

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1207

Railroads

SPONSOR(S): Homan

TIED BILLS:

IDEN./SIM. BILLS: SB 2792

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Infrastructure</u>	_____	<u>Creamer</u>	<u>Miller</u>
2) <u>Economic Expansion & Infrastructure Council</u>	_____	_____	_____
3) <u>Policy & Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1207 amends current law to require public railroad-highway grade crossings opened on or after July 1, 1972, to be maintained by a railroad company at its own expense. The bill provides that certain responsibilities of a railroad company to maintain and inspect public railroad-highway grade signal crossings shall not be abrogated, transferred, or nullified by contract or administrative rule.

The bill directs the Department of Transportation (DOT) to amend specified rules to delete provisions for DOT participation in the cost of maintaining grade crossing traffic control devices located on the State Highway System.

In addition, the bill creates s. 351.31, F.S., relating to access to railroad property by government officials. The bill authorizes any governmental entity, or its agent, to access railroad real property adjoining public property as necessary to plan, facilitate, and complete road or highway construction, improvement, or repair projects and prohibits railroad companies from refusing this access and prohibits a railroad company from refusing such access. The provisions also include specific requirements related to railroad property access to include:

- Requiring the governmental entity, or its agent, to comply with laws and rules while on railroad property;
- Limiting liability of the railroad company for conduct of any governmental entity, or its agent, accessing railroad property;
- Providing procedures to be followed by the governmental entity prior to entry onto the railroad property;
- Requiring governmental entities to notify railroad companies at least 5 days prior to entry onto railroad properties, and providing procedures for the railroad company to object to access to railroad properties.

The bill will have a positive fiscal impact on the State Transportation Trust funds as a result of the amended rules. The elimination of the 50 percent participation requirements in the cost of maintaining grade crossing traffic control devices so long as the devices are located on the State Highway System have not been determined by DOT at this time. This provision will have a negative fiscal impact on railroad companies which will be required to pay 100 percent of these costs.

The bill may have fiscal impacts on railroad companies and governmental entities for court costs and attorney fees depending on circuit court decisions related to access requests.

The bill is effective July 1, 2008.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1207.INF.doc

DATE: 3/19/2008

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not implicate any House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 335.141, F.S., provides for the regulation of public railroad-highway grade crossings. Current law specifically provides:

- DOT has regulatory authority over all public railroad-highway grade crossings in the state, including the authority to issue permits which shall be required prior to the opening and closing of such crossings.
- DOT, in cooperation with railroad companies operating in the state, shall develop and adopt a program for the expenditure of funds available for the construction of projects for the reduction of the hazards at public railroad-highway grade crossings.
- Every railroad company maintaining a public railroad-highway grade crossing shall, upon reasonable notice from DOT, install, maintain, and operate traffic control devices at crossings to provide motorists with warning of the approach of trains. DOT notices are based on its adopted program for the reduction of hazards at crossings and on construction efficiency considerations relating to the geographical proximity of crossings. The design of the railroad company's traffic control devices must be approved by DOT, and the cost of their purchase and installation must be paid from the funds available for the construction of projects for the reduction of the hazards at public railroad-highway grade crossings.
- Any public railroad crossing opened prior to July 1, 1972, shall be maintained by the railroad company at its own expense, unless the maintenance has been provided for in another manner by contractual agreement entered into prior to October 1, 1982. If the railroad company fails to maintain the crossing, the unit of government with jurisdiction over the public road that is crossed, after notifying the railroad company of the needed repairs and after giving the company 30 days after the date of receipt of the notice to make the repairs, shall proceed to make the repairs. The unit of government's cost of repairs will be recovered by means of a lien upon the railroad company's assets and is enforceable by law. In addition, any reasonable attorney's fees incurred by the unit of government are in addition to these costs and may also be recovered.
- Prior to construction, rehabilitation, or maintenance of the railroad grade or highway approaches at a public railroad-highway grade crossing, the railroad company or governmental entity initiating the work shall notify the other party in order to promote the coordination of activities and to ensure a safe crossing with smooth pavement transitions from the grade of the railroad to the highway approaches.
- DOT is authorized to regulate, by rule, the speed limit of railroad traffic on a municipal, county, regional, or statewide basis. DOT rules shall, at a minimum, provide for public input prior to the issuance of any orders.
- Any local governmental entity or other public or private agency planning a public event, such as a parade or race, that involves the crossing of a railroad track shall notify the railroad no less

than 72 hours in advance of the event so that the coordination of the crossing may be arranged by the agency and railroad to assure the safety of the railroad trains and the participants in the event.

Proposed Changes

HB 1207 revises s. 335.141, F.S., to provide that any public railroad-highway grade crossing opened on or after July 1, 1972, shall be maintained by the railroad company at its own expense. Current rule 14-57.011(3)(a), Florida Administrative Code provides that DOT shall participate in 50 percent of the cost of maintaining grade crossing traffic control devices so long as the devices are located on the State Highway System. The bill directs DOT to amend rule 14-57.011(3)(a), Florida Administrative Code, to delete the provision for DOT participation in the cost of maintaining grade crossing traffic control devices located on the State Highway System.

The bill also provides that it is responsibility of a railroad company to comply with federal requirements of maintenance and inspection of public railroad-highway grade signal crossings and the public policy of the state and that this responsibility is to be carried out by the railroad company at its own expense and shall not be abrogated, transferred, or nullified by contract or administrative rule.

HB 1207 creates s. 351.31, F.S., providing for governmental entity's access to railroad property and specifies conditions for access to these properties. Specifically this section provides:

- Authorization to governmental entities to access railroad property that is adjacent to, abutting, or intersecting public lands, roadways, or highways is authorized for governmental entities and their agents for all purposes necessary to plan, facilitate, and complete road or highway construction, improvement, or repair projects. This access applies during the period of time that the road or highway construction, improvement or repair project undertaken by or on behalf of the jurisdictional governmental entity is in progress. This access does not give any governmental entity or its agent the authority to destroy, injure, damage, or remove any private property belonging to the railroad or to make any physical improvements to or conduct any excavation of any real property belonging to the railroad without first obtaining written permission of the railroad company.
- No railroad company or railroad company representative shall refuse access to railroad real property as authorized above. Entry onto railroad property by a governmental entity, or its agent, does not constitute trespass is not subject to arrest or to a civil action. However, a governmental entity or its agent authorized to enter railroad property, must comply with all federal, state, and local laws, as well as agency rules pertaining to premises security and other health and safety requirements applicable to such property.
- A railroad company is not liable to any third party for civil or criminal acts or damages that result from the negligent or intentional conduct of any agent of a governmental entity who is on these railroad properties.
- Prior to entry onto railroad property by a governmental entity or its agent, the governmental entity must deliver to the railroad company written notice of its intended entry not less than 5 days before the date of entry. The notice must include:
 - The full name of each individual who is authorized to enter railroad property on its behalf as well as the name of his or her employer and immediate supervisor.
 - The name of the governmental entity on whose behalf the entering agents are acting.
 - The location, size, and area of the property to which access will be required.

- The name of the work project for which access is required.
- The estimated time required for access.
- A description of the work or other activity to be performed which makes access to railroad property necessary.

Within 72 hours after delivery of the written notice, a railroad company may file an action stating its objection in the circuit court of the jurisdiction in which the railroad property to be accessed is located. If no objection is filed by the railroad company within 72 hours after delivery of the written notice, access as specified in the written notice is authorized. If an objection is filed by the railroad company, the circuit court shall set a hearing to determine the basis for the objection. (A timely filed objection shall suspend authority to access railroad property for 10 days unless, before the end of the 10-day period, a hearing has been scheduled and a stay has been issued in which event authority to access the railroad property shall remain suspended pending resolution by order of the circuit court.)

At the hearing, the circuit court shall review the following issues:

1. Whether or not the access to railroad property is necessary in scope, duration, and purpose for the planning, facilitation, and completion of a road or highway construction, improvement, or repair project;
 2. Whether or not the denial of access to the property necessary to avoid a substantial risk of physical harm to persons or railroad property;
 3. Whether or not access to the property for the work or activity described would be in violation of federal, state, or local laws or agency rules pertaining to premises security or other health and safety requirements;
 4. Whether or not there is a reasonable probability that railroad property would be damaged, destroyed, injured, or removed or real property excavated without permission of the railroad company;
 5. Whether or not the activity described would cause a substantial impairment of railroad operations; and
 6. Whether or not granting the access requested would constitute a taking of property under the Fifth Amendment to the United States Constitution or s. 6, Art. X of the State Constitution which related to eminent domain.
- A railroad company may not compel or require the use of flagging or other services provided by railroad company employees as a condition of allowing access to their property.

The bill will have a positive fiscal impact on the State Transportation Trust funds as a result of the amended rules. The elimination of the 50 percent participation requirements in the cost of maintaining grade crossing traffic control devices so long as the devices are located on the State Highway System have not been determined by DOT at this time. This provision will have a negative fiscal impact on railroad companies which will be required to pay 100 percent of these costs.

C. SECTION DIRECTORY:

Section 1. Amends s. 335.141, F.S.; requiring public railroad-highway grade crossings opened after a certain date to be maintained by the railroad company at its own expense; providing that certain responsibilities of a railroad company to maintain and inspect public railroad-highway grade signal

crossings shall not be abrogated, transferred, or nullified by contract or administrative rule; and directing the Department of Transportation to amend specified rules to delete the provision for department participation in the cost of maintaining grade crossing traffic control devices located on the State Highway System.

Section 2. Creates s. 351.31, F.S.; providing authorization for governmental entities to access railroad real property adjoining public property as necessary to plan, facilitate, and complete road or highway construction, improvement, or repair projects, subject to specified procedures; prohibiting a railroad company from refusing such access; providing that entry pursuant to such authorization is not trespass; requiring the governmental entity or its agent to comply with laws and rules; limiting liability of the railroad company for conduct of the agent; providing procedures to be followed by the governmental entity prior to entry onto the railroad property; requiring notification; providing procedures for the railroad company to object; providing for filing of the objection in court; providing specifications for court review and findings; providing for compensation if the court finds that granting access would result in a taking; and authorizing the court to order such conditions on granting access and certain limitations on activities as it deems necessary; providing that the railroad company may not condition access on the use of services provided by railroad company employees by contract, agreement, or otherwise; providing for applicability.

Section 3. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Section 1 of the bill will have a positive fiscal impact on the State Transportation Trust funds as a result of the amended rules. The elimination of the 50 percent participation requirements in the cost of maintaining grade crossing traffic control devices so long as the devices are located on the State Highway System have not been determined by DOT at this time.

2. Expenditures:

Section 2 of the bill may have a negative fiscal impact on state governmental entities for court costs and attorney fees not recovered from the railroad companies if railroad property access is denied after circuit court decisions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Section 2 of the bill may have a negative fiscal impact on local governmental entities for court costs and attorney fees not recovered from the railroad companies if railroad property access is denied after circuit court decisions.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 1 of the bill will have a negative fiscal impact on railroad companies in the state as a result of the amended rules. The elimination of the 50 percent participation requirements from DOT in the cost of maintaining grade crossing traffic control devices so long as the devices are located on the State Highway System will be assumed by these companies.

Section 2 of the bill may have a negative fiscal impact on railroad companies for court costs and attorney fees related to objections filed denying governmental entity access to railroad properties.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 1 of the bill requires DOT to amend current rules to delete the provision for DOT participation in the cost of maintaining grade crossing traffic control devices located on the State Highway System.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES