

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 673

Introduced by Louden, 49; Aguilar, 35; Baker, 44; Combs, 32;
Erdman, 47; McDonald, 41; Smith, 48; Stuthman, 22

Read first time January 19, 2005

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend sections 81-2,236 and
2 81-2,237, Reissue Revised Statutes of Nebraska; to adopt
3 the Black-Tailed Prairie Dog Management Act; to harmonize
4 provisions; and to repeal the original sections.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 12 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) Buffer zone means an area with no resident
6 black-tailed prairie dog colonies;

7 (2) Colony means the series of burrows and tunnels
8 created by the black-tailed prairie dog where black-tailed prairie
9 dogs live;

10 (3) County board means the county board of commissioners
11 or supervisors;

12 (4) Director means the Director of Agriculture or his or
13 her designated representative;

14 (5) Manage means to limit the growth or spread of
15 black-tailed prairie dog colonies and monitor resident species for
16 health and viability;

17 (6) Managed black-tailed prairie dog colony means (a) an
18 area covering ten acres or more with resident black-tailed prairie
19 dogs that is monitored for the vitality of the grassland ecosystem,
20 water quality, and species health and viability that has a buffer
21 zone of at least one mile surrounding it or (b) an area covering
22 fewer than ten acres with resident black-tailed prairie dogs that
23 is monitored for the vitality of the grassland ecosystem, water
24 quality, and species health and viability that has a buffer zone of
25 at least one-half mile surrounding it; and

26 (7) Person means any individual, partnership, firm,
27 limited liability company, corporation, company, society, or
28 association, the state or any department, agency, or subdivision

1 thereof, the federal government, or any other public or private
2 entity.

3 Sec. 3. The Legislature finds that:

4 (1) The black-tailed prairie dog (Cynomys ludovicianus)
5 creates colonies that alter topography and vegetation and may
6 extend over hundreds of acres. Black-tailed prairie dogs'
7 burrowing, foraging, and clipping of vegetation affect soils, water
8 transport, and plants. Grassland ecosystems in areas traditionally
9 used for wildlife habitat, recreation, and grazing may be destroyed
10 if black-tailed prairie dog colonies are not managed;

11 (2) Black-tailed prairie dog colonies host or attract
12 other species which should be preserved; and

13 (3) When managed properly, a black-tailed prairie dog
14 colony protects nongame and endangered species, water quality, and
15 grassland ecosystems for animal grazing.

16 Sec. 4. (1) It is the duty of each person who owns or
17 controls public or private land to effectively manage black-tailed
18 prairie dog colonies to ensure that (a) a colony covering ten acres
19 or more has a buffer zone of at least one mile surrounding it and
20 (b) a colony covering fewer than ten acres has a buffer zone of at
21 least one-half mile surrounding it.

22 (2) In counties with black-tailed prairie dogs, county
23 boards are responsible for administration of the Black-Tailed
24 Prairie Dog Management Act at the county level. County boards are
25 authorized to determine and impose fees under the Black-Tailed
26 Prairie Dog Management Act.

27 (3) The Department of Agriculture shall cooperate with
28 the United States Department of Agriculture Animal and Plant Health

1 Inspection Service Wildlife Services and landowners to monitor and
2 manage black-tailed prairie dog colonies on public and private land
3 in Nebraska.

4 Sec. 5. (1) (a) The duty of enforcing and carrying out
5 the Black-Tailed Prairie Dog Management Act shall be vested in the
6 director and the county boards of counties with black-tailed
7 prairie dogs. The director may, from time to time, adopt and
8 promulgate such rules and regulations on methods for management of
9 black-tailed prairie dog colonies as are necessary to carry out the
10 act.

11 (b) The director shall (i) investigate the subject of
12 black-tailed prairie dogs, (ii) require information and reports
13 from county boards as to the presence of black-tailed prairie dogs;
14 (iii) cooperate with agencies of federal and state governments and
15 other persons in carrying out his or her duties under the
16 Black-Tailed Prairie Dog Management Act, (iv) procure materials and
17 equipment and employ personnel necessary to carry out the
18 director's duties and responsibilities, and (v) perform such other
19 acts as may be necessary or appropriate to the administration of
20 the act.

21 (c) When the director determines that a county board of a
22 county with black-tailed prairie dogs has substantively failed to
23 carry out its duties and responsibilities under the Black-Tailed
24 Prairie Dog Management Act, he or she shall instruct the county
25 board regarding the measures necessary to fulfill such duties and
26 responsibilities. The director shall establish a reasonable date
27 by which the county board shall fulfill such duties and
28 responsibilities. If the county board fails or refuses to comply

1 with instructions by such date, the Attorney General shall file an
2 action as provided by law against the control authority for such
3 failure or refusal.

4 (2) (a) Each county board of a county with black-tailed
5 prairie dogs shall carry out the duties and responsibilities vested
6 in it under the act with respect to land under its jurisdiction in
7 accordance with rules and regulations adopted and promulgated by
8 the director. Such duties shall include the establishment of a
9 coordinated program for management of black-tailed prairie dog
10 colonies within the county. Each county board of a county with
11 black-tailed prairie dogs shall determine when and how to monitor
12 the size of each colony.

13 (b) A county board of a county with black-tailed prairie
14 dogs may cooperate with any person in carrying out its duties and
15 responsibilities under the act and may appropriate and expend funds
16 for the purchase of materials, machinery, and equipment to assist
17 with managing black-tailed prairie dog colonies.

18 (3) The director, a member of a county board of a county
19 with black-tailed prairie dogs, or anyone authorized thereby may
20 enter upon all land under his, her, or its respective jurisdiction
21 for the purpose of performing the duties and exercising the powers
22 under the rules and regulations adopted and promulgated by the
23 director and the act without the consent of the person owning or
24 controlling such land and without being subject to any action for
25 trespass or damages, including damages for destruction of growing
26 crops, if reasonable care is exercised.

27 Sec. 6. The director may convene an advisory committee
28 to advise the director concerning his or her responsibilities under

1 the Black-Tailed Prairie Dog Management Act. Representatives from
2 state or federal agencies actively concerned with the management of
3 black-tailed prairie dog colonies, the University of Nebraska
4 Institute of Agriculture and Natural Resources, county government,
5 agriculture, environmental groups, and others in the public and
6 private sector may serve on such committee at the request of the
7 director. If an advisory committee is convened, members shall not
8 receive any reimbursement for expenses.

9 Sec. 7. (1) (a) Notices for management of black-tailed
10 prairie dog colonies shall consist of two kinds: General notices,
11 as prescribed by rules and regulations adopted and promulgated by
12 the director, which notices shall be on a form prescribed by the
13 director; and individual notices, which notices shall be on a form
14 prescribed by this section. Failure to publish general notices or
15 to serve individual notices as provided in this section shall not
16 relieve any person from the necessity of full compliance with the
17 Black-Tailed Prairie Dog Management Act and rules and regulations
18 adopted and promulgated pursuant to the act.

19 (b) General notice shall be published by each county
20 board of a county with black-tailed prairie dogs in one or more
21 newspapers of general circulation throughout the area over which
22 the county board has jurisdiction on or before May 1 of each year
23 and at such other times as the director may require or the county
24 board may determine.

25 (c) Whenever any county board of a county with
26 black-tailed prairie dogs finds it necessary to secure more prompt
27 or definite management of black-tailed prairie dogs on particular
28 land than is accomplished by the general published notice, it shall

1 cause to be served individual notice upon the owner of record of
2 such land at his or her last-known address, giving specific
3 instructions and methods when and how black-tailed prairie dogs are
4 to be managed.

5 (d) Each county board of a county with black-tailed
6 prairie dogs shall use one or both of the following forms for all
7 individual notices: (i)

8 County Board

9 OFFICIAL NOTICE

10 Information received by the county board, including an
11 onsite investigation by the county board, indicates the existence
12 of an unmanaged black-tailed prairie dog colony on property owned
13 by you at:

14

15 The method of management recommended by the county board is as
16 follows:

17

18 Other appropriate management methods are acceptable if approved by
19 the county board.

20 Because the stage of growth of the unmanaged black-tailed
21 prairie dog colony on the above-specified property warrants
22 immediate management, if such colony remains unmanaged after sixty
23 days from the date specified at the bottom of this notice, the
24 county board may enter upon such property for the purpose of taking
25 the appropriate management measures. Costs for the management
26 activities shall be at the expense of the owner of the property and
27 shall become a lien on the property as a special assessment levied
28 on the date of control.

1
.....

2 County Board Dated

3 or (ii)

4 County Board

5 OFFICIAL NOTICE

6 Information received by the county board, including an
7 onsite investigation by the county board, indicates the existence
8 of an unmanaged black-tailed prairie dog colony on property owned
9 by you at:

10

11 The method of management recommended by the county board is as
12 follows:

13

14 Other appropriate management methods are acceptable if approved by
15 the county board. If, within sixty days from the date specified at
16 the bottom of this notice, the black-tailed prairie dog colony on
17 such property, as specified above, has not been brought under
18 management, you may, upon conviction, be subject to a fine of
19 \$100.00 per day for each day of noncompliance beginning on
20, up to a maximum of fifteen days of noncompliance
21 (maximum \$1,500).

22 Upon request to the county board, within fifteen days
23 from the date specified at the bottom of this notice, you are
24 entitled to a hearing before the county board to challenge the
25 existence of an unmanaged black-tailed prairie dog colony on
26 property owned by you at.....

27
.....

28 County Board Dated.

1 (2) At the request of any owner served with an individual
2 notice pursuant to subdivision (1)(b)(ii) of this section, the
3 county board of a county with black-tailed prairie dogs shall hold
4 an informal public hearing to allow such landowner an opportunity
5 to be heard on the question of the existence of an unmanaged
6 black-tailed prairie dog colony on such landowner's property.

7 (3) Whenever the owner of the land on which an unmanaged
8 black-tailed prairie dog colony is present has neglected or failed
9 to manage it as required pursuant to the act and any notice given
10 pursuant to subsection (1) of this section, the county board having
11 jurisdiction shall proceed as follows:

12 (a) If, within fifteen days from the date specified on
13 the notice required by subdivision (1)(b)(ii) of this section, the
14 owner has not taken action to manage the black-tailed prairie dog
15 colony on the specified property and has not requested a hearing
16 pursuant to subsection (2) of this section, the county board of a
17 county with black-tailed prairie dogs shall notify the county
18 attorney who shall proceed against such owner as prescribed in this
19 subdivision. A person who is responsible for an unmanaged
20 black-tailed prairie dog colony on particular land under his or her
21 ownership and who refuses or fails to manage the black-tailed
22 prairie dog colony within the time designated in the notice
23 delivered by the county board shall, upon conviction, be guilty of
24 an infraction pursuant to sections 29-431 to 29-438, except that
25 the penalty shall be a fine of one hundred dollars per day for each
26 day of violation up to a total of one thousand five hundred dollars
27 for fifteen days of noncompliance; or

28 (b) If, within ten days from the date specified in the

1 notice required by subdivision (1)(b)(i) of this section, the owner
2 has not taken action to manage the black-tailed prairie dog colony
3 on the specified property and the stage of growth of such unmanaged
4 black-tailed prairie dog colony warrants immediate control to
5 prevent spread of the colony into a buffer zone, the county board
6 may cause proper management methods to be used on such land and
7 shall advise the record owner of the cost incurred in connection
8 with such operation. The cost of any such management shall be at
9 the expense of the owner. In addition the county board shall
10 immediately cause notice to be filed of possible unpaid
11 black-tailed prairie dog management assessments against the
12 property upon which the management measures were used in the
13 register of deeds office in the county where the property is
14 located. If unpaid for two months, the county board shall certify
15 to the county treasurer the amount of such expense and such expense
16 shall become a lien on the property upon which the management
17 measures were taken as a special assessment levied on the date of
18 management. The county treasurer shall add such expense to and it
19 shall become and form a part of the taxes upon such land and shall
20 bear interest at the same rate as delinquent taxes.

21 (3) Nothing contained in this section shall be construed
22 to limit satisfaction of the obligation imposed hereby in whole or
23 in part by tax foreclosure proceedings. The expense may be
24 collected by suit instituted for that purpose as a debt due the
25 county or by any other or additional remedy otherwise available.
26 Amounts collected under this section shall be deposited to the
27 black-tailed prairie dog management fund of the county board if
28 such fund has been created by the county board or if no such fund

1 has been created, then to the county general fund.

2 Sec. 8. A black-tailed prairie dog management fund may
3 be established for each county board of a county with black-tailed
4 prairie dogs, which fund shall be available for expenses authorized
5 to be paid from such fund, including necessary expenses of the
6 county board in carrying out its duties and responsibilities under
7 the Black-Tailed Prairie Dog Management Act. The county shall (1)
8 ascertain and tabulate each year the approximate amount of acres
9 with black-tailed prairie dog colonies and their location in the
10 county and (2) ascertain and prepare all information required in
11 the preparation of the county budget, including actual and expected
12 revenue from all sources, cash balances, expenditures, amounts
13 proposed to be expended during the year, and working capital.

14 Sec. 9. The cost of managing black-tailed prairie dog
15 colonies on all land owned or controlled by a state department,
16 agency, commission, or board or a political subdivision shall be
17 paid by the state department, agency, commission, or board in
18 control thereof or the political subdivision out of funds
19 appropriated to the state department, agency, commission, or board
20 or budgeted by the political subdivision for its use.

21 Sec. 10. The director may use funds from the Animal
22 Damage Control Cash Fund to carry out the purposes of the
23 Black-Tailed Prairie Dog Management Act.

24 Sec. 11. If any person is dissatisfied with the amount
25 of any costs or fines charged against him or her under the
26 Black-Tailed Prairie Dog Management Act, he or she may, within
27 fifteen days after being advised of the amount of the charge, file
28 a protest with the county board. The county board shall hold a

1 hearing to determine whether the charges were appropriate, taking
2 into consideration whether the management measures were conducted
3 in a timely fashion. Following the hearing, the county board shall
4 have the power to adjust or affirm such charge. If any person is
5 dissatisfied with the decision of the county board or with charges
6 made by the county board for management work performed, such person
7 may appeal the decision, and the appeal shall be in accordance with
8 the Administrative Procedure Act.

9 Sec. 12. Any person or public agency may institute legal
10 action for failure to comply with the Black-Tailed Prairie Dog
11 Management Act.

12 Sec. 13. Section 81-2,236, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 81-2,236. The Director of Agriculture may contract and
15 cooperate with the Animal and Plant Health Inspection Service of
16 the United States Department of Agriculture in the management and
17 control of (1) coyotes, bobcats, foxes, and other predatory animals
18 listed in section 23-358 in this state that are injurious to
19 livestock, poultry, and game animals and the public health, (2)
20 black-tailed prairie dogs and other injurious commensal and field
21 rodents, and (3) nuisance birds or other nuisance wildlife in
22 accordance with organized and systematic plans of the Animal and
23 Plant Health Inspection Service of the United States Department of
24 Agriculture for the management and control of such animals.
25 Supervision of the program shall be by the local representative of
26 the Animal and Plant Health Inspection Service of the United States
27 Department of Agriculture. Expenditure of funds appropriated by
28 the Legislature may not be made without the approval in writing by

1 the director. The director in cooperation with the Animal and
2 Plant Health Inspection Service of the United States Department of
3 Agriculture may enter into agreements with other governmental
4 agencies and with counties, associations, corporations, or
5 individuals when such cooperation is deemed to be necessary to
6 promote the management and control of such predatory animals,
7 black-tailed prairie dogs and other injurious commensal and field
8 rodents, nuisance birds, or other nuisance wildlife.

9 Sec. 14. Section 81-2,237, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 81-2,237. There is hereby created the Animal Damage
12 Control Cash Fund. Such fund shall be administered by the
13 Department of Agriculture. The fund shall consist of funds
14 received from any source to carry out the animal damage control
15 program pursuant to section 81-2,236. The Legislature shall ensure
16 that the fund has at least one hundred thousand dollars available
17 for the program each fiscal year. Any money in the fund available
18 for investment shall be invested by the state investment officer
19 pursuant to the Nebraska Capital Expansion Act and the Nebraska
20 State Funds Investment Act.

21 Sec. 15. Original sections 81-2,236 and 81-2,237,
22 Reissue Revised Statutes of Nebraska, are repealed.