

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 536

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

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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underscored material = new  
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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 [~~B.~~] C. Prior to entering a conveyance or equipment  
22 into any water body in the state, the owner or person in  
23 control of a warning-tagged conveyance or warning-tagged  
24 equipment or a conveyance or equipment that has been in an  
25 infested water body in New Mexico or elsewhere shall:

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1                   (1) have the conveyance or equipment  
2 decontaminated by a person or entity approved by the director  
3 to effect decontamination, and only the person legally  
4 effecting the decontamination is authorized to remove a warning  
5 tag and provide certification that the conveyance or equipment  
6 is free from infestation; or

7                   (2) have the conveyance or equipment inspected  
8 and certified as free from infestation by trained personnel  
9 prior to entering a water body or if certification or other  
10 documentation of decontamination is not available, otherwise  
11 demonstrate compliance with the decontamination requirements  
12 established by the director.

13                   [~~G.~~] D. A law enforcement officer may impound a  
14 conveyance or equipment if the person transporting the  
15 conveyance or equipment refuses to submit to an inspection  
16 authorized by this section [~~and the officer has reason to~~  
17 ~~believe that an aquatic invasive species may be present~~], or if  
18 the conveyance or equipment has a warning tag affixed and the  
19 operator of the conveyance is attempting to enter a state water  
20 body and cannot provide evidence that the conveyance or  
21 equipment has been decontaminated. A law enforcement officer  
22 shall take action to prevent equipment or conveyances believed  
23 or known to contain an aquatic invasive species and warning-  
24 tagged equipment or conveyances from entering a state water  
25 body.

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1           ~~[D-]~~ E. The impoundment of a conveyance or  
2 equipment may continue for a reasonable period necessary to  
3 inspect and decontaminate the conveyance or equipment.

4           ~~[E-]~~ F. Notwithstanding any provision to the  
5 contrary, no motor vehicle that is drawing a conveyance shall  
6 be impounded pursuant to this section.

7           G. The owner of a conveyance or equipment that  
8 requires decontamination, or that is impounded, is responsible  
9 for all costs associated with the decontamination or  
10 impoundment.

11           ~~[F-]~~ H. Trained personnel may:

12                   (1) establish, operate and maintain aquatic  
13 invasive species check stations and conduct inspections at a  
14 port of entry, at or adjacent to the entrance to any state-  
15 controlled water body or, pursuant to a cooperative agreement,  
16 at or adjacent to any county, municipal or federally or  
17 privately controlled water body or at or adjacent to the exit  
18 point of an infested water body or at a location agreed to by  
19 the owner of the conveyance or equipment in order to inspect  
20 conveyances and equipment prior to a conveyance or equipment  
21 entering, being launched onto or being directly exposed to  
22 water bodies of the state or upon the conveyance's or  
23 equipment's departure from infested waters;

24                   (2) affix a warning tag to equipment or a  
25 conveyance where the presence of an aquatic invasive species

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1 has been found;

2 (3) affix a warning tag to a conveyance or  
3 equipment upon the conveyance or equipment leaving an infested  
4 water; or

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

9 ~~[G.]~~ I. Except for state, local, tribal or federal  
10 agencies and their respective agents, employees and contractors  
11 while performing their duties or contractual obligations  
12 specific to management or control of an aquatic invasive  
13 species, it is unlawful for a person to:

14 (1) knowingly possess, import, export, ship or  
15 transport an aquatic invasive species into, within or from the  
16 state;

17 (2) knowingly release, place, plant or cause  
18 to be released, placed or planted an aquatic invasive species  
19 into a water body or adjacent to a water body where it  
20 reasonably might be anticipated to be introduced into a water  
21 body that is not infested;

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

24 (4) introduce any tagged conveyance or  
25 equipment or any equipment or conveyance from which a warning

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1 tag has been unlawfully removed into a water body without first  
2 having that conveyance or equipment decontaminated and  
3 certified pursuant to the provisions of this section; or

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

9 [~~H. Knowingly~~] J. A person who knowingly or  
10 willfully [~~violating~~] violates any provision of this section as  
11 a first offense [~~is~~] commits a petty misdemeanor. A person who  
12 commits a second or subsequent violation of any provision of  
13 this section [~~is~~] commits a misdemeanor. Any violation is  
14 punishable pursuant to Section 31-19-1 NMSA 1978.

15 [~~F.~~] K. The director or the director's designee  
16 shall coordinate the monitoring of the water bodies of the  
17 state for the presence of aquatic invasive species, including  
18 privately controlled waters if the director has authorized  
19 access to them or has received permission to monitor them from  
20 the persons controlling access to such waters.

21 [~~J.~~] L. Upon determination of an infested water  
22 body in New Mexico, the director shall immediately recommend to  
23 the person in control of the infested water body actions to  
24 limit access or take other actions to prevent the potential  
25 spread of an aquatic invasive species to other water bodies.

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1           ~~[K-]~~ M. The commission is authorized to adopt rules  
 2 pursuant to Section 17-1-26 NMSA 1978, and the secretary of  
 3 energy, minerals and natural resources is authorized to adopt  
 4 rules pursuant to Section 16-2-32 NMSA 1978, and any state  
 5 agency authorized by the director to conduct inspections under  
 6 this section is authorized to adopt rules, as necessary to  
 7 implement and enforce the provisions of this section.

8           ~~[L-]~~ N. The director may enter into cooperative  
 9 agreements with any federal, state, county or municipal  
 10 authority or private entity that may be in control of a water  
 11 body potentially affected by aquatic invasive species.

12           ~~[M-]~~ O. As used in this section:

13                   (1) "aquatic invasive species" means quagga  
 14 mussels and zebra mussels and other exotic or nonnative aquatic  
 15 animals, including invertebrates but excluding those species  
 16 listed as protected in Chapter 17 NMSA 1978, or any plant or  
 17 animal species whose introduction into an aquatic ecosystem is  
 18 determined by the director, after consulting with the secretary  
 19 of energy, minerals and natural resources and with the  
 20 concurrence of the director of the New Mexico department of  
 21 agriculture, to cause or be likely to cause harm to the  
 22 economy, environment or human health or safety;

23                   (2) "commission" means the state game  
 24 commission;

25                   (3) "conveyance" means a motor vehicle,

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1 vessel, trailer or any associated equipment or containers,  
2 including, but not limited to, live wells, fish-hauling tanks,  
3 ballast tanks, motorized skis and bilge areas that may contain  
4 or carry an aquatic invasive species or any other equipment by  
5 which aquatic invasive species may be introduced into an  
6 aquatic ecosystem;

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

11 (5) "department" means the department of game  
12 and fish;

13 [~~(5)~~] (6) "director" means the director of the  
14 department; [~~of game and fish;~~

15 ~~(6)~~] (7) "equipment" means an article, a tool,  
16 an implement, a device or a piece of clothing, including boots  
17 and waders, that is capable of containing or transporting  
18 water;

19 [~~(7)~~] (8) "infested water" means a geographic  
20 region, water body or water supply system or facility within  
21 the state that the director, after consulting with the  
22 secretary of energy, minerals and natural resources and with  
23 the concurrence of the director of the New Mexico department of  
24 agriculture, identifies as carrying or containing an aquatic  
25 invasive species or a water body outside the state that has

1 been identified as carrying or containing an aquatic invasive  
2 species;

3 ~~(8)~~ (9) "inspect" means to examine a  
4 conveyance or equipment to determine whether an aquatic  
5 invasive species is present;

6 ~~(9)~~ (10) "law enforcement officer" means a  
7 state or federal certified law enforcement officer;

8 ~~(10)~~ (11) "trained personnel" means  
9 individuals who have successfully completed the United States  
10 fish and wildlife service's aquatic invasive species watercraft  
11 inspection and decontamination training, level I or level II,  
12 or an equivalent training recognized by the director;

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

16 ~~(11)~~ (13) "warning tag" means a tag that is  
17 affixed to equipment or a conveyance upon the equipment or  
18 conveyance leaving an infested water or upon an inspection  
19 determining that the equipment or conveyance contains an  
20 aquatic invasive species that requires the equipment or  
21 conveyance to be decontaminated; and

22 ~~(12)~~ (14) "water body" means a natural or  
23 impounded surface water, including a stream, river, spring,  
24 lake, reservoir, pond, wetland, tank or fountain."

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~~[bracketed material]~~ = delete

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