

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Section 1 is new material entitled “Unlawful Squatting” to be added to Chapter 30, Article 14.

Subsection A provides that a person who enters unto the real property of another and resides on such property “for any period of time without the knowledge or consent or the property owner, rightful occupant or authorized representative of the property owner” is guilty of unlawful squatting.

Subsection B provides that the crime is a fourth degree felony.

Section 2 amends Section 30-14-1.1 entitled “Types of Trespass – Injury to Realty – Civil Damages” to add to the title the phrase “Civil Damages for Unlawful Squatting”

Subsection D is amended to change “he” to “that person.”

Subsection E is added as new material that anyone who commits the offense of unlawful squatting and injures or damages any part of the realty of its improvements, “including buildings, structures, trees, shrubs or other natural features” shall be liable to the owner for damages in an amount “equal to two times the amount of the appraised value of the damage of” the property destroyed.

Section 3 is new material entitled “Unlawful Squatter - Citation – Contesting a Citation” of Chapter 31 NMSA 1978

Subsection A provides that a person who commits or is accused of committing unlawful squatting “shall receive a citation” advising the person that they may present documentation that authorizes their entry onto the land or premises to the head of the issuing law enforcement agency within three business days of receiving the citation. If the person is unable to present any such documentation, then the person is subject to arrest for the crime of unlawful squatting.

Subsection B provides that the documentation may include a valid lease or rental agreement, proof of rental payments, or a deed of real property in the name of the accused person.

Subsection C provides that nothing in this section shall prohibit a property owner from shutting off the utilities.

Section 4 is new material entitled “Removal of an Unlawful Squatter from Possession of Real Property – Affidavit – Opportunity to Present a Counter Affidavit – Trial – Damages” of Chapter 42 NMSA 1978 (“Actions and Proceedings Relating to Property”)

Subsection A provides that a person claiming ownership to the property shall present an affidavit to a local law enforcement officer and that officer shall present it to the person allegedly squatting at least three days prior to turning that person out of possession, unless the alleged squatter tenders a counter affidavit stating a good faith claim to the property.

Subsection B provides that if such a counter affidavit is presented to law enforcement, the officer shall not turn that person out of the property and will return both affidavits to the district court clerk in preparation for a nonjury trial.

Subsection C provides that if the district court determines that the affidavit is not meritorious “based on the preponderance of the evidence”, then law enforcement shall turn the person out of possession of the property as soon as practicable pursuant to a writ of possession.

Subsection D provides that the court may award the plaintiff the fair market value of rent for the duration of the unlawful occupancy and other monetary relief found appropriate. A party may appeal the decision which “shall be directly appealable but shall not be subject to de novo review by the New Mexico supreme court.”

Subsection E provides that if the court finds for the plaintiff, the clerk shall issue a writ of possession under Section 42-4-12 and award costs of the proceeding and other monetary relief awarded by the court. The plaintiff and the court are authorized to present the final order to law enforcement for investigation or prosecution.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

Both the criminal and civil parts of this bill could increase workloads for prosecutors’ offices, the courts, and the public defender’s office which could require additional funding for staff, training, or IT resources.

SIGNIFICANT ISSUES

It is unclear if Section 4 is meant to be a precedent condition to charging someone criminally with unlawful squatting, given that the last line of Section 4, subsection E says “[t]he plaintiff and the court shall be authorized to present the final order to law enforcement for investigation or prosecution” or if someone can be charged criminally with squatting without this removal procedure first.

Subsection D, regarding the appeal of a removal under Section 4 is also somewhat unclear. It is unclear what is meant by not being subject to “de novo review” (which generally refers to the appellate court deciding the issue without giving deference to the district court) and why the appeal would be taken to the Supreme Court, rather than the Court of Appeals. If the drafters intended the appellate court to defer to the district court, a better way to phrase it would be to indicate that the appellate standard of review is to be “abuse of discretion.”

Section 1 also contains no mens rea for the felony crime of squatting. That is, there is no language that the person trespass “knowingly” on another’s property. This crime is designated as a fourth degree felony which carries a potential prison sentence of 18 months and contains a specific provision for a compulsory fine. It is possible that the courts could decline to read the statute as one of strict liability, and construe the crime to require an intent element. *See e.g. State v. Ramos*, 2013-NMSC-031, ¶ 21 (holding that although not expressly stated in the statute, the crime of violating a protection order requires proof that the defendant knew of the order and of the protected person’s presence within the protected zone); *State v. Nozie*, 2009-NMSC-018, ¶ 30 (knowledge that the victim is a police officer is an essential element of aggravated battery on an officer, although not expressly stated in the statute). *State v. Valino*, 2012-NMCA-105, ¶¶ 15, 17 (same for battery on a health care worker).

PERFORMANCE IMPLICATIONS

n/a

ADMINISTRATIVE IMPLICATIONS

n/a

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

n/a

OTHER SUBSTANTIVE ISSUES

n/a

ALTERNATIVES

n/a

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

n/a