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FISCAL IMPACT REPORT

SPONSOR Stewart ORIGINAL DATE 03/04/19
LAST UPDATED _____ HB _____

SHORT TITLE Portage on Private Property SB 635

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		No fiscal impact				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)

Department of Game and Fish (DGF)

Energy, Minerals and Natural Resources Department (EMNRD)

Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

Senate Bill 635 seeks to amend Section 17-4-6 NMSA 1978 relating to penalties for hunting and fishing on posted private property, by adding a condition that a person operating watercraft in public water may walk or wade onto private property to avoid hazardous conditions in the water.

FISCAL IMPLICATIONS

No fiscal impact.

SIGNIFICANT ISSUES

DGF noted an individual who was operating a watercraft would likely always walk the path of least resistance along water. Scouting needs to be clarified as to how far an individual could trespass onto private land and be within the limits of the exception. Hazardous conditions are also going to be based on watercraft user ability and experience. A person could also walk onto private property for any distance to see if the water flow is acceptable or if there are any obstacles prior to continuing onto the section of water on that private land as long as they started

in a watercraft.

PERFORMANCE IMPLICATIONS

The NMAG provided the following comments:

This bill is not completely explicit about whether common law principals that apply in the doctrine of private necessity would apply, and whether a trespasser would be protected from tort action to recover for damages resulting from the trespass covered by this rule. *See Vincent v. Lake Erie Transp. Co.*, 109 Minn. 456, 124 N.W. 221 (1910) (Where under stress of weather a master, to preserve his vessel, maintains her moorings to a dock after the discharge of the vessel's cargo, and the dock is damaged by the pounding of the vessel, the dock owner may recover from the shipowner for the injury sustained.)

Vincent is cited in administrative law proceedings in other states. *Podmajersky v. Michigan Dept. of Treasury*, No. 410949, 2012 WL 2161126, at 5 (Apr. 12, 2012); *CLAIM OF S. J. DOBSON*, 60 Interior Dec. 337, 339, 1949 WL 4962, at 2; and *Cape Cod Trawling Corp.*, 23 NLRB 208 (1940).

ADMINISTRATIVE IMPLICATIONS

The bill does not clarify “scouting” as well as how far a person could scout or travel onto private property, which could make it difficult for agency, county and state police officers to enforce.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Existing laws governing access to private land for fishing and hunting via public water will remain in place, which requires consent in writing by the person in control of the private lands for access.

AMENDMENTS

NMAG suggested adding language to further clarify that trespassers can be held liable for actual damages caused by their trespass in avoiding hazardous conditions, for instance, if they drag their boat across the land and destroy or damage private property, but not liable for nominal and punitive damages when trespassing to avoid a hazardous condition not caused by the trespasser.

AHO/gb