

HOUSE BILL 766

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

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AN ACT

RELATING TO FOSSILS; PROVIDING PROTECTION OF FOSSIL RESOURCES
AND SITES THAT ARE ON STATE LAND; DECLARING OWNERSHIP;
PROVIDING FOR PERMITS; PROHIBITING CERTAIN ACTS; PROVIDING
PENALTIES.

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

Section 1. SHORT TITLE. -- This act may be cited as the
"Fossil Protection Act".

Section 2. PURPOSES. -- The purposes of the Fossil
Protection Act are to secure protection of fossils and fossil
sites that are on state lands for future generations of New
Mexicans to enjoy and to ensure that all fossils discovered on
state lands remain the property of the state.

Section 3. DEFINITIONS. -- As used in the Fossil
Protection Act:

1 A. "applicant" means a person applying for a
2 permit from the commissioner pursuant to the Fossil Protection
3 Act;

4 B. "commissioner" means the commissioner of public
5 lands or his designee;

6 C. "fossil" means:

7 (1) scientifically significant naturally
8 occurring remains of a biological organism that lived prior to
9 the Holocene epoch;

10 (2) remains that are determined by the
11 commissioner, after consultation with a paleontologist
12 qualified to assess the remains, to meet the description in
13 Paragraph (1) of this subsection; or

14 (3) fossilized remains of a biological
15 organism that are determined by the commissioner, after
16 consultation with a paleontologist qualified to assess the
17 remains:

18 (a) to have been discovered in deposits
19 dating from prior to the Holocene epoch; and

20 (b) are not associated with an
21 archaeological resource;

22 D. "permit" means an authorization issued by the
23 commissioner pursuant to the provisions of the Fossil
24 Protection Act; and

25 E. "state lands" means state-owned lands and state

1 trust lands under the direction, control, care and disposition
2 of the commissioner.

3 Section 4. OWNERSHIP OF FOSSILS. -- A fossil discovered on
4 state lands is the property of the state. A fossil excavated
5 or removed from state lands remains the property of the state.

6 Section 5. EXCAVATION AND REMOVAL. --

7 A. A person may apply to the commissioner for a
8 permit to excavate, remove, transport or study a fossil
9 located on state lands and to carry out activities associated
10 with that excavation, removal, transportation or study.

11 B. The application shall contain information that
12 the commissioner deems necessary, including:

13 (1) the time, scope, location and specific
14 purpose of the proposed excavation or removal;

15 (2) an identification of the individual who
16 is responsible for carrying out the terms and conditions of
17 the permit; and

18 (3) a description of the arrangement that has
19 been made for the care and control of the fossil, the name of
20 the depository who is responsible for the fossil and the
21 identification of the designated approved state- or
22 government-owned and operated repository that will be
23 entrusted with the fossil.

24 Section 6. REQUIREMENTS FOR ISSUANCE OF PERMIT. --

25 A. A permit may be issued pursuant to an

1 application submitted in compliance with the Fossil Protection
2 Act if the commissioner determines that:

3 (1) the applicant is qualified to carry out
4 the permitted activity;

5 (2) the activity is undertaken for the
6 purpose of furthering paleontological knowledge in the public
7 interest;

8 (3) the activity pursuant to the permit is
9 consistent with any management plan applicable to the state
10 lands concerned;

11 (4) the applicant will carry out the
12 permitted activity primarily for the purpose of scientific
13 research, public education or public display;

14 (5) the applicant will not use the permit to
15 further commercial collecting; and

16 (6) the fossil and copies of associated
17 paleontological records and data will be preserved by the New
18 Mexico museum of natural history and science or other
19 designated approved state or governmental repository.

20 B. Any information in the custody of a public
21 official concerning the location of fossil resources, the
22 preservation of which is in the interests of the state, shall
23 remain confidential unless the commissioner determines that
24 the dissemination of the information is not detrimental to the
25 asset.

1 Section 7. PERMIT CONSULTATION REQUIRED. --Prior to
2 determining whether to issue a permit, the commissioner shall
3 consult with a paleontologist to assess the potential impact
4 of the activities for which the permit is requested on the
5 remaining fossil resource and related research. The
6 paleontologist shall be:

7 A. a resident of New Mexico;

8 B. qualified to assess the activities proposed to
9 be carried out pursuant to the permit; and

10 C. qualified to assess the potential impact of the
11 activities on related research projects that are currently in
12 progress.

13 Section 8. TERMS AND CONDITIONS OF PERMIT. --A permit
14 shall contain the terms and conditions that the commissioner
15 deems necessary to carry out the provisions of the Fossil
16 Protection Act. Every holder of a permit is required to
17 submit a report to the commissioner concerning fossils
18 excavated and removed pursuant to the permit.

19 Section 9. SUSPENSION AND REVOCATION OF PERMITS. --The
20 commissioner may suspend or revoke a permit issued pursuant to
21 the Fossil Protection Act if he determines that the holder of
22 the permit has violated the provisions of Section 11 of the
23 Fossil Protection Act or any condition of the permit.

24 Section 10. CUSTODY OF FOSSILS. --

25 A. Fossils excavated and removed from state lands

1 without a valid permit that are determined to be of scientific
2 significance shall be deposited with the New Mexico museum of
3 natural history and science.

4 B. The New Mexico museum of natural history and
5 science shall ensure that the fossils are accessioned,
6 catalogued and maintained in accordance with the standards of
7 the American association of museums and shall remain
8 accessible for scientific study and for educational purposes.

9 Section 11. FOSSILS--UNAUTHORIZED DAMAGE OR
10 APPROPRIATION--CIVIL PENALTIES. --A person violating the
11 provisions of the Fossil Protection Act shall be liable for
12 civil damages to the state land office in an amount equal to
13 the value of the fossil or, in the discretion of the court, in
14 an amount equal to twice the value of repossession,
15 restoration, stabilization and costs of returning the fossil
16 to an appropriate state or governmental repository.

17 Section 12. DAMAGING A FOSSIL--UNLAWFUL EXCHANGE--
18 PENALTIES. --

19 A. Damaging a fossil consists of:

20 (1) excavating, removing, damaging or
21 otherwise altering or defacing a fossil on state lands without
22 a permit issued by the commissioner pursuant to the Fossil
23 Protection Act allowing the excavating, removing, damaging or
24 otherwise altering or defacing of the fossil; or

25 (2) knowingly causing another person to

1 commit damaging a fossil.

2 B. Unlawful exchange of a fossil consists of
3 selling, purchasing, exchanging, transporting or receiving of
4 a fossil removed from state lands without a permit issued by
5 the commissioner pursuant to the Fossil Protection Act that
6 allows the selling, purchasing, exchanging, transporting or
7 receiving of the fossil.

8 C. A person who commits a first offense of
9 damaging a fossil is guilty of a fourth degree felony.

10 D. A person who commits a first offense of
11 unlawful exchange of a fossil is guilty of a fourth degree
12 felony.

13 E. Upon conviction of any offense set forth in
14 this section, a person shall be sentenced pursuant to the
15 provisions of Section 31-18-15 NMSA 1978.

16 F. Upon a second or subsequent conviction of any
17 offense set forth in this section, a person is guilty of a
18 third degree felony and shall be sentenced pursuant to the
19 provisions of Section 31-18-15 NMSA 1978.