

**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 Regulated Industries

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BILL: CS/CS/SB 340

INTRODUCER: Criminal Justice Committee and Senator Yarborough

SUBJECT: Intentional Damage to Critical Infrastructure

DATE: January 31, 2024

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

|    | ANALYST         | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|-----------------|----------------|-----------|---------------|
| 1. | <u>Cellon</u>   | <u>Stokes</u>  | <u>CJ</u> | <u>Fav/CS</u> |
| 2. | <u>Schrader</u> | <u>Imhof</u>   | <u>RI</u> | <u>Fav/CS</u> |
| 3. | _____           | _____          | <u>FP</u> | _____         |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 340 creates s. 812.141, F.S., relating to the intentional damage of, or trespass upon, certain utility, transportation, storage, mining, manufacturing, and other facilities designated to be 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 signage requirements.

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.<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 in electric utilities 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>
- 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>

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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 Jan. 30, 2024).

<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 Jan 26, 2024).

<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 Jan. 26, 2024).

<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 Jan. 30, 2024).

<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 Jan. 26, 2024); 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,

## 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, a person may be charged under existing crimes for such damage. 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 if that person, 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.<sup>6</sup>

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 or other acts of vandalism:<sup>10</sup>

- If the damage to such property is \$200 or less, it is a misdemeanor of the second degree.<sup>11</sup>
- 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 telecommunications equipment. A person who, without the consent of the owner thereof, willfully destroys or

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available at <https://www.wltx.com/article/news/politics/state-lawmakers-pass-power-grid-protections/101-a3c290a8-42f5-4915-94aa-533cfbed0db1> (last visited Jan. 26, 2024).

<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.

<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.

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>

Section 815.061, F.S., also provides penalties for computer-related crimes against public utilities.<sup>15</sup> The section provides willfully, knowingly, and without authorization:

- Gaining access to a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility while knowing that such access is unauthorized, is a felony of the third degree.<sup>16</sup>
- Physically tampering with, inserting a computer contaminant into, or otherwise transmitting commands or electronic communications to a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by a public utility, is a felony of the second degree.<sup>17</sup>

Section 815.06, F.S., is also the general cyber-crime statute for Florida. The section provides that it is unlawful to willfully, knowingly, and without authorization or exceeding authorization to:

- Access or cause to be accessed any computer, computer system, computer network, or electronic device with knowledge that such access is unauthorized or the manner of use exceeds authorization;
- Disrupt or deny or cause the denial of the ability to transmit data to or from an authorized user of a computer, computer system, computer network, or electronic device, which, in whole or in part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another;
- Destroy, take, injure, or damage equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device;
- Destroy, injure, or damage any computer, computer system, computer network, or electronic device;
- Introduce any computer contaminant into any computer, computer system, computer network, or electronic device; or
- Engage in audio or video surveillance of an individual by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, including accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.<sup>18</sup>

<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.

<sup>15</sup> “Public utility” for this provision means the same as in s. 366.02, F.S. Under s. 366.02, F.S., a “public utility” is defined “as every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state.” There are, however, several exceptions to this definition, which include, “a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; [and] any dependent or independent special natural gas district.” Generally, “public utility” means investor-owned utilities.

<sup>16</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>17</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, and 775.084, F.S.

<sup>18</sup> Section 815.06(2), F.S.

Penalties for violations of s. 815.06, F.S., range from a felony of the third degree<sup>19</sup> to a felony of the first degree,<sup>20</sup> depending on the unlawful act and the severity of the unlawful act.<sup>21</sup> Section 815.06(4), F.S., also provides that “a person who willfully, knowingly, and without authorization modifies equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device commits a misdemeanor of the first degree.”<sup>22</sup> Civil remedies are also provided under the section.

### **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.

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<sup>19</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>20</sup> A first degree felony is punishable by up to 30 years’ incarceration or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment, and a \$10,000 fine (or \$15,000 for a life felony). Sections 775.082 and 775.083, F.S.

<sup>21</sup> Section 815.06(3), F.S.

<sup>22</sup> Section 815.06(4), 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>23</sup>

In Part III, ch. 692, F.S., Conveyances to Foreign Entities, “critical infrastructure facility” means any of the following, if the facility 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>24</sup>

## **Federal Law**

### ***Energy Industry***

Title 18 U.S.C. s. 1366 is a current federal criminal law that applies in cases of damaging the property of an energy facility.<sup>25</sup> The penalty for a violation of this section is a fine and imprisonment for up to 20 years. If such a violation results in the death of a person, the penalty can rise to a term of life.

<sup>23</sup> The “Unmanned Aircraft Systems Act,” Section 330.41(1) and (2)(a)1.-20., F.S.

<sup>24</sup> Section 692.201(2), F.S.

<sup>25</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.

(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.

“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>26</sup>

### ***Natural Gas Industry***

Title 49 U.S.C. s. 60123(b), provides penalties “for knowingly and willfully damaging or destroying an interstate gas pipeline facility, an interstate hazardous liquid pipeline facility, or either an intrastate gas pipeline facility or intrastate hazardous liquid pipeline facility that is used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce, or attempting or conspiring to do such an act.” Such an act is punishable by a under the U.S. criminal code, imprisonment for not more than 20 years, or both; and, if death results to any person from such an act, imprisonment of a “term of years or for life.”

### ***Public Water Systems***

Title 42 U.S.C. s. 300i–1 provides penalties for tampering with public water systems. The section defines “tampering” as:

- Introducing a contaminant into a public water system with the intention of harming persons; or
- Otherwise interfering with the operation of a public water system with the intention of harming persons.<sup>27</sup>

The section provides for differing penalties:

- Tampering with a water system: fine or imprisonment of not more than 20 years.
- Attempting or threatening to tamper: fine or imprisonment of not more than 10 years.

The Administrator of the Environmental Protection Agency may also bring a civil action against violators of the section, with civil penalties of not more than \$1,000,000 for tampering and \$100,000 for attempts or threats to tamper.<sup>28</sup>

### ***Transportation Systems and Carriers***

Title 18 U.S.C. s. 1992, provides penalties for terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air. A person who, under qualifying circumstances,<sup>29</sup> knowingly and without lawful authority or permission:

<sup>26</sup> 18 U.S.C. s. 1366(c)

<sup>27</sup> 42 U.S.C. s. 300i–1(d).

<sup>28</sup> 42 U.S.C. s. 300i–1(c).

<sup>29</sup> The qualifying circumstances are that any “of the conduct required for the offense is, or, in the case of an attempt, threat, or conspiracy to engage in conduct, the conduct required for the completed offense would be, engaged in, on, against, or affecting a mass transportation provider, or a railroad carrier engaged in interstate or foreign commerce,” or traveling or communicating across a state line to commit the offense, or transporting materials across a state line in aid of the offense. 18 U.S.C. s. 1992(c).

- Wrecks, derails, sets fire to, or disables railroad on-track equipment or a mass transportation vehicle;
- Places any biological agent or toxin, destructive substance, or destructive device in, upon, or near railroad on-track equipment or a mass transportation vehicle with intent to endanger the safety of any person, or with a reckless disregard for the safety of human life;
- Sets fire to, undermines, makes unworkable, unusable, or hazardous to work on or use, or places any biological agent or toxin, destructive substance, or destructive device in, upon, or near:
  - Certain railroad carrier facilities, and with intent to, or knowing or having reason to know, such activity would likely derail, disable, or wreck railroad on-track equipment; or
  - Certain structures or facilities used in the operation of, or in support of the operation of, a mass transportation vehicle, and with intent to, or knowing or having reason to know such activity would likely, derail, disable, or wreck a mass transportation vehicle used, operated, or employed by a mass transportation provider;
- Places or releases a hazardous material or a biological agent or toxin on or near any railroad carrier or mass transportation property described above, with intent to endanger the safety of any person; or with reckless disregard for the safety of human life or commits an act, including the use of a dangerous weapon, with the intent to cause death or serious bodily injury to any person who is on railroad carrier or mass transportation property described above;
- Removes an appurtenance from, damages, or otherwise impairs the operation of a railroad signal system or mass transportation signal or dispatching system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal;
- With intent to endanger the safety of any person, or with a reckless disregard for the safety of human life, interferes with, disables, or incapacitates any dispatcher, driver, captain, locomotive engineer, railroad conductor, or other person while the person is employed in dispatching, operating, controlling, or maintaining railroad on-track equipment or a mass transportation vehicle;
- Surveils, photographs, videotapes, diagrams, or otherwise collects information with the intent to plan or assist in planning any of the acts described above;
- Conveys false information, knowing the information to be false, concerning an attempt or alleged attempt to engage acts above; or
- Attempts, threatens, or conspires to engage in any violation of any of the acts above.

Such acts are punishable by fine and imprisonment of not more than 20 years, or both; and, if death results to any person from certain above acts, imprisonment of a “term of years or for life.” Certain aggravated violations of 18 U.S.C. s. 1992, can result in a term of life or be a capital offense.

### ***National Defense***

Title 18 U.S. Code s. 2155 provides penalties for destruction of national-defense materials, national-defense premises, or national-defense utilities. Under the section, a person who acts with “intent to injure, interfere with, or obstruct the national defense of the United States, willfully injures, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any national-defense material, national-defense premises, or national-defense utilities”



may be fined and “imprisoned not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.”

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

- Any linear asset;<sup>30</sup> or
- Any of the following for which the owner or operator thereof has employed physical or digital measures designed to exclude unauthorized persons, including, but not limited to, fences, barriers, guard posts, identity and access management, firewalls, virtual private networks, encryption, multifactor authentication, passwords, or other cybersecurity systems and controls:
  - An electric 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 pipeline.
  - A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
  - 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 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, aircraft, or spacecraft.
  - 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.
  - A civilian defense industrial base 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.

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<sup>30</sup> As used in this provision, “linear asset” means an “electric distribution or transmission asset, gas distribution or transmission pipeline, communication wirelines, or railway, and any attachments thereto.”

- Dams and other water control structures.

The term “improperly tampers” as used in the bill means to knowingly and intentionally 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 critical infrastructure, or any portion thereof, without permission or authority to do so;
- Otherwise moving, damaging, or destroying the critical infrastructure or any portion thereof, without permission or authority to do so; or
- Accessing without authorization, introducing malware, or taking any other 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 resulting in damage to critical infrastructure that is \$200 or more or in the interruption or impairment of the function of critical infrastructure which costs \$200 or more in labor and supplies to restore commits a second degree felony.<sup>31</sup>

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

Under the bill it is a third degree felony<sup>32</sup> for any person who, without being authorized, licensed, or invited, willfully enters upon or remains on physical critical infrastructure as to which notice against entering or remaining in is given, either by actual communication to the offender or by posting,<sup>33</sup> fencing,<sup>34</sup> or cultivation<sup>35</sup> as described in s. 810.011, F.S.

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<sup>31</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.

<sup>32</sup> *Id.*

<sup>33</sup> Section 810.011(5)(a), F.S., defines “posted land” as land upon which any of the following have been placed:

- “Signs placed not more than 500 feet apart along and at each corner of the boundaries of the land or, for land owned by a water control district that exists pursuant to chapter 298 or was created by special act of the Legislature, signs placed at or near the intersection of any district canal right-of-way and a road right-of-way, which prominently display in letters of not less than 2 inches in height the words “no trespassing” and the name of the owner, lessee, or occupant of the land. The signs must be placed along the boundary line of posted land in a manner and in such position as to be clearly noticeable from outside the boundary line;” or
- “Conspicuous no trespassing notice is painted on trees or posts on the property,” subject to certain notice conditions.

<sup>34</sup> Section 810.011(7), F.S., defines “fenced land” as “land which has been enclosed by a fence of substantial construction, whether with rails, logs, post and railing, iron, steel, barbed wire, other wire, or other material, which stands at least 3 feet in height.”

<sup>35</sup> Section 810.011(6), F.S., defines “cultivated land” as “land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture, or trees or is fallow land as part of a crop rotation.”

The bill provides that a person who willfully, knowingly, and without authorization gains access to a computer, computer system, computer network, or electronic device<sup>36</sup> owned, operated, or used by any critical infrastructure entity, while knowing that such access is unauthorized, commits a third degree felony.<sup>37</sup>

Additionally, a person who willfully, knowingly, and without authorization 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<sup>38</sup> that causes a disruption in any service delivered by any critical infrastructure commits a second degree felony.<sup>39</sup>

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.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

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<sup>36</sup> As used in this provision, the terms “computer,” “computer system,” “computer network,” and “electronic device” have the same meanings as in s. 815.03, F.S.

<sup>37</sup> A third degree felony is punishable by up to 5 years’ imprisonment and a \$5,000 fine.

<sup>38</sup> As used in this provision, the terms “computer,” “computer system,” “computer network,” and “electronic device” have the same meanings as in s. 815.03, F.S.

<sup>39</sup> *Id.*

**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>40</sup> However, the CS created additional felony offenses (which were subsequently amended by the CS/CS) that may affect the preliminary proposed estimate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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.

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<sup>40</sup> Office of Economic and Demographic Research, *SB340 Preliminary Estimate* (on file with the Senate committee for Criminal Justice).

- 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.

### **CS by Regulated Industries on January 29, 2024**

- Revises the definition of “critical infrastructure” to include all linear assets.
- For other types of critical infrastructure identified in the bill, the amendment also requires that, to be critical infrastructure, facility in question must be one for which the owner or operator thereof has employed physical or digital measures designed to exclude unauthorized persons, including, but not limited to, fences, barriers, guard posts, identity and access management, firewalls, virtual private networks, encryption, multifactor authentication, passwords, or other cybersecurity systems and controls. The amendment adds to this type of facilities all types of pipelines (the underlying bill only included natural gas and compressed gas pipelines); spacecraft; and civilian defense industrial base conducting research and development of military weapons systems, subsystems, components, or parts.
- Creates a definition for “linear asset,” “computer,” “computer system,” “computer network,” and “electronic device.”
- Revises what constitutes tampering with critical infrastructure to remove a provision that 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.
- Revises what constitutes trespass on critical infrastructure to make it when a person willfully enters upon or remains on physical critical infrastructure as to which notice against entering or remaining in is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011, F.S.
- Requires that for a person to have violated the provision regarding tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to, a computer, a computer system, a computer network, or an electronic device that causes a disruption in any service that they have done so willfully, knowingly, and without authorization.

- Makes technical changes.

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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