

LEGISLATIVE BILL 805

Approved by the Governor April 19, 2022

Introduced by Hughes, 44.

A BILL FOR AN ACT relating to agriculture; to amend sections 2-2303, 2-2309, 2-2311, 2-2312, 2-2315, 2-2318, 23-3803, 23-3804, 23-3805, 23-3806, and 23-3808, Reissue Revised Statutes of Nebraska, and section 2-958.02, Revised Statutes Cumulative Supplement, 2020; to change provisions relating to the Noxious Weed Control Act, the Nebraska Wheat Resources Act, and the Black-Tailed Prairie Dog Management Act; to harmonize provisions; to provide severability; and to repeal the original sections. Be it enacted by the people of the State of Nebraska,

Section 1. Section 2-958.02, Revised Statutes Cumulative Supplement, 2020, is amended to read:

2-958.02 (1) From funds available in the Noxious Weed and Invasive Plant Species Assistance Fund, the director may administer a grant program to assist local control authorities and other weed management entities in the cost of implementing and maintaining noxious weed control programs and in addressing special weed control problems as provided in this section.

(2) The director shall receive applications by local control authorities and weed management entities for assistance under this subsection and, in consultation with the advisory committee created under section 2-965.01, award grants for any of the following eligible purposes:

(a) To conduct applied research to solve locally significant weed management problems;

(b) To demonstrate innovative control methods or land management practices which have the potential to reduce landowner costs to control noxious weeds or improve the effectiveness of noxious weed control;

(c) To encourage the formation of weed management entities;

(d) To respond to introductions or infestations of invasive plants that threaten or potentially threaten the productivity of cropland and rangeland over a wide area;

(e) To respond to introductions and infestations of invasive plant species that threaten or potentially threaten the productivity and biodiversity of wildlife and fishery habitats on public and private lands;

(f) To respond to special weed control problems involving weeds not included in the list of noxious weeds promulgated by rule and regulation of the director if the director has approved a petition to bring such weeds under the county control program;

(g) To conduct monitoring or surveillance activities to detect, map, or determine the distribution of invasive plant species and to determine susceptible locations for the introduction or spread of invasive plant species; and

(h) To conduct educational activities.

(3) The director shall select and prioritize applications for assistance under subsection (2) of this section based on the following considerations:

(a) The seriousness of the noxious weed or invasive plant problem or potential problem addressed by the project;

(b) The ability of the project to provide timely intervention to save current and future costs of control and eradication;

(c) The likelihood that the project will prevent or resolve the problem or increase knowledge about resolving similar problems in the future;

(d) The extent to which the project will leverage federal funds and other nonstate funds;

(e) The extent to which the applicant has made progress in addressing noxious weed or invasive plant problems;

(f) The extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds or invasive plant species as identified and listed by the Nebraska Invasive Species Council;

(g) The extent to which the project will reduce or prevent the total population or area of infestation of a noxious weed or invasive plant species as identified and listed by the Nebraska Invasive Species Council;

(h) The extent to which the project uses the principles of integrated vegetation management and sound science; and

(i) Such other factors that the director determines to be relevant.

(4) The director shall receive applications for grants under this subsection and shall award grants to recipients and programs eligible under this subsection. Priority shall be given to grant applicants whose proposed programs are consistent with vegetation management goals and priorities and plans and policies of the Riparian Vegetation Management Task Force established under section 2-970. Beginning in fiscal year ~~2022-23~~ ~~2016-17~~, it is the intent of the Legislature to appropriate three ~~one~~ million dollars annually for the management of vegetation within the banks or flood plain of a natural stream ~~or within one hundred feet of the banks of a channel of any natural stream~~. Such funds shall only be used to pay for activities and equipment as part of vegetation management programs that have as their primary objective improving

conveyance of streamflow in natural streams. Grants from funds appropriated as provided in this subsection shall be disbursed only to weed management entities, local weed control authorities, and natural resources districts whose territory includes river basins, with priority given to river basins that are the subject of an interstate compact or decree. The Game and Parks Commission shall assist grant recipients in implementing grant projects under this subsection, and interlocal agreements under the Interlocal Cooperation Act or the Joint Public Agency Act shall be utilized whenever possible in carrying out the grant projects.

(5) Nothing in this section shall be construed to relieve control authorities of their duties and responsibilities under the Noxious Weed Control Act or the duty of a person to control the spread of noxious weeds on lands owned and controlled by him or her.

(6) The Department of Agriculture may adopt and promulgate necessary rules and regulations to carry out this section.

(7) The director may annually apply for conservation funding from the Natural Resources Conservation Service of the United States Department of Agriculture.

Sec. 2. Section 2-2303, Reissue Revised Statutes of Nebraska, is amended to read:

2-2303 For purposes of the Nebraska Wheat Resources Act, unless the context otherwise requires:

(1) Board means the Nebraska Wheat Development, Utilization, and Marketing Board;

(2) Commercial channels means the sale of wheat for any use when the buyer resells or intends to resell ~~sold to any commercial buyer, dealer, processor, cooperative, or any person, public or private, who resells~~ any such wheat or product produced from such wheat for a purpose other than for use as seed;

(3)(a) ~~(3)~~ First purchaser means any individual or person, public or private corporation, association, partnership, ~~or~~ limited liability company, or other business entity, if such individual or entity buys, accepts ~~buying,~~ accepting for shipment, or otherwise acquires ~~acquiring~~ the property in or to wheat from a grower for a purpose other than for use as seed.

(b) First purchaser shall not include a public or private and includes a mortgagee, pledgee, lienor, or other person, ~~public or private~~, having a claim against the grower when the actual or constructive possession of such wheat is taken as part payment or in satisfaction of a such mortgage, pledge, lien, or claim;

(4) Grower means any landowner personally engaged in growing wheat, a tenant of the landowner personally engaged in growing wheat, and both the owner and the tenant jointly and includes an individual or a person, partnership, limited liability company, association, corporation, cooperative, trust, sharecropper, and other business units, devices, and arrangements;

(5) Net market price means the sales price, or other value, per volumetric unit received by a producer for wheat after adjustment for any premium or discount;

(6) Net market value means the value found by multiplying the net market price by the appropriate quantity of the volumetric units or the minimum value in a production contract received by a producer for wheat after adjustments for any premium or discount. For wheat pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program, net market value means the principal amount of the loan; and

(7) Sale does not include a ~~includes any~~ pledge or mortgage of wheat after harvest to any individual or person, public or private entity.

Sec. 3. Section 2-2309, Reissue Revised Statutes of Nebraska, is amended to read:

2-2309 It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by protecting and stabilizing the wheat industry and the economy of the areas producing wheat. The Nebraska Wheat Development, Utilization, and Marketing Board shall be the agency of the State of Nebraska for such purpose. In connection with and in furtherance of such purpose, such board shall have the power to:

(1) Formulate the general policies and programs of the State of Nebraska relating to the wheat industry, including:

(a) The respecting the discovery, promotion, and development of markets and industries for the utilization of wheat grown within the State of Nebraska;

(b) The acquisition of ownership rights, including intellectual property rights, to any variety of wheat; and

(c) The development, production, marketing, and sale of seed for any wheat variety owned by the board;

(2) Adopt and devise a program of education and publicity;

(3) Cooperate with local, state, or national organizations, whether public or private, in carrying out the purposes of the Nebraska Wheat Resources Act and to enter into such contracts as may be necessary;

(4) Adopt and promulgate such rules and regulations as are necessary to promptly and effectively enforce the Nebraska Wheat Resources Act. The rules and regulations shall include provisions which prescribe the procedure for adjustment of the excise tax by the board pursuant to section 2-2311;

(5) Conduct, in addition to the things enumerated, any other program for the development, utilization, and marketing of wheat grown in the State of Nebraska. Such programs may provide for cooperation with, grants to, or contracts with individuals or entities in the private sector or public sector

~~for the following purposes: include a program to make grants and enter into contracts for research, accumulation of data, and construction of ethanol production facilities;~~

- ~~(a) Research;~~
- ~~(b) Accumulation of data;~~
- ~~(c) Development of new varieties of wheat;~~
- ~~(d) Securing plant variety protection under federal law when possible;~~
- ~~(e) Securing intellectual property rights relating to development of new varieties of wheat when possible;~~
- ~~(f) Producing wheat for seed and selling such seed; and~~
- ~~(g) Construction of ethanol production facilities;~~
- (6) Make refunds for overpayments of the excise tax according to rules and regulations adopted and promulgated by the board; and
- (7) Employ personnel and contract for services which are necessary for the proper operation of the program.

Sec. 4. Section 2-2311, Reissue Revised Statutes of Nebraska, is amended to read:

2-2311 (1) Commencing July 1, 1990, the board may levy on growers of wheat an excise tax of not to exceed one and one-half cents per bushel upon all wheat sold through commercial channels in the State of Nebraska. Commencing on October 1, 2012, there is hereby levied an excise tax of four-tenths percent of the net market value of wheat sold through commercial channels in the State of Nebraska. The first purchaser of such wheat shall levy, impose, and collect the tax at the time of settlement for the wheat tax shall be levied and imposed on the grower at the time of sale or delivery and shall be collected by the first purchaser. Under the Nebraska Wheat Resources Act, no wheat is shall be subject to the tax more than once.

(2) After October 1, 2014, the board may, whenever it determines that the excise tax levied by this section is yielding more or less than is required to carry out the intent and purposes of the Nebraska Wheat Resources Act, reduce or increase such levy for such period as it deems justifiable, but not less than one year, and such levy shall not exceed five-tenths percent of the net market value. Any adjustment to the levy shall be by rule and regulation adopted and promulgated by the board in accordance with the Administrative Procedure Act.

Sec. 5. Section 2-2312, Reissue Revised Statutes of Nebraska, is amended to read:

2-2312 In the case of a pledge or mortgage of wheat as security for a loan under the federal price support program, no excise the tax shall be deducted from the proceeds of such loan at the time the loan is made.

Sec. 6. Section 2-2315, Reissue Revised Statutes of Nebraska, is amended to read:

2-2315 (1) The first purchaser, at the time of settlement with a grower therefor, shall deduct the wheat excise tax as provided in section 2-2311 and shall maintain a ~~the necessary~~ record of the excise tax for each purchase of wheat on the grain settlement form or check stub showing payment to the grower for each purchase.

(2) The first purchaser shall also maintain a record of all settlements in which an excise tax was not deducted from the payment to the grower.

(3) Such records maintained by the first purchaser shall provide the following information: (a) Name and address of the grower and seller; (b) the date of the purchase; (c) the number of bushels of wheat sold; (d) the net market value of the wheat sold; and (e) and (d) the amount of wheat excise tax collected on each purchase. Such records shall be open for inspection and audit by authorized representatives of the board during normal business hours observed by the purchaser.

(4) (2) The first purchaser shall render and have on file with the board by the last day of each January, April, July, and October on forms prescribed by the board, a statement of the number of bushels of wheat purchased in Nebraska. Such statement shall include the number of bushels of wheat for which the first purchaser collected the excise tax. At the time the statement is filed, the purchaser shall pay and remit to the board the tax as provided for in section 2-2311.

Sec. 7. Section 2-2318, Reissue Revised Statutes of Nebraska, is amended to read:

2-2318 (1) The Nebraska Wheat Development, Utilization, and Marketing Board shall not be authorized to set up research or development units or agencies of its own. The board may cooperate with, provide grants to, or contract with any of the following for the purposes described in subdivisions (1) and (5) of section 2-2309, with preference given to private-sector individuals or entities:

- (a) A business entity formed by one or more growers;
- (b) The , but shall limit its activity to cooperation and contracts with the Department of Agriculture; ,
- (c) The University of Nebraska Institute of Agriculture and Natural Resources; , or
- (d) Any other public or private proper local, state, or national organization organizations, public or private, in carrying out the Nebraska Wheat Resources Act.

(2) This section shall not be construed to prohibit the board from exercising its powers under subdivisions (1)(b) and (c) of section 2-2309, including its ability to produce and sell wheat for use as seed without cooperating with, providing grants to, or contracting with any of the

individuals or entities described in subsection (1) of this section.

Sec. 8. Section 23-3803, Reissue Revised Statutes of Nebraska, is amended to read:

23-3803 (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 adopted pursuant to this section shall:

(a) Include 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~~

(b) Include 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~~

(c) Provide a method for an adjacent landowner to make a written waiver of objection to the expansion of a colony upon such adjacent landowner's property pursuant to section 23-3804; and

(d) 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 or 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. 9. Section 23-3804, Reissue Revised Statutes of Nebraska, is amended to read:

23-3804 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 23-3803 shall effectively manage colonies present upon such his, her, or its property to prevent the expansion of colonies to adjacent property unless the owner of the adjacent property makes a written waiver of objection to the expansion of such colonies to such adjacent landowner's property if the owner of the adjacent property objects to such expansion.

Sec. 10. Section 23-3805, Reissue Revised Statutes of Nebraska, is amended to read:

23-3805 A county board of a county that has adopted a coordinated program for the management of black-tailed prairie dogs under section 23-3803 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 23-3806 for the management of colonies; ~~and~~

(3) Examine property within the county for the purpose of determining the location of colonies; ~~and~~

(4) Assign performance of elements of the black-tailed prairie dog management plan, including, but not limited to, investigation of reports or complaints regarding unmanaged prairie dog colonies.

Sec. 11. Section 23-3806, Reissue Revised Statutes of Nebraska, is amended to read:

23-3806 (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 23-3803 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 23-3803 finds 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, by certified mail 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 form forms~~ for all individual notices:

~~(i) County Board
OFFICIAL NOTICE~~

~~Information received by the county board, including from an onsite investigation, 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 23-3803 to manage black-tailed prairie dog colonies present upon his or her property to prevent the expansion of colonies to adjacent property unless if the owner of the adjacent property waives objection in writing 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 23-3803 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) Following the hearing, the county board may affirm, modify, or rescind such notice. 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 in the notice required by subdivision (1)(d) (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.~~

~~(5) Any action of the county board taken pursuant to this section may be appealed to any court having jurisdiction.~~

Sec. 12. Section 23-3808, Reissue Revised Statutes of Nebraska, is amended to read:

23-3808 The county board of a county that has adopted a coordinated program for the management of black-tailed prairie dogs under section 23-3803, 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 after ~~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. 13. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 14. Original sections 2-2303, 2-2309, 2-2311, 2-2312, 2-2315, 2-2318, 23-3803, 23-3804, 23-3805, 23-3806, and 23-3808, Reissue Revised Statutes of Nebraska, and section 2-958.02, Revised Statutes Cumulative Supplement, 2020, are repealed.