

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1323 Metal Theft
SPONSOR(S): Criminal Justice Subcommittee; Drake and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1324

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Williams	Cunningham
2) Justice Appropriations Subcommittee	14 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee			

SUMMARY ANALYSIS

Throughout the industrialized world, stealing valuable metal has become a serious concern for police, businesses, public utilities, railroad companies, and the community at large. While efforts to combat metal theft have occurred for several decades, reports of dramatic increases in scrap metal theft are occurring throughout the United States. The stolen metals are usually sold to secondary metal recyclers at scrap yards.

In Florida, secondary metals recyclers are currently regulated under ch. 538, F.S. This chapter contains a variety of provisions that require or prohibit secondary metals recyclers to engage in certain acts. The chapter also imposes criminal penalties on secondary metals recyclers who do not comply with the chapter's provisions. For example, s. 538.23(1)(a), F.S., makes it a first degree misdemeanor for a secondary metals recycler to knowingly and intentionally:

- Engage in a pattern of failing to keep records as required by s. 538.19, F.S.;
- Fail to allow a law enforcement officer to inspect a recycler's records and purchased regulated metals property as required by s. 538.20, F.S.;
- Fail, pursuant to a request from law enforcement, to hold regulated metals property as required by s. 538.21, F.S.;
- Enter into any cash transaction in excess of \$1,000 for the purchase of regulated metals property; and
- Purchase regulated metals property from a seller where the metals were not transported in a motor vehicle.

A third or subsequent violation of these offenses is a third degree felony.

The bill amends s. 538.23, F.S. to increase the criminal penalty for violations of s. 538.23(1)(a), F.S., from a first degree misdemeanor to a third degree felony. The bill also increases the penalty for third or subsequent violations of s. 528.23(1)(a), F.S., from a third degree felony to a first degree felony.

The bill also amends s. 812.145, F.S. (relating to theft of copper or other nonferrous metals), to make it a first degree felony for a person to knowingly and intentionally remove, or assist with the removal of, copper or other nonferrous metals from an electrical substation without authorization of the utility.

The Criminal Justice Impact Conference met on January 30, 2012, and determined this bill will have an insignificant impact on state prison beds.

The bill is effective October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Metal Theft

Throughout the industrialized world, stealing valuable metal has become a serious concern for police, businesses, public utilities, railroad companies, and the community at large.¹ While efforts to combat metal theft have occurred for several decades, reports of dramatic increases in scrap metal theft are occurring throughout the United States.² The stolen metals are usually sold to secondary metal recyclers at scrap yards.³

Florida has responded to this problem by enacting a variety of statutes that regulate secondary metal recyclers and that specifically criminalize theft of copper and other nonferrous metals.⁴

Secondary Metals Recyclers

Secondary metals recyclers⁵ are currently regulated under ch. 538, F.S. This chapter contains a variety of provisions that require or prohibit secondary metals recyclers to engage in certain acts. Chapter 538, F.S., also imposes criminal penalties on secondary metals recyclers who do not comply with the chapter's provisions. For example, s. 538.23(1)(a), F.S., makes it a first degree misdemeanor⁶ for a secondary metals recycler to knowingly and intentionally:

- Engage in a pattern of failing to keep records as required by s. 538.19, F.S.;
- Fail to allow a law enforcement officer to inspect a recycler's records and purchased regulated metals property as required by s. 538.20, F.S.;
- Fail, pursuant to a request from law enforcement, to hold regulated metals property as required by s. 538.21, F.S.;
- Enter into any cash transaction in excess of \$1,000 for the purchase of regulated metals property; or
- Purchase regulated metals property from a seller where the metals were not transported in a motor vehicle.

A secondary metals recycler who commits a third or subsequent violation of s. 538.23(1)(a), F.S., commits a third degree felony^{7, 8}.

Effect of the Bill

The bill increases the criminal penalty for violations of s. 538.23(1)(a), F.S., from a first degree misdemeanor to a third degree felony. The bill also increases the penalty for a third or subsequent violations of s. 528.23(1)(a), F.S., from a third degree felony to a first degree felony.⁹

¹ Kooi, Brandon R. (2010). Theft of Scrap Metal. *Center for Problem-Oriented Policing, Guide No. 58.* (http://www.popcenter.org/problems/metal_theft/1)(last visited on January 20, 2012).

² *Id.*

³ *Id.*

⁴ *See, e.g.*, chapters 2008-69 and 2008-195, L.O.F.

⁵ Section 538.18(8), F.S., defines the term "secondary metals recycler" as a person who:

- (a) Is engaged, from a fixed location or otherwise, in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or
- (b) Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.

⁶ A first degree misdemeanor is punishable by up to one year in county jail and a maximum \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁷ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁸ Section 538.23(1)(b), F.S.

Theft of Copper or Other Nonferrous Metals

In addition to enacting legislation to regulate secondary metals recyclers, Florida has responded to the growing problem of metal theft by enacting s. 812.145, F.S. This statute makes 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 if the theft:

- Damages the facilities of a utility or communications services provider;
- Interrupts or interferes with utility service or communications services; or
- Interferes with the ability of a utility service or communications services provider to provide service.¹⁰

Effect of the Bill

The bill amends s. 812.145, F.S., to provide that a person who knowingly and intentionally removes, or assists with the removal of, copper or other nonferrous metals from an electrical substation without authorization of the utility commits a first degree felony.

The bill defines an “electrical substation” as a facility that takes electricity from the transmission grid and converts it to a lower voltage so it can be distributed to customers in the local area on the local distribution grid through one or more distribution lines less than 69 kilovolts in size.

B. SECTION DIRECTORY:

Section 1. Amends s. 538.23, F.S., relating to violations and penalties.

Section 2. Amends s. 812.145, F.S., relating to theft of copper or other nonferrous metals.

Section 3. Provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met on January 30, 2012, and determined this bill will have an insignificant impact on state prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill increases the criminal penalty for a violation of s. 538.23(1)(a), F.S., from a first degree misdemeanor to a third degree felony. As a result, the bill may have an insignificant positive jail bed impact on local governments.

⁹ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁰ Section 812.145, F.S., defines the terms “copper or other nonferrous metals,” “utility,” “communications services provider,” “utility service,” and “communications services.”

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2012, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment defines an "electrical substation" as a facility that takes electricity from the transmission grid and converts it to a lower voltage so it can be distributed to customers in the local area on the local distribution grid through one or more distribution lines less than 69 kilovolts in size.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.