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 Communications, Energy, and Public Utilities

BILL:	CS/SB 218
INTRODUCER:	Transportation Committee and Senator Grimsley
SUBJECT:	Transportation
DATE:	January 7, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	**Fav/CS**
2.	Wiehle	Caldwell	CU	**Pre-meeting**
3.			CM	
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 additional exception for a utility to bear the cost to relocate certain municipally-or county-owned utilities located in road and rail corridors under specified conditions;
- eliminates 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 publicly funded 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;
- authorizes the FDOT to remove a sign and assess costs to the sign owner under certain circumstances; and
- clarifies provisions relating to the tourist-oriented directional sign program.

II. Present Situation:

Utility Relocation Expenses

Section 337.401, F.S., addresses the use of road and rail corridor right-of-way by utilities.[1] The section authorizes the FDOT and local governmental entities[2] to prescribe and enforce reasonable rules or regulations relating to the placing and maintaining of any utilities lines along, across, or on any road or publicly-owned rail corridors under their respective jurisdictions.

Section 337.403, F.S., requires a utility owner to remove or relocate a utility that is found by the authority to unreasonably interfere with the convenient, safe, and continuous use, maintenance, improvement, extension, or expansion of the road or rail corridor. The utility owner must initiate the work necessary for such a removal or relocation upon 30 days written notice, and must complete it within the reasonable time stated in the notice or another time agreed to by the authority and the utility owner. The utility owner must bear the cost of the removal or relocation except under the following exceptions.

- When the project is on the federal-aid interstate system and federal funding is identified as paying for at least 90 percent of the cost, the FDOT pays for the removal or relocation with federal funds.
- When utility work is performed as part of a transportation facility construction contract, the FDOT may participate in those costs in an amount limited to the difference between the official estimate of all the work in the agreement plus 10 percent and the amount awarded for the utility work in the construction contract.
- When utility work is performed in advance of a construction contract, the FDOT may participate in the cost of clearing and grubbing (removing stumps and roots) necessary for the relocation.
  If the utility being removed or relocated was initially installed to exclusively serve an authority (the FDOT or local governmental entities) or its tenants, or both, the authority bears the cost of the utility work but is not responsible for the cost of removal or relocation of any subsequent additions to the facility for the purpose of serving others.
- If, in an agreement between a utility and an authority entered into 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 cost of removal or relocation of the utility, the authority bears the cost of such removal or relocation, but nothing impairs or restricts, or may be used to interpret, the terms of any agreement entered into prior to July 1, 2009.
- If the utility is an electric facility being relocated underground to enhance vehicular, bicycle, and pedestrian safety, and if ownership of the electric facility to be placed underground has been transferred from a private to a public utility within the past five years, the FDOT bears the cost of the necessary utility work.

[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. See s. 337.401(1)(a), F.S.

[2] Referred to in ss. 337.401-337.404, F.S., as the "authority."

- 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 particular property before the authority acquired rights in the property;
  - the utility demonstrates that 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 relative priorities of the authority's and the utility's interest in the property.

The FDOT advises that under its procedure 710-030-005, *Utility Work for Local Government Utilities*,[3] when a governmental entity cannot afford utility work necessitated by an FDOT project as determined by the FDOT's comptroller, the FDOT will pay for the work. In such cases, the governmental entity signs a promissory note to reimburse the FDOT, thereby allowing the FDOT project to proceed, potentially avoiding contractor delay claims. If the governmental entity does not reimburse the FDOT within ten years, the FDOT advises steps can be taken to write off the loss, as opposed to continuing collection efforts.

The FDOT advises it currently "has approximately $12 million in promissory notes for utility relocations that under the legislation would be eligible for waivers."[4]

Control of Outdoor Advertising

Since the passage of the Highway Beautification Act (HBA) in 1965, the Federal Highway Administration (FHWA) has established controls for outdoor advertising along Federal-aid Primary, Interstate, and National Highway System 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.

The primary features of the Highway Beautification Act include:

- Billboards are allowed, by statute, in commercial and industrial areas consistent with size, lighting, and spacing provisions as agreed to by the state and federal governments. Billboard controls apply to all Interstates, Federal-Aid Primaries, and other highways that are part of the national Highway System.
- States have the discretion to remove legal nonconforming signs[5] 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

[3] http://www2.dot.state.fl.us/proceduraldocuments/procedures/proceduresbynumber.asp?index=7 (Last visited 10/23/13.)
[4] FDOT bill analysis, on file with the Senate Transportation Committee.
[5] 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.[6]

Under the provisions of a 1972 agreement between the State of Florida and the U.S. Department of Transportation (USDOT)[7] 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 same roadways when outside of urban areas. The agreement embodies the federally-required "effective control of the erection and maintenance of outdoor advertising signs, displays, and devices." Absent this effective control, the non-compliance penalty of 10 percent of federal highway funds may be imposed.

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

On-Premise Signs/Lighting Restrictions/Rulemaking Authority
Section 479.16(1), F.S., currently allows, without the need for a permit, signs erected on the premises of an establishment that consist primarily of the name of the establishment or identify the principal or accessory merchandise, services, activities, or entertainment sold, produced, manufactured, or furnished on the premises of the establishment, 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 on-premise signs that display "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 highway on the State Highway System, interstate highway system, or federal-aid primary highway system or which is illuminated in such a manner so as to cause glare or to impair the vision of motorists or otherwise distract motorists so as to interfere with the motorists' ability to safely operate their vehicles."

The FDOT currently has no adopted rule that addresses lighting restrictions for on-premise signs and relies on the quoted statute. The rulemaking authority is therefore unnecessary.

Other Permit Exemptions
Section 479.16, F.S., currently identifies 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 not exceeding 8 square feet in area;
- Signs that are not in excess of 8 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 place 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

[6] 23 U.S.C. § 131(b)
[7] Copy on file in the Senate Transportation Committee.

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.

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.

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. The program is intended to provide directions to rural tourist-oriented businesses, services, and activities in rural counties identified by criteria and population in s. 288.0656, F.S., when approved and permitted by county or local government entities. Section 288.0656, 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, and a county with a population of 125,000 or fewer that is contiguous to a county with a population of 75,000 or fewer.

A county or local government that issues permits for a TOD sign program[8] 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.[9] TOD signs installed on the State Highway System must comply with the requirements of the Manual on Uniform Traffic Control Devices[10] (MUTCD) and rules established by the FDOT.

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. 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.[11]

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 rural area of critical economic concern as defined in s. 288.0656(2), F.S., and if 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

[8] Prior to requesting a permit to install a TOD sign on the State Highway System, a local government must first have established by ordinance the criteria provided in part VI of chapter 14-51, Florida Administrative Code.
[9] s. 479.262(2), F.S.
[10] Adopted by the FDOT pursuant to s. 316.0745, F.S.
[11] See rule 14-51.063, Florida Administrative Code, and s. 2K.01 of Chapter 2K of the MUTCD (2009).

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.

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

- eliminate unnecessary rulemaking authority;
- delete the exemption for charter counties from the small business hardship sign authorization;
- authorize local tourist-oriented business signs, without a permit, within rural areas of critical economic concern, provided such signs are:
  - not more than eight square feet in size and not more than four feet tall;
  - located only in rural areas on a facility that does not meet the definition of a limited access facility;
  - located within two miles of the business location and at least 500 feet apart;
  - located only in two directions leading to the business;
  - not located within the right-of-way; and
  - provided 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;
- authorize temporary harvest-season signs, without a permit, 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 with the State Highway System, but only during the harvest season, not to exceed four months;
- authorize "acknowledgement signs,"[12] without a permit, 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;
- authorize displays erected upon a sports facility,[13] without a permit, 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;
- prohibit implementation or continuation of the provisions allowing small business "hardship" signs, local tourist-oriented business signs, farm harvest signs, public school premise acknowledgement signs, and sports facility displays without a permit if the federal government notifies the FDOT that implementation or continuation will adversely affect the allocation of federal funds to the FDOT; and
- in such an event, require the FDOT to provide notice to a sign owner that the sign must be removed within 30 days, with FDOT required to remove the sign if the owner does not with FDOT's costs to be assessed against and collected from the owner.

Section 3 amends s. 479.262, F.S., relating to the TOD sign program, to remove the restriction for participation in the program to such roads in rural counties identified by criteria and

[12] 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.
[13] 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.

population in s. 288.0656, F.S., and to expressly state, consistent with rule 14-51.063, Florida Administrative Code, 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 rural areas of critical economic concern provides greater opportunity for business participation in the program. Participants will be subject to permit fees established by local governments.

C. Government Sector Impact:

FDOT states that section 1 of the bill "formalizes 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." Additionally, the section is

permissive; it provides that FDOT *may* pay the utility's costs. As such, it does not appear that this section will require FDOT to incur any additional expenses.

The bill avoids a potential annual penalty of 10% of federal highway funds by authorizing 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.

FDOT states that local governments may experience a positive but indeterminate fiscal impact from issuing potentially higher numbers of sign permits.

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.