

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 799 Theft of Copper or Other Nonferrous Metals

**SPONSOR(S):** Safety & Security Council; Adams and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1384

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security &amp; Public Safety</u>	<u>10 Y, 0 N</u>	<u>Padgett</u>	<u>Kramer</u>
2) <u>Safety &amp; Security Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Padgett/Davis</u>	<u>Havlicak</u>
3) <u>Policy &amp; Budget Council</u>	<u></u>	<u>Leznoff</u>	<u>Hansen</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

The bill creates s. 812.145, F.S. which provides that a person who knowingly and intentionally takes copper or other nonferrous metals from a utility or communications services provider commits a first degree felony if the theft:

- Damages the facilities of a utility or communications services provider, or
- 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.

A first degree felony is punishable by up to 30 years in prison and a \$10,000 fine. The bill does not provide a ranking level for the newly created offense on the Offense Severity Ranking Chart of the Criminal Punishment Code. Section 921.0023, Florida Statutes provides that an unranked first degree felony defaults to a level 7 offense for purposes of sentencing. Therefore absent the presence of other factors at sentencing such as prior record, additional offenses or probation violations, the lowest permissible sentence for the offense under the Criminal Punishment Code would be 21 months in state prison.

The bill has an effective date of October 1, 2008.

The Criminal Justice Impact Conference met on February 26, 2008 and determined this bill would have an insignificant prison bed impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility/Maintain Public Security: The bill creates s. 812.145, F.S. which provides a person commits a first degree felony if the person steals copper or other nonferrous metals from a utility or communications service provider and the theft causes damage or interrupts service.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Recently, there has been an increase in media reports 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. Currently, scrap copper wire sells for up to \$3.19 per pound<sup>1</sup>.

The degrees of punishment under the current theft statute are primarily based upon the dollar value of the stolen property.<sup>2</sup> There are specific circumstances in which the dollar value threshold amounts which qualify for a higher level of punishment are altered or eliminated if a certain type of property<sup>3</sup> is stolen or if certain conditions occur related to the theft<sup>4</sup>. One of these circumstances provides that if a person causes damage to property in excess of \$1,000 during the course of the grand theft, the person commits a first degree felony. Under current Florida law, there is no distinction between the theft of copper and nonferrous metals from a utility and the theft of all other property.<sup>5</sup> As a result, absent one of the exceptions, the criminal penalties for theft of copper and nonferrous metals from a utility would be based on dollar value threshold amounts.

Regarding utilities, s. 812.14, F.S. currently provides that a person commits a first degree misdemeanor<sup>6</sup> if the person willfully alters, tampers with, injures, or knowingly suffers to be injured any meter, meter seal, pipe, conduit, wire, line, cable, transformer, or other apparatus or device belonging to a utility service as to cause loss or damage. There is no requirement that the damage cause an interruption in service. Although the theft of utility lines appears to be punishable as a misdemeanor under 812.14, F.S., the main focus of s. 812.14, F.S. is the theft of utility services via unauthorized use and the damage caused by the unauthorized use rather than actual theft or damage of the utility lines themselves.

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<sup>1</sup> <http://www.scrapindex.com/metal/copper> (as of February 19, 2008).

<sup>2</sup> See generally, s. 821.012, F.S. If the stolen property is valued at \$100,000 or more, the offense is a first degree felony. If the stolen property is valued at between \$20,000 and \$100,00, the offense is a second degree felony. If the stolen property is valued at between \$300 and \$20,000, the offense is a third degree felony. If the stolen property is valued between \$100 and \$300, the offense is a first degree misdemeanor. If the stolen property is under \$100, the offense is a second degree misdemeanor.

<sup>3</sup> E.g. firearms, a will, a fire extinguisher, citrus fruit, a stop sign, emergency medical equipment, law enforcement equipment, etc.

<sup>4</sup> E.g. theft during a state of emergency, use of a motor vehicle, damage to property during the course of the theft, theft of cargo in interstate commerce, etc.

<sup>5</sup> Section 812.014, F.S.

<sup>6</sup> Punishable by up to one year in jail and a \$1,000 fine. Sections 775.082, 775.083, F.S.

## Proposed Changes

The bill creates s. 812.145, F.S. which provides that a person who knowingly and intentionally takes copper or other nonferrous metals<sup>7</sup> from a utility<sup>8</sup> or communications services provider<sup>9</sup> commits a first degree felony if the theft:

- Damages the facilities of a utility or communications services provider, or
- Interrupts or interferes with utility service<sup>10</sup> or communications services<sup>11</sup>, or
- Interferes with the ability of a utility service or communications services provider to provide service.

The bill does not provide for a minimum dollar value threshold to make the theft of copper and other nonferrous metals punishable as a first degree felony when service is interrupted. Thus, all thefts which fall into this category are automatically punishable as first degree felonies.

A first degree felony is punishable by up to 30 years in prison and a \$10,000 fine<sup>12</sup>. The bill does not provide a ranking level for the newly created offense on the Offense Severity Ranking Chart<sup>13</sup>. Per Florida law, an unranked first degree felony defaults to a level 7 offense for purposes of sentencing.<sup>14</sup>

### C. SECTION DIRECTORY:

Section 1 Creates s. 812.145, F.S., relating to the theft of copper and nonferrous metals.

Section 2 Provides an effective date of October 1, 2008.

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<sup>7</sup> The bill defines “copper or other nonferrous metals” as, “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.”

<sup>8</sup> Utility is defined to mean 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.

<sup>9</sup> The bill defines “communications services provider” as “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.”

<sup>10</sup> The bill defines “utility service” as “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.”

<sup>11</sup> The bill defines “communications services” as “the transmission, conveyance, or routing of voice, data, audio, or video, or any other information or signals, including cable services, to a point, or between 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 client 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.”

<sup>12</sup> Sections 775.082, 775.083, 775.084, F.S.

<sup>13</sup> Section 921.0022, F.S.

<sup>14</sup> Section 921.0023(3), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

See fiscal comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met on February 26, 2008 and determined this bill would have an insignificant prison bed impact.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The 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:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### D. STATEMENT OF THE SPONSOR

No statement submitted.

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

- On March 5, 2008, the Committee on Homeland Security & Public Safety adopted one amendment to the bill. The amendment revises the definition of “utility” to include 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 electric service.
- On March 12, 2008, the Safety & Security Council made the bill a council substitute.