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DATE: March 1, 2002

HOUSE OF REPRESENTATIVES
COUNCIL FOR READY INFRASTRUCTURE
ANALYSIS

BILL #: CS/HB 715

RELATING TO: Transportation

SPONSOR(S): Council for Ready Infrastructure and Representative(s) Bense & others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) TRANSPORTATION YEAS 11 NAYS 0
 - (2) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS YEAS 17 NAYS 0
 - (3) COUNCIL FOR READY INFRASTRUCTURE YEAS 16 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

The bill addresses several transportation-related issues.

The bill:

- Creates s. 70.20, F.S., to create an arbitration process for local governments and billboard owners who cannot reach agreement on just compensation for sign removal.
- Amends ss. 163.3180 and 339.135, F.S., to change the concurrency time frames from 3 years to 5 years for projects affecting the Florida Intrastate Highway System (FIHS).
- Amends s. 344.044(5), F.S., to include “scenic roads” among the topics for which the Department of Transportation (DOT) can purchase promotional materials, and to delegate storm water permitting to a water management district or other entity, provided the permit is based on requirements, as determined by the agency, that protect transportation facilities being affected by the runoff.
- Amends s. 479.15, F.S., to provide a definition for the term “federal-aid primary highway system.”
- Creates s. 479.25, F.S., to specify governmental entities may enter into agreements with billboard owners allowing a lawfully erected billboard to be raised when a sound barrier, visibility screen, or other highway improvement blocks the billboard from being seen.

The bill has no apparent fiscal impact on state agencies.

It takes effect upon becoming a law.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Local government regulation of outdoor advertising signs

Chapter 479, F.S., governs billboards and other forms of outdoor advertising. Advertising companies and other owners of outdoor signs must be licensed by the Department of Transportation (DOT) and obtain permits regulating height, size and other characteristics of the billboards. The majority of the provisions relate to DOT's duties and authority as they relate to permitting, removing, and otherwise regulating billboards along the interstate highway system and the federal-aid primary highway system, which includes state roads. Because federal dollars helped build or maintain these roads, DOT must adhere to federal guidelines, as first expressed in the Highway Beautification Act of 1965.

Another provision in chapter 479, F.S., addresses ways to accommodate billboard owners whose signs are affected by highway beautification projects, such as planting of vegetation. For example, vegetation may be removed, cut, or trimmed to ensure billboard visibility for a legal billboard, only after obtaining a permit from DOT. However, the chapter does not address the issue of other types of obstructions, such as concrete sound barriers along highways and roads intended to reduce the noise level in nearby neighborhoods.

Section 479.01(7), F.S., also defines the term "federal-aid primary highway system" as the "existing, unbuilt, or unopened system of highways or portions thereof, which include the National Highway System, designated as the federal-aid primary highway system by the department." This definition applies to every section in chapter 479, F.S.

A recurring issue is what to do about billboards that were lawfully erected, but are now classified as "nonconforming," because the zoning, land-use, lighting, and similar regulations have changed since they were permitted.

If DOT orders the removal of a legally erected, but now nonconforming, sign along the interstate or a federal-aid primary highway, it must pay the billboard owner just compensation. But Florida's local governments are not required to pay just compensation to billboard owners when they remove, or force the removal of legal, but nonconforming signs along local roads. Currently, 44 Florida counties or municipalities have ordinances that specify amortization schedules and/or removal provisions for nonconforming signs, based on information provided by the Florida Outdoor Advertising Association. An "amortization schedule" is a set period of time during which it is assumed the value of a billboard depreciates. A typical period for amortization is 5 to 7 years. For example, a local government would not owe compensation for the removal of a billboard that has been in use past the amortization period.

The Florida Supreme Court has not addressed the issue of amortization of legally erected, but nonconforming, outdoor signs that must be removed. However, the Fifth District Court of Appeals has ruled that local governments are not constitutionally required to compensate billboard owners, and may amortize nonconforming signs, as long as the amortization period is reasonably long enough to allow the sign owner to recoup his investment. [See *Lamar Advertising Associates, Ltd. V. Daytona Beach*, 450 So.2d 1145, 1150 (Fla. 5th DCA 1984)]

Transportation Concurrency

Florida has one of the most detailed growth-management laws in the nation. Among its requirements is "concurrency." Concurrency requires that adequate infrastructure, such as schools, roads, and sanitary sewer systems, must be made available to serve the growth that comes with development. Section 163.3180, F.S., requires transportation facilities that serve new development must be in place or under actual construction no later than 3 years after the local government has issued a certificate of completion for the development.

In addition, s. 339.135, F.S., provides guidelines for the development of DOT's 5-Year Work Program. This document is a statewide project specific list of projects and project phases planned for the next 5 years. Current law provides that the first 3 years of the work program are a commitment to local governments from the state to undertake transportation projects, which allow local governments to plan for future development.

DOT's Wide-Ranging Responsibilities

The powers and duties of DOT are listed in s. 334.044, F.S. Among its varied responsibilities is the ability to purchase, lease, or otherwise acquire promotional or educational materials on traffic and train safety awareness, commercial motor vehicle safety, and alternatives to single-occupant vehicle travel. DOT is not authorized to purchase materials to promote Florida's scenic roads.

The section further authorizes DOT to regulate and prescribe conditions for the transfer of stormwater to state right-of-way because of development of, or other manmade changes to, adjacent properties. Pursuant to s. 334.044(15), F.S., DOT is authorized to adopt rules for issuing stormwater management permits. However, the section also directs DOT to accept stormwater permits from the water management districts, the Department of Environmental Protection, or local governments, provided those permits are based on requirements equal to, or even more stringent than, DOT's requirements.

According to DOT, situations have arisen in recent years where a water management district's permit criteria were not equal to or more stringent than DOT's criteria, yet still would have accomplished the goal of protecting the state's transportation infrastructure.

C. EFFECT OF PROPOSED CHANGES:

The bill proposes to:

- Creates s. 70.20, F.S., to create an arbitration process for local governments and billboard owners who cannot reach agreement on just compensation for sign removal.
- Amend ss.163.3180 and 339.135, F.S., to change the concurrency time frames for certain transportation projects. Roads, bridges and other transportation facilities designated as part of the Florida Intrastate Highway System that are needed to serve new development shall be in place, or under actual construction, no more than 5 years after the relevant local government has issued a certificate of completion to a development. For all other transportation projects, the deadline remains at 3 years.

- Amend s. 344.044(5), F.S., to include “scenic roads” among the topics for which DOT can purchase promotional materials.
- Amend s. 344.044(15), F.S., to allow DOT to delegate storm water permitting to a water management district or other entity, provided the permit is based on requirements, as determined by DOT, that ensure the safety and integrity of transportation facilities being affected by the runoff.
- Amend s. 479.15(2), F.S., to define “federal aid primary highway system” for the purposes of clarifying when local governments have to pay just compensation for removing, or causing the removal of, lawfully erected billboards. For the purposes of this subsection, the term is defined as the “system in existence on June 1, 1991, and any highway which was not on such system but which is, or hereafter becomes, a part of the National Highway System.”
- Creates s. 479.25, F.S., to specify that governmental entities may enter into agreements with sign owners allowing a lawfully erected billboard to be raised when a sound barrier, visibility screen, or other highway improvement blocks the billboard from being seen. If the now-obstructed billboard is located along a “federal aid primary highway system” (also defined here as the “system in existence on June 1, 1991, and any highway which was not on such system but which is, or hereafter becomes, a part of the National Highway System”), the billboard may be raised to achieve only the same level of visibility it had prior to the obstruction.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates s. 70.20, F.S., to establish a process by which local governments and sign owners are encouraged to enter into relocation and reconstruction agreements that balance the public policy interests of both groups. “Relocation and reconstruction agreement” is defined as a “consensual, contractual agreement between a sign owner and municipality, county, or other governmental entity for either the reconstruction of an existing sign or removal of a sign and the construction of a new sign to substitute for the sign removed.”

The new section of law specifies that no local governmental entity may remove, cause to be removed, or alter any lawfully erected sign along any portion of the interstate, federal-aid primary or other highway system, or any other road, without first paying just compensation as determined by the agreement or through eminent domain proceedings.

Local governmental entities must give sign owners notice of a public project or goal that would impact such signs. Both parties then have 30 days to meet, negotiate, and try to execute a relocation and reconstruction agreement. If that fails, within 120 days either party may request mandatory nonbonding arbitration to try and resolve their differences. Each party will select one member of the arbitration panel, and those two shall select a third. The parties will share the costs of arbitration if an agreement is reached; if not, the party that rejects the arbitration has to bear the full costs. If no agreement is reached and the local governmental entity decides to move forward with its project, it must pay the sign owner just compensation.

The new s. 70.20, F.S., also establishes other conditions whereby just compensation must be paid to a sign owner whose sign is relocated, removed, or altered. It is applicable only to lawfully erected, off-premise signs.

Excluded from the provisions of s. 70.20, F.S., are counties and cities that have existing agreements with sign companies. Also excluded are local ordinances that sign owners have, by written agreement, waived all rights to challenge; a situation where local governments and sign companies have been engaged in judicial proceedings on or before May 1, 1997; and a local

ordinance that has created "view corridors" to effectuate a consensual agreement between a local government and at least two sign owners. Based on the above exclusions, Jacksonville, Lakeland, Tallahassee, Largo, Tampa, Orlando, Pompano Beach, Hillsborough County, Martin County, and Clearwater (partially) are exempt from the provisions of this act.

In addition, the provisions of this section do not apply until July 1, 2002, to any dispute between a local government and sign owners, where the amortization period has expired and judicial proceedings are pending. This covers Pinellas County, parts of Clearwater, and Fort Walton Beach.

Also, DOT is exempt from the provisions of this section because it follows federal requirements.

Sections 2 & 4: Amends ss. 163.3180(2) and 339.135, F.S., to provide that transportation improvements to the Florida Intrastate Highway System required in order to meet local concurrency requirements must at least be under construction within 5 years after issuance by the local government of a certificate of occupancy or its equivalent.

Section 3: Amends s. 334.044, F.S., to allow DOT to promote scenic highways. Also allows DOT to delegate its relevant permitting functions to an environmental agency, as long as the permit issuance is based on requirements that DOT determines are acceptable.

Section 5: Amends s. 479.15, F.S., to define "federal-aid primary highway system."

Section 6. Creates s. 479.25, F.S., to specify that nothing in chapter 479, F.S., shall prevent a governmental entity from entering into an agreement allowing height adjustments to billboards affected by the erection of noise barriers, visibility screens, or other highway improvements, except that along the federal-aid primary highway system, such billboards shall be elevated only to achieve the same degree of visibility that existed prior to erection of the barrier.

Section 7: Specifies this act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is likely to have positive economic impacts on the private sector.

Pursuant to Sections 2 & 4 of the bill, developments that impact the Florida Intrastate Highway System (FIHS) would have two additional years to satisfy concurrency requirements.

Pursuant to Sections 1 & 6 of the bill, billboard owners will now have an arbitration process in order to seek just compensation for the removal of signs by local governments. Also, billboard owners whose signs are being blocked by noise-mitigation barriers, vision screens, or other transportation-related obstructions along local roads would have the opportunity to work out compromises with the appropriate local governments to raise their signs above the obstructions. Thus, these billboards would retain their advertising value.

D. FISCAL COMMENTS:

None.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to an analysis of the bill, because the bill does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue-raising authority of counties or municipalities, in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the state tax revenues shared with counties or municipalities, in the aggregate.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The bill raises no constitutional issues.

B. RULE-MAKING AUTHORITY:

DOT has adequate rulemaking authority to implement the provisions of the bill.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its February 6, 2002, meeting, the House Transportation Committee adopted a strike-everything amendment to HB 715. The amendment conformed dates in the bill to June 1, 1991, and made some technical or conforming changes to the bill so that it is nearly identical to its Senate companion. Besides

the date change, done at the request of the DOT, there were no substantive changes in the strike-everything amendment.

On February 26, 2002, the Council for Ready Infrastructure adopted one amendment that creates s. 70.20, F.S., to create an arbitration process for local governments and billboard owners who cannot reach agreement on just compensation for sign removal. The bill was subsequently made a Council substitute.

VI. SIGNATURES:

COMMITTEE ON TRANSPORTATION :

Prepared by:

Joyce Pugh

Staff Director:

Phillip B. Miller

AS REVISED BY THE COMMITTEE ON TRANSPORTATION & ECONOMIC DEVELOPMENT
COMMITTEE:

Prepared by:

Eliza Hawkins

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Eliza Hawkins

AS FURTHER REVISED BY THE COUNCIL FOR READY INFRASTRUCTURE:

Prepared by:

C.Scott Jenkins

Council Director:

Thomas J. Randle
