

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: SB 320

INTRODUCER: Senator King

SUBJECT: Trespass/Posted Land/Railroads

DATE: April 18, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Boyd</u>	<u>Meyer</u>	<u>TR</u>	Favorable
2.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill allows a person to be prosecuted for the offense of trespass of property even though trespassing signs are not posted on stationary rails or roadbeds owned or leased by rail companies if the property is readily recognized or conspicuously identified as such. (Trespassing is currently punishable as a first degree misdemeanor, unless the trespasser is “armed with a firearm or other dangerous weapon,” in which case it is a third degree felony.)

This bill substantially amends section 810.011(5) and reenacts section 810.09 (1)(a) of the Florida Statutes.

II. Present Situation:

Florida’s rail system stretches for 2,788 miles.¹ All but 81 of those miles are privately owned.² Florida is third in the nation for trespasser fatalities that occur on rail lines.³ Under current law, a person who enters onto railroad property (i.e., tracks or railroad beds) cannot be found guilty of trespassing unless the trespasser has been given verbal notice, the land is fenced or cultivated, or the owner of the railroad tracks has posted signs every 500 feet on each side of the tracks.^{4,5} Like

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

² 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.

³ <http://safetydata.fra.dot.gov/officeofsafety/>.

⁴ There are 2,788 miles of railway. Since signs are required to be no more than 500 feet apart, this would require approximately 10.5 signs per mile. Multiplying 29,274 times two (both sides of the tracks) yields 58,548.

⁵ Section 810.011(5)(a), F.S.

any other property, railroad companies are not required by law to post “no trespassing” signs on their property. However, railroad companies are required to post “no trespassing” signs on their property if they want trespassers to be arrested without first having to provide prior verbal notice to the trespasser that he or she has entered onto privately owned land.

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.” “Posted land” is 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 contain the words “no trespassing” in letters at least 2 inches high. s. 810.011(5)(a), F.S.

Section 810.09(2)(a) F.S., provides it is a first degree misdemeanor (punishable by potential imprisonment up to 1 year and/or a potential fine up to \$1,000) to willfully enter or remain, uninvited, on property that is not a structure or conveyance if notice against entering has been given by actual verbal communication, or by posting, fencing, or cultivation. Furthermore, it is a third degree felony (punishable by potential imprisonment up to 5 years and/or a potential fine up to \$5,000) for a person to trespass under these circumstances while “armed with a firearm or other dangerous weapon.” Section 810.09(2)(c), F.S.

Accordingly, under this section, a person who is hiking or hunting in the woods cannot be prosecuted for trespassing when entering onto land that is undeveloped and such person has no idea the land is privately owned because there has been no requisite notice given.

III. Effect of Proposed Changes:

This bill amends s. 810.011(5), F.S., to provide, for purposes of prosecution for trespass, posting is not required for lands containing stationary rails or roadbeds 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.

This bill will allow people to be prosecuted for trespassing upon railroad tracks or railroad beds, even though prior notice that the property is privately owned was not given and there were not any “no trespassing” signs placed every 500 feet around the property. (Trespassing is currently punishable as a first degree misdemeanor, unless the trespasser is “armed with a firearm or other dangerous weapon, in which case it is a third degree felony.)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

A person prosecuted under this bill for first degree misdemeanor trespassing could be subjected to a fine up to \$1,000. A person prosecuted for third degree felony trespassing could be subjected to a fine up to \$5,000.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The 2004 Criminal Justice Estimating Conference found this bill would have an insignificant prison bed impact. The conference has not evaluated the bill in this term.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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