



The Legislature
of the
State of New Mexico

49th Legislature, 1st Session

LAWS 2009

CHAPTER 38

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 467, with emergency clause

Introduced by



EMERGENCY CLAUSE

CHAPTER 38

AN ACT

1
2 RELATING TO GAME AND FISH; PROVIDING FOR AUTHORITY FOR THE
3 CONTROL AND PREVENTION OF THE SPREAD OF AQUATIC INVASIVE
4 SPECIES IN NEW MEXICO; DECLARING AN EMERGENCY.

5
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

7 Section 1. A new section of Chapter 17, Article 4 NMSA
8 1978 is enacted to read:

9 "AQUATIC INVASIVE SPECIES CONTROL.--

10 A. Based on a determination of credible scientific
11 evidence, the director, after consulting with the secretary of
12 energy, minerals and natural resources and with the
13 concurrence of the director of the New Mexico department of
14 agriculture, is authorized to designate:

15 (1) species of exotic or nonnative animals
16 or plants as aquatic invasive species;

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

19 (3) specific requirements to decontaminate
20 conveyances and equipment.

21 B. Prior to entering any water body in the state,
22 the owner or person in control of a warning-tagged conveyance
23 or warning-tagged equipment or a conveyance or equipment that
24 has been in an infested water body in New Mexico or elsewhere
25 shall:

1 (1) have the conveyance or equipment
2 decontaminated by a person or entity approved by the director
3 to effect decontamination, and only the person legally
4 effecting the decontamination is authorized to remove a
5 warning tag; and

6 (2) provide certification by a person
7 legally authorized to effect decontamination that the
8 conveyance or equipment is free from infestation or otherwise
9 demonstrate compliance with the decontamination requirements
10 established by the director.

11 C. A law enforcement officer may impound a
12 conveyance or equipment if the person transporting the
13 conveyance or equipment refuses to submit to an inspection
14 authorized by this section and the officer has reason to
15 believe that an aquatic invasive species may be present, or if
16 the conveyance or equipment has a warning tag affixed and the
17 operator of the conveyance is attempting to enter a state
18 water body and cannot provide evidence that the conveyance or
19 equipment has been decontaminated. A law enforcement officer
20 shall take action to prevent equipment or conveyances believed
21 or known to contain an aquatic invasive species and warning-
22 tagged equipment or conveyances from entering a state water
23 body.

24 D. The impoundment of a conveyance or equipment
25 may continue for a reasonable period necessary to inspect and

1 decontaminate the conveyance or equipment.

2 E. Notwithstanding any provision to the contrary,
3 no motor vehicle that is drawing a conveyance shall be
4 impounded pursuant to this section.

5 F. Trained personnel of the department of game and
6 fish or the state parks division of the energy, minerals and
7 natural resources department may:

8 (1) establish, operate and maintain aquatic
9 invasive species check stations at or adjacent to the entrance
10 to any state-controlled water body or, pursuant to a
11 cooperative agreement, at or adjacent to any county, municipal
12 or federally or privately controlled water body or at or
13 adjacent to the exit point of an infested water body in order
14 to inspect conveyances and equipment prior to a conveyance or
15 equipment entering, being launched onto or being directly
16 exposed to water bodies of the state or upon the conveyance's
17 or equipment's departure from infested waters;

18 (2) affix a warning tag to equipment or a
19 conveyance where the presence of an aquatic invasive species
20 has been found; or

21 (3) affix a warning tag to a conveyance or
22 equipment upon the conveyance or equipment leaving an infested
23 water.

24 G. It is unlawful for a person to:

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

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

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

8 (4) introduce any tagged conveyance or
9 equipment or any equipment or conveyance from which a warning
10 tag has been unlawfully removed into a water body without
11 first having that conveyance or equipment decontaminated; or

12 (5) knowingly introduce into any water body
13 a conveyance or equipment that has been exposed to an infested
14 water body or a water body in any other state known to contain
15 aquatic invasive species without first being decontaminated.

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

21 I. The director or the director's designee shall
22 coordinate the monitoring of the water bodies of the state for
23 the presence of aquatic invasive species, including privately
24 controlled waters if the director has authorized access to
25 them or has received permission to monitor them from the

1 persons controlling access to such waters.

2 J. The commission is authorized to adopt rules
3 pursuant to Section 17-1-26 NMSA 1978, and the secretary of
4 energy, minerals and natural resources is authorized to adopt
5 rules pursuant to Section 16-2-32 NMSA 1978 as necessary to
6 implement and enforce the provisions of this section.

7 K. The director may enter into cooperative
8 agreements with any federal, state, county or municipal
9 authority or private entity that may be in control of a water
10 body potentially affected by aquatic invasive species.

11 L. As used in this section:

12 (1) "aquatic invasive species" means quagga
13 mussels and zebra mussels and other exotic or nonnative
14 aquatic animals, including invertebrates but excluding those
15 species listed as protected in Chapter 17 NMSA 1978, or any
16 plant or animal species whose introduction into an aquatic
17 ecosystem is determined by the director, after consulting with
18 the secretary of energy, minerals and natural resources and
19 with the concurrence of the director of the New Mexico
20 department of agriculture, to cause or be likely to cause harm
21 to the economy, environment or human health or safety;

22 (2) "commission" means the state game
23 commission;

24 (3) "conveyance" means a motor vehicle,
25 vessel, trailer or any associated equipment or containers,

1 including, but not limited to, live wells, fish-hauling tanks,
2 ballast tanks, motorized skis and bilge areas that may contain
3 or carry an aquatic invasive species or any other equipment by
4 which aquatic invasive species may be introduced into an
5 aquatic ecosystem;

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

10 (5) "director" means the director of the
11 department of game and fish;

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

16 (7) "infested water" means a geographic
17 region, water body or water supply system or facility within
18 the state that the director, after consulting with the
19 secretary of energy, minerals and natural resources and with
20 the concurrence of the director of the New Mexico department
21 of agriculture, identifies as carrying or containing an
22 aquatic invasive species;

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

1 (9) "law enforcement officer" means a state
2 or federal certified law enforcement officer;

3 (10) "trained personnel" means individuals
4 who have successfully completed the United States fish and
5 wildlife service's aquatic invasive species watercraft
6 inspection and decontamination training, level I or level II;

7 (11) "warning tag" means a tag that is
8 affixed to equipment or a conveyance upon the equipment or
9 conveyance leaving an infested water or upon an inspection
10 determining that the equipment or conveyance contains an
11 aquatic invasive species that requires the equipment or
12 conveyance to be decontaminated; and

13 (12) "water body" means a natural or
14 impounded surface water, including a stream, river, spring,
15 lake, reservoir, pond, wetland, tank or fountain."

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

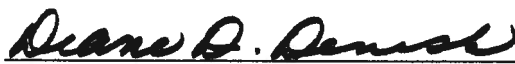
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BEN LUJAN, SPEAKER
HOUSE OF REPRESENTATIVES



STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES



DIANE D. DENISH, PRESIDENT
SENATE



LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this 31st day of March, 2009



BILL RICHARDSON, GOVERNOR
STATE OF NEW MEXICO