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HOUSE BILL 536

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Sharon Clahchischilliage

AN ACT

RELATING TO GAME AND FISH; PROVIDING FOR ENFORCEMENT OF AQUATIC
INVASIVE SPECIES CONTROL.

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

SECTION 1. Section 17-4-35 NMSA 1978 (being Laws 2009,
Chapter 38, Section 1, as amended) is amended to read:

"17-4-35. AQUATIC INVASIVE SPECIES CONTROL.--

A. Based on a determination of credible scientific
evidence, the director, after consulting with the secretary of
energy, minerals and natural resources and with the concurrence
of the director of the New Mexico department of agriculture, is
authorized to designate:

(1) species of exotic or nonnative animals or
plants as aquatic invasive species;

(2) water bodies within the state as infested

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1 waters; and

2 (3) specific requirements to decontaminate
3 conveyances and equipment.

4 B. In order to prevent, control, contain, monitor
5 and, whenever possible, eradicate aquatic invasive species from
6 the waters of the state, the department is authorized:

7 (1) in cooperation with the motor
8 transportation division of the department of public safety, to
9 require a conveyance to stop at a port of entry and submit to
10 an inspection of the conveyance and equipment for aquatic
11 invasive species;

12 (2) to require a conveyance or equipment to
13 submit to an inspection for aquatic invasive species prior to
14 launching a vessel onto a water body of the state or prior to
15 departing from a water body of the state or from a conveyance
16 staging area; and

17 (3) upon a reasonable belief that an aquatic
18 invasive species may be present, to require a conveyance or
19 equipment to submit to an inspection for the presence of
20 aquatic invasive species.

21 C. Upon a determination by the director that it
22 would further the purposes of this section, other state
23 agencies, including the New Mexico department of agriculture,
24 the department of environment, the energy, minerals and natural
25 resources department, the state parks division of the energy,

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1 minerals and natural resources department and the department of
2 public safety, may exercise the authority granted to the
3 department in Subsection B of this section.

4 ~~[B.]~~ D. Prior to entering a conveyance or equipment
5 into any water body in the state, the owner or person in
6 control of a warning-tagged conveyance or warning-tagged
7 equipment or a conveyance or equipment that has been in an
8 infested water body in New Mexico or elsewhere shall:

9 (1) have the conveyance or equipment
10 decontaminated by a person or entity approved by the director
11 to effect decontamination, and only the person legally
12 effecting the decontamination is authorized to remove a warning
13 tag and provide certification that the conveyance or equipment
14 is free from infestation; or

15 (2) have the conveyance or equipment inspected
16 and certified as free from infestation by trained personnel
17 prior to entering a water body or if certification or other
18 documentation of decontamination is not available, otherwise
19 demonstrate compliance with the decontamination requirements
20 established by the director.

21 ~~[G.]~~ E. A law enforcement officer may impound a
22 conveyance or equipment if the person transporting the
23 conveyance or equipment refuses to submit to an inspection
24 authorized by this section ~~[and the officer has reason to~~
25 ~~believe that an aquatic invasive species may be present]~~, or if

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1 the conveyance or equipment has a warning tag affixed and the
2 operator of the conveyance is attempting to enter a state water
3 body and cannot provide evidence that the conveyance or
4 equipment has been decontaminated. A law enforcement officer
5 shall take action to prevent equipment or conveyances believed
6 or known to contain an aquatic invasive species and warning-
7 tagged equipment or conveyances from entering a state water
8 body.

9 ~~[D-]~~ F. The impoundment of a conveyance or
10 equipment may continue for a reasonable period necessary to
11 inspect and decontaminate the conveyance or equipment.

12 ~~[E-]~~ G. Notwithstanding any provision to the
13 contrary, no motor vehicle that is drawing a conveyance shall
14 be impounded pursuant to this section.

15 H. The owner of a conveyance or equipment that
16 requires decontamination, or that is impounded, is responsible
17 for all costs associated with the decontamination or
18 impoundment.

19 ~~[F-]~~ I. Trained personnel may:

20 (1) establish, operate and maintain aquatic
21 invasive species check stations and conduct inspections at a
22 port of entry, at or adjacent to the entrance to any state-
23 controlled water body or, pursuant to a cooperative agreement,
24 at or adjacent to any county, municipal or federally or
25 privately controlled water body or at or adjacent to the exit

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1 point of an infested water body or at a location agreed to by
2 the owner of the conveyance or equipment in order to inspect
3 conveyances and equipment prior to a conveyance or equipment
4 entering, being launched onto or being directly exposed to
5 water bodies of the state or upon the conveyance's or
6 equipment's departure from infested waters;

7 (2) affix a warning tag to equipment or a
8 conveyance where the presence of an aquatic invasive species
9 has been found;

10 (3) affix a warning tag to a conveyance or
11 equipment upon the conveyance or equipment leaving an infested
12 water; or

13 (4) affix a warning tag to a conveyance or
14 equipment that the trained personnel have reason to believe is
15 infested with an aquatic invasive species based on its point of
16 origin or use.

17 ~~[G-]~~ J. Except for state, local, tribal or federal
18 agencies and their respective agents, employees and contractors
19 while performing their duties or contractual obligations
20 specific to management or control of an aquatic invasive
21 species, it is unlawful for a person to:

22 (1) knowingly possess, import, export, ship or
23 transport an aquatic invasive species into, within or from the
24 state;

25 (2) knowingly release, place, plant or cause

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1 to be released, placed or planted an aquatic invasive species
2 into a water body or adjacent to a water body where it
3 reasonably might be anticipated to be introduced into a water
4 body that is not infested;

5 (3) remove a warning tag other than as
6 provided pursuant to this section;

7 (4) introduce any tagged conveyance or
8 equipment or any equipment or conveyance from which a warning
9 tag has been unlawfully removed into a water body without first
10 having that conveyance or equipment decontaminated and
11 certified pursuant to the provisions of this section; or

12 (5) knowingly introduce into any water body a
13 conveyance or equipment that has been exposed to an infested
14 water body or a water body in any other state known to contain
15 aquatic invasive species without first being decontaminated and
16 certified pursuant to the provisions of this section.

17 [~~H. Knowingly~~] K. A person who knowingly or
18 willfully [violating] violates any provision of this section as
19 a first offense [is] commits a petty misdemeanor. A person who
20 commits a second or subsequent violation of any provision of
21 this section [is] commits a misdemeanor. Any violation is
22 punishable pursuant to Section 31-19-1 NMSA 1978. A person who
23 knowingly or willfully violates Subsection J of this section
24 shall also be strictly liable for all damages and costs
25 associated with the person's unlawful activity, including the

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1 costs of containing and eradicating, or attempting to contain
2 or eradicate, the aquatic invasive species from the water body
3 in which the violation occurred.

4 [F.] L. The director or the director's designee
5 shall coordinate the monitoring of the water bodies of the
6 state for the presence of aquatic invasive species, including
7 privately controlled waters if the director has authorized
8 access to them or has received permission to monitor them from
9 the persons controlling access to such waters.

10 [J.] M. Upon determination of an infested water
11 body in New Mexico, the director shall immediately recommend to
12 the person in control of the infested water body actions to
13 limit access or take other actions to prevent the potential
14 spread of an aquatic invasive species to other water bodies.

15 [K.] N. The commission is authorized to adopt rules
16 pursuant to Section 17-1-26 NMSA 1978, and the secretary of
17 energy, minerals and natural resources is authorized to adopt
18 rules pursuant to Section 16-2-32 NMSA 1978, and any state
19 agency authorized by the director to conduct inspections under
20 this section is authorized to adopt rules, as necessary to
21 implement and enforce the provisions of this section.

22 [H.] O. The director may enter into cooperative
23 agreements with any federal, state, county or municipal
24 authority or private entity that may be in control of a water
25 body potentially affected by aquatic invasive species.

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1 [M-] P. As used in this section:

2 (1) "aquatic invasive species" means quagga
3 mussels and zebra mussels and other exotic or nonnative aquatic
4 animals, including invertebrates but excluding those species
5 listed as protected in Chapter 17 NMSA 1978, or any plant or
6 animal species whose introduction into an aquatic ecosystem is
7 determined by the director, after consulting with the secretary
8 of energy, minerals and natural resources and with the
9 concurrence of the director of the New Mexico department of
10 agriculture, to cause or be likely to cause harm to the
11 economy, environment or human health or safety;

12 (2) "commission" means the state game
13 commission;

14 (3) "conveyance" means a motor vehicle,
15 vessel, trailer or any associated equipment or containers,
16 including, but not limited to, live wells, fish-hauling tanks,
17 ballast tanks, motorized skis and bilge areas that may contain
18 or carry an aquatic invasive species or any other equipment by
19 which aquatic invasive species may be introduced into an
20 aquatic ecosystem;

21 (4) "decontaminate" means to wash, drain, dry
22 or otherwise treat a conveyance in accordance with guidelines
23 established by the director in order to remove or destroy an
24 aquatic invasive species;

25 (5) "department" means the department of game

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1 and fish;

2 [~~(5)~~] (6) "director" means the director of the
3 department; [~~of game and fish;~~

4 ~~(6)~~] (7) "equipment" means an article, a tool,
5 an implement, a device or a piece of clothing, including boots
6 and waders, that is capable of containing or transporting
7 water;

8 [~~(7)~~] (8) "infested water" means a geographic
9 region, water body or water supply system or facility within
10 the state that the director, after consulting with the
11 secretary of energy, minerals and natural resources and with
12 the concurrence of the director of the New Mexico department of
13 agriculture, identifies as carrying or containing an aquatic
14 invasive species or a water body outside the state that has
15 been identified as carrying or containing an aquatic invasive
16 species;

17 [~~(8)~~] (9) "inspect" means to examine a
18 conveyance or equipment to determine whether an aquatic
19 invasive species is present;

20 [~~(9)~~] (10) "law enforcement officer" means a
21 state or federal certified law enforcement officer;

22 [~~(10)~~] (11) "trained personnel" means
23 individuals who have successfully completed the United States
24 fish and wildlife service's aquatic invasive species watercraft
25 inspection and decontamination training, level I or level II,

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1 or an equivalent training recognized by the director;

2 (12) "vessel" means every description of
3 watercraft, other than a seaplane on the water, used or capable
4 of being used as a means of transportation on water;

5 ~~[(11)]~~ (13) "warning tag" means a tag that is
6 affixed to equipment or a conveyance upon the equipment or
7 conveyance leaving an infested water or upon an inspection
8 determining that the equipment or conveyance contains an
9 aquatic invasive species that requires the equipment or
10 conveyance to be decontaminated; and

11 ~~[(12)]~~ (14) "water body" means a natural or
12 impounded surface water, including a stream, river, spring,
13 lake, reservoir, pond, wetland, tank or fountain."