

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 226

**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  
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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 any other provision of law, the  
16 right of the public to use public water on private property for  
17 hunting, fishing, trapping, camping, hiking, sightseeing, the  
18 operation of watercraft or any other recreational use shall be  
19 governed by this section. No person engaged in the above  
20 described recreational uses shall walk or wade onto private  
21 property by use of public water on private property or access  
22 public water via private property unless the private property  
23 owner or lessee or person in control of private lands has  
24 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. Notwithstanding any other provisions of law, the  
 7 state game commission is authorized to adopt rules, regulations  
 8 and procedures to implement the provisions of this section.

9 Any person may bring the issue of whether water on private  
 10 property is a navigable water before the state game commission  
 11 for determination prior to using water on private property for  
 12 recreational activity. With or without application by the  
 13 public or a private property owner or lessee or person in  
 14 control of private lands so affected, the state game commission  
 15 shall in its own right make a determination of whether water on  
 16 private property is a navigable water and such determination is  
 17 appealable as an administrative decision to the district court.

18 As used in this subsection for defining streambed ownership,  
 19 "navigable water" means a water course that at the time of  
 20 statehood was navigable in fact and that was used or was  
 21 susceptible of being used, in its ordinary condition, as a  
 22 highway for commerce over which trade and travel was or may  
 23 have been conducted in the customary modes of trade and travel  
 24 on water, to be determined on a segment-by-segment basis.

25 B. The owner of private property may obtain

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

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

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

22 E. When leaving a public access area, a person  
23 shall remove any refuse or tangible personal property that the  
24 person brought into the public access area.

25 F. As used in this section:

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

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

5 (a) cultivated land;

6 (b) properly posted pursuant to Sections  
7 17-4-6 and 17-4-26 NMSA 1978; or

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

12 (3) "public access area" means the limited  
13 part of privately owned property that is open to public  
14 recreational access by public easement contracted for by the  
15 department and private landowner;

16 (4) "public recreational access" means the  
17 right to engage in recreational access pursuant to this  
18 section; and

19 (5) "watercraft" means a boat, canoe, kayak or  
20 other floating device made to float upon water."

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

24 **SECTION 4. EFFECTIVE DATE.**--The effective date of the  
25 provisions of this act is July 1, 2015.

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