

WATER SOURCE PROTECTION ZONE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Waldrip

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses the processes related to water source protection zones and related ordinances.

Highlighted Provisions:

This bill:

- ▶ modifies the minimum requirements for ordinances;
- ▶ provides processes for approving water source protection zones;
- ▶ repeals outdated language; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-41-402.5, as enacted by Laws of Utah 2009, Chapter 376

19-4-113, as last amended by Laws of Utah 2009, Chapter 173

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

Section 1. Section **17-41-402.5** is amended to read:



28 **17-41-402.5. Limits on political subdivisions with respect to a vested mining use --**

29 **Exception.**

30 (1) A political subdivision may not:

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

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

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

36 (i) a variance;

37 (ii) a conditional use permit;

38 (iii) a special exception;

39 (iv) the establishment or determination of a nonconforming use right; or

40 (v) any other type of zoning or land use permit; or

41 (d) prohibit, restrict, limit, or otherwise regulate a vested mining use under a variance,
42 conditional use permit, special exception, or other zoning or land use permit issued before May
43 12, 2009.

44 (2) Subsection (1) does not prohibit a political subdivision from requiring a vested
45 mining use to comply with the generally applicable, reasonable health and safety regulations
46 and building code adopted by the political subdivision including a drinking water protection
47 zone as defined and limited to Subsection 19-4-113(4)[(a) and (b)].

48 Section 2. Section **19-4-113** is amended to read:

49 **19-4-113. Water source protection ordinance required.**

50 (1) (a) Before May 3, 2010, a first or second class county shall:

51 (i) adopt an ordinance in compliance with this section after:

52 (A) considering the rules established by the board to protect a watershed or water
53 source used by a public water system;

54 (B) consulting with a wholesale water supplier or retail water supplier whose drinking
55 water source is within the county's jurisdiction;

56 (C) considering the effect of the proposed ordinance on:

57 (I) agriculture production within an agricultural protection area created under Title 17,
58 Chapter 41, Agriculture, Industrial, or Critical Infrastructure Materials Protection Areas; and

59 (II) a manufacturing, industrial, or mining operation within the county's jurisdiction;
60 and

61 (D) holding a public hearing in accordance with Title 52, Chapter 4, Open and Public
62 Meetings Act; and

63 (ii) file a copy of the ordinance with the board.

64 (b) A municipality in a first or second class county may adopt an ordinance that a first
65 or second class county is required to adopt by this section by following the procedures and
66 requirements of this section.

67 (2) (a) A county ordinance adopted in accordance with this section applies to the
68 incorporated and unincorporated areas of the county unless a municipality adopts an ordinance
69 in accordance with this section.

70 (b) A municipal ordinance adopted in accordance with this section supercedes, within
71 the municipality's jurisdiction, a county ordinance adopted in accordance with this section.

72 (3) An ordinance required or authorized by this section at a minimum shall:

73 (a) designate a drinking water source protection zone in accordance with Subsection
74 (4) for a groundwater source that is:

75 (i) used by a public water system; and

76 (ii) located within the county's or municipality's jurisdiction;

77 (b) contain a zoning provision regulating the storage, handling, use, or production of a
78 hazardous or toxic substance within a drinking water source protection zone designated under
79 Subsection (3)(a); ~~and~~

80 (c) authorize a retail water supplier or wholesale water supplier to seek enforcement of
81 the ordinance provision required by Subsections (3)(a) and (b) in a district court located within
82 the county or municipality if the county or municipality:

83 (i) notifies the retail water supplier or wholesale water supplier within 10 days of
84 receiving notice of a violation of the ordinance that the county or municipality will not seek
85 enforcement of the ordinance; or

86 (ii) does not seek enforcement within two days of a notice of violation of the ordinance
87 when the violation may cause irreparable harm to the groundwater source[-];

88 (d) provide for disclosure to owners of private property affected by a drinking water
89 source protection zone, as follows:

90 (i) require a notice of the drinking water source protection zone be recorded with the
91 title of property affected by a drinking water source protection zone; or

92 (ii) in lieu of recording a notice under Subsection (3)(d)(i), the retail water supplier or
93 wholesale water supplier shall secure a drinking water source protection easement over and on
94 affected property;

95 (e) require at least one public hearing when a public water system for culinary use
96 proposes improvements to a new or existing drinking water source that will affect a drinking
97 water source protection zone designation on private property:

98 (i) that occurs before final approval of development or improvement of a drinking
99 water source;

100 (ii) that presents the reasonably anticipated extent and effect of any proposed drinking
101 water source protection zone on private property;

102 (iii) that is noticed by certified mail to the property owners likely to be affected, and by
103 posting in a newspaper of general circulation in the affected area, no less than 10 days in
104 advance of the public hearing; and

105 (iv) except that property owned or otherwise controlled by the public water system is
106 exempt from the hearing requirements of this Subsection (3)(e); and

107 (f) designate the department as the agency responsible for hearing appeals related to the
108 configuration of a public water system's drinking water source protection zone.

109 (4) ~~[A]~~ (a) For a drinking water source existing before May 12, 2020, a county shall
110 designate a drinking water source protection zone required by Subsection (3)(a) within:

111 ~~[(a)]~~ (i) a 100 foot radius from the groundwater source; and

112 ~~[(b)]~~ (ii) a 250 day groundwater time of travel to the groundwater source if the
113 ~~[supplier calculates]~~ public water system has calculated the time of travel in the public water
114 system's drinking water source protection plan in accordance with board rules.

115 (b) For a drinking water source developed or improved on or after May 12, 2020, and
116 after public notice and hearing as required in Subsection (3)(e), a county may:

117 (i) approve a proposed new or expanded drinking water source protection zone if
118 requested by a public water system; or

119 (ii) reject a proposed new or expanded drinking water source protection zone.

120 (c) If a county rejects a proposed new or expanded drinking water source protection

121 zone, the public water system may pursue other drinking water source protection remedies to
122 protect the proposed source.

123 (d) A county shall make publicly accessible by the Internet a map of the county's water
124 source protection zones.

125 (5) A zoning provision required by Subsection (3)(b) is not subject to Subsection
126 17-41-402(3).

127 (6) An ordinance authorized by Section 10-8-15 supercedes an ordinance required or
128 authorized by this section to the extent that the ordinances conflict.

129 (7) The board shall~~[(a)]~~ provide information, guidelines, and technical resources to a
130 county or municipality preparing and implementing an ordinance in accordance with this
131 section~~[, and]~~.

132 ~~[(b) report to the Natural Resources, Agriculture, and Environment Interim Committee~~
133 ~~before November 30, 2010 on:]~~

134 ~~[(i) compliance with this section's requirement to adopt an ordinance to protect a public~~
135 ~~drinking water source; and]~~

136 ~~[(ii) the effectiveness of the ordinance in retaining state primacy in regulating drinking~~
137 ~~water.]~~