

**WOLF MANAGEMENT**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Allen M. Christensen**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill provides a policy for the presence of wolves in the state.

**Highlighted Provisions:**

This bill:

- ▶ defines "wolf";
- ▶ declares the policy of the state to destroy or remove all wolves;
- ▶ requires the Division of Wildlife Resources to capture or kill any wolf found in the state;
- ▶ allows the division to authorize a person to capture or kill a wolf; and
- ▶ allows the division to make administrative rules, in accordance with Title 63G,

Chapter 3, Utah Administrative Rulemaking Act.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**23-29-101**, Utah Code Annotated 1953

**23-29-102**, Utah Code Annotated 1953

**23-29-103**, Utah Code Annotated 1953



28 23-29-201, Utah Code Annotated 1953

29 23-29-202, Utah Code Annotated 1953



31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section 23-29-101 is enacted to read:

33 **CHAPTER 29. WOLF MANAGEMENT ACT**

34 **Part 1. General Provisions**

35 **23-29-101. Title.**

36 This chapter is known as the "Wolf Management Act."

37 Section 2. Section 23-29-102 is enacted to read:

38 **23-29-102. Definitions.**

39 As used in this chapter, "wolf" means the species *Canis lupus*.

40 Section 3. Section 23-29-103 is enacted to read:

41 **23-29-103. Policy.**

42 The wolf is a predator and its presence in the state threatens the state's wildlife and  
43 ungulate populations, therefore, it is the policy of the state that the wolf shall be destroyed or  
44 removed from the state.

45 Section 4. Section 23-29-201 is enacted to read:

46 **Part 2. Wolf Management**

47 **23-29-201. Destruction or removal of wolves -- Delegation of authority.**

48 (1) The division shall capture or kill any wolf it discovers in the state, except for a wolf  
49 lawfully held in captivity.

50 (2) The division may authorize a person to capture or kill a wolf discovered in the  
51 state.

52 (3) (a) The division shall remove from the state a wolf captured in accordance with  
53 Subsection (1) or (2).

54 (b) In fulfilling its duty under Subsection (3)(a), the division may seek assistance from  
55 another state or federal authority to remove the wolf.

56 Section 5. Section 23-29-202 is enacted to read:

57 **23-29-202. Rulemaking.**

58 In administering this chapter, the division may make administrative rules, in accordance

59 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to authorize a person to  
 60 capture or kill a wolf, including:

61 (1) permit or license requirements;

62 (2) provisions for a landowner's capture or killing of a wolf; and

63 (3) removal requirements.

**Legislative Review Note**  
 as of 12-31-09 8:07 AM

As required by legislative rule and practice, the Office of Legislative Research and General Counsel provides the following legislative review note to assist the Legislature in making its own determination as to the constitutionality of the bill. The note is based on an analysis of relevant state and federal constitutional law as applied to the bill. The note is not written for the purpose of influencing whether the bill should become law, but is written to provide information relevant to legislators' consideration of this bill. The note is not a substitute for the judgment of the judiciary, which has authority to determine the constitutionality of a law in the context of a specific case.

This bill has a high probability of being held to be unconstitutional under the Supremacy Clause to the United States Constitution because federal law and regulations prohibit conduct allowed by this bill. See 16 U.S.C. § 1531 *et seq.* (Endangered Species Act); 50 C.F.R., Chapter I, Subchapter B, Part 17, Endangered and Threatened Wildlife and Plants. Among other things, the federal Endangered Species Act and federal regulations prohibit the killing or unauthorized capture of an animal listed as endangered by the federal Fish and Wildlife Service. This bill provides for the killing or capture and transfer of a wolf found anywhere in Utah. While the wolf is not listed as an endangered species for the northeastern portion of the state, it remains listed as an endangered species for the majority of the state. It is highly likely that a court, faced with determining the constitutionality of this bill, would find that it violates the Supremacy Clause by authorizing acts prohibited by federal law in those areas of the state where wolves remain listed as an endangered species.

The federal Endangered Species Act has been held to be a valid exercise of Congress's power under the Commerce Clause of the United States Constitution, even in circumstances where the species protected is found wholly within one state. GDF Realty Investments, Ltd. v. Norton, 326 F.3d 622 (5th Cir. 2003). Thus, the provisions of the Endangered Species Act and related regulations prevail over contradictory state law. See, e.g. City of New York v. FCC, 486 U.S. 57, 64 (1988) (stating that regulations authorized by federal statute preempt contradictory state law). For this reason, this bill has a high probability of being held to be unconstitutional.

**Office of Legislative Research and General Counsel**

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**S.B. 36 - Wolf Management**

**Fiscal Note**

2010 General Session  
State of Utah

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**State Impact**

Implementation of this bill could require an ongoing appropriation of as much as \$39,500 from the General Fund to the Division of Wildlife Resources depending upon the method of wolf management pursued. The Legislative General Counsel has attached a detailed Legislative Review Note to this bill. If provisions in the bill are challenged in court, there will be costs associated with defending those provisions.

	<u>FY 2010 Approp.</u>	<u>FY 2011 Approp.</u>	<u>FY 2012 Approp.</u>	<u>FY 2010 Revenue</u>	<u>FY 2011 Revenue</u>	<u>FY 2012 Revenue</u>
General Fund	\$0	\$39,500	\$39,500	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>\$39,500</b>	<b>\$39,500</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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