

As Amended by House Committee

{As Amended by Senate Committee of the Whole}

Session of 2014

SENATE BILL No. 276

By Committee on Federal and State Affairs

1-16

1 AN ACT concerning wildlife; enacting the state sovereignty over non-
2 migratory wildlife act.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. Sections 1 through 7, and amendments thereto, may be
6 cited as the state sovereignty over non-migratory wildlife act.

7 ~~Sec. 2. The legislature declares that the authority for the state~~
8 ~~sovereignty over non-migratory wildlife act is the following:~~

9 ~~(a) The tenth amendment to the constitution of the United States~~
10 ~~guarantees to the states and their people all powers not granted to the~~
11 ~~federal government elsewhere in the constitution and reserves to the state~~
12 ~~and people of Kansas certain powers as they were understood at the time~~
13 ~~that Kansas was admitted to statehood in 1861. The guaranty of those~~
14 ~~powers is a matter of contract between the state and people of Kansas and~~
15 ~~the United States as of the time that the compact with the United States~~
16 ~~was agreed upon and adopted by Kansas in 1859 and the United States in~~
17 ~~1861.~~

18 ~~(b) Article II, section 1 of the constitution of the state of Kansas~~
19 ~~authorizes the legislature of the state of Kansas to exercise the legislative~~
20 ~~power of the state, including the general police powers inherent in a~~
21 ~~sovereign state.~~

22 ~~Sec. 3.~~ 2. As used in the state sovereignty over non-migratory
23 wildlife act:

24 (a) "Borders of Kansas" means the boundaries of Kansas described in
25 the act for admission of Kansas into the union, 12 stat. 126, ch. 20, § 1.

26 (b) "Lesser prairie chicken" means the species *tympanuchus*
27 *pallidicinctus*.

28 (c) "Greater prairie chicken" means the species *tympanuchus cupido*.

29 ~~Sec. 4.~~ 3. (a) The lesser prairie chicken and the greater prairie chicken
30 are non-migratory species that are native to the grasslands of Kansas.
31 ~~Members of such species that exist in the state live their entire lives within~~
32 ~~the borders of Kansas.~~

33 (b) The lesser prairie chicken and the greater prairie chicken do not
34 inhabit or swim in any static bodies of water, navigable waterways or non-

1 navigable waterways.

2 (c) The existence and management of the lesser prairie chicken and
3 the greater prairie chicken do not have a substantial effect on commerce
4 among the states.

5 (d) The Kansas department of wildlife, parks and tourism, and its
6 predecessor agencies, have successfully managed lesser prairie chickens
7 and greater prairie chickens in the state and have provided for the adequate
8 preservation of the habitats of such species.

9 ~~Sec. 5.~~ **4.** (a) The state of Kansas, acting through the Kansas
10 legislature and through the Kansas department of wildlife, parks and
11 tourism, possesses the ~~sole~~ regulatory authority to govern the management,
12 habitats, hunting and possession of lesser prairie chickens and greater
13 prairie chickens that exist within the state of Kansas.

14 (b) The lesser prairie chickens and the greater prairie chickens that
15 exist within the state and the habitats of such species, are not subject to **the**
16 **endangered species act of 1973, as in effect on the effective date of this**
17 **act, or** any federal ~~law, treaty, federal~~ regulation or ~~federal~~ executive
18 action **pertaining thereto**, under the authority of congress to regulate
19 interstate commerce.

20 (c) Any federal ~~law, treaty,~~ regulation or executive action **pertaining**
21 **to the endangered species act of 1973, as in effect on the effective date**
22 **of this act, that specifically regulates purports to regulate** the following
23 ~~is null, void and unenforceable~~ **has no effect** within the ~~sate~~ **state**:

- 24 (1) The lesser prairie chicken;
25 (2) the greater prairie chicken;
26 (3) the habitats of such species;
27 (4) farming practices that affect such species; or
28 (5) other human activity that affects such species or the habitats of
29 such species.

30 ~~(d) No official, agent or employee of the state of Kansas, or any~~
31 ~~political subdivision thereof, shall enforce or attempt to enforce any~~
32 ~~federal law, treaty, regulation or executive action that specifically regulates~~
33 ~~the following within the state:~~

- 34 ~~(1) The lesser prairie chicken;~~
35 ~~(2) the greater prairie chicken;~~
36 ~~(3) the habitats of such species;~~
37 ~~(4) farming practices that affect such species; or~~
38 ~~(5) other human activity that affects such species or the habitats of~~
39 ~~such species.~~

40 ~~Sec. 6.~~ **5.** ~~(a) It is unlawful for any official, agent or employee of the~~
41 ~~government of the United States, or employee of a corporation providing~~
42 ~~services to the government of the United States to enforce or attempt to~~
43 ~~enforce any federal law, treaty, regulation or executive action that~~

1 ~~specifically regulates the following within the state:~~

2 ~~(1) The lesser prairie chicken;~~

3 ~~(2) the greater prairie chicken;~~

4 ~~(3) the habitats of such species;~~

5 ~~(4) farming practices that affect such species; or~~

6 ~~(5) other human activity that affects such species or the habitats of~~
7 ~~such species.~~

8 ~~(b) Violation of this section is a severity level 10, nonperson felony.~~

9 ~~(c) Any criminal prosecution for a violation of this section shall be~~
10 ~~commenced by service of complaint and summons upon such official,~~
11 ~~agent or employee. Such official, agent or employee shall not be arrested~~
12 ~~or otherwise detained prior to, or during the pendency of, any trial for a~~
13 ~~violation of this section.~~

14 ~~(d) A county or district attorney, or~~ The attorney general; may seek
15 injunctive relief in any court of competent jurisdiction to enjoin any
16 official, agent or employee of the government of the United States or
17 employee of a corporation providing services to the government of the
18 United States from enforcing any federal ~~law, treaty,~~ regulation or
19 executive action **pertaining to the endangered species act of 1973, as in**
20 **effect on the effective date of this act, that** ~~specifically regulates~~
21 **purports to regulate** the following within the state:

22 ~~(1)~~ (a) The lesser prairie chicken;

23 ~~(2)~~ (b) the greater prairie chicken;

24 ~~(3)~~ (c) the habitats of such species;

25 ~~(4)~~ (d) farming practices that affect such species; or

26 ~~(5)~~ (e) other human activity that affects such species or the habitats of
27 such species.

28 **Sec. 6. (a) This act shall not be construed to infringe on the**
29 **authority of the United States department of agriculture to administer**
30 **conservation programs that apply to:**

31 (1) **The lesser prairie chicken;**

32 (2) **the greater prairie chicken;**

33 (3) **the habitats of such species;**

34 (4) **farming practices that affect such species; or**

35 (5) **other human activity that affects such species or habitats of**
36 **such species.**

37 (b) **This act shall not be construed to infringe on the authority of**
38 **the United States environmental protection agency, or the state of**
39 **Kansas under delegated authority, to administer the federal water**
40 **pollution prevention and control act, as in effect on the effective date**
41 **of this act, or the clean air act, as in effect on the effective date of this**
42 **act, to the extent it may apply to:**

43 (1) **The lesser prairie chicken;**

- 1 **(2) the greater prairie chicken;**
- 2 **(3) the habitats of such species;**
- 3 **(4) farming practices that affect such species; or**
- 4 **(5) other human activity that affects such species or habitats of**
- 5 **such species.**

6 **(c) This act shall not be construed to infringe on the authority of**
7 **the Kansas department of wildlife, parks and tourism or any private**
8 **citizen of this state to operate or participate in the range wide lesser**
9 **prairie chicken management plan, the stakeholder conservation**
10 **strategy for the lesser prairie chicken, or any other management or**
11 **conservation plan pertaining to the lesser prairie chicken that may be**
12 **developed with the assistance and participation of the United States**
13 **fish and wildlife service and apply to:**

- 14 **(1) The lesser prairie chicken;**
- 15 **(2) the greater prairie chicken;**
- 16 **(3) the habitats of such species;**
- 17 **(4) farming practices that affect such species; or**
- 18 **(5) other human activity that affects such species or habitats of**
- 19 **such species.**

20 Sec. 7. If any provision of the state sovereignty over non-migratory
21 wildlife act or the application to any person or circumstance is held to be
22 invalid in any court of competent jurisdiction, such invalidity shall not
23 affect the other provisions or application of such act. To this end, the
24 provisions of such act are declared to be severable.

25 Sec. 8. This act shall take effect and be in force from and after its
26 publication in the ~~statute book~~ **Kansas register.**