

AGRICULTURAL PROTECTION AREAS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Eli H. Anderson

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AN ACT RELATING TO COUNTIES; MODIFYING AGRICULTURE PROTECTION AREA PROVISIONS TO ALLOW THE CREATION OF AGRICULTURE PROTECTION AREAS IN CITIES AND TOWNS; MODIFYING DEFINITIONS; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

17-41-101, as last amended by Chapters 360 and 383, Laws of Utah 1997

17-41-201, as last amended by Chapter 383, Laws of Utah 1997

17-41-301, as last amended by Chapter 383, Laws of Utah 1997

17-41-302, as last amended by Chapter 383, Laws of Utah 1997

17-41-303, as last amended by Chapter 383, Laws of Utah 1997

17-41-304, as last amended by Chapters 82 and 383, Laws of Utah 1997

17-41-305, as enacted by Chapter 58, Laws of Utah 1994

17-41-306, as last amended by Chapter 383, Laws of Utah 1997

17-41-307, as enacted by Chapter 58, Laws of Utah 1994

17-41-405, as last amended by Chapter 383, Laws of Utah 1997

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

Section 1. Section **17-41-101** is amended to read:

17-41-101. Definitions.

As used in this chapter:

(1) "Advisory board" means the Agriculture Protection Area Advisory Board created by this chapter.

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

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

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

(4) "Applicable legislative body" means:

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

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

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

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

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

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

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

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

(i) forages and sod crops;

(ii) grains and feed crops;

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

(iv) trees and fruits; or

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

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

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

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

(7) "Planning commission" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and

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

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

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

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

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

(ii) the legislative body of the city or town in which the area is located, if the area is within a city or town that has adopted an ordinance permitting the creation of an agriculture protection area within the city or town.

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

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

(2) The proposal shall identify:

- (a) the boundaries of the land proposed to become part of an agriculture protection area;
- (b) any limits on the types of agriculture production to be allowed within the agriculture protection area; and

(c) for each parcel of land:

- (i) the names of the owners of record of the land proposed to be included within the

agriculture protection area;

- (ii) the tax parcel number or account number identifying each parcel; and
- (iii) the number of acres of each parcel.

(3) An agriculture protection area may include within its boundaries land used for a roadway, dwelling site, park, or other nonagricultural use if that land constitutes a minority of the total acreage within the agriculture protection area.

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

- (a) the manner and form for submission of proposals; and
- (b) reasonable fees for accepting and processing the proposal.

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

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

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

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

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

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

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

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

(2) The notice shall contain:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) schedule a public hearing;

(b) provide notice of the public hearing by:

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

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

(B) the same city or town as the land proposed for inclusion within an agriculture protection

area, if the land is within a city or town; and

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

(c) ensure that the notice includes:

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

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

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

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

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

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

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

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

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

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

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

or

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

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

(i) the county recorder of deeds; and

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

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

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

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

(b) include in the notification:

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

(ii) the total acreage of the area;

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

(iv) the date of recording.

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

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

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

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

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

(1) whether or not the land is currently being used for agriculture production;

(2) whether or not the land is zoned for agriculture use;

- (3) whether or not the land is viable for agriculture production;
- (4) the extent and nature of existing or proposed farm improvements; and
- (5) anticipated trends in agricultural and technological conditions.

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

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

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

(i) filing a proposal with:

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

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

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

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

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

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

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

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

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

area.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and

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

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

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

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

17-41-405. Eminent domain restrictions.

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

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

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

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

(b) publish notice of the time, date, place, and purpose of the public hearing in a newspaper of general circulation within the agriculture protection area; and

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

(4) (a) If the condemnation is for highway purposes or for the disposal of solid or liquid waste materials, the [county] applicable legislative body and the advisory board may approve the

condemnation only if there is no reasonable and prudent alternative to the use of the land within the agriculture protection area for the project.

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

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

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

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

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

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