



Synopsis of Original Bill

Section 73-2-5 NMSA 1978 provides that if there has been continuous use of a ditch for the purposes of irrigation for a period of five years it will be presumed that an easement has been created by such.

Senate Bill 102 makes it unlawful to interfere with the easement noted or to prevent access to the ditch and states such action is a misdemeanor crime punishable by a fine of not less than \$300 dollars and not more than \$1,000 dollars and/or ninety (90) day imprisonment in the county jail.

SB 102 also provides that in addition to criminal prosecution, the district attorney, mayordomo, or the commission of the ditch or acequia may file a civil complaint for a civil penalty not to exceed \$5,000 dollars and/or may also file for damages.

SB 102 provides for a misdemeanor offense and establishes penalties for any person who violates an order of the mayordomo in charge of a ditch; or to interfere with any community ditch or dam; or to take or use water without having a water right.

SB 102 also provides that in addition to criminal prosecution, the district attorney, mayordomo, or commission of the ditch may file a civil complaint for a civil penalty not to exceed \$5,000 and includes the owner of the dominant estate as a party permitted to also file for injunctive relief. The bill further clarifies that the filing of either a criminal complaint or civil complaint will not prevent the complaining party from seeking damages.

Significant Issues

Under current statute, only the acequia mayordomo may prosecute violations. SB 102 would authorize the district attorney or an acequia commission to prosecute violations as well.

This bill provides for criminal complaints to be filed in the county where violations occur and also provides for applications to the district court of the county where a defendant resides for a prohibitory or mandatory injunctions.

**FISCAL IMPLICATIONS**

The provisions contained in this bill may generate small revenues to the various courts and acequias.

**PA/sb:lg:njw**