

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 236

INTRODUCER: Criminal Justice Committee and Senator Dean

SUBJECT: Utility Services/Unlawful Use/Controlled Substance

DATE: January 15, 2009 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 creates a new third degree felony for willfully obtaining or using unauthorized utility services, or willfully altering or tampering with utility property for the purpose of facilitating the manufacture of a controlled substance.

The bill also creates a new third degree felony for theft of utility services for the purpose of facilitating the manufacture of a controlled substance.

The bill also specifies what evidence constitutes prima facie evidence of a person's intent to commit each offense.

This bill substantially amends section 812.14, Florida Statutes.

II. Present Situation:

Prevalence of Indoor Grow Operations ("Marijuana Grow Houses")

The Florida Department of Law Enforcement (FDLE) reports:

In 2007, the reported seizures of marijuana from Indoor Grow Eradication Sites continued to outpace the seizures from Outdoor Grow Eradication Sites. Indoor Grow cultivators continue to develop innovative techniques and schemes to avoid detection by law enforcement.

Despite these innovative techniques and schemes, county and local law enforcement agencies in 45 of Florida's 67 counties reported the detection and dismantling of 944 Indoor Grow sites, resulting in the eradication of 74,698 marijuana plants. This represents twice the number of plants eradicated in 2006. Some of the reported Indoor Grow sites were small and simple, while others were more complex and highly organized. DEA eradicated 941 plants at one site in Marion County. Both the Miami-Dade Police Department and the Seminole County Sheriff's Office eradicated sites having over 850 plants.

Miami-Dade County led the state in marijuana plants eradicated with 26,019 reported. This is a 65 percent increase over the number reported for 2006 In addition, law enforcement reported the arrests of 971 cultivators. This is nearly double the number of arrests reported in 2006. Law enforcement also reported the seizure of 188 firearms in 2007. Both state and federal prosecutions of cultivators resulted pursuant to these arrests.

Current intelligence information indicates that marijuana cultivators continue to move their operations indoors to avoid detection and to increase the quality of the marijuana being produced. The sterile and climate controlled environments enable cultivators to utilize sophisticated techniques to increase Δ -9 Tetrahydrocannabinol (THC), the primary psychoactive ingredient of marijuana. Indoor Grow sites also allow cultivators to artificially induce as many as four growing seasons per year, as opposed to the single season imposed by nature on Outdoor Grow sites.¹

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

Statewide economic impact of electricity theft, including theft by grow house operators, has not been estimated. According to a September 22, 2008 article in the *Tampa Tribune*,² “[n]ationwide, the industry estimates people steal about \$6 billion worth of electricity each year.” The newspaper reports that “[t]he biggest and best power thieves” are the grow house operators. The newspaper further reports that “[h]onest customers are footing the bill for that stolen power because most utilities are guaranteed a certain rate of return and are allowed to increase their rates to cover losses resulting from theft.”

Grow houses also have significant costs to the homeowner who unknowingly rents his or her house to a grow house operator, and grow houses can pose a safety hazard to, and negatively impact the property values of, a neighborhood in which a grow house operates. “To make a

¹ *2007 Indoor Grow Report*. (February 2008). Florida Department of Law Enforcement (http://www.fdle.state.fl.us/publications/mjEradication/DomesticMarijuanaEradicationProgramAnnualReport_2007.pdf).

² Ray, Russell. Power ‘Police’ On The Hunt For Electricity Thieves, *Tampa Tribune* (September 22, 2008). All quoted remarks in this paragraph are from this source.

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

Theft and Offenses Relating to Utility Services

Section 812.014, F.S., is Florida's general theft statute. The degree of punishment under this statute is primarily based upon the dollar value of the stolen property⁴ with punishments graduating upward as that dollar value increases, though the theft of certain items⁵ or the presence of certain conditions relating to the theft⁶ can also result in increased penalties. There is no specific provision regarding theft of utility⁷ 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 the cost of the power stolen.

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

³ *Marijuana Home Grow Operations*, Niagara Regional Police Service, Ontario, Canada (<http://www.nrps.com/community/marijuana.asp>).

⁴ 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.

⁵ For example, firearms, a will, a fire extinguisher, citrus fruit, a stop sign, emergency medical equipment, and law enforcement equipment.

⁶ 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.

⁷ 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."

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.

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.

Controlled Substance Offenses Relevant to Marijuana Grow House Operations

Various controlled substance offenses may be applicable to marijuana grow house operations. Section 893.1351 (1), F.S., provides, in part, that it is a third degree felony to own, lease, or rent “any place” or structure, or part thereof, with the knowledge it will be used for the purpose of trafficking in a controlled substance, as provided in s. 893.135, F.S.; for the sale of a controlled substance, as provided in s. 893.13, F.S.; or for the manufacture¹⁰ of a controlled substance intended for sale or distribution to another. Section 893.1351 (1), F.S., provides, in part, that it is a second degree felony for the person to knowingly be in actual or constructive possession of any place, structure, or part thereof, for the purpose of drug trafficking, controlled substance sales, or controlled substance manufacturing, as previously described.¹¹ However, if the person knew or should have known that a minor was present, the possession is a first degree felony.¹²

III. Effect of Proposed Changes:

The bill amends s. 812.14, F.S., to create a new third degree felony¹³ for willfully obtaining or using unauthorized utility services, or willfully altering or tampering 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.¹⁴

The bill also creates a new third degree felony for theft of utility services for the purpose of facilitating the manufacture of a controlled substance.

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

¹⁰ Section 893.02(13), F.S., which defines the term ‘manufacture,’ includes ‘cultivating’ within that definition. Section 893.02(5), F.S., defines ‘cultivating’ as “the preparation of any soil or hydroponic medium for the planting of a controlled substance or the tending and care or harvesting of a controlled substance.”

¹¹ “[P]roof of the possession of 25 or more cannabis plants constitutes prima facie evidence that the cannabis is intended for sale or distribution.” s. 893.1351(4), F.S.

¹² s. 893.1351(3), F.S.

¹³ 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.

¹⁴ 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 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, 2009.

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); benefit law enforcement and utility companies (fewer resources expended on eradicating grow house and fewer instances of utility theft); and benefit utility customers (if the utility's practice is to pass through the costs of utility theft to its customers).

C. Government Sector Impact:

Regarding the third degree felonies created by the bill, the Florida Department of Corrections states:

Since the bill does not rank these offenses in a specific severity level, they automatically default to a level 1.

Since the bill creates new felonies, the Department of Corrections is unable to provide data from its current offender population to assist in gauging the impact the bill will have on the prison and probation population.

Final impact to be determined by the Criminal Justice Impact Conference (CJIC).¹⁵

In the 2008 Legislative Session, the CJIC analyzed a bill identical to SB 236 (CS/SB 1438) and estimated that the bill would have an indeterminate prison bed impact.¹⁶

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 January 14, 2009:
Removes a provision relating to the charging of utility theft.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁵ Analysis of SB 236 by Legislative Affairs, Florida Department of Corrections (December 17, 2008).

¹⁶ Analysis of CS/SB 1438, Florida Senate (April 21, 2008).