

**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: Scott D. Sandall

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**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:



- 26 [23-28-201](#), as enacted by Laws of Utah 2009, Chapter 273
- 27 [23-28-202](#), as last amended by Laws of Utah 2010, Chapter 218
- 28 [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

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

32 Section 1. Section [23-28-201](#) is amended to read:

33 **[23-28-201. Creation of a migratory bird production area.](#)**

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

38 (b) The notice of dedication shall contain:

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

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

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

44 (A) actively managed for migratory bird:

45 (I) production;

46 (II) habitat; or

47 (III) hunting; and

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

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

53 (2) (a) The notice of dedication may designate land, the amount of which is less than  
54 1% of the total acreage within a migratory bird production area, upon which the landowner  
55 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]~~<sub>2</sub> 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.