

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal and Civil Justice Appropriations Committee

BILL: CS/SB 1384

INTRODUCER: Communications & Public Utilities Committee; Senator Dean and others

SUBJECT: Theft of Copper or Other Nonferrous Metals

DATE: April 17, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Fav/CS
2.	Earlywine	Cooper	CM	Favorable
3.	Krol	Cannon	CJ	Favorable
4.	Butler	Sadberry	JA	Favorable
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The committee substitute provides that it is a first degree felony for a person to knowingly and intentionally take copper or other nonferrous metals from a utility or communications services provider, thereby:

- causing damage to the facilities of a utility or communications services provider,
- interrupting or interfering with communications services or utility service, or
- interfering with the ability of a utility or communications services provider to provide service.

The committee substitute provides definitions.

The Criminal Justice Impact Conference estimated that this bill will have an insignificant impact on prison beds.

The committee substitute creates section 812.145 of the Florida Statutes.

II. Present Situation:

Section 812.014, F.S., provides for the crime of theft. It provides that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

- deprive the other person of a right to the property or a benefit from the property, or
- appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

The section also sets forth the criteria for different degrees of theft, including:

- grand theft in the first degree, a first degree felony,
- grand theft in the second degree, a second degree felony,
- grand theft of the third degree, a third degree felony,
- petit theft of the first degree, a first degree misdemeanor, and
- petit theft of the second degree, a second degree misdemeanor.

A first degree felony is punishable by:

- a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment (s. 775.082(3)(b), F.S.),
- a fine not to exceed \$10,000 in addition to the imprisonment, or, when specifically authorized by statute, in lieu of any imprisonment, plus court costs (s. 775.083(1)(b), F.S.), and
- when appropriate, additional penalties specified for violent career criminals, habitual felony offenders and habitual violent felony offenders, and three-time violent felony offenders (s. 775.084, F.S.).

Recently, media outlets report that there has been an increase of metal theft (specifically copper) from utilities, construction sites, citrus groves, air conditioner units, cell phone towers, and even a report of copper theft from an Amtrak locomotive. The reports state that thieves take the stolen metal to a secondary metals recycler and sell the metal for cash.

III. Effect of Proposed Changes:

The committee substitute creates s. 812.145, F.S., making it a first degree felony for a person to knowingly and intentionally take copper or other nonferrous metals from a utility or communications services provider, thereby causing damage to the facilities of a utility or communications services provider, interrupting or interfering with communications services or utility service, or interfering with the ability of a utility or communications services provider to provide service.

The focus here is not simply theft of copper from the designated entities; this is already covered by s. 812.014, F.S., the general theft statute. The focus is when such a theft results in one or more of the following:

- causing damage to the facilities of a utility or communications services provider,
- interrupting or interfering with communications services or utility service, or
- interfering with the ability of a utility or communications services provider to provide service.

If the committee substitute becomes law and a person steals copper from a utility or communications service provider without causing any of these listed consequences, the new statute would not apply. Instead, the existing statute on theft would.

The committee substitute provides the following definitions.

- “Copper or other nonferrous metals” means metals not containing significant quantities of iron or steel, including, without limitation, copper, copper alloy, copper utility or communications service wire, brass, aluminum, bronze, lead, zinc, nickel, and alloys thereof.
- “Communications services” means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added.
- “Communications services provider” includes any person, firm, corporation, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of communications services.
- “Utility service” means electricity for light, heat, or power and natural or manufactured gas for light, heat, or power, including the transportation, delivery, transmission, and distribution of electricity or natural or manufactured gas.
- “Utility” includes any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas or electricity service.

The committee substitute takes effect October 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill may require counties and municipalities to spend funds because it creates new criminal penalties; therefore, offenders may be arrested and housed in jails while awaiting trial.

Section 18(a), Art. VII of the State Constitution provides that a city or county is not

bound by any general law requiring the city or county to spend funds or to take an action to expend funds unless the Legislature has determined that the law fulfills an important state interest and unless funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure.

However, Section 18(d), Art. VII of the Florida Constitution provides that criminal laws are exempt from the requirements of this section. Thus, it appears this bill is exempt from the requirements of Section 18(a), Art. VII of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the committee substitute has a deterrent effect, utilities, communications services providers, and their customers would be better protected from the economic consequences of interruptions in services resulting from theft of copper used in providing those services.

C. Government Sector Impact:

Governments that provide or receive such services will be included in these protections.

This committee substitute creates new penalties for a person to knowingly and intentionally take copper or other nonferrous metals from a utility or communications services provider. According to the Criminal Justice Impact Conference, these new penalties may result in an insignificant prison bed impact on the Department of Corrections.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Communications & Public Utilities on March 6, 2008:
The Committee Substitute narrows the definition of the term “utility.”

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
