

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 813 Secondary Metals Recyclers
SPONSOR(S): Agriculture & Natural Resources Subcommittee; Combee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 618

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, O N, As CS	Moore	Blalock
2) Appropriations Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

A secondary metals recycler is a person who is engaged in the business of obtaining metals or converting metals into raw material products. Secondary metals recyclers are currently regulated by the Department of Revenue (DOR). Current law requires a secondary metals recycler to register with DOR prior to engaging in business, authorizes law enforcement officers to inspect regulated metals property and records, and provides certain prohibitions and penalties.

The bill includes the following revisions pertaining to the regulation of secondary metals recyclers:

- Transfers all powers, duties, functions, records, personnel, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds of DOR relating to the administration of the laws governing secondary metals recyclers, by a type two transfer, to the Department of Agriculture and Consumer Services (DACS).
- Authorizes DOR to provide DACS with confidential information relative to the administration of the laws governing secondary metals recyclers.
- Includes an agent of an appropriate law enforcement official within the definition of "appropriate law enforcement official" to address law enforcement agencies use of third party vendors.
- Authorizes an employee of DACS who is a non-sworn trained regulatory investigator to inspect all purchased regulated metals property and records in the possession of a secondary metals recycler; authorizes DACS to seek an inspection warrant if DACS' personnel are denied access to a secondary metals recycler's place of business to verify registration.
- Requires each secondary metals recycler to maintain a minimum of \$100,000 in general liability insurance coverage throughout the registration period.
- Authorizes DACS to deny, suspend, revoke, or restrict a registration if, within the previous 10 years (2 years under current law), the registrant or applicant, or an owner, director, or trustee of the applicant or registrant was convicted of certain crimes; and authorizes the immediate suspension of a registration or an application for registration, if the registrant or applicant, or an owner, officer, director or trustee, was convicted of certain felony offenses.
- Provides that a secondary metals recycler who knowingly and intentionally violates a prohibited act or practice related to secondary metals recyclers commits a third degree felony; specifies that a person who knowingly provides false information and receives money or consideration from a secondary metals recycler in return for regulated metals property commits a second or third degree felony, depending on the value of money or consideration received, and commits a second degree felony if the money or consideration received is for restricted regulated metals property.
- Requires the Florida Department of Law Enforcement to retain fingerprints of applicants, and requires a renewal applicant to pay fingerprint retention fees.
- Prohibits the purchase of regulated metals property, restricted regulated metals property, or ferrous metals on Sundays, and prohibits a secondary metals recycler from purchasing certain regulated metals property, without first ascertaining proof that the seller is the owner of the property.
- Appropriates recurring and nonrecurring funds from the General Revenue Fund to DACS to implement the act.

The bill appears to have a negative fiscal impact on state government and DACS. (See Fiscal Comments Section). The bill may have a negative fiscal impact on the private sector. The bill does not appear to have a fiscal impact on local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0813a.ANRS

DATE: 3/19/2015

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

A secondary metals recycler is, generally, a person who is engaged, from a fixed location,¹ in the business of obtaining ferrous² or nonferrous³ metals or converting metals into raw material products, or who has facilities for converting metals into raw material products.⁴ Secondary metals recyclers are currently regulated by the Department of Revenue (DOR) under part II of ch. 538, F.S.

Required Records

Section 538.19, F.S., requires a secondary metals recycler to maintain legible paper and electronic records, approved by the Florida Department of Law Enforcement (FDLE), of all purchase transactions. Electronic records of a purchase transaction must be electronically transmitted to the appropriate law enforcement official no later than 10 a.m. of the business day following the date of the purchase transaction.

Inspections of Regulated Metals Property and Records

During the usual business hours of a secondary metals recycler, a properly identified law enforcement officer may inspect any and all purchased regulated metals property in the possession of the secondary metals recycler and any and all records required to be maintained.⁵

Violations and Penalties

Pursuant to s. 538.23(1)(a), F.S., a secondary metals recycler commits a third degree felony⁶ if he or she knowingly and intentionally:

- Violates provisions related to inspections of regulated metals property and records⁷ or hold notice requirements;⁸
- Engages in a pattern of failing to keep records;⁹
- Purchases regulated metals property, restricted regulated metals property, or ferrous metals from any seller who presents such property for sale at the registered location of the secondary metals recycler when such property was not transported in a motor vehicle;¹⁰ or
- Violates provisions related to methods of payment.¹¹

¹ Section 538.18(4), F.S., defines a "fixed location" as any site occupied by a secondary metals recycler as owner of the site or as lessee of the site under a lease or other rental agreement providing for occupation of the site by the secondary metals recycler for a total duration of not less than 364 days.

² Section 538.18(3), F.S., defines "ferrous metals" as any metals containing significant quantities of iron or steel.

³ Section 538.18(6), F.S., defines "nonferrous metals" as metals not containing significant quantities of iron or steel, including, without limitation, copper, brass, aluminum, bronze, lead, zinc, nickel, and alloys, excluding precious metals.

⁴ See s. 538.18(11), F.S.

⁵ Section 538.20, F.S.

⁶ Sections 772.082, 772.083, and 772.084, F.S.; A third degree felony is punishable by a term of imprisonment up to five years, or up to 10 years for a habitual offender, and a \$5,000 fine.

⁷ Section 538.20, F.S.

⁸ Section 538.21, F.S., provides that a hold notice may be issued by a law enforcement officer who has reasonable cause to believe that certain items of regulated metals property in a secondary metals recycler's possession have been stolen. Upon receipt of the notice, the secondary metals recycler may not process or remove the items identified in the notice for 15 calendar days after receipt of the notice, unless released sooner by a law enforcement officer. No later than the expiration of the 15 day hold notice, a law enforcement officer may issue a second hold notice for 45 calendar days. At the expiration of any hold notice, the hold is automatically released and the secondary metals recycler may dispose of the regulated metals property.

⁹ Section 538.19, F.S.

¹⁰ Section 538.26(2), F.S.

A person who knowingly gives false verification of ownership or gives a false or altered identification and who receives money or other consideration from a secondary metals recycler in return for regulated metals property commits:

- A third degree felony¹² if the value of the money or other consideration received is less than \$300.
- A second degree felony¹³ if the value of the money or other consideration received is \$300 or more.¹⁴

Registration

A person must register with DOR to engage in business as a secondary metals recycler.¹⁵ A person acting as a secondary metals recycler who is not registered with DOR commits a third degree felony.¹⁶ The registration must be conspicuously displayed at the place of business set forth on the registration.¹⁷

An application for registration can only be accepted from a fixed business address.¹⁸ An application with an address of a hotel or motel room, a vehicle, or a post office box will not be accepted.¹⁹ If a secondary metals recycler owns more than one location, the application must list each location, and DOR will issue a duplicate registration for each location.²⁰

An application must include a fee equal to the federal and state costs for processing required fingerprints.²¹ A secondary metals recycler must pay a \$6 fee for each location at the time of registration and an annual renewal fee of \$6 per location on October 1 of each year.²² All fees, less costs of administration, are deposited into DOR's Operating Trust Fund.²³

DOR is required to forward an applicant's fingerprints to FDLE for state and federal processing, provided the federal service is available, to be processed for any criminal justice information.²⁴ The cost of processing the fingerprints must be paid to FDLE by DOR.²⁵ DOR is authorized to issue a temporary registration to each location pending completion of the background check by state and federal law enforcement agencies, but is authorized to revoke the temporary registration if the completed background check reveals a prohibited criminal background.²⁶ FDLE is required to submit its findings to DOR within 30 days after the date the fingerprints are submitted to FDLE.²⁷

¹¹ Section 538.235, F.S.

¹² See *supra* at note 6.

¹³ Sections 775.082, 775.083, and 775.084, F.S.; A second degree felony is punishable by a term of imprisonment up to 15 years, or up to 30 years for a habitual offender, and a \$10,000 fine.

¹⁴ Section 538.23(3), F.S.

¹⁵ Section 538.25(1), F.S.

¹⁶ Section 538.23(5), F.S.; See *supra* at note 6.

¹⁷ Section 538.25(2), F.S.

¹⁸ Section 538.25(1), F.S.

¹⁹ *Id.*

²⁰ Section 538.25(1)(a), F.S.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Section 538.25(1)(b), F.S.; Section 943.045, F.S., defines "criminal justice information" as information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, offender registration information, identification record information, and wanted persons record information. The term does not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term does not include criminal intelligence information or criminal investigative information.

²⁵ Section 538.25(1)(b), F.S.

²⁶ *Id.*

²⁷ *Id.*

DOR is authorized to impose a civil fine of up to \$10,000 for each knowing and intentional violation of the registration requirements in s. 538.25, F.S.²⁸ If the fine is not paid within 60 days, DOR may bring a civil action, under s. 120.69, F.S.,²⁹ to recover the fine.³⁰ The fine must be transferred into the General Revenue Fund.³¹

In addition to assessing a civil fine, DOR may deny, revoke, restrict, or suspend a registration if, within a 24-month period immediately preceding the denial, revocation, restriction or suspension:

- The applicant or registrant has been convicted of knowingly and intentionally:
 - Violating provisions related to inspections of regulated metals property³² or hold notice requirements;³³
 - Engaging in a pattern of failing to keep records;³⁴
 - Making a material false statement in an application for registration; or
 - Engaging in a fraudulent act in connection with any purchase or sale of regulated metals property;³⁵
- The applicant or registrant has been convicted of or has entered a plea of guilty or nolo contendere to a felony against state or federal laws involving theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any felony drug offense or of knowingly and intentionally violating the laws of the state relating to registration as a secondary metals recycler;³⁶ or
- The applicant has, after receipt of written notice from DOR of failure to pay sales tax, failed or refused to pay, within 30 days after the secondary metals recycler's receipt of such written notice, any sales tax owed to DOR.³⁷

Prohibited Acts and Practices

Section 538.26, F.S., provides that it is unlawful for a secondary metals recycler to:

- Purchase regulated metals property, restricted regulated metals property, or ferrous metals before 7 a.m. or after 7 p.m.³⁸
- Purchase regulated metals property, restricted regulated metals property, or ferrous metals from any seller who presents such property for sale at the registered location of the secondary metals recycler when such property was not transported in a motor vehicle.³⁹
- Purchase regulated metals property, restricted regulated metals property, or ferrous metals from any location other than a fixed location.⁴⁰
- Purchase regulated metals property from a seller who:
 - Uses a name other than his or her own name or the registered name of the seller's business;
 - Is younger than 18 years of age; or
 - Is visibly or apparently under the influence of drugs or alcohol.⁴¹

²⁸ Section 538.25(3), F.S.

²⁹ Section 120.69, F.S., provides that an agency may seek enforcement of an action by filing a petition for enforcement in the circuit court where the subject matter of the enforcement is located.

³⁰ Section 538.25(3), F.S.

³¹ Id.

³² Section 538.20, F.S.

³³ Section 538.21, F.S.

³⁴ Section 538.19, F.S.

³⁵ Section 538.25(4)(a), F.S.

³⁶ Section 538.25(4)(b), F.S.

³⁷ Section 538.25(4)(c), F.S.

³⁸ Section 538.26(1), F.S.

³⁹ Section 538.26(2), F.S.

⁴⁰ Section 538.26(3), F.S.

⁴¹ Section 538.26(4), F.S.

- Purchase the following restricted regulated metals property without obtaining proof that the seller owns the regulated metals property:
 - A manhole cover.
 - An electric light pole or other utility structure and its fixtures, wires, and hardware that are readily identifiable as connected to the utility structure.
 - A guardrail.
 - A street sign, traffic sign, or traffic signal and its fixtures and hardware.
 - A funeral marker or funeral vase.
 - A historical marker.
 - Railroad equipment, including, but not limited to, a tie plate, signal house, control box, switch plate, E clip, or rail tie junction.
 - Communication, transmission, distribution, and service wire from a utility, including copper or aluminum bus bars, connectors, grounding plates, or grounding wire.
 - A copper, aluminum, or aluminum-copper condensing or evaporator coil, including its tubing or rods, from an air-conditioning or heating unit, excluding coils from window air-conditioning or heating units and motor vehicle air-conditioning or heating units.
 - An aluminum or stainless steel container or bottle designed to hold propane for fueling forklifts.
 - A stainless steel beer keg.
 - A catalytic converter or any nonferrous part of a catalytic converter unless purchased as part of a motor vehicle.
 - Metallic wire that has been burned in whole or in part to remove insulation.
 - A brass or bronze commercial valve or fitting, referred to as a “fire department connection and control valve” or an “FDC valve,” that is commonly used on structures for access to water for the purpose of extinguishing fires.
 - A brass or bronze commercial potable water backflow preventer valve that is commonly used to prevent backflow of potable water from commercial structures into municipal domestic water service systems.
 - A shopping cart.
 - A brass water meter.
 - A storm grate.
 - A brass sprinkler head used in commercial agriculture.
 - 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.⁴²

Confidentiality and Information Sharing

Section 213.053(2), F.S., provides that all information contained in returns, reports, accounts, or declarations received by DOR, including investigative reports and information and letters of technical advice, is confidential except for official purposes. This applies to certain taxes, trust funds, fees, and the registration of secondary metals recyclers.⁴³ DOR may disclose information to governmental or nongovernmental agencies pursuant to a written agreement between the executive director of DOR and the agency and those agencies are bound by the same requirements of confidentiality as DOR.⁴⁴

Effect of Proposed Changes

Transfers Regulation of Secondary Metals Recyclers from DOR to the Department of Agriculture and Consumer Services

The bill transfers from DOR to the Department of Agriculture and Consumer Services (DACS) all powers, duties, functions, records, personnel, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations,

⁴² Section 538.26(5), F.S.

⁴³ Section 213.053(1), F.S.

⁴⁴ Section 213.053(8), F.S.

and other funds relating to the administration of part II of ch. 538, F.S., by a type two transfer.⁴⁵ The transfer does not affect the validity of any judicial or administrative action pending as of 11:59 p.m. on the day before the effective date of the bill (July 1, 2015) to which DOR is at that time a party, and DACS must be substituted as a party in interest in any such action. All lawful orders issued by DOR relating to the administration of part II of ch. 538, F.S., issued before July 1, 2015, must remain in effect and be enforceable after July 1, 2015, unless subsequently modified in accordance with law. The rules of DOR relating to the administration of part II of ch. 538, F.S., that were in effect at 11:59 p.m. on the day before July 1, 2015, must remain in effect and be enforceable after July 1, 2015, unless subsequently modified in accordance with law.

Confidentiality and Information Sharing

The bill amends s. 213.053, F.S., to authorize DOR to provide information relative to ch. 212, F.S.,⁴⁶ and secondary metals recyclers to DACS in the conduct of its official duties.

Definitions

The bill amends the definition of “appropriate law enforcement official” in s. 538.18(1), F.S., to include an agent of a law enforcement officer as an appropriate law enforcement official. This revision addresses a recent court case in Santa Rosa County, which overturned a conviction of a secondary metals recycler based on a law enforcement agencies use of a third party vendor.

Inspection of Regulated Metals Property and Records

The bill amends s. 538.20, F.S., to provide that, in addition to a law enforcement officer, an employee of DACS who is a non-sworn trained regulatory investigator may inspect all purchased regulated metals property in the possession of a secondary metals recycler and all records maintained by a secondary metals recycler.

Prohibited Acts and Penalties

The bill amends s. 538.26, F.S., regarding certain prohibited acts and practices, as follows:

- Prohibits a secondary metals recycler from purchasing regulated metals property, restricted regulated metals property, or ferrous metals on Sundays.
- Prohibits a secondary metals recycler from purchasing a metal electric light pole and its fixtures, and hardware that is readily identifiable as connected to a metal electric light structure without first obtaining proof that the seller owns the property.

The bill amends s. 538.23, F.S., regarding violations and penalties, as follows:

- Provides that any secondary metals recycler who knowingly and intentionally violates any provision of s. 538.26, F.S., related to certain acts and practices that are prohibited by secondary metals recyclers, commits a third degree felony.⁴⁷ Currently, only one act listed under s. 538.26, F.S.,⁴⁸ is punishable as a third degree felony, and a violation of any other

⁴⁵ Section 20.06(2), F.S., defines a type two transfer as: merging into another agency or department of an existing agency or department or a program, activity, or function thereof; or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished. Any agency transferred by a type two transfer has 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.

⁴⁶ Chapter 212, F.S., governs taxes on sales, use, and other transactions.

⁴⁷ See *supra* at note 6.

⁴⁸ Section 538.26(2), F.S., provides that it is unlawful for a secondary metals recycler to purchase regulated metals property, restricted regulated metals property, or ferrous metals from a seller who presents such property for sale at the registered location when the property was not transported in a motor vehicle.

provision under s. 538.26, F.S., is punishable as a first degree misdemeanor, with a fine not to exceed \$10,000.⁴⁹

- Provides that a person who knowingly provides false information and receives money or other consideration from a secondary metals recycler in return for regulated metals property commits a third degree felony if the value of the money or other consideration received is less than \$300. If the value of the money or other consideration received is \$300 or more, the person commits a second degree felony. A person also commits a second degree felony if the money or other consideration received is for restricted regulated metals property.

Registration

The bill amends s. 538.25, F.S, regarding registration of secondary metals recyclers, as follows:

- Specifies that in order to be a secondary metals recycler a person must register on an application form prescribed by DACS. An application for registration must state the full name of the applicant, the place where the business is to be conducted, and any other relevant information required by DACS. If the applicant is not an individual, the applicant must state the full name and address of each direct or beneficial 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.
- Requires an applicant to submit a full set of fingerprints to DACS or an authorized entity or vendor.⁵⁰
- Requires FDLE to retain submitted fingerprints and to enroll the fingerprints in the Federal Bureau of Investigation's (FBI) national retained print arrest notification program, when FDLE begins participation with the FBI. FDLE must search arrest fingerprints against retained fingerprints, and any arrest record identified must be reported to DACS.
- Requires DACS, for a renewal applicant's registration, to request FDLE to forward retained fingerprints of the applicant to the FBI, unless the applicant is enrolled in the national retained print arrest notification program. The fee for the national criminal history check must be paid as part of the renewal fee to DACS and must be forwarded to FDLE. If an applicant's fingerprints are retained in the national retained print arrest notification program, the applicant must pay the state and national retention fee to DACS, and DACS must forward the fee to FDLE.
- Requires DACS to notify FDLE of a person whose fingerprints have been retained but who is no longer registered as a secondary metals recycler.
- Requires DACS to screen background results to determine if an applicant meets registration requirements.
- Repeals authorization for the issuance of a temporary registration pending completion of the background check, and the requirement for FDLE to report its background check findings within 30 days of receipt of the fingerprints.
- Requires each secondary metals recycler to maintain a minimum of \$100,000 in general liability insurance coverage throughout the registration period.
- Requires a person applying for or renewing a local business tax receipt to engage in business as a secondary metals recycler to exhibit an active registration certificate from DACS before the local business tax receipt may be issued or renewed.
- Requires a secondary metals recycler to allow DACS personnel to enter the secondary metals recycler's place of business to verify that a registration is valid. If DACS' personnel are refused entry for this purpose, DACS can seek an inspection warrant to obtain compliance with this requirement.
- Repeals the assessment of a civil fine of up to \$10,000 for each knowing and intentional violation of the registration requirements.
- Authorizes DACS to assess administrative penalties in s. 538.27, F.S.,⁵¹ as well as to deny, suspend, revoke, or restrict a registration if, within a 10-year period⁵² immediately preceding the denial, suspension, revocation, or restriction:

⁴⁹ Section 538.07(1), F.S.; Section 775.082, F.S., provides that a first degree misdemeanor is punishable by a term of imprisonment not to exceed one year.

⁵⁰ Section 943.053(13), F.S., provides the requirements for an authorized entity or vendor.

⁵¹ Section 538.27, F.S., provides for administrative penalties.

- The applicant or registrant, or an owner, officer, director or trustee of the applicant or registrant has been convicted of knowingly and intentionally:
 - ❖ Violating provisions related to inspections of regulated metals property, hold notice requirements, or any prohibited act or practice contained in s. 538.26, F.S.;
 - ❖ Engaging in a pattern of failing to keep records;
 - ❖ Making a material false statement in an application for registration; or
 - ❖ Engaging in a fraudulent act in connection with any purchase or sale of regulated metals property;
- The applicant or registrant, or an owner, officer, director, or trustee of the applicant or registrant, has been convicted of, or entered a plea of guilty or nolo contendere to, a felony against state or federal laws involving theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any felony drug offense or of knowingly and intentionally violating the laws of the state relating to registration as a secondary metals recycler; or
- The applicant has, after receipt of written notice from DOR of failure to pay sales tax, failed or refused to pay, within 30 days after the secondary metals recycler's receipt of such written notice, any sales tax owed to DOR.
- Requires DACS to suspend the registration or an application for registration of any registrant or applicant if the registrant or applicant, or any of its owners, officers, directors, or trustees have been convicted of a felony under ss. 817.67,⁵³ 817.705,⁵⁴ or 817.806, F.S.,⁵⁵ immediately upon receiving written verification of the conviction from a law enforcement agency, court, or state attorney's office or FDLE.

Administrative Penalties

The bill creates s. 536.27, F.S., which provides for administrative penalties, upon DACS' determination that a violation of ss. 538.19,⁵⁶ 538.235,⁵⁷ 538.25,⁵⁸ or 538.26, F.S.,⁵⁹ has occurred, as follows:

- Issuing a notice of noncompliance pursuant to s. 120.695, F.S.⁶⁰
- Imposing an administrative fine up to \$200 per violation, but not to exceed \$5,000 per inspection. Any fine collected must be deposited in the General Inspection Trust Fund. If a fine is not paid within 60 days after imposition, DACS is authorized to bring a civil action under s. 120.69, F.S.,⁶¹ to recover the fine.
- Directing that the secondary metals recycler cease and desist specified activities.

Additionally, the bill requires any administrative proceeding that could result in the entry of an order imposing any administrative penalties to be conducted in accordance with ch. 120, F.S.⁶²

Rulemaking Authority

⁵² Current law provides for a 2-year period.

⁵³ Section 817.67, F.S., provides for felony penalties related to credit card crimes.

⁵⁴ Section 817.705, F.S., provides for felony penalties related to credit service organizations.

⁵⁵ Section 817.806, F.S., provides for felony penalties related to credit counseling services.

⁵⁶ See discussion of s. 538.19, F.S., in the present situation section, under "*Required Records.*"

⁵⁷ Section 538.235, F.S., provides specific restrictions and methods of payment for transactions involving secondary metals.

⁵⁸ See discussion of s. 538.25, F.S., in the present situation section, under "*Registration.*"

⁵⁹ See discussion of s. 538.26, F.S., in the present situation, under "*Prohibited Acts and Practices.*"

⁶⁰ Section 120.695, F.S., provides that it is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established by the Legislature. Fines and other penalties may be provided in order to assure compliance; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance with an agency's rules.

⁶¹ See *supra* at note 27.

⁶² Chapter 120, F.S., is the Administrative Procedure Act.

The bill also creates s. 538.29, F.S., which authorizes DACS to adopt rules to implement the laws governing secondary metals recyclers and requires the rules to include tiered penalties for violations of these laws.

Appropriation

The bill appropriates, for fiscal year 2015-2016, \$320,000 in recurring funds and \$190,000 in nonrecurring funds from the General Revenue Fund to DACS to implement the act.

B. SECTION DIRECTORY:

Section 1. Transfers administration of part II of ch. 538, F.S., relating to secondary metals recyclers, from the Department of Revenue to the Department of Agriculture and Consumer Services.

Section 2. Amends s. 213.053, F.S., authorizing the Department of Revenue to share certain confidential information with the Department of Agriculture and Consumer Services.

Section 3. Amends s. 319.30, F.S., making conforming changes to the bill.

Section 4. Amends s. 538.18, F.S., revising a definition and making conforming changes to the bill.

Section 5. Amends s. 538.19, F.S., making conforming changes to the bill.

Section 6. Amends s. 538.20, F.S., authorizing specified persons to inspect regulated metals property and records.

Section 7. Amends s. 538.21, F.S., prohibiting a secondary metals recycler from disposing of certain property for a specified period.

Section 8. Amends s. 538.23, F.S., revising violations subject to criminal penalties.

Section 9. Amends s. 538.25, F.S., revising registration requirements.

Section 10. Amends s. 538.26, F.S., prohibiting certain acts and practices of secondary metals recyclers.

Section 11. Creates s. 538.27, F.S., providing for administrative penalties.

Section 12. Creates s. 538.29, F.S., providing for rulemaking authority.

Section 13. Appropriates recurring and nonrecurring funds from the General Revenue Fund to implement the act.

Section 14. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section below.

2. Expenditures:

The bill appropriates \$320,000 in recurring funds and \$190,000 in nonrecurring funds from the General Revenue Fund to DACS to implement the act. Also, DACS will have expenditures that outweigh revenues if the act is not funded each year. (See Fiscal Comments section below.)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has a potentially negative fiscal impact on secondary metals recyclers if the requirement to have a minimum of \$100,000 in general liability insurance coverage is more coverage than what is currently required.

D. FISCAL COMMENTS:

DACS provided the following estimated fiscal analysis⁶³ of the bill:

	(FY 14-15) Amount/FTE	(FY 15-16) Amount/FTE	(FY 16-17) Amount/FTE
A. Revenues			
1. Recurring			
a. Registration Fees (829 dealers @ \$6) ⁶⁴	0	4,974	4,974
b. Fingerprinting Fees (829 dealers @ \$31.50)	0	26,114	
c. Administrative Penalties	0	Undetermined	Undetermined
TOTAL RECURRING REVENUES	0	31,088	4,974
B. Expenditures GIFT			
1. Recurring			
a. Salaries and Benefits			
Regulatory Consultant (1)	0	48,941	48,941
Law Enforcement Investigator II (1)	0	61,809	61,809
Investigation Specialist II (2)	0	97,882	97,882
b. Expenses			
Professional – expense package (4)	0	24,664	24,664
Law Enforcement Package (1)	0	1,937	1,937
Uniform Allowance (1)	0	500	500
c. Contracted Services			
FDLE Fingerprinting Services (744 @ \$31.50)	0	23,436	
d. Special Category			
Human Resources Allocation (4)	<u>0</u>	<u>1,376</u>	<u>1,376</u>
TOTAL RECURRING COST	0	260,545	237,109
2. Non-Recurring – General Inspection Trust Fund			
a. Expenses			
Professional – expense package (4)	0	15,528	0
Law Enforcement Package (1)	0	5,047	0

⁶³ On file with Agricultural and Natural Resources Subcommittee staff.

⁶⁴ Based on the adopted strike-all amendment restoring the \$6 registration fee.

b. Contracted Services			
Software – develop, test, deploy			
1,040 hrs. @ \$85	0	88,400 ⁶⁵	0
c. OCO			
Mobile and Portable Radios	0	8,800	0
d. Acquisition of Motor Vehicles (3)			
2014 Ford Expedition 4WD 4DR XL SSV (1)	0	31,099	0
2014 Chevy Impala (2)	0	38,658	0
TOTAL NONRECURRING COST	0	187,532	0
TOTAL RECURRING/NONRECURRING COST	0	448,077	237,109
Non-Operating Cost			
Information Technology Support	0	2,465	2,465
Administrative /Indirect Cost	0	5,284	5,28z
General Revenue Service Charge	0	<u>22,707</u>	<u>22,832</u>
TOTAL NON-OPERATING COST	0	30,456	30,581
EXPENDITURES GRAND TOTAL (GITF)	0	478,533	267,690

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DACS to adopt rules to implement the laws governing secondary metals recyclers, which must include tiered penalties for violations of these laws.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

⁶⁵ The nonrecurring cost of \$88,400.00 to develop, test, and deploy software is only for an off-line registration application program. If this registration application program was designed for on line use, the total nonrecurring cost to develop, test and deploy software would be \$176,800.00.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2015, the Agriculture & Natural Resources Subcommittee (ANRS) adopted a strike-all amendment that included the following revisions:

- Revises the definition of “appropriate law enforcement official” to include an agent of an appropriate law enforcement official.
- Restores the annual registration fee for a secondary metals recycler to \$6 per location, payable each October 1, and for all registration fees, less costs of administration, to be transferred into the Operating Trust Fund.
- Requires a secondary metals recycler to maintain a minimum of \$100,000 in general liability insurance coverage.
- Narrows the instances where DACS must suspend a secondary metals recycler’s registration or application for registration, to situations where a registrant or applicant or any of its owners, officers, directors or trustees have been convicted of a felony related to certain fraudulent practices.
- Appropriates \$320,000 in recurring and \$190,000 in nonrecurring funds from the General Revenue Fund to implement the act.

This analysis is drafted to the bill as amended and passed by the ANRS.