

**STATE and LOCAL  
FISCAL IMPACT**

**Drafting Number:** LLS 11-0194

**Date:** January 26, 2011

**Prime Sponsor(s):** Rep. Priola

**Bill Status:** House Judiciary

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**TITLE:** CONCERNING COMMODITY METALS, AND, IN CONNECTION THEREWITH, IMPLEMENTING STRICTER IDENTIFICATION AND PAYMENT REQUIREMENTS FOR TRANSACTIONS INVOLVING COMMODITY METALS, INCREASING PENALTIES FOR VIOLATIONS OF THE LAW REGULATING PURCHASE OF COMMODITY METALS, BASING THE CLASSIFICATION OF OFFENSE OF THEFT OF A COMMODITY METAL ON THE WEIGHT OF THE METAL, AND CREATING THE COMMODITY METALS THEFT TASK FORCE.

<b>Fiscal Impact Summary</b>	<b>FY 2011-2012</b>	<b>FY 2012-2013</b>
<b>State Revenue</b>		
Cash Funds		
Fines Collection Cash Fund	less than \$5,000	less than \$5,000
<b>State Transfers or Diversions</b>		
Transfer from the General Fund to the Capital Construction Fund	(\$179,463)	
<b>State Expenditures</b>		
General Fund		\$56,547
Cash Funds - Capital Construction Fund appropriation to the Corrections Expansion Reserve Fund	\$179,463	
<b>FTE Position Change</b>		
<b>Effective Date:</b> The bill applies to acts committed on or after the effective date, which is upon signature of the Governor, or upon becoming law without his signature.		
<b>Appropriation Summary for FY 2011-2012:</b> See State Appropriations section		
<b>Local Government Impact:</b> Minimal		

**Summary of Legislation**

The penalties for theft of commodity metals (metals containing brass, copper, copper alloy, aluminum, stainless steel, magnesium, or other metals traded on the commodity markets for at least fifty cents per pound) are currently determined according to the monetary value of the items stolen. This bill bases the penalties on the weight of the commodity metals. Table 1 illustrates the new penalty structure.

<b>Felony Class</b>	<b>Weight of Commodity Metals</b>	<b>Number of Offenses</b>
Class 6	Less than 100 pounds	First offense
Class 5	100 to 1,000 pounds	First offense
Class 4	Greater than 1,000 pounds	First offense
Class 4	Regardless of the weight	Second or subsequent offense of theft of a commodity metal

The purchase of commodity metals is also addressed by the bill. It:

- no longer allows a seller to verify his or her identity with an identification document that does not contain a picture;
- requires buyers to sign up with and properly use the national scrap theft alert system maintained by the Institute of Scrap Recycling Industries;
- requires buyers to notify local law enforcement within 24 hours after discovering stolen commodity metals;
- allows buyers to pay sellers in cash for any transaction of \$300 or less;
- requires payment by check for transaction over \$300 unless payment is made through a process in which a picture is taken of the seller;
- requires buyers to take a photograph or video recording of the seller and merchandise in each transaction and to keep such photograph or recording for 180 days;
- removes the requirement that buyers hold commodity metals purchases separate from other inventory for five working days;
- newly applies regulation of commodity metals to purchases of less than 25 pounds;
- increases the penalty for reckless violation of the law concerning the purchase of commodity metals to a class 1 misdemeanor when the value of the metal is under \$500 and a class 6 felony when the value is \$500 or more;
- clarifies that commodity metals do not include precious metals such as gold, silver, or platinum; and
- creates the Commodity Metals Theft Task Force, which is repealed July 1, 2021.

### **State Revenue**

According to state law, the fine penalties for the offenses created by the bill range from \$500 to \$500,000. Unless otherwise provided by law, the fines are to be deposited in the state Fines Collection Cash Fund for annual appropriations to cover associated administrative and personnel costs in the Judicial Branch. All unexpended balances of the cash fund revert to the General Fund at the end of each fiscal year. Because the courts have the discretion of imposing incarceration, a fine, or both, the impact to the cash fund and the General Fund cannot be determined.

### **State Transfers or Diversions**

Pursuant to the requirements of state law, this bill transfers \$179,463 from the General Fund to the Capital Construction Fund in FY 2011-12, then appropriates the money to the Corrections Expansion Reserve Fund. Thus, this amount will not be available for General Fund appropriations. For a further explanation of this transfer and appropriation, see the section related to the five-year impact on correctional facilities.

### **State Expenditures**

**Judicial Branch.** There is likely to be a fiscal impact to the trial courts and probation departments as a result of restructuring the penalties for theft of commodity metals and creating new crimes related to purchases. The impact is expected to be minimal and can be absorbed within existing appropriations.

**Department of Corrections (DOC).** **The department requires additional General Fund expenditures of \$179,463 in FY 2011-12 and \$56,547 in FY 2012-13.** Basing the penalty structure for theft of commodity metals on the weight rather than the value of the metals stolen is not expected to change the number or length of sentences to the DOC. However, the bill is expected to result in one new class 4 felony conviction every five years for a second or subsequent offense of theft of commodity metals and one new class 6 felony conviction every five years for a violation of the laws concerning the purchase of commodity metals when the value of the metal is \$500 or more. Both of these felonies are new offenses not currently in law. The average sentence for a class 4 felony is 34 months and for a class 6 felony it is 12.2 months.

### **Five-Year Fiscal Impact on Correctional Facilities**

Section 2-2-703, C.R.S., specifies that no bill can be passed by the General Assembly which results in a net increase in periods of imprisonment in *state correctional* facilities unless it contains an appropriation of money sufficient to cover the increased capital construction costs and operating costs in each of the first five fiscal years of the bill. Sections 17-1-102, 104.9, and 105.5, C.R.S., authorize the department to permanently place inmates classified as medium custody and below in private contract prisons. Inmates classified higher than medium custody cannot be placed in private contract prisons, except under "correctional emergency" conditions. ***The fiscal note assumes that the new inmates identified in this bill will be allocated between state correctional facilities and private contract prisons according to historical patterns.***

If an inmate is placed in a state correctional facility, the additional construction costs are estimated to be \$130,046 per inmate bed. Operating costs are \$88.59 per bed per day or \$32,335 per bed per year. It should be noted that the construction costs reflect the funding needed to construct inmate beds in the fiscal year prior to when additional offenders are expected to enter the system. This lag accounts for the estimated time for criminal filing, trial, disposition, and sentencing. If an inmate is placed in a private contract prison, the state incurs no additional capital

construction costs; however, the state pays a rate of \$52.69 per bed per day for inmates placed in private prisons. The total cost to the department is therefore \$19,232 per private prison bed per year. Departmental data indicates that 29 percent of class 4 felons and 33 percent of class 6 felons are housed in private prisons, and both the construction and operating costs presented in Table 2 have been prorated accordingly.

<b>Fiscal Year</b>	<b>Inmate Bed Impact</b>	<b>Construction Cost</b>	<b>Operating Cost</b>	<b>Total Cost</b>
FY 2011-12	0.0	\$179,463	\$0	\$179,463
FY 2012-13	2.0	0	56,547	56,547
FY 2013-14	1.02	0	29,096	29,096
FY 2014-15	0.84	0	23,970	23,970
FY 2015-16	0.0	0	0	0
<b>Total</b>		\$179,463	\$109,613	\$289,076

**Local Government Impact**

The penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. Because the courts have the discretion of imposing incarceration or a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$72 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails a daily rate of \$50.44 to house state inmates. It is assumed that the impact of any new misdemeanor convictions will be minimal and will not create the need for additional county jail space.

**State Appropriations**

For FY 2011-12, the DOC requires an appropriation of \$179,463 from the Corrections Expansion Reserve Fund, plus the other five-year costs detailed in Table 2.

**Departments Contacted**

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| Corrections<br>Colorado Counties, Inc. | Judicial<br>Colorado Municipal League | Public Safety<br>County Sheriffs |
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