

INDUSTRIAL PROTECTION ACT

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronda Rudd Menlove

Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill authorizes the establishment of industrial protection areas.

Highlighted Provisions:

This bill:

► modifies provisions applicable to agriculture protection areas to allow industrial areas to follow the same procedures for becoming an industrial protection area and, once formed, to have the same legal protections as an agriculture protection area ~~↔~~ ; and modifies notice provisions applicable to proposed agriculture protection areas and industrial protection areas ~~↔~~ .

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 17-41-101, as last amended by Chapter 356, Laws of Utah 1998
- 17-41-201, as last amended by Chapter 356, Laws of Utah 1998
- 17-41-301, as last amended by Chapter 205, Laws of Utah 1999
- 17-41-302, as last amended by Chapter 356, Laws of Utah 1998
- 17-41-303, as last amended by Chapter 356, Laws of Utah 1998
- 17-41-304, as last amended by Chapters 13 and 356, Laws of Utah 1998
- 17-41-305, as last amended by Chapter 356, Laws of Utah 1998



- 28 17-41-306, as last amended by Chapter 205, Laws of Utah 1999
- 29 17-41-307, as last amended by Chapter 356, Laws of Utah 1998
- 30 17-41-402, as last amended by Chapter 383, Laws of Utah 1997
- 31 17-41-403, as last amended by Chapter 183, Laws of Utah 2002
- 32 17-41-404, as enacted by Chapter 58, Laws of Utah 1994
- 33 17-41-405, as last amended by Chapter 356, Laws of Utah 1998
- 34 17-41-406, as last amended by Chapter 82, Laws of Utah 1997



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

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

38 **17-41-101. Definitions.**

39 As used in this chapter:

40 (1) "Advisory board" means [~~the Agriculture Protection Area Advisory Board created~~
41 ~~by this chapter.~~];

42 (a) for an agriculture protection area, the agriculture protection area advisory board
43 created as provided in Section 17-41-201; and

44 (b) for an industrial protection area, the industrial protection area advisory board
45 created as provided in Section 17-41-201.

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

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

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

53 (4) "Applicable legislative body" means:

54 (a) with respect to a proposed agriculture protection area or industrial protection area:

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

58 (ii) the legislative body of the city or town in which the land proposed to be included in

59 an agriculture protection area or industrial protection area is located; and

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

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

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

66 (5) "Crops, livestock, and livestock products" includes:

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

69 (i) forages and sod crops;

70 (ii) grains and feed crops;

71 (iii) livestock as defined in [~~Section~~] Subsection 59-2-102(25)(d);

72 (iv) trees and fruits; or

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

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

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

79 [~~(6)~~] (7) (a) "Municipal" means of or relating to a city or town.

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

81 [~~(7)~~] (8) "Planning commission" means:

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

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

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

89 [~~(8)~~] (9) "Political subdivision" means a county, city, town, school district, or special

90 district.

91 ~~[(9)]~~ (10) "Proposal sponsors" means the owners of land in agricultural production or
92 industrial use who are sponsoring the proposal for creating an agriculture protection area or
93 industrial protection area, respectively.

94 ~~[(10)]~~ (11) "State agency" means each department, commission, board, council,
95 agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory,
96 library, unit, bureau, panel, or other administrative unit of the state.

97 ~~[(11)]~~ (12) "Unincorporated" means not within a city or town.

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

99 **17-41-201. Agriculture protection area or industrial protection area advisory**
100 **board.**

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

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

106 (b) A county legislative body may appoint the [~~Agriculture Protection Area Advisory~~
107 ~~Board~~] advisory board before or after a proposal to create an agriculture protection area or
108 industrial protection area is filed.

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

112 (3) Each [~~Agriculture Protection Area Advisory Board~~] advisory board shall:

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

116 (b) provide expert advice to the planning commission and to the applicable legislative
117 body about:

118 (i) the desirability of the proposal;

119 (ii) the nature of agricultural production or industrial use, as the case may be, within
120 the proposed area;

121 (iii) the relation of agricultural production or industrial use, as the case may be, in the
122 area to the county as a whole; and

123 (iv) which agriculture production or industrial use should be allowed within the
124 agriculture protection area or industrial protection area, respectively; and

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

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

127 **17-41-301. Proposal for creation of agriculture protection area or industrial**
128 **protection area.**

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

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

133 (ii) the legislative body of the city or town in which the area is located, if the area is
134 within a city or town.

135 (b) (i) To be accepted for processing by the applicable legislative body, a proposal
136 under Subsection (1)(a) shall be signed by a majority in number of all owners of real property
137 and the owners of a majority of the land area in agricultural production or industrial use within
138 the proposed agriculture protection area or industrial protection area, respectively.

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

141 (2) The proposal shall identify:

142 (a) the boundaries of the land proposed to become part of an agriculture protection area
143 or industrial protection area;

144 (b) any limits on the types of agriculture production or industrial use to be allowed
145 within the agriculture protection area or industrial protection area, respectively; and

146 (c) for each parcel of land:

147 (i) the names of the owners of record of the land proposed to be included within the
148 agriculture protection area or industrial protection area;

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

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

151 (3) An agriculture protection area or industrial protection area may include within its

152 boundaries land used for a roadway, dwelling site, park, or other nonagricultural or, in the case
153 of an industrial protection area, nonindustrial use if that land constitutes a minority of the total
154 acreage within the agriculture protection area or industrial protection area, respectively.

155 (4) A county or municipal legislative body may establish:

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

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

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

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

162 **17-41-302. Notice of proposal for creation of agriculture protection area or**
163 **industrial protection area -- Responses.**

164 (1) Each applicable legislative body shall provide notice of the proposal by:

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

166 (i) the same county as the land proposed for inclusion within an agriculture protection
167 area or industrial protection area, as the case may be, if the land is within the unincorporated
168 part of the county; or

169 (ii) the same city or town as the land proposed for inclusion within an agriculture
170 protection area or industrial protection area, as the case may be, if the land is within a city or
171 town; ~~and~~ **and**

172 (b) posting notice at five public places, designated by the county or municipal
173 legislative body, within or near the proposed agriculture protection area or industrial protection
174 area ~~and~~ **and**

174a **(c) mailing written notice to each owner of land within 1,000 feet of the land proposed**
174b **for inclusion within an agriculture protection area or industrial protection area** ~~and~~ .

175 (2) The notice shall contain:

176 (a) a statement that a proposal for the creation of an agriculture protection area or
177 industrial protection area has been filed with the applicable legislative body;

178 (b) a statement that the proposal will be open to public inspection in the office of the
179 applicable legislative body;

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

182 (i) written objections to the proposal; or

183 (ii) a written request to modify the proposal to exclude land from or add land to the
184 proposed agriculture protection area or industrial protection area, as the case may be;

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

186a ~~H~~→ [and] ←~~H~~

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

189 (i) the proposal to create the agriculture protection area or industrial protection area;

190 (ii) the recommendations of the advisory committee and planning commission; and

191 (iii) any requests for modification of the proposal and any objections to the proposal ~~H~~→ [;]

191a ; and

191b **(f) a statement indicating the date, time, and place of the public hearing.** ←~~H~~

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

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

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

201 **17-41-303. Review of proposal for creation of agriculture protection area or**
202 **industrial protection area.**

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

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

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

210 (ii) analyzes and evaluates the proposal by applying the criteria contained in Section
211 17-41-305;

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

214 (iv) analyzes and evaluates any objections to the proposal; and
 215 (v) includes a recommendation to the applicable legislative body either to accept,
 216 accept and modify, or reject the proposal.

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

- 219 (i) recommends any modifications to the land to be included in the proposed
 220 agriculture protection area or industrial protection area;
- 221 (ii) analyzes and evaluates the proposal by applying the criteria contained in Section
 222 17-41-305;
- 223 (iii) analyzes and evaluates any objections to the proposal; and
- 224 (iv) includes a recommendation to the applicable legislative body either to accept,
 225 accept and modify, or reject the proposal.

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

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

230 **17-41-304. Public hearing -- Review and action on proposal.**

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

- 234 (a) schedule a public hearing;
- 235 (b) provide notice of the public hearing by:
 - 236 (i) publishing notice in a newspaper having general circulation within:
 - 237 (A) the same county as the land proposed for inclusion within the agriculture
 238 protection area or industrial protection area, if the land is within the unincorporated part of the
 239 county; or

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

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

243a ~~and~~ **(iii) mailing written notice to each owner of land within 1,000 feet of the land**
 243b **proposed for inclusion within an agriculture protection area or industrial protection**
 243c **area; and** ~~and~~

244 (c) ensure that the notice includes:

- 245 (i) the time, date, and place of the public hearing on the proposal;
- 246 (ii) a description of the proposed agriculture protection area or industrial protection
- 247 area;
- 248 (iii) any proposed modifications to the proposed agriculture protection area or
- 249 industrial protection area;
- 250 (iv) a summary of the recommendations of the advisory committee and planning
- 251 commission; and
- 252 (v) a statement that interested persons may appear at the public hearing and speak in
- 253 favor of or against the proposal, any proposed modifications to the proposal, or the
- 254 recommendations of the advisory committee and planning commission.
- 255 (2) The applicable legislative body shall:
- 256 (a) convene the public hearing at the time, date, and place specified in the notice; and
- 257 (b) take verbal or written testimony from interested persons.
- 258 (3) (a) Within 120 days of the submission of the proposal, the applicable legislative
- 259 body shall approve, modify and approve, or reject the proposal.
- 260 (b) The creation of an agriculture protection area or industrial protection area is
- 261 effective at the earlier of:
- 262 (i) the applicable legislative body's approval of a proposal or modified proposal; or
- 263 (ii) 120 days after submission of a proposal complying with Subsection 17-41-301(2) if
- 264 the applicable legislative body has failed to approve or reject the proposal within that time.
- 265 (4) (a) In order to give constructive notice of the existence of the agriculture protection
- 266 area or industrial protection area to all persons who have, may acquire, or may seek to acquire
- 267 an interest in land in or adjacent to the agriculture protection area or industrial protection area,
- 268 respectively, within ten days of the creation of an agriculture protection area or industrial
- 269 protection area, the applicable legislative body shall file an executed document containing a
- 270 legal description of the agriculture protection area or industrial protection area, as the case may
- 271 be, with:
- 272 (i) the county recorder of deeds; and
- 273 (ii) the affected planning commission.
- 274 (b) If the legal description of the property to be included in the agriculture protection
- 275 area or industrial protection area is available through the county recorder's office, the

276 applicable legislative body shall use that legal description in its executed document required in
277 Subsection (4)(a).

278 (5) Within ten days of the recording of the agriculture protection area, the applicable
279 legislative body shall:

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

282 (b) include in the notification:

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

284 (ii) the total acreage of the area;

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

286 (iv) the date of recording.

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

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

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

294 **17-41-305. Criteria to be applied in evaluating a proposal for the creation of an**
295 **agriculture protection area or industrial protection area.**

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

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

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

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

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

307 may be; and

308 (5) (a) in the case of an agriculture protection area, anticipated trends in agricultural
309 and technological conditions[-]; or

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

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

313 **17-41-306. Adding land to or removing land from an agriculture protection area**
314 **or industrial protection area.**

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

317 (i) filing a proposal with:

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

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

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

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

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

330 (b) (i) The applicable legislative body shall:

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

335 (B) in order to give constructive notice of the removal to all persons who have, may
336 acquire, or may seek to acquire an interest in land in or adjacent to the agriculture protection
337 area or industrial protection area and the land removed from the agriculture protection area or

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

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

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

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

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

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

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

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

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

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

361 **17-41-307. Review of agriculture protection areas and industrial protection**
362 **areas.**

363 (1) In the 20th calendar year after its creation under this part, each agriculture
364 protection area or industrial protection area, as the case may be, shall be reviewed, under the
365 provisions of this section, by:

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

368 (b) the municipal legislative body, if the agriculture protection area or industrial

369 protection area is within the municipality.

370 (2) (a) In the 20th year, the applicable legislative body shall:

371 (i) request the planning commission and advisory board to submit recommendations
372 about whether the agriculture protection area or industrial protection area, as the case may be,
373 should be continued, modified, or terminated;

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

377 (iii) give notice of the hearing using the same procedures required by Section
378 17-41-302; and

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

381 (b) If the applicable legislative body modifies or terminates the agriculture protection
382 area or industrial protection area, it shall file an executed document containing the legal
383 description of the agriculture protection area or industrial protection area, respectively, with the
384 county recorder of deeds.

385 (3) If the applicable legislative body fails affirmatively to continue, modify, or
386 terminate the agriculture protection area or industrial protection area, as the case may be, in the
387 20th calendar year, the agriculture protection area or industrial protection area is considered to
388 be reauthorized for another 20 years.

389 Section 10. Section **17-41-402** is amended to read:

390 **17-41-402. Limitations on local regulations.**

391 (1) Each political subdivision within which an agriculture protection area or industrial
392 protection area is created shall encourage the continuity, development, and viability of
393 agriculture or industrial use, respectively, within the area by not enacting local laws,
394 ordinances, or regulations that would unreasonably restrict farm structures or farm practices or,
395 in the case of an industrial protection area, industrial uses of the land within the area unless
396 those laws, ordinances, or regulations bear a direct relationship to public health or safety.

397 (2) A political subdivision may not change the zoning designation of or zoning
398 regulations affecting land within an agriculture protection area or industrial protection area, as
399 the case may be, unless it receives written approval for the change from all the landowners

400 within the agriculture protection area or industrial protection area, respectively, affected by the
401 change.

402 Section 11. Section **17-41-403** is amended to read:

403 **17-41-403. Nuisances.**

404 (1) Each political subdivision shall ensure that any of its laws or ordinances that define
405 or prohibit a public nuisance exclude from the definition or prohibition;

406 (a) for an agriculture protection area, any agricultural activity or operation within an
407 agriculture protection area conducted using sound agricultural practices unless that activity or
408 operation bears a direct relationship to public health or safety[-]; or

409 (b) for an industrial protection area, any industrial use of the land within the industrial
410 protection area that is consistent with sound practices applicable to the industrial use, unless
411 that use bears a direct relationship to public health or safety.

412 (2) In a civil action for nuisance or a criminal action for public nuisance under Section
413 76-10-803, it is a complete defense if the action involves agricultural activities and those
414 agricultural activities were:

415 (a) conducted within an agriculture protection area; and

416 (b) not in violation of any federal, state, or local law or regulation relating to the
417 alleged nuisance or were conducted according to sound agricultural practices.

418 (3) (a) For any new subdivision development located in whole or in part within 300
419 feet of the boundary of an agriculture protection area, the owner of the development shall
420 provide notice on any plat filed with the county recorder the following notice:

421 "Agriculture Protection Area

422 This property is located in the vicinity of an established agriculture protection area in
423 which normal agricultural uses and activities have been afforded the highest priority use
424 status. It can be anticipated that such agricultural uses and activities may now or in the
425 future be conducted on property included in the agriculture protection area. The use
426 and enjoyment of this property is expressly conditioned on acceptance of any
427 annoyance or inconvenience which may result from such normal agricultural uses and
428 activities."

429 (b) For any new subdivision development located in whole or in part within
429a ~~H~~→ [300] 1000 ←~~H~~ feet of
430 the boundary of an industrial protection area, the owner of the development shall provide

431 notice on any plat filed with the county recorder the following notice:

432 "Industrial Protection Area

433 This property is located in the vicinity of an established industrial protection area in
434 which normal industrial uses and activities have been afforded the highest priority use
435 status. It can be anticipated that such industrial uses and activities may now or in the
436 future be conducted on property included in the industrial protection area. The use and
437 enjoyment of this property is expressly conditioned on acceptance of any annoyance or
438 inconvenience which may result from such normal industrial uses and activities."

439 Section 12. Section **17-41-404** is amended to read:

440 **17-41-404. Policy of state agencies.**

441 Each state agency shall encourage the continuity, development, and viability of
442 agriculture within agriculture protection areas and industrial uses with industrial protection
443 areas by:

444 (1) not enacting rules that would impose unreasonable restrictions on farm structures or
445 farm practices within the agriculture protection area or on industrial uses and practices within
446 the industrial protection area unless those laws, ordinances, or regulations bear a direct
447 relationship to public health or safety or are required by federal law; and

448 (2) modifying existing rules that would impose unreasonable restrictions on farm
449 structures or farm practices within the agriculture protection area or on industrial uses and
450 activities within the industrial protection area unless those laws, ordinances, or regulations bear
451 a direct relationship to public health or safety or are required by federal law.

452 Section 13. Section **17-41-405** is amended to read:

453 **17-41-405. Eminent domain restrictions.**

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

459 (2) Any condemnor wishing to condemn property within an agriculture protection area
460 or industrial protection area shall file a notice of condemnation with the applicable legislative
461 body and the agriculture protection area or industrial protection area's advisory board at least

462 30 days before filing an eminent domain complaint.

463 (3) The applicable legislative body and the advisory board shall:

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

466 (b) publish notice of the time, date, place, and purpose of the public hearing in a
467 newspaper of general circulation within the agriculture protection area or industrial protection
468 area, as the case may be; and

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

472 (4) (a) If the condemnation is for highway purposes or for the disposal of solid or
473 liquid waste materials, the applicable legislative body and the advisory board may approve the
474 condemnation only if there is no reasonable and prudent alternative to the use of the land
475 within the agriculture protection area or industrial protection area for the project.

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

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

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

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

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

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

491 Section 14. Section **17-41-406** is amended to read:

492 **17-41-406. Restrictions on state development projects.**

493 (1) Each state agency that plans any development project that might affect land within
494 an agriculture protection area or industrial protection area shall submit its development plan to
495 ~~[the commissioner of agriculture and food and the agriculture protection area's advisory board~~
496 ~~for their review.]:~~

497 (a) the advisory board of the agriculture protection area or industrial protection area,
498 respectively; and

499 (b) in the case of an agriculture protection area, the commissioner of agriculture and
500 food.

501 (2) The commissioner of agriculture and food, in the case of an agriculture protection
502 area, and the ~~[agriculture protection area's]~~ advisory board shall:

503 (a) review the state agency's proposed development plan; and

504 (b) recommend any modifications to the development project that would protect the
505 integrity of the agriculture protection area or industrial protection area, as the case may be, or
506 that would protect the agriculture protection area from nonfarm encroachment or the industrial
507 protection area from nonindustrial encroachment.

Legislative Review Note

as of 11-15-05 12:41 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0241

Industrial Protection Act

16-Jan-06

8:36 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst