

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 340

INTRODUCER: Senator Yarborough

SUBJECT: Intentional Damage to Critical Infrastructure

DATE: January 9, 2024

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	<b>Pre-meeting</b>
2.			RI	
3.			FP	

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**I. Summary:**

SB 340 creates s. 812.141, F.S., relating to the intentional damage of critical infrastructure. The bill creates a new felony offense providing 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 measures such as fences, barriers, or guard posts, commits a second degree felony. A second degree felony is punishable by up to 15 years imprisonment and a fine of up to \$10,000.

The bill defines the terms “improperly tampers” and “critical infrastructure.” “Improperly tampers” means without permission or authority to do so, to change the physical location or the physical condition of the property or any portion thereof, or otherwise knowingly and intentionally move, deface, damage, or destroy the property or any portion thereof. “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 wireless communications facility, including the tower, antennae, support structures, and all associated ground-based equipment.
- A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.
- A deepwater port or railroad switching yard.

The bill provides for civil damages against a person who is found to have knowingly and intentionally harmed critical infrastructure by virtue of having been convicted of the offense of improperly tampering with critical infrastructure. The person is civilly liable:

- To the utility, communication services provider, operator, or owner for damages in an amount equal to three times the actual damage sustained by the utility, communication services provider, operator, or owner due to any personal injury, wrongful death, or property damage caused by the act.
- For an amount equal to three times any claim made against the utility, communications service provider, operator, or owner for any personal injury, wrongful death, or property damage caused by the malfunction of the critical infrastructure resulting from the criminal violation of tampering with critical infrastructure, whichever is greater.

Additionally, the bill provides that the prosecution for an offense committed before the bill is effective, is not abated or affected by this act, and a statute that would be applicable but for this act remains applicable to the prosecution.

The bill may have a positive indeterminate fiscal impact on the Department of Corrections. 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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<sup>1</sup> 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](http://www.ncsl.org/energy/human-driven-physical-threats-to-energy-infrastructure) (last visited December 13, 2023).

<sup>2</sup> *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](https://www.oe.netl.doe.gov/OE417_annual_summary.aspx) (last visited December 13, 2023).

<sup>3</sup> 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).

- In December 2022, 40,000 customers in Monroe County, North Carolina, lost power due to firearm attacks at two substations.<sup>4</sup>
- Additional such attacks – or at least thwarted plans to make them – to critical infrastructure have also occurred in Oregon, South Carolina, and Washington.<sup>5</sup>

### **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 conveyance<sup>6</sup> 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.<sup>7</sup>

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.<sup>8,9</sup>

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.<sup>10</sup>

- If the damage to such property is \$200 or less, it is a misdemeanor of the second degree.<sup>11</sup>

<sup>4</sup> 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).

<sup>5</sup> 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).

<sup>6</sup> Section 810.09, F.S.

<sup>7</sup> 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.

<sup>8</sup> Section 810.09(2)(c), F.S.

<sup>9</sup> 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.

<sup>10</sup> Section 806.13, F.S.

<sup>11</sup> *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.

- If the damage to such property is greater than \$200 but less than \$1,000, it is a misdemeanor of the first degree.<sup>12</sup>
- 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.<sup>13</sup>

Additionally, Florida law specifically criminalizes damage to certain telephone equipment. A person who, without the consent of the owner thereof, willfully destroys or substantially 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.<sup>14</sup>

### **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.

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<sup>12</sup> *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.

<sup>13</sup> *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.

<sup>14</sup> *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 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.
- 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.<sup>15</sup>

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.<sup>16</sup>

### **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.<sup>17</sup>

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

<sup>16</sup> Section 692.201(2), F.S.

<sup>17</sup> 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.

“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.”<sup>18</sup>

### III. Effect of Proposed Changes:

The bill creates s. 812.141, F.S., relating to the intentional damage to critical infrastructure. The bill creates a new crime, providing 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 measures such as fences, barriers, or guard posts, commits a second degree felony.<sup>19</sup>

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.
- 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 wireless communications facility, including the tower, antennae, support structures, and all associated ground-based equipment.
- A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.
- A deepwater port or railroad switching yard.

The bill provides that the term “improperly tampers” means without permission or authority to do so, to change the physical location or the physical condition of the property or any portion thereof, or otherwise knowingly and intentionally move, deface, damage, or destroy the property or any portion thereof.

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(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.

<sup>18</sup> 18 U.S.C. s. 1366(c)

<sup>19</sup> 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.

The bill provides for civil damages against a person who is found to have knowingly and intentionally harmed critical infrastructure by virtue of having been convicted of the offense of improperly tampering with critical infrastructure. The person is civilly liable:

- To the utility, communication services provider, operator, or owner for damages in an amount equal to three times the actual damage sustained by the utility, communication services provider, operator, or owner due to any personal injury, wrongful death, or property damage caused by the act.
- For an amount equal to three times any claim made against the utility, communications service provider, operator, or owner for any personal injury, wrongful death, or property damage caused by the malfunction of the critical infrastructure resulting from the criminal violation of tampering with critical infrastructure, whichever is greater.

Additionally, the bill states that a prosecution for an offense committed before this bill is effective, is not abated or affected by this act, and a statute that would be applicable but for this act remains applicable to the prosecution.

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.<sup>20</sup>

**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 Risk Profile recognizes that 65 wind or solar plants existed in Florida at the time of the report in 2021.<sup>21</sup>

Section 2 of the bill appears to be current law. If a person commits a criminal offenses such as criminal mischief or trespass on the property of an electrical power generation facility as defined in the bill, *prior to* the effective date of the bill, those crimes are not affected by the new crime created in the bill. The new felony offense of improperly tampering with critical infrastructure, which becomes effective July 1, 2024, only applies to behavior committed on or after July 1, 2024.

**VIII. Statutes Affected:**

This bill creates section 812.141 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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<sup>20</sup> Office of Economic and Demographic Research, *SB340 Preliminary Estimate* (on file with the Senate committee for Criminal Justice).

<sup>21</sup> 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).