

LFC Requester:	Eric Chenier
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**AGENCY BILL ANALYSIS
2014 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**
Correction **Substitute**

Date 2/3/2014

Bill No: HB239-305 Feb 3

Sponsor: Rep. R. Gonzales

Reviewing Attorney General's Office

Short Disruption of Communications

Person Writing Chris Lackmann

Title: & Utilities

Phone: 222-9000 **Email** clackmann@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s, committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis:

HB 239 creates a new section in the criminal code to penalize theft of or damage to communications or public utility equipment or services. The penalties attach if the damage: creates a safety hazard; disrupts services to ten or more households/customers; or, causes damage of \$1,000 or more. The crime is a misdemeanor for the first offense, a 4th degree felony for a second offense, and a 3rd degree felony for third and subsequent offenses. "Equipment" is defined as utility system materials, communications towers, telephone lines, railroad and industrial safety communication devices or systems, electric towers, certain electric utility equipment, and natural gas transmission and distribution lines.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

May lead to a slight increase in expenses for all agencies involved in the criminal justice system.

SIGNIFICANT LEGAL ISSUES

There are several conflicts between provisions of HB239 and "Interference with Communications," NMSA 1978 Section 30-12-1. Although the intent of Section 30-12-1 is clearly to criminalize acts which interfere with communications (especially telephone), HB239 and Section 30-12-1(A) and (B) 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 30-12-1 would apply to a particular defendant's conduct. If HB239 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 HB239 displacing/repealing significant portions of Section 30-12-1.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

none

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

none

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

none noted at this time

TECHNICAL ISSUES OR DRAFTING ERROR

none

OTHER SUBSTANTIVE LEGAL ISSUES

There does not appear to be conflicts between HB239 and NMSA 1978, Sections 62-14-1, et seq., "Excavation Damage to Pipelines and Underground Utility Lines"; and Sections 63-11-1, et seq., "Excavation Damage to Cable Television Lines." Both these Sections address damage to utility lines from excavation. These Sections impose civil and administrative liabilities on persons who damage utility lines, either through negligence or accident. As opposed to HB239, nothing in these Sections address the intentional disruption or damage of utility lines.

ALTERNATIVES TO ENACTING THIS BILL

Section 30-12-1 remains the law.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

status quo

AMENDMENTS NEEDED TO IMPROVE THIS BILL

HB239 seems aimed at penalizing theft or damage related to tangible equipment, while Section 30-12-1 is aimed at penalizing interference with intangible communications. Repealing subsections (A) and (B) of 30-12-1 would eliminate the conflict between HB239 and those Subsections. However, amendments to reconcile HB239 and subsections (C) and (D) of 30-12-1 are not intuitively obvious.