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FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/2007

SPONSOR Jennings LAST UPDATED _____ HB _____

SHORT TITLE Trespass Posting and Notices SB 544

ANALYST Schuss

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	17.5-20.0	17.5-20.0	17.5-20.0	52.5-60.0	Recurring	Game Protection Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Department of Game and Fish (DGF)

SUMMARY

Synopsis of Bill

Senate Bill 544 amends the criminal trespass law. The bill adds fencing to the means by which a property owner can give notice that a person does not have permission to enter property. Also, the modes of providing notice that property is not to be entered are revised.

Section 1: Criminal Trespass

The bill amends the definition of criminal trespass by adding knowingly entering or remaining on “fenced” private property. A property owner provides notice of no consent to enter the property with “written communication ... or through fencing or other enclosure” that is obviously designed to exclude intruders or to contain livestock.

Section 2: Types of Trespass

The bill deletes the requirement that notice must be posted at every roadway and apparent way of access.

Section 3: No Trespassing Notice

The bill deletes the existing notice requirements: notices every 500 feet along the exterior boundaries of the property (if not fenced), at each roadway and other way of access; size and

information requirements for the notice; and if applicable, notice of specific prohibition.

The bill creates a new definition of notice:

- Written communication by the owner or someone with apparent authority to act for the owner,
- Fencing or other enclosure obviously designed to exclude intruders or to contain livestock,
- Sign indicating that entry is forbidden to the property or at building entrance and the sign is reasonably likely to come to the attention of intruders, or
- Vertical orange paint marks on trees or posts that are at least 1” wide and 8” long that begin between three and five feet from the ground, are readily visible, and are placed no more than 500 feet apart on forested land or are line of sight visible on non-forested land.

FISCAL IMPLICATIONS

DGF has listed the following potential implications:

Currently the department apprehends approximately 35 individuals for trespass annually. However, it is estimated that the department receives and investigates over 100 complaints where individuals are not arrested because properties are not posted as currently prescribed in 30-14-6 NMSA 1978. By changing the notice requirement to include simple range fencing common in New Mexico, it is predicted that complaints of trespassing and apprehension will dramatically increase although it is unknown how much.

It is estimated that officers spend at a minimum 10 hours per trespass case (travel time, interviews, investigations, apprehension, summons or arrest/booking, case reports, discovery and prosecution). This time spent would include a minimum estimate of 35-40 additional cases and would equate to 350-400 man-hours (44-50 work days) for conservation officers. Since officers are currently stationed in the field and on patrol, this bill, if passed, would require that officers spend more time in the field responding to trespass enforcement and less time carrying out other duties and patrols. It is unknown if additional budgets and overtime will be needed or just a reallocation of work effort and priorities can accomplish effective law enforcement for this bill if enacted.

However, there will be more fiscal impacts than man-hours and re-prioritization associated with this bill. The impact will come in the form of greater expenditure of contract dollars for revocation hearing services. Currently, department officers apprehend approximately 35 individuals per year for trespassing. Whoever violates the criminal trespass law when in connection with hunting, fishing or trapping, shall have his or her license revoked by the State Game Commission (30-14-1(E)), pursuant to the provisions found in 17-3-34. By amending 30-14-6 to allow landowners to utilize written communication, fencing (without posting) or placing identifying orange paint on trees or posts, it is reasonable to believe that incidents of trespass will dramatically increase and officers will be handling more complaints and apprehending more people. Many more people will be prosecuted for trespass and proportionately more convictions will result. This will require the department to offer and hold more hearings for this violation as referenced in 30-14-1(E) and 17-3-34 NMSA 1978. At a minimum an additional 35-40 more revocation proceedings will cost the Department approximately \$17,500.00-20,000.00 (\$500.00/person/revocation). This information is included in the table above.

SIGNIFICANT ISSUES

DGF states that New Mexico is a state that has over 32 million acres of public land and over 34 million private acres. These acres and properties are often intermingled with no fencing or if fencing is present, it does not specifically follow land status boundaries. Current law does not make it illegal to be on such property if there is no notice posted at conspicuous points of access or access has to specifically be denied to an individual. These amendments would change the posting/notice requirements, so an individual could be in violation of trespass even though there was not a posting or specific denial by landowner to access property. This will create challenges in law enforcement efforts as the public has been given more direct notice in the past.

OTHER SUBSTANTIVE ISSUES

DGF has included the following in their analysis:

Many public roads traverse through private lands and current standards do not make a person that comes across these intermingled properties as trespass violators. Also, drivers and occupants of vehicles must be warned by posting at points of access (like crossing a fence line or cattle guard). If amended as proposed, then these individuals could potentially be in violation of trespass should they cross into an unmarked fence or step out of their car off a roadway, and cross an unmarked boundary (that was properly noticed by written communication).

The portion found in 30-14-6 of this bill dramatically changes the standard of notification to the public. Because a landowner only has to have written communication in some fashion, there is no standard for making this communication reasonably available for anyone to read. Likewise, by only painting fence posts or trees, it is not clear if a person is on the public land side or private land side. Although this portion of the bill gives landowners many options to “notice” the public, it will make enforcement difficult.

Department officers are constantly contacted by landowners to apprehend trespassers. The threshold for making an arrest (as citation may not be issued for criminal trespass, see 31-1-6 NMSA 1978) is probable cause. However the notice provision pertaining to written communication, does not establish when the notice has to be written.

The notice requirement to allow “fencing or other enclosure designed to exclude intruders” without supporting signs/posting could lead to confusion. How is an individual going to know which side of the fence they are supposed to be on? Is an individual on the public side or private side? As mentioned earlier, many public roads go through private property but also go through public property, so which side of the fence is private and constitutes trespass? An individual even with a map may not know which side of the fence is public land. This could be confusing as to where to lawfully, hunt, fish or hike as pasture fencing does not always follow land status boundaries. Department officers’ may not even be able to tell where a person can lawfully be without thorough research.

Painting of posts or trees at intervals of 500 feet on forest lands will not guarantee that individuals will see the signs or markings. In many instances, tree densities and terrain are such that visibility in any direction is less than 100 feet. No standard is given in this bill to insure that the markings or posts on forest land are obviously visible from other adjacent markings. The only requirement is that markings are placed at locations readily visible to any person approaching (page 7, lines 6-8). This assumes a person will always approach the property

perpendicular to the boundary and in-line with the marking. Likewise, it is not clear what “forest land.” is This will make enforcement extremely difficult, if a landowner doesn’t think they have forest lands but trees are present on the property. An individual trespassing would have a ready excuse that the property should have been posted at 500 foot intervals because tress are present, even though the landowner considered his property not forested and marked trees/posts at 1000 foot intervals.

POSSIBLE QUESTIONS

In reference to “notice” by means of written communication:

Could a landowner or lessee write this communication on the spot, at the time the officer arrives after receiving a complaint of trespass?

Does this written communication have to be posted in some form or fashion?

BS/mt