



## 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 2,788 miles.<sup>1</sup> All but 81 of those miles are privately owned.<sup>2</sup> The Federal Railroad Administration (FRA) reports that trespasser deaths have decreased by 36.4% between 2002 and 2004.<sup>3</sup> Florida is third in the nation for trespasser fatalities that occur on rail lines.<sup>4</sup>

Section 810.09, F.S., provides that it is a first degree misdemeanor to commit trespass on lands.<sup>5</sup> The offense level is increased to a third degree felony in certain circumstances.<sup>6</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>7</sup>, licensed, or invited; and
- notice against entering is given by actual communication or by posting, fencing, or cultivation.<sup>8</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>9</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>10</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. An offender must be given actual notice (e.g.

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<sup>1</sup> 2004 Florida Rail System Plan, published by the Florida Department of Transportation (FDOT).

<sup>2</sup> The State of Florida, through the FDOT, 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 33 trespasser deaths in 2002, and 21 trespasser deaths in 2004. Between January and July of 2005, there have been 25 trespasser deaths. See <http://safetydata.fra.dot.gov/officeofsafety/>.

<sup>4</sup> <http://safetydata.fra.dot.gov/officeofsafety/>.

<sup>5</sup> Trespass in a dwelling, structure or conveyance is considered a more serious offense.

<sup>6</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 knowingly propels any potentially lethal projectile over or across private land without authorization while taking, killing, or endangering specified animals. See ss. 810.09(2)(a)-(g), F.S.

<sup>7</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>8</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>9</sup> See s. 810.011(5)(a), F.S.

<sup>10</sup> See s. 810.12, F.S.

direct communication) or constructive notice (e.g. posting) that entry is not authorized.<sup>11</sup> The law presumes that individuals know or should know that they are not authorized to enter fenced or cultivated lands.

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>12</sup> Once the presence of a trespasser is known, the railroad company must exercise ordinary care to avoid injury to him.<sup>13</sup>

A landowner owes less of a duty of care to an unknown licensee or to a trespasser, than they do to an invitee. "The unwavering rule as to a trespasser is that the property owner is under the duty only to avoid willful and wanton harm to him and upon discovery of his presence to warn him of known dangers not open to ordinary observation."<sup>14</sup> The duty owed by a landowner to an uninvited "licensee or discovered trespasser is essentially the same: to avoid willful and wanton harm to him, and to warn him of defect or condition known by the landowner to be dangerous when such danger is not open to ordinary observation by licensee or trespasser."<sup>15</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>16</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 in order for the state to prove that an individual trespassed upon railroad property, the state does not have to offer proof that notice was given.

### **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, 2006.

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<sup>11</sup> See *K.S. v. State*, 840 So.2d 1116 (Fla. 1<sup>st</sup> DCA 2003).

<sup>12</sup> See *Louisville & N.R. Co. v. Holland*, 79 So.2d 691 (Fla. 1955).

<sup>13</sup> See *Atlantic Coast Line R. Co. v. Webb*, 112 Fla. 449, 150 So. 741 (Fla. 1933).

<sup>14</sup> See *Wood v. Camp*, 284 So.2d 691, 693-694 (Fla. 1973).

<sup>15</sup> See *Morris v. Florentes, Inc.*, 421 So.2d 582, 583 (Fla. 5th DCA 1982).

<sup>16</sup> The roadbed of a railroad is the foundation upon which the ties, rails, and ballast of a railroad are laid. See *The American Heritage Dictionary of the English Language*, Fourth Edition.

## 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 had 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.

### D. FISCAL COMMENTS:

If the railroad companies elected to post "No Trespassing" signs, it would require more than 58,000 signs.<sup>17</sup>

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

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<sup>17</sup> There are 2,788 miles of railway. Signs are required to be no more than 500 feet apart, which would require approximately 10.5 signs per mile. Multiplying 29,274 times two (both sides of the tracks) yields 58,548.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

n/a