

MINING PROTECTION AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheldon L. Killpack

House Sponsor: _____

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;

▶ provides a process for a mine operator to abandon a vested mining use; and

▶ provides that the mineral estate is the dominant estate with respect to the surface estate from which the mineral estate is separated.

Monies Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **17-41-101**, as last amended by Laws of Utah 2007, Chapter 329

33 **17-41-306**, as last amended by Laws of Utah 2008, Chapter 168

34 **17-41-402**, as last amended by Laws of Utah 2008, Chapter 51

35 **17-41-403**, as last amended by Laws of Utah 2006, Chapter 194

36 ENACTS:

37 **17-41-402.5**, Utah Code Annotated 1953

38 **17-41-501**, Utah Code Annotated 1953

39 **17-41-502**, Utah Code Annotated 1953

40 **17-41-503**, Utah Code Annotated 1953

41 **40-1-13**, Utah Code Annotated 1953



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

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

45 **17-41-101. Definitions.**

46 As used in this chapter:

47 (1) "Advisory board" means:

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

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

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

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

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

- 59 (4) "Applicable legislative body" means:
- 60 (a) with respect to a proposed agriculture protection area or industrial protection area:
- 61 (i) the legislative body of the county in which the land proposed to be included in an
- 62 agriculture protection area or industrial protection area is located, if the land is within the
- 63 unincorporated part of the county; or
- 64 (ii) the legislative body of the city or town in which the land proposed to be included in
- 65 an agriculture protection area or industrial protection area is located; and
- 66 (b) with respect to an existing agriculture protection area or industrial protection area:
- 67 (i) the legislative body of the county in which the agriculture protection area or
- 68 industrial protection area is located, if the agriculture protection area or industrial protection
- 69 area is within the unincorporated part of the county; or
- 70 (ii) the legislative body of the city or town in which the agriculture protection area or
- 71 industrial protection area is located.
- 72 (5) "Board" means the Board of Oil, Gas, and Mining created in Section 40-6-4.
- 73 [~~5~~] (6) "Crops, livestock, and livestock products" includes:
- 74 (a) land devoted to the raising of useful plants and animals with a reasonable
- 75 expectation of profit, including:
- 76 (i) forages and sod crops;
- 77 (ii) grains and feed crops;
- 78 (iii) livestock as defined in Subsection 59-2-102 (27)(d);
- 79 (iv) trees and fruits; or
- 80 (v) vegetables, nursery, floral, and ornamental stock; or
- 81 (b) land devoted to and meeting the requirements and qualifications for payments or
- 82 other compensation under a crop-land retirement program with an agency of the state or federal
- 83 government.
- 84 (7) "Division" means the Division of Oil, Gas, and Mining created in Section 40-6-15.
- 85 [~~6~~] (8) "Industrial protection area" means a geographic area created under the
- 86 authority of this chapter that is granted the specific legal protections contained in this chapter.
- 87 (9) "Mine operator" means a natural person, corporation, association, partnership,
- 88 receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or
- 89 representative, either public or private, including a successor, assign, affiliate, subsidiary, and

90 related parent company, that, as of January 1, 2009:

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

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

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

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

97 (b) consolidated rock that:

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

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

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

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

104 (12) "Mining use":

105 (a) means:

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

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

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

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

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

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

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

117 (v) any smelting, refining, autoclaving, or other primary or secondary processing
118 operation;

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

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

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

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

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

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

131 [~~7~~] (13) (a) "Municipal" means of or relating to a city or town.

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

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

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

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

138 [~~8~~] (17) "Planning commission" means:

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

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

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

146 [~~9~~] (18) "Political subdivision" means a county, city, town, school district, local
147 district, or special service district.

148 [~~10~~] (19) "Proposal sponsors" means the owners of land in agricultural production or
149 industrial use who are sponsoring the proposal for creating an agriculture protection area or
150 industrial protection area, respectively.

151 [~~11~~] (20) "State agency" means each department, commission, board, council,

152 agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory,
153 library, unit, bureau, panel, or other administrative unit of the state.

154 [~~(12)~~] (21) "Unincorporated" means not within a city or town.

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

156 (a) by a mine operator; and

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

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

160 **17-41-306. Adding land to or removing land from an agriculture protection area**
161 **or industrial protection area -- Removing land from a mining protection area.**

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

164 (i) filing a proposal with:

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

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

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

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

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

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

179 (A) shall:

180 (I) grant the petition for removal of land from an agriculture protection area or
181 industrial protection area, as the case may be, even if removal of the land would result in an
182 agriculture protection area or industrial protection area of less than the number of acres

183 established by the applicable legislative body as the minimum under Section 17-41-301; and

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

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

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

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

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

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

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

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

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

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

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

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

215 **17-41-402. Limitations on local regulations.**

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

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

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

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

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

236 **17-41-402.5. Limits on political subdivisions with respect to a vested mining use --**
237 **Exception.**

238 (1) A political subdivision may not:

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

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

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

244 (i) a variance;

- 245 (ii) a conditional use permit;
- 246 (iii) a special exception;
- 247 (iv) the establishment or determination of a nonconforming use right; or
- 248 (v) any other type of zoning or land use permit; or
- 249 (d) prohibit, restrict, limit, or otherwise regulate a vested mining use under a variance,
- 250 conditional use permit, special exception, or other zoning or land use permit issued before May
- 251 12, 2009.

252 (2) Subsection (1) does not prohibit a political subdivision from requiring a vested
 253 mining use to comply with the generally applicable, reasonable health and safety regulations
 254 and building code adopted by the political subdivision.

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

256 **17-41-403. Nuisances.**

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

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

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

265 (2) In a civil action for nuisance or a criminal action for public nuisance under Section
 266 76-10-803, it is a complete defense if the action involves agricultural activities and those
 267 agricultural activities were:

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

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

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

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

274 (i) is presumed to be reasonable; and

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

276 (c) A vested mining use in operation for more than three years may not be considered a
277 private or public nuisance.

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

281 "Agriculture Protection Area

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

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

292 "Industrial Protection Area

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

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

300 **Part 5. Vested Mining Use**

301 **17-41-501. Vested mining use -- Conclusive presumption.**

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

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

307 established.

308 (2) A vested mining use:

309 (a) runs with the land; and

310 (b) may be changed to another use without losing its status as a vested mining use.

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

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

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

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

316 **17-41-502. Rights of a mine operator with a vested mining use.**

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

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

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

323 (i) is contiguous or related in mineralization to surface or subsurface land or a mineral
324 estate that the mine operator already owns or controls;

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

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

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

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

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

337 (2) If a mine operator expands a vested mining use to new land, as authorized under

338 Subsection (1)(b):

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

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

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

344 **17-41-503. Abandonment of a vested mining use.**

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

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

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

352 Section 9. Section **40-1-13** is enacted to read:

353 **40-1-13. Mineral estate is the dominant estate.**

354 Except as the owner of the mineral estate and the owner of the surface estate otherwise
355 agree in writing, a mineral estate separated from the surface estate by deed, lease, or other
356 instrument:

357 (1) is the dominant estate; and

358 (2) has an easement on and through the surface for:

359 (a) reasonable access to the minerals in place; and

360 (b) reasonable use of the surface in the development of the mineral estate.

Legislative Review Note
as of 2-11-09 12:46 PM

Office of Legislative Research and General Counsel

S.B. 68 - 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, or local governments. Some mining businesses would benefit.
