

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 Transportation Committee

BILL: SB 560

INTRODUCER: Senator Wise

SUBJECT: Sale of Advertising

DATE: March 4, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Spalla	TR	Pre-meeting
2.	_____	_____	CM	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill, the “State Revenue Enhancement Act of 2011,” authorizes the sale of advertising by private sector entities on state-owned property in the form of naming rights for state transportation facilities. The bill authorizes the Office of Tourism, Trade, and Economic Development (OTTED) to enter contracts for the sale or lease of naming rights to, or space for commercial displays on, any state-owned transportation facility or property. The name or display requires the approval of the Florida Department of Transportation (FDOT, department) or the Florida Turnpike Enterprise (Turnpike) as appropriate. Any such sale or lease is to be for one year but may be extended. Proceeds from the sale are to be distributed to the State Transportation Trust Fund (80%), OTTED (10%), and District School Boards (10%).

This bill creates s. 288.082, F.S.

This bill substantially amends s. 14.2015, F.S.

II. Present Situation:

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 first section of the law sets forth the basic program objectives: "The erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty."

The HBA mandates state compliance and the development of standards for certain signs as well as the removal of nonconforming signs. Expedious removal of illegal signs is required by federal regulations. While the states are not forced directly to control signs, 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 Federal-Aid Primaries (FAP's) as of June 1, 1991, Interstates and other highways that are part of the National Highway System (NHS). The FAP routes were highways noted 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, the 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.

FDOT's outdoor advertising regulatory program is based on federal law and regulations as well as state law and administrative rules. Florida's outdoor advertising laws are found in ch. 479, F.S. In addition to state statutes, the department has developed administrative rules to implement statutory intent for the general public. Chapter 14-10, F.A.C., is FDOT's rule chapter governing outdoor advertising.

Honorary or Memorial Designations of Transportation Facilities

Section 334.071, F.S., specifies the purpose and effect of the designation of roads, bridges, and other transportation facilities for honorary or memorial purposes by the Florida Legislature. These designations are for honorary purposes only, and do not require changing of street signs,

mailing addresses, or 911 listings. The section further specifies that the installation of markers indicating the designation is contingent upon the passage of a resolution of support by all affected local governments. Similarly, s. 267.062, F.S., provides for the naming of state buildings, roads, bridges, parks, recreational complexes, or other similar facilities by the Florida Historical Commission after deceased individuals who contributed to the state.

III. Effect of Proposed Changes:

The bill creates s. 288.082, F.S., to authorize the sale of advertising on state-owned property to private sector businesses or entities. The bill authorizes OTTED to enter contracts for the sale or lease of naming rights to, or space for commercial displays on, any state-owned transportation facility or property, including, but not limited to the Florida Turnpike, other roads and highways, highway lanes, on-ramps, off-ramps, road rights-of-way, toll facilities, buildings, barriers, parks, rest areas, and railways. Other state-owned transportation facilities include bridges and airports. The bill appears to also allow for the selling or leasing of advertising on other state-owned transportation property such as FDOT vehicles and buildings.

The bill specifies that the sale or lease of naming rights is for public relations or advertising purposes, and as such, are not to be construed to require any action by a local government or private party regarding the changing of any street signs, mailing addresses, or 911-emergency system.

Before it can be installed, the name or display requires the approval of FDOT or the Turnpike as appropriate. The department or Turnpike is directed to establish material and construction standards for all signage and is further directed to “provide for” the installation of such displays on its property. However, all costs, including development, construction, installation, operation, maintenance, and removal, are to be borne by the private sector.

Any such sale or lease is to be for one year but may be extended by a multiyear contract.

Proceeds from the sale are to be distributed as follows:

- 80% to the State Transportation Trust Fund (STTF);
- 10% to OTTED; and
- 10% to district school boards.

The proceeds distributed to district school boards are to be prorated by population and must be used to enhance the district’s driver education program. If the district does not provide a driver education program, that district’s funds are to be deposited into the STTF.

The bill revises s. 14.2015, F.S., to amend the responsibilities of OTTED to include entering contracts for the sale or lease of naming rights and advertising as described in newly-created s. 288.082, F.S.

Other Potential Implications:

The bill introduces a number of potential conflicts with existing state and federal law.

Lease of Real or Personal Property

Section 337.25(5), F.S., charges the department with the acquisition, lease, and disposal of real or personal property held by the department in the name of the state. Lease of such property by OTTED appears to conflict with that charge. Further, the department's authority to lease real or personal property pursuant to that section contains specific requirements which would appear to conflict with the bill's provisions.

Signs Prohibited on Right-of-Way

Federal regulations (see 23 CFR 710.403) provide that all real property within the boundaries of a federally-aided facility must be devoted exclusively to the transportation facility and be free of all other public or private alternative uses, unless permitted by federal regulation or the FHWA. Alternative uses must be consistent with the continued operation, maintenance, and safety of the facility, and not result in the exposure of the facility's users or others to hazards. Alternative uses include: public utilities, railroads, bike paths, walkways, and transportation projects. Exceptions must be requested in writing to FHWA.

Sections 337.407 and 479.11(8), F.S., prohibit advertising signs from being placed in the right-of-way of any road on the interstate highway system, the federal-aid primary highway system, the State Highway System, or the State Park Road System.

The bill's intent appear to conflict with these provisions.

Uniform Traffic Control Devices

Rule 14-15.010, F.A.C., incorporates by reference FHWA's "Manual on Uniform Traffic Control Devices" (MUTCD). Quoting FHWA's Policy Memorandums - Manual on Uniform Traffic Control Devices, dated August 10, 2005, "Use of highway right-of-way for advertising purposes is not allowed." This policy position is consistent with the principles and intent of several laws including 23 U.S.C. §1.23(b), 23 U.S.C. §109(d), and 23 U.S.C. §131. The MUTCD Section 1A.01 states:

Traffic control devices or their supports shall not bear any advertising message or any other message that is not related to traffic control. This position is founded on safety and operational concerns, particularly as related to driver distraction. Highway signs and other traffic control devices convey crucial information. In order for road users to perceive and respond appropriately to critical information, we must make sure that its conspicuity is preserved so that the safe and orderly movement of traffic is not compromised.

Pursuant to Section 2H.08 of the MUTCD, acknowledgement signs are allowed.

Acknowledgment signs are a way of recognizing a company or business, or a volunteer group that provides a highway-related service. Acknowledgment signs include sponsorship signs for adopt-a-highway litter removal programs, maintenance of a parkway or interchange, and other highway maintenance or beautification sponsorship programs. There must be a direct correlation between the business and its contribution to a particular highway service. The bill's provisions for dispersion of revenue as 80% to the Transportation Trust Fund, 10 % to OTTED and 10% to School Boards for driver safety instruction, conflict with this requirement.

Florida Turnpike Enterprise

Section 338.229, F.S., pledges to bondholders that the state will provide for restrictions on the sale, transfer, lease, or other disposition or operation of any portion of the Turnpike system which reduces the revenue available for payment to bondholders. Section 338.234, F.S., provides for the Turnpike's granting of concessions or selling along the Turnpike system, including advertising and other promotional opportunities. This bill's provisions may usurp the Turnpike's authority under statute to generate revenue and have that revenue available to the bondholders. With limited exception, opportunities for commercial advertising on the Turnpike are already under contract under a long-term agreement having more than 25 years remaining on the term.

Further, s. 338.227, F.S., mandates that revenues from the Turnpike system received by the department shall be used only for the cost of Turnpike projects and Turnpike improvements and for the administration, operation, maintenance, and financing of the Turnpike system. The bill's specified distribution of revenue conflicts with this provision.

Rest Areas

Federal regulations (see 23 CFR 752.5, 23 CFR 752.7, 23 CFR 752.8) address Safety Rest Areas. In summary, states can allow the leasing of advertising space in the Interstate rest areas provided the advertisements are relevant to the traveling public, equal access for space is assured, the space is leased at reasonable rates and the public is not charged for any goods or services with the exception of vending machine items. Advertisements cannot be legible from the roadway or must be inside the building. All revenues generated by this activity would have to be applied to Title 23 eligible activities (with supporting documentation provided to FHWA). The bill appears to conflict with these provisions.

There are no specific laws or regulations that address rest areas on non interstate, federally-funded highways. However, 23 CFR 1.23 states that any right of way purchased with federal Title 23 participation must be used exclusively for a highway purpose. Therefore, if Federal-aid highway funds were used to acquire the right-of-way for the roadway and/or adjoining rest area on any public road, that facility must be used for a highway purpose only.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill requires the approval of the Turnpike or FDOT, as appropriate, prior to the installation of a naming or advertising display. It is not clear whether the intent of this language is to provide authority to regulate the content of a message communicated by a display or simply whether the signage meets material and construction standards. Regardless, the provision may give rise to claims based on alleged interference with constitutionally protected free speech. Further, the language could be argued to vest absolute discretion in FDOT to decide appropriate content, the exercise of which can be expected to result in litigation challenging the constitutionality of the law either on the face of the law or as it is applied by FDOT.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

According to FDOT:

The potential fiscal impact to the department resulting from the bill's conflicts with federal law could subject the department to an annual penalty of 10% of its federal highway funding, which is approximately \$145 million, and would present a substantial impact to the department's work program. Additionally, the state could be required to reimburse the federal government in unknown amounts.

Even if the conflicting legal issues above could be resolved, the revenue generating potential for this proposal may be limited. The number of permitted outdoor advertising signs in the state has been steadily declining over the past 5 years. Much of the current inventory sits vacant and the department frequently hears from sign owners about the difficulty of selling their advertising space. Adding inventory to what is possibly an overbuilt sector may not be an effective revenue generator.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The proposed bill is silent as to restrictions put in place by the HBA, but commercial signs within the controlled area would have to meet the following permitting requirements:

1. Size -maximum of 950 feet by Section 479.07(9)(b), F.S. (reduced from fed-state agreement maximum of 1200 feet)
2. Spacing -1500 feet minimum spacing between signs along the interstate pursuant to Section 479.07(9)(a), F.S. (increased from 1000 feet minimum spacing subscribed by fed-state agreement); 1000 feet between signs on primary federal-aid primary highways pursuant to Section 479.07(9)(a), F.S., (increased from 500 feet maximum subscribed in fed-state agreement); outside cities, no outdoor advertising structure may be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety rest area.
3. Lighting - Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited. No signs shall be illuminated that interferes with the effectiveness of an official traffic sign, device, or signal.

Under 23 CFR 750.704, the federal-state agreement; and Section 479.111, F.S., commercial signs could only be permitted within a controlled area if the land use is zoned for commercial use, industrial use, is an unzoned commercial or unzoned industrial area. Many state buildings and state facilities are zoned civic/governmental or some similar designation and, therefore, would not meet the permitting requirements for commercial advertising if located within a controlled area.

VIII. Additional Information:

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

None.
- B. **Amendments:**

None.