

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: The bill provides that either a violation of current s. 812.14(2), F.S., or the theft of utility services for the purpose of facilitating the manufacture, growth, or cultivation of a controlled substance is a third degree felony.

B. 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.¹ In some cases, the marijuana growers connect the grow houses directly to the power grid without the consent of the utility service.

Current 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.² 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 property³ is stolen or if certain conditions occur related to the theft⁴. Under current Florida law, there is no specific provision regarding theft of utility services in s. 812.014, F.S.⁵ 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.”

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

² See generally, s. 821.012, 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 \$100,00, 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.

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

⁴ 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.

⁵ Section 812.014, F.S.

Currently, s. 812.14, F.S. provides a person commits a first degree misdemeanor⁶ if the person⁷:

- 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.

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.

Proposed Changes

The bill amends s. 812.14, F.S. to provide that a person commits a third degree felony⁸ if the person violates the current provisions of s. 812.14(2), F.S. for the purpose of facilitating the manufacture, growth, or cultivation of a controlled substance⁹. The bill provides it is prima facie evidence of a person's intent to violate the newly created offense if:

- A person violates the current provisions of s. 812.14, F.S. (listed above), resulting in a dwelling or structure receiving unauthorized utility services;
- A controlled substance and materials for manufacturing, growing, or cultivating 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, growing, or cultivating the controlled substance in the structure or dwelling, regardless of whether the person was involved in the manufacture, growth, or cultivation of the controlled substance.

The bill does not rank the new third degree felony in the Offense Severity Ranking Chart.¹⁰ An unranked third degree felony defaults to a Level 1 for purposes of sentencing.¹¹

⁶ 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.

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

⁸ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082, 775.083, F.S.

⁹ 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.

¹⁰ Section 921.0022, F.S.

¹¹ Section 921.0023, F.S.

HB 837 further amends s. 812.14, F.S. to provide that theft of utility services for the purpose of facilitating the manufacture, growth, or cultivation 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 the factors listed above exist.

The bill does not rank the new third degree felony in the Offense Severity Ranking Chart. An unranked third degree felony defaults to a Level 1 for purposes of sentencing.

The bill provides an effective date of July 1, 2008.

C. 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 July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met on February 26, 2008 and determined this 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill uses the term, "manufacture, growth, or cultivation of a controlled substance." Section 893.02(13)a, F.S. defines the term, "manufacture" in the context of Ch. 893, F.S., which relates to drug abuse prevention and control. The definition of "manufacture" includes both the cultivation and growth of a controlled substance. To maintain consistency and to eliminate redundancy, only the term "manufacture" should appear throughout the bill.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES