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 Committee on Community Affairs

BILL:	CS/SB 1048
INTRODUCER:	Transportation Committee and Senator Latvala
SUBJECT:	Department of Transportation
DATE:	March 31, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	**Fav/CS**
2.	Stearns	Yeatman	CA	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1048 authorizes, but does not require the Florida Department of Transportation (FDOT) to provide for the monetization of the revenue stream from leases for wireless communication facilities on property owned or controlled by the FDOT, and to seek investors to purchase the monetized streams.

The bill also makes revisions to the control of outdoor advertising. The bill provides that Water Management District (WMD) public information systems are subject to the provisions of certain federal laws and agreements and effectively rewrites ch. 479, F.S., to relocate, revise, and repeal various definitions, and to revise various duties of the FDOT to modernize and streamline the administration and enforcement of state and federal outdoor advertising provisions. The substantive revisions:

- Provide criteria to be used in the permitting of signs in commercial or industrial zones, as determined by the local government, and require the FDOT to notify a sign applicant in writing if the FDOT disagrees with a local government determination that a proposed sign location is on a parcel that is in a commercial or industrial zone;
- Require removal of a sign within 30 days if the FDOT determines that the parcel does not meet sign permit requirements, and provide for a reduction in transportation funding to a local government if a local government fails to comply;
- Revise provisions relating to signs visible from more than one highway, make permanent a pilot program under which the distance between certain permitted signs may be reduced to 1,000 feet, revise provisions relating to vegetation management, and revise provisions

relating to relocation or reconstruction of signs situated upon right-of-way acquired by the FDOT;
- Provide for additional signs that can be erected without a permit, revises provisions relating to increasing the height of a sign at its location if a noise-attenuation barrier is erected, and expand the logo sign program to the right-of-way of the limited-access system; and
- Repeal a pilot program authorized in 2012 for signs related to tourist-oriented commerce, which is replaced by authority to erect such signs without a permit.

II. Present Situation:

FDOT Wireless Communication Leases

The FDOT advises it currently has two contracts related to the leasing of wireless communication facilities whereby the FDOT makes unused communication tower space available to a private party over time for a fee. One is with the Turnpike Enterprise, and payment is received through in-kind services. The FDOT advises it is unlikely the bill's monetization provisions (described below in Effect of Proposed Changes) would be applicable to that contract. The other contract, according to the FDOT, would be eligible for application of the bill's provisions allowing the FDOT to seek investors for agreements to purchase the lease revenue stream.[1] (See Section 1 under "Effect of Proposed Changes.")

Control of Outdoor Advertising

Generally, 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 roads. The HBA allows the location of billboards in commercial or 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 when appropriate.

The primary features of the HBA 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 interstate highways, federal-aid primary roads, and other highways that are part of the National Highway System.
- States have the discretion to remove legal nonconforming signs[2] along highways. However, the payment of just compensation is required for the removal of any lawfully erected billboard along the specified roads.
- States and localities may enact stricter laws than stipulated in the HBA.

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] The FDOT email, March 17, 2014, on file in the Senate Community Affairs Committee.
[2] A legal "nonconforming sign" is a sign that was legally erected according to the applicable laws and regulations of the time, but which does not meet current laws or regulations. (s. 479.01(17), F.S.)

noncompliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.[3]

Under the provisions of a 1972 agreement between the State of Florida and the U.S. Department of Transportation (USDOT)[4] incorporating the HBA's required controls, 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; *i.e.*, a "controlled area." The agreement embodies the federally-required "effective control" of the erection and maintenance of outdoor advertising signs, displays, and devices. Absent this effective control, a state may be penalized 10 percent of federal highway funds.

Florida's outdoor advertising laws are found in ch. 479, F.S., and are based on federal law and regulations, and the 1972 agreement.

Water Management District Public Information Systems

Under ch. 2012-126, L.O.F., public information systems may be located on WMD property, provided certain terms and conditions are met. The systems must display messages to the general public concerning water management services, activities, events, watering restrictions, severe weather reports, amber alerts, and other essential public information. The law prohibits the use of WMDs funds to acquire, develop, construct, operate, or manage a public information system. Commercial messages are to be paid for by private sponsors.[5]

Section 479.02, F.S., requires the FDOT to regulate the size, height, lighting, and spacing of signs on the interstate highway system in accordance with state and federal regulations. A permit and annual fee are required by any individual that proposes to erect, operate, use, or maintain any sign on the State Highway System outside an urban area or on any portion of the interstate or federal-aid primary highway system. Certain signs do not require a permit as long as the signs are in compliance with the provisions in s. 479.11(4)-(8), F.S. However, WMD signs are not currently subject to the requirements of ch. 479, F.S., which governs outdoor advertising along roads throughout the state, or to the HBA or the 1972 agreement. Further, local government review and approval of such signs is not required.

Section 479.16, F.S., specifies that signs owned by a municipality or county that contain messages related to any commercial enterprise, a commercial sponsor of an event, personal messages, or political messages are not considered information regarding government services. If WMD public information signs are located within a "controlled area," the FDOT may be subject to an annual loss of 10 percent of federal highway funding if allowance of the erection and maintenance of these signs is deemed to constitute a loss of effective control of outdoor advertising. (See Section 2 under "Effect of Proposed Changes.")

[3] 23 U.S.C. § 131(b)
[4] Copy on file in the Senate Community Affairs Committee.
[5] *See* s. 373.618, F.S.

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., currently 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 the FDOT to consider both land development regulations and FLUMs in determining commercial and industrial land use areas and issuing permits for sign locations in such 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.[6] 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 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 when determining whether a parcel is an unzoned commercial or industrial area:

- Signs;
- Agricultural, forestry, ranching, grazing, farming, and related activities;
- Transient or temporary activities;
- Activities not visible from the main-traveled way;
- Activities conducted more than 660 feet from the right-of-way;
- Activities conducted in a building principally used as a residence;
- Railroad tracks and minor sidings; and
- Communications towers.[7]

With the exception of communication towers, the exclusion of these activities is specifically required by the 1972 agreement between the State and the United States Department of Transportation (USDOT). (See Sections 3, 4, and 5 under "Effect of Proposed Changes.")

Entry Upon Privately Owned Lands

For the purposes of ch. 479, F.S., all of the state is deemed as the territory under the FDOT's jurisdiction.[8] Employees, agents, or independent contractors working for the FDOT are authorized to enter upon any land upon which a sign is displayed, is proposed to be erected, or is being erected in order to make sign inspections, surveys, and removals. After receiving consent by the landowner, operator, or person in charge, or after an appropriate inspection warrant is issued by an appropriate judge stating that the removal of an illegal outdoor advertising sign is

[6] Section 479.01(26), F.S.
[7] Id.
[8] Section 479.03, F.S.

necessary, the FDOT is authorized to enter upon any intervening privately-owned lands for the purpose of removal of illegal signs, provided the FDOT has determined that no other legal or economically feasible means of entry to the sign site is reasonably available. The FDOT is responsible for the repair or replacement in like manner of any physical damage or destruction of the private property. (See Section 6 under "Effect of Proposed Changes.")

License to Engage in the Business of Outdoor Advertising

A person is prohibited from engaging in the business of outdoor advertising without first obtaining a license from the FDOT. A person is not required to obtain the license to erect outdoor advertising signs or structures as an incidental part of a building construction contract.[9] (See Section 7 under "Effect of Proposed Changes.")

Denial or Revocation of License

The FDOT may deny or revoke any license requested or granted under ch. 479, F.S., in any case in which the FDOT determines that the application for the license contains knowingly false or misleading information, or that the licensee has violated any of the provisions of that chapter, unless such licensee corrects such false or misleading information or complies with the provisions of that chapter within 30 days after the receipt of the FDOT notice. Any person aggrieved by any FDOT action in denying or revoking a license is authorized to apply to the FDOT for an administrative hearing within 30 days from the receipt of the notice.[10] (See Sections 8 and 10 under "Effect of Proposed Changes.")

Sign Permits

Section 479.07(1), F.S., provides that a person may not erect any sign on the State Highway System outside an urban area, or on any portion of the interstate or federal-aid primary highway system without first obtaining a permit for the sign from FDOT and paying the required annual fee. Subsection (2) prohibits a person from applying for a permit unless the person has first obtained the written permission of the owner of the site of the sign. As a part of the application, the applicant must certify in a notarized signed statement that he or she has obtained the written permission of the owner of the site.

The FDOT is required to establish by rule an annual permit fee for each sign facing[11] in an amount sufficient to offset the total cost to the FDOT for the program, but shall not exceed $100.[12] The fee may not be prorated for a period less than the remainder of the permit year to accommodate short-term publicity features, but the first-year fee may be prorated by payment of one-fourth of the annual fee for each remaining whole quarter or partial quarter of the permit year.

The transfer of valid permits from one sign owner to another is currently authorized upon written acknowledgement from the current permittee and submittal of a transfer fee of $5 for each permit

[9] Section 479.04, F.S.
[10] Section 479.05, F.S.
[11] A "sign facing" includes all sign faces and automatic changeable faces displayed at the same location and facing the same direction. A "sign face" means the part of the sign, including trim and background, which contains the message or informative contents. (s. 479.01(22) and (23), F.S.)
[12] Section 479.07(3)(c), F.S.

to be transferred.[13] The maximum transfer fee for any multiple transfer between two outdoor advertisers in a single transaction is $100. According to the FDOT, the $100 fee is insufficient to cover its administrative costs in frequent cases of bulk transfers between two outdoor advertisers in a single transaction.

Current law provides a process for sign removal if a permittee has not submitted all permit renewal fees by the expiration date of the license or permit.[14] If at any time before removal of the sign, the permittee demonstrates that a good faith error resulted in cancellation of the permit, the FDOT is authorized to reinstate the permit if the reinstatement fee (of up to $300 based on the size of the sign) is paid; all other permit fees due as of the reinstatement date are paid; and the permittee reimburses the FDOT for all actual costs resulting from the permit. The FDOT advises its administrative costs associated with reviewing reinstatement requests are the same regardless of the size of the sign.

The FDOT is currently required to furnish to a permittee a serially numbered permanent metal permit tag which the permittee is required to securely attach to the sign facing or on the pole nearest the highway. Further, effective July 1, 2012, the tag must be securely attached to the upper 50 percent of the pole nearest the highway and must be attached in such a manner as to be plainly visible from the main traveled way. In addition, the permit becomes void unless the permit tag is properly and permanently displayed at the permitted site within 30 days after the date of permit issuance.[15]

That section also provides for the FDOT to issue a replacement tag in the event a permit tag is lost, stolen, or destroyed and, alternatively, authorizes a permittee to provide its own replacement tag pursuant to the FDOT specifications that the FDOT shall adopt by rule at the time it establishes the service fee for replacement tags.[16]

If a sign is visible from the controlled area of more than one highway subject to the jurisdiction of the FDOT, the sign must meet the permitting requirements of the highway with the more stringent permitting requirements.[17]

Current law establishes a pilot program in Orange, Hillsborough, and Osceola Counties, and within the boundaries of the City of Miami, under which the distance between permitted signs on the same side of an interstate highway may be reduced to 1,000 feet under specified conditions. The law also directs the FDOT to track the use of the pilot program by maintaining statistics on the number of notifications received by the FDOT from local governments regarding the program.[18] (See Section 9 under "Effect of Proposed Changes.")

[13] Section 479.07(6), F.S
[14] Section 479.07(8), F.S.
[15] Section 479.07(5), F.S.
[16] Rule 14-10.004(5), F.A.C.
[17] Section 479.07(9)(a), F.S.
[18] Section 479.07(9)(c), F.S.

Sign Removal Following Permit Revocation

A sign permittee is currently required to remove a sign within 30 days after the date of revocation of the permit for the sign. If the permittee fails to do so, the FDOT is required to remove the sign without further notice.[19] The FDOT is immune from liability for the removal.[20] Further, all costs incurred by the FDOT in connection with the removal of a sign following the revocation of the permit shall be collected from the permittee.[21] (See Sections 11 and 23 under "Effect of Proposed Changes.")

Signs Erected or Maintained Without the Required Permit/Issuance of Permits for Conforming or Nonconforming Signs

Any sign located adjacent to the right-of-way of any highway on the State Highway System outside an incorporated area or adjacent to the right-of-way on any portion of the interstate or federal-aid primary highway system without the required FDOT permit must be removed. Prior to removal, the FDOT is required to prominently post on the sign face a notice that the sign is illegal and must be removed within 30 days. If the sign bears the name of the licensee or the name and address of the non-licensed sign owner, concurrently with and in addition to posting the notice, the FDOT must provide a written notice to the owner stating that the sign is illegal and must be permanently removed within the 30-day period; and that the sign owner has a right to request a hearing. If after notice the sign owner does not remove the sign, the FDOT is required to do so.[22]

The FDOT is authorized to consider the sign a conforming or nonconforming sign and to issue a permit for the sign upon application and payment of a penalty fee of $300 and all pertinent fees required by ch. 479, F.S., including annual permit renewal fees payable since the date of the erection of the sign,[23] if a sign owner demonstrates to the FDOT that:

- A given sign has been unpermitted, structurally unchanged, and continuously maintained at the same location for a period of seven years or more;
- The sign would have met the criteria established in ch. 479, F.S., for issuance of a permit at any time during the period in which the sign has been erected; and
- The FDOT has not initiated a notice of violation or taken other action to remove the sign during the initial seven-year period and the FDOT determines that the sign is not located on state right-of-way and is not a safety hazard. (See Section 12 under "Effect of Proposed Changes.")

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 interstates, expressways, federal-aid primary highways, and the State Highway System, excluding other publicly owned property and private

[19] Section 479.10, F.S.
[20] *Id.*
[21] Section 479.313, F.S.
[22] Section 479.105(1)(a) and (b), F.S.
[23] Section 479.105(1)(e), F.S.

property. The intent of the section is to foster partnerships that will improve the appearance of Florida's highways and create a net increase in the vegetative habitat along the roads.[24]

The section requires anyone desiring to remove, cut, or trim trees or vegetation on public right-of-way to improve the visibility of a sign or future sign to obtain written permission from the 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 14-10.057, 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 removed;
- Trees or shrubs 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, the 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 for cancellation. For signs originally permitted after July 1, 1996,[25] the FDOT is prohibited from granting any permit where such trees or vegetation are part of a beautification project implemented before the date of the original sign permit application, as specified.

The FDOT is currently authorized to establish an application fee not to exceed $25 for each individual application for the removal, cutting, or trimming of trees or vegetation on public right-of-way to defer the costs of processing such application and a fee not to exceed $200 to defer the costs of processing an application for multiple sites.[26] Further, any person who violates or benefits from a violation of ch. 479, F.S., is subject to an administrative penalty of up to $1,000 and is required to mitigate for the unauthorized removal, cutting, or trimming of trees or vegetation.[27] (See Section 13 under "Effect of Proposed Changes.")

Cost of Sign Removal/Additional Fine for Violations

Section 479.107(5), F.S., requires that the cost of removing a specified sign, whether by the FDOT or an independent contractor, shall be assessed by the FDOT against the owner of the sign. In addition, the FDOT is directed to assess a fine of $75 against the sign owner for any sign which violates the requirements of that section. The FDOT advises Senate staff that it

[24] Section 479.106(8), F.S.
[25] The date of enactment of s. 479.106, F.S.
[26] Section 479.106(4), F.S.
[27] Section 479.106(7), F.S.

infrequently assesses fines related to this section and collection is rare. (See Section 14 under "Effect of Proposed Changes.")

Relocation or Reconstruction of a Publicly Acquired Sign

When the FDOT acquires land with a lawful nonconforming sign, the sign may, at the election of its owner and the FDOT, and subject to FHWA approval, be relocated or reconstructed adjacent to the new right-of-way along the roadway within 100 feet of the current location, provided the nonconforming sign is not relocated to a parcel zoned for residential use, and provided further that such relocation is subject to applicable setback requirements.[28] The relocation is required to be adjacent to the current site, and the face of the sign may not be increased in size or height or structurally modified so as to conflict with the building codes of the jurisdiction in which the sign is located.[29] (See Section 16 under "Effect of Proposed Changes.")

Permits Not Required for Certain Signs

Section 479.16, F.S., currently identifies a number of signs for which permits are not required, including without limitation:

- On-premise signs (signs on property stating only the name of the owner, lessee, or occupant of the premises and not exceeding eight square feet in area);
- Signs that are not in excess of eight square feet that are owned by and relate to the facilities or activities of churches, civic organizations, fraternal organizations, charitable organizations, or units or agencies of government;
- Signs placed on benches, transit shelters, and waste receptacles; and
- Signs not in excess of 16 square feet placed at a road junction with the State Highway System denoting only the distance or direction of a residence or farm operation, or, in a rural area where a hardship is created because a small business is not visible from the road junction, one sign not in excess of 16 square feet, denoting only the name of, and the distance and direction to, the business. This provision does not apply to charter counties and may not be implemented if the federal government notifies the FDOT that implementation will adversely affect the allocation of federal funds to the FDOT. (See Section 18 under "Effect of Proposed Changes.")

Compensation for Removal of Signs

The FDOT is currently required to pay just compensation upon its removal of a lawful nonconforming sign along any portion of the interstate or federal-aid primary highway system.[30] (See Section 19 under "Effect of Proposed Changes.")

Noise-Attenuation Barriers Blocking View of Signs

The owner of a lawfully erected sign is authorized to increase the height above ground level of such sign at its permitted location if any governmental entity permits or erects a noise-attenuation barrier in such a way as to block visibility of the sign. If construction of a proposed noise-attenuation barrier will screen a lawfully permitted sign, the FDOT is required to provide

[28] Section 479.15(3), F.S.
[29] Section 479.15(4), F.S.
[30] Section 479.24, F.S.

notice to the local government or jurisdiction in which the sign is located before erection of the noise-attenuation barrier. If it is determined that the increase in height will violate a local ordinance or land development regulation, the local government or jurisdiction is required to notify the FDOT.

When notice has been received from the local government or jurisdiction prior to erection of the noise-attenuation barrier, the FDOT is required to conduct a written survey of all property owners identified as impacted by highway noise and who may benefit from the proposed barrier. The written survey must, in addition to stating the date, time, and location of a required public hearing, specifically advise the impacted property owners that:

- Erection of the noise-attenuation barrier may block the visibility of an existing outdoor advertising sign;
- The local government or local jurisdiction may restrict or prohibit increasing the height of the existing outdoor advertising sign to make it visible over the barrier; and
- If a majority of the impacted property owners vote for construction of the noise-attenuation barrier, the local government or local jurisdiction is required to:
    - Allow an increase in the height of the sign in violation of a local ordinance or land development regulation;
    - Allow the sign to be relocated or reconstructed at another location if the sign owner agrees; or
    - Pay the fair market value of the sign and its associated interest in the real property.

The FDOT must hold the public hearing and receive input on the proposed noise-attenuation barrier and its conflict with the local ordinance or land development regulations, and suggest or consider alternatives or modification to the proposed barrier to alleviate or minimize the conflict with the local ordinance or regulation or minimize any costs associated with relocating, reconstructing, or paying for the affected sign. Notice of the hearing, in addition to general provisions, must specifically state the same items specified for inclusion in the written survey above.

The FDOT is prohibited from permitting erection of the noise-attenuation barrier to the extent that the barrier screens or blocks visibility of the sign until after the public hearing and until such time as the survey has been conducted and a majority of the impacted property owners have indicated approval. When approved, the FDOT must notify the local governments or local jurisdictions, and the local government or jurisdiction must, notwithstanding any conflicting ordinance or regulation:

- Issue a permit by variance or otherwise for the reconstruction of a sign;
- Allow the relocation of a sign, or construction of another sign, at an alternative location that is permittable, if the sign owner agrees to relocate the sign or construct another sign; or
- Refuse to issue the required permits for reconstruction of a sign and pay fair market value of the sign and its associated interest in the real property to the sign owner.[31] (See Section 20 under "Effect of Proposed Changes.")

[31] Section 479.25, F.S.

Logo Program

The FDOT is required to establish a logo sign program for the rights-of-way of the interstate highway system to provide information to motorists about available gas, food, lodging, camping, attractions, and other services, as approved by the FHWA, at interchanges through the use of business logos and may include additional interchanges under the program.[32] As indicated, the program is limited to the interstate highway system, but under the federal Manual on Uniform Traffic Control Devices (MUTCD),[33] the program may be extended to other limited-access facilities, thereby expanding opportunities for business participation in the program.

The FDOT is directed to incorporate into the logo sign program "RV-friendly" markers, as approved by the FHWA, for establishments that cater to the needs of persons driving recreational vehicles.[34] Current law requires the FDOT to adopt rules relating to RV-friendly markers, including requirements for large parking spaces, entrances, and exits that can easily accommodate recreational vehicles and facilities having appropriate overhead clearances, if applicable. (See Section 21 under "Effect of Proposed Changes.")

Tourist-Oriented Directional Sign Program

Section 479.262, F.S., establishes a tourist-oriented directional (TOD) sign program for intersections on rural and conventional state, county, or municipal roads in rural counties identified by criteria and population in s. 288.0656, F.S., *i.e.*, rural areas of critical economic concern (RACEC). The program is intended to provide directions to tourist-oriented businesses, services, and activities in RACEC areas, when approved and permitted by county or local government entities.[35]

A county or local government that issues permits for a TOD sign program is responsible for sign construction, maintenance, and program operation for roads on the State Highway System and may establish permit fees sufficient to offset associated costs.[36] The TOD signs installed on the State Highway System must comply with the requirements of the MUTCD and rules established by the FDOT.[37] The MUTCD does not limit use of TOD signs to RACECs.

The TOD signs may be installed on the State Highway System only after being permitted by the FDOT, and placement of TOD signs is limited to rural conventional roads, as required in the MUTCD.[38] The TOD signs may *not* be placed within the right-of-way of limited access

[32] Section 479.261, F.S.
[33] Adopted by FDOT pursuant to s. 316.0745, F.S.
[34] Section 479.261, F.S.
[35] Section 288.0656(2), F.S., defines a "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. "Rural community" is defined to mean a county with a population of 75,000 or fewer, a county with a population of 125,000 or fewer that is contiguous to a county with a population of 75,000 or fewer, or a municipality therein.
[36] Section 479.262(1), F.S.; "Prior to requesting a permit to install TODS on the State Highway System, a local government shall have established, by ordinance, criteria for TODS program eligibility including participant qualifications and location regulations." Rule 14-51.061(3), F.A.C.
[37] Section 479.262(1), F.S.: "Prior to requesting a permit to install TODS on the State Highway System, a local government shall have established, by ordinance, criteria for TODS program eligibility including participant qualifications and location regulations." *See also* Rule 14-51.061(3), F.A.C.
[38] Rule 14-51.063(1) and (2), F.A.C.

facilities; within the right-of-way of a limited access facility interchange, regardless of jurisdiction or local road classification; on conventional roads in urban areas; or at interchanges on freeways or expressways.[39] (See Section 22 under "Effect of Proposed Changes.")

III. Effect of Proposed Changes:

Section 1 - Wireless Communication Leases

Section 339.041, F.S., is created to authorize the monetization of existing FDOT wireless communication leases in order to increase funding for fixed capital expenditures for the statewide transportation system. The bill reflects the intent of the Legislature to create a mechanism for factoring future revenues received by the FDOT for wireless communication facilities on FDOT property. Further, the bill:

- Exempts the revenues from factoring from income taxation under federal law;
- Specifies the FDOT property which may be used for the purpose of factoring revenues;
- Authorizes the FDOT to solicit investors to enter into agreements for the purchase of the revenue stream from one or more existing FDOT leases;
- Exempts such agreements from the competitive procurement provisions of ch. 287, F.S.;
- Specifies that the obligations of the FDOT and investors under such agreements do not constitute a general obligation of the state or pledge of the full faith and credit or taxing power of the state;
- Requires an annual appropriation for the FDOT to make the lease payments to the investors in the manner established in the agreements between the FDOT and investors; and
- Provides for the proceeds received from lease agreements for wireless communication facilities to be deposited into the State Transportation Trust Fund and used for fixed capital expenditures for the statewide transportation system.

The FDOT advises that "[t]he Net Present Value of the estimated revenues through the end of the term of the existing contract (2039) at a discount rate of 5% would be approximately $56 million. These firms generally discount that amount by 25-45%. Our estimated revenue is very subjective based on history."[40]

The investors would receive all revenues from the FDOT lease, but the FDOT would continue to bear both the responsibility and the cost of administering the lease.[41]

Section 2 - Water Management District Public Information Systems

Section 373.618, F.S., is amended to provide that WMD public information systems are subject to the requirements of the HBA and all federal laws and agreements when applicable. The requirements of ch. 479, F.S., remain inapplicable to such signs. The provision that local government review and approval is not required remains in law.

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[39] *Id.* at (2); s. 2K.01 of Ch. 2K of the MUTCD (2009), *available at* http://mutcd.fhwa.dot.gov/pdfs/2009r1r2/part2ithu2n.pdf (Last visited March 18, 2014).
[40] The FDOT email, March 17, 2014, on file in the Senate Community Affairs Committee.
[41] *Id.*

Sections 3, 4, and 5 - Commercial and Industrial Areas

Section 479.01, F.S., is amended to revise various definitions as used in ch. 479, F.S., including, but not limited to, the following:

- Revises the definition of "allowable uses" to mean *the intended uses identified in a local government's land development regulations* which are authorized within a zoning category *as a use by right*, without the requirement to obtain a variance or waiver, requiring uses to be present on the parcel in order to be qualified. These revisions clarify that uses must be present on the parcel in order to qualify.
- Repeals the definition of "commercial or industrial zone," and relocates provisions to a new s. 479.024, F.S., under which local governments are required to determine the location of commercial or industrial zones in accordance with ch. 163, F.S.
- Repeals the definition of "unzoned commercial or industrial area," and relocates the criteria for determination of such an area to a new s. 479.024, F.S.
- Relocates and revises provisions related to specified activities that may not be recognized as commercial or industrial activities.

Section 479.02, F.S., is amended to revise various duties of the FDOT, including, but not limited to, the following:

- Expressly incorporates specified law and agreements pertaining to nonconforming signs.
- Revises language to distinguish between commercial and industrial parcels and unzoned commercial or industrial areas.
- Directs the FDOT to determine such parcels and areas in the manner provided in the newly created s. 479.024, F.S.
- Requires the FDOT's rules to provide for determination of such parcels and areas in the manner provided in the new s. 479.024, F.S.
- Makes various other streamlining, editorial, and grammatical changes.

Section 479.024, F.S., entitled "*Commercial and industrial parcels,*" is created to provide a framework for local government determinations as to zoning for a parcel, the bulk of which is taken from existing law. The bill:

- Requires that the FDOT permit signs only in commercial or industrial zones, as determined by the local government in compliance with ch. 163, F.S., unless otherwise provided in ch. 479, F.S.
- Provides that commercial and industrial zones are those areas appropriate for commerce, industry, or trade, regardless of how those areas are labeled.
- Defines "parcel" to mean the property where the sign is located or proposed to be located.
- Requires the local government determination as to zoning for a parcel to meet the following criteria:
    - The parcel is comprehensively zoned and includes commercial or industrial uses as allowable uses.
    - The parcel can reasonably accommodate a commercial or industrial use under the FLUM and land use development regulations, as specified.
    - The parcel is not being used exclusively for noncommercial or nonindustrial uses.

- Requires, if a local government has not designated zoning but has designated the parcel under the FLUM for uses that include commercial or industrial uses, the parcel to be considered an unzoned commercial or industrial area.
- Requires three or more distinct commercial or industrial activities within 1,600 feet of each other, with at least one of the commercial or industrial activities located on the same side of the highway as the sign location, and within 800 feet of the sign location for issuance of a permit in an unzoned commercial or industrial area; and requires multiple commercial or industrial activities enclosed in one building when all uses have only shared building entrances to be considered one use.
- Revises existing uses and activities that may not be independently recognized as commercial or industrial.
- Requires the FDOT to notify a sign applicant in writing if the local government has indicated that a proposed sign location is on a parcel that is in a commercial or industrial zone and the FDOT finds it is not.
- Authorizes an applicant whose application is denied to request an administrative hearing for a determination of whether the parcel is located in a commercial or industrial zone and requires the FDOT to notify the local government that the applicant has requested a hearing.
- Provides that if the FDOT in a final order determines that the parcel does not meet the specified permitting conditions and a sign structure exists on the parcel, the applicant shall remove the sign within 30 days after the date of the order and is responsible for all sign removal costs.
- Requires that if the FHWA reduces funds that would otherwise be apportioned to the FDOT due to a local government's failure to be compliant, the FDOT must reduce apportioned transportation funding to the local government by an equivalent amount.

Local governments would make the determination as to zoning, which initially defines whether an outdoor advertising sign is eligible for permitting, with the potential loss of apportioned transportation funding from the FDOT in an amount equivalent to the FDOT's reduced federal funds, should local governments inappropriately apply the provisions of the new section.

Section 6 - Entry Upon Privately Owned Lands

Section 479.03, F.S., is amended to revise the FDOT's authority to enter upon privately owned lands to remove a sign by removing the requirement that the FDOT have received consent from the landowner or person in charge of the land to be entered. The bill inserts a specified written notice requirement, and expands those to whom written notice must be alternatively given to include a person in charge of an intervening privately owned land. The FDOT must have been authorized by a final order or have issued a notice to the sign owner that has not been contested before entering upon the intervening private land. These revisions ensure notice to interested parties and occurrence of appropriate preconditions to the FDOT's entry upon intervening private land.

Section 7 - License to Engage in the Business of Outdoor Advertising

Section 479.04, F.S., is amended to provide that a person is not required to obtain a license solely to erect or construct outdoor advertising signs or structures, to conform to the revised definition of "business of outdoor advertising."

Sections 8 and 10 - Denial or Revocation of License

Section 479.05, F.S., is amended to authorize suspension of any license, in addition to denial or revocation, when the FDOT determines the application for the license contains false or misleading information of material consequence, that the licensee has failed to pay fees or costs owed to the FDOT for outdoor advertising purposes, or that the licensee has violated any of the provisions of ch. 479, F.S., unless such licensee, within 30 days after receipt of the FDOT notice, corrects such false or misleading information, pays the outstanding amounts, or complies with the provisions of ch. 479, F.S. Suspension of a license allows the licensee to maintain existing sign permits, but the FDOT may not grant a transfer of an existing permit or issue an additional permit to a licensee with a suspended license.

Section 479.08, F.S., is amended to revise the FDOT's authority to deny or revoke any permit when it determines that the application contains false or misleading information of material consequence by eliminating the requirement that the information is *knowingly* false or misleading, and by requiring instead that the false or misleading information be *of material consequence*. This revision may result in fewer denials or revocations.

Section 9 - Sign Permits

Section 479.07, F.S., which prohibits any sign on the State Highway System outside an urban area or on any portion of the interstate or federal-aid primary highway system without first obtaining a permit, is amended as follows:

- Streamlines processes by removing a requirement for a notarized affidavit in addition to certifying that all information contained in the application is true and correct and by removing an unnecessary certification of receipt of landowner written permission for the designated sign location.
- Removes a prohibition against prorating a fee for a period less than the remainder of the permit year to accommodate short-term publicity features.
- Clarifies that the FDOT must act on a permit application within 30 days after receipt of the application by granting, denying, or returning the incomplete application.
- Revises requirements for placement of permit tags on sign structures; removes a provision rendering a permit void unless the permit tag is properly and permanently displayed as specified; removes permittee authorization to provide its own replacement tag; and removes the FDOT authority to adopt by rule specifications for the replacement tags.
- Increases the maximum transfer fee for any multiple transfers between two outdoor advertisers in a single transaction from $100 to $1,000 to allow the FDOT to recover administrative costs in frequent cases of bulk transfers between two outdoor advertisers in a single transaction.
- Revises the permit reinstatement fee from up to $300, based on the size of the sign, to a static $300.
- Makes "plain language" revisions to provisions relating to permitting signs visible from more than one highway subject to the FDOT jurisdiction and within the controlled area of the highways.
- Makes permanent a pilot program in specified locations under which the distance between permitted signs on the same side of an interstate highway may be reduced to 1,000 feet under

specified and revised conditions and removes the FDOT's duty to maintain statistics on the pilot program.
- Deletes obsolete language.

These revisions streamline the permit application process, ease permittee ability to comply with permit tag placement requirements, allow the FDOT to cover administrative expenses relating to bulk transfers, provide increased opportunity for businesses to obtain sign permits under certain conditions, and generally provide language clarity.

Sections 11 and 23 - Sign Removal Following Permit Revocation

Section 479.10, F.S., is amended to require a permittee to remove a sign within 30 days after the date of cancellation, in addition to revocation, of a sign permit and specifies removal of the sign is at the permittee's expense if the FDOT removes the sign because the permittee fails to do so.

Section 479.313, F.S., is amended to provide that all costs incurred by the FDOT for the removal of a sign within a controlled area following permit cancellation, in addition to permit revocation, shall be assessed against and collected from the permittee.

Section 12 - Signs Erected or Maintained Without Required Permit/Issuance of Permits for Conforming or Nonconforming Signs

Section 479.105, F.S., regarding signs erected or maintained without a required permit, is amended to:
- Revise provisions for placement of an FDOT notice of violation on a sign;
- Require the FDOT to provide a written notice of an illegal sign and its required removal to the advertiser displayed on the sign, or the owner of the property, in addition to the owner of the sign;
- Remove the condition that notice be given concurrently to the owner only if the sign bears the name of the licensee or the name and address of the non-licensed sign owner; and
- Relocate and clarify existing provisions for the FDOT issuance of permits for conforming and nonconforming signs erected or maintained without the required permit.

These revisions ensure notice to interested parties; removal of unpermitted signs; and continued issuance of permits for previously unpermitted but erected signs.

Section 13 - Vegetation Management and View Zones for Outdoor Advertising

Section 479.106, F.S., relating to vegetation management and sign visibility, is amended to:
- Require the removal of two nonconforming signs in addition to mitigation or contribution to a plan of mitigation. The requirement is triggered by applications for the removal, cutting, or trimming of trees or vegetation along the highway that a related sign is permitted to. The requirement applies to signs originally permitted after July 1, 1996, signs that are the subject of a new application, or signs related to an application for a change of view zone; and
- Provide that the administrative penalty for engaging in removal, cutting, or trimming in violation of this section or benefiting from such actions is up to $1,000 *per sign facing*.

The first revision may result in increased removal of nonconforming signs. No change in the FDOT's application of the statute is expected due to the second revision, as the FDOT has historically interpreted and continues to interpret and assess the administrative penalty per sign facing.

Section 14 - Cost of Sign Removal/Additional Fine for Violations

Section 479.107(5), F.S., is amended to repeal the $75 fine rarely assessed against and collected from a sign owner who has been assessed the costs of removing a sign.

Section 16 - Relocation or Reconstruction of a Publicly Acquired Sign

Section 479.15, F.S., providing for harmony of state and local regulations, is amended to:

- Strike the definition of "federal-aid primary highway system," also defined in s. 479.01, F.S.;
- Eases the requirements for relocation of a sign located on land acquired by the FDOT, subject to the FHWA approval and the HBA;
- Provide the face of a *nonconforming* sign may not be increased in size or height or structurally modified at the point of relocation as specified; and
- Provide a neighboring sign that is already permitted and that is within the spacing requirements of s. 479.07(9)(a), F.S., is not caused to become nonconforming.

These revisions may ease the process for permittees who wish to relocate a permitted sign located on property acquired by the FDOT.

Section 18 - Permits Not Required for Certain Signs

Section 479.16, F.S., relating to signs for which permits are not required, is amended to:

- Provide that specified provisions allowing certain signs without a permit may not be implemented or continued if the federal government notifies FDOT that implementation or continuation will adversely affect the allocation of federal funds to the FDOT;
- Remove a requirement for FDOT rules relating to lighting restrictions, as the FDOT relies on the existing requirements listed in s. 479.11(5), F.S.;
- Remove a provision rendering the small business sign authorization inapplicable to charter counties and strike relocated language;
- Authorize local tourist-oriented business signs within RACEC; temporary harvest signs; "acknowledgement signs" on publicly-funded school premises, and displays erected on a "sports facility," all under specified conditions; and
- Provide that if the specified exemptions are not implemented or continued due to notice from the federal government that allocation of federal funds to the FDOT will be adversely impacted, the FDOT must provide notice to the sign owner that the sign must be removed within 30 days after receipt of the notice; and, if the sign is not so removed, the FDOT may remove the sign and assess against and collect from the owner the costs incurred.

These revisions eliminate an unnecessary rulemaking requirement and provide greater opportunity for installation and maintenance of the specified signs without obtaining a permit, while protecting against the potential 10 percent federal funds penalty.

Section 19 - Compensation for Removal of Signs

Section 479.24, F.S., is amended to require the FDOT to pay just compensation for acquisition (rather than removal) of a lawful conforming sign, in addition to a nonconforming sign.

Section 20 - Noise-Attenuation Barriers Blocking View of Signs

Section 479.25, F.S., relating to erection of noise-attenuation barriers (sound walls) blocking the view of a sign, is amended to:

- Make "plain language" and conforming changes;
- Upon a determination that an increase in the height of a sign will violate a provision contained in a local ordinance or land development regulation, require the local government or jurisdiction to provide a variance or waiver to allow an increase in the height of the sign (or allow the sign to be relocated, or pay the fair market value of the sign); and
- Strike an FDOT requirement to conduct a written survey of all property owners impacted by noise who may benefit from the barrier.

These revisions revise the duties of the FDOT and local governments with respect to a proposed sound wall.

Section 21 - Logo Program

Section 479.261(1) and (1)(b), F.S., is revised to:

- Expand the logo sign program to the entire limited-access highway system, rather than just the interstate highway system, as is already authorized under the federal MUTCD; and
- Require the FDOT rules relating to "RV-friendly" markers on logo signs to establish minimum requirements for parking spaces, entrances and exits, and overhead clearance which must be met by establishments to qualify as RV-friendly.

Opportunities for business participation in the logo sign program are increased, and the FDOT rule requirements for RV-friendly establishments are minimally, but more specifically, established.

Section 22 - Tourist-Oriented Direction Sign Program

Section 479.262, F.S., is amended to expand the TOD sign program by repealing the restriction limiting the program to roads in a RACEC and providing that the program applies to intersections on rural and conventional state, county, or municipal roads. The bill also expressly states, consistent with Rule 14-51.063, F.A.C., and the MUTCD, that a TOD sign may not be used on roads in urban areas or at interchanges on freeways or expressways. Opportunities for business participation in the TOD sign program are increased.

The bill also makes the following revisions:

Section 15 amends s. 479.111(2), F.S., to insert in a reference to the agreement between the state and the USDOT the year the agreement was entered into; *i.e.*, 1972.

Section 17 amends s. 479.156, F.S., relating to wall murals, to replace references to the "Highway Beautification Act" with references to its statutory placement in federal law, 23 U.S.C. s. 131, and to correct cross-references.

Section 24 repeals s. 76 of ch. 2012-174, L.O.F., which established a pilot program for TOD outdoor advertising signs in RACEC. The program is replaced by authority to erect such signs without a permit under certain conditions, as described in section 18 of the bill.

Section 25 provides the act takes effect on July 1, 2014.

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:

Section 9

The maximum transfer fee for any multiple transfer between two outdoor advertisers in a single transaction is increased from $100 to $1,000, a fee to which those requesting a multiple transfer would be subject. The FDOT notes the transfer fee of $5 for each permit to be transferred is not changing; however, in many instances, the transfer requests are so numerous that the $100 fee is not covering the FDOT's actual costs to transfer the permits.

As to the permit reinstatement fee, the bill strikes the words "up to" and "based on the size of the sign," leaving the fee at a static $300. The FDOT currently charges $300 for permit reinstatement; no private sector fiscal impact will occur.

Section 22

Revision of the TOD sign program to eliminate restriction of the program to signs at intersections in a RACEC provides greater opportunity for business participation in the program. Participants may be subject to permit fees established by local governments.

C. Government Sector Impact:

Section 1

According to the FDOT, existing lease payments for wireless communications total approximately $1.4 million annually. Factoring the revenues from lease payments would provide a lump sum of cash that would be available for statewide transportation projects in the initial year of a factoring agreement with investors. However, the forecasted annual revenue for existing lease payments would be eliminated in later years of the transportation work program and an alternative fund source would be needed for existing commitments programmed to use those revenues. Factoring the revenues may result in a negative fiscal impact over time.

Although the bill subjects WMD public information signs to the HBA, all federal laws, and the 1972 agreement, s. 373.618, F.S., continues to authorize private sponsors to display commercial messages on WMD public information signs. Should such signs display commercial messages on WMD public information signs located within a "controlled area," the potential for a federal funds penalty of 10 percent of federal highway funds still exists.

Section 9

The FDOT expects to recoup its administrative expenses associated with processing large requests for multiple transfers at the same fee of $5 per transfer but with the increased cap of $1,000 for multiple transfers.

VI. Technical Deficiencies:

Consistent with other revisions in the bill, the word "highway" should be inserted between "primary" and "system" on line 273 and on line 670.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 373.618, 479.01, 479.02, 479.03, 479.04, 479.05, 479.07, 479.08, 479.10, 479.105, 479.106, 479.107, 479.111, 479.15, 479.156, 479.16, 479.24, 479.25, 479.261, 479.262, and 479.313.

This bill creates the following sections of the Florida Statutes: 339.041 and 479.024.

This bill repeals section 76 of chapter 2012-174, Laws of Florida.

IX. 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 20, 2014:

- Removes language from the bill that would have subjected WMD public information signs to the provisions of ch. 479, F.S., governing outdoor advertising.
- Removes from the bill stricken language that would have subjected such signs to local government review and approval.
- Provides that such signs are subject to certain federal laws and agreements when applicable.

The committee also adopted a technical amendment to restore use of the word "regulation," rather than "rules," as it relates to those regulations established and enforced by municipalities and counties with respect to criteria governing wall murals in areas zoned for commercial and industrial use.

B. Amendments:

None.