

MIGRATORY BIRD PRODUCTION AREA AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Joel Ferry

Senate Sponsor: Scott D. Sandall

LONG TITLE

General Description:

This bill addresses migratory bird production areas.

Highlighted Provisions:

This bill:

- ▶ extends the time for creating a migratory bird production area;
- ▶ provides a process to add property to a migratory bird production area;
- ▶ provides for inclusion of easements;
- ▶ addresses limitations on local ordinances;
- ▶ addresses use by a guest of a migratory bird production area under provisions related to limiting landowner liability under certain circumstances;
- ▶ prohibits exercising eminent domain under certain circumstances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

23-28-201, as enacted by Laws of Utah 2009, Chapter 273

23-28-202, as last amended by Laws of Utah 2010, Chapter 218

23-28-302, as enacted by Laws of Utah 2009, Chapter 273

29 **57-14-202**, as renumbered and amended by Laws of Utah 2013, Chapter 212

30 **78B-6-501**, as last amended by Laws of Utah 2020, Chapter 87

31

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

33 Section 1. Section **23-28-201** is amended to read:

34 **23-28-201. Creation of a migratory bird production area.**

35 (1) (a) On or before July 1, [~~2010~~] 2022, an owner or owners of at least 500 contiguous
36 acres of land in an unincorporated area may dedicate the land as a migratory bird production
37 area by filing a notice of dedication with the county recorder of the county in which the land is
38 located.

39 (b) The notice of dedication shall contain:

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

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

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

45 (A) actively managed for migratory bird:

46 (I) production;

47 (II) habitat; or

48 (III) hunting; and

49 (B) used for a purpose compatible with the purposes described in Subsection

50 (1)(b)(iii)(A).

51 (c) A person who files a notice of dedication under this section shall give a copy of the
52 notice of dedication within 10 days of its filing to the legislative body of the county in which
53 the migratory bird production area is located.

54 (2) (a) The notice of dedication may designate land, the amount of which is less than
55 1% of the total acreage within a migratory bird production area, upon which the landowner

56 may build a structure described in Subsection [23-28-302\(1\)](#)~~(b)~~(c).

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

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

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

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

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

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

73 (4) In accordance with Section [23-28-202](#), a person may at any time add land to a
74 migratory bird production area created under this section.

75 Section 2. Section **23-28-202** is amended to read:

76 **23-28-202. Adding to or removing land from a migratory bird production area.**

77 (1) ~~[A]~~ Subject to the other provisions of this section, a landowner may file a revision
78 notice with the county recorder of the county in which the migratory bird production area is
79 located to add land to or remove land from a migratory bird production area.

80 (2) The revision notice shall contain:

81 (a) a legal description of the land added to or removed from the migratory bird
82 production area; and

83 (b) the name of the owner or owners of the land added to or removed from the
84 migratory bird production area.

85 (3) A person who files a revision notice under this section shall give a copy of the
86 revision notice within 10 days of its filing to the legislative body of the county in which the
87 migratory bird production area is located.

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

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

91 (b) the landowner shall:

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

93 (ii) file the revision notice required by this section for the entire migratory bird
94 production area.

95 (5) A landowner may add land to a migratory bird production area only if:

96 (a) the land to be added is contiguous to the migratory bird production area; and

97 (b) all the landowners of the contiguous land to be added to the migratory bird
98 production area consent to the contiguous land being added to the migratory bird production
99 area.

100 (6) A landowner of a migratory bird production area may include an easement in the
101 migratory bird production area if:

102 (a) the landowner owns the easement;

103 (b) the easement is on land that is contiguous to the migratory bird production area;

104 and

105 (c) the owner of the land where the easement is located consents to the easement being
106 included in the migratory bird production area.

107 Section 3. Section **23-28-302** is amended to read:

108 **23-28-302. Limitations on local regulations.**

109 (1) (a) A county within which a migratory bird production area is located shall

110 encourage the continuity, development, and viability of the migratory bird production area.

111 (b) Except as otherwise specifically provided in this chapter, the purposes, uses, and
112 activities of a migratory bird production area described in this chapter are afforded the highest
113 priority of use status.

114 ~~[(b)]~~ (c) A structure ~~[or]~~, improvement, or activity historically or customarily used in
115 conjunction with a migratory bird production area is considered a permitted use under the
116 county's zoning law, ordinance, or regulation.

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

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

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

123 (c) enact a law, ordinance, or regulation concerning the use, operation, or discharge of
124 a firearm ~~[that is more restrictive than state law, except as provided by Subsection~~
125 ~~23-14-1(3)(b).]~~ on a migratory bird production area.

126 (3) For purposes of Subsection (2)(a), a law, ordinance, or regulation is unreasonable if
127 it restricts or impairs the purposes, uses, and activities historically or customarily associated
128 with a migratory bird production area.

129 Section 4. Section **57-14-202** is amended to read:

130 **57-14-202. Use of private land without charge -- Effect.**

131 (1) Except as provided in Subsection 57-14-204(1), an owner of land who either
132 directly or indirectly invites or permits without charge, or for a nominal fee of no more than \$1
133 per year, any person to use the owner's land for any recreational purpose, or an owner of a
134 public access area open to public recreational access under Title 73, Chapter 29, Public Waters
135 Access Act, does not:

136 ~~[(1)]~~ (a) make any representation or extend any assurance that the land is safe for any

137 purpose;

138 ~~[(2)]~~ (b) confer upon the person the legal status of an invitee or licensee to whom a
139 duty of care is owed;

140 ~~[(3)]~~ (c) assume responsibility for or incur liability for any injury to persons or property
141 caused by an act or omission of the person or any other person who enters upon the land; or

142 ~~[(4)]~~ (d) owe any duty to curtail the owner's use of the land during its use for
143 recreational purposes.

144 (2) The limitations of liability provided in this part apply to the owner of land
145 designated as a migratory bird production area under Title 23, Chapter 28, Migratory Bird
146 Production Area, that is owned and operated for any purpose allowed under Title 23, Chapter
147 28, Migratory Bird Production Area, if:

148 (a) the owner allows a guest of the owner or, if the owner has shareholders, members,
149 or partners, a guest of a shareholder, member, or partner of the owner to engage in an activity
150 with a recreational purpose on that land; and

151 (b) the guest is not charged.

152 Section 5. Section **78B-6-501** is amended to read:

153 **78B-6-501. Eminent domain -- Uses for which right may be exercised --**

154 **Limitations on eminent domain.**

155 (1) As used in this section, "century farm" means real property that is:

156 (a) assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act; and

157 (b) owned or held by the same family for a continuous period of 100 years or more.

158 (2) Except as provided in ~~[Subsection]~~ Subsections (3) and (4) and subject to the
159 provisions of this part, the right of eminent domain may be exercised on behalf of the following
160 public uses:

161 (a) all public uses authorized by the federal government;

162 (b) public buildings and grounds for the use of the state, and all other public uses
163 authorized by the Legislature;

164 (c) (i) public buildings and grounds for the use of any county, city, town, or board of
165 education;

166 (ii) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or
167 sewage, including to or from a development, for the use of the inhabitants of any county, city,
168 or town, or for the draining of any county, city, or town;

169 (iii) the raising of the banks of streams, removing obstructions from streams, and
170 widening, deepening, or straightening their channels;

171 (iv) bicycle paths and sidewalks adjacent to paved roads;

172 (v) roads, byroads, streets, and alleys for public vehicular use, including for access to a
173 development; and

174 (vi) all other public uses for the benefit of any county, city, or town, or its inhabitants;

175 (d) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank
176 and turnpike roads, roads for transportation by traction engines or road locomotives, roads for
177 logging or lumbering purposes, and railroads and street railways for public transportation;

178 (e) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes
179 for the supplying of persons, mines, mills, smelters or other works for the reduction of ores,
180 with water for domestic or other uses, or for irrigation purposes, or for the draining and
181 reclaiming of lands, or for solar evaporation ponds and other facilities for the recovery of
182 minerals in solution;

183 (f) (i) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places
184 to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines,
185 quarries, coal mines, or mineral deposits including oil, gas, and minerals in solution;

186 (ii) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water
187 from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal
188 mines or mineral deposits including minerals in solution;

189 (iii) mill dams;

190 (iv) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or

191 formation in any land for the underground storage of natural gas, and in connection with that,
192 any other interests in property which may be required to adequately examine, prepare,
193 maintain, and operate underground natural gas storage facilities;

194 (v) solar evaporation ponds and other facilities for the recovery of minerals in solution;
195 and

196 (vi) any occupancy in common by the owners or possessors of different mines,
197 quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores,
198 or any place for the flow, deposit or conduct of tailings or refuse matter;

199 (g) byroads leading from a highway to:

200 (i) a residence; or

201 (ii) a farm;

202 (h) telecommunications, electric light and electric power lines, sites for electric light
203 and power plants, or sites for the transmission of broadcast signals from a station licensed by
204 the Federal Communications Commission in accordance with 47 C.F.R. Part 73 and that
205 provides emergency broadcast services;

206 (i) sewage service for:

207 (i) a city, a town, or any settlement of not fewer than 10 families;

208 (ii) a public building belonging to the state; or

209 (iii) a college or university;

210 (j) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and
211 storing water for the operation of machinery for the purpose of generating and transmitting
212 electricity for power, light or heat;

213 (k) cemeteries and public parks; and

214 (l) sites for mills, smelters or other works for the reduction of ores and necessary to
215 their successful operation, including the right to take lands for the discharge and natural
216 distribution of smoke, fumes, and dust, produced by the operation of works, provided that the
217 powers granted by this section may not be exercised in any county where the population

218 exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the
219 proposed condemner has the right to operate by purchase, option to purchase or easement, at
220 least 75% in value of land acreage owned by persons or corporations situated within a radius of
221 four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits
222 of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing
223 between the condemner and the owner of land within the limit and providing for the operation
224 of such mill, smelter, or other works for the reduction of ores; nor until an action shall have
225 been commenced to restrain the operation of such mill, smelter, or other works for the
226 reduction of ores.

227 (3) The right of eminent domain may not be exercised on behalf of the following uses:

228 (a) except as provided in Subsection (2)(c)(iv), trails, paths, or other ways for walking,
229 hiking, bicycling, equestrian use, or other recreational uses, or whose primary purpose is as a
230 foot path, equestrian trail, bicycle path, or walkway;

231 (b) (i) a public park whose primary purpose is:

232 (A) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use; or

233 (B) to connect other trails, paths, or other ways for walking, hiking, bicycling, or
234 equestrian use; or

235 (ii) a public park established on real property that is:

236 (A) a century farm; and

237 (B) located in a county of the first class.

238 (4) (a) The right of eminent domain may not be exercised within a migratory bird
239 production area created on or before December 31, 2020, under Title 23, Chapter 28, Migratory
240 Bird Production Area, except as follows:

241 (i) subject to Subsection (4)(b), an electric utility may condemn land within a migratory
242 bird production area located in a county of the first class only for the purpose of installing
243 buried power lines;

244 (ii) an electric utility may condemn land within a migratory bird production area in a

245 county other than a county of the first class to install:

246 (A) buried power lines; or

247 (B) a new overhead transmission line that is parallel to and abutting an existing

248 overhead transmission line or collocated within an existing overhead transmission line right of

249 way; or

250 (iii) the Department of Transportation may exercise eminent domain for the purpose of

251 the construction of the West Davis Highway.

252 (b) Before exercising the right of eminent domain under Subsection (4)(a)(i), the

253 electric utility shall demonstrate that:

254 (i) the proposed condemnation would not have an unreasonable adverse effect on the

255 preservation, use, and enhancement of the migratory bird production area; and

256 (ii) there is no reasonable alternative to constructing the power line within the

257 boundaries of a migratory bird production area.