

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 338

INTRODUCER: Senator Simpson

SUBJECT: Theft of Utility Services

DATE: February 6, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.	Erickson	Cannon	CJ	Pre-meeting
3.			ACJ	
4.			AP	
5.				
6.				

I. Summary:

SB 338 amends s. 812.14, F.S., to provide that thefts of utility services are punishable as theft under s. 812.014, F.S., the general theft statute. As a result of this change, a person who commits theft of utility services will not necessarily commit a first degree misdemeanor (the current degree of offenses under s. 812.14, F.S.). Under s. 812.014, F.S., the offense degree and penalties relevant to a theft depend upon the value of the property (which includes services) stolen and other factors, if relevant, such as whether the theft is a first offense (relevant to petit theft).

The bill also increases the civil penalty for a person found in a civil action to have violated the statute on utility theft from the current three times the amount of services stolen or \$1,000, whichever is greater, to three times the amount stolen or \$3,000, whichever is greater.

The bill takes effect October 1, 2013.

This bill substantially amends section 812.14 of the Florida Statutes.

II. Present Situation:

Utility Theft

Section 812.14, F.S., prohibits and punishes theft of utility services. The term “utility” is defined to include any person, firm, corporation, 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 telecommunication service.

Section 812.14(2)(a), F.S., provides that it is unlawful to willfully alter, tamper with, injure, or knowingly suffer to be injured any meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service in such a manner as to cause loss or damage or to prevent any meter installed for registering electricity, gas, or water from registering the quantity which otherwise would pass through the same; to alter the index or break the seal of any such meter; in any way hinder or interfere with the proper action or just registration of any such meter or device; or knowingly use, waste, or suffer the waste, by any means, of electricity or gas or water passing through any such meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to any such utility, after such meter, wire, pipe or fitting, or other appliance or appurtenance has been tampered with, injured, or altered.

Section 812.14(2)(b), F.S., provides that it is unlawful to make or cause to be made any connection with any wire, main, service pipe or other pipes, appliance, or appurtenance in such manner as to use, without the consent of the utility, any service or any electricity, gas, or water, or to cause to be supplied any service or electricity, gas, or water from a utility to any person, firm, or corporation or any lamp, burner, orifice, faucet, or other outlet whatsoever, without such service being reported for payment or such electricity, gas, or water passing through a meter provided by the utility and used for measuring and registering the quantity of electricity, gas, or water passing through the same.

Section 812.014(2)(c), F.S., provides that it is unlawful to use or receive the direct benefit from the use of a utility knowing, or under such circumstances as would induce a reasonable person to believe, that such direct benefits have resulted from any tampering with, altering of, or injury to any connection, wire, conductor, meter, pipe, conduit, line, cable, transformer, amplifier, or other apparatus or device owned, operated, or controlled by such utility, for the purpose of avoiding payment.

Section 812.14(4), F.S., provides that a willful violation of s. 812.14(2)(a), (b), or (c), F.S., is a first degree misdemeanor.¹

Section 812.14(5), F.S., provides that it is unlawful for a person or entity that owns, leases, or subleases a property to permit a tenant or occupant to use utility services knowing, or under such circumstances as would induce a reasonable person to believe, that such utility services have been connected in violation of s. 812.14(2)(a), (b), or (c), F.S.

Section 812.14(7), F.S., provides that a willful violation of s. 812.14(5), F.S., is a first degree misdemeanor. Prosecution for a violation of s. 812.14(5), F.S., does not preclude prosecution for theft under s. 812.14(8), F.S. (described, *supra*) or s. 812.014, F.S.

¹ A first degree misdemeanor is punishable by up to a year in jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

Section 812.14(8), F.S., provides that it is a first degree misdemeanor to commit theft of utility services for the purpose of facilitating the manufacture of a controlled substance.

Section 812.14(10), F.S., provides that whoever is found in a civil action to have violated the provisions of s. 812.14, F.S., is liable to the utility involved in an amount equal to three times the amount of services unlawfully obtained or \$1,000, whichever is greater.

General Theft

Section 812.014, F.S., is the general theft statute. The offense degree of theft depends upon the value of the property (which includes services) stolen and other factors, if relevant, such as whether the theft is a first offense (relevant to petit theft). As offense degree increases, so do the range and severity of penalties. The statute provides, in part, that it is:

- A first degree felony if the property stolen is valued at \$100,000 or more (grand theft in the first degree).²
- A second degree felony if the property stolen is valued at \$20,000 or more, but less than \$100,000 (grand theft in the second degree).³
- A third degree felony if the property stolen is valued at \$300 or more, but less than \$20,000 (grand theft of the first degree).⁴
- A third degree felony if the property stolen is valued at \$100 or more, but less than \$300, and is taken from a dwelling or from the unenclosed curtilage of a dwelling (grand theft of the third degree).⁵
- Excluding third degree felony theft involving a dwelling, a first degree misdemeanor if the property stolen is valued at \$100 or more, but less than \$300 (petit theft of the first degree).⁶
- A second degree misdemeanor if theft of property does not involve any of the other thefts described (petit theft of the second degree).⁷
- A first degree misdemeanor if a person who commits petit theft has previously been convicted of any theft.⁸
- A first degree misdemeanor if a person who commits petit theft has previously been convicted two or more times of any theft.⁹

² Section 812.014(2)(a)1., F.S. A first degree felony is generally punishable by up to 30 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

³ Section 812.014(2)(b)1., F.S. A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

⁴ Section 812.014(2)(c)1.-3., F.S. Theft is a third degree felony if the property stolen is valued at \$3000 or more, but less than \$5,000; 5,000 or more, but less than \$10,000; or \$10,000 or more but less than \$20,000. What distinguishes these thefts is not their offense degree but their ranking in the offense severity ranking chart of the Criminal Punishment Code (s. 921.0022, F.S.). A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

⁵ Section 812.014(2)(d), F.S.

⁶ Section 812.014(2)(e), F.S.

⁷ Section 812.014(3)(a), F.S. A second degree misdemeanor is punishable by up to 60 days in jail, a fine of up to \$500, or both. Sections 775.082 and 775.083, F.S.

⁸ Section 812.014(3)(b), F.S.

⁹ Section 812.014(3)(c), F.S.

- A second degree felony if a person individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing theft under s. 812.014, F.S., where the stolen property has a value in excess of \$3,000.¹⁰

III. Effect of Proposed Changes:

The bill amends s. 812.14, F.S., to provide that thefts of utility services are punishable as theft under s. 812.014, F.S., the general theft statute. As a result of this change, a person who commits theft of utility services will not necessarily commit a first degree misdemeanor (the current degree of offenses under s. 812.14, F.S.). By providing that utility theft is punishable under s. 812.014, F.S., the general theft statute, the offense degree and penalties relevant to the theft depend upon the value of the property (which includes services) stolen and other factors, if relevant, such as whether the theft is a first offense (relevant to petit theft).

For those utility theft cases that constitute a felony, repeat offender sanctions under ss. 775.082 and 775.084, F.S., may be available if the offender has a qualifying prior conviction or convictions.

The bill does not amend s. 812.14 (5) and (7), F.S. Section 812.14(5), F.S., provides that it is unlawful for a person or entity that owns, leases, or subleases a property to permit a tenant or occupant to use utility services knowing, or under such circumstances as would induce a reasonable person to believe, that such utility services have been connected in violation of s. 812.14(2)(a), (b), or (c), F.S.

Section 812.14(7), F.S., provides that a willful violation of s. 812.14(5), F.S., is a first degree misdemeanor. Prosecution for a violation of s. 812.14(5), F.S., does not preclude prosecution for theft under s. 812.14(8), F.S. (which the bill provides is punishable under s. 812.014, F.S.) or s. 812.014, F.S. Consequently, under the bill, if a person is convicted of a violation of s. 812.014(5), F.S., the person commits a first degree misdemeanor but prosecution under this subsection does not preclude prosecution under s. 812.14(8), F.S., or s. 812.014, F.S., which has the potential for greater punishment.

The bill also increases the civil penalty for a person found in a civil action to have violated the statute on utility theft from the current three times the amount of services stolen or \$1,000, whichever is greater, to three times the amount stolen or \$3,000, whichever is greater.

The bill takes effect October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not impact municipalities and counties under the requirements of Article VII, Section 18, of the Florida Constitution.

¹⁰ Section 812.014(6), F.S.

B. Public Records/Open Meetings Issues:

The bill does not raise public records or open meetings issues under the requirements of Article I, Section 24(a) and (b), of the Florida Constitution.

C. Trust Funds Restrictions:

The bill does not impact trust fund restrictions under the requirements of Article III, Section 19(f), of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By linking utility theft under s. 812.14, F.S., to the punishments provided for theft under s. 812.014, F.S., the punishment for the utility theft may be greater than provided under s. 812.14, F.S. (first degree misdemeanor), depending upon the facts and circumstances of the case (most importantly, the value of the property stolen). This change to the law may dissuade some persons from engaging in theft of utility services from private utility service providers. Also, the increased civil penalty should better compensate these providers and their customers for the losses to theft than the current civil penalty.

C. Government Sector Impact:

The changes the bill makes to punish utility theft may dissuade some persons from engaging in theft of utility services from government-owned utility service providers. Also, the increased civil penalty should better compensate these providers and their customers for the losses to theft than the current civil penalty.

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation had not convened at the time this analysis was completed. However, the Legislature's Office of Economic and Demographic Research (EDR) states that it will probably recommend to the CJIC that the bill is likely to have an insignificant prison bed impact.

The EDR states that the Florida Department of Law Enforcement (FDLE) found 73 guilty and 43 adjudication withheld counts in the Computerized Criminal History database for FY 2001-12.¹¹

¹¹ The FDLE states that the CCH is fingerprint-based and, unless prints were taken at a later stage in the criminal justice process, does not include records involving a notice to appear, direct files, or sworn complaints where no physical arrest was made. The FDLE does not warrant that the records provided are comprehensive or accurate as of the date they are provided, it only warrants that they contain information received by the FDLE from contributing agencies, and that any errors or omissions brought to the FDLE's attention are investigated and, as needed, corrected. Caution should be used in making conclusions about the data provided. The CCH data is as of February 1, 2013.

The EDR provides the following information regarding incarceration rates for petit theft (3rd conviction) and the four theft levels in FY 2011-12:

Petit theft, 3rd conviction:	15.2%
Grand theft, \$ 300 - \$4,999:	10.4%
Grand theft, \$ 5,000 - \$9,999:	9.2%
Grand theft, \$10,000-\$19,999:	17.6%
Grand theft, \$20,000-\$99,999:	32.0%

The preliminary EDR estimate assumes that few of the utility thefts would fall in the higher dollar amount ranges for theft and most of the theft offenses would be at lower levels (e.g., 17% of the sentencing events for the five previously-noted theft offenses were for petit theft (3rd conviction) and 73% were for the \$300 to \$4,999 level).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.