

Senator Margaret Dayton proposes the following substitute bill:

MIGRATORY BIRD PRODUCTION AREAS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis Oda

Senate Sponsor: Margaret Dayton

6	Cosponsors:	Julie Fisher	Christopher N. Herrod
7	Roger E. Barrus	Kevin S. Garn	Stephen E. Sandstrom
8	Stephen D. Clark		

LONG TITLE

General Description:

This bill enacts provisions relating to a migratory bird production area.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ authorizes the creation of a migratory bird production area;
- ▶ authorizes a landowner to remove land from a migratory bird production area;
- ▶ requires a municipality to have the written permission of all landowners within a migratory bird production area to annex land within the production area;
- ▶ clarifies the effect the creation of a migratory bird production area would have on receiving the benefits of the Farmland Assessment Act;
- ▶ prohibits a county from enacting certain ordinances regarding a migratory bird production area;
- ▶ requires a county to exclude activities associated with a migratory bird production area from being a public nuisance;



26 ▶ establishes a defense for a migratory bird production area in civil or criminal
27 nuisance actions; and

28 ▶ prohibits the use of eminent domain on land within a migratory bird production
29 area, except in certain circumstances.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **10-2-403**, as last amended by Laws of Utah 2007, Chapter 329

37 ENACTS:

38 **23-28-101**, Utah Code Annotated 1953

39 **23-28-102**, Utah Code Annotated 1953

40 **23-28-201**, Utah Code Annotated 1953

41 **23-28-202**, Utah Code Annotated 1953

42 **23-28-301**, Utah Code Annotated 1953

43 **23-28-302**, Utah Code Annotated 1953

44 **23-28-303**, Utah Code Annotated 1953

45 **23-28-304**, Utah Code Annotated 1953

46 **23-28-305**, Utah Code Annotated 1953

47 **23-28-306**, Utah Code Annotated 1953



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

50 Section 1. Section **10-2-403** is amended to read:

51 **10-2-403. Annexation petition -- Requirements -- Notice required before filing.**

52 (1) Except as provided in Section 10-2-418, the process to annex an unincorporated
53 area to a municipality is initiated by a petition as provided in this section.

54 (2) (a) (i) Before filing a petition under Subsection (1) with respect to the proposed
55 annexation of an area located in a county of the first class, the person or persons intending to
56 file a petition shall:

57 (A) file with the city recorder or town clerk of the proposed annexing municipality a
58 notice of intent to file a petition; and

59 (B) send a copy of the notice of intent to each affected entity.

60 (ii) Each notice of intent under Subsection (2)(a)(i) shall include an accurate map of the
61 area that is proposed to be annexed.

62 (b) (i) Subject to Subsection (2)(b)(ii), the county in which the area proposed to be
63 annexed is located shall:

64 (A) mail the notice described in Subsection (2)(b)(iii) to:

65 (I) each owner of real property located within the area proposed to be annexed; and

66 (II) each owner of real property located within 300 feet of the area proposed to be
67 annexed; and

68 (B) send to the proposed annexing municipality a copy of the notice and a certificate
69 indicating that the notice has been mailed as required under Subsection (2)(b)(i)(A).

70 (ii) The county shall mail the notice required under Subsection (2)(b)(i)(A) within 20
71 days after receiving from the person or persons who filed the notice of intent:

72 (A) a written request to mail the required notice; and

73 (B) payment of an amount equal to the county's expected actual cost of mailing the
74 notice.

75 (iii) Each notice required under Subsection (2)(b)(i)(A) shall:

76 (A) be in writing;

77 (B) state, in bold and conspicuous terms, substantially the following:

78 "Attention: Your property may be affected by a proposed annexation.

79 Records show that you own property within an area that is intended to be included in a
80 proposed annexation to (state the name of the proposed annexing municipality) or that is within
81 300 feet of that area. If your property is within the area proposed for annexation, you may be
82 asked to sign a petition supporting the annexation. You may choose whether or not to sign the
83 petition. By signing the petition, you indicate your support of the proposed annexation. If you
84 sign the petition but later change your mind about supporting the annexation, you may
85 withdraw your signature by submitting a signed, written withdrawal with the recorder or clerk
86 of (state the name of the proposed annexing municipality) within 30 days after (state the name
87 of the proposed annexing municipality) receives notice that the petition has been certified.

88 There will be no public election on the proposed annexation because Utah law does not
89 provide for an annexation to be approved by voters at a public election. Signing or not signing
90 the annexation petition is the method under Utah law for the owners of property within the area
91 proposed for annexation to demonstrate their support of or opposition to the proposed
92 annexation.

93 Under Utah law, the elected officials of (state the name of the proposed annexing
94 municipality) may have no choice but to grant the annexation petition if the county's property
95 tax rate for municipal services in the area proposed to be annexed is higher than the property
96 tax rate of (state the name of the proposed annexing municipality) and if other statutory
97 conditions are met.

98 You may obtain more information on the proposed annexation by contacting (state the
99 name, mailing address, telephone number, and email address of the official or employee of the
100 proposed annexing municipality designated to respond to questions about the proposed
101 annexation), (state the name, mailing address, telephone number, and email address of the
102 county official or employee designated to respond to questions about the proposed annexation),
103 or (state the name, mailing address, telephone number, and email address of the person who
104 filed the notice of intent under Subsection (2)(a)(i)(A), or, if more than one person filed the
105 notice of intent, one of those persons). Once filed, the annexation petition will be available for
106 inspection and copying at the office of (state the name of the proposed annexing municipality)
107 located at (state the address of the municipal offices of the proposed annexing municipality).";
108 and

109 (C) be accompanied by an accurate map identifying the area proposed for annexation.

110 (iv) A county may not mail with the notice required under Subsection (2)(b)(i)(A) any
111 other information or materials related or unrelated to the proposed annexation.

112 (c) (i) After receiving the certificate from the county as provided in Subsection
113 (2)(b)(i)(B), the proposed annexing municipality shall, upon request from the person or persons
114 who filed the notice of intent under Subsection (2)(a)(i)(A), provide an annexation petition for
115 the annexation proposed in the notice of intent.

116 (ii) An annexation petition provided by the proposed annexing municipality may be
117 duplicated for circulation for signatures.

118 (3) Each petition under Subsection (1) shall:

119 (a) (i) be filed with the city recorder or town clerk, as the case may be, of the proposed
120 annexing municipality; and

121 (ii) when filed and if applicable, be accompanied by a written statement, signed by the
122 petition sponsors, certifying that signatures on a petition that does not comply with the
123 requirements of Subsection (3)(d) were gathered before the effective date of that Subsection;

124 (b) contain the signatures of:

125 (i) the owners of private real property that:

126 (A) is located within the area proposed for annexation;

127 (B) (I) subject to Subsection (3)(b)(i)(B)(II), covers a majority of the private land area
128 within the area proposed for annexation; and

129 (II) covers 100% of the private land area within the area proposed for annexation, if the
130 area is within:

131 (Aa) an agriculture protection area created under Title 17, Chapter 41, Agriculture and
132 Industrial Protection [Area; and] Areas; or

133 (Bb) a migratory bird production area created under Title 23, Chapter 28, Migratory
134 Bird Production Area; and

135 (C) is equal in value to at least 1/3 of the value of all private real property within the
136 area proposed for annexation; or

137 (ii) if all the real property within the area proposed for annexation is owned by a public
138 entity other than the federal government, the owner of all the publicly owned real property;

139 (c) be accompanied by:

140 (i) an accurate and recordable map, prepared by a licensed surveyor, of the area
141 proposed for annexation; and

142 (ii) a copy of the notice sent to affected entities as required under Subsection
143 (2)(a)(i)(B) and a list of the affected entities to which notice was sent;

144 (d) if the area proposed to be annexed is located in a county of the first class, contain
145 on each signature page a notice in bold and conspicuous terms that states substantially the
146 following:

147 "Notice:

148 • Under Utah law, the elected officials of (state the name of the proposed annexing
149 municipality) may have no choice but to grant this annexation petition if the county's property

150 tax rate for municipal services in the area proposed to be annexed is higher than the property
151 tax rate of (state the name of the proposed annexing municipality) and if other statutory
152 conditions are met.

153 • There will be no public election on the annexation proposed by this petition because
154 Utah law does not provide for an annexation to be approved by voters at a public election.

155 • If you sign this petition and later decide that you do not support the petition, you may
156 withdraw your signature by submitting a signed, written withdrawal with the recorder or clerk
157 of (state the name of the proposed annexing municipality). If you choose to withdraw your
158 signature, you must do so no later than 30 days after (state the name of the proposed annexing
159 municipality) receives notice that the petition has been certified.";

160 (e) if the petition proposes the annexation of an area located in a county that is not the
161 county in which the proposed annexing municipality is located, be accompanied by a copy of
162 the resolution, required under Subsection 10-2-402(6), of the legislative body of the county in
163 which the area is located; and

164 (f) designate up to five of the signers of the petition as sponsors, one of whom shall be
165 designated as the contact sponsor, and indicate the mailing address of each sponsor.

166 (4) A petition under Subsection (1) may not propose the annexation of all or part of an
167 area proposed for annexation to a municipality in a previously filed petition that has not been
168 denied, rejected, or granted.

169 (5) A petition under Subsection (1) proposing the annexation of an area located in a
170 county of the first class may not propose the annexation of an area that includes some or all of
171 an area proposed to be incorporated in a request for a feasibility study under Section 10-2-103
172 or a petition under Section 10-2-125 if:

173 (a) the request or petition was filed before the filing of the annexation petition; and

174 (b) the request, a petition under Section 10-2-109 based on that request, or a petition
175 under Section 10-2-125 is still pending on the date the annexation petition is filed.

176 (6) If practicable and feasible, the boundaries of an area proposed for annexation shall
177 be drawn:

178 (a) along the boundaries of existing local districts and special service districts for
179 sewer, water, and other services, along the boundaries of school districts whose boundaries
180 follow city boundaries or school districts adjacent to school districts whose boundaries follow

181 city boundaries, and along the boundaries of other taxing entities;

182 (b) to eliminate islands and peninsulas of territory that is not receiving municipal-type
183 services;

184 (c) to facilitate the consolidation of overlapping functions of local government;

185 (d) to promote the efficient delivery of services; and

186 (e) to encourage the equitable distribution of community resources and obligations.

187 (7) On the date of filing, the petition sponsors shall deliver or mail a copy of the
188 petition to:

189 (a) the clerk of the county in which the area proposed for annexation is located; and

190 (b) the chair of the planning commission of each township in which any part of the area
191 proposed for annexation is located.

192 (8) A property owner who signs an annexation petition proposing to annex an area
193 located in a county of the first class may withdraw the owner's signature by filing a written
194 withdrawal, signed by the property owner, with the city recorder or town clerk no later than 30
195 days after the municipal legislative body's receipt of the notice of certification under
196 Subsection 10-2-405(2)(c)(i).

197 Section 2. Section **23-28-101** is enacted to read:

198 **CHAPTER 28. MIGRATORY BIRD PRODUCTION AREA**

199 **Part 1. General Provisions**

200 **23-28-101. Title.**

201 This chapter is known as the "Migratory Bird Production Area."

202 Section 3. Section **23-28-102** is enacted to read:

203 **23-28-102. Definitions.**

204 As used in this chapter:

205 (1) "Migratory bird" is as defined in 16 U.S.C. Sec. 715j.

206 (2) "Migratory bird production area" means an area of land that is:

207 (a) created under this chapter; and

208 (b) used according to the description in Subsections 23-28-201(1)(b)(iii)(A) through

209 (C).

210 Section 4. Section **23-28-201** is enacted to read:

211 **Part 2. Migratory Bird Production Area**

212 **23-28-201. Creation of a migratory bird production area.**

213 (1) (a) On or before July 1, 2010, an owner or owners of at least 500 contiguous acres
214 of land in an unincorporated area may dedicate the land as a migratory bird production area by
215 filing a notice of dedication with the county recorder of the county in which the land is located.

216 (b) The notice of dedication shall contain:

217 (i) the legal description of the land included within the migratory bird production area;

218 (ii) the name of the owner or owners of the land included within the migratory bird
219 production area; and

220 (iii) an affidavit signed by each landowner that all of the land, except as provided by
221 Subsection (2), within the migratory bird production area is:

222 (A) actively managed for migratory bird:

223 (I) production;

224 (II) habitat; or

225 (III) hunting; and

226 (B) used for a purpose compatible with the purposes described in Subsection
227 (1)(b)(iii)(A).

228 (c) A person who files a notice of dedication under this section shall give a copy of the
229 notice of dedication within ten days of its filing to the legislative body of the county in which
230 the migratory bird production area is located.

231 (2) (a) The notice of dedication may designate land, the amount of which is less than
232 1% of the total acreage within a migratory bird production area, upon which the landowner
233 may build a structure described in Subsection 23-28-302(1)(b).

234 (b) (i) An owner may build or maintain a road, dike, or water control structure within
235 the migratory bird production area.

236 (ii) A road, dike, or water control structure is not considered a structure for purposes of
237 Subsection (2)(a).

238 (3) (a) Within 30 days of the day on which the county legislative body receives a copy
239 of the notice of dedication under Subsection (1)(c), the county legislative body may bring an
240 action in district court to cancel or revise a migratory bird production area on the basis that an
241 affidavit filed as part of the notice of dedication under Subsection (1)(a)(iii) is inaccurate.

242 (b) In bringing the action, the county legislative body shall specify the portion of the

243 migratory bird production area and the affidavit subject to the action.

244 (c) In an action brought under this Subsection (3), the person who files an affidavit
245 described in Subsection (3)(a) has the burden to prove by a preponderance of the evidence that
246 the affidavit is accurate.

247 (d) If the court cancels or revises a migratory bird production area, the person who filed
248 the original notice of dedication shall file a revision notice with the county recorder reflecting
249 the court's order.

250 Section 5. Section **23-28-202** is enacted to read:

251 **23-28-202. Removing property from a migratory bird production area.**

252 (1) A landowner may file a revision notice with the county recorder of the county in
253 which the migratory bird production area is located to remove land from a migratory bird
254 production area.

255 (2) The revision notice shall contain:

256 (a) a legal description of the land removed from the migratory bird production area;

257 (b) the name of the owner or owners of the land removed from the migratory bird
258 production area.

259 (3) A person who files a revision notice under this section shall give a copy of the
260 revision notice within ten days of its filing to the legislative body of the county in which the
261 migratory bird production area is located.

262 (4) If removing land from a migratory bird production area results in a migratory bird
263 production area of less than 300 contiguous acres:

264 (a) the migratory bird production area ceases to exist; and

265 (b) the landowner shall:

266 (i) notify each landowner within the former migratory bird production area; and

267 (ii) file the revision notice required by this section for the entire migratory bird
268 production area.

269 Section 6. Section **23-28-301** is enacted to read:

270 **Part 3. Protections**

271 **23-28-301. Farmland Assessment Act.**

272 (1) Creation of a migratory bird production area does not impair the ability of land
273 within the migratory bird production area to qualify for the benefits of Title 59, Chapter 2, Part

274 5, Farmland Assessment Act.

275 (2) The eligibility of land for the benefits of Title 59, Chapter 2, Part 5, Farmland
276 Assessment Act, is determined exclusively by the provisions of that act, notwithstanding the
277 land's location within a migratory bird production area.

278 Section 7. Section **23-28-302** is enacted to read:

279 **23-28-302. Limitations on local regulations.**

280 (1) (a) A county within which a migratory bird production area is located shall
281 encourage the continuity, development, and viability of the migratory bird production area.

282 (b) A structure or improvement historically or customarily used in conjunction with a
283 migratory bird production area is considered a permitted use under the county's zoning law,
284 ordinance, or regulation.

285 (2) A county within which a migratory bird production area is located may not:

286 (a) enact a law, ordinance, or regulation that unreasonably restricts an activity normally
287 associated with the migratory bird production area;

288 (b) change the zoning designation of or a zoning regulation applying to land within a
289 migratory bird production area unless the county receives written approval for the change from
290 all the landowners within the migratory bird production area; or

291 (c) enact a law, ordinance, or regulation concerning the use, operation, or discharge of
292 a firearm that is more restrictive than state law, except as provided by Subsection
293 23-14-1(3)(b).

294 Section 8. Section **23-28-303** is enacted to read:

295 **23-28-303. Nuisances.**

296 (1) (a) A county shall exclude the activities described in Subsection (1)(b) from the
297 definition of public nuisance in a county law or ordinance regulating a public nuisance.

298 (b) An activity or occurrence normally associated with a migratory bird production area
299 is not a nuisance, including:

300 (i) hunting;

301 (ii) discharging a firearm;

302 (iii) improving habitat;

303 (iv) trapping;

304 (v) eradicating weeds;

- 305 (vi) discing;
- 306 (vii) planting;
- 307 (viii) impounding water;
- 308 (ix) raising a bird or other domestic animal;
- 309 (x) grazing;
- 310 (xi) an activity conducted in the normal course of an agricultural operation as defined
- 311 in Section 78B-6-1101; and
- 312 (xii) an odor.

313 (2) In a civil action for nuisance or a criminal action for public nuisance under Section
314 76-10-803, it is a complete defense if the action is:

- 315 (a) normally associated with a migratory bird production area;
- 316 (b) conducted within a migratory bird production area; and
- 317 (c) not in violation of any federal or state law.

318 (3) An owner of a new development located in whole or in part within 1,000 feet of a
319 migratory bird production area shall provide the following notice on any plat filed with the
320 county recorder:

321 "Migratory Bird Production Area

322 This property is located in the vicinity of an established migratory bird production area
323 in which hunting and activities related to the management and operation of land for the benefit
324 of migratory birds have been afforded the highest priority use status. It can be anticipated that
325 these uses and activities may now or in the future be conducted on land within the migratory
326 bird production area. The use and enjoyment of this property is expressly conditioned on
327 acceptance of any annoyance or inconvenience that may result from activities normally
328 associated with a migratory bird production area."

329 Section 9. Section **23-28-304** is enacted to read:

330 **23-28-304. Eminent domain restrictions.**

331 (1) Notwithstanding Title 78B, Chapter 6, Part 5, Eminent Domain, and except as
332 provided by Subsection (2), the state, a state agency, a political subdivision, or a person may
333 not exercise eminent domain power to condemn any real property within a migratory bird
334 production area for any purpose unless:

- 335 (a) the condemnation does not have an unreasonable adverse effect upon the migratory

336 bird production area; or

337 (b) there is no reasonable and prudent alternative to the condemnation.

338 (2) Real property within a migratory bird production area may be condemned in
339 accordance with Title 78B, Chapter 6, Part 5, Eminent Domain, for an international airport:

340 (a) located within a county of the first class; and

341 (b) that has a United States customs office on its premises.

342 Section 10. Section **23-28-305** is enacted to read:

343 **23-28-305. Annexation restrictions.**

344 A municipality may annex real property within a migratory bird production area as
345 provided by Title 10, Chapter 2, Part 4, Annexation.

346 Section 11. Section **23-28-306** is enacted to read:

347 **23-28-306. Application of Water Quality Act.**

348 A migratory bird production area is subject to Title 19, Chapter 5, Water Quality Act.