

HOUSE HEALTH, GOVERNMENT AND INDIAN  
AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 382

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO STATE PARKS; AMENDING AND ENACTING SECTIONS OF THE  
NMSA 1978 TO PROVIDE FOR PENALTIES UNDER THE BOAT ACT;  
PROVIDING FOR PENALTY ASSESSMENT MISDEMEANORS IN STATE PARKS.

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

SECTION 1. A new section of Chapter 16, Article 2 NMSA  
1978 is enacted to read:

"NEW MATERIAL] STATE PARKS DIVISION PENALTY ASSESSMENT  
MISDEMEANORS--DEFINITION--SCHEDULE OF ASSESSMENTS.--

A. As used in Chapter 16, Article 2 NMSA 1978,  
"penalty assessment misdemeanor" means a violation of any rule  
of the state parks division of the energy, minerals and natural  
resources department promulgated pursuant to Chapter 16,  
Article 2 NMSA 1978.

B. The term "penalty assessment misdemeanor" does  
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underscored material = new  
[bracketed material] = delete

1 not include a violation that has caused or contributed to the  
2 cause of an accident resulting in injury or death to a person  
3 or disappearance of a person, nor does it include a violation  
4 of Section 16-2-32 NMSA 1978.

5 C. Whenever a person is arrested for violation of a  
6 penalty assessment misdemeanor, the arresting officer shall  
7 advise the person of the option either to accept the penalty  
8 assessment and pay it to the court or to appear in court. The  
9 arresting officer, using a uniform non-traffic citation, shall  
10 complete the information section, prepare the penalty  
11 assessment and prepare a notice to appear in court specifying  
12 the time and place to appear. The arresting officer shall have  
13 the person sign the citation as a promise either to pay the  
14 penalty assessment as prescribed or to appear in court as  
15 specified, give a copy of the citation to the person and  
16 release the person from custody. An officer shall not accept  
17 custody of payment of any penalty assessment.

18 D. The arresting officer may issue a warning  
19 notice, but shall fill in the information section of the  
20 citation and give a copy to the arrested person after requiring  
21 a signature on the warning notice as an acknowledgment of  
22 receipt. No warning notice issued under this section shall be  
23 used as evidence of conviction for purposes of Subsection L of  
24 this section.

25 E. In order to secure release, the arrested person

1 must give a written promise to appear in court or to pay the  
2 penalty assessment prescribed or to acknowledge receipt of a  
3 warning notice.

4 F. The magistrate court or metropolitan court in  
5 the county where the alleged violation occurred has  
6 jurisdiction for any case arising from a penalty assessment  
7 misdemeanor issued for violation of a rule of the state parks  
8 division promulgated pursuant to Chapter 16, Article 2 NMSA  
9 1978.

10 G. A penalty assessment citation issued by a law  
11 enforcement officer shall be submitted to the appropriate  
12 magistrate or metropolitan court within three business days of  
13 issuance. If the citation is not submitted within three  
14 business days, it may be dismissed with prejudice.

15 H. It is a misdemeanor for any person to violate a  
16 written promise to pay the penalty assessment or to appear in  
17 court given to an officer upon issuance of a citation  
18 regardless of the disposition of the charge for which the  
19 citation was issued.

20 I. A citation with a written promise to appear in  
21 court or to pay the penalty assessment is a summons. If a  
22 person fails to appear or to pay the penalty assessment by the  
23 appearance date, a warrant for failure to appear may be issued.

24 J. A written promise to appear in court may be  
25 complied with by appearance of counsel.

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1           K. When an alleged violator of a penalty assessment  
2 misdemeanor elects to appear in court rather than to pay the  
3 penalty assessment to the court, no fine imposed upon later  
4 conviction shall exceed the penalty assessment established for  
5 the particular penalty assessment misdemeanor.

6           L. The penalty assessment for a first violation of  
7 any rule of the state parks division promulgated to Chapter 16,  
8 Article 2 NMSA 1978 is thirty dollars (\$30.00). This penalty  
9 assessment is in addition to any magistrate or metropolitan  
10 court costs as provided in Subsection B of Section 35-6-4 NMSA  
11 1978. Upon a second conviction or acceptance of a notice of  
12 penalty assessment for violation of any rule of the state parks  
13 division promulgated pursuant to Chapter 16, Article 2 NMSA  
14 1978, the penalty assessment shall be fifty dollars (\$50.00).  
15 Upon a third or subsequent conviction or acceptance of a notice  
16 of penalty assessment, the penalty assessment shall be one  
17 hundred fifty dollars (\$150)."

18           **SECTION 2.** Section 16-2-32 NMSA 1978 (being Laws 1935,  
19 Chapter 57, Section 19, as amended) is amended to read:

20           "16-2-32. CRIMINAL OFFENSES--PENALTY.--A person who  
21 commits any of the following acts is guilty of a petty  
22 misdemeanor and shall be sentenced in accordance with the  
23 provisions of Section 31-19-1 NMSA 1978:

24           A. cut, break, injure, destroy, take or remove a  
25 tree, shrub, timber, plant or natural object in any state park

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1 and recreation area, except in areas designated by the  
2 secretary and permitted by [~~regulations~~] rules adopted by the  
3 secretary. Such [~~regulations~~] rules shall only permit the  
4 removal of a tree, shrub, timber, plant or natural object for  
5 scientific study or for noncommercial use by an individual as a  
6 souvenir. The quantity of material authorized for removal from  
7 any area shall be strictly regulated by park personnel in order  
8 to minimize resource damage;

9 B. kill, cause to be killed or pursue with intent  
10 to kill a bird or animal in a state park and recreation area,  
11 except in areas designated by the secretary and except in  
12 conformity with the provisions of general law and the  
13 [~~regulations~~] rules of the state game commission;

14 C. take a fish from the waters of a state park and  
15 recreation area, except in conformity with the provisions of  
16 general law and the [~~regulations~~] rules of the state game  
17 commission;

18 D. willfully mutilate, injure, deface or destroy  
19 any guidepost, notice, tablet, fence, enclosure or work that is  
20 for the protection or ornamentation of a state park and  
21 recreation area;

22 E. light a fire in a state park and recreation  
23 area, except in those places authorized for fires by the  
24 secretary, or willfully or carelessly permit any fire [~~which~~]  
25 that is authorized and that [~~he~~] the person has lighted or

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1 caused to be lighted or under [~~his~~] the person's charge to  
2 spread or extend to or burn the shrubbery, trees, timber,  
3 ornaments or improvements in a state park and recreation area  
4 or leave a campfire that [~~he~~] the person has lighted or that  
5 has been left in [~~his~~] the person's charge unattended by a  
6 competent person without extinguishing it;

7 F. place in a state park and recreation area or affix  
8 to an object in a state park and recreation area a word,  
9 character or device designed to advertise a business,  
10 profession, article, thing, exhibition, matter or event without  
11 a written license from the secretary permitting [~~him~~] the  
12 person to do it; or

13 G. violate a rule [~~or regulation~~] adopted by the  
14 secretary pursuant to the provisions of Chapter 16, Article 2  
15 NMSA 1978 when the violation has caused or contributed to the  
16 cause of an accident resulting in injury or death to a person  
17 or disappearance of a person."

18 SECTION 3. Section 66-12-23 NMSA 1978 (being Laws 1963,  
19 Chapter 45, Section 9, as amended) is amended to read:

20 "66-12-23. PENALTIES.--

21 A. Except for penalty provisions provided in  
22 Subsections B through M of this section, a person who violates  
23 a provision of the Boat Act or a [~~regulation~~] rule of the state  
24 parks division of the energy, minerals and natural resources  
25 department promulgated pursuant to that act is guilty of a

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1 petty misdemeanor and shall be sentenced pursuant to the  
2 provisions of Section 31-19-1 NMSA 1978.

3 B. As used in Chapter 66, Article 12 NMSA 1978,  
4 "penalty assessment misdemeanor" means a violation of Section  
5 66-12-7, 66-12-7.1, 66-12-10 or 66-12-14 NMSA 1978 or a rule of  
6 the division promulgated pursuant to those sections.

7 C. The term "penalty assessment misdemeanor" does not  
8 include a violation that has caused or contributed to the cause  
9 of an accident resulting in injury or death to a person or  
10 disappearance of a person.

11 D. Whenever a person is arrested for violation of a  
12 penalty assessment misdemeanor, the arresting officer shall  
13 advise the person of the option either to accept the penalty  
14 assessment and pay it to the court or to appear in court. The  
15 arresting officer, using a uniform non-traffic citation, shall  
16 complete the information section, prepare the penalty  
17 assessment and prepare a notice to appear in court specifying  
18 the time and place to appear. The arresting officer shall have  
19 the person sign the citation as a promise either to pay the  
20 penalty assessment as prescribed or to appear in court as  
21 specified, give a copy of the citation to the person and  
22 release the person from custody. An officer shall not accept  
23 custody of payment of any penalty assessment.

24 E. The arresting officer may issue a warning notice,  
25 but shall fill in the information section of the citation and

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1 give a copy to the arrested person after requiring a signature  
2 on the warning notice as an acknowledgment of receipt. No  
3 warning notice issued under this section shall be used as  
4 evidence of conviction for purposes of Subsection M of this  
5 section.

6 F. In order to secure release, the arrested person  
7 must give a written promise to appear in court or to pay the  
8 penalty assessment prescribed or to acknowledge receipt of a  
9 warning notice.

10 G. The magistrate court or metropolitan court in the  
11 county where the alleged violation occurred has jurisdiction  
12 for any case arising from a penalty assessment misdemeanor  
13 issued for violation of Section 66-12-7, 66-12-7.1, 66-12-10 or  
14 66-12-14 NMSA 1978 or a rule of the division promulgated  
15 pursuant to those sections.

16 H. A penalty assessment citation issued by a law  
17 enforcement officer shall be submitted to the appropriate  
18 magistrate or metropolitan court within three business days of  
19 issuance. If the citation is not submitted within three  
20 business days, it may be dismissed with prejudice.

21 I. It is a misdemeanor for any person to violate a  
22 written promise to pay the penalty assessment or to appear in  
23 court given to an officer upon issuance of a citation  
24 regardless of the disposition of the charge for which the  
25 citation was issued.

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1           J. A citation with a written promise to appear in  
2 court or to pay the penalty assessment is a summons. If a  
3 person fails to appear or to pay the penalty assessment by the  
4 appearance date, a warrant for failure to appear may be issued.

5           K. A written promise to appear in court may be  
6 complied with by appearance of counsel.

7           L. When an alleged violator of a penalty assessment  
8 misdemeanor elects to appear in court rather than to pay the  
9 penalty assessment to the court, no fine imposed upon later  
10 conviction shall exceed the penalty assessment established for  
11 the particular penalty assessment misdemeanor.

12           M. The penalty assessment for a first violation of  
13 Section 66-12-7, 66-12-7.1, 66-12-10 or 66-12-14 NMSA 1978 or  
14 any rule of the division promulgated pursuant to those sections  
15 is thirty dollars (\$30.00). This penalty assessment is in  
16 addition to any magistrate or metropolitan court costs as  
17 provided in Subsection B of Section 35-6-4 NMSA 1978. Upon a  
18 second conviction or acceptance of a notice of penalty  
19 assessment for violation of Section 66-12-7, 66-12-7.1,  
20 66-12-10 or 66-12-14 NMSA 1978 or any rule of the division  
21 promulgated pursuant to those sections, the penalty assessment  
22 shall be fifty dollars (\$50.00). Upon a third or subsequent  
23 conviction or acceptance of a notice of penalty assessment, the  
24 penalty assessment shall be one hundred fifty dollars (\$150)."