

MIGRATORY BIRD PRODUCTION AREAS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis Oda

Senate Sponsor: Margaret Dayton

Cosponsors:
Roger E. Barrus
Stephen D. Clark

Julie Fisher
Kevin S. Garn

Christopher N. Herrod
Stephen E. Sandstrom

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **10-2-403**, as last amended by Laws of Utah 2007, Chapter 329

35 ENACTS:

36 **23-28-101**, Utah Code Annotated 1953

37 **23-28-102**, Utah Code Annotated 1953

38 **23-28-201**, Utah Code Annotated 1953

39 **23-28-202**, Utah Code Annotated 1953

40 **23-28-301**, Utah Code Annotated 1953

41 **23-28-302**, Utah Code Annotated 1953

42 **23-28-303**, Utah Code Annotated 1953

43 **23-28-304**, Utah Code Annotated 1953

44 **23-28-305**, Utah Code Annotated 1953



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

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

48 **10-2-403. Annexation petition -- Requirements -- Notice required before filing.**

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

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

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

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

57 (ii) Each notice of intent under Subsection (2)(a)(i) shall include an accurate map of

58 the area that is proposed to be annexed.

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

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

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

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

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

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

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

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

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

73 (A) be in writing;

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

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

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

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

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

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

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

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

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

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

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

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

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

122 (b) contain the signatures of:

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

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

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

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

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

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

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

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

138 (c) be accompanied by:

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

141 (ii) a copy of the notice sent to affected entities as required under Subsection

142 (2)(a)(i)(B) and a list of the affected entities to which notice was sent;

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

146 "Notice:

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

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

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

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

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

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

168 (5) A petition under Subsection (1) proposing the annexation of an area located in a
169 county of the first class may not propose the annexation of an area that includes some or all of

170 an area proposed to be incorporated in a request for a feasibility study under Section 10-2-103
171 or a petition under Section 10-2-125 if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Part 1. General Provisions

23-28-101. Title.

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

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

23-28-102. Definitions.

As used in this chapter:

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

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

(a) created under this chapter; and

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

(B).

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

Part 2. Migratory Bird Production Area

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

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

(b) The notice of dedication shall contain:

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

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

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

(A) actively managed for migratory bird:

(I) production;

(II) habitat; or

(III) hunting; and

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

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

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

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

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

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

242 (b) In bringing the action, the county legislative body shall specify the portion of the
243 migratory bird production area and the affidavit subject to the action.

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

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

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

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

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

254 production area.

255 (2) The revision notice shall contain:

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

257 (b) the name of the owner or owners of the land removed from the migratory bird

258 production area.

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

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

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

265 (b) the landowner shall:

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

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

268 production area.

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

270 **Part 3. Protections**

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

272 (1) Creation of a migratory bird production area does not impair the ability of land
273 within the migratory bird production area to qualify for the benefits of Title 59, Chapter 2,
274 Part 5, Farmland Assessment Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

300 (i) hunting;

301 (ii) discharging a firearm;

302 (iii) improving habitat;

303 (iv) trapping;

304 (v) eradicating weeds;

305 (vi) discing;

306 (vii) planting;

307 (viii) impounding water;

308 (ix) raising a bird or other domestic animal;

309 (x) grazing;

310 (xi) an activity conducted in the normal course of an agricultural operation as defined
311 in Section 78B-6-1101; and

312 (xii) an odor.

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

315 (a) normally associated with a migratory bird production area;

316 (b) conducted within a migratory bird production area; and

317 (c) not in violation of any federal or state law.

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

321 "Migratory Bird Production Area

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

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

330 **23-28-304. Annexation restrictions.**

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

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

334 **23-28-305. Application of Water Quality Act.**

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