

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 275 Offenses Involving Critical Infrastructure

SPONSOR(S): Criminal Justice Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Padgett	Hall

SUMMARY ANALYSIS

According to the Cybersecurity and Infrastructure Security Agency within the United States Department of Homeland Security, critical infrastructure are “those assets, systems, and networks that provide functions necessary for our way of life,” and that are “...considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety ...”

PCS for HB 275 creates s. 812.141, F.S., to create new criminal offenses involving critical infrastructure, including:

- Improperly tampering with critical infrastructure when the owner or operator of such infrastructure has employed measures designed to exclude unauthorized persons and causing \$200 or more of damage, punishable as a second degree felony;
- Trespassing on critical infrastructure, punishable as a third degree felony;
- Unauthorized access to a computer, computer system, computer network, or electronic device owned, operated, or used by a critical infrastructure entity, punishable as a third degree felony; and
- Physically tampering with or inserting a computer contaminant into a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by the critical infrastructure entity, punishable as a second degree felony.

The bill defines the term “critical infrastructure” to mean 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 facility, mining facility, or rubber manufacturing or storage facility.
- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas 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 communications network, including towers, antennae, support structures, and ground equipment.
- 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 operating, 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 facility or 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 essential to the reliable operations, monitoring, and security of any critical infrastructure.
- Dams and other water control structures.

A person who is found in a civil action to have improperly tampered with critical infrastructure based on such a conviction is civilly liable to the owner or operator in an amount equal to three times the amount of: the actual damage sustained by the owner or operator due to any personal injury, wrongful death, or property damage caused by the act; or any claim made against the owner or operator 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 may have a positive impact on jail and prison beds by creating new felony offenses relating to critical infrastructure, which may result in increased admissions to such facilities.

The bill provides an effective date of July 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: pcs0275.CRJ

DATE: 1/18/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Damage to Critical Infrastructure

According to the Cybersecurity and Infrastructure Security Agency (CISA) within the United States Department of Homeland Security, critical infrastructure are “those assets, systems, and networks that provide functions necessary for our way of life,” and that are “...considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof.”¹ CISA broadly classifies critical infrastructure into the following sectors: chemicals; commercial facilities; communications; critical manufacturing; dams; defense industrial bases; emergency services; energy; financial services; food and agriculture; government facilities; healthcare and public health; information technology; nuclear reactors, materials, and waste; transportation systems; and water and wastewater systems.²

Due to the vast number of critical infrastructure facilities, the difficulty in securing and monitoring such facilities, and the widespread effects that damage to such facilities can cause, critical infrastructure facilities have become a frequent target of both physical and cyber attacks in recent years.³ In 2022, physical security incidents against electric infrastructure, such as vandalism, trespassing, and theft, increased 70 percent from the previous year.⁴ In September 2022, six separate “intrusion events” occurred at Duke Energy electric substations in central Florida, resulting in several brief power outages.⁵ On December 3, 2022, gunfire damaged an electrical substation in Moore County, North Carolina, leaving approximately 45,000 people without power and resulting in the death of one person.⁶

Florida Laws Prohibiting Damage to Critical Infrastructure

Under Florida law, there is not a specific criminal offense prohibiting a person from tampering with critical infrastructure. However, a person who tampers with such infrastructure either by intentionally causing damage or illegally entering on the property upon which the critical infrastructure is located could be prosecuted for committing other criminal offenses, such as criminal mischief or trespass.

Criminal Mischief

A person commits criminal mischief by willfully and maliciously injuring or damaging the property of another, including by vandalism or graffiti.⁷ The penalty for criminal mischief generally corresponds to the value of the damage:

Value of Damage ⁸	Penalty
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¹ Cybersecurity and Infrastructure Security Agency, *Critical Infrastructure Security and Resilience*, <https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience> (last visited Jan. 18, 2024).

² Cybersecurity and Infrastructure Security Agency, *Critical Infrastructure Sectors*, <https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors> (last visited Jan. 18, 2024).

³ Dinah Voyles Pulver and Grace Hauck, *Attacks on power substations are growing. Why is the electric grid so hard to protect?*, USA Today (Dec. 30, 2022) <https://www.usatoday.com/story/news/nation/2022/12/30/power-grid-attacks-increasing/10960265002/> (last visited Jan. 18, 2024).

⁴ National Conference of State Legislatures, *Human-Driven Physical Threats to Energy Infrastructure*, <https://www.ncsl.org/energy/human-driven-physical-threats-to-energy-infrastructure> (last visited Jan. 18, 2024).

⁵ Andrew Dorn and Evan Lambert, *Report shows 6 “intrusions” at power stations in Florida*, WDHN (Dec. 8, 2022), <https://www.wdhn.com/news/report-shows-6-intrusions-at-power-stations-in-florida/> (last visited Jan. 18, 2024).

⁶ John Nagy and Jonathan Bym, *Still no arrests, but warrants reveal more details on Moore County power grid attacks*, The News & Observer (Dec. 16, 2023), <https://www.newsobserver.com/news/state/north-carolina/article283121923.html> (last visited Jan. 18, 2024).

⁷ S. 806.13(1)(a), F.S.

⁸ S. 806.13(1)(b), F.S.

≤ \$200	Second degree misdemeanor ⁹
> \$200 but ≤ \$1,000	First degree misdemeanor ¹⁰
> \$1,000	Third degree felony ¹¹

Criminal mischief may also be enhanced to a third degree felony based on a prior criminal mischief conviction¹² or the nature of the property damaged, including when a person damages:

- Property that results in the 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.¹³
- A church, synagogue, mosque, or other place of worship, or a religious article therein, if the damage is valued at greater than \$200.¹⁴
- A memorial¹⁵ or historic property,¹⁶ if the damage is valued at greater than \$200.¹⁷
- A public telephone, regardless of the value of the damage.¹⁸
- A sexually violent predator detention or commitment facility, if the damage is valued at greater than \$200.¹⁹

Trespass

A person commits the offense of trespass on property other than a structure²⁰ or conveyance,²¹ punishable as a first degree misdemeanor, 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

⁹ A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. Ss. 775.082 or 775.083, F.S.

¹⁰ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082 or 775.083, F.S.

¹¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

¹² S. 806.13(1)(b)4., F.S.

¹³ S. 806.13(1)(b)3., F.S.

¹⁴ S. 806.13(2), F.S.

¹⁵ "Memorial" means a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained; is dedicated to a historical person, an entity, an event, or a series of events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising the state or the United States. The term includes, but is not limited to, the following memorials established under ch. 265, F.S.:

- Florida Women's Hall of Fame.
- Florida Medal of Honor Wall.
- Florida Veterans' Hall of Fame.
- POW-MIA Chair of Honor Memorial.
- Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden.
- Florida Law Enforcement Officers' Hall of Fame.
- Florida Holocaust Memorial.
- Florida Slavery Memorial.
- Any other memorial located within the Capitol Complex, including, but not limited to, Waller Park.

S. 806.135(1)(b), F.S.

¹⁶ "Historic property" means any building, structure, site, or object that has been officially designated as a historic building, historic structure, historic site, or historic object through a federal, state, or local designation program. S. 806.135(1)(a), F.S.

¹⁷ S. 806.13(3), F.S.

¹⁸ S. 806.13(4), F.S.

¹⁹ S. 806.13(5), F.S.

²⁰ "Structure" means a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S., only, the term means a building of any kind or such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

²¹ "Conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and "to enter a conveyance" includes taking apart any portion of the conveyance. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S., only, the term "conveyance" means a motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car or such portions thereof as exist.

- If the property is the unenclosed curtilage²² of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.²³

A trespass offense is enhanced to a third degree felony if:

- A person becomes armed with a firearm or other dangerous weapon during the commission of the offense;²⁴ or
- The property trespassed upon is any of the following and the property complies with specified posting of notice requirements:
 - A construction site;²⁵
 - Commercial horticulture property;²⁶
 - An agricultural site for testing or research purposes;²⁷
 - A certified domestic violence center;²⁸
 - An agricultural chemicals manufacturing facility;²⁹ or
 - The operational area of an airport, if the offender trespasses with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway, taxiway, ramp, or apron area.³⁰

Offenses Against Computers

Under s. 815.06, F.S., a person commits an offense against users of computers, computer systems, computers networks, or electronic devices if he or she willfully, knowingly, and without authorization or exceeding authorization:

- Accesses or causes to be accessed any computer,³¹ computer system,³² computer network,³³ or electronic device³⁴ with knowledge that such access is unauthorized or the manner of use exceeds authorization;
- Disrupts or denies or causes 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;
- Destroys, takes, injures, or damages equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device;
- Destroys, injures, or damages any computer, computer system, computer network, or electronic device;
- Introduces any computer containment into any computer, computer system, computer network, or electronic device; or
- Engages 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

²² "Unenclosed curtilage" means the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling. S. 810.09(1)(b), F.S.

²³ S. 810.09(1)(a), F.S.

²⁴ S. 810.09(2)(c), F.S.

²⁵ S. 810.09(2)(d), F.S.

²⁶ S. 810.09(2)(e), F.S.

²⁷ S. 810.09(2)(f), F.S.

²⁸ S. 810.09(2)(g), F.S.

²⁹ S. 810.09(2)(i), F.S.

³⁰ S. 810.09(2)(j), F.S.

³¹ "Computer" means an internally programmed, automatic device that performs data processing. S. 815.03(2), F.S.

³² "Computer system" means a device or collection of devices, including support devices, one or more of which contain computer programs, electronic instructions, or input data and output data, and which perform functions, including, but not limited to, logic, arithmetic, data storage, retrieval, communication, or control. The term does not include calculators that are not programmable and that are not capable of being used in conjunction with external files. S. 815.03(7), F.S.

³³ "Computer network" means a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer systems or electronic devices by physical or wireless telecommunication facilities. S. 815.03(4), F.S.

³⁴ "Electronic device" means a device or a portion of a device that is designed for and capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data, including, but not limited to, a cellular telephone, tablet, or other portable device designed for and capable of communicating with or across a computer network and that is actually used for such purpose. S. 815.03(9), F.S.

accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.

Generally, a person who commits a violation of s. 815.06, F.S., commits a third degree felony. A person commits a second degree felony if he or she commits a violation of s. 815.06, F.S., that interrupts or impairs a governmental operation or public communication, transportation, or supply of water, gas, or other public service.³⁵

Additionally, under s. 815.061, F.S., a person commits a third degree felony if he or she willfully, knowingly and without authorization gains 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.³⁶ A person commits a second degree felony if he or she 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 that causes a disruption in any service delivered by a public utility.³⁷

Offense Severity Ranking Chart

Felony offenses subject to the Criminal Punishment Code (CPC) are listed in a single offense severity ranking chart (OSRC), which uses 10 offense levels to rank felonies from least severe (Level 1) to most severe (Level 10). Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute. A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense. The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.³⁸ If an offense is unranked, the CPC specifies a default level on the OSRC depending on the felony degree of the offense.³⁹

Effect of Proposed Changes

PCS for HB 275 creates s. 812.141, F.S., to create various new criminal offenses involving critical infrastructure.

Improperly Tampering with Critical Infrastructure

The bill prohibits a person from improperly tampering 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, when such improper tampering results in damage that is \$200 or greater to critical infrastructure. A violation of the prohibition is punishable as a second degree felony.

The bill defines the term "critical infrastructure" to mean 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.

³⁵ S. 815.06(3)(b)3., F.S. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

³⁶ S. 815.061(2)(a), F.S.

³⁷ S. 815.061(2)(b), F.S.

³⁸ S. 921.0022, F.S.

³⁹ S. 921.0023, F.S.

- 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, railroad switching yard, airport, trucking terminal, or other freight transportation facility.
- A facility used for the operating, 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 facility or 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 essential to the reliable operations, monitoring, and security of any critical infrastructure.
- Dams and other water control structures.

Under the bill, “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.

The bill does not rank the offense of improperly tampering with critical infrastructure on the OSRC. As such, the second degree felony offense defaults to a Level 4 offense on the OSRC.

The bill specifies that a person who is found in a civil action to have improperly tampered with critical infrastructure based on such a conviction 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 personal injury, wrongful death, or property damage caused by the act; or
- Any claim made against the owner or operator for any personal injury, wrongful death, or property damage caused by the malfunction of the critical infrastructure resulting from the criminal act, whichever is greater.

Trespass on Critical Infrastructure

The bill prohibits a person from willfully entering or remaining on physical critical infrastructure as to which specified notice against entering or remaining is given, without being authorized, licensed, or invited to do so. The bill specifies notice and posting requirements that critical infrastructure must comply with to obtain the trespass protections created by the bill as follows:

- For physical critical infrastructure that is one acre or less in area, a sign must be posted that appears prominently, in letters of not less than 2 inches in height, and reads in substantially the following manner: “This area is a designated critical infrastructure facility and anyone who trespasses on this property commits a felony.”
- For physical critical infrastructure that is more than one acre in area, signs must be 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 ch. 298, F.S., or was created by special act of the Legislature, signs must be placed at or near the intersection of any district canal right-of-way and a road right-of-way.

Additionally, signs must be placed along the boundary line of posted land in a manner and in such a position as to be clearly noticeable from outside the boundary line.

Under the bill, a violation of trespass on physical critical infrastructure is a third degree felony. The bill does not rank the offense on the OSRC and as such, the third degree felony offense defaults to a Level 1 offense on the OSRC.

Offenses Against Computers

The bill prohibits a person from willfully, knowingly, and without authorization gaining 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. A violation of the prohibition is a third degree felony. The bill does not rank the offense on the OSRC and as such, the third degree felony offense defaults to a Level 1 offense on the OSRC.

Finally, the bill prohibits a person from 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 any critical infrastructure. A violation of the prohibition is a second degree felony. The bill does not rank the offense and as such, the second degree felony offense defaults to a Level 4 offense on the OSRC.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 812.141, F.S., relating to intentional damage to critical infrastructure.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a positive impact on jail and prison beds by creating new felony offenses relating to critical infrastructure, which may result in increased admissions to such facilities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES