

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1335**

Introduced by Moser, 22.

Read first time January 17, 2024

Committee: Natural Resources

1 A BILL FOR AN ACT relating to the Nongame and Endangered Species  
2 Conservation Act; to amend sections 37-801 and 37-802, Reissue  
3 Revised Statutes of Nebraska; to define terms; to change provisions  
4 of and provide duties and exemptions from the Nongame and Endangered  
5 Species Conservation Act relating to transportation infrastructure;  
6 to harmonize provisions; and to repeal the original sections.

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

1 Section 1. Section 37-801, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 37-801 Sections 37-801 to 37-811 and sections 3 to 5 of this act  
4 shall be known and may be cited as the Nongame and Endangered Species  
5 Conservation Act.

6 Sec. 2. Section 37-802, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8 37-802 For purposes of the Nongame and Endangered Species  
9 Conservation Act, unless the context otherwise requires, the definitions  
10 found in sections 37-203 to 37-236, 37-238, 37-239, 37-241, and 37-243 to  
11 37-247 and the following definitions are used:

12 (1) Endangered species means any species of wildlife or wild plants  
13 whose continued existence as a viable component of the wild fauna or  
14 flora of the state is determined to be in jeopardy or any species of  
15 wildlife or wild plants which meets the criteria of the Endangered  
16 Species Act;

17 (2) Exempted party means any state agency, political subdivision, or  
18 any agent, employee, consultant, or contractor of any state agency or  
19 political subdivision;

20 (3) (2) Extirpated species means any species of wildlife or wild  
21 plants which no longer exists or is found in Nebraska;

22 (4) (3) Nongame species means any species of mollusks, crustaceans,  
23 or vertebrate wildlife not legally classified as game bird, game animal,  
24 game fish, fur-bearing animal, threatened species, or endangered species  
25 by statute or regulation of this state;

26 (5) (4) Person means an individual, corporation, partnership,  
27 limited liability company, trust, association, or other private entity or  
28 any officer, employee, agent, department, or instrumentality of the  
29 federal government, any state or political subdivision thereof, or any  
30 foreign government;

31 (6) (5) Species means any subspecies of wildlife or wild plants and

1 any other group of wildlife of the same species or smaller taxa in common  
2 spatial arrangement that interbreed when mature;

3 (7) (6) Take means to harass, harm, pursue, hunt, shoot, wound,  
4 kill, trap, capture, or collect or attempt to engage in any such conduct;  
5 and

6 (8) (7) Threatened species means any species of wild fauna or flora  
7 which appears likely to become endangered, either by determination of the  
8 commission or by criteria provided by the Endangered Species Act; and -

9 (9) Transportation infrastructure includes any:

10 (a) Road, street, highway, or any right-of-way of a road, street, or  
11 highway;

12 (b) Interdependent or interrelated contractor use site;

13 (c) Actions permitted by a state agency or political subdivision  
14 within any road, street, highway, or right-of-way of any road, street, or  
15 highway controlled by the state agency or political subdivision;

16 (d) Pedestrian or bicycle trail, lane, or bridge;

17 (e) Technology with the primary purpose of benefiting the traveling  
18 public; and

19 (f) Broadband infrastructure placed by the Department of  
20 Transportation.

21 Sec. 3. (1) Except as provided in subsection (2) of this section,  
22 the Nongame and Endangered Species Conservation Act does not apply to any  
23 action of an exempted party in furtherance of its lawful duties  
24 associated with designing, constructing, reconstructing, repairing,  
25 operating, or maintaining transportation infrastructure.

26 (2) The Nongame and Endangered Species Conservation Act applies to  
27 any initial action of any exempted party that creates new transportation  
28 infrastructure on areas not previously dedicated to the exempted party's  
29 lawful duties or any subsequent action that increases the area of  
30 existing transportation infrastructure.

31 Sec. 4. Each public road, street, and highway, including any

1 associated right-of-way, is a manmade structure and is not critical  
2 habitat for purposes of the Nongame and Endangered Species Conservation  
3 Act.

4       Sec. 5. (1) To the extent practical and compatible with the primary  
5 purposes of transportation infrastructure, an exempted party shall  
6 consider the impact on threatened species and endangered species when  
7 designing, constructing, reconstructing, repairing, operating, or  
8 maintaining transportation infrastructure. The exempted party may modify  
9 or amend designs and operation and maintenance practices to decrease or  
10 avoid any negative impact on any threatened species or endangered  
11 species.

12       (2)(a) Upon request of any exempted party, the Game and Parks  
13 Commission shall provide support and recommendations to such exempted  
14 party relating to any potential impact caused by the actions of the  
15 exempted party on a threatened species or endangered species related to  
16 the design, construction, reconstruction, repair, operation, or  
17 maintenance of transportation infrastructure.

18       (b) The exempted party may enter into any written agreement with the  
19 Game and Parks Commission or any other governmental entity for the  
20 purpose of providing aid in the conservation of any threatened species or  
21 endangered species.

22       Sec. 6.   Original sections 37-801 and 37-802, Reissue Revised  
23 Statutes of Nebraska, are repealed.