

**AGRICULTURE PROTECTION AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: \_\_\_\_\_

---

---

**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

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

**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

31 

---

---

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 ~~[(c)]~~ (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 is no longer being used for an agricultural purpose;

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

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

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

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

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

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

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

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

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

139 (v) include in the notice:

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

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

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

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

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

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

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

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

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

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

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

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

166 **17-41-405. Eminent domain restrictions.**

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

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

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

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

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

179 Subsection (4);

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

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

182 described in Subsection (3).

183 (3) The applicable legislative body [~~and the advisory board~~] shall:  
 184 (a) hold a joint public hearing on the proposed condemnation at a location within the  
 185 county in which the agriculture protection area or industrial protection area is located;  
 186 (b) publish notice of the time, date, place, and purpose of the public hearing:  
 187 (i) in a newspaper of general circulation within the agriculture protection area or  
 188 industrial protection area, as the case may be; and  
 189 (ii) on the Utah Public Notice Website created in Section 63F-1-701; and  
 190 (c) post notice of the time, date, place, and purpose of the public hearing in five  
 191 conspicuous public places, designated by the applicable legislative body, within or near the  
 192 agriculture protection area or industrial protection area, as the case may be.

193 (4) At the hearing required in Subsection (3), the legislative body shall:  
 194 (a) receive testimony, evidence, and recommendations from:  
 195 (i) the condemnor;  
 196 (ii) the landowner; and  
 197 (iii) the public; and  
 198 (b) consider a report submitted by an advisory board in accordance with Subsection  
 199 (2)(b)(iv).

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

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

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

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

212 [~~(5)~~] (6) (a) Within 60 days after receipt of the notice of condemnation, the applicable  
 213 legislative body [~~and the advisory board~~] shall approve or reject the proposed condemnation.

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

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 a condemnor 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) (a) 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 (b) The district court shall review the appeal de novo.

231 (2) A court shall award the prevailing party of an appeal filed in accordance with  
232 Subsection (1)(a) court costs, including reasonable attorney fees.

233 Section 6. **Effective date.**

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

---

---

Legislative Review Note  
as of 2-8-12 9:00 AM

Office of Legislative Research and General Counsel