

SB0172S01 compared with SB0172

~~{deleted text}~~ shows text that was in SB0172 but was deleted in SB0172S01.

inserted text shows text that was not in SB0172 but was inserted into SB0172S01.

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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: _____

LONG TITLE

General Description:

This bill modifies provisions related to statutorily protected areas.

Highlighted Provisions:

This bill:

- ▶ addresses general land use authority;
- ▶ modifies definitions;

~~{~~ → ~~addresses vested critical infrastructure materials protection operations, including~~
~~repealing redundant language;~~

→ ~~modifies provisions related to filing declarations;~~

→ ~~provides for the rights of a critical infrastructure materials operator;~~

} ▶ amends provisions related to the ~~{critical infrastructure materials }~~ protection area
advisory ~~{board};~~

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- ~~addresses the creation of a critical infrastructure materials protection area;~~
- ~~repeals authority to establish a minimum number of continuous acres that may be included in}boards;~~
 - ▶ addresses a proposal for creation of a protection area;
 - ▶ ~~{outlines the}~~addresses notice of ~~{a}~~ proposal ~~{to create}~~for creation of a protection area;
 - ▶ ~~{addresses public hearing requirements;~~
- ~~modifies}~~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 ~~{considered}~~applied in ~~{creating}~~evaluating a ~~{protection area}~~proposal;
 - ▶ ~~{amends process to add}~~addresses adding land to or ~~{remove}~~removing land from a protection area;
 - ▶ ~~{modifies effects of annexation;~~
- ~~limits powers related to review of protection areas}~~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;
 - ▶ addresses vested mining uses;
 - ▶ addresses bested critical infrastructure materials operations, including repeal of redundant language; and
 - ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9a-102, as last amended by Laws of Utah 2019, Chapter 384

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17-27a-102, as last amended by Laws of Utah 2022, Chapter 307

17-41-101, as last amended by Laws of Utah 2023, Chapter 15

~~{ **17-41-201**, as last amended by Laws of Utah 2019, Chapter 227~~

~~— **17-41-301**, as last amended by Laws of Utah 2019, Chapter 227~~

‡ **17-41-302**, as last amended by Laws of Utah 2023, Chapter 435

17-41-304, as last amended by Laws of Utah 2023, Chapter 435

17-41-305, as last amended by Laws of Utah 2019, Chapter 227

17-41-306, as last amended by Laws of Utah 2019, Chapter 227

~~{ **17-41-307**, as last amended by Laws of Utah 2019, Chapter 227~~

‡ **17-41-402**, as last amended by Laws of Utah 2019, Chapter 227

17-41-403, as last amended by Laws of Utah 2019, Chapters 81, 227

17-41-404, as last amended by Laws of Utah 2019, Chapter 227

17-41-405, as last amended by Laws of Utah 2023, Chapter 435

17-41-501, as enacted by Laws of Utah 2009, Chapter 376

17-41-502, as enacted by Laws of Utah 2009, Chapter 376

78B-6-1101, as last amended by Laws of Utah 2021, Chapter 207

ENACTS:

17-41-701, Utah Code Annotated 1953

17-41-702, Utah Code Annotated 1953

17-41-703, Utah Code Annotated 1953

17-41-704, Utah Code Annotated 1953

REPEALS:

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

10-9a-902, as enacted by Laws of Utah 2019, Chapter 227

10-9a-903, as enacted by Laws of Utah 2019, Chapter 227

10-9a-904, as enacted by Laws of Utah 2019, Chapter 227

10-9a-905, as enacted by Laws of Utah 2019, Chapter 227

17-27a-1001, as enacted by Laws of Utah 2019, Chapter 227

17-27a-1002, as enacted by Laws of Utah 2019, Chapter 227

17-27a-1003, as enacted by Laws of Utah 2019, Chapter 227

17-27a-1004, as enacted by Laws of Utah 2019, Chapter 227

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17-27a-1005, as enacted by Laws of Utah 2019, Chapter 227

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

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

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

(1) The purposes of this chapter are to:

(a) provide for the health, safety, and welfare;

(b) promote the prosperity;

(c) improve the morals, peace, good order, comfort, convenience, and aesthetics of each municipality and each municipality's present and future inhabitants and businesses;

(d) protect the tax base;

(e) secure economy in governmental expenditures;

(f) foster the state's agricultural and other industries;

(g) protect both urban and nonurban development;

(h) protect and ensure access to sunlight for solar energy devices;

(i) provide fundamental fairness in land use regulation;

(j) facilitate orderly growth and allow growth in a variety of housing types; and

(k) protect property values.

(2) To accomplish the purposes of this chapter, a municipality may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that the municipality considers necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing:

(a) uses;

(b) density;

(c) open spaces;

(d) structures;

(e) buildings;

(f) energy efficiency;

(g) light and air;

(h) air quality;

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- (i) transportation and public or alternative transportation;
- (j) infrastructure;
- (k) street and building orientation;
- (l) width requirements;
- (m) public facilities;
- (n) fundamental fairness in land use regulation; and
- (o) considerations of surrounding land uses to balance the foregoing purposes with a landowner's private property interests and associated statutory and constitutional protections.

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

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

- (i) is necessary for the purposes of this chapter;
- (ii) does not effectively or unduly limit, ban, or prohibit an oil and gas activity; and
- (iii) does not interfere with the state's exclusive jurisdiction to regulate oil and gas activity, as described in Section 40-6-2.5.

(4) An ordinance, resolution, or rule enacted by a municipality pursuant to the municipality's authority under this chapter shall comply with Title 17, Chapter 41, Agriculture, Industrial, or Critical Infrastructure Materials Protection Areas.

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

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

- (1) (a) The purposes of this chapter are to:
- (i) provide for the health, safety, and welfare;
 - (ii) promote the prosperity;
 - (iii) improve the morals, peace, good order, comfort, convenience, and aesthetics of each county and each county's present and future inhabitants and businesses;
 - (iv) protect the tax base;
 - (v) secure economy in governmental expenditures;
 - (vi) foster the state's agricultural and other industries;
 - (vii) protect both urban and nonurban development;

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- (viii) protect and ensure access to sunlight for solar energy devices;
- (ix) provide fundamental fairness in land use regulation;
- (x) facilitate orderly growth and allow growth in a variety of housing types; and
- (xi) protect property values.

(b) Subject to Subsection (4) and Section 11-41-103, to accomplish the purposes of this chapter, a county may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that the county considers necessary or appropriate for the use and development of land within the unincorporated area of the county or a designated mountainous planning district, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing:

- (i) uses;
- (ii) density;
- (iii) open spaces;
- (iv) structures;
- (v) buildings;
- (vi) energy-efficiency;
- (vii) light and air;
- (viii) air quality;
- (ix) transportation and public or alternative transportation;
- (x) infrastructure;
- (xi) street and building orientation and width requirements;
- (xii) public facilities;
- (xiii) fundamental fairness in land use regulation; and

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

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

(3) (a) Any ordinance, resolution, or rule enacted by a county pursuant to its authority under this chapter shall comply with the state's exclusive jurisdiction to regulate oil and gas

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

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

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

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

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

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

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

(5) An ordinance, resolution, or rule enacted by a county pursuant to the county's authority under this chapter shall comply with ~~{Title 17, }~~Chapter 41, Agriculture, Industrial, or Critical Infrastructure Materials Protection Areas.

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

17-41-101. Definitions.

As used in this chapter:

(1) "Advisory board" means:

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

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

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

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

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(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 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

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

(b) has ~~ff~~produced~~ff~~ or caused commercial quantities of a mineral deposit to be 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 if the area has not yet 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 as of January 1, 2019.

(16) "Mining use":

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(a) means ~~(i)~~:

~~(i)~~ the full range of activities, ~~{ that have been, are being, or will be conducted, }~~ 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 ~~(iii)~~

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

~~(i) the use of the surface, subsurface, groundwater, or surface water of an area;~~

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

~~(iii)~~ any drilling, blasting, excavating, or tunneling;

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

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

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

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

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

~~(ix)~~ 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;

~~(x)~~ 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;

~~(xi)~~ the construction of a storage, factory, processing, or maintenance facility; ~~(xii)~~ and ~~(xiii)~~

~~(xiv)~~ an activity described in Subsection 40-8-4(17)(a) ~~(i), (ii), and (iii)~~

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~~(xiii) acquisition, ownership, or control as inventory of contiguous or partly contiguous property or parcels, regardless of whether actual excavation or land disturbance has occurred.}~~

(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, special 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, 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 critical infrastructure materials operations" means critical infrastructure

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materials operations that meet the conclusive presumption described in Subsection 17-41-701(1)(a).

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

(a) by a mine operator; and

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

Section 4. Section ~~{17-41-201}~~17-41-302 is amended to read:

~~{~~ ~~17-41-201. Protection area advisory board.~~

~~_____ (1) (a) (i) A county legislative body shall appoint no more than five members from the county's conservation district board of supervisors to serve as the agriculture protection area advisory board.~~

~~_____ (ii) A county legislative body shall appoint an industrial protection area advisory board.~~

~~_____ (iii) Subject to Subsection (1)(b), a county legislative body shall form a critical infrastructure materials protection area advisory board that, once formed, consists of:~~

~~_____ (A) the executive director of the Department of Transportation, or the executive director's designee;~~

~~_____ (B) a local government elected official appointed by the county legislative body;~~

~~_____ (C) a representative of a local highway authority appointed by the county legislative body;~~

~~_____ (D) a representative of the critical infrastructure materials industry appointed by the county legislative body; and~~

~~_____ (E) a representative of the construction industry appointed by the county legislative body.~~

~~_____ (b) A county legislative body may appoint an advisory board before or after a proposal to create an agriculture protection area or industrial protection area is filed. A county legislative body shall appoint a critical infrastructure materials protection area advisory board only after a proposal to create a critical infrastructure materials protection area is filed by a critical infrastructure materials operator.~~

~~_____ (2) A member of an advisory board shall serve without salary, but a county legislative body may reimburse members for expenses incurred in the performance of their duties.~~

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~~—— (3) An advisory board shall:~~

~~—— (a) evaluate proposals for the establishment of the relevant protection areas and make recommendations to the applicable legislative body about whether the proposal should be accepted;~~

~~—— (b) provide expert advice to the planning commission and to the applicable legislative body about:~~

~~—— (i) the desirability of the proposal;~~

~~—— (ii) the nature of agricultural production, industrial use, or critical infrastructure materials operations, as the case may be, within the proposed area;~~

~~—— (iii) the relation of agricultural production, industrial use, or critical infrastructure materials operations, as the case may be, in the area to the county as a whole; and~~

~~—— (iv) which agriculture production, industrial use, or critical infrastructure materials operations, should be allowed within the relevant protection area; and~~

~~—— (c) perform the other duties required by this chapter.~~

~~—— Section 5. Section ~~17-41-301~~ is amended to read:~~

~~—— **17-41-301. Proposal for creation of a protection area.**~~

~~—— (1) (a) A proposal to create an agriculture protection area, an industrial protection area, or critical infrastructure materials protection area may be filed with:~~

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

~~—— (ii) the legislative body of the [city or town] municipality in which the area is located, if the area is within a [city or town] municipality.~~

~~—— (b) [A proposal to create a critical infrastructure protection area can only be initiated by the legislative body of the municipality or county.] Creation of a critical infrastructure materials protection area is a legislative act.~~

~~—— (c) (i) To be accepted for processing by the applicable legislative body, a proposal under Subsection (1)(a) shall be signed by:~~

~~—— (A) for a proposed agriculture protection area or industrial protection area, a majority in number of all owners of real property and the owners of a majority of the land area in agricultural production[,], or industrial use[, or critical infrastructure materials operations] within the proposed relevant protection area[.]; or~~

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~~—— (B) for a proposed critical infrastructure materials protection area, the critical infrastructure materials operator:~~

~~—— (ii) For purposes of Subsection (1)(c)(i), the owners of real property shall be determined by the records of the county recorder:~~

~~—— (2) The proposal shall identify:~~

~~—— (a) the boundaries of the land proposed to become part of the relevant protection area;~~

~~—— (b) any limits on the types of agriculture production, industrial use, or critical infrastructure materials operations to be allowed within the relevant protection area; and~~

~~—— (c) for each parcel of land:~~

~~—— (i) the names of the owners of record of the land proposed to be included within the relevant protection area;~~

~~—— (ii) the tax parcel number or account number identifying each parcel; and~~

~~—— (iii) the number of acres of each parcel:~~

~~—— (3) An agriculture protection area, industrial protection area, or critical infrastructure materials protection area may include within its boundaries land used for a roadway, dwelling site, park, or other nonagricultural use, in the case of an industrial protection area, nonindustrial use, or in the case of a critical infrastructure materials protection area, use unrelated to critical infrastructure materials operations, if that land constitutes a minority of the total acreage within [the] the relevant protection area.~~

~~—— (4) A county or municipal legislative body may establish:~~

~~—— (a) the manner and form for submission of proposals; and~~

~~—— (b) reasonable fees for accepting and processing the proposal:~~

~~—— [(5) A county and municipal legislative body shall establish the minimum number of continuous acres that shall be included in an agriculture protection area, industrial protection area, or critical infrastructure materials protection area.]~~

~~—— Section 6. Section ~~17-41-302~~ is amended to read:~~

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

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

(b) A legislative body shall provide the notice described in Subsection (1)(a) for the geographic boundaries of the proposed agriculture protection area, industrial protection area, or

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critical infrastructure materials protection area, and the area that extends 1,000 feet beyond the geographic boundaries of the proposed agriculture protection area, industrial protection area, or critical infrastructure materials protection area.

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

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

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

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

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

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

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

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

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

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

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

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

(2) The notice shall provide as follows: "[County/City/Town] has received a proposal to create a [agriculture/industrial/critical infrastructure materials] protection area. This proposal is available for public inspection in the office of [Name of County/City/Town Office], located at [address]. Any person affected by this proposal may, within 15 days of the date of this notice, file a written objection or a written request to modify the proposal. The [applicable legislative body of the County/City/Town] will submit this proposal to [the advisory committee and to the planning commission, if applicable] for review and recommendations. The

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[applicable legislative body of the County/City/Town] will hold a public hearing to discuss and hear public comment on (1) the proposal; (2) the recommendations of the [the advisory committee and the planning commission, if applicable]; and (3) any requests for modifications of the proposal and any objections to the proposal. The public hearing will take place on [date] at [time] at [location and address]."

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

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

Section ~~(7)~~5. Section **17-41-304** is amended to read:

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

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

- (a) schedule a public hearing;
- (b) provide notice of the public hearing for the geographic area described in Subsection 17-41-302(1)(b), as a class B notice under Section 63G-30-102, for at least seven days; and
- (c) ensure that the notice includes:
 - (i) the time, date, and place of the public hearing on the proposal;
 - (ii) a description of the proposed agriculture protection area, industrial protection area, or critical infrastructure materials protection area;
 - (iii) any proposed modifications to the proposed agriculture protection area, industrial protection area, or critical infrastructure materials protection area;
 - (iv) a summary of the recommendations of the advisory committee and planning commission, if applicable; and
 - (v) a statement that interested persons may appear at the public hearing and speak in

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favor of or against the proposal, any proposed modifications to the proposal, or the recommendations of the advisory committee and planning commission.

(2) The applicable legislative body shall:

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

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

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

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

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

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

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

(4) (a) To give constructive notice of the existence of the agriculture protection area, industrial protection area, or critical infrastructure materials protection area to all persons who have, may acquire, or may seek to acquire an interest in land in or adjacent to the relevant protection area within 10 days of the creation of the relevant protection area, the applicable legislative body shall file an executed document containing a legal description of the relevant protection area with:

(i) the county recorder of deeds; and

(ii) the affected planning commission.

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

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

(a) send written notification to the commissioner of agriculture and food that the

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agriculture protection area has been created; and

(b) include in the notification:

(i) the number of landowners owning land within the agriculture protection area;

(ii) the total acreage of the area;

(iii) the date of approval of the area; and

(iv) the date of recording.

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

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

Section ~~17-41-306~~6. Section **17-41-305** is amended to read:

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

(1) In evaluating a proposal and in determining whether or not to create or recommend the creation of an agriculture protection area, industrial protection area, or critical infrastructure materials protection area, the advisory committee, planning commission, and applicable legislative body shall apply the following criteria:

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

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

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

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

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

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

~~(c)~~ (iii) in the case of a critical infrastructure materials protection area^[5]:

(A) anticipated trends in technological conditions applicable to the critical infrastructure materials operations of the land in question^[7];

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

(C) post-operations land use.

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

Section ~~{9}~~7. Section 17-41-306 is amended to read:

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

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

(i) filing a proposal with:

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

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

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

(b) The applicable legislative body shall:

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

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

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

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

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

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

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

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

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

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

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

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

(4) A mine operator that owns or controls land within a mining protection area may remove any or all of the land from the mining protection area by filing a notice of removal with

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the legislative body of the county in which the land is located.

Section ~~{10}~~8. Section ~~{17-41-307}~~17-41-402 is amended to read:

~~{~~17-41-307. Review of protection areas.

~~———— (1) In the 20th calendar year after its creation under this part, an agriculture protection area, industrial protection area, or critical infrastructure materials protection area, as the case may be, shall be reviewed, under the provisions of this section, by:~~

~~———— (a) the county legislative body, if the relevant protection area is within the unincorporated part of the county; or~~

~~———— (b) the municipal legislative body, if the relevant protection area is within the municipality.~~

~~———— (2) (a) In the 20th year, the applicable legislative body may:~~

~~———— (i) request the planning commission and advisory board to submit recommendations about whether the agriculture protection area, industrial protection area, or critical infrastructure materials protection area, as the case may be, should be continued, modified, or terminated;~~

~~———— (ii) at least 120 days before the end of the calendar year, hold a public hearing to discuss whether the relevant protection area, should be continued, modified, or terminated;~~

~~———— (iii) give notice of the hearing using the same procedures required by Section 17-41-302; and~~

~~———— (iv) after the public hearing, continue, modify, or terminate the relevant protection area.~~

~~———— (b) If the applicable legislative body modifies or terminates the agriculture protection area, industrial protection area, or critical infrastructure materials protection area, the applicable legislative body shall file an executed document containing the legal description of the relevant protection area, with the county recorder of deeds.~~

~~———— (c) An agriculture protection area, industrial protection area, or critical infrastructure materials protection area may not be terminated by a legislative body unless:~~

~~———— (i) the protection area has not been used for agricultural, industrial, or critical infrastructure materials purposes for at least the immediately preceding 15 consecutive years;~~
~~and~~

~~———— (ii) the provisions of Section 17-41-306 or 17-41-704 have been met.~~

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~~(3) If the applicable legislative body fails affirmatively to continue, modify, or terminate the agriculture protection area, industrial protection area, or critical infrastructure materials protection area, as the case may be, in the 20th calendar year, the relevant protection area is considered to be reauthorized for another 20 years.~~

~~Section 11. Section 17-41-402 is amended to read:~~

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

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

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

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

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

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

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

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

(3) Except as provided by Section 19-4-113, a political subdivision may not change the

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zoning designation of or a zoning regulation affecting land within an industrial protection area unless the political subdivision receives written approval for the change from all the landowners within the industrial protection area affected by the change.

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

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

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

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

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

Section ~~12~~9. Section **17-41-403** is amended to read:

17-41-403. Nuisances.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) is presumed to be reasonable; and

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

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

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

"Agriculture Protection Area

{ This property is located in the vicinity of an established agriculture protection area in which normal agricultural uses and activities have been afforded the highest

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priority use status. It can be anticipated that such agricultural uses and activities may now or in the future be conducted on property included in the agriculture protection area. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities."

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

"Industrial Protection Area

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

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

"Critical Infrastructure Materials Protection Area

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

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

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

Section ~~{13}~~10. Section **17-41-404** is amended to read:

17-41-404. Policy of state agencies.

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

~~[(1)]~~ (a) not enacting rules that would impose unreasonable restrictions on:

~~(i)~~ farm structures or farm practices within the agriculture protection area~~[-on]~~;

~~(ii)~~ industrial uses and practices within the industrial protection area~~[-or on]~~;

~~(iii)~~ critical infrastructure materials operations ~~[with]~~ within a critical infrastructure materials protection area~~[- unless those laws, ordinances, or regulations bear a direct relationship to public health or safety or are required by federal law; and]~~; or

~~(iv)~~ a mining use within a mining protection area; or

~~[(2)]~~ (b) modifying existing rules that would impose unreasonable restrictions on:

~~(i)~~ farm structures or farm practices within the agriculture protection area~~[-on]~~;

~~(ii)~~ industrial uses and activities within the industrial protection area~~[-or on]~~;

~~(iii)~~ critical infrastructure materials operations within a critical infrastructure materials protection area~~[- unless those laws, ordinances, or regulations bear a direct relationship to public health or safety or are required by federal law.]; or~~

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

(2) Notwithstanding Subsection (1), if there is clear and convincing evidence that farm structures or farm practices within an agriculture protection area, industrial uses and activities within an industrial protection area, critical infrastructure materials operations within a critical infrastructure materials protection area, or a mining use within a mining protection area would present an imminent danger to public health, safety, and welfare, a state agency may impose

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reasonable conditions on the operations to directly address the imminent danger.

Section ~~{14}~~11. Section 17-41-405 is amended to read:

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

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

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

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

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

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

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

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

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

(A) agriculture within the agriculture protection area;

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

(C) critical infrastructure materials operations within the critical infrastructure materials protection area; or

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

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

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

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

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

Section ~~{15}~~12. Section **17-41-501** 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 on any portion of the mining property or was conducted or otherwise engaged in before a political subdivision prohibits~~{ff}~~, restricts, or otherwise limits~~{ff}~~ the mining use.

(b) ~~[Anyone]~~ Subject to Subsection (5), a person 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

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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.

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

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

(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 of:

- (i) May 1, 2025; 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.

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

(6) This part controls over any other statute, rule, ordinance, policy, practice, order, or directive regarding vested mining use.

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

Section ~~16~~13. 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.

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(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 as of 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 ~~for partly contiguous~~ and related in mineralization to surface or subsurface land or a mineral estate that the mine operator [~~already owns or controls~~] comes to own or control after January 1, 2019;

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

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

(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 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

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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]~~.

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

(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.

Section ~~{17}~~14. Section 17-41-701 is enacted to read:

Part 7. Vested Critical Infrastructure Materials Operations

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

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

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

(2) Vested critical infrastructure materials operations:

(a) run with the land; and

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

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

(b) Regardless of whether a critical infrastructure materials protection area is created, vested critical infrastructure materials operations have the protections contained in this chapter, Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act, and ~~§Title 17,~~ ~~§~~Chapter 27a, County Land Use, Development, and Management Act.

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

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

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

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

(c) If a critical infrastructure materials operator with vested critical infrastructure materials operations provides a copy of the critical infrastructure materials operator's recorded declaration to a political subdivision or state agency, the political subdivision or state agency has actual notice of the vested critical infrastructure materials operations and shall treat the vested critical infrastructure materials operations as established unless a person presents clear

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and convincing evidence to the political subdivision or state agency in a formal adjudicative proceeding that the vested critical infrastructure materials operations have not been established.

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

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

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

Section ~~{18}~~15. Section 17-41-702 is enacted to read:

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

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

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

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

~~{2} expand the vested critical infrastructure materials operations to any new land that:
—— (a) is contiguous or partly contiguous and related in mineralization to; b) the surface or subsurface land or {a} mineral estate ~~{that the critical infrastructure materials operator comes to own or control after May 14, 2019;~~~~

~~—— (b) contains minerals that are part of the same mineral trend as the minerals that the critical infrastructure materials operator comes to own or control after May 14, 2019; or~~

~~—— (c) is a geologic offshoot to surface or subsurface land or a mineral estate that the critical infrastructure materials operator comes to own or control after May 14, 2019;~~

~~—— {3} is within two miles of the land described in the declaration under Subsection~~

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17-41-701(4)(a):

(2) use, operate, construct, reconstruct, restore, maintain, repair, alter, substitute, modernize, upgrade, and replace equipment, processes, facilities, and buildings;

(~~4~~3) increase production or volume, alter the method of mining or processing, and mine or process a different or additional mineral or other critical infrastructure material than previously mined or owned on any surface or subsurface land or mineral estate that the critical infrastructure materials operator owns or controls, except that a critical infrastructure materials operator shall comply with applicable state statutes or rules, including statutes or rules applying to safety, air pollution, or water pollution; and

(~~5~~4) discontinue, suspend, terminate, deactivate, or continue and reactivate, temporarily or permanently, all or any part of the critical infrastructure materials operations.

Section ~~{19}~~16. Section **17-41-703** is enacted to read:

17-41-703. Notice.

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

"Vested Critical Infrastructure Materials Operations

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

Section ~~{20}~~17. Section **17-41-704** is enacted to read:

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

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

(2) To abandon some or all of a vested critical infrastructure materials operations, a critical infrastructure materials operator shall record a written declaration of abandonment with the recorder of the county in which the vested critical infrastructure materials operations being

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abandoned is located.

(3) The written declaration of abandonment under Subsection (2) shall specify the vested critical infrastructure materials operations or the portion of the vested critical infrastructure materials operations being abandoned.

Section ~~{21}~~18. Section 78B-6-1101 is amended to read:

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

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

(2) A nuisance may include the following:

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

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

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

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

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

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

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

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

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

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

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

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

(b) a hotel or motel room.

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

(6) An action may be brought by a person whose property is injuriously affected, or

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whose personal enjoyment is lessened by the nuisance.

(7) An action for nuisance against an agricultural operation is governed by Title 4, Chapter 44, Agricultural Operations Nuisances Act.

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

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

Section ~~{22}~~19. **Repealer.**

This bill repeals:

Section ~~10-9a-901~~, **Definitions.**

Section ~~10-9a-902~~, **Vested critical infrastructure materials operations -- Conclusive presumption.**

Section ~~10-9a-903~~, **Rights of a critical infrastructure materials operator with a vested critical infrastructure materials operations.**

Section ~~10-9a-904~~, **Notice.**

Section ~~10-9a-905~~, **Abandonment of a vested critical infrastructure materials operations.**

Section ~~17-27a-1001~~, **Definitions.**

Section ~~17-27a-1002~~, **Vested critical infrastructure materials operations -- Conclusive presumption.**

Section ~~17-27a-1003~~, **Rights of a critical infrastructure materials operator with a vested critical infrastructure materials operations.**

Section ~~17-27a-1004~~, **Notice.**

Section ~~17-27a-1005~~, **Abandonment of a vested critical infrastructure materials operations.**

Section ~~{23}~~20. **Effective date.**

This bill takes effect on May 1, 2024.