

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 29 Unlawful Use of Utility Services  
**SPONSOR(S):** Criminal & Civil Justice Policy Council; Energy & Utilities Policy Committee; Public Safety & Domestic Security Policy Committee; Grimsley  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** CS/CS/SB 236

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	6 Y, 2 N, As CS	Padgett	Kramer
2)	Energy & Utilities Policy Committee	22 Y, 0 N, As CS	Keating	Collins
3)	Criminal & Civil Justice Policy Council	11 Y, 0 N, As CS	Padgett	Havlicak
4)	Criminal & Civil Justice Appropriations Committee			
5)	Full Appropriations Council on General Government & Health Care			

### SUMMARY ANALYSIS

Currently, s. 812.14, F.S., provides criminal penalties for certain offenses relating to utilities. The bill amends s. 812.14, F.S., to add a third degree felony offense if a person or entity owns, leases, or subleases a property and permits a tenant or occupant to use utility services knowing, under such circumstances as would induce a reasonable person to believe, that such utility services have been connected in violation of the current provisions of this section. The bill provides a list of factors that constitute prima facie evidence of a person's intent to violate the newly created offense.

The bill also amends s. 812.14, F.S., to provide that theft of utility services for the purpose of facilitating the manufacture of a controlled substance is a third degree felony. The bill provides a list of factors that constitute prima facie evidence of a person's intent to commit theft of utility services for the purpose of manufacturing a controlled substance.

The prima facie evidence also applies in the determination of a person's civil liability for a violation of this section.

The Criminal Justice Impact Conference met on February 25, 2009, and determined the bill would have an insignificant prison bed impact.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives:

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Cultivation of marijuana in a "grow house" requires grow lamps, fans, air conditioning, and other equipment that uses a significant amount of electricity. The electricity use in such a grow house would be well above the normal electricity use of a similarly sized house. To prevent utilities and law enforcement from detecting abnormal electricity use and becoming suspicious about possible criminal activity, marijuana growers often tamper with utility meters so the meters register a lower amount of electricity consumption than what is actually used.<sup>1</sup> In some cases, the marijuana growers connect the grow houses directly to the power grid without the consent of the utility service.

##### **Present Situation**

The degrees of punishment under the current theft statute, s. 812.014, F.S., are primarily based upon the dollar value of the stolen property.<sup>2</sup> There are specific circumstances in which the dollar value threshold amounts which qualify for a higher level of punishment are altered or eliminated if a certain type of property<sup>3</sup> is stolen or if certain conditions occur related to the theft.<sup>4</sup> Under current Florida law, there is no specific provision regarding theft of utility services in s. 812.014, F.S.<sup>5</sup> As a result, absent one of the other exceptions, the criminal penalties for theft of utility services would be based on dollar value threshold amounts.

Section 812.14(2), F.S., provides criminal penalties for certain offenses relating to utilities. Specifically, a person commits a first degree misdemeanor<sup>6</sup> if the person<sup>7</sup>:

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<sup>1</sup> <http://www.tcpalm.com/news/2007/nov/29/3020-arrested-in-connection-with-pot-growing/>

<sup>2</sup> See generally, s. 812.012, F.S., concerning determination of value. Under s. 812.014, F.S., if the stolen property is valued at \$100,000 or more, the offense is a first degree felony. If the stolen property is valued at between \$20,000 and \$100,000, the offense is a second degree felony. If the stolen property is valued at between \$300 and \$20,000, the offense is a third degree felony. If the stolen property is valued between \$100 and \$300, the offense is a first degree misdemeanor. If the stolen property is under \$100, the offense is a second degree misdemeanor.

<sup>3</sup> E.g. firearms, a will, a fire extinguisher, citrus fruit, a stop sign, emergency medical equipment, law enforcement equipment, etc.

<sup>4</sup> E.g. theft during a state of emergency, use of a motor vehicle, damage to property during the course of the theft, theft of cargo in interstate commerce, etc.

<sup>5</sup> Section 812.014, F.S.

<sup>6</sup> A first degree misdemeanor is punishable by up to 1 year in jail and a \$1,000 fine. Sections 775.082, 775.083, F.S.

<sup>7</sup> Section 812.14, F.S., does not apply to licensed and certified electrical contractors performing usual and ordinary service in accordance with recognized standards.

- Willfully alters, tampers, or injures a meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier or other device belonging to a utility as to cause loss or damage; to prevent the meter from registering the actual quantity of electricity, gas, or water used; or to knowingly use electricity, gas, or water which passed through an altered meter, wire, pipe, or fitting. [s. 812.14(2)(a), F.S.]
- Makes or causes to be made a connection with a wire, main, service pipe or other pipes, appliance, or appurtenance to use electricity, water, or gas without the consent of the utility and without the service being reported for payment or passing through a meter. [s. 812.14(2)(b), F.S.]
- Uses or receives the direct benefit from a utility if the person knows, or should have known, that the utility services were obtained by the direct result of tampering, altering, or injuring a wire, conductor, meter, pipe, conduit, line, cable, transformer, amplifier, or other apparatus. [s. 812.14(2)(c), F.S.]

Section 812.14(5), F.S., provides that a person who unlawfully obtains utility services is subject to civil liability for three times the amount of utility services unlawfully obtained or \$1,000, whichever is greater.

Section 812.14, F.S., defines a utility as “any person, firm, corporation, or association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service or telecommunications service.”

### **Effect of Proposed Changes**

The bill amends s. 812.14, F.S., to add a create a third degree felony<sup>8</sup> offense if a person or entity owns, leases, or subleases a property and permits a tenant or occupant to use utility services knowing, under such circumstances as would induce a reasonable person to believe, that such utility services have been connected in violation of the current provisions of this section. The bill provides it is prima facie evidence of a person’s intent to violate the newly created offense if:

- A controlled substance and materials for manufacturing the controlled substance intended for sale or distribution to another were found in the structure or dwelling;
- The dwelling or structure has been visibly modified to accommodate the use of equipment to grow marijuana indoors; and
- The person who owned, leased, or subleased the structure or dwelling knew, or under such circumstances as would induce a reasonable person to believe, of the presence of the controlled substance and materials for manufacturing the controlled substance in the structure or dwelling, regardless of whether the person or entity was involved in the manufacture or sale of the controlled substance or was in actual possession of the structure or dwelling.

The bill provides that theft of utility services for the purpose of facilitating the manufacture of a controlled substance is a third degree felony. The bill provides it is prima facie evidence of a person’s intent to violate the newly created offense if:

- A person committed theft of utility services resulting in a dwelling or structure receiving unauthorized access to utility services;
- A controlled substance and materials for manufacturing the controlled substance were found in the structure or dwelling; and
- The person knew of the presence of the controlled substance and materials for manufacturing the controlled substance in the structure or dwelling, regardless of whether the person was involved in the manufacture of the controlled substance.

The prima facie evidence also applies in the determination of a person’s civil liability for a violation of this section. This could increase a utility’s ability to recover monetary damages for utility theft.

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<sup>8</sup> A third degree felony is punishable by up to 5 years imprisonment and a maximum \$5,000 fine. Section 775.082, 775.083, 775.084.

The bill does not rank the new third degree felony offenses in the Offense Severity Ranking Chart.<sup>9</sup> An unranked third degree felony defaults to a Level 1 for purposes of sentencing.<sup>10</sup>

The bill provides an effective date of October 1, 2009.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 812.14, F.S., relating to trespass and larceny with relation to utility fixtures; theft of utility services.

**Section 2.** Provides an effective date of October 1, 2009.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments, below.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill could increase a utility's ability to recover civil damages for the unlawful connection and/or theft of utilities.

**D. FISCAL COMMENTS:**

The Criminal Justice Impact Conference met on February 25, 2009, and determined the bill would have an insignificant prison bed impact.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

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<sup>9</sup> Section 921.0022, F.S.

<sup>10</sup> Section 921.0023, F.S.

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 10, 2009, the Public Safety & Domestic Security Policy Committee adopted two amendments to HB 29 and reported the bill favorably as a committee substitute. The amendments make the following changes to the bill:

- Create a third degree felony for a violation of s. 812.14(2)(b), F.S., and remove third degree felony offenses for violations of s. 812.14(2)(a) and (2)(c), F.S.
- Provide that the knowledge element of a prima facie case for theft of utility services for the purpose of facilitating the manufacture of a controlled substance is satisfied if the person "knew or should have known of the presence of the controlled substance."

On March 17, 2009, the Energy & Utilities Policy Committee adopted an amendment to CS/HB 29 and reported the bill favorably as a committee substitute. The amendment modifies the knowledge element of a prima facie case for theft of utility services for the purpose of facilitating the manufacture of a controlled substance and modifies the knowledge element of a prima facie case for violation of s. 812.14(2)(b). The knowledge element is satisfied only if the person "knew," rather than "knew or should have known," of the presence of the controlled substance and materials for its manufacture.

On March 27, 2009, the Criminal & Civil Justice Policy Council adopted one amendment to the bill. The amendment creates a third degree felony offense if a person or entity owns, leases, or subleases a property and permits a tenant or occupant to use utility services knowing, under such circumstances as would induce a reasonable person to believe, that such utility services have been connected in violation of the current provisions of this section.