

1 SENATE BILL 226

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Richard C. Martinez

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10 AN ACT

11 RELATING TO PUBLIC WATERS; AMENDING SECTION 17-4-7 NMSA 1978  
12 (BEING LAWS 1967, CHAPTER 6, SECTION 1, AS AMENDED); DEFINING  
13 THE SCOPE OF EASEMENT CREATED BY CONSTITUTIONAL PROVISIONS  
14 REGARDING OWNERSHIP OF PUBLIC WATERS, BENEFICIAL USE OF PUBLIC  
15 WATERS AND THE RIGHT TO ACQUIRE, OWN AND PROTECT PRIVATE  
16 PROPERTY; PROVIDING LIABILITY PROTECTION FOR LANDOWNERS FROM  
17 RECREATIONAL USERS OF PUBLIC WATERS AND TO PROVIDE FOR LAWFUL  
18 RECREATIONAL ACCESS TO PUBLIC WATERS; PROVIDING FOR INJUNCTIVE  
19 RELIEF.

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21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

22 SECTION 1. Section 17-4-7 NMSA 1978 (being Laws 1967,  
23 Chapter 6, Section 1, as amended) is amended to read:

24 "17-4-7. LIABILITY OF LANDOWNER PERMITTING PERSONS TO  
25 HUNT, FISH OR USE LANDS FOR RECREATION--DUTY OF CARE--

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1 EXCEPTIONS--RECREATIONAL ACCESS TO PUBLIC WATER--INJUNCTIVE  
2 RELIEF.--

3 A. Any owner, lessee or person in control of lands  
4 has no duty of care to trespassers. Any owner, lessee or  
5 person in control of lands who, without charge or other  
6 consideration, other than a consideration paid to the landowner  
7 by the state, the federal government or any other governmental  
8 agency, grants permission to any person or group to use the  
9 owner's, lessee's or land controller's lands for the purpose of  
10 hunting, fishing, trapping, camping, hiking, sightseeing, the  
11 operation of aircraft or any other recreational use does not  
12 thereby:

13 (1) extend any assurance that the premises are  
14 safe for such purpose;

15 (2) assume any duty of care to keep such lands  
16 safe for entry or use; or

17 (3) assume responsibility or liability for any  
18 injury or damage to or caused by such person or group [~~or~~

19 ~~(4) assume any greater responsibility, duty of~~  
20 ~~care or liability to such person or group than if permission~~  
21 ~~had not been granted and the person or group were trespassers].~~

22 B. This section shall not limit the liability of  
23 any landowner, lessee or person in control of lands that may  
24 otherwise exist by law for injuries to any person granted  
25 permission to hunt, fish, trap, camp, hike, sightsee, operate

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1 aircraft or use the land for recreation in exchange for a  
2 consideration, other than a consideration paid to the landowner  
3 by the state, the federal government or any other governmental  
4 agency.

5 C. Notwithstanding the provisions of Sections  
6 72-4-15 and 72-4-17 NMSA 1978 or any other provision of law,  
7 the right of the public to use public water on private property  
8 for hunting, fishing, trapping, camping, hiking, sightseeing,  
9 the operation of aircraft or any other recreational use shall  
10 be governed by this section. No person shall walk or wade onto  
11 private property by use of public water on private property or  
12 access public water via private property unless the private  
13 property owner, lessee or person in control of private lands  
14 has expressly consented in writing. Determination of whether a  
15 public water on private property is a navigable water shall be  
16 implemented solely by the state game commission. The state  
17 game commission is authorized to adopt rules, regulations and  
18 procedures to implement the provisions of this section. Any  
19 person may bring the issue of whether a public water on private  
20 property is a navigable water before the state game commission  
21 for determination prior to using public water on private  
22 property for recreational activity. With or without  
23 application by the public or a private property owner or lessee  
24 or person in control of private lands so affected, the state  
25 game commission may in its own right make a determination of

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1 whether a public water on private property is a navigable water  
2 and such determination may be challenged by interested parties.  
3 An administrative appeal to the state game commission of any  
4 final determination by the commission is available to any  
5 interested person. Absent such a determination by the state  
6 game commission, it shall be presumed that a public water on  
7 private property was and is a non-navigable water.

8 D. The owner of private property may obtain  
9 injunctive relief against a person who, without permission,  
10 enters, remains or persists in an effort to enter or remain on  
11 the owner's property for recreational use of public water other  
12 than use pursuant to this section. An injunction under this  
13 section is in addition to any remedy for trespass. The court  
14 may award attorney fees and costs in an action under this  
15 section if the court finds that the losing party's arguments  
16 lack a reasonable basis in law or fact.

17 E. Nothing in this section affects the right of the  
18 public to use public water for public recreational access,  
19 including the touching of the bed beneath the public water if  
20 the bed beneath the public water is public property or the bed  
21 beneath the public water is private property to which access is  
22 not restricted. A person using a public water for public  
23 recreational access is subject to any other restriction  
24 lawfully placed on the use of the public water by a  
25 governmental entity with authority to restrict the use of the

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1 public water. Nothing in this section limits or enlarges any  
2 right granted by express easement.

3 F. When leaving a public access area, a person  
4 shall remove any refuse or tangible personal property the  
5 person brought into the public access area.

6 G. As used in this section:

7 (1) "department" means the department of game  
8 and fish;

9 (2) "navigable water" means a water course  
10 that at the time of statehood was navigable in fact and that is  
11 used, or is susceptible of being used, in its ordinary  
12 condition, as a highway for commerce, over which trade and  
13 travel are or may be conducted in the customary modes of trade  
14 and travel on water;

15 (3) "private property to which access is  
16 restricted" means privately owned real property that is:

17 (a) cultivated land;

18 (b) properly posted pursuant to Sections  
19 17-4-6 and 17-4-26 NMSA 1978; and

20 (c) fenced or enclosed as a posted area  
21 pursuant to Section 17-4-6 or 17-4-26 NMSA 1978; or from which  
22 the owner or a person authorized to act on the owner's behalf  
23 has requested a person to leave;

24 (4) "public access area" means the limited  
25 part of privately owned property that is open to public

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1 recreational access by public easement contracted for by the  
2 department and private landowner; and

3 (5) "public recreational access" means the  
4 right to engage in recreational access pursuant to this  
5 section."

6 SECTION 2. SEVERABILITY.--If any part or application of  
7 this act is held invalid, the remainder or its application to  
8 other situations or persons shall not be affected.

9 SECTION 3. EFFECTIVE DATE.--The effective date of the  
10 provisions of this act is July 1, 2015.