

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 191 Theft of Utility Services

**SPONSOR(S):** Raulerson and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 338

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 1 N	Jones	Cunningham
2) Justice Appropriations Subcommittee	11 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee	16 Y, 0 N	Jones	Havlicak

### SUMMARY ANALYSIS

Section 812.14, F.S., establishes a variety of crimes involving the theft of utilities. A violation of any of the provisions in s. 812.14, F.S., is currently a first degree misdemeanor.

In a civil action, if a person is found in violation of s. 812.14, F.S., they are liable to the utility entity involved for an amount equal to 3 times the amount of services unlawfully obtained or \$1,000, whichever is greater.

The bill applies the criminal penalties in the general theft statute (s. 812.014, F.S.), to the utility theft offenses in s. 812.14, F.S. The general theft statute penalties are primarily based upon the dollar value of the stolen property. However, there are some circumstances where the penalties are determined by the type of property stolen or whether certain situations are present during the theft. The bill also increases the threshold amount available in a civil action from \$1,000 to \$3,000.

The Criminal Justice Impact Conference met on February 27, 2013, and determined this bill may have an insignificant negative impact on the Department of Corrections, and a positive jail bed impact on local governments.

The bill is effective on October 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

##### Theft of Utility Services

Section 812.14, F.S., establishes a variety of crimes involving the theft of utilities.<sup>1</sup> For example, subsections (2) and (4) make it a first degree misdemeanor<sup>2</sup> for a person 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 to hinder or interfere with the proper action or just registration of any such meter or device; or knowingly to 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;
- 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; or
- 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.<sup>3</sup>

Subsections (5) and (7) make it a first degree misdemeanor 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 any of the above stated provisions.<sup>4</sup>

Subsection (8) makes theft of utility services for the purpose of facilitating the manufacture of a controlled substance<sup>5</sup> a first degree misdemeanor.<sup>6</sup>

In a civil action, if a person is found in violation of s. 812.14, F.S., they are liable to the utility entity involved for an amount equal to 3 times the amount of services unlawfully obtained or \$1,000, whichever is greater.

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<sup>1</sup> “Utility” is defined in s. 812.14, F.S., as any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which 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.

<sup>2</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>3</sup> Section 812.14(2)(a)-(c) and (4), F.S.

<sup>4</sup> Section 812.14(5) and (7), F.S.

<sup>5</sup> Section 893.02(4), F.S., defines “controlled substance” as any substance named or described in Schedules I-V of s. 893.03, F.S.

<sup>6</sup> Section 812.14(8), F.S.

## Theft

The criminal penalties under the general theft statute (s. 812.014, F.S.) are primarily based upon the dollar value of the stolen property.<sup>7</sup> Section 812.014, F.S., provides:

- If the stolen property is valued at \$100,000 or more, the offense is a first degree felony.<sup>8</sup>
- If the stolen property is valued between \$20,000 and \$100,000, the offense is a second degree felony.<sup>9</sup>
- If the stolen property is valued between \$300 and \$20,000, the offense is a third degree felony.<sup>10</sup>
- 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>11</sup>

In certain instances the theft statute imposes criminal penalties that are not solely based on value. For example, stealing a fire extinguisher is a third degree felony no matter the value of the fire extinguisher.<sup>12</sup> Stealing law enforcement equipment valued at \$300 or more from an emergency vehicle within a county subject to a state of emergency and where the theft is facilitated by the emergency is a first degree felony.<sup>13</sup>

### **Effect of the Bill**

The bill applies the criminal penalties in the general theft statute (s. 812.014, F.S.) to the utility theft offenses in s. 812.14, F.S.

The bill also increases the threshold amount available in a civil action from \$1,000 to \$3,000.

### **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, 2013.

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

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

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

The Criminal Justice Impact Conference met on February 27, 2013, and determined this bill will have an insignificant negative impact on the Department of Corrections.

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<sup>7</sup> See generally, s. 812.014, F.S.

<sup>8</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>9</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

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

<sup>11</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

<sup>12</sup> See s. 812.014(2)(c)8., F.S.

<sup>13</sup> See s. 812.014(2)(b)4., F.S.

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

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill may have a positive jail bed impact on local governments because the bill could make what is currently a first degree misdemeanor either a second degree misdemeanor or a felony (for example, a felony conviction may require the offender to serve their sentence in a state prison instead of a local jail).

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

Private utility companies may benefit because the bill increases the threshold amount available in civil actions from \$1,000 to \$3,000.

**D. FISCAL COMMENTS:**

None.

**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:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.