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FISCAL IMPACT REPORT

SPONSOR Jennings DATE TYPED 3/2/05 HB _____

SHORT TITLE Civil Fines For Trespassing SB 977

ANALYST Wilson

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
		\$0.1 Insignificant		

Relates to

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Game and Fish Department (GFD)

SUMMARY

Synopsis of Bill

Senate Bill 977 specifies that an individual who commits criminal trespass shall pay a fine equal to the fee charged for hunting, fishing or trapping, by the owner of the land on which the trespass occurred. The fine may not exceed \$1 thousand.

Significant Issues

Under current law, which is unchanged by this bill, criminal trespass is a misdemeanor and carries a \$1 thousand fine, the imposition of which is discretionary with the judge. The AGO believes the "shall be subject" language might be interpreted as requiring the judge to impose a fine, but because it does not indicate that a judge "shall impose" a fine, the mandatory nature of the fine is unclear.

Additionally, this bill is titled in part, "Providing for a civil fine for trespass" which suggests this new language is designed to create a civil penalty, however, criminal trespass is found in the

criminal code, and the specific provision relates to the commission of a misdemeanor, consequently, the fine is a criminal fine rather than a civil fine, which means it will be imposed by the court in a criminal case and be deposited in the general fund.

In addition, the passage of this bill could arguably result in the creation of a specific penalty for criminal trespass which will not include any jail sentence because it is not mentioned in the new penalty language.

GFD points out all fines collected must be routed to the proper fund. Likewise, all money collected by the courts is considered "public money" as established in 35-7-5 NMSA 1978. If a landowner wishes to bring a civil liability suit on a person, this should be done independent of any criminal punishment. The common practice is for a private individual or their attorney to file such in the proper court so that any civil settlement found can be imposed and awarded without mixing public money and private money.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

GFD states currently criminal trespass is a misdemeanor established under 31-19-1 NMSA 1978. Since the language added after establishing a fine not to exceed \$1 thousand there is the reference that "the fee charged by the landowner for hunting, fishing or trapping activity." It is unclear if the intent of the bill to reimburse landowners a trespass fine.

RELATIONSHIP

AGO indicates HB189 and SB437 also amend the criminal trespass law, and although neither specifically amends section E, they may create a conflict if passed. The presumption is that the last bill signed by the governor is controlling when two or more bills amend the same section of law, but all validly enacted laws should be harmonized to give maximum effect to legislative intent.

TECHNICAL ISSUES

The AGO states if the goal of the amendment is to require the defendant to pay civil damages to the land owner, language similar to that in section D of the criminal trespass statute making a convicted defendant "liable to the owner... for civil damages" will be more effective.

DW/yr:lg