

Senator Curtis S. Bramble proposes the following substitute bill:

AGRICULTURE PROTECTION AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Melvin R. Brown

LONG TITLE

General Description:

This bill amends provisions related to an agriculture protection area.

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

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



26 17-41-305, as last amended by Laws of Utah 2006, Chapter 194

27 17-41-306, as last amended by Laws of Utah 2009, Chapter 376

28 17-41-405, as last amended by Laws of Utah 2010, Chapter 90

29 ENACTS:

30 17-41-407, Utah Code Annotated 1953



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

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

34 **17-41-201. Agriculture protection area or industrial protection area advisory**
35 **board.**

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

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

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

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

46 (3) Each advisory board shall:

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

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

52 (i) the desirability of the proposal;

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

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

57 (iv) which agriculture production or industrial use should be allowed within the
58 agriculture protection area or industrial protection area, respectively; [~~and~~]

59 (c) report to the applicable legislative body on a proposed condemnation in accordance
60 with Section 17-41-405; and

61 [~~(e)~~] (d) perform all other duties required by this chapter.

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

63 **17-41-305. Criteria to be applied in evaluating a proposal for the creation of an**
64 **agriculture protection area or industrial protection area.**

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

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

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

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

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

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

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

81 (5) (a) in the case of an agriculture protection area, anticipated trends in agricultural
82 and technological conditions; or

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

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

86 **17-41-306. Adding land to or removing land from an agriculture protection area**
87 **or industrial protection area -- Removing land from a mining protection area.**

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

90 (i) filing a proposal with:

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

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

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

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

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

104 (b) (i) The applicable legislative body:

105 (A) shall:

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

110 (II) in order to give constructive notice of the removal to all persons who have, may
111 acquire, or may seek to acquire an interest in land in or adjacent to the agriculture protection
112 area or industrial protection area and the land removed from the agriculture protection area or
113 industrial protection area, file a legal description of the revised boundaries of the agriculture
114 protection area or industrial protection area with the county recorder of deeds and the affected
115 planning commission; and

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

118 (ii) The remaining land in the agriculture protection area or industrial protection area is

119 still an agriculture protection area or industrial protection area, respectively.

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

122 (i) the land no longer qualifies under Title 59, Chapter 2, Part 5, Farmland Assessment
123 Act; and

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

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

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

129 (A) the same county as the land proposed for removal from an agriculture protection
130 area if the land is within the unincorporated part of the county; or

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

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

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

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

138 (v) include in the notice:

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

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

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

144 ~~[(3)]~~ (4) (a) If a municipality annexes any land that is part of an agriculture protection
145 area or industrial protection area located in the unincorporated part of the county, the county
146 legislative body shall, within 30 days after the land is annexed, review the feasibility of that
147 land remaining in the agriculture protection area or industrial protection area according to the
148 procedures and requirements of Section 17-41-307.

149 (b) The county legislative body shall remove the annexed land from the agriculture

150 protection area or industrial protection area, as the case may be, if:

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

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

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

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

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

161 [~~(4)~~] (5) A mine operator that owns or controls land within a mining protection area
162 may remove any or all of the land from the mining protection area by filing a notice of removal
163 with the legislative body of the county in which the land is located.

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

165 **17-41-405. Eminent domain restrictions -- Attorney fees.**

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

171 (2) [~~Any condemnor~~] (a) A political subdivision wishing to condemn property within
172 an agriculture protection area or industrial protection area shall file a notice of condemnation
173 with the applicable legislative body and the agriculture protection area or industrial protection
174 area's advisory board at least 30 days before filing an eminent domain complaint.

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

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

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

178 Subsection (4);

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

180 (iv) submit the report to the applicable legislative body before the public hearing

181 described in Subsection (3).

182 (3) The applicable legislative body [~~and the advisory board~~] shall:

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

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

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

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

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

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

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

194 (i) the political subdivision;

195 (ii) the landowner; and

196 (iii) the public; and

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

199 [~~(4)~~] (5) (a) If the condemnation is for highway purposes or for the disposal of solid or
200 liquid waste materials, the applicable legislative body [~~and the advisory board~~] may approve
201 the condemnation [~~only~~] if there is no reasonable and prudent alternative to the use of the land
202 within the agriculture protection area or industrial protection area for the project.

203 (b) If the condemnation is for [~~any other purpose~~] a purpose other than a purpose
204 described in Subsection (5)(a), the applicable legislative body [~~and the advisory board~~] may
205 approve the condemnation [~~only~~] if:

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

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

211 (6) (a) Within 15 days after the day of the hearing described in Subsection (3)(a), the

212 applicable legislative body, the advisory board, or the political subdivision may file an
213 application with the Office of the Property Rights Ombudsman, as provided in Title 13,
214 Chapter 43, The Property Rights Ombudsman Act, for an advisory opinion advising:

215 (i) whether the criteria of this section have been met; and

216 (ii) whether the condemnation should be approved or rejected.

217 (b) If a party files a request for an advisory opinion under Subsection (6)(a), the request
218 is a stay on the request for the proposed condemnation approval before the applicable
219 legislative body until the Office of the Property Rights Ombudsman issues the requested
220 advisory opinion.

221 [~~(5)(a)~~] (7) Within 60 days after receipt of the notice of condemnation, the applicable
222 legislative body [~~and the advisory board~~] shall approve or reject the proposed condemnation.

223 [~~(b) If the applicable legislative body and the advisory board fail to act within the 60~~
224 ~~days or such further time as the applicable legislative body establishes, the condemnation shall~~
225 ~~be considered rejected.]~~

226 [~~(6) The~~] (8) (a) Subject to Subsection (8)(b), the applicable legislative body [~~or the~~
227 advisory board] may request the county or municipal attorney to bring an action to enjoin [~~any~~
228 condemnor] a political subdivision from violating any provisions of this section.

229 (b) If the decision of the legislative body made in accordance with this section is
230 appealed in accordance with Section 17-41-407, the county or municipal attorney may not
231 bring an action under Subsection (8)(a) unless the action is to enforce the district court's final
232 order.

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

234 **17-41-407. Appeal of condemnation decision.**

235 (1) No later than 30 days after a proposed condemnation is approved or rejected in
236 accordance with Section 17-41-405, a person may file a complaint to appeal a decision made
237 by the applicable legislative body to the district court of the district where the protected area is
238 located.

239 (2) The district court shall review the appeal.

240 (3) The entity requesting the condemnation shall pay the reasonable attorney fees
241 incurred:

242 (a) by the land owner that are directly related to the determination of the value of the

243 property being condemned; and

244 (b) in the district court proceedings only.

245 Section 6. **Effective date.**

246 (1) Except as provided in Subsection (2), if approved by two-thirds of all the members
247 elected to each house, this bill takes effect upon approval by the governor, or the day following
248 the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's
249 signature, or in the case of a veto, the date of veto override.

250 (2) The following sections take effect on July 1, 2012:

251 (a) Section 17-41-201;

252 (b) Section 17-41-405; and

253 (c) Section 17-41-407.