

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.)

Prepared By: Community Affairs Committee

BILL: CS/ SB 566

INTRODUCER: Community Affairs Committee, Senator Haridopolis and others

SUBJECT: Outdoor Advertising

DATE: March 6, 2006

REVISED: _____

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

I. Summary:

The committee substitute (CS) establishes “view zones” for lawfully permitted outdoor advertising signs along the public rights-of-way for interstates, expressways, federal-aid primary highways, and the State Highway System, excluding privately owned property. It specifies the distance for view zones depending on whether the speed limit exceeds 35 m.p.h. Under this CS, local governments or other parties may be held liable for blocking a sign’s visibility by planting trees or other vegetation within a view zone if the sign was permitted before the planting. The CS provides a 90-day window after written notice from the sign owner for a governmental entity or other party to cure the alleged violation in order to avoid a penalty. The modification or removal of material from a beautification project or other planting to cure an alleged violation does not require a permit from the Florida Department of Transportation (FDOT) if the department receives not less than 48 hour’s notice. The CS provides an exemption from liability for entities that design projects which initially comply with s. 479.106(6), F.S.

Additionally, the CS allows the owner of a lawfully erected sign governed by and conforming to state and federal standards to increase the sign’s height if a noise-attenuation barrier is erected or permitted by a governmental entity to block or screen the sign. It also specifies a sign reconstructed for this purpose must comply with the Florida Building Code’s construction standards and wind load requirements. If the increase in the height of the sign violates a local ordinance or land development regulation, the CS gives a local government the option of issuing a variance, allowing the relocation or reconstruction of the sign at an alternative location with the sign owner’s consent, denying the permit and paying the owner fair market value for the sign and associated interest in real property, or notifying FDOT of the conflict and the department is then prohibited from erecting or permitting the noise-attenuation barrier so that it blocks visibility of the sign. Existing settlement agreements between a local government and a sign owner are

exempt from the provisions of the CS that address visibility because of a noise-attenuation barrier.

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

II. Present Situation:

Florida has an estimated 20,674 permitted outdoor advertising signs on 13,659 structures. About 4,647 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 \$300.¹ 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 (U.S.C.) and federal regulations.² 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.³ The chapter also addresses ways to accommodate sign owners of non-conforming signs that are affected by highway beautification projects such as planting of vegetation, and highway widening or other improvements.⁴ This chapter specifies beautification projects may not be located in an area that will screen from view legally erected outdoor advertising signs that were permitted prior to the date of the beautification project.⁵

Since federal dollars are used to build and maintain 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

¹ Section 479.04, F.S.

² Section 479.02(1), F.S.

³ Sections 479.015, F.S., 479.07, F.S., 479.107, F.S., and 479.111, F.S.

⁴ Section 479.27(3)(b), F.S.

⁵ Section 479.106(6), F.S.

- 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.⁶

Section 479.25, F.S., clarifies that 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 nonconforming and it is located along a federal-aid primary highway system, the Federal Highway Administration (FHWA) must approve the agreement.⁷

Noise-Attenuation Barriers and Federal Funding

The FHWA has established noise standards that require states to conduct noise analyses to identify potential highway traffic noise impacts for certain types of federally-aided highway projects. If impacts are identified, reasonable and feasible noise abatement measures must be implemented. Noise-attenuation barriers are the most common type of noise abatement measure. The FHWA distinguishes between "Type I" projects that require noise abatement as a feature in a new or expanded highway and "Type II" projects in which noise abatement is a retrofit feature on an existing highway. For Type I projects, noise abatement must be considered as part of the highway construction project and is mandatory if federal-aid funds are to be used and if a traffic noise impact is expected to occur. Noise abatement for Type II projects is voluntary on the part of the individual states.⁸

III. Effect of Proposed Changes:

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

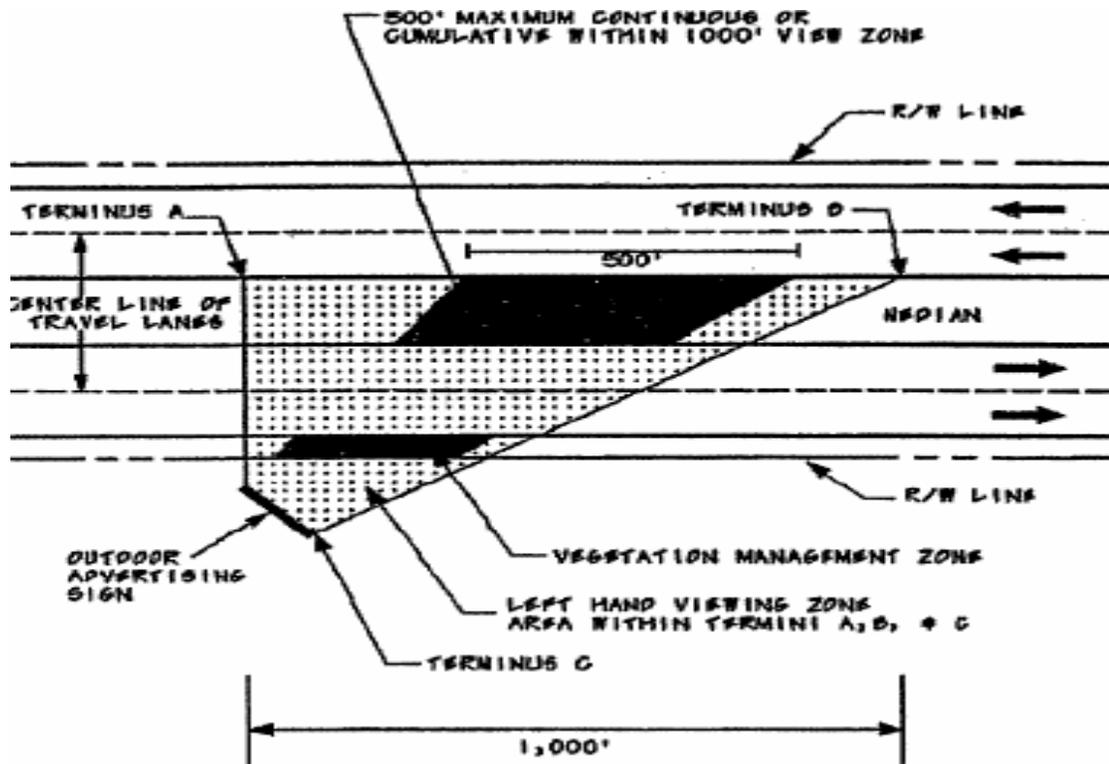
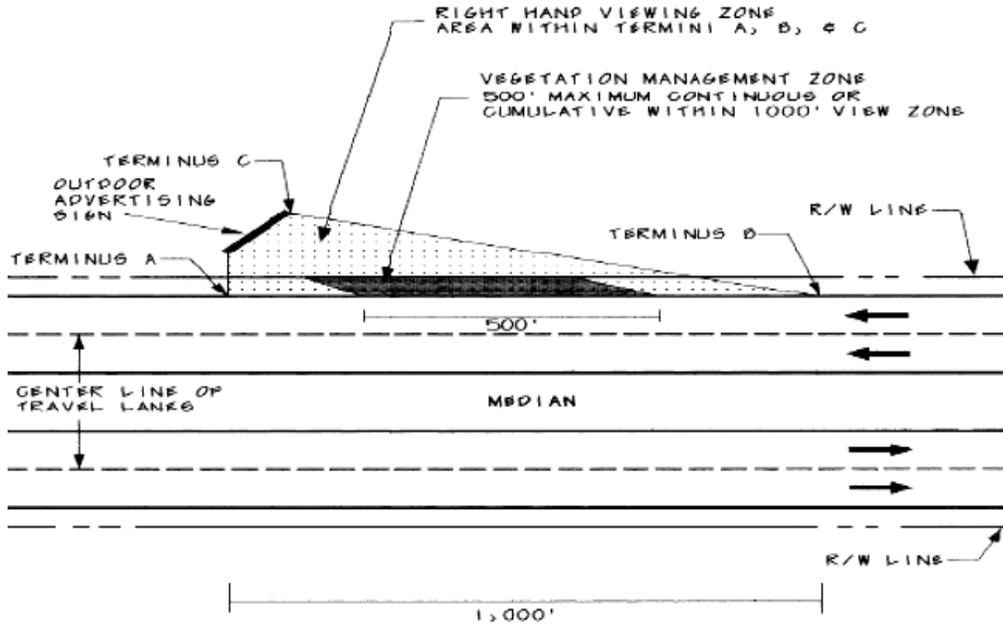
- Establishes "view zones" for lawfully permitted outdoor advertising signs on the interstates, expressways, federal-aid primary highways, and the State Highway System, excluding privately owned property. This section establishes in statute the measurements of a view zone: 350 feet in areas where the posted speed limit is 35 m.p.h. or less. In areas where the speed limit is over 35 m.p.h., the view zone is 500 feet. These view zones shall be 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 following illustrations taken from existing agency rule depict a 500-foot view zone for signs on either side of a roadway.⁹

⁶ See http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr_2003/aprqrtr/pdf/23cfr750.707.pdf

⁷ Section 479.25, F.S.

⁸ See <http://www.fhwa.dot.gov/environment/probresp.htm#procd>. Highway Traffic Noise in the United States: Problem and Response, U.S. Department of Transportation, Federal Highway Administration. (April 2000).

⁹ See Rule 14-40.030, F.A.C.



Additional requirements for outdoor advertising signs and highway beautification can be found in chapters 14-10 and 14-40, respectively, of the Florida Administrative Code.¹⁰

¹⁰ See <http://fac.dos.state.fl.us/faconline/chapter14.pdf>

- Specifies an outdoor advertising sign’s view zone shall be continuous unless interrupted by naturally occurring vegetation.
- Allows FDOT and sign owners to enter into agreements identifying the specific location of an outdoor advertising sign’s view zone, and if no agreement is reached, then the view zone shall be measured as provided for in this section.
- 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 if the sign was permitted before such project or planting.
- 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.
- Provides a 90-day window, after receiving written notice from the sign owner, for a governmental entity or other party to cure the alleged violation in order to avoid a penalty.
- Exempts modifications or removal of materials within a beautification project or other planting from FDOT permit requirements if the department receives not less than 48 hours’ notice.
- Provides immunity from legal liability for entities that design projects if the initial project design complies with s. 479.106(6), F.S.

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

- Provides the owners of a lawfully erected outdoor advertising sign that 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-attenuation barrier permitted or erected by a governmental entity blocks visibility of the sign.
- Existing references to visibility screen or other highway improvement are deleted.
- 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’s construction standards and wind load requirements.
- Provides the following options for a local government if the increase in height of a permitted sign will violate a local ordinance or land development regulation:
 - Issue a permit by variance or other approval;
 - Allow the relocation or construction at an alternative location if the sign owner agrees;
 - Deny the permit and pay the sign owner the fair market value of the sign and its associated interest in the real property; or
 - Notify FDOT of the conflict and FDOT is then prohibited from erecting or permitting the noise-attenuation barrier to the extent that it screens or blocks the sign’s visibility.
- Provides an exemption from this section’s provisions for existing settlement agreements between a local government and the sign owner if the agreement was executed before the effective date of this legislation.

Section 3 provides the CS becomes effective upon becoming law.

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., by planting trees or other vegetation would be required 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., the FDOT or local government would be required 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-attenuation barrier would be required to pay the sign owner the fair market value of the sign and its associated interest in real property.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Because federally-aided highway projects are sometimes contingent on the consideration of traffic noise and noise abatement measures, the provision in this CS prohibiting FDOT from permitting or erecting a noise-attenuation barrier in certain situations could result in the loss of some federal funding.

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

VIII. Summary of Amendments:

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