



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

June 11, 2015

Honorable Amy Klobuchar
United States Senate
302 Hart Senate Office Building
Washington, D.C. 20510

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RE: Amendment 1555 to Amendment 1463 on HR 1735 “National Defense Authorization Act for Fiscal Year 2016 ”

Dear Senator Klobuchar:

On behalf of the National Conference of State Legislatures (NCSL), we are writing to urge you not to proceed with consideration of Amendment 1555 to Amendment 1463 on HR 1735, National Defense Authorization Act for Fiscal Year 2016, until additional research and investigation is made into the impact of this legislation on the states. NCSL is the bipartisan national organization that represents the legislatures of our nation's 50 states, its commonwealths and territories.

NCSL recognizes there is a need to combat the growing problem of metal theft and we appreciate your leadership and efforts to help address the increase in metal theft across the country. We are concerned, however, that this amendment may preempt some state laws and hinder the work that is underway in the states to battle this problem. All fifty states currently have laws addressing the issue of metal theft, and most of these laws have the same basic underlying goals as this amendment and therefore, they would be substantially similar. For example, a majority of states have already enacted proof of ownership and payment restriction provisions for specified metal. NCSL is concerned that state variations in policies may be inadvertently overturned in the wake of federal legislation.

For this reason, we would urge you to use care when legislating uniform standards for state metal theft laws. The current state laws regarding metal theft contain differences, but do so in order to address each state's particular needs. Uniform standards may lead to confusion rather than clarity regarding whether state or federal laws apply. This may hinder the progress made in enforcing metal theft on a state-by-state basis, and may also have a negative effect upon prosecution efforts. Although section 1709 of the bill cites that state and local law will not be preempted by this bill's proposals, further explanation should be given regarding what entails a “substantially similar” law which would warrant an exception. Depending on this definition, many states' laws may ultimately be preempted if slight variances do not warrant a “substantially similar” classification.

An additional concern is that of enforcement. The current language allows for both federal and state enforcement actions and even allows the U.S. Attorney General to intervene in an ongoing

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state action. If the federal government chooses to intervene, it raises the concern of diversion of state penalty money from the state to the federal treasury. Additionally, the enforcement sections of this bill undermine state authority by requiring state attorneys general to file burdensome notice requirements to their federal counterparts and these provisions are completely unnecessary as states have been actively engaged in curtailing metal theft on the state level for years.

Again, NCSL urges a cautious and thoughtful approach to drafting federal legislation in this area which must include a thorough understanding of current state metal theft law in all states. NCSL would welcome the opportunity to be a resource as the impact upon the state laws now in place is further investigated. Please do not hesitate to contact NCSL staff Susan Parnas Frederick (susan.frederick@ncsl.org) or Jennifer Arguinzoni (jennifer.arguinzoni@ncsl.org) with any questions you may have. Thank you.

Sincerely,



Debbie Smith
Senate Assistant Majority Floor Leader, Nevada
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Curtis S. Bramble
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Cc: Members of the United States Senate