed under a water right }~~.

(9) "Funding application" means an application filed under Section 73-10g-206.

(10) "Saved water" means the water quantified as depletion reduction or diversion reduction in a final order approving a change application filed in conjunction with an agricultural water optimization project.

Section ~~{4}~~6. Section 73-10g-204 is amended to read:

73-10g-204. Agricultural Water Optimization Account.

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

~~[(a) "Account" means the Agricultural Water Optimization Account created in Subsection (2).]~~

~~[(b) "Agricultural water optimization" means the implementation of agricultural and water management practices that maintain or increase viable agriculture while minimizing negative impacts on water supply, water quality, and the environment.]~~

~~[(c) "Department" means the Department of Agriculture and Food.]~~

~~[(2)] (1) There is created a restricted account within the General Fund called the "Agricultural Water Optimization Account."~~

~~[(3)] (2) The account consists of:~~

- ~~(a) appropriations from the Legislature;~~
- ~~(b) federal funds; and~~
- ~~(c) grants or donations from other public or private sources.~~

~~[(4)] (3) Subject to appropriation, the ~~[department]~~ conservation commission may use money in the account to issue grants in accordance with Section 73-10g-206 to improve agricultural water optimization.~~

~~[(5)] (4) Until December 31, 2024, the department may loan up to \$3,000,000 of General Fund money in the account to the Agriculture Resource Development Fund, subject to the conditions described in Section 4-18-106.~~

~~[(6)] (5) (a) The department shall maintain the ~~[Agriculture Water Optimization Account]~~ account and record ~~[all]~~ the debits and credits made to the account by the department.~~

~~(b) The Office of the Treasurer shall deposit interest and other earnings derived from investment of money in the ~~[Agriculture Water Optimization Account]~~ account into the account.~~

~~(6) The department and the Department of Natural Resources may use money in the account for the administration of this part, except that the aggregate amount expended under this Subsection (6) may not exceed 1.5% of the money in the account.~~

Section ~~{5}~~7. Section **73-10g-205** is enacted to read:

73-10g-205. Agricultural Water Optimization Committee.

(1) There is created in the department a committee known as the "Agricultural Water Optimization Committee" that consists of:

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(a) the commissioner of the department, or the commissioner's designee;

(b) the director of the division, or the director's designee;

(c) the director of the Division of Water Rights, or the director's designee;

(d) the dean of the College of Agriculture and Applied Science from Utah State University, or the dean's designee;

(e) one individual representing local conservation districts created by Title 17D, Chapter 3, Conservation District Act, appointed by the executive director of the Department of Natural Resources;

(f) one individual representing water conservancy districts, appointed by the executive director of the Department of Natural Resources; and

(g) three Utah residents representing the interests of the agriculture industry appointed by the executive director of the Department of Natural Resources.

(2) (a) An individual appointed under Subsection (1) shall serve for a term of four years.

(b) Notwithstanding the requirements of Subsection (2)(a), the executive director of the Department of Natural Resources shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of appointed members are staggered so that approximately half of the appointed members are appointed every two years.

(3) (a) The presence of five members constitutes a quorum.

(b) The vote of five members constitutes the transaction of business by the committee.

(c) The committee shall select one of the committee's members to be chair. The committee may select a member to be vice chair to act in place of the chair:

(i) during the absence or disability of the chair; or

(ii) as requested by the chair.

(d) The committee shall convene at the times and places prescribed by the chair.

(4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

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(5) The department shall provide administrative support to the committee.

(6) The committee shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing:

(a) eligibility requirements for a grant issued under Section 73-10g-206, except that the eligibility requirements shall:

(i) require at least a match for grant money of 50% of the total costs;

(ii) consider the statewide need to distribute grant money;

(iii) require a grant recipient to construct or install and maintain one or more measuring devices as necessary to comply with Section 73-5-4 and rules adopted by the Division of Water Rights regarding installation, use, and maintenance of devices to measure water use and to demonstrate water use in accordance with a project funded by a grant; and

(iv) require a grant recipient to report water diversion and use measurements to the state engineer pursuant to Section 73-5-4 and rules made by the state engineer, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for water measurement and reporting;

(b) the process for applying for a grant issued under Section 73-10g-206; and

(c) preliminary screening criteria to be used by the department under Subsection 73-10g-206(2)(d).

(7) The committee shall, in coordination with the division:

(a) as of July 1, 2023, assume oversight of all remaining research and contracts of the previous Agricultural Water Optimization Task Force activities;

(b) post research to address and account for farm economics at the enterprise and community level that ~~faffect~~ affects agricultural water optimization and encourage market behavior that financially rewards agricultural water optimization practices;

(c) oversee research to identify obstacles to and constraints upon optimization of agricultural water use, and to recommend management tools, technologies, and other opportunities to optimize agricultural water use as measured at the basin level; and

(d) facilitate benefits for farmers who optimize water use and protect water quality.

(8) The committee shall comply with Section 73-10g-206 related to grants issued under this part.

Section ~~6~~8. Section **73-10g-206** is enacted to read:

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73-10g-206. Agricultural water optimization grants -- Demonstration of water savings.

(1) The conservation commission may issue a grant described in Subsection 73-10g-204(3) in accordance with the procedures in this section.

(2) (a) The committee shall establish funding application periods during which a person may apply for a grant under this part.

(b) During a funding application period, a person may file a funding application with the department for preliminary screening of eligibility to receive a grant under this part, including requisite water savings.

(c) The department shall screen the funding applications for eligibility.

(d) If the department determines that an applicant meets eligibility requirements and proposes water savings, the department shall provide the applicant preliminary approval.

(e) After receiving preliminary approval under Subsection (2)(d), the applicant shall engage in a pre-filing consultation with the Division of Water Rights under Subsection 73-3-3(2) to determine whether a change application is required to accomplish the project proposed in the funding application or to quantify saved water that may be made available for beneficial use ~~by~~as part of the project.

(f) Once the Division of Water Rights determines whether the person is required to file a change application, the person may complete the funding application process and file the completed funding application with the committee.

(g) The committee shall review completed funding applications to rank the funding applications and recommend to the conservation commission which applicants should receive a grant under this part for the relevant funding application period.

(h) The conservation commission may issue a grant under this section only after receipt of the recommendations of the committee.

(3) If the conservation commission issues a grant under this part, before the grant recipient may receive the grant money, the grant recipient shall:

(a) enter into a contract with the department that includes:

(i) the expectations for the grant recipient;

(ii) the life expectancy of a project;

(iii) the process of certifying completion; and

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(iv) design requirements;

(b) file any needed change application and obtain a final order from the state engineer approving the change application, including any judicial review of the state engineer's order;
and

(c) **demonstrate how the grant recipient shall** comply with the requirements of the final order approving the related change application.

(4) A grant recipient shall comply with the monitoring and reporting requirements under the contract described in Subsection (3).

(5) The department shall:

(a) monitor the grant related activities of a grant recipient;

(b) certify a project funded by a grant once the project is complete;

(c) determine whether there are funding sources other than the account to fund the grant; and

(d) provide information needed by the division or the Division of Water Rights to fulfill the division's or **the** Division of Water Rights' statutory duties, including those designated in this chapter.

(6) The department may:

(a) conduct outreach campaigns related to the grant program, including the program's purpose and expectations for grant recipients;

(b) solicit funding applications and assist persons in applying for a grant under this part;

(c) assist grant recipients in developing a project; and

(d) coordinate with federal agencies and the division for evaluation of funding applications and for assistance with implementing projects for which funding has been provided under this part.

(7) Grant money may be used by the department or a grant recipient for the hiring of third-party consultants as appropriate to complete a project funded by grant money.

(8) The division, upon request from the committee, may assist with evaluation of funding applications and implementation of projects funded under this part.

Section ~~{7}~~9. Section 73-10g-207 is enacted to read:

73-10g-207. Division public information and reporting.

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(1) The division shall, in coordination with the department and the Division of Water Rights, annually compile and publish a report on:

- (a) completed projects;
- (b) saved water made available from agricultural water optimization projects; and
- (c) the effectiveness of the agricultural water optimization funding programs

established by this part.

(2) On or before November 30 of each year, the committee, division, and the Division of Water Rights shall jointly present the annual report to:

- (a) the Legislative Water Development Commission;
- (b) the Natural Resources, Agriculture, and Environment Interim Committee;
- (c) the Utah Water Task Force within the Department of Natural Resources; and
- (d) the Utah Watersheds Council.

~~{ (3) The division, on request from the committee, may assist with evaluation of funding applications and implementation of projects funded under this part.~~

~~{~~ ~~(4)~~3 The division shall publish reports from research described in Subsection 73-10g-205(7).

Section ~~{8}~~10. Section **73-10g-208** is enacted to read:

73-10g-208. Water use pursuant to a water optimization change application.

(1) A person entitled to file a change application under Section 73-3-3 may file a change application in connection with an agricultural water optimization project, regardless of whether the agricultural water optimization project is funded under this part:

- (a) to change the nature of use of the depletion reduction amount of an agricultural water right to saved water;
- (b) to quantify saved water; and
- (c) to allow beneficial use of saved water separate from the agricultural use, so long as there is no enlargement of depletion or diversion amounts.

(2) ~~{A person may file a nonuse application under Section 73-1-4 for saved}~~ ~~water resulting from an agricultural water optimization project}~~ **Saved** **water** **is considered beneficial use as required by Sections 73-1-3 and 73-3-1.**

(3) The state engineer may make rules as provided under Section 73-2-1 and Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding implementation of this section.

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Section ~~{9}~~11. **Repealer.**

This bill repeals:

Section 73-10g-202, **Agricultural Water Optimization Task Force.**

Section 73-10g-203, **Duties of the task force.**

Section ~~{10}~~12. **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 General Fund Restricted -- Agricultural Water Optimization Account

From General Fund, One-time ~~{200}~~170,000,000

From Federal Funds - American Rescue Plan, One-time 30,000,000

Schedule of Programs:

Agricultural Water Optimization Account 200,000,000

The Legislature intends that funds appropriated by this item from the American Rescue Plan Act may only be expended or distributed for purposes that comply with the legal requirements and federal guidelines under the American Rescue Plan Act of 2021. Additionally, the Legislature intends that the agency administering these funds meet all compliance and reporting requirements associated with these funds, as directed by the Governor's Office of Planning and Budget.

ITEM 2

To Department of Agriculture and Food -- Resource Conservation

From Agricultural Water Optimization Account, One-time 125,000,000

Schedule of Programs:

Water Quantity 125,000,000

The Legislature intends that the \$125,000,000 one-time appropriation from the Agricultural Water Optimization Account provided by this item be expended as follows:

- (1) \$25,000,000 on general water optimization;
- (2) \$25,000,000 on subsurface drip irrigation;

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(3) \$25,000,000 on surge irrigation;

(4) \$25,000,000 on ~~delivery, measurement, and reporting of water use data, including~~ telemetry ~~and delivery~~; and

(5) \$25,000,000 on canal improvements.

ITEM 3

To Department of Natural Resources -- Water Resources Conservation and Development Fund

From General Fund Restricted -- Water Infrastructure Restricted

Account 50,000,000

Schedule of Programs:

Water Resources Conservation and Development Fund 50,000,000

The Legislature intends that:

(1) for fiscal year 2024:

(a) \$5,000,000 of the \$50,000,000 provided by this item be expended as a grant for construction related to the Hyrum Reservoir; and

(b) the remaining \$45,000,000 be expended as loans for projects that benefit the Colorado River drainage in Utah, including projects for water reuse, dam construction, desalination, and other conservation projects;

(2) after fiscal year 2024, the \$50,000,000 provided by this item be expended as loans for projects described in Subsection (1)(b); and

(3) repayments of loans described in Subsection (1)(b) be transferred to the Water Infrastructure Restricted Account as outlined under Section 73-10-25.

Section ~~{11}~~13. **Effective date.**

This bill takes effect on July 1, 2023.