

# HB0527S01 compared with HB0527

~~{deleted text}~~ shows text that was in HB0527 but was deleted in HB0527S01.

inserted text shows text that was not in HB0527 but was inserted into HB0527S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Keven J. Stratton proposes the following substitute bill:

## MINING OPERATIONS AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Keven J. Stratton**

Senate Sponsor: \_\_\_\_\_

---

### LONG TITLE

#### General Description:

This bill modifies provisions related to mining operations.

#### Highlighted Provisions:

This bill:

- ▶ ~~{amends definitions related to the Agriculture, Industrial, or Critical Infrastructure Materials Protection Areas provisions;~~
- ▶ ~~requires actions to be brought before the Board of Oil, Gas, and Mining;~~
- ▶ ~~restricts the time for seeking a challenge of a vested mining use;~~
- ▶ ~~modifies rights of a mine operator with a vested mining use}~~ adds to the makeup of the board;
- ▶ amends definitions related to the regulation of mining;
- ▶ modifies the authority of the board and division;

## HB0527S01 compared with HB0527

- ▶ addresses review of notice of intentions;
- ▶ enacts provisions related to review of a permit order;
- ▶ addresses surety requirements;
- ▶ addresses withdrawal of approved notice of intention;
- ▶ clarifies requirements for revised notice of intentions; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

17-41-101, as last amended by Laws of Utah 2022, Chapter 72

~~17-41-501~~ 40-6-4, as ~~enacted~~ last amended by Laws of Utah ~~2009~~ 2020, ~~Chapter~~  
376

~~17-41-502, as enacted by Laws of Utah 2009, Chapter 376~~ Chapters 352, 373

40-8-4, as last amended by Laws of Utah 2022, Chapter 72

40-8-7, as last amended by Laws of Utah 2008, Chapter 382

40-8-13, as last amended by Laws of Utah 2013, Chapter 243

40-8-14, as last amended by Laws of Utah 2011, Chapter 125

40-8-16, as last amended by Laws of Utah 1989, Chapter 22

40-8-18, as last amended by Laws of Utah 2003, Chapter 35

#### ENACTS:

40-8-13.1, Utah Code Annotated 1953

---

*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

## HB0527S01 compared with HB0527

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:

(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

## HB0527S01 compared with HB0527

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.

(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 ~~{}~~on or before~~}~~ January 1, 2019:

(a) owns, controls, ~~{}~~or~~}~~ manages ~~{, or is listed in a notice of intention filed under Title 40, Chapter 8, Utah Mined Land Reclamation Act, as an owner of}~~ a mining use under a large mine permit issued by the division or the board; and

(b) has ~~{}~~produced ~~{}~~caused~~}~~ commercial quantities of a mineral deposit ~~{to be}~~

## HB0527S01 compared with HB0527

~~produced~~ from the mining use ~~{ under the large mine permit }~~.

(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, ~~has occurred, or will occur when the area has not been disturbed or excavated,~~ 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;

(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;

## HB0527S01 compared with HB0527

(x) the construction of a storage, factory, processing, or maintenance facility; ~~[[and]~~  
~~(xi) the acquisition, ownership, and control as inventory of contiguous or partly  
contiguous mineral bearing properties or parcels, regardless of whether actual excavation or  
land disturbance has occurred; and~~

~~[(xi)] (xii) and~~

(xi) an activity described in Subsection ~~[40-8-4(17)(a)]~~ 40-8-4(18)(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 ~~{ after January 1}, { 2019, regardless 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 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,

## HB0527S01 compared with HB0527

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 ~~{17-41-501}~~40-6-4 is amended to read:

~~{~~ ~~17-41-501. Vested mining use == Conclusive presumption.~~

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

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

~~\_\_\_\_\_ (2) A vested mining use:~~

~~\_\_\_\_\_ (a) runs with the land; and~~

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

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

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

~~\_\_\_\_\_ (b) the protection that this chapter provides for a mining protection area.~~

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

~~\_\_\_\_\_ (b) A declaration under Subsection (4)(a) shall:~~

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

~~\_\_\_\_\_ (ii) provide notice of the vested mining use.~~

~~\_\_\_\_\_ (5) (a) A person seeking to challenge a vested mining use shall file the challenge with the board.~~

~~\_\_\_\_\_ (b) A person shall file a challenge under this Subsection (5) by no later than the later~~

## HB0527S01 compared with HB0527

of:

~~— (i) May 1, 2024, or~~

~~— (ii) one year after receiving actual notice of the vested mining use.~~

~~— (c) If a person does not file a challenge under this Subsection (5) within the time frame described in Subsection (5)(b), the declaration described in Subsection (4) is considered to be conclusively established for all purposes.~~

~~— Section 3. Section 17-41-502 is amended to read:~~

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

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

~~— (a) progress, extend, enlarge, grow, or expand the vested mining use to any surface or subsurface land or mineral estate [that] if, on or before January 1, 2019, the mine operator owns or controls the surface or subsurface land or mineral estate;~~

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

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

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

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

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

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

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

~~— (2) (a) As used in this Subsection (2), "applicable legislative body" means the~~



## HB0527S01 compared with HB0527

legislative body of each:

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

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

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

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

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

~~—— (ii) to each applicable legislative body.~~

~~—— (d) (i) An applicable legislative body shall:~~

~~—— (A) hold a public meeting or hearing at its next available meeting that is more than 10 days after receiving the notice under Subsection (2)(c); and~~

~~—— (B) provide reasonable, advance, written notice:~~

~~—— (I) of:~~

~~—— (Aa) the intended expansion of the vested mining use; and~~

~~—— (Bb) the public meeting or hearing; and~~

~~—— (II) to each owner of the surface estate of the new land.~~

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

~~—— (e) After the public meeting or hearing under Subsection (2)(d)(ii), a mine operator may expand a vested mining use to new land without any action by an applicable legislative body, unless there is clear and convincing evidence in the record that the expansion to new land will imminently endanger the public health, safety, and welfare.~~

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

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

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

## HB0527S01 compared with HB0527

### † 40-6-4. Board of Oil, Gas, and Mining created -- Functions -- Appointment of members -- Terms -- Chair -- Quorum -- Expenses.

(1) (a) There is created within the Department of Natural Resources the Board of Oil, Gas, and Mining.

(b) The board shall be the policy making body for the Division of Oil, Gas, and Mining.

(2) (a) The board shall consist of ~~seven~~ nine members appointed by the governor with the advice and consent of the Senate and in accordance with Title 63G, Chapter 24, Part 2, Vacancies.

(b) No more than four members shall be from the same political party.

(c) In accordance with the requirements of Section 79-2-203, the members appointed under Subsection (2)(a) shall include the following:

(i) two members who are knowledgeable in mining matters;

(ii) two members who are knowledgeable in oil and gas matters;

(iii) one member who is knowledgeable in ecological and environmental matters;

(iv) one member who:

(A) is a private land owner;

(B) owns a mineral or royalty interest; and

(C) is knowledgeable in mineral or royalty interests; ~~and~~

(v) one member who is knowledgeable in geological matters~~[-];~~

(vi) one member who is an attorney authorized to practice law in this state and who has experience in natural resources issues, with a focus on the extractive industries; and

(vii) a mining or oil and gas land manager with expertise in mineral rights, mining claims, title issues, leases, land access, vested mining interests, and related contracting.

(3) (a) Except as required by Subsection (3)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

## HB0527S01 compared with HB0527

(c) A member shall hold office until the expiration of the member's term and until the member's successor is appointed, but not more than 90 days after the expiration of the member's term.

(4) (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the governor with the advice and consent of the Senate.

(b) The person appointed shall have the same qualifications as the person's predecessor.

(5) (a) The board shall appoint its chair from the membership.

(b) ~~Four~~ Five members of the board shall constitute a quorum for the transaction of business and the holding of hearings.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) A member shall comply with the conflict of interest provisions described in Title 63G, Chapter 24, Part 3, Conflicts of Interest.

Section ~~4-3~~ 3. 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

## HB0527S01 compared with HB0527

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 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 consolidated rock fragment greater than 75 millimeters in size that is associated with unconsolidated material and detached from bedrock.

(7) "Complete notice of intention" means a notice of intention in a form supplied by the division on which an operator has provided a satisfactory response to each applicable request for information.

~~(7)~~ (8) "Conference" means an informal adjudicative proceeding conducted by the division or board.

~~(8)~~ (9) (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.

~~(9)~~ (10) "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.

## HB0527S01 compared with HB0527

~~[(10)]~~ (11) "Division" means the Division of Oil, Gas, and Mining.

~~[(11)]~~ (12) "Emergency order" means an order issued by the board in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

~~[(12)]~~ (13) (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:

- (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 ~~[(12)(b)]~~ (13)(b).

~~[(13)]~~ (14) "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.

~~[(14)]~~ (15) "Hearing" means a formal adjudicative proceeding conducted by the board under the board's procedural rules.

~~[(15)]~~ (16) (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.

~~[(16)]~~ (17) (a) "Land affected" means the surface and subsurface of an area within the state where mining operations are being or will be conducted, including:

## HB0527S01 compared with HB0527

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

(b) Lands are excluded from Subsection [~~(16)~~(a)] (17)(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.

(c) "Large exploration operation" means an exploration operation that is not a small exploration operation.

[~~(17)~~] (18) (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, 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

## HB0527S01 compared with HB0527

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

~~[(18)]~~ (19) "Notice" means:

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

(b) written information given to an operator by the division describing compliance conditions at a mining operation.

~~[(19)]~~ (20) "Notice of intention" means a notice ~~[to commence mining operations]~~, including revisions to the notice to:

(a) commence small mining operations, including small exploration operations; or

(b) commence large mining operations, including large exploration operations.

~~[(20)]~~ (21) "Off-site" means the land areas that are outside of or beyond the on-site land.

~~[(21)]~~ (22) (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.

~~[(22)]~~ (23) "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.

~~[(23)]~~ (24) "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.

~~[(24)]~~ (25) "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.

~~[(25)]~~ (26) "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]~~ in a notice of intention.

~~[(26)]~~ (27) "Permit" means a permit or notice to conduct mining operations issued by

## HB0527S01 compared with HB0527

the division.

(28) "Permit order" means an order issued by the division that:

(a) approves a notice of intention to commence large mining operations or revise large mining operations;

(b) disapproves a notice of intention to commence large mining operations or revise large mining operations;

(c) accepts as complete, and approves the amount and form of surety for, a notice of intention to commence small mining operations or revise small mining operations;

(d) accepts as complete, and approves the amount and form of surety for, a notice of intention to conduct small exploration operations or revise small exploration operations; or

(e) approves a notice of intention to conduct large exploration operations or revise large exploration operations.

~~[(27)]~~ (29) "Permittee" means a person holding, or who is required by Utah law to hold, a valid permit or notice to conduct mining operations.

~~[(28)]~~ (30) "Person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other governmental or business organization.

~~[(29)]~~ (31) "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.

(32) "Review proceeding" means a proceeding under this chapter to resolve a challenge to a permit order.

~~[(30)]~~ (33) (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.

~~[(31)]~~ (34) "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.

(35) "Small exploration operations" means exploration operations that disturbs or will disturb:



## HB0527S01 compared with HB0527

(a) 20 or less surface acres at any given time in an unincorporated area of a county; or

(b) 10 or less surface acres at any given time in an incorporated area of a county.

~~[(32)]~~ (36) "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.

~~[(33)]~~ (37) "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.

Section ~~(5)~~4. Section **40-8-7** is amended to read:

### **40-8-7. Board and division -- Authority.**

(1) The board and the division may require:

(a) that a notice of intention [~~for all mining operations~~] be filed with~~[-and approved by,]~~ the division, before the mining operation commences or continues pursuant to Sections 40-8-13 and 40-8-23;

(b) the reclamation of lands affected by mining operations after the effective date of this chapter having due regard for innate differences in mineral deposits;

(c) [~~for mining operations, including small mining operations,]~~ for small mining operations, the furnishing and maintenance of reasonable surety to guarantee that the land affected is reclaimed as required by rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act

(d) for large mining operations, the furnishing and maintenance of reasonable surety to guarantee that the land affected is reclaimed according to approved plans consistent with on-site conditions;

~~[(d)]~~ (e) that the operator rehabilitate, close, or mitigate the impacts of each drill hole, shaft, or tunnel as required under Section 40-8-13;

~~[(e)]~~ (f) that the operator pay legally determined public liability and property damage claims resulting from mining operations;

~~[(f)]~~ (g) that every operator who conducts mining operations in the state maintain suitable records and make periodic reports to the division as required under this chapter;

~~[(g)]~~ (h) that with respect to all mining operations, a notice of intention is filed with

## HB0527S01 compared with HB0527

and, if required by this chapter, approved by the division before any such mining operations are commenced or continued pursuant to Section 40-8-23;

~~[(h)]~~ (i) the suspension of mining operations in an emergency situation;

~~[(i)]~~ (j) the payment of fixed, uniform, and nonescalating permit fees; or

~~[(j)]~~ (k) that mining operations be conducted to minimize or prevent hazards to public health and safety.

(2) ~~[No rule established]~~ A rule made by the board with respect to mined land reclamation ~~[shall]~~ may not have retroactive effect on existing reclamation plans included as a part of an approved notice of intention to commence mining operations ~~[which]~~ that was approved ~~[prior to]~~ before the effective date of the rule.

(3) The board may ~~[promulgate]~~ make rules relating to the surety for mining operations in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) The board may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that provide for division action within a shorter time than provided in this chapter.

Section ~~6~~5. Section **40-8-13** is amended to read:

**40-8-13. Notice of intention required before mining operations -- Assurance of reclamation required in notice of intention -- When contents confidential -- Approval of notice of intention not required for small mining operations -- Procedure for reviewing notice of intention.**

(1) (a) Before ~~[any]~~ an operator begins mining operations, or continues mining operations pursuant to Section 40-8-23, the operator shall file a notice of intention for each individual mining operation with the division.

(b) The notice of intention referred to in Subsection (1)(a) shall include:

(i) identification of all owners of any interest in a mineral deposit, including any ownership interest in surface land affected by the notice;

(ii) copies of underground and surface mine maps;

(iii) locations of drill holes;

(iv) accurate area maps of existing and proposed operations; and

(v) information regarding the amount of material extracted, moved, or proposed to be moved, relating to the mining operation.

## HB0527S01 compared with HB0527

(c) The notice of intention for small mining operations shall include a statement that the operator shall conduct reclamation as required by rules [~~promulgated~~] made by the board.

(d) The notice of intention for mining operations, other than small mining operations, shall include a plan for reclamation of the lands affected as required by rules [~~promulgated~~] made by the board.

(2) The division may require that the operator rehabilitate, close, or mitigate the impacts of each drill hole, shaft, or tunnel when no longer needed as part of the mining operation.

(3) Information provided in the notice of intention, and its attachments relating to the location, size, or nature of the deposit that is marked confidential by the operator shall be protected as confidential information by the board and the division and is not a matter of public record unless the board or division obtains a written release from the operator, or until the mining operation has been terminated as provided in Subsection 40-8-21(2).

~~(4) (a) Within 30 days from the receipt of a notice of intention, the division shall complete its review of the notice and shall make further inquiries, inspections, or examinations that are necessary to properly evaluate the notice.]~~

~~[(b) The division shall notify the operator of any objections to the notice and shall grant the operator a reasonable opportunity to take action that may be required to remove the objections or obtain a ruling relative to the objections from the board.]~~

~~(4) (a) A notice of intention for small mining operations shall be reviewed as provided in this Subsection (4).~~

(b) Within 30 days after the receipt of a notice of intention, the division shall complete the division's review of the notice of intention and notify the operator in writing that the notice of intention is complete or incomplete.

(c) If the notice of intention is incomplete, the division shall give the operator a reasonable opportunity to take action that may be required to complete the notice of intention.

(d) Within 30 days after receipt of a complete notice of intention, the division shall issue a permit order.

(e) Before issuing a permit order for small mining operations, the division shall give the operator written notice of a deficiency and shall grant the operator a reasonable opportunity to take action that may be required to remove the deficiency. The division may extend the time

## HB0527S01 compared with HB0527

for issuing a permit order if the operator requests additional time to address a deficiency.

~~[(5)]~~ ~~(f)~~

~~(f) Except for the form and amount of surety, an approval of a notice of intention for small mining operations is not required.~~

~~[(6)]~~ ~~(5) [The notice of intention for mining operations other than small mining operations;]~~

~~(5)~~ ~~(f)~~ ~~(a) A notice of intention for large mining operations shall be reviewed as provided in this Subsection~~ ~~[(6)]~~ ~~(5).~~

~~[(a) Within 30 days after receipt of a notice of intention or within 30 days following the last action of the operator or the division on the notice of intention, the division shall make a tentative decision to approve or disapprove the notice of intention.]~~

~~[(b) The division shall:]~~

~~[(i) mail the information relating to the land affected and the tentative decision to the operator; and]~~

~~[(ii) publish the information and the decision, in abbreviated form:]~~

~~[(A) one time only, in all newspapers of general circulation published in the county where the land affected is situated;]~~

~~[(B) in a daily newspaper of general circulation in Salt Lake City, Utah; and]~~

~~[(C) as required in Section 45-1-101.]~~

~~[(c) The division shall also mail a copy of the abbreviated information and tentative decision to the zoning authority of the county in which the land affected is situated and to the owner of record of the land affected:]~~

~~[(d) (i) Any person or agency aggrieved by the tentative decision may file a request for agency action with the division:]~~

~~[(ii) If no requests for agency action are received by the division within 30 days after the last date of publication, the tentative decision on the notice of intention is final and the division shall notify the operator:]~~

~~[(iii) If written objections of substance are received, the division shall hold an informal adjudicative proceeding:]~~

~~[(e) This Subsection (6) does not apply to exploration:]~~

~~[(7) Within 30 days after receipt of a notice of intention concerning exploration~~

## HB0527S01 compared with HB0527

~~operations other than small mining operations, the division will review the notice of intention and approve or disapprove it.]~~

(b) Within 30 days after receipt of a notice of intention, the division shall complete the division's review of the notice of intention and notify the operator in writing that the notice of intention is complete or incomplete.

(c) If the notice of intention is incomplete, the division shall give the operator a reasonable opportunity to take action that may be required to complete the notice of intention.

(d) Within 30 days after receipt of a complete notice of intention, the division shall:

(i) publish notice of the notice of intention and the opportunity for public comment:

(A) one time only in all newspapers of general circulation published in the county where the land affected is situated;

(B) one time in a newspaper of general circulation in Salt Lake City, Utah;

(C) as required in Section 45-1-101; and

(D) on the division's public website; and

(ii) mail notice of the notice of intention to the zoning authority of the county or municipality in which the land affected is situated and to the owner of record of the land affected.

(e) The division shall allow 30 days from the day on which the division publishes notice on the division's website for public comment on the notice of intention. Public comment shall be submitted to the division, in writing, as provided by rule.

(f) Within 15 days after the close of the public comment period, the division shall review the public comments received, and the division may hold a non-adjudicative informal conference to review any comment that the division determines to be substantive.

(g) If the division determines that a non-adjudicative informal conference is necessary, the division shall:

(i) hold the non-adjudicative informal conference within 45 days after the end of the period to review public comments specified in Subsection (5)(f); and

(ii) issue a permit order within 45 days after the date of the non-adjudicative informal conference.

(h) If the division does not hold a conference under Subsection (5)(g), the division shall issue a permit order within 45 days after the end of the period for the division to review

## HB0527S01 compared with HB0527

public comments specified in Subsection (5)(f).

(i) Before issuing a permit order for large mining operations, the division shall give the operator written notice of any deficiency and shall grant the operator a reasonable opportunity to take action that may be required to remove the deficiency. The division may extend the time for issuing a permit order if the operator requires additional time to address a deficiency.

(j) Notice of the permit order shall be provided to the operator and posted on the division's website.

(6) An operator may convert a small mining operation to a large mining operation or may convert a large mining operation to a small mining operation by filing a notice of intention with the division requesting the conversion. The division shall review the notice of intention according to the procedures provided in this section for the resulting operation.

(7) ~~At~~ Land may not at any given time ~~, land may only~~ be permitted under ~~one~~ both a notice of intention for small mining operations and a notice of intention for large mining operations.

Section ~~7~~6. Section **40-8-13.1** is enacted to read:

### **40-8-13.1. Procedures for review of permit orders.**

(1) As used in this section, "party" means:

(a) the division;

(b) the operator;

(c) the municipality or county in which the proposed mining operation at issue in the permit order is located; or

(d) a person granted intervention by the board.

(2) (a) Review of a permit order may be obtained by filing a petition for review before the board.

(b) Only a party may file a petition for review of a permit order.

(c) A party who files a petition for review shall file the petition within 30 days after the day on which the permit order is issued.

(3) A petition for review shall:

(a) be filed and served in accordance with the board rules;

(b) include the name and address of each person to whom a copy of the petition for review is sent;

## HB0527S01 compared with HB0527

(c) if known, include the division's file number or other reference number assigned to the adjudicative proceeding;

(d) state the date on which the petition for review is served;

(e) include a statement of the petitioner's position, including, as applicable:

(i) the legal authority under which the petition for review is requested;

(ii) the legal authority under which the board has jurisdiction to review the petition for review;

(iii) each of the petitioner's arguments in support of the petitioner's requested relief;

(iv) a detailed description of any permit condition to which the petitioner is objecting;

(v) any modification or addition to a permit that the petitioner is requesting;

(vi) a demonstration that the division's permit decision is based on a finding of fact or conclusion of law that is clearly erroneous; and

(vii) a claim for relief.

(f) A party who files a petition for review may only raise an issue or argument in the party's petition for review or during the review proceeding that:

(i) is within the board's jurisdiction;

(ii) is supported with information or documentation that:

(A) is cited with reasonable specificity; and

(B) sufficiently enables the board to fully consider the substance and significance of the issue; and

(iii) if a public comment period was provided during the permit application process, the party raised during the public comment period or at a non-adjudicative informal conference unless the issue or argument was not reasonably ascertainable before or during the public comment period.

(4) A person seeking to intervene in a review proceeding shall file a petition to intervene in accordance with rules made by the board. A person who is not a party may not participate in a review proceeding under this section or under Title 63G, Chapter 4, Administrative Procedures Act, unless granted the right to intervene by the board.

(5) In a proceeding to review a permit order, the operator and the division are parties to the proceeding regardless of who files the petition for review and the operator and division do not need to file a separate petition to intervene.

## HB0527S01 compared with HB0527

(6) Review of a permit order is subject to Title 63G, Chapter 4, Administrative Procedures Act.

Section ~~48~~7. Section **40-8-14** is amended to read:

### **40-8-14. Surety requirement -- Forfeiture of surety.**

(1) (a) After receiving notification that a notice of intention for mining operations has been approved, but ~~[prior to]~~ before commencement of those operations, the operator shall provide surety to the division, in a form and amount determined by the division or board as provided in this section.

(b) In determining the amount of surety under this section, the division may use the average cost of reclamation per acre.

(c) The board shall annually establish a figure representing the average cost of reclamation per acre after receiving a presentation from the division concerning the average cost of reclamation per acre and providing opportunity for public comment.

(2) (a) Except as provided in Subsection (3), the division shall approve the amount and form of surety.

(b) In determining the amount of surety to be provided, the division shall consider:

(i) the magnitude, type, and costs of approved reclamation activities planned for the land affected; and

(ii) the nature, extent, and duration of operations under the approved notice.

(c) The division shall approve a fixed amount estimated to be required to complete reclamation at any point in time covered by the notice of intent.

(d) (i) The division shall determine the amount of surety required for notices of intention, by using cost data from current large mining sureties.

(ii) The costs shall be adjusted to reflect the nature and scope of activities in the affirmative statement filed under Subsection 40-8-18(4).

(e) (i) In determining the form of surety to be provided by the operator, the division shall approve a method acceptable to the operator consistent with the requirements of this chapter.

(ii) The form of surety that the operator may provide includes~~[-but is not limited to,]~~ the following:

(A) collateral;



## HB0527S01 compared with HB0527

(B) a bond or other form of insured guarantee;

(C) deposited securities; or

(D) cash.

(3) (a) If the operator proposes reclamation surety in the form of a written contractual agreement, the board shall approve the form of surety.

(b) In making this decision, the board shall consider:

(i) the operator's:

(A) financial status;

(B) assets within the state;

(C) past performance in complying with contractual agreements; and

(D) facilities available to carry out the planned work;

(ii) the magnitude, type, and costs of approved reclamation activities planned for the land affected; and

(iii) the nature, extent, and duration of operations under the approved notice.

(4) In determining the amount and form of surety to be provided under this section, consideration shall be given to similar requirements made on the operator by landowners, governmental agencies, or others, with the intent that surety requirements shall be coordinated and not duplicated.

(5) The liability under surety provisions shall continue until liability, in part, or in its entirety, is released by the division.

(6) (a) If the operator of a mining operation~~[, including a small mining operation,]~~ fails or refuses to carry out the necessary land reclamation as outlined in the ~~[approved]~~ notice of intention, the board may, after notice and hearing, declare any surety filed for this purpose forfeited.

(b) With respect to the surety filed with the division, the board shall request the attorney general to take the necessary legal action to enforce and collect the amount of liability.

(c) If surety or a bond has been filed with the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, or any agency of the federal government, the board shall certify a copy of the transcript of the hearing and transmit it to the agency together with a request that the necessary forfeiture action be taken.

(d) The forfeited surety shall be used only for the reclamation of the land to which it

## HB0527S01 compared with HB0527

relates, and any residual amount returned to the rightful claimant.

Section ~~{9}~~8. Section **40-8-16** is amended to read:

### **40-8-16. Approved notice of intention valid for life of operation -- Withdrawal of approval -- Procedure and basis.**

(1) An approved notice of intention or approved revision of it remains valid for the life of the mining operation, as stated in it, unless the board withdraws the approval as provided in Subsection (2).

(2) The board or the division [~~shall~~] may not withdraw approval of a notice of intention or revision of [~~it~~] a notice of intention, except as follows:

(a) [~~Approval~~] approval may be withdrawn [~~in the event that~~] if the operator substantially fails to perform reclamation or conduct mining operations so that the approved reclamation plan can be accomplished[-];

(b) [~~Approval~~] approval may be withdrawn [~~in the event that~~] if the operator fails to provide and maintain surety as may be required under this chapter[-]; or

(c) [~~Approval~~] approval may be withdrawn [~~in the event that~~] if mining operations are continuously shut down for a period in excess of five years, unless the extended period is accepted upon application of the operator.

(3) [~~Approval of~~] The division may not withdraw approval of a notice of intention [~~may not be refused, withheld, nor withdrawn by the division~~] until the operator[~~, who holds or has applied for such approval,~~] has had an opportunity to request a hearing before the board, present evidence, cross-examine, and participate fully in the proceedings. Based on the record of the hearing, the board will issue an order concerning the [~~refusal, withholding, or~~] withdrawal of the approval of the notice of intention. If no hearing is requested, the division may [~~refuse, withhold, or~~] withdraw approval of a notice of intention.

(4) [~~In the event that~~] If the division or the board withdraws approval of a notice of intention or [~~its~~] a notice of intention's revision, [~~at~~] the mining operations included under the notice shall be suspended in accordance with procedures and schedule approved by the division.

Section ~~{10}~~9. Section **40-8-18** is amended to read:

### **40-8-18. Notice of intention to revise operations -- Procedure.**

(1) (a) Since mining operations and related reclamation plans may need to be revised to

## HB0527S01 compared with HB0527

accommodate changing conditions or new technology, an operator conducting mining operations under ~~[an approved]~~ a notice of intention shall submit to the division a notice of intention when revising mining operations.

(b) The notice of intention to revise mining operations shall be submitted in the form required by the rules promulgated by the board.

(2) (a) The notice of intention to revise mining operations will be designated as an amendment to the existing notice of intention by the division, based on rules promulgated by the board.

(b) An amendment of a notice of intention will be reviewed and considered for approval or disapproval by the division within 30 days of receipt of a notice of intention to revise mining operations.

(3) (a) A notice of intention to revise mining operations, if not designated as an amendment of a notice of intention as set forth in Subsection (2), shall be processed and considered for approval by the division in the same manner and within the same time period as an original notice of intention.

(b) The operator shall be authorized and bound by the requirements of the existing notice until the revision is acted upon and any revised surety requirements are established and satisfied.

(4) (a) If a change in the operation occurs, a mining operation representative shall submit an amendment to the notice of intention.

(b) Although approval of an amendment to the notice of intention by small mining operations is not required, a revised surety shall be filed by the permittee prior to implementing the amended notice of intention.

(5) A notice of intention to revise mining operations shall:

(a) include the information concerning the revision that would be required in an original notice of intention; and

(b) comply with the requirements relating to the revision that would apply to an original notice of intention, including the procedures of Section 40-8-13.