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: Judiciary Committee

BILL:	CS/CS/SB 566
INTRODUCER:	Judiciary Committee, Community Affairs Committee, Senator Haridopolos, and others
SUBJECT:	Outdoor Advertising
DATE:	March 17, 2006 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Meyer	TR	**Fav/2 amendments**
2.	Herrin	Yeatman	CA	**Fav/CS**
3.	Chinn	Maclure	JU	**Fav/CS**
4.				
5.				
6.				

I. Summary:

The bill 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 or publicly owned property. It specifies the distance for view zones based upon whether the speed limit exceeds 35 m.p.h. Under this bill, 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 bill provides a 90-day window after written notice from the sign owner for a governmental entity or other party to cure the alleged violation. If the governmental entity or other private party does not cure the alleged violation, the sign owner may file a claim for compensation in circuit court. 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 hours' notice. The bill provides an exemption from liability for entities that design projects which initially comply with s. 479.106(6), F.S., and provides an exemption to the applicability of the revisions to statute for existing written agreements.

Additionally, the bill 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 that blocks or screens 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 bill requires the FDOT to conduct a written survey of potentially affected property owners and a public hearing for comments on the proposed barrier. In addition to notifying property owners of the hearing, the survey must include the list

of options for local government in response to the proposed barrier as outlined in the revised statute. The options for local government include issuing a variance; allowing the relocation or reconstruction of the sign at an alternative location with the sign owner's consent; or denying the permit and paying the owner fair market value for the sign and associated interest in real property.[1] The barrier may not be erected until the survey and hearing are conducted; also, the FDOT must advise the respective governmental entity of the property owners' approval. Existing written agreements between a local government and a sign owner are exempt from the provisions of the bill that address visibility because of a noise-attenuation barrier.

This bill substantially amends sections 479.106 and 479.25, Florida Statutes.

II. Present Situation:

Florida has an estimated 20,674 permitted outdoor advertising signs on 13,659 structures. About 4,647 signs 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 they 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.[2] 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.[3] 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.[4] 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, highway widening, or other improvements.[5] 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.[6]

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[7] and 23 C.F.R. s. 750.707 set 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.

[1] (New) s. 479.25(2)(a), F.S.
[2] Section 479.04(1), F.S.
[3] Section 479.02(1), F.S.
[4] Sections 479.015, 479.07, 479.107, and 479.111, F.S.
[5] Section 479.27(3)(b), F.S.
[6] Section 479.106(6), F.S.
[7] 23 U.S.C. s. 131.

- 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 discontinue rights to maintain ownership of a nonconforming sign. When rights to a nonconforming sign are terminated under state law based upon lack of maintenance or a substantial change, the sign must be removed as an illegal sign without compensation.
- However, lawfully erected signs, even if they are now nonconforming (because of a change in law—not a failure to maintain, etc.), cannot be removed by a state without payment of just compensation.[8]

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.[9]

Noise-Attenuation Barriers and Federal Funding

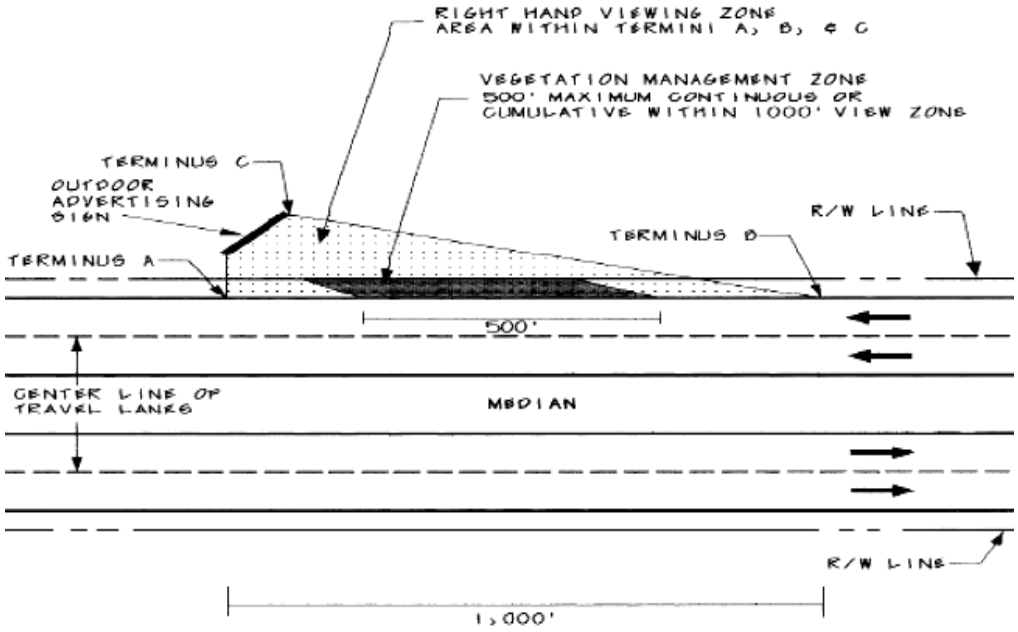
The FHWA has established noise standards that require states to conduct noise analyses to identify potential highway traffic noise impacts for certain types of federally-aided highway projects. If impacts are identified, reasonable and feasible noise abatement measures must be implemented. Noise-attenuation 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.[10]

[8] *See* 23 C.F.R. s. 750.707, *available at* http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr_2003/aprqtr/pdf/23cfr750.707.pdf.
[9] Section 479.25, F.S.
[10] U.S. Department of Transportation, Federal Highway Administration, *Highway Traffic Noise in the United States: Problem and Response* (April 2000), *available at* http://www.fhwa.dot.gov/environment/probresp.htm#procd.

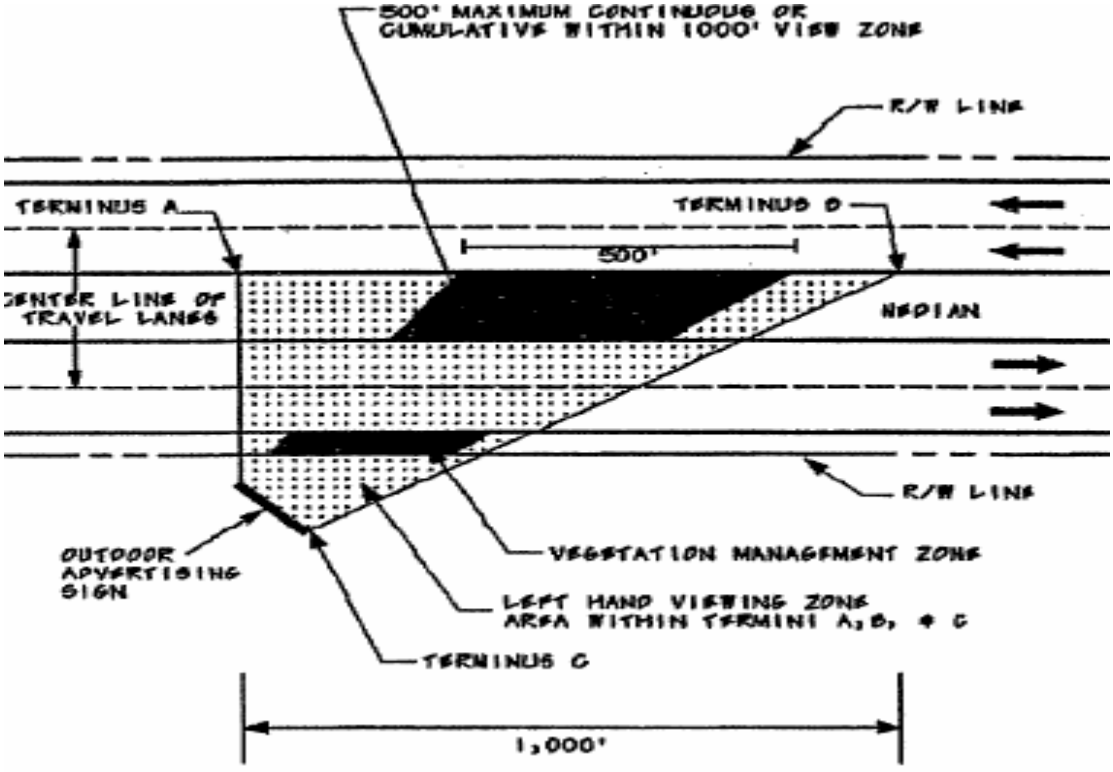
III. Effect of Proposed Changes:

View Zones/Penalties for Violation (Section 1)

The bill amends s. 479.106(6), F.S., and establishes "view zones" for lawfully permitted outdoor advertising signs on the interstates, expressways, federal-aid primary highways, and the State Highway System, excluding privately or other publicly owned property. The measurements of a view zone are 350 feet, in areas where the posted speed limit is 35 m.p.h. or less, and 500 feet, where the speed limit is over 35 m.p.h. These view zones are to 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.[11] The proposed language 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 discussed above.



[11] *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.[12]

The bill specifies an outdoor advertising sign's view zone shall be continuous unless interrupted by naturally occurring vegetation. The language specifically prohibits trees and other vegetation, which are part of a "beautification project" or "other planting," from being located in an outdoor advertising sign's view zone if the sign was permitted before such project or planting.

The party alleged to be violating the view zone—whether it is a governmental entity or other party—has a 90-day window, after receiving written notice from the sign owner, to cure the alleged violation in order to avoid a claim for compensation. Assuming the governmental or other party cures the violation, the required FDOT permit is not required for modifications or removal of materials within a beautification project or other planting where the department receives not less than 48 hours' notice.

If the governmental entity or other party fails to cure the violation within 90 days, the sign owner may file a claim for compensation in the circuit court where the sign is located. If the court finds that there is a violation of the a view zone of a sign, the court may award the sign owner, subject to appeal, the lesser of the lost revenue to the sign owner resulting from the sign being blocked or the sign's fair market value.

Immunity from legal liability under the proposed language is also available for entities that design projects if the initial project design complies with s. 479.106(6), F.S.

[12] *See* http://fac.dos.state.fl.us/faconline/chapter14.pdf.

Sign Modification/Replacement (Section 2)

Section 479.25, F.S., is substantially revised by the bill. The proposed language provides that 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. The proposed language specifies that an outdoor advertising sign reconstructed under this section of law must comply with the Florida Building Code's construction standards and wind load requirements.

The bill deletes references to a requirement for Federal Highway Administration approval before raising the height of a non-conforming billboard along a federal-aid primary highway and deletes existing references to a visibility screen or other highway improvement. If the increase in the height of the sign violates a local ordinance or land development regulation, however, the proposed language would require the FDOT to conduct a written survey of potentially impacted property owners and a public hearing for comments on the proposed barrier. In addition to notifying property owners of the hearing, the survey must advise homeowners of the following:

- That erecting the noise-attenuation barrier may block the visibility of an existing outdoor advertising sign;
- That by increasing the height of the existing outdoor advertising sign in order to make it visible over the barrier, the increased height will violate an ordinance or land development regulation of the governmental entity; and
- If a majority of the impacted property owners vote for construction of the barrier, the governmental entity must:

    - Allow an increase in the height of the sign in violation of an ordinance or land development regulation (i.e., a variance);
    - Allow the relocation or reconstruction of the sign at an alternative location with the sign owner's consent; or
    - Deny the permit and pay the owner fair market value for the sign and associated interest in real property.[13]

The hearing held by FDOT must be conducted within the boundaries of the affected governmental entity and noticed to the public. The purpose of the hearing is to receive comments on the proposed barrier, the conflict with the local ordinance, and any suggested alternatives or modifications to the proposed barrier to limit its conflict with the ordinance or to minimize the cost for whatever option is chosen. The barrier may not be erected until the survey and hearing are conducted, and the FDOT must advise the respective governmental entity of the property owners' approval.

The new language creates and an exemption from revised s. 479.25, F.S., for existing written agreements between a local government and the sign owner if the agreement was executed before the effective date of the legislation.

[13] (New) s. 479.25(2)(a), F.S.

Effective Date (Section 3)

The bill becomes effective upon becoming a 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:

If a governmental entity or other party does not cure a violation of the proposed view zone provisions in s. 479.106, F.S., within 90 days of receiving notice from a sign owner, the sign owner may file a claim for compensation. If the court rules in favor of the sign owner, an "other party" (e.g., a garden club) could be held liable and ordered to pay 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 a claim for compensation under s. 479.106, F.S., is filed against the Florida Department of Transportation or local governmental entity, the party could be ordered to pay the sign owner an amount 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 that refuses to permit reconstruction of a conforming billboard under s. 479.25, F.S., 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:

Section 479.25, F.S., requires local governments that choose to refuse to issue a permit for reconstruction for a conforming sign to pay the owner of the sign the fair market value of the sign and its "*associated interest* in the real property" (emphasis added). The phrase "associated interest" is not defined in statute and lends itself to different interpretations.

VIII. Summary of Amendments:

None.