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SENATE BILL 72

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

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. 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 wildlife service either**

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

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

8 D. by virtue of these characteristics, wolves are
9 inherently dangerous to any human being they may randomly
10 encounter;

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

20 F. basic notions of justice and equity demand that
21 the law also provide the citizens of New Mexico equal, if not
22 greater, protections under the laws of this state as those
23 afforded to wolves based on the following three fundamental
24 premises:

25 (1) the life and physical safety of any human

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1 being is, at minimum, at least of equal value to that of any
2 wolf and, in fact, is of greater inherent value in and to the
3 state than any individual benefit or cumulative benefits that
4 may be claimed to be derived from the reintroduction of wolves
5 into New Mexico under the cover of the Endangered Species Act
6 of 1973;

7 (2) the death or grievous bodily injury of any
8 human being by a species intentionally released in the state
9 under the alleged authority of the Endangered Species Act of
10 1973 cannot conceivably have been a permissible or acceptable
11 consequence intended or even foreseen by the United States
12 congress when that act was enacted in 1973; and

13 (3) if a citizen of New Mexico may be
14 criminally prosecuted, imprisoned or fined for causing the
15 death of or bodily injury to a wolf, equity and justice demand
16 that any person found responsible for unleashing such
17 inherently dangerous animals within New Mexico shall also be
18 subject to criminal prosecution, imprisonment or fine when it
19 is determined that any wolf or wolves released by that person
20 have caused the death of or bodily injury to any human being in
21 New Mexico.

22 Section 2. REGULATION OF WOLF RELEASES. --Based on the
23 foregoing findings, the legislature declares the following:

24 A. the knowing, premeditated and intentional
25 unconstrained release of any inherently dangerous carnivorous

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1 predator, including any wolf, in New Mexico by any person shall
2 be found to constitute an act that:

3 (1) poses a foreseeable threat to the health,
4 safety and welfare of a New Mexico citizen or a citizen's
5 livestock;

6 (2) exceeds the scope of authority intended to
7 be vested in the executive branch of the federal government by
8 the United States congress when the latter body enacted the
9 Endangered Species Act of 1973, if it is determined in a state
10 court of competent jurisdiction that one or more wolves has
11 either caused the death of or inflicted great bodily injury to
12 any New Mexico citizen or a citizen's livestock; or

13 (3) because wolves are inherently dangerous
14 carnivorous predators, it shall be the joint and several lawful
15 duty of each person who causes, participates in or assists in
16 the release of any wolf in New Mexico to at all times properly
17 supervise, monitor and control both that wolf and any offspring
18 produced by that wolf and to appropriately limit the migrations
19 of wolves in and around New Mexico for the purpose of achieving
20 full and complete compliance with any and all of the
21 requirements and objectives of this statute;

22 B. any persons charged under this statute with the
23 duty to supervise, monitor and control any wolf or to limit the
24 migrations of any wolf shall discharge those responsibilities
25 in full and complete compliance with the following

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1 requirements:

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

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

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

9 (4) it shall be unlawful for any wolf to
10 injure or kill any pet or any livestock of any New Mexico
11 citizen, provided that such pet or livestock is lawfully
12 entitled to be in the location where it is attacked by the
13 wolf;

14 (5) it shall be unlawful for any wolf to
15 threaten to injure or kill any pet or any livestock of any New
16 Mexico citizen, provided that such pet or livestock is lawfully
17 entitled to be in the location where the threat of attack by
18 the wolf occurs;

19 (6) any person found in violation of this
20 lawful duty to supervise, monitor and control a wolf or to
21 appropriately limit its migration pursuant to this section
22 shall for each separate offense be guilty of a misdemeanor
23 punishable by a definite term not to exceed six months in
24 county jail or a fine not to exceed five hundred dollars
25 (\$500);

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

4 (8) any wolf found to be in violation of this
5 section shall be captured and euthanized by any state or county
6 law enforcement official with jurisdiction over the territory
7 in which that wolf is located;

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

13 (10) in the event that it is determined in a
14 state court of competent jurisdiction that a human being has
15 been killed by a wolf in New Mexico in violation of this
16 section, each person charged under the provisions of this
17 section with the duty to supervise, monitor and control the
18 wolf involved in the attack or to limit the wolf's migration
19 shall be guilty of committing an act greatly dangerous to the
20 lives of others pursuant to the provisions of Section 30-2-1
21 NMSA 1978 if the human being that was attacked was lawfully
22 entitled to be at the location where the attack occurred;

23 (11) in the event that it is determined in a
24 state court of competent jurisdiction that a human being has
25 been attacked or injured by a wolf in New Mexico in violation

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1 of this section, each person charged under the provisions of
2 this section with the duty to supervise, monitor and control
3 the wolf involved in the attack or to limit the wolf's
4 migration shall be guilty of committing an act of aggravated
5 battery with a deadly weapon pursuant to the provisions of
6 Section 30-3-5 NMSA 1978 if the human being that was attacked
7 was lawfully entitled to be at the location where the attack
8 occurred;

9 (12) in the event that it is determined in a
10 state court of competent jurisdiction that any pet or livestock
11 owned by any citizen of New Mexico has been attacked and killed
12 or injured by a wolf in New Mexico in violation of this
13 section, each person charged under the provisions of this
14 section with the duty to supervise, monitor and control the
15 wolf involved in the attack or to limit the wolf's migration
16 shall be guilty of destruction of property and shall be jointly
17 and severally liable to the owner of the pet or livestock for
18 any damages, including costs caused by or resulting from the
19 attack if the pet or livestock that was attacked or killed was
20 lawfully entitled to be at the location where the attack
21 occurred;

22 (13) it shall be unlawful for any wolf to be
23 released in New Mexico at any time or in any location unless,
24 prior to the release, an authorized representative of the
25 person charged with the duty to supervise, monitor and control

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1 the wolf or to limit the wolf's migration under the provisions
2 of this section provides to the state a certified DNA sample of
3 the wolf that shall be received and retained by the department
4 of game and fish;

5 (14) it shall be unlawful for any wolf that is
6 the offspring of any wolf released in New Mexico to remain at
7 large within the state of New Mexico for a period exceeding six
8 months immediately following its birth unless, within that six-
9 month period, an authorized representative of the person
10 charged with the duty to supervise, monitor and control the
11 wolf or to limit the wolf's migration under the provisions of
12 this section provides to the state a certified DNA sample of
13 the wolf that shall be received and retained by the department
14 of game and fish;

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

25 (16) each DNA sample required to be filed with

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1 the state pursuant to this section shall be given a separate
2 and unique identification number issued by the department of
3 game and fish and shall be retained for a period of not less
4 than fifteen years or until it is determined by the department
5 of game and fish that the wolf to which the DNA sample pertains
6 is deceased;

7 (17) it shall be unlawful for any wolf to be
8 released in New Mexico at any time or in any location unless,
9 prior to the release, each person charged with the duty to
10 supervise, monitor and control any wolf or to limit the wolf's
11 migration under the provisions of this section has signed under
12 penalty of perjury a declaration of responsibility and that
13 declaration of responsibility is delivered to and received by
14 the department of game and fish;

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

25 (19) it shall be unlawful for any wolf

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

10 (20) each declaration of responsibility
11 executed and filed pursuant to this section shall be retained
12 by the department of game and fish for a period equal to the
13 period that the corresponding DNA sample is retained pursuant
14 to Paragraph (16) of this subsection and shall contain the
15 following:

16 (a) the identification number assigned
17 by the department of game and fish to the DNA sample of the
18 wolf to which the declaration applies;

19 (b) the name and social security number
20 of each person who is required to sign the declaration pursuant
21 to this section;

22 (c) a statement declaring that each
23 person who signs the declaration acknowledges under penalty of
24 perjury that he is, and for so long as the wolf remains at
25 large in New Mexico shall be, jointly and severally responsible

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1 for the control, monitoring and supervision of the wolf to
2 which the declaration pertains together with any of its
3 progeny;

4 (d) a statement declaring that each
5 person who signs the declaration further acknowledges under
6 penalty of perjury that for so long as the wolf identified in
7 the declaration remains at large in New Mexico, he shall be
8 entirely responsible for any failure to properly control,
9 monitor and supervise the wolf or its offspring or to limit the
10 wolf's migration in the event that such failure is determined
11 by a state court of competent jurisdiction to have resulted in
12 any violation of any one or more of the provisions of this act;

13 (e) any person required by this section
14 to file a DNA sample or a declaration of responsibility with
15 the department of game and fish but who fails to do so within
16 the time permitted shall for each separate offense be guilty of
17 a misdemeanor punishable by a definite term not to exceed six
18 months in county jail or a fine not to exceed five hundred
19 dollars (\$500); and

20 (f) any wolf captured by any state or
21 county law enforcement authority pursuant to the provisions of
22 this section and for which it is determined that there does not
23 exist on file with the department of game and fish a valid
24 certified DNA sample or a valid corresponding declaration of
25 responsibility shall be subject to capture by the department of

1 game and fish and upon capture shall be euthanized by state
2 authorities within ten days of capture; and

3 (21) all provisions of this section are and
4 shall be applicable to any offspring of any wolf in New Mexico
5 notwithstanding the fact that it may have been born in the
6 wild.

7 Section 3. CIVIL REMEDIES NOT LIMITED. --Nothing in this
8 act is intended to limit in any way whatsoever any civil
9 remedies that are or may be available under either federal or
10 state law to any New Mexico citizen who is the victim of a wolf
11 attack or that citizen's family.

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

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