

AMENDMENTS TO LB 777

1 1. Strike the original sections and insert the following
2 new sections:

3 "Section 1. Section 37-806, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 37-806. (1) Any species of wildlife or wild plants
6 determined to be an endangered species pursuant to the Endangered
7 Species Act shall be an endangered species under the Nongame and
8 Endangered Species Conservation Act, and any species of wildlife or
9 wild plants determined to be a threatened species pursuant to the
10 Endangered Species Act shall be a threatened species under the
11 Nongame and Endangered Species Conservation Act. The commission
12 may determine that any such threatened species is an endangered
13 species throughout all or any portion of the range of such species
14 within this state.

15 (2) In addition to the species determined to be
16 endangered or threatened pursuant to the Endangered Species Act,
17 the commission shall by regulation determine whether any species of
18 wildlife or wild plants normally occurring within this state is an
19 endangered or threatened species as a result of any of the
20 following factors:

21 (a) The present or threatened destruction, modification,
22 or curtailment of its habitat or range;

23 (b) Overutilization for commercial, sporting, scientific,
24 educational, or other purposes;

1 (c) Disease or predation;

2 (d) The inadequacy of existing regulatory mechanisms; or

3 (e) Other natural or manmade factors affecting its
4 continued existence within this state.

5 (3)(a) The commission shall make determinations required
6 by subsection (2) of this section on the basis of the best
7 scientific, commercial, and other data available to the commission.

8 (b) Except with respect to species of wildlife or wild
9 plants determined to be endangered or threatened species under
10 subsection (1) of this section, the commission may not add a
11 species to nor remove a species from any list published pursuant to
12 subsection (5) of this section unless the commission has first:

13 ~~(a)~~ (i) Published a public notice of such proposed action
14 in each region of the subject species' range in which it is
15 endangered or threatened;

16 (ii) Provided notice of such proposed action to and
17 allowed comment from the Governor and state agencies;

18 (iii) Provided notice of such proposed action to and
19 allowed comment from each county and natural resources district
20 located in that portion of the subject species' range in which it
21 is endangered or threatened;

22 ~~(b)~~ (iv) Notified the Governor of any state sharing a
23 common border with this state, in which the subject species is
24 known to occur, that such action is being proposed; ~~and~~

25 ~~(e)~~ (v) Allowed at least thirty days following
26 publication for comment from the public and other interested
27 parties;

1 (vi) Held at least one public hearing on such proposed
2 action in each region of the subject species' range in which it is
3 endangered or threatened;

4 (vii) Submitted the scientific, commercial, and other
5 data which is the basis of the proposed action to scientists or
6 experts outside and independent of the commission for peer review
7 of the data and conclusions; and

8 (viii) For species proposed to be added under this
9 subsection but not for species proposed to be removed under this
10 subsection, developed an outline of the potential requirements or
11 regulations that may be placed on private landowners, or other
12 persons who hold state-recognized property rights, as a result of
13 the listing of the species or the development of a proposed program
14 for the conservation of the species as required in subsection (1)
15 of section 37-807.

16 (c) When the commission is proposing to add or remove a
17 species under this subsection, public notice under subdivision
18 (3)(b)(i) of this section shall include, but not be limited to, (i)
19 the species proposed to be listed and a description of that portion
20 of its range in which the species is endangered or threatened, (ii)
21 a declaration that the commission submitted the data which is the
22 basis for the listing for peer review and developed an outline if
23 required under subdivision (b)(viii) of this subsection, and (iii)
24 a declaration of the availability of the peer review and outline,
25 if applicable, for public examination.

26 (d) In cases when the commission determines that an
27 emergency situation exists involving the continued existence of

1 such species as a viable component of the wild fauna or flora of
2 the state, the commission may add species to such lists after
3 having first published a public notice that such an emergency
4 situation exists together with a summary of facts which support
5 such determination.

6 (4) In determining whether any species of wildlife or
7 wild plants is an endangered or threatened species, the commission
8 shall take into consideration those actions being carried out by
9 the federal government, by other states, by other agencies of this
10 state or political subdivisions thereof, or by any other person
11 which may affect the species under consideration.

12 (5) The commission shall issue regulations containing a
13 list of all species of wildlife and wild plants normally occurring
14 within this state which it determines, in accordance with
15 subsections (1) through (4) of this section, to be endangered or
16 threatened species and a list of all such species. Each list shall
17 refer to the species contained therein by scientific and common
18 name or names, if any, and shall specify with respect to each such
19 species over what portion of its range it is endangered or
20 threatened.

21 (6) Except with respect to species of wildlife or wild
22 plants determined to be endangered or threatened pursuant to the
23 Endangered Species Act, the commission shall, upon the petition of
24 an interested person, conduct a review of any listed or unlisted
25 species proposed to be removed from or added to the lists published
26 pursuant to subsection (5) of this section, but only if the
27 commission publishes a public notice that such person has presented

1 substantial evidence which warrants such a review.

2 (7) Whenever any species of wildlife or wild plants is
3 listed as a threatened species pursuant to subsection (5) of this
4 section, the commission shall issue such regulations as are
5 necessary to provide for the conservation of such species. The
6 commission may prohibit, with respect to any threatened species of
7 wildlife or wild plants, any act prohibited under subsection (8) or
8 (9) of this section.

9 (8) With respect to any endangered species of wildlife,
10 it shall be unlawful, except as provided in subsection (7) of this
11 section, for any person subject to the jurisdiction of this state
12 to:

13 (a) Export any such species from this state;

14 (b) Take any such species within this state;

15 (c) Possess, process, sell or offer for sale, deliver,
16 carry, transport, or ship, by any means whatsoever except as a
17 common or contract motor carrier under the jurisdiction of the
18 Public Service Commission or the Interstate Commerce Commission,
19 any such species; or

20 (d) Violate any regulation pertaining to the conservation
21 of such species or to any threatened species of wildlife listed
22 pursuant to this section and promulgated by the commission pursuant
23 to the Nongame and Endangered Species Conservation Act.

24 (9) With respect to any endangered species of wild
25 plants, it shall be unlawful, except as provided in subsection (7)
26 of this section, for any person subject to the jurisdiction of this
27 state to:

1 (a) Export any such species from this state;

2 (b) Possess, process, sell or offer for sale, deliver,
3 carry, transport, or ship, by any means whatsoever, any such
4 species; or

5 (c) Violate any regulation pertaining to such species or
6 to any threatened species of wild plants listed pursuant to this
7 section and promulgated by the commission pursuant to the act.

8 (10) Any endangered species of wildlife or wild plants
9 which enters this state from another state or from a point outside
10 the territorial limits of the United States and which is being
11 transported to a point within or beyond this state may be so
12 entered and transported without restriction in accordance with the
13 terms of any federal permit or permit issued under the laws or
14 regulations of another state.

15 (11) The commission may permit any act otherwise
16 prohibited by subsection (8) of this section for scientific
17 purposes or to enhance the propagation or survival of the affected
18 species.

19 (12) Any law, regulation, or ordinance of any political
20 subdivision of this state which applies with respect to the taking,
21 importation, exportation, possession, sale or offer for sale,
22 processing, delivery, carrying, transportation other than under the
23 jurisdiction of the Public Service Commission, or shipment of
24 species determined to be endangered or threatened species pursuant
25 to the Nongame and Endangered Species Conservation Act shall be
26 void to the extent that it may effectively (a) permit that which is
27 prohibited by the act or by any regulation which implements the act

AM0742
LB 777
MMM-02-28

AM0742
LB 777
MMM-02-28

1 or (b) prohibit that which is authorized pursuant to an exemption
2 or permit provided for in the act or in any regulation which
3 implements the act. The Nongame and Endangered Species
4 Conservation Act shall not otherwise be construed to void any law,
5 regulation, or ordinance of any political subdivision of this state
6 which is intended to conserve wildlife or wild plants.

7 Sec. 2. Original section 37-806, Reissue Revised
8 Statutes of Nebraska, is repealed.".