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SENATE BILL 93

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

INTRODUCED BY

Mary Jane M. Garcia

AN ACT

RELATING TO PARKS AND RECREATION; AMENDING AND ENACTING  
SECTIONS OF THE STATE TRAILS SYSTEM ACT TO PROVIDE FOR LAW  
ENFORCEMENT AUTHORITY FOR THE STATE PARKS DIVISION OVER STATE  
TRAILS AND TO PROVIDE FOR DESIGNATING STATE TRAILS; CREATING A  
FUND; MAKING AN APPROPRIATION.

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

Section 1. Section 16-2-30 NMSA 1978 (being Laws 1935,  
Chapter 57, Section 17, as amended) is amended to read:

"16-2-30. POLICE POWERS VESTED IN DIRECTOR AND STATE  
PARKS EMPLOYEES DESIGNATED BY THE SECRETARY.--

A. The director of the state parks division of the  
energy, minerals and natural resources department and state  
parks division employees designated by the secretary are vested  
with general police power and shall be state park law

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1 enforcement officers with the authority of conservators of the  
2 peace within state parks and recreation areas [~~It shall be~~  
3 ~~their duty~~] and on trails designated as state trails pursuant  
4 to the State Trails System Act that are contiguous to a state  
5 park. They shall have the authority, concurrent with any other  
6 law enforcement entity with jurisdiction, to enforce the laws  
7 of the state and the rules [~~and regulations~~] of the energy,  
8 minerals and natural resources department within state parks  
9 and recreation areas and on designated state trails that are  
10 contiguous to a state park. They shall have the further power  
11 of forcibly ejecting from a state park or recreation area or a  
12 designated state trail that is contiguous to a state park a  
13 person who knowingly, willfully or wantonly violates a rule [~~or~~  
14 ~~regulation~~] of the department within a state park or recreation  
15 area or on a designated state trail that is contiguous a state  
16 park.

17 B. State park law enforcement officers, in  
18 emergency situations, shall be considered on duty and within  
19 the scope of their employment for employee benefits when they  
20 follow specific instructions from a duly qualified full-time  
21 peace officer and aid the peace officer in carrying out [~~his~~  
22 the officer's] duties. State park law enforcement officers  
23 shall respond in emergency situations, subject to the needs of  
24 the park to which they are assigned, and they shall have law  
25 enforcement powers outside the park so long as they follow

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1 specific instructions from the peace officer who requested aid.

2 C. As used in this section, "emergency" means a  
3 sudden, unexpected occurrence or an unforeseen combination of  
4 circumstances that calls for immediate action without time for  
5 deliberation."

6 Section 2. Section 16-3-1 NMSA 1978 (being Laws 1973,  
7 Chapter 372, Section 1) is amended to read:

8 "16-3-1. SHORT TITLE.--~~[This act]~~ Chapter 16, Article 3  
9 NMSA 1978 may be cited as the "State Trails System Act"."

10 Section 3. Section 16-3-3 NMSA 1978 (being Laws 1973,  
11 Chapter 372, Section 3) is amended to read:

12 "16-3-3. PURPOSE.--The purpose of the State Trails System  
13 Act is to provide public access to and the enjoyment and  
14 appreciation of the New Mexico outdoors in order to conserve,  
15 develop and use the natural resources of the state for purposes  
16 of health and recreation. It is the intent and purpose of the  
17 State Trails System Act to encourage horseback riding, hiking,  
18 bicycling and off-highway vehicle and other recreational trail  
19 activities."

20 Section 4. Section 16-3-4 NMSA 1978 (being Laws 1973,  
21 Chapter 372, Section 4, as amended) is amended to read:

22 "16-3-4. STATE TRAILS SYSTEM CREATED--TYPES OF TRAILS--  
23 ~~[PLANNING]~~ DESIGNATING STATE TRAILS.--

24 A. There is created a "state trails system"  
25 composed of the following state trails:

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1 (1) "[state] scenic trails" [which] that are  
2 extended trails so located as to provide maximum potential for  
3 the appreciation of natural areas and for the conservation and  
4 enjoyment of the significant scenic, historic, natural,  
5 ecological, geological or cultural qualities of the areas  
6 through which such trails pass;

7 (2) "[state] recreation trails" [which] that  
8 are trails designed to provide a variety of outdoor  
9 recreational trail uses in or reasonably accessible to urban  
10 areas and, where appropriate, shall connect parks, scenic  
11 areas, historical points and neighboring communities; and

12 (3) "[state ~~historical~~] historic trails"  
13 [which] that are trails designed to identify and interpret  
14 routes [which] that were significant in the prehistoric  
15 settlement or historical development of the state [and

16 ~~(4) "special use trails" which are trails that~~  
17 ~~may provide uses also provided by scenic, recreation and~~  
18 ~~historical trails but which shall not be limited to such uses.~~  
19 ~~The secretary may designate special use trails in such~~  
20 ~~locations as he deems appropriate and may limit the use of such~~  
21 ~~trails to such special users as he determines. In designating~~  
22 ~~special use trails, the secretary shall give due regard to the~~  
23 ~~interests of users who have needs of a special nature which are~~  
24 ~~not fulfilled by other trail types comprising the state trails~~  
25 ~~system].~~

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1           B. State trails [~~shall~~] may be supplemented by  
2 support facilities deemed necessary and feasible by the  
3 secretary. These facilities shall comply with [~~health and~~]  
4 applicable department of environment [department] standards and  
5 regulations and with the federal Americans with Disabilities  
6 Act of 1990, as appropriate.

7           C. State trails shall:

8                   (1) traverse, provide access to or showcase  
9 areas and resources of outstanding significance, including  
10 areas of scientific, aesthetic, geologic, recreational,  
11 educational, natural or cultural value; and

12                   (2) provide recreational opportunities  
13 significant enough to assure patronage from a region or,  
14 preferably, from the state as a whole.

15           [~~G.~~] D. In [~~the~~] planning and [~~designation of~~]  
16 designating state trails, the secretary shall give due regard  
17 to the interests of federal or state agencies, tribal  
18 governments, counties, municipalities, private landowners and  
19 interested individuals and recreational and conservation  
20 organizations. In acquiring lands or interests in lands for  
21 the state trails system, consideration shall be given to  
22 minimizing adverse effects upon adjacent landowners. In  
23 acquiring lands or interests in lands for the state trails  
24 system, the secretary shall not use the power of eminent  
25 domain. The secretary shall give full consideration to the

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1 inclusion of trails from all categories within the system.

2 ~~[D. The secretary shall prescribe the uses and~~  
3 ~~limits of each type of trail.~~

4 ~~E. Separate trails may be established for motorized~~  
5 ~~vehicles but shall not be trails designated for horseback~~  
6 ~~riding, hiking or bicycling.~~

7 ~~F. Before making a final designation of any trail,~~  
8 ~~the secretary shall:~~

9 ~~(1) hold a public hearing after proper notice~~  
10 ~~within the affected county and area; and~~

11 ~~(2) as a result of the hearing, adopt a~~  
12 ~~finding approving or disapproving the trail based upon evidence~~  
13 ~~as to the adverse effects that the trail has on the holders of~~  
14 ~~any interest in the lands in the proximity of the trail.]~~

15 E. Prior to a trail being designated as a component  
16 of the state trails system, the secretary shall verify that its  
17 uses and limits meet the purposes of the State Trails System  
18 Act. State trails are not required to provide for and allow  
19 all types of uses on every state trail. Separate trails may be  
20 established for motorized vehicles. When motorized and  
21 non-motorized uses are permitted on the same trail, such trails  
22 shall be designed, constructed and managed so that motorized  
23 uses are not in conflict with horseback riding, hiking or  
24 bicycling.

25 F. Before designating a trail as a component of the

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1 state trails system, the secretary shall:

2 (1) hold a public meeting to receive comments  
3 on the proposed designation not less than thirty days after  
4 notice is published in a newspaper of general circulation in  
5 the county where the proposed trail to be designated is  
6 located, stating the date, location and purpose of the meeting;

7 (2) complete an analysis of the feasibility  
8 and suitability of the trail or trail segment as a state trail;  
9 and

10 (3) as a result of the feasibility and  
11 suitability analysis and the public meeting, either approve or  
12 disapprove the trail as a component of the state trails system  
13 based upon evidence as to the beneficial or adverse effects  
14 that the trail may have on anticipated users of the trail and  
15 holders of any interests in lands adjacent to the trail."

16 Section 5. Section 16-3-5 NMSA 1978 (being Laws 1973,  
17 Chapter 372, Section 6, as amended) is amended to read:

18 "16-3-5. SECRETARY [~~TO SUPERVISE PLANNING, CONSTRUCTION,~~  
19 ~~OPERATION AND MAINTENANCE OF TRAILS SYSTEM]~~--POWERS AND  
20 DUTIES.--

21 A. The secretary shall:

22 (1) adopt and regularly review and revise in  
23 accordance with the State Rules Act such rules [~~and~~  
24 ~~regulations~~] as may be necessary to carry into effect and  
25 enforce the provisions of the State Trails System Act

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1                   ~~[(2) plan, establish, acquire, purchase,~~  
2 ~~develop, construct, enlarge, improve, maintain, equip, operate,~~  
3 ~~protect and police the state trails system;~~

4                   ~~(3) acquire by lease, deed or contract rights~~  
5 ~~of way or easements for trails across private, municipal,~~  
6 ~~county, state or federal lands. In selecting the rights of~~  
7 ~~way, every consideration shall be given to minimizing the~~  
8 ~~adverse effects upon the adjacent landowner or user.~~

9 Acquisition shall be, wherever possible, in the form of an  
10 easement obtained by gift, exchange or purchase with donated  
11 funds. When such devices fail, the secretary may authorize the  
12 expenditure of state appropriations for acquisition in fee.

13 Any agreement for acquisition of rights in land shall be for  
14 terms of not less than twenty-five years whenever possible; and

15                   ~~(4) coordinate trail development by assisting~~  
16 ~~counties, municipalities and other political subdivisions in~~  
17 ~~the formation of their trail plans. In carrying out this~~  
18 ~~responsibility, the secretary shall review records of easements~~  
19 ~~and other interests in lands which are available for use as~~  
20 ~~trails, including public lands, utility easements, flood~~  
21 ~~plains, railroad rights of way, arroyos, other rights of way~~  
22 ~~and surplus public proprietary lands as may be adaptable for~~  
23 ~~such use, and shall ensure that uniform construction standards,~~  
24 ~~compatible with allowed usage, are made available to local~~  
25 ~~governments.~~

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1           ~~B. The secretary may abandon any portion or all of~~  
2 ~~a trail or easement acquired for trail purposes which is no~~  
3 ~~longer needed for such purposes, or he may transfer any trail~~  
4 ~~or easement to a local government having jurisdiction over the~~  
5 ~~area in which the trail or easement is located for so long as~~  
6 ~~the local government agrees to maintain and operate the trail.~~

7           ~~C. The secretary shall notify the owner of the land~~  
8 ~~through which any trail or easement passes prior to entering~~  
9 ~~into any agreement with a local government for the operation of~~  
10 ~~a trail and shall secure the consent of the landowner prior to~~  
11 ~~the transfer of any trail or easement to a local government.~~

12           ~~D. The secretary shall review all formal~~  
13 ~~declarations of railroad right-of-way abandonments by the~~  
14 ~~interstate commerce commission for possible inclusion into the~~  
15 ~~state trails system.~~

16           ~~E. Within the boundaries of a right of way, the~~  
17 ~~secretary may acquire on behalf of the state lands in fee~~  
18 ~~title, any interest in lands in the form of scenic or other~~  
19 ~~easements or any interest in lands under cooperative or other~~  
20 ~~agreement. Acquisition of land or of any interest in land may~~  
21 ~~be by gift, purchase, exchange or by the assumption of~~  
22 ~~obligations. Acquisition may be through the use of funds~~  
23 ~~obtained by donation, federal grants, proceeds of the sale of~~  
24 ~~bonds, legislative appropriation or otherwise. In acquiring~~  
25 ~~real property or any interest therein, the power of eminent~~

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1 ~~domain shall not be used.~~

2 ~~F. The secretary shall prepare and publish trail~~  
3 ~~plans and standards and make them available to participating~~  
4 ~~local governments and interested members of the public upon~~  
5 ~~request. The secretary shall also prepare a state trails map~~  
6 ~~and shall make copies available to members of the public upon~~  
7 ~~request.~~

8 ~~G. The secretary shall prepare and publish a~~  
9 ~~comprehensive intermediate and long-range state trails plan on~~  
10 ~~a continuing basis in accordance with the state comprehensive~~  
11 ~~outdoor recreation plan. Included in these plans shall be an~~  
12 ~~inventory of existing trails and potential trail routes on all~~  
13 ~~lands within the state. Such plans may include general routes~~  
14 ~~or corridors within which specific trails or segments of trails~~  
15 ~~may be considered for inclusion in the state trails system.~~

16 ~~H. The secretary shall annually submit a written~~  
17 ~~report on recreational, scenic, historical and special use~~  
18 ~~trails to the governor by December 31. Copies of the annual~~  
19 ~~reports shall be furnished to participating local governments~~  
20 ~~and shall be made available to interested members of the public~~  
21 ~~upon request] for designating trails as part of the state~~  
22 ~~trails system;~~

23 (2) encourage and promote the planning,  
24 establishment, acquisition, purchase, development,  
25 construction, enlargement, improvement, maintenance, operation

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1 and protection of the state trails system, alone or in  
2 conjunction with other governmental and nongovernmental  
3 entities;

4 (3) prior to the transfer of any trail or  
5 easement proposed for a designated state trail to a local,  
6 state, tribal or federal government, acquire the consent of the  
7 owner of the land on which a trail or easement is established;

8 (4) prepare a map of the state trails system  
9 and make copies available to members of the public upon  
10 request;

11 (5) prepare and publish a state trails system  
12 plan. Included in this plan shall be an inventory of existing  
13 designated state trails and potential state trail routes. The  
14 plan may include general routes or corridors within which  
15 specific trails or segments of trails may be considered for  
16 inclusion in the state trails system; and

17 (6) report annually to the governor on  
18 recreation, scenic and historic state trails that have been  
19 established. Copies of the report shall be made available to  
20 members of the public upon request.

21 B. The secretary may:

22 (1) acquire by lease, deed or contract land,  
23 or interests in land, including rights of way or easements, for  
24 the state trails system across private, municipal, county,  
25 state, tribal or federal lands. Acquisition shall be, wherever

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1 possible, in the form of an easement. The secretary may  
2 acquire land or interest in land in fee simple. Any agreement  
3 for acquisition of rights in land shall guarantee public access  
4 for not less than twenty-five years whenever possible;

5 (2) authorize the expenditure of state  
6 appropriations to plan, develop and manage potential or  
7 designated state trails located on private, local, county,  
8 state, tribal or federal lands;

9 (3) coordinate state trails system development  
10 by assisting counties, municipalities and other political  
11 subdivisions in the formation of their trail plans; and

12 (4) abandon any portion or all of a state  
13 trail or an easement acquired for the state trails system that  
14 is no longer needed for that purpose, or the secretary may  
15 transfer any state trail or easement to a local, state, tribal  
16 or federal government having jurisdiction over the area in  
17 which the state trail or easement is located for so long as the  
18 local, state, tribal or federal government agrees to maintain  
19 and operate the trail subject to the provisions of Section  
20 13-6-3 NMSA 1978."

21 Section 6. Section 16-3-6 NMSA 1978 (being Laws 1973,  
22 Chapter 372, Section 7, as amended) is amended to read:

23 "16-3-6. TRAILS ON FEDERAL LANDS--COORDINATION WITH  
24 NATIONAL TRAILS SYSTEM.--

25 A. The secretary may establish and designate state

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1     ~~[recreational]~~ recreation, scenic ~~[historical and special use]~~  
2     and historic trails on lands under the jurisdiction of a  
3     federal agency when, in the opinion of the federal agency and  
4     the secretary, such lands may be so developed under the  
5     provisions of federal law and the provisions of Section 16-3-4  
6     NMSA 1978.

7             B. Nothing in the State Trails System Act shall  
8     preclude a component of the state trails system from being a  
9     part of the national trails system. The secretary shall  
10    coordinate the state trails system with the national trails  
11    system and is directed to encourage and assist any federal  
12    studies for inclusion of New Mexico trails in the national  
13    trails system. The secretary may enter into written  
14    cooperative agreements for joint federal-state administration  
15    of any New Mexico component of the national trails system,  
16    provided that such agreements for administration of land uses  
17    are not less restrictive than those set forth in the State  
18    Trails System Act."

19             Section 7. Section 16-3-7 NMSA 1978 (being Laws 1973,  
20    Chapter 372, Section 8, as amended) is amended to read:

21             "16-3-7. VIOLATIONS--PENALTIES.--~~[Each]~~ A person is  
22    guilty of a misdemeanor who ~~[shall]~~:

23             A. willfully ~~[mutilate, deface or destroy]~~  
24    mutilates, defaces or destroys any guidepost, notice, ~~[tablet]~~  
25    sign, fence or other work ~~[which]~~ that is for the protection or

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1 ornamentation of any state trail;

2 B. [~~place~~] places along any trail or [~~affix~~]  
3 affixes to any object in the right of way, without a written  
4 license from the secretary, any word, character or device  
5 designed to advertise any business, trade, profession, article,  
6 thing, matter or event; or

7 C. [~~violate~~] violates any rule [~~or regulation~~]  
8 adopted by the secretary in accordance with the State Rules Act  
9 to regulate the use of and prevent damage to [~~lands within and~~  
10 ~~adjacent to~~] the state trails system."

11 Section 8. A new section of the State Trails System Act  
12 is enacted to read:

13 "[NEW MATERIAL] STATE TRAILS SYSTEM FUND CREATED.--The  
14 "state trails system fund" is created in the state treasury.  
15 The fund is a nonreverting fund, and income from investment of  
16 the fund shall be credited to the fund. The fund shall be  
17 administered by the energy, minerals and natural resources  
18 department, and money in the fund is appropriated to the  
19 energy, minerals and natural resources department to carry out  
20 the purposes of the State Trails System Act. Expenditures from  
21 the fund shall be by warrant of the secretary of finance and  
22 administration upon vouchers signed by the secretary of energy,  
23 minerals and natural resources or the secretary's authorized  
24 representative."