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 Commerce and Tourism

BILL: CS/SB 218

INTRODUCER: Transportation Committee and Senator Grimsley

SUBJECT: Transportation

DATE: February 14, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	**Fav/CS**
2.	Wiehle	Caldwell	CU	**Favorable**
3.	Malcolm	Hrdlicka	CM	**Favorable**
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 218 revises provisions relating to certain transportation-related utility relocation expenses, outdoor advertising permit exemptions, and the tourist-oriented directional sign program. The bill:

- Provides an exception for certain public-utilities in a rural area of critical economic concern (RACEC) from the requirement that a utility bear the cost to remove or relocate utility lines in certain circumstances;
- Repeals unnecessary rulemaking authority relating to lighting restrictions for certain outdoor advertising signs;
- Exempts from permitting certain signs placed by tourist-oriented businesses, farm signs placed during harvest seasons, “acknowledgement signs” on public school premises, and displays on specific sports facilities;
- Provides that certain exemptions from sign permitting may not be implemented if such exemptions will adversely impact the allocation of federal funds to the Florida Department of Transportation (FDOT);
- Directs the FDOT to notify a sign owner that a sign must be removed if federal funds are adversely impacted, and authorizes the FDOT to remove the sign and assess costs to the sign owner if the sign is not removed; and
- Expands the tourist-oriented directional sign program to all rural and conventional roads, and clarifies provisions relating to the program.

II. Present Situation:

Utility Relocation Expenses
Section 337.401, F.S., regulates the use of road and rail corridor right-of-ways by utilities.[1] It authorizes the FDOT and local governmental entities[2] to regulate the placement and maintenance of utility lines along, across, or on any public road or rail corridor under their respective jurisdictions.

Section 337.403, F.S., requires a utility owner to remove or relocate a utility that the authority finds is unreasonably interfering with the use, maintenance, improvement, extension, or expansion of the road or rail corridor. Upon 30 days' written notice by the authority, the utility owner must initiate work on the removal or relocation. The work must be completed within a reasonable time stated in the notice or as agreed to by the authority and the utility owner. The utility owner must bear the cost of the removal or relocation except in the following cases:

- When utility relocation is required due to construction of a project on the federal-aid interstate system and federal funding will cover at least 90 percent of the project cost, the FDOT pays for the removal or relocation.
- When utility work is performed as part of a transportation facility construction contract, the FDOT may participate in those costs that exceed the FDOT's estimate of the cost of the work by 10 percent.[3]
- When utility work is performed in advance of a construction contract, the FDOT may participate in the cost of removing trees, stumps, and roots necessary for the relocation.
- If the utility being removed or relocated was initially installed to exclusively serve the authority or its tenants, the authority bears the cost of the utility work.
- If, in an agreement between a utility and an authority made after July 1, 2009, the utility conveys, subordinates, or relinquishes a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority without the agreement expressly addressing future responsibility for the cost of removal or relocation of the utility, the authority bears the cost of such removal or relocation.
- If the utility is an electric facility being relocated underground to enhance vehicular, bicycle, and pedestrian safety, and if ownership of the facility has been transferred to a public utility within the past 5 years, the FDOT bears the cost of the necessary utility work.
- An authority may bear the costs of utility work when the utility is not able to establish a compensable property right in the property where the utility is located if:
  - The utility was physically located on the property before the authority acquired rights in the property;
  - The utility demonstrates it has a compensable property right in all adjacent properties along the alignment of the utility; and
  - The information available to the authority does not establish the priorities of the authority's and the utility's interest in the property.

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[1] "Utility" means "any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structure[] . . . ." Section 337.401(1)(a), F.S.
[2] Referred to in ss. 337.401-337.404, F.S., as the "authority."
[3] However, the FDOT's participation amount is limited to the difference between the estimate of the work in the agreement plus 10 percent and the amount awarded for the utility work in the construction contract. Section 337.403(1)(b), F.S.

The FDOT advises that under its procedure 710-030-005-a, *Utility Work for Local Government Utilities*,[4] when a local-government utility cannot afford work necessitated by an FDOT project as determined by the FDOT's comptroller, the FDOT will pay for the work. In such cases, the utility signs a promissory note to reimburse the FDOT, thereby allowing the FDOT project to proceed, potentially avoiding contractor delay claims. According to the FDOT, if the utility does not reimburse the FDOT within 10 years, the FDOT can take steps to write off the loss as opposed to undergoing collection efforts.[5]

The FDOT advises it currently "has approximately $12 million in promissory notes for utility relocations that under the legislation would be eligible for waivers."[6]

Control of Outdoor Advertising

Since the passage of the Highway Beautification Act (HBA)[7] in 1965, the Federal Highway Administration (FHWA) has established controls for outdoor advertising along federal-aid primary, interstate, and National Highway System roads. 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.[8] Billboard controls apply to interstates, federal-aid primary roads, and other highways that are part of the National Highway System.
- States have the discretion to remove legal nonconforming signs[9] along highways. However, the payment of just compensation is required for the removal of any lawfully erected billboard along the specified roads.[10]
- States and localities may enact stricter laws than stipulated in the HBA.[11]

The HBA requires the development of standards for certain signs as well as the removal of nonconforming signs.[12] While states are not directly forced 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.[13]

Under the provisions of a 1972 agreement between the State of Florida and the U.S. Department of Transportation[14] incorporating the HBA's required controls, the FDOT requires commercial signs to meet certain requirements to obtain sign permits when they are within 660 feet of interstate and federal-Aid primary highways in urban areas, or visible at any distance from the

[4] *Available at* http://www2.dot.state.fl.us/proceduraldocuments/procedures/bin/710030005.pdf (last visited Feb. 10, 2014).
[5] FDOT Legislative Bill Analysis, *SB 218*, 2 (Oct. 25, 2013) (on file with the Committee on Commerce and Tourism).
[6] *Id.* at 4.
[7] 23 U.S.C. s. 131 et seq.
[8] *Id.* at (d); *see id.* at (t).
[9] 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. Section 479.01(17), F.S.
[10] 21 U.S.C. s. 131(g).
[11] *Id.* at (k).
[12] *Id.* at (d) and (r).
[13] *Id.* at (b).
[14] *Available at* http://www.scenic.org/storage/PDFs/FSAs/fl1965.pdf (last visited Feb. 10, 2014).

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.[15] 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.

On-Premise Signs/Lighting Restrictions/Rulemaking Authority
Section 479.16(1), F.S., exempts from signage permitting, signs on the premises of an establishment that consist primarily of the name of the establishment or identify the merchandise, services, activities, or entertainment sold, produced, manufactured, or furnished on the premises, provided the signs comply with the lighting restrictions "under department rule adopted pursuant to s. 479.11(5), F.S."

Section 479.11(5), F.S., prohibits an on-premise sign that displays "intermittent lights not embodied in the sign, or any rotating or flashing light within 100 feet of the outside boundary of the right-of-way of any [state or federal highway or interstate] or which is illuminated in such a manner so as . . . to impair the vision of motorists or otherwise distract motorists . . . ."

The FDOT currently has no adopted rule that addresses lighting restrictions for on-premise signs pursuant to s. 479.11(5), F.S., and instead relies on the quoted statute. The rulemaking authority in s. 479.16(1), F.S., is therefore unnecessary.[16]

Other Permit Exemptions
In addition to the exemption for on-premise signs in s. 479.16(1),F.S., s. 479.16, F.S., includes a number of other signs for which permits are not required, including:

- Signs on property stating only the name of the owner, lessee, or occupant of the premises and no larger than 8 square feet in area;
- Signs no larger than 8 square feet that are owned by and relate to the facilities or activities of churches, civic organizations, fraternal organizations, charitable organizations, or government agencies;
- Signs placed on benches, transit shelters, and waste receptacles; and
- Signs no larger than 16 square feet placed at a state highway road junction denoting only the distance or direction of a residence or farm, or, in a rural area where a hardship is created because a small business is not visible from the junction, one sign no larger than 16 square feet, denoting only the name of, and the distance and direction to, the business.

The final exemption 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.[17]

[15] 21 U.S.C. s. 131(b) and (d).
[16] E-mail from Rob Jessee, Office of Right of Way, FDOT (Feb. 10, 2014) (on file with the Committee on Commerce and Tourism).
[17] Section 479.16(15), F.S.

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 areas of critical economic concern ("rural counties identified by criteria and population in s. 288.0656, F.S.") (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.[18]

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.[19] TOD signs installed on the State Highway System must comply with the requirements of the Manual on Uniform Traffic Control Devices[20] (MUTCD) and rules established by the FDOT.[21]

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.[22] TOD signs may *not* be placed within the right-of-way of limited access 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.[23]

III. Effect of Proposed Changes:

Section 1 amends s. 337.403, F.S., to add another exception to the general rule that a utility owner must bear the cost of removing or relocating a utility. This exception applies if a municipally- or county-owned utility is located in a RACEC and the FDOT determines that the utility is unable, and will not be able within the next 10 years, to pay for the cost of utility work necessitated by an FDOT project on the State Highway System. Under these circumstances, the FDOT may pay the cost of the work performed by the FDOT or its contractors.

This exception "[f]ormalizes current FDOT procedure of promissory note forgiveness for a local utility that meets certain criteria and demonstrates an inability to pay for utility work necessitated by an FDOT project."[24]

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[18] 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.
[19] 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.
[20] Adopted by the FDOT pursuant to s. 316.0745(2), F.S.
[21] Section 479.262(3), F.S.
[22] Rule 14-51.063(1) and (2), F.A.C.
[23] *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 Feb. 10, 2014).
[24] FDOT Bill Analysis at 2.

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

- Clarify that signs placed on certain objects, such as benches, news racks, and street light poles, which are regulated under s. 337.408, F.S., are exempt from permit requirements under s. 479.16, F.S.;
- Eliminate unnecessary rulemaking authority; and
- Delete the exemption for charter counties from the small business "hardship" sign authorization.

The bill also authorizes the following new permit exemptions:

- Local tourist-oriented business signs within a RACEC, provided that:
  - Signs are not more than eight square feet in size and not more than four feet tall;
  - Signs are located only in rural areas on a facility that does not meet the definition of a limited access facility;
  - Signs are located within two miles of the business location and at least 500 feet apart;
  - Signs are located only in two directions leading to the business;
  - Signs are not located within the right-of-way; and
  - The business is at least four miles from any other business using the exemption and the business does not participate in any other directional sign program;
- Temporary harvest-season signs, provided such signs measure up to 32 square feet, denote only the distance or direction of a farm operation, and are erected at a road junction within the State Highway System; signs may only be erected during the harvest season, not to exceed 4 months;
- "Acknowledgement signs,"[25] provided such signs:
  - Are erected upon publicly funded school premises;
  - Relate to a specific public school club, team, or event;
  - Are placed at least 1,000 feet from any other acknowledgement sign on the same side of the roadway; and
  - Limit sponsor information to no more than 100 square feet of the sign; and
- Displays erected upon a sports facility,[26] the content of which is directly related to the facility's activities or where products or services offered on the sports facility property are present, provided such displays are mounted flush to the surface of the sports facility and rely on the building facade for structural support.

The bill prohibits implementation or continuation of the provisions allowing permit exemptions for small business "hardship" signs, local tourist-oriented business signs, harvest-season signs, public school premise "acknowledgement signs," and sports facility displays if the federal government notifies the FDOT that implementation or continuation will adversely affect the allocation of federal funds to the FDOT. In such an event, the FDOT is required to provide notice to a sign owner that the sign must be removed within 30 days; the FDOT is required to remove the sign if the owner does not remove it and the FDOT's costs will be assessed against and collected from the owner.

[25] The bill defines the term "acknowledgement sign" to mean "a sign that is intended to inform the traveling public that a public school club, team, or event has been sponsored by a person, firm, or other entity."

[26] "Sports facility" is defined to mean "an athletic complex, athletic arena, or athletic stadium, including physically connected parking facilities, which is open to the public and has a permanent installed seating capacity of 15,000 people or more."

Section 3 amends s. 479.262, F.S., relating to the TOD sign program. The bill expands the program by repealing the restriction for participation in the program to such roads in a RACEC. 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.

Section 4 provides the bill 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:

In the event the FDOT bears the cost of utility work for municipally- or county-owned utility removal or relocation, and such action avoids delay of a project on the State Highway System, a positive but indeterminate fiscal impact to businesses and private individuals may be realized.

The authorization to use signs without a permit to advertise local tourist-oriented businesses; farm products; public school club, team, or event sponsors; and products and services directly related to a sports facility's activities or offered on the sports facility's property provides greater opportunity to attract people to such businesses or events.

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:

According to the FDOT, formalizing the FDOT's procedure of promissory note forgiveness for a local utility that meets certain criteria and demonstrates an inability to

pay for utility work necessitated by an FDOT project will result in a negative but indeterminate fiscal impact to the state. The FDOT advises it currently "has approximately $12 million in promissory notes for utility relocations that under the legislation would be eligible for waivers." Additionally, the FDOT states the waiver provision will result in an indeterminate reduction in expenditures for local governments that a receive a promissory note waiver from the FDOT.[27]

The bill avoids a potential annual penalty of 10 percent of federal highway funds by authorizing the FDOT to remove signs erected under the additional sign permit exemptions in the event that the Federal Government notifies the FDOT of an adverse impact on the allocation of federal funds.

According to the FDOT, due to the expansion for participation in the TOD sign program, local governments may experience a positive but indeterminate fiscal impact from issuing potentially higher numbers of sign permits for signs located on roads where signs previously were not permitted.[28]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 337.403, 479.16, and 479.262.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on November 7, 2013:
The CS reflects a technical revision to the language relating to signs placed by local tourist-oriented businesses to rely on an existing definition of "limited access facility," thereby avoiding the need for the FDOT to incur expenses associated with adopting by rule a definition of "non-limited access facility."

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[27] FDOT Bill Analysis at 4.
[28] *Id.*