CHAPTER 2002-13

Committee Substitute for House Bill No. 715

An act relating to transportation; creating s. 70.20, F.S.; providing for a process for governmental entities and sign owners to enter into relocation and reconstruction agreements related to outdoor advertising signs; defining "relocation and reconstruction agreement"; providing for compensation to sign owners under certain conditions; requiring a study by the Office of Program Policy Analysis and Government Accountability and requiring a report to the Legislature; amending s. 163.3180, F.S.; extending the period within which certain transportation facilities needed to serve new development must be in place or under actual construction; amending s. 334.044, F.S.; authorizing the Department of Transportation to expend funds to promote scenic highways; authorizing the department to delegate to other governmental entities the authority to issue drainage permits under certain circumstances; amending s. 339.135, F.S.; providing a 5-year commitment for projects on the Florida Intrastate Highway System; amending s. 479.15, F.S.; defining "federal-aid primary highway system" for purposes of provisions governing the alteration of certain lawfully erected signs; creating s. 479.25, F.S.; authorizing local governments to enter into agreements with the department which allow outdoor signs to be erected above sound barriers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 70.20, Florida Statutes, is created to read:

70.20 Balancing of interests.—It is a policy of this state to encourage municipalities, counties, and other governmental entities and sign owners to enter into relocation and reconstruction agreements that allow governmental entities to undertake public projects and accomplish public goals without the expenditure of public funds while allowing the continued maintenance of private investment in signage as a medium of commercial and noncommercial communication.

(1) Municipalities, counties, and all other governmental entities are specifically empowered to enter into relocation and reconstruction agreements on whatever terms are agreeable to the sign owner and the municipality, county, or other governmental entity involved and to provide for relocation and reconstruction of signs by agreement, ordinance, or resolution. As used in this section, a "relocation and reconstruction agreement" means a consensual, contractual agreement between a sign owner and a municipality, county, or other governmental entity for either the reconstruction of an existing sign or the removal of a sign and construction of a new sign to substitute for the sign removed.

(2) Except as otherwise provided in this section, no municipality, county, or other governmental entity may remove, or cause to be removed, any lawfully erected sign located along any portion of the interstate, federal-aid

primary or other highway system, or any other road without first paying just compensation for such removal as determined by agreement between the parties or through eminent domain proceedings. Except as otherwise provided in this section, no municipality, county, or other governmental entity may cause in any way the alteration of any lawfully erected sign located along any portion of the interstate, federal-aid primary or other highway system, or any other road without first paying just compensation for such alteration as determined by agreement between the parties or through eminent domain proceedings. The provisions of this section shall not apply to any ordinance the validity, constitutionality, and enforceability of which the owner has by written agreement waived all right to challenge.

(3) In the event that a municipality, county, or other governmental entity undertakes a public project or public goal requiring alteration or removal of any lawfully erected sign, the municipality, county, or other governmental entity shall notify the owner of the affected sign in writing of the public project or goal and of the intention of the municipality, county, or other governmental entity to seek such alteration or removal. Within 30 days after receipt of the notice, the owner of the sign and the municipality, county, or other governmental entity shall attempt to meet for purposes of negotiating and executing a relocation and reconstruction agreement as provided for in subsection (1).

(4) If the parties fail to enter into a relocation and reconstruction agreement within 120 days after the initial notification by the municipality, county, or other governmental entity, either party may request mandatory nonbinding arbitration to resolve the disagreements between the parties. Each party shall select an arbitrator, and the individuals so selected shall choose a third arbitrator. The three arbitrators shall constitute the panel that shall arbitrate the dispute between the parties and, at the conclusion of the proceedings, shall present to the parties a proposed relocation and reconstruction agreement that the panel believes equitably balances the rights, interests, obligations, and reasonable expectations of the parties. If the municipality, county, or other governmental entity and the sign owner accept the proposed relocation and reconstruction agreement, the municipality, county, or other governmental entity and the sign owner shall each pay its respective costs of arbitration and shall pay one-half of the costs of the arbitration panel, unless the parties otherwise agree.

(5) If the parties do not enter into a relocation and reconstruction agreement, the municipality, county, or other governmental entity may proceed with the public project or purpose and the alteration or removal of the sign only after first paying just compensation for such alteration or removal as determined by agreement between the parties or through eminent domain proceedings.

(6) The requirement by a municipality, county, or other governmental entity that a lawfully erected sign be removed or altered as a condition precedent to the issuance or continued effectiveness of a development order constitutes a compelled removal that is prohibited without prior payment of just compensation under subsection (2). This subsection shall not apply when the owner of the land on which the sign is located is seeking to have

the property redesignated on the future land use map of the applicable comprehensive plan for exclusively single-family residential use.

(7) The requirement by a municipality, county, or other governmental entity that a lawfully erected sign be altered or removed from the premises upon which it is located incident to the voluntary acquisition of such property by a municipality, county, or other governmental entity constitutes a compelled removal that is prohibited without payment of just compensation under subsection (2).

(8) Nothing in this section shall prevent a municipality, county, or other governmental entity from acquiring a lawfully erected sign through eminent domain or from prospectively regulating the placement, size, height, or other aspects of new signs within such entity's jurisdiction, including the prohibition of new signs, unless otherwise authorized pursuant to this section. Nothing in this section shall impair any ordinance or provision of any ordinance not inconsistent with this section, including a provision that creates a ban or partial ban on new signs, nor shall this section create any new rights for any party other than the owner of a sign, the owner of the land upon which it is located, or a municipality, county, or other governmental entity as expressed in this section.

(9) This section applies only to a lawfully erected sign the subject matter of which relates to premises other than the premises on which it is located or to merchandise, services, activities, or entertainment not sold, produced, manufactured, or furnished on the premises on which the sign is located.

(10) This section shall not apply to any actions taken by the Department of Transportation that relate to the operation, maintenance, or expansion of transportation facilities, and this section shall not affect existing law regarding eminent domain relating to the Department of Transportation.

(11) Nothing in this section shall impair or affect any written agreement existing prior to the effective date of this act, including, but not limited to, any settlement agreements reliant upon the legality or enforceability of local ordinances. The provisions of this section shall not apply to any signs that are required to be removed by a date certain in areas designated by local ordinance as view corridors if the local ordinance creating the view corridors was enacted in part to effectuate a consensual agreement between the local government and two or more sign owners prior to the effective date of this act, nor shall the provisions of this section apply to any signs that are the subject of an ordinance providing an amortization period, which period has expired, and which ordinance is the subject of judicial proceedings that were commenced on or before January 1, 2001, nor shall this section apply to any municipality with an ordinance that prohibits billboards and has two or fewer billboards located within its current boundaries or its future annexed properties.

(12) Subsection (6) shall not apply when the development order permits construction of a replacement sign that cannot be erected without the removal of the lawfully erected sign being replaced.

(13) Effective upon this section becoming a law, the Office of Program Policy Analysis and Government Accountability, in consultation with the property appraisers and the affected private-sector parties, shall conduct a study of the value of offsite signs in relation to, and in comparison with, the valuation of other commercial properties for ad valorem tax purposes, including a comparison of tax valuations from other states. The Office of Program Policy Analysis and Government Accountability shall complete the study by December 31, 2002, and shall report the results of the study to the President of the Senate and the Speaker of the House of Representatives.

Section 2. Paragraph (c) of subsection (2) of section 163.3180, Florida Statutes, is amended to read:

163.3180 Concurrency.—

(2)

(c) Consistent with the public welfare, and except as otherwise provided in this section, transportation facilities designated as part of the Florida Intrastate Highway System needed to serve new development shall be in place or under actual construction not more than 5 years after issuance by the local government of a certificate of occupancy or its functional equivalent. Other transportation facilities needed to serve new development shall be in place or under actual construction no more than 3 years after issuance by the local government of a certificate of occupancy or its functional equivalent.

Section 3. Subsection (5) and paragraph (b) of subsection (15) of section 334.044, Florida Statutes, are amended to read:

334.044 Department; powers and duties.—The department shall have the following general powers and duties:

(5) To purchase, lease, or otherwise acquire property and materials, including the purchase of promotional items as part of public information and education campaigns for the promotion of scenic highways, traffic and train safety awareness, alternatives to single-occupant vehicle travel, and commercial motor vehicle safety; to purchase, lease, or otherwise acquire equipment and supplies; and to sell, exchange, or otherwise dispose of any property that is no longer needed by the department.

(15) To regulate and prescribe conditions for the transfer of stormwater to the state right-of-way as a result of manmade changes to adjacent properties.

(b) The department is specifically authorized to adopt rules which set forth the purpose; necessary definitions; permit exceptions; permit and assurance requirements; permit application procedures; permit forms; general conditions for a drainage permit; provisions for suspension or revocation of a permit; and provisions for department recovery of fines, penalties, and costs incurred due to permittee actions. In order to avoid duplication and overlap with other units of government, the department shall accept a surface water management permit issued by a water management district, the

Department of Environmental Protection, a surface water management permit issued by a delegated local government, or a permit issued pursuant to an approved Stormwater Management Plan or Master Drainage Plan; provided issuance is based on requirements equal to or more stringent than those of the department. The department may enter into a permit-delegation agreement with a governmental entity if issuance of a permit is based on requirements that the department finds will ensure the safety and integrity of facilities of the Department of Transportation.

Section 4. Paragraph (b) of subsection (4) of section 339.135, Florida Statutes, is amended to read:

339.135 Work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.—

(4) FUNDING AND DEVELOPING A TENTATIVE WORK PROGRAM.—

(b)1. A tentative work program, including the ensuing fiscal year and the successive 4 fiscal years, shall be prepared for the State Transportation Trust Fund and other funds managed by the department, unless otherwise provided by law. The tentative work program shall be based on the district work programs and shall set forth all projects by phase to be undertaken during the ensuing fiscal year and planned for the successive 4 fiscal years. The total amount of the liabilities accruing in each fiscal year of the tentative work program may not exceed the revenues available for expenditure during the respective fiscal year based on the cash forecast for that respective fiscal year.

2. The tentative work program shall be developed in accordance with the Florida Transportation Plan required in s. 339.155 and must comply with the program funding levels contained in the program and resource plan.

3. The department may include in the tentative work program proposed changes to the programs contained in the previous work program adopted pursuant to subsection (5); however, the department shall minimize changes and adjustments that affect the scheduling of project phases in the 4 common fiscal years contained in the previous adopted work program and the tentative work program. The department, in the development of the tentative work program, shall advance by 1 fiscal year all projects included in the second year of the previous year's adopted work program, unless the secretary specifically determines that it is necessary, for specific reasons, to reschedule or delete one or more projects from that year. Such changes and adjustments shall be clearly identified, and the effect on the 4 common fiscal years contained in the previous adopted work program and the tentative work program shall be shown. It is the intent of the Legislature that the first 5 years of the adopted work program for facilities designated as part of the Florida Intrastate Highway System and the first 3 years of the adopted work program stand as the commitment of the state to undertake transportation projects that local governments may rely on for planning purposes and in the development and amendment of the capital improvements elements of their local government comprehensive plans.

4. The tentative work program must include a balanced 36-month forecast of cash and expenditures and a 5-year finance plan supporting the tentative work program.

Section 5. Subsection (2) of section 479.15, Florida Statutes, is amended to read:

479.15 Harmony of regulations.—

(2) A municipality, county, local zoning authority, or other local governmental entity may not remove, or cause to be removed, any lawfully erected sign along any portion of the interstate or federal-aid primary highway system without first paying just compensation for such removal. A local governmental entity may not cause in any way the alteration of any lawfully erected sign located along any portion of the interstate or federal-aid primary highway system without payment of just compensation if such alteration constitutes a taking under state law. The municipality, county, local zoning authority, or other local government entity that adopts ~~promulgating~~ requirements for such alteration shall pay ~~must be responsible for payment of~~ just compensation to the sign owner if such alteration constitutes a taking under state law. This subsection applies only to a lawfully erected sign the subject matter of which relates to premises other than the premises on which it is located or to merchandise, services, activities, or entertainment not sold, produced, manufactured, or furnished on the premises on which the sign is located. As used in this subsection, the term "federal-aid primary highway system" means the federal-aid primary highway system in existence on June 1, 1991, and any highway that was not a part of such system as of that date but that is or becomes after June 1, 1991, a part of the National Highway System. This subsection shall not be interpreted as explicit or implicit legislative recognition that alterations do or do not constitute a taking under state law.

Section 6. Section 479.25, Florida Statutes, is created to read:

479.25 Application of chapter.—This chapter does not prevent a governmental entity from entering into an agreement allowing the height above ground level of a lawfully erected sign to be increased at its permitted location if a noise-attenuation barrier, visibility screen, or other highway improvement is erected in such a way as to screen or block visibility of the sign. However, if a nonconforming sign is located on the federal-aid primary highway system, as such system existed on June 1, 1991, or on any highway that was not a part of such system as of that date but that is or becomes after June 1, 1991, a part of the National Highway System, the agreement must be approved by the Federal Highway Administration. Any increase in height permitted under this section may only be the increase in height which is required to achieve the same degree of visibility from the right-of-way which the sign had prior to the construction of the noise-attenuation barrier, visibility screen, or other highway improvement.

Section 7. This act shall take effect July 1, 2002.

Approved by the Governor April 4, 2002.

Filed in Office Secretary of State April 4, 2002.