

CS/CS/SB 340 – Offenses Involving Critical Infrastructure (Identical CS/CS/HB 275)

This bill creates s. 812.141, F.S., defining “improperly tampers” to mean “knowingly and intentionally cause, or attempt to cause, a significant interruption or impairment of a function of critical infrastructure by...changing the physical location or physical or virtual condition of the critical infrastructure, or any portion thereof, without permission or authority to do so...otherwise moving, damaging, or destroying the critical infrastructure or any portion thereof, without permission or authority to do so...or...accessing without authorization, introducing malware, or taking any other action that compromises the integrity or availability of the critical infrastructure’s digital systems.”

It also defines “critical infrastructure” as “any linear asset...or...any of the following for which the owner or operator thereof has employed physical or digital measures designed to exclude unauthorized persons, including, but not limited to, fences, barriers, guard posts, identity and access management, firewalls, virtual private networks, encryption, multifactor authentication, passwords, or other cybersecurity systems and controls...an electric power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center...a chemical or rubber manufacturing or storage facility...a mining facility...a natural gas or compressed gas compressor station, storage facility, or pipeline...a gas processing plant...a liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more...any portion of an aboveground oil or gas pipeline...wireless or wired communications network...a water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station...a deepwater port, railroad switching yard, airport, trucking terminal, or other freight transportation facility...a facility used for the operation, landing, takeoff, or surface maneuvering of vehicles, aircraft, or spacecraft...a transmission facility used by a federally licensed radio or television station...a military base or military facility...a civilian defense industrial base...cyber or virtual assets...dams and other water control structures.” Also, “linear asset” is defined as “any electric distribution or transmission asset, gas distribution or transmission pipeline, communication wirelines, or railway, and any attachments thereto.”

An **unranked, 2nd degree felony (Level 4 by default)** is added for “a person who improperly tampers with critical infrastructure resulting in damage to critical infrastructure that is \$200 or more or in the interruption or impairment of the function of critical infrastructure which costs \$200 or more in labor and supplies to restore.” An **unranked, 3rd degree felony (Level 1 by default)** is added for when a person, “without being authorized, licensed, or invited, willfully enters upon or remains on physical critical infrastructure as to which notice against entering or remaining in is given, either by actual communication to the offender or by posting, fencing, or cultivation.” An **unranked, 3rd degree felony (Level 1 by default)** is added for when a person “willfully, knowingly, and without authorization gains access to a computer, a computer system, a computer network, or an electronic device that is owned, operated, or used by any critical infrastructure entity while knowing that such access is unauthorized.” Finally, an **unranked, 2nd degree felony (Level 4 by default)** is added for when a person “willfully,

knowingly, and without authorization physically tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to, a computer, a computer system, a computer network, or an electronic device that causes a disruption in any service delivered by any critical infrastructure.”

Per U.S. Department of Energy, there were 3 incidents of vandalism at Florida electrical facilities in CY 2022, and there were 5 incidents in the first six months of CY 2023 involving vandalism or suspicious activity at electrical facilities.¹

Misdemeanor violations with monetary thresholds exist under s. 806.13(1)(a), F.S., s. 806.13(1)(b)1, F.S., and s. 806.13(1)(b)2, F.S. for when “a person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages by any means any real or personal property belonging to another, including, but not limited to, the placement of graffiti thereon or other acts of vandalism thereto.” Per FDLE, in FY 22-23, there were 7,708 arrests, with 3,572 guilty/convictions, and 1,104 adjudications withheld for these misdemeanor criminal mischief violations.

A Level 2, 3rd degree felony exists under s. 806.13(1)(b)3, F.S., where “a person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages by any means any real or personal property” and “the damage is \$1,000 or greater, or if there is interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service which costs \$1,000 or more in labor and supplies to restore.” Per DOC, in FY 22-23, there were 73 new commitments to prison for these violations.

Per FDLE, in FY 22-23, there were two convictions for the Level 7, 1st degree felony under s. 812.145, F.S., where someone “intentionally takes copper or other nonferrous metals from a utility or communications services provider, thereby causing damage.” Additionally, there were two convictions for the Level 1, 3rd degree felony under s. 860.09, F.S. when a person “knowingly or willfully moves, interferes with, removes, or obstructs any railroad switch, bridge, track, crossties, or other equipment located on the right-of-way or property of a railroad and used in railroad operations.” Per DOC, there were no new commitments to prison under these statutes in FY 22-23.

Per FDLE, in FY 22-23, there were 5,283 arrests for misdemeanor trespassing under s. 810.09, F.S., 4,091 guilty/convicted and 711 adjudications withheld. It is not known how many of these offenders fit the criteria described in this bill.

Per DOC, in FY 22-23, there were no new commitments to prison for trespassing upon agricultural chemicals manufacturing facilities or airports under s. 810.09, F.S.

Per DOC, in FY 22-23, there were two new commitments to prison for offenses against users of computers, computer systems, computer networks, and electronic devices (s.

¹ Electric Disturbance Events (OE-417) Annual Summaries, https://www.oe.netl.doe.gov/OE417_annual_summary.aspx

815.06, F.S.). There were no new commitments for computer-related offenses against public utilities (s. 815.061, F.S) or governmental entities (s. 815.062, F.S).

In FY 22-23, the incarceration rate for a Level 4, 2nd degree felony was 27.6%. The incarceration rate for a Level 1, 3rd degree felony was 9.5%.

Given the absence of data for this pool of potential offenders, and not knowing how many misdemeanor offenders or new commitments under s. 806.13, F.S. or s. 810.09, F.S. fit the criteria under this new language, it is not known how these newly created felonies will impact prison beds.

CONFERENCE ADOPTED ESTIMATE: Positive Indeterminate

Requested by: Senate & House