

HB0083S01 compared with HB0083

~~text~~ shows text that was in HB0083 but was deleted in HB0083S01.

text shows text that was not in HB0083 but was inserted into HB0083S01.

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Representative Joel Ferry proposes the following substitute bill:

MIGRATORY BIRD PRODUCTION AREA AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Joel Ferry

Senate Sponsor: _____

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.

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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

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

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

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

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

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

(1) (a) On or before July 1, [~~2010~~] 2022, 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The revision notice shall contain:

(a) a legal description of the land added to or removed from the migratory bird

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production area; and

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

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

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

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

(b) the landowner shall:

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

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

production area.

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

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

(b) all the landowners of the contiguous land to be added to the migratory bird

production area consent to the contiguous land being added to the migratory bird production area.

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

(a) the landowner owns the easement;

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

and

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

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

23-28-302. Limitations on local regulations.

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

(b) Except as otherwise specifically provided in this chapter, the purposes, uses, and activities of a migratory bird production area described in this chapter are afforded the highest

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priority of use status.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) the guest is not charged.

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

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

Limitations on eminent domain.

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

- (a) assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act; and
- (b) owned or held by the same family for a continuous period of 100 years or more.

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

- (a) all public uses authorized by the federal government;
- (b) public buildings and grounds for the use of the state, and all other public uses authorized by the Legislature;
- (c) (i) public buildings and grounds for the use of any county, city, town, or board of education;
- (ii) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or sewage, including to or from a development, for the use of the inhabitants of any county, city, or town, or for the draining of any county, city, or town;
- (iii) the raising of the banks of streams, removing obstructions from streams, and widening, deepening, or straightening their channels;
- (iv) bicycle paths and sidewalks adjacent to paved roads;
- (v) roads, byroads, streets, and alleys for public vehicular use, including for access to a development; and
- (vi) all other public uses for the benefit of any county, city, or town, or its inhabitants;

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

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

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

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

(iii) mill dams;

(iv) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or formation in any land for the underground storage of natural gas, and in connection with that, any other interests in property which may be required to adequately examine, prepare, maintain, and operate underground natural gas storage facilities;

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

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

(g) byroads leading from a highway to:

(i) a residence; or

(ii) a farm;

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

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(i) sewage service for:

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

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

(iii) a college or university;

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

(k) cemeteries and public parks; and

(l) sites for mills, smelters or other works for the reduction of ores and necessary to their successful operation, including the right to take lands for the discharge and natural distribution of smoke, fumes, and dust, produced by the operation of works, provided that the powers granted by this section may not be exercised in any county where the population exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the proposed condemner has the right to operate by purchase, option to purchase or easement, at least 75% in value of land acreage owned by persons or corporations situated within a radius of four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing between the condemner and the owner of land within the limit and providing for the operation of such mill, smelter, or other works for the reduction of ores; nor until an action shall have been commenced to restrain the operation of such mill, smelter, or other works for the reduction of ores.

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

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

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

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

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

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

(A) a century farm; and

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

(4) (a) The right of eminent domain may not be exercised within a migratory bird production area created on or before December 31, 2020, under Title 23, Chapter 28, Migratory Bird Production Area ~~f.7~~, except as follows:

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

(ii) an electric utility may condemn land within a migratory bird production area in a county other than a county of the first class to install:

(A) buried power lines; or

(B) a new overhead transmission line that is parallel to and abutting an existing overhead transmission line or collocated within an existing overhead transmission line right of way; or

(iii) the Department of Transportation may exercise eminent domain for the purpose of the construction of the West Davis Highway.

(b) Before exercising the right of eminent domain under Subsection (4)(a)(i), the electric utility shall demonstrate that:

(i) the proposed condemnation would not have an unreasonable adverse effect on the preservation, use, and enhancement of the migratory bird production area; and

(ii) there is no reasonable alternative to constructing the power line within the boundaries of a migratory bird production area.