

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1371 Billboard Regulation

SPONSOR(S): Coley

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	14 Y, 0 N	Johnson	Brown
2) Economic Development & Tourism Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

HB 1371 creates a tourist-oriented commerce signs pilot program for small businesses in rural areas of critical economic concern. The signs are to be located in rural areas along highways, within two miles of the business. Businesses participating in the pilot program may not participate in the logo sign program or the tourist-oriented directional sign program. The pilot program expires on June 16, 2016.

The bill provides that signs erected under the local tourist-oriented commerce signs pilot program are not required to obtain a permit from the Department of Transportation. The bill revises the definitions of "commercial or industrial zone" and "unzoned commercial or industrial area" as they apply to the permissible location of outdoor advertising.

The bill does not appear to have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Control of Outdoor Advertising

Since the passage of the Highway Beautification Act (HBA) in 1965, the Federal Highway Administration (FHWA) has established controls for outdoor advertising along Federal-Aid Primary, Interstate and National Highway System (NHS) roads. The HBA allows the placement of billboards in commercial and industrial areas, mandates a state compliance program, requires the development of state standards, promotes the expeditious removal of illegal signs, and requires just compensation for takings.

The HBA mandates state compliance and the development of standards for certain signs as well as the removal of nonconforming signs. Expeditious removal of illegal signs is required by federal regulations. While the states are not required to directly control sign placement, failure to impose the required controls can result in a substantial penalty. The penalty for noncompliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.

The primary features of the Highway Beautification Act include:

- Billboards are allowed, by statute, in commercial and industrial areas consistent with size, lighting and spacing provisions as agreed to by the state and federal governments. Billboard controls apply to all Interstates, Federal-Aid Primaries, and other highways that are part of the NHS. The FAP routes are highways designated by state DOTs to be of significant service value and importance.
- States have the discretion to remove legal nonconforming signs along highways. However, the payment of just (monetary) compensation is required for the removal of any lawfully erected billboard along the Federal-Aid Primary, Interstate and National Highway System roads.
- States and localities may enact stricter laws than stipulated in the HBA.
- No new signs can be erected along the scenic portions of state designated scenic byways of the Interstate and federal-aid primary highways, but billboards are allowed in segmented areas deemed un-scenic on those routes.

Under the provisions of a 1972 federal-state agreement incorporating the HBA, DOT requires commercial signs to meet certain requirements when they are within 660 feet of interstate and federal-aid primary highways in urban areas, or visible at any distance from the same roadways when outside of urban areas.

Commercial and Industrial Areas

Florida's outdoor advertising laws are based on federal law and regulations, and are found in ch. 479, F.S., which, in conjunction with the agreement between the State of Florida and the U.S. Department of Transportation, allow outdoor advertising signs to be located in commercial or industrial areas. Section 479.01(4), F.S., defines "commercial or industrial zone" as a parcel of land designated for commercial or industrial use under both the Future Land Use Map (FLUM) of the local comprehensive plan and the land development regulations adopted pursuant to ch. 163, F.S. This allows DOT to consider both land development regulations and future land use maps in determining commercial and industrial land use areas.

Unzoned Commercial and Industrial Areas

If a parcel is located in an area designated for multiple uses on the FLUM, and the land development regulations do not clearly designate the parcel for a specific use, the area will be considered an unzoned commercial or industrial area and outdoor advertising signs may be permitted there provided

three or more separate commercial or industrial activities take place. However, the following criteria must be met:

- One of the commercial or industrial activities must be located within 800 feet of the sign and on the same side of the highway,
- The commercial or industrial activities must be within 660 feet of the right-of-way, and
- The commercial or industrial activities must be within 1,600 feet of each other.

Regardless of whether the criteria above are met, the following activities are specifically excluded from being recognized as commercial or industrial activities and therefore cannot be considered in determining whether a parcel is an unzoned commercial or industrial area:

- Signs,
- Agriculture, forestry, ranching, grazing, and farming,
- Transient or temporary activities,
- Activities not visible from the traveled way,
- Activities taking place more than 660 feet from the right of way,
- Activities in a building principally used as a residence,
- Railroad tracks and sidings, and
- Communication towers.

Proposed Changes

The bill amends s. 479.01(4), F.S., clarifying the definition of “commercial or industrial zone,” and providing for the legal location of outdoor advertising on parcels of land that are designated predominantly for commercial or industrial use.

The bill amends s. 479.01(26), F.S., regarding the definition of “unzoned commercial or industrial zone.” The revision broadens the application of the term to include an area of land, rather than a parcel of land, in which multiple commercial or industrial activities take place but for which the land development regulations do not specify. The subsection is further amended to limit the number of criteria by which the determination of whether an area may be considered an “unzoned commercial or industrial zone.”

The bill creates s. 473.263, F.S., creating the tourist-oriented commerce signs pilot program. The pilot program is created in rural areas of economic concern.¹ The bill amends s. 479.16, F.S., to provide that a permit is not required for signs erected under this pilot program.

Under the pilot program, a tourist-business that is a small business² may erect signs that meet the following criteria:

¹ The bill provides that rural areas of economic concern are defined by s. 388.0656(2)(d) and (e), F.S. Section 388.0656(2)(d), defines rural area of critical economic concern as “a rural community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.” Section 388.0656(2)(e), F.S., defines rural community as:

“1. A county with a population of 75,000 or fewer.

2. A county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer.

3. A municipality within a county described in subparagraph 1. or subparagraph 2.

4. An unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified in paragraph (c) and verified by the Office of Tourism, Trade, and Economic Development.

For purposes of this paragraph, population shall be determined in accordance with the most recent official estimate pursuant to s. 186.901.”

² The bill provides that small business is defined in s. 288.703, F.S., which defines “small business” as “an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

- Signs not more than eight square feet in size or more than four feet in height.
- Signs located only in rural areas along highways that are not limited access highways.
- Signs located within two miles of the business location and not less than 500 feet apart.
- The advertising copy of the sign consists only of the name of the business or the principle or accessory merchandise or services sold or furnished on the premises of the business.

A business placing a sign under the pilot program:

- Must be a minimum of four miles from any other business placing signs under this program.
- May not participate in the logo sign program³ or the tourist-directional sign program.⁴

Businesses conducted in a building that is principally used as a residence is not eligible to participate in the pilot program.

A business must notify DOT in writing before placing signs under this program.

DOT is required to maintain records of the businesses participating in the program.

The program does not take effect if FHWA advises DOT in writing that implementation constitutes a loss of effective control of outdoor advertising.

The pilot program expires on June 30, 2016.

The bill has an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1 Amends s. 479.01, F.S., relating to definitions.

Section 2 Amends s. 479.16, F.S., relating to signs for which permits are not required.

Section 3 Creates s. 479.263, F.S., creating the tourist-oriented commerce signs pilot program.

Section 4 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

³ Section 479.261, F.S.

⁴ Section 479.262, F.S.

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of certain parcels of land affected by the definitional revisions may benefit from the expansion of allowed land uses to include the installation of outdoor advertising.

Businesses participating in the pilot program may see additional revenue due to the ability to increase advertising opportunities.

D. FISCAL COMMENTS:

While the bill requires businesses participating in the pilot program to notify DOT of their participation, and DOT to maintain records of businesses participating in the program, these costs should be minimal.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal government.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 34: By inserting the word “only”, the bill introduces the question of how many criteria must be met in order for a parcel of land to be considered an “unzoned commercial or industrial area.” Although, the insertion seemingly applies only to the three criteria in paragraph (a), it may construe an implied voiding of the activities listed in (b) which under current law, may not be recognized as commercial or industrial activities.

On line 73: The tag line for s. 479.263 is “tourist-oriented commerce sign pilot program;” however, other portions refer to the program as “the local tourist-oriented commerce signs pilot program.”

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES