

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. As used in the state sovereignty over non-migratory wildlife
23 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. (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-
35 navigable waterways.

36 (c) The existence and management of the lesser prairie chicken and

1 the greater prairie chicken do not have a substantial effect on commerce
2 among the states.

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

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

12 (b) The lesser prairie chickens and the greater prairie chickens that
13 exist within the state and the habitats of such species, are not subject to
14 any federal law, treaty, federal regulation or federal executive action under
15 the authority of congress to regulate interstate commerce.

16 (c) Any federal law, treaty, regulation or executive action that
17 specifically regulates the following is null, void and unenforceable within
18 the state:

- 19 (1) The lesser prairie chicken;
- 20 (2) the greater prairie chicken;
- 21 (3) the habitats of such species;
- 22 (4) farming practices that affect such species; or
- 23 (5) other human activity that affects such species or the habitats of
24 such species.

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

- 29 ~~(1) The lesser prairie chicken;~~
- 30 ~~(2) the greater prairie chicken;~~
- 31 ~~(3) the habitats of such species;~~
- 32 ~~(4) farming practices that affect such species; or~~
- 33 ~~(5) other human activity that affects such species or the habitats of~~
34 ~~such species.~~

35 Sec. 6. (a) It is unlawful for any official, agent or employee of the
36 government of the United States, or employee of a corporation providing
37 services to the government of the United States to enforce or attempt to
38 enforce any federal law, treaty, regulation or executive action that
39 specifically regulates the following within the state:

- 40 (1) The lesser prairie chicken;
- 41 (2) the greater prairie chicken;
- 42 (3) the habitats of such species;
- 43 (4) farming practices that affect such species; or

1 (5) other human activity that affects such species or the habitats of
2 such species.

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

4 (c) Any criminal prosecution for a violation of this section shall be
5 commenced by service of complaint and summons upon such official,
6 agent or employee. Such official, agent or employee shall not be arrested
7 or otherwise detained prior to, or during the pendency of, any trial for a
8 violation of this section.

9 (d) A county or district attorney, or the attorney general, may seek
10 injunctive relief in any court of competent jurisdiction to enjoin any
11 official, agent or employee of the government of the United States or
12 employee of a corporation providing services to the government of the
13 United States from enforcing any federal law, treaty, regulation or
14 executive action that specifically regulates the following within the state:

15 (1) The lesser prairie chicken;

16 (2) the greater prairie chicken;

17 (3) the habitats of such species;

18 (4) farming practices that affect such species; or

19 (5) other human activity that affects such species or the habitats of
20 such species.

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

26 Sec. 8. This act shall take effect and be in force from and after its
27 publication in the statute book.