

Legislative Analysis



THEFTS OF COPPER WIRE & UNLAWFUL ACTIVITIES AGAINST UTILITY INFRASTRUCTURES

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House Bill 5335 with committee amendment
Sponsor: Rep. Bert Johnson

House Bill 5336 with committee amendment
Sponsor: Rep. Tim Melton

House Bill 5361 (Substitute H-1)
House Bill 5362 with committee amendment
Sponsor: Rep. Chuck Moss

Committee: Judiciary
First Analysis (3-17-08)

BRIEF SUMMARY: The bills would specifically prohibit stealing or offering for sale copper wire; stealing or defacing property of a utility; include telecommunications systems as a utility; remove the element of intent from violations involving utilities; and make a violation a felony.

FISCAL IMPACT: The bills could have an indeterminate fiscal impact on state and local governments. See a more detailed discussion later in the analysis.

THE APPARENT PROBLEM:

As the world faces a shortage of copper due to a boom in overseas construction (in particular, China and India), the per pound price of scrap copper has increased from about 60 cents a pound in 2002 to over \$3.50 as of 2007. As a result, the theft of copper wiring has become a lucrative business and thieves have become more blatant in picking targets. Where a few years ago, primarily empty houses or construction sites were stripped of copper pipes or wirings, thieves are now targeting utility substations, telephone and electric poles, and irrigation systems in rural areas.

One associated problem is that stealing telephone and electric service cables is dangerous; six people were killed in southeast Michigan in 2006 from electrocution or falls when trying to steal copper cables, and more have perished since then. In addition, obviously, thefts of cables from utilities disrupt important services such as telephone, electric, and heat. Without these services, business operations are disrupted, and the public's safety is put at risk when 9-1-1 calls cannot be made, medical equipment cannot operate, first responders cannot communicate with each other, or street lights go out. Moreover, the cost to utilities, homeowners, and businesses to replace the stolen copper wire or cables is many times what the thief gets from selling the wire on the scrap metal circuit. For instance, copper wire taken from between two utility poles may net a thief

\$20-\$30 dollars worth of scrap copper, but cost the utility company \$5,000 to \$10,000 to replace—costs eventually passed on to consumers.

The theft of copper cables from utilities is dangerous to the public in other ways, also. Apparently, the transformers on utility poles contain oil in addition to about 50 pounds of copper cables. When the wires are cut, the oil spills and becomes a hazard to the environment, wildlife, and humans. In one case, AT&T was delayed in restoring power after a line was cut while the company waited for a Hazmat crew to come and complete an environmental cleanup. Further, dangling wires can electrocute passersby, and utility workers can be injured when entering a vandalized substation.

According to media reports and committee testimony, the problem is growing, with utility companies reporting incidents in the hundreds across the state each year. And, though Detroit leads the nation in copper wire thefts, the problem is being felt across the state and in rural areas as well, as more and more utility substations and farm equipment, such as irrigation machines, are being stripped of copper components. Even with many utilities offering substantial rewards for tips regarding thefts of copper cables and some local communities enacting ordinances prohibiting copper thefts, the problem is increasing.

Reportedly, prosecutors are finding it difficult to fit current penal code provisions to copper wire thefts and attacks on utility infrastructures. Legislation therefore is being offered to revise several statutes to address the problem.

THE CONTENT OF THE BILLS:

The bills would amend the state's penal code and sentencing guidelines to specifically prohibit stealing or selling copper wire under certain circumstances and to prohibit thefts from and damage to utility infrastructures. All of the bills would take effect July 1, 2008.

House Bills 5335-5336

House Bill 5335 would amend the Michigan Penal Code (MCL 777.16r) to make it a felony to steal copper wiring or to offer for sale copper wiring belonging to another person without that person's consent. The felony would be punishable by imprisonment for up to five years and/or a fine of up to \$5,000.

House Bill 5336 would amend the Code of Criminal Procedure (MCL 750.357c) to put the new felony into the sentencing guidelines. The crime would be a Class E felony against property with a five-year maximum sentence. The bill is tie-barred to House Bill 5335.

House Bills 5361-5362

Currently, it is against the law to willfully cut, break, obstruct, injure, destroy, tamper with or manipulate various kinds of property of a utility company, including any

machinery; tools; equipment; a telephone line or post; electric line; a post, tower, or supporting structure; electric wire, insulator, switch, or signal; or a natural gas pipeline, water pipeline, or steam heat pipeline with the intention and without authority to interrupt or disrupt communications or electric, gas, water, or steam heat service, or to curtail or impair the utilization of those services. A violation is an unspecified felony; under the penal code, a felony for which a penalty is not fixed by statute is punishable by imprisonment for not more than four years and/or a fine of not more than \$5,000.

House Bill 5361 would amend the Michigan Penal Code (MCL 750.383a) to do the following:

- Prohibit, in addition to the current prohibited acts, defacing or stealing the listed property of a utility or component of the electric, telecommunication, or natural gas infrastructure that is the property of a utility.
- Include in the list of utility property a telecommunication line, tower, or post; and apply the violation to all prohibited acts committed without lawful authority.
- Make numerous editorial revisions to enhance clarity, including specifying that the term "utility" includes both publicly and privately owned systems operated for the public use. The term is currently defined to include any pipeline, gas, electric, heat, water, oil, sewer, telephone, telegraph, radio, railway, railroad, airplane, transportation, communication, or other system. The bill would add telecommunication to the list of what "utility" includes.
- Specify that a violation would be punishable by imprisonment for not more than five years and/or a fine of not more than \$5,000.

Further, the penalty for the prohibited conduct also currently applies to anyone who with the intention and without authority to do so interrupts or disrupts communications or electric, gas, water, or steam heat service, or curtails or impairs the utilization of those utilities; the bill would delete this provision, thus removing the element of intent from the remaining prohibited conduct. The penalty for the prohibited conduct also currently applies to anyone who conspires, aids, abets in or causes to be done any of the unlawful acts; this provision would also be deleted.

House Bill 5362 would amend the sentencing guidelines portion of the Code of Criminal Procedure (MCL 777.16s) to specify that malicious destruction of utility equipment or utility infrastructure component would be a Class E felony punishable by a maximum term of imprisonment of five years. Currently, it is a Class F felony, punishable by a maximum of four years.

FISCAL INFORMATION:

The bills' fiscal impact on state and local correctional systems would depend on how they affected the number of criminal convictions and the severity of sentences. There are no data to indicate how many offenders might be affected by the bills. House Bills 5361-5362 (unlawful conduct against a utility infrastructure) would change the maximum sentence from 4 to 5 years and move the offense from a Class F to a Class E felony.

House Bills 5335-5336, as reported from committee, would also make the theft or unlawful sale of copper wire a Class E felony. Exclusive of sentences for habitual offenders, sentencing guidelines ranges for the minimum sentence for a Class E offense vary from 0-3 months (for which a nonprison sanction is required) to 24-38 months (for which a prison term is mandated). For Class F offenses, recommended minimums vary from 0-3 months to 17-30 months.

To the extent that more offenders were sentenced to jail, counties could incur increased costs of jail incarceration; those costs vary by county. To the extent that more offenders were sentenced to prison, the state could incur increased costs averaging about \$32,000 per prisoner per year. To the extent that more offenders were sentenced to felony probation, the state could incur increased costs of probation supervision; parole and probation supervision cost about \$2,000 per supervised offender per year.

Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

ARGUMENTS:

For:

The bills are part of a larger package of bills taking a two-prong approach to the ongoing problem of copper wire and cable thefts. One part of the legislation will reportedly deal with the supply side of scrap metal by increasing regulatory oversight. The bills under discussion address the issues by giving prosecutors the tools needed to prosecute the criminals stealing copper wires and vandalizing utility infrastructures and provide more appropriate penalties considering the threat to public safety and the costs to businesses and consumers as a result of the criminal activity.

In particular, House Bills 5335 and 5336 specifically target unlawful thefts of copper wire from any source and the resale of that stolen copper. According to utility companies, they are able to stamp their wire cables with identifiers similar to a car with a VIN. Even if thieves strip the outer insulation from the cables, the utilities can often identify even a portion of stolen wire or cable as belonging to their company or at a minimum, identify it as say, telephone wire. The stiff penalties that the bills would create would be a strong deterrent in stopping a future incident or in effectively punishing the perpetrator or an unscrupulous scrap metal dealer who buys and then offers for resale stolen copper wire.

House Bills 5361 and 5362 address the very serious threat to utility infrastructures and telecommunication infrastructures that can put the public at risk. Whether from disruptions to emergency, phone, electric, or gas services, or the hazards of dangling electric lines, people's safety is in jeopardy, businesses suffer economic hardship, and consumers end up paying higher costs for goods and services. The revisions to current violations regarding utilities would be strengthened and appropriately expanded to include components needed for telecommunication services. Prosecutors would no longer need to prove that a person intended to disrupt the services of a utility by his or her

unlawful deed; a case could move forward simply on the evidence that any of the prohibited conduct occurred.

Against:

House Bills 5335 and 5336 only apply to copper thefts and unlawful sale of copper wire. However, thefts involving copper plumbing and copper components in air conditioners are also a major problem. Many homes and businesses have been burglarized just for these items. Shouldn't they be included also?

Response:

Thefts of copper components from a home or business may be prosecutable under the breaking and entering laws. The bill package is specifically targeting a type of criminal conduct that falls outside the purview of the breaking and entering and larceny statutes, therefore they are drawn more narrowly to apply to copper wire thefts that are harder to fit into the current laws.

POSITIONS:

The following organizations and businesses indicated support for the bills on 3-12-08:

The Michigan State Police (HB 5335 and 5361)
Consumers Energy
AT&T
DTE Energy
Verizon
Sprint/Nextel
Institute of Scrap Recycling Industries
Indiana Michigan Power
Verizon Wireless
County of Oakland, Office of the Sheriff
The Michigan Realtors Association (HB 5335 and 5336)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.