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HOUSE BILL 113

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Don L. Tripp

AN ACT

RELATING TO GAME AND FISH; AMENDING A SECTION OF CHAPTER 17,
ARTICLE 4 NMSA 1978 TO PROVIDE FOR AUTHORITY FOR THE CONTROL
AND PREVENTION OF THE SPREAD OF AQUATIC INVASIVE SPECIES IN NEW
MEXICO; DECLARING AN EMERGENCY.

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) 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

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1 plants as aquatic invasive species;

2 (2) water bodies within the state as infested
3 waters; and

4 (3) specific requirements to decontaminate
5 conveyances and equipment.

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

11 (1) have the conveyance or equipment
12 decontaminated by a person or entity approved by the director
13 to effect decontamination, and only the person legally
14 effecting the decontamination is authorized to remove a warning
15 tag and ~~[(2)]~~ provide certification ~~[by a person legally~~
16 ~~authorized to effect decontamination]~~ that the conveyance or
17 equipment is free from infestation ~~[or otherwise demonstrate~~
18 ~~compliance with the decontamination requirements established by~~
19 ~~the director]; or~~

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

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1 C. A law enforcement officer may impound a
2 conveyance or equipment if the person transporting the
3 conveyance or equipment refuses to submit to an inspection
4 authorized by this section and the officer has reason to
5 believe that an aquatic invasive species may be present, or if
6 the conveyance or equipment has a warning tag affixed and the
7 operator of the conveyance is attempting to enter a state water
8 body and cannot provide evidence that the conveyance or
9 equipment has been decontaminated. A law enforcement officer
10 shall take action to prevent equipment or conveyances believed
11 or known to contain an aquatic invasive species and warning-
12 tagged equipment or conveyances from entering a state water
13 body.

14 D. The impoundment of a conveyance or equipment may
15 continue for a reasonable period necessary to inspect and
16 decontaminate the conveyance or equipment.

17 E. Notwithstanding any provision to the contrary,
18 no motor vehicle that is drawing a conveyance shall be
19 impounded pursuant to this section.

20 F. Trained personnel [~~of the department of game and~~
21 ~~fish or the state parks division of the energy, minerals and~~
22 ~~natural resources department~~] may:

23 (1) establish, operate and maintain aquatic
24 invasive species check stations and conduct inspections at or
25 adjacent to the entrance to any state-controlled water body or,

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1 pursuant to a cooperative agreement, at or adjacent to any
2 county, municipal or federally or privately controlled water
3 body or at or adjacent to the exit point of an infested water
4 body or at a location agreed to by the owner of the conveyance
5 or equipment in order to inspect conveyances and equipment
6 prior to a conveyance or equipment entering, being launched
7 onto or being directly exposed to water bodies of the state or
8 upon the conveyance's or equipment's departure from infested
9 waters;

10 (2) affix a warning tag to equipment or a
11 conveyance where the presence of an aquatic invasive species
12 has been found; ~~[or]~~

13 (3) affix a warning tag to a conveyance or
14 equipment upon the conveyance or equipment leaving an infested
15 water; or

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

20 G. Except for state, local, tribal or federal
21 agencies and their respective agents, employees and contractors
22 while performing their duties or contractual obligations
23 specific to management or control of an aquatic invasive
24 species, it is unlawful for a person to:

25 (1) knowingly possess, import, export, ship or

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1 transport an aquatic invasive species into, within or from the
2 state;

3 (2) knowingly release, place, plant or cause
4 to be released, placed or planted an aquatic invasive species
5 into a water body or adjacent to a water body where it
6 reasonably might be anticipated to be introduced into a water
7 body that is not infested;

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

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

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

20 H. Knowingly or willfully violating any provision
21 of this section as a first offense is a petty misdemeanor. A
22 second or subsequent violation of any provision of this section
23 is a misdemeanor. Any violation is punishable pursuant to
24 Section 31-19-1 NMSA 1978.

25 I. The director or the director's designee shall

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1 coordinate the monitoring of the water bodies of the state for
2 the presence of aquatic invasive species, including privately
3 controlled waters if the director has authorized access to them
4 or has received permission to monitor them from the persons
5 controlling access to such waters.

6 J. Upon determination of an infested water body in
7 New Mexico, the director shall immediately recommend to the
8 person in control of the infested water body actions to limit
9 access or take other actions to prevent the potential spread of
10 an aquatic invasive species to other water bodies.

11 [~~J.~~] K. The commission is authorized to adopt rules
12 pursuant to Section 17-1-26 NMSA 1978, and the secretary of
13 energy, minerals and natural resources is authorized to adopt
14 rules pursuant to Section 16-2-32 NMSA 1978 as necessary to
15 implement and enforce the provisions of this section.

16 [~~K.~~] L. The director may enter into cooperative
17 agreements with any federal, state, county or municipal
18 authority or private entity that may be in control of a water
19 body potentially affected by aquatic invasive species.

20 [~~L.~~] M. As used in this section:

21 (1) "aquatic invasive species" means quagga
22 mussels and zebra mussels and other exotic or nonnative aquatic
23 animals, including invertebrates but excluding those species
24 listed as protected in Chapter 17 NMSA 1978, or any plant or
25 animal species whose introduction into an aquatic ecosystem is

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1 determined by the director, after consulting with the secretary
2 of energy, minerals and natural resources and with the
3 concurrence of the director of the New Mexico department of
4 agriculture, to cause or be likely to cause harm to the
5 economy, environment or human health or safety;

6 (2) "commission" means the state game
7 commission;

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

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

19 (5) "director" means the director of the
20 department of game and fish;

21 (6) "equipment" means an article, a tool, an
22 implement, a device or a piece of clothing, including boots and
23 waders, that is capable of containing or transporting water;

24 (7) "infested water" means a geographic
25 region, water body or water supply system or facility within

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1 the state that the director, after consulting with the
2 secretary of energy, minerals and natural resources and with
3 the concurrence of the director of the New Mexico department of
4 agriculture, identifies as carrying or containing an aquatic
5 invasive species or a water body outside the state that has
6 been identified as carrying or containing an aquatic invasive
7 species;

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

11 (9) "law enforcement officer" means a state or
12 federal certified law enforcement officer;

13 (10) "trained personnel" means individuals who
14 have successfully completed the United States fish and wildlife
15 service's aquatic invasive species watercraft inspection and
16 decontamination training, level I or level II, or an equivalent
17 training recognized by the director;

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

24 (12) "water body" means a natural or impounded
25 surface water, including a stream, river, spring, lake,

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1 reservoir, pond, wetland, tank or fountain."

2 Section 2. EMERGENCY.--It is necessary for the public
3 peace, health and safety that this act take effect immediately.

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