

LFC Requester:	Armstrong, Jonas
-----------------------	-------------------------

**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., SB2, and only attach one bill analysis and related documentation per email message}

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 26, 2015
Bill No: HB 235s

Sponsor: Rep. Paul C. Bandy
Short Title: Use of Public Water and Landowner Protection

Agency Code: Attorney General's Office - 305
Person Writing: Brian Parrish, AAG
Phone: (505) 827-6624 **Email:** bparrish@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

BILL SUMMARY

Synopsis:

Substitute House Bill 235 (HB 235) amends NMSA 1978, Section 17-4-6, adding a new subsection C, which contains additional caveats to the prohibition of Section 17-4-6(B), explicitly prohibiting walking or wading in a body of water on or crossing private property without written permission.

HB 235 also enacts a "new section of Chapter 17 NMSA 1978," which (1) provides a new grant of authority to the State Game Commission (SGC), the power and duty to determine the navigability of bodies of water in New Mexico, which also determines who owns the streambed; (2) provides a new civil cause of action for injunctive relief, including attorney's costs and fees; and (3) exempts watercraft from the enactment.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

Section 1(C), pg. 2, ln. 15: "Notwithstanding any other provisions of law..." It is unclear exactly what effect this language will have on the authority of other state agencies that have oversight of water or land within the state, but it appears that there could be some effect, which may potentially undermine or erode previous grants of authority.

Section 1(C), pg. 2, ln. 23-24: "...has expressly consented in writing." It is unclear what effect this phrase will have on Section 1(B), pg. 2, ln. 13-14, which seems to allow for oral permission to enter the private land for "hunting or fishing or to kill or injure any bird, animal or fish..." as well as written permission. As such, it would seem that oral permission would suffice for entering upon the private land in some cases, but written permission would be required for access via the water. It is also unclear, which would control, Section 1 (B) or Section 1(C), as they appear to cover some of the same activities, but conflict of the type of permission required.

Section 2(A), pg. 2, ln. 6: "Notwithstanding any other provisions of law..." It is unclear exactly what the effect this language will have on the authority of other state agencies that have oversight of water or land within the state, but it appears that there could be some effect, which may potentially undermine or erode previous grants of authority.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 235 relates to HB 226 introduced this session.

TECHNICAL ISSUES

Section 2, pg. 2, ln. 25: “A new section of Chapter 17 NMSA 1978 is...,” suggest clarifying whether this is a new article to be included in Chapter 17 or a new section of Chapter 17, Article 1 (which deals with the creation and grant of authority to the SGC).

Section 2(F)(1), p. 5, ln. 1-2: Suggest deleting this subsection regarding the definition for “department” because the term is not used in the bill as drafted. Note this would also require the renumbering of Subsection (F).

Section 2(F)(2)(c), p. 5, ln. 10-11: Suggest clarifying; as written it is unclear whether the bill intends that the request to leave the property by “the owner or a person authorized to act...” renders land “private property to which access is restricted” to all persons or solely to the person asked to leave the premises.

OTHER SUBSTANTIVE ISSUES

Section 2(B), pg. 3, ln. 25 to pg. 4, ln. 8: HB 235 allows for an additional and redundant measure to that of criminal trespass, civil trespass, and existing injunctions, thus providing that a landowner may bring an action under both trespass and this new cause of action simultaneously; and thereby, potentially allows for multiple and additive penalties for unified conduct. As a result, any person in violation of this could be criminally liable for trespass, civilly liable for trespass, and civilly liable under Section 17-4-7, for the same activity. In addition, it does not appear to make enforcement any easier or more likely than the remedies currently available. However, HB 235 provides for legal fees and costs if the cause of action is brought under this section, something the other remedies do not provide.

Section 2(E), pg. 4, ln. 22-24: This section admonishes the public to “remove any refuse or tangible personal property,” but provides no penalty, and appoints no agency or official to enforce the provision. As a result, it is unclear whether this provision allows for some type of penalty or whether it is superfluous.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

N/A