

**Senator Curtis S. Bramble** proposes the following substitute bill:

**PROTECTION AREAS REVISIONS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to statutorily protected areas.

**Highlighted Provisions:**

This bill:

- ▶ addresses general land use authority;
- ▶ modifies definitions;
- ▶ amends provisions related to the protection area advisory boards;
- ▶ addresses a proposal for creation of a protection area;
- ▶ addresses notice of proposal for creation of a protection area;
- ▶ amends provisions regarding review and action on a proposal, including a time frame for a legislative body to act on a proposal;
- ▶ outlines criteria to be applied in evaluating a proposal;
- ▶ addresses adding land to or removing land from a protection area;
- ▶ provides for the treatment of annexed land;
- ▶ addresses limitations on local regulations;
- ▶ addresses nuisance;
- ▶ modifies the policy for state agencies;
- ▶ amends restrictions related to eminent domain;



- 26           ▶ addresses vested mining uses;
- 27           ▶ addresses bested critical infrastructure materials operations, including repeal of
- 28 redundant language; and
- 29           ▶ makes technical and conforming changes.

30 **Money Appropriated in this Bill:**

31           None

32 **Other Special Clauses:**

33           None

34 **Utah Code Sections Affected:**

35 AMENDS:

- 36           **10-9a-102**, as last amended by Laws of Utah 2019, Chapter 384
- 37           **17-27a-102**, as last amended by Laws of Utah 2022, Chapter 307
- 38           **17-41-101**, as last amended by Laws of Utah 2023, Chapter 15
- 39           **17-41-302**, as last amended by Laws of Utah 2023, Chapter 435
- 40           **17-41-304**, as last amended by Laws of Utah 2023, Chapter 435
- 41           **17-41-305**, as last amended by Laws of Utah 2019, Chapter 227
- 42           **17-41-306**, as last amended by Laws of Utah 2019, Chapter 227
- 43           **17-41-402**, as last amended by Laws of Utah 2019, Chapter 227
- 44           **17-41-403**, as last amended by Laws of Utah 2019, Chapters 81, 227
- 45           **17-41-404**, as last amended by Laws of Utah 2019, Chapter 227
- 46           **17-41-405**, as last amended by Laws of Utah 2023, Chapter 435
- 47           **17-41-501**, as enacted by Laws of Utah 2009, Chapter 376
- 48           **17-41-502**, as enacted by Laws of Utah 2009, Chapter 376
- 49           **78B-6-1101**, as last amended by Laws of Utah 2021, Chapter 207

50 ENACTS:

- 51           **17-41-701**, Utah Code Annotated 1953
- 52           **17-41-702**, Utah Code Annotated 1953
- 53           **17-41-703**, Utah Code Annotated 1953
- 54           **17-41-704**, Utah Code Annotated 1953

55 REPEALS:

- 56           **10-9a-901**, as enacted by Laws of Utah 2019, Chapter 227

- 57 [10-9a-902](#), as enacted by Laws of Utah 2019, Chapter 227
- 58 [10-9a-903](#), as enacted by Laws of Utah 2019, Chapter 227
- 59 [10-9a-904](#), as enacted by Laws of Utah 2019, Chapter 227
- 60 [10-9a-905](#), as enacted by Laws of Utah 2019, Chapter 227
- 61 [17-27a-1001](#), as enacted by Laws of Utah 2019, Chapter 227
- 62 [17-27a-1002](#), as enacted by Laws of Utah 2019, Chapter 227
- 63 [17-27a-1003](#), as enacted by Laws of Utah 2019, Chapter 227
- 64 [17-27a-1004](#), as enacted by Laws of Utah 2019, Chapter 227
- 65 [17-27a-1005](#), as enacted by Laws of Utah 2019, Chapter 227

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

68 Section 1. Section **10-9a-102** is amended to read:

69 **10-9a-102. Purposes -- General land use authority.**

70 (1) The purposes of this chapter are to:

- 71 (a) provide for the health, safety, and welfare;
- 72 (b) promote the prosperity;
- 73 (c) improve the morals, peace, good order, comfort, convenience, and aesthetics of
- 74 each municipality and each municipality's present and future inhabitants and businesses;
- 75 (d) protect the tax base;
- 76 (e) secure economy in governmental expenditures;
- 77 (f) foster the state's agricultural and other industries;
- 78 (g) protect both urban and nonurban development;
- 79 (h) protect and ensure access to sunlight for solar energy devices;
- 80 (i) provide fundamental fairness in land use regulation;
- 81 (j) facilitate orderly growth and allow growth in a variety of housing types; and
- 82 (k) protect property values.

83 (2) To accomplish the purposes of this chapter, a municipality may enact all

84 ordinances, resolutions, and rules and may enter into other forms of land use controls and

85 development agreements that the municipality considers necessary or appropriate for the use

86 and development of land within the municipality, including ordinances, resolutions, rules,

87 restrictive covenants, easements, and development agreements governing:

- 88 (a) uses;
- 89 (b) density;
- 90 (c) open spaces;
- 91 (d) structures;
- 92 (e) buildings;
- 93 (f) energy efficiency;
- 94 (g) light and air;
- 95 (h) air quality;
- 96 (i) transportation and public or alternative transportation;
- 97 (j) infrastructure;
- 98 (k) street and building orientation;
- 99 (l) width requirements;
- 100 (m) public facilities;
- 101 (n) fundamental fairness in land use regulation; and
- 102 (o) considerations of surrounding land uses to balance the foregoing purposes with a
- 103 landowner's private property interests and associated statutory and constitutional protections.

104 (3) (a) Any ordinance, resolution, or rule enacted by a municipality pursuant to its

105 authority under this chapter shall comply with the state's exclusive jurisdiction to regulate oil

106 and gas activity, as described in Section 40-6-2.5.

107 (b) A municipality may enact an ordinance, resolution, or rule that regulates surface

108 activity incident to an oil and gas activity if the municipality demonstrates that the regulation:

- 109 (i) is necessary for the purposes of this chapter;
- 110 (ii) does not effectively or unduly limit, ban, or prohibit an oil and gas activity; and
- 111 (iii) does not interfere with the state's exclusive jurisdiction to regulate oil and gas

112 activity, as described in Section 40-6-2.5.

113 (4) An ordinance, resolution, or rule enacted by a municipality pursuant to the

114 municipality's authority under this chapter shall comply with Title 17, Chapter 41, Agriculture,

115 Industrial, or Critical Infrastructure Materials Protection Areas.

116 Section 2. Section 17-27a-102 is amended to read:

117 **17-27a-102. Purposes -- General land use authority -- Limitations.**

118 (1) (a) The purposes of this chapter are to:

- 119 (i) provide for the health, safety, and welfare;
- 120 (ii) promote the prosperity;
- 121 (iii) improve the morals, peace, good order, comfort, convenience, and aesthetics of
- 122 each county and each county's present and future inhabitants and businesses;
- 123 (iv) protect the tax base;
- 124 (v) secure economy in governmental expenditures;
- 125 (vi) foster the state's agricultural and other industries;
- 126 (vii) protect both urban and nonurban development;
- 127 (viii) protect and ensure access to sunlight for solar energy devices;
- 128 (ix) provide fundamental fairness in land use regulation;
- 129 (x) facilitate orderly growth and allow growth in a variety of housing types; and
- 130 (xi) protect property values.
- 131 (b) Subject to Subsection (4) and Section [11-41-103](#), to accomplish the purposes of this
- 132 chapter, a county may enact all ordinances, resolutions, and rules and may enter into other
- 133 forms of land use controls and development agreements that the county considers necessary or
- 134 appropriate for the use and development of land within the unincorporated area of the county or
- 135 a designated mountainous planning district, including ordinances, resolutions, rules, restrictive
- 136 covenants, easements, and development agreements governing:
  - 137 (i) uses;
  - 138 (ii) density;
  - 139 (iii) open spaces;
  - 140 (iv) structures;
  - 141 (v) buildings;
  - 142 (vi) energy-efficiency;
  - 143 (vii) light and air;
  - 144 (viii) air quality;
  - 145 (ix) transportation and public or alternative transportation;
  - 146 (x) infrastructure;
  - 147 (xi) street and building orientation and width requirements;
  - 148 (xii) public facilities;
  - 149 (xiii) fundamental fairness in land use regulation; and

150 (xiv) considerations of surrounding land uses to balance the foregoing purposes with a  
151 landowner's private property interests and associated statutory and constitutional protections.

152 (2) Each county shall comply with the mandatory provisions of this part before any  
153 agreement or contract to provide goods, services, or municipal-type services to any storage  
154 facility or transfer facility for high-level nuclear waste, or greater than class C radioactive  
155 waste, may be executed or implemented.

156 (3) (a) Any ordinance, resolution, or rule enacted by a county pursuant to its authority  
157 under this chapter shall comply with the state's exclusive jurisdiction to regulate oil and gas  
158 activity, as described in Section 40-6-2.5.

159 (b) A county may enact an ordinance, resolution, or rule that regulates surface activity  
160 incident to an oil and gas activity if the county demonstrates that the regulation:

161 (i) is necessary for the purposes of this chapter;

162 (ii) does not effectively or unduly limit, ban, or prohibit an oil and gas activity; and

163 (iii) does not interfere with the state's exclusive jurisdiction to regulate oil and gas  
164 activity, as described in Section 40-6-2.5.

165 (4) (a) This Subsection (4) applies to development agreements entered into on or after  
166 May 5, 2021.

167 (b) A provision in a county development agreement is unenforceable if the provision  
168 requires an individual or an entity, as a condition for issuing building permits or otherwise  
169 regulating development activities within an unincorporated area of the county, to initiate a  
170 process for a municipality to annex the unincorporated area in accordance with Title 10,  
171 Chapter 2, Part 4, Annexation.

172 (c) Subsection (4)(b) does not affect or impair the enforceability of any other provision  
173 in the development agreement.

174 (5) An ordinance, resolution, or rule enacted by a county pursuant to the county's  
175 authority under this chapter shall comply with Chapter 41, Agriculture, Industrial, or Critical  
176 Infrastructure Materials Protection Areas.

177 Section 3. Section 17-41-101 is amended to read:

178 **17-41-101. Definitions.**

179 As used in this chapter:

180 (1) "Advisory board" means:

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

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

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

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

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

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

194 (4) "Applicable legislative body" means:

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

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

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

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

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

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

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

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

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

211 (8) "Critical infrastructure materials operator" means a natural person, corporation,

212 association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or  
213 other organization or representative, either public or private, including a successor, assign,  
214 affiliate, subsidiary, and related parent company, that:

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

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

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

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

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

224 (i) forages and sod crops;

225 (ii) grains and feed crops;

226 (iii) livestock as defined in Section [59-2-102](#);

227 (iv) trees and fruits; or

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

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

232 (11) "Division" means the Division of Oil, Gas, and Mining created in Section  
233 [40-6-15](#).

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

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

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



243 (b) has produced or caused commercial quantities of a mineral deposit to be produced  
244 from the mining use under the large mine permit.

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

246 (15) "Mining protection area" means land where a vested mining use occurs, has  
247 occurred, or will occur if the area has not yet been disturbed or excavated, including each  
248 surface or subsurface land or mineral estate that a mine operator with a vested mining use owns  
249 or controls as of January 1, 2019.

250 (16) "Mining use":

251 (a) means:

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

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

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

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

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

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

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

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

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

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

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

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

274 area, buffer zone, and power production facility;

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

276 (xi) an activity described in Subsection 40-8-4(17)(a).

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

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

279 (18) "New land" means surface or subsurface land or mineral estate that a mine

280 operator gains ownership or control of[;] after January 1, 2019, regardless of whether that land

281 or mineral estate is included in the mine operator's large mine permit.

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

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

284 (21) "Planning commission" means:

285 (a) a countywide planning commission if the land proposed to be included in the

286 agriculture protection area, industrial protection area, or critical infrastructure materials

287 protection area is within the unincorporated part of the county and not within a planning

288 advisory area;

289 (b) a planning advisory area planning commission if the land proposed to be included

290 in the agriculture protection area, industrial protection area, or critical infrastructure materials

291 protection area is within a planning advisory area; or

292 (c) a planning commission of a city or town if the land proposed to be included in the

293 agriculture protection area, industrial protection area, or critical infrastructure materials

294 protection area is within a city or town.

295 (22) "Political subdivision" means a county, city, town, school district, special district,

296 or special service district.

297 (23) "Proposal sponsors" means the owners of land in agricultural production,

298 industrial use, or critical infrastructure materials operations who are sponsoring the proposal

299 for creating an agriculture protection area, industrial protection area, or critical infrastructure

300 materials protection area.

301 (24) "State agency" means each department, commission, board, council, agency,

302 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,

303 unit, bureau, panel, or other administrative unit of the state.

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

305           (26) "Vested critical infrastructure materials operations" means critical infrastructure  
306 materials operations that meet the conclusive presumption described in Subsection  
307 17-41-701(1)(a).

308           ~~[(26)]~~ (27) "Vested mining use" means a mining use:

309           (a) by a mine operator; and

310           (b) that existed on any portion of the mining property or was conducted or otherwise  
311 engaged in before a political subdivision prohibits, restricts, or otherwise limits a mining use.

312           Section 4. Section **17-41-302** is amended to read:

313           **17-41-302. Notice of proposal for creation of protection area -- Responses.**

314           (1) (a) An applicable legislative body shall provide notice of the proposal, as a class B  
315 notice under Section **63G-30-102**, for at least 15 days.

316           (b) A legislative body shall provide the notice described in Subsection (1)(a) for the  
317 geographic boundaries of the proposed agriculture protection area, industrial protection area, or  
318 critical infrastructure materials protection area, and the area that extends 1,000 feet beyond the  
319 geographic boundaries of the proposed agriculture protection area, industrial protection area, or  
320 critical infrastructure materials protection area.

321           ~~[(2) The notice shall contain:]~~

322           ~~[(a) a statement that a proposal for the creation of an agriculture protection area,~~  
323 ~~industrial protection area, or critical infrastructure materials protection area has been filed with~~  
324 ~~the applicable legislative body;]~~

325           ~~[(b) a statement that the proposal will be open to public inspection in the office of the~~  
326 ~~applicable legislative body;]~~

327           ~~[(c) a statement that any person affected by the establishment of the area may, within~~  
328 ~~15 days of the date of the notice, file with the applicable legislative body:]~~

329           ~~[(i) written objections to the proposal; or]~~

330           ~~[(ii) a written request to modify the proposal to exclude land from or add land to the~~  
331 ~~proposed protection area;]~~

332           ~~[(d) a statement that the applicable legislative body will submit the proposal to the~~  
333 ~~advisory committee and to the planning commission for review and recommendations;]~~

334           ~~[(e) a statement that the applicable legislative body will hold a public hearing to~~  
335 ~~discuss and hear public comment on:]~~

336 ~~[(i) the proposal to create the agriculture protection area, industrial protection area, or~~  
337 ~~critical infrastructure materials protection area;]~~

338 ~~[(ii) the recommendations of the advisory committee and planning commission; and]~~

339 ~~[(iii) any requests for modification of the proposal and any objections to the proposal;~~  
340 ~~and]~~

341 ~~[(f) a statement indicating the date, time, and place of the public hearing.]~~

342 (2) The notice shall provide as follows: "[County/City/Town] has received a proposal  
343 to create a [agriculture/industrial/critical infrastructure materials] protection area. This proposal  
344 is available for public inspection in the office of [Name of County/City/Town Office], located  
345 at [address]. Any person affected by this proposal may, within 15 days of the date of this  
346 notice, file a written objection or a written request to modify the proposal. The [applicable  
347 legislative body of the County/City/Town] will submit this proposal to [the advisory committee  
348 and to the planning commission, if applicable] for review and recommendations. The  
349 [applicable legislative body of the County/City/Town] will hold a public hearing to discuss and  
350 hear public comment on (1) the proposal; (2) the recommendations of the [the advisory  
351 committee and the planning commission, if applicable]; and (3) any requests for modifications  
352 of the proposal and any objections to the proposal. The public hearing will take place on [date]  
353 at [time] at [location and address]."

354 (3) (a) A person wishing to modify the proposal for the creation of the agriculture  
355 protection area, industrial protection area, or critical infrastructure materials protection area  
356 shall, within 15 days after the date of the notice, file a written request for modification of the  
357 proposal, which identifies specifically the land that should be added to or removed from the  
358 proposal.

359 (b) A person wishing to object to the proposal for the creation of the agriculture  
360 protection area, industrial protection area, or critical infrastructure materials protection area  
361 shall, within 15 days after the date of the notice, file a written objection to the creation of the  
362 relevant protection area.

363 Section 5. Section **17-41-304** is amended to read:

364 **17-41-304. Public hearing -- Notice -- Review and action on proposal.**

365 (1) After receipt of the written reports from the advisory committee and planning  
366 commission, or after the 45 days have expired, whichever is earlier, the county or municipal

367 legislative body shall:

368 (a) schedule a public hearing;

369 (b) provide notice of the public hearing for the geographic area described in Subsection  
370 17-41-302(1)(b), as a class B notice under Section 63G-30-102, for at least seven days; and

371 (c) ensure that the notice includes:

372 (i) the time, date, and place of the public hearing on the proposal;

373 (ii) a description of the proposed agriculture protection area, industrial protection area,  
374 or critical infrastructure materials protection area;

375 (iii) any proposed modifications to the proposed agriculture protection area, industrial  
376 protection area, or critical infrastructure materials protection area;

377 (iv) a summary of the recommendations of the advisory committee and planning  
378 commission, if applicable; and

379 (v) a statement that interested persons may appear at the public hearing and speak in  
380 favor of or against the proposal, any proposed modifications to the proposal, or the  
381 recommendations of the advisory committee and planning commission.

382 (2) The applicable legislative body shall:

383 (a) convene the public hearing at the time, date, and place specified in the notice; and

384 (b) take oral or written [~~testimony~~] comments from interested persons.

385 (3) (a) Within 120 days of the submission of the proposal, the applicable legislative  
386 body shall approve, modify and approve, or reject the proposal. If the applicable legislative  
387 body fails to approve, modify and approve, or reject the proposal within the 120-day time  
388 period, the proposal is considered approved as submitted.

389 (b) The creation of an agriculture protection area, industrial protection area, or critical  
390 infrastructure materials protection area is effective at the earlier of:

391 (i) the applicable legislative body's approval of a proposal or modified proposal; or

392 (ii) 120 days after submission of a proposal complying with Subsection 17-41-301(2) if  
393 the applicable legislative body has failed to approve or reject the proposal within that time.

394 (c) Notwithstanding Subsection (3)(b), a critical infrastructure materials protection area  
395 is effective only if the applicable legislative body, at its discretion, approves a proposal or  
396 modified proposal.

397 (4) (a) To give constructive notice of the existence of the agriculture protection area,

398 industrial protection area, or critical infrastructure materials protection area to all persons who  
399 have, may acquire, or may seek to acquire an interest in land in or adjacent to the relevant  
400 protection area within 10 days of the creation of the relevant protection area, the applicable  
401 legislative body shall file an executed document containing a legal description of the relevant  
402 protection area with:

- 403 (i) the county recorder of deeds; and
- 404 (ii) the affected planning commission.

405 (b) If the legal description of the property to be included in the relevant protection area  
406 is available through the county recorder's office, the applicable legislative body shall use that  
407 legal description in its executed document required in Subsection (4)(a).

408 (5) Within 10 days of the recording of the agriculture protection area, the applicable  
409 legislative body shall:

410 (a) send written notification to the commissioner of agriculture and food that the  
411 agriculture protection area has been created; and

412 (b) include in the notification:

- 413 (i) the number of landowners owning land within the agriculture protection area;
- 414 (ii) the total acreage of the area;
- 415 (iii) the date of approval of the area; and
- 416 (iv) the date of recording.

417 (6) The applicable legislative body's failure to record the notice required under  
418 Subsection (4) or to send the written notification under Subsection (5) does not invalidate the  
419 creation of an agriculture protection area.

420 (7) The applicable legislative body may consider the cost of recording notice under  
421 Subsection (4) and the cost of sending notification under Subsection (5) in establishing a fee  
422 under Subsection 17-41-301(4)(b).

423 Section 6. Section 17-41-305 is amended to read:

424 **17-41-305. Criteria to be applied in evaluating a proposal for the creation of a**  
425 **protection area.**

426 (1) In evaluating a proposal and in determining whether or not to create or recommend  
427 the creation of an agriculture protection area, industrial protection area, or critical infrastructure  
428 materials protection area, the advisory committee, planning commission, and applicable

429 legislative body shall apply the following criteria:

430 ~~[(1)]~~ (a) whether or not the land is currently being used for agriculture production,  
431 industrial use, or critical infrastructure materials operations, as the case may be;

432 ~~[(2)]~~ (b) whether or not the land is zoned for agriculture use, industrial use, or critical  
433 infrastructure materials operations, as the case may be;

434 ~~[(3)]~~ (c) whether or not the land is viable for agriculture production, industrial use, or  
435 critical infrastructure materials operations, as the case may be;

436 ~~[(4)]~~ (d) the extent and nature of existing or proposed farm improvements, the extent  
437 and nature of existing or proposed improvements to or expansion of the industrial use, or the  
438 extent and nature of existing or proposed improvements to or expansion of critical  
439 infrastructure materials operations, as the case may be; and

440 ~~[(5)]~~ (e) ~~[(a)]~~ (i) in the case of an agriculture protection area, anticipated trends in  
441 agricultural and technological conditions;

442 ~~[(b)]~~ (ii) in the case of an industrial protection area, anticipated trends in technological  
443 conditions applicable to the industrial use of the land in question; or

444 ~~[(c)]~~ (iii) in the case of a critical infrastructure materials protection area~~[-]~~;

445 (A) anticipated trends in technological conditions applicable to the critical  
446 infrastructure materials operations of the land in question~~[-]~~;

447 (B) the extent to which the property has been or will be used in the critical  
448 infrastructure materials operations; and

449 (C) post-operations land use.

450 (2) The timing of acquisition of the various parcels within a critical infrastructure  
451 materials protection area, or ownership of the parcels, is not relevant when evaluating a  
452 proposal to create a critical infrastructure protection area if the parcels are owned or controlled  
453 as of May 14, 2019, by the persons consenting to the creation of a critical infrastructure  
454 materials protection area.

455 Section 7. Section **17-41-306** is amended to read:

456 **17-41-306. Adding land to or removing land from a protection area -- Removing**  
457 **land from a mining protection area.**

458 (1) (a) Any owner may add land to an existing agriculture protection area, industrial  
459 protection area, critical infrastructure materials protection area, as the case may be, by:

460 (i) filing a proposal with:

461 (A) the county legislative body, if the relevant protection area and the land to be added  
462 are within the unincorporated part of the county; or

463 (B) the municipal legislative body, if the relevant protection area and the land to be  
464 added are within a city or town; and

465 (ii) obtaining the approval of the applicable legislative body for the addition of the land  
466 to the relevant protection area.

467 (b) The applicable legislative body shall:

468 (i) comply with the provisions for creating an agriculture protection area, industrial  
469 protection area, critical infrastructure materials protection area, as the case may be, in  
470 determining whether to accept the proposal; and

471 (ii) for purposes of a critical infrastructure materials protection area, request a copy of  
472 the applicable Division of Air Quality approval order.

473 (c) The applicable legislative body may deny the expansion if it is contrary to the  
474 Division of Air Quality's approval order.

475 (2) (a) An owner of land within an agriculture protection area, industrial protection  
476 area, or critical infrastructure materials protection area may remove any or all of the land from  
477 the relevant protection area, by filing a petition for removal with the applicable legislative  
478 body.

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

480 (A) shall:

481 (I) grant the petition for removal of land from the relevant protection area, even if  
482 removal of the land would result in an agriculture protection area, industrial protection area, or  
483 critical infrastructure materials protection area of less than the number of acres established by  
484 the applicable legislative body as the minimum under Section [17-41-301](#); and

485 (II) to give constructive notice of the removal to all persons who have, may acquire, or  
486 may seek to acquire an interest in land in or adjacent to the agriculture protection area,  
487 industrial protection area, or critical infrastructure materials protection area and the land  
488 removed from the relevant protection area, file a legal description of the revised boundaries of  
489 the relevant protection area with the county recorder of deeds and the affected planning  
490 commission; and



491 (B) may not charge a fee in connection with a petition to remove land from an  
492 agriculture protection area, an industrial protection area, or critical infrastructure materials  
493 protection area.

494 (ii) The remaining land in the agriculture protection area, industrial protection area, or  
495 critical infrastructure materials protection area is still an agriculture protection area, industrial  
496 protection area, or critical infrastructure materials protection area.

497 (iii) (A) A critical infrastructure materials operator may abandon some or all of its  
498 critical infrastructure materials operations use only as provided in this Subsection (2)(b)(iii).

499 (B) To abandon some or all of a critical infrastructure materials operations, a critical  
500 infrastructure materials operator shall record a written declaration of abandonment with the  
501 recorder of the county in which the critical infrastructure materials operations being abandoned  
502 is located.

503 (C) The written declaration of abandonment under this Subsection (2)(b)(iii) shall  
504 specify the critical infrastructure materials operations or the portion of the critical infrastructure  
505 materials operations being abandoned.

506 (3) (a) If a municipality annexes any land located in the unincorporated part of the  
507 county that is part of an agriculture protection area, industrial protection area, or critical  
508 infrastructure materials protection area [~~located in the unincorporated part of the county,~~]:

509 (i) the annexed land retains the annexed land's status as part of an agriculture  
510 protection area, industrial protection area, or critical infrastructure materials protection area  
511 unless the municipality determines there is good cause not to retain the protection area status;  
512 and

513 (ii) the county legislative body shall, within 30 days after the land is annexed, review  
514 the feasibility of [~~that land remaining in the relevant protection area~~] any land that remains  
515 within the unincorporated part of the county retaining its status as part of an agriculture  
516 protection area, industrial protection area, or critical infrastructure materials protection area  
517 according to the procedures and requirements of Section 17-41-307.

518 (b) The county legislative body shall remove the annexed land from the relevant  
519 protection area only if:

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

522 (ii) the owners of all the annexed land that is within the relevant protection area  
523 consent in writing to the removal.

524 (c) Removal of land from an agriculture protection area, industrial protection area, or  
525 critical infrastructure materials protection area under this Subsection (3) does not affect  
526 whether that land may be:

527 (i) included in a proposal under Section 17-41-301 to create an agriculture protection  
528 area, industrial protection area, or critical infrastructure materials protection area within the  
529 municipality; or

530 (ii) added to an existing agriculture protection area, industrial protection area, or  
531 critical infrastructure materials protection area within the municipality under Subsection (1).

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

535 Section 8. Section 17-41-402 is amended to read:

536 **17-41-402. Limitations on local regulations.**

537 (1) (a) A political subdivision within which an agriculture protection area, industrial  
538 protection area, or critical infrastructure materials protection area is created or with a mining  
539 protection area within its boundary shall encourage the continuity, development, and viability  
540 of agriculture use, industrial use, critical infrastructure materials operations, or mining use,  
541 within the relevant protection area by not enacting a local law, ordinance, or regulation that[;  
542 ~~unless the law, ordinance, or regulation bears a direct relationship to public health or safety,]~~  
543 would unreasonably restrict:

544 ~~[(a)]~~ (i) in the case of an agriculture protection area, a farm structure or farm practice;

545 ~~[(b)]~~ (ii) in the case of an industrial protection area, an industrial use of the land within  
546 the area;

547 ~~[(c)]~~ (iii) in the case of a critical infrastructure materials protection area, critical  
548 infrastructure materials operations; or

549 ~~[(d)]~~ (iv) in the case of a mining protection area, a mining use within the protection  
550 area.

551 (b) Notwithstanding the other provisions of this section, if there is clear and convincing  
552 evidence that an agriculture protection area, industrial protection area, or critical infrastructure

553 materials protection area presents an imminent danger to the public health, safety, and welfare,  
554 a political subdivision may impose reasonable conditions on the agriculture operations,  
555 industrial operations, or critical infrastructure materials operations to directly address the  
556 imminent danger.

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

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

565 (4) A political subdivision may not change the zoning designation of or a zoning  
566 regulation affecting land within a critical infrastructure materials protection area unless the  
567 political subdivision receives written approval for the change from each critical infrastructure  
568 materials operator within the relevant area.

569 (5) A political subdivision may not change the zoning designation of or a zoning  
570 regulation affecting land within a mining protection area unless the political subdivision  
571 receives written approval for the change from each mine operator within the area.

572 (6) A [~~county, city, or town~~] political subdivision may not:

573 (a) adopt, enact, or amend an existing land use regulation, ordinance, or regulation that  
574 would prohibit, restrict, regulate, or otherwise limit critical infrastructure materials operations,  
575 including vested critical infrastructure materials operations [~~as defined in Section 10-9a-901 or~~  
576 ~~17-27a-1001~~]; or

577 (b) initiate proceedings to amend the [~~county's, city's, or town's~~] political subdivision's  
578 land use ordinances as described in Subsection 10-9a-509(1)(a)(ii) or 17-27a-508(1)(a)(ii).

579 Section 9. Section 17-41-403 is amended to read:

580 **17-41-403. Nuisances.**

581 (1) (a) A political subdivision shall ensure that any of the political subdivision's laws or  
582 ordinances that define or prohibit a public nuisance exclude from the definition or prohibition:

583 [~~(a)~~] (i) for an agriculture protection area, any agricultural activity or operation within

584 an agriculture protection area conducted using sound agricultural practices [~~unless that activity~~  
585 ~~or operation bears a direct relationship to public health or safety~~];

586 ~~[(b)]~~ (ii) for an industrial protection area, any industrial use of the land within the  
587 industrial protection area that is consistent with sound practices applicable to the industrial  
588 use[~~, unless that use bears a direct relationship to public health or safety; or~~];

589 ~~[(c)]~~ (iii) for a critical infrastructure materials protection area, any critical infrastructure  
590 materials operations on the land within the critical infrastructure materials protection area that  
591 is consistent with sound practices applicable to the critical infrastructure materials operations[  
592 ~~unless that use bears a direct relationship to public health or safety.~~]; or

593 (iv) for a mining protection area, a mining use or vested mining use on any portion of  
594 the land within the mining protection area that is consistent with sound practices applicable to  
595 the mining use or vested mining use.

596 (b) Notwithstanding the other provisions of this section, if there is clear and convincing  
597 evidence that an agriculture protection area, industrial protection area, or critical infrastructure  
598 materials protection area presents an imminent danger to the public health, safety, and welfare,  
599 a political subdivision may impose reasonable conditions on the agriculture operations,  
600 industrial operations, or critical infrastructure materials operations to directly address the  
601 imminent danger.

602 (2) In a civil action for nuisance or a criminal action for public nuisance under Section  
603 76-10-803, it is a complete defense if the action involves agricultural, industrial, critical  
604 infrastructure, or mining activities and:

605 (a) those [~~agricultural~~] activities were:

606 (i) conducted within [~~an agriculture~~] the protection area; and

607 (ii) not in violation of any federal, state, or local law or regulation relating to the  
608 alleged nuisance or were conducted according to sound [~~agricultural~~] practices; or

609 (b) a defense under Section 4-44-201 applies.

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

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

613 (i) is presumed to be reasonable; and

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

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

618 (4) (a) For any new subdivision development located in whole or in part within 300  
619 feet of the boundary of an agriculture protection area, the owner of the development shall  
620 provide notice on any plat filed with the county recorder the following notice:

621 "Agriculture Protection Area

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

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

631 "Industrial Protection Area

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

638 (c) For any new subdivision development located in whole or in part within 1,000 feet  
639 of the boundary of a critical infrastructure materials protection area, the owner of the  
640 development shall provide notice on any plat filed with the county recorder the following  
641 notice:

642 "Critical Infrastructure Materials Protection Area

643 This property is located in the vicinity of an established critical infrastructure materials  
644 protection area in which critical infrastructure materials operations have been afforded the  
645 highest priority use status. It can be anticipated that such operations may now or in the future

646 be conducted on property included in the critical infrastructure materials protection area. The  
 647 use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or  
 648 inconvenience which may result from such normal critical infrastructure materials operations."

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

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

658 Section 10. Section ~~17-41-404~~ is amended to read:

659 **17-41-404. Policy of state agencies.**

660 (1) A state agency shall encourage the continuity, development, and viability of  
 661 agriculture within agriculture protection areas, industrial uses within industrial protection areas,  
 662 ~~[and]~~ critical infrastructure materials operations within critical infrastructure protection areas,  
 663 and mining uses within mining protection areas by:

664 ~~[(1)]~~ (a) not enacting rules that would impose unreasonable restrictions on:  
 665 (i) farm structures or farm practices within the agriculture protection area~~[-or-]~~;  
 666 (ii) industrial uses and practices within the industrial protection area~~[-or-]~~;  
 667 (iii) critical infrastructure materials operations ~~[with]~~ within a critical infrastructure  
 668 materials protection area~~[- unless those laws, ordinances, or regulations bear a direct~~  
 669 ~~relationship to public health or safety or are required by federal law; and];~~ or

670 (iv) a mining use within a mining protection area; or  
 671 ~~[(2)]~~ (b) modifying existing rules that would impose unreasonable restrictions on:  
 672 (i) farm structures or farm practices within the agriculture protection area~~[-or-]~~;  
 673 (ii) industrial uses and activities within the industrial protection area~~[-or-]~~;  
 674 (iii) critical infrastructure materials operations within a critical infrastructure materials  
 675 protection area~~[- unless those laws, ordinances, or regulations bear a direct relationship to~~  
 676 ~~public health or safety or are required by federal law.];~~ or

677 (iv) a mining use within a mining protection area.

678 (2) Notwithstanding Subsection (1), if there is clear and convincing evidence that farm  
679 structures or farm practices within an agriculture protection area, industrial uses and activities  
680 within an industrial protection area, critical infrastructure materials operations within a critical  
681 infrastructure materials protection area, or a mining use within a mining protection area would  
682 present an imminent danger to public health, safety, and welfare, a state agency may impose  
683 reasonable conditions on the operations to directly address the imminent danger.

684 Section 11. Section **17-41-405** is amended to read:

685 **17-41-405. Eminent domain restrictions -- Notice of hearing.**

686 (1) A political subdivision having or exercising eminent domain powers may not  
687 condemn for any purpose any land within an agriculture protection area that is being used for  
688 agricultural production, land within an industrial protection area that is being put to an  
689 industrial use, [or] land within a critical infrastructure materials protection area, land within a  
690 mining protection area, or land described in a declaration filed pursuant to Subsection  
691 17-41-501(4) or 17-41-701(4) unless the political subdivision obtains approval, according to  
692 the procedures and requirements of this section, from the applicable legislative body and the  
693 advisory board.

694 (2) Any condemnor wishing to condemn property within an agriculture protection area,  
695 industrial protection area, [or] critical infrastructure materials protection area, or mining  
696 protection area shall file a notice of condemnation with the applicable legislative body and the  
697 relevant protection area's advisory board at least 30 days before filing an eminent domain  
698 complaint.

699 (3) The applicable legislative body and the advisory board shall:

700 (a) hold a joint public hearing on the proposed condemnation at a location within the  
701 county or municipality in which the relevant protection area is located; and

702 (b) publish notice of the time, date, place, and purpose of the public hearing for the  
703 relevant protection area, as a class A notice under Section 63G-30-102, for at least seven days.

704 (4) (a) If the condemnation is for highway purposes or for the disposal of solid or  
705 liquid waste materials, the applicable legislative body and the advisory board may approve the  
706 condemnation only if there is no reasonable and prudent alternative to the use of the land  
707 within the agriculture protection area, industrial protection area, [or] critical infrastructure

708 materials protection area, or mining protection area for the project.

709 (b) If the condemnation is for any other purpose, the applicable legislative body and the  
710 advisory board may approve the condemnation only if:

711 (i) the proposed condemnation would not have an unreasonably adverse effect upon the  
712 preservation and enhancement of:

713 (A) agriculture within the agriculture protection area;

714 (B) the industrial use within the industrial protection area; [~~or~~]

715 (C) critical infrastructure materials operations within the critical infrastructure

716 materials protection area; or

717 (D) mining use within the mining protection area; or

718 (ii) there is no reasonable and prudent alternative to the use of the land within the  
719 relevant protection area for the project.

720 (5) (a) Within 60 days after receipt of the notice of condemnation, the applicable  
721 legislative body and the advisory board shall approve or reject the proposed condemnation.

722 (b) If the applicable legislative body and the advisory board fail to act within the 60  
723 days or such further time as the applicable legislative body establishes, the condemnation shall  
724 be considered rejected.

725 (6) The applicable legislative body or the advisory board may request the county or  
726 municipal attorney to bring an action to enjoin any condemnor from violating any provisions of  
727 this section.

728 Section 12. Section **17-41-501** is amended to read:

729 **17-41-501. Vested mining use -- Conclusive presumption.**

730 (1) (a) A mining use is conclusively presumed to be a vested mining use if the mining  
731 use existed on any portion of the mining property or was conducted or otherwise engaged in  
732 before a political subdivision prohibits, restricts, or otherwise limits the mining use.

733 (b) [~~Anyone~~] Subject to Subsection (5), a person claiming that a vested mining use has  
734 not been established has the burden of proof to show by clear and convincing evidence that the  
735 vested mining use has not been established.

736 (2) A vested mining use:

737 (a) runs with the land; and

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



739 use.

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

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

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

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

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

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

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

749 (c) If a mine operator with a vested mining use provides a copy of the mine operator's  
750 recorded declaration to a political subdivision or state agency, the political subdivision or state  
751 agency has actual notice of the vested mining use and shall treat the vested mining use as  
752 established unless clear and convincing evidence is presented to the political subdivision or  
753 state agency in a formal adjudicative proceeding that the vested mining use has not been  
754 established.

755 (d) The division or the board may declare a vested mining use to be established, which  
756 determination is conclusive for all purposes unless it is arbitrary and capricious or illegal.

757 (5) (a) A person seeking to challenge a vested mining use shall file the challenge with  
758 the board.

759 (b) A person shall file a challenge under this Subsection (5) by no later than the later  
760 of:

761 (i) May 1, 2025; or

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

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

766 (d) If a party unsuccessfully challenges a vested mining use, the board may award the  
767 prevailing mine operator appropriate costs and expenses, including reasonable attorney fees,  
768 from the unsuccessful party.

769 (6) This part controls over any other statute, rule, ordinance, policy, practice, order, or

770 directive regarding vested mining use.

771 (7) This part applies to a declaration that has been filed on or before May 1, 2024, and  
772 to a declaration that may be filed after May 1, 2024.

773 Section 13. Section **17-41-502** is amended to read:

774 **17-41-502. Rights of a mine operator with a vested mining use -- Expanding**  
775 **vested mining use.**

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

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

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

783 (i) is contiguous and related in mineralization to surface or subsurface land or a  
784 mineral estate that the mine operator ~~[already owns or controls]~~ comes to own or control after  
785 January 1, 2019;

786 (ii) contains minerals that are part of the same mineral trend as the minerals that the  
787 mine operator ~~[already owns or controls]~~ comes to own or control after January 1, 2019; or

788 (iii) is a geologic offshoot to surface or subsurface land or a mineral estate that the  
789 mine operator ~~[already owns or controls]~~ comes to own or control after January 1, 2019;

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

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

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

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

800 (i) county in whose unincorporated area the new land to be included in the vested

801 mining use is located; and

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

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

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

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

809 (ii) to each applicable legislative body.

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

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

813 (B) provide reasonable, advance, written notice:

814 (I) of:

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

816 (Bb) the public meeting or hearing; and

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

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

820 (e) After the public meeting or hearing under Subsection (2)(d)(ii), a mine operator  
821 may expand a vested mining use to new land without any action by an applicable legislative  
822 body[~~-, unless~~].

823 (f) If there is clear and convincing evidence in the record that the expansion to new  
824 land will imminently endanger the public health, safety, and welfare, the applicable legislative  
825 body may impose reasonable conditions on the mine operator's expansion of the vested mining  
826 use, but may not prohibit the expansion if the mine operator agrees to abide by the reasonable  
827 conditions imposed by the applicable legislative body.

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

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

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

834 Section 14. Section 17-41-701 is enacted to read:

835 **Part 7. Vested Critical Infrastructure Materials Operations**

836 **17-41-701. Vested critical infrastructure materials operations -- Conclusive**  
837 **presumption.**

838 (1) (a) Critical infrastructure materials operations operating in accordance with a legal  
839 nonconforming use or a permit issued by the political subdivision are conclusively presumed to  
840 be vested critical infrastructure materials operations if the critical infrastructure materials  
841 operations permitted by the political subdivision, existed on any portion of the property or were  
842 conducted or otherwise engaged in before a political subdivision prohibits the critical  
843 infrastructure materials operations.

844 (b) A person claiming that vested critical infrastructure materials operations have not  
845 been established has the burden of proof to show by clear and convincing evidence that the  
846 vested critical infrastructure materials operations have not been established.

847 (2) Vested critical infrastructure materials operations:

848 (a) run with the land; and

849 (b) may be changed to other critical infrastructure materials operations without losing  
850 status as vested critical infrastructure materials operations.

851 (3) (a) A critical infrastructure materials protection area may be created within a  
852 political subdivision following the procedures outlined in this chapter.

853 (b) Regardless of whether a critical infrastructure materials protection area is created,  
854 vested critical infrastructure materials operations have the protections contained in this chapter,  
855 Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act, and Chapter  
856 27a, County Land Use, Development, and Management Act.

857 (4) (a) A critical infrastructure materials operator with vested critical infrastructure  
858 materials operations shall file a declaration for recording in the office of the recorder of the  
859 county in which the vested critical infrastructure materials operations are located.

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

861 (i) contain a legal description of the land included within the vested critical  
862 infrastructure materials operations; and

863 (ii) provide notice of the vested critical infrastructure materials operations.

864 (c) If a critical infrastructure materials operator with vested critical infrastructure  
865 materials operations provides a copy of the critical infrastructure materials operator's recorded  
866 declaration to a political subdivision or state agency, the political subdivision or state agency  
867 has actual notice of the vested critical infrastructure materials operations and shall treat the  
868 vested critical infrastructure materials operations as established unless a person presents clear  
869 and convincing evidence to the political subdivision or state agency in a formal adjudicative  
870 proceeding that the vested critical infrastructure materials operations have not been established.

871 (d) If a person unsuccessfully challenges vested critical infrastructure materials  
872 operations under this Subsection (4), the prevailing critical infrastructure materials operator  
873 may recover appropriate costs and expenses, including reasonable attorney fees, from the  
874 unsuccessful challenger.

875 (e) Subsections (4)(a), (b), and (c) have retroactive effect to a challenge brought after  
876 May 14, 2019.

877 (5) Except for the other provisions of this chapter, this part controls over any other  
878 statute, rule, ordinance, policy, practice, order, or directive regarding vested critical  
879 infrastructure materials operations.

880 Section 15. Section **17-41-702** is enacted to read:

881 **17-41-702. Rights of a critical infrastructure materials operator with vested**  
882 **critical infrastructure materials operations.**

883 Notwithstanding a political subdivision's prohibition, restriction, or other limitation on  
884 a critical infrastructure materials operations adopted after the establishment of the critical  
885 infrastructure materials operations, the rights of a critical infrastructure materials operator with  
886 vested critical infrastructure materials operations include the right to:

887 (1) progress, extend, enlarge, grow, or expand the vested critical infrastructure  
888 materials operations to any surface or subsurface land or mineral estate if:

889 (a) as of May 14, 2019, the critical infrastructure materials operator owns or controls  
890 the surface or subsurface land or mineral estate; and

891 (b) the surface or subsurface land or mineral estate is within two miles of the land  
892 described in the declaration under Subsection [17-41-701\(4\)\(a\)](#);

893 (2) use, operate, construct, reconstruct, restore, maintain, repair, alter, substitute,

894 modernize, upgrade, and replace equipment, processes, facilities, and buildings;

895 (3) increase production or volume, alter the method of mining or processing, and mine  
896 or process a different or additional mineral or other critical infrastructure material than  
897 previously mined or owned on any surface or subsurface land or mineral estate that the critical  
898 infrastructure materials operator owns or controls, except that a critical infrastructure materials  
899 operator shall comply with applicable state statutes or rules, including statutes or rules applying  
900 to safety, air pollution, or water pollution; and

901 (4) discontinue, suspend, terminate, deactivate, or continue and reactivate, temporarily  
902 or permanently, all or any part of the critical infrastructure materials operations.

903 Section 16. Section **17-41-703** is enacted to read:

904 **17-41-703. Notice.**

905 For any new subdivision development located in whole or in part within 1,000 feet of  
906 the boundary of a vested critical infrastructure materials operations, the owner of the  
907 development shall provide notice on any plat filed with the county recorder the following  
908 notice:

909 "Vested Critical Infrastructure Materials Operations

910 This property is located in the vicinity of an established vested critical infrastructure  
911 materials operations in which critical infrastructure materials operations have been afforded the  
912 highest priority use status. It can be anticipated that such operations may now or in the future  
913 be conducted on property included in the critical infrastructure materials protection area. The  
914 use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or  
915 inconvenience that may result from such normal critical infrastructure materials operations."

916 Section 17. Section **17-41-704** is enacted to read:

917 **17-41-704. Abandonment of a vested critical infrastructure materials operations.**

918 (1) A critical infrastructure materials operator may abandon some or all of a vested critical  
919 infrastructure materials operations use only as provided in this section.

920 (2) To abandon some or all of a vested critical infrastructure materials operations, a  
921 critical infrastructure materials operator shall record a written declaration of abandonment with  
922 the recorder of the county in which the vested critical infrastructure materials operations being  
923 abandoned is located.

924 (3) The written declaration of abandonment under Subsection (2) shall specify the

925 vested critical infrastructure materials operations or the portion of the vested critical  
926 infrastructure materials operations being abandoned.

927 Section 18. Section **78B-6-1101** is amended to read:

928 **78B-6-1101. Definitions -- Nuisance -- Right of action -- Agriculture operations.**

929 (1) A nuisance is anything that is injurious to health, indecent, offensive to the senses,  
930 or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment  
931 of life or property. A nuisance may be the subject of an action.

932 (2) A nuisance may include the following:

933 (a) drug houses and drug dealing as provided in Section [78B-6-1107](#);

934 (b) gambling as provided in Title 76, Chapter 10, Part 11, Gambling;

935 (c) criminal activity committed in concert with three or more persons as provided in  
936 Section [76-3-203.1](#);

937 (d) criminal activity committed for the benefit of, at the direction of, or in association  
938 with any criminal street gang as defined in Section [76-9-802](#);

939 (e) criminal activity committed to gain recognition, acceptance, membership, or  
940 increased status with a criminal street gang as defined in Section [76-9-802](#);

941 (f) party houses that frequently create conditions defined in Subsection (1); and

942 (g) prostitution as provided in Title 76, Chapter 10, Part 13, Prostitution.

943 (3) A nuisance under this part includes tobacco smoke that drifts into a residential unit  
944 a person rents, leases, or owns, from another residential or commercial unit and the smoke:

945 (a) drifts in more than once in each of two or more consecutive seven-day periods; and

946 (b) creates any of the conditions under Subsection (1).

947 (4) Subsection (3) does not apply to:

948 (a) a residential rental unit available for temporary rental, such as for a vacation, or  
949 available for only 30 or fewer days at a time; or

950 (b) a hotel or motel room.

951 (5) Subsection (3) does not apply to a unit that is part of a timeshare development, as  
952 defined in Section [57-19-2](#), or subject to a timeshare interest as defined in Section [57-19-2](#).

953 (6) An action may be brought by a person whose property is injuriously affected, or  
954 whose personal enjoyment is lessened by the nuisance.

955 (7) An action for nuisance against an agricultural operation is governed by Title 4,

956 Chapter 44, Agricultural Operations Nuisances Act.

957 (8) "Critical infrastructure materials operations" means the same as that term is defined  
958 in Section [~~10-9a-901~~] [17-41-701](#).

959 (9) "Manufacturing facility" means a factory, plant, or other facility including its  
960 appurtenances, where the form of raw materials, processed materials, commodities, or other  
961 physical objects is converted or otherwise changed into other materials, commodities, or  
962 physical objects or where such materials, commodities, or physical objects are combined to  
963 form a new material, commodity, or physical object.

964 Section 19. **Repealer.**

965 This bill repeals:

966 Section [10-9a-901](#), **Definitions.**

967 Section [10-9a-902](#), **Vested critical infrastructure materials operations -- Conclusive**  
968 **presumption.**

969 Section [10-9a-903](#), **Rights of a critical infrastructure materials operator with a**  
970 **vested critical infrastructure materials operations.**

971 Section [10-9a-904](#), **Notice.**

972 Section [10-9a-905](#), **Abandonment of a vested critical infrastructure materials**  
973 **operations.**

974 Section [17-27a-1001](#), **Definitions.**

975 Section [17-27a-1002](#), **Vested critical infrastructure materials operations --**  
976 **Conclusive presumption.**

977 Section [17-27a-1003](#), **Rights of a critical infrastructure materials operator with a**  
978 **vested critical infrastructure materials operations.**

979 Section [17-27a-1004](#), **Notice.**

980 Section [17-27a-1005](#), **Abandonment of a vested critical infrastructure materials**  
981 **operations.**

982 Section 20. **Effective date.**

983 This bill takes effect on May 1, 2024.