

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Community Affairs Committee

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BILL: CS/CS/SB 1850

SPONSOR: Transportation Committee and Senator Peaden

SUBJECT: Outdoor Advertising

DATE: April 26, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Evans</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Herrin</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This committee substitute for committee substitute (CS) establishes law concerning “viewing zones” for lawfully permitted outdoor advertising signs on the State Highway System and expressways and requires a governmental entity or other party violating the established view zone provisions to pay the sign’s owner a penalty equal to the lesser of lost revenue from the sign being blocked or the sign’s fair market value.

Additionally, the CS allows the owner of a lawfully erected outdoor advertising sign that is governed by and conforms to state and federal standards to increase the sign’s height if a noise wall that is permitted or erected by a governmental entity blocks or screens the sign. It also specifies that if a sign is reconstructed for this purpose, it must comply with the Florida Building Code standards and wind load requirements. This CS also specifies local governments are required to issue permits, if necessary, to reconstruct these signs and those local governments which refuse to issue such permits are required to pay just compensation to the sign’s owner.

This CS substantially amends sections 479.106 and 479.25 of the Florida Statutes.

## II. Present Situation:

Florida has an estimated 22,500 permitted outdoor advertising signs on 16,000 structures. About 7,000 are considered by the Florida Department of Transportation (FDOT) as lawful, non-conforming signs, meaning they were in compliance with federal, state, and, if applicable, local regulations when they were erected, but are not in compliance with current regulations.

Chapter 479, F.S., governs billboards and other outdoor advertising signs. Advertising companies and other owners of outdoor signs must obtain and renew a license from FDOT. The

fee for such license, and for each annual renewal, is \$300.<sup>1</sup> The FDOT is responsible for administering and enforcing the provisions of chapter 479 and the agreement between the state and the United States Department of Transportation relating to the size, lighting, and spacing of signs in accordance with Title I of the Highway Beautification Act of 1965 and Title 23 of the United States Code and federal regulations.<sup>2</sup> This chapter also specifies FDOT's duties and authority as they relate to permitting, removing, and otherwise regulating outdoor advertising signs along the interstate highway system and the federal-aid primary highway system, which includes state roads.<sup>3</sup> The chapter also addresses ways to accommodate sign owners of non-conforming signs, which are effected by highway beautification projects, such as planting of vegetation, and highway widening or other improvements.<sup>4</sup> This chapter also specifies beautification projects shall not be located in an area, which will screen from view legally erected and permitted outdoor advertising signs, which have been permitted prior to the date of the beautification project.<sup>5</sup>

Since federal dollars are used to build and maintain these federal and state roads in Florida, FDOT must adhere to federal laws and regulations concerning nonconforming outdoor advertising signs. Title I of the Highway Beautification Act of 1965 and 23 U.S.C. 750.707 sets the following guidelines for nonconforming outdoor advertising signs:

- 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.<sup>6</sup>

Section 479.25, F.S., clarifies nothing within chapter 479 prevents FDOT or other governmental entities from entering into an agreement with a sign owner to increase the height of a lawfully erected sign at its 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

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<sup>1</sup> Section 479.04, F.S.

<sup>2</sup> Section 479.02(1), F.S.

<sup>3</sup> Sections 479.015, F.S., 479.07, F.S., 479.107, F.S., and 479.111, F.S.

<sup>4</sup> Section 479.27 (3) (b), F.S.

<sup>5</sup> Section 479.106 (6), F.S.

<sup>6</sup> See [http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr\\_2003/aprqrtr/pdf/23cfr750.707.pdf](http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr_2003/aprqrtr/pdf/23cfr750.707.pdf)

non-conforming and it is located along a federal-aid primary highway system the FHWA must approve the agreement.<sup>7</sup>

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 479.106, F.S., in the following ways:

- Establishes the FDOT policies concerning “viewing zones” of lawfully permitted outdoor advertising signs for the State Highway System and expressways. This section 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. Additional requirements for outdoor advertising signs can be found in chapter 14-10 of the Florida Administrative Code.<sup>8</sup>
- Specifies an outdoor advertising sign’s view zone shall be a continuous 500 feet unless interrupted by naturally occurring vegetation.
- Allows FDOT and sign owners to enter into agreements identifying the specific location of a outdoor advertising sign’s view zone, and if no agreement is reached, then the view zone is the first continuous 500 linear feet from the sign.
- Specifically prohibits trees and other vegetation, which are part of a “beautification project” or other planting from being planted in an outdoor advertising sign’s view zone.
- Requires any governmental entity or other party violating the view zone provisions to pay the sign owner a penalty equal to the lesser of lost revenue resulting from the sign being blocked or the sign’s fair market value.

**Section 2.** Amends s. 479.25, F.S., in the following ways:

- Provides that the owners of a lawfully erected outdoor advertising sign which conforms to state and federal requirements for land-use, size, height, and spacing, may increase the sign’s height at its permitted location if a noise wall that is permitted by or erected by a governmental entity blocks or screens the signage.
- Existing references to visibility screen or other highway improvement are deleted.
- Clarifies in such circumstances the billboard may be elevated to above ground level allowing the same amount of visibility as before the noise wall was built.
- Deletes references to FHWA approval before raising the height of a non-conforming billboard along a federal aid primary highway.
- Specifies an outdoor advertising sign reconstructed under this section of law must comply with the Florida Building Code standards and wind load requirements.
- Requires local governments to issue permits, if necessary, to reconstruct a sign pursuant to this section of law. Local governments, which refuse to issue such permits, shall pay just compensation to the sign’s owner.

**Section 3.** Provides an effective date of July 1, 2005.

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<sup>7</sup> Section 479.25, F.S.

<sup>8</sup> See <http://fac.dos.state.fl.us/faconline/chapter14.pdf>

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Any party violating the proposed view zone provisions in s. 479,106, F.S., would have to pay the sign owner a penalty equal to the lesser of the lost revenue from the screened or blocked billboard or the fair market value of the sign.

## C. Government Sector Impact:

If the FDOT or a local governmental entity violates the proposed view zone provisions in s. 479,106, F.S., they would have to pay the sign owner a penalty equal to the lesser of the lost revenue from the screened or blocked billboard or the fair market value of the sign. Additionally, a local governmental entity which refuses to permit reconstruction of a conforming billboard to raise its height above a noise wall would have to pay the sign owner just compensation.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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