

**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.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SB 1182

INTRODUCER: Senator Brandes

SUBJECT: Secondary Metals Recyclers

DATE: March 21, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	<b>Pre-meeting</b>
2.			AG	
3.			AP	

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**I. Summary:**

SB 1182 transfers regulatory authority over secondary metals recyclers from the Department of Revenue (DOR) to the Department of Agriculture and Consumer Services (DACS) and makes a number of regulatory changes to provide increased oversight of secondary metals recyclers.

Specifically, the bill:

- Increases the annual registration fee for a secondary metals recycler from \$6 per location to \$350 per location;
- Requires a secondary metals recycler to maintain workers' compensation insurance and general liability insurance;
- Requires the DACS to immediately suspend the registration or application for registration of a secondary metals recycler if it or any of its senior personnel is convicted of certain felonies;
- Allows the DACS to suspend, revoke, or restrict the registration of a secondary metals recycler if it has been convicted of certain crimes or violated certain regulations in a prior 10-year period;
- Expands the list of prohibited acts related to secondary metals recyclers that constitute a third-degree felony;
- Specifies that a person who knowingly provides false information and then receives payment from a secondary metals recycler in return for regulated metals commits a second- or third-degree felony depending on the value of the payment received, and makes it a second-degree felony if the payment received is for restricted regulated metals;
- Prohibits the purchase of regulated metals, restricted regulated metals, or ferrous metals on Sundays;
- Revises the types of restricted regulated metals the purchase of which is prohibited without obtaining proof that the seller is authorized to sell the metals;
- Authorizes a DACS investigator to inspect a secondary metals recycler and all records maintained by a secondary metals recycler;

- Authorizes the DACS to seek an inspection warrant if DACS personnel are denied access to a registrant's place of business in order to verify registration; and
- Authorizes the DACS to levy administrative penalties for certain violations of the secondary metals recycler regulations.

## II. Present Situation:

Secondary metals recyclers are currently regulated by the DOR under Part II of ch. 538, F.S. A secondary metals recycler is, generally, a person who is engaged in the business of obtaining used ferrous<sup>1</sup> or nonferrous<sup>2</sup> metals or converting such metals into raw material products.<sup>3</sup> Current law requires a secondary metals recycler to register with the DOR prior to engaging in business, provides for the inspection of regulated metals and records kept by the recycler, regulates methods of payment, and provides certain prohibitions and penalties.<sup>4</sup>

The DACS is charged with, among other things, protecting consumers from unsafe or defective products and deceptive business practices. The Division of Consumer Services (division) within the DACS is tasked with receiving the state's consumer complaints. It is also responsible for overseeing and regulating a broad range of business activities, including commercial weight loss practices, telephone solicitations, dance studios, pawnshops, health studios, sellers of travel, and telemarketers. The division is also responsible for protecting consumers from unfair and unsafe business practices across a wide range of products, including petroleum products, brake fluid, antifreeze, lubricating oil, and weighing and measuring devices.

## III. Effect of Proposed Changes:

**Section 1** transfers the authority, responsibility, and funding for regulating secondary metals recyclers from the DOR to the DACS as a type two transfer.<sup>5</sup>

### The DOR Confidentiality and Information Sharing

Under s. 213.053, F.S., information contained in returns, reports, or other documents received by the DOR, including investigative reports, is confidential and exempt from public disclosure. This protection applies to certain taxes, trust funds, and regulatory programs, including the registration of secondary metals recyclers.<sup>6</sup> The DOR may disclose certain information to other agencies, and those agencies are bound by the same requirements of confidentiality as the DOR. For example, the DOR may disclose only the name, addresses, and sales tax registration

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<sup>1</sup> Section 538.18(3), F.S., defines ferrous metals as any metals containing significant quantities of iron or steel.

<sup>2</sup> Section 538.18(6), F.S., defines nonferrous metals as metals not containing significant quantities of iron or steel, including copper, brass, aluminum, bronze, lead, zinc, nickel, and alloys.

<sup>3</sup> Section 538.18(11), F.S.

<sup>4</sup> A number of organizations, such as charities, non-profit corporations, and religious institutions, and individuals, such as law enforcement officers and bankruptcy trustees, are exempt from part II of ch. 538, F.S. Section 538.22, F.S.

<sup>5</sup> Section 20.06(2), F.S., defines a type two transfer to include the merging or removal of an existing program of one department into another department. Any program transferred by a type two transfer retains all its statutory powers, duties, and functions. Unless provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

<sup>6</sup> Section 213.053(1), F.S.

information to the division at the DACS.<sup>7</sup> Additionally, the DOR is authorized to disclose to a law enforcement officer whether a secondary metals recycler's certificate of registration is valid and provide the name of the certificate holder.<sup>8</sup>

**Section 3** amends s. 213.053, F.S., to authorize the DOR to also provide sales tax information to the division in addition to names, addresses, and sales tax registration information allowed in current law. This information may only be provided to the DACS for the purposes of enforcing the regulations related to payment methods for purchases of certain metals by secondary metals recyclers.<sup>9</sup>

The bill also repeals the DOR's authorization to disclose to a law enforcement officer whether a secondary metals recycler's certificate of registration is valid and to provide the name of the certificate holder. Because secondary metals recycler registration is transferred to the DACS, this provision in s. 213.053, F.S., is obsolete.

### Registration Requirements

Currently, under s. 538.25, F.S., a secondary metals recycler must register with the DOR and pay an annual fee of \$6 for each location. Applicants are generally required to provide a complete set of fingerprints and a recent identification card with the applicant's photo on it.<sup>10</sup> The DOR must forward an applicant's fingerprints to the Florida Department of Law Enforcement (FDLE) for a criminal background check.<sup>11</sup> The DOR may issue a temporary registration to each location pending completion of the background check.<sup>12</sup>

One application is required for each secondary metals recycler, and if a secondary metals recycler owns more than one location, the application must list each location and the DOR will issue a duplicate registration for each location.<sup>13</sup> The registration must be conspicuously displayed at the place of business set forth on the registration.<sup>14</sup>

A fine of up to \$10,000 may be imposed for each knowing and intentional violation of the registration requirements, and if the fine is not paid within 60 days, the DOR may bring a civil action.<sup>15</sup> The DOR may also deny, revoke, restrict, or suspend a registration if, within the preceding 24 months, the applicant or registrant, knowingly and intentionally:<sup>16</sup>

- Violates provisions related to inspections<sup>17</sup> or hold notices;<sup>18</sup>

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<sup>7</sup> *Id.* at (8)(p).

<sup>8</sup> Section 213.053(11), F.S.

<sup>9</sup> Section 538.235(3), F.S.

<sup>10</sup> Section 538.25(1)(c), F.S.

<sup>11</sup> *Id.* at (1)(b). According to the DACS, the fingerprinting fee paid by an applicant is \$31.50. DACS, *Agency Analysis: SB 1182*, 2 (Mar. 3, 2014) (on file with the Committee on Commerce and Tourism).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at (1)(a).

<sup>14</sup> *Id.* at (2).

<sup>15</sup> *Id.* at (3). *See* s. 120.69, F.S.

<sup>16</sup> Section 538.25(4), F.S.

<sup>17</sup> Section 538.20, F.S.

<sup>18</sup> Section 538.21, F.S.

- Engages in a pattern of failing to keep records;<sup>19</sup>
- Makes a material false statement in the application for registration; or
- Engages in fraud in connection with any purchase or sale of regulated metals.

The same penalties may be assessed if, within the preceding 24 months:

- The applicant or registrant has been convicted of or pled guilty to a felony involving property, any felony drug offense, or knowingly and intentionally violating laws relating to registration as a secondary metals recycler; or
- The applicant has, after receipt of written notice from the DOR of failure to pay sales tax, failed to pay within 30 days after the receipt of the notice.<sup>20</sup>

**Section 10** amends s. 538.25, F.S., to require a secondary metals recycler to register on an application form prescribed by the DACS. The required information on the application is generally consistent with current law but must also include the full name and address of the applicant and any other information required by the DACS. If the applicant is not an individual, the applicant must state the full name and address of each owner of at least 10 percent equity interest in the business. If the applicant is a corporation, the application must state the full name and address of each officer and director.

The bill increases the annual registration fee for each of the secondary metals recycler's locations from \$6 to \$350. All fees collected must be transferred into the General Inspection Trust Fund.

The bill repeals the fine for each knowing and intentional violation of the registration requirements.<sup>21</sup>

The bill requires each secondary metals recycler to maintain workers' compensation insurance and general liability insurance and must provide the DACS with evidence of each. Failure to maintain either form of insurance constitutes an immediate threat to the public health, safety, and welfare of the residents of Florida, and the DACS may immediately suspend or deny the recycler's registration.

In addition, the bill requires a secondary metals recycler to allow the DACS personnel to enter the secondary metals recycler's place of business in order to verify that a registration is valid. If the DACS personnel are refused entry for this purpose, the DACS can seek an inspection warrant<sup>22</sup> to obtain compliance with this requirement.

The DACS may deny, suspend, revoke, or restrict a registration if the secondary metals recycler or any senior personnel of the recycler has been convicted of knowingly and intentionally violating certain requirements and regulations or been convicted of certain crimes within a 10-year period, as opposed to the current 2-year period, immediately preceding the denial, suspension, revocation, or restriction.

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<sup>19</sup> Section 538.19, F.S.

<sup>20</sup> Section 539.25(4)(b) and (c), F.S.

<sup>21</sup> A secondary metal recycler that does not register still commits a third-degree felony, pursuant to s. 538.23(5), F.S., and may be subject to additional administrative fines under s. 538.27, F.S., which is created in section 12 of the bill.

<sup>22</sup> See ss. 933.20-933.30, F.S.

Upon notification from a law enforcement agency, court, state attorney, or the FDLE, the DACS must immediately suspend the registration or application of a secondary metals recycler, if the recycler, or any of its senior personnel are convicted of a felony under chs. 812<sup>23</sup> or 817, F.S.<sup>24</sup>

### **Inspections**

A properly identified law enforcement officer has the right to inspect during usual business hours any purchased regulated metals in the possession of a secondary metals recycler and any records required to be maintained by the recycler.<sup>25</sup>

**Section 7** amends s. 538.20, F.S., to provide that, in addition to a law enforcement officer, an employee of the DACS who is a nonsworn, trained regulatory investigator has the right to inspect any purchased regulated metals in possession of a secondary metals recycler and any records maintained by a recycler.

### **Violations and Penalties**

Section 538.23, F.S., makes it a third-degree felony<sup>26</sup> for a secondary metals recycler to knowingly and intentionally violate s. 538.26(2), F.S., which prohibits a secondary metals recycler from purchasing regulated metals, restricted regulated metals, or ferrous metals from a seller when such items were not transported in a motor vehicle.<sup>27</sup> This is the only prohibited act listed under s. 538.26, F.S., that is a third-degree felony. Violations of the other prohibited acts under s. 538.26, F.S., are currently first-degree misdemeanors with a fine of up to \$10,000.<sup>28</sup>

Section 538.23(3), F.S., also prohibits a person from knowingly providing false verification of ownership or providing false or altered identification and receiving payment from a secondary metals recycler in return for regulated metals. If the person receives payment less than \$300, he or she is guilty of a third-degree felony. If the payment is \$300 or more, it is a second-degree felony.<sup>29</sup>

**Section 9** amends s. 538.23, F.S., to make any knowing and intentional violation by a secondary metals recycler of any of the prohibitions listed in s. 538.26, F.S., (*see* Prohibited Acts below) that constitute a third-degree felony. The bill also includes a person who knowingly provides false information and receives payment from a secondary metals recycler in return for regulated metals as a third-degree felony if the value of the payment is less than \$300. If the payment is

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<sup>23</sup> Chapter 812, F.S., relates to theft, robbery, and related crimes.

<sup>24</sup> Chapter 817, F.S., relates to fraudulent practices including false pretenses and fraud, credit card crimes, credit service organizations, and credit counseling services.

<sup>25</sup> Section 538.20, F.S.

<sup>26</sup> A third-degree felony is punishable by up to 5 years in prison, or up to 10 years for a habitual offender, and a \$5,000 fine. Sections 775.082(3)(d), 775.083(1)(c), and 775.084(4)(a), F.S.

<sup>27</sup> Section 538.26(2), F.S.

<sup>28</sup> Section 538.07, F.S. A first degree misdemeanor is punishable by a term of imprisonment not to exceed 1 year. Section 775.082, F.S.

<sup>29</sup> A second-degree felony is punishable by up to 15 years in prison, or up to 30 years for a habitual offender, and a \$10,000 fine. Sections 775.082(3)(c), 775.083(1)(b), and 775.084(4)(a), F.S.

\$300 or more, it is a second-degree felony. In addition, the bill adds that a person commits a second-degree felony if the payment received is for *restricted* regulated metals.<sup>30</sup>

### **Prohibited Acts**

Currently, s. 538.26, F.S., contains a number of unlawful acts that a secondary metals recycler is prohibited from doing. Prohibited acts include purchasing regulated metals, restricted regulated metals, or ferrous metals before 7 a.m. or after 7 p.m. Additionally, a secondary metals recycler is prohibited from purchasing a number of restricted regulated metals items without obtaining proof that the seller is authorized to sell the items. Such items include:

- An electric light pole or other utility structure and its fixtures, wires, and hardware that are readily identifiable as connected to the utility structure;
- Communication, transmission, distribution, and service wire from a utility, including copper or aluminum bus bars, connectors, grounding plates, or grounding wire; and
- More than two lead-acid batteries, or any part or component of the battery, in a single purchase or from the same individual in a single day.

**Section 11** amends s. 538.26, F.S., to prohibit the purchase of regulated metals, restricted regulated metals, or ferrous metals on Sundays. The bill also adds the following items to the list of regulated metals that a secondary metals recycler is prohibited from purchasing without first obtaining proof that the seller is authorized to sell the item:

- A *metal* electric light pole and its fixtures, and hardware that is readily identifiable as connected to a *metal electric light structure*.
- Communication, transmission, distribution, and service wire other than from a utility, including jelly wire, heavy gauge copper, certain types of aluminum wire, waveguide, and underground cable; and
- Three or more lead-acid batteries.

In addition, the bill removes the following from the list of regulated metals that a secondary metals recycler is prohibited from purchasing without first obtaining proof that the seller is authorized to sell the items:

- Utility structures other than metal electric light poles, including their fixtures, wires, and hardware; and
- Wires for metal electric light poles.

### **Administrative Penalties**

Except for authorizing the DOR to levy a fine of up to \$10,000 for violating the secondary metals recycler registration requirements,<sup>31</sup> part II of ch. 538, F.S., does not provide any other administrative fines or penalties if a secondary metals recycler violates part II.

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<sup>30</sup> “Restricted regulated metals” are defined as those regulated metals, such as manhole covers, electrical wiring, and railroad equipment, the purchase of which is prohibited without obtaining proof that the seller owns or is authorized to sell the metals. Sections 538.18(10) and 538.26(5), F.S.

<sup>31</sup> Section 538.25(3), F.S.

**Section 12** creates s. 538.27, F.S., to authorize the DACS to levy administrative penalties for violations of ss. 538.19,<sup>32</sup> 538.235,<sup>33</sup> 538.25,<sup>34</sup> and 538.26, F.S.<sup>35</sup> Upon its determination that a violation has occurred, the DACS may initiate one of the following administrative penalties:

- Issue a notice of noncompliance pursuant to s. 120.695, F.S.;
- Impose an administrative fine up to \$200 per violation and up to \$5,000 per inspection; and
- Issue a cease and desist order.

Any administrative proceedings that could result in any of the above penalties must be conducted in accordance with the Administrative Procedures Act.<sup>36</sup> The DACS may bring a civil action under s. 120.69, F.S., to recover any fine imposed under this section that is not paid within 60 days.

Fines collected under this section must be deposited into the General Inspection Trust Fund.

**Section 5** amends s. 538.18, F.S., to update the definition of “department” from the DOR to the DACS.

**Sections 2, 4, and 6** amend ss. 213.05, 319.30, and 538.19, F.S., respectively to correct references to the DACS.

**Section 8** amends s. 538.21, F.S., to transfer current law related to hold notices that was located in s. 538.25(2), F.S., to this section, which deals with hold notices.

**Section 13** creates s. 538.29, F.S., to authorize the DACS to adopt rules and forms to administer part II of ch. 538, F.S., and it requires the rules to include tiered penalties for violations of part II.

**Section 14** provides an effective date of July 1, 2014.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

<sup>32</sup> See Required Records section above.

<sup>33</sup> See Methods of Payment section above.

<sup>34</sup> See Registration section above.

<sup>35</sup> See Prohibited Acts and Practices section above.

<sup>36</sup> Chapter 120, F.S.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The bill increases the annual registration fee for secondary metals recyclers from \$6 per location to \$350 per location. The DACS estimates that the \$350 annual registration fee and the \$31.50 fingerprint fee paid by registrants will result in an estimated recurring revenue increase of \$283,836 annually.<sup>37</sup>

The bill has not been evaluated by the Revenue Estimating Conference.

**B. Private Sector Impact:**

Under the bill, secondary metals recyclers will pay an increased annual registration fee of \$350 for each site, instead of the current annual fee of \$6 for each site. Secondary metals recyclers will also be required to maintain current and valid workers' compensation insurance and general liability coverage.

Secondary metals recyclers may also incur greater costs due to any fines levied by the DACS and any violations prosecuted by the Attorney General or the State Attorney.

**C. Government Sector Impact:**

The DACS estimates \$283,886 in registration and fingerprinting revenue to be deposited into the General Inspection Trust Fund. For Fiscal Year 2014-2015, the DACS will require four positions and \$445,385 to implement the provisions in the bill.

**REVENUES**

(General Inspection Trust Fund)

	<b>FY 2014-15</b>	<b>FY 2015-16</b>
Registration Fees	260,400	260,400
Fingerprint Fees	<u>23,436</u>	<u>23,436</u>
Total	283,836	283,836

**EXPENDITURES**

(General Inspection Trust Fund)

Salaries and Benefits	207,916	207,916
Expenses	46,519	26,993
Contracted Services	111,836	23,436
Special Category - Human Resources	1,376	1,376
OCO	8,800	0
Acquisition of Motor Vehicles	68,938	0
Non-operating	<u>30,991</u>	<u>30,991</u>
Total	476,376	290,712

<sup>37</sup> DACS, *Agency Analysis*, 2. The DACS estimate is based on an estimated 744 registrants. An estimated \$23,436 will be transferred to the FDLE for fingerprinting and background checks.



The DACS states an undetermined amount of revenue will be generated from administrative penalties.<sup>38</sup>

The Criminal Justice Impact Conference has not yet determined the impact of this bill on prison beds.

## **VI. Technical Deficiencies:**

The bill limits information the DOR may provide to the DACS to only names, addresses, sales tax registration information, and information related to sales tax remittances *only* for the purpose of enforcing the methods of payment regulations for secondary metals recyclers. It appears the bill may prohibit the DOR from releasing names, addresses, and sales tax information to any other division of the DACS for any other purpose, which is permitted in current law.

The bill retains current law that allows the DACS to subtract administrative costs from any fees collected before the fees are deposited to the General Inspection Trust Fund. Similar language does not appear to exist anywhere else in current law.

The bill also retains current law that requires secondary metals recyclers to renew their annual registration by October 1 of each year. The DACS is pursuing a policy of allowing rolling renewals rather than specific annual filing dates. Rolling renewals distribute application cycles throughout the year and allow current staffing levels to be sufficient to process the workload and prevent large backlogs of registrations.

## **VII. Related Issues:**

The bill authorize the DACS to adopt rules to implement the act and must include tiered penalties for violations.

The FDLE recommends that the fingerprinting provisions be amended to require that the fingerprints be taken by an authorized entity, require that fingerprints be retained for participation in the state and federal fingerprint retention program, and clarify that fingerprint fees are paid by the applicant.<sup>39</sup>

## **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 213.05, 213.053, 319.30, 538.18, 538.19, 538.20, 538.21, 538.23, 538.25, and 538.26.

This bill creates the following sections of the Florida Statutes: 538.27 and 528.29.

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<sup>38</sup> *Id.*

<sup>39</sup> FDLE, *Agency Analysis: SB 1182*, 5-6 (Mar. 14, 2014) (on file with the Committee on Commerce and Tourism).

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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