HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 345 Transportation
SPONSOR(S): Economic Affairs Committee, Beshears
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 218

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	11 Y, 0 N	Johnson	Miller
2) Transportation & Economic Development Appropriations Subcommittee	11 Y, 0 N	Davis	Davis
3) Economic Affairs Committee	18 Y, 0 N, As CS	Johnson	Creamer

SUMMARY ANALYSIS

The bill revises provisions related to transportation. Specifically, the bill:

- Provides that commercial motor vehicles or trailers designed to transport unprocessed logs or pulpwood may display an amber light.
- Provides an additional exemption for payment to relocate certain municipally or county-owned utilities located in road and rail corridors under specified conditions.
- Authorizes the Department of Transportation (DOT) to factor revenues from leases for wireless communication facilities.
- 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 season, 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 affect the allocation of federal funds to the Department of Transportation (DOT).
- Directs DOT to notify a sign owner that a sign must be removed if federal funds are adversely impacted.
- Authorizes DOT to remove a sign and assess costs to the sign owner under certain circumstances.
- Clarifies provisions relating to the tourist-oriented directional sign program.

The bill has an indeterminate fiscal impact on both state and local government revenues and expenditures. (See Fiscal Analysis section for further detail.)

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Amber Lights (Section 1)

Current Situation
Section 316.228(2), F.S., provides that any commercial motor vehicle or trailer transporting a load of unprocessed logs or pulpwood, when the load extends more than four feet beyond the rear the vehicle, it must have securely fixed as close as practical to the end of any such projection one amber strobe-type lamp equipped with a multidirectional type lens so mounted as to be visible from the rear and both sides of the projecting load. The lamp must be operating at any time of the day or night when the vehicle is operated on any highway or parked on the shoulder or immediately adjacent to the traveled portion of any public roadway. The projecting load must also be marked with a red flag as described in s. 316.228(1), F.S.

Section 316.2397(4), F.S., provides that road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier vehicles may show or display amber lights when in operation or a hazard exists. However, no provision exists regarding vehicles designed to transport unprocessed logs or pulpwood.

Proposed Changes
The bill amends s. 316.2397(4), F.S., providing that a commercial motor vehicle or trailer designed to transport unprocessed logs or pulpwood may show or display an amber light affixed to the rearmost point of the vehicle or trailer.

Utility Relocation (Section 2)

Current Situation
Section 337.104, F.S., addresses the use of road and rail corridor right-of-way by utilities,[1] authorizing the Department of Transportation (DOT) and local government entities[2] to prescribe and enforce reasonable regulations relating to the placing and maintaining of any utility lines along, across, or on any road or publicly-owned rail corridors under their respective jurisdictions.

Section 337.403, F.S., provides that, other than the exceptions below, if an authority determines that a utility upon, under, over, or along a public road or publicly-owned rail corridor, is interfering with the safe continuous use, maintenance, improvement, extension or expansion of the road or rail corridor, the utility, upon 30 days written notice, is required to begin work to remove or relocate the utility at its own expense. The exceptions are:

- When the project is on the federal aid interstate system and federal funding is identified for at least 90 percent of the cost, DOT pays for the removal or relocation with federal funds.
- When utility work is performed as part of a transportation facility construction contract, DOT 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 of the amount awarded for the utility work in the construction contract.
- When utility work is performed in advance of a construction contract, DOT may participate in the cost of clearing and grubbing necessary for relocation.
- If the utility being removed or relocated was initially installed to serve an authority 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.

[1] "Utility" means any electric transmission, telephone, telegraph, or other communications service 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."

- If, in an agreement between the utility and an authority entered into after July 1, 2009, the utility convey, 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 the authority bears the cost of the utility work, 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, DOT bears the cost of the necessary utility work.
- An authority may bear the cost 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.

Under DOT procedure 710-030-005, *Utility Work for Local Government Utilities,*[3] when a government entity cannot afford utility work necessitated by a DOT project, DOT will pay for the work and the government entity will sign a promissory note to reimburse DOT. Under these circumstances, if the entity does not reimburse DOT within 10 years, DOT can take steps to write off the loss as opposed to continuing the collection efforts.

Proposed Changes

The bill creates s. 337.403(h), F.S., providing that if a municipally owned or county-owned utility is located in a rural area of critical economic concern (RACEC)[4] and DOT 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 a DOT project on the State Highway System, DOT may pay, in whole or in part, the cost of such utility work performed by DOT or its contractor.

According to DOT, this formalizes its current procedure of promissory note forgiveness for a local utility that meets certain criteria and demonstrates an inability to pay for utility work necessitated by a DOT project. DOT retains discretion to pay for work if the utility meets the prerequisites established in the bill.

According to DOT, it currently "has approximately $12 million in promissory notes for utility relocations that under the legislation would be eligible for waivers."[5]

Leasing of Wireless Communications Facilities (Section 3)

Current Situation

Section 365.172(12)(f), F.S., authorizes the leasing of state property for wireless communication facilities. Throughout the state, many wireless communications facilities are located on DOT right-of-way. DOT currently does not have statutory authority to allow for the factoring of revenues from leases for wireless communications facilities.

Proposed Changes

[3] http://www2.dot.state.fl.us/proceduraldocuments/procedures/proceduresbynumber.asp?index=7 (Last visited November 6, 2013.)
[4] Section 288.0656(2)(d) defines "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."
[5] Department of Transportation bill analysis of SB 218. Copy on file with House Transportation and Highway Safety Subcommittee.

The bill creates ss. 339.041, F.S., relating to the factoring of revenues from leases for wireless communications facilities.

The bill provides Legislative findings that efforts to increase funding for capital expenditures for the transportation system are necessary for the protection of the public safety and general welfare for the preservation of transportation facilities. It is the intent of the Legislature to:

- Create a mechanism for factoring future revenues received by DOT from leases for wireless communication facilities on DOT property on a nonrecourse basis;
- Fund fixed capital expenditures for the statewide transportation system from proceeds generated through this mechanism;
- Maximize revenues from factoring by ensuring that such revenues are exempt from income taxation under federal law in order to increase funds available for capital expenditure.

For purposes of factoring revenues, DOT property includes:

- Real property located within DOT's limited access rights-of-way,
- Property located outside the current operating right-of-way limits which is not needed to support current transportation facilities,
- Other property owned by the Board of Trustees of the Internal Improvement Trust Fund and leased by DOT,
- Space on DOT telecommunications facilities, and
- Space on DOT structures.

The bill authorizes DOT to solicit investors willing to enter into agreements to purchase the revenue stream from one or more existing DOT leases for wireless communication facilities on property owned or controlled by DOT through the issuance of an invitation to negotiate. These agreements are to be structured as tax-exempt financings for federal tax purposes in order to result in the largest possible payout.

DOT may not pledge the credit, the general revenues, or the taxing power of the state or of any political subdivision of the state. DOT and investor obligations under the agreement do not constitute a general obligation of the state or a pledge of the full faith and credit or taxing power of the state. The agreement is payable from and secured solely by payments received from DOT leases for wireless communication facilities on property owned or controlled by DOT, and neither the state nor any of its agencies has any liability beyond such payment.

DOT may make any covenant or representation necessary or desirable in connection with the agreement, including a commitment by DOT to take whatever actions are necessary on behalf of investors to enforce DOT's rights to payments on property leased for wireless communication facilities. However, DOT may not guarantee that revenues actually received in a future year will be those anticipated in its leases for wireless communication facilities. DOT may agree to use its best efforts to ensure that anticipated future-year revenues are protected. Any risk that actual revenues received from DOT leases for wireless communications facilities will be lower than anticipated shall be borne exclusively by investors.

Subject to annual appropriation, the investors shall collect the lease payments on a schedule and in a manner established in the agreements entered into between DOT and the investors. The agreements may provide for lease payments to be made directly to investors by lessees if the lease agreements entered into by DOT and lessees pursuant to s. 365.172(12)(f), F.S., allow direct payment.

Proceeds received by DOT from leases for wireless communications facilities shall be deposited into the State Transportation Trust Fund[6] and used for fixed capital expenditures for the statewide transportation system.

[6] The State Transportation Trust Fund is created under s. 206.46, F.S.

Outdoor Advertising (Sections 4 and 5)

Current Situation

Control of Outdoor Advertising

Since the passage of the Highway Beautification Act (HBA) in 1965,[7] FHWA has established controls for outdoor advertising along Federal-Aid Primary, Interstate and National Highway System (NHS) roads. The HBA allows the location of billboards in commercial and industrial areas, mandates a state compliance program, requires the development of state standards, promotes the expeditious removal of illegal signs, and requires just compensation for takings.

The primary features of the Highway Beautification Act include:

- Billboards are allowed, by statute, in commercial and industrial areas consistent with size, lighting and spacing provisions as agreed to by the state and federal governments. Billboard controls apply to all Interstates, Federal-Aid Primaries, and other highways that are part of the National Highway System.
- States have the discretion to remove legal nonconforming signs[8] along highways. However, the payment of just (monetary) compensation is required for the removal of any lawfully erected billboard along the Federal-Aid Primary, Interstate and National Highway System roads.
- States and localities may enact stricter laws than stipulated in the HBA.
- No new signs can be erected along the scenic portions of state designated scenic byways of the Interstate and Federal-Aid Primary highways, but billboards are allowed in segmented areas deemed un-scenic on those routes.

The HBA mandates state compliance and the development of standards for certain signs as well as the removal of nonconforming signs. While the states are not directly forced to control signs, failure to impose the required controls can result in a substantial penalty. The penalty for non-compliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.[9]

Under the provisions of a 1972 agreement[10] between the State of Florida and the U.S. Department of Transportation (USDOT) incorporating the HBA's required controls, DOT requires commercial signs to meet certain requirements when they are within 660 feet of Interstate and Federal-Aid Primary highways in urban areas, or visible at any distance from the same roadways when outside of urban areas. The agreement embodies the federally-required "effective control of the erection and maintenance of outdoor advertising signs, displays, and devices." Absent this effective control, the non-compliance penalty of 10 percent of federal highway funds may be imposed. Florida has never been penalized for loss of effective control of outdoor advertising signs.

Florida's outdoor advertising laws are found in ch. 479, F.S., and are based on federal law 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 consists 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."

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[7] 23 U.S.C. 131

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

[9] 23 U.S.C. 131(b)

[10] A copy of the 1972 agreement is available at http://www.dot.state.fl.us/rightofway/Documents.shtm (Last visited November 26, 2013).

Section 479.11(5), F.S., prohibits on-premises signs that display "intermittent lights not embodied in the sign, or 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 the impair the vision of motorists or otherwise distract motorists so as to interfere with the motorists' ability to safely operate the vehicle."

DOT currently has no adopted rule that addresses lighting restrictions for on-premise signs and relies on the quoted statute.

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 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.

The latter provision does not apply to charter counties and may not be implemented if the federal government notifies DOT that implementation will adversely affect the allocation of federal funds to DOT.

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.

The latter section of law 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.[11] "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 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. TOD signs installed on the State Highway System must comply with the requirements of the Manual on Uniform Traffic Control Devices (MUTCD) and rules established by DOT.

TOD signs may be installed on the State Highway System only after being permitted by DOT 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] A list of rural areas of critical economic concern is available at: http://www.eflorida.com/FloridasFuture.aspx?id=2108 (Last visited November 25, 2013).

Proposed Changes

The bill clarifies the already existing permit exemption of signs for rural business directional signs to make the provision applicable to signs located outside an incorporated area. The bill also repeals the language that provides that the rural small business sign permit exemption does not apply in charter counties.

The bill provides the following new exemptions with the caveat that they may not be implemented or continued if the Federal Government notifies DOT that the implementation or continuation will adversely affect the allocation of federal funds to DOT:

- Signs placed by a local tourist-oriented business located within a RACEC which signs meet the following criteria:
  - Not more than eight square feet in size or more than four feet in height;
  - Located only in rural areas on a facility that does not meet the definition of a limited access facility as defined by DOT rule;
  - Located within two miles of the business location and not less than 500 feet apart;
  - Located only in two directions leading to the business;
  - Not located within the road right-of-way.

  Businesses placing such signs must be a minimum of four miles from any other business utilizing this exemption and such business may not participate in any other DOT directional signage program.
- Signs not in excess of 32 square feet placed temporarily during harvest season of a farm operation for a period of no more than four months at a road junction with the State Highway System denoting only the distance or direction of the farm operation.
- Acknowledgement signs erected upon publicly-funded school premises relating to a specific public school club, team or event placed no closer than 1,000 feet from another acknowledgement sign on the same side of the roadway. All sponsors on an acknowledgement sign may constitute no more than 100 square feet of the sign.[12]
- Displays erected upon a sports facility that displays content directly related to the facility's activities or where a presence of the products or services offered on the property exists. Displays are to be mounted flush or flat to the surface of the sports facility and rely upon the building façade for structural support.[13]

The bill provides that if certain exemptions are not implemented or continued due to Federal Government notification that the allocation of federal funds to DOT will be adversely affected, DOT shall provide notice to the sign owner that the sign must be removed within 30 days. If the sign is not removed within 30 days, DOT is authorized to remove the sign and all costs associated with sign removal are to be assessed against and collected from the sign owner.

Effective Date (Section 6)

The bill has an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1 Amends s. 316.2397, F.S., relating to certain lights prohibited; exceptions.

Section 2 Amends s. 337.403, F.S., relating to interference cause by relocation of utility; expenses.

Section 3 Creates s. 339.041, F.S., relating to factoring of revenues from leases for wireless communication facilities.

Section 4 Amends s. 479.16, F.S., relating to signs for which permits are not required.

[12] The bill defines "acknowledgement sign" as signs that are intended to inform the traveling public that a public school club, team, or event has been sponsored by a person, firm, or entity.

[13] The bill defines, "sports facility" as 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 or more.

Section 5 Amends s. 479.262, F.S., relating to the tourist oriented directional sign program.

Section 6 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DOT may see some additional up-front revenues from agreements with investors willing to purchase the revenue stream from one or more existing DOT leases of wireless communication facilities. To the extent that such agreements are executed, there would be a reduction in future revenues to DOT from the lease payments purchased by the investors. The amount of these revenue impacts would be dependent of the terms of various agreements and cannot be determined at this time.

2. Expenditures:

DOT may incur some additional expenditures for paying for certain utility work on a DOT project on the State Highway System for municipally-owned and county-owned utilities in RACECs, but the bill does not require DOT's payment for such utility work. The fiscal impact of any future expenditures, should the case arise, is indeterminate at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill expands the tourist-oriented directional sign program beyond RACEC communities provided the locals adhere to certain eligibility requirements. Current statute permits local governments to establish permit fees for TOD signs sufficient to offset the associated costs of sign construction, maintenance and program operations. To the extent additional communities participate in the TOD program, local governments could realize increased revenues from permit fees, but the amount of this revenue is indeterminate positive.

The bill also expands the list of exemptions from permitting requirements for certain signs. The placement of any additional signs falling within this expanded list equates to a decrease in revenues a local government would otherwise have obtained from these permits. This provision will have a negative indeterminate impact.

2. Expenditures:

Municipally and county-owned utilities in RACECs may see a reduction in expenditures due to DOT paying for utility work in certain circumstances.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

In the event DOT bears the cost of utility work for a municipally or county-owned utility removal or relocation and such actions avoid delays of a project on the State Highway System, a positive but indeterminate fiscal impact to business and private individuals may be realized.

The bill expands the list of exemptions from permitting requirements for certain signs. To the extent a sign owner had been paying for permits for these signs in the past, this change will have a positive impact on the private sector. Such signs are also required to be removed at the owner's expense should DOT find the sign must be removed due to federal notification. The net effect of these provisions on a sign owner is indeterminate.

Revisions of the TOD sign program eliminating the restriction of the program to signs at intersections in RACECs provides greater opportunity for business participation in the program. Participants will be subject to permit fees established by local governments.

D. FISCAL COMMENTS:

Failure of the state to maintain control of its outdoor advertising could result in a 10 percent reduction in federal highway funds, which correlates to approximately $160 million annually. To prevent noncompliance with federal law, however, the bill provides that the outdoor advertising exemptions may not be implemented or continued if the Federal Government notifies DOT that the implementation or continuation will adversely affect the allocation of federal funds to DOT. In such cases, DOT shall provide notice to the sign owner that the sign must be removed, and is further authorized to remove the sign and assess removal costs to the owner should it become necessary.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill eliminates unnecessary rulemaking authority related to lighting restrictions for certain outdoor advertising signs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2014, the Economic Affairs Committee adopted two amendments, creating a committee substitute. These amendments:

- Provide that a commercial motor vehicle or trailer designed to transport unprocessed logs or pulpwood may display an amber light on the rearmost point of the vehicle or trailer.
- Create a process for factoring revenues from leases of wireless communications facilities.

This analysis is written to the committee substitute.