

## Effects of SB1760 on Municipalities

### What Background Info Do I Need to Know?

Under current law, any business or commercial facility that is in operation at the time that a municipality adopts a zoning ordinance that modifies the allowable use of the property on which such a facility is located in such a way that the activities and/or facility no longer conform to the new ordinance, is permitted to continue to conduct activities that were allowed prior to the change in zoning. In effect, the activities and facilities are “grandfathered,” provided certain conditions are satisfied. Courts have determined that an “off-site sign” (billboard) is a business or commercial facility and is eligible for “grandfathering,” under this statute and are most commonly referred to as “nonconforming signs.” Currently, owners of nonconforming signs are allowed to rebuild, replace and expand such signs, provided they comply with the specific and detailed limitations prescribed in law. These allowances do not include conversion from static display signs to digital display signs (LED billboards). Cities believe such conversions are improvements that constitute a change in use of the property and, as such, are outside the authorized allowances extended to nonconforming signs under T.C.A. 13-7-208. This bill would, instead, require local governments to allow owners to convert nonconforming signs to digital display.

### What Proponents of the Bill Are Saying

The proponents claim this bill is “clarifying” legislation, intended to clarify that the transition of a nonconforming off-site sign from static display to digital display is authorized under T.C.A. § 13-7-208. The industry suggests sign owners simply want to update their off-site signs to the latest technology. Bill proponents maintain that the conversion from static display to digital display and the corresponding installation of new support structure(s) is tantamount to expansion. Further, the industry argues that as expansion of nonconforming signs is permissible, then conversion from static display to digital display is allowed under the law. In addition, proponents have argued that this “clarification” is needed to allow these sign owners to keep up with industry standards, like any other business that continually updates its facilities and products to keep pace with changing times. They also contend that the replacement of terms, definitions and lighting standard in the provisions of law exclusively pertaining to local zoning are necessary to conform the provisions to other provision of law related to signs.

### What Cities Think About This Bill

**Cities disagree. This bill is not simply clarifying established practice or accepted fact, rather this bill is “needed” because the bill’s proponents are seeking to make new law. With this bill, the proponents mean to “clarify the law” by rewriting the law the way they wish it had been written.** These signs were originally permitted as static structures. Many of these signs were granted local approval for construction of a much smaller sign, but have been permitted to expand in size under the nonconforming law. Unlike these expansions (increase in physical size of structure or facility), which are expressly authorized pursuant to specific and detailed allowances under the nonconforming statute, currently the law makes no reference to conversion to digital or any other future technological enhancements as is proposed under this bill. Moreover, allowing such conversions is not an accepted fact, nor are such conversions common practice. Further, no court has issued a ruling affirming the industry’s assertion that such conversions are covered under the nonconforming provisions. To the contrary, conversions of nonconforming billboards from static display to digital display constitute a

change of use rather than a simple expansion in size, as is contemplated under T.C.A 13-7-208. As such, conversions fall outside the allowances and are not authorized under law. If they succeed in passing this bill, then the law would be amended to provide that every owner of a nonconforming billboard has the legal authority to convert to digital and to continue to upgrade to the latest structural and/or illumination technology in perpetuity.

**In addition, the bill preempts local ordinances and imposes a one-size-fits-all, statewide standard governing signs converted to digital pursuant to this new legislation.** Section 6 of the amendment suggests signs undergoing such conversions are only required to meet the lighting requirements that apply to interstates and highways enacted under Title 54 of the Tennessee Code. This suggests that any local ordinances derived from a municipality's police powers that are applied to every other type of sign, such as those that regulate safety, are no longer applicable in the case of such conversions. This is in direct conflict with the court's ruling in several cases addressing conversion of nonconforming signs under Title 13 of the Tennessee Code Annotated. As such, all relevant, non-zoning local ordinances would be supplanted by a single, lighting standard originally intended to be applied only to signs on interstates and federal and state highways.

**The bill also Substitutes "outdoor advertising device" for the established and tested "off-site sign;" applies law intended for interstates and highways to municipal streets, expands what constitutes a sign, creates uncertainty surrounding an abundance of settled case law, and invites litigation.** The bill proposes to replace the term "off-site sign" everywhere it appears in T.C.A. § 13-7-208(h) with the term "outdoor advertising device" from Title 54 of the Tennessee Code. This is a consequential change. First, Title 13 of the Tennessee Code relates to municipal zoning and governs use in the context of circumstances and scenarios one could encounter within a municipality. Title 54, Chapter 21 of the Tennessee Code, on the other hand, relates to TDOT and governs signs in the context of circumstances and scenarios one could encounter on an interstate or highway. Second, substituting "outdoor advertising device" for "off-site sign" significantly expands what constitutes a sign. An off-site sign is currently defined as "any sign that advertises or gives direction to any business, product, service, attraction or any other purpose or interest, other than the industrial, commercial or other business establishment located on the site where the sign located." If the bill becomes law, then the signs covered under "outdoor advertising device" would include not only billboards but also "any outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, or other thing which is designed, intended or used to advertise or inform any part of the advertising or informative contents of which is visible from any place on the main traveled way." The full ramifications of this expansion are unknown. Finally, because this bill seeks to substitute a term and definition from another title that was not intended for local government, expands what constitutes a sign and is, itself, new law, this substitution is certain to invite years of litigation.