

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 1286**

Introduced by Kremer, 34; Baker, 44; Dickey, 18; Hudkins, 21;  
Jones, 43; Stuhr, 24; Tyson, 19; Wehrbein, 2

Read first time January 18, 2000

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the Nongame and Endangered Species  
2 Conservation Act; to amend sections 37-801 and 37-807,  
3 Reissue Revised Statutes of Nebraska, and section 37-201,  
4 Revised Statutes Supplement, 1999; to provide for safe  
5 harbor agreements to permit certain actions; to provide  
6 powers and duties; to harmonize provisions; and to repeal  
7 the original sections.

8 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 37-201, Revised Statutes Supplement,  
2 1999, is amended to read:

3           37-201. Sections 37-201 to 37-811 and section 4 of this  
4 act shall be known and may be cited as the Game Law.

5           Sec. 2. Section 37-801, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           37-801. Sections 37-801 to 37-811 and section 4 of this  
8 act shall be known and may be cited as the Nongame and Endangered  
9 Species Conservation Act.

10          Sec. 3. Section 37-807, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12          37-807. (1) The commission shall establish such  
13 programs, including acquisition of land or aquatic habitat or  
14 interests therein, as are necessary for the conservation of  
15 nongame, threatened, or endangered species of wildlife or wild  
16 plants. Acquisition for the purposes of this subsection shall not  
17 include the power to obtain by eminent domain.

18          (2) In carrying out programs authorized by this section,  
19 the commission shall consult with other states having a common  
20 interest in particular species of nongame, endangered, or  
21 threatened species of wildlife or wild plants and may enter into  
22 agreements with federal agencies, other states, political  
23 subdivisions of this state, or private persons with respect to  
24 programs designed to conserve such species including, when  
25 appropriate, agreements for administration and management of any  
26 area established under this section or utilized for conservation of  
27 such species.

28          (3) The Governor shall review other programs administered

1 by him or her and utilize such programs in furtherance of the  
2 purposes of the Nongame and Endangered Species Conservation Act.  
3 All other state agencies shall, in consultation with and with the  
4 assistance of the commission, utilize their authorities in  
5 furtherance of the purposes of the act by carrying out programs for  
6 the conservation of endangered species and threatened species  
7 listed pursuant to section 37-806 and by taking such action  
8 necessary to insure that actions authorized, funded, or carried out  
9 by them do not jeopardize the continued existence of such  
10 endangered or threatened species or result in the destruction or  
11 modification of habitat of such species which is determined by the  
12 commission to be critical. The secretary of the commission shall  
13 grant an exemption from the requirements of this subsection for a  
14 state agency action in the event that there are no reasonable or  
15 prudent alternatives to such action, the economic benefits of such  
16 action clearly outweigh the environmental or social benefits of not  
17 authorizing, funding, or carrying out such action, and such action  
18 is in the public interest. For purposes of this subsection, state  
19 agency means any department, agency, board, bureau, or commission  
20 of the state or any corporation whose primary function is to act  
21 as, and while acting as, an instrumentality or agency of the state,  
22 except that state agency shall not include a natural resources  
23 district or any other political subdivision.

24 (4) The commission shall provide notice and hold a public  
25 meeting prior to the implementation of conservation programs  
26 designed to reestablish threatened, endangered, or extirpated  
27 species of wildlife or wild plants through the release of animals  
28 or plants to the wild. The purpose of holding such a public

1 meeting shall be to inform the public of programs requiring the  
2 release to the wild of such wildlife or wild plants and to solicit  
3 public input and opinion. The commission shall set a date and time  
4 for the public meeting to be held at a site convenient to the  
5 proposed release area and shall publish a notice of such meeting in  
6 a legal newspaper published in or of general circulation in the  
7 county or counties where the proposed release is to take place.  
8 The notice shall be published at least twenty days prior to the  
9 meeting and shall set forth the purpose, date, time, and place of  
10 the meeting.

11           Sec. 4. (1) The secretary of the commission may enter  
12 into safe harbor agreements with the head of any other state agency  
13 as defined in section 37-807. Under such an agreement the  
14 secretary shall permit an action to jeopardize endangered or  
15 threatened species included under the agreement on lands or waters  
16 that are subject to the agreement if the jeopardy is incidental to,  
17 and not the purpose of, carrying out such action, except that the  
18 secretary may not permit through such agreements any jeopardy below  
19 the baseline requirement specified pursuant to subsection (2) of  
20 this section.

21           (2) For each agreement under this section, the secretary  
22 shall establish a baseline requirement that is mutually agreed upon  
23 by the secretary and head of any other state agency at the time of  
24 the agreement that will, at a minimum, maintain existing conditions  
25 for the species covered by the agreement on lands and waters that  
26 are subject to the agreement. The baseline may be expressed in  
27 terms of the abundance or distribution of endangered or threatened  
28 species, quantity or quality of habitat, or such other indicators

1 as appropriate.

2           (3) In the event of a safe harbor agreement between the  
3 secretary and head of any other state agency, similar proposed  
4 actions of the state agency involving the same species and habitat  
5 subject to the agreement shall not require informal or formal  
6 consultation with the commission prior to such actions being  
7 approved by the agency.

8           (4) With respect to application for de minimis uses or de  
9 minimis consumptive uses pending before the Department of Water  
10 Resources, the secretary shall be required to attempt to negotiate  
11 a safe harbor agreement with the Director of Water Resources  
12 pursuant to this section.

13           (5) The commission may adopt and promulgate rules and  
14 regulations to carry out the provisions of this section.

15           Sec. 5. Original sections 37-801 and 37-807, Reissue  
16 Revised Statutes of Nebraska, and section 37-201, Revised Statutes  
17 Supplement, 1999, are repealed.