

## SB0086S01 compared with SB0086

~~deleted text~~ shows text that was in SB0086 but was deleted in SB0086S01.

inserted text shows text that was not in SB0086 but was inserted into SB0086S01.

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Senator Curtis S. Bramble proposes the following substitute bill:

### AGRICULTURE PROTECTION AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill amends provisions related to an agriculture protection area.

##### Highlighted Provisions:

This bill:

- ▶ amends language related to the duties of an advisory board;
- ▶ amends language related to the creation of an agriculture protection area;
- ▶ amends language related to removing land from an agriculture protection area;
- ▶ amends language related to condemning land located in an agriculture protection area;
- ▶ enacts language related to an appeal of a condemnation decision; and
- ▶ makes technical corrections.

##### Money Appropriated in this Bill:

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None

### Other Special Clauses:

This bill provides an immediate effective date.

### Utah Code Sections Affected:

AMENDS:

**17-41-201**, as last amended by Laws of Utah 2007, Chapter 179

**17-41-305**, as last amended by Laws of Utah 2006, Chapter 194

**17-41-306**, as last amended by Laws of Utah 2009, Chapter 376

**17-41-405**, as last amended by Laws of Utah 2010, Chapter 90

ENACTS:

**17-41-407**, Utah Code Annotated 1953

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

Section 1. Section **17-41-201** is amended to read:

**17-41-201. Agriculture protection area or industrial protection area advisory board.**

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

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

(b) A county legislative body may appoint the advisory board before or after a proposal to create an agriculture protection area or industrial protection area is filed.

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

(3) Each advisory board shall:

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

(b) provide expert advice to the planning commission and to the applicable legislative

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body about:

- (i) the desirability of the proposal;
- (ii) the nature of agricultural production or industrial use, as the case may be, within the proposed area;
- (iii) the relation of agricultural production or industrial use, as the case may be, in the area to the county as a whole; and
- (iv) which agriculture production or industrial use should be allowed within the agriculture protection area or industrial protection area, respectively; ~~[and]~~
- (c) report to the applicable legislative body on a proposed condemnation in accordance with Section 17-41-405; and
- ~~[(e)]~~ (d) perform all other duties required by this chapter.

Section 2. Section **17-41-305** is amended to read:

**17-41-305. Criteria to be applied in evaluating a proposal for the creation of an agriculture protection area or industrial protection area.**

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

(1) whether or not the land is currently being used for ~~[agriculture production or for an industrial use, as the case may be];~~

(a) if the proposal is for the creation of an agriculture protection area, agriculture production sufficient to qualify for a benefit available under Title 59, Chapter 2, Part 5, Farmland Assessment Act, regardless of whether the applicant has applied for a benefit; or

(b) if the proposal is for the creation of an industrial protection area, an industrial use;

(2) whether or not the land is zoned for agriculture use or industrial use, as the case may be;

(3) whether or not the land is viable for agriculture production or industrial use, as the case may be;

(4) the extent and nature of existing or proposed farm improvements or the extent and nature of existing or proposed improvements to or expansion of the industrial use, as the case may be; and

(5) (a) in the case of an agriculture protection area, anticipated trends in agricultural

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and technological conditions; or

(b) in the case of an industrial protection area, anticipated trends in technological conditions applicable to the industrial use of the land in question.

Section 3. Section **17-41-306** is amended to read:

### **17-41-306. Adding land to or removing land from an agriculture protection area or industrial protection area -- Removing land from a mining protection area.**

(1) (a) Any owner may add land to an existing agriculture protection area or industrial protection area, as the case may be, by:

(i) filing a proposal with:

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

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

(b) The applicable legislative body shall comply with the provisions for creating an agriculture protection area or industrial protection area, as the case may be, in determining whether or not to accept the proposal.

(2) (a) Any owner of land within an agriculture protection area or industrial protection area may remove any or all of the land from the agriculture protection area or industrial protection area, respectively, by filing a petition for removal with the applicable legislative body.

(b) (i) The applicable legislative body:

(A) shall:

(I) grant the petition for removal of land from an agriculture protection area or industrial protection area, as the case may be, even if removal of the land would result in an agriculture protection area or industrial protection area of less than the number of acres established by the applicable legislative body as the minimum under Section 17-41-301; and

(II) 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 or industrial protection area and the land removed from the agriculture protection area or

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industrial protection area, file a legal description of the revised boundaries of the agriculture protection area or industrial protection area with the county recorder of deeds and the affected planning commission; and

(B) may not charge a fee in connection with a petition to remove land from an agriculture protection area or an industrial protection area.

(ii) The remaining land in the agriculture protection area or industrial protection area is still an agriculture protection area or industrial protection area, respectively.

(3) (a) The applicable legislative body may remove land from an agriculture protection area if:

(i) the land ~~is~~ no longer ~~being used for an agricultural purpose~~ qualifies under Title 59, Chapter 2, Part 5, Farmland Assessment Act;

(ii) the landowner applies for a zoning change that, if approved, would remove the property from agricultural zoning; and

(iii) the applicable legislative body holds a public hearing in accordance with Subsection (3)(b).

(b) Before the applicable legislative body may remove land from an agriculture protection area in accordance with Subsection (3)(a), the applicable legislative body shall:

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

(A) the same county as the land proposed for removal from an 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 removal from an agriculture protection area if the land is within a city or town;

(ii) publish notice in accordance with Section 45-1-101;

(iii) post notice at five public places, designated by the county or municipal legislative body, within or near the land proposed for removal from an agriculture protection area;

(iv) mail written notice to each owner of land within 1,000 feet of the land proposed for removal from an agriculture protection area;

(v) include in the notice:

(A) a statement that the applicable legislative body shall hold a public hearing to consider removing land from an agriculture protection area; and

(B) identify the land described in Subsection (3)(b)(v)(A); and

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(vi) hold a public hearing to determine whether to remove the land from an agriculture protection area.

~~[(3)]~~ (4) (a) If a municipality annexes any land that is part of an agriculture protection area or industrial 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 or industrial protection area according to the procedures and requirements of Section 17-41-307.

(b) The county legislative body shall remove the annexed land from the agriculture protection area or industrial protection area, as the case may be, if:

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

(ii) the owners of all the annexed land that is within the agriculture protection area or industrial protection area consent in writing to the removal.

(c) Removal of land from an agriculture protection area or industrial protection area under this Subsection ~~[(3)]~~ (4) does not affect whether that land may be:

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

(ii) added to an existing agriculture protection area or industrial protection area within the municipality under Subsection (1).

~~[(4)]~~ (5) A mine operator that owns or controls land within a mining protection area may remove any or all of the land from the mining protection area by filing a notice of removal with the legislative body of the county in which the land is located.

Section 4. Section **17-41-405** is amended to read:

### **17-41-405. Eminent domain restrictions -- Attorney fees.**

(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 or any land within an industrial protection area that is being put to an industrial use unless it has obtained approval, according to the procedures and requirements of this section, from the applicable legislative body [~~and the advisory board~~].

(2) [~~Any condemnor~~] (a) A ~~condemnor~~ political subdivision wishing to condemn property within an agriculture protection area or industrial protection area shall file a notice of

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condemnation with the applicable legislative body and the agriculture protection area or industrial protection area's advisory board at least 30 days before filing an eminent domain complaint.

(b) An advisory board described in Subsection (2)(a) shall:

(i) review the notice of condemnation and the land identified for condemnation;

(ii) determine whether the proposed condemnation meets the requirements of

Subsection (4);

(iii) prepare a report of the advisory' board's findings under Subsection (2)(b)(i); and

(iv) submit the report to the applicable legislative body before the public hearing described in Subsection (3).

(3) The 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 or industrial protection area is located;

(b) publish notice of the time, date, place, and purpose of the public hearing:

(i) in a newspaper of general circulation within the agriculture protection area or industrial protection area, as the case may be; and

(ii) on the Utah Public Notice Website created in Section 63F-1-701; and

(c) post notice of the time, date, place, and purpose of the public hearing in five conspicuous public places, designated by the applicable legislative body, within or near the agriculture protection area or industrial protection area, as the case may be.

(4) At the hearing required in Subsection (3), the legislative body shall:

(a) receive testimony, evidence, and recommendations from:

(i) the ~~condemnor~~ political subdivision;

(ii) the landowner; and

(iii) the public; and

(b) consider a report submitted by an advisory board in accordance with Subsection (2)(b)(iv).

~~[(4)]~~ (5) (a) If the condemnation is for highway purposes or for the disposal of solid or liquid waste materials, the 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 or industrial protection area for the project.

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(b) If the condemnation is for ~~[any other purpose]~~ a purpose other than a purpose described in Subsection (5)(a), the 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 of the industrial use within the industrial protection area; or

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

~~[(5)(a)]~~ ~~(6)(a)~~ Within 60 days after receipt of the notice of condemnation, the applicable legislative body ~~[and the advisory board]~~ shall approve or reject the proposed condemnation.

~~[(b) If the applicable legislative body {} and the advisory board fail {} fails} to act within the 60 days or such further time as the applicable legislative body establishes, {} the condemnation shall be considered rejected.]~~ { the political subdivision may proceed with the condemnation action. }

~~[(6) The]~~ (7) (a) Subject to Subsection (7)(b), the applicable legislative body ~~[or the advisory board]~~ may request the county or municipal attorney to bring an action to enjoin ~~[any {} a] condemnor~~ a political subdivision from violating any provisions of this section.

(b) If the decision of the legislative body made in accordance with this section is appealed in accordance with Section 17-41-407, the county or municipal attorney may not bring an action under Subsection (7)(a) unless the action is to enforce the district court's final order.

Section 5. Section ~~17-41-407~~ is enacted to read:

### 17-41-407. Appeal of condemnation decision.

(1) ~~{(a)}~~ No later than 30 days after the public hearing described in Section 17-41-405, a person may file a complaint to appeal a decision made by the applicable legislative body to the district court of the district where the protected area is located.

~~{(b)}2~~ The district court shall review the appeal { de novo }.

~~{(2) A court shall award the prevailing party of an appeal filed in accordance with Subsection (1)(a) court costs, including }~~ 3) The entity requesting the condemnation shall pay the reasonable attorney fees incurred:

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(a) by the land owner that are directly related to the determination of the value of the property being condemned; and

(b) in the district court proceedings only.

Section 6. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

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**Legislative Review Note**

~~as of 2-8-12 9:00 AM~~

~~Office of Legislative Research and General Counsel}~~