

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1253 School District of Palm Beach County

SPONSOR(S): Rooney, Jr. and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	12 Y, 0 N	Darden	Miller
2) K-12 Subcommittee	12 Y, 0 N	Flynn	Fudge
3) Local & Federal Affairs Committee	16 Y, 0 N	Darden	Kiner

SUMMARY ANALYSIS

The Legislature established a pilot program in 2008, enabling the School District of Palm Beach County (District) to recognize its business partners. The business partners provide funds for school programs, including Project Graduation and athletic sponsorships, and in turn the District displays the names of the partners on school property. The program was subsequently reauthorized in 2012 and 2014.

The bill establishes the School District of Palm Beach County Business Partnership Program (Program), removing the need for periodic renewal of the pilot program. The bill also sets standards for signs erected as part of the Program and provides that its provisions prevail in a conflict with any county signage ordinances to the contrary.

The Economic Impact Statement for HB 1253 states the bill will provide the school district with \$150,000 in additional funding for fiscal years 2015-2016 and 2016-2017.

The bill shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

School District of Palm Beach County Business Partner Program

In 2014, the Legislature reauthorized a pilot program for the School District of Palm Beach County (District) to recognize its business partners.¹ The business partners fund programs such as Project Graduation and athletic sponsorships, and in return have their names publicly displayed on school district property.² The size, color, and placement of signs under the pilot program must be consistent with county standards for other signs.³

If any provisions of the pilot program conflict with county ordinances or regulations relating to signs in the unincorporated areas of the county, or are inconsistent with ch. 125, F.S. or ch. 166, F.S., the provisions set forth for the pilot program prevail.⁴ Without the pilot program, the placement of the signs would violate Palm Beach County ordinances. The county prohibits the construction of any new billboard or “similar off-site signs,” for the purpose of “improve[ing] the aesthetic appearance of unincorporated [Palm Beach County].”⁵

If the Department of Transportation (DOT) is informed by the Federal Highway Administration that the pilot program is not providing effective control of outdoor advertising, DOT is required to inform the District of any problematic sign(s) and the District must remove the sign(s) within thirty days.⁶

The current pilot program expires June 30, 2015.⁷ The pilot program was created in 2008⁸ and subsequently reauthorized in 2012⁹ and 2014.¹⁰

The pilot program provided \$140,000 in additional funding in fiscal year in 2013-2014.¹¹

Commercial Speech and the Constitution

Billboards, like any form of communication, contain both ideas and a method for transmitting those ideas.¹² While regulation of the underlying ideas is impermissible under the First and Fourteenth Amendments, the government may regulate the method of transmission in a manner that balances “the government’s regulatory interests with the individual’s right to expression.”¹³

The United States Supreme Court has applied a four factor test for regulations of commercial speech, holding that the First Amendment only protects commercial speech that is not misleading and concerns lawful activity, seeks to advance a substantial government interest, directly advances that interest, and

¹ Ch. 2014-215, s. 24, Laws of Fla.

² *Id.*

³ *Id.* For detailed description of county standards, *see* art. 8, ch. A, s. 2, Palm Beach County Unified Land Development Code (general design principles for signs); *see also* art. 8, ch. F, Palm Beach County Unified Land Development Code (general provisions for all signs types, setting standards for measuring sign size).

⁴ Ch. 2014-215, s. 24, Laws of Fla.

⁵ Art. 8, ch. H, s. 2, Palm Beach County Unified Land Development Code.

⁶ Ch. 2014-215, s. 24, Laws of Fla.

⁷ *Id.*

⁸ Ch. 2008-174, s. 3, Laws of Fla.

⁹ Ch. 2012-174, s. 77, Laws of Fla.

¹⁰ Ch. 2014-215, s. 24, Laws of Fla.

¹¹ Letter from Chuck Shaw, Chairman, School Board of Palm Beach County, to Rep. Berman, as chair of Palm Beach County local delegation, Nov. 26, 2014.

¹² *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 502 (1981).

¹³ *Id.*

reaches no further than necessary to accomplish the advancement of that interest.¹⁴ The Court stated that aesthetic concerns are a substantial governmental interest.¹⁵ Restrictions on speech based on content face strict scrutiny,¹⁶ while time, place, and manner restrictions face intermediate scrutiny.¹⁷

The United States Supreme Court has held in other cases that local governments are allowed to recognize a distinction between on-premise and off-premises advertising.¹⁸ Local governments are also allowed to choose and reject certain advertisements when the government is a market participant, as long as it does not do so in an arbitrary, capricious, or invidious manner.¹⁹

The Palm Beach County Board of County Commissioners has shown concern in the past about authorizing the program at the local level.²⁰ The County Attorney's Office for Palm Beach County expressed concern that providing an exception to the sign ordinance for the school district would run afoul of the 11th Circuit's decision in *Solantic, LLC v. City of Neptune Beach*.²¹ The *Solantic* court reiterated that a content-based restriction on speech is impermissible.²² The county maintains that the ordinance is a content-based restriction, and therefore would be vulnerable to challenge under *Solantic*.²³ Due to this concern, the county asserts it cannot provide an exemption for the Program via a local ordinance.

Effect of Proposed Changes

The bill establishes the School District of Palm Beach County Business Partnership Program to allow the school district to recognize its business partners by displaying the names of the business partners on school district property in unincorporated areas of Palm Beach County.

The bill sets standards for signs that feature the names of participants in the Program and provides that its provisions shall prevail over county ordinances relating to signs in unincorporated areas to the extent they are in conflict.

The bill states that if the Federal Highway Administration determines that DOT is not providing effective control of outdoor advertising as a result of this act, DOT must notify the District, who must remove the signs within thirty days.

The concerns of the county regarding *Solantic* appear to be questionable. In *Solantic*, the city was providing a content-based exemption for an otherwise general ban. The Program is not a content-based exemption, but a location-based one. The Program would only represent an abridgment to a person's First Amendment rights to the extent the county selected or denied potential business partners in an arbitrary, capricious, or invidious manner. The legislative delegation for Palm Beach County has certified that the Program cannot be implemented by ordinance.

The Economic Impact Statement for HB 1253 states the bill will provide the school district with \$150,000 in additional funding for fiscal years 2015-2016 and 2016-2017.

B. SECTION DIRECTORY:

¹⁴ *Id.* at 507.

¹⁵ *Id.*

¹⁶ *Id.* at 514.

¹⁷ *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984).

¹⁸ *Young v. American Mini Theaters, Inc.* 427 U.S. 50, 68 (1976) (citing *Markham Advertising Co. v. State*, 73 Wash.2d 405, 417 (Wash. 1968) , appeal denied *Markham Advertising Co. v. Washington* , 393 U.S. 1112 (1969)).

¹⁹ *Lehman v. City of Shaker Heights*, 418 U.S. 298, 303 (1974).

²⁰ Agenda Item 7B-1, Palm Beach County Board of County Commissioners, April 22, 2008.

²¹ Email from Ron LaFace, Jr., Capital City Consulting, Re: HB 1253, regarding basis for county's reasoning for seeking bill, citing to *Solantic, LLC v. City of Neptune Beach*, 410 F. 3d 1250(2005) (email dated 3/16/15). Copy retained by House Local Government Affairs Subcommittee staff.

²² *Solantic, LLC v. City of Neptune Beach*, 410 F. 3d 1250, 1260 (11th Cir. 2005).

²³ Email from Ron LaFace, Jr., *supra* note 21.

- Section 1: Establishes the School District of Palm Beach County Business Partnership Recognition Program.
- Section 2: Sets standards for signs placed by participants in the program.
- Section 3: Provides that the provisions of this bill would prevail, to the extent of any conflict, over any county ordinances relating to signs.
- Section 4: Provides that Department of Transportation shall inform School District of Palm Beach County if the act is not providing effective control of outdoor advertising.
- Section 5: Provides the bill shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 25, 2014.

WHERE? *The Palm Beach Post*, a daily newspaper published in Palm Beach County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES