

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR SPAC **ORIGINAL DATE** 01/17/14
LAST UPDATED 02/18/14 **HB** _____

SHORT TITLE Theft of Utility and Railroad Hardware Penalty **SB** CS/21/aSJC/aSFI#1

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications Section					

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Bernalillo County Metro Court (BCMC)
- Department of Transportation (DOT)
- Administrative Office of the Courts (AOC)
- Attorney General’s Office (AGO)
- Regulation and Licensing Department (RLD)
- Department of Public Safety (DPS)

SUMMARY

Synopsis of SFI#1 Amendment

Senate Floor Amendment #1 makes changes to the severity of the new crime of disrupting communications and utility services by making it a misdemeanor for first and second offenses and a fourth degree felony for third and subsequent offenses. The amendment also changes the definition of equipment in this section from distribution “lines” to distribution “facilities”.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to the Senate Public Affairs Committee substitute for Senate Bill 21 adds “and second” offense making it a misdemeanor for a second offense when a person damages communication or utility equipment as outlined below. The amendment makes it a fourth degree felony to damage communication or utility equipment upon third and subsequent offenses and removes lines that would have made it a third degree felony upon a third offense. The amendment also makes grammatical changes.

Synopsis of Original Bill

The Senate Public Affairs Committee substitute for Senate Bill 21 creates a new section of the criminal code and outlines the criminal penalties for any person who by theft or by intentionally damaging, communications or public utility equipment, whether customer or utility owned, creates a public safety hazard or causes a disruption of communications services or public utility services to ten or more households, customers or subscribers or causes monetary damage equal to or greater than one thousand dollars (\$1000) in value of equipment. The individual would be guilty of a misdemeanor for the first offense, a fourth degree felony for the second offense and a third degree felony for a third and subsequent offenses.

FISCAL IMPLICATIONS

Since January 2008, there have been 57 incidents of copper wire theft on the DOT owned railroad, with an estimated cost of \$1 million to \$1.5 million to repair and replace. This law has the potential to increase caseloads in the judicial system, thus requiring additional resources to handle the increase. Additionally, increased penalties may lead to an increase in the number of appeals, and an increase in the number of inmates in jails and prisons.

SIGNIFICANT ISSUES

DOT stated that, higher criminal penalties for larceny of railroad signal system components may prevent or reduce the frequency of metal theft from DOT owned railroad signal systems. Theft of copper is a significant problem for the DOT owned railroad line. Copper wires are used for communicating track conditions and in some parts of the system, for communicating between the train dispatcher and the signals. When communications fail due to theft of wires, trains must slow down to 10-15 miles per hour until repairs are made. This can cause significant delays to Rail Runner and Amtrak trains on the DOT owned railroad posing a safety threat to trains. If the theft results in bodily harm or death additional statutes may apply.

The AGO provided the following: There are several conflicts between provisions of this substitute and Section 30-12-1 NMSA 1978 known as "Interference with Communications". Although the intent of that section is to criminalize acts which interfere with communications, the substitute and Section 30-12-1(A) and (B) NMSA 1978 overlap one another to a large degree. Additionally, the language in Sections 30-12-1(C) "interrupting" and (D) "preventing, obstructing or delaying" is clearly susceptible to interpretations which would make it unclear whether the new crime or Section 30-12-1 NMSA 1978 would apply to a particular defendant's conduct. If the substitute is enacted, the reconciliation of the two statutes by applying the "general/specific" rule of construction is unclear. Applying the "last enacted" rule of construction would result in the bill displacing repealing significant portions of Section 30-12-1 NMSA 1978.

The PDD provided the following: this bill would not create a new offense, but rather create a more specific manner of prosecution for these offenses, which already fall within the existing criminal damage to property statute. See Section, 30-15-1 NMSA 1978. For a first offense, this bill would reduce the penalty for damage greater than \$1,000 dollars from the fourth degree felony provided in the criminal damage statute to a petty misdemeanor. For third and subsequent offenses, it would increase the penalty be a fourth degree felony.