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**MINING PROTECTION AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Sheldon L. Killpack**

House Sponsor: Ron Bigelow

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**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

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

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

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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  
62 in 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  
80 federal 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,  
107 or 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  
117 processing 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  
121 is 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,  
124 pond, gravel excavation, mining waste, conveyor, power line, trackage, storage, reserve,  
125 passive use 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,  
150 laboratory, 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  
155 subdivision 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  
167 land 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  
190 is 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  
210 with 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  
218 protection area, an industrial use of the land within the area or, in the case of a mining  
219 protection area, a mining use within the protection area unless the law, ordinance, or  
220 regulation bears a direct 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



226 the zoning designation of or a zoning regulation affecting land within an industrial protection  
227 area 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  
248 May 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 including a drinking water protection  
252 zone as defined and limited to Subsection 19-4-113(4)(a) and (b).

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

254 **17-41-403. Nuisances.**

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

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

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

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

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

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

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

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

272 (i) is presumed to be reasonable; and

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

274 (c) A vested mining use in operation for more than three years may not be considered  
275 to have become a private or public nuisance because of a subsequent change in the condition  
276 of land within the vicinity of the vested mining use.

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

280 "Agriculture Protection Area

281 This property is located in the vicinity of an established agriculture protection area in

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

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

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

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

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

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

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

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

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

329 **17-41-502. Rights of a mine operator with a vested mining use -- Expanding**  
330 **vested mining use.**

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

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

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

337 (i) is contiguous and related in mineralization to surface or subsurface land or a

338 mineral estate that the mine operator already owns or controls;

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

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

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

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

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

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

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

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

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

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

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

362 (ii) to each applicable legislative body.

363 (d) (i) An applicable legislative body shall:

364 (A) hold a public meeting or hearing at its next available meeting that is more than ten  
365 days after receiving the notice under Subsection (2)(c); and

366 (B) provide reasonable, advance, written notice:  
367 (I) of:  
368 (Aa) the intended expansion of the vested mining use; and  
369 (Bb) the public meeting or hearing; and  
370 (II) to each owner of the surface estate of the new land.  
371 (ii) A public meeting or hearing under Subsection (2)(d)(i) serves to provide sufficient  
372 public notice of the mine operator's intent to expand the vested mining use to the new land.  
373 (e) After the public meeting or hearing under Subsection (2)(d)(ii), a mine operator  
374 may expand a vested mining use to new land without any action by an applicable legislative  
375 body, unless there is clear and convincing evidence in the record that the expansion to new  
376 land will imminently endanger the public health, safety, and welfare.  
377 (3) If a mine operator expands a vested mining use to new land, as authorized under  
378 this section:  
379 (a) the mine operator's rights under the vested mining use with respect to land on  
380 which the vested mining use occurs apply with equal force after the expansion to the new land;  
381 and  
382 (b) the mining protection area that includes land on which the vested mining use  
383 occurs is expanded to include the new land.  
384 Section 8. Section **17-41-503** is enacted to read:  
385 **17-41-503. Abandonment of a vested mining use.**  
386 (1) A mine operator may abandon some or all of a vested mining use only as provided  
387 in this section.  
388 (2) To abandon some or all of a vested mining use, a mine operator shall record a  
389 written declaration of abandonment with the recorder of the county in which the vested mining  
390 use being abandoned is located.  
391 (3) The written declaration of abandonment under Subsection (2) shall specify the  
392 vested mining use or the portion of the vested mining use being abandoned.