

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

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

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

8 (4) "Applicable legislative body" means:

9 (a) with respect to a proposed agriculture protection area:

10 (i) the legislative body of the county in which the land proposed to be included in an
11 agriculture protection area is located, if the land is within the unincorporated part of the county;
12 or

13 (ii) the legislative body of the city or town in which the land proposed to be included in
14 an agriculture protection area is located; and

15 (b) with respect to an existing agriculture protection area:

16 (i) the legislative body of the county in which the agriculture protection area is located,
17 if the agriculture protection area is within the unincorporated part of the county; or

18 (ii) the legislative body of the city or town in which the agriculture protection area is
19 located.

20 [~~4~~] (5) "Crops, livestock, and livestock products" includes:

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

23 (i) forages and sod crops;

24 (ii) grains and feed crops;

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

26 (iv) trees and fruits; or

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

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

31 (6) (a) "Municipal" means of or relating to a city or town.

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

2 (7) "Planning commission" means:

3 (a) a countywide planning commission if the land proposed to be included in the
4 agriculture protection area is within the unincorporated part of the county and not within a
5 township;

6 (b) a township planning commission if the land proposed to be included in the agriculture
7 protection area is within a township; or

8 (c) a planning commission of a city or town if the land proposed to be included in the
9 agriculture protection area is within a city or town.

10 [(5)] (8) "Political subdivision" means a county, city, town, school district, or special
11 district.

12 [(6)] (9) "Proposal sponsors" means the owners of land in agricultural production who are
13 sponsoring the proposal for creating an agriculture protection area.

14 [(7)] (10) "State agency" means each department, commission, board, council, agency,
15 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
16 unit, bureau, panel, or other administrative unit of the state.

17 (11) "Unincorporated" means not within a city or town.

18 Section 2. Section **17-41-201** is amended to read:

19 **17-41-201. Agriculture Protection Area Advisory Board.**

20 (1) (a) [The] Each county legislative body shall appoint no more than five members from
21 the county's soil conservation district boards of supervisors to serve as the Agriculture Protection
22 Area Advisory Board.

23 (b) [The] A county legislative body may appoint the Agriculture Protection Area Advisory
24 Board before or after [receipt of] a proposal to create an agriculture protection area is filed.

25 (2) [The members] Each member of the Agriculture Protection Advisory Board shall serve
26 without salary, but [the] a county legislative body may reimburse [them] members for expenses
27 incurred in the performance of their duties.

28 (3) [The] Each Agriculture Protection Area Advisory Board shall:

29 (a) evaluate proposals for the establishment of agriculture protection areas and make
30 recommendations to the [county] applicable legislative body about whether or not the proposal
31 should be accepted;

1 (b) provide expert advice to the planning commission and to the [county] applicable
2 legislative body about:

- 3 (i) the desirability of the proposal;
- 4 (ii) the nature of agricultural production within the proposed area;
- 5 (iii) the relation of agricultural production in the area to the county as a whole; and
- 6 (iv) which agriculture production should be allowed within the agriculture protection area;

7 and

8 (c) perform all other duties required by this chapter.

9 Section 3. Section **17-41-301** is amended to read:

10 **17-41-301. Proposal for creation of agriculture protection area.**

11 (1) (a) A proposal to create an agriculture protection area may be filed with:

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

14 (ii) the legislative body of the city or town in which the area is located, if the area is within
15 a city or town **h THAT HAS ADOPTED AN ORDINANCE PERMITTING THE CREATION OF AN**

15a **AGRICULTURE PROTECTION AREA WITH THE CITY OR TOWN h .**

16 (b) (i) To be accepted for processing by the [county] applicable legislative body, a proposal
17 under Subsection (1)(a) shall be signed by a majority in number of all owners of real property and
18 the owners of a majority of the land area in agricultural production within the proposed agriculture
19 protection area.

20 (ii) For purposes of Subsection (1)(b)(i), the owners of real property shall be determined
21 by the records of the county recorder.

22 (2) The proposal shall identify:

23 (a) the boundaries of the land proposed to become part of an agriculture protection area;

24 (b) any limits on the types of agriculture production to be allowed within the agriculture
25 protection area; and

26 (c) for each parcel of land:

27 (i) the names of the owners of record of the land proposed to be included within the
28 agriculture protection area;

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

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

31 (3) An agriculture protection area may include within its boundaries land used for a

1 roadway, dwelling site, park, or other nonagricultural use if that land constitutes a minority of the
2 total acreage within the agriculture protection area.

3 (4) [Each] A county or municipal legislative body may establish:

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

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

6 (5) Each county and municipal legislative body shall establish the minimum number of
7 continuous acres that must be included in an agriculture protection area.

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

9 **17-41-302. Notice of proposal for creation of agriculture protection area --**

10 **Responses.**

11 (1) [~~The county~~] Each applicable legislative body shall provide notice of the proposal by:

12 (a) publishing notice in a newspaper having general circulation within:

13 (i) the same county as the land proposed for inclusion within an agriculture protection area,
14 if the land is within the unincorporated part of the county; or

15 (ii) the same city or town as the land proposed for inclusion within an agriculture
16 protection area, if the land is within a city or town; and

17 (b) posting notice at five public places, designated by the county or municipal legislative
18 body, within or near the proposed agriculture protection area.

19 (2) The notice shall contain:

20 (a) a statement that a proposal for the creation of an agriculture protection area has been
21 filed with the [county] applicable legislative body;

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

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

26 (i) written objections to the proposal; or

27 (ii) a written request to modify the proposal to exclude land from or add land to the
28 proposed agriculture protection area;

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

31 (e) a statement that the [county] applicable legislative body will hold a public hearing to

1 discuss and hear public comment on:

- 2 (i) the proposal to create the agriculture protection area;
- 3 (ii) the recommendations of the advisory committee and planning commission; and
- 4 (iii) any requests for modification of the proposal and any objections to the proposal.

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

9 (b) Any person wishing to object to the proposal for the creation of the agriculture
10 protection area shall, within 15 days after the date of the notice, file a written objection to the
11 creation of the agriculture protection area.

12 Section 5. Section **17-41-303** is amended to read:

13 **17-41-303. Review of proposal for creation of agriculture protection area.**

14 (1) After 15 days from the date of the notice, the [county] applicable legislative body shall
15 refer the proposal and any objections and proposed modifications to the proposal to the advisory
16 committee and planning commission for their review, comments, and recommendations.

17 (2) (a) Within 45 days after receipt of the proposal, the planning commission shall submit
18 a written report to the [county] applicable legislative body that:

19 (i) analyzes and evaluates the effect of the creation of the proposed area on the [county's]
20 planning policies and objectives of the county or municipality, as the case may be;

21 (ii) analyzes and evaluates the proposal by applying the criteria contained in Section
22 17-41-305;

23 (iii) recommends any modifications to the land to be included in the proposed agriculture
24 protection area;

25 (iv) analyzes and evaluates any objections to the proposal; and

26 (v) includes a recommendation to the [county] applicable legislative body either to accept,
27 accept and modify, or reject the proposal.

28 (b) Within 45 days after receipt of the proposal, the advisory board shall submit a written
29 report to the [county] applicable legislative body that:

30 (i) recommends any modifications to the land to be included in the proposed agriculture
31 protection area;

1 (ii) analyzes and evaluates the proposal by applying the criteria contained in Section
2 17-41-305;

3 (iii) analyzes and evaluates any objections to the proposal; and

4 (iv) includes a recommendation to the [county] applicable legislative body either to accept,
5 accept and modify, or reject the proposal.

6 (c) The [county] applicable legislative body shall consider a failure of the planning
7 commission or advisory committee to submit a written report within the 45 days under Subsection
8 (2)(a) or (b) as a recommendation of that committee to approve the proposal as submitted.

9 Section 6. Section **17-41-304** is amended to read:

10 **17-41-304. Public hearing -- Review and action on proposal.**

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

14 (a) schedule a public hearing;

15 (b) provide notice of the public hearing by:

16 (i) publishing notice in a newspaper having general circulation within:

17 (A) the same county as the land proposed for inclusion within the agriculture protection
18 area, if the land is within the unincorporated part of the county; or

19 (B) the same city or town as the land proposed for inclusion within an agriculture
20 protection area, if the land is within a city or town; and

21 (ii) posting notice at five public places, designated by the [county] applicable legislative
22 body, within or near the proposed agriculture protection area; and

23 (c) ensure that the notice includes:

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

25 (ii) a description of the proposed agriculture protection area;

26 (iii) any proposed modifications to the proposed agriculture protection area;

27 (iv) a summary of the recommendations of the advisory committee and planning
28 commission; and

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

1 (2) The [county] applicable legislative body shall:

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

3 (b) take verbal or written testimony from interested persons.

4 (3) (a) Within 120 days of the submission of the proposal, the [county] applicable
5 legislative body shall approve, modify and approve, or reject the proposal.

6 (b) The creation of an agriculture protection area is effective at the earlier of:

7 (i) [~~a county~~] the applicable legislative body's approval of a proposal or modified proposal;
8 or

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

12 (4) (a) In order to give constructive notice of the existence of the agriculture protection
13 area to all persons who have, may acquire, or may seek to acquire an interest in land in or adjacent
14 to the agriculture protection area, within ten days of the creation of an agriculture protection area,
15 the [county] applicable legislative body shall file an executed document containing a legal
16 description of the agriculture protection area with:

17 (i) the county recorder of deeds; and

18 (ii) the affected [~~county or district~~] planning commission [~~or township planning and zoning~~
19 board].

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

23 (5) Within ten days of the recording of the agriculture protection area, the [county]
24 applicable legislative body shall:

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

27 (b) include in the notification:

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

29 (ii) the total acreage of the area;

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

31 (iv) the date of recording.

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

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

7 Section 7. Section **17-41-305** is amended to read:

8 **17-41-305. Criteria to be applied in evaluating proposals for the creation of**
9 **agriculture protection areas.**

10 In evaluating a proposal and in determining whether or not to create or recommend the
11 creation of an agriculture protection area, the advisory committee, planning commission, and
12 [county] applicable legislative body shall apply the following criteria:

- 13 (1) whether or not the land is currently being used for agriculture production;
- 14 (2) whether or not the land is zoned for agriculture use;
- 15 (3) whether or not the land is viable for agriculture production;
- 16 (4) the extent and nature of existing or proposed farm improvements; and
- 17 (5) anticipated trends in agricultural and technological conditions.

18 Section 8. Section **17-41-306** is amended to read:

19 **17-41-306. Adding land to or removing land from an agriculture protection area.**

20 (1) (a) Any owner may add land to an existing agriculture protection area by:

21 (i) filing a proposal with:

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

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

26 (ii) obtaining the approval of the [county] applicable legislative body for the addition of
27 the land to the area.

28 (b) The [county] applicable legislative body shall comply with the provisions for creating
29 an agriculture protection area in determining whether or not to accept the proposal.

30 (2) (a) Any owner may remove land from an agriculture protection area by filing a petition
31 for removal of the land from the agriculture protection area with the [county] applicable legislative

1 body.

2 (b) (i) The [county] applicable legislative body shall:

3 (A) grant the petition for removal of land from an agriculture protection area even if
4 removal of the land would result in an agriculture protection area of less than the number of acres
5 established by the [county] applicable legislative body as the minimum under Section 17-41-301;
6 and

7 (B) in order to give constructive notice of the removal to all persons who have, may
8 acquire, or may seek to acquire an interest in land in or adjacent to the agriculture protection area
9 and the land removed from the agriculture protection area, file a legal description of the revised
10 boundaries of the agriculture protection area with the county recorder of deeds and the affected
11 [county or district] planning commission [or township planning and zoning board].

12 (ii) The remaining land in the agriculture protection area is still an agriculture protection
13 area.

14 (3) (a) When a municipality annexes any land that is part of an agriculture protection area
15 located in the unincorporated part of the county, the county legislative body shall, within 30 days
16 after the land is annexed, review the feasibility of that land remaining in the agriculture protection
17 area according to the procedures and requirements of Section 17-41-307.

18 (b) If appropriate, the county legislative body shall remove the annexed land from the
19 agriculture protection area.

20 (c) Removal of land from an agriculture protection area under this Subsection (3) does not
21 affect whether that land may be:

22 (i) included in a proposal under Section 17-41-301 to create an agriculture protection area
23 within the municipality; or

24 (ii) added to an existing agriculture protection area within the municipality under Section
25 17-41-306.

26 Section 9. Section **17-41-307** is amended to read:

27 **17-41-307. Review of agriculture protection areas.**

28 (1) [~~The county legislative body shall review any agriculture protection area created under~~
29 ~~the authority of this chapter in~~] In the 20th calendar year after [it is created] its creation under this
30 part, each agriculture protection area shall be reviewed, under the provisions of this section, by:

31 (a) the county legislative body, if the agriculture protection area is within the

1 unincorporated part of the county; or

2 (b) the municipal legislative body, if the agriculture protection area is within the
3 municipality.

4 (2) (a) In the 20th year, the [county] applicable legislative body shall:

5 (i) request the planning commission and advisory board to submit recommendations about
6 whether the agriculture protection area should be continued, modified, or terminated;

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

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

10 and

11 (iv) after the public hearing, continue, modify, or terminate the agriculture protection area.

12 (b) If the [county] applicable legislative body modifies or terminates the agriculture
13 protection area, it shall file an executed document containing the legal description of the
14 agriculture protection area with the county recorder of deeds.

15 (3) If the [county] applicable legislative body fails [to] affirmatively to continue, modify,
16 or terminate the agriculture protection area in the 20th calendar year, the agriculture protection area
17 is considered to be reauthorized for another 20 years.

18 Section 10. Section **17-41-405** is amended to read:

19 **17-41-405. Eminent domain restrictions.**

20 (1) A political subdivision having or exercising eminent domain powers may not condemn
21 for any purpose any land within an agriculture protection area that is being used for agricultural
22 production unless it has obtained approval, according to the procedures and requirements of this
23 section, from the [county] applicable legislative body and the advisory board [~~according to the~~
24 ~~procedures and requirements of this section~~].

25 (2) Any condemnor wishing to condemn property within an agriculture protection area
26 shall file a notice of condemnation with the [county] applicable legislative body and the agriculture
27 protection area's advisory board at least 30 days before filing an eminent domain complaint.

28 (3) The [county] applicable legislative body and the advisory board shall:

29 (a) hold a joint public hearing on the proposed condemnation at a location within the
30 county in which the agriculture protection area is located;

31 (b) publish notice of the time, date, place, and purpose of the public hearing in a

1 newspaper of general circulation within the agriculture protection area; and

2 (c) post notice of the time, date, place, and purpose of the public hearing in five
3 conspicuous public places, designated by the [county] applicable legislative body, within or near
4 the agriculture protection area.

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

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

11 (i) the proposed condemnation would not have an unreasonably adverse effect upon the
12 preservation and enhancement of agriculture within the agriculture protection area; or

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

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

17 (b) If the [county] applicable legislative body and the advisory board fail to act within the
18 60 days or such further time as the [county] applicable legislative body establishes, the
19 condemnation shall be considered rejected.

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

Legislative Review Note
as of 1-7-98 11:11 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel