The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	CS/SB 1570
INTRODUCER:	Transportation Committee and Senator Evers
SUBJECT:	Billboard Regulation
DATE:	March 28, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Spalla	TR	**Fav/CS**
2.	Wolfgang	Yeatman	CA	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

Senate Bill 1570 relates to the regulation of billboards and other forms of outdoor advertising. Generally, the bill makes changes which affect where signs may be located, their size, and how vegetation may be managed with respect to signs. More specifically, 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;
- removes the Florida Department of Transportation's (FDOT, department) authority to adopt rules used in determining the designation of "commercial or industrial zone" and "unzoned commercial or industrial area";
- provides for the voluntary submission of a vegetation management plan, mitigation contribution, or a combination when applying for a permit to clear vegetation to improve the visibility of a sign;
- directs FDOT to consider the condition of vegetation when evaluating vegetation management plans and limits application of herbicides to those approved by the Department of Agriculture and Consumer Services;
- reduces from at least two to one, the number of nonconforming signs that a sign owner must remove prior to being issued a permit to erect a new sign;

- establishes new criteria for the designation of view zones for billboards along certain highways;
- increases the size of hardship signs allowed in rural areas from 16 square feet to 32 square feet; and
- creates the tourist-oriented commerce sign pilot program in rural areas of economic concern.

This bill substantially amends the following section of the Florida Statutes: 479.01, 479.02, 479.106, and 479.16.

This bill creates s. 479.263, F.S.:

II. Present 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 location 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 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 National Highway System.

- States have the discretion to remove legal nonconforming signs[1] 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.

The HBA mandates state compliance and the development of standards for certain signs as well as the removal of nonconforming signs. While the states are not directly forced to control signs, failure to impose the required controls can result in a substantial penalty. The penalty for

[1] A "legal nonconforming sign" is a sign that was legally erected according to the applicable laws or regulations of the time, but which does not meet current laws or regulations.

noncompliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.

Under the provisions of a 1972 agreement between the State of Florida and the U.S. Department of Transportation (USDOT) incorporating the HBA's required controls, FDOT 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. The agreement embodies the federally-required "effective control of the erection and maintenance of outdoor advertising signs, displays, and devices". Absent this effective control, the non-compliance penalty of 10 percent of federal highway funds may be imposed.

Florida's outdoor advertising laws are found in ch. 479, F.S., and are based on federal law and regulations, and the 1972 agreement which includes definitions of certain relevant terms, such as "commercial and industrial zone" and "unzoned commercial and industrial areas".

Commercial and Industrial Areas
Outdoor advertising signs may legally be located in commercial or industrial areas. In conformance with the 1972 agreement, s. 479.01(4), F.S., also 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 FDOT 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 activity must be within 660 feet of the right-of-way, and
- The commercial or industrial activities must be within 1600 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 when 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.

With the exception of communication towers, the exclusion of these activities is specifically required by the 1972 agreement between the State and USDOT.

Vegetation Management and View Zones for Outdoor Advertising
Section 479.106, F.S., addresses vegetation management 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 intent of the section is to create partnering relationships which will have the effect of improving the appearance of Florida's highways and creating a net increase in the vegetative habitat along the roads.[2]

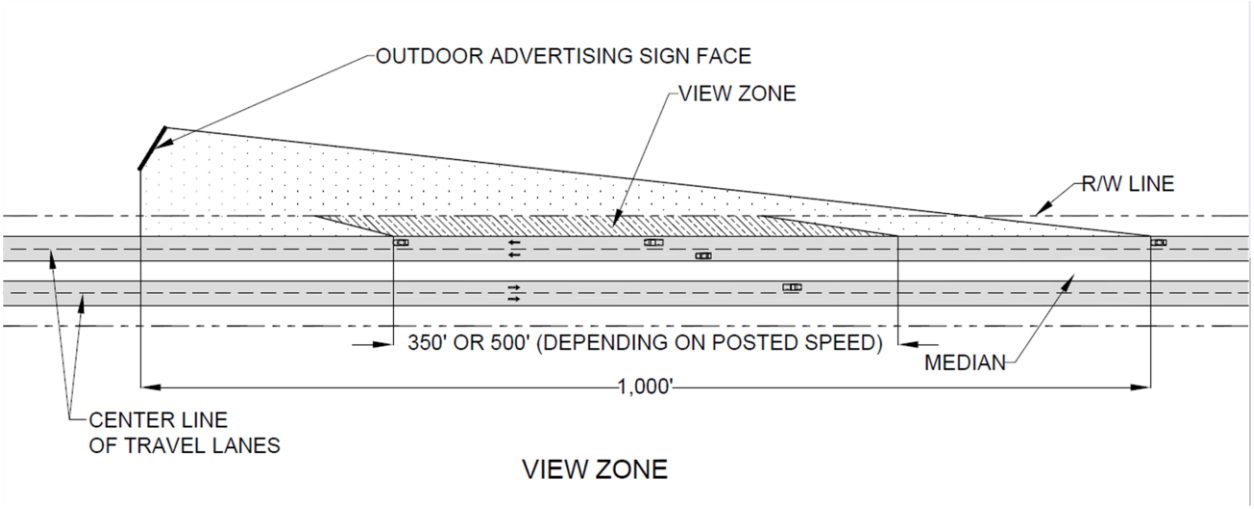
The section requires anyone desiring to remove, cut, or trim trees or vegetation on public right-of-way to improve the visibility or future visibility of a sign or future sign, to obtain written permission from FDOT. To receive a permit to remove vegetation, the applicant must provide a plan for the removal and for the management of any vegetation planted as the result of a mitigation plan. Rule 14-40.030, F.A.C., requires mitigation where:

- Cutting, trimming, or damaging vegetation permanently detracts from the appearance or health of trees, shrubs, or herbaceous plants, or where such activity is not done in accordance with published standard practices. This does not apply to invasive exotic and other noxious plants;
- Trees taller than the surrounding shrubs and herbaceous plants are permanently damaged or destroyed;
- Species of trees or shrubs not likely to grow to interfere with visibility are damaged or destroyed;
- Trees that are likely to interfere with visibility are trimmed improperly, permanently damaged, or removed; or
- Herbaceous plants are permanently damaged.

When the installation of a new sign requires the removal, cutting, or trimming of existing trees or vegetation on public right-of-way, FDOT may only grant a permit for the new sign when the sign owner has removed at least two non-conforming signs of comparable size and surrendered those signs' permits.

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 unless interrupted by naturally occurring vegetation. The following illustration taken from agency rule (Rule 14-40.030, F.A.C.) depicts a view zone for signs on one side of a roadway.

[2] Section 479.106(8), F.S.



Section 479.106, F.S., 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 described above. For some signs viewed across the median (cross readers), part of the view zone may include the highway median.

Rural Areas of Critical Economic Concern
Rural Areas of Critical Economic Concern (RACEC) are defined in s. 288.0656, F.S., as rural communities, or a region composed of rural communities, that have been adversely affected by extraordinary economic events or natural disasters. The Governor may designate up to three RACECs, which allows the Governor to waive criteria of any economic development incentive. Florida's three designated RACECs include:

- Northwest Rural Area of Critical Economic Concern: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Washington counties, and the City of Freeport in Walton County.

- South Central Rural Area of Critical Economic Concern: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, and South Bay (Palm Beach County), and Immokalee (Collier County).

- North Central Rural Area of Critical Economic Concern: Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.

III. Effect of Proposed Changes:

Section 1 amends. s. 479.01(4), F.S., regarding the definition of "commercial or industrial zone." The revision clarifies the definition, providing for the legal location of outdoor advertising on parcels of land that are designated *predominantly* for commercial or industrial use.

Subsection 479.01(26), F.S., is amended 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 clarify the criteria by which the determination of whether an area may be considered an "unzoned commercial or industrial zone."

Section 2 amends s. 479.02, F.S., to revise the department's authority to adopt rules. Under the provisions of the bill, FDOT may not adopt rules identifying non-commercial or non-industrial activities for use in determining whether an area is an unzoned commercial or industrial area.

Section 3 amends multiple subsections of s. 479.106, F.S., relating to the management of vegetation affecting visibility of signs.

Subsection 479.106(1), F.S., which establishes that vegetation management may only be conducted with the written permission of the department, is amended by deleting the word "only".

Subsection 479.106 (2), F.S., is amended to delete an existing provision mandating the submission of a management plan when applying for a vegetation management permit. The bill replaces the mandate with an allowance for:

- submission of a vegetation management plan consisting of a depiction of the vegetation to be removed, cut, or trimmed and a description of the existing conditions and the work to be performed;
- a mitigation contribution to the tree planting program administered by the Department of Agriculture and Consumer Services Division of Forestry under s. 589.277, F.S.;
- a combination of a vegetation management plan and mitigation contribution.

The decision to submit a management plan, mitigation contribution, or combination of both is to be made by the applicant.

Subsection 479.106(3), F.S., is amended to require FDOT to take into consideration the existing condition of the vegetation being affected by the plan when evaluating a vegetation management plan. The current requirement for a plan to include plantings to screen a sign's structural support, where applicable, is made permissive.

The bill provides that only herbicides approved by the Department of Agriculture and Consumer Services may be used in the management of vegetation.

Permit applications for vegetation management or mitigation must be acted on by FDOT within 30 days. An approved permit is valid for five years and may be renewed for an additional five years upon payment of the application fee.

Subsection 479.106(5), F.S., is amended to reduce from at least two to one, the nonconforming signs that must be removed prior to the department issuing a permit for a new sign that requires vegetation to be cleared.

A new *s. 479.106(6), F.S.*, is created to revise view zone requirements. Under the bill's provisions, the current dimensions for view zones are established as minimum dimensions. The current exception for view zone disruption, *i.e.*, allowable natural vegetation, is reduced to allow only vegetation that:

- has established historical significance,
- is protected by state law, or
- has a circumference of 70% or more of the circumference of the Florida Champion of that species when both are measured at 4 and ½ feet above grade.

Renumbered *subsection 479.106(7), F.S.,* is amended, allowing the specific location of a sign's view zone may be designated by the sign owner and the department must notify the owner within 90 days of any planting or beautification project that may affect a view zone. No less than 60 days are to be afforded to such affected sign owners to designate the view zone. Vegetation management plans and permits are not required due to implementation of beautification projects.

Section 4 of the bill amends s. 479.16, F.S., which establishes the conditions and criteria under which a sign does not require a permit. The revisions double the maximum size of signs for residential, farm operation, and certain small business signs which do not currently require permitting. Also, signs installed under the tourist-oriented commerce sign pilot program are included in the types of signs which do not require permitting.

Section 5 creates s. 479.263, F.S., to establish the tourist-oriented commerce signs pilot program in rural areas of critical economic concern as defined by ss. 288.0656(2)(d) and (e), F.S.[3] Signs created under the section do not require permits provided the sign advertises a small business as defined in s. 288.703, F.S.,[4] and:

- is not more than 32 square feet in size or 4 feet in height.
- is located in a rural area but not along a limited-access highway.
- is located within 2 miles of the business location and not less than 500 feet from another sign advertising the same business.
- contains only the name of the business or the merchandise or services sold or furnished at the business.

[3] "Rural area of critical economic concern" means 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.
"Rural community" means:
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.

[4] "Small business" means 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.

Businesses placing such signs must not be located closer than 4 miles from another business placing such signs. Also, the business may not participate in both the tourist-oriented commerce signs pilot program created in this section and the logo sign program created in s. 479.261, F.S.

Section 6 establishes an effective date of July 1, 2011.

Other Potential Implications:
According to discussions with FDOT staff, the current provisions allowing signs up to 16 square feet to be placed in rural areas (s. 479.16, F.S.) were provisionally approved by USDOT with the caveat that such activity, which would otherwise be prohibited by the HBA, would be found acceptable due to the hardship imposed by the overarching prohibition. FDOT staff reported that the USDOT's provisional approval was conditioned on the limited geographic nature of the program and its maximum size allowance for signs so placed. Accordingly, concerns have been raised that the doubling of the maximum size allowance in Section 4, as well as the introduction of additional unpermitted signs of that size in Section 5, could result in FHWA determining that the State has failed to maintain adequate controls on outdoor advertising as required by the HBA.

The tourist-oriented commerce sign pilot program created by Section 5 of the bill introduces a number of potential concerns:

1. Although the program is identified as a pilot program, the bill does not provide a date certain on which the pilot program terminates. Further, the bill does not provide for the collection, collation, or analysis of any data, nor for the reporting of the pilot program's results.
2. Unlike the similar tourist-oriented directional sign program described in s. 479.262, F.S., the bill authorizes the placement of signs without deference to local governmental sign ordinances and controls.
3. The bill precludes businesses from placing signs under this program when also participating in the logo sign program. However, there is no preclusion for businesses placing signs under this program and the similar tourist-oriented directional sign program. The effect could theoretically result in an unanticipated proliferation of signs.
4. The bill excludes any business from participating in the program if it is located within 4 miles of another business that is participating.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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.

Owners of nonconforming signs who desire to erect additional signs will benefit by reducing, by half, the number of nonconforming signs that must be removed in order to receive a permit for new signs.

Certain small businesses in rural areas of critical economic concern may benefit from the allowance for additional signs advertising their products or services.

C. Government Sector Impact:

Should the FHWA determine the allowance of 32 square foot signs or any other provision of the bill results in a loss of effective control of outdoor advertising, section 131(b) of Title 23 USC, requires the withholding of up to 10% of federal highway funds (approximately $145 million). Further, if federal action results in the subsequent repeal of a provision, any signs legally erected under the provision would become legal nonconforming signs. The removal of such signs requires just (monetary) compensation.

VI. Technical Deficiencies:

Line 93: The purpose for removing the word "only" may produce confusion in its application. Absent a provision identifying when vegetation management activity may be performed *without* written permission, the removal could result in legal challenges. Staff recommends retaining the word "only" or clarifying when such activity could be performed without written permission.

Lines 100-101: The intent for supplanting "may" for "shall" in regards to the required vegetation management plan and mitigation is unclear. As currently drafted, this could be interpreted to mean that one, the other, or a combination must now be submitted. It could also be taken to mean that none of the choices are required to be submitted in the application for a permit, but *may* be submitted if the applicant chooses. If the former is the intent, staff recommends maintaining the word "shall" and restructuring paragraphs (a) through (c) to be delineated by semicolons and inserting the word "or" after each.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on March 16, 2011:
The committee substitute incorporated provisions that:

- remove the FDOT's authority to adopt rules used in determining the designation of "commercial or industrial zone" and "unzoned commercial or industrial area";
- provide for the voluntary submission of a vegetation management plan, mitigation contribution, or a combination when applying for a permit to clear vegetation to improve the visibility of a sign;
- direct FDOT to consider the condition of vegetation when evaluating vegetation management plans and limits application of herbicides to those approved by the Department of Agriculture and Consumer Services;
- reduce from at least two to one, the number of nonconforming signs that a sign owner must remove prior to being issued a permit to erect a new sign;
- establish new criteria for the designation of view zones for billboards along certain highways;
- increase the size of hardship signs allowed in rural areas from 16 square feet to 32 square feet; and
- create the tourist-oriented commerce sign pilot program in rural areas of economic concern.

B. Amendments:

None.