

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: CS/SB 340

INTRODUCER: Criminal Justice Committee and Senator Yarborough

SUBJECT: Intentional Damage to Critical Infrastructure

DATE: January 12, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	Fav/CS
2.			RI	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 340 creates s. 812.141, F.S., relating to the intentional damage of or trespass upon critical infrastructure. The bill creates new felony offenses and provides for civil liability to the owner or operator of critical infrastructure if a person is found to have improperly tampered with critical infrastructure based on a conviction for one of the crimes created by the bill.

A person who improperly tampers with critical infrastructure for which the owner or operator thereof has employed measures that are designed to exclude unauthorized persons, and such improper tampering results in damage that is \$200 or greater to critical infrastructure, commits a felony of the second degree, punishable by up to 15 years imprisonment and a \$10,000 fine.

A person who physically tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure commits a felony of the second degree, punishable by up to 15 years imprisonment and a \$10,000 fine.

A person who willfully, knowingly, and without authorization gains access to a computer, computer system, computer network, or electronic device owned, operated, or used by any critical infrastructure entity, while knowing that such access is unauthorized commits a felony of the third degree, punishable by up to 5 years imprisonment and a \$5,000 fine.

Any person who, without being authorized, licensed, or invited, willfully enters upon or remains on a physical critical infrastructure as to which notice against entering or remaining in is given, commits the offense of trespass on a critical infrastructure, a third degree felony punishable by up to 5 years imprisonment and a \$5,000 fine. The bill specifies the manner in which notice must be given against trespass on a critical infrastructure based on the size of the property and includes including signage requirements.

The bill defines the terms “improperly tampers” and “critical infrastructure.”

“Improperly tampers” means to intentionally and knowingly cause, or attempt to cause, a significant interruption or impairment of a function of critical infrastructure by:

- Changing the physical location or physical or virtual condition of the property, or any portion thereof, without permission or authority to do so;
- Otherwise moving, damaging, or destroying the property or any portion thereof, without permission or authority to do so; or
- The unauthorized access, introduction of malware, or any action that compromises the integrity or availability of the critical infrastructure’s digital systems.

“Critical infrastructure” is defined in the bill as any of the following:

- An electrical power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.
- A chemical or rubber manufacturing or storage facility.
- A mining facility.
- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.
- A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.
- Any portion of an aboveground oil or gas pipeline.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A wireless or wired communications network, including the tower, antennae, support structures, and all associated ground-based equipment, including equipment intended to provide communications to governmental entities, including but not limited to, law enforcement agencies, fire emergency medical services, emergency management agencies, or any other governmental entity.
- A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.
- A deepwater port, railroad switching yard, airport, trucking terminal, or other freight transportation facility.
- A facility used for the operation, landing, takeoff, or surface maneuvering of vehicles or aircraft.
- A transmission facility used by a federally licensed radio or television station.
- A military base or military facility conducting research and development of military weapons systems, subsystems, components, or parts.

- Cyber or virtual assets, including electronic systems, networks, servers, data centers, devices, hardware, software, or data that are essential to the reliable operations, monitoring, and security of any critical infrastructure.
- Dams and other water control structures.

The bill may have a positive indeterminate fiscal impact on the Department of Corrections. The bill creates additional felony offenses not taken into account since the preliminary estimate provided by the Office of Economic and Demographic Research. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2024.

II. Present Situation:

Acts of Destruction against Utilities

The National Conference of State Legislatures (NCSL) suggests that states should be aware of and be prepared for actual physical threats perpetrated by humans to energy infrastructure.¹ The U.S. Department of Energy's annual summary of Electric Emergency Incident and Disturbance Reports indicates at least 25 reports were filed as actual physical attacks perpetrated by humans in 2022, compared to six attacks in 2021.²

A sample of the attacks to critical infrastructure throughout the country in the last few years includes:

- In September 2022, six separate incidents occurred at Duke Energy substations in Central Florida.³
- In December 2022, 40,000 customers in Monroe County, North Carolina, lost power due to firearm attacks at two substations.⁴
- Additional such attacks – or at least thwarted plans to make them – to critical infrastructure have also occurred in Oregon, South Carolina, and Washington.⁵

¹ The National Conference of State Legislatures, *Human-Driven Physical Threats to Energy Infrastructure*, updated May 22, 2023, available at www.ncsl.org/energy/human-driven-physical-threats-to-energy-infrastructure (last visited December 13, 2023).

² *Id.*; U.S. Department of Energy, *Office of Cybersecurity, Energy Security, & Emergency Response, Electric Disturbance Events (OE-417) Annual Summaries*, available at https://www.oe.netl.doe.gov/OE417_annual_summary.aspx (last visited December 13, 2023).

³ USA TODAY, *Attacks on power substations are growing. Why is the electric grid so hard to protect?*, Dinah Voyles Pulver, Grace Hauck, December 30, 2022, updated February 8, 2023, available at <https://www.usatoday.com/story/news/nation/2022/12/30/power-grid-attacks-increasing/10960265002/> (last visited December 14, 2023).

⁴ Utility Dive News, *FBI called to investigate firearms attacks on Duke Energy substations in North Carolina; 40K without power*, Robert Walton, December 4, 2022, available at <https://www.utilitydive.com/news/fbi-investigate-firearms-attacks-duke-energy-substations-North-Carolina/637927/> (last visited December 14, 2023).

⁵ Koin News, *Memo: Oregon, Washington substations intentionally attacked; Aim is 'violent anti-government activity,'* Elise Haas, December 6, 2022, available at <https://www.koin.com/news/oregon/memo-oregon-washington-substations-intentionally-attacked/> (last visited December 14, 2023); WLTX News 19, *South Carolina lawmakers pass power grid protections after attacks, Dominion Energy said the state had 12 of these incidents last year alone*, Becky Budds, March 20, 2023, available at <https://www.wltx.com/article/news/politics/state-lawmakers-pass-power-grid-protections/101-a3c290a8-42f5-4915-94aa-533cfbed0db1> (last visited December 14, 2023).

Florida Criminal Laws that May Apply to Incidents Involving Intentional Damage of Critical Infrastructure

Although there is no current Florida criminal offense of Intentional Damage of Critical Infrastructure, under certain facts involving intentional damage to critical infrastructure, a person may be charged under existing crimes. These crimes include, in part, the offense of trespass and criminal mischief.

A person commits the crime of trespass on a property other than a structure or conveyance⁶ if he or she, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

- As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation; or
- If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.

Trespass on property other than a structure or conveyance is a first degree misdemeanor offense.⁷

If the offender is armed with a firearm or other dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance, he or she commits a third degree felony.^{8,9}

A person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages by any means any real or personal property belonging to another, including, but not limited to, the placement of graffiti thereon or other acts of vandalism thereto.¹⁰

- If the damage to such property is \$200 or less, it is a misdemeanor of the second degree.¹¹
- If the damage to such property is greater than \$200 but less than \$1,000, it is a misdemeanor of the first degree.¹²
- If the damage is \$1,000 or greater, or if there is interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service which costs \$1,000 or more in labor and supplies to restore, it is a felony of the third degree.¹³

Additionally, Florida law specifically criminalizes damage to certain telephone equipment. A person who, without the consent of the owner thereof, willfully destroys or substantially

⁶ Section 810.09, F.S.

⁷ A first degree misdemeanor is punishable by up to 1 year in the county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁸ Section 810.09(2)(c), F.S.

⁹ A third degree felony is punishable by up to 5 years' incarceration and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹⁰ Section 806.13, F.S.

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

¹² *Id.* A first degree misdemeanor is punishable by up to 1 year in the county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹³ *Id.* A third degree felony is punishable by up to 5 years' incarceration and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

damages any public telephone, or telephone cables, wires, fixtures, antennas, amplifiers, or any other apparatus, equipment, or appliances, which destruction or damage renders a public telephone inoperative or which opens the body of a public telephone, commits a third degree felony.¹⁴

Current Florida Statutes Defining “Critical Infrastructure”

The term “critical infrastructure facility” is currently defined in two sections of Florida law.

In the context of protecting critical infrastructure from a drone’s flightpath, s. 330.41, F.S., defines a “critical infrastructure facility” as any of the following, if completely enclosed by a fence or other physical barrier obviously designed to exclude intruders, or if clearly marked with a sign or signs which indicate that entry is forbidden and which are posted on the property in a manner reasonably likely to come to the attention of intruders:

- A power generation or transmission facility, substation, switching station, or electrical control center.
- A chemical or rubber manufacturing or storage facility.
- A water intake structure, water treatment facility, wastewater treatment plant, or pump station.
- A mining facility.
- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.
- A liquid natural gas or propane gas terminal or storage facility.
- Any portion of an aboveground oil or gas pipeline.
- A refinery.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A wireless communications facility, including the tower, antennae, support structures, and all associated ground-based equipment.
- A seaport as listed in s. 311.09(1), F.S., which need not be completely enclosed by a fence or other physical barrier and need not be marked with a sign or signs indicating that entry is forbidden.
- An inland port or other facility or group of facilities serving as a point of intermodal transfer of freight in a specific area physically separated from a seaport.
- An airport as defined in s. 330.27, F.S.
- A spaceport territory as defined in s. 331.303(18), F.S.
- A military installation as defined in 10 U.S.C. s. 2801(c)(4) and an armory as defined in s. 250.01, F.S.
- A dam as defined in s. 373.403(1), F.S., or other structures, such as locks, floodgates, or dikes, which are designed to maintain or control the level of navigable waterways.
- A state correctional institution as defined in s. 944.02, F.S., or a private correctional facility authorized under ch. 957, F.S.

¹⁴ *Id.* A conspicuous notice of the provisions of this subsection and the penalties provided must be posted on or near the destroyed or damaged instrument and visible to the public at the time of the commission of the offense.

- A secure detention center or facility as defined in s. 985.03, F.S., or a nonsecure residential facility, a high-risk residential facility, or a maximum-risk residential facility as those terms are described in s. 985.03(44), F.S.
- A county detention facility as defined in s. 951.23, F.S.
- A critical infrastructure facility as defined in s. 692.201, F.S.¹⁵

In Part III, ch. 692.201, F.S., Conveyances to Foreign Entities, “critical infrastructure facility” means any of the following, if it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized persons:

- A chemical manufacturing facility.
- A refinery.
- An electrical power plant as defined in s. 403.031(20), F.S.
- A water treatment facility or wastewater treatment plant.
- A liquid natural gas terminal.
- A telecommunications central switching office.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A seaport as listed in s. 311.09, F.S.
- A spaceport territory as defined in s. 331.303(18), F.S.
- An airport as defined in s. 333.01, F.S.¹⁶

Federal Law

Title 18 U.S.C.A. section 1366 is a current federal criminal law that applies in cases of damaging the property of an energy facility.¹⁷

“Energy facility” is defined as: “a facility that is involved in the production, storage, transmission, or distribution of electricity, fuel, or another form or source of energy, or research, development, or demonstration facilities relating thereto, regardless of whether such facility is still under construction or is otherwise not functioning, except a facility subject to the jurisdiction, administration, or in the custody of the Nuclear Regulatory Commission or an interstate gas pipeline facility.”¹⁸

¹⁵ The “Unmanned Aircraft Systems Act,” Section 330.41(1) and (2)(a)1.-20., F.S.

¹⁶ Section 692.201(2), F.S.

¹⁷ 18 U.S.C. s. 1366(a), (b), and (d), provide: (a) Whoever knowingly and willfully damages or attempts or conspires to damage the property of an energy facility in an amount that in fact exceeds or would if the attempted offense had been completed, or if the object of the conspiracy had been achieved, have exceeded \$100,000, or damages or attempts or conspires to damage the property of an energy facility in any amount and causes or attempts or conspires to cause a significant interruption or impairment of a function of an energy facility, shall be punishable by a fine under this title or imprisonment for not more than 20 years, or both.

(b) Whoever knowingly and willfully damages or attempts to damage the property of an energy facility in an amount that in fact exceeds or would if the attempted offense had been completed have exceeded \$5,000 shall be punishable by a fine under this title, or imprisonment for not more than five years, or both....

(d) Whoever is convicted of a violation of subsection (a) or (b) that has resulted in the death of any person shall be subject to imprisonment for any term of years or life.

¹⁸ 18 U.S.C. s. 1366(c)

III. Effect of Proposed Changes:

The bill creates s. 812.141, F.S., relating to the intentional damage to and trespass upon critical infrastructure.

The term “improperly tampers” as used in the bill means to intentionally and knowingly cause, or attempt to cause, a significant interruption or impairment of a function of critical infrastructure by:

- Changing the physical location or physical or virtual condition of the property without authorization;
- Otherwise moving, damaging, or destroying the property without authorization; or
- The unauthorized access, introduction of malware, or any action that compromises the integrity or availability of the critical infrastructure’s digital systems.

The bill provides that a person who “improperly tampers” with critical infrastructure for which the owner or operator thereof has employed measures that are designed to exclude unauthorized persons, which may include physical or digital measures such as fences, barriers, or guard posts, or identity and access management, firewalls, virtual private networks, encryption, multi-factor authentication, passwords, or other cybersecurity systems and controls, and such improper tampering results in damage that is \$200 or greater to critical infrastructure commits a second degree felony.¹⁹

Additionally, a person who physically tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure commits a second degree felony.²⁰

The bill provides that a person who willfully, knowingly, and without authorization gains access to a computer, computer system, computer network, or electronic device owned, operated, or used by any critical infrastructure entity, while knowing that such access is unauthorized commits a third degree felony.²¹

Under the bill it is third degree felony²² for any person who, without being authorized, licensed, or invited, to willfully enter upon or remain on a physical critical infrastructure as to which notice against entering or remaining in is given as provided in the bill, commits the offense of trespass on a critical infrastructure. The bill specifies the manner in which notice must be given against trespass on a critical infrastructure based on the size of the property and includes including signage requirements.

The bill defines the term “critical infrastructure” as any of the following:

- An electrical power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.

¹⁹ A second degree felony is punishable by up to 15 years imprisonment and a fine of up to \$10,000. Sections 775.082, 775.083, or 775.084, F.S.

²⁰ *Id.*

²¹ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine.

²² *Id.*

- A chemical or rubber manufacturing or storage facility.
- A mining facility.
- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.
- A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.
- Any portion of an aboveground oil or gas pipeline.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A wireless or wired communications network, including the tower, antennae, support structures, and all associated ground-based equipment, including equipment intended to provide communications to governmental entities, including but not limited to, law enforcement agencies, fire emergency medical services, emergency management agencies, or any other governmental entity.
- A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.
- A deepwater port, railroad switching yard, airport, trucking terminal, or other freight transportation facility.
- A facility used for the operation, landing, takeoff, or surface maneuvering of vehicles or aircraft.
- A transmission facility used by a federally licensed radio or television station.
- A military base or military facility conducting research and development of military weapons systems, subsystems, components, or parts.
- Cyber or virtual assets, including electronic systems, networks, servers, data centers, devices, hardware, software, or data that are essential to the reliable operations, monitoring, and security of any critical infrastructure.
- Dams and other water control structures.

The bill provides for civil damages against a person who is found to have improperly tampered with critical infrastructure based on a conviction for the crime created by the bill. The person is civilly liable to the operator or owner of the critical infrastructure for damages in an amount equal to three times the actual damage sustained by the operator or owner due to any personal injury, wrongful death, or property damage caused by the act, or for an amount equal to three times any claim made against the operator or owner for any personal injury, wrongful death, or property damage caused by the malfunction of the critical infrastructure resulting from the act, whichever is greater.

The bill becomes effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of Economic and Demographic Research has provided a preliminary proposed estimate which determines that the bill may have a positive indeterminate fiscal impact on the Department of Corrections. A positive indeterminate fiscal impact means that the number of prison beds that may result from the bill is unquantifiable at this time.²³ However, the CS creates additional felony offenses that may affect the preliminary proposed estimate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There are sources of energy produced in Florida that may not be included in the definition of critical infrastructure created in the bill. For example, the 2022 State of Florida Energy Sector

²³ Office of Economic and Demographic Research, *SB340 Preliminary Estimate* (on file with the Senate committee for Criminal Justice).

Risk Profile recognizes that 65 wind or solar plants existed in Florida at the time of the report in 2021.²⁴

VIII. Statutes Affected:

This bill creates section 812.141 of the Florida Statutes.

IX. 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 10, 2024:

The committee substitute:

- Amends the definition of “improperly tampers,” to clarify that a person must intentionally and knowingly cause, or attempt to cause, a significant interruption or impairment of a function of critical infrastructure by:
 - Changing the physical or virtual condition of the property without authorization; or
 - The unauthorized access, introduction of malware, or any action that compromises the integrity or availability of the critical infrastructure’s digital systems.
- Requires proof of resulting damage of \$200 or greater if the owner or operator has taken measures to exclude unauthorized persons to prove the second degree felony crime of improperly tampering with critical infrastructure existing in the original bill.
- Expands the list of measures designed to exclude unauthorized persons.
- Creates an additional second degree felony for physically tampering, etc., with a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure.
- Creates a third degree felony of trespass on a critical infrastructure, and specifies the requirements that constitute notice against entering or remaining in a physical critical infrastructure.
- Creates a new third degree felony, for willfully, knowingly, and without authorization gaining access to a computer, etc., owned, operated, or used by any critical infrastructure entity, while knowing that such access is unauthorized.
- Provides for civil damages against a person who is found to have improperly tampered with critical infrastructure.
- Expands the definition of “critical infrastructure” by including additional facilities, etc.
- Removes Section 2. of the bill.
- Makes technical changes.

²⁴ U.S. Department of Energy; Cybersecurity, Energy Security, and Emergency Response; State of Florida Energy Sector Risk Profile, March 2021; available at <https://www.energy.gov/sites/default/files/2021-09/Florida%20Energy%20Sector%20Risk%20Profile.pdf> (last visited December 15, 2023).

B. Amendments:

None.

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