

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Jennings DATE TYPED 3/4/05 HB _____

SHORT TITLE Notice Requirements for Criminal Trespass SB 437/aSJC

ANALYST Medina

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Partially duplicates HB 189

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AGO)
 Administrative Office of the District Attorneys (AODA)
 Administrative Office of the Courts (AOC)
 Corrections Department (NMCD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment restores requirement of the sufficient notice to the public concerning criminal trespass to “posting of the property at all vehicular entryways”, eliminating the provision that fencing or other enclosure obviously designed to exclude intruders or contain livestock be considered adequate public notice of criminal trespass.

The amendment clarifies that government lands include state trust lands. In further regard to “notice”, the amendment requires that posted notice signs be placed at the entrance of a building, property, or fences. Regarding the placement of orange paint marks on trees to provide notice of trespass, the amendment increases the minimum required dimensions of the orange marks from eight inches in length to ten and from one inch in width to two. The amendment also considers the placement of orange steel fence posts as adequate notice of trespass.

Synopsis of Original Bill

Senate Bill 437 amends Sections 30-14-1, 30-14-1.1, and 30-14-6 NMSA 1978 relating to the technical posting requirements for no trespassing notices, making it easier to post private property while still abiding by criminal trespass law and the wrongful posting of public lands law. This bill expands the definition of criminal trespass to include “fenced” private property, in addition to “posted” private property. It further deletes the requirement to post “notice of no consent” at all vehicular access entry ways, and replaces it with the need to issue written communication or by the existence of fencing or other enclosure obviously designed to exclude intruders or contain livestock.

This bill further replaces the section of statute relating to the requirements for posting a written notice with one detailing several mechanisms by which to provide notice. This language is replaced by language providing for acceptable forms of notice. Notice is defined to include written communication by the owner, fencing or other enclosure, a posted sign on the property, or the placement of identifying orange paint marks on trees.

Significant Issues

This bill expands the means by which a property owner can provide notice of no consent for entering private property. Rather than place the responsibility solely on the property owner for clear signs posted at every vehicular entry way, this bill changes the notice provisions to allow posting by written communication as well as the placement of fencing or signs in places likely to be seen by visitors; and adds a new posting technique which uses vertical stripes of orange paint placed on trees and sign posts at certain heights and intervals.

According to the Attorney General’s Office, this provision may prove difficult to enforce because the crime of criminal trespass, as defined by the New Mexico Supreme Court in its Uniform Jury Instruction 14-402, requires that the defendant “knew or should have known” that permission to enter had been denied. When property is posted by signs proclaiming it closed that is relatively easy to prove; however, the use of orange paint would require proving that the defendant knew or should have known the meaning of the paint stripes, which could be very difficult to prove and would depend on the widespread understanding of the significance of such stripes.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The sections of this bill relating to criminal trespass, types of trespass, and no trespassing notice duplicate language in HB 819. However, HB 819 also includes a rewrite of Unlawful Hunting and Fishing (Section 17-2-7 NMSA 1978).

TECHNICAL ISSUES

Although fencing, sign posting, and the placement orange paint are all defined and it is evident how a property owner can issue notice of criminal trespass by these means, the bill is not clear on how written communication from the property owner, lessee, or his agent is to be transmitted to provide notice of criminal trespass.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The technical posting requirements for no trespassing notices will not change.

DXM/lg:yr