

SESSION OF 2014

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 276**

As Amended by Senate Committee of the Whole

**Brief\***

SB 276 would establish the State Sovereignty Over Non-Migratory Wildlife Act.

The bill would establish the state as being the sole regulatory authority to govern the management, habitats, hunting, and possession of lesser and greater prairie chickens that exist within the state. In addition, the bill would establish that lesser and greater prairie chickens and their habitats existing within the state are not subject to federal laws, treaties, federal regulations, or executive action.

The bill also would prevent any federal agent or contracted employee from enforcing any federal law or regulation that specifically regulates in the state the lesser prairie chicken and greater prairie chicken, their habitats, farming practices, or other human activity that affects both species.

**Background**

The bill was introduced by the Senate Committee on Federal and State Affairs.

Prior to the introduction of the bill, the Senate Committee on Natural Resources held a joint informational hearing with the Senate Committee on Agriculture and the House Committee on Agriculture and Natural Resources on the lesser prairie chicken and the possible listing of the

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\*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>

species under the Endangered Species Act of 1973, as amended (ESA). The Kansas Department of Wildlife, Parks and Tourism (KDWPT) presented information regarding a five-state comprehensive plan titled “The Lesser Prairie Chicken Range-wide Conservation Plan” (Plan). KDWPT representatives explained that wildlife conservation officials from Colorado, Kansas, New Mexico, Oklahoma, and Texas worked together during 2013 to create the Plan, which, if implemented in a timely manner, could preclude the need to list the lesser prairie chicken under the ESA. The KDWPT representative stated the goal of the Plan is to conserve the lesser prairie chicken for future generations while facilitating continued and uninterrupted economic activity throughout the entire five-state lesser prairie chicken range.

At the Senate Committee hearing on the bill, Secretary of State Kris Kobach provided comments in favor of the bill, stating he drafted the bill to protect Kansas’ sovereignty. Secretary Kobach stated the ESA was originally based on the premise that Congress was using its power to regulate interstate commerce under Article I, Section 8 of the *U.S. Constitution*. The Secretary stated the prairie chicken does not migrate from state to state and does not use waterways, navigable or otherwise; therefore, the prairie chicken is not part of interstate commerce and cannot be regulated by the federal government.

Representatives of the Kansas Farm Bureau and Kansas Electric Cooperatives, Inc. (KEC), also provided proponent testimony at the Senate Committee hearing. The representative of Kansas Farm Bureau stated the potential listing of the lesser prairie chicken as a threatened species under the ESA is a concern, as it could have an impact on agriculture activities, continued mineral development, and the placing of transmission lines and wind turbines. The Kansas Farm Bureau representative stated the KDWPT has attempted to convince the U.S. Fish and Wildlife Service (USFWS) that prolonged drought conditions have had a greater impact on lesser prairie chicken populations than any

single factor; however, the representative stated Kansas Farm Bureau believes the USFWS will list the species.

A representative of KEC stated the Plan will impose significant costs on developers of home sites, new roads, and required utilities. In addition, the representative stated KEC believes it is imperative that the USFWS demonstrate sound science and validate the lesser prairie chicken is truly threatened. The representative stated the KEC believes numerous conservation steps are already in place and should be given a chance to work.

The Senate Committee of the Whole amended the bill to strike provisions that would not allow officials, agents, or employees of the state to enforce any federal law or regulation that specifically regulates in the state the lesser prairie chicken and greater prairie chicken, their habitats, farming practices, or other human activity that affects both species.

The revised fiscal note on the introduced version of the bill provided by the Division of the Budget states the KDWPT expects passage of the bill will result in litigation with the federal government; however, litigation would be handled by the Office of the Attorney General. The Office of the Attorney General states the litigation would be handled in-house, but was unable to estimate the costs of the litigation. In addition, the fiscal note discusses various impacts with regard to possible prison and bed space impacts, for which no fiscal impact can be determined.