

LFC Requester:

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment** _____
Correction **Substitute** _____

Date February 10, 2025
Bill No: HB 332-280

Sponsor: Catherine J. Cullen
Rod Montoya
Jonathan A. Henry
Short Title: Unlawful Squatting

Agency Name and Code Number: LOPD-280
Person Writing: Kim Chavez Cook
Phone: 505-395-2822 **Email:** Kim.ChavezCook@lopdm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **SB 153** (creating a home invasion crime); **SB 228** (expanding burglary to retail stores open to the public)

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Section 1 of HB 332 seeks to create a new fourth-degree felony for “squatting,” described as “enter[ing] upon the real property of another and resid[ing] on such real property for any period of time without the knowledge or consent of the property owner, rightful occupant or authorized representative of the property owner.”

Section 2 would separately authorize **double** civil damages for any damage the occupancy caused to real property, including to natural features.

Section 3 would provide a citation process giving individuals an opportunity to present documentation authorizing their presence.

Section 4 would provide a process for seeking law enforcement assistance in removing a squatter from real property, as well as a civil award of the fair market value of rent “for the duration of the unlawful squatter’s occupancy.”

FISCAL IMPLICATIONS

It is difficult to predict the number of cases of this sort that would be brought in any given year, but based on the nature of the targeted conduct, any prosecutions are likely to involve an indigent defendant, so it stands to reason that LOPD would handle 100% of the criminal cases filed. Critically, LOPD representation would not extend to proceedings seeking civil damages, either for “market value rent” or actual damages. As in landlord-tenant disputes, Legal Aid non-profits can occasionally represent indigent defendants to such civil claims, but resources would surely be strained by the increase in such cases.

Barring some other way to reduce indigent defense workload, any increase in the number of felony prosecutions would bring a concomitant need for an increase in indigent defense funding in order to keep this problem from spreading. Of course accurate prediction of the fiscal impact would be impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed statutory scheme.

As a felony, these prosecutions could lead to an increase in incarceration rates, which would increase costs and population in Department of Corrections.

SIGNIFICANT ISSUES

This conduct is already a crime. Indeed, HB 332 uses almost the exact same language as the existing crime of trespass. If a person enters on private land without permission, it is misdemeanor trespass, which specifically includes entering “or remaining” on land without permission, and already specifically addresses when a person damages that property. *See* NMSA 1978, § 30-14-1. Additionally, Section 30-14-1.1 already expressly provides for “double damages” if a trespassor “damages or destroys any part of the realty or its improvements, including buildings, structures, trees, shrubs or other natural features,” the exact language specified in HB 332. The new crime in Section 1 of HB 332 therefore creates an exact duplicate crime to trespass, but makes it a felony. The applicability of one crime over the other will lead to extensive litigation. Analyst questions the creation of a new felony when the bill apparently seeks to simply elevate trespass to a felony, which could be accomplished by simply amending Section 30-14-1. (Policy concerns with either approach are addressed below.)

Furthermore, much of the associated conduct would also already constitute a felony. For example, if a person enters into a closed structure without permission, it is felony breaking and entering. *See* NMSA 1978, § 30-14-8. If they do so with the intent to commit a crime inside, it is burglary. *See* NMSA 1978, § 30-16-3. And any intentional damage to private property is punished as “criminal damage to property” with a penalty that varies based on the cost of the damage done. *See* NMSA 1978, § 30-15-1.

Analyst cannot identify a need for yet another felony crime for when someone commits trespass and then “resides” on the property for “any period of time without the knowledge or consent of the property owner” when such conduct is already punishable and damages are already recoverable.

Analyst notes that the phrase “any period of time” could conflict with New Mexico law on adverse possession, which bestows lawful title to a person who maintains actual, visible, exclusive, hostile and continuous possession, under color of title, for the statutory period of ten years. *See Bd. of Trustees of the Tecolote Land Grant v. Griego*, 2005-NMCA-007, ¶ 9, 136 N.M. 688. By criminalizing squatting for *any* amount of time, HB 332 would conflict with lawful rights of a person who may have been squatting for ten years, satisfying title by adverse possession.

LOPD questions the policy wisdom and constitutionality of criminalizing conduct stemming from status like poverty or housing insecurity. The most likely factual scenario targeted by the bill, however, is an unhoused individual sleeping on private property for a *short* period of time or even weeks or months, but who otherwise has no criminal intent. If this law is used to target the unhoused, those cases could see significant litigation under the New Mexico Constitution. *See City of Grants Pass, Oregon v. Johnson*, 603 U.S. 520, 563-64, 144 S. Ct. 2202, 2228 (2024) (“For people with no access to shelter, that punishes them for being homeless. That is unconscionable and unconstitutional. Punishing people for their status is ‘cruel and unusual’ under the Eighth Amendment.”) (Sotomayor, J., Kagan, J., and Jackson, J., dissenting) (citing *Robinson v. California*, 370 U.S. 660 (1962)).

Another scenario implicated by the bill is a tenant who stays past their lease or after violating the terms of a lease. This scenario is more than adequately handled by civil landlord-

tenant law and the proper remedy is eviction and civil damages, if applicable. Because such cases typically arise when a tenant *cannot afford* rent, punishing the conduct as a felony and authorizing damages at *twice* the actual damages incurred is both draconian and unnecessary.

PERFORMANCE IMPLICATIONS

See Fiscal Implications, supra.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None at this time.