

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: The bill increases sanctions on secondary metals recyclers who repeatedly fail to keep required transaction records and hold metals, pursuant to a request from a law enforcement officer, for a certain period of time. The bill also enhances the punishment if a seller provides false information to a secondary metals recycler.

B. EFFECT OF PROPOSED CHANGES:

A secondary metals recycler is essentially a scrap metal dealer. Secondary metals recyclers purchase used metals typically salvaged from building demolition, remodeling, etc. and refine those metals into raw materials which can be used to make new products. Secondary metals recyclers are currently regulated under Ch. 538, Part II, F.S. All secondary metals recyclers in Florida must be registered with the Department of Revenue as provided in s. 538.25, F.S.

Recently, there has been an increase of reports of metal theft (specifically copper) from 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 \$2.59-\$2.74 per pound¹.

Definitions

Currently, to qualify as a "purchase transaction"² regulated under Chapter 538, the transaction must involve an exchange of consideration greater than \$10. Section 538.18(6), F.S. CS/HB 105 deletes the requirement that the transaction be greater than \$10. This has the effect of making all transactions involving the sale of regulated metals subject to the regulations set forth in Florida Statutes, Chapter 538, Part II.

In addition, the bill adds stainless steel beer kegs to the definition of regulated metals property. As a result, secondary metals recyclers would be required to use the same procedures when purchasing stainless steel beer kegs as they would for all regulated metals under Ch. 538, Part II, F.S.

Record Keeping

Currently s. 538.19, F.S. requires secondary metals recyclers³ to gather information about each seller of regulated metals⁴ and information about the regulated metals being sold. The current statute requires the secondary metals recycler to maintain a record of:

¹ http://www.dallascontracting.com/scrap_copper_metal_prices.html (As of December 4, 2007).

² A purchase transaction is formally defined as a transaction in which a secondary metals recycler gives consideration having a value in excess of \$10 in exchange for regulated metals property. Section 538.18(6), F.S.

³ Section 538.18, F.S. defines a secondary metals recycler as "any person who (a) is engaged, from a fixed location or otherwise, in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business

- The name of the secondary metals recycler
- The name of the seller
- The date and time of the transaction
- The weight, quantity, or volume, and a description of the regulated metals being sold
- A signed statement from the seller stating that the seller is entitled to sell the regulated metals
- The number of a seller's personal identification card
- A photograph of the seller

CS/HB 105 expands the list to require that secondary metals recyclers also gather the following additional information:

- The seller's full name, residential address, workplace, and home and work telephone number
- The seller's height, weight, date of birth, race, gender, hair color, eye color, and other physical identifying marks
- The seller's right thumbprint
- A description of the seller's vehicle including the make, model, and tag number
- Any other information required by FDLE
- A photograph of the regulated metals being sold

The secondary metals recycler is required to keep this information for 5 years from the date of the transaction. There is no requirement the form on which the seller's information is recorded be approved by any governmental department.

A "personal identification card" is currently defined as driver's license, identification card, passport, military identification card, or a work authorization card. CS/HB 105 deletes this specific language and amends the statute to include the broader definition of any government-issued photo identification card.

In addition to the requirements above, if the transaction involves a stainless steel beer keg, the seller of the beer keg must provide written documentation from the manufacturer of the keg that the seller is the owner of the keg or an agent of the manufacturer of the keg.

CS/HB 105 also amends s. 538.19, F.S. to require the form on which the above information is recorded be approved by FDLE.

of performing the manufacturing process by which ferrous or nonferrous metals are converted into raw material products consisting of prepared grades and having existing or potential economic value; or (b) has facilities for performing the manufacturing process by which ferrous or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof."

⁴ Regulated metals are defined as "any item composed primarily of any nonferrous metals, but shall not include aluminum beverage containers, used beverage containers, or similar beverage containers." S. 538.18(7), F.S.

Enhanced Penalties – Secondary Metals Recyclers

Currently, s. 538.23, F.S. provides that a secondary metals recycler is guilty of a first degree misdemeanor⁵ if convicted for knowingly and intentionally:

- Failing to allow a law enforcement official access to inspect records of transactions
- Failing to allow a law enforcement official access to inspect regulated metals in the possession of the secondary metals recycler
- Failing to gather and maintain records of each transaction
- Failing, pursuant to a request from law enforcement, to hold regulated metals for a minimum period of time
- Purchasing regulated metals from a seller where the metals were not transported in a motor vehicle

CS/HB 105 expands s. 538.23(1)(a), F.S. to allow for enhanced penalties for third or subsequent offenses of s. 538.23, F.S. The bill makes third or subsequent offenses a third degree felony⁶.

Enhanced Penalties – Sellers of Regulated Metals

Subsection (3) of s. 538.23, F.S. provides that a seller of regulated metals who receives money for a transaction and knowingly gives false verification of ownership of the regulated metals or who gives altered identification to a secondary metals recycler is guilty of:

- A first degree misdemeanor if the seller received less than \$300
- A third degree felony if the seller received \$300 or more

CS/HB 105 amends s. 538.23, F.S. to enhance the penalties for violations of subsection (3). The bill provides that a seller convicted under s. 538.23(3) F.S. is guilty of:

- A third degree felony if the seller received less than \$300
- A second degree felony⁷ if the seller received \$300 or more

Registration of Secondary Metals Recyclers

Currently, s. 538.25, F.S. provides that secondary metals recyclers must register with the Department of Revenue and lists minimum eligibility requirements to become a registered secondary metals recycler. The Department of Revenue is authorized by s. 213.053(11) F.S. to give law enforcement officials the name of a specified secondary metals dealer as well as information on whether a specified secondary metals dealer holds a valid certificate of registration.

⁵ Punishable by up to a year in jail and a \$1,000 fine. Section 775.082(4)(a), F.S.; s. 775.083(1)(d), F.S.

⁶ Punishable by up to 5 years in prison and a \$5,000 fine. Section 775.082(3)(d), F.S.; s. 775.083(1)(c), F.S.

⁷ Punishable by up to 15 years in prison and a \$10,000 fine. Section 775.082(3)(c), F.S.; s. 775.083(1)(b) F.S.

CS/HB 105 adds subsection (6) to s. 538.25, which requires the Department of Revenue, upon the request of a law enforcement official, to release the names and addresses of any secondary metals recyclers who are registered to do business in the law enforcement official's jurisdiction.

Prohibited Transactions

Section 538.26(4) currently prohibits secondary metals recyclers from purchasing regulated metals from sellers if the regulated metals were not transported in a motor vehicle. There is an exception, however, if the seller can prove ownership of the regulated metals⁸.

CS/HB 105 amends s. 538.26(4) to eliminate the exception which allows the purchase if the seller can prove ownership of the regulated metals. The bill would require sellers to transport all regulated metals to a secondary metals recycler in a motor vehicle.

Payment

Currently, secondary metals recyclers are not required to make payment to sellers of regulated metals in any specific manner. The bill creates s. 538.235, F.S., which requires secondary metals recyclers to make payment by check in all transactions in excess of \$1,000. Additionally, the bill provides that a secondary metals recycler who violates this section commits a first degree misdemeanor.

C. SECTION DIRECTORY:

Section 1 Amends s. 538.18, F.S.; revising definitions.

Section 2 Amends s. 538.19, F.S.; relating to information the secondary metals recycler must obtain concerning each seller.

Section 3 Amends s. 538.23, F.S.; relating to violations and penalties.

Section 4 Creates s. 538.235, F.S., relating to method of payment for certain transactions.

Section 5 Amends s. 538.25, F.S.; relating to registration.

Section 6 Amends s. 538.26, F.S.; relating to certain prohibited practices involving secondary metals recyclers.

Section 7 Provides effective date of October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

⁸ A violation of this section would subject the secondary metals recycler to punishment of a first degree misdemeanor. Section 538.23(1), F.S.

Indeterminate – see fiscal comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

CS/HB 105 requires secondary metals recyclers to gather additional information about sellers of regulated metals. Secondary metals recyclers are already obligated to collect some information about the sellers of regulated metals so there is already an existing framework for the information gathering process. This bill would increase the amount of information secondary metals recyclers are required to collect, but since the structure for gathering such information is already in place, the economic impact on the private sector is likely to be minimal.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. The bill creates third degree felony penalties for certain offenses and as a result, this bill may have a prison bed impact on the department. However, the third degree felony offenses created by this bill are not ranked in the Offense Severity Ranking Chart and as a result, will default to a level 1 ranking. Such offenses are usually presumed to have an insignificant prison bed impact on the Department of Corrections.

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 comment submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On December 12, 2007, the Committee on Homeland Security & Public Safety adopted three amendments and reported the bill favorably as a recommended council substitute. The recommended council substitute makes the following changes to the original bill:

- changes the term “secondhand dealers” to “secondary metals recyclers.” This change maintains consistent language throughout Ch. 538, Part II which regulates only secondary metals recyclers. The recommended council substitute also deletes an exception regarding the purchase of aluminum cans. Aluminum cans are already excluded from the definition of regulated metals in s. 538.18(7), F.S.
- creates s. 538.235, F.S., which requires secondary metals recyclers to make payment to the seller by check if the transaction amount exceeds \$1,000. The recommended council substitute also adds s. 538.23(1)(a)4. F.S., which makes failure to comply with s. 538.235, F.S. a first degree misdemeanor.
- adds “stainless steel beer kegs” to the definition of regulated metals. The recommended council substitute also specifies that, for any transaction involving a stainless steel beer keg, the seller must provide written documentation from the manufacturer of the keg that the seller is the owner of the keg or has the authority to sell the keg.

The Safety & Security Council made the bill a council substitute.