

Senator Sheldon L. Killpack proposes the following substitute bill:

MINING PROTECTION AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheldon L. Killpack

House Sponsor: Ron Bigelow

LONG TITLE

General Description:

This bill enacts and modifies provisions relating to the protection of mining uses.

Highlighted Provisions:

This bill:

- ▶ provides certain protection for specified mining uses of a mine operator that holds a large mine permit issued by the Division or Board of Oil, Gas, and Mining that have resulted, as of a specified date, in the production and selling of commercial quantities of a mineral deposit and that existed before a political subdivision limits the mining use;

- ▶ provides that vested mining uses, as defined, constitute a mining protection area;
- ▶ extends to mining protection areas some of the same protection or similar protection afforded agriculture and industrial protection areas;

- ▶ establishes a conclusive presumption for a vested mining use;
- ▶ defines features of a vested mining use;
- ▶ provides for the rights of a mine operator with a vested mining use; and
- ▶ provides a process for a mine operator to abandon a vested mining use.

Monies Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **17-41-101**, as last amended by Laws of Utah 2007, Chapter 329

31 **17-41-306**, as last amended by Laws of Utah 2008, Chapter 168

32 **17-41-402**, as last amended by Laws of Utah 2008, Chapter 51

33 **17-41-403**, as last amended by Laws of Utah 2006, Chapter 194

34 ENACTS:

35 **17-41-402.5**, Utah Code Annotated 1953

36 **17-41-501**, Utah Code Annotated 1953

37 **17-41-502**, Utah Code Annotated 1953

38 **17-41-503**, Utah Code Annotated 1953



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

41 Section 1. Section **17-41-101** is amended to read:

42 **17-41-101. Definitions.**

43 As used in this chapter:

44 (1) "Advisory board" means:

45 (a) for an agriculture protection area, the agriculture protection area advisory board
46 created as provided in Section 17-41-201; and

47 (b) for an industrial protection area, the industrial protection area advisory board
48 created as provided in Section 17-41-201.

49 (2) (a) "Agriculture production" means production for commercial purposes of crops,
50 livestock, and livestock products.

51 (b) "Agriculture production" includes the processing or retail marketing of any crops,
52 livestock, and livestock products when more than 50% of the processed or merchandised
53 products are produced by the farm operator.

54 (3) "Agriculture protection area" means a geographic area created under the authority
55 of this chapter that is granted the specific legal protections contained in this chapter.

56 (4) "Applicable legislative body" means:

57 (a) with respect to a proposed agriculture protection area or industrial protection area:

58 (i) the legislative body of the county in which the land proposed to be included in an
59 agriculture protection area or industrial protection area is located, if the land is within the
60 unincorporated part of the county; or

61 (ii) the legislative body of the city or town in which the land proposed to be included in
62 an agriculture protection area or industrial protection area is located; and

63 (b) with respect to an existing agriculture protection area or industrial protection area:

64 (i) the legislative body of the county in which the agriculture protection area or
65 industrial protection area is located, if the agriculture protection area or industrial protection
66 area is within the unincorporated part of the county; or

67 (ii) the legislative body of the city or town in which the agriculture protection area or
68 industrial protection area is located.

69 (5) "Board" means the Board of Oil, Gas, and Mining created in Section 40-6-4.

70 [~~5~~] (6) "Crops, livestock, and livestock products" includes:

71 (a) land devoted to the raising of useful plants and animals with a reasonable
72 expectation of profit, including:

73 (i) forages and sod crops;

74 (ii) grains and feed crops;

75 (iii) livestock as defined in Subsection 59-2-102 (27)(d);

76 (iv) trees and fruits; or

77 (v) vegetables, nursery, floral, and ornamental stock; or

78 (b) land devoted to and meeting the requirements and qualifications for payments or
79 other compensation under a crop-land retirement program with an agency of the state or federal
80 government.

81 (7) "Division" means the Division of Oil, Gas, and Mining created in Section 40-6-15.

82 [~~6~~] (8) "Industrial protection area" means a geographic area created under the
83 authority of this chapter that is granted the specific legal protections contained in this chapter.

84 (9) "Mine operator" means a natural person, corporation, association, partnership,
85 receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or
86 representative, either public or private, including a successor, assign, affiliate, subsidiary, and
87 related parent company, that, as of January 1, 2009:

88 (a) owns, controls, or manages a mining use under a large mine permit issued by the
89 division or the board; and

90 (b) has produced commercial quantities of a mineral deposit from the mining use.

91 (10) "Mineral deposit" has the same meaning as defined in Section 40-8-4, but
92 excludes:

93 (a) building stone, decorative rock, and landscaping rock; and

94 (b) consolidated rock that:

95 (i) is not associated with another deposit of minerals;

96 (ii) is or may be extracted from land; and

97 (iii) is put to uses similar to the uses of sand, gravel, and other aggregates.

98 (11) "Mining protection area" means land where a vested mining use occurs, including
99 each surface or subsurface land or mineral estate that a mine operator with a vested mining use
100 owns or controls.

101 (12) "Mining use":

102 (a) means:

103 (i) the full range of activities, from prospecting and exploration to reclamation and
104 closure, associated with the exploitation of a mineral deposit; and

105 (ii) the use of the surface and subsurface and groundwater and surface water of an area
106 in connection with the activities described in Subsection (12)(a)(i) that have been, are being, or
107 will be conducted; and

108 (b) includes, whether conducted on-site or off-site:

109 (i) any sampling, staking, surveying, exploration, or development activity;

110 (ii) any drilling, blasting, excavating, or tunneling;

111 (iii) the removal, transport, treatment, deposition, and reclamation of overburden,
112 development rock, tailings, and other waste material;

113 (iv) any removal, transportation, extraction, beneficiation, or processing of ore;

114 (v) any smelting, refining, autoclaving, or other primary or secondary processing
115 operation;

116 (vi) the recovery of any mineral left in residue from a previous extraction or processing
117 operation;

118 (vii) a mining activity that is identified in a work plan or permitting document;

119 (viii) the use, operation, maintenance, repair, replacement, or alteration of a building,
120 structure, facility, equipment, machine, tool, or other material or property that results from or is
121 used in a surface or subsurface mining operation or activity;

122 (ix) any accessory, incidental, or ancillary activity or use, both active and passive,
123 including a utility, private way or road, pipeline, land excavation, working, embankment, pond,
124 gravel excavation, mining waste, conveyor, power line, trackage, storage, reserve, passive use
125 area, buffer zone, and power production facility;

126 (x) the construction of a storage, factory, processing, or maintenance facility; and

127 (xi) any activity described in Subsection 40-8-4(14)(a).

128 [~~7~~] (13) (a) "Municipal" means of or relating to a city or town.

129 (b) "Municipality" means a city or town.

130 (14) "New land" means surface or subsurface land or mineral estate that a mine
131 operator gains ownership or control of, whether or not that land or mineral estate is included in
132 the mine operator's large mine permit.

133 (15) "Off-site" has the same meaning as provided in Section 40-8-4.

134 (16) "On-site" has the same meaning as provided in Section 40-8-4.

135 [~~8~~] (17) "Planning commission" means:

136 (a) a countywide planning commission if the land proposed to be included in the
137 agriculture protection area or industrial protection area is within the unincorporated part of the
138 county and not within a township;

139 (b) a township planning commission if the land proposed to be included in the
140 agriculture protection area or industrial protection area is within a township; or

141 (c) a planning commission of a city or town if the land proposed to be included in the
142 agriculture protection area or industrial protection area is within a city or town.

143 [~~9~~] (18) "Political subdivision" means a county, city, town, school district, local
144 district, or special service district.

145 [~~10~~] (19) "Proposal sponsors" means the owners of land in agricultural production or
146 industrial use who are sponsoring the proposal for creating an agriculture protection area or
147 industrial protection area, respectively.

148 [~~11~~] (20) "State agency" means each department, commission, board, council,
149 agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory,

150 library, unit, bureau, panel, or other administrative unit of the state.

151 ~~[(12)]~~ (21) "Unincorporated" means not within a city or town.

152 (22) "Vested mining use" means a mining use:

153 (a) by a mine operator; and

154 (b) that existed or was conducted or otherwise engaged in before a political subdivision
155 prohibits, restricts, or otherwise limits a mining use.

156 Section 2. Section **17-41-306** is amended to read:

157 **17-41-306. Adding land to or removing land from an agriculture protection area**
158 **or industrial protection area -- Removing land from a mining protection area.**

159 (1) (a) Any owner may add land to an existing agriculture protection area or industrial
160 protection area, as the case may be, by:

161 (i) filing a proposal with:

162 (A) the county legislative body, if the agriculture protection area or industrial
163 protection area and the land to be added are within the unincorporated part of the county; or

164 (B) the municipal legislative body, if the agriculture protection area or industrial
165 protection area and the land to be added are within a city or town; and

166 (ii) obtaining the approval of the applicable legislative body for the addition of the land
167 to the area.

168 (b) The applicable legislative body shall comply with the provisions for creating an
169 agriculture protection area or industrial protection area, as the case may be, in determining
170 whether or not to accept the proposal.

171 (2) (a) Any owner of land within an agriculture protection area or industrial protection
172 area may remove any or all of the land from the agriculture protection area or industrial
173 protection area, respectively, by filing a petition for removal with the applicable legislative
174 body.

175 (b) (i) The applicable legislative body:

176 (A) shall:

177 (I) grant the petition for removal of land from an agriculture protection area or
178 industrial protection area, as the case may be, even if removal of the land would result in an
179 agriculture protection area or industrial protection area of less than the number of acres
180 established by the applicable legislative body as the minimum under Section 17-41-301; and

181 (II) in order to give constructive notice of the removal to all persons who have, may
182 acquire, or may seek to acquire an interest in land in or adjacent to the agriculture protection
183 area or industrial protection area and the land removed from the agriculture protection area or
184 industrial protection area, file a legal description of the revised boundaries of the agriculture
185 protection area or industrial protection area with the county recorder of deeds and the affected
186 planning commission; and

187 (B) may not charge a fee in connection with a petition to remove land from an
188 agriculture protection area or an industrial protection area.

189 (ii) The remaining land in the agriculture protection area or industrial protection area is
190 still an agriculture protection area or industrial protection area, respectively.

191 (3) (a) If a municipality annexes any land that is part of an agriculture protection area
192 or industrial protection area located in the unincorporated part of the county, the county
193 legislative body shall, within 30 days after the land is annexed, review the feasibility of that
194 land remaining in the agriculture protection area or industrial protection area according to the
195 procedures and requirements of Section 17-41-307.

196 (b) The county legislative body shall remove the annexed land from the agriculture
197 protection area or industrial protection area, as the case may be, if:

198 (i) the county legislative body concludes, after the review under Section 17-41-307,
199 that removal is appropriate; and

200 (ii) the owners of all the annexed land that is within the agriculture protection area or
201 industrial protection area consent in writing to the removal.

202 (c) Removal of land from an agriculture protection area or industrial protection area
203 under this Subsection (3) does not affect whether that land may be:

204 (i) included in a proposal under Section 17-41-301 to create an agriculture protection
205 area or industrial protection area within the municipality; or

206 (ii) added to an existing agriculture protection area or industrial protection area within
207 the municipality under Subsection (1).

208 (4) A mine operator that owns or controls land within a mining protection area may
209 remove any or all of the land from the mining protection area by filing a notice of removal with
210 the legislative body of the county in which the land is located.

211 Section 3. Section **17-41-402** is amended to read:

212 **17-41-402. Limitations on local regulations.**

213 (1) A political subdivision within which an agriculture protection area or industrial
214 protection area is created or with a mining protection area within its boundary shall encourage
215 the continuity, development, and viability of agriculture [~~or~~], industrial, or mining use,
216 respectively, within the area by not enacting a local law, ordinance, or regulation that would
217 unreasonably restrict a farm structure or farm practice or, in the case of an industrial protection
218 area, an industrial use of the land within the area or, in the case of a mining protection area, a
219 mining use within the protection area unless the law, ordinance, or regulation bears a direct
220 relationship to public health or safety.

221 (2) A political subdivision may not change the zoning designation of or a zoning
222 regulation affecting land within an agriculture protection area unless the political subdivision
223 receives written approval for the change from all the landowners within the agriculture
224 protection area affected by the change.

225 (3) Except as provided by Section 19-4-113, a political subdivision may not change the
226 zoning designation of or a zoning regulation affecting land within an industrial protection area
227 unless the political subdivision receives written approval for the change from all the
228 landowners within the industrial protection area affected by the change.

229 (4) A political subdivision may not change the zoning designation of or a zoning
230 regulation affecting land within a mining protection area unless the political subdivision
231 receives written approval for the change from each mine operator within the area.

232 Section 4. Section **17-41-402.5** is enacted to read:

233 **17-41-402.5. Limits on political subdivisions with respect to a vested mining use --**

234 **Exception.**

235 (1) A political subdivision may not:

236 (a) terminate a vested mining use, whether by amortization, the exercise of police
237 power, or otherwise;

238 (b) prohibit, restrict, or otherwise limit a mine operator with a vested mining use from
239 exercising the rights permitted under this chapter;

240 (c) require, for a vested mining use:

241 (i) a variance;

242 (ii) a conditional use permit;

243 (iii) a special exception;

244 (iv) the establishment or determination of a nonconforming use right; or

245 (v) any other type of zoning or land use permit; or

246 (d) prohibit, restrict, limit, or otherwise regulate a vested mining use under a variance,
 247 conditional use permit, special exception, or other zoning or land use permit issued before May
 248 12, 2009.

249 (2) Subsection (1) does not prohibit a political subdivision from requiring a vested
 250 mining use to comply with the generally applicable, reasonable health and safety regulations
 251 and building code adopted by the political subdivision ~~Ĥ~~→ **including a drinking water protection**
 251a **zone as defined and limited to Section 19-4-113(4)(a) and (b)** ←~~Ĥ~~ .

252 Section 5. Section **17-41-403** is amended to read:

253 **17-41-403. Nuisances.**

254 (1) Each political subdivision shall ensure that any of its laws or ordinances that define
 255 or prohibit a public nuisance exclude from the definition or prohibition:

256 (a) for an agriculture protection area, any agricultural activity or operation within an
 257 agriculture protection area conducted using sound agricultural practices unless that activity or
 258 operation bears a direct relationship to public health or safety; or

259 (b) for an industrial protection area, any industrial use of the land within the industrial
 260 protection area that is consistent with sound practices applicable to the industrial use, unless
 261 that use bears a direct relationship to public health or safety.

262 (2) In a civil action for nuisance or a criminal action for public nuisance under Section
 263 76-10-803, it is a complete defense if the action involves agricultural activities and those
 264 agricultural activities were:

265 (a) conducted within an agriculture protection area; and

266 (b) not in violation of any federal, state, or local law or regulation relating to the
 267 alleged nuisance or were conducted according to sound agricultural practices.

268 (3) (a) A vested mining use undertaken in conformity with applicable federal and state
 269 law and regulations is presumed to be operating within sound mining practices.

270 (b) A vested mining use that is consistent with sound mining practices:

271 (i) is presumed to be reasonable; and

272 (ii) may not constitute a private or public nuisance under Section 76-10-803.

273 (c) A vested mining use in operation for more than three years may not be considered

274 to have become a private or public nuisance because of a subsequent change in the condition of
275 land within the vicinity of the vested mining use.

276 [~~3~~] (4) (a) For any new subdivision development located in whole or in part within
277 300 feet of the boundary of an agriculture protection area, the owner of the development shall
278 provide notice on any plat filed with the county recorder the following notice:

279 "Agriculture Protection Area

280 This property is located in the vicinity of an established agriculture protection area in
281 which normal agricultural uses and activities have been afforded the highest priority use
282 status. It can be anticipated that such agricultural uses and activities may now or in the
283 future be conducted on property included in the agriculture protection area. The use
284 and enjoyment of this property is expressly conditioned on acceptance of any
285 annoyance or inconvenience which may result from such normal agricultural uses and
286 activities."

287 (b) For any new subdivision development located in whole or in part within 1,000 feet
288 of the boundary of an industrial protection area, the owner of the development shall provide
289 notice on any plat filed with the county recorder the following notice:

290 "Industrial Protection Area

291 This property is located in the vicinity of an established industrial protection area in
292 which normal industrial uses and activities have been afforded the highest priority use
293 status. It can be anticipated that such industrial uses and activities may now or in the
294 future be conducted on property included in the industrial protection area. The use and
295 enjoyment of this property is expressly conditioned on acceptance of any annoyance or
296 inconvenience which may result from such normal industrial uses and activities."

297 (c) For any new subdivision development located in whole or in part within 1,000 feet
298 of the boundary of a mining protection area, the owner of the development shall provide notice
299 on any plat filed with the county recorder the following notice:

300 "This property is located within the vicinity of an established mining protection area in
301 which normal mining uses and activities have been afforded the highest priority use status. It
302 can be anticipated that the mining uses and activities may now or in the future be conducted on
303 property included in the mining protection area. The use and enjoyment of this property is
304 expressly conditioned on acceptance of any annoyance or inconvenience that may result from

305 the normal mining uses and activities."

306 Section 6. Section **17-41-501** is enacted to read:

307 **Part 5. Vested Mining Use**

308 **17-41-501. Vested mining use -- Conclusive presumption.**

309 (1) (a) A mining use is conclusively presumed to be a vested mining use if the mining
 310 use existed or was conducted or otherwise engaged in before a political subdivision prohibits,
 311 restricts, or otherwise limits the mining use.

312 (b) Anyone claiming that a vested mining use has not been established has the burden
 313 of proof to show by clear and convincing evidence that the vested mining use has not been
 314 established.

315 (2) A vested mining use:

316 (a) runs with the land; and

317 (b) may be changed to another ~~§~~→ **mining** ←~~§~~ use without losing its status as a vested
 317a mining use.

318 (3) The present or future boundary described in the large mine permit of a mine
 319 operator with a vested mining use does not limit:

320 (a) the scope of the mine operator's rights under this chapter; or

321 (b) the protection that this chapter provides for a mining protection area.

322 (4) (a) A mine operator with a vested mining use shall file a declaration for recording
 323 in the office of the recorder of the county in which the vested mining use is located.

324 (b) A declaration under Subsection (4)(a) shall:

325 (i) contain a legal description of the land included within the vested mining use; and

326 (ii) provide notice of the vested mining use.

327 Section 7. Section **17-41-502** is enacted to read:

328 **17-41-502. Rights of a mine operator with a vested mining use.**

329 (1) Notwithstanding a political subdivision's prohibition, restriction, or other limitation
 330 on a mining use adopted after the establishment of the mining use, the rights of a mine operator
 331 with a vested mining use include the rights to:

332 (a) progress, extend, enlarge, grow, or expand the vested mining use to any surface or
 333 subsurface land or mineral estate that the mine operator owns or controls;

334 (b) expand the vested mining use to any new land that:

335 (i) is contiguous ~~§~~→ **[or]** and ←~~§~~ related in mineralization to surface or subsurface land or
 335a a mineral

336 estate that the mine operator already owns or controls;

337 (ii) contains minerals that are part of the same mineral trend as the minerals that the
 338 mine operator already owns or controls; or

339 (iii) is a geologic offshoot to surface or subsurface land or a mineral estate that the
 340 mine operator already owns or controls;

341 (c) use, operate, construct, reconstruct, restore, extend, expand, maintain, repair, alter,
 342 substitute, modernize, upgrade, and replace equipment, processes, facilities, and buildings on
 343 any surface or subsurface land or mineral estate that the mine operator owns or controls;

344 (d) increase production or volume, alter the method of mining or processing, and mine
 345 or process a different or additional mineral than previously mined or owned on any surface or
 346 subsurface land or mineral estate that the mine operator owns or controls; and

347 (e) discontinue, suspend, terminate, deactivate, or continue and reactivate, temporarily
 348 or permanently, all or any part of the mining use.

349 (2) (a) As used in this Subsection (2), "applicable legislative body" means the
 350 legislative body of each:

351 (i) county in whose unincorporated area the new land to be included in the vested
 352 mining use is located; and

353 (ii) municipality in which the new land to be included in the vested mining use is
 354 located.

355 (b) A mine operator with a vested mining use is presumed to have a right to expand the
 356 vested mining use to new land.

357 (c) Before expanding a vested mining use to new land, a mine operator shall provide
 358 written notice:

359 (i) of the mine operator's intent to expand the vested mining use; and

360 (ii) to each applicable legislative body.

361 (d) (i) An applicable legislative body shall ~~H~~→ :

361a (A) ~~H~~← hold a public meeting or hearing at its next

362 ~~S~~→ [regularly scheduled] available ~~S~~← meeting that is more than ~~S~~→ [five] ten ~~S~~← days after
 362a receiving the notice under

363 Subsection (2)(c) ~~H~~→ [] ; and

363a **(B) provide reasonable, advance, written notice:**

363b **(I) of:**

363c **(Aa) the intended expansion of the vested mining use; and**

363d **(Bb) the public meeting or hearing; and**

363e **(II) to each owner of the surface estate of the new land. ~~H~~←**

364 (ii) A public meeting or hearing under Subsection (2)(d)(i) serves to provide sufficient
 365 public notice of the mine operator's intent to expand the vested mining use to the new land.

366 (e) After the public meeting or hearing under Subsection (2)(d)(ii), a mine operator

367 may expand a vested mining use to new land without any action by an applicable legislative
368 body, unless there is clear and convincing evidence in the record that the expansion to new land
369 will imminently endanger the public health, safety, and welfare.

370 (3) If a mine operator expands a vested mining use to new land, as authorized under
371 this section:

372 (a) the mine operator's rights under the vested mining use with respect to land on which
373 the vested mining use occurs apply with equal force after the expansion to the new land; and

374 (b) the mining protection area that includes land on which the vested mining use occurs
375 is expanded to include the new land.

376 Section 8. Section **17-41-503** is enacted to read:

377 **17-41-503. Abandonment of a vested mining use.**

378 (1) A mine operator may abandon some or all of a vested mining use only as provided
379 in this section.

380 (2) To abandon some or all of a vested mining use, a mine operator shall record a
381 written declaration of abandonment with the recorder of the county in which the vested mining
382 use being abandoned is located.

383 (3) The written declaration of abandonment under Subsection (2) shall specify the
384 vested mining use or the portion of the vested mining use being abandoned.

S.B. 68 1st Sub. (Green) - Mining Protection Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
