

SESSION OF 2003

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2027

As Amended by Senate Committee of the Whole

Brief*

HB 2027 would transfer authority for the control of prairie dogs from townships to counties. The bill specifically allows county commissions to employ persons to control prairie dogs, moles, and gophers. (Townships currently have authority to destroy prairie dogs, gophers, and moles.) The bill would provide that nothing in the act is to be construed to prevent a landowner from voluntarily controlling prairie dogs on the landowner's land nor independently controlling prairie dogs. The bill would stipulate that prairie dogs are a species of management concern requiring control.

Upon detection and identification of an uncontrolled population of prairie dogs that has been determined by a county commission to pose a threat of destructive, injurious, or detrimental effect upon the surrounding lands, then the bill would allow county commissions to send a written notice of the determination of the threat to the landowner. The notice would indicate that control measures have been deemed necessary to abate the population of prairie dogs.

When this determination is made, the bill would permit the landowner to submit and commence a control plan approved by the county. This is to occur within 30 days of the written notice. The county may refuse to approve, renew, suspend, revoke, or deny the plan. In the alternative, the landowner may permit the county to undertake prairie dog control and then reimburse the county for the costs.

If a landowner does not cooperate, then following a 30-day notice period, the bill would allow the county to enter and conduct the control. If the county conducts control measures, then the county would notify

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org/klrd>

the landowner of the costs of the prairie dogs control. If payment is not made, then the cost could be extended to the tax roll against the property.

If a landowner fails to implement a control plan, then the bill would authorize the county to enter the property, conduct the control, and assess the costs associated with the control of prairie dogs by the county. If the prairie dogs have become established on surrounding lands due to the landowner's failure or refusal to implement an approved control plan, then the landowner may be subject to entry by the county and for the payment of the control by the county on those surrounding lands.

The Secretary of Wildlife and Parks would be prohibited from adopting any rules and regulations to carry out the above provisions of the bill.

The bill also would prohibit the transplanting of prairie dogs except when done in conjunction with a scientific, educational or exhibition permit issued by the Department of Wildlife and Parks.

The bill further would provide that notwithstanding any other provision of law, nothing would prohibit the harvesting of prairie dogs for commercial purposes for sale outside of the state.

Finally, the bill would prohibit any state agency from petitioning to have any animal placed on the federal list of endangered species.

Background

At the hearing on the original bill, the House Committee on Agriculture heard from a spokesperson from the U.S. Fish and Wildlife Service. The spokesperson indicated that in 1998, the National Wildlife Federation and Predator Conservation Alliance, Biodiversity Legal Foundation, and an individual filed two petitions to list the black-tailed prairie dog as a threatened species under the Endangered Species Act. In February of 2000, the Fish and Wildlife Service determined that the black-tailed prairie dog warranted listing under the federal Endangered Species Act. The spokesperson stated that the listing is precluded at this time due to other higher priority listing activities. It was pointed out that the Fish and Wildlife Service identified several factors in its

conclusion: habitat loss; over-utilization for recreational purposes (recreational hunting); disease (sylvatic plague); inadequacy of existing regulatory mechanisms to address shooting and poisoning; and other natural or man-made factors. The Committee learned that the Service is currently in the process of conducting its annual status review to determine if there has been a change in status of the black-tailed prairie dog. The historic range of this species of prairie dog includes Arizona, Colorado, Kansas, Montana, Nebraska, North Dakota, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming.

Among the conferees testifying in support of the bill was the Secretary of Wildlife and Parks. The Secretary indicated that the Department had taken several steps after the prairie dog was added to the "warranted but precluded" list. Among those steps was the formation of the Kansas Black-Tailed Prairie Dog Conservation and Management Plan. He indicated that the bill incorporated several of the ideas of the working group. He noted that the bill replaces words such as extermination and destroy with management and control. He also noted that the bill specifically states that nothing would preclude a landowner from voluntarily managing or controlling prairie dogs on their land.

Others testifying in support of the bill included representatives of Audubon of Kansas, the Kansas Livestock Association, the Kansas Farm Bureau, the Kansas Association of Counties, and the Kansas Legislative Policy Group. An individual from Sabetha also spoke in favor of the bill. Written support was provided by the Finney County Commission, the Kansas Agricultural Aviation Association, the Kansas Dairy Association, and the Kansas Seed Industry Association.

Testimony in opposition to the bill was provided by Senator Clark. He indicated that the prairie dog can be a health hazard to humans because of their plague carrying potential. He indicated that the bill is part of a concerted effort at both the national and state level to manage and control private property. Written testimony in opposition was provided by individuals from St. Francis.

The House Committee on Agriculture amended the bill to prohibit the transplantation of prairie dogs outside of their normal home range. The Committee also amended the bill to prohibit Wildlife and Parks from adopting rules and regulations with respect to the bill.

The House Committee of the Whole amended the bill to prohibit transplanting prairie dogs to any location except with a special permit from the Kansas Department of Wildlife and Parks. The House Committee of the Whole also amended the bill to allow the harvesting of prairie dogs for commercial purposes for sale outside of the state.

The Senate Committee on Natural Resources amended the bill to:

1. Delete language which would have authorized "management" of prairie dog populations while retaining language authorizing "control" of prairie dog populations;
2. Delete language that stated that the prairie dog was a species of management concern and that it and its habitat may need to be protected at times and controlled at other times, depending on the rate of reproduction, climate, disease, population viability, and other factors;
3. Delete the provision dealing with consulting with the Secretary of Wildlife and Parks where control plans are to be approved by counties in consultation with the Secretary of Wildlife and Parks; and
4. Amend language dealing with the harvest of prairie dogs for commercial purposes by eliminating language limiting this harvest to "sale outside of the State of Kansas."

The Senate Committee of the Whole amended the bill to prohibit any state agency from petitioning to have any animal placed on the federal endangered species list.

The fiscal note on the original bill indicates that the bill would have a negligible fiscal effect on the Kansas Department of Wildlife and Parks.