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HOUSE BILL 273

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Nathan P. Cote

AN ACT

RELATING TO PARKS AND RECREATION; AMENDING AND ENACTING
SECTIONS OF THE STATE TRAILS SYSTEM ACT TO PROVIDE FOR LAW
ENFORCEMENT AUTHORITY FOR THE STATE PARKS DIVISION OVER STATE
TRAILS AND TO PROVIDE FOR DESIGNATING STATE TRAILS; CREATING A
FUND; MAKING APPROPRIATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 16-2-30 NMSA 1978 (being Laws 1935,
Chapter 57, Section 17, as amended) is amended to read:

"16-2-30. POLICE POWERS VESTED IN DIRECTOR AND STATE
PARKS EMPLOYEES DESIGNATED BY THE SECRETARY.--

A. The director of the state parks division of the
energy, minerals and natural resources department and state
parks division employees designated by the secretary are vested
with general police power and shall be state park law

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1 enforcement officers with the authority of conservators of the
2 peace within state parks and recreation areas [~~It shall be~~
3 ~~their duty~~] and on trails designated as state trails pursuant
4 to the State Trails System Act. They shall have the authority,
5 concurrent with any other law enforcement entity with
6 jurisdiction, to enforce the laws of the state and the rules
7 [~~and regulations~~] of the energy, minerals and natural resources
8 department within state parks and recreation areas and on
9 designated state trails. They shall have the further power of
10 forcibly ejecting from a state park or recreation area or a
11 designated state trail a person who knowingly, willfully or
12 wantonly violates a rule [~~or regulation~~] of the department
13 within a state park or recreation area or on a designated state
14 trail.

15 B. State park law enforcement officers, in
16 emergency situations, shall be considered on duty and within
17 the scope of their employment for employee benefits when they
18 follow specific instructions from a duly qualified full-time
19 peace officer and aid the peace officer in carrying out [~~his~~]
20 the officer's duties. State park law enforcement officers
21 shall respond in emergency situations, subject to the needs of
22 the park to which they are assigned, and they shall have law
23 enforcement powers outside the park so long as they follow
24 specific instructions from the peace officer who requested aid.

25 C. As used in this section, "emergency" means a

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1 sudden, unexpected occurrence or an unforeseen combination of
2 circumstances that calls for immediate action without time for
3 deliberation."

4 Section 2. Section 16-3-1 NMSA 1978 (being Laws 1973,
5 Chapter 372, Section 1) is amended to read:

6 "16-3-1. SHORT TITLE.--~~[This act]~~ Chapter 16, Article 3
7 NMSA 1978 may be cited as the "State Trails System Act"."

8 Section 3. Section 16-3-3 NMSA 1978 (being Laws 1973,
9 Chapter 372, Section 3) is amended to read:

10 "16-3-3. PURPOSE.--The purpose of the State Trails System
11 Act is to provide public access to and the enjoyment and
12 appreciation of the New Mexico outdoors in order to conserve,
13 develop and use the natural resources of the state for purposes
14 of health and recreation. It is the intent and purpose of the
15 State Trails System Act to encourage horseback riding, hiking,
16 bicycling and off-highway vehicle and other recreational trail
17 activities."

18 Section 4. Section 16-3-4 NMSA 1978 (being Laws 1973,
19 Chapter 372, Section 4, as amended) is amended to read:

20 "16-3-4. STATE TRAILS SYSTEM CREATED--TYPES OF TRAILS--
21 ~~[PLANNING]~~ DESIGNATING STATE TRAILS.--

22 A. There is created a "state trails system"
23 composed of the following state trails:

24 (1) "~~[state]~~ scenic trails" ~~[which]~~ that are
25 extended trails so located as to provide maximum potential for

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1 the appreciation of natural areas and for the conservation and
2 enjoyment of the significant scenic, historic, natural,
3 ecological, geological or cultural qualities of the areas
4 through which such trails pass;

5 (2) "[state] recreation trails" [which] that
6 are trails designed to provide a variety of outdoor
7 recreational trail uses in or reasonably accessible to urban
8 areas and, where appropriate, shall connect parks, scenic
9 areas, historical points and neighboring communities; and

10 (3) "[state historical] historic trails"
11 [which] that are trails designed to identify and interpret
12 routes [which] that were significant in the prehistoric
13 settlement or historical development of the state [and

14 ~~(4) "special use trails" which are trails that~~
15 ~~may provide uses also provided by scenic, recreation and~~
16 ~~historical trails but which shall not be limited to such uses.~~
17 ~~The secretary may designate special use trails in such~~
18 ~~locations as he deems appropriate and may limit the use of such~~
19 ~~trails to such special users as he determines. In designating~~
20 ~~special use trails, the secretary shall give due regard to the~~
21 ~~interests of users who have needs of a special nature which are~~
22 ~~not fulfilled by other trail types comprising the state trails~~
23 ~~system].~~

24 B. State trails [shall] may be supplemented by
25 support facilities deemed necessary and feasible by the

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1 secretary. These facilities shall comply with applicable
2 health and department of environment [~~department~~] standards and
3 regulations and with the federal Americans with Disabilities
4 Act of 1990, as appropriate.

5 C. State trails shall:

6 (1) traverse, provide access to or showcase
7 areas and resources of outstanding significance, including
8 areas of scientific, aesthetic, geologic, recreational,
9 educational, natural or cultural value; and

10 (2) provide recreational opportunities
11 significant enough to assure patronage from a region or,
12 preferably, from the state as a whole.

13 [~~C.~~] D. In [~~the~~] planning and [~~designation of~~]
14 designating state trails, the secretary shall give due regard
15 to the interests of federal or state agencies, tribal
16 governments, counties, municipalities, private landowners and
17 interested individuals and recreational and conservation
18 organizations. In acquiring lands or interests in lands for
19 the state trails system, consideration shall be given to
20 minimizing adverse effects upon adjacent landowners. In
21 acquiring lands or interests in lands for the state trails
22 system, the secretary shall not use the power of eminent
23 domain. The secretary shall give full consideration to the
24 inclusion of trails from all categories within the system.

25 [~~D.~~ The secretary shall prescribe the uses and

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1 ~~limits of each type of trail.~~

2 ~~E. Separate trails may be established for motorized~~
3 ~~vehicles but shall not be trails designated for horseback~~
4 ~~riding, hiking or bicycling.~~

5 ~~F. Before making a final designation of any trail,~~
6 ~~the secretary shall:~~

7 ~~(1) hold a public hearing after proper notice~~
8 ~~within the affected county and area; and~~

9 ~~(2) as a result of the hearing, adopt a~~
10 ~~finding approving or disapproving the trail based upon evidence~~
11 ~~as to the adverse effects that the trail has on the holders of~~
12 ~~any interest in the lands in the proximity of the trail.]~~

13 E. Prior to a trail being designated as a component
14 of the state trails system, the secretary shall verify that its
15 uses and limits meet the purposes of the State Trails System
16 Act. State trails are not required to provide for and allow
17 all types of uses on every state trail. Separate trails may be
18 established for motorized vehicles. When motorized and
19 non-motorized uses are permitted on the same trail, such trails
20 shall be designed, constructed and managed so that motorized
21 uses are not in conflict with horseback riding, hiking or
22 bicycling.

23 F. Before designating a trail as a component of the
24 state trails system, the secretary shall:

25 (1) hold a public meeting to receive comments

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1 on the proposed designation not less than thirty days after
2 notice is published in a newspaper of general circulation in
3 the county where the proposed trail to be designated is
4 located, stating the date, location and purpose of the meeting;

5 (2) complete an analysis of the feasibility
6 and suitability of the trail or trail segment as a state trail;
7 and

8 (3) as a result of the feasibility and
9 suitability analysis and the public meeting, either approve or
10 disapprove the trail as a component of the state trails system
11 based upon evidence as to the beneficial or adverse effects
12 that the trail may have on anticipated users of the trail and
13 holders of any interests in lands adjacent to the trail."

14 Section 5. Section 16-3-5 NMSA 1978 (being Laws 1973,
15 Chapter 372, Section 6, as amended) is amended to read:

16 "16-3-5. SECRETARY ~~[TO SUPERVISE PLANNING, CONSTRUCTION,~~
17 ~~OPERATION AND MAINTENANCE OF TRAILS SYSTEM]~~--POWERS AND
18 DUTIES.--

19 A. The secretary shall:

20 (1) adopt and regularly review and revise in
21 accordance with the State Rules Act such rules [~~and~~
22 ~~regulations~~] as may be necessary to carry into effect and
23 enforce the provisions of the State Trails System Act

24 [~~(2) plan, establish, acquire, purchase,~~
25 ~~develop, construct, enlarge, improve, maintain, equip, operate,~~

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1 ~~protect and police the state trails system;~~

2 ~~(3) acquire by lease, deed or contract rights~~
3 ~~of way or easements for trails across private, municipal,~~
4 ~~county, state or federal lands. In selecting the rights of~~
5 ~~way, every consideration shall be given to minimizing the~~
6 ~~adverse effects upon the adjacent landowner or user.~~

7 ~~Acquisition shall be, wherever possible, in the form of an~~
8 ~~easement obtained by gift, exchange or purchase with donated~~
9 ~~funds. When such devices fail, the secretary may authorize the~~
10 ~~expenditure of state appropriations for acquisition in fee.~~

11 ~~Any agreement for acquisition of rights in land shall be for~~
12 ~~terms of not less than twenty-five years whenever possible; and~~

13 ~~(4) coordinate trail development by assisting~~
14 ~~counties, municipalities and other political subdivisions in~~
15 ~~the formation of their trail plans. In carrying out this~~
16 ~~responsibility, the secretary shall review records of easements~~
17 ~~and other interests in lands which are available for use as~~
18 ~~trails, including public lands, utility easements, flood~~
19 ~~plains, railroad rights of way, arroyos, other rights of way~~
20 ~~and surplus public proprietary lands as may be adaptable for~~
21 ~~such use, and shall ensure that uniform construction standards,~~
22 ~~compatible with allowed usage, are made available to local~~
23 ~~governments.~~

24 ~~B. The secretary may abandon any portion or all of~~
25 ~~a trail or easement acquired for trail purposes which is no~~

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1 ~~longer needed for such purposes, or he may transfer any trail~~
2 ~~or easement to a local government having jurisdiction over the~~
3 ~~area in which the trail or easement is located for so long as~~
4 ~~the local government agrees to maintain and operate the trail.~~

5 ~~G. The secretary shall notify the owner of the land~~
6 ~~through which any trail or easement passes prior to entering~~
7 ~~into any agreement with a local government for the operation of~~
8 ~~a trail and shall secure the consent of the landowner prior to~~
9 ~~the transfer of any trail or easement to a local government.~~

10 ~~D. The secretary shall review all formal~~
11 ~~declarations of railroad right-of-way abandonments by the~~
12 ~~interstate commerce commission for possible inclusion into the~~
13 ~~state trails system.~~

14 ~~E. Within the boundaries of a right of way, the~~
15 ~~secretary may acquire on behalf of the state lands in fee~~
16 ~~title, any interest in lands in the form of scenic or other~~
17 ~~easements or any interest in lands under cooperative or other~~
18 ~~agreement. Acquisition of land or of any interest in land may~~
19 ~~be by gift, purchase, exchange or by the assumption of~~
20 ~~obligations. Acquisition may be through the use of funds~~
21 ~~obtained by donation, federal grants, proceeds of the sale of~~
22 ~~bonds, legislative appropriation or otherwise. In acquiring~~
23 ~~real property or any interest therein, the power of eminent~~
24 ~~domain shall not be used.~~

25 ~~F. The secretary shall prepare and publish trail~~

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1 ~~plans and standards and make them available to participating~~
2 ~~local governments and interested members of the public upon~~
3 ~~request. The secretary shall also prepare a state trails map~~
4 ~~and shall make copies available to members of the public upon~~
5 ~~request.~~

6 G. ~~The secretary shall prepare and publish a~~
7 ~~comprehensive intermediate and long-range state trails plan on~~
8 ~~a continuing basis in accordance with the state comprehensive~~
9 ~~outdoor recreation plan. Included in these plans shall be an~~
10 ~~inventory of existing trails and potential trail routes on all~~
11 ~~lands within the state. Such plans may include general routes~~
12 ~~or corridors within which specific trails or segments of trails~~
13 ~~may be considered for inclusion in the state trails system.~~

14 H. ~~The secretary shall annually submit a written~~
15 ~~report on recreational, scenic, historical and special use~~
16 ~~trails to the governor by December 31. Copies of the annual~~
17 ~~reports shall be furnished to participating local governments~~
18 ~~and shall be made available to interested members of the public~~
19 ~~upon request] for designating trails as part of the state~~
20 ~~trails system;~~

21 (2) encourage and promote the planning,
22 establishment, acquisition, purchase, development,
23 construction, enlargement, improvement, maintenance, operation
24 and protection of the state trails system, alone or in
25 conjunction with other governmental and nongovernmental

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1 entities;

2 (3) prior to the transfer of any trail or
3 easement proposed for a designated state trail to a local,
4 state, tribal or federal government, acquire the consent of the
5 owner of the land on which a trail or easement is established;

6 (4) prepare a map of the state trails system
7 and make copies available to members of the public upon
8 request;

9 (5) prepare and publish a state trails system
10 plan. Included in this plan shall be an inventory of existing
11 designated state trails and potential state trail routes. The
12 plan may include general routes or corridors within which
13 specific trails or segments of trails may be considered for
14 inclusion in the state trails system; and

15 (6) report annually to the governor on
16 recreation, scenic and historic state trails that have been
17 established. Copies of the report shall be made available to
18 members of the public upon request.

19 B. The secretary may:

20 (1) acquire by lease, deed or contract land,
21 or interests in land, including rights of way or easements, for
22 the state trails system across private, municipal, county,
23 state, tribal or federal lands. Acquisition shall be, wherever
24 possible, in the form of an easement. The secretary may
25 acquire land or interest in land in fee simple. Any agreement

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1 for acquisition of rights in land shall guarantee public access
2 for not less than twenty-five years whenever possible;

3 (2) authorize the expenditure of state
4 appropriations to plan, develop and manage potential or
5 designated state trails located on private, local, county,
6 state, tribal or federal lands;

7 (3) coordinate state trails system development
8 by assisting counties, municipalities and other political
9 subdivisions in the formation of their trail plans; and

10 (4) abandon any portion or all of a state
11 trail or an easement acquired for the state trails system that
12 is no longer needed for that purpose, or the secretary may
13 transfer any state trail or easement to a local, state, tribal
14 or federal government having jurisdiction over the area in
15 which the state trail or easement is located for so long as the
16 local, state, tribal or federal government agrees to maintain
17 and operate the trail subject to the provisions of Section
18 13-6-3 NMSA 1978."

19 Section 6. Section 16-3-6 NMSA 1978 (being Laws 1973,
20 Chapter 372, Section 7, as amended) is amended to read:

21 "16-3-6. TRAILS ON FEDERAL LANDS--COORDINATION WITH
22 NATIONAL TRAILS SYSTEM.--

23 A. The secretary may establish and designate state
24 [~~recreational~~] recreation, scenic [~~historical and special use~~]
25 and historic trails on lands under the jurisdiction of a

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1 federal agency when, in the opinion of the federal agency and
2 the secretary, such lands may be so developed under the
3 provisions of federal law and the provisions of Section 16-3-4
4 NMSA 1978.

5 B. Nothing in the State Trails System Act shall
6 preclude a component of the state trails system from being a
7 part of the national trails system. The secretary shall
8 coordinate the state trails system with the national trails
9 system and is directed to encourage and assist any federal
10 studies for inclusion of New Mexico trails in the national
11 trails system. The secretary may enter into written
12 cooperative agreements for joint federal-state administration
13 of any New Mexico component of the national trails system,
14 provided that such agreements for administration of land uses
15 are not less restrictive than those set forth in the State
16 Trails System Act."

17 Section 7. Section 16-3-7 NMSA 1978 (being Laws 1973,
18 Chapter 372, Section 8, as amended) is amended to read:

19 "16-3-7. VIOLATIONS--PENALTIES.--[Each] A person is
20 guilty of a misdemeanor who [~~shall~~]:

21 A. willfully [~~mutilate, deface or destroy~~]
22 mutilates, defaces or destroys any guidepost, notice, [~~tablet~~]
23 sign, fence or other work [~~which~~] that is for the protection or
24 ornamentation of any state trail;

25 B. [~~place~~] places along any trail or [~~affix~~]

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1 affixes to any object in the right of way, without a written
2 license from the secretary, any word, character or device
3 designed to advertise any business, trade, profession, article,
4 thing, matter or event; or

5 C. ~~[violate]~~ violates any rule ~~[or regulation]~~
6 adopted by the secretary in accordance with the State Rules Act
7 to regulate the use of and prevent damage to ~~[lands within and~~
8 ~~adjacent to]~~ the state trails system."

9 Section 8. A new section of the State Trails System Act
10 is enacted to read:

11 "[NEW MATERIAL] STATE TRAILS SYSTEM FUND CREATED.--The
12 "state trails system fund" is created in the state treasury.
13 The fund is a nonreverting fund, and income from investment of
14 the fund shall be credited to the fund. The fund shall be
15 administered by the energy, minerals and natural resources
16 department, and money in the fund is appropriated to the
17 energy, minerals and natural resources department to carry out
18 the purposes of the State Trails System Act. Expenditures from
19 the fund shall be by warrant of the secretary of finance and
20 administration upon vouchers signed by the secretary of energy,
21 minerals and natural resources or the secretary's authorized
22 representative."