

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 regulations.

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' "view zones" are affected by highway beautification projects, such as planting of vegetation, and highway widening or other improvements.

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 U.S. Code s.131), chapter 23 Code of Federal Regulation s. 750, and Federal Highway Administration (FHWA) Policy Guidance relate to the regulation of billboards. Under federal law, regulation, and policy guidance:

- o 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.
- o Reasonable repair and maintenance of the sign, including a change of advertising message, is allowable.
- o 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.
- o 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.
- o However, lawfully erected signs, even if they are now nonconforming, cannot be removed by a state without payment of just compensation.

A March 2005, memorandum from the FHWA addressed a relatively new issue relating to non-conforming signs – conflicts between sign owners and state transportation agencies over noise-attenuation barriers (or "sound walls") along highways that are blocking billboards. The memorandum concluded that allowing owners of non-conforming billboards to increase the signs' height in such circumstances is inconsistent with federal law and regulations.¹

Section 479.25, F.S., clarifies that nothing in the chapter prevents FDOT or other governmental entities from entering into an agreement with a sign owner increasing the height of a lawfully erected sign at its

¹ U.S. DOT /FHWA memorandum from Susan Lauffer, director of Office of Real Estate Services to Division Administrators and Directors of Field Services, dated March 8, 2005.

permitted location if a noise-attenuation barrier, visibility screen, or other highway improvement is erected in such a way as to screen or block the sign's visibility. Under such agreements, the affected sign's height can be increased only as much as is necessary to achieve the same degree of visibility from the road as it had previously. If the affected sign is non-conforming and it is located along a federal-aid primary highway system (which includes most of Florida's major highways), the FHWA must approve the agreement.

Effect of Proposed Changes

HB 1497 w/CS amends two sections of chapter 479, F.S., related to visibility and height of lawfully permitted billboards.

Specifically, the bill amends s. 479.106, F.S., to:

- o Codify FDOT rules on the "view zone" dimensions of lawfully permitted billboards. It establishes in statute how a view zone is to be measured: the first 500 linear feet within the first 1,000 feet as measured along the edge of the pavement in the direction of approaching traffic from a point on the edge of the pavement perpendicular to the sign's edge facing the highway. The dimensions are in FDOT's outdoor advertising rule, chapter 14-40.030, Florida Administrative Code.
- o Specifies that a billboard's view zone shall be a continuous 500 feet unless interrupted by naturally occurring vegetation.
- o It allows FDOT and sign owners to enter into agreements identifying the "specific location" of a billboard's view zone, and if no agreement is reached, then the view zone is the first continuous 500 linear feet from the sign.
- o Specifically prohibits trees and other vegetation that are part of a "beautification project" from being planted in a billboard's view zone.
- o Requires any governmental entity violating the view zone provisions to pay the sign owner a penalty equal to the lesser of lost revenue because the sign was blocked or the sign's fair market value.

The bill also amends s. 479.25, F.S., to:

- o Provide that the owner of a lawfully erected billboard that conforms to state and federal requirements for land-use, size, height, and spacing, may increase the billboard's height at its permitted location if a noise wall blocks or screens the signage. Existing references to visibility screen or other highway improvement are deleted.
- o Clarify that in such circumstances, the billboard may be elevated as high as is necessary – even if that means exceeding the state limits of 50 feet high outside an incorporated area and 65 feet high within an incorporated area – so that its visibility is the same as it was before the noise wall was built.
- o Delete references to FHWA approval before raising the height of a non-conforming billboard along a federal aid primary highway. This complies with current federal guidance that non-conforming billboards along federal-aid highways can not be raised.
- o Specify that a billboard reconstructed under this section of law must comply with the Florida Building Code standards and wind-load requirements.
- o Require local governments to issue permits, if necessary, to reconstruct a sign pursuant to this section of law. Local governments that refuse to issue such permits shall pay just compensation to the sign's owner.

HB 1497 w/CS takes effect upon becoming law.

C. SECTION DIRECTORY:

Section 1: Amends s. 479.106, F.S., to codify view zone dimensions and method for determining the view zone. Specifies penalties.

Section 2: Amends s. 479.25, F.S., to clarify under what circumstances lawfully erected, conforming billboards may be raised. Deletes obsolete language. Provides for payment of just compensation for refusal to issue permits.

Section 3: Specifies this act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

No direct or immediate impact. But see "D. FISCAL COMMENTS" below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

No direct or immediate impact. But see "D. FISCAL COMMENTS" below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

No direct or immediate impact. But see "D. FISCAL COMMENTS" below.

D. FISCAL COMMENTS:

In the event that FDOT or a local governmental entity violates the proposed view zone provisions in s. 479,106, F.S., it would have to pay the sign owner a penalty equal to the lesser of the lost revenue from the screened or blocked billboard. Likewise, a local governmental entity that refused to permit reconstruction of a conforming billboard to raise its height above a noise wall would have to pay the sign owner just compensation. A governmental entity violating these two provisions also may have to pay legal costs and expenses if the issue is litigated.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 1497 w/CS 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:

Drafting Issue

Since s. 479.25, F.S., deals entirely with circumstances allowing a sign owner to raise a conforming lawfully permitted, conforming billboard, it is recommended that the tag line of the section be changed from "Application of Chapter" to a phrase more descriptive of the section's content.

Local governments' concerns

FDOT has said it is satisfied that all of its earlier concerns with the bill as filed have been addressed by the committee substitute. The bill's sponsor and supporters have agreed to continue working with the Florida League of Cities to fine-tune some of the language relating to local governments.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its April 5, 2005 meeting, the Transportation Committee adopted a strike-everything-after-the-enacting clause amendment that completely rewrote the original bill. The strike-all amendment proposes:

- o Changing s. 479,106, F.S., to codify in statute the definition and measurement methodology of "view zones" for billboards, and to add penalties for governmental entities that violate these provisions.
- o Deleting in s. 479.25, F.S., the reference to Federal Highway Administration approval to raise the height of non-conforming billboards and the references to "visibility screens" and "other highway improvements" as obstructions to billboards that could lead to impacted billboards being raised in height.
- o Specifying that a lawfully erected, conforming billboard may be raised if a noise-attenuation barrier is constructed that blocks the sign. It also requires local governments that refuse to issue permits to reconstruct such billboards to pay the sign owner just compensation.

The committee then voted 12 to 1 to report the bill as favorable with a CS.