

SECTION III: NARRATIVE

BILL SUMMARY

Provides a process for a property owner to remove persons who are unlawfully occupying the owner's real property. "Unlawfully occupying" is a crime constituting trespassing.

FISCAL IMPLICATIONS

No fiscal impact for DPS

SIGNIFICANT ISSUES

DPS supports the idea of having a clear legal process in place for removing unlawful occupants from property. A clear legal process for removing unlawful occupants helps law enforcement allocate their resources more effectively. Instead of spending time on disputes that could have been resolved through proper legal channels, law enforcement can focus on more pressing and urgent matters. Clear guidelines streamline the process, allowing officers to address situations with more immediacy and precision.

If law enforcement can quickly and predictably handle unlawful occupancy cases through an established process, they can reduce the likelihood of conflicts escalating. A structured legal process for handling unlawful occupancy helps reduce confusion and strain on law enforcement officers, who may otherwise be forced to make difficult judgment calls in unclear situations. This clarity allows them to focus on their primary duties and reduces the chance of missteps, such as unlawfully evicting individuals or failing to follow protocol, which could result in legal consequences or conflicts.

By having a clear and structured process for handling unlawful property occupations, law enforcement can take appropriate precautions and ensure officer safety. Officers can assess the situation beforehand, understanding the legal grounds for intervention, and plan their response accordingly.

Multiple states have processes that provide law enforcement with the ability to remove unlawful occupants for real property. In West Virginia, [W.Va. Code, §37-6-31](#) explicitly states that no court in West Virginia shall require the utilization of eviction procedures for the removal of a squatter, and such removal shall not be unduly hindered. [W.Va. Code, §37-6-31](#). A squatter is defined as a person occupying a dwelling unit without entitlement under a rental agreement or authorization by the tenant. In Alabama, the law provides for the recovery of lands or possession thereof through an action of ejectment. [Ala. Code 1975 §6-6-280](#) allows for the removal of individuals who unlawfully withhold and detain property, supporting claims for ejectment against squatters ([Ala.Code 1975 §6-6-280](#)). This is further supported by case law, which states that a squatter's occupancy of property is unlawful and supports a claim for ejectment. [Barber v. Barber, 185 So.3d 455 \(2015\)](#). Under Missouri law, a property owner or their authorized agent can file a verified petition to remove unlawful occupants from a residential dwelling. Upon filing, the court can issue an *ex parte* order for immediate removal if the petition shows good cause, such as the occupants being on the property without permission and not being tenants or guests. The sheriff enforces the order by removing the occupants and may arrest them for trespassing or other legal causes ([V.A.M.S. 534.602](#)).

DPS has some legal concerns with respect to this bill, which can be remedied by revisions to the bill. This bill requires that law enforcement rely on the information provided by property owners and authorized agents, so there is a risk of property owners or agents misusing this process. There is also a concern about law enforcement officers acting as judge and enforcer in property disputes, which could raise constitutional and procedural concerns regarding due process. The bill does not specify what happens if the removal is later found to be unlawful, potentially leaving room for civil liability for law enforcement. It also does not clarify who is responsible for the property damage during the eviction process or if damage occurs during law enforcement's

involvement. Lastly, there is a concern that this bill provides the ability to remove people quickly without a court hearing or determination of the underlying facts, which may violate the constitutional protections of due process under the 14th Amendment of the New Mexico Constitution.

PERFORMANCE IMPLICATIONS

No performance implications to DPS.

ADMINISTRATIVE IMPLICATIONS

No administrative implications to DPS.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

No conflict, duplication, companionship or relationship to DPS.

TECHNICAL ISSUES

No technical issues to DPS.

OTHER SUBSTANTIVE ISSUES

No other substantive issues to DPS.

ALTERNATIVES

DPS suggests that the following revisions be made to this bill to provide greater clarity, ensure fairness, and protect constitutional rights while maintaining the intended effectiveness of the bill:

- (1) Implement documentation and pre-screening processes to verify claims and prevent misuse by property owners and agents;
- (2) clarify law enforcement's role by ensuring that law enforcement acts only to carry out lawful removals and has no decision-making role in disputes;
- (3) provide civil liability protections to shield law enforcement from civil liability if acting in good faith and place liability for unlawful removal on the property owner or agent;
- (4) clearly assign responsibility for property damage to the property owner or agent;
- (5) require a court hearing or process to review removal requests, allowing time for legal challenges and implementing due process safeguards.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo will remain.

AMENDMENTS

None at this time.