

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 473

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, the federal government, or any other public or
16 private entity.

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

24 (2) A county may by resolution discontinue a coordinated
25 program for the management of black-tailed prairie dogs. If such a

1 program is discontinued, any unpaid assessments against landowners
2 for costs of black-tailed prairie dog management shall continue to be
3 collected pursuant to this section.

4 Sec. 4. Each person who owns or controls property within
5 a county that has adopted a coordinated program for the management of
6 black-tailed prairie dogs under section 3 of this act shall
7 effectively manage black-tailed prairie dog colonies present upon
8 his, her, or its property to prevent the expansion of colonies to
9 adjacent property if the owner of the adjacent property objects to
10 such expansion.

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

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

17 (2) Cooperate and coordinate with the Animal and Plant
18 Health Inspection Service of the United States Department of
19 Agriculture, the National Forest Service, the United States Fish and
20 Wildlife Service, the Game and Parks Commission, and other local,
21 state, and national agencies and organizations, public or private, to
22 develop a coordinated program for the control and management of
23 black-tailed prairie dogs and to carry out its duties and
24 responsibilities under the act;

25 (3) Issue general and individual notices as provided in

1 section 6 of this act for the management of black-tailed prairie dog
2 colonies; and

3 (4) Examine property within the county for the purpose of
4 determining the location of black-tailed prairie dog colonies.

5 Sec. 6. (1)(a) Notices for management of black-tailed
6 prairie dog colonies shall consist of two kinds: General notice and
7 individual notices, which notices shall be on a form prescribed by
8 this section. Failure to publish general notice or to serve
9 individual notices as provided in this section shall not relieve any
10 person from the necessity of full compliance with the Black-Tailed
11 Prairie Dog Management Act.

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

18 (c) Whenever any county board of a county that has
19 adopted a coordinated program for the management of black-tailed
20 prairie dogs under section 3 of this act has reason to believe, based
21 upon information or through its own investigation, that a colony, or
22 any portion of a colony, has expanded onto adjacent property and the
23 owner of the adjacent property objects to such expansion and the
24 county board determines that it is necessary to secure more prompt or
25 definite management of a colony than is accomplished by the general

1 published notice, it shall cause to be served individual notice, upon
 2 the owner of record of the property upon which the colony is located
 3 at his or her last-known address, of recommended methods of when and
 4 how black-tailed prairie dogs are to be managed.

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

7 (i) County Board

8 OFFICIAL NOTICE

9 Information received by the county board indicates the
 10 existence of an unmanaged black-tailed prairie dog colony on property
 11 owned _____ by _____ you
 12 at: The method
 13 of management recommended by the county board is as
 14 follows:
 15 Other appropriate management methods are acceptable if approved by
 16 the county board.

17 State law specifies a duty of each person who owns or
 18 controls property within a county that has adopted a coordinated
 19 program for the management of black-tailed prairie dogs under section
 20 3 of this act to manage black-tailed prairie dog colonies present
 21 upon his or her property to prevent the expansion of colonies to
 22 adjacent property if the owner of the adjacent property objects to
 23 such expansion. You must provide notice and evidence to the county
 24 board within sixty days after the date specified at the bottom of
 25 this notice that appropriate management has specified in this notice,

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

13 If the county board receives a written request from you
 14 within fifteen days after the date specified at the bottom of this
 15 notice, you are entitled to a hearing before the county board to
 16 challenge this notice.

17 County Board

18 Dated

19 (ii) County Board

20 OFFICIAL NOTICE

21 Information received by the county board indicates the
 22 presence of an unmanaged black-tailed prairie dog colony on property
 23 owned _____ by _____ you
 24 at: The
 25 method of management recommended by the county board is as

1 follows:

2 Other appropriate management methods are acceptable if approved by
3 the county board.

4 State law specifies a duty of each person who owns or
5 controls property within a county that has adopted a coordinated plan
6 for the management of black-tailed prairie dogs under section 3 of
7 this act to manage black-tailed prairie dog colonies present upon his
8 or her property to prevent the expansion of colonies to adjacent
9 property if the owner of the adjacent property objects to such
10 expansion. You must provide notice and evidence to the county board
11 within sixty days after the date specified at the bottom of this
12 notice that appropriate management has specified in this notice, or
13 alternative management that is approved by the board, has been
14 initiated. If services for the management of black-tailed prairie
15 dogs are not available within the sixty-day period specified in this
16 notice, you may satisfy this notice by providing evidence that you
17 have arranged for management to occur when available. If such notice
18 and evidence are not received by the county board within sixty days
19 after the date specified at the bottom of this notice you may, upon
20 conviction, be subject to a fine of \$100.00 per day for each day of
21 noncompliance beginning on, up to a maximum of fifteen days
22 of noncompliance (maximum \$1,500).

23 If the county board receives a written request from you
24 within fifteen days after the date specified at the bottom of this
25 notice, you are entitled to a hearing before the county board to

1 challenge this notice.

2 County Board

3 Dated

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

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

12 (a) If, upon expiration of the sixty-day period specified
13 on the notice required by subdivision (1)(d)(i) of this section, the
14 landowner has not complied with the notice and has not requested a
15 hearing pursuant to subsection (2) of this section, the county board
16 may cause proper management methods to be used on such property and
17 shall advise the record landowner of the cost incurred in connection
18 with such operation. The cost of any such management shall be at the
19 expense of the landowner. In addition the county board shall
20 immediately cause notice to be filed of possible unpaid black-tailed
21 prairie dog management assessments against the property upon which
22 the management measures were used in the register of deeds office in
23 the county where the property is located. If unpaid for two months,
24 the county board shall certify to the county treasurer the amount of
25 such expense and such expense shall become a lien on the property

1 upon which the management measures were taken as a special assessment
2 levied on the date of management. The county treasurer shall add such
3 expense to and it shall become and form a part of the taxes upon such
4 land and shall bear interest at the same rate as delinquent taxes; or

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

16 (4) This section shall not be construed to limit
17 satisfaction of the obligation imposed by this section in whole or in
18 part by tax foreclosure proceedings. The expense may be collected by
19 suit instituted for that purpose as a debt due the county or by any
20 other or additional remedy otherwise available. Amounts collected
21 under this section shall be deposited to the black-tailed prairie dog
22 management fund of the county board if such fund has been created by
23 the county board or if no such fund has been created, then to the
24 county general fund.

25 Sec. 7. If any person is dissatisfied with the amount of

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

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

19 Sec. 9. A black-tailed prairie dog management fund may be
20 established by a county, which fund shall be available for expenses
21 authorized to be paid from such fund, including necessary expenses of
22 the county board in carrying out its duties and responsibilities
23 under the Black-Tailed Prairie Dog Management Act.

24 Sec. 10. The cost of managing black-tailed prairie dog
25 colonies on all land owned or controlled by a state department,

1 agency, commission, or board or a political subdivision shall be paid
2 by the state department, agency, commission, or board in control
3 thereof or the political subdivision out of funds appropriated to the
4 state department, agency, commission, or board or budgeted by the
5 political subdivision for its use.

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

8 81-2,236 The Director of Agriculture may contract and
9 cooperate with the Animal and Plant Health Inspection Service of the
10 United States Department of Agriculture in the management and control
11 of (1) coyotes, bobcats, foxes, and other predatory animals listed in
12 section 23-358 in this state that are injurious to livestock,
13 poultry, and game animals and the public health, (2) black-tailed
14 prairie dogs and other injurious commensal and field rodents, and (3)
15 nuisance birds or other nuisance wildlife in accordance with
16 organized and systematic plans of the Animal and Plant Health
17 Inspection Service of the United States Department of Agriculture for
18 the management and control of such animals. Supervision of the
19 program shall be by the local representative of the Animal and Plant
20 Health Inspection Service of the United States Department of
21 Agriculture. Expenditure of funds appropriated by the Legislature may
22 not be made without the approval in writing by the director. The
23 director in cooperation with the Animal and Plant Health Inspection
24 Service of the United States Department of Agriculture may enter into
25 agreements with other governmental agencies and with counties,

1 associations, corporations, or individuals when such cooperation is
2 deemed to be necessary to promote the management and control of such
3 predatory animals, black-tailed prairie dogs and other injurious
4 commensal and field rodents, nuisance birds, or other nuisance
5 wildlife.

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