

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. Senate Bill 652

PRINTER NO. 1584

AMOUNT

See Fiscal Impact

FUND

General Fund

DATE INTRODUCED

April 25, 2017

PRIME SPONSOR

Senator Regan

DESCRIPTION

Senate Bill 652 amends Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in burglary and other criminal intrusion, further providing for the offense of criminal trespass.

This legislation amends Title 18 §3503 (relating to criminal trespass) by adding a new subsection (b.4) (relating to critical infrastructure facility trespasser). The offense of "criminal trespass" is expanded to instances when a person does any of the following:

- 1) Enters or attempts to enter property containing a "critical infrastructure facility", knowing that the person is not licensed or does not have the permission of the owner or lawful occupant;
- 2) Enters property containing a critical infrastructure facility with the intent to willfully damage, destroy, vandalize, deface, tamper with equipment or impede or inhibit operations of the facility;
- 3) Remains in a critical infrastructure facility and defies an order to leave which has been communicated to the person by the owner of the property or other lawful occupant; or
- 4) Conspires with another person to commit any of the aforementioned.

It is a defense to prosecution under this new subsection that:

- 1) Entry is made by an emergency services provider in response to a condition within the critical infrastructure facility that the person reasonably believes to be a serious threat to public health or safety;
- 2) Entry is made under exigent circumstances by a law enforcement officer to pursue and apprehend a suspect of criminal conduct; or
- 3) Prevent the destruction of evidence of criminal conduct.

Grading of the offense depends on whether it is a first offense, the defendant is a minor and whether there is an intent to damage or obstruct the operation of the facility. The offense is graded as follows:

- First offense:
 - 1) Entering or attempting to enter property containing a critical infrastructure facility is a felony of the third degree, unless the offense is committed by an individual under 18 years of age, of which it then becomes a misdemeanor of the third degree;

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

- 2) Entering property containing a critical infrastructure facility with the intent to willfully damage, destroy, vandalize, deface, tamper with equipment or impede or inhibit operations of the facility is a felony of the second degree and is punishable by imprisonment for a term of not more than one (1) year and a fine of not less than \$5,000, unless the offense is committed by an individual under 18 years of age, of which it then becomes a misdemeanor of the second degree.
- Second or subsequent offense:
 - 1) Entering or attempting to enter property containing a critical infrastructure facility is a felony of the second degree and is punishable by imprisonment for a term of not more than one (1) year and a fine of not less than \$5,000, unless the offense is committed by an individual under 18 years of age, of which it then becomes a misdemeanor of the second degree;
 - 2) Entering property containing a critical infrastructure facility with the intent to willfully damage, destroy, vandalize, deface, tamper with equipment or impede or inhibit operations of the facility is a felony of the first degree and is punishable by imprisonment for a term of not more than two (2) years and a fine of not less than \$10,000, unless the offense is committed by an individual under 18 years of age, of which it then becomes a misdemeanor of the first degree.

"Critical infrastructure facility" is defined as any of the following, whether constructed or under construction, if completely enclosed by a fence or other physical barrier that is obviously designated to exclude intruders, or if clearly marked with a sign posted on the property that is reasonably likely to come to the attention of intruders and indicates that entry is forbidden without site authorization if notice requirements are not necessary during obvious and apparent construction, or for a pipeline to the extent that it is marked by a pipeline marker:

- 1) A petroleum or alumina refinery;
- 2) An electrical power generating facility, substation, switching station, electrical control center or electrical power lines and associated equipment infrastructure;
- 3) A chemical, polymer or rubber manufacturing facility;
- 4) A water intake structure, water treatment and distribution infrastructure or wastewater treatment and collection infrastructure;
- 5) A natural gas compressor station;
- 6) A liquid natural gas terminal or storage facility;
- 7) A telecommunication central switching office, remote terminal or any other equipment in a secure enclosure used to provide telecommunications services;
- 8) Wireless and wireline telecommunications infrastructure;
- 9) A port, railroad switching yard, railroad tracks, trucking terminal or other freight transportation facility;
- 10) A gas processing plant;
- 11) A transmission facility used by a federally licensed radio or television station;

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

- 12) A steelmaking facility that uses an electric arc furnace to make steel;
- 13) A facility identified and regulated by the Department of Homeland Security Chemical Facility Anti-Terrorism Standards (CFATS) program;
- 14) A dam that is regulated by the federal or state government;
- 15) A natural gas transmission or distribution utility facility;
- 16) A crude oil or refined products storage and distribution facility;
- 17) An above-ground portion of an oil, gas, hazardous liquid or chemical pipeline, tank or railroad facility or other related storage facility;
- 18) Oil and gas production facilities;
- 19) Pipelines used to transport natural gas, oil or refined products, whether buried or above ground;
- 20) Equipment and machinery, regardless of whether stored on location or at a storage yard, to the extent that it is used to construct a critical infrastructure facility; and
- 21) An energy facility as defined in 18 U.S.C. §1366(c) (relating to destruction of an energy facility).

This Act shall take effect in 60 days.

FISCAL IMPACT:

Currently, sentences for convictions of §3503 (relating to criminal trespass) range from a misdemeanor of the third degree to felony of the second degree. According to data from the Pennsylvania Commission on Sentencing there were 2,470 sentences in 2016, of which 260 defendants were sentenced to incarceration in a state prison.

In order to be charged with this new subsection (b.4) (relating to critical infrastructure facility trespasser), the facility, whether constructed or under construction, must be completely enclosed by a fence or other physical barrier that is obviously designated to exclude intruders or if clearly marked with a sign or signs posted on the property or during obvious and apparent construction for a pipeline. Assuming 5% of the 260 cases involved a "critical infrastructure facility," thirteen (13) individuals would be charged under this new subsection §3503 (b.4) (relating to critical infrastructure facility trespasser). If all thirteen (13) individuals are sentenced by the courts to one (1) year imprisonment in a state correctional institution, based on an inmate variable cost per day to the Pennsylvania Department of Corrections (DOC) (\$17.82 per day), this may result in \$84,566 additional annual costs to the DOC.

Acknowledging there will be a future amendment to the bill to address the grading of offenses, the Appropriations Committee will issue a revised fiscal note at that time.