

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 immediate 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;

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

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

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

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

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

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

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

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

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

140 (v) include in the notice:

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

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

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

146 ~~[(3)]~~ (4) (a) If a municipality annexes any land that is part of an agriculture protection
147 area or industrial protection area located in the unincorporated part of the county, the county
148 legislative body shall, within 30 days after the land is annexed, review the feasibility of that
149 land remaining in the agriculture protection area or industrial protection area according to the

150 procedures and requirements of Section 17-41-307.

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

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

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

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

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

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

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

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

167 **17-41-405. Eminent domain restrictions -- Attorney fees.**

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

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

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

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

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

180 Subsection (4);

181 (iii) prepare a report of the advisory' board's findings under Subsection (2)(b)(i); and
182 (iv) submit the report to the applicable legislative body before the public hearing
183 described in Subsection (3).

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

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

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

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

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

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

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

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

196 (i) the political subdivision;

197 (ii) the landowner; and

198 (iii) the public; and

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

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

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

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

211 (ii) there is no reasonable and prudent alternative to the use of the land within the

212 agriculture protection area or industrial protection area for the project.

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

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

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

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

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

226 **17-41-407. Appeal of condemnation decision.**

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

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

231 (3) The entity requesting the condemnation shall pay the reasonable attorney fees
232 incurred:

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

235 (b) in the district court proceedings only.

236 Section 6. **Effective date.**

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