

LEGISLATIVE BILL 473

Approved by the Governor March 14, 2012

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

FOR AN ACT relating to prairie dogs; to amend section 81-2,236, Reissue Revised Statutes of Nebraska; to adopt the Black-Tailed Prairie Dog Management Act; to harmonize provisions; and to repeal the original section.

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

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

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

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

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

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

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

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

(2) A black-tailed prairie dog management plan shall include a finding by the county board of adverse impacts of unmanaged colonies within the county and the necessity to exercise the authority made available under the Black-Tailed Prairie Dog Management Act. Such management plan shall include a listing of the methods for management of colonies to be used for purposes which are consistent with the act. Such management plan shall not conflict with any state management plan for black-tailed prairie dogs or any rules or regulations adopted and promulgated pursuant to the Nongame and Endangered Species Conservation Act and shall not conflict with any state or federal recovery plan for endangered or threatened species.

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

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

Sec. 4. 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 shall effectively manage colonies present upon his, her, or its property to prevent the expansion of colonies to adjacent property if the owner of the adjacent property objects to such expansion.

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

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

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

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

Sec. 6. (1)(a) Notices for management of colonies shall consist of two kinds: General notice and individual notices, which notices shall be on a form prescribed by this section. Failure to publish general notice or to

serve individual notices as provided in this section shall not relieve any person from the necessity of full compliance with the Black-Tailed Prairie Dog Management Act.

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

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

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

(i) County Board

OFFICIAL NOTICE

Information received by the county board indicates the existence 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, the county board or its agent may enter upon your property for the purpose of taking the appropriate management measures. Costs for the management activities performed by the county board shall be at the expense of the owner of the property and shall become a lien on the property as a special assessment levied on the date of control.

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

County Board

Dated ; or

(ii) County Board

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

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

County Board

Dated

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

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

(a) If, upon expiration of the sixty-day period specified on the notice required by subdivision (1)(d)(i) of this section, the landowner has not complied with the notice and has not requested a hearing pursuant to subsection (2) of this section, the county board may cause proper management methods to be used on such property and shall advise the record landowner of the cost incurred in connection with such operation. The cost of any such management shall be at the expense of the landowner. In addition, the county board shall immediately cause notice to be filed of possible unpaid black-tailed prairie dog management assessments against the property upon which the management measures were used in the register of deeds office in the county where the property is located. If unpaid for two months, the county board shall certify to the county treasurer the amount of such expense and such expense shall become a lien on the property upon which the management measures were taken as a special assessment levied on the date of management. The county treasurer shall add such expense to and it shall become and form a part of the taxes upon such land and shall bear interest at the same rate as delinquent taxes; or

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

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

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

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

Sec. 9. A black-tailed prairie dog management fund may be established by a county, which fund shall be available for expenses authorized to be paid from such fund, including necessary expenses of the county board

in carrying out its duties and responsibilities under the Black-Tailed Prairie Dog Management Act.

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

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

81-2,236 The Director of Agriculture may contract and cooperate with the Animal and Plant Health Inspection Service of the United States Department of Agriculture in the management and control of (1) coyotes, bobcats, foxes, and other predatory animals listed in section 23-358 in this state that are injurious to livestock, poultry, and game animals and the public health, (2) black-tailed prairie dogs and other injurious commensal and field rodents, and (3) nuisance birds or other nuisance wildlife in accordance with organized and systematic plans of the Animal and Plant Health Inspection Service of the United States Department of Agriculture for the management and control of such animals. Supervision of the program shall be by the local representative of the Animal and Plant Health Inspection Service of the United States Department of Agriculture. Expenditure of funds appropriated by the Legislature may not be made without the approval in writing by the director. The director in cooperation with the Animal and Plant Health Inspection Service of the United States Department of Agriculture may enter into agreements with other governmental agencies and with counties, associations, corporations, or individuals when such cooperation is deemed to be necessary to promote the management and control of such predatory animals, black-tailed prairie dogs and other injurious commensal and field rodents, nuisance birds, or other nuisance wildlife.

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