

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 Transportation

BILL: SB 1670

INTRODUCER: Senator Gainer

SUBJECT: Outdoor Advertising

DATE: March 29, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	Pre-meeting
2.			MS	
3.			AP	

I. Summary:

SB 1670 addresses matters relating to outdoor advertising. Specifically, the bill:

- Directs the Florida Division of Emergency (FDEM) to identify and maintain an inventory of available digital outdoor advertising structures capable of providing messaging to the public during a declared emergency.
- Directs the Florida Department of Transportation (FDOT) to include details for each outdoor advertising permit issued in a publicly accessible electronic database, which must include specified information.
- Removes all statutory references to permanent metal permit tags and related provisions.

The FDEM will likely incur unknown expenses relating to the required inventory of available digital outdoor advertising structures. The FDOT will likely incur significant expenses associated with development of the required database and an insignificant reduction in revenue relating to removal of the fee for replacement permit tags.

The bill takes effect July 1, 2021.

II. Present Situation:

Outdoor Advertising

Since the passage of the Highway Beautification Act (HBA) in 1965, the Federal Highway Administration (FHWA) has established controls for outdoor advertising along Federal-aid Primary, Interstate, and National Highway System 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 signs¹ 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 noncompliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.²

Under the provisions of a 1972 agreement between the State of Florida and the U.S. Department of Transportation (USDOT)³ 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. 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.⁴ That chapter expressly provides that its provisions do not supersede the rights and powers of counties and municipalities to enact outdoor advertising or sign ordinances.⁵

Permitting and Metal Tags

A person is prohibited from engaging in the business of outdoor advertising in this state without first obtaining a license from the FDOT.⁶ Except as otherwise provided,⁷ a person may not erect, operate, use, or maintain, or cause to be erected, operated, used, or maintained, any sign on the

¹ 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(16), F.S.

² 23 U.S.C. § 131(b).

³ For a copy of the agreement, see ScenicAmerica, available at [Florida Agreement \(scenic.org\)](https://www.scenic.org) (last visited March 25, 2021).

⁴ Some local governments have their own ordinances regulating outdoor advertising in their communities. See FDOT, *Outdoor Advertising*, available at [Outdoor Advertising \(fdot.gov\)](https://www.fdot.gov) (last visited March 26, 2021). The current database may be accessed using the same link.

⁵ Section 479.155, F.S.

⁶ Section 479.04, F.S. However, 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.

⁷ See, e.g., s. 479.16, F.S., for a list of signs for which permits are not required.

State Highway System outside an urban area,⁸ 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).⁹

Once obtaining a license to engage in the business of outdoor advertising and having been issued a permit by the FDOT for an outdoor advertising sign, the FDOT is required to furnish to a permittee a serially numbered, permanent metal permit tag which the permittee is responsible for maintaining on each permitted sign facing at all times. The tag must be securely attached to the upper 50 percent of the sign structure in such a manner as to be plainly visible from the main traveled way.¹⁰ The tag must be properly and permanently displayed at the permitted site within 30 days after the date of permit issuance and, if the permittee fails to erect a completed sign on the permitted site within 270 days after the date of permit issuance, the permit becomes void. The FDOT is prohibited from issuing a new permit to that permittee for the same locations for 270 days after the date on which the permit becomes void.¹¹ Current law also provides for the FDOT issuance of a replacement tag in the event a permit tag is lost, stolen, or destroyed.¹² The fee for a replacement tag, set by FDOT rule, is \$12 per tag.¹³

At least 105 days before a license or a sign permit expires, the FDOT must send to each permittee a notice of fees due for all licenses and permits issued to a licensee/permittee before the date of the notice, and the permittee must advise the FDOT of any additions, deletions, or errors contained in the notice no later than 45 days before the expiration date.¹⁴ Permits tags that are not renewed must be returned to the FDOT for cancellation by the expiration date. Permits that are not renewed or are canceled must be certified in writing at canceled or not renewed by the permittee, and permit tags for such permits must be returned to the FDOT or accounted for in writing by the permittee.¹⁵

⁸ "Urban area" means a geographic region comprising as a minimum the area inside the United States Bureau of the Census boundary of an urban place with a population of 5,000 or more persons, expanded to include adjacent developed areas as provided for by Federal Highway Administration regulations. Section 334.03(31), F.S.

⁹ The annual permit fee for each sign facing is \$71. See Rule 14-10.0043, F.A.C. A "sign facing" includes all sign faces and automatic changeable faces displayed at the same location and facing the same direction. Section 479.01(22), F.S. An "automatic changeable facing" means a facing that is capable of delivering two or more advertising messages through an automated or remotely controlled process. Section 479.01(2), F.S.

¹⁰ "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. The term does not include such facilities as frontage roads, turning roadways which specifically include on-ramps or off-ramps to the interstate highway system, or parking areas. Section 479.01(12), F.S.

¹¹ Section 479.07(5), F.S.

¹² Section 479.07(5), F.S.

¹³ Rule 14-10.004(14), F.A.C.

¹⁴ Section 479.07(8), F.S.

¹⁵ Id.

“Digital” Outdoor Advertising Signs

Neither current law nor the FDOT’s rules expressly define “digital” outdoor advertising signs but do address “changeable messages” on outdoor advertising signs.¹⁶ Signs may have an automatic changeable facing under the following conditions:

- The static display time for each message is at least six seconds;
- The time to completely change from one message to the next is a maximum of two seconds or, if messages are displayed digitally, the message must change instantaneously;
- The change of message occurs simultaneously for the entire sign face; and,
- All signs with changeable messages shall contain a default design that will ensure no flashing, intermittent message, or any other apparent movement is displayed should a malfunction occur.¹⁷

DEM Emergency Management Powers

Chapter 252, F.S., confers certain emergency powers upon the Governor, the DEM, and the governing bodies of each political subdivision of the state when an emergency or disaster occurs in Florida.¹⁸ The DEM, which is responsible for maintaining a comprehensive statewide program of emergency management,¹⁹ is charged with a broad range of responsibilities, including, but not limited to, preparation of a state comprehensive emergency management plan.²⁰

In carrying out its responsibilities under the State Emergency Management Act (the Act),²¹ one of the roles of the DEM is to “plan and program for emergency management, ascertain the requirements of the state and its political subdivisions for equipment and supplies of all kinds in the event of an emergency; plan for and either procure supplies, medicines, materials, and equipment or enter into memoranda of agreement or open purchase orders that will ensure their availability; and use and employ from time to time any of the property, services, and resources within the state in accordance with [the Act].”²²

In furtherance of that duty, among others, current law requires the DEM to complete an inventory and maintain an inventory list of generators, including portable generators, owned by state and local governments which are capable of operating during a declared emergency.²³ The DEM may also maintain a list of private entities, along with appropriate contact information, which offer generators for sale or lease. The list of private entities must be available to the public for inspection in written and electronic formats.²⁴

¹⁶ Rule 14-10.004(10), F.A.C.

¹⁷ Id.

¹⁸ Section 252.32(1)(b), F.S.

¹⁹ Section 252.35, F.S.

²⁰ Section 252.35(2), F.S.

²¹ Sections 252.31-252.60, F.S.

²² Section 252.35(2)(g), F.S.

²³ Section 252.35(2)(s) and (t), F.S.

²⁴ Section 252.35(2)(t), F.S.

Current law reserves to the Governor the power to commandeer or utilize any private property if she or he finds this necessary to cope with the emergency,²⁵ subject to any applicable requirements for compensation.²⁶

III. Effect of Proposed Changes:

Section 1 amends s. 252.35, F.S., relating to the DEM's emergency management powers, directing the DEM to identify and maintain an inventory of available digital outdoor advertising structures capable of providing messaging to the public during a declared emergency.

Section 2 amends s. 479.07, F.S., relating to outdoor advertising sign permits, requiring the FDOT to include permit details for each permit issued in a publicly accessible electronic database. The details in the database must include, but are not limited to the:

- Name and contact information of the permit operator,
- Structure identification number of numbers,
- Latitude and longitude of the permitted sign,
- Compass bearing, and
- Most recent date the FDOT visually inspected the permitted sign.

Additionally, the database must include images of the permitted sign once constructed.

The bill deletes all references to permanent metal permit tags, along with related provisions.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Section 18(a) of the Florida Constitution provides that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds, unless certain conditions are met. Section 18(d) exempts from this provision laws having insignificant fiscal impact. To the extent that local governments are asked to provide to the DEM the information required for the digital outdoor advertising structures inventory, municipalities and counties may incur administrative expenses. The extent of any fiscal impact is indeterminate, but likely insignificant. The bill may therefore be exempt from the cited Constitutional provision.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁵ Section 252.36(5)(d), F.S.

²⁶ As provided in s. 252.43, F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The FDOT will no longer collect the \$12 fee for replacement tags. However, the FDOT advises the related loss of revenue is insignificant.²⁷

B. Private Sector Impact:

Owners of the specified outdoor advertising signs will no longer be subject to the \$12 fee for replacement tags.

C. Government Sector Impact:

The FDEM will likely incur unknown expenses relating to the required inventory of available digital outdoor advertising structures.

The FDOT will likely incur significant expenses associated with development of the required database and an insignificant reduction in revenue relating to removal of the fee for replacement permit tags.

The extent of any impact on local governments is unknown but likely insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Florida law does not currently define the term “digital outdoor advertising structures.” Consideration of a definition consistent with current definitions may be in order.

Some local governments have their own ordinances regulating outdoor advertising in their communities. However, the number of any locally permitted sign structures with “digital” or automatic “changeable message” facings is unknown. Identification of signs at the local level for purposes of the required inventory may be difficult and complicated by potential differences in state and local definitions.

²⁷ Telephone conversation with FDOT staff, March 29, 2021.

Whether the FDEM has the information necessary to complete the required inventory of digital outdoor advertising structures is unclear. The FDOT may be a better source of information, as the FDOT is the agency that issues outdoor advertising permits on the State Highway System, but not at the local level. However, the Florida Outdoor Advertising Association indicates it can provide a list to the FDEM that would include a majority of sign structures owned by its members.²⁸ Whether all outdoor advertising permit holders are members is unknown.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 252.35 and 479.07.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

²⁸ Telephone conversation with FOAA representative March 26, 2021.