

HOUSE AGRICULTURE, WATER AND WILDLIFE COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 235

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

AN ACT

RELATING TO PUBLIC WATERS; AMENDING AND ENACTING SECTIONS OF  
CHAPTER 17 NMSA 1978; DEFINING THE SCOPE OF EASEMENT CREATED BY  
CONSTITUTIONAL PROVISIONS REGARDING OWNERSHIP OF PUBLIC WATERS,  
BENEFICIAL USE OF PUBLIC WATERS AND THE RIGHT TO ACQUIRE, OWN  
AND PROTECT PRIVATE PROPERTY; PROVIDING FOR LAWFUL RECREATIONAL  
ACCESS TO PUBLIC WATERS; PROVIDING FOR INJUNCTIVE RELIEF.

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

**SECTION 1.** Section 17-4-6 NMSA 1978 (being Laws 1912,  
Chapter 85, Section 10, as amended) is amended to read:

"17-4-6. HUNTING AND FISHING ON PRIVATE PROPERTY--  
POSTING--PENALTY.--

A. Whenever the owner or lessee desires to protect  
or propagate game birds, animals or fish within ~~his~~ the  
owner's or lessee's enclosure or pasture, ~~he~~ the owner or

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underscored material = new  
[bracketed material] = delete

1     lessee shall publish notices in English and Spanish warning all  
2 persons not to hunt or fish within the enclosure or pasture.  
3 The notices shall be posted in at least six conspicuous places  
4 on the premises and published for three consecutive weeks in a  
5 newspaper of general circulation in the county where the  
6 premises are situated. In the event a public road enters or  
7 crosses the enclosure or pasture, an additional notice shall be  
8 posted conspicuously within three hundred yards of the point  
9 where each public road enters the posted property.

10             B. After the publication and posting, it is a  
11 misdemeanor for any person to enter the premises for the  
12 purpose of hunting or fishing or to kill or injure any bird,  
13 animal or fish within the enclosure or pasture without  
14 permission of the owner or lessee.

15             C. Notwithstanding the provisions of Sections  
16 72-4-15 and 72-4-17 NMSA 1978 or any other provision of law,  
17 the right of the public to use public water on private property  
18 for hunting, fishing, trapping, camping, hiking, sightseeing,  
19 the operation of aircraft or any other recreational use shall  
20 be governed by this section. No person shall walk or wade onto  
21 private property by use of public water on private property or  
22 access public water via private property unless the private  
23 property owner or lessee or person in control of private lands  
24 has expressly consented in writing."

25             SECTION 2. A new section of Chapter 17 NMSA 1978 is

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1 enacted to read:

2 "[NEW MATERIAL] ADDITIONAL POWERS AND DUTIES OF STATE GAME  
3 COMMISSION--DETERMINATION OF STREAMBED OWNERSHIP--PRIVATE  
4 PROPERTY NAVIGABLE WATER--INJUNCTIVE RELIEF--PUBLIC  
5 RECREATIONAL ACCESS.--

6 A. Determination of streambed ownership based upon  
7 whether water on private property is a navigable water shall be  
8 implemented solely by the state game commission. The state  
9 game commission is authorized to adopt rules, regulations and  
10 procedures to implement the provisions of this section. Any  
11 person may bring the issue of whether water on private property  
12 is a navigable water before the state game commission for  
13 determination prior to using water on private property for  
14 recreational activity. With or without application by the  
15 public or a private property owner or lessee or person in  
16 control of private lands so affected, the state game commission  
17 shall in its own right make a determination of whether water on  
18 private property is a navigable water and such determination is  
19 appealable as an administrative decision to the district court.  
20 Absent such a determination by the state game commission, it  
21 shall be presumed that a public water on private property was  
22 and is a non-navigable water. As used in this subsection for  
23 defining streambed ownership, "navigable water" means a water  
24 course that at the time of statehood was navigable in fact and  
25 that was used or was susceptible of being used, in its ordinary

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1 condition, as a highway for commerce over which trade and  
2 travel was or may have been conducted in the customary modes of  
3 trade and travel on water.

4 B. The owner of private property may obtain  
5 injunctive relief against a person who, without permission,  
6 enters, remains or persists in an effort to enter or remain on  
7 the owner's property for recreational use of public water other  
8 than use pursuant to this section. An injunction under this  
9 section is in addition to any remedy for trespass. The court  
10 may award attorney fees and costs in an action under this  
11 section if the court finds that the losing party's arguments  
12 lack a reasonable basis in law or fact.

13 C. Nothing in this section affects the right of the  
14 public to use public water for public recreational access,  
15 including the touching of the bed beneath the public water if  
16 the bed beneath the public water is public property or the bed  
17 beneath the public water is not private property to which  
18 access is restricted. A person using a public water for public  
19 recreational access is subject to any other restriction  
20 lawfully placed on the use of the public water by a  
21 governmental entity with authority to restrict the use of the  
22 public water. Nothing in this section limits or enlarges any  
23 right granted by express easement.

24 D. Nothing in this section shall limit or affect  
25 any permissible use of water by watercraft.

1           E. When leaving a public access area, a person  
 2 shall remove any refuse or tangible personal property that the  
 3 person brought into the public access area.

4           F. As used in this section:

5                   (1) "department" means the department of game  
 6 and fish;

7                   (2) "private property to which access is  
 8 restricted" means privately owned real property that is:

9                           (a) cultivated land;

10                           (b) properly posted pursuant to Sections  
 11 17-4-6 and 17-4-26 NMSA 1978; or

12                           (c) fenced or enclosed as a posted area  
 13 pursuant to Section 17-4-6 or 17-4-26 NMSA 1978; or from which  
 14 the owner or a person authorized to act on the owner's behalf  
 15 has requested a person to leave;

16                   (3) "public access area" means the limited  
 17 part of privately owned property that is open to public  
 18 recreational access by public easement contracted for by the  
 19 department and private landowner;

20                   (4) "public recreational access" means the  
 21 right to engage in recreational access pursuant to this  
 22 section;

23                   (5) "public water" means waters of the state  
 24 that have not been appropriated for beneficial use; and

25                   (6) "watercraft" means a boat, canoe, kayak or

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1 other floating device made to float upon water."

2 SECTION 3. SEVERABILITY.--If any part or application of  
3 this act is held invalid, the remainder or its application to  
4 other situations or persons shall not be affected.

5 SECTION 4. EFFECTIVE DATE.--The effective date of the  
6 provisions of this act is July 1, 2015.