

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1497
SPONSOR(S): Mayfield
TIED BILLS:

Outdoor Advertising

IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Transportation Committee, Pugh, Miller. Row 2: 2) State Infrastructure Council. Row 3: 3). Row 4: 4). Row 5: 5).

SUMMARY ANALYSIS

Chapter 479, F.S., regulates billboards and other forms of outdoor advertising. Advertising companies and other owners of outdoor signs must be licensed by the Florida Department of Transportation (FDOT) and obtain permits, regulating height, size and other characteristics of the billboards. County and municipal governments are not precluded from enacting local ordinances regulating outdoor advertising, but these regulations must be in harmony with the state and federal requirements.

Florida has an estimated 22,500 permitted outdoor advertising signs on 16,000 billboard structures., according to FDOT. About 7,000 are considered by FDOT as lawful, non-conforming signs, meaning they were in compliance with federal, state, and, if applicable, local regulations when they were erected, but aren't in compliance with current rules. Under FDOT rule, a wooden billboard structure that has sustained more than 50-percent damage, and metal billboard that has sustained more than 25-percent damage, are considered "destroyed" and must be removed.

During the 2004 hurricane season, hundreds of billboards were damaged. By FDOT's count, 299 permitted signs along state or federal highways received sufficient damage that they were destroyed, based on FDOT's definition. However, 164 are being allowed to be rebuilt due to settlement agreements between the agency and the signs' owners. No numbers exist on how many signs along county and city rights-of-way were destroyed and whether their owners are seeking to rebuild them.

HB 1497 creates a new section of law, s. 479.157, F.S., to address the issue of repairing or rebuilding lawful, nonconforming outdoor advertising signs damaged or destroyed in a major or catastrophic disaster, as defined in s. 252.34, F.S. The new law specifies that notwithstanding any other statute, ordinance, rule, or regulation to the contrary, such signs may be repaired or reconstructed in compliance with Florida Building Code standards.

The bill raises no apparent constitutional issues, but appears to be in conflict with federal law that says legal non-conforming signs destroyed by an act of nature may not be rebuilt.

The bill has no immediate financial impact on the state or on local governments.

HB 1497 would take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

HB 1497 does not appear to implicate any House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida has an estimated 22,500 permitted outdoor advertising signs on 16,000 billboard structures. About 7,000 are considered by FDOT as lawful, non-conforming signs, meaning they were in compliance with federal, state, and, if applicable, local regulations when they were erected, but aren't in compliance with current rules.

Chapter 479, F.S., governs billboards and other forms of outdoor advertising. Advertising companies and other owners of outdoor signs must be licensed by FDOT and obtain permits, regulating height, size and other characteristics of the billboards. The majority of the provisions specify DOT's duties and authority as they relate to permitting, removing, and otherwise regulating billboards along the interstate highway system and the federal-aid primary highway system, which includes state roads. The chapter also addresses ways to accommodate billboard owners whose signs are affected by highway beautification projects, such as planting of vegetation.

Because federal dollars are used to build and maintain these federal and state roads in Florida, FDOT must adhere to federal laws and regulations concerning billboards. The Highway Beautification Act of 1965, chapter 23 Code of Federal Regulations s.131, and Federal Highway Administration Policy Guidance relate to the regulation of billboards. Under federal law and policy guidance:

- To be able to remain, nonconforming signs must remain substantially the same as they were on the effective date of the state law or regulations that made them nonconforming.
- Reasonable repair and maintenance of the sign, including a change of advertising message, is allowable.
- Nonconforming signs may continue as long as they are not destroyed, abandoned, or discontinued. States may pass laws for exceptions to be made for nonconforming signs destroyed due to vandalism and other criminal or tortious acts.
- Each state must develop its own criteria to determine when customary maintenance ceases and a substantial change has occurred which would terminate nonconforming rights. When nonconforming rights are terminated under state law, the sign must be removed as an illegal sign without compensation.
- However, lawfully erected signs, even if they are now nonconforming, cannot be removed by a state without payment of just compensation.

In chapter 14-10.007, Florida Administrative Code, FDOT 's rule on nonconforming billboards defines "destroyed" as:

"...more than 50% of the upright supports of a sign structure are physically damaged such that normal repair practices of the industry would call for, in the case of wooden sign structures, replacement of the broken supports and, in the case of a metal sign structure, replacement of at least 25% of the length above ground of each broken, bent, or twisted support."

In Florida, local governments regulate the placement and removal of billboards along county and municipal roads. Section 479.155, F.S., specifies that the provisions in chapter 479, F.S., do not supersede the rights and powers of local governments to regulate outdoor advertising. The process for removing an outdoor advertising sign and compensating its owner is specified in s. 70.20, F.S.

In 2004, four hurricanes and one tropical storm wrecked havoc throughout Florida. Among the commercial structures damaged were billboards. By FDOT's count 299 permitted signs along state or federal highways received more than 50-percent damage, and thus met the agency's definition of "destroyed." In January, FDOT issued notices of intent to revoke the sign permits for these billboards, but in March entered into settlement agreements with three outdoor advertising companies that owned the majority of the destroyed signs. Based on the agreements, 77 of the 241 identified billboards belonging to Clear Channel, Lamar Advertising, and Viacom will not be rebuilt. The remaining 164 signs may be rebuilt to their original pre-storm specifications and at the original location, except for any changes required by local ordinance or safety building codes.

Effect of Proposed Changes

HB 1497 creates s. 479.157, F.S. to specify that notwithstanding any law, ordinance, rule or regulation to the contrary, the owner or lessee of any lawful nonconforming sign damaged or destroyed by a major or catastrophic disaster, as defined in s. 252.34, F.S., may repair or rebuild the sign in compliance with construction standards set forth in the Florida Building Code.

Section 252.34, F.S., in part, defines the abovementioned terms as:

(1) *"Disaster" means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by a county, the Governor, or the President of the United States. Disasters shall be identified by the severity of resulting damage, as follows:*

(a) *"Catastrophic disaster" means a disaster that will require massive state and federal assistance, including immediate military involvement.*

(b) *"Major disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance.*

The multiple hurricanes and tropical storms of 2004 would like meet the definition of "major disaster" and "catastrophic disaster," which are not limited to natural causes, and which require state and federal assistance to local communities.

HB 1497 appears to be in conflict with federal regulations prohibiting the re-erection of nonconforming signs that have been destroyed.

HB 1497 would take effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1: Creates s. 479.157, F.S., to allow legal but nonconforming outdoor advertising signs that are damaged or destroyed by a hurricane or other major or catastrophic disaster to be rebuilt or repaired in compliance with the Florida Building Code.

Section 2: Specifies this act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "D. Fiscal Comments" section below.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The owners or lessees of nonconforming billboards that are damaged or destroyed under circumstances meeting the statutory definitions of major and catastrophic disaster could be assured of rebuilding those structures and continuing receiving income they might otherwise lose under existing FDOT regulations.

D. FISCAL COMMENTS:

FDOT could face a loss of up to 10 percent of its federal highway funds if state law is not in compliance with federal law on billboards, according to chapter 23 CFR s. 131. In FDOT's case, that could be as much as \$140 million in lost federal highway funds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 1497 does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenues

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

FDOT and the Florida League of Cities oppose the bill. The Florida Association of Counties is continuing to evaluate the bill to determine negative impacts on counties with outdoor advertising ordinances.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES