

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2255 - SB 2188

June 3, 2020

**SUMMARY OF ORIGINAL BILL:** Defines the term "off-premises device" for purposes of the Billboard Regulation and Control Act of 1972, the Tennessee Scenic Highway System Act, and Tennessee Parkway System Act to be in accordance with federal law.

FISCAL IMPACT OF ORIGINAL BILL:

Other Fiscal Impact – Passage of this legislation will prevent a penalty against federal funding received from the Federal Highway Administration estimated to exceed \$93,100,000.

**SUMMARY OF AMENDMENTS (017628, 018058):** Amendment 017628 deletes all language after the enacting clause. Makes various changes to the Billboard Regulation and Control Act of 1972.

Requires the application for an addendum and the payment of a \$70 fee for an outdoor advertising device with a digital display lawfully permitted as legal conforming or legal nonconforming, erected and in operation prior this legislation.

Requires the application for an addendum and the payment of a \$70 fee for an outdoor advertising device authorized by valid permit from the Department of Transportation (TDOT) that was effective on September 10, 2019 and has been upgraded to a changeable message sign with a digital display between September 11, 2019 and the effective date of this legislation.

Specifies that a valid permit that was effective on September 10, 2019, shall not become invalid based on any failure to renew the permit between November 1 and December 31, 2019 and such permit shall not be subject to renewal until the renewal period occurring after the effective date of this legislation.

Authorizes the TDOT Commissioner to assess and collect from the owner who has failed to remove a non-conforming outdoor advertising device a civil penalty in the amount of \$500 for each calendar day, not to exceed \$10,000 each year.

Makes various changes to the Scenic Highway System Act of 1971 and the Tennessee Parkway System Act to reflect and mirror the above provisions.

Specifies that if any provision of this legislation is held invalid, the invalidity does not affect other provisions which can be given effect without the invalid provision or application, and to that end the provisions are declared to be severable. To the extent that a state or federal court

may enjoin the application or enforcement of this legislation to any outdoor advertising device other than a commercial outdoor advertising device, the application to regulated outdoor advertising devices shall be limited, to the extent of the court injunction, to commercial outdoor advertising devices. Authorizes TDOT to promulgate emergency rules in such a case of documented noncompliance with federal law.

Amendment 018058 deletes and replaces language within amendment 017628. Specifies that an “on-premise device” does not receive compensation. Defines “unzoned commercial or industrial area”. Decreases, from 36 square feet to 20 square feet, the size of signs excluded from the provisions of the legislation. Reduces, from \$10,000 to \$5,000, the total civil penalty that can be imposed in a year for failure to remove a non-conforming outdoor advertising device.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:**

### **NOT SIGNIFICANT**

Assumptions for the bill as amended:

- Due to the 6<sup>th</sup> Circuit U.S. Court of Appeals *Thomas v. Bright* decision ruling the Tennessee Billboard Law unconstitutional, TDOT has indefinitely suspended regulatory enforcement of the Outdoor Advertising Control Program.
- Pursuant to 23 U.S.C. § 131(b), federal-aid highway funds apportioned to any state which the Secretary of Transportation determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within 660 feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, and Federal-aid highway funds apportioned on or after January 1, 1975, or after the expiration of the next regular session of the state legislature, whichever is later, to any state which the Secretary of Transportation determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of those additional outdoor advertising signs, displays, and devices which are more than 660 feet off the nearest edge of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such state, until such time as such state shall provide for such effective control.
- This legislation further makes similar revisions to the Tennessee Scenic Highway System Act and Tennessee Parkway System Act to address the same constitutional issue.
- Passage of this proposed legislation will allow TDOT to resume enforcement of the Billboard Act and provide for effective control of outdoor advertising, as required under 23 U.S.C. Section 131, and therefore avoid penalties from the Federal Highway Administration of 10 percent of the annual allocation of Federal Highway Funds under 23 U.S.C. Section 104, which is currently approximately \$93,100,000.
- Pursuant to Tenn. Code Ann. § 54-21-104(b)(3), any person that upgrades a billboard to put a digital display panel on it has to pay a \$200 fee to obtain an "addendum" to that person's existing outdoor advertising permit.

- Per the language of this legislation, those that upgrade between the time permits ceased release on September 11, 2019 and the effective date, a fee of \$70 is required.
- The total figure of how many of these specific billboards would be upgraded in this limited timeframe, as well as TDOT's ability to collect the fee is unknown. It is assumed that what is collected will not significantly impact state revenue.
- There are not a significant number of instances whereas the owner of an outdoor advertising device fails to remove a non-conforming outdoor advertising to result in a significant impact to state revenue.
- This legislation specifies that that if any provision of this legislation is held invalid, the invalidity does not affect other provisions which can be given effect without the invalid provision or application, and to that end the provisions are declared to be severable. To the extent that a state or federal court may enjoin the application or enforcement of this legislation to any outdoor advertising device other than a commercial outdoor advertising device, the application to regulated outdoor advertising devices shall be limited, to the extent of the court injunction, to commercial outdoor advertising devices.
- This ensures that, should a section of this legislation be deemed non-compliant with federal funding standards, TDOT would not be required to comply with such a provision; therefore, there is not a significant risk to jeopardized federal funding of grants.
- Clarifying the definitions of "on-premise device" and "unzoned commercial or industrial area" will not result in a significant fiscal impact.
- Decreasing the maximum size of signs excluded from the provisions of the legislation will not significantly impact state revenue.

### **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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