

MINING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: Scott H. Chew

LONG TITLE

General Description:

This bill addresses mining.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of small mining operations; and
- ▶ addresses eligibility of a mining company or mining services company for certain grants;
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

40-8-4, as last amended by Laws of Utah 2011, Chapter 231

63N-4-404, as last amended by Laws of Utah 2019, Chapters 45 and 136

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

Section 1. Section **40-8-4** is amended to read:

40-8-4. Definitions.

As used in this chapter:

(1) "Adjudicative proceeding" means:

(a) a division or board action or proceeding determining the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, permit, or license; or

(b) judicial review of a division or board action or proceeding specified in Subsection (1)(a).

(2) "Applicant" means a person who has filed a notice of intent to commence mining operations, or who has applied to the board for a review of a notice or order.

(3) (a) "Approved notice of intention" means a formally filed notice of intention to commence mining operations, including revisions to ~~[it, which has been]~~ the notice of intention that is approved under Section 40-8-13.

(b) An approved notice of intention is not required for small mining operations.

(4) "Board" means the Board of Oil, Gas, and Mining.

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

(6) (a) "Deposit" or "mineral deposit" means an accumulation of mineral matter in the form of consolidated rock, unconsolidated material, solutions, or occurring on the surface, beneath the surface, or in the waters of the land from which any product useful to man may be produced, extracted, or obtained or which is extracted by underground mining methods for underground storage.

(b) "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, water, geothermal steam, and oil and gas as defined in ~~[Title 40,]~~ Chapter 6, Board and Division of Oil, Gas, and Mining, but includes oil shale and bituminous sands extracted by mining operations.

(7) "Development" means the work performed in relation to a deposit following ~~[its]~~ the deposit's discovery but ~~[prior to]~~ before and in contemplation of production mining

operations, aimed at, but not limited to, preparing the site for mining operations, defining further the ore deposit by drilling or other means, conducting pilot plant operations, constructing roads or ancillary facilities, and other related activities.

(8) "Division" means the Division of Oil, Gas, and Mining.

(9) "Emergency order" means an order issued by the board in accordance with ~~the provisions of~~ Title 63G, Chapter 4, Administrative Procedures Act.

(10) (a) "Exploration" means surface-disturbing activities conducted for the purpose of:

(i) discovering a deposit or mineral deposit~~;~~;

(ii) delineating the boundaries of a deposit or mineral deposit~~;~~; and

(iii) identifying regions or specific areas in which deposits or mineral deposits are most likely to exist.

(b) "Exploration" includes~~;~~ ~~but is not limited to~~:

(i) sinking shafts;

(ii) tunneling;

(iii) drilling holes and digging pits or cuts;

(iv) building of roads, and other access ways; and

(v) constructing and operating other facilities related to ~~these~~ the activities described in this Subsection (10)(b).

(11) "Hearing" means a formal adjudicative proceeding conducted by the board under ~~its~~ the board's procedural rules.

(12) (a) "Imminent danger to the health and safety of the public" means the existence of a condition or practice, or a violation of a permit requirement or other requirement of this chapter in a mining operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated.

(b) A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not

83 expose ~~[himself or herself]~~ the rational person to the danger during the time necessary for
84 abatement.

85 (13) (a) "Land affected" means the surface and subsurface of an area within the state
86 where mining operations are being or will be conducted, including~~[-but not limited to]:~~

87 (i) on-site private ways, roads, and railroads;

88 (ii) land excavations;

89 (iii) exploration sites;

90 (iv) drill sites or workings;

91 (v) refuse banks or spoil piles;

92 (vi) evaporation or settling ponds;

93 (vii) stockpiles;

94 (viii) leaching dumps;

95 (ix) placer areas;

96 (x) tailings ponds or dumps; and

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

98 (b) ~~[All lands shall be]~~ Lands are excluded from ~~[the provisions of]~~ Subsection (13)(a)
99 that would:

100 (i) be includable as land affected, but which have been reclaimed in accordance with an
101 approved plan, as may be approved by the board; and

102 (ii) include lands in which mining operations have ceased ~~[prior to]~~ before July 1,
103 1977.

104 (14) (a) "Mining operation" means activities conducted on the surface of the land for
105 the exploration for, development of, or extraction of a mineral deposit, including~~[-but not~~
106 ~~limited to,]~~ surface mining and the surface effects of underground and in situ mining, on-site
107 transportation, concentrating, milling, evaporation, and other primary processing.

108 (b) "Mining operation" does not include:

109 (i) the extraction of sand, gravel, and rock aggregate;

(ii) the extraction of oil and gas as defined in ~~[Title 40,]~~ Chapter 6, Board and Division of Oil, Gas, and Mining;

(iii) the extraction of geothermal steam;

(iv) smelting or refining operations;

(v) off-site operations and transportation;

(vi) reconnaissance activities; or

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

(15) "Notice" means:

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

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

(16) "Notice of intention" means a notice to commence mining operations, including revisions to the notice.

(17) "Off-site" means the land areas that are outside of or beyond the on-site land.

(18) (a) "On-site" means the surface lands on or under which surface or underground mining operations are conducted.

(b) A series of related properties under the control of a single operator, but separated by small parcels of land controlled by others, ~~[will be]~~ are considered to be a single site unless an exception is made by the division.

(19) "Operator" means a natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative, either public or private, owning, controlling, or managing a mining operation or proposed mining operation.

(20) "Order" means written information provided by the division or board to an operator or other parties, describing the compliance status of a permit or mining operation.

(21) "Owner" means a natural person, corporation, association, partnership, receiver,

trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative, either public or private, owning, controlling, or managing a mineral deposit or the surface of lands employed in mining operations.

(22) "Permit area" means the area of land indicated on the approved map submitted by the operator with the application or notice to conduct mining operations.

(23) "Permit" means a permit or notice to conduct mining operations issued by the division.

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

(25) "Person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other governmental or business organization.

(26) "Reclamation" means actions performed during or after mining operations to shape, stabilize, revegetate, or treat the land affected in order to achieve a safe, stable[,] ecological condition and use [~~which will be~~] that is consistent with local environmental conditions.

(27) "Small mining operations" means mining operations that disturb or will disturb [~~10~~] 20 or less surface acres at any given time in an unincorporated area of a county or [~~five~~] 10 or less surface acres at any given time in an incorporated area of a county.

(28) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of a violation of the permit or a requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate a violation of the permit or this chapter due to indifference, lack of diligence, or lack of reasonable care.

Section 2. Section ~~63N-4-404~~ is amended to read:

63N-4-404. Rural employment expansion grant application process.

(1) For a fiscal year beginning on or after July 1, 2018, a business entity seeking to receive a rural employment expansion grant as provided in this part shall provide the office with an application for a rural employment expansion grant in a form approved by the office

that includes:

(a) a certification, by an officer of the business entity, of each signature on the application;

(b) a document that specifies the projected number and anticipated wage level of the new full-time employee positions that the business entity plans to create as the basis for qualifying for a rural employment expansion grant; and

(c) any additional information required by the office.

(2) (a) If, after review of an application provided by a business entity as described in Subsection (1), the office determines that the application is inadequate to provide a reasonable justification for authorizing the rural employment expansion grant, the office shall:

(i) deny the application; or

(ii) inform the business entity that the application is inadequate and ask the business entity to submit additional documentation.

(b) (i) If the office denies an application, the business entity may appeal the denial to the office.

(ii) The office shall review any appeal within 10 business days and make a final determination of the business entity's eligibility for a grant under this part.

(3) If, after review of an application provided by a business entity as described in Subsection (1), the office determines that the application provides reasonable justification for authorizing a rural employment expansion grant and if there are available funds for the grant, the office shall enter into a written agreement with the business entity that:

(a) indicates the maximum rural employment expansion grant amount the business entity is authorized to receive;

(b) includes a document signed by an officer of the business entity that expressly directs and authorizes the State Tax Commission to disclose to the office the business entity's tax returns and other information that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code;

(c) describes the documentation required to demonstrate that the business entity has created the new full-time employee positions described in the application provided under Subsection (1); and

(d) specifies the deadlines to provide the documentation described in Subsection (3)(c).

(4) (a) Subject to available funds, the office may award a rural employment expansion grant to a business entity as follows:

(i) \$4,000 for each new full-time employee position in a county where the average county wage is equal to or greater than the state average wage;

(ii) \$5,000 for each new full-time employee position in a county where the average county wage is between 85% and 99% of the state average wage; and

(iii) \$6,000 for each new full-time employee position in a county where the average county wage is less than 85% of the state average wage.

(b) A business entity may qualify for no more than \$250,000 in rural employment expansion grants in any fiscal year.

(5) (a) Subject to available funds, the office shall award a business entity a grant in the amount allowed under this part if the business entity provides documentation to the office:

(i) in a form prescribed by the office under Subsection (3)(c);

(ii) before the deadline described in Subsection (3)(d); and

(iii) that demonstrates that the business applicant has created new full-time employee positions.

(b) If a business entity does not provide the documentation described in Subsection (3)(c) before the deadline described in Subsection (3)(d), the business entity is ineligible to receive a rural employment expansion grant unless the business entity submits a new application to be reviewed by the office in accordance with Subsection (1).

(6) Nothing in this part prevents a business entity that has received a rural employment expansion grant from concurrently applying for or receiving another grant or incentive administered by the office.

218 (7) (a) As used in this Subsection (7):

219 (i) "Mining company" means an entity whose primary business is the exploration for or
220 extraction of minerals from the earth.

221 (ii) "Mining services company" means an entity whose primary business is providing
222 support services for a mining company, including drilling or geological modeling.

223 (b) If an applicant for a rural employment expansion grant is a mining company or
224 mining services company having business operations within five miles of a rural county, the
225 applicant shall be treated as if the applicant were located within the adjacent rural county in
226 determining whether the applicant qualifies for the rural employment expansion program.