

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.)

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

BILL: SB 1324

INTRODUCER: Senator Norman

SUBJECT: Theft of Copper

DATE: January 25, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Juliachs	Hrdlicka	CM	Pre-meeting
2.			CJ	
3.			BC	
4.				
5.				
6.				

I. Summary:

SB 1324 deals with the regulation of secondary metals recyclers. Specifically, the bill defines copper and includes copper in the definition of a regulated metals property; requires secondary metals recyclers to execute a bond annually in the amount of \$1.5 million for the benefit of any person wrongfully injured by the secondary metals recycler; specifies additional prohibited activities as they relate to the purchase of regulated metals property; and provides that a person who removes or assists another to remove copper or other nonferrous metals from an electrical substation site commits a felony of the first degree.

This bill amends the following sections of the Florida Statutes: ss. 538.18, 538.23, 538.26, and 812.145

This bill reenacts the following section of the Florida Statutes: s. 319.30(1)(u), F.S.

II. Present Situation:

Part II of ch. 538, F.S., addresses the regulation of secondary metals recyclers¹ and purchase transactions² involving “regulated metals property.”³ With the economic recession, the value of 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

¹ The definition for “secondary metals recyclers” is defined in s. 538.18(8)(a), F.S.

² Section 538.18(6), F.S. (2011) (“Any transaction in which a secondary metals recycler gives consideration for regulated metals property.”).

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).

III. Effect of Proposed Changes:

Section 1 amends s. 538.18, F.S., by including copper within the definition of a regulated metals property. Furthermore, copper is newly defined as “the nonferrous metal known as copper and includes, but is not limited to, copper, copper alloy, copper utility service wire and copper communication service wire.”

Section 2 amends s. 538.23, F.S., by correcting a cross-reference, as well as by requiring a secondary metals recycler to 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,¹² misfeasance,¹³ neglect of duty, or incompetence by the secondary metals recycler for purchasing metals property stolen from an electrical substation site.

Section 3 amends s. 538.26, F.S., specifying 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 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.

Section 4 amends s. 812.145, F.S., to provide that anyone who removes or assists with the removal of copper or other nonferrous metals from an electrical substation site commits a felony of the first degree.¹⁴

Section 5 reenacts s. 319.30(1)(u), F.S., as it relates to the definition for secondary metals recyclers.

Section 6 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.

D. Other Constitutional Issues:

None.

¹² Defined as a wrongful or unlawful act. *See* Black’s Law Dictionary (9th ed. 2009).

¹³ Defined as a lawful act performed in a wrongful manner. *See* Black’s Law Dictionary (9th ed. 2009).

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

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

None.

B. Private Sector Impact:

SB 1324 imposes the requirement that secondary metals recyclers annually execute a bond for the amount of \$1.5 million with a surety company authorized to do business in Florida. As such, this requirement will impose an additional operating cost for secondary metals recyclers. Conversely, the requirement that bonds be issued by a surety company located in Florida will positively affect the state's surety industry by creating a new demand.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The definition of copper appears logically circular since it enumerates examples of copper rather than defines it. Furthermore, reference to copper is already made where a nonferrous metal¹⁵ is defined. Seeing that regulated metals property¹⁶ includes nonferrous metals, the inclusion of copper in that definition appears redundant.

Additionally, it is unclear who the required bond should benefit: the purchaser of stolen property from an electrical substation site or the actual victim of the theft, the electrical substation site. Furthermore, it appears that the remedy would only be triggered in the limited case where the property at issue is stolen from an electrical substation site.

VII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

¹⁵ Nonferrous metals is defined as metals not containing significant quantities of iron or steel, including, without limitation, *copper*, brass, aluminum, bronze, lead, zinc, nickel, and alloys. *See* s. 538.18(4), F.S.

¹⁶ Regulated metals property is defined as any item composed primarily of any *nonferrous metals* . . . s. 538.18(7), F.S.