

1                                   **INDUSTRIAL PROTECTION ACT**

2   2006 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Ronda Rudd Menlove**

5   Senate Sponsor: Peter C. Knudson

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7   **LONG TITLE**

8   **General Description:**

9           This bill authorizes the establishment of industrial protection areas.

10   **Highlighted Provisions:**

11           This bill:

12           ▶ modifies provisions applicable to agriculture protection areas to allow industrial  
13 areas to follow the same procedures for becoming an industrial protection area and,  
14 once formed, to have the same legal protections as an agriculture protection area.

15   **Monies Appropriated in this Bill:**

16           None

17   **Other Special Clauses:**

18           None

19   **Utah Code Sections Affected:**

20   **AMENDS:**

21           **17-41-101**, as last amended by Chapter 356, Laws of Utah 1998

22           **17-41-201**, as last amended by Chapter 356, Laws of Utah 1998

23           **17-41-301**, as last amended by Chapter 205, Laws of Utah 1999

24           **17-41-302**, as last amended by Chapter 356, Laws of Utah 1998

25           **17-41-303**, as last amended by Chapter 356, Laws of Utah 1998

26           **17-41-304**, as last amended by Chapters 13 and 356, Laws of Utah 1998

27           **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

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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

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.

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; and

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.

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

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 300 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.

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**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**