

Senate Substitute for Substitute for HOUSE BILL No. 2051

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

Be it enacted by the Legislature of the State of Kansas:

Section 1. Sections 1 through 8, and amendments thereto, may be cited as the state sovereignty over non-migratory wildlife act.

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

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

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

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

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

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

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

Sec. 4. (a) The lesser prairie chicken and the greater prairie chicken are non-migratory species that are native to the grasslands of Kansas.

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

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

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

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

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

(c) Any federal regulation or executive action pertaining to the endangered species act of 1973, as in effect on the effective date of this act, that purports to regulate the following has no effect within the state:

(1) The lesser prairie chicken;

(2) the greater prairie chicken;

(3) the habitats of such species;

(4) farming practices that affect such species; or

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

Sec. 6. A county or district attorney, or the attorney general may seek injunctive relief in any court of competent jurisdiction to enjoin any official, agent or employee of the government of the United States or employee of a corporation providing services to the government of the United States from enforcing any federal regulation or executive action pertaining to the endangered species act of 1973, as in effect on the effective date of this act, that purports to regulate the following within the state:

- (a) The lesser prairie chicken;
- (b) the greater prairie chicken;
- (c) the habitats of such species;
- (d) farming practices that affect such species; or
- (e) other human activity that affects such species or the habitats of such species.

Sec. 7. (a) This act shall not be construed to infringe on the authority of the United States department of agriculture to administer conservation programs that apply to:

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

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

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

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

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

Sec. 8. If any provision of the state sovereignty over non-migratory wildlife act or the application to any person or circumstance is held to be invalid in any court of competent jurisdiction, such invalidity shall not affect the other provisions or application of such act. To this end, the provisions of such act are declared to be severable.

Sec. 9. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.