

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 523 Trespass on Airport Property

SPONSOR(S): Cortes, B.

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1094

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 0 N	Tuszynski	Sumner
2) Transportation & Infrastructure Subcommittee	12 Y, 0 N	Johnson	Vickers
3) Judiciary Committee			

SUMMARY ANALYSIS

HB 523 increases criminal penalties from a first degree misdemeanor to a third degree felony where an offender trespasses on the operational area of an airport with the intent to:

- Injure another person;
- Damage property; or
- Impede the operation or use of an aircraft, runway, taxiway, ramp or apron area.

The bill defines "operational area of an airport" as any portion of an airport to which access by the public is prohibited by fences or appropriate signs and includes runways, taxiways, ramps, apron areas, aircraft parking and storage areas, fuel storage areas, maintenances areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.

The bill requires that a sign with language similar to the following be posted in order for a trespasser to be prosecuted: "THIS AREA IS A DESIGNATED OPERATIONAL AREA OF AN AIRPORT AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

The Criminal Justice Impact Conference (CJIC) met on March 11, 2015, and determined that an identical bill would have had an insignificant impact on state prison beds through Fiscal Year 2019-20. This means CJIC estimates that this bill may increase the Department of Corrections prison bed population by less than 10 inmates annually. The bill may also have an insignificant county jail bed impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Trespass

Florida law currently prohibits a variety of acts relating to trespassing in or on the property of others. For example:

- Section 810.08, F.S., makes it a second degree misdemeanor¹ to willfully enter or remain in any structure² or conveyance,³ without being authorized, licensed, or invited, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so.⁴
- Section 810.09, F.S., makes it a first degree misdemeanor⁵ to willfully enter or remain in any property other than a structure or conveyance, without being authorized, licensed, or invited:
 - Where notice against entering or remaining is given either by actual communication or by posting, fencing, or cultivation;⁶ or
 - If the property is the unenclosed curtilage⁷ of a dwelling⁸ and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.

Generally, trespass offenses are misdemeanors. However, the penalties relating to trespass offenses are often increased when the offense involves specified types of property. For example, it is a third degree felony⁹ to trespass on designated construction sites, commercial horticulture properties, and agricultural chemical manufacturing facilities.¹⁰ Such properties must have posted warnings that contain specific language identifying it as a protected type of property.¹¹

Airport Security

Air travel security first gained national attention in the 1960s because of a marked increase airplane hijackings.¹² In response, Congress made aircraft piracy and carrying a “concealed deadly or dangerous weapon” on an aircraft without authorization a federal crime.¹³ The law did not slow the rate of hijacking attempts, and in 1970 the first federal airport screening and security program was

¹ A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. SS. 775.082 and 775.083, F.S.

² S. 810.011(1), F.S., defines “structure” as a building of any kind.

³ S. 810.011(3), F.S., defines “conveyance” as any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

⁴ This section increases the penalties to a first degree misdemeanor or a third degree felony in specified circumstances.

⁵ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁶ S. 810.011(6), F.S., defines “cultivated land” as that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture, or trees or is fallow land as part of a crop rotation.

⁷ S. 810.09(1)(b), defines “curtilage” as the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling.

⁸ S. 810.011(2), F.S., defines “dwelling” as a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof.

⁹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine; ss. 775.082 and 775.083, F.S.

¹⁰ S. 810.09(2)(d)1., (e), and (i), F.S.

¹¹ S. 810.09(2), F.S.

¹² Daniel S. Harawa, *The Post-TSA Airport: A Constitution Free Zone?*, 41 Pepp. L. Rev. 1, 4 (2013).

¹³ Act of Jan. 3, 1961, Pub. L. No. 87-197, 75 Stat. 466-68.

implemented at airports nationwide to fight increasing security hazards.¹⁴ These measures included specially trained armed personnel on flights, electronic surveillance, and metal detectors and x-rays.¹⁵

In the 16 years since September 11, 2001, airport security has been enhanced to account for new technology and threats. The federal Office of Homeland Security is tasked with developing and coordinating the implementation of a comprehensive national strategy to secure the United States from terrorist threats and attacks. As a result, federal oversight and coordination of airport security has greatly increased.¹⁶ This has evolved into a multi-layered approach to air transportation security including a multi-agency coordinated information system to vet passengers, enhanced detection technology to uncover a wide array of emerging threats, such as explosives, carry-on baggage screening, hardened and locked cockpits, and increased in-flight security.¹⁷

In recent years, there have been multiple reports of individuals trespassing into security screening areas, taxiways, and other restricted areas at airports.¹⁸ Small breaches of airport security can cause major delays and security risks. One incident at Newark Liberty International Airport involved a young man who slipped under a security rope into a secured passenger area to give his girlfriend a goodbye kiss.¹⁹ This brief security breach caused a six-hour terminal shutdown, stranded thousands of passengers, and delayed flights continuing into the next day.²⁰

Federal law currently prohibits any person from knowingly and willfully entering any aircraft or airport area in violation of specified security requirements²¹ with a penalty of fines and imprisonment not more than one year.²² An offender who acts with the intent to evade security procedures or with the intent to commit a felony in the aircraft or airport area may face up to twenty years in federal prison.²³

Current Florida law does not specifically prohibit trespassing in any portion of an airport. However, s. 901.15(14), F.S., allows law enforcement to arrest a person for misdemeanor trespass without a warrant when there is probable cause to believe that person has trespassed in a secure area of an airport with conspicuously posted signs notifying that unauthorized entry into such areas constitutes a trespass and the methods for gaining authorized access to such areas.

Effect of Proposed Changes

HB 523 makes it a third degree felony, punishable by up to five years imprisonment and a \$5,000 fine, for a person to trespass on the operational area of an airport with the intent to injure another person;

¹⁴ Statement Announcing a Program to Deal with Airport Hijacking, 1 Pub. Papers 742 (Sept. 11, 1970), available at:

<http://www.presidency.ucsb.edu/ws/index.php?pid=2659> (last accessed November 29, 2017); see also Harawa, supra FN 12, at 4.

¹⁵ Id.

¹⁶ Exec. Order No. 13,228, 66 Fed. Reg. 51,812 (Oct. 10, 2001).

¹⁷ Department of Homeland Security, Transportation Security Administration, *Addressing CSIS: Evolution of Aviation Security Since 9/11*, available at: <https://www.tsa.gov/news/speeches/addressing-csis-evolution-aviation-security-911> (last accessed November 29, 2017).

¹⁸ Peter D'Oench, *Police: Woman Arrested for Scaling Miami Airport Fence*, CBS Miami (March 2, 2015), available at: <http://miami.cbslocal.com/2015/03/02/police-woman-arrested-for-scaling-miami-airport-fence/> (last accessed November 20, 2017); Ray Sanchez, *Man Walks onto Newark Airport Runways; Authorities Reviewing Security Video*, Fox 13 (Dec. 26, 2013), available at: <http://fox13now.com/2013/12/26/new-jersey-airports-multimillion-dollar-detection-system-fails/> (last accessed November 20, 2017); Sarah Wheaton, *Man is Held in Security Breach at Newark*, The New York Times (Jan. 8, 2010), available at: <http://www.nytimes.com/2010/01/09/nyregion/09newark.html> (last accessed November 20, 2017); *Police: Airport Trespasser Spit On Cop, Said He Has HIV*, CBS Miami (Nov. 18, 2017), available at: <http://miami.cbslocal.com/2017/11/18/airport-trespasser-spit-cop-said-he-has-hiv/> (last accessed November 21, 2017).

¹⁹ Sarah Wheaton, *Man is Held in Security Breach at Newark*, The New York Times (Jan. 8, 2010), available at: <http://www.nytimes.com/2010/01/09/nyregion/09newark.html> (last accessed November 20, 2017); Al Baker & Liz Robbins, *A 'Romantic' Now in Trouble over an Airport Kiss*, The New York Times (Jan. 9, 2010), available at: <http://www.nytimes.com/2010/01/10/nyregion/10newark.html> (last accessed November 20, 2017).

²⁰ Id.

²¹ 49 U.S.C. § 46314(a) (2015).

²² 49 U.S.C. § 46314(b)(1) (2015).

²³ 49 U.S.C. § 46314(b)(2) (2015).

damage property; or impede the operation or use of an aircraft, runway,²⁴ taxiway,²⁵ ramp or apron area.²⁶

The bill defines “operational area of an airport” as any portion of an airport to which access by the public is prohibited by fences or appropriate signs and includes runways, taxiways, ramps, apron areas, aircraft parking and storage areas, fuel storage areas, maintenances areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.

For a trespasser to be prosecuted, the bill requires that an airport post a sign with language similar to the following:

“THIS AREA IS A DESIGNATED OPERATIONAL AREA OF AN AIRPORT AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.”

The bill provides an effective date of October 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 810.09, F.S., relating to trespass on property other than structure or conveyance.

Section 2: Provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference met on March 11, 2015, and determined that an identical bill would have had an insignificant impact on state prison beds through Fiscal Year 2019-20, meaning the bill may increase the Department of Corrections prison bed population by less than 10 inmates annually.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

To the extent persons who trespass on the operational area of an airport are charged with a felony rather than a misdemeanor, based on the CJIC estimate, the bill may have an insignificant impact on the number of jail beds.

²⁴ A runway is a defined rectangular area of an airport or airfield prepared for the landing and take-off of aircraft. International Civil Aviation Organization, *Runway Safety Handbook: Second Edition*, runway, (2015) (on file with Criminal Justice Subcommittee staff).

²⁵ A taxiway is commonly defined as the paved area in which an aircraft taxis between the runway and the apron of the airport.

²⁶ An apron, or ramp, is a defined area on an airport intended to accommodate aircraft for purposes of loading or unloading passengers or cargo, refueling, parking, or maintenance. Federal Aviation Administration, Advisory Circular, No: 120-57A, pg. 2, available at: https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC%20120-57A.pdf (last accessed November 29, 2017).

The bill will have an indeterminate negative fiscal impact on publicly operated airports that create signage in compliance with the bill's sign posting requirement.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have an indeterminate negative fiscal impact on privately owned airports that create signage in compliance with the bill's sign posting requirement.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.