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SENATE BILL 746

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Steve Komadina

AN ACT

RELATING TO FERAL ANIMALS; MITIGATING THE FORESEEABLE INHERENT
DANGERS TO THE LIVES AND PROPERTY OF NEW MEXICO CITIZENS
ASSOCIATED WITH THE RELEASE OF WOLVES WITHIN THE STATE OF NEW
MEXICO; DECLARING AN EMERGENCY.

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

Section 1. FINDINGS. -- The legislature finds that:

A. prior to April 2000 there were no known
unconfined wolves existing within the borders of New Mexico;

B. since April 2000, there have been a significant
number of wolves released upon federal lands to roam within the
borders of New Mexico, together with their offspring.

Hereinafter wolves, including their offspring, shall be
referred to individually as the "wolf" and collectively as the
"wolves" by employees or agents of the United States fish and

1 wildlife service either independently or in cooperation with
2 and with the assistance of other individuals under, and
3 pursuant to, the alleged authority of the Endangered Species
4 Act of 1973;

5 C. by definition, wolves are by their very nature
6 undomesticated and free-roaming carnivorous predators with the
7 foreseeable and undeniable ability, if not propensity, to
8 threaten or inflict death or grievous bodily harm;

9 D. by virtue of these characteristics, wolves must
10 be found by the state of New Mexico to be inherently dangerous
11 to any human beings they may randomly encounter;

12 E. the United States fish and wildlife service and
13 other federal authorities have by various means informed the
14 citizens of New Mexico that the lives and well-being of wolves
15 have the full protection of federal law and that any human
16 being or New Mexico citizen found responsible for the death or
17 maiming of wolves shall be prosecuted by federal authorities to
18 the full extent of applicable federal law, which includes up to
19 one year in federal prison or a fine of up to one thousand
20 dollars (\$1,000) per incident;

21 F. following considerable reflection upon the
22 sanctity that is afforded the lives and well-being of wolves
23 under the law, the state of New Mexico has determined that
24 basic notions of justice and equity demand that the law also
25 provide the citizens of New Mexico equal, if not greater,

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1 protections under the laws of this state as those afforded
2 wolves based on the following three fundamental premises; and

3 G. following considerable reflection upon the
4 sanctity that is afforded the lives and well-being of wolves
5 under the law, the state of New Mexico has determined that
6 basic notions of justice and equity demand that the law also
7 provide the citizens of New Mexico equal, if not greater,
8 protections under the laws of this state as those afforded
9 wolves based on the following three fundamental premises:

10 (1) the life and physical safety of any
11 individual human being is, at minimum, at least of equal value
12 to that of any wolf and, in fact, is of greater inherent value
13 in and to the state of New Mexico than any individual or
14 cumulative benefits that may be claimed by some to be derived
15 from the reintroduction of wolves in New Mexico under cover of
16 the Endangered Species Act of 1973;

17 (2) the foreseeable death or grievous bodily
18 injury of any individual human being by a species intentionally
19 released in the state of New Mexico under the alleged authority
20 of the Endangered Species Act of 1973 cannot conceivably have
21 been a permissible or acceptable consequence intended or even
22 foreseen by the United States congress when the Endangered
23 Species Act was enacted in 1973; and

24 (3) if a citizen of New Mexico may be
25 criminally prosecuted, imprisoned or fined for causing the

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1 death or bodily injury of a wolf, equity and justice demands
2 that any individual found responsible for unleashing such
3 foreseeable inherently dangerous animals within New Mexico
4 shall also be subject to criminal prosecution, imprisonment or
5 fine when it is determined that any wolf or wolves released by
6 that individual has caused the death or bodily injury of any
7 citizen or other human being in the New Mexico.

8 Section 2. REGULATION OF WOLF RELEASES. --Based on the
9 foregoing findings, the legislature hereby declares the
10 following:

11 A. the knowing, premeditated and intentional
12 unconstrained release of any inherently dangerous carnivorous
13 predator, including without limitation, any wolf, in New Mexico
14 by any individual or individuals shall be found to constitute
15 an act that:

16 (1) poses a foreseeable threat to the health,
17 safety and welfare of a New Mexico citizen and one's livestock;

18 (2) exceeds the scope of authority intended to
19 be vested in the executive branch of the federal government by
20 the United States congress when the latter body enacted the
21 Endangered Species Act of 1973, if it is determined in a state
22 court of competent jurisdiction that one or more wolves has
23 either caused the death of, or inflicted great bodily injury
24 upon, any New Mexico citizen or one livestock; or

25 (3) because wolves are inherently dangerous

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1 carnivorous predators, it shall be the joint and several lawful
2 duty of each and every individual who causes, participates in
3 or assists in the release of any wolf in New Mexico to at all
4 times properly supervise, monitor and control both that wolf
5 and any progeny produced by that wolf and to appropriately
6 limit the migrations of wolves in and around the New Mexico for
7 the purposes of achieving full and complete compliance with any
8 and all of the requirements and objectives of this statute;

9 B. any and all individuals charged under this
10 statute with the duty to supervise, monitor and control any
11 wolf or to limit the migrations of any wolf shall discharge
12 those responsibilities in full and complete compliance with the
13 following requirements:

14 (1) it shall be unlawful for any wolf at any
15 time to be located on, or allowed to migrate to, any
16 non-federal lands, state or private lands, within New Mexico;

17 (2) it shall be unlawful for any wolf at any
18 time to injure or kill a human being in New Mexico;

19 (3) it shall be unlawful for any wolf at any
20 time to threaten to injure or kill a human being in New Mexico;

21 (4) it shall be unlawful for any wolf to
22 injure or kill any pet or any livestock of any New Mexico
23 citizen, provided that such pet or livestock is lawfully
24 entitled to be in the location that it is attacked by the wolf;

25 (5) it shall be unlawful for any wolf to

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1 threaten to injure or kill any pet or any livestock of any New
2 Mexico citizen, provided that such pet or livestock is lawfully
3 entitled to be in the location where the threat of attack by
4 the wolf occurs;

5 (6) any individual found in violation of his
6 or her lawful duty to supervise, monitor and control a wolf or
7 to appropriately limit its migration under this section shall
8 for each separate offense be guilty of a misdemeanor punishable
9 by up to six months in county jail or a fine not to exceed five
10 hundred dollars;

11 (7) any wolf found to be in violation of this
12 section may be captured or euthanized by any New Mexico citizen
13 that encounters that wolf;

14 (8) any wolf found to be in violation this
15 section shall be captured and euthanized by any state or county
16 law enforcement officials with jurisdiction over the territory
17 in which that wolf is located;

18 (9) any wolf found to be in violation of this
19 section may be captured or euthanized by any state or law
20 enforcement official at any time during or after the occurrence
21 of the violation or by any New Mexico citizen who is present at
22 the time the violation is occurring;

23 (10) in the event that it is determined in a
24 state court of competent jurisdiction that any human being has
25 been killed by a wolf in the New Mexico in violation of this

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1 section, each individual charged under the provisions of this
2 section with the duty to supervise, monitor and control the
3 wolf or wolves involved in the attack or to limit the wolf's or
4 wolves' migration shall be guilty of committing an act greatly
5 dangerous to the lives of others pursuant to the provisions of
6 Section 30-2-1 NMSA, 1978 provided that the human being that
7 was attacked was lawfully entitled to be at the location where
8 said attack occurred;

9 (11) in the event that it is determined in a
10 state court of competent jurisdiction that any human being has
11 been attacked or injured by a wolf in New Mexico in violation
12 of this section, each individual charged under the provisions
13 of this section with the duty to supervise, monitor and control
14 the wolf or wolves involved in the attack or to limit the
15 wolf's or wolves' migration shall be guilty of committing an
16 act of aggravated battery with a deadly weapon pursuant to the
17 provisions of Section 30-2-5 NMSA 1978, provided that the human
18 being that was attacked was lawfully entitled to be at the
19 location where said attack occurred;

20 (12) in the event that it is determined in a
21 state court of competent jurisdiction that any pet or livestock
22 owned by any citizen of New Mexico has been attacked and killed
23 or injured by a wolf in New Mexico in violation of this
24 section, each individual charged under the provisions of this
25 section with the duty to supervise, monitor and control the

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1 wolf or wolves involved in the attack or to limit the wolf's or
2 wolves' migration shall be guilty of destruction of property
3 and shall be jointly and severally liable to the owner of the
4 pet or livestock for any and all damages, including costs
5 caused by or resulting from said attack, provided that the pet
6 or livestock that was attacked or killed was lawfully entitled
7 to be at the location where the attack occurred;

8 (13) it shall be unlawful for any wolf to be
9 released in New Mexico at any time or in any location
10 whatsoever unless, prior to said release, an authorized
11 representative of the individuals charged with the duty to
12 supervise, monitor and control the wolf or to limit said wolf's
13 migration under the provisions of this section provides to the
14 state a certified DNA sample of the wolf that shall be received
15 and retained by the department of game and fish;

16 (14) it shall be unlawful for any wolf that is
17 the offspring of any wolf released in New Mexico to remain at
18 large within the state of New Mexico for a period exceeding six
19 months immediately following its birth unless, within that six-
20 month period, an authorized representative of the individual
21 charged with the duty to supervise, monitor and control the
22 wolf or to limit the wolf's migration under the provisions of
23 this section provides to the state a certified DNA sample of
24 the wolf that shall be received and retained by the department
25 of game and fish;

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1 (15) it shall be unlawful for any wolf
2 released in New Mexico prior to the enactment of this statute
3 to remain at large within New Mexico for a period exceeding six
4 months immediately following that enactment unless, within that
5 six-month period, an authorized representative of the
6 individuals charged with the duty to supervise, monitor and
7 control said wolf or to limit said wolf's migration under the
8 provisions of this section provides to the state a certified
9 DNA sample of the wolf that shall be received and retained by
10 the department of game and fish;

11 (16) each DNA sample required to be filed with
12 the state pursuant to this section shall be given a separate
13 and unique identification number issued by the department of
14 game and fish and shall be retained for a period not less than
15 fifteen years or until it is determined by the department of
16 game and fish that the wolf to which the DNA sample pertains is
17 deceased;

18 (17) it shall be unlawful for any wolf to be
19 released in New Mexico at any time or in any location
20 whatsoever unless, prior to said release, each individual
21 charged with the duty to supervise, monitor and control any
22 wolf or to limit the wolf's migration under the provisions of
23 this section has signed under penalty of perjury a declaration
24 of responsibility and that Declaration of Responsibility is
25 delivered to and received by the department of game and fish;

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1 (18) it shall be unlawful for any wolf that is
2 the offspring of any wolf released in New Mexico to remain at
3 large within New Mexico for a period exceeding six months
4 immediately following its birth unless, within that six-month
5 period, a declaration of responsibility pertaining to the wolf
6 is signed under penalty of perjury by each individual charged
7 with the duty to supervise, monitor and control the wolf or to
8 limit said wolf's migration under the provisions of this
9 section of this act and that declaration of responsibility is
10 delivered to and received by the department of game and fish;

11 (19) it shall be unlawful for any wolf
12 released in New Mexico prior to the enactment of this act to
13 remain at large within New Mexico for a period exceeding six
14 months immediately following said enactment unless, within that
15 six-month period, a declaration of responsibility pertaining to
16 the wolf is signed under penalty of perjury by each individual
17 charged with the duty to supervise, monitor and control said
18 wolf or to limit the wolf's migration under the provisions of
19 this section and that declaration of responsibility is
20 delivered to and received by the department of game and fish;

21 (20) each declaration of responsibility
22 executed and filed pursuant to this section shall be retained
23 by the department of game and fish for a period equal to the
24 period that the corresponding DNA sample is retained pursuant
25 to Paragraph (14) of this subsection and shall contain the

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1 following:

2 (a) the identification number assigned
3 by the department of game and fish to the DNA sample of the
4 wolf to which the declaration applies;

5 (b) the name and social security number
6 of each individual who is required to sign the declaration
7 pursuant to this section;

8 (c) a statement declaring that each
9 individual who signs the Declaration acknowledges under penalty
10 of perjury that he is, and for so long as the wolf remains at
11 large in New Mexico shall be, jointly and severally responsible
12 for the control, monitoring and supervision of the wolf to
13 which the declaration pertains together with any of its
14 progeny;

15 (d) a statement declaring that each
16 individual who signs the declaration further acknowledges under
17 penalty of perjury that for so long as the wolf identified in
18 the declaration remains at large in New Mexico, he as an
19 individual shall be entirely responsible for any failure to
20 properly control, monitor and supervise the wolf or its progeny
21 or to limit the wolf's migration in the event that such failure
22 is determined by a state court of competent jurisdiction to
23 have resulted in any violation of any one or more of the
24 provisions of this act;

25 (e) any individual required by this

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1 statute to file a DNA sample or a declaration of responsibility
2 with the department of game and fish but who fails to do so
3 within the time permitted shall for each separate offense be
4 guilty of a misdemeanor punishable by up to six months in
5 county jail or a fine not to exceed five hundred dollars
6 (\$500); and

7 (f) any wolf captured by any state or
8 county law enforcement authority pursuant to the provisions of
9 this act and for which it is determined that there does not
10 exist on file with the department of game and fish a valid
11 certified DNA sample or a valid corresponding declaration of
12 responsibility shall be subject to capture by the department of
13 game and fish and upon capture shall be euthanized by state
14 authorities within ten days of capture; and

15 (21) all provisions of this act are and shall
16 be applicable to any offspring of any wolf in New Mexico
17 notwithstanding the fact that it may have been born in the
18 wild.

19 Section 3. CIVIL REMEDIES NOT LIMITED.--Nothing in the
20 provisions of this act is intended to limit in any way
21 whatsoever any civil remedies that are or may be available
22 under either federal or state law to any New Mexico citizen who
23 is the victim of a wolf attack or their families.

24 Section 4. EMERGENCY.--It is necessary for the public
25 peace, health and safety that this act take effect immediately.

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