

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1085 w/CS Trespass
SPONSOR(S): Mahon
TIED BILLS: **IDEN./SIM. BILLS:** SB 2460

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	16 Y, 1 N w/CS	Birtman	Havlicak
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

In order to commit the offense of trespassing, an unauthorized person must willfully enter on property as to which notice against entering is given by actual communication, fencing, cultivation, or by posting. This bill provides an alternative to the posting requirement for stationary rails or roadbeds that are owned or leased by a railroad or railway company.

This bill appears to have an insignificant fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Florida's rail system is comprised of 2,871-mile rail system which is owned and operated by the private sector¹, but for 81 miles that comprise the South Florida Rail Corridor². The Federal Railroad Administration reports that trespasser deaths have increased by 37% over the last 5 years,³ and that Florida is fourth in the nation in regard to trespasser fatalities.

The offense of trespass on property other than a structure or conveyance is generally a first degree misdemeanor⁴, and occurs when a person:

- willfully enters upon or remains in any property other than a structure or conveyance without being authorized⁵, licensed, or invited; and
- notice against entering is given by actual communication or by posting, fencing, or cultivation.⁶

"Posted land" is land upon which signs are placed no more than 500 feet apart along, and at each corner of, the boundaries of the land, upon which signs there appears prominently the words "no trespassing."⁷

The unauthorized entry by any person into or upon any enclosed and posted land is prima facie evidence of the intention of such person to commit an act of trespass.⁸

This bill provides an alternative to the posting requirement on any stationary rails or roadbeds⁹ that are owned or leased by a railroad or railway company and are:

¹ 2002 Florida Rail System Plan, published by the Florida Department of Transportation.

² The State of Florida, through the DOT, owns the 81-mile stretch between West Palm Beach and Miami, with a branch to the Miami International Airport.

³ The Federal Railroad Administration Office of Safety Analysis reports that Florida had 24 trespasser deaths in 1999, and 33 trespasser deaths in 2003. See www.fra.dot.gov.

⁴ The offense is a third degree felony if the offender is armed during the trespass; if the property trespassed is a posted construction site; if the property is posted as commercial property designated for horticultural products; if the property trespassed is posted as a designated agricultural site for testing or research purposes; or if a person in taking specified animals knowingly propels any potentially lethal projectile over or across private land without authorization. See ss. 810.09(2)(a)-(g), F.S.

⁵ "Authorized" means any owner, or his or her agent, or any law enforcement officer whose department has received written authorization from the owner or agent to communicate an order to leave the property in the case of a threat to public safety or welfare. Section 810.09(3), F.S.

⁶ See s. 810.09(1)(a), F.S. Trespass can also occur 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.

⁷ See s. 810.011(5)(a), F.S.

⁸ See s. 810.12, F.S.

- readily recognizable to a reasonable person as being the property of a railroad or railway company, or
- identified by conspicuous fencing or signs indicating private ownership.

The bill provides that the provisions of ss. 810.09, F.S. (trespass) and 810.12, F.S. (prima facie evidence of trespass) would apply as long as the railroad or railway company complies with the alternatives to posting as stated in the bill.

Generally, the only duty owed by a railroad company to a trespasser on its property is not to harm the trespasser willfully or wantonly or to expose the trespasser to danger recklessly or wantonly.¹⁰ Once the presence of a trespasser is known, the railroad company must exercise ordinary care to avoid injury to him.¹¹

C. SECTION DIRECTORY:

Section 1 amends s. 810.011, F.S., to provide an alternative to posting requirements.

Section 2 re-enacts s. 810.09, F.S., to incorporate the reference to s. 810.011

Section 3 provides an effective date of October 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

⁹ The roadbed of a railroad is located on its roadway or right of way, and it is the foundation on which the superstructure of the railroad rests. 65 Am.Jur. 2d, Railroads s. 201.

¹⁰ See *Louisville & N.R. Co. v. Holland*, 79 So.2d 691 (Fla. 1955).

¹¹ See *Atlantic Coast Line R. Co. v. Webb*, 112 Fla. 449 (Fla. 1933).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 11, 2004, the Judiciary Committee adopted one amendment that removed section 2 of the bill, which allowed warrantless arrests if the law enforcement officer had probable cause to believe that a person committed trespass to a stationary rail or roadbed in certain circumstances.

This analysis is drafted to the bill as amended.