

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 473

Final Reading

Introduced by Louden, 49; Hansen, 42; Harms, 48; Schilz, 47;
Wallman, 30.

Read first time January 14, 2011

Committee: Agriculture

A BILL

- 1 FOR AN ACT relating to prairie dogs; to amend section 81-2,236,
- 2 Reissue Revised Statutes of Nebraska; to adopt the Black-
- 3 Tailed Prairie Dog Management Act; to harmonize
- 4 provisions; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 10 of this act shall be known
2 and may be cited as the Black-Tailed Prairie Dog Management Act.

3 Sec. 2. For purposes of the Black-Tailed Prairie Dog
4 Management Act:

5 (1) Colony means the series of burrows and tunnels
6 created by the black-tailed prairie dog where black-tailed prairie
7 dogs live;

8 (2) County board means the county board of commissioners
9 or supervisors of a county that has adopted the act;

10 (3) Managed colony means a colony that is confined to
11 land owned by one person; and

12 (4) Person means any individual, partnership, firm,
13 limited liability company, corporation, company, society, or
14 association, the state or any department, agency, or political
15 subdivision thereof, or any other public or private entity.

16 Sec. 3. (1) A county may adopt by resolution and carry
17 out a coordinated program for the management of black-tailed prairie
18 dogs on property within the county consistent with the Black-Tailed
19 Prairie Dog Management Act. When a county adopts such a resolution,
20 the county shall assume the authority and duties provided in the act
21 and the act shall be applicable to persons owning or controlling
22 property within the county.

23 (2) A black-tailed prairie dog management plan shall
24 include a finding by the county board of adverse impacts of unmanaged
25 colonies within the county and the necessity to exercise the

1 authority made available under the Black-Tailed Prairie Dog
2 Management Act. Such management plan shall include a listing of the
3 methods for management of colonies to be used for purposes which are
4 consistent with the act. Such management plan shall not conflict with
5 any state management plan for black-tailed prairie dogs or any rules
6 or regulations adopted and promulgated pursuant to the Nongame and
7 Endangered Species Conservation Act and shall not conflict with any
8 state or federal recovery plan for endangered or threatened species.

9 (3) A county may cooperate and coordinate with the Animal
10 and Plant Health Inspection Service of the United States Department
11 of Agriculture, the Game and Parks Commission, the United States Fish
12 and Wildlife Service, and other local, state, and national agencies
13 and organizations, public or private, to prepare a coordinated
14 program for the control and management of black-tailed prairie dogs
15 and to carry out its duties and responsibilities under the Black-
16 Tailed Prairie Dog Management Act.

17 (4) A county may by resolution discontinue a coordinated
18 program for the management of black-tailed prairie dogs. If such a
19 program is discontinued, any unpaid assessments against landowners
20 for costs of black-tailed prairie dog management shall continue to be
21 collected pursuant to the Black-Tailed Prairie Dog Management Act.

22 Sec. 4. Each person who owns or controls property within
23 a county that has adopted a coordinated program for the management of
24 black-tailed prairie dogs under section 3 of this act shall
25 effectively manage colonies present upon his, her, or its property to

1 prevent the expansion of colonies to adjacent property if the owner
2 of the adjacent property objects to such expansion.

3 Sec. 5. A county board of a county that has adopted a
4 coordinated program for the management of black-tailed prairie dogs
5 under section 3 of this act may:

6 (1) Employ personnel and expend funds for the purchase of
7 materials, machinery, and equipment to carry out its duties and
8 responsibilities under the Black-Tailed Prairie Dog Management Act;

9 (2) Issue general and individual notices as provided in
10 section 6 of this act for the management of colonies; and

11 (3) Examine property within the county for the purpose of
12 determining the location of colonies.

13 Sec. 6. (1)(a) Notices for management of colonies shall
14 consist of two kinds: General notice and individual notices, which
15 notices shall be on a form prescribed by this section. Failure to
16 publish general notice or to serve individual notices as provided in
17 this section shall not relieve any person from the necessity of full
18 compliance with the Black-Tailed Prairie Dog Management Act.

19 (b) General notice shall be published by the county board
20 of each county that has adopted a coordinated program for the
21 management of black-tailed prairie dogs under section 3 of this act
22 in one or more newspapers of general circulation in the county on or
23 before May 1 of each year or at such other times as the county board
24 may determine.

25 (c) Whenever any county board of a county that has

1 adopted a coordinated program for the management of black-tailed
 2 prairie dogs under section 3 of this act has reason to believe, based
 3 upon information or through its own investigation, that a colony, or
 4 any portion of a colony, has expanded onto adjacent property and the
 5 owner of the adjacent property objects to such expansion and the
 6 county board determines that it is necessary to secure more prompt or
 7 definite management of a colony than is accomplished by the general
 8 published notice, it shall cause to be served individual notice, upon
 9 the owner of record of the property upon which the colony is located
 10 at his or her last-known address, of recommended methods of when and
 11 how black-tailed prairie dogs are to be managed.

12 (d) The county board shall use one or both of the
 13 following forms for all individual notices:

14 (i) County Board

15 OFFICIAL NOTICE

16 Information received by the county board indicates the
 17 existence of an unmanaged black-tailed prairie dog colony on property
 18 owned by you at: The method of
 19 management recommended by the county board is as
 20 follows: Other
 21 appropriate management methods are acceptable if approved by the
 22 county board.

23 State law specifies a duty of each person who owns or
 24 controls property within a county that has adopted a coordinated
 25 program for the management of black-tailed prairie dogs under section

1 3 of this act to manage black-tailed prairie dog colonies present
 2 upon his or her property to prevent the expansion of colonies to
 3 adjacent property if the owner of the adjacent property objects to
 4 such expansion. You must provide notice and evidence to the county
 5 board within sixty days after the date specified at the bottom of
 6 this notice that appropriate management as specified in this notice,
 7 or alternative management that is approved by the board, has been
 8 initiated. If services for the management of black-tailed prairie
 9 dogs are not available within the sixty-day period specified in this
 10 notice, you may satisfy this notice by providing evidence that you
 11 have arranged for management to occur when available. If such notice
 12 and evidence are not received by the county board within sixty days
 13 after the date specified at the bottom of this notice, the county
 14 board or its agent may enter upon your property for the purpose of
 15 taking the appropriate management measures. Costs for the management
 16 activities performed by the county board shall be at the expense of
 17 the owner of the property and shall become a lien on the property as
 18 a special assessment levied on the date of control.

19 If the county board receives a written request from you
 20 within fifteen days after the date specified at the bottom of this
 21 notice, you are entitled to a hearing before the county board to
 22 challenge this notice.

23 County Board

24 Dated ; or

25 (ii) County Board

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OFFICIAL NOTICE

Information received by the county board indicates the presence of an unmanaged black-tailed prairie dog colony on property owned by you at: The method of management recommended by the county board is as follows: Other appropriate management methods are acceptable if approved by the county board.

State law specifies a duty of each person who owns or controls property within a county that has adopted a coordinated program for the management of black-tailed prairie dogs under section 3 of this act to manage black-tailed prairie dog colonies present upon his or her property to prevent the expansion of colonies to adjacent property if the owner of the adjacent property objects to such expansion. You must provide notice and evidence to the county board within sixty days after the date specified at the bottom of this notice that appropriate management as specified in this notice, or alternative management that is approved by the board, has been initiated. If services for the management of black-tailed prairie dogs are not available within the sixty-day period specified in this notice, you may satisfy this notice by providing evidence that you have arranged for management to occur when available. If such notice and evidence are not received by the county board within sixty days after the date specified at the bottom of this notice you may, upon conviction, be subject to a fine of \$100.00 per day for each day of

1 noncompliance beginning on, up to a maximum of fifteen days
2 of noncompliance (maximum \$1,500).

3 If the county board receives a written request from you
4 within fifteen days after the date specified at the bottom of this
5 notice, you are entitled to a hearing before the county board to
6 challenge this notice.

7 County Board

8 Dated

9 (2) Upon the written request of any landowner served with
10 an individual notice pursuant to subsection (1) of this section
11 received within fifteen days after the date specified by such notice,
12 the county board shall hold an informal public hearing to allow such
13 landowner an opportunity to address the county board's notice.

14 (3) If a landowner who has received a notice pursuant to
15 subsection (1) of this section fails to comply with the notice, the
16 county board shall:

17 (a) If, upon expiration of the sixty-day period specified
18 on the notice required by subdivision (1)(d)(i) of this section, the
19 landowner has not complied with the notice and has not requested a
20 hearing pursuant to subsection (2) of this section, the county board
21 may cause proper management methods to be used on such property and
22 shall advise the record landowner of the cost incurred in connection
23 with such operation. The cost of any such management shall be at the
24 expense of the landowner. In addition, the county board shall
25 immediately cause notice to be filed of possible unpaid black-tailed

1 prairie dog management assessments against the property upon which
2 the management measures were used in the register of deeds office in
3 the county where the property is located. If unpaid for two months,
4 the county board shall certify to the county treasurer the amount of
5 such expense and such expense shall become a lien on the property
6 upon which the management measures were taken as a special assessment
7 levied on the date of management. The county treasurer shall add such
8 expense to and it shall become and form a part of the taxes upon such
9 land and shall bear interest at the same rate as delinquent taxes; or

10 (b) If, upon the expiration of the sixty-day period
11 specified on the notice required by subdivision (1)(d)(ii) of this
12 section, the landowner has not complied with the notice and has not
13 requested a hearing pursuant to subsection (2) of this section, the
14 county board shall notify the county attorney who shall proceed
15 against such landowner as prescribed in this subdivision. A person
16 who is responsible for an unmanaged colony shall, upon conviction, be
17 guilty of an infraction pursuant to sections 29-431 to 29-438, except
18 that the penalty shall be a fine of one hundred dollars per day for
19 each day of violation, up to a total of one thousand five hundred
20 dollars for fifteen days of noncompliance.

21 (4) This section shall not be construed to limit
22 satisfaction of the obligation imposed by this section in whole or in
23 part by tax foreclosure proceedings. The expense may be collected by
24 suit instituted for that purpose as a debt due the county or by any
25 other or additional remedy otherwise available. Amounts collected

1 under this section shall be deposited to the black-tailed prairie dog
2 management fund of the county board if such fund has been created by
3 the county board or, if no such fund has been created, then to the
4 county general fund.

5 Sec. 7. If any person is dissatisfied with the amount of
6 any costs charged against him or her under the Black-Tailed Prairie
7 Dog Management Act, he or she may, within fifteen days after being
8 advised of the amount of the charge, file a written protest with the
9 county board. The county board shall hold a hearing to determine
10 whether the charges were appropriate, taking into consideration
11 whether the management measures were conducted in a timely fashion.
12 Following the hearing, the county board shall have the power to
13 adjust or affirm such charge.

14 Sec. 8. The county board of a county that has adopted a
15 coordinated program for the management of black-tailed prairie dogs
16 under section 3 of this act, or anyone authorized by the county
17 board, may enter upon property in the county for purposes of
18 performing the duties and exercising the powers under the Black-
19 Tailed Prairie Dog Management Act without being subject to any action
20 for trespass or damages, including damages for destruction of growing
21 crops, if reasonable care is exercised and forty-eight hours' written
22 advance notice of entrance is provided to the property owner or
23 occupant.

24 Sec. 9. A black-tailed prairie dog management fund may be
25 established by a county, which fund shall be available for expenses

1 authorized to be paid from such fund, including necessary expenses of
2 the county board in carrying out its duties and responsibilities
3 under the Black-Tailed Prairie Dog Management Act.

4 Sec. 10. The cost of managing colonies on all land owned
5 or controlled by a state department, agency, commission, or board or
6 a political subdivision shall be paid by the state department,
7 agency, commission, or board in control thereof or the political
8 subdivision out of funds appropriated to the state department,
9 agency, commission, or board or budgeted by the political subdivision
10 for its use.

11 Sec. 11. Section 81-2,236, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 81-2,236 The Director of Agriculture may contract and
14 cooperate with the Animal and Plant Health Inspection Service of the
15 United States Department of Agriculture in the management and control
16 of (1) coyotes, bobcats, foxes, and other predatory animals listed in
17 section 23-358 in this state that are injurious to livestock,
18 poultry, and game animals and the public health, (2) black-tailed
19 prairie dogs and other injurious commensal and field rodents, and (3)
20 nuisance birds or other nuisance wildlife in accordance with
21 organized and systematic plans of the Animal and Plant Health
22 Inspection Service of the United States Department of Agriculture for
23 the management and control of such animals. Supervision of the
24 program shall be by the local representative of the Animal and Plant
25 Health Inspection Service of the United States Department of

1 Agriculture. Expenditure of funds appropriated by the Legislature may
2 not be made without the approval in writing by the director. The
3 director in cooperation with the Animal and Plant Health Inspection
4 Service of the United States Department of Agriculture may enter into
5 agreements with other governmental agencies and with counties,
6 associations, corporations, or individuals when such cooperation is
7 deemed to be necessary to promote the management and control of such
8 predatory animals, black-tailed prairie dogs and other injurious
9 commensal and field rodents, nuisance birds, or other nuisance
10 wildlife.

11 Sec. 12. Original section 81-2,236, Reissue Revised
12 Statutes of Nebraska, is repealed.