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HOUSE BILL 73

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

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO WILDLIFE; PROVIDING FOR TAKINGS OF COVERED SPECIES OR PREDATORS THAT THREATEN HUMAN LIFE OR PROPERTY; PROVIDING OPTIONS FOR ASSISTANCE TO REMEDY CURRENT OR POTENTIAL DAMAGE TO PROPERTY; PROVIDING LIMITATIONS; REQUIRING THE DEPARTMENT OF GAME AND FISH TO REQUEST GRANT ASSISTANCE FROM THE STATE BOARD OF FINANCE UNDER CERTAIN CIRCUMSTANCES; INCREASING THE BIG GAME DEPREDATION DAMAGE STAMP FEE; MAKING AN APPROPRIATION.

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

Section 1. Section 17-2-7.2 NMSA 1978 (being Laws 1997, Chapter 224, Section 3) is repealed and a new Section 17-2-7.2 NMSA 1978 is enacted to read:

"17-2-7.2. [NEW MATERIAL] PREDATOR TAKING--CONDITIONS-- DEPARTMENT RESPONSIBILITIES.--

A. As used in this section:

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1 (1) "commission" means the state game  
2 commission;

3 (2) "damage" means actual physical damage  
4 to property;

5 (3) "department" means the department of game  
6 and fish;

7 (4) "immediate" means an emergency situation  
8 in which imminent harm to human life, livestock or family pets  
9 is perceived to exist;

10 (5) "landowner" means a person that holds a  
11 verifiable fee interest or interest under a land sale contract  
12 in real property in New Mexico and includes an employee or  
13 agent of the landowner;

14 (6) "lessee" means a person that is in  
15 possession of private, state or federal land under the terms of  
16 a lease, occupancy agreement or other documentation between the  
17 lessee and the landowner and includes an employee or agent of  
18 the lessee;

19 (7) "livestock" means all domestic or  
20 domesticated animals that are used or raised on a farm or ranch  
21 and exotic animals in captivity and includes horses, asses,  
22 mules, cattle, sheep, goats, swine, bison, poultry, ostriches,  
23 emus, rheas, camelids and farmed cervidae upon any land in New  
24 Mexico. "Livestock" does not include canine or feline animals;

25 (8) "predator" means bears, cougars or

1 bobcats;

2 (9) "property" means:

3 (a) private land or leased state or  
4 public land on which cultivated crops are growing;

5 (b) harvested and stored crops;

6 (c) seed crops purposefully grown for  
7 cultivation;

8 (d) fences intended to keep livestock  
9 away from cultivated crops, seed crops, irrigation and water  
10 supply systems, forage cultivated or grown to be mechanically  
11 harvested and fed to livestock or sold or fruit or nut  
12 orchards;

13 (e) irrigation and water supply systems;

14 (f) forage cultivated or grown to be  
15 mechanically harvested and fed to livestock or sold; and

16 (g) fruit or nut orchards; and

17 (10) "ungulate" means elk, deer, antelope or  
18 oryx.

19 B. A landowner, lessee or any other person may take  
20 or kill a predator that presents an immediate threat to human  
21 life, livestock or family pets; provided that the taking or  
22 killing is reported to the department within twenty-four hours.  
23 The department shall determine disposition of the predator  
24 carcass. Nothing in this subsection authorizes a taking in  
25 violation of the Wildlife Conservation Act.

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1 C. A landowner or lessee may request assistance  
2 from the department in remedying current damage or preventing  
3 reasonably anticipated damage to property caused by ungulates.  
4 The request shall be made in writing or to a toll-free  
5 telephone number provided by the department. Within twenty-  
6 four hours of receipt of a request for assistance, the  
7 department shall consult with the complainant and make  
8 arrangements to conduct an on-site investigation of the request  
9 for assistance. As soon as reasonably possible, but no later  
10 than fourteen days following the investigation, the department  
11 shall offer the following options if the department determines  
12 that damage is occurring or is reasonably expected to occur:

13 (1) for option 1, pursuant to agreement, the  
14 department shall provide materials, as listed in this  
15 paragraph, to modify existing fences to minimize damage caused  
16 by the species involved. The landowner or lessee shall be  
17 responsible for installation or construction:

18 (a) for pronghorn antelope, thirty-six-  
19 inch high net wire to cover the distance necessary to minimize  
20 damage caused by this species; and

21 (b) for deer, elk or oryx, eight-foot  
22 high net wire to cover the distance necessary to minimize the  
23 damage caused by these species and ten-foot T-posts, wooden  
24 posts or pipe required to support wire at no greater than  
25 fifty-foot spacing and constructed corner and line bracing as

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1 necessary and reasonable; and

2 (2) for option 2, the department and landowner  
3 or lessee shall enter into a cost-share agreement by which the  
4 landowner or lessee completes fence modification, application  
5 of fertilizer, reseeding, irrigation system improvements or  
6 similar action approved by the department that result in  
7 continued access and benefit to wildlife while increasing  
8 productivity of property or reducing property maintenance  
9 costs. The landowner's or lessee's actual costs incurred under  
10 the agreement shall be reimbursed at a rate for such period of  
11 time and under such other terms and conditions as contained in  
12 the agreement.

13 D. A landowner or lessee that selects option 1  
14 shall be responsible for all maintenance of the modified fence  
15 for a period of fifteen years and shall not submit a request  
16 for additional assistance or materials for the protected  
17 acreage during this period. Option 1 shall not be available to  
18 a landowner or lessee that, during the period of seven years  
19 preceding the claimed damage, has received state or federal  
20 funds for use in the improvement or management of the real  
21 property for enhancement of the real property as habitat for  
22 the damaging species of wildlife. Option 1 shall not be  
23 available to a lessee without the landowner entering into an  
24 agreement as provided in Paragraph (1) of Subsection C of this  
25 section.

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1           E. The landowner or lessee shall be required to  
2 demonstrate that materials or funding supplied by the  
3 department were used pursuant to specifications in the  
4 agreement and were not used for any other purpose. If it is  
5 determined that materials or funding were used for purposes  
6 other than their intended use, the landowner shall reimburse  
7 the department for the purchase costs of the materials or funds  
8 that were diverted.

9           F. If the department determines that the cost of  
10 material purchases and cost-share reimbursements during any  
11 fiscal year will exceed the amount appropriated from the big  
12 game depredation damage fund for that fiscal year, the  
13 department shall request a grant from the state board of  
14 finance sufficient to purchase materials and pay reimbursements  
15 for agreements approved by the department for the balance of  
16 that fiscal year. If a grant request is denied, the provision  
17 of materials or reimbursement under existing agreements shall  
18 be made at the beginning of the next fiscal year subject to  
19 availability of money in the big game depredation damage fund.

20           G. Neither the department nor any other state  
21 agency is obligated to purchase materials or pay reimbursements  
22 in any cumulative amount exceeding the amount available for  
23 such purchases or reimbursements from the big game depredation  
24 damage fund.

25           H. A landowner or lessee may request assistance

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1 from the department in addressing current damage or preventing  
2 reasonably anticipated future damage to property caused by  
3 protected species other than ungulates. The request shall be  
4 made in writing or to a toll-free telephone number provided by  
5 the department. Within twenty-four hours of receipt of a  
6 request for assistance, the department shall consult with the  
7 complainant and make arrangements to conduct an on-site  
8 investigation of the request for assistance. As soon as  
9 reasonably possible, but no later than fourteen days following  
10 the investigation, the department shall offer technical  
11 guidance to address the complaint or other assistance deemed  
12 appropriate by the department to deter future damage other than  
13 the assistance described as option 1 or option 2 in Subsection  
14 C of this section. Such assistance shall not include  
15 construction of or provision of material for the construction  
16 of game-resistant fences.

17 I. The commission shall establish rules to  
18 implement the provisions of this section."

19 Section 2. Section 17-3-13.3 NMSA 1978 (being Laws 2001,  
20 Chapter 213, Section 1) is amended to read:

21 "17-3-13.3. BIG GAME DEPREDATION DAMAGE STAMP REQUIRED--  
22 DISPOSITION OF RECEIPTS.--

23 A. Each license to hunt big game shall include a  
24 big game depredation damage stamp. The department of game and  
25 fish shall, by rule, set the fee for the stamp; provided that

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1 the fee shall not exceed [~~five dollars (\$5.00)~~] six dollars  
2 (\$6.00) for each resident license or [~~ten dollars (\$10.00)~~]  
3 twenty dollars (\$20.00) for each nonresident license.

4 B. No license to hunt big game shall be considered  
5 to be a proper and valid license unless it indicates, by a  
6 stamp, check off or other official mark, that the fee for the  
7 big game depredation damage stamp has been paid.

8 C. Revenues received by the department of game and  
9 fish from the sale of big game depredation damage stamps shall  
10 be deposited to the credit of the big game depredation damage  
11 fund."

12 Section 3. EFFECTIVE DATE.--The effective date of the  
13 provisions of Section 2 of this act is April 1, 2011.