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FISCAL IMPACT REPORT

SPONSOR Moore DATE TYPED 2/1/2005 HB 189

SHORT TITLE Notice Requirements For Criminal Trespass SB _____

ANALYST Aguilar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney Generals Office (AGO)
 Commissioner of Public Lands (SLO)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 189 requires hunters and fisherman to obtain written permission from landowners to hunt or fish on posted private property, modifies the notice of consent and changes posting requirements.

The bill also directs that any game animal, game bird or game fish taken, captured or killed on private property without written permission shall be confiscated.

Significant Issues

House Bill 189 strengthens the rights of private property owners to exclude people from their lands.

A number of very public differences over access to and use of public land has arisen over the last two years particularly in those checkerboard areas where parcels of private land and public lands are intermingled. Often these lands are fenced by the lessee as part of large tracts. While the public generally has access to trust lands for various purposes, the bill places the responsibility on the person who seeks to enter to secure the permission of the owner.

TECHNICAL ISSUES

HB 189 modifies the current Criminal Trespass bill (Section 30-14-1 NMSA 1978) by defining the notice an owner may use to exclude others from un-posted lands to include “written communication” or the existence of fencing. The lack of definition of “written communication” could present a problem in enforcement because it does not indicate where or how such written communication must be done.

The Attorney General’s Office notes that HB 189 also changes the notice provisions in Sections 30-14-1.1 and 30-14-6, NMSA 1978, to allow posting by “written communication” as well as the placement of fencing or signs in places likely to be seen by visitors; and adds a new posting technique which uses vertical stripes of orange paint placed on trees and sign posts at certain heights and intervals. This provision may prove difficult to enforce because the crime of criminal trespass, as defined by the New Mexico Supreme Court in its Uniform Jury Instruction 14-402, requires that the defendant “knew or should have known” that permission to enter had been denied. When property is posted by signs proclaiming it closed that is relatively easy to prove; however, the use of orange paint would require proving that the defendant knew or should have known the meaning of the paint stripes, which could be very difficult to prove and would depend on the widespread understanding of the significance of such stripes. In the hunting context, this could be dealt with by informing all hunters of the stripes meaning as part of the licensing process.

The State Land Office notes page 5 lines 15-16 exempt from posting requirements in the bill “property owned by the state and federal government.” For clarification this should read “property owned by the state and federal government and state trust lands.”

OTHER SUBSTANTIVE ISSUES

The Department of Game and Fish notes this bill makes it unlawful to hunt and take game animals if trespassing on private property in violation of Section 30-14-1 NMSA 1978. The implications of the unlawful taking of a game animal on private property only apply to those lands that are “posted” against trespassing. The violation of criminal trespassing has several more facets pursuant to Section 30-14-1 that would not apply, such as being on private property after the landowner has told the person to leave. Consideration should be given as to deleting the restriction to just posted property and include any time that an individual is on private property in violation of Section 30-14-1. Department officers often deal with trespassers that come back to hunt even after access has been denied to them.

PA/lg