

HB0378S01 compared with HB0378

~~text~~ shows text that was in HB0378 but was deleted in HB0378S01.

inserted text shows text that was not in HB0378 but was inserted into HB0378S01.

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Representative Steven J. Lund proposes the following substitute bill:

MINING OPERATIONS AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steven J. Lund

Senate Sponsor: _____

LONG TITLE

General Description:

This bill excludes certain activities from the definition of mining operation.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of mining operation to exclude the extraction of boulders ~~under certain circumstances~~; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

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AMENDS:

17-41-101, as last amended by Laws of Utah 2021, Chapter 39

40-8-4, as last amended by Laws of Utah 2021, Chapter 39

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

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

17-41-101. Definitions.

As used in this chapter:

(1) "Advisory board" means:

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

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

(c) for a critical infrastructure materials protection area, the critical infrastructure materials protection area advisory board created as provided in Section 17-41-201.

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

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

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

(4) "Applicable legislative body" means:

(a) with respect to a proposed agriculture protection area, industrial protection area, or critical infrastructure materials protection area:

(i) the legislative body of the county in which the land proposed to be included in the relevant protection area is located, if the land is within the unincorporated part of the county; or

(ii) the legislative body of the city or town in which the land proposed to be included in the relevant protection area is located; and

(b) with respect to an existing agriculture protection area, industrial protection area, or critical infrastructure materials protection area:

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(i) the legislative body of the county in which the relevant protection area is located, if the relevant protection area is within the unincorporated part of the county; or

(ii) the legislative body of the city or town in which the relevant protection area is located.

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

(6) "Critical infrastructure materials" means sand, gravel, or rock aggregate.

(7) "Critical infrastructure materials operations" means the extraction, excavation, processing, or reprocessing of critical infrastructure materials.

(8) "Critical infrastructure materials operator" means a natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative, either public or private, including a successor, assign, affiliate, subsidiary, and related parent company, that:

(a) owns, controls, or manages a critical infrastructure materials operation; and

(b) has produced commercial quantities of critical infrastructure materials from the critical infrastructure materials operations.

(9) "Critical infrastructure materials protection area" means a geographic area created under the authority of this chapter on or after May 14, 2019, that is granted the specific legal protections contained in this chapter.

(10) "Crops, livestock, and livestock products" includes:

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

(i) forages and sod crops;

(ii) grains and feed crops;

(iii) livestock as defined in Section 59-2-102;

(iv) trees and fruits; or

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

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

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

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

(13) "Mine operator" means a natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative, either public or private, including a successor, assign, affiliate, subsidiary, and related parent company, that, as of January 1, 2019:

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

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

(14) "Mineral deposit" means the same as that term is defined in Section 40-8-4.

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

(16) "Mining use":

(a) means:

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

(ii) the use of the surface and subsurface and groundwater and surface water of an area in connection with the activities described in Subsection (16)(a)(i) that have been, are being, or will be conducted; and

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

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

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

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

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

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

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

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

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

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

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

(xi) ~~any~~ an activity described in Subsection 40-8-4~~(16)~~(17)(a).

(17) (a) "Municipal" means of or relating to a city or town.

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

(18) "New land" means surface or subsurface land or mineral estate that a mine operator gains ownership or control of, whether that land or mineral estate is included in the mine operator's large mine permit.

(19) "Off-site" means the same as that term is defined in Section 40-8-4.

(20) "On-site" means the same as that term is defined in Section 40-8-4.

(21) "Planning commission" means:

(a) a countywide planning commission if the land proposed to be included in the agriculture protection area, industrial protection area, or critical infrastructure materials protection area is within the unincorporated part of the county and not within a planning advisory area;

(b) a planning advisory area planning commission if the land proposed to be included in the agriculture protection area, industrial protection area, or critical infrastructure materials protection area is within a planning advisory area; or

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

(22) "Political subdivision" means a county, city, town, school district, local district, or special service district.

(23) "Proposal sponsors" means the owners of land in agricultural production, industrial use, or critical infrastructure materials operations who are sponsoring the proposal

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for creating an agriculture protection area, industrial protection area, or critical infrastructure materials protection area.

(24) "State agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(25) "Unincorporated" means not within a city or town.

(26) "Vested mining use" means a mining use:

(a) by a mine operator; and

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

Section 2. Section **40-8-4** is amended to read:

40-8-4. Definitions.

As used in this chapter:

(1) "Adjudicative proceeding" means:

(a) a division or board action or proceeding determining the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, permit, or license; or

(b) judicial review of a division or board action or proceeding specified in Subsection (1)(a).

(2) "Applicant" means a person who has filed a notice of intent to commence mining operations, or who has applied to the board for a review of a notice or order.

(3) (a) "Approved notice of intention" means a formally filed notice of intention to commence mining operations, including revisions to the notice of intention that is approved under Section 40-8-13.

(b) An approved notice of intention is not required for small mining operations.

(4) (a) "Basalt" means fine-grained mafic igneous rock formed in the tertiary or quaternary periods.

(b) A Utah Geological Survey published map or a United States Geological Survey published map that classifies material as "basalt" is prima facie evidence that the material meets the requirements of Subsection (4)(a). An unmapped area may be classified by a Utah

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Geological Survey geologist or a professional geologist licensed in the state.

(5) "Board" means the Board of Oil, Gas, and Mining.

(6) "Boulder" means a naturally occurring rock ~~{that is}~~ fragment greater than 75 millimeters in size that has been naturally transported from the rock fragment's original position.

~~[(6)]~~ (7) "Conference" means an informal adjudicative proceeding conducted by the division or board.

~~[(7)]~~ (8) (a) "Deposit" or "mineral deposit" means an accumulation of mineral matter in the form of consolidated rock, unconsolidated material, solutions, or occurring on the surface, beneath the surface, or in the waters of the land from which any product useful to man may be produced, extracted, or obtained or which is extracted by underground mining methods for underground storage.

(b) "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, basalt, boulders, water, geothermal steam, and oil and gas as defined in Chapter 6, Board and Division of Oil, Gas, and Mining, but includes oil shale and bituminous sands extracted by mining operations.

~~[(8)]~~ (9) "Development" means the work performed in relation to a deposit following the deposit's discovery but before and in contemplation of production mining operations, aimed at preparing the site for mining operations, defining further the ore deposit by drilling or other means, conducting pilot plant operations, constructing roads or ancillary facilities, and other related activities.

~~[(9)]~~ (10) "Division" means the Division of Oil, Gas, and Mining.

~~[(10)]~~ (11) "Emergency order" means an order issued by the board in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

~~[(11)]~~ (12) (a) "Exploration" means surface-disturbing activities conducted for the purpose of:

(i) discovering a deposit or mineral deposit;

(ii) delineating the boundaries of a deposit or mineral deposit; and

(iii) identifying regions or specific areas in which deposits or mineral deposits are most likely to exist.

(b) "Exploration" includes:

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- (i) sinking shafts;
- (ii) tunneling;
- (iii) drilling holes and digging pits or cuts;
- (iv) building of roads, and other access ways; and
- (v) constructing and operating other facilities related to the activities described in this

Subsection [~~(11)~~] (12)(b).

~~[(12)]~~ (13) "Gravel" means a naturally occurring unconsolidated to moderately consolidated accumulation of rock and mineral particles, the dominant size range being between 4 millimeters and 75 millimeters, that has been deposited by sedimentary processes.

~~[(13)]~~ (14) "Hearing" means a formal adjudicative proceeding conducted by the board under the board's procedural rules.

~~[(14)]~~ (15) (a) "Imminent danger to the health and safety of the public" means the existence of a condition or practice, or a violation of a permit requirement or other requirement of this chapter in a mining operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated.

(b) A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose the rational person to the danger during the time necessary for abatement.

~~[(15)]~~ (16) (a) "Land affected" means the surface and subsurface of an area within the state where mining operations are being or will be conducted, including:

- (i) on-site private ways, roads, and railroads;
- (ii) land excavations;
- (iii) exploration sites;
- (iv) drill sites or workings;
- (v) refuse banks or spoil piles;
- (vi) evaporation or settling ponds;
- (vii) stockpiles;
- (viii) leaching dumps;
- (ix) placer areas;
- (x) tailings ponds or dumps; and

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(xi) work, parking, storage, or waste discharge areas, structures, and facilities.

(b) Lands are excluded from Subsection [(15)] (16)(a) that would:

(i) be includable as land affected, but which have been reclaimed in accordance with an approved plan, as may be approved by the board; and

(ii) include lands in which mining operations have ceased before July 1, 1977.

[(16)] (17) (a) "Mining operation" means activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including surface mining and the surface effects of underground and in situ mining, on-site transportation, concentrating, milling, evaporation, and other primary processing.

(b) "Mining operation" does not include:

(i) the extraction of sand, gravel, ~~[and]~~ rock aggregate, and boulders;

(ii) the extraction of basalt for an area not to exceed 50 acres under active surface mining;

(iii) the extraction of oil and gas as defined in Chapter 6, Board and Division of Oil, Gas, and Mining;

(iv) the extraction of geothermal steam;

(v) smelting or refining operations;

(vi) off-site operations and transportation;

(vii) reconnaissance activities; ~~{}~~ or ~~{}~~

(viii) activities that will not cause significant surface resource disturbance or involve the use of mechanized earth-moving equipment, such as bulldozers or backhoes ~~{}~~. ~~{}~~. ~~or~~

~~{~~ (ix) the extraction of a boulder if:

~~_____~~ (A) the extraction disturbs or will disturb 20 or less surface acres;

~~_____~~ (B) the extraction is on private land;

~~_____~~ (C) the extraction is done for or by the person owning the land where the extraction occurs; and

~~_____~~ (D) at the time of the extraction, the primary use of the land where the extraction occurs is not the extraction of a mineral deposit or boulders.

~~†~~ [(17)] (18) "Notice" means:

(a) notice of intention, as defined in this chapter; or

(b) written information given to an operator by the division describing compliance

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conditions at a mining operation.

~~[(18)]~~ (19) "Notice of intention" means a notice to commence mining operations, including revisions to the notice.

~~[(19)]~~ (20) "Off-site" means the land areas that are outside of or beyond the on-site land.

~~[(20)]~~ (21) (a) "On-site" means the surface lands on or under which surface or underground mining operations are conducted.

(b) A series of related properties under the control of a single operator, but separated by small parcels of land controlled by others, are considered to be a single site unless an exception is made by the division.

~~[(21)]~~ (22) "Operator" means a natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative, either public or private, owning, controlling, or managing a mining operation or proposed mining operation.

~~[(22)]~~ (23) "Order" means written information provided by the division or board to an operator or other parties, describing the compliance status of a permit or mining operation.

~~[(23)]~~ (24) "Owner" means a natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative, either public or private, owning, controlling, or managing a mineral deposit or the surface of lands employed in mining operations.

~~[(24)]~~ (25) "Permit area" means the area of land indicated on the approved map submitted by the operator with the application or notice to conduct mining operations.

~~[(25)]~~ (26) "Permit" means a permit or notice to conduct mining operations issued by the division.

~~[(26)]~~ (27) "Permittee" means a person holding, or who is required by Utah law to hold, a valid permit or notice to conduct mining operations.

~~[(27)]~~ (28) "Person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other governmental or business organization.

~~[(28)]~~ (29) "Reclamation" means actions performed during or after mining operations to shape, stabilize, revegetate, or treat the land affected in order to achieve a safe, stable ecological condition and use that is consistent with local environmental conditions.

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~~[(29)]~~ (30) (a) "Rock aggregate" means those consolidated rock materials associated with a sand deposit, a gravel deposit, or a sand and gravel deposit that were created by alluvial sedimentary processes.

(b) "Rock aggregate" excludes any solid rock in the form of bedrock, other than basalt, that is exposed at the surface of the earth or overlain by unconsolidated material.

~~[(30)]~~ (31) "Sand" means a naturally occurring unconsolidated to moderately consolidated accumulation of rock and mineral particles, the dominant size range being between .004 millimeters to 4 millimeters, that has been deposited by sedimentary processes.

~~[(31)]~~ (32) "Small mining operations" means mining operations that disturb or will disturb 20 or less surface acres at any given time in an unincorporated area of a county or 10 or less surface acres at any given time in an incorporated area of a county.

~~[(32)]~~ (33) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of a violation of the permit or a requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate a violation of the permit or this chapter due to indifference, lack of diligence, or lack of reasonable care.