

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain public security -- This bill will provide added security to the state's railroad system.

B. EFFECT OF PROPOSED CHANGES:

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 the current trespass laws, a person who enters onto railroad property (i.e., tracks or railroad beds) cannot be found guilty of trespassing unless the person has been given prior 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

Like 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. It is not trespassing where a person wanders onto land that is undeveloped, and that person has no idea that the land is privately owned because he or she was not given any prior notice through a verbal warning or posted signs.

Section 810.09, F.S., provides that it is a first-degree misdemeanor to enter, uninvited, onto property that is not a structure or conveyance⁵ if prior notice against entering has been given by verbal communication, or by posting, fencing or cultivation as described in s. 810.011, F.S.⁶ Section 810.011(5), F.S., provides that the definition for "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" and meet certain minimum size requirements.

Section 810.12, F.S., provides that "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."

These trespassing laws presume that individuals know or should know that they are not authorized to enter fenced or cultivated lands, or lands that have "no trespassing" signs around the property. In this same respect, people should know that railroad tracks and railroad beds are privately owned property in the same way that people know fenced, cultivated, or otherwise developed property is privately owned.

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 Section 810.011(5), F.S.

⁵ "Conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and "to enter a conveyance" includes taking apart any portion of the conveyance. Section. 810.011, F.S.

⁶ Section 810.011, F.S., provides definitions for "posted land", "fenced land", and "cultivated land".

Effect of Bill

This bill amends s. 810.011(5), F.S., to provide that, for purposes of prosecution for trespass under 810.09, F.S., posting is not required for lands that contain stationary rails or roadbeds⁷ 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.

These changes to the trespassing law will have no effect on current protections afforded trespassers under Florida's negligence tort law. Florida's negligence tort laws provide that a landowner has no duty to an undiscovered trespasser. However, once a landowner discovers the presence of a trespasser, he is under a duty to exercise ordinary care to warn the trespasser of, or to make safe, artificial conditions known to the landowner that involve a risk of death or serious bodily harm and that the trespasser is unlikely to discover. There is no duty owed by the landowner for natural conditions and less dangerous artificial ones. The duty of a landowner to a discovered trespasser will remain in affect regardless of the changes provided in this bill.

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, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁷ According to the *American Heritage Dictionary of the English Language*, Fourth Edition, the "roadbed" of a railroad is the foundation upon which the ties, rails, and ballast of a railroad are laid.

D. FISCAL COMMENTS:

If the railroad companies elected to post "No Trespassing" signs, it would require more than 58,000 signs.⁸

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.

⁸There 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.