

## LEGISLATIVE BILL 826

Approved by the Governor April 15, 2004

Introduced by Erdman, 47; Schrock, 38; Smith, 48

AN ACT relating to the state game refuges; to amend section 37-707, Reissue Revised Statutes of Nebraska, section 37-706, Revised Statutes Supplement, 2002, and section 37-201, Revised Statutes Supplement, 2003; to state intent; to define a term; to provide and change powers and duties for the Department of Natural Resources and the Game and Parks Commission; to provide for rules and regulations and appeal procedures; to harmonize provisions; to provide a duty for the Revisor of Statutes; and to repeal the original sections.

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

Section 1. Section 37-201, Revised Statutes Supplement, 2003, is amended to read:

37-201. Sections 37-201 to 37-811 and sections 2 and 5 of this act shall be known and may be cited as the Game Law.

Sec. 2. It is the intent of the Legislature to preserve the state game refuges described in section 37-706.

Sec. 3. Section 37-706, Revised Statutes Supplement, 2002, is amended to read:

37-706. (1) For the better protection of birds and the establishment of breeding places therefor, the following area within the State of Nebraska is hereby set aside, designated, and established as a state game refuge: All that portion of the State of Nebraska on the North Platte River and for one hundred ten yards back of the banks of said stream on the land side in Garden County, Nebraska. ~~and, except for the repair for existing alterations, future alterations in the banks by the damming of such stream shall not be recognized as effecting legal changes of such refuge boundary.~~

(2) For the better protection of birds and the establishment of breeding and resting places therefor, the following areas within the State of Nebraska are hereby set aside, designated, and established as state game refuges: (a) All that portion of the State of Nebraska on the Platte River and for one hundred ten yards on each side of the banks of said stream from the west line of Dodge County and Saunders County east and southeast to the bridge across said Platte River, west of Venice, Nebraska, on U.S. Route No. 30A and State Route No. 92; (b) all that portion of the State of Nebraska embracing the channel or channels of the Niobrara River and for one hundred ten yards back from the banks of such stream on the land side in Boyd and Holt Counties, extending from the west line of Boyd and Holt Counties on the west to State Highway No. 11 on the east; ~~and manmade alterations in the banks of such streams shall not be recognized as effecting legal changes of refuge boundaries;~~ and (c) all that portion of the State of Nebraska on the North Platte River, and for one hundred ten yards on each side of the banks of the stream in sections twenty-one, twenty-six, twenty-seven, twenty-eight, thirty-four, thirty-five, and thirty-six, township fourteen north, range thirty, west of the sixth principal meridian, Lincoln County, Nebraska.

(3) For purposes of sections 37-701 to 37-708, the banks of said stream means the banks of the river which are the elevation of ground which confines the water at a level not exceeding flood stage.

Sec. 4. Section 37-707, Reissue Revised Statutes of Nebraska, is amended to read:

37-707. (1) The commission is directed to place suitable signs showing the boundaries of the refuges, as designated in section 37-706, using the map adopted by the Department of Natural Resources pursuant to this section, ~~and~~ on all roads leading into such refuges.

(2) (a) The Department of Natural Resources shall adopt and promulgate rules and regulations determining the boundaries of the state game refuges. The department's determination shall be based on the definitions in sections 37-701 to 37-708 and shall include maps showing such boundaries.

(b) The department shall make the initial boundary determinations for the state game refuge in Garden County by March 1, 2005. The department shall make the initial boundary determinations for the remaining state game refuges by January 1, 2006.

(c) Until the initial determinations are made pursuant to subdivision (a) of this subsection, the boundaries that have been determined and maintained by the commission shall remain in effect.

(d) The department shall update any boundary determination required

by subdivision (a) of this subsection whenever it determines that there has been a substantial change in the location of the banks of said stream used for locating such boundary.

(e) To the extent necessary to fulfill their obligations under sections 37-701 to 37-708 and pursuant to notice as provided in subdivision (f) of this subsection, the department and the commission shall have access at all reasonable times to all properties to which access is needed to fulfill such obligations. Entry upon such properties for the purposes set forth in such sections shall not be considered trespass.

(f) Notice of intent to enter upon property for the purposes of subdivision (2)(e) of this section shall be satisfied by publishing such notice at least once each week for three consecutive weeks in a legal newspaper published or of general circulation in the county or counties in which such property and such game refuge are located.

Sec. 5. (1) The validity of any rule or regulation adopted by the Department of Natural Resources pursuant to sections 37-701 to 37-708 may be determined pursuant to section 84-911.

(2) Any person aggrieved by any other order or act of the department or commission pursuant to its authority under sections 37-701 to 37-708 may, within thirty days after notice thereof, file a petition in the district court of the county in which the aggrieved person resides or, if the aggrieved person is not a resident of Nebraska, in the district court of Lancaster County, for review. The court shall summarily hear the petition as a case in equity without a jury and may order only declaratory or prospective injunctive relief with regard to such order or act.

(3) Except as provided in subsection (1) of this section, the appeal procedures described in the Administrative Procedure Act shall not apply to actions taken pursuant to sections 37-701 to 37-708.

(4) The appeal procedures described in sections 61-206 and 61-207 do not apply to actions taken pursuant to sections 37-701 to 37-708.

Sec. 6. The Revisor of Statutes shall assign sections 2 and 5 of this act within sections 37-701 to 37-709.

Sec. 7. Original section 37-707, Reissue Revised Statutes of Nebraska, section 37-706, Revised Statutes Supplement, 2002, and section 37-201, Revised Statutes Supplement, 2003, are repealed.