

**ONE HUNDRED SECOND LEGISLATURE - FIRST SESSION - 2011**  
**COMMITTEE STATEMENT**  
**LB473**

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**Hearing Date:** Tuesday February 15, 2011  
**Committee On:** Agriculture  
**Introducer:** Louden  
**One Liner:** Adopt the Black-Tailed Prairie Dog Management Act

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**

<b>Aye:</b>	6	Senators Bloomfield, Brasch, Carlson, Karpisek, Larson, Wallman
<b>Nay:</b>	1	Senator Harr
<b>Absent:</b>		
<b>Present Not Voting:</b>	1	Senator Lathrop

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**Proponents:**

Senator LeRoy Louden  
Larry Dix  
Allen Guse  
Pete McClymont  
Jack Andersen

**Representing:**

Introducer  
Nebraska Association of County Officials  
Dr. Donald Dreyer DVM & Wayne Dreyer  
Nebraska Cattlemen  
Sheridan County Board of Commissioners

**Opponents:**

Jarel Vinduska

**Representing:**

Nebraska Wildlife Federation

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

LB 473 imposes an affirmative duty upon certain landowners and managers to prevent uncontrolled spread of colonies of black-tailed prairie dogs. The bill further assigns duties and authorities upon county boards of counties where black-tailed prairie dogs are present to carry out a program of black-tailed prairie dog management modeled closely after the Noxious Weed Control Act.

Designation and definitions:

Section 1 names sections 1 to 12 the Black-Tailed Prairie Dog Management Act

Section 2 defines key or recurring terms used throughout the act.

Duties of landowners and authorities of counties:

Landowners:

Section 4 imposes an affirmative duty upon persons owning or controlling land within a county that has adopted a prairie dog management program to prevent the spread of prairie dog colonies onto neighboring property.

Section 10 assigns the cost for managing prairie dogs on land owned or controlled by the state and political subdivisions to the governmental entity out of funds appropriated to the state entity or budgeted by the subdivision.

County Governments:

Section 3 -- Authorizes any county to adopt by resolution a prairie dog management program consistent with the Act.

Section 5 -- Counties that have adopted a management plan assume authorities and duties prescribed in the remainder of the Act, including:

- Authority to employ personnel and expend funds for purpose of carrying out the responsibilities of counties;
- Cooperate with USDA/APHIS & other entities and to develop a prairie dog management program and to carry out such program;
- Issue general and individual notices as provided in section 6;
- Examine property in the county for the presence of prairie dog colonies.

Enforcement actions authorized:

Section 6 prescribes two types of notices, general and individual, that may be utilized by counties to notify landowners of prairie dog management responsibilities and provides additional authorities to secure landowner compliance, or to carry out control activities without the cooperation of a landowner.

Subsection 1(b) provides for newspaper publication of general notices on or before May 1 of each year. General notices serve public with notice of duty to manage prairie dogs but lack of publication of general notice is expressly declared not to relieve landowners of the duty to manage prairie dogs

Subsection 1(c) authorizes counties to serve individual notices upon the owner of record of properties having a prairie dog colony that is expanding onto adjacent property when a county determines it is necessary to secure immediate management intervention on particular land. Two types of enforcement notices are authorized pursuant to subdivisions (i) and (ii) of subsection 1(d) of this subsection. The form and content of either type of notice is prescribed to include the following common terms and disclosures:

- The county has information that an unmanaged colony is present on specified property and expanding onto neighboring property
- The date of the notice;
- Specific management actions to be taken;
- That the landowner is to provide notice and evidence to the county board within sixty days of the notice that management action has occurred or have been arranged;
- Notice of enforcement action that may be taken if the landowner fails to comply, and;
- The landowner may, within 15 days of receiving individual notice, request a hearing before the county board to contest the notice.

The two types of individual notice that may be served as set forth in subsection 1(d) differ in the notice of enforcement action if a landowner fails to timely comply with the notice.

-That the landowner is subject to fine of \$100 / day for each day of non-compliance up to a maximum of \$1500; or

-That the county shall cause management activities to be performed upon the property and that the expense of such management action shall be at the cost of the property owner and becomes a lien against the property and collected as a special assessment levied upon the date of the management action.

The remaining portions of Section 6 assign duties and authorities to counties to implement enforcement actions specified in the individual notices, as follows:

Subsection (2) directs the county to hold an informal public hearing if timely request is received for hearing by a person served individual notice;

Subsection (3) authorizes counties to cause proper management methods to be performed upon properties whose owners have failed to timely comply with the corresponding individual notice and directs that the county notify the landowner of the cost of the control activity. The county board is directed to file notice of possible lien for unpaid assessments against the property with the register of deeds. If the landowner fails to reimburse the county board within two months, the county board shall certify the unpaid obligation, which becomes a lien against the property and collected as a special assessment levied upon the date of the management action.

Subsection (4) authorizes a county board to refer to the county attorney instances of non-compliance with the corresponding notice for prosecution as an infraction punishable by a fine of \$100 / day for each day of violation up a maximum of 15 days.

Subsection (5) clarifies that counties may pursue any available civil remedy apart from levy collection to recover the obligation, but pursuit of alternative means of collecting debt does not preclude satisfaction by tax foreclosure. Any amounts collected are to be deposited in the county's prairie dog management fund, if one exists, or to the county general fund.

Section 7 requires county boards to receive timely filed protests by landowners contesting the amount of any charge assesses against them under the Act, and to conduct a hearing.

Section 8 limits liability of the county board or its agents to actions for trespass or damage while performing duties and powers conferred to counties that have adopted a management plan.

Section 9 authorizes counties to establish a separate black-tailed prairie dog management fund for receipts and disbursement in carrying out management activities.

Animal Damage Control:

Section 81-2,236 is amended by section 11 of the bill to specifically expressly authorize the Director of Agriculture to cooperate with APHIS for control and management of black-tailed prairie dogs and to expand existing authorization for cooperation with other entities for animal damage control to expressly include control of prairie dogs.

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**Explanation of amendments:**

The committee amendment (AM 648) inserts a new subsection (2) within section 3 that prescribes elements of the management plan to include a finding of necessity, a listing of methods of management, and to specify that such management plan shall not conflict with any state plan for the management of prairie dogs or the Non-Game and Endangered Species Act, or state or federal recovery plan for the endangered or threatened species.

New subsection (3) of section 3 inserted by AM 648 reassigns an authority of counties in section 5 of the bill as introduced to cooperate and coordinate with state and federal wildlife and land management entities. The juxtaposition reinforces that consultation would occur in the plan development phase.

The committee amendment also revises the defined term "person" in section 2 of the bill to exclude the federal government.

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Tom Carlson, Chairperson