

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: CS/SB 2180

INTRODUCER: Regulated Industries Committee and Senator Bennett

SUBJECT: Trespass/Construction Site

DATE: April 12, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	Erickson	Cannon	CJ	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill defines the term “construction site” to mean any property where there is construction for which a building permit is required.

The bill provides a third degree felony violation for trespass at construction sites of less than one acre in size and identified as such with a sign that appears predominantly, in letters not less than two inches in height, and reads in substantially the following manner:

THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY

The bill requires that the notice be placed where the building permits for construction are located. The bill provides that it is not necessary for a construction site of less than one acre to give the notice required by s. 810.011(5), F.S., which requires that multiple no-trespassing signs must be placed not more than 500 feet apart along, and at each corner of, the boundaries of the land.

This bill substantially amends sections 810.011 and 810.09, Florida Statutes.

II. Present Situation:

Section 810.09, F.S., provides that it is a first-degree misdemeanor to enter, uninvited, onto property that is not a structure or conveyance if prior notice against entering has been given by verbal communication, or by posting, fencing, or cultivation. Consequently, it is not trespassing for a person to wander onto land that is undeveloped and about which that person has no

knowledge that the land is privately owned because he or she has not been given any prior notice not to trespass.

Trespassing onto property that is a construction site is a third degree felony.¹ In order to be found guilty of trespassing on property that is a construction site, the state must prove beyond a reasonable doubt that the property was both “legally posted” and identified in substantially the following manner:

THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE
WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY²

Section 810.09, F.S., also prohibits, as third degree felonies, trespass at commercial horticulture properties,³ agricultural sites used for testing or research purposes,⁴ domestic violence centers certified under s. 39.905, F.S.,⁵ and agricultural chemicals manufacturing facilities.⁶ As with trespass at a construction site, s. 810.09, F.S., also specifies the form of the notice for these locations, which must identify the type of location or facility and that trespassing is a felony.

Section 810.011(5), F.S., defines the term “posted land” as used in ch. 810, F.S. It defines the term “posted land” to mean land upon which signs are placed not more than 500 feet apart along, and at each corner of, the boundaries of the land. The signs must prominently display, in letters of not less than 2 inches in height, the words “no trespassing” and the name of the owner, lessee, or occupant of the land. The “no trespassing” signs must be placed along the boundary line of the land in a manner and in such position as to be clearly noticeable from outside the boundary line.

Construction sites and the other locations and facilities listed in s. 810.09(2), F.S., must post the two notices, i.e., the notice required by s. 810.09, F.S., and the “no trespassing” notice required by s. 810.011(5), F.S. Alternatively, they could post individual signs that each meet all of the requirements in both sections. To be legally “posted,” both signs must meet the placement and size requirements in s. 810.011(5), F.S. The definition of “posted land” in s. 810.011, F.S., is intended to apply to the term “legally posted” in s. 810.09, F.S.⁷

In order to obtain the benefits of ss. 810.09 and 810.12, F.S., posting is not required for land upon which there is a dwelling. Section 810.12, F.S., provides “the unauthorized entry by any person into or upon any enclosed and posted land shall be prima facie evidence of the intention of such person to commit an act of trespass.”

III. Effect of Proposed Changes:

This bill amends s. 810.011, F.S., to define the term “construction site” to mean any property where there is construction for which a building permit is required.

¹ Section 810.09(2)(d), F.S.

² *Id.*

³ Section 810.09(2)(e), F.S.

⁴ Section 810.09(2)(f), F.S.

⁵ Section 810.09(2)(g), F.S.

⁶ Section 810.09(2)(i), F.S.

⁷ See *Lewis v. State*, 932 So.2d 357 (Fla. 2nd DCA 2006).

The bill creates s. 810.09(2)(d)2., F.S., to provide a third degree felony violation for trespass at construction sites less than one acre in size and identified as such with a sign that appears predominantly, in letters not less than two inches in height, and reads in substantially the following manner:

THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE
WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY

The bill requires that the notice be placed where the building permits for construction are located.⁸ Current law and the Florida Building Code do not specify the location on the construction site where construction permits must be placed.⁹

The bill provides that it is not necessary for a construction site of less than one acre to give the notice required by s. 810.011(5), F.S., which requires that the “no-trespass notices be placed not more than 500 feet apart along, and at each corner of, the boundaries of the land.” This provision would permit persons to be charged and convicted of a felony for trespassing if the one sign provided by s. 810.09(2)(d)2., F.S., is present at the construction site.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

⁸ Section 105.1 of the Florida Building requires that:

Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

⁹ Section 105.7 of the Florida Building Code provides that a permit or a copy thereof must be kept on the site of the work until the completion of the project.

B. Private Sector Impact:

Contractor and property owners may save costs by not having to post multiple no trespassing signs at construction sites of less than one acre in size.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) provides the final, official estimate of the prison bed impact of legislation. The CJIC has not yet met to consider the bill. However, the bill creates a third degree felony that is not ranked in the offense severity level ranking chart of the Criminal Punishment Code.¹⁰ Pursuant to s. 921.0023, F.S., a third degree felony that is not ranked in the chart is assigned a Level 1 ranking. A first-time offender convicted of this offense alone would not score a lowest permissible sentence of prison, but rather a non-prison sanction, although the sentencing court has the discretion to sentence up to the maximum penalty for a third degree felony, which is 5 years in state prison.¹¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁰ Section 921.0022, F.S.

¹¹ Section 775.082, F.S.

VIII. Summary of Amendments:

None.

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