

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.

Highlighted Provisions:

This bill:

- ▶ addresses prescribed fires, pile burns, and nonfull suppression events on private land;
- ▶ 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;
- ▶ 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;
 - requiring actions related to a community wildfire preparedness plan; and
 - requiring studies by the division;



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- 27 ▶ repeals outdated language; and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

29 **Money Appropriated in this Bill:**

30 This bill appropriates in fiscal year 2024:

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

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

- 38 **19-2a-105**, as renumbered and amended by Laws of Utah 2020, Chapter 57
- 39 **63I-2-265**, as last amended by Laws of Utah 2022, Chapter 219
- 40 **65A-8-204**, as last amended by Laws of Utah 2021, Chapter 97
- 41 **65A-8-211**, as last amended by Laws of Utah 2016, Chapter 174
- 42 **65A-8-213**, as enacted by Laws of Utah 2019, Chapter 118

43 ENACTS:

- 44 **65A-8-215**, Utah Code Annotated 1953

45 REPEALS:

- 46 **65A-8-214**, as enacted by Laws of Utah 2022, Chapter 219



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

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

50 **19-2a-105. Prescribed fires, pile burns, and nonfull suppression events.**

51 (1) As used in this section:

- 52 (a) "Board" means the Air Quality Board.
- 53 (b) "Burn plan" means the plan required for each fire application ignited by a land
- 54 manager.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

88 or large prescribed pile fire;

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

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

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

95 (a) the United States National Weather Service clearing index in the area of the burn is
96 500 or greater;

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

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

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

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

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

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

110 (ii) minimize the risk of catastrophic fire;

111 (iii) achieve necessary watershed and ecological conditions; and

112 (iv) establish, restore, or maintain a sustainable and resilient wildland ecosystem or to
113 preserve endangered or threatened species through a program of prescribed burning or pile
114 burning.

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

118 (a) the United States National Weather Service clearing index in the area of the burn is

119 500 or greater; or

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

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

125 (ii) implements measures to notify residents; and

126 (iii) minimizes residents exposure to smoke.

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

130 (a) the United States National Weather Service clearing index in the area of the burn is
131 500 or greater; or

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

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

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

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

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

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

143 **63I-2-265. Repeal dates: Title 65A.**

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

146 Section 3. Section **65A-8-204** is amended to read:

147 **65A-8-204. Wildland Fire Suppression Fund created.**

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

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

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

157 ~~[(a) interest and earnings from the investment of fund money;]~~

158 ~~[(b)]~~ (a) money appropriated by the Legislature;

159 ~~[(c) costs recovered from successful investigations;]~~

160 ~~[(d)]~~ (b) federal funds received by the division for wildfire management costs;

161 ~~[(e)]~~ (c) suppression costs billed to an eligible entity that does not participate in a
162 cooperative agreement;

163 ~~[(f)]~~ (d) suppression costs paid to the division by another state agency;

164 ~~[(g)]~~ (e) costs recovered from settlements and civil or administrative actions related to
165 wildfire suppression;

166 ~~[(h)]~~ (f) restitution payments ordered by a court following a criminal adjudication;

167 ~~[(i)]~~ (g) the balance of the fund as of July 1, 2016;

168 ~~[(j)]~~ (h) money deposited by the Division of Finance, pursuant to Section [59-21-2](#); and

169 ~~[(k)]~~ (i) money transferred by the Division of Finance, pursuant to Section [63J-1-314](#).

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

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

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

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

179 Section 4. Section [65A-8-211](#) is amended to read:

180 **[65A-8-211](#). Closed fire season -- Notice -- Violations -- Red Flag Warnings --**

181 **Burning permits -- Personal liability -- Exemptions from burning permits.**

182 (1) As used in this section:

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

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

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

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

190 (iii) pasturage that is artificially irrigated.

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

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

196 [(+)] (2) (a) The period from June 1 to October 31 of each year is a closed fire season
197 throughout the state.

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

200 (c) [~~The~~] The state forester shall notify the public of the alteration of the closed season
201 [is done] by posting the appropriate proclamation [in the courthouse of each county seat] on the
202 division's website and on the Utah Public Notice Website, created in Section 63A-16-601, for
203 at least seven days in advance of the date the change is effective.

204 [(2)] (3) During the closed fire season [~~it is~~], an individual is guilty of a class [B] C
205 misdemeanor [~~to set~~] if the individual sets on fire, or [~~cause~~] causes to be set on fire[~~, any~~
206 flammable material on any];

207 (a) (i) a forest[~~;~~];

208 (ii) brush[~~;~~];

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

210 (iv) a field;

211 (v) cultivated land; or

212 (vi) a debris pile; and
 213 (b) without:
 214 ~~[(a)]~~ (i) first securing a written permit from the state forester or a [designated] deputy
 215 designated by the state forester; [and]
 216 ~~[(b)]~~ (ii) complying fully with [the terms and conditions prescribed by] the permit[-]
 217 described in Subsection (3)(b)(i); and
 218 (iii) subject to Subsection (10), first notifying the state forester, the state forester's
 219 designee, or the applicable public safety answering point of the approximate time the burning
 220 will occur.

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

- 223 (a) (i) a forest;
- 224 (ii) brush;
- 225 (iii) range;
- 226 (iv) a field;
- 227 (v) cultivated land;
- 228 (vi) a fence line;
- 229 (vii) a canal; or
- 230 (viii) an irrigation ditch; and
- 231 (b) without:

232 (i) first securing a written permit from the state forester or a deputy designated by the
 233 state forester;
 234 (ii) complying fully with the permit described in Subsection (4)(b)(i); and
 235 (iii) subject to Subsection (10), first notifying the state forester, the state forester's
 236 designee, or the applicable public safety answering point of the approximate time the burning
 237 will occur.

238 ~~[(3)]~~ (5) [The county fire warden, or the county sheriff in a county that has not entered
 239 into a cooperative agreement as described in Section 65A-8-203;] The state forester or the state
 240 forester's designee shall issue burning permits using the form prescribed by the division.

241 ~~[(4)]~~ (6) (a) The burning permit does not relieve an individual from personal liability
 242 [due to neglect or incompetence] as a result of damage caused by the fire.

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

246 ~~[(5)] (7) [The state forester, the state forester's designees, and the county sheriffs]~~ The
 247 following may refuse, revoke, postpone, or cancel [permits when they find it] a permit if the
 248 person finds that it is necessary in the interest of public safety[;]:

249 (a) the state forester;

250 (b) a state forester's designee; or

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

253 ~~[(6)] (8) (a) [A]~~ Except for during a Red Flag Warning as described in Subsection
 254 (4)(a), a burning permit is not required:

255 (i) for the burning within 10 feet of:

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

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

258 (C) the banks of irrigation ditches; and

259 (ii) if:

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

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

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

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

270 ~~[(7)] (9)~~ A burning conducted in accordance with Subsection ~~[(6)] (8)~~ is not a reckless
 271 burning under Section 76-6-104 unless the fire escapes control and requires fire control action.

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

274 jurisdiction:

275 (i) the applicable municipal chief, county fire warden, or state forester's designee; and

276 (ii) the governing body of the one or more applicable public safety answering points.

277 (b) On June 1 of each year, beginning with June 1, 2023, the state forester or state

278 forester's designee shall publish for each jurisdiction the notification process adopted under

279 Subsection (10)(a) on the division's website and on the Utah Public Notice Website created in

280 Section [63A-16-601](#).

281 (c) If the state forester or state forester's designee cannot determine the notification

282 process for a jurisdiction, a person is required to notify the applicable public safety answering

283 point.

284 Section 5. Section **65A-8-213** is amended to read:

285 **65A-8-213. Creation of the Wildland Fire Preparedness Grants Fund --**

286 **Awarding of grants -- Rulemaking.**

287 (1) (a) There is created an expendable special revenue fund known as the "Wildland

288 Fire Preparedness Grants Fund."

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

290 (i) voluntary contributions received;

291 (ii) appropriations the Legislature makes to the Wildland Fire Preparedness Grants

292 Fund;

293 (iii) 10% of the costs recovered annually related to wildfire suppression described in

294 Subsections [~~[65A-8-204\(3\)\(g\) and \(h\)](#)~~] [65A-8-204\(3\)\(e\) and \(f\)](#); and

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

296 (c) The state treasurer shall:

297 (i) invest the money in the Wildland Fire Preparedness Grants Fund described in

298 Subsection (1)(a) following the procedures and requirements of Title 51, Chapter 7, State

299 Money Management Act; and

300 (ii) deposit all interest or other earnings derived from each investment described in

301 Subsection (1)(c)(i) into the Wildland Fire Preparedness Grants Fund.

302 (2) (a) The state forester shall make one or more grants from the Wildland Fire

303 Preparedness Grants Fund to one or more local fire departments or volunteer fire departments

304 to assist in building capacity for the suppression of wildland fire.

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

307 Section 6. Section **65A-8-215** is enacted to read:

308 **65A-8-215. Wildland-urban interface fire prevention, preparedness, and**
309 **mitigation.**

310 (1) As used in this section:

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

313 (b) "Suppression fund" means the Wildland Fire Suppression Fund created in Section
314 65A-8-204.

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

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

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

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

322 (ii) money appropriated by the Legislature; and

323 (iii) money transferred from the suppression fund under Subsection 65A-8-204(5).

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

325 (i) pay costs of prevention and preparedness efforts on wildland-urban interface within
326 the state, as defined by the division by rule made in accordance with Title 63G, Chapter 3, Utah
327 Administrative Rulemaking Act, including costs of an eligible entity that has entered into a
328 cooperative agreement, as described in Section 65A-8-203;

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

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

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

335 (3) (a) The division may by rule, made in accordance with Title 63G, Chapter 3, Utah

336 Administrative Rulemaking Act, establish criteria for community wildfire preparedness plans
337 addressing wildland-urban interface. The criteria shall require action that is:

338 (i) qualitative and quantitative; and

339 (ii) leads to reduced wildfire risk.

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

343 **Section 7. Repealer.**

344 This bill repeals:

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

346 **Section 8. Appropriation.**

347 The following sums of money are appropriated for the fiscal year beginning July 1,
348 2023, and ending June 30, 2024. These are additions to amounts previously appropriated for
349 fiscal year 2024. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures
350 Act, the Legislature appropriates the following sums of money from the funds or accounts
351 indicated for the use and support of the government of the state of Utah.

352 ITEM 1

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

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

355 Schedule of Programs:

356 Wildland-urban Interface Prevention, Preparedness, and

357 Mitigation Fund 2,000,000