

metals has risen significantly, prompting an increase in metal theft crimes statewide. Law enforcement agencies have testified before county commission boards as to the negative consequences that increased criminal activity relating to the theft of secondary metals and secondary metal products has had on their respective jurisdictions.⁴

Additionally, the unlawful removing of metal from private property and government structures has caused economic loss for both the private and public sectors.⁵ In an issue paper published by the National Conference of State Legislatures it was noted that “stealing copper and other metals from utilities can cause electric outages and [that] expensive repairs impact ratepayers.” “The Department of Energy estimates that a theft of just \$100 in copper wire can cost the utility more than \$5,000 to repair.”⁶ In Miami Dade County alone, “since 2009, the County’s Public Works Department has spent thousands of dollars to repair or replace vandalized light poles.”⁷ Furthermore, with the influx of the number of foreclosures, metal theft has become common in unoccupied properties, which has impeded the ability of property owners, banks, and mortgage holders to sell both residential and commercial properties.⁸

In 2008, the Legislature revised part II of ch. 538, F.S., considerably. The new statutory provisions included increasing the record keeping requirements for purchase transactions by requiring additional seller information to be obtained; enhancing penalties for third or subsequent violations of the statute and for providing false verification of ownership or false or altered identification to a secondary metals recycler; prohibiting secondary metals recyclers from entering into cash transactions for over the amount of \$1,000; as well as requiring that all secondary metals recyclers register with the Department of Revenue prior to engaging in business.^{9, 10} In 2009, part II of ch. 538, F.S., was once again amended when s. 538.21, F.S., added a clause whereby all municipal and county ordinances relating to the issuance of hold notices by law enforcement were preempted.¹¹

With respect to penalties directed at punishing violators of secondary metals recycler laws, the law presently provides that a secondary metals recycler who knowingly and intentionally engages in a pattern of failing to keep records commits a misdemeanor of the first degree.¹²

³ Section 538.18(7) F.S. (2011) (“Any item composed primarily of any nonferrous metals, but shall not include aluminum beverage containers, used beverage containers, or similar beverage containers . . .”).

⁴ See Orange County, Fla. Ordinance 2010-16, pmbl (Dec. 7, 2010); See also Miami-Dade County, Fla. Ordinance 11-17, pmbl (April 4, 2011).

⁵ Jacquelyn Pless, *Copper Theft Can Cause Major Outages and Impact Ratepayers: A Hot Issue in 2011* (October 2011), NCSL.org, available at <http://www.ncsl.org/default.aspx?tabid=23720> (last visited December 16, 2011).

⁶ *Id.* (citing U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, *An Assessment of Copper Wire Thefts from Electric Utilities*, DOE.org, available at <http://www.oe.netl.doe.gov/docs/copper042707.pdf>. (April 2007).

⁷ Miami-Dade County, Fla. Ordinance 11-17, pmbl (April 4, 2011).

⁸ *Id.*

⁹ Chapter 2008-69, L.O.F. (2008).

¹⁰ In 2008, the number of secondary metals recyclers registered with the Florida Department of Revenue was 278. As of August 2011, that number increased to 769. See, Fla. Dept. of Revenue, *Secondary Dealers and Secondary Metals Recyclers by County* (August 2011), available at http://dor.myflorida.com/dor/taxes/pdf/secondhand_dealers_recyclers.pdf (last visited January 3, 2012).

¹¹ Chapter 2009-162, L.O.F. (2009) (creating s. 538.21(4), F.S., effective October 1, 2009).

¹² A misdemeanor of the first degree is punishable by a term of imprisonment not exceeding 1 year and a fine of up to \$1,000. See ss. 775.082 and 775.083, F.S. (2011).

Moreover, a third or subsequent violation of such provision will result in a felony of the third degree.¹³

Section 812.145, F.S., provides that a person who knowingly and intentionally takes copper or other nonferrous metals from a utility or communications services provider commits a felony of the first degree, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.¹⁴

III. Effect of Proposed Changes:

Section 1 amends s. 538.23, F.S., by providing that a secondary metals recycler who knowingly and intentionally engages in a pattern of failing to keep records concerning purchase transactions commits a felony of the third degree.¹⁵ Moreover, a secondary metals recycler who commits a third or subsequent violation of such provision will have committed a felony of the first degree.¹⁶

Section 2 amends s. 812.145, F.S., by defining 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.

Moreover, this section also provides that anyone who knowingly and intentionally removes or assists with the removal of copper or other nonferrous metals from an electrical substation site commits a felony of the first degree.¹⁷

Section 3 provides that this act shall take effect October 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹³ A felony of the third degree is punishable by a term of imprisonment not exceeding 5 years and a fine of up to \$5,000. See ss. 775.082 and 775.083, F.S. (2011).

¹⁴ A felony of the first degree is punishable by a term of imprisonment not exceeding 30 years and a fine of up to \$10,000. See ss. 775.082 and 775.083, F.S. (2011).

¹⁵ See Note 13 *supra*.

¹⁶ See Note 14 *supra*.

¹⁷ *Id.*

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

As of January 30, 2012, the Criminal Justice Impact Conference determined that the fiscal impact that this CS will have upon prison beds within the Department of Corrections is insignificant.

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 Commerce and Tourism on January 26, 2012:**

- Creates definition for an electrical substation.
- Increases punishment for secondary metals recyclers who knowingly and intentionally engages in a pattern of failing to keep records of purchase transactions from a misdemeanor of the first degree to a felony of the third degree.
- Increases punishment for a secondary metals recycler who violates the above-referenced provision for a third or subsequent time from a felony of the third degree to a felony of the first degree.
- Removes newly created definition of copper, as well as the reference to copper from the definition of regulated metals property.
- Removes requirement that a secondary metals recycler annually execute a bond in the amount of \$1.5 million with a surety company authorized to do business in Florida for the benefit of any person wrongfully injured by any malfeasance,¹⁸ misfeasance,¹⁹ neglect of duty, or incompetence by the secondary metals recycler for purchasing metals property stolen from an electrical substation site.
- Removes requirement that a secondary metals recycler is prohibited from purchasing regulated metals property from a seller who either uses a name other than his or her

¹⁸ Defined as a wrongful or unlawful act. *See* Black's Law Dictionary (9th ed. 2009).

¹⁹ Defined as a lawful act performed in a wrongful manner. *See* Black's Law Dictionary (9th ed. 2009).

own name or the registered name of the seller's business; is younger than 18 years of age; or is under the influence of drugs or alcohol, if such condition is visible or apparent.

B. Amendments:

None.

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