



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill lessens the requirement that a railway company post signs in order to have the protection of the trespass law.

#### B. EFFECT OF PROPOSED CHANGES:

Florida's rail system stretches for 2,871 miles. All but 81 of those miles are privately owned.<sup>1</sup> The state owns the South Florida Rail Corridor<sup>2</sup>. The Federal Railroad Administration reports that trespasser deaths have increased by 37% over the last 5 years,<sup>3</sup> and that Florida is fourth in the nation for trespasser fatalities that occur on rail lines.

Section 810.09, F.S., provides that it is a first degree misdemeanor to commit trespass on lands.<sup>4</sup> The offense level is increased to a third degree felony in certain circumstances.<sup>5</sup> Trespass on lands is when a person:

- willfully enters upon or remains in any property other than a structure or conveyance without being authorized<sup>6</sup>, licensed, or invited; and
- notice against entering is given by actual communication or by posting, fencing, or cultivation.<sup>7</sup>

"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."<sup>8</sup> 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.<sup>9</sup>

The effect of these laws is that a person is not prosecuted for criminal trespass by simply wandering onto the open property of another. The offender must be given actual notice that entry is not authorized (by direct communication to the individual, or by posting), or notice must be presumed, that is, notice that is assumed that a reasonable person would know. The law presumes that individuals know or should know that they are not authorized to enter fenced or cultivated lands.

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<sup>1</sup> 2002 Florida Rail System Plan, published by the Florida Department of Transportation.

<sup>2</sup> 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.

<sup>3</sup> 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](http://www.fra.dot.gov).

<sup>4</sup> A opposed to trespass in a dwelling, structure or conveyance, which is considered a more serious offense.

<sup>5</sup> It 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.

<sup>6</sup> "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.

<sup>7</sup> 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.

<sup>8</sup> See s. 810.011(5)(a), F.S.

<sup>9</sup> See s. 810.12, F.S.

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.<sup>10</sup> Once the presence of a trespasser is known, the railroad company must exercise ordinary care to avoid injury to him.<sup>11</sup>

### **Effect of Bill**

This bill provides that, for purposes of prosecution for trespass, posting is not required for lands that contain stationary rails or roadbeds<sup>12</sup> that are owned or leased by a railroad or railway company if the property is:

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

Thus, this bill provides that an individual should know that he or she may not enter or remain on railroad property.

#### **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, F.S.

Section 3 provides an effective date of October 1, 2005.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The 2004 Criminal Justice Estimating Conference determined that this bill has an insignificant prison bed impact.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

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

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

<sup>12</sup> 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.

D. FISCAL COMMENTS:

If the railroad companies were to post "No Trespassing" signs, it would require more than 60,000 signs.<sup>13</sup>

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.

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<sup>13</sup> There are 2,871 miles of railway. Signs are required to be no more than 500 feet apart, which would require approximately 10.5 signs per mile. Multiply 30,145.5 times two (both sides of the tracks) yields 60,291.