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FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/12

SPONSOR Rodella LAST UPDATED 02/07/12 HB 118/a HAFC

SHORT TITLE Secondhand Metal Dealer Requirements SB _____

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
	\$300.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY12	FY13	FY14		
	\$17.5 - \$30.0	\$17.5 - \$30.0	Recurring	RLD Operating

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			\$50.0	\$50.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates Senate Bill 67

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

The AGO issues the following disclaimer. "This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Opinion letter. This is a staff analysis in response to the agency's, committee's or legislator's request."

Regulation and Licensing Department (RLD)

Public Regulation Commission (PRC)

Department of Public Safety (DPS)

SUMMARY

Synopsis of House Appropriations Finance Committee Amendment

The House Appropriations Finance Committee amends House Bill 118/a HAFC as follows: On page 1, line 21, strike "; MAKING AN APPROPRIATION". On page 7, strike lines 24 and 25, and on page 8, line 1, strike "stolen or" and insert in lieu thereof. Further clarifying, if a peace officer determines, through an investigation or examination of the records kept by the secondhand metal dealer, that the dealer may be in possession of stolen property or property that". On page 8, line 21, strike "require" and insert in lieu thereof "impose any reporting requirements on". On page 8, line 22, after "dealers", strike the remainder of the line and insert in lieu thereof "regarding". On page 15, strike lines 3 through 9 in their entirety and renumber the succeeding section accordingly.

Synopsis of Original Bill

House Bill 118 (HB118) would amend the *Sale of Recycled Metals Act* to (Chapter 57, Article 30) to provide a statutory basis for regulation of the purchase and sale of certain recycled metals. The bill would remove "auto wrecker" from classification as a secondhand metal dealer.

House Bill 118 would affect secondhand metal dealer transactions in the following ways.

- Secondhand metal dealers would not be permitted to buy or sell secondhand metals without a valid registration issued by RLD. The registration would be valid for three years and could be suspended or revoked by the RLD Superintendent on a finding that the dealer intentionally violated the provisions of the *Sale of Recycled Materials Act*. The opportunity for a hearing would be provided prior the imposition of a civil penalty.
- Certain transactions by dealers would be restricted by requiring documentation that the seller is the rightful owner of the regulated materials, has the permission of the rightful owner, or the regulated material was otherwise lawfully obtained. The regulated materials subject to this restriction include infrastructure grade materials which have been burned to remove insulation, material where the manufacturer's or other personal identification has been removed, material marked with the name of a utility company, railroad or governmental entity, metal beer kegs marked as being the property of the beer maker, and catalytic converters that are not a part of an entire vehicle.
- Secondhand metal dealers would be allowed to photograph the seller and the regulated materials.
- If a peace officer has probable cause to believe that property in the possession of a dealer is stolen or constitutes evidence in a criminal investigation, the peace officer may place a hold on the property (for up to five days or until the property is seized, whichever is earlier) prohibiting the sale or removal of the property from the premises.
- Reporting of purchases or acquisition of regulated material would be by upload to a database maintained by RLD rather than by mail. The database would be available exclusively to law enforcement officials.

- Local governments would be prohibited from requiring any additional reports on the purchase or acquisition of regulated material.
- The waiting period for a seller of regulated materials to dispose of such materials would be reduced from five days to twenty-four hours.
- The list of prohibited acts would be expanded to include removing or altering a manufacturer's make, model, serial or personal identification number or other identifying marks engraved or etched upon property that is regulated material

House Bill 118 would appropriate \$300 thousand dollars from the general fund to the Regulation and Licensing Department for use in fiscal years 2013 and 2014 for the purpose of building the database required by the provisions of the act.

FISCAL IMPLICATIONS

The appropriation of \$300 thousand contained in HB118 is a non-recurring expense to the general fund. Any unexpended or unencumbered balance at June 30, 2014 would revert to the general fund.

LFC analysis guidelines for information technology expenditures classify the purchase of computer equipment as non-recurring. The RLD estimates that once the database is operating, they will incur software maintenance costs of \$50 thousand per year, so this is the amount shown estimated additional operating cost table above.

House Bill 118 would allow RLD to charge a fee of \$25 for the registration of a secondhand metal dealer. The RLD estimates that there are approximately 700 to 1,200 dealers in the state. This results in the estimated revenues of \$17,500 to \$30,000 in fiscal year 2013. Based on the above estimated annual costs for maintenance of the database, there would be a requirement for the remainder of \$20,000 to \$32,500 to become an increase to the department's general fund base.

SIGNIFICANT ISSUES

The RLD reports that metal theft is on the rise nationwide and this bill proposes to have a mechanism to regulate the industry and give law enforcement better working tools to catch the criminals who place the citizens of New Mexico at risk as they suffer power outages and interruptions in telephone services, including 911 services. These thefts also include infrastructure thefts such as transformers from the Railrunner, road and bridge guard rails, traffic signals and water meter covers.

HB118 tightens requirements on dealing in regulated materials, changes the definition of "secondhand metal dealer", allows for a 3 yr. registration for secondhand metal dealers and does not require those who do not deal in regulated materials to be registered or to report transactions to the database; thus allowing rural and other small dealers who trade in other metals to conduct their business outside of these requirements.

ADMINISTRATIVE IMPLICATIONS

The RLD notes that in 2008, a bill was passed to require reporting of transactions by recycled metal dealers dealing in regulated materials, such as copper, brass, steel, aluminum and bronze. These transactions were to be placed in a database. Since the appropriation was stripped before the bill was passed, there was no way to build a database with existing resources so an FTP site was set up. Transactions are currently uploaded, faxed, mailed or emailed to the department. While the current statute allows for administrative penalties, there is no “triggering mechanism” because there is neither a licensing nor a registration requirement.

According to the RLD, HB118 addresses many of the difficulties in fulfilling the current legislative mandate. It requires RLD to regulate those recycled metal dealers who choose to trade in regulated materials as well as enhancing the tools available to law enforcement. The agency can implement this bill with existing personnel.

DUPLICATION

Senate Bill 67 is a duplicate of this bill.

TECHNICAL ISSUES

The fund to which receipts for registration fees are deposited is not specified. The prior version of this bill created the “recycled metals licensing fund.”

CH/svb