

**PROTECTION AREAS REVISIONS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David P. Hinkins**

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;
- ▶ 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 a protection area;
- ▶ outlines the notice of a proposal to create a protection area;
- ▶ addresses public hearing requirements;
- ▶ modifies criteria to be considered in creating a protection area;
- ▶ amends process to add land or remove land from a protection area;
- ▶ modifies effects of annexation;



- 28 ▶ limits powers related to review of protection areas;
- 29 ▶ addresses limitations on local regulations;
- 30 ▶ addresses nuisance;
- 31 ▶ modifies the policy for state agencies;
- 32 ▶ amends restrictions related to eminent domain;
- 33 ▶ addresses vested mining uses; and
- 34 ▶ makes technical and conforming changes.

35 **Money Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

- 41 **10-9a-102**, as last amended by Laws of Utah 2019, Chapter 384
- 42 **17-27a-102**, as last amended by Laws of Utah 2022, Chapter 307
- 43 **17-41-101**, as last amended by Laws of Utah 2023, Chapter 15
- 44 **17-41-201**, as last amended by Laws of Utah 2019, Chapter 227
- 45 **17-41-301**, as last amended by Laws of Utah 2019, Chapter 227
- 46 **17-41-302**, as last amended by Laws of Utah 2023, Chapter 435
- 47 **17-41-304**, as last amended by Laws of Utah 2023, Chapter 435
- 48 **17-41-305**, as last amended by Laws of Utah 2019, Chapter 227
- 49 **17-41-306**, as last amended by Laws of Utah 2019, Chapter 227
- 50 **17-41-307**, as last amended by Laws of Utah 2019, Chapter 227
- 51 **17-41-402**, as last amended by Laws of Utah 2019, Chapter 227
- 52 **17-41-403**, as last amended by Laws of Utah 2019, Chapters 81, 227
- 53 **17-41-404**, as last amended by Laws of Utah 2019, Chapter 227
- 54 **17-41-405**, as last amended by Laws of Utah 2023, Chapter 435
- 55 **17-41-501**, as enacted by Laws of Utah 2009, Chapter 376
- 56 **17-41-502**, as enacted by Laws of Utah 2009, Chapter 376
- 57 **78B-6-1101**, as last amended by Laws of Utah 2021, Chapter 207

58 ENACTS:

- 59           17-41-701, Utah Code Annotated 1953
- 60           17-41-702, Utah Code Annotated 1953
- 61           17-41-703, Utah Code Annotated 1953
- 62           17-41-704, Utah Code Annotated 1953

63 REPEALS:

- 64           10-9a-901, as enacted by Laws of Utah 2019, Chapter 227
- 65           10-9a-902, as enacted by Laws of Utah 2019, Chapter 227
- 66           10-9a-903, as enacted by Laws of Utah 2019, Chapter 227
- 67           10-9a-904, as enacted by Laws of Utah 2019, Chapter 227
- 68           10-9a-905, as enacted by Laws of Utah 2019, Chapter 227
- 69           17-27a-1001, as enacted by Laws of Utah 2019, Chapter 227
- 70           17-27a-1002, as enacted by Laws of Utah 2019, Chapter 227
- 71           17-27a-1003, as enacted by Laws of Utah 2019, Chapter 227
- 72           17-27a-1004, as enacted by Laws of Utah 2019, Chapter 227
- 73           17-27a-1005, as enacted by Laws of Utah 2019, Chapter 227



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

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

77           **10-9a-102. Purposes -- General land use authority.**

- 78           (1) The purposes of this chapter are to:
  - 79           (a) provide for the health, safety, and welfare;
  - 80           (b) promote the prosperity;
  - 81           (c) improve the morals, peace, good order, comfort, convenience, and aesthetics of
  - 82           each municipality and each municipality's present and future inhabitants and businesses;
  - 83           (d) protect the tax base;
  - 84           (e) secure economy in governmental expenditures;
  - 85           (f) foster the state's agricultural and other industries;
  - 86           (g) protect both urban and nonurban development;
  - 87           (h) protect and ensure access to sunlight for solar energy devices;
  - 88           (i) provide fundamental fairness in land use regulation;
  - 89           (j) facilitate orderly growth and allow growth in a variety of housing types; and

90 (k) protect property values.

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

96 (a) uses;

97 (b) density;

98 (c) open spaces;

99 (d) structures;

100 (e) buildings;

101 (f) energy efficiency;

102 (g) light and air;

103 (h) air quality;

104 (i) transportation and public or alternative transportation;

105 (j) infrastructure;

106 (k) street and building orientation;

107 (l) width requirements;

108 (m) public facilities;

109 (n) fundamental fairness in land use regulation; and

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

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

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

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

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

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

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

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

125           **17-27a-102. Purposes -- General land use authority -- Limitations.**

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

127           (i) provide for the health, safety, and welfare;

128           (ii) promote the prosperity;

129           (iii) improve the morals, peace, good order, comfort, convenience, and aesthetics of  
130 each county and each county's present and future inhabitants and businesses;

131           (iv) protect the tax base;

132           (v) secure economy in governmental expenditures;

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

134           (vii) protect both urban and nonurban development;

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

136           (ix) provide fundamental fairness in land use regulation;

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

138           (xi) protect property values.

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

145           (i) uses;

146           (ii) density;

147           (iii) open spaces;

148           (iv) structures;

149           (v) buildings;

150           (vi) energy-efficiency;

151           (vii) light and air;

- 152 (viii) air quality;
- 153 (ix) transportation and public or alternative transportation;
- 154 (x) infrastructure;
- 155 (xi) street and building orientation and width requirements;
- 156 (xii) public facilities;
- 157 (xiii) fundamental fairness in land use regulation; and
- 158 (xiv) considerations of surrounding land uses to balance the foregoing purposes with a
- 159 landowner's private property interests and associated statutory and constitutional protections.

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

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

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

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

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

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

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

182 (5) An ordinance, resolution, or rule enacted by a county pursuant to the county's

183 authority under this chapter shall comply with Title 17, Chapter 41, Agriculture, Industrial, or  
184 Critical Infrastructure Materials Protection Areas.

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

186 **17-41-101. Definitions.**

187 As used in this chapter:

188 (1) "Advisory board" means:

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

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

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

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

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

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

202 (4) "Applicable legislative body" means:

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

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

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

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

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

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

214 located.

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

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

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

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

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

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

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

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

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

232 (i) forages and sod crops;

233 (ii) grains and feed crops;

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

235 (iv) trees and fruits; or

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

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

240 (11) "Division" means the Division of Oil, Gas, and Mining created in Section  
241 40-6-15.

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

244 (13) "Mine operator" means a natural person, corporation, association, partnership,



245 receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or  
 246 representative, either public or private, including a successor, assign, affiliate, subsidiary, and  
 247 related parent company, that, ~~[as of]~~ on or before January 1, 2019:

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

251 (b) has ~~[produced]~~ caused commercial quantities of a mineral deposit to be produced  
 252 from the mining use under the large mine permit.

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

254 (15) "Mining protection area" means land where a vested mining use occurs, has  
 255 occurred, or will occur if the area has not yet been disturbed or excavated, including each  
 256 surface or subsurface land or mineral estate that a mine operator with a vested mining use owns  
 257 or controls.

258 (16) "Mining use":

259 (a) means~~[-(i)]~~ the full range of activities, that have been, are being, or will be  
 260 conducted, from prospecting and exploration to reclamation and closure, associated with the  
 261 exploitation of a mineral deposit; and

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

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

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

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

268 ~~[(ii)]~~ (iii) any drilling, blasting, excavating, or tunneling;

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

271 ~~[(iv)]~~ (v) any removal, transportation, extraction, beneficiation, or processing of ore;

272 ~~[(v)]~~ (vi) any smelting, refining, autoclaving, or other primary or secondary processing  
 273 operation;

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

276 [~~(vii)~~] (viii) a mining activity that is identified in a work plan or permitting document;  
277 [~~(viii)~~] (ix) the use, operation, maintenance, repair, replacement, or alteration of a  
278 building, structure, facility, equipment, machine, tool, or other material or property that results  
279 from or is used in a surface or subsurface mining operation or activity;

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

284 [~~(x)~~] (xi) the construction of a storage, factory, processing, or maintenance facility;

285 [~~and~~]

286 [~~(xi)~~] (xii) an activity described in Subsection [40-8-4\(17\)\(a\)](#)[-]; and

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

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

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

291 (18) "New land" means surface or subsurface land or mineral estate that a mine  
292 operator gains ownership or control of[-] after January 1, 2019, regardless of whether that land  
293 or mineral estate is included in the mine operator's large mine permit.

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

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

296 (21) "Planning commission" means:

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

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

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

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

309 (23) "Proposal sponsors" means the owners of land in agricultural production,  
310 industrial use, or critical infrastructure materials operations who are sponsoring the proposal  
311 for creating an agriculture protection area, industrial protection area, or critical infrastructure  
312 materials protection area.

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

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

317 (26) "Vested critical infrastructure materials operations" means critical infrastructure  
318 materials operations that meet the conclusive presumption described in Subsection  
319 17-41-701(1)(a).

320 [~~26~~] (27) "Vested mining use" means a mining use:

321 (a) by a mine operator; and

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

324 Section 4. Section **17-41-201** is amended to read:

325 **17-41-201. Protection area advisory board.**

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

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

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

332 (A) the executive director of the Department of Transportation, or the executive  
333 director's designee;

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

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

337 (D) a representative of the critical infrastructure materials industry appointed by the

338 county legislative body; and

339 (E) a representative of the construction industry appointed by the county legislative  
340 body.

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

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

348 (3) An advisory board shall:

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

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

354 (i) the desirability of the proposal;

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

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

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

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

362 Section 5. Section **17-41-301** is amended to read:

363 **17-41-301. Proposal for creation of a protection area.**

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

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

368 (ii) the legislative body of the [~~city or town~~] municipality in which the area is located,

369 if the area is within a [~~city or town~~] municipality.

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

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

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

379 (B) for a proposed critical infrastructure materials protection area, the critical  
380 infrastructure materials operator.

381 (ii) For purposes of Subsection (1)(c)(i), the owners of real property shall be  
382 determined by the records of the county recorder.

383 (2) The proposal shall identify:

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

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

387 (c) for each parcel of land:

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

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

391 (iii) the number of acres of each parcel.

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

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

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

400 (b) reasonable fees for accepting and processing the proposal.

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

404 Section 6. Section **17-41-302** is amended to read:

405 **17-41-302. Notice of proposal for creation of protection area -- Responses.**

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

408 (b) A legislative body shall provide the notice described in Subsection (1)(a) for the  
409 geographic boundaries of the proposed agriculture protection area, industrial protection area, or  
410 critical infrastructure materials protection area, and the area that extends 1,000 feet beyond the  
411 geographic boundaries of the proposed agriculture protection area, industrial protection area, or  
412 critical infrastructure materials protection area.

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

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

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

419 ~~[(c) a statement that any person affected by the establishment of the area may, within~~  
420 ~~15 days of the date of the notice, file with the applicable legislative body:]~~

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

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

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

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

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

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

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

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

434 (2) The notice shall provide as follows: "[County/City/Town] has received a proposal  
 435 to create a [agriculture/industrial/critical infrastructure materials] protection area. This proposal  
 436 is available for public inspection in the office of [Name of County/City/Town Office], located  
 437 at [address]. Any person affected by this proposal may, within 15 days of the date of this  
 438 notice, file a written objection or a written request to modify the proposal. The [applicable  
 439 legislative body of the County/City/Town] will submit this proposal to [the advisory committee  
 440 and to the planning commission, if applicable] for review and recommendations. The  
 441 [applicable legislative body of the County/City/Town] will hold a public hearing to discuss and  
 442 hear public comment on (1) the proposal; (2) the recommendations of the [the advisory  
 443 committee and the planning commission, if applicable]; and (3) any requests for modifications  
 444 of the proposal and any objections to the proposal. The public hearing will take place on [date]  
 445 at [time] at [location and address]."

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

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

455 Section 7. Section **17-41-304** is amended to read:

456 **17-41-304. Public hearing -- Notice -- Review and action on proposal.**

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

460 (a) schedule a public hearing;

461 (b) provide notice of the public hearing for the geographic area described in Subsection

462 17-41-302(1)(b), as a class B notice under Section 63G-30-102, for at least seven days; and

463 (c) ensure that the notice includes:

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

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

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

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

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

474 (2) The applicable legislative body shall:

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

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

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

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

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

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

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

489 (4) (a) To give constructive notice of the existence of the agriculture protection area,  
490 industrial protection area, or critical infrastructure materials protection area to all persons who  
491 have, may acquire, or may seek to acquire an interest in land in or adjacent to the relevant  
492 protection area within 10 days of the creation of the relevant protection area, the applicable



493 legislative body shall file an executed document containing a legal description of the relevant  
494 protection area with:

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

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

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

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

504 (b) include in the notification:

- 505 (i) the number of landowners owning land within the agriculture protection area;
- 506 (ii) the total acreage of the area;
- 507 (iii) the date of approval of the area; and
- 508 (iv) the date of recording.

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

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

515 Section 8. Section 17-41-305 is amended to read:

516 **17-41-305. Criteria to be applied in evaluating a proposal for the creation of a**  
517 **protection area.**

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

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

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

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

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

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

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

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

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

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

541           (C) post-operations land use.

542           (2) The timing of acquisition of the various parcels within a critical infrastructure  
543 materials protection area, or ownership of the parcels, is not relevant when evaluating a  
544 proposal to create a critical infrastructure protection area.

545           Section 9. Section **17-41-306** is amended to read:

546           **17-41-306. Adding land to or removing land from a protection area -- Removing**  
547 **land from a mining protection area.**

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

550           (i) filing a proposal with:

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

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

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

557 (b) The applicable legislative body shall:

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

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

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

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

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

570 [~~(A) shall:~~]

571 [~~(F) grant the petition for removal of land from the relevant protection area, even if~~  
572 ~~removal of the land would result in an agriculture protection area, industrial protection area, or~~  
573 ~~critical infrastructure materials protection area of less than the number of acres established by~~  
574 ~~the applicable legislative body as the minimum under Section 17-41-301; and]~~

575 [~~(H) to]~~

576 (A) shall give constructive notice of the removal to all persons who have, may acquire, or  
577 or may seek to acquire an interest in land in or adjacent to the agriculture protection area,  
578 industrial protection area, or critical infrastructure materials protection area and the land  
579 removed from the relevant protection area, file a legal description of the revised boundaries of  
580 the relevant protection area with the county recorder of deeds and the affected planning  
581 commission; and

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

585 (ii) The remaining land in the agriculture protection area, industrial protection area, or

586 critical infrastructure materials protection area is still an agriculture protection area, industrial  
587 protection area, or critical infrastructure materials protection area.

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

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

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

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

600 (i) the annexed land retains the annexed land's status as part of an agriculture  
601 protection area, industrial protection area, or critical infrastructure materials protection area;  
602 and

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

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

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

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

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

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

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

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

625 Section 10. Section 17-41-307 is amended to read:

626 **17-41-307. Review of protection areas.**

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

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

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

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

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

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

641 (iii) give notice of the hearing using the same procedures required by Section  
642 17-41-302; and

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

645 (b) If the applicable legislative body modifies or terminates the agriculture protection  
646 area, industrial protection area, or critical infrastructure materials protection area, the  
647 applicable legislative body shall file an executed document containing the legal description of

648 the relevant protection area, with the county recorder of deeds.

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

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

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

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

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

660 **17-41-402. Limitations on local regulations.**

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

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

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

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

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

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

679 critical infrastructure operations to directly address the imminent danger.

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

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

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

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

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

696 (a) adopt, enact, or amend an existing land use regulation, ordinance, or regulation that  
697 would prohibit, restrict, regulate, or otherwise limit critical infrastructure materials operations,  
698 including vested critical infrastructure materials operations [~~as defined in Section 10-9a-901 or~~  
699 ~~17-27a-1001~~]; or

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

702 Section 12. Section 17-41-403 is amended to read:

703 **17-41-403. Nuisances.**

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

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

709 (b) for an industrial protection area, any industrial use of the land within the industrial

710 protection area that is consistent with sound practices applicable to the industrial use~~[-unless~~  
711 ~~that use bears a direct relationship to public health or safety; or];~~

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

716 (d) for a mining protection area, a mining use or vested mining use on any portion of  
717 the land within the mining protection area that is consistent with sound practices applicable to  
718 the mining use or vested mining use.

719 (2) In a civil action for nuisance or a criminal action for public nuisance under Section  
720 76-10-803, it is a complete defense if the action involves agricultural, industrial, critical  
721 infrastructure, or mining activities and:

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

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

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

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

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

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

730 (i) is presumed to be reasonable; and

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

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

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

738 "Agriculture Protection Area

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



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

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

748 "Industrial Protection Area

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

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

759 "Critical Infrastructure Materials Protection Area

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

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

770 "This property is located within the vicinity of an established mining protection area in  
771 which normal mining uses and activities have been afforded the highest priority use

772 status. It can be anticipated that the mining uses and activities may now or in the future be  
 773 conducted on property included in the mining protection area. The use and enjoyment of this  
 774 property is expressly conditioned on acceptance of any annoyance or inconvenience that may  
 775 result from the normal mining uses and activities."

776 Section 13. Section **17-41-404** is amended to read:

777 **17-41-404. Policy of state agencies.**

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

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

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

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

802 Section 14. Section **17-41-405** is amended to read:

803 **17-41-405. Eminent domain restrictions -- Notice of hearing.**

804 (1) A political subdivision having or exercising eminent domain powers may not  
805 condemn for any purpose any land within an agriculture protection area that is being used for  
806 agricultural production, land within an industrial protection area that is being put to an  
807 industrial use, [or] land within a critical infrastructure materials protection area, land within a  
808 mining protection area, or land described in a declaration filed pursuant to Subsection  
809 17-41-501(4) or 17-41-701(4) unless the political subdivision obtains approval, according to  
810 the procedures and requirements of this section, from the applicable legislative body and the  
811 advisory board.

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

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

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

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

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

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

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

831 (A) agriculture within the agriculture protection area;

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

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

834 materials protection area; or

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

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

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

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

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

846 Section 15. Section **17-41-501** is amended to read:

847 **17-41-501. Vested mining use -- Conclusive presumption.**

848 (1) (a) A mining use is conclusively presumed to be a vested mining use if the mining  
849 use existed on any portion of the mining property or was conducted or otherwise engaged in  
850 before a political subdivision prohibits~~[, restricts, or otherwise limits]~~ the mining use.

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

854 (2) A vested mining use:

855 (a) runs with the land; and

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

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

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

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

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

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

865 (i) contain a legal description of the land included within the vested mining use; and  
866 (ii) provide notice of the vested mining use.

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

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

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

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

879 (i) May 1, 2025; or

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

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

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

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

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

891 Section 16. Section **17-41-502** is amended to read:

892 **17-41-502. Rights of a mine operator with a vested mining use -- Expanding**  
893 **vested mining use.**

894 (1) Notwithstanding a political subdivision's prohibition, restriction, or other limitation  
895 on a mining use adopted after the establishment of the mining use, the rights of a mine operator

896 with a vested mining use include the rights to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

927 (ii) to each applicable legislative body.

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

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

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

932 (I) of:

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

934 (Bb) the public meeting or hearing; and

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

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

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

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

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

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

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

952 Section 17. Section **17-41-701** is enacted to read:

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

954 **17-41-701. Vested critical infrastructure materials operations -- Conclusive**

955 **presumption.**

956 (1) (a) Critical infrastructure materials operations operating in accordance with a legal  
957 nonconforming use or a permit issued by the political subdivision are conclusively presumed to

958 be vested critical infrastructure materials operations if the critical infrastructure materials  
959 operations permitted by the political subdivision, existed on any portion of the property or were  
960 conducted or otherwise engaged in before a political subdivision prohibits the critical  
961 infrastructure materials operations.

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

965 (2) Vested critical infrastructure materials operations:

966 (a) run with the land; and

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

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

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

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

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

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

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

982 (c) If a critical infrastructure materials operator with vested critical infrastructure  
983 materials operations provides a copy of the critical infrastructure materials operator's recorded  
984 declaration to a political subdivision or state agency, the political subdivision or state agency  
985 has actual notice of the vested critical infrastructure materials operations and shall treat the  
986 vested critical infrastructure materials operations as established unless a person presents clear  
987 and convincing evidence to the political subdivision or state agency in a formal adjudicative  
988 proceeding that the vested critical infrastructure materials operations have not been established.



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

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

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

998 Section 18. Section **17-41-702** is enacted to read:

999 **17-41-702. Rights of a critical infrastructure materials operator with vested**  
1000 **critical infrastructure materials operations.**

1001 Notwithstanding a political subdivision's prohibition, restriction, or other limitation on  
1002 a critical infrastructure materials operations adopted after the establishment of the critical  
1003 infrastructure materials operations, the rights of a critical infrastructure materials operator with  
1004 vested critical infrastructure materials operations include the right to:

1005 (1) progress, extend, enlarge, grow, or expand the vested critical infrastructure  
1006 materials operations to any surface or subsurface land or mineral estate if, as of May 14, 2019,  
1007 the critical infrastructure materials operator owns or controls the surface or subsurface land or  
1008 mineral estate;

1009 (2) expand the vested critical infrastructure materials operations to any new land that:

1010 (a) is contiguous or partly contiguous and related in mineralization to surface or  
1011 subsurface land or a mineral estate that the critical infrastructure materials operator comes to  
1012 own or control after May 14, 2019;

1013 (b) contains minerals that are part of the same mineral trend as the minerals that the  
1014 critical infrastructure materials operator comes to own or control after May 14, 2019; or

1015 (c) is a geologic offshoot to surface or subsurface land or a mineral estate that the  
1016 critical infrastructure materials operator comes to own or control after May 14, 2019;

1017 (3) use, operate, construct, reconstruct, restore, maintain, repair, alter, substitute,  
1018 modernize, upgrade, and replace equipment, processes, facilities, and buildings;

1019 (4) increase production or volume, alter the method of mining or processing, and mine

1020 or process a different or additional mineral or other critical infrastructure material than  
1021 previously mined or owned on any surface or subsurface land or mineral estate that the critical  
1022 infrastructure materials operator owns or controls; and

1023 (5) discontinue, suspend, terminate, deactivate, or continue and reactivate, temporarily  
1024 or permanently, all or any part of the critical infrastructure materials operations.

1025 Section 19. Section **17-41-703** is enacted to read:

1026 **17-41-703. Notice.**

1027 For any new subdivision development located in whole or in part within 1,000 feet of  
1028 the boundary of a vested critical infrastructure materials operations, the owner of the  
1029 development shall provide notice on any plat filed with the county recorder the following  
1030 notice:

1031 "Vested Critical Infrastructure Materials Operations

1032 This property is located in the vicinity of an established vested critical infrastructure  
1033 materials operations in which critical infrastructure materials operations have been afforded the  
1034 highest priority use status. It can be anticipated that such operations may now or in the future  
1035 be conducted on property included in the critical infrastructure materials protection area. The  
1036 use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or  
1037 inconvenience that may result from such normal critical infrastructure materials operations."

1038 Section 20. Section **17-41-704** is enacted to read:

1039 **17-41-704. Abandonment of a vested critical infrastructure materials operations.**

1040 (1) A critical infrastructure materials operator may abandon some or all of a vested critical  
1041 infrastructure materials operations use only as provided in this section.

1042 (2) To abandon some or all of a vested critical infrastructure materials operations, a  
1043 critical infrastructure materials operator shall record a written declaration of abandonment with  
1044 the recorder of the county in which the vested critical infrastructure materials operations being  
1045 abandoned is located.

1046 (3) The written declaration of abandonment under Subsection (2) shall specify the  
1047 vested critical infrastructure materials operations or the portion of the vested critical  
1048 infrastructure materials operations being abandoned.

1049 Section 21. Section **78B-6-1101** is amended to read:

1050 **78B-6-1101. Definitions -- Nuisance -- Right of action -- Agriculture operations.**

1051 (1) A nuisance is anything that is injurious to health, indecent, offensive to the senses,  
1052 or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment  
1053 of life or property. A nuisance may be the subject of an action.

1054 (2) A nuisance may include the following:

1055 (a) drug houses and drug dealing as provided in Section [78B-6-1107](#);

1056 (b) gambling as provided in Title 76, Chapter 10, Part 11, Gambling;

1057 (c) criminal activity committed in concert with three or more persons as provided in  
1058 Section [76-3-203.1](#);

1059 (d) criminal activity committed for the benefit of, at the direction of, or in association  
1060 with any criminal street gang as defined in Section [76-9-802](#);

1061 (e) criminal activity committed to gain recognition, acceptance, membership, or  
1062 increased status with a criminal street gang as defined in Section [76-9-802](#);

1063 (f) party houses that frequently create conditions defined in Subsection (1); and

1064 (g) prostitution as provided in Title 76, Chapter 10, Part 13, Prostitution.

1065 (3) A nuisance under this part includes tobacco smoke that drifts into a residential unit  
1066 a person rents, leases, or owns, from another residential or commercial unit and the smoke:

1067 (a) drifts in more than once in each of two or more consecutive seven-day periods; and

1068 (b) creates any of the conditions under Subsection (1).

1069 (4) Subsection (3) does not apply to:

1070 (a) a residential rental unit available for temporary rental, such as for a vacation, or  
1071 available for only 30 or fewer days at a time; or

1072 (b) a hotel or motel room.

1073 (5) Subsection (3) does not apply to a unit that is part of a timeshare development, as  
1074 defined in Section [57-19-2](#), or subject to a timeshare interest as defined in Section [57-19-2](#).

1075 (6) An action may be brought by a person whose property is injuriously affected, or  
1076 whose personal enjoyment is lessened by the nuisance.

1077 (7) An action for nuisance against an agricultural operation is governed by Title 4,  
1078 Chapter 44, Agricultural Operations Nuisances Act.

1079 (8) "Critical infrastructure materials operations" means the same as that term is defined  
1080 in Section [~~10-9a-901~~] [17-41-701](#).

1081 (9) "Manufacturing facility" means a factory, plant, or other facility including its

1082 appurtenances, where the form of raw materials, processed materials, commodities, or other  
1083 physical objects is converted or otherwise changed into other materials, commodities, or  
1084 physical objects or where such materials, commodities, or physical objects are combined to  
1085 form a new material, commodity, or physical object.

1086 Section 22. **Repealer.**

1087 This bill repeals:

1088 Section **10-9a-901, Definitions.**

1089 Section **10-9a-902, Vested critical infrastructure materials operations -- Conclusive**  
1090 **presumption.**

1091 Section **10-9a-903, Rights of a critical infrastructure materials operator with a**  
1092 **vested critical infrastructure materials operations.**

1093 Section **10-9a-904, Notice.**

1094 Section **10-9a-905, Abandonment of a vested critical infrastructure materials**  
1095 **operations.**

1096 Section **17-27a-1001, Definitions.**

1097 Section **17-27a-1002, Vested critical infrastructure materials operations --**  
1098 **Conclusive presumption.**

1099 Section **17-27a-1003, Rights of a critical infrastructure materials operator with a**  
1100 **vested critical infrastructure materials operations.**

1101 Section **17-27a-1004, Notice.**

1102 Section **17-27a-1005, Abandonment of a vested critical infrastructure materials**  
1103 **operations.**

1104 Section 23. **Effective date.**

1105 This bill takes effect on May 1, 2024.