

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 Criminal Justice Committee

BILL: CS/SB 1438

INTRODUCER: Criminal Justice Committee and Senator Aronberg

SUBJECT: Utility Services/Unlawful Use/Controlled Substance

DATE: April 21, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			JU	
3.			JA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill provides that a person commits a third degree felony if the person willfully obtains or uses unauthorized utility services, or willfully alters or tampers with utility property in violation of the current provisions of s. 812.14(2), F.S., for the purpose of facilitating the manufacture of a controlled substance.

The bill also provides that theft of utility services for the purpose of facilitating the manufacture of a controlled substance is a third degree felony.

The bill also provides that it is prima facie evidence of a person's intent to commit each offense if:

- In the case of a violation of s. 812.14(2), F.S., a person violates this subsection, or in the case of theft of utility services, the person commits theft of utility services, and the result of the violation of s. 812.14(2), F.S., or theft of a utility service is that a dwelling or structure receives 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.

This bill substantially amends s. 812.14, F.S.

II. Present Situation:

Prevalence of Indoor Grow Operations (“Marijuana Grow Houses”)

The Florida Department of Law Enforcement (FDLE) reported:

The indoor cultivation of domestic marijuana continues to be prevalent throughout the state. In 2006, the reported seizures of marijuana from Indoor Grow Operations outpaced the seizures from Outdoor Grow Operations. However, the reported number of plants seized this year was less than 2005.

Investigative intelligence indicates that marijuana cultivators continue to move indoors to avoid detection and to increase the quality of the marijuana being produced. The sterile and clemently controlled environments available to Indoor Grow Operations enable cultivators to utilize sophisticated techniques to increase .-9 Tetrahydrocannabinol (THC), the primary psychoactive ingredient of marijuana. Indoor Grow Operations also allow the cultivators to artificially induce as many as four growing seasons per year as opposed to one season limited by nature in Outdoor Grow Operations.¹

Local law enforcement agencies in 41 of Florida’s 67 counties reported the detection and dismantling of 511 Indoor Grow Operation sites which resulted in the eradication of 37,311 marijuana plants. Some of the reported Indoor Grow Operations are small and simple while others are more complex and highly organized. Indoor Grow cultivators continue to develop innovative techniques and schemes to avoid detection by law enforcement. In addition, local law enforcement reported the arrest of 492 cultivators and the seizure of 126 firearms. The prosecution of the arrested cultivators was shared by both federal and state prosecutors.²

Impact on Utility Companies, Homeowners, and Neighborhoods from Marijuana Grow House Operations

Ontario, Canada, has experienced significant problems with marijuana grow houses over the last decade, and Canadian law enforcement agencies have compiled useful information on marijuana grow houses relevant to Florida’s grow house problem. On its website, the Niagara Regional Police Service in Ontario, Canada, briefly summarizes some of the problems encountered by utility companies, homeowners, and neighborhoods from marijuana grow houses:

Marijuana Grow Houses are normal houses in residential areas that are converted for the purposes of growing marijuana. Larger houses are often used because they provide a

¹ *Florida’s Domestic Marijuana Eradication Program - 2006 Annual Report - Indoor Grow Investigations*. (March 2007). Florida Department of Law Enforcement. (http://www.fdle.state.fl.us/publications/mjEradication/2006_Marijuana_Annual_Report.pdf)

² *Id.*

larger capacity for growing marijuana, but such operations may be found in any home, in any neighborhood.

To make a house suitable for cultivating marijuana, significant changes are made to the home's structure. High intensity lighting is needed to grow the plants (which is costly), so many home grow operations by-pass the electricity illegally putting the neighborhood at risk of fire and electrocution. Combined with construction to provide water and ventilation for the grow operation, the house becomes uninhabitable for future residents. Unless major repairs are made, the house is ruined and the property value of other homes in the area is lowered.³

Although staff did not find any data on the financial impact of marijuana grow houses on Florida utility companies, a 2003 report from the Ontario Association of Chiefs of Police suggests that there is the potential for Florida utilities to incur significant costs. The association estimated the financial impact of marijuana grow houses for the years 2000 to 2003 on Ontario hydroelectric companies (based on an estimate from these hydroelectric companies that each grow house operation set up with a "hydro bypass" stole between \$1,500 and \$2,000 of utility services per month):

...[I]n 2002 alone, the cost of hydro theft to hydro companies could have ranged between approximately \$1 and 13.4 million *per month*. Total theft estimated and projected for the 2000-2003 period amounts to between approximately \$2.7 and 35.8 million *per month*. Beyond monthly figures, it is difficult to assess the annual cost stemming from hydro theft because the duration for which a typical grow op runs, before dismantling by police or its operators, is unknown. In addition, the amount of "down time" between growing cycles may vary. Hence, it is not known how many months worth of electricity a typical grow op will steal over a given year. However, it is known that a typical grow op cycle is estimated at three months. Assuming conservatively that a typical operation averages two cycles per year and steals \$1,500 per month, then grow ops will have stolen between approximately \$16 and 160 million over the 2000-2003 period. Based on the same conservative assumptions, grow ops are estimated to have stolen between approximately \$6 and 60 million in 2002 alone.⁴

Theft and Offenses Relating to Utility Services

Section 812.014, F.S., is Florida's general theft statute. The degrees of punishment under this statute are primarily based upon the dollar value of the stolen property.⁵ There are specific circumstances in which the dollar value threshold amounts which qualify for a higher level of

³ See *Marijuana Home Grow Operations*, Niagara Police Department (<http://www.nrps.com/community/marijuana.asp>).

⁴ *Green Tide: Indoor Marijuana Cultivation and Its Impact on Ontario*. (2003). Ontario Association of Chiefs of Police. The report may be accessed at the website of the Canadian Centre on Substance Abuse (<http://www.ccsa.ca/CCSA/EN/Topics/Intervention/Enforcement.htm>).

⁵ 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.

punishment are altered or eliminated if a certain type of property⁶ is stolen or if certain conditions occur related to the theft.⁷ There is no specific provision regarding theft of utility services in s. 812.014, F.S. 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, 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.”

Currently, s. 812.14, F.S., provides that a person commits a first degree misdemeanor⁸ if the person:

- 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.
- 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.
- 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.⁹

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.

III. Effect of Proposed Changes:

The bill amends s. 812.14, F.S., to provide that a person commits a third degree felony¹⁰ if the person willfully obtains or uses unauthorized utility services, or willfully alters or tampers with utility property in violation of the current provisions of s. 812.14(2), F.S., for the purpose of facilitating the manufacture of a controlled substance.¹¹

⁶ For example, firearms, a will, a fire extinguisher, citrus fruit, a stop sign, emergency medical equipment, and law enforcement equipment.

⁷ For example, theft during a state of emergency, use of a motor vehicle, damage to property during the course of the theft, and theft of cargo in interstate commerce.

⁸ A first degree misdemeanor is punishable by up to 1 year in jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁹ Section 812.14, F.S. does not apply to licensed and certified electrical contractors performing usual and ordinary service in accordance with recognized standards.

¹⁰ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹¹ A “controlled substance” is defined as any substance named or described in Schedules I-V of s. 893.03. Section 893.02(4), F.S.

The bill also provides that theft of utility services for the purpose of facilitating the manufacture of a controlled substance is a third degree felony. The prosecution of this theft offense is in lieu of prosecution for theft pursuant to s. 812.014, F.S.

The bill also provides that it is prima facie evidence of a person's intent to commit each offense if:

- In the case of a violation of s. 812.14(2), F.S., a person violates this subsection, or in the case of theft of utility services, the person commits theft of utility services, and the result of the violation of s. 812.14(2), F.S., or theft of a utility service is that a dwelling or structure receives 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 bill takes effect on July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the bill decreases marijuana grow houses, it will benefit homeowners and neighborhoods (since remediation of a house used as a grow house is costly and property values in the neighborhood might be affected) and also benefit law enforcement and utility companies (fewer resources expended on eradicating grow house and fewer instances of utility theft).

C. Government Sector Impact:

The Criminal Justice Impact Conference estimates the bill will have an insignificant prison bed impact.

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.)

CS by Criminal Justice on April 21, 2008:

Removes language relating to growth or cultivation of a controlled substance (growth or cultivation are activities subsumed within the definition of “manufacturing” in ch. 893, F.S.).

B. Amendments:

None.