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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/06/14  
**LAST UPDATED** 02/11/14     **HB** 239/HBICS/aHJC

**SPONSOR**    HBIC

**SHORT TITLE**    Disruption of Communications & Utilities     **SB** \_\_\_\_\_

**ANALYST**    Chenier

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	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 HJC Amendment

The House Judiciary Committee amendment to House Bill 239 adds a new subsection stating that “prosecution pursuant to this section shall not prevent prosecution pursuant to any other provision of law when the conduct also constitutes a violation of that other provision”.

#### Synopsis of Bill

The House Business and Industry Committee substitute for House Bill 239 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 House Judiciary Committee amendment makes the necessary changes to end conflicts between this bill and existing statute.

### **TECHNICAL ISSUES**

This substitute penalizes theft or damage related to tangible equipment, while Section 30-12-1 NMSA 1978 is aimed at penalizing interference with intangible communications. Repealing subsections (A) and (B) of Section 30-12-1 NMSA 1978 would eliminate the conflict between this bill and those Subsections. However, amendments to reconcile the bill and subsections (C) and (D) are not intuitively obvious.