FEDERAL HIGHWAY BEAUTIFICATION ASSISTANCE ACT OF 1979

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HEARINGS

BEFORE THE

MMITTEE ON TRANSPORTATION

OF THE

COMMITTEE ON

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UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

S. 344

A BILL TO AMEND SECTION 131, TITLE 23, UNITED STATES CODE

JULY 17 AND 18, 1979

SERIAL NO. 96–H25

Printed for the use of the Committee on Environment and Public Works

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FEDERAL HIGHWAY BEAUTIFICATION ASSISTANCE ACT OF 1979

TUESDAY, JULY 17, 1979

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON TRANSPORTATION,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 4200, Dirksen Senate Office Building, Hon. Lloyd Bentsen (chairman of the subcommittee) presiding.

Present: Senators Bentsen, Randolph, Stafford, and Burdick.

Senator BENTSEN. Gentlemen, it is 10 o'clock.

We have a Senate in session, and we will be interrupted by votes, I understand, at 10:15.

I regret to have to ask you to summarize substantially. But I have to ask that, because we have quite a number of witnesses and we are going to have these interruptions, which is further going to limit our time.

Our first witness this morning will be the Honorable Les Lamm, Executive Director, Federal Highway Administration.

If you would, please proceed.

Senator STAFFORD. Mr. Chairman?

Senator BENTSEN. Would you like for us to go ahead with our opening statements? Would you prefer to do that?

Let's do that.

Senator STAFFORD. I would be willing to put them in the record.

Senator BENTSEN. No. As eloquent as I expect to be, I think we will just go ahead and give them.

I think you have given me a good correction. So, if you will defer for just a moment, I will proceed.

OPENING STATEMENT OF HON. LLOYD BENTSEN, U.S. SENATOR FROM THE STATE OF TEXAS

Senator BENTSEN. We are meeting to hold the first 2 days of hearings on the status of the the Billboard Control and Highway Beautification Act. And we are in particular addressing S. 344, a bill that has been introduced by my distinguished colleague from Vermont.

It would make the highway beautification program, first enacted in 1965, as a mandatory program, one of voluntary State participation.

I am concerned—and I am intensely concerned—as I know my Vermont colleague is, about preventing our road sites from being cluttered with uncontrolled billboards and signs. Such a situation mars the natural beauty of our great country, which millions of

Americans are exposed to as they utilize the Nation's highway network.

Improper sign control can even result in hazardous conditions when sight pollution becomes sight obstruction and interferes with safe driving conditions.

I have always supported and I will continue to support a mandatory program of sign removal that I believe to be effective and equitable to all parties concerned. Both the effectiveness and the equitability of this program will be addressed today.

I would agree that the highway beautification program has suffered from some of the difficulties that all new programs suffer. Perhaps the most devastating thing to hurt this program has been a lack of funds. But I have supported increases in appropriations to remove the billboards.

While the existing act has required modification over the years, I don't believe that rescinding mandatory participation will be the answer to the problems that remain. Voluntary participation will only put us back where we were in 1965.

A second issue that we must address will involve equity and the question of proper compensation for billboard removed under the Highway Beautification Act.

Critics of the program have long stated that the intent of the original act has been perverted by compensation requirements for property owners forced to comply with provisions of the program. I just don't believe they could be further from the truth in that regard.

The decision for just compensation for signs and billboards removed under the Highway Beautification Act was made by Congress in 1965, and it is totally consistent with all of the provisions of the highway program that results in the acquisition of personal or real property.

You see, I want billboards removed. I really don't enjoy billboards. But I run right into the question of private property and to the compensation for private property and to respect of private property.

When a person's residence, business, or real property is acquired by the Federal highway program, just compensation is paid. And in many cases, relocation assistance is also provided.

Congress has determined, and rightfully so, that the acquisition of signs and billboards under the Highway Beautification Act should be carried out in a manner that guarantees just the same rights and equitable treatment as other activities associated with the Federal highway program The position of Congress with regard to the highway program has always been to treat the owners of signs and billboards in a manner consistent with fair and just compensation.

Under the highway programs, we don't amortize a person's home or his office building over a number of years and then take it for highway purposes. We don't do that to any other property owner.

Much of this hearing will address whether the highway beautification program should continue as a mandatory program, as I believe, or whether each State should make that determination upon its own.

Maybe you will get rid of some of the signs in Vermont with your State legislature. But I am not so sure you would in a lot of these other States.

I submit, the only effective program is a mandatory one. And we are fooling ourselves if we believe we can set out with national billboard control as our goal and then accomplish it on an optional basis.

As Gov. Bill Clinton of Arkansas has said:

> I am apprehensive about legislation that would permit voluntary State control may not be as successful in Arkansas and could jeopardize the excellent progress that has been made. Speaking of highway beautification without mandatory provisions is not speaking of effective highway beautification.

Senator Stafford.

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

Senator STAFFORD. Thank you very much, Mr. Chairman.

I am pleased to join with you in opening these hearings which, as you point out, will address the need for S. 344 as well as discuss the issue of highway billboard control generally.

I might say, Mr. Chairman, I am very grateful to you for agreeing to hold these important hearings.

First, I feel compelled to say, this is not a parochial issue.

The State of Vermont has been able to complete its beautification program, despite the difficulties of the 1965 act. We have nothing to gain with the adoption of S. 344. But other States should have the opportunity Vermont did. They will not. If we perpetuate the existing Federal law, other States cannot achieve compliance without unacceptable costs to the taxpayers, both Federal and State.

As you know, I have long believed that our Nation needed effective billboard control. I have sought to uphold the 1965 act as it was originally drafted.

Until recent years, that act proved to be a fairly effective tool. But the Federal billboard-control law has now become so riddled with loopholes that I and most of its original supporters have come to the conclusion that it cannot be salvaged.

The only alternative, in the opinion of this Senator, is to return the program to the States or, at least, to return it to those States that want to assume control.

The phasing out of Federal control, of course, carries with it potential problems. There will be some States that may be tempted to let billboards flower along their roadways But those same States have taken little or no action to control billboards under the existing program. So, I do not see any loss to the public.

What Federal decontrol will achieve, of course, is greater freedom for interested States in acting for beautification, using a plan that they see fit to achieve that goal.

As we will hear, three-quarters of the States support decontrol. The others would be eligible to remain in the Federal program, with its regulations and its grants.

The bias of the present law is obvious when we realize that the only group supporting it, as now written, is the billboard industry itself.

At recent hearings ccnducted by the Federal Highway Administration, praise for the law was heard from the industry, with other witnesses all pointing out its abject failures.

Doesn't that give us a hint as to who benefits and who suffers under the present Federal law?

This subcommittee will doubtless hear testimony that the present law has been effective because, supposedly, many signs have come down. That is a false picture.

A trip through this Nation certainly won't give most motorists the feeling that progress is continuing. Where billboard-free routes exist along the Interstate System, it is largely due to the Bonus Act from the 1950's. Those signs that did come down were generally the ones the industry no longer wanted. And that was before the 1976 and 1978 amendments.

The amended act is so perverted that compensation is now required when signs are taken down totally outside the requirements of the 1965 act. I find it frightening that the billboard law should be used to hamper the zoning rights of a city or county. But that is precisely what the 1978 amendments require.

Mr. Chairman, we need to do something to rescue this situation—to keep faith with the intent of the 1965 act. The American people do not want laws that promise one thing but provide the opposite. That is why the public is losing faith in Washington.

To keep faith with the public, I believe, we must admit our mistakes and simply turn this program back to the States, to free this program from the burdens of continued Federal regulation.

Thank you, Mr. Chairman.

Senator BENTSEN. Thank you very much.

Senator STAFFORD. One more thing, Mr. Chairman, Senator Pressler had planned to attend the hearing but is unable to be here this morning and asks that his statement be made a part of the record.

Senator BENTSEN. Without objection, so ordered.

[Senator Pressler's statement follows:]

Opening Statement - Senator Pressler
Highway Beautification Hearings

I am pleased to be here this morning and look forward to hearing testimony on S. 344, the Federal Highway Beautification Assistance Act of 1979, which my distinguished colleague (Senator Stafford) introduced, and which I co-sponsored.

The Highway Beautification Act was passed in 1965 on the premise that the Federal government needed to be involved in regulating the building and maintaining of outdoor advertising signs.

Since the Act's passage in 1965 several significant changes have been made. Most recently, provisions in the Surface Transportation Assistance Act of 1978 provided that compensation must be paid for all signs taken down regardless of the reason for their removal. Previously, states and localities were allowed to use their police powers or provide for amortization. This change will substantially increase the cost of the program.

At the same time, the Administration has been requesting less and less money to support the highway beautification

program. In fact, this year, no money at all was requested for the program. This, in effect, will bring the program to a standstill because no signs can be taken down by the state without compensation being paid, and there are insufficient funds available for the Federal matching share.

In my own State of South Dakota, there have been difficulties in conforming with the Highway Beautification Act. South Dakota is a state in which the tourist industry is an economic backbone of the state, second only to agriculture. Signs advertising services to tourists are an important part of that industry.

South Dakota is also primarily a rural state with many small communities which depend on advertising along major roads and interchanges to keep local businesses economically viable.

While my State is concerned about regulating outdoor advertising to promote highway beautification and safety, there are also clearly areas where outdoor advertising is beneficial and necessary for the economic well-being of the residents. I believe individual states are in the best position to make these decisions regarding outdoor advertising for their own unique situation.

The bill which Senator Stafford has introduced allows for that kind of decision-making to happen. It allows the States the option of participating in the Federal program or establishing a program of their own. If a state wishes to set its own guidelines for the regulation of outdoor advertising, it may do without fear of a Federal sanction of losing highway funds.

I believe it is very important to fairly compensate the owners of signs which are removed. Senator Stafford's bill would provide the States with several options in this area also. If a state elects to participate in the Federal program, there would be Federal matching funds available for compensation. If a state prefers to formulate its own program, it could decide what form of compensation would be provided.

The Highway Beautification Act has been in existence almost 15 years. Criticism concerning the Act's functioning, particularly in the last several years, has been grow ing. The General Accounting Office issued a report to Congress last year calling for a reassessment of the program. I understand the Federal Highway Administration is in the process of holding hearings on the beautification program throughout the country. Senator Stafford, by requesting these hearings, has provided this Committee with an opportunity to review the Highway Beautification program and I want to thank him for that.

Again, I look forward to hearing from the witnesses here today.

Senator BENTSEN. Please proceed, Mr. Lamm.

STATEMENT OF LESTER P. LAMM, EXECUTIVE DIRECTOR, FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Mr. LAMM. Thank you, Mr. Chairman.

I have a rather lengthy summary, which I would be happy to submit for the record and summarize.

Senator BENTSEN. That will be accepted in the record in its entirely. (See p. 75.)

Mr. LAMM. Mr. Chairman, members of the subcommittee, the Department welcomes the opportunity to appear here today during the consideration of S. 344 and the outdoor advertising control program.

If you wish, I will submit my statement for the record, briefly outline its contents, and then answer any questions the committee may have.

I have with me, on my right, Mr. Lorenzo Casanova, Chief Counsel, Federal Highway Administration and on my left, Mr. Richard Moeller, Chief of the Federal Highway Administration's Junkyard and Outdoor Advertising Branch and, on my far right, Mr. Edward Kussy, Deputy Assistant Chief Counsel of the Federal Highway's Right-of-Way and Environmental Law Division.

This hearing occurs just as we have finished a series of nationwide public hearings concerning the highway beautification program. These hearings were held for the purpose of soliciting comments from all interested parties who wish to express their ideas about the future direction of the highway beautification program.

My statement outlines our initial impressions of the reassessment hearings.

The statement provides technical comments on S. 344.

Its predominant change would be to make the control of outdoor advertising voluntary and provide for Federal participation if certain minimum control standards are met and the States choose to provide compensation. We have made some suggestions which might make S. 344 more effective, given its underlying intent.

However, it is our belief that any legislative action should await completion of the FHWA reassessment.

I want to make it clear from the very outset that the administration opposed the 1978 modifications to the beautification statutes. Nonetheless, we are trying to administer the program as best we can consistent with the intent of Congress.

So that you are up to date on our present efforts in the program, the statement gives a status report of the program.

While the statistics can be read in a variety of ways, our conclusions as to the success of the present program is best described as mixed.

Many States continue to resist the implementation of an active control and acquisition program. The many special categories of the act have confused both sign owners and State administrators. Uneven funding has made it difficult or impossible for States unwilling or unable to invest a great deal of their own funds, since Federal support has been unpredictable.

All of these problems were addressed in the GAO report of March 27, 1978, on the program.

With the enactment of section 122 of the Surface Transportation Assistance Act of 1978 amending the just compensation provisions of United States Code, section 131(g) of title 23, new questions of interpretation and administration of the progra arose.

As to just compensation, the statement explains how we came to issue a series of memoranda interpreting the 1978 amendment to the Highway Beautification Act. These memorandums have been the source of considerable controversy.

Finally, my statement also provides background on the Federal advisory committee we are establishing to assist us in the reassessment effort I mentioned earlier.

In conclusion, Mr. Chairman, I would like to reiterate that we do not believe additional legislation should be enacted in this area until our reassessment of the beautification program has been completed. However, I assure you that the Department will work closely with you in your legislative proceedings.

That completes my statement, Mr. Chairman.

We will be glad to answer any questions you might have.

Senator BENTSEN. Mr. Lamm, I would certainly agree that one of the problems has been a failure to provide a consistent, well planned funding program to assure the finances are available to the States to carry out these decisions. But this committee has had a history of trying to get the appropriations to accomplish that type of thing.

And, frankly, I don't think the administration or your group has helped this situation at all by not asking for the funds in the budget this year.

I think, in effect, when you say, "Well, we oppose the 1978 amendments for compensation, you are failing to carry out the intent of the Congress. And you are doing that by saying, "We will have a study. We won't ask for any funds to accomplish that thing."

How do you justify continuing to ignore the intent of the Congress when they have written it very carefully for you?

You had the opportunity to oppose them. And the Congress decided otherwise.

Then you say, "All right. We just won't ask for any funds to do that."

How do you justify that kind of action?

Mr. LAMM. Mr. Chairman, the funding decision was made independently of the actions on the 1978 Surface Transportation Assistance Act.

We did oppose the legislative amendment in the beautification area, which were debated last year and were passed. However, once they were passed, we did begin to implement them.

In fact, in my statement I refer to memoranda which we issued implementing S. 122, which themselves have raised controversy.

If we didn't want to implement the will of Congress, we wouldn't have mentioned section 122 at all. We intend to carry it out.

However, in regard to funding, we came up with what we felt was a very make-or-break situation, practically, for the beautification program.

Many people around the country were questioning whether the original intent of Congress can be carried out, not only given the 1978 amendments, but given the long history of funding and given the series of other amendments which the Congress has enacted over the years.

In the spirit of the growing degree of support for sunset-type legislation, which we see in the Congress, we really felt that the time was right to make a lasting, long-term review of the beautification program and to come to you with legislative modifications, if we felt that was necessary.

I wouldn't at this stage rule out that at some point, we might be proposing something similar to S. 344 or, on the other hand, we might be proposing a return to the original provisions of 1965 or something even more stringent.

At this point, it is just not possible for me to determine what our legislative proposals will be.

Senator BENTSEN. You have made a very minor contribution, Mr. Lamm. Do you have any questions?

Senator STAFFORD. Mr. Chairman, I do.

Mr. Chairman, I have a series of questions that will take me more than the 2 or 3 minutes available.

Senator BENTSEN. I have some other questions, too. I will submit them in writing for Mr. Lamm. [See p. —.]

Senator STAFFORD. Mr. Lamm, is it not accurate that the vast majority of the signs removed since 1965 have been illegal signs?

Mr. LAMM. Yes, this is true.

Senator STAFFORD. Is it not also accurate that these signs would have had to come down anyway whether or not the 1965 act had been passed by the Congress?

Mr. LAMM. I would agree with that statement, yes, Senator, in the sense that some of these signs would have been removed by the then existing or subsequent State and local control laws. However, since most States and local jurisdictions prior to 1965 had no such controls, the Highway Beautification Act is generally considered primarily responsible for the removal of approximately 400,000 illegal signs.

Senator STAFFORD. It is sometimes argued that the 1965 act is now considered as a success because it has prevented the erection of new signs. What evidence does FHWA have that the law has prevented the erection of new signs?

How many new signs have gone up since the adoption of the 1965 act along the primary and interstate highways?

Mr. LAMM. Senator Stafford, let me take the option of providing additional information for the record. We have an estimate of at least 200,000 signs or so that would otherwise have been erected had it not been for the existence of the 1965 act.

Senator STAFFORD. You will supply evidence——

Mr. LAMM. Yes, we will supply the background information for the record.

[Additional information follows:]

Question. It is sometimes argued that the 1965 Act, as now constituted, is a success because it has prevented the erection of new signs. What evidence does the FHWA have that the law has prevented the erection of new signs? How many signs have gone up since the adoption of the 1965 Act along the primary and Interstate system?

Answer. In 1965, there were 839,361 controlled off-premise advertising signs subject to removal along 250,809 miles of Interstate and primary highways, or 3.3 signs per mile. Projecting this signs per mile rate to the total 301,072 miles in 1978, indicates 993,538 such signs would have existed absent any acquisition or removal of signs as a direct result of the Highway Beautification Program. Any reduction in the aggregate number of signs or in the rate of signs-per-mile could be attributed to the control aspects of the Highway Beautification Program. Based on this analysis, a total of 218,321 additional signs would have been erected if the control aspects of the Highway Beautification Program had not been in operation.

In regard to the number of signs erected subsequent to the 1965 Act along the Interstate and primary highway systems, there was a variable period of time in the States (October 22, 1965, until the State came into full compliance) commonly referred to as the hiatus period when Federal participation was not available for the cost of nonconforming signs erected during this period. Our records indicate that there were 126,834 signs in this category. In addition, 5,430 signs commonly referred to as jumbo signs were erected beyond the 660-foot control zone until the Federal-Aid Highway Amendments of 1974 precluded the erection of such signs and eliminated the hiatus period thereby requiring the payment of just compensation upon the removal of any nonconforming sign.

Current reports submitted by the States do not include the number of conforming signs located in commercial and industrial areas and additional conforming signs erected in these areas. Increases in this category obviously have the effect of reducing the accomplishment described previously. Information on the number of these conforming signs is forthcoming and will be provided to the committee.

Senator BENTSEN. Will you restate that point? I didn't hear that.

Mr. LAMM. About 215,000 to 220,000 additional signs would have been erected along the interstate and primary system had it not been for the existence of the 1965 legislation.

Senator BENTSEN. How do you know that?

Mr. LAMM. We will provide for the committee background data behind those estimates.

Senator STAFFORD. The 1978 amendments to the act make it necessary for the States to compensate owners of any sign taken down, even if the sign is not removed for Federal beautification purposes.

This means that if local governments decide by local zoning to remove signs in a commercial or industrial zone where no removal is required by Federal law, the State must still pay full compensation.

What is the FHWA's estimate of the cost of this if implemented and the number of signs that would be covered?

Mr. LAMM. We don't have a good estimate at this time, Senator Stafford. I believe we would want to have an estimate of the cost at such time as we came to the committee for legislative proposals. We have begun to get a field review of this figure to try and get an estimate of the cost.

Senator STAFFORD. Mr. Chairman, I have two more questions I would like to direct to Mr. Lamm. In view of some problems I have, I really need to leave.

Senator BENTSEN. All right, fine. Then we will defer that. Would you like to keep him here to ask those questions?

Senator STAFFORD. If Mr. Lamm can remain long enough for me to ask two more questions personally, the others I have I will submit in writing.

Mr. LAMM. Mr. Chairman, Senator Stafford, we will be most happy to answer any of your questions in writing for the record.

Senator BENTSEN. Then we will recess until we return from the vote. We will try to go back into session at 10:35.

[Brief recess.]

Senator BENTSEN. The committee will commence its deliberations again while we wait on Senator Stafford.

Let me ask you, did the Federal Highway Administration ask for funds for billboard removal?

Mr. LAMM. For the 1980 budget, Mr. Chairman?

Senator BENTSEN. Yes.

Mr. LAMM. Yes, sir, we did.

Senator BENTSEN. How much did you ask for?

Mr. LAMM. In the 1980 budget, it was prepared in a zero-based budget ranking. That meant that every program had several identified amounts ranking from a minimum to the most desirable.

The rank, I believe, for the beautification program figures we had was from a bare minimum of $10 million to a most desirable of about $40 million.

Senator BENTSEN. Senator Stafford had a couple of other questions to ask.

Senator, if you would proceed with as many as you would like.

Senator STAFFORD. Mr. Lamm, I understand that in responding, as you did, to question 4, the sudden bells and our departure caused you to omit something you wish to add to the answer. If that is so, I invite expansion of the answer now.

Mr. LAMM. Yes, sir, Senator Stafford. Mr. Brayman and I were talking earlier. I believe I may have given the impression that we may not have an estimate of the additional signs that would have to be compensated for a period of 2 years or so as a result of the 1978 amendments. That is not the period we are talking about.

We have asked for a very quick review. It is not going to be the best figures you will see, but we will be able to submit something to the committee perhaps within a period of 90 to 120 days.

Senator STAFFORD. All right. As of last September, a total of 88,215 nonconforming and compensable signs have been acquired. Of those, about 80,000 have been removed. That leaves about 200,000 signs, according to the understanding of this Senator that are nonconforming under Federal law that would need to be required.

At the present pace, do you have some estimate how long it will take and what the cost is to remove the other 200,000 nonconforming signs and after these are removed, how many will be still standing?

Mr. LAMM. Senator Stafford, it would be better if we provided you those figures for the record. We have the figures you are referring to. I am not sure I tie it to exactly the number of signs you use in your question. We can provide it for the record for the committee.

[The information follows:]

Question. As of last September, a total of 98,215 nonconforming and compensable signs have been "acquired." Of those, 88,454 signs have been "removed." That leaves about 200,000 signs that are nonconforming under Federal law and would need to be acquired. At the present pace, how long will it take, and at what cost, to remove the remaining 200,000 nonconforming signs? How many signs will still be standing after those 200,000 are removed?

Answer. As of September 30, 1978, 98,215 nonconforming compensable signs had been acquired and 88,454 removed, out of a total of 296,006 signs, leaving 197,791 signs to be acquired, and 207,552 signs to be removed.

More recent data is now available as of March 31, 1979, which indicates 103,095 nonconforming compensable signs have been acquired and 94,876 removed, out of a total 293,135 signs, leaving 190,040 nonconforming signs to be acquired and 198,259 signs to be removed.

At the acquisition rate of 11,672 signs for the past 12 months, it would take approximately 16 years to acquire the remaining signs.

A projection for completion of this activity is affected by many factors including sufficient or insufficient funding levels, cooperativeness of the States, program emphasis, and commitment, etc. Based on the level of funding of $13,135,000 provided in FY 1979 for outdoor advertising control, junkyard control, and the cost to administer these two programs, it would take approximately 114 years to complete these programs.

The estimated cost, in current dollars, to remove the remaining signs is approximately $565 million, of which $424 million would be Federal funds. This estimate does not include the cost of removing those additional signs which now have a compensable status as a result of the 1978 amendments to the Highway Beautification Act. The 1978 amendments pertaining to just compensation will have the effect of substantially increasing the cost to complete the program. An accurate estimate of cost can only be determined after appropriate refinements are made in State sign inventories and another national cost estimate or projection is made. The States are now in the process of making the necessary inventory refinements. Once this is done a revised program cost estimate will be made.

In regard to the number of signs remaining after completion of the above, such signs would be conforming signs which are not currently being reported by the States. It is anticipated that this information should be made available to the committee in the near future.

Senator STAFFORD. This Senator heard estimates at the present pace, it might take 100 years to complete the program. Is that far off the mark in your opinion?

Mr. LAMM. At the 1980 pace of zero, it would take even longer.

Senator STAFFORD. Infinity. There appears to be strong evidence that most sign removal has occurred not along the interstate but along less traveled roads where the industry no longer finds signs profitable, would you agree?

Mr. LAMM. Let me ask Mr. Moeller to respond to that.

Mr. MOELLER. I think, generally speaking, the programs that we have implemented in cooperation with the States have been less than aggressive primarily as a result of the limited funding. Most States approach their acquisition program usually from the standpoint of allowing sign companies to volunteer signs to the States to be acquired.

The States' acquisition program is also necessarily tailored to certain priorities, the agency as well as Congress has established relative to the directional type sign which normally enjoys a lower acquisition priority.

Senator STAFFORD. Could you cite the number of signs removed along the Interstate System out of the 88,000 compensable signs removed to date?

Mr. MOELLER. The Federal Highway Administration does not keep records by system. The statistics we have, Senator Stafford, are for the primary and Interstate System combined as a whole.

Senator STAFFORD. As a whole?

Mr. MOELLER. Yes.

Senator STAFFORD. Mr. Chairman, I appreciate your indulgence, and I have a number of additional questions, but I will submit them in writing for responses in writing.

Senator BENTSEN. So do I, except I want another estimate, if I can get it, from Mr. Lamm. If this was made voluntary program. how many States do you think would drop out of participation on billboard removal?

Mr. LAMM. It would be very difficult to predict, Mr. Chairman. We have not gone through a State by State canvas to try and come up with that figure.

Senator BENTSEN. Let me ask you this then: Do you have some States now that you are having a great deal of controversy with who want to put up a lot more billboards than you think the law allows?

Mr. LAMM. As far as the people we do business with, generally the State Department of Transportation or Highway Department, no, but I think you are right in characterizing some States as having a climate that is more conducive to putting up additional billboards than in some other cases.

Senator BENTSEN. Don't you have some controversy with the State of South Dakota, for example, over the placement of billboards now?

Mr. LAMM. Yes, again——

Mr. BENTSEN. Do you have a controversy with the State of Georgia?

Mr. LAMM. Our prime problem has been enactment of legislation at the State level through the South Dakota Legislature.

Senator BENTSEN. Do you have any assurance at all that some of these States, if placed on a voluntary basis, wouldn't be putting up an awful lot more billboards than they could put up now?

Mr. LAMM. We couldn't give you that assurance, no, sir.

Senator BENTSEN. You can give me no assurance that they wouldn't?

Mr. LAMM. We cannot assure you States would not at some point in the future increase the number of billboards. At present, of course, they do have their own State legislation which was developed to follow the 1965 act, and that would limit additional billboards even without a Federal program at this stage.

Senator BENTSEN. Thank you, very much.

Senator STAFFORD. Mr. Chairman, before Mr. Lamm is completed, I think the other side of the question that you just asked ought to be also directed to him. That is, are there States to be more aggressive in billboard removal than allowed by the Federal act in its present condition?

Mr. LAMM. To be candid, Mr. Stafford, yes, sir, there are States that would like to move more rapidly in taking down billboards than the Federal program permits.

Senator STAFFORD. Thank you.

Senator BENTSEN. Then if we are being candid, why don't we speak to the other side too then, Mr. Lamm.

Mr. LAMM. Are there three sides, Mr. Chairman?

Senator BENTSEN. I want to get back to that candid statement. Aren't there States then that would be putting up more billboards?

Mr. LAMM. I framed that answer to your previous question, that I could give you no assurance that States would not.

Senator BENTSEN. That is right. I wanted something as positive as I heard on the other side.

Mr. LAMM. Same degree of candidness, yes, sir.

Senator BENTSEN. Thank you.

Our next witness will be Dr. Charles Floyd, University of Georgia. If you will take the witness stand, please.

Dr. Floyd, because of the limitations of time and the reoccuring votes which we know will be facing us, and the questions that obviously Senator Stafford and I would want to ask, if you would summarize your statement to 5 minutes and we will take it in its entirety for the record.

STATEMENT OF DR. CHARLES FLOYD, UNIVERSITY OF GEORGIA, ATHENS, GA.

Mr. FLOYD. Since I got interested in this topic academically several years ago, I have written several articles and a book on this, but I was told that I would be cited for contempt if I tried to read all of those.

Senator BENTSEN. I am afraid we won't be able to take the book into the record.

Mr. FLOYD. But I would like to put the articles in the record. (See p. 135.)

I support Senator Stafford's bill, S. 344, with extreme reluctance, as I am sure Senator Stafford offered it with extreme reluctance.

The bill is an admission that the Highway Beautification Act, which was hearalded with great expectation and upon which so much time and money has been expended, is a failure. Instead of achieving the original goals of removing existing billboard clutter from our rural roadside and preventing its future spread, the act has been transformed into a sign industry dominated program that is actually protecting and subsidizing the industry it was meant to regulate.

In preparing for these hearings, I asked myself several questions.

How could this program be made more ineffective than it is today? How could this program be more perverted away from its original stated objectives?

How could this program be made a greater benefit to the sign industry? How could this program be changed to waste more of the taxpayer's money?

It was very difficult for me to find any answers to these questions.

But I think the most compelling criterion regarding the effectiveness of this program is spoken by the billboard industry?

If the act were meeting its original objectives, if it was any good, they obviously would be very unhappy with it, but they love it.

Let us examine some of the reasons why the act has been so ineffective.

Under the act, billboards were to be allowed only in areas that were zoned for commercial and industrial use and were to be made subject to size, spacing and lighting criteria. Unfortunately for the act's stated objectives, the Secretary was not allowed to set any national standards but was to enter into agreements with the States based on customary use. "Customary use" has been defined in a rather curious way.

The Bureau of Public Roads first proposed a maximum size sign of 400 square feet. Later they changed this proposed criteria to 650 square feet, even though a national inventory showed that all but 1.85 percent of the existing signs were smaller than 650 square feet.

Finally, as the then Federal Highway Administrator testified several years ago, the Federal Highway Administration developed a model agreement in cooperation with the Outdoor Advertising Association of America. This model agreement set a maximum size limitation of 1,200 square feet that was adopted by 32 of the States in their agreements with the Secretary.

This square footage is equal to the floor area of a medium size three-bedroom house and is approximately twice the size of the largest billboards normally erected along the Interstate System.

Mr. George MacInturff, who served as Chief of the Scenic Enhancement Division of the Federal Highway Administration and was chief negotiator in negotiating these agreements with the States and who now works for the Outdoor Advertising Association of America, recently testified—

> That size limit is the outer limit of what is used by the industry in major urban areas in the United States.
>
> I doubt greatly that more than 1 sign out of 2,000 now erected or erected since these controls were established ever even approaches 1,200 square feet.

Customary spacing in the guidelines and in most of the States was defined as every 500 feet on the Interstate System, every 300 feet on the primary system and every 100 feet on the primary system within municipalities. Since we can have two signs at every site, this means it is possible to have 42 boards per mile on any portion of the Interstate System that is zoned commercial or industry, 70 faces per mile on the primary system and the somewhat absurd level of 212 sign faces per mile on the primary system inside a municipality.

If each of the signs were of the maximum size, 1,200 square feet per site, this would mean we could have 3 acres of billboard for every mile in each direction.

To say the size and spacing requirements serve as any effective control on sign boards is obviously absurd.

Since the size and spacing requirements contained in most of the agreements amount to virtually no control of outdoor advertising, the designation of commercial and industrial areas becomes all important.

At the time of the act's passage, many were concerned that local jurisdictions would zone areas as commercial or industrial solely to permit signs, thereby creating a huge loophole. During the debate, Senator Randolph stated, however, and I quote:

> The matter of zoning areas for commercial or industrial purposes is left to the States. This language does not, of course, mean that a State or local authority can place a label "zoned commercial or industrial" on land adjacent to the interstate and primary systems solely to permit billboards or junkyards and thereby frustrate the intent of Congress.

Unfortunately, this has not been the case. Large areas of rural countryside have been zoned commercial in violation of any accepted land use planning criteria. And this is being accepted for purposes of the act by the FHWA.

Let me give you one flagrant example that happened to have occurred in Georgia. Camden and Glynn Counties are bisected by Interstate 95 which was recently constructed through the rural countryside, most of which was pine forest and swamp.

Each of these counties zoned between 500 and 800 acres as commercial at each intersection. Camden County, which has a popula-

tion of approximately 12,000 people and has around 50 acres of land actually in commercial use in the entire county, zoned nearly 4,000 acres as commercial.

The director of the Glynn County Planning Commission stated in a public hearing that the purpose of the zoning was to permit billboards. The zoning violated every recognized standard of land use planning.

A study by the planning commission projected a need for only 102 acres of additionally commercially zoned land in Camden County by the year 2000. Both the Junkyard and Outdoor Advertising Branch and the Chief Counsel's office of FHWA recommended against accepting this zoning for the purpose of the Highway Beautification Act.

The Assistant Chief Counsel's report stated:

> It is clearly established that the zoning amendments were enacted solely to avoid the proscriptive effect of the Federal and State outdoor advertising laws.

He concluded:

> The records submitted indicate the primary purpose of the zoning amendments is to allow outdoor advertising signs to be erected.

The records also indicate the zoning action was not a part of the comprehensive zoning. He concluded, State and Federal law specifically provides that action that is not part of a comprehensive zoning and is created primarily to permit outdoor advertising structures is not recognized as zoning for outdoor advertising purposes. Therefore, the erection and zoning violates the Highway Beautification Act.

Despite all this evidence, the Federal Highway Administration accepted this zoning thereby permitting billboards to be erected in areas that were totally rural in nature and, thereby, frustrated the stated intent of Congress.

Of course, another problem arises under what can be referred to as anticipatory zoning. Under generally accepted land use planning practices lands are zoned not just for the present but also for anticipated development far in the future.

This tends to create billboard alleys out in what are obviously rural areas but areas that are zoned for commercial use.

The General Accounting Office, in their study last year, recognized these problems and they stated:

> In some cases signs in commercial or industrial zones or in rural environments where there are no commercial or industrial businesses—the land is merely zoned for such businesses.
>
> We believe that a more appropriate criterion for allowing such signs will be the actual use to which the land was put. This would restrict such signs to areas which have already suffered the visual blight of industrialization.

Now, what about removing the nonconforming signs? We see figures that approximately 30 percent of the nonconforming signs have been removed.

This figure, however, gives a totally false impression regarding the status of the removal program. As you have heard testified——

Senator BENTSEN. Dr. Floyd, I will have to ask you to summarize it in the next minute. You have gone over your time.

Dr. FLOYD. All right. The GAO in their report estimate the cost of the removal program at $823 million. I think that is probably low. I think we are talking about a figure, under the current law of

something approximating a billion dollars to actually remove the signs. This has been complicated, of course, tremendously by the 1978 amendments which constitute an unprecedented interference with local government zoning authorities.

Senator BENTSEN. Thank you, very much, Dr. Floyd.

Dr. FLOYD. Can I mention just one more thing, Senator, very briefly?

Senator BENTSEN. All right.

Dr. FLOYD. I would like to mention the vegetation control issue which is an euphemism for destroying trees and other vegetation on the publicly owned right-of-way.

The Federal Highway Administration, in a memorandum of March 15, 1977, gave the States the authority to allow the billboard industry to go in and cut down the trees on the publicly owned right-of-way to provide a better view of their signs.

This is being done now in several of the States. Georgia happens to be one of them. Where I mentioned these permits on Interstate 95, they are allowing swaths 4,000 and 5,000 feet long being cut in front of the signs. Some of these trees are 50 feet high and 9 inches in diameter. This seems to be certainly in violation of the original intent of the act.

Senator BENTSEN. Thank you, Dr. Floyd.

Senator Burdick, do you have a statement you want to insert in the record?

Senator BURDICK. I do not have a statement of my own, Mr. Chairman, but I would like to add to the record a statement of the highway commissioner of the State of North Dakota.

Senator BENTSEN. Without objection, it will be included in the record following Dr. Floyd's statement. (See p. 158.)

Dr. Floyd, as I recall your statement, you made some reference to 3 acres of billboards per mile.

Dr. FLOYD. Yes, sir.

Senator BENTSEN. That is as outrageous to me as it is to you. But now you are from Georgia and you understand the political system in Georgia and you talked about some of the problems down there. Your objection, apparently, is to the need for additional control of a definition of commercial and industrial zoned areas to make it more effective.

Do you see a volunteer program doing that? Do you see S. 344 doing that?

Dr. FLOYD. Senator, I think in my whole region of the country, the Southeast, we would have less billboard control under S. 344 than under the present act. But I would say that under the present act, we don't have any effective control either.

Senator BENTSEN. Well, we just had Mr. Lamm testify that we had some 200,000 billboards that weren't put up that could have been put up if we hadn't had the legislation.

Now you say you didn't know how the program could be more perverted or denied, and I can tell you how. By no appropriations, no money to take the billboards down, and that is what the position of the administration has been this year. I strongly disagree with that, and so does the chairman of the full committee, both of us have requested additional funds.

I am pleased to find out that the Federal Highway Administration also asked for those additional funds.

In your book, you talked about advertising as a use for the road rather than use for private property.

Dr. FLOYD. Yes.

Senator BENTSEN. You know, Congress has faced up to that definition time and time again. They understood the issue and it considered the issue when it passed the 1965 act. It then made the decision to compensate people who own billboards or who own the land where the billboards are located due to the loss of that property.

Congress made that decision not because it believed the use of the road inapplicable, it made that decision because it believed this program, the highway beautification program, should pay compensation as all other Federal-aid highway programs do.

If you have got a commercial building and that has to be taken down, we don't ask them to amortize that commercial building. We compensate them for it. So I think it is a question of property rights. And that decision has been made in this Congress time and time again.

So it is a question of implementation of compensation. I can certainly agree with you, Doctor, that we ought to try to find a better way of defining commercial areas, industrial zones than we have seen thus far. And I sure don't want to see 3,000-foot swaths or 5,000-foot swaths cut so you can see the billboards better.

I had the present Governor of Maryland see me when he was Secretary of Transportation on the Baltimore-Washington Turnpike and they were talking about going in and cutting down all of those trees. We made an exception for him, that I totally concurred with. But I frankly don't see where S. 344 when you put it on a volunteer basis helps in that situation.

I think you are going to have the problem aggravated. Do you care to comment on that?

Dr. FLOYD. Yes, sir, two things I would like to mention.

One, I think under the present act, the way it is being administered, that you can put up a sign just about anywhere you want to now if you know how to do it.

Senator BENTSEN. Well, apparently the Administrator doesn't agree with you. He said over 200,000 were denied.

Dr. FLOYD. I would disagree with the Administrator on that. I think the evidence shows the other to be correct. I think that you find the smaller businesses, the small motel owner, for example, people like this, they have a problem.

The larger sign companies that have the legal staffs and the knowledge. They know how to secure permits and they can get the signs put up. The other things I would like to mention about compensation, I think within compensation, we have some problems of interpretations and how the signs are valued.

I remember the comment that Senator Muskie made in the debates concerning the 1965 act. He said the only thing that would be compensated would be the unamortized values that remained on the sign. And the procedures that had been used to value the signs really do not take depreciation of the signs into account.

Even if we agree that we are going to have compensation, I think the way this has been done has certainly wasted the taxpayers' money.

Senator BENTSEN. Do you really think when they go in to compensate for a commercial building that they take depreciation into account. They take in present value, that is the way you compensate for property.

Dr. FLOYD. Replacement cost less depreciation is the generally accepted method for valuing signs.

Senator BENTSEN. I don't agree with you at all on that. You take market value of the things and most of your judges and juries are going to give it on that basis.

Go ahead, Senator Stafford.

Senator STAFFORD. Professor Floyd, one of the traditional ways of taking down signs has been by amortizing the sign over a period of years under the police powers of the local municipalities and in some cases, I guess, State. Is that not true?

Dr. FLOYD. Yes, sir.

Senator STAFFORD. The police power had been a recognized power in connection with our highways where in effect the traveler on the highway is captive to whatever he sees even though he may have the right under police power to the enjoyment of a clear view as he travels the highway.

Dr. FLOYD. Yes, sir.

Senator STAFFORD. It has been the removal of that power in the 1978 amendments that really has contributed to bringing the removal of signs pretty much to a halt, that and the lack of any money to pay compensation. Am I correct?

Dr. FLOYD. Yes, sir.

Senator STAFFORD. Let me ask you this: Have you ever been hired by the opponents of the billboard industry and paid by them?

Dr. FLOYD. No, sir.

Senator STAFFORD. You have written a book that has been alluded to already "Highway Beautification: The Environmental Movement's Greatest Failure," analyzing the history of the billboard. Do you expect to make a lot of money from that book?

Dr. FLOYD. Zero. Any royalties, which would be fairly small I would imagine, go to the University of Georgia.

Senator STAFFORD. During these hearings, we will hear testimony telling us of the great success of the program since it has led to the removal of 380,000 illegal signs and 98,000 nonconforming signs.

Do you believe that is a fair indication of the program's success?

Dr. FLOYD. No, sir. The reasons I have already indicated, I tried to make some estimate in Georgia—I hate to be picking on Georgia, but I am there and I know a little more about the program in Georgia.

I certainly don't want to indicate that Georgia is the State doing the least on the billboard program or anything like that. But I did check. The Georgia Department of Transportation has issued 5,055 billboard permits.

Now, of course, you can erect up to four signs per permit, but if we use an average of two, that would be 10,000 billboards. They estimate that there are about 2,300 nonconforming signs on the Interstate System. Almost all of those were put up after the time

the 1965 act was passed and before Georgia came into compliance in 1972, and they estimate that there are 9,000 illegal signs that have been put up since the act and not taken down.

That comes up to over 21,000 signs and they say that they have removed 506. So certainly I would say in Georgia there must be 20,000 more billboards now than there were when this act was passed in 1965.

Senator STAFFORD. Has the act, as it is presently constituted, in your opinion, resulted in the removal of signs other than those that the industry wants to eliminate in any event?

Dr. FLOYD. Well, I cannot estimate that categorically because I haven't seen all the evidence. I do know, for example, I mentioned Interstate 95 where I would characterize phony zoning to permit signs, the State also went in on U.S. 17, which is the bypass route, and bought up the signs which the industry didn't want any more because the route has been bypassed.

I am afraid a lot of our funds have been used in this fashion for very small effect.

Senator STAFFORD. The 1978 amendments to the act make it necessary for States to compensate owners for any sign taken down, even if the sign is not removed for Federal beautification purposes. This means that if local governments decide by local zoning to remove signs in a commercial or industrial zone where no removal is required by Federal law, the State must still pay full compensation. As an expert in real estate law, do you believe this is an intrusion on local zoning rights and, if so, what do you see as the ramification of such intrusion in our local systems?

Dr. FLOYD. It is just about an unprecedented intrusion into the local government affairs. It is already having some immense effects. I think the Congress intended to compensate owners of signs removed because of the act.

This is not how it has worked in practice. The effect of the act has been to halt sign removal programs which local governments wish to undertake.

San Diego had been in court since 1972 and received a favorable ruling from the California Supreme Court, which is now being reheard, and they have over 1,200 signs that were coming down under their local police powers which are now in court and possibly will require compensation under the 1978 amendments.

Senator STAFFORD. One last question, Mr. Chairman.

Do you believe that the law, as it is now written, can be administered in a way that will achieve the stated goals of the act?

Dr. FLOYD. Not as it is presently written. I think if it had some amendments, it could be an effective program, but I do not believe that the present program can be effective.

Senator STAFFORD. Thank you, very much.

Thank you, Mr. Chairman.

Senator BENTSEN. Thank you, very much, Dr. Floyd.

We will reconvene—we have a vote on the floor of the Senate—not later than 11:30.

[Brief recess.]

Senator BENTSEN. This hearing will come to order.

Senator Stafford, you are recognized.

Senator STAFFORD. On March 23, 1979, I wrote to Administrator Bowers seeking answers to various questions regarding billboard control. On May 15, I received a letter in response. I ask that both letters be included at this point in the record of this hearing.

Senator BENTSEN. Without objection, it will be so ordered.

[The documents referred to follow:]

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United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, D.C. 20510

March 23, 1979

Honorable Karl Bowers
Administrator
Federal Highway Administration
400 7th St., S.W.
Washington, D.C. 20590

Dear Mr. Administrator:

I recently introduced S. 344, legislation that would establish new flexibility within the Highway Beautification Act. To assist me in preparing for the hearings on S. 344 that will be held later this spring, I would appreciate your analysis and thoughts on several points that focus on the billboard control program.

1. Is compensation now required for a sign erected in a municipal-commercial area when the owner of that sign was allowed to amortize it prior to its removal under state or local ordinance, if that sign had not been removed physically as of the date of the 1978 Amendments? If your answer is yes, how will that compensation be calculated?

2. At your confirmation hearing on August 11, 1978, you stated the following: "I had the unpleasant task of warning the chief highway commissioner in South Carolina, since becoming Acting Administrator, if better action was not taken at home that we would be forced to impose a penalty as required by law. We have subsequently met with people from South Carolina. They have assured they are going to make a good-faith effort to get in compliance with the beautification law." What specific actions, if any, have been taken or will be taken in relation to the South Carolina sign program?

3. What has FHWA done to assure compliance with the law in a state such as Missouri? What specifically has DOT done to investigate the billboard situation in the State of Missouri?

4. What has the FHWA done, if anything, to assure that the more visible billboards are removed by the States along the heavily traveled roadways, rather than those along the least traveled roadways?

5. What is the position of the FHWA regarding "vegetation-control" within the highway right of way, when the growth of vegetation may block the visibility of billboards? The newsletter of the Roadside Business Association has indicated that FHWA's position is that States must refrain from additional planting and must remove shrubbery and brush from the right of way, if the vegetation obscures the motorist's view of billboards. What is the authority for that position? A recent news article stated: "Groves of pines are to be chopped down, some belonging to the Federal government, to insure good visibility for the billboards that have been erected at several interchanges" in

Georgia. Has any vegetation planted by the states, using Federal funds, been removed, or will be removed, as a result of this directive?

6. Questions have been raised over the possible influence of the billboard lobby within FHWA. Could you provide me with a chronology of specific contacts you and your deputy have had with the industry and its representatives since the date of your confirmation? I would appreciate a full list, including meetings that occurred in the offices of FHWA.

My thanks for your assistance and cooperation. Your response prior to May 10 would be most appreciated.

Sincerely yours,

Robert T. Stafford
United States Senator

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
WASHINGTON, D.C. 20590

OFFICE OF THE ADMINISTRATOR

MAY 15 1979

IN REPLY REFER TO:

HCC-40

Honorable Robert T. Stafford
United States Senate
Washington, D.C. 20510

Dear Senator Stafford:

This is in response to your letter of March 23, 1979, which raises several questions as to the manner in which the Federal Highway Administration (FHWA) has been administering the highway beautification program. Some of the questions you raise have been among the more troubling confronting our agency over the past few months, especially after the passage of the Surface Transportation Assistance Act of 1978, P.L. 95-599, November 6, 1978.

You will recall the Department objected to the amendments to the Highway Beautification Act contained in P.L. 95-599 [1978 Amendments]. In spite of our efforts, those amendments were passed. In order to find an administratively acceptable way to implement the 1978 Amendments, and deal with the numerous other difficulties which have been plaguing the highway beautification program for many years, we have embarked upon a nationwide restudy of the entire highway beautification effort. That study, which includes eleven public hearings across the country, should be completed this year. The study and the public hearings have been announced in an Advance Notice of Proposed Rulemaking published in the Federal Register at 44 FR 25388, April 30, 1979 (copy enclosed). Until the restudy is complete, we believe it premature to make any final judgments regarding this program.

With the foregoing thoughts in mind, we will answer your questions specifically:

(1) We have interpreted sections 122(a) and 122(b) of the 1978 Amendments to require compensation for any lawfully erected sign removed on or after November 6, 1978. Signs which were in litigation on that date must also be compensated. This interpretation is based on our understanding that the Congress intended to completely reject amortization as a way of removing signs in the 1978 Amendments. Thus, removals after an amortization period can no longer be allowed. Compensation must be calculated based on the full value of the sign, ignoring any amortization period. Any other approach would nullify the substance of this interpretation (copies enclosed).

Missouri is a case in point. The FHWA's review of the Missouri program in June 1976 identified a number of deficiencies relating to the State's removal of illegal and nonconforming signs. Also, the State allowed the erection of signs in violation of agreement criteria governing signs in unzoned commercial and industrial areas. Most of the State's problems relating to sign removals arose from a very cumbersome hearing and appeal process which had to precede any involuntary removal.

Further, in 1975 the State legislature amended the State outdoor advertising law to require compensation of previously illegal signs. The FHWA has informed the State that Federal funds could not participate in such compensation, since such signs would continue to be treated as illegal for Federal purposes and would have to be removed expeditiously. A number of other technical problems continue to exist with the State's rules and procedures which hamper the State's effective control program.

After being informed of these deficiencies, the State did undertake to make a number of changes in its procedures which should lead to better compliance in the future. Serious problems remain regarding the expeditious removal of illegal signs. We are still attempting to resolve these matters through our regional office in accordance with the procedures outlined above.

It is true that the State has not corrected all of the matters we have called to its attention. In fact, some of these matters, if left uncorrected, would eventually place the State in jeopardy of losing a part of its Federal-aid highway apportionment. However, progress has been made in Missouri. In addition to the regulatory reforms mentioned above, the State has obligated more than $300,000 for sign removal in fiscal 1978 and 1979. Informal efforts to rectify remaining problems are continuing even now.

We should point out that enforcement actions based solely on deficient program administration by a State, rather than on a more patent statutory deficiency, have been rather difficult. So long as a State is moving toward compliance rather than away from it, formal penalty actions have been viewed by both my predecessors and me as counterproductive. The perceived lack of congressional support, as reflected by amendments making sign removal more difficult and costly for the States, also makes enforcement on operational grounds more difficult.

(4) The FHWA has always taken the position that sign removal priority is a State matter. Some States have a policy of removing signs along particular routes or in particular areas, irrespective of the wishes of sign owners, while others have worked out agreements with sign owners to make voluntary acquisitions come first. The relatively low level of funding provided over the years has made it difficult for many States to progress beyond initial phases of their acquisition programs.

(2) A number of issues relating to South Carolina's outdoor advertising control program are now pending before the FHWA. There are two major issues now pending regarding signs in urban areas. The first deals with the State's spacing controls of signs in commercial and industrial areas inside incorporated municipalities adjacent to Interstate highways. The second deals with a legislative drafting error which raises some technical questions regarding the State's ability to administer the program in urban areas. These matters were called to the attention of the South Carolina State Department of Transportation last fall. It is our understanding that they were referred to the State Attorney General's Office for an opinion. We are still awaiting a final opinion by the State. Of course, if this process does not result in a satisfactory resolution of these matters, more formal action will be required.

A number of other issues came to the FHWA's attention during the course of a review of the State's program conducted in June 1977. Most of the problems identified by that review have since been resolved. Several major problems are, however, still outstanding. One deals with the question of the adequacy of sign site owner compensation. Other problems dealing with the compensability of certain signs were also identified. We were and are now working specifically with the State through our field offices to resolve these issues. Resolution of these questions, including the spacing and legislative problems, is in the first instance a field matter under existing FHWA delegations.

(3) State compliance with the Highway Beautification Act is one of the major responsibilities of the FHWA's Office of Right-of-Way. The FHWA has a staff of professionals expert in the highway beautification area stationed at the Headquarters Office in Washington responsible for the program on a national basis. The FHWA's regional and division offices have primary responsibility for direct implementation of program requirements and also have professional employees knowledgeable in this program who work with the States on a regular basis. When difficulties in a given State program are unresolved, the FHWA attempts to secure compliance through a series of actions escalating in severity in an effort to secure the necessary changes.

Our first effort is usually an informal contact between the division and the State to induce the needed changes voluntarily. If this proves unsuccessful, the matter is referred to the region or Headquarters, where efforts are again made to obtain voluntary compliance. Finally, the State is given a formal warning that its noncompliance will lead to a reduction of its Federal-aid highway apportionment. This is generally considered the first step in the administrative proces leading to the "penalty" envisioned by the Highway Beautification Act.

Usually, the more informal efforts outlined above are sufficient. The ultimate administrative effort is greatly reduced if voluntary State compliance can be achieved.

There is no statutory mandate to remove signs along heavily traveled roads first. In fact, 23 U.S.C. section 131(q)(2) directs the Secretary to encourage the States to defer the removal of signs giving directional information about goods and services of interest to the traveling public until all other signs have been removed. This group of signs is very large. Thus, section 131(q)(2) would defeat, at the outset, any attempt by the FHWA to clear heavily traveled routes first.

(5) The removal of vegetation from a highway right-of-way is usually handled either as a maintenance question, in the case of State authorized activities, or as an encroachment where illegal cutting is involved. Highway maintenance is, in the first instance, a State responsibility, although the FHWA has after the fact review authority (23 U.S.C. section 116). The FHWA's policy issuances on vegetation control have generally been directed toward this end (copies enclosed).

In the case of illegal cutting to make signs more visible, the FHWA has urged the States to impose strong sanctions against sign owners engaging in such practices. These include the immediate removal of the signs benefiting from the cutting, as well as fine or imprisonment for the individuals and companies involved, as appropriate (copy of guidelines enclosed).

In the case of federally funded landscape projects, we have rather clearly taken the position that removal of vegetation, except for purposes of routine maintenance and highway safety, could not be allowed without the FHWA's approval, which must be based on a finding of consistency with the Highway Beautification Act. Enclosed is a copy of a legal opinion to this effect.

The statement contained in the Roadside Business Association Newsletter which you cite, does not reflect FHWA's position on this issue. The FHWA does not and never has required the States to refrain from additional plantings which may obscure signs or to remove existing vegetation when this occurs. We are not aware of the basis or context of the quote you refer to, which may reflect a personal opinion, rather than a policy position.

Obviously, with the Highway Beautification Act limiting the number of conforming sites and the cost of signs continually increasing, sign owners are becoming more concerned about the number of signs and potential sign sites blocked from view. The problem is greater in rural areas because of more vegetation and fewer sites. For this reason, Georgia reached an agreement with some outdoor advertising companies, permitting the companies to clear limited areas within the right-of-way to enhance the visibility of their signs and sign sites. None of the rights-of-way involved were "owned" by the Federal Government. However, Federal-aid highway funds were used to acquire the rights-of-way involved, which in certain areas were wider than minimum requirements because of esthetic design considerations. These rights-of-way were wooded at the time of acquisition and, except for the cut areas, are heavily wooded now. Federal funds were not used to landscape or plant these areas. The State is responsible for the maintenance of the right-of-way and for the proper implementation of this project.

Finally, because of the continuing controversy in this area, we are addressing the vegetation issue in the Advance Notice of Proposed Rulemaking discussed at the beginning of this letter. We will solicit comments on the entire range of issues raised by this question, including such things as development of a Federal prohibition on vegetation obscuring signs and whether there is any Federal interest at all in ensuring or encouraging the visibility of signs.

(6) We have provided you with a list of meetings with the representatives of the outdoor advertising industry as you requested (list enclosed). We have attempted to make the list as complete as possible. We should note that any list of this type would be misleading. The FHWA has a tradition of meeting with anyone who has concern with a matter under the authority of the FHWA. Thus, the calendars of both my deputy and myself are full of meetings with a wide range of groups representing many points of view on most of the controversial issues before the FHWA. These meetings are not generated by anyone within the FHWA.

While we have met with people opposed to signs, I would be the first to admit that we have met more frequently with those representing the outdoor advertising industry. This is due to the fact that very few such meetings have been requested by those opposed to billboards. Our desire to hold the nationwide public hearings, referred to at the beginning of this letter is, in part, due to our frustration at obtaining balanced input. The main reason that we have scheduled hearings in ten cities is to ensure maximum accessibility for those who cannot travel to Washington.

Further, we have been making efforts to establish an advisory committee on which a wide spectrum of views will be represented to review the comments we receive during the restudy process. It is our hope that this committee will be functioning within a few months. The complexities of the Federal Advisory Committee Act makes it difficult for us to be more precise. When approved, however, we have every intention of asking several individuals who have long been associated with the antibillboard movement to serve as members of the Committee. Of course, industry representatives will be asked to serve as well.

Since being appointed, my deputy and I have attempted to administer this program fairly. Our first efforts, aimed at defeating the 1978 Amendments of the Highway Beautification Act, were unsuccessful. Since then, we have tried to be as evenhanded as possible in dealing with the many complex issues confronting the highway beautification program. We hope to be able to continue along this path.

We intend to follow the hearings you plan to hold on S. 344 with great interest. With your permission, we would very much like to incorporate any information developed into our restudy effort. We plan to issue the results of our study this fall, and will be happy to transmit our conclusions to you.

51-237 O - 79 - 3

We appreciate your long interest in this program and in the Federal-aid highway program, in general. We have attempted to deal with the questions you raise as completely as possible. If we can provide you with additional information or be of further assistance, please let us know.

Sincerely yours,

Karl S. Bowers
Federal Highway Administrator

7 Enclosures

√ Background

Form FHWA 121 (Rev. 5-73)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DATE: March 6, 1979

In reply refer to: HCC-40

SUBJECT: Just Compensation for Signs

FROM: Federal Highway Administrator

TO: Regional Federal Highway Administrators, Regions 1-10
Regional Engineer, Region 15

On December 5, 1978, a memorandum was issued to all Regional Administrators to explain the impact of the 1978 amendments to the Highway Beautification Act contained in the Surface Transportation Assistance Act, P.L. 95-599, November 6, 1978.

Since its issuance, that memorandum has been the subject of considerable discussion with the House Committee on Public Works and Transportation. The Committee has expressed concern that the December 5 memorandum does not reflect the true scope of the 1978 amendments.

Attached is a memorandum by the Chief Counsel which deals with the concerns raised by the Committee. Thus, it should be clear that all lawfully erected signs still in existence on November 6, 1978, and those additional signs which were removed prior to November 6, 1978, but were the subject of litigation pending on that date are entitled to compensation under 23 U.S.C. 131(g) and (k).

We will be issuing several notices over the next few weeks concerning the outdoor advertising control program. It is hoped that this memorandum will assist you in interpreting those notices.

Karl S. Bowers

Attachment

Form FHWA 121 (Rev. 5-73)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DATE: MAR 5 1979

In reply refer to: HCC-40

SUBJECT: INFORMATION: Just Compensation for Signs

FROM : Chief Counsel

TO : Mr. Karl S. Bowers
HOA-1 Federal Highway Administrator

On December 5, 1978, you issued a memorandum to all Regional Administrators to explain the impact of sections 122(a) and 122(b) of the Surface Transportation Assistance Act of 1978, amending 23 U.S.C. section 131(g) and (k).

That memorandum indicated, among other things, that:

> "the statute requires the States to provide just compensation upon the removal of signs legally in existence on or after November 6, 1978, the effective date of the 1978 amendments, which do not conform to the definition found at 23 U.S.C. section 131(c) if they wish to remain in compliance with the Highway Beautification Act." [Emphasis added.]

The House Committee on Public Works and Transportation has indicated that this language does not accurately reflect the true scope of the 1978 amendments. Accordingly, the statute is to be interpreted to require the States to provide compensation upon removal of signs which were lawfully erected under State law. As a matter of administrative policy, the FHWA will not require the payment of just compensation for signs that were not in existence on November 6, 1978, except for any such signs that were the subject of pending litigation on that date. Failure to provide compensation for signs that are subject to pending litigation or in existence on November 6, 1978, will be in violation of 23 U.S.C. section 131(b), exposing a State to reduction of its Federal-aid highway apportionment.

Lorenzo Casanova

ED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DATE: MAR 15 1977

In reply refer to: HRE-1

510

SUBJECT: Vegetation Clearance From Within Federal-Aid Highway Rights-of-Way - Outdoor Advertising Control (Re: December 30, 1976, memo)

FROM: Associate Administrator for Right-of-Way and Environment
Associate Administrator for Engineering and Traffic Operations
Washington, D.C.

TO: Regional Federal Highway Administrators
Region 1-10

The December 30, 1976, memorandum to Regional Administrators captioned above was issued because it had come to the attention of the Federal Highway Administration (FHWA) that efforts were being made to encourage States to adopt rules and regulations which would permit clearance of native and/or planted vegetation from within Federal-aid rights-of-way in order that such vegetation would not screen outdoor advertising signs from the view of the traveling public.

Since the December 30, 1976, memorandum was issued, a question has arisen whether a State highway department at the request of an outdoor advertiser could enter an agreement with the outdoor advertiser to maintain specified areas within Federal-aid highway rights-of-way for the purpose of permitting the outdoor advertising sign to be viewed by the traveling public with the cost of maintenance to be paid by the outdoor advertiser. It is anticipated that this or similar requests for selective maintenance in areas adjacent to nonconforming signs until they are acquired or in areas adjacent to signs in commercial or industrial areas on a more permanent basis will be made of many State highway departments. The decision whether to enter into such an agreement must be made by the State highway department as part of its overall maintenance responsibility under 23 U.S.C., Section 101 and 116 to preserve the entire highway including roadsides for its safe and efficient use, within its own laws and maintenance policies, good landscaping practices, and the guidance provided by the AASHTO Maintenance Manual. Neither the FHWA nor State highway departments would countenance any illegal or unauthorized cutting of trees or vegetation on Federal-aid

rights-of-way performed to protect or enhance the visibility of outdoor advertising signs adjacent thereto. FHPM 7-6-2, Attachment 1, paragraph 2, was written to provide guidelines for unauthorized or illegal destruction of trees or shrubs.

J. M. O'Connor

Joseph M. O'Connor

/s/ H. A. Lindberg

H. A. Lindberg

Form FHWA 121 (Rev. 5-73)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DATE: DEC 20 1976

In reply refer to: HRW-10

SUBJECT: Vegetation Clearance From Within Federal-Aid Highway Rights-of-Way - Outdoor Advertising Control

FROM: Associate Administrator for Engineering and Traffic Operations
Associate Administrator for Right-of-Way and Environment
Washington, D.C.

TO: Regional Federal Highway Administrators
Regions 1 - 10

It has come to our attention that efforts are being made to encourage States to adopt rules and regulations which would permit clearance of native and/or planted vegetation from within Federal-aid highway rights-of-way in order that such vegetation does not screen outdoor advertising signs from the view of the traveling public. Such efforts include encouraging the States to arrive at sign values without considering economic depreciation due to the fact that a sign may be obscured by vegetation. With respect to these efforts, an attempt is being made to obtain the backing and support of the AASHTO Operating Subcommittee on Maintenance.

Adoption of rules and regulations which guarantee the visibility of all outdoor advertising signs, such as discussed above, would have an adverse effect on highway beautification and would be contrary to FHWA policy. Rules or regulations promulgated by a State which guarantee the visibility of outdoor advertising signs cannot be approved by FHWA.

To emphasize and reaffirm the position of FHWA on any action involving the clearance of vegetation from within Federal-aid highway rights-of-way on the Federal-aid system for the primary purpose of providing visibility of outdoor advertising signs to motorists, the following action is recommended: To protect the integrity of the highway facility and the safety of the traveling public consistent with (1) the objectives of highway beautification and (2) expenditure of public funds for public purposes, all State highway agencies should be encouraged to follow the guidelines provided in FHPM 7-6-2, Attachment 1, paragraph 2, where Federal funds participated in any phase of project costs.

This policy should be immediately brought to the attention of personnel in the States and FHWA field offices who have responsibility for highway maintenance and outdoor advertising sign acquisition and controls.

/s/ H. A. Lindberg
H. A. Lindberg

J. M. O'Connor
J. M. O'Connor

2. Guidelines Concerning Destruction of Trees and Violations of Access Control

a. Instances involving the destruction of trees and shrubs on the right-of-way in order to increase or enhance the visibility of an outdoor advertising sign and instances involving the erection and/or maintenance of signs adjacent to Interstate highways by access from the highway right-of-way are contrary to the provisions of 23 CFR 1.23 and State laws and regulations.

b. The State highway department should take all legal and administrative action at its disposal to abate these practices, including action to recover damages to landscaping, sodding, fences, and other appurtenances to the highway. Additionally, it is recommended that the States consider the following administrative remedies:

(1) revocation of permits for any signs so involved,

(2) denial of permits for signs which can only be erected or maintained as a practical matter from the highway right-of-way or which could not be seen from the highway due to existing landscaping on the right-of-way,

(3) certification on permits and/or licenses to the effect that the sign owner will not engage in these practices,

(4) performance bonds in permit or licensing procedures to guarantee compliance, and

(5) a specific prohibition in State outdoor advertising control regulations.

c. Regional and division offices should report to the Washington Office promptly all such instances which come to their attention together with action being taken by the State.

Form FHWA 121 (Rev. 5-73)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DATE: February 8, 1979

In reply refer to: HCC-40

SUBJECT: Vegetation In Mississippi

FROM : Assistant Chief Counsel for
Right-of-Way and Environmental
Law Division

TO : Mr. Joseph M. O'Connor
HRE-1 Associate Administrator for
Right-of-Way and Environment

You have asked for our views regarding the legality of the State of Mississippi embarking upon a project to clear vegetation which had been erected with Federal participation on a Federal-aid highway right-of-way in order to make legal signs visible from the main traveled way of the highway.

The whole subject area of vegetation clearance has been the subject of considerable controversy in the past. Present Federal Highway Administration policies regarding the clearance of vegetation within the Federal-aid rights-of-way in front of signs are expressed in two memorandums, dated December 30, 1976, and March 15, 1977. Those two memorandums indicate that the specific decisions regarding vegetation clearance are part of the State's maintenance responsibilities under 23 U.S.C. sections 101 and 116. The March 15 memorandum, however, does not prohibit the States from entering into agreements with outdoor advertising companies to maintain specific areas, if this is consistent with State maintenance policies, good landscaping practice, and the guidance provided by the AASHTO maintenance manual.

A different question arises when the vegetation is in place as a result of Federal involvement in a landscape project, either under 23 U.S.C. section 315 or otherwise. Section 116(a) specifically imposes on the State the duty to "maintain or cause to be maintained any project constructed under the provisions of this chapter or constructed under the provisions of prior acts." This obligation continues until the project is no longer part of a Federal-aid system. The only circumstance

under which a State would seemingly be able to relieve itself of the obligation to maintain pursuant to section 116 is if the underlying system designation were changed. 23 CFR 470.111(b).

Relinquishment of highway facilities where Federal-aid funds participated in either right-of-way of physical construction costs of a project is regulated by 23 CFR, Part 620, Subpart B. Relinquishment is allowed only where the Federal Highway Administrator specifically agrees to such relinquishment. The relinquishment must be justified by a series of specific findings which include that "the lands to be relinquished are not suitable for retention in order to restore, preserve, or improve the scenic beauty adjacent to the highway consistent with the intent of 23 U.S.C. 319 and P.L. 89-285, Title 3, Sections 302 and 305 (Highway Beautification Act of 1965)." 23 CFR 620.203(1)(4).

Where the highway facility at issue is a project specifically carried out under section 319, or where it is a landscape project and its purposes are consistent with section 319, it would be difficult to justify the relinquishment of the facility as consistent with the purposes of section 319.

The above discussion makes clear that FHWA's concurrence is required before the State can be relieved of its obligation to maintain a federally funded landscape project. The State cannot take unilateral action by returning Federal-aid funds as a means of terminating its obligation to maintain the landscape project. This would not be consistent with the provisions of 23 U.S.C. section 116 and 23 CFR, Parts 470 and 620, as discussed above. Federal concurrence, on the other hand, is governed by the provisions of 23 CFR, Part 620,"Relinquishment of Highway Facilities."

In conclusion, the following rules would seem to govern the removal of vegetation on the Federal-aid highway rights-of-way:

1. For vegetation acquired incidentally as part of a larger Federal-aid project, or vegetation which has incidentally grown on a Federal-aid project, State maintenance rules will govern consistent with sound landscape practice.

2. Where the project in question specifically included landscape elements, or where the project in question was exclusively a landscape project, Federal concurrence is required prior to the removal of any such landscaping. This is because the"project" to be maintained under 23 U.S.C. section 116 is the landscape project. The removal would be governed by 23 CFR, Part 620, since such removal of vegetation would essentially amount to a relinquishment of a federally funded highway facility.

3. State maintenance responsibility ceases when the highway itself no longer constitutes part of the Federal-aid highway system.

If the State were to remove vegetation in violation of the above conditions, it would be in violation of 23 U.S.C. section 116. Under that section sanctions could include withholding further project approvals until maintenance is restored. The Federal Highway Administrator has other remedies available to him short of withholding project approvals. See 23 CFR section 1.36. His authority to adopt appropriate corrective measures under this section has been established in a number of recent decisions, including Nebraska v. Tiemann, and South Dakota v. Adams.

We recognize that landscape projects are sometimes modified for purposes relating to highway safety, redesign of the highway facility, or as part of the normal maintenance of the landscape project. This memorandum should not be read to curtail activities of this type. Where, however, the purpose of the activity to be undertaken is diametrically opposed to the reason for the landscape project and is not directly related to some other highway purpose as defined in Title 23, the above restrictions apply.

Irwin L. Schroeder

You asked for a list of the meetings my deputy and I have had with the representatives of the outdoor advertising industry. These meetings are as follows:

1. On October 3, 1978, Mr. Hassell and I had lunch with Mr. Vernon Clark of the Outdoor Advertising Association of America.

2. On November 10, 1978, I gave a speech at the Roadside Business Association (RBA) Convention in Hilton Head, South Carolina.

3. On November 3, 1978, I met with Mr. William Reynolds of the RBA to make arrangements for the November 10 address.

4. On November 27, 1978, Mr. Hassell gave a speech in San Francisco, California, at a meeting of the Outdoor Advertising Association of America.

5. On December 8, 1978, Mr. Hassell and his assistant met with Mr. Reynolds.

6. On February 9, 1979, Mr. Hassell met with Mr. Clark and Mr. Jack Goss.

7. On March 28, 1979, I had dinner with Mr. Reynolds in Las Cruces, New Mexico. With me was Mr. James Jenkins, an employee of the FHWA's Office of Public Affairs.

federal register

Monday
April 30, 1979

Part VI

Department of Transportation

Federal Highway Administration

Highway Beautification Program; Reassessment and Public Hearings

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[23 CFR Parts 750 and 751]

Highway Beautification Program; Reassessment and Public Hearings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking and public hearings.

SUMMARY: There are now pending before the Federal Highway Administration (FHWA) several matters related to the Highway Beautification Act of 1965, as amended, 23 U.S.C. 131, 136, and 319, and particularly relating to the outdoor advertising and junkyard control programs, sections 131 and 136. A discussion of these matters is contained in the Supplementary Information Section. As a result of these matters, the FHWA is considering a reassessment of the Highway Beautification Program, particularly 23 U.S.C. 131 and 136. As part of this reassessment, the FHWA will hold public hearings for the purpose of soliciting comments from all interested parties who may wish to express their ideas about the future direction of the program. While any of the areas mentioned in the Supplementary Information Section of this Notice are open for comment, the main purpose of the hearings will be to formulate a basis for an overall approach to the program in the future, both as to its administration and possible recommendations for legislative change.

DATES: The public hearings announced in this Notice will be held in all ten Federal regions. Hearings are tentatively scheduled to be held on June 5 (and 6, if necessary), 1979, in Boston, Massachusetts, Chicago, Illinois, and Portland, Oregon; on June 12 (and 13, if necessary) in Baltimore, Maryland, Kansas City, Missouri, and San Francisco, California; on June 19 (and 20, if necessary) in Atlanta, Georgia, Dallas, Texas, and Denver, Colorado and on June 26 (and 27, if necessary) in New York City, New York. An additional hearing will be held in Washington, D.C., on July 10 (and 11, if necessary). More specific details of the site, time, and procedures for the hearings will be announced in the **Federal Register** at a later date. Written comments are due by July 15, 1979.

ADDRESS: Submit written comments, if possible in triplicate, to FHWA Docket No. 79–10, Federal Highway Administration, Room 4205, HCC–10, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Richard W. Moeller, Chief, Junkyard and Outdoor Advertising Branch, telephone number (202) 245–0021, or Mr. Edward Kussy, Deputy Assistant Chief Counsel for Right-of-Way and Environmental Law, (202) 426–0791. Office hours are 7:45 a.m. to 4:15 p.m., e.s.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: Sections 131 and 136, title 23, U.S.C. (the Highway Beautification Act of 1965), require the States to effectively control outdoor advertising devices and junkyards adjacent to Interstate and Federal-aid primary highways. Failure to provide control in either program requires the Secretary of Transportation to withhold 10 percent of a State's Federal-aid highway apportionment until such time as control is achieved. Effective control of outdoor advertising limits the erection of new outdoor advertising devices, hereinafter called signs, and requires the removal with compensation of certain nonconforming signs. New signs, other than those specifically exempted by the 1965 Act, may be erected only in zoned commercial or industrial areas or in areas which are unzoned but developed as commercial or industrial land uses as defined by an agreement between the various States and the U.S. Secretary of Transportation. Such signs must also comply with requirements for size, lighting, and spacing as specified in the same agreement. Effective control of junkyards requires that junkyards which are subject to control be either screened so as not to be visible or be removed from sight if located outside of industrial areas.

A final section of the Highway Beautification Act of 1965, as amended, now codified at 23 U.S.C. 319, deals with landscaping and scenic enhancement adjacent to Federal-aid highways and will be further discussed in paragraph IC4 of the *Comments Requested* section.

Since their inception, the programs established by the Highway Beautification Act have had some success. As of September 30, 1978, the States have acquired 98,215 nonconforming signs. Over 88,000 of these have been removed. An estimated 197,791 nonconforming signs remain to be acquired. In addition, the States have removed 380,464 illegal signs. The total number of nonconforming junkyards which have been either screened or removed is 2,345 and the total number of illegal junkyards removed is 1,055. An estimated 10,608 nonconforming junkyards remain to be screened or removed.

It is generally accepted that the greatest accomplishment of the beautification program to date has been its control aspect. Controls resulting from the program have prohibited the placement of substantial numbers of outdoor advertising signs and junkyards adjacent to our primary and Interstate highways with resultant esthetic and safety benefits.

At various times, the States, the outdoor advertising and junkyard/automotive recycling/scrap processing industries, environmental groups, the academic community, advertisers, and Federal, State, and local legislators and officials have expressed concerns. This has resulted in many amendments to the law and, in turn, to administrative changes. All of the matters referred to in this Supplementary Information Section have resulted from the concerns with the Highway Beautification Program as expressed by these various sectors of society.

Impact of 1978 Amendments

The first matter pertains to the implementation of the existing program as revised by amendments contained in the Surface Transportation Assistance Act of 1978, Pub. L. 95–599, November 6, 1978 (the 1978 Act). The outdoor advertising control provision of the law was also amended by the Congress in 1968, 1974, and 1976. The junkyard control provision of the law was amended in 1974. All these amendments have met with varying reactions by those affected by or interested in these programs. All amendments prior to 1978 have been implemented by the Federal Highway Administration through the promulgation of regulations. The 1978 amendments on outdoor advertising will again necessitate major revisions to Federal regulations and State law and regulations. A synopsis of the amendments contained in the 1978 Act follows:

1. Section 121 of the 1978 Act added a new category of permitted signs to section 131(c) which allows the placement of signs off the highway right-of-way denoting the availability of free coffee distributed by nonprofit organizations at locations accessible to travelers on the Interstate and primary systems. The term "free coffee" includes coffee for which a donation may be made but is not required. Such signs are presently permitted on the highway right-of-way under Section 2F–36 of the 1978 Manual on Uniform Traffic Control Devices (MUTCD).

2. The most significant change in the 1978 Act was provided in sections 122(a) and (b) which amended section 131(g), the just compensation provision, and section 131(k), the provision allowing stricter sign standards and limitations by States. The States are required to ensure that just compensation is paid for any sign lawfully erected along the interstate and primary systems and required to be controlled, even though the removal is made pursuant to a State or local law unrelated to the Highway Beautification Act. The amendment has been interpreted to apply to and guarantee the payment of just compensation for all signs lawfully erected under State law and in existence on or after November 6, 1978. The FHWA will not require the payment of just compensation for signs that were not in existence on November 6, 1978, except for such signs that were the subject of pending litigation on that date. Failure to provide compensation for such signs will subject the State to a reduction of its Federal-aid apportionment, 23 U.S.C. 131(b).

3. Sections 122(c) and 122(d) of the new law amended section 131(c)(3), the exemption for on-premise signs, and section 131(j), concerning bonus payment provisions which, in effect: *Provided*, That the States which had entered into an agreement to control outdoor advertising in accordance with the 1958 Bonus Act and the National Standards (23 CFR Part 750, Subpart A) may now allow the erection and maintenance of electronic or changeable message signs as on-premise signs without violation of the terms of the bonus agreement. Such on-premise signs had been prohibited only adjacent to the controlled portions of the Interstate System for the 23 bonus States. Thus, this amendment does not affect the nonbonus States nor the primary system controls in the bonus States.

4. In addition to the aforementioned provisions contained in the 1978 Act, the Conference Report (H.R. Rep. No. 95–1797), which was issued with the Act, included advisory language as follow:

"The conferees agreed not to amend subsection (o) of Section 131 in the absence of experience that can be gained through its adequate implementation. When enacting subsection (o) in 1976, the Congress intended that it be administered by the Secretary in a meaningful way and that he approves the requests of States for the retention of signs, displays, and devices whenever the requests meet the requirements set forth in the subsection. The conferees emphasize that we expect the Secretary to expedite the implementation of subsection (o) to carry out this Congressional intent and to assist those States which desire to utilize its provisions in doing so." [1]

Subsection (o) of 23 U.S.C. 131 provides that certain nonconforming signs may be eligible for retention in specific areas if the signs provide directional information about goods and services in the interest of the traveling public and that removal of same would work a substantial economic hardship in the defined area.

In response to the advisory language contained in the Conference Report, the FHWA has announced that it will hold a Workshop/Open Meeting in Washington, D.C., on May 15, 1979, for the purpose of explaining and discussing the section 131(o) exemption provisions.[2]

GAO Report

The second of the matters involves a Report to the Congress by the Comptroller General of the United States on March 27, 1978, entitled "Obstacles to Billboard Removal," CED–78–38. That report indicates that the outdoor advertising control program fostered by the Act has been effective in curbing the number of new signs erected and removing illegal signs along the Nation's Interstate and primary highway systems. However, the report also indicates that the removal of signs made nonconforming by the Act has been slow, that many signs will remain due to exemptions granted by the law, and that, as a result, motorists in many States will not see a tangible difference when the sign removal program is completed. The report concludes that in light of the problems and limited progress by most States in removing nonconforming signs, it appears that the objectives of the Highway Beautification Act will not be accomplished in the near future. It recommends that the Congress reassess the program and that, if it wants to strengthen the removal program, it amend the Act to encourage the States to remove all signs except on-premise or landmark signs or, alternatively, remove all signs, except on-premise signs, landmark signs, and signs in areas of actual commercial or industrial use.

Revision of FHWA Regulations

The third matter concerns the proposed revision of current FHWA regulations relating to the control and acquisition of outdoor advertising signs, displays, and devices, and junkyard control. The proposed revision would be in furtherance of the policies set forth in Executive Order 12044, "Improving Government Regulations," dated March 23, 1978, and the general thrust toward deregulation of private industry.

The proposed revision of existing rules would combine existing regulations, 23 CFR Part 750, Subparts D and G, and existing interim regulations 23 CFR Part 750, Subpart E. It would also result in the simplification of 23 CFR Part 751. Subpart D of Part 750 concerns the acquisition of rights of sign and sign site owners; Subpart E concerns signs which are exempt from removal in defined areas; and Subpart G concerns the control of signs. Part 751 concerns the control of junkyards. The FHWA has delayed issuance of the proposed rules pending the outcome of legislative changes to the program and this reassessment. Upon the conclusion of this reassessment, the FHWA will publish proposed rules.

Restudy of National Standards

The fourth matter concerns the restudy of existing standards for two types of directional signs; the first authorized by 23 U.S.C. 131(c)(1) and the latter by 23 U.S.C. 131(f). The first category includes signs located off the right-of-way and is regulated by the "National Standards for Directional and Official Signs," which are codified at 23 CFR Part 750, Subpart B. The second category includes signs located on the right-of-way and is regulated on the Interstate and primary systems by the "National Standards for Specific Information Signs," which are codified at 23 CFR Part 655, Subpart C.

The aforementioned restudy was mandated by the addition of a new Subsection 131(q)(1), to 23 U.S.C. 131, by Section 122(b) of the Federal-Aid Highway Act of 1976, 90 Stat. 425, Pub. L. 94–280, May 5, 1976. The FHWA established a multidisciplinary task force to conduct this restudy and has used the mandate of section 131(q)(1) to examine the entire spectrum of motorist information systems. Two research projects were authorized by the task force and both have been completed. Several alternative revisions to both the directional and the informational sign standards are now being considered, as well as the development of information systems that will assure the availability of information of interest to the traveling public.

Although the draft final report has not yet been completed, the task force has

[1] H.R. Rep. No. 95–1797, 95th Cong., 2d Sess. 91 (October 14, 1978).

[2] For further information on this Workshop/Open Meeting contact: Mr. Richard W. Moeller, Chief, Junkyard and Outdoor Advertising Branch, telephone number (202) 245–0021, Federal Highway Administration, Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.s.t., Monday through Friday.

explored numerous options to improve the motorist information system. The task force report will be submitted to the Federal Highway Administrator prior to the completion of the rulemaking process referred to in prior paragraphs. Comments received in response to the questions listed in paragraph 4 of *Comments Requested*, see below, will be considered by the FHWA prior to any final decision on this restudy.

Comments Requested

The FHWA, in seeking comments on the future direction of the Highway Beautification Program, would appreciate comments on the following questions, which are divided into three basic groups:

1. Part I—*Current Program.*—This part sets forth issues relating to the implementation of current requirements, especially the implementation of the 1978 amendments, the economic hardship exemption, and other areas which have resulted in controversy in the past.

2. Part II—*Alternative Program Approaches.*—This part explores revisions to the existing law and regulations. Considerable controversy has been generated by the existing program and comments are requested on alternative approaches to the program. One such approach would require stricter Federal controls, while another would reduce present Federal controls.

3. Part III—*Alternative Motorists Information Systems.*—This part seeks comment on alternative means of providing directional information to the traveling public.

Persons submitting comment need not address all of the following questions, nor are their comments limited to the matters addressed in these questions.

I. *Current Program.*—The FHWA desires comments relative to the implementation of the existing program including the following:

A. *Implementation of the 1978 Amendments.*—The 1978 Act made several significant changes in the program.

1. *Just Compensation.*—Revised just compensation requirements will have significant impacts in several areas. The matter of State compliance could involve amendments to State outdoor advertising control laws, zoning enabling statutes, and possibly some State constitutions, as well as the revision of many local ordinances.

(a) What FHWA actions and policies will facilitate an expeditious and orderly transition to the new requirements created by this legislation?

(b) How can the FHWA best serve the States, local governments, industry, and other interested parties to ensure compliance by State and local governments in the administration of the new just compensation provisions?

(c) The 1978 amendments dealing with just compensation no longer allow the States or local governments to remove signs without compensation following the expiration of an amortization period. In the future, any sign removed along Federal-aid Interstate and primary systems must be compensated for, if the sign was legally erected and in existence on or after November 6, 1978, or, if removed, in litigation on that date, unless the sign is maintained in a manner which violates reasonable maintenance requirements. Compliance with such maintenance requirements must be possible in the course of normal business operation by the sign or site owner and such requirements may not be confiscatory in nature.

(1) What are the impacts of this provision (which precludes the use of amortization) in dealing with nonconforming signs along the Interstate and primary systems?

(2) Will this legislation have an effect on the control of other nonconforming land uses by local governments?

(3) How will this legislation affect general business regulatory requirements that a State or community may want to administer such as sign permit or business licensing systems?

(4) What are the legal and constitutional implications of this legislation?

2. *"Free Coffee" Signs.*—What restrictions, if any, should be placed on the erection of off right-of-way "free coffee" signs in terms of duration of display, message, size, number, collection of donations, who can erect, and what should be the relationship to such "free coffee" signs allowed on the highway right-of-way?

3. *Electronic Signs.*—What restrictions, if any, should be placed on electronic signs now authorized in on-premise Interstate locations in bonus States, generally and in terms of the frequency of message change? Should further research be conducted in the area of the motorist safety and esthetic characteristics of such electronic variable message or flashing signs?

B. *Economic Hardship Exemptions.*—Pursuant to Section 131(o), the FHWA requires an economic analysis demonstrating a substantial hardship throughout a defined area before an approval can be given exempting from acquisition certain nonconforming signs which provide directional information about goods and services in the interest of the traveling public. Should the FHWA:

1. Continue to require an economic analysis for the purpose of demonstrating hardship throughout a defined area?

2. Retain its present policy and allow exemptions only where economically justified?

C. *Other Significant Program Areas.*—1. *Nonconforming Uses.*—Nonconforming land use controls have been required by Federal regulation in both the outdoor advertising and junkyard control programs. A number of problems have been experienced from the standpoint of their acceptance by the outdoor advertising and junkyard/automotive recycling/scrap processing industries and the administration and enforcement problems on the part of the government entities having the responsibility for controlling signs and junkyards. Should the FHWA:

(a) Strengthen existing regulations concerning land use controls which regulate customary maintenance, abandonment, destruction, discontinuance, etc., as they pertain to the outdoor advertising and junkyard control programs?

(b) Eliminate or modify the land use controls in the Highway Beautification Program? If the controls are eliminated or modified, how can an effective control program be maintained otherwise?

(c) Allow each State to decide what it must do concerning land use control requirements applicable to nonconforming land uses in that State?

2. *Zoning.*—The Highway Beautification Program is a land use control program and, by statute, relies on zoning and land use planning decisions made by State and local governments. On some occasions, zoning decisions have been made designating land areas as commercial or industrial solely to permit the erection of outdoor advertising signs. Such practices are not consistent with accepted land use planning or comprehensive zoning principles and cannot, under present law, be recognized for outdoor advertising control purposes. These practices circumvent the intent of the Federal and State laws which have as their purpose the limitation of commercial advertising to true commercial or industrial zones. Similar abuses can occur in the junkyard control program in industrial zoning decisions. Comments are requested on the following alternatives or on any other ways of dealing with this problem.

(a) Should actual commercial or industrial land use be required in areas zoned commercial and industrial before it is eligible for the erection of outdoor advertising signs, as suggested by GAO and required by several States?

(b) Should local zoning actions be recognized even if they are intended to circumvent Federal law by allowing the erection of outdoor advertising signs?

3. *Vegetation Clearance.*—Inherent in the existing Highway Beautification Program is the problem of the illegal destruction of landscaping on highway rights-of-way to ensure visibility of outdoor advertising signs. Parallel to this is the issue of the authorized or legal clearance of vegetation to ensure visibility of outdoor advertising signs which may be permitted in accordance with the FHWA highway maintenance policy. This policy gives States the discretion to contract, as appropriate, for the removal of vegetation in front of billboards. Comments would be appreciated on both of these issues.

(a) What can be done to stop the illegal destruction of highway landscaping to achieve billboard visibility?

(b) Should the FHWA maintain or revise its current policy on authorized vegetation clearance by States?

4. *Landscaping.*—There are conflicting purposes between highway landscaping and outdoor advertising signs when both occur on the same section of the highway. Landscaping is for the purpose of enhancement or beautification of the highway. It serves to contain or direct the views of and from the highway. Signs are for the purpose of informing the highway user and are dependent upon visibility or lack of visual obstructions such as vegetation on the highway right-of-way. The two are most often at cross purposes in metropolitan areas and approaches to interchange ramps where both landscaping and advertising are advantageous. There are no Federal laws or regulations guaranteeing the visibility of outdoor advertising signs.

(a) Should a State be permitted to landscape a section of highway where authorized outdoor advertising signs occur?

(b) Should Federal-aid highway funds be authorized for landscaping sections of highway where signs are permitted?

(c) Should the Federal government be involved in determining the compatibility of highway landscaping and outdoor advertising signs on a particular section of highway?

5. *Anticompetitive Impact.*—A substantial number of signs have been removed as a result of the acquisition portion of the program. At the same time, the erection of new signs has been prohibited in protected areas.

(a) Have these conditions contributed to the elimination or crippling of smaller outdoor advertising companies due to their inability to compete with larger companies for the limited sites available for new signs?

(b) Should there be any effort to protect the small companies and individual sign owners from such a situation? If so, how and by whom?

II. *Alternative Program Approaches.*—Frequent amendment of the Highway Beautification Act and its implementing regulations, along with limited funding, has raised the possibility that the program will never achieve its original goal as it is presently structured. This concern could be met by two basic alternative legislative and regulatory approaches. The first would be to substantially expand the scope of the present mandatory requirements. This would require increased Federal involvement and would call for stricter controls. The second would be to turn over more responsibility for the Highway Beautification Program to the States by eliminating or limiting Federal requirements. Thus, those States wishing to strictly control outdoor advertising would be free to do so, while those wishing not to control outdoor advertising would be able to do so with fewer or no Federal constraints.

A. *Stricter Controls.*—Should the FHWA recommend amendments to the Highway Beautification Act to increase esthetic controls along the Nation's highways? Towards this end, should any of the following be considered:

1. *First GAO Alternative.*—Removal of all signs except on-premise and landmark signs as suggested by the GAO report, which would, in effect, eliminate all off-premise outdoor advertising signs? or

2. *Second GAO Alternative.*—Removal of all signs except on-premise signs, landmark signs, and signs in areas of actual commercial and industrial use as suggested by the GAO report? This would restrict off-premise signs to areas zoned commercial and industrial which are actually developed for that use. This would also eliminate directional and official signs (Section 131(c)(1)), and "free coffee" signs (Section 131(c)(5)), that are presently permitted.

3. *Other Options—Outdoor Advertising.*—Should the FHWA also consider:

(a) Eliminating or providing further limitations on the unzoned commercial and industrial area definition which is applied in areas which are not comprehensively zoned?

(b) Controlling the size, height, lighting, and quantity of on-premise signs?

(c) Mandating sign acquisition and removal priorities in such a way that a visually apparent accomplishment can be realized, i.e., clean up designated scenic routes first, then Interstate, etc.?

(d) Revising all agreements with the States to establish uniform national standards relative to:

(1) The designation of areas eligible for erection of outdoor advertising signs, and

(2) The delineation of size, lighting, and spacing criteria to achieve effective minimum esthetic controls?

(e) Attempting to ensure adequate Federal funding levels to complete the acquisition portion of the program within a set period of time?

(f) Seeking more effective control on Federal Indian lands?

(g) Establishing and enforcing minimum national standards for the maintenance of nonconforming signs? (e.g., abandonment, destruction, discontinuance, etc.)

4. *Stricter Junkyard Regulation.*—In the area of junkyard/automotive recycler/scrap processor controls, should the FHWA consider any of the following:

(a) Requiring that junkyards/automotive recyclers/scrap processors be given similar benefits or rights as those given to sign and site owners in the area of just compensation?

(b) Specifying junkyard abatement priorities in such a manner that accomplishment can be realized, i.e., scenic routes, Interstate routes, etc.?

(c) Attempting to ensure adequate Federal funding levels and establish a definite timetable to complete the junkyard program?

(d) Establishing and enforcing national maintenance standards for nonconforming junkyards?

(e) Establishing and enforcing national criteria for junkyard screening?

(f) Establishing a Federal incentive grant program to encourage recycling programs?

(g) Eliminating State screening and abatement programs for nonconforming junkyards/automotive recyclers/scrap processors which are at the "expense of the owner"?

B. *Reduced Controls.*—Should the FHWA consider requesting either partial or total repeal of the outdoor advertising and junkyard control programs? Comment on the following alternatives would be appreciated:

1. *Repeal.*—Total and immediate repeal of mandatory Section 131 (outdoor advertising control), 136 (junkyard control), or both.

2. *Voluntary State Programs.*—Allow the existing program or a revised federally funded program to continue on a voluntary basis in those States that desire to participate. A bill, S. 344, embracing this concept for only the outdoor advertising program was introduced in the U.S. Senate on February 6, 1979, by Senator Robert T. Stafford of Vermont. The section-by-section analysis of S. 344, as submitted for the record by Senator Stafford and published in the Daily Congressional Record, S. 1125, February 6, 1979, is as follows:

Sec. 1. Title of the Act.

Sec. 2. Creates a new Section 131 of Title 23, United States Code, as follows:

Sec. 131. (a) Declares it a national policy for the Federal Government to assist the States in controlling outdoor advertising.

(b) Permits States to establish a statewide program of billboard control and provides that where the State program meets the requirements of subsection (c), Federal funds will make up 80 percent of the cost of the State's purchase of signs along the Interstate or primary systems. A State is not required to pay compensation but where it elects to do so, Federal funds will be made available.

(c) To be eligible for Federal assistance, a State must limit signs within 660 feeet of the road in urban areas or visible from the road outside urban areas, to (1) specified directional and official signs and notices, (2) signs for the sale or lease of property on which the signs are located, (3) on-premise signs, (4) landmark signs, and (5) signs in commercial and industrial areas.

(d) Requires the Secretary to provide within the Interstate right-of-way for signs giving information of use to travelers and permits the Secretary to provide for such signs along the primary system.

(e) Permits States to provide travelers information and advertising at safety rest areas and provides for Federal assistance in establishing information centers or systems.

(f) Retains payments to States which entered into agreements with the Secretary to control signs along the Interstate System under the Bonus Act.

3. *Selective Regulation of Systems.*—Revise the law to regulate only the Interstate System and scenic sections of the primary system on a mandatory or voluntary basis.

4. *Partial Program Modification.*—Retain the present program's mandatory controls on the erection of new signs, but eliminate the acquisition and compensation requirements of the law, with respect to existing nonconforming signs.

5. *Eliminate Federal Oversight.*—Eliminate Federal oversight of all or part of the program.

6. *Reduce Junkyard Screening Standards.*—With reference to existing junkyard screening requirements, modify or eliminate the provision that junkyards be screened "so as not to be visible" from controlled highways.

III. *Alternative Motorist Information Systems.*—As to such system options, should the FHWA:

A. Mandate or encourage a basic system?

1. Provide for the addition of motorist information elements (to be applied incrementally) to a basic motorist information system depending on needs and justification?

2. Provide the opportunity and encourage private industry to operate the various elements of the system such as logo signs, information centers, conforming outdoor advertising signs, etc., for profit?

B. Retain present policy of totally voluntary participation in motorist information systems in combination with billboard advertising?

C. Place greater reliance on billboard advertising to provide motorist information by seeking repeal of mandatory outdoor advertising controls?

This advance notice of proposed rulemaking is issued under the authority of 23 U.S.C. 131, 136, and 315 and the delegation of authority by the Secretary of Transportation at 49 CFR 1.48(b).

Note.— The Federal Highway Administration has determined that this document contains a significant proposal according to the criteria established by the Department of Transportation pursuant to E.O. 12044. An evaluation of this proposal will be placed in the docket for public inspection.

Issued on: April 25, 1979.

John S. Hassell, Jr.,

Deputy Administrator.

[FHWA Docket No. 79-10.]

[FR Doc. 79-13294 Filed 4-27-79; 8:45 am]

BILLING CODE 4910-22-M

Senator STAFFORD. Mr. Chairman, the State of Oregon contacted me with a suggested amendment to S. 344. I would ask unanimous consent this amendment be made a part of the hearing record at this point.

Senator BENTSEN. Without objection.

[The amendment referred to follows:]

AMENDMENT TO S. 344

Beginning on line 4 and ending on line 5, P. 3, delete the words *"service club and reigious notices, public service signs"* and insert in lieu thereof,

"business identification signs containing only the name of the business, direction and mileage to the business and not exceeding 16 square feet in size, residential directional signs, memorial signs or tablets, church directional signs, signs erected by public bodies showing the place and time of services or meetings of churches and civic organizations within the jurisdiction of the political subdivision, signs of a governmental unit including, but not limited to regulatory devices, legal notices or warnings, small signs displayed for the direction, instruction or convenience of the public including signs which identify restrooms, freight entrances, posted areas of the like, signs warning of hazard or danger on the property on which they are located or warning against hunting, fishing or trespassing upon such property, and signs erected by a utility or common carrier for the purpose of notices necessary for the information, safety or direction of the public",

Senator STAFFORD. I recently obtained a letter from the Roadside Business Association to its members seeking funds to further the cause of the industry.

I ask this be made a part of the hearing record as well.

Senator BENTSEN. Without objection.

[The letter referred to follows:]

RBA **Roadside Business Association**

POST OFFICE BOX 2697 / SPRINGFIELD, VIRGINIA 22152 / (703) 323-5902

MEMO

TO: ALL RBA MEMBERS

FROM: William V. Reynolds WVR

RE: CONTRIBUTIONS TO NON-PARTISAN HIGHWAY ADVERTISERS COMMITTEE

DATE: May 3, 1979

You have received, over the years, several letters from the RBA requesting contributions to the Non-partisan Highway Advertisers Committee which is the RBA's Political Action Committee. Your response has been well received and we have been able to pass those contributions along to key senators and congressmen who are responsible for seeing that the RBA's interests are well represented.

It's that time again! An approach several trade associations are using is through the payment of "Honorariums" to these members of congress in lieu of appearing before their group. The average amount is $1,000 for a congressman and upwards to senators. If the association is wealthy enough to do this, it is more effective and brings the member closer and more personal to all RBA members. Needless to say, the RBA budget does not provide for this type of participation. In the meantime, let's do the best with the tools we got to work with....your contribution!

This is the end of the pitch! You all know how the game is played in Washington. Need I say more?

WVR/jq

Make your PERSONAL (not company or corporation) check payable to:

NON-PARTISAN HIGHWAY ADVERTISERS COMMITTEE.

Thank you.

Senator BENTSEN. Mr. Cox, a former Federal Highway Administrator, we are pleased to have you from Madisonville, Ky.

Mr. Cox?

STATEMENT OF WILLIAM COX, FORMER FEDERAL HIGHWAY ADMINISTRATOR, MADISONVILLE, KY.

Mr. Cox. Thank you, Mr. Chairman.

My name is William M. Cox. I reside in Madisonville, Ky. From April 1977 until May 1978, I was Federal Highway Administrator. In that capacity, I was responsible for administering 136 programs involving Federal aid to highways, including the highway beautification program.

In relation to its size, I spent a greater ratio of my time on the beautification program than any other 135 missions for which we were responsible.

The reason for this inordinate amount of time necessary to oversee the administration of the program was not that the program was at that time complex or difficult to administer. By 1977, most of the bugs had been ironed out. All but one of the States were in compliance and the sign removal phase was moving along.

The stormy conflicts of the late 1960's and early 1970's had, for the most part, been resolved and were becoming then memories. The problems I faced stemmed from internal conflicts and the lack of a reasonable approach on the part of those directly responsible for the day-to-day administration of the act.

It appears to me that the people involved in the family at FHWA and DOT were determined to be against whatever the outdoor advertising industry advocated. The agency was also terribly confused as to the real concerns and interests of Congress in highway beautification and by the hesitancy of OMB to allow adequate funding to complete removal process.

Government must be based on fair and equitable treatment This was the quality that was lacking in the day-to-day administration of the highway beautification program.

I cannot imagine that my successor will have any more success of fairly administering the program than I.

Mr. Chairman, I have made this statement in the past and I will repeat it for the committee. The States and those working on the highway beautification program is such that I don't think the ourdoor advertising industry will ever receive fair treatment at the hands of DOT.

However, there is no need to scrap the program, which is what I believe S. 344 would do. The only thing necessary to make it work is to have FHWA and DOT take a reasonable approach to the problem and have OMB agree to a funding level which will allow the sign removal program to progress on a timetable certain.

Senator BENTSEN. Mr. Cox, I am in accord with that statement, as I was with your administrative abilities when you were in as Federal Highway Administrator.

If S. 344 became law, do you think that would mean that we would suddenly find a lot of these States would do on their own what they were not able to do or wouldn't do under the present legislation in the way of control of billboards?

Mr. Cox. Mr. Chairman, I am not certain, obviously, what would occur, but I am of the opinion that we would end up with as many as probably 20 or 25 different approaches to the problem.

One of the concerns that I have about this bill, I worked very hard trying to bring all 50 States into compliance and in trying to move ahead with what I believed to be the direction and the intent of Congress.

I think that I am correct that at the time I left the Federal Highway Administration, every State with the exception of South Dakota had enacted legislation which was in compliance and at that time, we had won our case in South Dakota, and I hate to see us now at this point turn around and throw all of that out the window, turn them loose to do as they please on a State-by-State basis in a program where the industry has been lead to believe the Federal Government had an interest and an involvement in the direction.

Senator BENTSEN. Apart from the industry, insofar as trying to see some reasonable program underway for control of billboard construction and elimination of billboards, insofar as the traveling public is concerned, in those areas where you are away from commercial enterprises and in the rural areas, would we not in effect be removing some of the limitations on the construction of such billboards and seeing a haphazard, patchwork type of approach by the 50 States?

Mr. Cox. Yes, sir, I am afraid that we would.

Senator BENTSEN. This is totally aside.

Mr. Chairman, you might be interested in this. When we talk about beautification, I cannot help but think about the legacy that has been left by Lady Bird Johnson and what she has done for this city and various parts around the country.

Senator Stafford, I think you will be interested, I had the Park Service develop a pictoral presentation of some of the things she had contributed in parks around the country and gave it to her.

I gave that to her last month. There was an amazing emotional response from that lady, because she has made quite an imprint, I think. In turn, I have a deep concern about the highways of our country, as far as the beautification of it. I defer to the chairman.

Senator RANDOLPH. Mr. Chairman, Senator Stafford, I know that you understand that I would have been present earlier today except for testimony in reference to the synthetic liquid fuels proposals that are pending in several committees. I attended a hearing before the Governmental Affairs Committee.

I was just thinking how sometimes you feel like you are back at the old stand. That is how I felt this morning in reference to synthetic liquid fuels because I remember that I was conducting hearings in the House of Representatives in the Subcommittee on Coal in June and July of 1942 on the synthetic liquids fuels programs.

Our bill was ultimately passed in 1944. So some of this subject matter has been with us for a long, long time. The trouble is, so very often, that legislation passed here on the Hill and becomes law is not always carried out by the executive branch of the Government.

Mr. Chairman, would it be convenient to make a very brief statement, or would you rather I place it in the record. '

Senator BENTSEN. No, by all means.

Senator RANDOLPH. I will be glad to place it. As you know, I wanted to be here but could not and I am sure Senator Stafford understands.

Senator BENTSEN. Whatever you desire, Mr. Chairman.

Senator RANDOLPH. It would take only 3 or 4 or 5 minutes. Maybe I should do that.

Senator BENTSEN. That will be fine.

STATEMENT OF HON. JENNINGS RANDOLPH, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator RANDOLPH. I am sure Mr. Cox would understand.

Since the Highway Beautification Act was adopted in 1965, this committee has been working to develop a practical workable and effective program for control of billboards on the Nation's Federal highway system.

It has not been, as we all know, an easy task. We have had to devise ways of protecting the legitimate interests of outdoor advertisers and of serving the needs of travelers to be informed without, at the same time, permitting degredation of the environment and natural beauty of the surrounding countryside.

The most difficult and controversial aspect of that effort has been the question of compensating owners of signs which did not conform to those standards and which required removal to meet the objectives of the program.

Now that issue, however, has been thoroughly studied and adequately addressed—most recently by an amendment to the act just last year restating in, I think, clear and unequivocal terms the commitment of Congress to the principle of just compensation as an essential feature of billboard control.

It is important to realize that nearly $340 million has been authorized for the control program since its inception, including a commitment of $25 million for each of the next 3 fiscal years.

This commitment of funds has assisted in bringing about the removal of a half-million, I repeat, a half-million nonconforming billboards from our highways and has precluded a new proliferation of such signs.

I am convinced that we have found the right approach to this problem and that we should not change direction now.

That is why I am concerned about the bill, S. 344, which is being addressed in these hearings.

As proposed by my very good friend and colleague, Bob Stafford, it would give individual States the option of withdrawing from the highway beautification program if they desired and substituting their own enforcement programs.

One effect of that approach could be to permit States and communities to use their police powers for sign removal and to avoid the just compensation payments.

Conversely, it could result in lax enforcement allowing retention of existing nonconforming signs or construction of additional ones.

Bob Stafford and I agree on most matters, I would say 95 percent of the time, so this is a rare exception to a general rule, but I have to differ with him in this instance.

I am differing because I believe adoption of S. 344 would be a step backward and would fragment the billboard control program, making it less effective, maybe ineffective, undoing what we have sought to accomplish in these 14 years as I have mentioned.

So I am hopeful that the measure would not be approved. Rather than adopting any further amendment to this program, particular one with such rather damaging potential, I think we need to give it a chance to work on its given form, that we should concentrate our efforts in that direction.

I thank you, Mr. Chairman, for an opportunity to break in on the testimony of former highway administrator of the United States.

Senator BENTSEN. Thank you, very much, Mr. Chairman. Senator Stafford?

Senator STAFFORD. Thank you, Mr. Chairman. I wanted to say first to our distinguished chairman of the full committee, he is right, We do agree a great deal of the time. If I could attain a 95 percent agreement rating with my wife, I would be in much better shape back home than I am now.

Mr. Cox, I listened with interest to your statement. You were not in office at the time the 1978 amendments were adopted to this bill, as I recall it.

Mr. Cox. No, sir, I was not.

Senator STAFFORD. So that you have had no experience in the administration of the act insofar as those amendments?

Mr. Cox. No, sir, I have not. You are correct, sir.

Senator STAFFORD. I think I should note on the record that this Senator was a strong supporter of this act, as Lady Bird Johnson originally urged us to enact it, and as we adopted it. I have joined with Senator Bentsen in supporting the act right through until the adoption of the amendments of 1978, which caused me to deviate from previous position and support.

You probably know that your State of Kentucky is one of 38 of the 50 States that do support S. 344, the bill which is now in front of this subcommittee. I have a letter here, which I won't read into the record, from your Governor stating that he will do everything within his power to cause a favorable outcome with respect to S. 344?

Mr. Cox. Senator, I did not know you had the letter. Let me say this will not be the first time my Governor and I disagreed.

Senator STAFFORD. Do you believe, Mr. Cox, that the 1978 amendments to the act are an intrusion in the local zoning rights and serve to frustrate the goals of the act?

Mr. Cox. Senator Stafford, I believe that some units of local government attempted to circumvent the just compensation provisions of the law under their zoning police powers.

I believe the 1978 amendments were an attempt to block that gap. Yes, on the one hand, I believe that they could be construed as an intrustion into the administration of the police powers. On the other hand, I can only question that the original use of those police

powers was not, in fact, flying in the face of the just compensation provisions of the law before the 1978 amendments.

Senator STAFFORD. You would certainly agree that the exercise of police power in the sign cases has been recognized as a constitutional right or power under the state court decisions of this country.

Mr. Cox. I am not familiar with the decision, but I believe that is correct, yes, sir.

Senator STAFFORD. You were in the room during the testimony of Dr. Floyd, were you not, sir?

Mr. Cox. For a portion of it.

Senator STAFFORD. Based on what you heard him say that Georgia has erected some 21,000 new signs under the Federal law, assuming you heard that, isn't that an indication that the present law simply is not working and is, in fact, hampering those States that wish to control billboards effectively?

Mr. Cox. Senator Stafford, without being irrespectful, Ithink the main problem with the present law boils down to the answer of one question, how badly does Congress want the billboard control program enforced and completed? And as soon as Congress determines a direction and the degree of commitment with which they intend to pursue it, they can bring it to a stop. But the truth of the matter is, there has been some kind of standoff and hung in the middle of this standoff between, quite frankly, OMB and the Congress, you have the states and you have the billboard industry.

Senator STAFFORD. Let me ask you one final question. What is your estimate of the cost of completing the program for sign removals?

Mr. Cox. Senator, I have no idea. I have tried very hard in the past 18 months to forget all these figures. I just honestly do not know, sir.

Senator STAFFORD. If I have any other questions for Mr. Cox, Mr. Chairman, I will submit them in writing.

Senator BENTSEN. Fine. Thank you very much, Mr. Cox.

Mr. Cox. Thank you, Mr. Chairman.

Senator BENTSEN. Our next witness, Mr. Ronald Crisman, secretary of the Vermont Department of Transportation.

Mr. Crisman, we are very pleased to have you.

STATEMENT OF RONALD CRISMAN, SECRETARY, VERMONT STATE DEPARTMENT OF TRANSPORTATION

Mr. CRISMAN. Good morning, Mr. Chairman, Senators. I have with me Mr. Henrik Stafseth, executive director of AASHTO. I am representing both the National Governor's Conference for one brief moment and AASHTO. I would like to share with you the policy position that the Governors passed just a week ago. The Governors recognized that the roadside provisions of the Highway Beautification Act are not effectively achieving their goal.

They, therefore, endorse concepts to allow each State to meet its own problems in its own way and still participate in the Federal program.

That motion was made in the Governor's Conference with a great deal of thought and consideration of the progress of the program over the years and the impact not only on beautification,

but also in respect to the whole purpose of signs in the first place, that of conveying information to motorists and to people seeking services or seeking material purchases.

I have a brief statement I would like to read which is the AASHTO position. When Senator Stafford proposed his bill last spring, the policy committee of AASHTO was polled to determine the acceptability of the concept of the Stafford approach to the States. All 50 State departments of transportation and highways, plus the District of Columbia DOT, responded to the request; 38 States favored the proposal, while 13 opposed. As a two-thirds majority supported the concept, it became an official AASHTO policy.

As I am sure members of AASHTO advised the committee last year during its deliberations on the Surface Transportation Act of 1978, the States viewed the amendments proposed at that time as very detrimental to the continued success of the beautification program. The amendment to subsection 131(g) of title 23 in the 1978 act has proved a hindrance to the program, while increasing the cost.

Now we find that signs which, prior to the amendment could have been removed without compensation by police authority of local ordinance completely unrelated to the Highway Beautification Act must now be compensated for by State and Federal funds if they fall within the jurisdictional area of the act. This naturally has the effect in many cases of delaying or ending good faith local efforts to remove signs for the purposes of urban renewal or other reasons unrelated to the act, if the signs are adjacent to interstate or primary routes, because of the cost of compensation which would apply even if amortization of the signs would have otherwise been provided.

Even previous to the amendment included in the 1978 Surface Transportation Assistance Act, the highway beautification program, as it applies to outdoor advertising has produced spotty results while running greatly over the original cost estimates. As recently as the end of September 1978, after the Highway Beautification Act had been in effect for 13 years, only 13 States actually acquired or removed as much as 50 percent of the signs within their borders which were classified as "nonconforming"; that is, according to the Federal Highway Administration's quarterly reports.

An additional two States and Puerto Rico had no nonconforming signs to remove.

The resulting improvements, as one looks at the interstate and primary roadsides, are not even as encouraging as those percentages indicate, despite the fact that truly illegal signs—as compared to nonconforming signs—were removed relatively easily. The number of illegal signs was 380,282, or approximately 87 percent, according to the quarterly reports.

The particularly numerous exempt signs are those which are located on the premises of the property they pertain to, or those located in zoned or unzoned industrial and commercial areas, and those permitted under the Cotton amendment. These, and other exempt signs, which represent a significant percentage of the total number of signs adjacent to interstate and primary highways, will

remain, even if 100 percent of the illegal and nonconforming signs are removed, and will significantly reduce the visual impact of this portion of the beautification program.

We can speak later of equity in that program where someone with a phony zoning situation has a chance to advertise their wares and services beyond those folks who are not so lucky to find that kind of zoning location.

The Highway Beautification Act has been controversial, difficult to administer and implement, and has sometimes placed State agencies in the middle of conflicts involving sign owners and lawsuits on one hand, and the threatened loss of 10 percent of their Federal highway funds on the other. As one example, the Missouri State Highway Commission has been criticized and taken to court by sign owners and landowners who feel the program administration has been too demanding and inflexible, while at the same time Missouri is being threatened with the 10-percent loss of Federal funds because the Federal Highway Administration feels the program has not effectively controlled outdoor advertising.

The Missouri Commission has received 2,900 requests for administrative review of notices to remove signs, and has over 60 outdoor advertising lawsuits pending.

This brings us to S. 344, introduced by Senator Stafford, which would provide for State established systems to control erection and maintenance of outdoor advertising adjacent to interstate and primary highways, with assistance from the Federal Government. As we noted at the beginning of this testimony, AASHTO's policy supports conversion of the beautification program to a voluntary State program. We feel this bill would address the weaknesses noted in the present program.

Senator BENTSEN. I must ask you—you have gone past your 5 minutes—to summarize in the next minute.

Mr. CRISMAN. What we have is a problem for which we have a negative program. A program which says thou shalt not and we will remove. The loopholes in that program are enormous and do not provide equity either to merchants, the owners of the property, the owners of signs and the people who primarily need them, the business communities.

We have not had good compliance with millions and millions of dollars being spent in this program. The projected cost of the existing law is even more enormous. We are not solving the basic problem, make visual impact of the highway better, because of the loopholes, the law and the system.

It is time, perhaps, that we looked at what States themselves can do. I know there is a negative feeling the States do not perform. I think you will find out with some research, States such as Vermont, since 1927, have been controlling sign programs with police powers.

Our courts have supported that position. Many other States feel the same way. A major fault in the present Federal sign system is there is no provision for a positive aspect of sign control program, no alternatives provided in the Federal program to deal with the question of providing alternative information exchange between a merchant or business person and the motorist or person in lieu of an outdoor sign.

S. 344 does for the first time bring that opportunity to a State and Federal participatory program. We feel that would be a very positive step. Let's have a program that leads and offers positive incentives rather than one which pushes and does not provide positive support. I will be glad to answer questions.

Senator BENTSEN. Thank you. I notice in your statement you indicate that these and other exempt signs, which can represent a significant percentage, you say, of the total number of signs adjacent to interstate and primary highways will remain, even if 100 percent of the illegal and nonconforming signs are removed and significantly reduce the visual impact of this portion of the beautification program. I think here we have a difference in perception between you and the Congress regarding the Beautification Act.

Certainly a good part of it is beautification, but the point is not to ban all signs. The point is to control the location of those signs. That is what the act was designed for. It is not unreasonable to assume signs will be existing if the nonconforming signs were removed. I think that is a difference in perception.

Mr. CRISMAN. I see in our own State, and we are 100 percent conforming, we have probably more animosity and negative feelings toward government in general over signs than any other single issue with which our department deals. We do see in fact a person who has a place of business located close to an Interstate Highway has an advertising advantage over a person who is remote from the highway. We have tried to overcome this through the use of sign plazas, State operated off business premises signs which are of esthetic nature, so on. I think we understand the need to move information between people in that respect.

I feel very strongly that the law, as it has been recently changed, particularly, creates more problems than it solves.

Senator BENTSEN. Mr. Chairman.

Senator RANDOLPH. Just a comment. The problem that you have indicated in Vermont that has caused animosity between groups and individuals and government units, that certainly does not exist in all States, does it?

Mr. CRISMAN. Probably it is because we have been more diligent in pursuing the objectives of the law, and with our own law which, in many ways, which is more stringent than some of the Federal requirements. The fact is when things are becoming tough for small business people, particularly those in the tourist industry, and they see their opportunity to advertise their wares diminishing—parts of the law which make little sense need to be explained to those folks and there certainly has to be some rationale behind them. If there is a sense "I am being discriminated against by my location or a fluke in the law and someone else is permitted to have a sign, then there is something wrong with the law."

Senator RANDOLPH. I don't want to be facetious, but Mailpouch chewing tobacco is a product of West Virginia. Do you know that?

Mr. CRISMAN. I think I have seen it on most barns and roofs throughout the country.

Senator RANDOLPH. You were very kind to say that it is advertised in West Virginia, in the hill country. I think people enjoy those signs.

Mr. CRISMAN. That is true.

Senator BENTSEN. Thank you very much, Mr. Chairman. Senator Stafford?

Senator STAFFORD. Thank you, Mr. Chairman. When AASHTO was obviously going to be a witness here, I didn't realize Mr. Crisman would be the witness. I am delighted he is. I want to extend a welcome personally and to the committee to you for coming down here as the spokesman for AASHTO.

I think my understanding is 38 of the 50 States have supported S. 344, am I correct in that?

Mr. CRISMAN. Correct.

Senator STAFFORD. Does AASHTO believe that the beautification law as now written gives the taxpayers a fair run on the cost of the program?

Mr. CRISMAN. As no one has been able to yet name the price tag, the general consensus is it is over a billion dollars to deal with it in terms of the 1978 amendments. Obviously most of us in the business of transportation are far more concerned with that kind of money being spent in an area which is good transportation enhancement. At the same time when there is desperate need for work throughout the entire transportation system, we wonder at the level of priorities to spend that kind of money, without some grand assurance that we are going to achieve what we sought—what we set out to achieve.

Senator STAFFORD. I think you mentioned that Vermont is in compliance at the present time.

Mr. CRISMAN. Yes, sir.

Senator STAFFORD. As I said in my opening statement, we are not to be accused of a parochial interest here since Vermont would benefit very little from whatever this program might do, am I correct in that?

Mr. CRISMAN. That is true. We have experimented with the sign plaza ideas and the alternative information systems. We think we have a long way to go to make that work well. We would like to see other States doing the same sort of things so we can share with them our success in that area.

Senator STAFFORD. Is it not true the great majority of signs removed since 1965 were illegal signs that would have been required to be removed under State law irregardless of the 1965 act?

Mr. CRISMAN. That is correct.

Senator STAFFORD. It is sometimes argued the 1965 act, as now constituted is a success because it has prevented the erection of new signs. If that argument is made, what evidence does AASHTO have that the law has prevented the erection of new signs, how many signs have gone up since the adoption of the 1965 act along primary and Interstate Systems?

Mr. CRISMAN. I can't answer, obviously, entirely for AASHTO. I can in terms of our own State. I think the mere existence of the 1965 act and the subsequent adoption of State legislatures of companion acts create an environment and attitude we will not retreat from. I don't think it is a fair thing to say if the Federal Government would reduce its presence in this area and States were to assume that burden that you would see a reduction in level of quality.

You never go back to where you came from. You may see different flavors and different local sign laws much as we have differing dialects and brands of liquor we drink from region to region. That may be healthy, too. Homogeneous behavior and thinking would not be that good for the country. Even with a strong State act, illegal signs, nonconforming signs, spring up daily. It is a daily task to get out there and keep signs off the traveled way much less the right-of-way.

Senator STAFFORD. If it is possible that your colleagues in AASHTO and your central office have details which would answer the specifics of the question I just asked, I wonder if that could be supplied for the record?

Mr. CRISMAN. We will. We were discussing this question earlier and could respond within 30 days, perhaps.

Senator STAFFORD. The 1978 amendments to the act make it necessary for the States to compensate owners of any sign taken down, even if the sign is not removed for Federal beautification purposes.

This means that if a local government decides by local zoning to remove signs in a commercial or industrial area where no removal is required by Federal law, the State must pay full compensation. What is AASHTO's estimate of the cost of this amendment if fully implemented and the number of signs covered?

Mr. CRISMAN. We will need to respond to that in writing.

Senator STAFFORD. Can AASHTO supply that for the record? I ask that be included.

Senator BENTSEN. No objection.

[The following is in response to Senator Stafford's request:]

AMERICAN ASSOCIATION OF STATE HIGHWAY
AND TRANSPORTATION OFFICIALS

THOMAS D. MORELAND, President
Commissioner and State Highway Engineer
Georgia Department of Transportation

HENRIK E. STAFSETH, Executive Director
444 N. Capitol Street, N.W., Suite 225
Washington, D. C. 20001
Telephone: (202) 624-5800

October 10, 1979

The Honorable Robert Stafford
Senate Environment and Public Works Committee
4210 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Stafford:

This is in response to a couple of questions you asked during our appearance at the hearing on your bill, S.344. We apologize for the delay in responding to the request for additional information.

The first question was, "Does AASHTO have any figures as to how many signs have been erected since the adoption of the 1965 Highway Beautification Act along the Primary and Interstate highways?" In researching this, we found out that such numbers are not readily available from the States.

The second question asked was, "Does AASHTO have an estimate of the cost of the 1978 Act Amendments, if they are fully implemented, along with the number of signs affected?" In responding to this question, we can only give an estimate and that would be from a low of $600 million to a high of $1 billion. This is based on an estimated cost of removing the remaining billboards, prior to passage of the 1978 Act, of approximately $565 million, of which $424 million would be Federal dollars. This latter figure represents approximately 87,000 illegal signs yet to be taken down. The 1978 Act Amendments, regarding just compensation, will have the effect of substantially increasing the cost to complete the program.

If we can be of further service, please let us know.

Sincerely,

Henrik E. Stafseth

Henrik E. Stafseth
Executive Director

Senator STAFFORD. There appears to be evidence most sign removal occurs not along the Interstate System but along less traveled roads where the industry no longer finds these signs profitable. Would you agree with that statement?

Mr. CRISMAN. Probably in the abstract, yes. I would say in our own case, I am not sure the evidence would have supported that conclusion.

Senator STAFFORD. Once again, this might require AASHTO to supply the information, but we would ask if you have the information that, for the record, you site the number of signs removed along the Interstate System out of the 68,000 compensable signs removed to date.

Mr. CRISMAN. We didn't quite understand the question.

Senator STAFFORD. We will phrase the question in writing for you so it will be clear. In view of the history and the many studies of this program, do you believe anything can be gained by another 2-year delay as a result of FHWA's advisory committee?

Mr. CRISMAN. No; if the Congress does not finance the sign law—their portion of it—and if we don't move forward to the required level, it obviously won't work. Two years of debate I don't think will add to the solution. I think you ought to deal with it immediately.

Senator STAFFORD. Thank you very much, Mr. Crisman.

Senator BENTSEN. Thank you very much, Mr. Crisman, for your testimony. We have one other gentleman who is not scheduled as a witness, but we will take his statement for the record. If there is no objection, Mr. Alan Korte who is representing the Association of Illinois Rural Recreation Enterprises.

[The statement referred to follows:]

ASSOCIATION OF ILLINOIS RURAL RECREATION ENTERPRISES

ALAN KORTE, Secretary
Executive Director

Deer Run Campground
Carthage, Illinois 62321

217/357-2228
(Home) [redacted]

Distinguished Senators, Ladies and Gentlemen:

My name is Alan Korte, I am from Carthage, Illinois and I am Executive Director of the Association of Illinois Rural Recreational Enterprises, better known as AIRRE. I also own and operate Deer Run Campground.

I realize your time is limited, so I have limited my remarks to what I feel is the most important.

My association is primarily made up of campground owners, but it also has dude ranches, museums, and other kinds of outdoor recreation. We do have one thing in common, however, and that is that we are all located in rural areas, as the name of our association indicates.

We also have in common the fact that most of us have been severely affected by the Highway Beautification Act. We have collectively lost millions of dollars and individually thousands of dollars through lost income because of the removal of our signs or because we could no erect new signs to direct tourists to our place of business.

Since the Act was first written, it has had the unintentional effect of discriminating against thousands of us with businesses in rural areas, because of the provision allowing signs only in commercial or industrial zones. We have no legal right to erect signs of our own except on our own premises. In addition, no state has come up with a satisfactory substitute allowable under the present act. The so called "logo" program has possibilities, but no state, to my knowlege, has adopted it on more than an experimental basis.

I also happen to be from a state which has been very aggressive in removing signs, in contrast to some adjacent states which have done very little in carrying out the provisions of the Highway Beautification Act.

The members of my association feel the most fair solution to solving the difficulties

which have arisen through the years with this Act is to pass Senate Bill 344, Senator Stafford's attempt to correct some of these inequities.

We also realize that this bill is being vigorously opposed by the billboard industry. Our position is that we do not need billboards but we do need some kind of directional signs, and we do not care if these signs are put up by the states or by the industry, as long as they get put up. However, it seems likely the only way we will get any kind of directional signs, whether logo or conventional, is if the present law is changed.

I am not a lawyer, but I am aware of the enormous complexities of the existing Act. I noticed the FHWA has taken five pages of the Federal Register simply to raise questions about how this Act should be enforced. I tend to agree with Senator Stafford when he says, "I think it is time to admit the Highway Beautification Act is a failure and to seek its repeal."

Senator STAFFORD. Mr. Chairman, I would ask the statement of the National Conference of the State legislators on S. 344 and a letter to you from Representative Louis B. Nickinello of the Massachusetts House of Representatives, chairman of the NCSL Transportation Committee, be made a part of the record also.

Senator BENTSEN. Without objection, it will so be ordered.

[The documents referred to follow:]

National Conference of State Legislatures

Office of State Federal Relations

444 North Capitol Street, N.W. 2nd Floor Washington, D.C. 20001 202/624-5400

President Jason Boe President of The Oregon Senate

Executive Director Earl S. Mackey

July 17, 1979

Honorable Lloyd Bentsen
Chairman, Subcommittee on Transportation
Senate Environment and Public Works Committee
Room 4204, Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Bentsen:

The National Conference of State Legislatures appreciates the opportunity which you have offered to us to testify at the hearings of your subcommittee on S 344, the Highway Beautification Assistance Act of 1979. However, due to a number of circumstances, the witness who was supposed to appear on behalf of NCSL was not able to be in Washington for the hearings.

Therefore, we respectfully would like to request the opportunity to submit a formal statement to the Subcommittee on Transportation at a later date.

Mr. Chairman, the NCSL believes that S 344 provides a much-needed change in direction in the Highway Beautification Program. It would give the states the flexibility to decide the best means of beautifying our nation's highways. Further, it removes the serious Federal preemption of state and local police powers enacted under the Surface Transportation Assistance Act of 1978.

We appreciate your consideration in this matter and again thank you for the opportunity to make our views known to this committee.

Sincerely,

Louis R. Nickinello

Representative Louis R. Nickinello
Massachusetts House of Representatives
Chairman, NCSL Transportation Committee

LN/bjp

National Conference of State Legislatures

Office of State Federal Relations

444 North Capitol Street, N.W. 2nd Floor Washington, D.C. 20001 202/624-5400

President Jason Boe President of The Oregon Senate

Executive Director Earl S. Mackey

STATEMENT

OF THE

NATIONAL CONFERENCE OF STATE LEGISLATURES

BEFORE THE

SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

SUBCOMMITTEE ON TRANSPORTATION

REGARDING

S 344

HIGHWAY BEAUTIFICATION ASSISTANCE ACT OF 1979

WASHINGTON, DC

JULY 17, 1979

WITNESS: FRANCIS T. VALLUZZO, STAFF DIRECTOR FOR TRANSPORTATION

NATIONAL CONFERENCE OF STATE LEGISLATURES

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS FRANCIS VALLUZZO. I AM THE STAFF DIRECTOR FOR TRANSPORTATION OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES. THE NCSL IS THE OFFICIAL REPRESENTATIVE IN OUR NATION'S CAPITAL OF THIS COUNTRY'S 7,500 STATE LEGISLATORS. OUR FUNCTION IS TO PROVIDE THE NATION'S STATE LEGISLATORS WITH A STRONG, COHESIVE VOICE IN THE FEDERAL DECISION-MAKING PROCESS.

IN THAT REGARD, WE REQUESTED AND WERE GRACIOUSLY GRANTED, THE OPPORTUNITY TO PROVIDE A WITNESS FOR THIS HEARING ON S 344, THE FEDERAL HIGHWAY BEUATIFICATION ASSISTANCE ACT OF 1979. STATE SENATOR FRED HEARD, THE MAJORITY LEADER OF THE OREGON SENATE, WAS SUPPOSEDTO APPEAR BEFORE YOU TODAY TO TESTIFY ON THE NEED TO RETURN TO THE STATES THE RESPONSIBILITY FOR HIGHWAY BEAUTIFICATION. SENATOR HEARD IS ALSO A MEMBER OF THE TRANSPORTATION COMMITTEE OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES.

UNFORTUNATELY, SENATOR HEARD WAS NOT ABLE TO BE WITH YOU TODAY BECAUSE OF CONFLICTS WITH HIS DUTIES AS SENATE MAJORITY LEADER AND BECAUSE OF AN INABILITY TO OBTAIN THE NECESSARY AIR-LINE RESERVATIONS TO WASHINGTON AND BACK TO OREGON.

IT IS VERY UNUSUAL FOR A MEMBER OF THE STAFF OF NCSL TO APPEAR BEFORE A COMMITTEE OF CONGRESS. MY APPEARANCE HERE TODAY IS SIMPLY TO EXPRESS OUR REGRET THAT SENATOR HEARD COULD NOT BE PRESENT AND TO SUBMIT TO THE COMMITTEE A RESOLUTION SUPPORTING THE PROVISIONS OF S 344 WHICH WAS ADOPTED UNANIMOUSLY ON

MAY 18, 1979 BY THE NCSL STATE-FEDERAL ASSEMBLY, OUR POLICY MAKING BODY. I AM ALSO HERE TO SUBMIT A LETTER TO YOU, MR. CHAIRMAN, FROM STATE REPRESENTATIVE LOUIS R. NICKINELLO OF MASSACHUSETTS, THE CHAIRMAN OF NCSL TRANSPORTATION COMMITTEE RESPECTFULLY REQUESTING PERMISSION TO SUBMIT A FURTHER STATEMENT FOR THE RECORD ON S 344.

MR. CHAIRMAN, WE HAVE ONE OTHER ITEM WE WOULD LIKE TO SUBMIT FOR THE COMMITTEE'S CONSIDERATION. THAT IS A RESOLUTION ADOPTED JUNE 7, 1979 BY THE NEW YORK STATE ASSEMBLY WHICH CALLS FOR AN END TO FEDERAL ENFORCEMENT OF THE HIGHWAY BEAUTIFICATION ACT AND THE REMOVAL OF "FEDERAL AUTHORITY TO INTERFERE WITH STATE AND LOCAL GOVERNMENT CONTROL OF ADVERTISING UNDER THEIR POLICE POWERS".

MR. CHAIRMAN, NCSL APPRECIATES THE OPPORTUNITY TO PRESENT THIS STATEMENT AND WE THANK YOU FOR YOUR COURTESY.

NATIONAL CONFERENCE OF STATE LEGISLATURES
TRANSPORTATION COMMITTEE

CONTROL OF OUTDOOR ADVERTISING

NCSL believes that the expenditure of public funds under the Highway Beautification Act has not resulted in achieving the original goal of removing outdoor advertising signs adjacent to Interstate and primary highways. In addition, the 1978 amendments to Section 131 of Title 23, United States Code Annotated, concerning control of outdoor advertising, have resulted in an unwarranted Federal preemption of state and local laws by requiring the payment of compensation to sign owners whose signs are removed under state or local laws and not under the Highway Beautification Act. States are now prohibited from removing signs through amortization without facing a loss of 10% of their Federal-aid highway funds. NCSL believes that Section 131 should be amended to make participation in the sign removal program voluntary, thus giving the states the option of removing signs either through payment of compensation or through amortization. If a state chooses to establish a program to remove a sign through payment of compensation, Federal matching funds of 80% of the cost of compensation should be available to the state.

NCSL believes that this change in the law will provide the states with the flexibility to determine the scope and method of sign removal. It would also give a state the option of deciding if the removal of certain signs would have an adverse impact on any portion of the state's economy, for example, tourism.

STATE OF NEW YORK

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The Legislature

ALBANY

LEGISLATIVE RESOLUTION
Assembly No. 613

IN ASSEMBLY

By The Committee on Rules (at the request of Messrs. Murphy, Healey, Abramson, Calogero, Casale, Conners, D'Andrea, Dearie, DiCarlo, Graber, Hevesi, Larkin, Mrs. Lipschutz, MacNeil, McGrath, Nagle, Parola, Pillittere, Rappleyea, Schimminger, Sheffer, Spano, Viggiano, S.P. Walsh and Winner):

Legislative resolution memorializing the State Department of Transportation to stop immediately the removal of nonconforming tourist-oriented directional signs as this action is destructive to the tourist industry in New York State and respectfully memorializing the Governor of the State of New York to take whatever steps may be desirable or necessary to convince President Carter that the actions of the Federal executive bureaucracy have had the effect of further depressing the economy of New York State and further memorializing the Federal Highway Administration of the United States Department of Transportation to cease the harassment of New York State businesses by requiring the removal of signs, and to suspend any further enforcement of the Highway Beautification Act until a determination is made as to how and if the program can be successfully continued and urging the members of the New York State Congressional delegation to take all steps that may be desirable or necessary to prevent the continued activities of the Federal Highway Administration, and to actively support suitable legislation which would remove Federal authority to interfere with State and local government control of advertising under their police powers

Whereas, Tourism is this State's second largest industry, directly generating over four billion dollars for the State's economy and providing approximately four hundred thousand jobs; and

Whereas, The Senate Task Force on Critical Problems, in its 1976 report, "Vital Signs; Sustaining the Health of Tourism," estimated that at least $1.2 billion in State tourist-oriented commerce is dependent upon highway advertising signs; and

Whereas, The Federal Highway Administration has previously threatened to penalize New York State by withholding ten percent of the State's highway moneys for failure to enforce the Federal Highway Beautification Act and amendments thereto; and

Whereas, In passing the 1976 amendments to the Federal Highway Beautification Act, the Congress recognized that the removal of nonconforming signs in certain areas could cause a substantial economic hardship in those areas; and

Whereas, Section 131(o) Title 23, United States Code, allows the U.S. Secretary of Transportation to exempt from removal certain nonconforming tourist-oriented directional signs the removal of which will cause a substantial economic hardship within defined areas; and

Whereas, The New York State Department of Transportation has begun studies to determine which nonconforming signs would qualify for an exemption under Section 131(o) Title 23, United States Code; and

Whereas, Nonconforming signs which would qualify for an exemption under Section 131(o) Title 23, United States Code, but which are removed before completion of the study cannot be reerrected under the current Federal Highway Beautification Act regulations, thereby causing irreparable damage to New York State's tourist industry; and

Whereas, A report by the Comptroller General of the United States indicates that "In the light of the problems and limited progress by most States in removing nonconforming signs, it appears that the objectives of the Highway Beautification Act will not be accomplished in the near future"; and

Whereas, The Federal Highway Administration, in recognition of the program's demonstrated ineffectiveness, has failed to request additional funding for this program in the 1980 United States Budget; and

Whereas, The Federal Highway Administration, in recognition of the chaos, confusion and opposition caused in the several states by the rigid requirements of the Highway Beautification Act, has scheduled public hearings to determine how and if the program can be successfully continued; and

Whereas, Legislation has been introduced in Congress to amend Section 131, Title 23, United States Code, by removing the penalty provisions of the Highway Beautification Act and allowing enforcement of the removal provisions to be voluntary on the part of the states; now, therefore, be it

Resolved, That this Legislative Body memorializes the State Department of Transportation to stop immediately the removal of nonconforming tourist-oriented directional signs as being destructive to the tourist industry in New York State; and be it further

Resolved, That this Legislative Body respectfully memorializes the Governor of the State of New York to take whatever steps may be desirable or necessary to convince President Carter that the actions of the Federal executive bureaucracy have had the effect of further depressing the economy of New York State; and be it further

Resolved, That this Legislative Body memorializes the Federal Highway Administration of the United States Department of Transportation to cease the harassment of New York State businesses by requiring the removal of signs, and to suspend any further enforcement of the Highway Beautification Act until a determination is made as to how and if the program can be successfully continued; and be it further

Resolved, That this Legislative Body respectfully memorializes the members of the New York State Congressional delegation to take all steps that may be desirable or necessary to prevent the continued activities of the Federal Highway Administration, and to actively

support suitable legislation which would remove Federal authority to interfere with State and local government control of advertising under their police powers; and be it further

Resolved, That copies of this resolution, suitably engrossed, be transmitted to the Governor, the Commissioner of the State Department of Transportation, the President and Vice President of the United States, the Secretary of Transportation, the President Pro Tempore and the Secretary of the Senate, the Speaker and Clerk of the House of Representatives and to each Member of the Congress of the United States from the State of New York.

By order of the Assembly,

Catherine A. Carey

Catherine A. Carey, Clerk

ADOPTED IN ASSEMBLY ON
June 7, 1979



Senator BENTSEN. That will conclude the hearings for this morning. We will reconvene in this room at 10 a.m. tomorrow morning.

[Whereupon, at 12:03 p.m., the subcommittee recessed, to reconvene at 10 a.m., July 18, 1979.]

[Statements and other material supplied for the record and the bill, S. 344 follow:]

STATEMENT OF LESTER P. LAMM, EXECUTIVE DIRECTOR, FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE, TRANSPORTATION SUBCOMMITTEE, CONCERNING S. 344, A BILL TO AMEND SECTION 131, TITLE 23, UNITED STATES CODE, JULY 17, 1979

Mr. Chairman and Members of the Subcommittee:

The Department welcomes the opportunity to appear here today during consideration of S. 344 and the outdoor advertising control program. This hearing occurs just as we have finished a 2-day public hearing on July 10-11 in Washington concerning the Highway Beautification Program. Other hearings were held in June in Boston, Chicago, Portland, Baltimore, Kansas City, San Francisco, Denver, Atlanta, Dallas, and New York City. These hearings were for the purpose of soliciting comments from all interested parties who wish to express their ideas about the future direction of the Highway Beautification Program. In particular, the hearings were intended to focus on the impact of the 1978 Surface Transportation Assistance Act amendments to the program, the Comptroller General's report of March 27, 1978, entitled "Obstacles to Billboard Removal," proposed revisions to current FHWA regulations relating to control and acquisition of outdoor advertising signs and junkyards, and the restudy of national standards required under 23 U.S.C. §131(c)(1) and 131(f), and ordered restudied by the Congress in the 1976 Federal-Aid Highway Act.

Additionally, an outdoor advertising section 131(o) workshop/open meeting was held on May 15 to discuss the existing operational guidelines for the aspect of the program pertaining to the exemption from removal of certain nonconforming signs on an economic hardship basis.

We have been asked to address five basic areas regarding S. 344 and the administration of the present highway beautification program. These areas include:

I. Just compensation as it relates to §§122(a) and 122(b) of the Surface Transportation Assistance Act of 1978, P.L. 95-599, November 6, 1978, [1978 Amendments];

II. Comments on S. 344;

III. Present status of the outdoor advertising control program;

IV. Our initial impression of the reassessment hearings which I mentioned above; and

V. The Federal Advisory Committee we are establishing to review the comments received during the reassessment, and to make recommendations regarding the future of the highway beautification program.

I will handle these various subjects in turn.

I. JUST COMPENSATION

Section 122(a) of the Surface Transportation Assistance Act of 1978 amended the just compensation provisions of 23 U.S.C. §131(g). In effect, signs are now eligible for just compensation upon removal if they were lawfully erected under State law, whether or not their removal was caused by the Federal Highway Beautification Act. We have been asked to address the way in which we came to interpret the new compensation requirements in two memoranda, dated December 5, 1978, and March 6, 1979.

I want to make it clear from the very outset that the Administration opposed the 1978 modifications to the Beautification statutes. Nonetheless, we will try to administer the program as best we can consistent with congressional intent.

After the passage of the Act on November 6, 1978, we were uncertain as to the scope of application the new requirements were to take. This uncertainty was caused by complexities found in interpreting retroactivity and in determining the legality of sign status. Meetings were held with this Committee and the House Committee on Public Works and Transportation so that an interpretation as to these issues would not conflict with congressional intent.

As a result of these meetings, it was argued the new compensation requirements were not to apply retroactively, but were to only apply to those signs still standing as of November 6, 1978, the date of the Act. Since many signs still standing may have become illegal under State law, our initial interpretation, reflected in the December 5, 1978, memorandum, afforded compensation eligibility to those signs "legally in existence" as of November 6, 1978. In effect, this interpretation embodied the concept that legality of a sign be determined at the time of removal.

Although this interpretation dealt with the issue of retroactivity, the House Public Works Subcommittee leadership and staff subsequently emphasized to us the statutory language stating that a

sign is eligible for compensation if it was "lawfully erected under State law." Since the legislative history of the 1978 Compensation Amendment is clear that amortization of signs under general zoning ordinances was no longer valid, the December 5, 1978, interpretation could have frustrated this intent. Under our initial interpretation, a sign that is lawfully erected, and still standing on November 6, 1978, would not be eligible for compensation if the amortization period had run prior to November 6, 1978.

Given the insistence that sign legality is to be determined at time of erection, the issue of retroactivity had to be addressed again. Committee staff pointed to three categories of lawfully erected signs existing on November 6, 1978: those still standing, those removed, with or without compensation, and those removed with the issue of compensability pending in litigation. Upon consultation with the House Public Works Committee, the March 6, 1979, memorandum was issued to clarify the application of the compensation amendments. Those signs which had been lawfully erected, and had been removed by November 6, 1978, were not to receive compensation if no judicial process was still pending. A "retroactive" application would only apply if a sign had been removed prior to November 6, 1978, and a legal challenge to this removal had not been resolved as of November 6, 1978. We would also like to point out that the compensation requirement would only

apply when uncompensated removal is tied to some nonvolitional act of the sign owner, such as the expiration of an amortization period. Ordinary maintenance requirements may continue.

We are aware of litigation involving about 9,000 signs which would be subject to this interpretation. Of these, most are signs involved in cases brought by major sign companies. We project that compensation for these signs will involve an added expense to the program of about $20 million. The effect of this interpretation based as it is on the intent of the Congress, is that signs in litigation will have a first call on beautification funds to the extent that State laws permit their use for this purpose. (Where a locality is involved in the litigation, some State laws may not permit the pass through of Federal funds.)

II. COMMENTS ON S. 344

S. 344, which is the vehicle for this hearing, would fundamentally change the direction of the Highway Beautification Program as it relates to outdoor advertising control. The predominant change would be to make the control of outdoor advertising voluntary and provide for Federal participation if certain minimum control standards are met and the States choose to provide compensation. In contrast, the present program attaches a penalty for failure to comply with the Highway Beautification Act. The congressional declaration is changed from one in which the Congress states that

outdoor advertising "should be controlled" to one in which the Congress states that it is in the public interest for the Federal Government "to assist the States in controlling" outdoor advertising. This change is also inherent in the name assigned to S. 344, the Federal Highway Beautification Assistance Act of 1979."

In light of the current reassessment, we believe it inappropriate for the Department to support or oppose any legislation relating to outdoor advertising control at this time. We believe any legislative action should await completion of this reassessment. However, we are pleased to provide you with our technical comments on S. 344 based upon our experience with the existing beautification program.

Section 2 (amending 23 U.S.C. 131(b)) sets forth the basic principle of S. 344 which is to allow the States the options of (1) maintaining any outdoor advertising control program, and (2) providing compensation for signs required to be removed if the State elects to maintain a control program. States that establish "an effective statewide system of control" and elect to pay compensation would be eligible for Federal participation in 80 percentum of the cost of such compensation. This is an increase from 75 percentum as set forth in existing section 131(g). As noted previously, no penalties are associated with failure to provide compensation. The bill preserves the bonus program unchanged, by using the same language as is presently contained in 23 U.S.C. 131(j)).

Briefly, I would like to comment on the workability of the approach adopted in S. 344:

1. Section 2 of the bill amending 23 U.S.C. 131(c) and (c)(5) states that:

> "An effective statewide system of control is one which provides that signs, displays, or devices, if located within six hundred and sixty feet of the right-of-way within urban areas or if located outside urban areas and visible from the main traveled way of the system, shall be limited to . . . (5) signs, displays and devices in areas zoned industrial or commercial under authority of State law and actually developed for such use or in unzoned commercial or industrial areas."

Implementation of this section would probably require definition of "commercial or industrial development," as well as "unzoned commercial or industrial areas." This could be done by adopting Federal standards, by using State developed standards approved by the Secretary, or by affording the States the option of either approach.

2. Implementation of section 2 of the bill amending 23 U.S.C. 131(c) will result in a new class of nonconforming signs located in undeveloped commercial or industrial zones. The bill would be clearer if reference were made to nonconforming signs or the term "nonconforming" were defined. In addition, it would be helpful if the bill established an effective date upon which such signs would be considered nonconforming.

3. We would suggest that Federal participation in compensation should not be limited to terms as absolute as those set out in section 2 of S. 344 amending 23 U.S.C. 131(b). Rather,

the section could be rewritten to establish the maximum interest which could be acquired with Federal participation. Should the State elect to provide some lesser measure of compensation, but still maintain an effective statewide system, we see no reason to deny Federal participation in such lesser measure of compensation.

4. Upon implementation of S. 344, as currently written, there would be no way to prevent States from entering and leaving the program at will. Thus, a State could voluntarily enter the program, use Federal funds to acquire a given number of signs, and then terminate all controls. The potential for abuse is evident. In order to counteract this problem, we suggest the following:

   a. A cut-off date, after which participation in the Federal program would no longer be permitted. This occurred with respect to the bonus program in 1965. The advantage of this proposal is that it is easy to administer and it would discourage States from leaving the program since reentry after the cut-off date would be impossible. Under this approach we would suggest a 2-year period, preceding the cut-off date, during which States could decide whether to participate in the program. A provision could be added to the bill directing the Secretary to make an assessment after the cut-off date to determine the

amount of funding necessary for program completion in a time period to be determined by the Secretary.

b. The Secretary could be given the authority to negotiate an agreement with States entering the voluntary program. Such an agreement would contain provisions describing the consequences of withdrawing from the program. Use of this approach would require amendment of section 2 of the bill (amending 23 U.S.C. 131(b)). We would suggest that the second sentence in that section be rewritten to read: "Whenever a State which has established and has agreed to maintain an effective statewide system of control . . ." (underlining indicates new language).

c. It may be possible to specify a statutory penalty for withdrawal. However, this might well discourage States from embarking upon a voluntary program and therefore is not a recommended approach.

5. The issue of controls on the Federal lands and reservations, viz. Indian lands, could be addressed in S. 344.

6. The Federal matching share could be reduced from 80 percent to 75 percent, the same matching share that applies to most other Federal highway assistance programs.

We hope these technical comments and observations, as well as a section-by-section factual analysis I am entering into the record, will be of use to the Committee in its consideration of S. 344.

III. PRESENT STATUS OF THE OUTDOOR ADVERTISING PROGRAM

I am sure that the Subcommittee is interested in the present status of the billboard control effort. Accordingly, I will submit for the record a statistical report which should bring the Subcommittee up to date on the present program. Also included is a digest which summarizes the present program and a brief discussion of some of the issues raised by the 1978 Amendments.

While the statistics can be read in a variety of ways, our conclusion as to the success of the present program is best described as mixed. Many States continue to resist the implementation of an active control and acquisition program. The many special categories of the Act have confused both sign owners and State administrators. Uneven funding has made it difficult or impossible for States unwilling or unable to invest a great deal of their own funds since Federal support has been unpredictable. All of these problems were addressed in the GAO report of March 27, 1978 (CED-78-38), entitled "Obstacles to Billboard Removal."

Section 122(b) of the Federal-Aid Highway Act of 1976, 23 U.S.C. 131(q)(1), required the Secretary of Transportation to encourage and assist the States to develop sign controls and programs which will assure that necessary directional information about facilities providing goods and services in the interest of the traveling public will continue to be available to motorists. To this end, the Secretary was required to restudy and revise as appropriate existing

standards for directional and informational signs to develop signs which are functional and esthetically compatible with their surroundings.

Pursuant to this mandate, the Federal Highway Administration formed an in-house interdisciplinary task force to consider all motorist information systems. An Advance Notice of Proposed Rulemaking was published in 1976 wherein public comment was solicited. Additionally, several independent studies were undertaken relative to motorist information needs.

The task force has recently submitted its final report to the Federal Highway Administrator and an announcement as to the availability of the report of the task force will be published in the Federal Register in the near future. This report will be utilized in the reassessment of the Highway Beautification Program.

Much has been done, but the road to completion is long, and the 1978 Amendments, we believe, have complicated the problem. We believe that this is an appropriate time to consider how the program should be administered in the future. It may well be that the present complexity is necessary to achieve fairness, but before that is finally decided, a careful reassessment of the program as it is presently structured is in order. For this reason, the FHWA has embarked on the nationwide effort I mentioned earlier. This

effort began with an Advance Notice of Proposed Rulemaking published in the Federal Register on April 30, 1979, at 44 FR 25388, and is continuing now. Copies of a number of documents relating to this reassessment are submitted for your information.

IV. IMPRESSIONS OF THE REASSESSMENT HEARINGS

I would like to report to you on our initial impression of the public hearings which ended last week. Let me emphasize that these analyses are very preliminary at best, and based on the documents and testimony received. They do not, in any sense, reflect our final conclusions of the entire record.

The Highway Beautification Reassessment Hearings have been completed at the 11 locations throughout the country. Approximately 875 people attended with 435 presenting testimony. The speakers could generally be grouped into those representing the outdoor advertising industry, advertisers, State and local government officials, anti-billboard groups and concerned citizens. Additionally, the Governors of the States of Colorado and South Dakota, and former Governor Tom McCall of Oregon, offered testimony at the hearings. Congressmen Kostmayer and Murphy of Pennsylvania provided oral testimony at the hearing in Washington, D.C.

The outdoor advertising industry representatives unanimously expressed support for the existing Highway Beautification Program supporting the 1978 Amendments on just compensation. Although

expressing support for the existing program, several of the speakers indicated that the FHWA was not administering section 131(o) hardship exemptions for directional signs in accordance with the intent of the Congress.

The advertisers who rent outdoor advertising space and small businessmen who own signs complained that the controls penalized the small businesses. Furthermore, they leveled criticism at the FHWA's administration of section 131(o) program from the standpoint that to date no exemptions had been allowed. Mixed viewpoints were expressed both for and against S. 344.

The city and county representatives responsible for billboard control indicated they were completely against the existing Highway Beautification Program as it usurps their authority to legislate and regulate.

Thirteen States have provided oral testimony or written comments on the existing program as of last Wednesday. The consensus of these comments is that the 1978 amendments on compensation made it extremely difficult to continue the program and remain in compliance. These States indicated that they should not be held responsible for the actions of local governments exercising police power controls. They felt that insufficient State or Federal funds were or would be available to continue the program.

Eight of the thirteen State representatives indicated they would support the Stafford Bill which would make the program optional on the part of the State. One of the State representatives indicated that he was speaking in support of S. 344 on behalf of the American Association of State Highway and Transportation Officials (AASHTO), and indicated that two-thirds of the States would favor an optional program. Three States indicated support for the existing program with what they consider minor modifications. One State suggested stricter controls along controlled access highways and another indicated the State would prefer complete police power control with no requirement for compensation.

Most environmentalists felt the Highway Beautification Program was substantially weakened by numerous amendments since its inception and that not enough was being accomplished to control outdoor advertising signs.

The individual citizens indicated that either there was too much control so that they did not have adequate directional signing or not enough was being accomplished and billboard blight remained.

Approximately 600 letters have been submitted to the docket at this time. All comments received at the hearings or in the Docket (No. 79-10) will be provided to the Advisory Committee. In

addition, the FHWA will make its own assessment of the hearing records and the Docket. The Docket closed July 15, 1979.

V. NATIONAL ADVISORY COMMITTEE ON OUTDOOR ADVERTISING AND MOTORIST INFORMATION

Another development of which you should be aware is an announcement last Thursday, July 12, in the Federal Register (44 FR 40781) which I submit for the record, establishing a National Advisory Committee on Outdoor Advertising and Motorist Information.

The advantages of establishing an advisory committee to review the materials gathered pursuant to the reassessment effort are considerable. Review of all materials relating to the reassessment by a broad-based advisory committee would provide an excellent opportunity to inject some external views into the FHWA decisionmaking process. As the advisory committee will include selected representatives of all interests providing direct input, it is our sincere hope that its recommendations would represent a consensus of those with a strong interest in the Highway Beautification Program.

It is estimated that the cost of this committee will be $50,000 annually, and that the committee will be functioning within 3 months. Considering the above, it is our conclusion that establishing an advisory committee is the most effective, expeditious, and economical means of evaluating the outdoor advertising control and acquisition programs. It is understood that the committee will serve only as

long as necessary to fulfill its function, and it would certainly be possible to terminate the committee within a period of approximately 2 years.

Considering the GAO report entitled "Obstacles to Billboard Removal," the amendments to the Surface Transportation Assistance Act of 1978, the proposed Fiscal Year 1980 budget of no funds for the Beautification Program, and the general controversy over the cost effectiveness of the program, we feel that the establishment of this advisory committee is necessary and in the public interest.

In conclusion, Mr. Chairman, I would like to reiterate that we do not believe additional legislation should be enacted in this area until our reassessment of the Beautification Program has been completed.

This completes my statement. I will be glad to answer any questions you may have.

Thank you.

Question. Mr. Lamm, could you describe for the subcommittee the breadth of the review of the National Advisory Committee?

Answer. The breadth of the review to be conducted by the National Advisory Committee includes all areas delineated in the Advance Notice of Proposed Rulemaking (ANPR) published in the Federal Register on April 30, 1979, except those areas not specified in the committee's charter, viz. the junkyard program. One of the principal tasks of the committee will be to review all records amassed during our reassessment including the hearing transcripts and FHWA Docket No. 79-10.

The committee will be composed of a variety of persons having an interest in outdoor advertising and motorist information. It will be asked to advise DOT's Federal Highway Administration on the reassessment of the Highway Beautification Program.

The committee will consist of at least 10 and not more than 25 members to be selected by Federal Highway Administrator Karl S. Bowers with the approval of the Secretary of Transportation.

Among groups that will be represented on the committee are State government, municipal government, highway users, environmental organizations, academic community, roadside councils, outdoor advertising industry, tourist industry, alternate information systems industry, and citizens at large.

The committee is expected to function for a period not to exceed 2 years and may conduct inquiries, workshops, seminars, and studies in cooperation with groups in the private sector and State and local government jurisdictions. A final report will be submitted to the Federal Highway Administrator.

The National Advisory Committee will be asked to conduct its review and structure its report in a manner which is consistent with "sunset" legislation, such as S. 2, now being considered by the Congress.

Question. The FHWA has just completed a rather extensive series of hearings on the Highway Beautification Program. Do you believe that another round of hearings by the National Advisory Committee would serve any useful purpose?

Answer. The committee will review the information received at the FHWA hearings and FHWA Docket No. 79-10, and will not conduct a series of hearings. As the committee charter indicates, it may conduct inquiries, workshops, seminars, and studies in its review process.

Question. Is it not accurate that the vast majority of the signs removed since 1965 have been "illegal" signs?

Answer. As of March 31, 1979, 94,876 compensable nonconforming signs and 393,559 illegal signs have been removed. The majority of the signs removed were classified in the original inventory taken in 1966 as nonconforming signs. As the States began to implement the requirements of the 1965 Act they set up permit systems in order to have more effective control over the erection and maintenance of signs. Some sign owners who did not obtain permits for their signs allowed their sign status to change from legal nonconforming to illegal under the permit requirements.

While this is a significant imbalance, it must be remembered that illegal signs are removed with little or no removal costs as part of the control program, while nonconforming signs are removed with full compensation. The Federal Highway Administration has been able to require the States to have an adequate control program even in years where low funding levels required virtual cessation of acquisition activities. This is possible due to the fact that the control program exists independent of the acquisition program in the statute. Thus, a State could be penalized for inadequate control even in the absence of Federal funds for acquisition.

Question. Is it not also accurate that these signs would have had to come down anyway, whether or not the 1965 Act had been passed by Congress?

Answer. Some of these signs would have been removed by the then existing or subsequent State or local control laws. However, since most States and local jurisdictions prior to 1965 had no such controls or less restrictive controls, the Highway Beautification Act is considered primarily responsible for the removal of approximately 400,000 illegal signs mentioned in a previous question. Additionally, since 1958 the 23 "Bonus" States were required to remove illegal signs adjacent to the Interstate System.

Question. The 1978 amendments to the Act make it necessary for the States to compensate owners of any sign taken down, even if the sign is not removed for Federal beautification purposes. This means that if local governments decide by local zoning to remove signs in a commercial or industrial zone (where no removal is required by Federal law) the State must still pay full compensation. What is FHWA's estimate of the cost of this amendment, if implemented fully, and the number of signs that would be covered?

Answer. The 1978 amendments pertaining to just compensation will have the effect of substantially increasing the cost to complete the program. An accurate estimate of cost can only be determined after appropriate refinements are made in State sign inventories and another national cost estimate or projection is made. However, to provide a figure for this question, we have recently requested an inventory refinement from the States which will indicate the number of signs covered by the 1978 amendments. The FHWA needs this information for program budgeting purposes. We anticipate that an estimate of the number of signs affected, along with a cost projection, can be provided to the subcommittee within 120 days.

Question. There appears to be strong evidence that most sign removal has occurred not along the Interstate System but along less traveled roads where the industry no longer finds those signs profitable. Would you agree?

Answer. Yes.

Question. Could you also cite the number of signs removed along the Interstate System out of the 88,000 compensable signs removed to date?

Answer. Such information is not collected on a system basis. We roughly estimate, however, that as of June 30, 1979, 22,000 compensable signs have been removed along the Interstate System. This number represents 23 percent of the total of approximately 97,000 signs that had been removed by that date nationwide.

Question. When does the FHWA plan to complete its reassessment of the Highway Beautification Program?

Answer. Although the committee to study the program has been established for a period not to exceed 2 years, it is anticipated that tangible results will be seen within 1 year. If the committee completes its work within 1 year, it will then be dissolved. The FHWA would like to complete the reassessment as quickly as possible.

The committee is expected to function for a period not to exceed 2 years. Although the approved committee charter established a 2-year duration period, the GSA established a tentative 1-year expiration date. Therefore, if the committee has not completed its assignment within the 1-year period (expiring June 30, 1980), an appropriate extension will have to be obtained from GSA. The committee may conduct inquiries, workshops, seminars, and studies in cooperation with groups in the private sector and State and local government jurisdictions. A final report will be submitted to the Federal Highway Administrator.

The National Advisory Committee will be asked to conduct its review and structure its report in a manner which is consistent with "sunset"legislation, such as S. 2, now being considered by the Congress.

Question. In view of the tedious history of this program and the studies of the program, what do you believe can be gained by another two year delay as a result of the advisory committee?

Answer. It is expected that the reassessment will be completed, or nearly so, within 1 year. Even during this year, the program will not be "delayed." The FHWA will continue to administer the program as was intended by Congress. The advisory committee should provide fresh ideas on program goals, objectives, and administration as a result of a broad-based and objective analysis of the program and comments received relative to its operation and goals.

Question. Mr. Lamm, I understand that you have some photographs showing the zoning for sign purposes of Camden County, Georgia. Would you show us those signs, and tell us why you believe their zoning was reasonable?

Answer. The Federal Highway Administration has in its possession copies of a series of zoning maps based on aerial photographs of the I-95 corridor in Camden County, Georgia. The maps indicate the boundaries of land parcels and also show the type of zoning designation assigned to each parcel. Adjacent to the I-95 interchanges in Camden County are large areas with the designation C-I, Interchange Commercial. Map No. 111, for example, indicates that approximately 775 $\pm$ acres around the interchange of I-95 and Dover Road have been zoned C-I. This zoning will permit, in accordance with the Camden County Zoning Ordinance, the erection of up to 12 sign boards or a maximimum of 24 sign faces (assuming V-type signs are erected) in the areas adjacent to this interchange. Attached for your information are maps Nos. 90, 93, 107, 108, and 111 showing the five I-95 interchanges. We would appreciate the return of the maps when you are finished with them.

The Federal Highway Administration does not think that the zoning represented in these aerial photographs is reasonable.

The decision made with respect to this situation in Camden County, Georgia, (and in neighboring Glynn County) was that the zoning actions were "not sufficiently in contravention of the mandates of 23 U.S.C. 131 . . . to recommend to the Secretary that a penalty action be

initiated." We advised our Atlanta Regional Office that this decision referred only "to permits already issued in Glynn and Camden Counties for the erection of billboards." We further advised that our approval was "limited to Glynn and Camden Counties . . ." and was " . . . not to be precedent setting."

The rationale for this decision was that the magnitude of the problem was insufficient to warrant the heavy sanction of a 10 percent reduction in the State's Federal-aid highway program and that the Federal Highway Administration criticism had come after the fact.

Question. If different needs for billboards information exist in different areas of the nation, isn't it logical that we return the program to the States, as would occur under S. 344?

Answer. There has been criticism of the current program from those who desire stricter control of billboards, those who desire less control and those who desire no control. The ramifications of all these alternatives will be considered during the reassessment of the program. That there are differences in needs for billboard information in different areas of the nation is the general rationale of those who desire less strict control of billboards. Returning the program to the States (as would occur under S. 344) is one possible solution to this problem. Another solution would be to expand alternative motorist information systems in those States where the need for such information is the greatest. Unfortunately the States have not voluntarily provided such systems within the right-of-way as allowed under Section 131. Perhaps mandating, or placing greater emphasis on the installation of such systems (e.g. "logos," travel information centers, etc.), would help solve the problem of adequate motorist information. Our policy in this area will be studied during the reassessment of the program. It must be remembered that the present law also provides considerable flexibility in allowing the State to provide direction information, exempt certain signs, and impose stricter controls.

Question. The Ohio Roadside Council has suggested a highway tax on billboards, possibly with the money used to remove billboards. What is your reaction to that idea?

Answer. The view of the Ohio Roadside Council that billboards constitute a use of the roadway is based on a number of State court decisions. Under the present structure of the Federal-aid highway program, where ownership and control is in the State, such a taxation system would be imposed at the State level. While the FHWA has never encouraged such a tax, nothing in the Highway Beautification Act would prevent the States from levying such taxes now. We have received comment from the Ohio Roadside Council on this matter and will consider it further in the course of the reassessment.

Billboard Value

Question No. 1. What is the average capital cost of a billboard along the Interstate System? What is the average cost of annual maintenance?

Question No. 2. What is the average rental cost of such a billboard?

Question No. 3. What is the average period needed to amortize such a sign?

Question No. 4. What is the average cost compensation paid to the owner of such a sign?

Question No. 5. Of the Interstate System signs removed to date, on average, how long had they been standing?

Answer. Except for question No. 4, we do not have the information available within the Federal Highway Administration to provide a response. In regard to question No. 4, the average cost in Federal funds paid for a nonconforming sign in FY 1978 was $1,732. Since this is 75 percent of the total cost, the average State and Federal cost was $2,300 per sign.

Question. The Federal Highway Administration approved zoning actions in Glynn and Camden counties, Georgia, allowing placement of numerous signs along Interstate 95. I understand that various offices within the Federal Highway Administration had issued reports stating that the zoning was done solely for the purpose of circumventing the Federal Highway Beautification Act. Could you please explain your assessment of the situation and whether this was obvious circumvention, signalling to the sign industry that manipulation of local zoning was acceptable to the Federal Highway Administration?

Answer. The Federal Highway Administration does not condone the zoning actions in Glynn and Camden counties, Georgia. In the opinion of the Federal Highway Administration, the zoning actions were contrary to the intent of the 1965 Act and the regulations promulgated thereunder. As stated in response to another of your questions, the decision made with respect to this situation in Glynn and Camden counties was that the zoning actions were "not sufficiently in contravention of the mandates of 23 U.S.C. 131 . . . to recommend to the Secretary that a penalty action be initiated." We advised our Atlanta Regional Office that this decision referred only "to permits already issued in Glynn and Camden counties for the erection of billboards." We further advised that our approval was "limited to Glynn and Camden counties . . ." and was " . . . not to be precedent setting."

We do not consider our action to have been a signal to the sign industry that manipulation of local zoning was acceptable

to the Federal Highway Administration. Recent newspaper articles have reached this conclusion but I assure you that the Federal Highway Administration will countenance no similar local zoning actions in Georgia or anywhere else. Accordingly, we will be taking further action to ensure that our approval of the Glynn and Camden county zoning actions has not been used as a precedent by any governmental entity or as an authorization to permit more signs to be erected in these counties. (Reference our memorandum of August 24, 1979, to Mr. James D. Lacy, Regional Federal Highway Administrator, Atlanta, Georgia, attached.)

The administrative decision made by the Federal Highway Administration was based on our assessment that the actions taken in Georgia were not of such magnitude that the heavy sanction of a 10 percent penalty should be imposed. It was anticipated that the language contained in our November 17, 1978, memorandum (copy attached) would preclude any further abuse in Georgia.

Form FHWA 121 (Rev. 5-73)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DATE: AUG 24 1979

SUBJECT: Outdoor Advertising Control - Georgia Zoning

In reply refer to: HRW-14

FROM : Executive Director

TO : Mr. James D. Lacy
HRA-04 Regional Federal Highway Administrator
Atlanta, Georgia

On November 17, 1978, I advised you that I had determined that the zoning actions in Glynn and Camden Counties, which the Georgia Department of Transportation had accepted as comprehensive zoning, were not sufficiently in contravention of the mandates of 23 U.S.C. 131 to recommend to the Secretary that a penalty action be initiated against the State. I did not, on the basis of that decision, condone the type of zoning actions undertaken by these two counties. To the contrary, it had been concluded by both the Office of the Chief Counsel and the Office of Right-of-Way that the zoning enactments in these two coastal counties had been done for the specific purpose of permitting the erection of outdoor advertising. I agreed with that conclusion and my November 17 memorandum is consistent with that conclusion.

The purpose of my November 17 memorandum was to advise you that I would accept your decision that the zoning was "valid" only with respect to permits already issued in these two counties. I further advised you that our action was not to be precedent setting and that, in the future, Georgia should not recognize zoning which is done for the express purpose of allowing outdoor advertising signs to be erected.

Since this decision, there have been numerous reports by the news media on this subject. Some of these reports indicate, either implicitly or explicitly, that similar zoning actions are underway in Georgia. If this is true, I trust that you have not and will not approve such zoning.

As you are aware, Senator Robert T. Stafford of Vermont has held hearings on his bill, S. 344, which would afford the State the option of voluntarily continuing a sign control program. In testifying before the Senate Transportation Subcommittee, I assured Senator Stafford

that the Federal Highway Administration would take further action to ensure that my decision in Glynn and Camden Counties has not been used as a precedent by any governmental entity or as an authorization to permit more signs to be erected in those counties.

Accordingly, I request that you take the following actions:

1. Advise the Georgia Department of Transportation of my concerns as stated herein.

2. Report to me all zoning actions approved by the Georgia Department of Transportation subsequent to November 17, 1978.

3. Provide a list of all signs currently permitted and/or in existence adjacent to I-95 in Glynn and Camden Counties and the dates of permit approval.

4. Keep me informed of all subsequent actions by your office in this matter.

L. P. Lamm

Question. Would you also explain the difference between the issue in Georgia and in Lyman County, South Dakota? Why would the Federal Highway Administration initiate penalty actions, including charges of zoning circumventions, in South Dakota and yet approve what appears to be the same circumvention in Georgia?

Answer. The 1977 penalty action against South Dakota involved a variety of actions in the State which had resulted in a determination by the Secretary of Transportation of noncompliance with the "effective control" provisions of 23 U.S.C. 131. Specifically, the penalty action against South Dakota was based on the lack of adequate State complying legislation and the lack of an agreement between the State and the Secretary as required by 23 U.S.C. 131(d). This situation resulted from the decision of the South Dakota Supreme Court in declaring South Dakota's 1973 law unconstitutional. In response, the South Dakota legislature passed a law in January 1977 which the Federal Highway Administration determined to be not in compliance with the requirements of Federal law.

In the hearing on this matter in December 1977 before Administrative Law Judge Paul Pfeiffer, the Federal Highway Administration testified as to the inadequacies of the 1977 legislation. In detailing the potentials for abuse under this legislation, Lyman County zoning was cited as an example of how zoning could be manipulated to circumvent the intent

of 23 U.S.C. 131. While many of the issues in Lyman County, South Dakota, are similar to those in Glynn and Camden counties, Georgia, the overriding issue in the South Dakota penalty action was the lack of an adequate law and an agreement, not the lesser issue of zoning.

Question. What is the Federal Highway Administration policy on vegetation clearance? Is it not true that the Federal Highway Administration issued a policy on December 1976 which prohibited the destruction of the landscaping and natural vegetation along Federal-aid highways? Why did the policy change and change within a matter of only a little over three months? Were there any meetings between Federal Highway Administration personnel and representatives of the outdoor advertising industry between the issuance of the December policy and the issuance of the March policy? If so, was the policy change as a result of those meetings?

Answer. The Federal Highway Administration policy now in effect on vegetation clearance was issued on March 15, 1977. This policy defers to the States the decision whether to enter into agreements with outdoor advertisers to maintain specified areas within Federal-aid highway rights-of-way for the purpose of permitting the outdoor advertising sign to be viewed by the traveling public with the cost of maintenance to be paid by the outdoor advertiser. This matter is considered a part of a State highway department's overall maintenance responsibility under 23 U.S.C., Sections 101 and 116.

It is true that the March 15, 1977, policy memorandum countermanded an earlier policy memorandum dated December 30, 1976. The December policy memorandum precluded the States from entering into the so-called "maintenance agreements" which are now permitted under the March policy.

As you note, the policy change did occur within a matter of three months. In that interim time between the two policy

memoranda, Federal Highway Administration personnel did meet with a representative of the outdoor advertising industry. On February 1, 1977, Associate Administrator for Right-of-Way and Environment, Mr. Joseph M. O'Connor, met with Mr. George McInturff of the Outdoor Advertising Association of America. The note written by Mr. O'Connor subsequent to that meeting is self-explanatory and is attached for your information.

February 3, 1977

Dr. Levin

SUBJECT: Vegetation Clearance From Within Federal-Aid Highway Rights-of-Way - Outdoor Advertising Control

Attached is a copy of the December 30, 1976, memorandum to Regional Administrators captioned above signed by Mr. Lindberg and myself. A copy of this memorandum was obtained on January 31, 1977, by the Outdoor Advertising Association of America (OAAA).

On February 1, 1977, Mr. George McInturff told me that he believed this memorandum as written should not have been sent to the Regional Administrators. He also said that he believed the reference to FHPM 7-6-2, Attachment 1, paragraph 2, was not proper because this refers to illegal cuttings on rights-of-way, and his efforts with State highway departments were directed to maintaining the rights-of-way in front of signs in a legal manner.

Mr. McInturff said that there had been illegal cuttings of shrubbery and trees on the rights-of-way in front of signs by the sign owners, and to prevent this to a degree, the OAAA sign owners wanted to enter into cooperative landscaping projects with willing State highway departments to maintain the rights-of-way. This could be done by the OAAA at its cost or by State highway departments with the advertisers paying for the force account work. In furtherance of this concept, Mr. McInturff met with Mr. Stafseth of AASHTO. Mr. Stafseth referred Mr. McInturff to Mr. Cobb of the South Carolina State Highway Department as he was Chairman of the AASHTO Maintenance Committee. Again, in furtherance of this concept, Mr. McInturff worked with Mr. Cobb and Mr. P. E. Cunningham in Mr. Lindberg's office. Mr. McInturff prepared a position paper on this subject for presentation before the AASHTO Maintenance Committee meeting in Hershey, Pennsylvania, this past summer. Mr. Cunningham presented that paper. In that position paper, Mr. McInturff stated that he would like to be invited to the AASHTO Annual Meeting to present a more lengthy paper on this subject. However, he was not invited to the AASHTO Annual Meeting in Alabama.

Mr. McInturff thought that, as a result of that meeting, the OAAA members could meet with State highway departments, and if the State highway departments were willing, effect the procedures discussed at Hershey. Mr. McInturff said he was really surprised to read the contents of the memorandum signed by Mr. Lindberg and me dated December 30, 1976, as it is contrary to what he thought the AASHTO Committee agreed to.

On February 3, I talked to Mr. Cunningham in Mr. Lindberg's office. He told me that he knew that Mr. McInturff had seen Mr. Stafseth, and in furtherance of the concept Mr. McInturff presented, Mr. Stafseth told him to visit Mr. Cobb of the South Carolina State Highway Department. Again, in furtherance of that concept, Mr. McInturff prepared a paper for presentation at the AASHTO Maintenance Committee meeting in Hershey this summer, and that he, Mr. Cunningham, distributed this paper to those in attendance for their comments. Mr. Cunningham said there was no reaction to this paper by the Maintenance Committee. It was the Committee's belief that it was a matter for the individual States to handle by themselves. It was also believed that this was a matter that the members of the OAAA could best handle themselves with the individual States that were willing to participate.

Mr. Cunningham said that he delivered a copy of this position paper to Mr. Rickerson in the Landscape Branch, Office of Engineering, and to Mr. Jim McLane in the Junkyard and Outdoor Advertising Branch.

Mr. Cunningham said that the people in your office in the Junkyard and Outdoor Advertising Branch were the only ones to his knowledge who objected to the contents of this position paper and were the force behind the preparation of the memorandum which Mr. Lindberg and I signed. Mr. Cunningham said that this was not in his area of expertise and believed that he was in no position to speak out against this memo if those who had responsibility for this program felt that this memorandum which Mr. Lindberg and I signed should be sent to the field.

Mr. Cunningham told me that maintenance of rights-of-way by other than State highway department forces is not unusual. Farmers come in and cut the grass and pay the States because of the benefits the farmers receive from the hay that they obtain from the rights-of-way. In some States, farmers come in on a contract basis through a bidding procedure and maintain the rights-of-way. It is my impression that Mr. Cunningham has no objections to State highway departments working out cooperative agreements with outdoor advertisers to maintain rights-of-way where signs are located unless it entails the removal of plantings with which there were Federal monies involved.

The basic question is whether or not the Federal Government should tell the States what they can or cannot do in these circumstances or whether this is a matter that we should not become

involved in and leave it to the discretion of the States as to what should be done as long as it does not violate laws or regulations.

The inference is clear in the memorandum which Mr. Lindberg and I signed, through the reference to Attachment 1, paragraph 2, which deals with illegal cuttings on the rights-of-way, that the FHWA by its memorandum places the proposition offered by Mr. McInturff in a somewhat illegal category.

I would appreciate your looking at this matter and correcting any inequities.

J. M. O'Connor

3 Attachments
12-30-76 Memo to Reg. Adms.
6-30-76 Memo by Mr. McInturff
7-21-76 Memo by Mr. McInturff

cc: Mr. H. A. Lindberg - 3212 w/atts.

MA

DEC 3 0 1976

HRM-10

Vegetation Clearance From Within Federal-Aid Highway Rights-of-Way - Outdoor Advertising Control

Associate Administrator for Engineering and Traffic Operations
Associate Administrator for Right-of-Way and Environment
Washington, D.C.

Regional Federal Highway Administrators
Regions 1 - 10

It has come to our attention that efforts are being made to encourage States to adopt rules and regulations which would permit clearance of native and/or planted vegetation from within Federal-aid highway rights-of-way in order that such vegetation does not screen outdoor advertising signs from the view of the traveling public. Such efforts include encouraging the States to arrive at sign values without considering economic depreciation due to the fact that a sign may be obscured by vegetation. With respect to these efforts, an attempt is being made to obtain the backing and support of the AASHTO Operating Subcommittee on Maintenance.

Adoption of rules and regulations which guarantee the visibility of all outdoor advertising signs, such as discussed above, would have an adverse effect on highway beautification and would be contrary to FHWA policy. Rules or regulations promulgated by a State which guarantee the visibility of outdoor advertising signs cannot be approved by FHWA.

To emphasize and reaffirm the position of FHWA on any action involving the clearance of vegetation from within Federal-aid highway rights-of-way on the Federal-aid system for the primary purpose of providing visibility of outdoor advertising signs to motorists, the following action is recommended: To protect the integrity of the highway facility and the safety of the traveling public consistent with (1) the objectives of highway beautification and (2) expenditure of public funds for public purposes, all State highway agencies should be encouraged to follow the guidelines provided in FHWA 7-6-2, Attachment 1, paragraph 2, where Federal funds participated in any phase of project costs.

This policy should be immediately brought to the attention of personnel in the States and FHWA field offices who have responsibility for highway maintenance and outdoor advertising sign acquisition and controls.

/s/ H. A. Lindberg

H. A. Lindberg

I. M. O'Connor

GEORGE F. McINTURFF
CONSULTANT ON ENVIRONMENTAL AFFAIRS
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June 30, 1976

UNCONTROLLED GROWTH OF VEGETATION ON THE RIGHT OF WAY AS IT AFFECTS ADVERTISING SIGNS

A problem of serious proportions in a number of states involves the uncontrolled growth of trees and underbrush on the rights of way, which eventually obscures legally maintained commercial advertising signs. In some areas, this uncontrolled growth of "volunteer" vegetation can render an otherwise valuable advertising sign useless in a matter of several years, thereby depriving the owner of the sign and the owner of the land on which the sign is placed rental income which would otherwise accrue to them. If the sign produces income of several hundred dollars a month, which many do, the loss of a number of such signs through undergrowth blockage can be severe.

Options open to the outdoor advertising company official in such a situation are few. He can petition the state highway department to periodically mow the right of way in the vicinity of his signs, or allow the sign company to do so. Lacking a favorable response to this, he is faced with the loss of valuable property and income.

The best solution to this problem is a closer working relationship between the state highway department and the outdoor advertising industry with a resultant better understanding of each other's problems. The highway department desires to keep its maintenance costs down; the outdoor advertising company wants to be able to conduct its business in those areas in which it is legally entitled to. Both of these objectives can be achieved by the following program:

1. The area in front of, or approaching, any legally erected and maintained outdoor advertising sign will be kept free of any vegetation which would block the motorist's view of the sign.

2. This would be done by any effective means chosen by the state, including mowing, herbicides, etc.

3. Treatment would be annually, unless conditions required more frequent application.

4. Mowing patterns established would be consistent, whenever possible, with the AASHTO Maintenance Manual, 1976.

5. The proper time for mowing or other treatment would be at the option of the state, and would be based on consideration of wildflower growth and propagation, the nesting of wildlife and other matters of ecological concern.

6. Any cost to the state would be reimbursed by the sign owner, if so requested by the state.

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July 21, 1976

MEMORANDUM

TO: ALL MEMBERS, OAAA

FR: GEORGE F. McINTURFF

RE: REMOVAL OF TREES AND UNDERGROWTH FROM HIGHWAY RIGHTS-OF-WAY

A number of plants experience continuing difficulty in the visual obstruction of signs by trees and underbrush growing on the highway right-of-way. The obvious solution is for the state highway department (SHD) to periodically mow the area in front of the sign, or allow the sign company to. This has not always been possible; many state highway departments are reluctant to co-operate in this manner.

Mowing operations are in most cases handled by the SHD Maintenance Division. Policies on maintenance, including mowing, are developed and disseminated by the American Association of State Highway and Transportation Officials (AASHTO) Operating Subcommittee on Maintenance, which is chaired by Mr. Paul W. Cobb, State Highway Engineer for South Carolina. Through the cooperation of Mr. Cobb, and Mr. P.E. Cunningham, Federal Highway Administration engineer who is secretary to the committee, I arranged for the paper printed on the reverse side to be given to the summer meeting of the committee, in Hershey, Pennsylvania, July 8 & 9, 1976.

If you have problems relating to the growth of trees and underbrush on the right-of-way, you may wish to discuss possible solutions with the Maintenance Engineer of your SHD.

I hope that the AASHTO Maintenance Committee will take a benevolent attitude towards our problems in this area. Also, I hope to be invited to give a more lengthy paper on the subject at the AASHTO annual meeting in November. I will keep you advised.

GFM/lg

cc: Washington OAAA

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DATE: MAR 15 1977

In reply refer to: HRE-1

SUBJECT: Vegetation Clearance From Within Federal-Aid Highway Rights-of-Way - Outdoor Advertising Control (Re: December 30, 1976, memo)

FROM: Associate Administrator for Right-of-Way and Environment
Associate Administrator for Engineering and Traffic Operations
Washington, D.C.

TO: Regional Federal Highway Administrators
Regions 1-10

The December 30, 1976, memorandum to Regional Administrators captioned above was issued because it had come to the attention of the Federal Highway Administration (FHWA) that efforts were being made to encourage States to adopt rules and regulations which would permit clearance of native and/or planted vegetation from within Federal-aid rights-of-way in order that such vegetation would not screen outdoor advertising signs from the view of the traveling public.

Since the December 30, 1976, memorandum was issued, a question has arisen whether a State highway department at the request of an outdoor advertiser could enter an agreement with the outdoor advertiser to maintain specified areas within Federal-aid highway rights-of-way for the purpose of permitting the outdoor advertising sign to be viewed by the traveling public with the cost of maintenance to be paid by the outdoor advertiser. It is anticipated that this or similar requests for selective maintenance in areas adjacent to nonconforming signs until they are acquired or in areas adjacent to signs in commercial or industrial areas on a more permanent basis will be made of many State highway departments. The decision whether to enter into such an agreement must be made by the State highway department as part of its overall maintenance responsibility under 23 U.S.C., Sections 101 and 116 to preserve the entire highway including roadsides for its safe and efficient use, within its own laws and maintenance policies, good landscaping practices, and the guidance provided by the AASHTO Maintenance Manual. Neither the FHWA nor State highway departments would countenance any illegal or unauthorized cutting of trees or vegetation on Federal-aid

rights-of-way performed to protect or enhance the visibility of outdoor advertising signs adjacent thereto. FHPM 7-6-2, Attachment 1, paragraph 2, was written to provide guidelines for unauthorized or illegal destruction of trees or shrubs.

J. M. O'Connor

Joseph M. O'Connor

/s/ H. A. Lindberg

H. A. Lindberg

Federal Highway Administration
HRE-1:JMO'Connor:mss:60100:3-11-77
Copies to:
Files (2)
Mr. Lindberg - 3212
Mr. O'Connor - 3213 (2)
Dr. Levin - 3215
Real Property Acq. Div. - 4132
Reader File - 3213

Question. In a letter to me on May 15, 1979, the Federal Highway Administration provided information regarding the sign situation in South Carolina and Missouri. I understand that nothing has changed in either State since that letter. Why not?

Answer. In both the South Carolina and Missouri situations as related in our May 15 letter, the Federal Highway Administration is awaiting responses from the States. Both of these matters involve complex legal issues and the length of time necessary for State responses is as expected. As you note, nothing has changed in either State since our May 15 letter to the best of our knowledge. If satisfactory responses are not forthcoming in a reasonable period of time, we will take appropriate action to attain such responses.

Question. Mr. Bowers is reported to have said that many problems in administering the Highway Beautification Act concern Federal Highway Administration personnel and the need to find people who are more responsive to the industry. Would you consider these to be the remarks of an impartial Federal regulator or a friend of the regulated?

Answer. The remarks attributed to Mr. Bowers are with reference to his comments before the 1978 annual meeting of the Roadside Business Association (RBA) at Hilton Head, South Carolina, in November 1978. At that meeting Mr. Bowers is reported by the RBA newsletter of December 1978 to have "discussed his concern regarding Federal Highway Administration personnel and the need to find people who are responsive to the way the Highway Beautification Act should be administered."

In reporting on this same meeting, the outdoor advertising industry news magazine "Signs of the Times," in its January 1979 issue quotes Mr. Bowers as being "totally opposed to regulators writing the laws," and that it is his tack to make the Federal Highway Administration "more responsive in following the intent of Congress." The article continues with the following paragraph:

> "We have been guilty of writing the laws," Bowers continued, freely admitting that the end result has caused frustrations not only for the outdoor advertising industry but for the FHWA itself. The former chairman of the South Carolina highway commission further observed that the U.S. Department of Transportation has been

biased in its handling of outdoor regulations and "it's getting worse," referring to instances where bureaucrats have actually lobbied against the industry.

The characterization of these remarks as being those of either "an impartial Federal regulator" or "a friend of the regulated" depends on the perspective of the person hearing and reporting the remarks.

Mr. Bowers believes that to implement the law as Congress intended is the best way to administer the program in an effective and impartial manner.

STATEMENT OF CHARLES F. FLOYD, DEPARTMENT OF REAL ESTATE AND LEGAL STUDIES, THE UNIVERSITY OF GEORGIA TO THE TRANSPORTATION SUBCOMMITTEE, COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS REGARDING S.344, THE FEDERAL HIGHWAY BEAUTIFICATION ACT OF 1979

I support S.344 with great reluctance--as I feel certain Senator Stafford offered it with great reluctance. The bill is an admission that the Highway Beautification Act, which was heralded with such great expectations and upon which so much time and money has been expended, is a failure. Instead of achieving its original goals of removing existing billboard clutter from our rural roadsides and preventing its future spread, the Act has been transformed into a sign industry dominated program that is actually protecting and subsidizing the industry it was meant to regulate.

In preparing for these hearings I asked myself several questions:

. How could this program be made more ineffective?

. How could this program be more perverted away from its stated objectives?

. How could this program be made of greater benefit to the sign industry?

. How could this program be changed to waste more of the taxpayers' money?

It was very difficult to find any answers to these questions.

But the most compelling criterion regarding the effectiveness of this program is spoken by the billboard industry. If the Act were meeting its original objectives--if it were any good--they obviously would be very unhappy with it. But they love it, and will be here testifying how the Act should be retained in its present form.

Let us examine some of the reasons why the Act has been so ineffective. Billboards were to be allowed only in areas zoned commercial or industrial, and were made subject to size, spacing, and lighting criteria. Unfortunately for the stated objectives of the Act, the Secretary was not allowed to set any national standards, but was to enter into agreements with the states based on "customary use." "Customary use" has been defined in a rather curious way.

The Bureau of Public Roads first proposed a maximum size of 400 square feet, but later changed this to 650 square feet even though a national inventory showed that size was larger than all but 1.85 percent of the existing signs. Finally, as the Federal Highway Administrator testified, the Federal Highway Administration developed a model agreement in cooperation with the Outdoor Advertising Association of America. This "model agreement" set a maximum size limitation of 1200 square feet that was adopted by thirty-two states. The square footage is equal to the floor area of a medium-sized three bedroom house and is approximately twice the size of the largest billboards

normally erected along the interstate system. George McInturff, who served as chief negotiator of the agreements as head of the Scenic Enhancement Division of the Federal Highway Administration and who now is employed by the Outdoor Advertising Association of America, recently testified:

> That size limit is the outer limit of what is used by the industry in major urban areas within the United States. . . . I doubt greatly that more than one sign out of 2,000 now erected, or erected since those controls were established, even approaches that 1200 square feet.

"Customary spacing" in the guidelines, and in most of the states, was defined as every 500 feet on the interstate system, every 300 feet on the primary system, and every 100 feet on the primary system within municipalities. The billboard industry favored the spacing requirements since they prevent a competitor from erecting another sign close enough to block an unobstructed view out of an existing billboard. Under the spacing requirements it is possible to have 10.5 billboard sites per mile on each side of the road along an interstate highway, a total of 21 sites on both sides. Since two faces are permitted at each site, 42 billboards per mile are allowed along any portion of the interstate system that is zoned commercial or industrial. On the primary system, the comparable figures are 35 sites and 70 faces per mile. Within municipalities the allowable sites reach the somewhat absurd level of 106 per mile with 212 possible sign faces. If each of these signs were of

the maximum allowable size (1200 square feet per site), the total area of the sign faces would be equal to approximately three football fields for each mile of roadway. To say that the size and spacing requirements serve as any effective control of signboards is obviously absurd.

Since the size and spacing requirements contained in most of the agreements amount to virtually no control of outdoor advertising, the designation of commercial and industrial zones becomes all important. At the time of the Act's passage many were concerned that local jurisdictions would zone areas as commercial or industrial solely to permit signs, thereby creating a huge loophole. During the debates Senator Randolph stated, however:

> The matter of zoning areas for commercial or industrial purposes is left to the States . . . This language does not, of course, mean that a State or local authority can place a label 'zoned commercial or industrial' on land adjacent to the interstate and primary systems solely to permit billboards or junkyards and thereby frustrate the intent of Congress.

Unfortunately this has not been the case. Large areas of rural countryside have been zoned as commercial in violation of any accepted land-use planning criteria--and this is being accepted for purposes of the Act by the Federal Highway Administration. Let me give you one recent flagrant example that happened to have occurred in Georgia.

Camden and Glynn counties are bisected by I-95 which was recently constructed through the rural countryside. Each of these counties zoned between 500 and 800 acres as

commercial at each interchange. Camden County, which has a population of approximately 12,000 and around 50 acres in actual commercial use in the entire county, zoned nearly 4000 acres as "commercial." The Director of the Glynn County Planning Commission stated in a public hearing that the purpose of the zoning was to permit billboards. The zoning violated every recognized standard of land-use planning. A study by the area planning commission projected a need for only 102 additional acres of commercially zoned land in Camden County by the year 2000. Both the Junkyard and Outdoor Advertising Branch and the Chief Counsel's office of the Federal Highway Administration recommended against accepting this zoning for the purposes of the Highway Beautification Act. The Assistant Chief Counsel's report stated: "It is clearly established that the zoning amendments were enacted solely to avoid the prescriptive effects of Federal and State outdoor advertising laws." He concluded:

> Federal and State law specifically provide that action which is not a part of a comprehensive zoning and is created primarily to permit outdoor advertising structures is not recognized as zoning for outdoor advertising purposes. Therefore, the erection of signs in the zones at issue violate the Highway Beautification Act.

Despite all this evidence, the Federal Highway Administration accepted the zoning, thereby permitting billboards to be erected in areas that were totally rural in nature, and thereby frustrated the intent of Congress.

Another problem arises under what can be referred to as "anticipatory" zoning. Under accepted land-use planning practices lands are zoned not just for the present, but also for anticipated development some years in the future. Because there is no requirement in the Beautification Act that restricts billboards to areas of actual commercial or industrial land use, this practice results in signboards being allowed in vast areas of rural countryside. For example, on Interstate 85 in Gwinnett County near Atlanta an industrial zone extends approximately four miles beyond the currently developed industrial area. In this four miles there are fifty-one billboard sites, only four of which are actually located near any type of commercial or industrial land use.

The General Accounting Office recognized these problems in their recent report:

> In some cases signs in commercial or industrial zoned areas are in rural environments where there are no commercial or industrial business--the land is merely zoned for such businesses. We believe that a more appropriate criterion for allowing such signs would be the actual use to which the land was put. This would restrict such signs to areas which have already suffered the visual blight of industrialization.

But what about sign removals.

Despite the fact that twenty-two states were already removing nonconforming billboards under the Bonus Law through their use of the police power, the 1965 Act required the payment of compensation to both the sign owner and the

owner of the land on which the sign was located. Congress justified this change in policy on the basis that controls were being extended to the primary system where outdoor advertising was long established. There is also considerable evidence, however, that the Congress did not fully understand the implications of this section. For example, in the debate Senator Muskie emphasized that "under the bill all that can be compensated for is whatever remains of the leaseholds or the unamortized values, so that if, in fact, the billboard has been completely amortized or the leasehold has expired, no compensation will be paid under the bill." This, of course, is an exact description of the amortization or phase-out principle which was being outlawed by the Act.

Subsequent experience proved that the Senators' belief that the value of nonconforming signs would generally decrease steadily over time was not justified. To the contrary, the signboards have tended to retain their value even though the outdoor advertising industry generally depreciates billboards over an eight-year period for tax purposes. Lenient regulations regarding repair and refurbishment have allowed the sign companies to continually rebuild and repair the nonconforming signs and, in effect, to give them eternal life. Combined with liberal interpretations of what constitutes "just compensation," this has resulted in a continual increase in sign removal costs.

The General Accounting Office report estimates this increase at 6 percent annually.

Although approximately 30 percent of the non-conforming signs have been removed, this figure gives a totally false impression regarding the status of the removal program. Most of the signs removed have been small and obsolete ones of little value. Most of the larger and more valuable signs remain.

Most public projects are planned so as to maximize the benefit-to-cost ratio; the billboard removal program has been designed to minimize the benefit-to-cost ratio. In the 1976 amendments Congress directed that the first priority for removal be signs voluntarily offered by the billboard companies, while other nonconforming signs along heavily traveled rural highways will be the last removed. This strategy has resulted in the very limited funds that have been appropriated for highway beautification being dissipated to little benefit except to the outdoor advertising firms.

The program has been further weakened by the 131(o) amendment contained in the 1976 Federal Highway Act. In addition to directing the states to retain nonconforming rural signboards giving directional information until the end of the program, the amendment also allowed the states to keep these billboards permanently where their removal

might cause "economic hardship." This provision has the potential of completely halting the removal of rural signs.

The General Accounting Office estimates the cost of the removal program at $823 million. Even this figure is probably too low, particularly in light of the 1978 amendments and the subsequent regulations by the Federal Highway Administration which have required compensation for an estimated 9000 signs that were to be removed under the police power of the states. Realistically, the cost would be over $1 billion.

The 1978 amendment regarding compensation was the final step in perverting the original intent of the Highway Beautification Act. Under this amendment, compensation must be paid whenever a nonconforming sign is removed under any state or local land-use control, environmental, or zoning law. Previously, compensation was required only where signs were removed because of the act.

This amendment represents an unprecedented limitation on local zoning authorities and a victory by the industry in its longstanding campaign to deny state and local governments the traditional right to remove nonconforming signs through the use of the police power. George McInturf of the Outdoor Advertising Association of America, wrote in Signs of the Times magazine, "The effect of the amendments should be the elimination of amortization in most ordinances of larger communities."

Perhaps even more perverse and illustrative of the industry's current domination of the "regulatory" function at the Federal Highway Administration, regulations implementing the amendment have been issued that apply it retroactively so as to include approximately 9000 signs that were illegal under state law and in litigation, as well as other signs that were illegal under state or local law that had not yet been removed. The first draft of the regulations covered only signs legally maintained as of November 1978. The industry opposed that and was able to literally rewrite the regulations to their advantage. This was documented in an article by Irwin Arieff in the Congressional Quarterly of March 17, 1979.

Perhaps the ultimate perversion of the beautification law has been as justification for the legalized vandalism of tree cutting in front of billboards. Illegal tree cutting along the highway right-of-way in front of billboards euphuistically called "vegetation control" by the industry has long been a serious problem. Under pressure from the sign industry, the Federal Highway Administration has promulgated regulations allowing the companies to legally destroy trees and other vegetation owned by the public. Ironically, some of these trees were purchased and planted under the provisions of Title III of the Highway Beautification Act.

In summary, billboard control under the Highway Beautification Act has largely been a failure, both in

removing nonconforming signs and in preventing the spread of billboard clutter to much of the rural countryside. In particular:

- The requirement that size, spacing, and lighting would be in accordance with "customary use" has meant that for all practical purposes there are no restrictions on billboards in the areas that are designated as commercial and industrial zones.
- These ineffective regulations have tended to shield the billboard industry from more effective regulation at the state or local level.
- The designation of commercial and industrial zones has been so loose that local or state governments desiring to circumvent the Act can do so with almost complete impunity.
- The designation of "unzoned commercial and industrial areas" is so loosely defined that even very obscure commercial or industrial uses will permit billboards.
- Only a relatively small number of nonconforming billboards have actually been removed, and at the present level of funding the program could not be complete is less than 110 years.
- Ineffective regulations have permitted billboard companies to continually rebuild and refurbish nonconforming signs, in effect, to give them eternal life. Allowing the billboard companies to rebuild their

signs continually has meant that the cost of acquisition continues to rise rather than to decline as was stated Congressional intent.

- The mandatory compensation provision has hindered the use of the police power to remove signs at the state and local level.
- Adequate alternative motorist information systems have not been provided.

As I stated at the beginning of this testimony, S.344 is not the approach that I would prefer, but it is far preferable to the travesty that now exists.

Billboard Control Under the Highway Beautification Act—A Failure of Land Use Controls

Charles F. Floyd

Billboard control and removal under the Highway Beautification Act has largely been a failure, achieving little toward the accomplishment of stated Congressional goals. Crippling amendments, "loopholes" in the designation of commercial and industrial zones, the exemption of on-premise signs, a lack of national standards, reliance upon the use of eminent domain rather than the police power to remove noncomforming signs, inadequate appropriations for the program, and general indifference among former supporters have been the main causes of the Act's ineffectiveness. Extensive amendment and vigorous administration are essential if the Act is ever to be effective.

Perhaps no environmental or land-use issue evoked more discussion and debate during the 1950s and 1960s than did aesthetics and sign control. This movement culminated in the Highway Beautification Act of 1965 which promised to control:

> The erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the interstate system and primary system . . . in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

In practice, however, the Act has largely been a failure, achieving little toward the accomplishment of the stated Congressional goals. Crippling amendments, problems arising from reliance upon the use of eminent domain rather than the police power to remove nonconforming signs, "loopholes" in the designation of commercial and industrial zones, the exemption of on-premise signs, a lack of national standards, and general indifference among former supporters have been the main causes of the Act's ineffectiveness.

The Bonus Act

Local governments have been attempting to control billboards since these eyesores became prevalent around the turn of the century.[1]

A strong push for national billboard legislation came after the beginning of the interstate highway system in 1956. Two years later Congress passed the so-called "Bonus Act," which encouraged individual states to develop control measures consistent with national standards by offering a federal-aid highway bonus payment in the amount of one-half of one percent of the cost of interstate highway construction projects. The Act prohibited most off-premise signs along the interstate system and provided some control of on-premise signs.[2] Later amendments ex-

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empted from control those segments of the interstate system which traversed (1) areas that had been either zoned commercial or industrial within the boundaries of incorporated municipalities as of September 1959, or areas in which the state had clearly established land use as industrial or commercial as of that date, and (2) older rights-of-way incorporated into the interstate system.[3]

Twenty-five states, located mostly in the Northeast, the Midwest, and along the Pacific Coast, passed enabling acts and entered into bonus agreements before the expiration of the program on June 30, 1965 (Johnson 1970). The Bonus Law did not specify the method to be used in effecting the required outdoor advertising controls. Only three states utilized the power of eminent domain to eliminate nonconforming signs; seven states combined compensation for certain existing signs along with police power controls; the remainder relied solely upon the police power. Six of these states had their laws tested in the courts and all were upheld with the exception of Georgia's. In an opinion which is widely quoted because it is so in variance with prevailing legal opinion in other states, the Georgia Supreme Court declared the law unconstitutional because it did not provide compensation in the acquisition of nonconforming signs.[4]

Even though it was the first attempt to develop national advertising control legislation, the Bonus Act has been much more successful in achieving its stated objectives than has the 1965 Beautification Act. The primary reasons for the Bonus Act's success were:

- It provided for definite national standards.
- The freeze date on the designation of new commercial and industrial zones kept these areas from proliferating to an extent that would undermine the purposes of the Act.

An alternative to the passage of the Highway Beautification Act would have been to amend the Bonus Act to make outdoor advertising control along the interstate system mandatory for all of the states and to eliminate some of the Bonus Act's loopholes. In retrospect, there is little question that this approach would have been far more effective in controlling billboards than the one actually adopted in the 1965 Act.

The Highway Beautification Act

The year 1965 marked the passage of the Highway Beautification Act, sometimes called the Ladybird Johnson Bill but more accurately described as the Billboard Protection and Compensation Act. The Act was conceived with lofty intentions—to make billboard control mandatory in all the states and to extend control to the primary system (most US-numbered and some state-numbered highways). What emerged offers a classic case of a powerful industry gutting environmental legislation. On the positive side, billboard control was made mandatory (a state would lose 10 percent of its federal-aid highway funds unless it complied with the Act), and regulation was extended to the primary system.[5] The costs, however, both in monetary and other terms, were enormous.

First, *all* areas zoned for commercial and industrial use, including "unzoned commercial and industrial areas," were exempted from any but the most minimal controls. The exemption is much too broad, lumping research parks and rural areas that happen to be zoned for possible future commercial development with ugly commercial strips. The practical effect of the provision has been to allow billboards in commercial areas where they are totally inharmonious, and also in areas which are almost totally rural in character.

Second, on-premise signs, those signs that identify a place of business, were exempted from any controls. The result has been huge gas station signs towering above the landscape at almost every interchange and the unchecked spread of sign clutter along our highways.

The most devastating triumph of the billboard lobby, however, was the provision making payment of compensation mandatory for the removal of all noncomforming signs. As will be shown, this forced compensation feature, combined with meager appropriations for the program, has meant that very few signboards have actually been removed under the Act.

The Highway Beautification Act in practice

How effective has Title I of the Highway Beautification Act of 1965 been in (1) controlling the erection of new billboards and (2) removing billboards that are nonconforming? The record indicates that the Act has been ineffective in both respects.

Control of new billboards

Size and spacing standards. The Highway Beautification Act required that each state enter into an agreement with the Secretary of Commerce (later Secretary of Transportation) to "provide effective control of outdoor advertising," including size and spacing requirements for billboards permitted in commercial and industrial areas. The Secretary was not allowed to set national standards for size and spacing limitations, however, but was to accept what was "customary" in each state.

In an attempt to set a basis for the negotiations with the states, and to assist in developing the required cost estimate for Congress, the Bureau of Public Roads developed draft standards for directional and official signs, a draft definition of unzoned commercial and industrial areas, and draft criteria for the size, spacing,

and lighting of signs permitted in commercial or industrial zones. Following the publishing of these criteria in the Federal Register, a series of public hearings was held in each state (Federal Register 1966).

The proposed standards were opposed within both the billboard industry and Congress because they would have established some restrictions on the sign companies' activities. The regulations set a maximum size limitation of 300 square feet—400 square feet if the sign was located more than 150 feet from the edge of the right-of-way. Billboards were also required to be set back 25 feet from the right-of-way, and a maximum of six signs per mile was established. No signs were to be allowed within 2000 feet of an entrance or exit ramp for an interchange or rest area, in effect creating a "blocked out zone" for approximately one and one-half miles at each interchange as a safety feature.

As a result of the opposition that developed during the hearings, when these proposed guidelines were presented to Congress in January 1967 they had been watered down considerably. The maximum size had been increased to 650 square feet with no setback requirement, while the maximum number of signs per mile had been increased to twenty-one.

Even these reduced standards met considerable opposition from the billboard lobby and its supporters in Congress, and the proposed standards were vigorously attacked during the hearings on the Beautification Act that were held by both Houses in 1967. The primary questions at issue were what constituted "customary use," and how much right the Secretary had to set any type of minimum standards. The Federal Highway Administrator testified that:

> We received a lot of testimony on what constitutes "customary use," and as you might suspect, it was certainly not unanimous in its presentation. We finally wound up with, for example, a size proposal of 650 feet. Just as a matter of interest, *this size is larger than all but 1.85 percent of existing signs* (U.S. Congress, House, 1967, p. 961). (Emphasis added.)

Finally, in a May 24 letter to Representative Kluczynski, Chairman of the Subcommittee on Roads of the House Public Works Committee, Transportation Secretary Boyd abandoned the proposed standards, and stated that "subject to supporting evidence, state determination of customary use will be accepted with respect to size, lighting, and spacing of signs" (U.S. Congress, Senate, 1967). Essentially, this was defined to encompass almost everything the sign companies wanted. F. C. Turner, Federal Highway Administrator, later wrote to Congressman Wright, then also Chairman of the Commission on Highway Beautification, that:

> The Federal Highway Administration, *in cooperation with the Outdoor Advertising Association of America, Inc.*, developed a model agreement which could be utilized by any state during the negotiation process (Commission on Highway Beautification 1973). (Emphasis added.)

This "model agreement" set a maximum size limitation of 1200 square feet that was adopted by thirty-two states. The square footage is equal to the floor area of a medium-sized three bedroom house and is approximately twice the size of the largest billboards normally erected along the interstate system. George McInturff of the Outdoor Advertising Association of America later testified:

> That size limit is the outer limit of what is used by the industry in major urban areas within the United States. . . . I doubt greatly that more than one sign out of 2,000 now erected, or erected since those controls were established, even approaches that 1200 square feet.[6]

"Customary spacing" in the guidelines, and in most of the states, was defined as every 500 feet on the interstate system, every 300 feet on the primary system, and every 100 feet on the primary system within municipalities. The billboard industry favored the spacing requirements since they prevent a competitor from erecting another sign close enough to block an unobstructed view out of an existing billboard. Under the spacing requirements it is possible to have 10.5 billboard sites per mile on each side of the road along an interstate highway, a total of 21 sites on both sides. Since two faces are permitted at each site, 42 billboards per mile are allowed along any portion of the interstate system that is zoned commercial or industrial. On the primary system, the comparable figures are 35 sites and 70 faces per mile. Within municipalities the allowable sites reach the somewhat absurd level of 106 per mile with 212 possible sign faces. If each of these signs were of the maximum allowable size (1200 square feet per site), the total area of the sign faces would be equal to approximately three football fields for each mile of roadway (Commission on Highway Beautification 1974).[7] (Table 1 illustrates the difference between proposed and final regulations under the Highway Beautification Act).

Commercial and industrial zones. Since the size and spacing requirements contained in most of the agreements amount to virtually no control of outdoor advertising, the designation of commercial and industrial areas becomes all important. Unfortunately, local zoning authorities often do not place great importance on providing an uncluttered view for the interstate motorist. The real or imagined benefits to be derived for local businesses through billboard advertising usually assumes a much greater priority. In practice, therefore, many local communities, and particularly rural counties have attempted to circumvent the Highway Beautification Act by zoning long

Table 1. Guidelines for size and spacing agreements in commercial and industrial areas

	Highway Beautification Act		
	Proposed in Federal Register January 28, 1966	Proposed in report to congress, January 10, 1967	Final guidelines
Maximum size	300 sq. ft.; 400 sq. ft. if located more than 150 feet from right-of-way	650 sq. ft.	1200 sq. ft.
Maximum height from ground	30 feet	None	None
Setback from right-of-way	25 feet	None	None
Maximum number per mile on:			
interstate	6	21	42
primary-rural	6	21	70
primary-cities	6	21	212
Allowable square footage per mile:			
interstate	2,400	13,650	25,200
primary-rural	2,400	13,650	42,000
primary-cities	2,400	13,650	127,200
"Blocked-out" zone from interchange	2,000 feet	2,000 feet	500 feet outside municipality. None within municipality.
Number of firms needed to qualify as "Unzoned commercial and industrial area"	2	2	1

Source: Federal Register, January 28, 1966. Senate Document No. 6, 90th Congress, 1st Session. Highway Beautification Commission, *Hearings*, 1974, pp. 413–419.

stretches of rural highways as commercial and industrial areas. The absence of any requirement that such areas actually contain commercial or industrial land uses, and the Congressional insistence that state and local zoning actions be accepted for the purposes of the Act, makes this provision perhaps the largest loophole in the entire Highway Beautification Act.

"Anticipatory" commercial and industrial zones. Under generally accepted planning techniques lands are zoned not just for the present, but also for anticipated development some years into the future. Because there is no requirement in the Beautification Act that restricts billboards to areas of actual commercial or industrial land use, this practice results in signboards being allowed in vast areas of rural countryside. For example, on Interstate 85 in Gwinnett County near Atlanta an industrial zone extends approximately four miles beyond the currently developed industrial area. In this four miles there are fifty-one billboard sites, only four of which are actually located near any type of commercial or industrial land use.

"False" commercial and industrial zones. Many states or local communities have classified areas as commercial and industrial zones that fail to qualify for this designation under any accepted land use standards. Consequently, it is difficult to reach any conclusion other than the obvious one that they were zoned primarily to allow billboards. In some cases, strips along the entire length of rural highways have been zoned solely for this purpose. Other rural counties have designated large areas on either side of interchanges as commercial zones, even though such activities are confined almost exclusively to the areas immediately adjacent to the interchange. Still others have classified strips along interstate highways as agricultural-commercial zones, in which billboards are almost the only permitted commercial use. Several states passed legislation to comply with the Highway Beautification Act that zoned vast areas as commercial or industrial. The most obvious was Wyoming, which zoned *all* lands outside of municipalities within 660 feet of the rights-of-way of interstate and primary highways as commercial (U.S. Congress, House, 1967, p. 1005). South Dakota zoned all land within 660 feet of interstate and primary highways up to fifteen miles from mu-



"Unzoned commercial area"—cars are repaired behind the house that fronts on a nearby secondary road.

nicipal limits as commercial (Commission on Highway Beautification 1973, pp. 644–645). Georgia zoned similar areas from two to eight miles from municipal limits, varying with municipal population size.[8]

These flagrant examples of false commercial and industrial zoning were not accepted by the U.S. Department of Transportation. Even though the Highway Beautification Act gives the states full authority to zone commercial and industrial for the purposes of the Act, the Federal Highway Administration has taken the position that zoning created primarily to permit outdoor advertising structures will not be recognized (U.S. Department of Transportation 1975).

Unzoned commercial and industrial areas. The designation of "unzoned commercial and industrial areas" is another gigantic loophole permitting billboards in predominantly rural areas. The U.S. Department of Transportation initially proposed that at least two businesses be located in such an area to qualify it as commercial (Federal Register 1966). On the other hand, much of the billboard industry took the position that billboards should be allowed in any area that *might* be suitable for commercial and industrial development, even though there were no such firms there at all. In the definition that was finally accepted, even the most obscure commercial or industrial use will serve to permit signs. For example, small family businesses that happen to back up to an interstate highway—and that in many cases cannot even readily be seen from the highway—will permit the erection of several large billboards. Ironically, junkyards in rural areas that are screened and controlled under the Highway Beautification Act have also served as the justification for permitting billboards.

Four of the states, California, Hawaii, Oregon, and Colorado, do not allow signs in unzoned commercial and industrial areas, while another four, New Hampshire, Massachusetts, Washington, and Vermont, require a minimum of two or three activities to qualify. (Vermont has since prohibited all billboard advertising within the state). The remainder of the states, except South Dakota, require only one activity and allow signs within 400 to 1000 feet (Commission on Highway Beautification 1974).

The ingenuity shown by some advertising companies to get a foot into this loophole are fascinating. In Georgia one property owner erected a small shed in a rural area and put up a sign designating it as a warehouse. A large billboard was erected next to this "warehouse" and the outdoor advertising firm then applied for a permit based on the area's being an unzoned industrial area. In South Carolina, a large national advertising company helped set up a small radio repair shop in a residence that happened to be

located near Interstate 95, and then used this "business" as justification to erect several large billboards.

The case of South Dakota. The Federal Highway Administration refused to accept the South Dakota law which zoned vast areas as commercial, and Secretary of Transportation Volpe invoked the ten percent penalty in federal-aid highway funds. The Secretary's determination that South Dakota was not providing "effective control," as called for under the Act, was challenged in federal district court, but the action was upheld. The court found that the State had:

> zoned commercial corridors through the State corresponding to the federally assisted highway systems, affording the State virtually no protection from outdoor advertising and subjecting the Interstate traveler to an array of billboards in the midst of an area obviously agricultural. For example, under the South Dakota law, on Interstate 90, crossing the State east to west, there would be only two short segments from one border to the other in which billboards would not be permitted. Each of these excepted segments would have been approximately two miles long. The Secretary reasonably concluded that these provisions were obviously inconsistent with the Act's purpose.[9]

Although South Dakota did pass new legislation and sign an agreement with the Secretary of Transportation (who returned the withheld federal-aid highway funds), this did not end South Dakota's efforts to circumvent the Highway Beautification Act. Local communities passed zoning ordinances designating large areas along interstate and primary highways as commercial, and these zoning determinations were accepted for purposes of the Highway Beautification Act by the State.

For example, Lyman County, with a population of approximately four thousand people, passed a zoning ordinance in 1975. Despite the fact that the county's population had been declining since 1910, and only slightly over two hundred persons were employed in wholesale and retail trade within the entire county, 29 of the 52 miles of I-90 within the county, comprising approximately 2,200 acres, was zoned for commercial use. These commercial zones were 300 feet wide on each side of the highway and sometimes extended more than three miles from any access to the interstate at an interchange. The town of Lyman, which had a population of approximately fifty and not a single commercial enterprise, zoned four miles of I-90 as commercial (Fifth District Planning and Development Commission 1976).

After the billboard industry successfully challenged the state's new law on the grounds of improper delegation of power, South Dakota passed still another act.[10] This act was a blatant attempt to not only circumvent the intent of the Highway Beautification Act but to use it to protect and enrich the billboard industry.[11] Among its provisions were:

- "Direction signs," which are allowed in all types of areas, were defined to include billboards.
- Local government control of outdoor advertising was pre-empted and local ability to require removal of any type of nonconforming signs through amortization under the police power was eliminated.
- Depreciation of the sign could not be taken into account in determining compensation.
- All noncomforming billboards could be "repaired or replaced by a sign of substantially the same kind," in effect giving all these signs eternal life.



"Unzoned commercial area"—farm machinery is repaired in the building to the right of the sign.

- The state was required to secure negative easements rather than use traditional zoning powers to control the erection of new signs.

In addition, the unzoned commercial and industrial area was defined to include:

- All land on both sides of the road within one mile in either direction of the property boundaries of any commercial or industrial activity.
- All land within one thousand feet of the right-of-way that is traversed by a railroad.
- "All pockets of land" lying between zoned or unzoned commercial and industrial areas which are not more than one thousand feet apart.
- "All other unzoned lands, *or zoned lands without regard to zoning classification*," as determined by any board of county commissioners. (Emphasis added.)

Determining that the South Dakota law "failed to provide for effective control of outdoor advertising," Secretary of Transportation Brock Adams invoked an approximate $4.5 million penalty on the State in November 1978.[12] He also reserved ten percent of the State's current allocation, pending possible revision of the South Dakota law by March 31, 1979. South Dakota has appealed this decision to the courts.

The 660 foot control zone. Framers of the 1958 Bonus Law felt that some limit of control was necessary, and for somewhat obscure reasons this was set at 660 feet (⅛ mile) from the edge of the right-of-way. These limits were continued in the Highway Beautification Act of 1965. The billboard industry responded in predictable fashion to this loophole by creating the phenomena of the "jumbo" sign. These are very large billboards, usually 1200 to 2500 square feet in size, but sometimes even larger. By 1973 the states estimated that there were nearly five thousand of these jumbos located just beyond the 660 foot control limit (Commission on Highway Beautification 1974). Several thousand more were erected before state laws were changed to comply with a 1974 amendment to the Highway Beautification Act which extended the control zone to the limit of visibility. The cost of removing the existing jumbos is now estimated at $77 million.[13]

Removal of nonconforming signs

Communities have traditionally eliminated nonconforming signs through amortization under the police power (Floyd and Shedd 1979, Chapter 4; Dobrow 1975; Travers 1974; and Williams 1974–75, Chap. 116). Almost all of the "Bonus" states used this method, but Congress decided upon compensation in the Highway Beautification Act, supposedly because control was being extended to the primary system (Floyd 1979).

In 1972 the Secretary of Transporation made a determination that Vermont's policy of not paying compensation for the removal of nonconforming billboards did not constitute "effective control" under the meaning of the Highway Beautification Act. The State challenged this mandatory compensation provision on the basis that (1) such action was not authorized under a proper construction of the Act, and (2) the provision violated the Tenth Amendment to the Federal Constitution. The court ruled against Vermont, and the State agreed to pay compensation.[14]

Congress made compensation mandatory for the removal of nonconforming signs, declared in a 1968 amendment that no signs are required to be removed unless the federal share of compensation is available, but has since failed to appropriate the funds necessary to complete the program within any reasonable time.



"Jumbo" billboards—compare to size of truck

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In May 1971 Secretary Volpe attended ceremonies in Shreveport, Maine, marking the removal of the first sign purchased under the Highway Beautification Act. The outdoor advertising company was awarded $6,000 in compensation for this sign which had a town property tax valuation of some $820 (U.S. Congress, Senate, 1974). This event occurred nearly a year after the "final compliance date" of July 1, 1970, that was originally set in the Highway Beautification Act for the removal of all noncomforming signs.

Approximately 91,650 nonconforming signs had been removed under the Highway Beautification Act as of March 31, 1978; this is 30 percent of all nonconforming signs. Expenditures on the outdoor advertising control program, including administrative expenses, totaled $107.5 million through June 30, 1978 (Floyd and Shedd 1979, pp. 124–127).

State sign removal programs have varied widely, with some of the states removing all or almost all nonconforming signs, while others have removed few, if any. Eleven states had acquired less than 10 percent of their total nonconforming signs while only fourteen had purchased more than 50 percent.

The Federal Highway Administration estimates the total cost of removing signs made nonconforming by the Highway Beautification Act at approximately $515 million.[15] This represents a considerable underestimation, however, since the figure was derived by employing an average acquisition cost per signboard based on past experience, and the remaining signs are acknowledged to have a much greater average value than those removed during the early part of the program. The General Accounting Office estimates the removal cost at $823 million (Comptroller General 1978). Even if the lower FHWA cost estimate is correct, at the current level of appropriations the sign removal program could not be completed in less than *110 years.*

Most public projects are planned so as to *maximize* the benefit-to-cost ratio; the billboard removal program has been designed to *minimize* the benefit-to-cost ratio. In 1976 amendments Congress directed that the first priority for removal be signs voluntarily offered by the billboard companies, while other nonconforming signs along heavily traveled rural highways will be the last removed. This strategy has resulted in the very limited funds that have been appropriated for highway beautification being dissipated to little benefit except to the outdoor advertising firms.

The program has been further weakened by another amendment contained in the 1976 Federal Highway Act. In addition to directing the states to retain nonconforming rural signboards giving directional information until the end of the program, the amendments also allowed the states to keep these billboards permanently where their removal might cause "economic hardship."[16] This provision has the potential of completely halting the removal of rural signs.

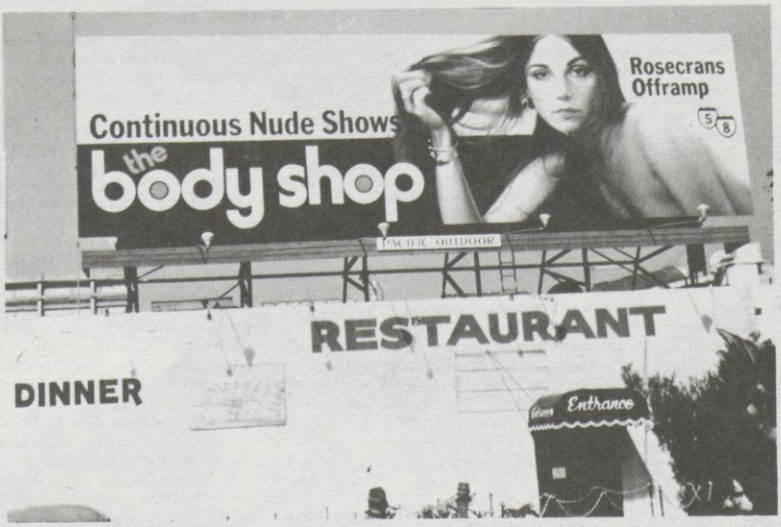
Still not satisfied, the billboard industry is lobbying hard to further amend the Act to permit "private directional signs" in all rural areas. This euphemism describes any billboard that contains directional information, a definition that covers an estimated 80 percent of existing signboards. Only a few hours and a few gallons of paint are needed to change the others. Needless to say, the proposed amendment would almost completely gut what still remains of the billboard control program.

1978 Amendments. In response to requests from the outdoor advertising industry, the Act was amended in 1978 to require that compensation be paid whenever a nonconforming sign is removed under *any* state or local land-use control, environmental, or zoning law.[17] Previously, compensation was required only where signs were removed because of the Act; it was not required where signs were removed because they were nonconforming under other state conservation or environmental laws, or under local comprehensive zoning ordinances. The amendment represents an unprecedented limitation on local zoning authorities and a victory by the industry in its longstanding campaign to deny state and local governments the traditional right to remove nonconforming signs through the use of the police power.

This Congressional action comes at a time when the principle of compensation through an amortization period has met with increasing acceptance in the courts (Floyd and Shedd 1979, Chap. 4; Dubrow 1975; and Environmental Law Review 1976.) In a major challenge by the sign industry, the amortization provision in Denver's sign ordinance was upheld by the Tenth Circuit Court of Appeals.[18] Other examples of amortization period held to be reasonable include the six and one-half years allowed for removal of all advertising signs in the Catskill and Adirondack Parks of New York,[19] the three year amortization period provided prior to mandatory removal of billboards in the Village of Minnetonka's residential communities,[20] the ten month period allowed for removal of billboards in Boothbay, Maine,[21] and the two year period enacted by Doraville, Georgia, provided before removal of signs within five hundred feet of an expressway.[22]

Billboard control under the Highway Beautification Act: an assessment

Billboard control under the Highway Beautification Act has largely been a failure, both in removing nonconforming signs and in preventing the spread of billboard clutter to much of the rural countryside. In particular:



Motorist information sign

- The requirement that size, spacing, and lighting would be in accordance with "customary use" has meant that for all practical purposes there are no restrictions on billboards in the areas that are designated as commercial and industrial zones.
- These ineffective regulations have tended to shield the billboard industry from more effective regulation at the state or local level.
- The designation of commercial and industrial zones has been so loose that local or state governments desiring to circumvent the Act can do so with almost complete impunity.
- The designation of "unzoned commercial and industrial areas" is so loosely defined that even very obscure commercial or industrial uses will permit billboards.
- Only a relatively small number of nonconforming billboards have actually been removed, and at the present level of funding the program could not be complete is less than 110 years.
- Ineffective regulations have permitted billboard companies to continually rebuild and refurbish nonconforming signs, in effect, to give them eternal life. Allowing the billboard companies to rebuild their signs continually has meant that the cost of acquisition continues to rise rather than to decline as was stated Congressional intent.
- The mandatory compensation provision has hindered the use of the police power to remove signs at the state and local level.
- Adequate alternative motorist information systems have not been provided.

This gloomy assessment of the program's effectiveness is shared by many observers, including the General Accounting Office, which recently completed a study of the Highway Beautification Act (Comptroller General 1978). That study concluded:

> The program as it is now structured may not achieve the overall objective of preserving natural beauty along the highways. A general lack of support for the program, the legal complexities that may result between States and sign owners, the numerous exemptions granted under the law, and the differences in State and local rules all appear to hamper achieving the aesthetic results of sign removal. . . . It appears that the objectives of the Highway Beautification Act will not be accomplished in the near future.

Senator Robert T. Stafford (R-Vt.), one of the Act's strongest supporters over many years, recently evaluated the billboard control program in discussing the 1978 amendments (Congressional Record 1978):

> This program is only a small part of the total Federal-aid scheme but, in my opinion, is one which functions the least well, raises more controversy, and provides fewer benefits than any other program element.
>
> It seems to me that we have succeeded in tying the hands of those States, such as my own, which want to move aggressively to clear highways of billboards. At the same time we have achieved very little in States which are less interested in the scenic value of their roads. We are fostering the worst of two worlds. And at the funding levels provided by Congress since the program began in 1965 it is evident that the program has little support from its creators. . . . In some instances it seems as if *the Beautification Act has been turned around and now promotes rather than discourages billboards. . . . I want my colleagues to consider the possibility that repeal of the highway beautification experiment may ultimately prove to be the only way to further the goals originally sought.* (Emphasis added.)

Steps toward an effective billboard control program

What are some realistic ways that the Highway Beautification Act could be amended so as to become more effective?

Control of new billboards

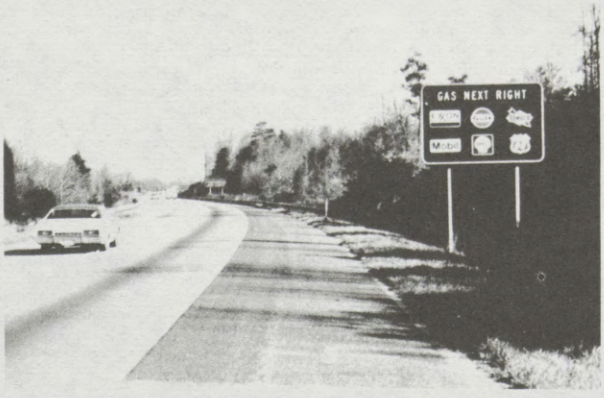
The proliferation of billboards in commercial and industrial zones that are actually primarily rural is the greatest loophole in the Highway Beautification Act. This loophole could be eliminated by:

- Initiating a freeze on the designation of additional commercial and industrial zones similar to that in the Bonus Act.
- Redefining "unzoned commercial and industrial areas" to limit this designation to areas of significant commercial and industrial activity.
- Requiring that billboards be located near actual commercial or industrial uses. This would eliminate the problem of anticipatory or false commercial and industrial zones.

Some control of on-premise signs is also necessary to eliminate obvious abuses such as the huge signs that tower over the landscape near interchanges. These regulations would not need to be complex; only size and height limitations are essential.

The size and spacing limitations for billboards in commercial and industrial areas should also be reassessed. The present requirements are so broad that they provide no real limitation on outdoor advertisers and serve merely to shield the industry from effective local regulation. The requirements should either be revised so as to be effective or else be eliminated.

Alternative motorist information services should be provided. A first step would be to establish "logo" information signing on all rural freeways. These signs, which are located on the right-of-way, display panels



showing brand names, trademarks, and names of business establishments. Separate blue panels are erected in advance of interchanges for gas, food, lodging, and camping facilities (U.S. Department of Transportation 1974). Firms near the interchange and meeting certain criteria can furnish panels containing a brand name logo or other type of name identification to be placed on these panels. A few states, notably Virginia and Oregon, have made extensive use of the logo signs, and a number of other states have begun similar programs. After years of experimentation there are no longer valid reasons to delay implementation of such a program.

Removal of nonconforming signs

The principle of mandatory compensation for the removal of nonconforming signs under the Highway Beautification Act appears to be firmly established, and it is unlikely that Congress would be willing to eliminate this provision. Even so, the removal program could be made much more realistic and effective. First, rules and regulations regarding the replacement, repair, and refurbishment of nonconforming signs should be revised so that these signs would actually depreciate as the years advance. This is consistent with generally accepted practices regarding nonconforming uses and would make it possible to eliminate these signs over a reasonable period of time.

Second, the monies that are available for sign removal should be utilized for maximum benefit rather than frittered away as is current practice. Nonconforming signs on the heavily traveled interstate system should be completely removed before any funds are expended on the primary system. Exceptions to this rule could be made for especially scenic roads, but the program should definitely involve removal of all nonconforming signs on a particular stretch of highway. Partial removals leave little discernible visual improvement for the average motorist.

These steps would make it possible to conduct a meaningful billboard removal program within a reasonable period of time. Obviously, this is not being achieved under the current program.

Billboard control: the forgotten environmental issue

The outdoor advertising industry has been able to dismember the Highway Beautification Act almost unimpeded in recent years and reduce it to near total ineffectiveness because the Act has been virtually abandoned by environmentalists. Even though billboard control was one of the first important environmental issues, it now is seemingly out of vogue with these groups.

Effective billboard control can still be achieved under the Highway Beautification Act if significant public support can be mobilized in support of extensive amendments and vigorous administration. Otherwise, perhaps it would be preferable to acknowledge failure as Senator Stafford suggests, and repeal the Act.

In his proposed budget for fiscal year 1980 President Carter has recommended that funds be discontinued for the Highway Beautification program. On February 6th, Senator Robert Stafford, the program's greatest supporter in the Congress, introduced a bill to repeal the mandatory provisions of the act. The Senator explained that "The purposes this act was intended to achieve have been to a large degree perverted. The act has become more a protection for billboards than the cause for their removal." Senator Stafford was attacked as a "rabble-rouser" by an official of the Outdoor Advertising Association of America, who praised the act as "a worthy endeavor that should continue." Hearings on the bill are scheduled for this summer.

Notes

1. For a review of these local efforts see Floyd and Shedd (1979); Travers (1975a, 1975b); and Williams (1974–1975, Chapter 11, 120–127).
2. Federal Aid Highway Act of 1958, 23 U.S.C. Sec. 131.
3. Public Law 86-342 (1959).
4. The flavor of the Court's opinion can be gathered from the following excerpt:

   > We believe this matter is important enough to justify the following observations. Private property is the antithesis of Socialism or Communism. Indeed, it is an insuperable barrier to the establishment of either collective system of government. Too often, as in this case, the desire of the average citizen to secure the blessings of a good thing like beautification of our highways, and their safety blinds them to a consideration of the property owner's rights to be saved from harm by even the government. The thoughtless, the irresponsible, and the misguided will likely say that this court has blocked the effort to beautify and render our highways safer. But the actual truth is that we have only protected constitutional rights by condemning the unconstitutional method to attain such desirable ends, and to emphasize that there is a perfect constitutional way which must be employed for that purpose. . . . *State Highway Department v. Branch*, 222 Ga. 770, 152 S.E. 2d 372 (1966).

5. 23 U.S.C. Sec. 131.
6. Testimony given before a public hearing to consider a challenge to the constitutionality of the State College Borough, Pennsylvania, Sign Ordinance 888 (March 13, 1978).
7. For a review of legal issues concerning the Highway Beautification Act see Cunningham (1973).
8. Georgia Laws, 1967 Session, No. 271.
9. *State of South Dakota v. Volpe*, 353 F. Supp. 335 (S.D. S.D. 1973).
10. *Hogen v. South Dakota State Board of Transportation*, 245 N.W. 2d 493 (1976).
11. House Bill No. 786, 52d Sess., Legislature of the State of South Dakota (April 1, 1977).
12. Final Determination and Order by Secretary of Transportation Brock Adams, November 9, 1978.
13. Letter from G. B. Saunders, Chief, Real Property Acquisition Division, Federal Highway Administration (June 17, 1977).
14. *State of Vermont v. Brinegar*, 379 F. Supp. 606 (D.C. Vt. 1974).

15. Saunders letter, *op. cit.*
16. 23 U.S.C. Sec. 131(o).
17. Public Law 95-599, Nov. 6, 1978. 92 Statutes at Large 2689.
18. *Art Neon Co. v. The City and County of Denver*, 448 F. 2d 118 (10th Cir. 1973) *cert. denied* 417 U.S. 932 (1974).
19. *Modjeska Sign Studios, Inc. v. Berle*, 402 N.Y.S. 2d 359, 373 N.E. 2d 255 (N.Y. Ct. of App. 1977).
20. *Naegele Outdoor Advertising Company of Minnesota v. Village of Minnetonka*, 281 Minn. 492, 162 N.W. 2d 206, 213 (Minn. Sup. Ct. 1968).
21. *Inhabitants of the Town of Boothbay and State of Maine v. National Advertising Company*, 347 A2d 419 (Sup. Judicial Ct. of Me. 1975).
22. *City of Doraville v. Turner Communications Corporation*, 236 Ga. 385, 223 S. E. 2d 798 (Ga. Sup. Ct. 1976).

References

Bell, Brenda. Highway Beautification Program May Die. *Atlanta Journal and Constitution.* February 4, 1979.

Commission on Highway Beautification. 1973. *Public hearings before the commission on highway beautification*, pp. 410–419.

Commission on Highway Beautification. June 1974. *Staff papers*, Washington, D.C.

Congressional Record 124, S. 13719, 1978.

Congressional Record S1124–25, February 6, 1979.

Controller General of the United States. 1978. *Obstacles to billboard removal.* General Accounting Office.

Cunningham, Roger A. 1973. Billboard control under the Highway Beautification Act of 1965, 71 *Michigan Law Review*: 1295.

Dobrow, Ilene. 1975. Constitutionality of sign amortization ordinances. 9 *Urban Law Annual*: 303.

Environmental Law Review. 1976. Aesthetics off the pedestal: Massachusetts Supreme Judicial Court upholds aesthetics as basis for exercise of the police power. *Environmental Law Review* 10036.

Federal Register, Vol. 31, No. 19, January 28, 1966, pp. 1162–1166.

Fifth District Planning and Development Commission, *Lyman County Interim Zoning Ordinance.* Pierre, S.D., July 1975, revised April 1976.

Floyd, Charles F. 1979. Removal of billboards under the Highway Beautification Act. *Real Estate Appraiser and Analyst*: March–April.

Floyd, Charles F., and Shedd, Peter J. 1979. *Highway beautification: the environmental movement's greatest failure.* Boulder: Westview Press.

Johnson, Ruth R. 1970. The Highway Beautification Act: cosmetic for the city? *The Catholic University Law Review* 20: 69–90.

Travers, Timothy E. 1974. Classification and maintenance of advertising structure as nonconforming use. 80 *American Law Review 3d*: 613.

Travers, Timothy E. 1975a. Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway. 81 *American Law Review 3d*: 557.

Travers, Timothy E. 1975b. Validity and construction of state or local regulation prohibiting off-premises advertising structures. 81 *American Law Review 3d*: 474.

U.S. Congress, House, *Hearings on H.R. 7797*, 90th Cong., 1st Sess., 1967.

U.S. Congress, Senate Report No. 542, 90th Cong., 1st Sess., 1967.

U.S. Department of Transportation, *Federal aid program manual.* Vol. 6, Chap. 8, sec. 3, subsec. 8, Transmitted 1974.

U.S. Department of Transportation, *Federal aid program manual.* Vol. 7, Chap. 6, Transmitted September 26, 1975.

Williams, Norman, Jr. 1974–1975. *American land planning law.* Chicago: Callaghan & Company, 5 Volumes.



U.S. 301 in South Georgia fourteen years after the passage of the Highway Beautification Act

REAL ESTATE APPRAISER AND ANALYST

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Billboard Control Under the Highway Beautification Act

By Charles F. Floyd

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The Highway Beautification Act of 1965 promised to control "the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the interstate system and primary system. . . in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty."[1] In practice, however, the Act has largely been a failure, achieving little toward the accomplishment of the stated Congressional goals. The main causes of the Act's ineffectiveness in both preventing the erection of new billboards and in removing those that were made nonconforming by the Act have been:

Crippling amendments;
"Loopholes" in the designation of commercial and industrial zones;
Exemption of on-premise signs;
Problems arising from the reliance upon the use of eminent domain rather than the police power to remove nonconforming signs;
Weak regulations and enforcement which have allowed nonconforming signs to be continually rebuilt;
Billboard industry pressure;
Indifference among former supporters.

The Bonus Act

A strong push for national billboard legislation came after the beginning of the interstate highway system in 1956. Two years later Congress passed the so-called *Bonus Act*, which encouraged individual states to develop control measures consistent with national standards by offering a federal-aid highway bonus payment in the amount of one-half of one percent of the cost of interstate highway construction projects. The Act prohibited most off-premise signs along the interstate system and provided some control of on-premise signs.[2] Later amendments exempted from control those segments of the interstate system which traversed (1) areas that had been either zoned commercial or industrial within the boundaries of incorporated municipalities as of September 1959 or areas in which the state had clearly established land use as industrial or commercial as of that date, and (2) older rights-of-way incorporated into the interstate system.[3]

Twenty-five states, located mostly in the Northeast, the Midwest, and along the Pacific Coast, passed enabling acts and entered into bonus agreements before the expiration of the program on June 30, 1965.[4] The Bonus Law did not specify the methods to be used in effecting the required outdoor advertising controls. Only three states utilized the power of eminent domain to eliminate nonconforming signs; seven states combined compensation for certain existing signs along with police power controls; the remainder relied solely upon the police power. Six of these states had their laws tested in the courts, and all were upheld with the exception of Georgia. In an opinion which is widely quoted because it is so in variance with prevailing legal opinion in other states, the Georgia Supreme Court declared the law unconstitutional because it did not provide compensation in the acquisition of nonconforming signs[5]

Even though it was the first attempt to develop national advertising control legislation, the Bonus Act has been much more successful in achieving its stated objectives than has the 1965 Beautification Act. The primary reasons for the Bonus Act's success were:

It provided for definite national standards;
The freeze date on the designation of new commercial and industrial zones kept these areas from proliferating to an extent that would undermine the purposes of the Act.

An alternative to the passage of the Highway Beautification Act would have been to amend the Bonus Act to make outdoor advertising control along the interstate system mandatory for all of the states and to eliminate some of the Act's "loopholes." In retrospect, there is little question that this approach would have been far more effective in controlling billboards than the one actually adopted in the 1965 Act.

Highway Beautification Act

The year 1965 marked the passage of the Highway Beautification Act, sometimes called the Ladybird Johnson Bill, but more accurately described as the Billboard Protection and Compensation Act. The Act was conceived with lofty intentions—to make billboard control mandatory in all the states and to extend control to the primary system (most US-numbered and some state-numbered highways). What emerged offers a classic case of a powerful industry gutting environmental legislation. On the positive side, billboard control was made mandatory (a state would lose 10 percent of its federal-aid highway funds unless it complied with the Act), and regulation was extended to the primary system.[7] The costs, however, in both monetary and other terms, were enormous.

First, *all* areas zoned for commercial and industrial use including "unzoned commercial and industrial areas," were exempted from any but the most minimal controls. The exemption is much too broad, lumping research parks and rural areas that happen to be zoned for possible future commercial development with ugly commercial strips. The practical effect of the provision has been to allow billboards in commercial areas where they are totally inharmonious and also in areas which are almost totally rural in character.

Second, on-premise signs, those signs that identify a place of business, were exempted from any controls. The result has been huge gas station signs towering above the landscape at almost every interchange and the unchecked spread of sign clutter along our highways.

The most devastating triumph of the billboard lobby, however, was the provision making payment of compensation mandatory for the removal of all nonconforming signs. As interpreted by former Attorney General Ramsey Clark, even those states that had been using their police powers to remove signs under the Bonus Act were now required to pay for removal.[8] As we will see, this forced compensation feature, combined with meager appropriations for the program, has meant that very few signboards have actually been removed under the Act.

Control of New Billboards

Size and Spacing Standards

The Highway Beautification Act required that each state enter into an agreement with the Secretary of Commerce (later Secretary of Transportation) to "provide effective control of outdoor advertising," including size and spacing requirements for billboards permitted in commercial and industrial areas. The Secretary was not allowed to set national standards for size and spacing limitations, however, but was to accept what was "customary" in the states. Thirty-two states adopted a maximum size limitation of 1200 square feet—equal to the floor area of a medium-sized three bedroom house approximately twice the size of the largest billboards normally erected along the interstate system.[9]

Customary spacing in most of the states was defined as every 500 feet on the interstate system, 300 feet on the primary system, and every 100 feet on the primary system within municipalities. The billboard industry favored these spacing requirements since they prevent a competitor from erecting another sign close enough to block an unobstructed view of an existing billboard.

Under the agreements reached with most states it is possible to have 10.5 billboard sites per mile on each side of the road along an interstate highway, a total of 21 sites on both sides. Since two faces are permitted at each site, 42 billboards per mile are allowed along any portion of the interstate system that is zoned commercial or industrial. On the primary system, the comparable figures are 35 sites and 70 faces per mile. Within municipalities the allowable sites reach the somewhat absurd level of 106 per mile with 212 sign faces. If each of these signs were of the maximum allowable size (1,200 square feet per site), the total area of the sign faces would be equal to approximately three football fields for each mile of roadway.

Commercial and Industrial Zones

Since the size and spacing requirements amount to virtually no control of outdoor advertising, the designation of commercial and industrial areas becomes all important. Unfortunately, local zoning authorities often do not place great importance on providing an uncluttered view for the interstate motorist. The real or imagined benefits to be derived for local businesses through billboard advertising usually assumes a much greater priority. In practice, therefore, many local communities, and particularly rural counties, have attempted to circumvent the Highway Beautification Act by zoning long stretches of rural highways as commercial and industrial areas.

Many communities have designated areas as commercial and industrial zones primarily to allow billboards, and some have zoned strips along the entire length of rural highways solely for this purpose. Other rural counties have zoned large areas on either side of interchanges as commercial zones, even though such activity is confined almost exclusively to the areas immediately adjacent to the interchange. Still others have designated strips along interstate highways as agricultural and commercial zones, in which billboards are almost the only permitted commercial use.

The "unzoned commercial and industrial area" designation has served as a gigantic loophole to permit billboards to be legally erected in predominantly rural areas. The U.S. Department of Transportation initially proposed that at least two businesses by located in such an area to qualify it as commercial.[10] The billboarders, on the other hand, took the position that billboards should be allowed in any area that *might* be suitable for commercial and industrial development even though there were no such firms there at all. In the definition that was finally accepted, even the most obscure commercial or industrial use will serve to permit signs. For example, small family businesses that happen to back up to an interstate highway—and that in many cases cannot even readily be seen from the highway—will permit the erection of several large billboards. Ironically, junk yards in rural areas that are screened and controlled under the Highway Beautification Act have also served as the justification for permitting billboards.

The 660 Foot Control Zone

Framers of the 1958 Bonus Law felt that some limit of control was necessary, and for somewhat obscure reasons this was set at 660 feet ($^1/_8$ mile) from the edge of the right of way. These limits were continued in the Highway Beautification Act of 1965, even though the Administration's proposal would have increased them to 1,000 feet. The billboard industry responded in predictable fashion to this loophole by creating the phenomena of the "jumbo" sign. By 1973 the states estimated that there were nearly 5,000 of these "jumbos" located just beyond the 660 foot control limit.[11] Several thousand more were erected before state laws were changed to comply with a 1974 amendment to the Highway Beautification Act which extended the control zone to the limit of visibility. The cost of removing the existing jumbos is now estimated at $77 million.[12]

Removal of Nonconforming Billboards

Despite the fact that twenty-two states were already removing nonconforming billboards under the Bonus Law through their use of the police power, the 1965 Act required the payment of compensation to both the sign owner and the owner of the land on which the sign was located. Congress justified this change in policy on the basis that controls were being extended to the primary system where outdoor advertising was long established. There is also considerable evidence, however, that the Congress did not fully understand the implications of this section. For example, in the debate Senator Muskie emphasized that "under the bill all that can be compensated for is whatever remains of the leaseholds or the unamortized values, so that if, in fact, the billboard has been completely amortized or the leasehold has expired, no compensation will be paid under the bill.[13] This, of course, is an exact description of the amortization or phase-out principle which was being outlawed by the Act.

Subsequent experience proved that the Senators' belief that the value of nonconforming signs would generally decrease steadily over time was not justified. To the contrary, the signboards have tended to retain their value even though the outdoor advertising industry generally depreciates billboards over an eight-year period for tax purposes. Lenient regulations regarding repair and refurbishment have allowed the sign companies to continually rebuild and repair the nonconforming signs and, in effect, to give them eternal life. Combined with liberal interpretations of what constitutes "just compensation," this has resulted in a continual increase in sign removal costs. A recent General Accounting Office report estimates this increase at 6 percent annually.[14]

The Sign Removal Program

Congress made compensation mandatory for the removal of nonconforming signs, declared in a 1968 amendment that no signs are required to be removed unless the federal share of compensation is available, and then has filed to appropriate the funds necessary to complete the program within any reasonable time. In May 1971 Secretary Volpe attended ceremonies in Shreveport, Maine, marking the removal of the first sign purchased under the Highway Beautification Act. The outdoor advertising company was awarded $6,000 in compensation for this sign which had a town property tax valuation of some $820.[15] This event occurred nearly a year after the "final compliance date" of July 1, 1970, that was originally set in the Highway Beautification Act.

Approximately 91,650 nonconforming signs had been removed under the Highway Beautification Act as of March 31, 1978, 30 percent of the total nonconforming signs. The status of the removal program by state is shown in Table 1. The expenditures on the outdoor advertising control program, including administrative expenses, totaled $107.5 million through June 30, 1978.

State sign removal programs have varied widely, with some of the states removing all or almost all nonconforming signs, while others have removed few if any. Eleven states had acquired less than 10 percent of their total nonconforming signs.

The Federal Highway Administration estimates the total cost of removing signs made nonconforming by the Highway Beautification Act at approximately $515 million.[16] In the author's opinion this represents a considerable underestimation, however, since the figure was derived employing an average acquisition cost per signboard based on past experience, and the remaining signs are acknowledged to have a much greater average than those removed during the early part of the program. The General Accounting Office estimates the removal cost at $823 million.[17] Even assuming the lower FHWA cost estimate to be correct, at the current level of appropriations the sign removal program could not be completed in less than *100 years.*

Most public projects are planned so as to *maximize* the benefit-to-cost ratio; the billboard removal program has been designed to *minimize* the benefit-to-cost ratio. In the 1976 amendments Congress directed that the first priority for removal be signs voluntarily offered by the billboard companies, while other nonconforming signs along heavily traveled rural highways will be the last removed. This strategy has resulted in the very limited funds that have been appropriated for highway beautification being dissipated to little benefit except to the outdoor advertising firms.

The program has been further weakened by another amendment contained in the 1976 Federal Highway Act. In addition to directing the states to retain nonconforming rural signboards giving directional information until the end of the program, the amendments also allowed the states to keep these billboards permanently where their removal might cause "economic hardship."[18] This provision has the potential of completely halting the removal of rural signs.

Appraisal of Outdoor Advertising Signs

As discussed earlier, Congress's adoption of mandatory compensation for nonconforming signboards ran counter to generally accepted zoning and legal principles.[19] Consequently, principles, techniques, and data for billboard appraisals were not well established.[20]

Use of Income and Market Approaches

In accordance with the general appraisal principle that the market data and capitalization of income techniques are superior methods of valuation if adequate data are available, some appraisers have advocated their use for appraising signs in preference to a replacement cost less depreciation approach.[21] This view ignores the fundamental question of whether outdoor advertising is a genuine use of private property or rather a use of the road.

The outdoor advertising industry contends that (1) billboards are a commercial land use and should be allowed where any type of commercial or industrial use is permitted and (2) the income produced results from a use of private property. The opposing view is that the only "use" of a billboard occurs where the reflected image meets the eye—on the road; no good or service is provided at the location of the sign. Acceptance of this viewpoint means that (1) billboard control laws represent regulation of the roads rather than regulation of private property, and (2) the income and market approaches to the valuation of billboards are not valid.

The doctrine that outdoor advertising signs are a use of the road was first held by the courts over 60 years ago in the case of *Churchill and Tait v. Rafferty:*[22]

> The success of billboard avertising depends not so much upon the use of private property as it does upon the use of the channels of travel used by the general public. Suppose that the owner of private property, who so vigorously objects to the restriction of this form of advertising, should require the advertiser to paste his posters upon the billboards so that they would face the interior of the property instead of the exterior. Billboard advertising would die a natural death if this were done, and its real dependency not upon the unrestricted use of private property but upon the unrestricted use of the public highways is at once apparent. Ostensibly located on private property, the real and sole value of the billboard is its proximity to the public thoroughfares. Hence, we conceive that the regulation of billboards and their restriction is not so much a regulation of private property as it is a regulation of the use of the streets and other public thoroughfares.

It has been reaffirmed many times in the intervening years, including the classic case *General Outdoor Advertising Company v. Department of Public Works:*[23]

> [Outdoor advertising signs] constitute a franchise upon the public highways... [The Billboard interests] are not asserting a natural right... They are seizing for private benefit an opportunity created for quite a different purpose by the expenditure of public monies.

Table 1
Highway Beautification Program

Status of Nonconforming Signs
As of March 31, 1978

State	Acquired	Remaining	Percent Acquired	Cumulative Exp. Under HBA 1966 - 6/30/1978
Alabama	1,897	2,096	48	$ 825,112.40
Alaska	0	0	—	76,274.68
Arizona	1,306	5,313	20	3,381,024.04
Arkansas	550	3,389	14	905,864.00
California	1,697	2,116	45	4,307,744.99
Colorado	1,599	2,521	39	2,419,893.16
Connecticut	74	198	27	284,746.89
Delaware	166	142	54	406,569.78
Florida	1,790	13,000	12	3,683,612.00
Georgia	557	23,903	2	1,290,427.53
Hawaii	0	0	—	3,409.78
Idaho	1,180	742	61	1,726,426.26
Illinois	8,899	2,720	77	9,335,872.95
Indiana	1,084	10,466	9	1,680,684.74
Iowa	5,146	3,753	58	2,786,049.76
Kansas	2,688	25,760	9	1,596,874.08
Kentucky	2,768	915	75	2,943,451.41
Louisiana	118	2,277	5	271,987.87
Maine	1,014	45	96	816,926.65
Maryland	469	1,539	23	1,118,051.00
Massachusetts	19	281	6	466,134.02
Michigan	4,881	4,388	53	10,735,720.26
Minnesota	5,692	1,500	79	5,468,114.93
Mississippi	374	2,022	16	693,184.00
Missouri	0	6,048	0	149,184.96
Montana	7,027	2,912	7	1,276,021.40
Nebraska	5,048	8,965	36	1,420,462.53
Nevada	1,097	125	90	2,682,777.53
New Hampshire	537	678	44	542,577.20
New Jersey	0	81	0	874,354.11
New Mexico	285	1,230	19	845,588.51
New York	406	955	30	1,761,945.66
North Carolina	781	4,639	14	1,440,531.00
North Dakota	1,552	1,365	53	650,082.42
Ohio	1,607	6,955	19	1,739,094.86
Oklahoma	1,709	3,587	32	2,022,714.91
Oregon	1,960	47	98	3,322,307.03
Pennsylvania	6,819	11,263	38	5,081,220.96
Rhode Island	8	124	6	126,406.06
South Carolina	1,378	2,287	38	1,063,633.33
South Dakota	1,586	5,685	22	969,023.47
Tennessee	115	8,400	1	355,374.00
Texas	6,906	12,908	35	12,679,420.00
Utah	1,988	181	92	1,957,870.68
Vermont	917	0	100	344,412.34
Virginia	339	3,712	.8	557,183.44
Washington	2,323	532	81	4,166,507.45
West Virginia	671	750	47	713,582.96
Wisconsin	2,211	19,918	10	2,744,818.64
Wyoming	408	2,346	15	753,310.00
Dist. of Columbia	5	0	100	2,843.10
Puerto Rico	0	0	—	46,163.89
TOTAL	91,651	214,779	30	$107,513,569.62

In one of the most recent cases, *Modjeska Sign Studios, Inc. v. Berle*, the court stated:[24]

> Billboards and advertising signs are of little value and small use unless great highways bring the traveling public within view of them, and their enhanced value when they are seen by a large number of people was created by the State in the construction of the roads and not by the signs' owners.

The position that billboards are a use of the road and not a use of land was supported by Mr. George F. McInturff of the Outdoor Advertising Association of America in a recent hearing when he testified that:[25]

> The Outdoor Advertising Association members do not sell signs; they sell circulation.

The sign companies do nothing to create this "circulation;" it comes from the public's investment in roads and highways.

Replacement Cost Less Depreciation Approach

The sign appraisal technique employed in most jurisdictions is the replacement cost less depreciation approach. The appraiser calculates an estimate of replacement cost and subtracts applicable depreciation. The principal points of contention in using this method revolve around what constitutes "cost" and how to measure depreciation. In addition, some appraisers argue that severance damages should be paid for the potential diminution in earning power of the sign company's "plant."[26] Although severance damages have been paid in a few states, the Federal Highway Administration's position is that: "Generally, Federal participation will not be allowed in the payment of damages to remaining signs, or other property of a sign company alleged to be due to the taking of *some* of the company's signs."[27] Under the FHWA regulations "cost" includes "all direct and indirect cost required to construct an outdoor advertising sign including labor, material, overhead and profit which are typical of the sign industry."[28] Depreciation is based on observed physical deterioration and functional or economic obsolescence.

Combined with quite lenient regulations regarding repair and refurbishment, use of "observed depreciation" rather than an age-life method has meant that nonconforming signs depreciate quite little unless they are essentially abandoned by their owners. In addition, the extent of repair allowed to nonconforming signs is usually based on a percentage of reproduction cost. Since reproduction cost is defined by the FHWA to include overhead and profit, in many states a sign must be almost totally destroyed to make it ineligible for "repair." As a result of these factors, the cost of acquiring nonconforming signboards has continued to increase rather than decrease as Congress originally envisioned.

Toward Effective Control Program

Billboard control under the Highway Beautification Act has been largely a failure, both in removing nonconforming signs and in preventing the spread of billboard clutter in much of the rural countryside. What are some realistic ways that the Act could be amended so as to become more attractive?

Control of New Signs

The proliferation of billboards in commercial and industrial zones that are primarily rural in character is the greatest loophole in the Highway Beautification Act. A recent General Accounting Office report came to a similar conclusion.[29]

> In some cases, signs in commercial or industrial zoned areas are in rural environments where there are no commercial or industrial businesses—the land is merely zoned for such business. We believe that a more appropriate criterion for allowing such signs—and one in which the department of Transportation concurs—would be the actual use to which the land was put rather than how it was zoned. This would restrict such signs to areas which have already suffered the visual blight of industrialization.

Removal of Nonconforming Signs

The principle of mandatory compensation for the removal of nonconforming signs under the Highway Beautification Act appears to be firmly established, and it is unlikely that Congress would be willing to eliminate this provision. Even so, the removal program could be made much more realistic and effective. First, rules and regulations regarding the replacement, repair, and refurbishment of nonconforming signs should be revised so that these signs would actually depreciate as the years advance. This is consistent with generally accepted practices regarding nonconforming uses and would make it possible to eliminate these signs over a reasonable period of time.

Second, the monies that are available for sign removal should be utilized for maximum benefit rather than frittered away as is current practice. Nonconforming signs on the heavily traveled interstate system should be completely removed before any funds are expended on the primary system. Exceptions to this rule could be made for especially scenic roads, but the program should definitely involve removal of all nonconforming signs on a particular stretch of highway. Partial removals leave little discernible visual improvement for the average motorist.

These steps would make it possible to conduct a meaningful billboard removal program within a reasonable period of time. Obviously, this is not being achieved under the current program.

1. 23 U.S.C. Sec. 131.

2. Federal Aid Highway Act of 1958, 23 U.S.C. Sec. 131.

3. Public Law 86-342, 1959.

4. Ruth R. Johnson, "The Highway Beautification Act. Cosmetic for the City?" *The Catholic University Law Review*, Vol. 20, No. 1, (Fall 1970) pp. 69-90.

5. *Ibid.*

6. The flavor of the Court's opinion can be gathered from the following excerpt:

> We believe this matter is important enough to justify the following observations. Private property is the antithesis of Socialism or Communism. Indeed, it is an insuperable barrier to the establishment of either collective system of government. Too often, as in this case, the desire of the average citizen to secure the blessnings of a good thing like beautification of our highways, and their safety blinds them to a consideration of the property owner's rights to be saved from harm by even the government. The thoughtless, the irresponsible, and the misguided will likely say that this court has blocked the effort to beautify and render our highways safer. But the actual truth is that we have only protected constitutional rights by condemning the unconstitutional method to attain such desirable ends, and to emphasize that there is a perfect constitutional wah which must be employed for that purpose. . . . *State Highway Department v. Branch*, 222 Ga. 770, 152 S.E. 2d 372 (1966).

7. 23 U.S.C. Sec. 131.

8. 42 Op. Atty's. Gen. 26 (1965).

9. *Staff Papers*. Prepared for the Commission on Highway Beautification, Washington, D.C., June 1974.

10. Federal Register, Vol. 31, No. 19, January 28, 1966, pp. 1162-1166.

11. *Ibid.*

12. Letter from G. B. Saunders, Chief, Real Property Acquisition Division, Federal Highway Administration, June 17, 1977.

13. Cong. Rec. 111, 23872 (1965).

14. Controller General of the United States, General Accounting Office; *Obstacles to Billboard Removal*, General Accounting Office, 1978.

15. U. S. Congress, *Hearings Before the Subcommittee on Transportation of the Senate Committee on Public Works: Hearings on S. 3161*, 92d Cong., 2d Sess. (April 9 and 10, 1974), p. 415.

16. Letter from G. B. Saunders, Chief, Real Property Acquisition Division, Federal Highway Administration, June 17, 1977.

17. Controller General of the United States, General Accounting Office, *Obstacles to Billboard Removal*, General Accounting Office, 1978.

18. 23 U.S.C. Sec. 131 (o).

19. Charles F. Floyd and Peter J. Shedd, *Highway Beautification: Environmental Movement's Greatest Failure*. Boulder: Westview Press, 1978, Chapter 4.

Ilene Dobrow, "Constitutionality of Sign Amortization Ordinances." *Urban Law Annual*, vol. 9: 303, 1975.

"Aesthetics Off the Pedestal: Massachusetts Supreme Judicial Court Upholds Aesthetics as Basis for Exercise of the Police Power." 6 *Environmental Law Review* 10036 (1976).

"Environmental Aesthetics: New Horizons for Billboard Controls," 8 *Environmental Law Review* 10066 (1978).

20. Donald T. Sutte, *The Appraisal of Roadside Advertising Signs*. Chicago: American Institute of Real Estate Appraisers (1972).

21. *Ibid.*

22. *Churchill and Tait v. Rafferty*, 32 Philippine Rpts. 580, 609 (Phil. Isl. Sup. Ct. 1915), *app. dismissed* 248 U.S. 591 (1918).

23. *General Advertising Co., Inc. v. Department of Public Works*, 289 Mass. 149, 139 N.E. 799, 813 (Mass. Sup. Jud. Ct. 1935) *app. dismissed* 296 U.S. 543 (1935) and 297 U.S. 725 (1936); *Kelbro, Inc. v. Myrick*, 113 Vt. 64, 30 A.2d 527 (1943); and *New York State Thruway Authority v. Ashley Motor Court*, 176 N.E. 2d 566 (New York Court of Appeals, 1961).

24. *Modjeska Sign Studios, Inc. v. Berle*, 402 N.Y.S.2d 359, 373 N.E.2d 255 (N.Y. Ct. of App. 1977).

25. Testimony given before a public hearing to consider a challenge to the constitutionality of the State College Borough, Pennsylvania, Sign Ordinance 888, March 13, 1978.

26. 73 A.L.R.3d 1114, "Eminent Domain: Determination of Just Compensation for Condemnation of Billboards or Other Advertising Signs."

27. U.S. Department of Transportation, Federal Highway Administration, *Policy and Procedure Memorandum*, PPM 80-5.2 Highway Beautification - Outdoor Advertising, December 12, 1972.

28. *Ibid.*

29. Comptroller General of the United States, General Accounting Office, *Obstacles to Billboard Removal*, General Accounting Office (1978).

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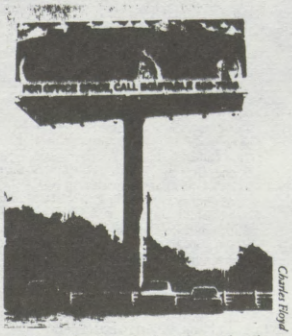

Charles Floyd

Lack of enforcement of outdoor advertising regulations may be the environmental movement's greatest failure (page 14).

Cover photo by Wendy V. Watriss and Frederick C. Baldwin

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How the billboard industry beats the law

By Charles F. Floyd

Passage of the federal Highway Beautification Act in 1965 promised an end to the billboards cluttering the rural landscape. In reality, however, the act largely has been a failure, its lofty aims destroyed by crippling amendments, the power of industry lobbyists, and the indifference of its former supporters. This story about the rise, fall, and impending demise of billboard control along our nation's highways focuses on a typical state, Georgia.

Although many states and local communities have been battling billboards since these eyesores came into vogue around the turn of the century, a strong push for national legislation came only after the beginning of the interstate highway program. The so-called Bonus Act was passed in 1958 to encourage the states to pass laws controlling billboards on the interstate system. The carrot was a small bonus in interstate highway construction funds.

Twenty-five states—located primarily in the Northeast, the Midwest, and along the Pacific coast—entered into bonus agreements before 1965. Among these states was Georgia, the only one in the Southeast to enact implementing legislation and the only bonus state to have its outdoor advertising control law overturned in the courts.

The 1958 federal law did not specify the methods to be used by a state to remove existing signs that did not comply with the new law. Of the 25 states that entered into bonus agreements, only three exercised the power of eminent domain (purchase) to eliminate nonconforming signs. The remainder elected to use their powers of regulation to force removal of the offending signs after an amortization or phaseout period.

At that time, the Georgia supreme court was hostile to all types of land-use controls and, in an opinion that is almost hysterical in tone, declared the amortization provision in the Georgia law unconstitutional. This decision, which is widely quoted because it is so at variance with prevailing legal opinion in other states, not only deprived Georgia of several million dollars in bonus payments but also opened the floodgates to the billboarders. It would cost the state around $20 million to remove nonconforming signboards that were erected along Georgia's interstate highways between the time the Georgia Bonus Act was declared unconstitutional in 1966 and the effective date of the subsequent 1971 act.

The Highway Beautification Act of 1965, sometimes called the Ladybird Johnson Act, could be described more accurately as the Billboard Baron's Financial Relief Act. The act was born with noble intentions—to make billboard control mandatory in all the states and to extend control to billboards along the primary highway system (most U.S. highways and some state highways). But what emerged offers a classic case of a law that was gutted by a powerful industry lobby.

First, all areas zoned for commercial and industrial use, plus "unzoned commercial and industrial areas," were exempted from any but the most minimal controls. For many years, the outdoor advertising industry has advanced the notion that billboards are a commercial land use and should be permitted in any commercial zone. The opposite is true, of course. Billboards are not a land use; they are a use of the road, and their value is derived solely from their visual intrusion on the road.

This principle has been recognized by many courts to justify stringent regulation or prohibition of off-premises advertising. The exemption from control is too broad, since it lumps ugly commercial strips with research parks and rural areas that happen to be zoned for future commercial development. The practical effect of the exemption has been to allow billboards where they are totally inharmonious and also in areas that are almost totally rural.

Second, on-premises signs (those signs that identify a place of business) were exempted from any controls. The result has been huge gas station signs towering above the landscape at almost every highway interchange.

The most devastating triumph of the billboard lobby was the provision making monetary compensation mandatory for the removal of all nonconforming signs. Even those states that had been using their police powers to remove signs under the Bonus Act now were required to pay for removal. This forced compensation, combined with meager appropriations for the program, has meant that very few signboards actually have been removed. Nationwide, only 30 percent of the nonconforming signs have been purchased; at the present level of funding, it will take another 109 years to buy the 215,000 remaining signs.

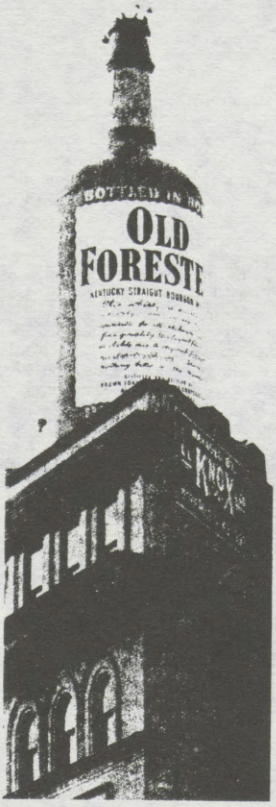
Georgia passed an Outdoor Advertising Control Act in 1967 in an obvious attempt to establish the very minimum criteria that would allow the state to comply with the Highway Beautification Act. Signs were allowed in any area that local authorities had zoned commercial or industrial, and the state zoned as commercial all land along the highways within two to eight miles of municipalities. No limitations were placed on the number of signs permitted per mile, nor were any minimum size regulations established.

The Georgia law also provided that billboards could be erected in unzoned commercial and industrial areas. On the interstate system, these areas were defined as the land 3,500 feet on each side of the property line of any commercial or industrial activity. The existence of one small country store on a secondary road near the interstate could justify the permitting of billboards for 3,500 feet on both sides of the highway—a potential 28 billboard sites—and with no regulations regarding maximum size or number per site.

The more obvious result of this provision in the law was that it allowed billboards in rural areas near interchanges. Since most such areas had at least one commercial establishment, signboards were allowed for two-thirds of a mile or more on each side of every interchange.

Under pressure from John Volpe, then U.S. Secretary of Transportation, who ruled that the Georgia law did not comply with the federal law, the state revised its billboard control regulations in 1971 to set maximum size and spacing requirements and to tighten the definition of unzoned commercial and industrial areas. A glaring deficiency that had marked all national and Georgia billboard legislation up to this point remained in the 1971 Georgia law, however.

Framers of the Bonus Act, the 1958 federal law, felt it was necessary to establish some limit of control, and for somewhat obscure reasons this limit was set at 660 feet from the edge of the right-of-way. Beyond that, billboard-



Outdoor advertising often takes on larger-than-life proportions, as witnessed by this sign, which was removed after a protest.

ers could do what they liked. The billboard industry responded in predictable fashion to this loophole by creating the phenomenon of the jumbo sign located just outside the control limit. There are now over 250 of these jumbos along the interstate highways in Georgia, with the cost of removal estimated in excess of $3 million.

Unfortunately, the Georgia law has been pitifully ineffective in two respects. It has failed to control the erection of new billboards, and it has done almost nothing to remove nonconforming billboards.

The Highway Beautification Act directed the U.S. Secretary of Transportation to accept the size and spacing limitations that were customary in the states. Thirty-two states, including Georgia, adopted a maximum size limitation of 1,200 square feet (equal to the floor area of a medium-sized, three-bedroom house and approximately twice the size of the largest billboards along the interstate system).

The billboard industry pushed for minimum spacing requirements since these limits prevent competitors from erecting signs that can obstruct each other. Under the Georgia law and most state laws, it is possible to have up to 42 billboards a mile along any portion of the interstate system that is zoned commercial or industrial and up to 70 billboards a mile along the primary system. Within municipalities, the number of allowable signs reaches the rather absurd level of 212 a mile. If each of these signs were of the maximum allowable size, the total area of the sign faces would equal three football fields for each mile of roadway.

Since the size and spacing requirements amount to virtually no control, the designation of commercial and industrial areas becomes all important. The Bonus Act allowed billboards only in commercial and industrial zones of municipalities designated by September 1959. The 1965 Highway Beautification Act eliminated this freeze and, in fact, removed most controls on all commercial and industrial areas, either zoned or unzoned. The size and spacing limitations were the only controls. The 1968 amendments directed the Secretary of Transportation to accept state and local zoning.

Local zoning authorities, though, often place more importance on the real or imagined benefits of billboard advertising than on uncluttered views for the motorist. Many local communities, particularly rural counties, have tried to circumvent the Highway Beautification Act by zoning long stretches of rural highways as commercial and industrial.

Largely rural Columbia County, near Augusta, Georgia, zoned its entire 26 miles of Interstate 20 as industrial. Camden County recently zoned about 750 acres for commercial use at each of five interchanges, even though less than 50 acres in the whole county are used commercially. Still other counties have designated areas along interstate highways as agricultural and commercial zones, but billboards are almost the only permitted commercial use.

The "unzoned commercial and industrial area" provision has served as a gigantic loophole in the law, permitting billboards to go up in predominantly rural areas. For example, small family businesses that happen to back up to an interstate highway—and that in many cases cannot even be seen easily from the highway—will permit the erection of several large billboards. Ironically, junkyards in rural areas that are screened and controlled under the Highway Beautification Act also have served as the justification for permitting billboards.

Some firms are ingenious in taking advantage of the loophole in the Highway Beautification Act. One property owner on Interstate 75 in Georgia erected a small shed in a rural area and put up a sign designating it a warehouse. A large billboard was erected next to this "warehouse," and an outdoor advertising firm then applied for a permit based on the area's being an "unzoned industrial" area.

It is difficult to conceive of a billboard removal program that could have been more ineffective than the one carried out nationally under the Highway Beautification Act. In fact, it is difficult to imagine how any expenditure of public funds could have been more ineffective.

Most public projects are planned so as to increase benefits and decrease costs. The billboard removal program has been designed to *minimize* the benefit-to-cost ratio. Congress directed that the first signs to be removed would be those voluntarily offered by the billboard companies. Nonconforming signs along heavily traveled rural highways would be the last to be removed. This strategy has meant that the very limited funds appropriated for highway beautification were dissipated in paying billboard firms for obsolete signs.

Georgia's Outdoor Advertising Control Act of 1971 rendered nearly 24,000 legally erected billboards nonconforming, but by mid-1978 only around 500 of these signboards had been removed. At the present rate, all of the billboards that were nonconforming in 1971 will come down by the year 2431—461 years after the deadline originally set in the 1965 Highway Beautification Act.

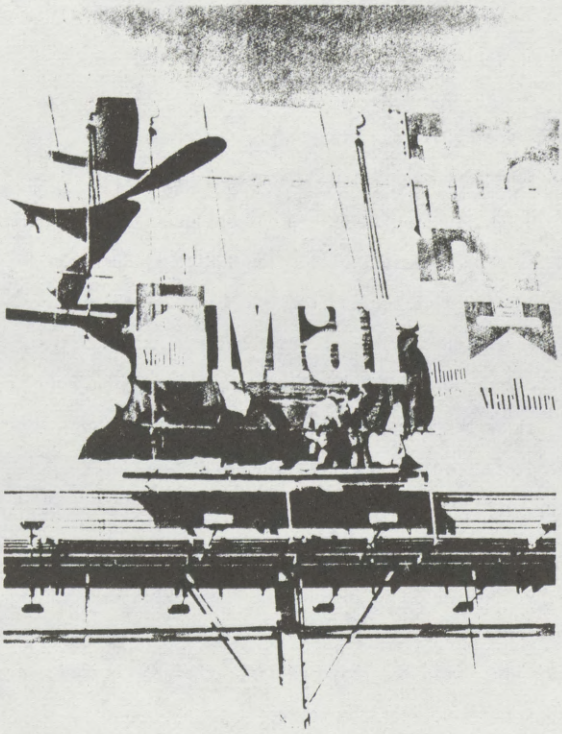
The national program has been weakened further by amendments contained in the 1976 Federal Highway

Act. This law directed the states to retain until the end of the program all nonconforming rural signboards containing directional information. Moreover, the 1976 law allowed the states to retain these billboards permanently where their removal might cause economic hardship. This last provision has not been used yet in Georgia or any other state, mainly because so few signs actually are being removed.

Still not satisfied, the billboard industry is lobbying hard to amend the 1965 law further to permit "private directional signs" in all rural areas. This euphemism describes any billboard that contains directional information—a definition that covers an estimated 80 percent of the existing signboards. Only a few hours and a few gallons of paint are needed to change the others. Needless to say, the proposed amendments would almost completely gut what still remains of the billboard control program.

Illegal signs (those erected in violation of the law) also present a problem. The Georgia statute requires their removal within 30 days after official notification. Thereafter, the owner is subject to a fine of $1,000 per day, and the offending sign may be removed by the state.

Even so, there are now an estimated 7,000 illegal billboards in Georgia. Nearly 300 of these cases have been turned over to the state attorney general for legal action, and some of them have been buried in that office for over five years. The attorney general has not allowed the state department of transportation to take down illegal signs as provided in the law, nor has he ever sought to fine the owner of an illegal billboard.



Charles Floyd

Perhaps the ultimate perversion of the Highway Beautification Act has been in "vegetation control," i.e., the killing of trees. Illegal tree cutting along the highway right-of-way in front of billboards has been a serious problem in Georgia, as in most states. Recently, however, the Georgia transportation department solved the legal problem involved. It succumbed to pressure from the billboard industry and allowed the companies to cut these trees legally. Some of the pine trees removed along interstate 95 to give a better view of billboards were over 50 feet high.

Georgia's poor record in controlling billboards along its highways is a typical one. The Highway Beautification Act simply is too weak to be effective.

Imagine a clean water act that set as a standard for commercial and industrial rivers a pollution level that was twice the pollution level found in all but the worst industrial streams. Imagine further that the "commercial and industrial" designation would apply to all streams that received the effluent from at least one country store or were located in an area that the local governments hoped would become commercial or industrial sometime in the distant future. All nonconforming firms would be allowed to continue polluting until they were paid to stop. In addition, state and local governments that were using their police powers to require firms to reduce levels of pollution would be forced to drop these programs and pay compensation to the polluters from funds that would not be appropriated.

Imagine how effective this program would be in cleaning up our water! The Highway Beautification Act has been equally effective in reducing visual pollution along our highways.

The ineffectiveness of the billboard control program is perhaps the environmental movement's greatest failure. Extensive revision of the Highway Beautification Act is essential if the original objectives are to be achieved. □

Charles Floyd is chairman of the Department of Real Estate and Legal Studies at the University of Georgia. He holds a Ph.D. in economics from the University of North Carolina at Chapel Hill. He says most of his publications are "dull papers concerning regional development."

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NORTH DAKOTA STATEMENT ON BILLBOARD CONTROL

Shortly after the passage of the Federal Highway Beautification Act of 1965, North Dakota, as did other states, inventoried all of the billboards and signs existing along its interstate and primary highway system. That inventory revealed approximately 12,000 signs and billboards in existence along these two highway systems. Probably the only reason that more signs and billboards were not in existence at that time was because North Dakota had purchased billboard controls on I-94 for a distance of approximately half-way across the state.

In December of 1965, North Dakota's State Highway Commissioner, by administrative order which was supported by an attorney general's opinion, declared that no sign could be erected without a permit from the State Highway Department. In February of 1967, our state legislature enacted a statute titled "Regulation of Outdoor Advertising Adjacent to Highways." This state legislation is in effect today with only minor changes. Implementation of the state statute is by rules promulgated by a Highway Corridor Board consisting of five members. One member is from the North Dakota Outdoor Advertising Association and that board member from the first organization of the Highway Corridor Board until 1973 was from the Newman Sign Company of Jamestown, ND. That member from the Newman Sign Company was on the Highway Corridor Board and accompanied the State Highway Commissioner to Washington, DC, in January, 1972, when the agreement to control billboards, in accordance with the Federal Highway Beautification Act, was initially signed by the State Highway Commissioner under threat of being out of compliance. The Newman Sign Company representative of the Corridor Board also was present at the meeting of December 7, 1972, when the board ratified that agreement. The ratification passed by unanimous vote of the board.

Beginning in August of 1973, and while still a member of the Highway Corridor Board, the Newman Sign Company brought a number of actions in state court against both the State Highway Department and the Highway Corridor Board. These actions contested the state law and the rules and regulations of the Highway Corridor Board, since that company would not comply with the state law or the rules and regulations. Following many hearings in the state court, the matter was finally resolved in the North Dakota Supreme Court in 1978. The State Supreme Court upheld the state statutes, the rules and regulations of the Highway Corridor Board, and the administrative action of the State Highway Commissioner in December of 1965. Two minor issues were remanded for further trial through the state courts. The Newman Sign Company carried this case to the United States Supreme Court who refused to take the matter under their jurisdiction.

Through all these trials and tribulations, the State of North Dakota has made rather good progress in billboard control. Our initial 1966 inventory listed an approximate 12,000 signs, the majority of which were non-conforming insofar as the federal rules and regulations were concerned. As of today and using our Supreme Court ruling as a guideline, we now have 930 non-conforming compensable signs remaining, there are also 803 illegal non-compensable signs remaining. Both state and federal funds are currently obligated and available to acquire the non-conforming compensable signs and to provide for takedown of those illegal non-compensable signs. It has taken us years of frustrations and court trials to achieve our present status.

We are now faced with attempted subversion of the Highway Beautification Laws. You will recall that the 1965 Highway Beautification Act in its original form said that federal monies would <u>not</u> participate in the purchase of any billboard erected after October of 1965. We reacted in that regard by a proper administrative order dated December 3, 1965 and by subsequent actions.

The Beautification Laws continually recite the phrase "lawfully erected or lawfully in existence." This can have no other meaning than "lawfully" under the laws of the particular state. The net effect of this is that state law governs as to being lawfully erected and lawfully in existence, and therefore is the determining factor in compensability. Numerous statements in correspondence between the agencies bears this out.

There is a definite need for integrity in the direction of the program. We are now faced with what we believe is subversion of the intent of the federal law. Notwithstanding this, the State of North Dakota is bound to follow the statutes and the rulings of the Supreme Court of the State. The Administrative Order of December of 1965 and the State Statute of February of 1967 both set forth that no sign would be erected without a permit. It therefore follows that such signs could be erected only under the terms and conditions of that permit.

The North Dakota State Supreme Court in its decision of July 3, 1978, prior to the passage of the Surface Transportation Act of 1978, with its amendments to the Beautification Act, reaffirmed the validity of the Administrative Order of December 3, 1965 and the State Statute of February 1967. It is this State Supreme Court ruling that the State of North Dakota must follow. We deserve the support of all levels of federal government in this matter.

It is critically important for the federal government to continue to support the states in the Beautification Act. North Dakota is one of the states that has been sincere in its efforts to achieve the original intent of the 1965 Beautification Act. We and other states have expended time, monies and extraordinary efforts in pursuit of that goal. We firmly believe that for the federal government to be any less than one hundred percent in its support is a breach of faith. Total federal government participation and backing is mandatory both in legislation and in interpretation of that legislation. We are at the turning point. We have kept the faith, now it is your turn.

July 13, 1979 - WALTER R. HJELLE - HIGHWAY COMMISSIONER - NORTH DAKOTA STATE HIGHWAY DEPARTMENT

STATEMENT BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
ON S.344 - FEDERAL HIGHWAY BEAUTIFICATION ASSISTANCE ACT OF 1979
PRESENTED BY RONALD E. W. CRISMAN
AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS
JULY 17, 1979

MR. CHAIRMAN, MY NAME IS RONALD CRISMAN, SECRETARY OF THE VERMONT DEPARTMENT OF TRANSPORTATION, APPEARING BEFORE YOU TODAY AS A MEMBER OF THE POLICY COMMITTEE OF THE AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS. WITH ME IS HENRIK STAFSETH, EXECUTIVE DIRECTOR OF AASHTO AND FORMER DIRECTOR OF THE MICHIGAN STATE DEPARTMENT OF HIGHWAYS.

BECAUSE VERMONT HAS BEEN A LEADER IN CONTROLLING OUTDOOR ADVERTISING ALONG ITS HIGHWAYS, IT PROBABLY WOULD BE AFFECTED AS LITTLE BY THIS PROPOSED LEGISLATION AS ANY STATE IN THE UNION. HOWEVER, BECAUSE OF OUR LEADERSHIP ROLE, WE HAVE EXPERIENCED MANY OF THE SAME PROBLEMS AND FRUSTRATIONS THAT ARE BEING ENCOUNTERED BY ALL OF THE STATES AND I WOULD LIKE TO SHARE WITH YOU AASHTO'S VIEWS ON THE PROPOSED LEGISLATION.

WHEN SENATOR STAFFORD PROPOSED HIS BILL LAST SPRING, THE POLICY COMMITTEE OF AASHTO WAS POLLED TO DETERMINE THE ACCEPTABILITY OF THE CONCEPT OF THE STAFFORD APPROACH TO THE STATES. ALL FIFTY STATE DEPARTMENTS OF TRANSPORTATION AND HIGHWAYS, PLUS THE DISTRICT OF COLUMBIA DOT, RESPONDED TO THIS REQUEST WHICH SHOWED 38 STATES FAVORED SUCH A PROPOSAL, AND 13 OPPOSED, WHICH, AS A TWO-THIRDS MAJORITY, MAKES THIS AN OFFICIAL AASHTO POLICY.

AS I AM SURE MEMBERS OF AASHTO ADVISED THE COMMITTEE LAST YEAR DURING ITS DELIBERATIONS ON THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1978, THE STATES VIEWED THE AMENDMENTS PROPOSED AT THAT TIME AS VERY DETRIMENTAL TO THE CONTINUED SUCCESS OF THE BEAUTIFICATION PROGRAM. THE AMENDMENT TO SUBSECTION 131(g) OF TITLE 23 HAS PROVEN A HINDRANCE TO THE PROGRAM, WHILE INCREASING ITS COST. SIGNS WHICH, PRIOR TO THE AMENDMENT, COULD HAVE BEEN REMOVED WITHOUT COMPENSATION BY POLICE AUTHORITY OF LOCAL ORDINANCES COMPLETELY UNRELATED TO THE HIGHWAY BEAUTIFICATION ACT MUST NOW BE COMPENSATED FOR BY STATE AND FEDERAL FUNDS IF THEY FALL WITHIN THE JURISDICTIONAL AREA OF THAT ACT. THIS NATURALLY HAS THE EFFECT IN MANY CASES OF DELAYING OR ENDING GOOD FAITH LOCAL EFFORTS TO REMOVE SIGNS FOR THE PURPOSES OF URBAN RENEWAL OR OTHER PURPOSES UNRELATED TO THE ACT, IF THE SIGNS ARE ADJACENT TO INTERSTATE OR PRIMARY ROUTES, BECAUSE OF THE COST OF COMPENSATION WHICH WOULD APPLY EVEN IF AMORTIZATION OF THE SIGNS WOULD HAVE OTHERWISE BEEN PROVIDED. FOR EXAMPLE, IN WISCONSIN, WHICH HAD CERTIFIED 26 LOCAL SIGN ORDINANCES AS ACCEPTABLE IN LIEU OF THE STATE SIGN CONTROL CRITERIA, LOCALITIES AND SIGN COMPANIES HAVE BEEN SEEKING ADDITIONAL CERTIFICATIONS. NEW CERTIFICATIONS HAVE NOW BEEN STOPPED, WHILE THE FINANCIAL OBLIGATIONS BROUGHT ABOUT BY THE 1978 AMENDMENT ARE ASSESSED. AVOIDANCE OF COMPENSATION MEANS LOSS OF FEDERAL HIGHWAY FUNDS TO ANY STATE, AND THE LIKELIHOOD OF COURT ACTION BROUGHT BY THE SIGN OWNERS.

EVEN PREVIOUS TO THE AMENDMENT INCLUDED IN THE 1978 SURFACE TRANSPORTATION ASSISTANCE ACT, THE HIGHWAY BEAUTIFICATION PROGRAM, AS IT APPLIES TO OUTDOOR ADVERTISING, HAS PRODUCED SPOTTY RESULTS WHILE RUNNING GREATLY OVER THE ORIGINAL COST ESTIMATES. AS RECENTLY AS THE END OF SEPTEMBER 1978, AFTER THE HIGHWAY

BEAUTIFICATION ACT HAD BEEN IN EFFECT FOR THIRTEEN YEARS, ONLY THIRTEEN STATES ACTUALLY ACQUIRED OR REMOVED AS MUCH AS FIFTY PERCENT OF THE SIGNS WITHIN THEIR BORDERS WHICH WERE CLASSIFIED AS "NONCONFORMING," ACCORDING TO THE FEDERAL HIGHWAY ADMINISTRATION'S QUARTERLY REPORTS. AN ADDITIONAL TWO STATES AND PUERTO RICO HAD NO NONCONFORMING SIGNS TO REMOVE. THE REPORTS ALSO INDICATED THAT AS OF THE SAME DATE, 98,215 NONCONFORMING COMPENSABLE SIGNS HAD BEEN ACQUIRED OUT OF A TOTAL OF 296,006 SIGNS, OR APPROXIMATELY ONE-THIRD OF THIS CATEGORY OF SIGN. OF THESE, 88,454 SIGNS HAD ACTUALLY BEEN REMOVED.

THE RESULTING IMPROVEMENTS, AS ONE LOOKS AT THE INTERSTATE AND PRIMARY ROADSIDES, ARE NOT EVEN AS ENCOURAGING AS THOSE PERCENTAGES, DESPITE THE FACT THAT TRULY ILLEGAL SIGNS -- AS COMPARED TO "NONCONFORMING" SIGNS -- WERE REMOVED RELATIVELY EASILY. THESE NUMBERED 380,464 SIGNS REMOVED AS OF SEPTEMBER 30, 1978, OR A TOTAL OF 439,282 ILLEGAL SIGNS, OR APPROXIMATELY 87 PERCENT, ACCORDING TO THE QUARTERLY REPORTS. THE RESULTS ARE NOT UNUSUALLY STRIKING FOR THE MOST PART BECAUSE A LARGE NUMBER OF SIGNS FALL WITHIN THE SEVERAL EXEMPTIONS TO "NONCONFORMING" STATUS AND CANNOT BE REMOVED UNDER THE ACT.

EXEMPT SIGNS WHICH ARE PARTICULARLY NUMEROUS ARE THOSE WHICH ARE LOCATED ON THE PREMISES OF THE PROPERTY THEY PERTAIN TO; THOSE LOCATED IN ZONED OR UNZONED INDUSTRIAL AND COMMERCIAL AREAS; AND THOSE PERMITTED UNDER THE COTTON AMENDMENT. THESE, AND OTHER EXEMPT SIGNS, WHICH CAN REPRESENT A SIGNIFICANT PERCENTAGE OF THE TOTAL NUMBER OF SIGNS ADJACENT TO INTERSTATE AND PRIMARY HIGHWAYS, WILL REMAIN, EVEN IF ONE HUNDRED PERCENT OF THE ILLEGAL AND NONCONFORMING SIGNS ARE REMOVED, AND SIGNIFICANTLY REDUCE THE VISUAL IMPACT OF THIS PORTION OF THE BEAUTIFICATION PROGRAM.

IT WAS ESTABLISHED IN A REPORT RELEASED IN MARCH, 1978, BY THE GENERAL ACCOUNTING OFFICE (GAO) TITLED "OBSTACLES TO BILLBOARD REMOVAL" THAT UNDER THE ACT THEN EXISTING, AN ADDITIONAL TWENTY-ONE YEARS WOULD BE NEEDED TO COMPLETELY REMOVE NONCONFORMING SIGNS, AT A TOTAL COST OVER A BILLION DOLLARS. THE 1978 AMENDMENTS WILL ADD FURTHER TO THIS COST.

THE MAJOR BENEFITS WHICH APPEAR TO HAVE ACCRUED FROM THE PASSAGE OF THE HIGHWAY BEAUTIFICATION ACT ARE, THEREFORE, THE REMOVAL OF ILLEGAL SIGNS, AND THE SLOWING DOWN OF PLACEMENT OF NEW SIGNS ALONG THE HIGHWAYS.

ON THE OTHER HAND, THE HIGHWAY BEAUTIFICATION ACT HAS BEEN CONTROVERSIAL, DIFFICULT TO ADMINISTER AND IMPLEMENT, AND HAS SOMETIMES PLACED STATE AGENCIES IN THE MIDDLE OF CONFLICTS INVOLVING SIGN OWNERS AND LAWSUITS ON ONE HAND, AND THE THREATENED LOSS OF TEN PERCENT OF THEIR FEDERAL HIGHWAY FUNDS ON THE OTHER. AS ONE EXAMPLE, THE MISSOURI STATE HIGHWAY COMMISSION HAS BEEN CRITICIZED AND TAKEN TO COURT BY SIGNOWNERS AND LANDOWNERS WHO FEEL THE PROGRAM ADMINISTRATION HAS BEEN TOO DEMANDING AND INFLEXIBLE, WHILE AT THE SAME TIME BEING THREATENED WITH THE TEN PERCENT LOSS OF FEDERAL FUNDS BECAUSE THE FEDERAL HIGHWAY ADMINISTRATION FEELS THE PROGRAM HAS NOT EFFECTIVELY CONTROLLED OUTDOOR ADVERTISING. THAT COMMISSION HAS RECEIVED 2900 REQUESTS FOR ADMINISTRATIVE REVIEW OF NOTICES TO REMOVE SIGNS, AND HAS OVER SIXTY OUTDOOR ADVERTISING LAWSUITS PENDING.

THIS BRINGS US TO S.344, INTRODUCED BY SENATOR STAFFORD, WHICH WOULD PROVIDE FOR STATE-ESTABLISHED SYSTEMS TO CONTROL ERECTION AND MAINTENANCE OF OUTDOOR ADVERTISING ADJACENT TO INTERSTATE AND PRIMARY HIGHWAYS, WITH ASSISTANCE FROM THE FEDERAL GOVERNMENT. AS WE NOTED AT THE BEGINNING OF THIS TESTIMONY, AASHTO'S POLICY SUPPORTS CONVERSION OF THE BEAUTIFICATION PROGRAM TO A VOLUNTARY STATE PROGRAM. WE FEEL THIS WOULD ADDRESS THE WEAKNESSES NOTED IN THE PRESENT PROGRAM.

THE FEDERAL HIGHWAY ADMINISTRATION NOTED IN 1978 THAT SEVENTEEN STATES, WASHINGTON, D.C., AND PUERTO RICO, CONTROL OUTDOOR ADVERTISING SIGNS ON OTHER HIGHWAY SYSTEMS, IN ADDITION TO THE INTERSTATE AND PRIMARY SYSTEMS. WHERE THIS EXISTS, THE SHIFTING OF ROAD MILEAGE TO OR FROM THE FEDERAL-AID PRIMARY SYSTEM, FOR EXAMPLE, WOULD NOT AFFECT THE CONTROL PROGRAM AS IS NOW THE CASE UNDER THE HIGHWAY BEAUTIFICATION ACT. PRESENTLY, A SIGNOWNER CAN BE COMPENSATED FOR REMOVAL OF A NONCOMPLYING SIGN ON THE PRIMARY SYSTEM, AND IF THAT LOCATION IS SUBSEQUENTLY TAKEN OFF THE FEDERAL-AID PRIMARY SYSTEM, THAT SIGNOWNER CAN LEGALLY THEN REINSTALL THE SAME SIGN AT THE SAME LOCATION.

THE PROBLEM OF INCREASED COST DUE TO THE PRESENT PROGRAM WHICH PROVIDES FOR COMPENSATION WHEN SIGNS ARE REMOVED UNDER UNRELATED LOCAL ORDINANCES, WOULD BE ELIMINATED. IN MANY CASES, SUCH AS IS THE CASE IN VERMONT, SIGNOWNERS ARE COMPENSATED FOR LOSS OF THEIR SIGNS BY POLICE POWER BY RECEIVING AN AMORTIZATION PERIOD OF SEVERAL YEARS. FURTHER COMPENSATION IN THESE CASES UNDER THE EXISTING BEAUTIFICATION PROGRAM IS AN UNNECESSARY USE OF TAXPAYERS' FUNDS WHICH WOULD BE ELIMINATED BY A STATE PROGRAM. STATES CAUGHT IN THIS "DOUBLE PAYMENT"

SITUATION WOULD NO LONGER BE SUBJECT TO PARTIAL LOSS OF FEDERAL FUNDING, UNDER A STATE-ADMINISTERED PROGRAM.

WHILE STILL PROVIDING FOR FEDERAL ASSISTANCE, A CHANGE TO A STATE PROGRAM WOULD ELIMINATE MANY OF THE DELAYS INHERENT TO THE PRESENT PROGRAM BY REMOVING THE INFLEXIBILITY OF THE FEDERAL IMPLEMENTATION. A STATE PROGRAM CAN BE TAILORED TO FIT THAT PARTICULAR STATE'S CITIZENRY, LOCAL CONDITIONS AND NEEDS.

S.344 WOULD MODIFY ONE EXEMPTION APPLICABLE TO SIGNS WHICH WOULD REDUCE THE NUMBER OF SIGNS EXISTING AFTER THE PROGRAM IS COMPLETED. ELIMINATION OF THE EXEMPTION FOR SIGNS LOCATED IN AREAS ZONED COMMERCIAL OR INDUSTIAL WHERE NO SUCH DEVELOPMENT EXISTS WOULD SIGNIFICANTLY REDUCE SIGNING IN AREAS WHICH HAVE THIS TYPE OF ZONING, AND IS PART OF ONE OF THE RECOMMENDATIONS MADE BY THE GAO IN ITS "OBSTACLES TO BILLBOARD REMOVAL" REPORT. THE STATES, WITH THEIR KNOWLEDGE OF THEIR LOCALITIES, NEEDS, AND ORDINANCES, CAN MORE EFFECTIVELY ADMINISTER THE REMOVAL OF REDESIGNATED SIGNS.

S.344 ALSO PROVIDES FOR AREAS IN WHICH MOTORIST INFORMATION ON SERVICES, ETC., CAN BE PROVIDED NEAR INTERCHANGES OF INTERSTATE HIGHWAYS, WHICH AS A VOLUNTARY PROGRAM CAN PROVIDE USEFUL INFORMATION WHERE A STATE DETERMINES THAT A LACK OF OUTDOOR ADVERTISING IS DETRIMENTAL TO THE NEEDS OF MOTORISTS. WE WOULD SUGGEST THAT, IN THE SAME MANNER AS OTHER NATIONAL HIGHWAY STANDARDS AND SPECIFICATIONS ARE DEVELOPED, THAT AASHTO BE THE DEVELOPING AGENCY FOR SUCH INFORMATIONAL SIGN STANDARDS.

IN SUMMARY, WE FEEL THAT A FEDERALLY-ASSISTED STATE PROGRAM WOULD BE MORE EFFECTIVE AT ATTAINING THE GOALS OF THE HIGHWAY BEAUTIFICATION PROGRAM; WOULD RESULT IN A MORE RAPID REMOVAL OF SIGNS; AND BE ACCOMPLISHED AT LESS COST THAN THE PRESENT PROGRAM.

MR. CHAIRMAN, I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU OR THE OTHER COMMITTEE MEMBERS MAY HAVE.

96TH CONGRESS
1ST SESSION

S. 344

To amend section 131, title 23, United States Code.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6 (legislative day, JANUARY 15), 1979

Mr. STAFFORD introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To amend section 131, title 23, United States Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Federal Highway Beautification Assistance Act of 1979."

SEC. 2. Section 131 of title 23, United States Code, is amended to read as follows:

"**§ 131. Control of outdoor advertising**

"(a) The Congress hereby finds and declares that it is in the public interest for the Federal Government to assist the

States in controlling the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

"(b) A State may establish a statewide system to control the erection and maintenance of outdoor advertising signs, displays, and devices adjacent to the Interstate and primary systems. Whenever a State which has established an effective statewide system of control, as defined in subsection (c) and determined by the Secretary, shall acquire by purchase or condemnation signs, displays, or devices lawfully erected and maintained adjacent to the Interstate or primary system, the Federal share of such acquisition shall be 80 per centum. Any State electing to provide such compensation shall provide (1) compensation for the taking from the owner of such sign, display, or device; and (2) compensation for the taking from the owner of real property on which the sign, display, or device is located, of the right to erect and maintain such sign, display, or device thereon.

"(c) An effective statewide system of control is one which provides that signs, displays, or devices, if located within six hundred and sixty feet of the right-of-way within urban areas or if located outside urban areas and visible from

the main traveled way of the system, shall be limited to (1) directional and official signs and notices, which signs and notices shall be limited to official signs and notices, public utility signs, service club and religious notices, public service signs and directional signs consistent with the national standards as in effect on the date of enactment of this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, (3) signs, displays, and devices advertising activities conducted on the premises on which they are located, (4) signs lawfully in existence on October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which would be consistent with the purposes of this section, and (5) signs, displays, and devices in areas zoned industrial or commercial under authority of State law and actually developed for such use or in unzoned commercial or industrial areas.

"(d) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. The Secretary may also, in consultation with the States, provide within the rights-of-way of the primary

system for areas in which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. Such signs shall conform to national standards to be promulgated by the Secretary.

"(e) In order to provide information in the specific interest of the traveling public, the State highway departments are authorized to maintain maps and to permit information directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas and other travel information systems within the rights-of-way for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable. The Federal share of the cost of establishing such an information center or travel information system shall be that which is provided in section 120 for a highway project on that Federal-aid system to be served by such center or system.

"(f) Any State highway department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall be entitled

to such payments unless the State maintains the control required under such agreement.".

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FEDERAL HIGHWAY BEAUTIFICATION ACT OF 1979

WEDNESDAY, JULY 18, 1979

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON TRANSPORTATION,
Washington, D.C.

The subcommittee met, at 10 a.m., in room 4200, Dirksen Senate Office Building, Hon. Lloyd Bentsen (chairman of the subcommittee) presiding.

Present: Senators Randolph (chairman of the full committee), Bentsen, Burdick, Stafford, and Pressler.

Senator BENTSEN. It is 10 o'clock, and this hearing will come to order. We will commence.

Our first witness is Gov. John Volpe who has had a long and distinguished record in public service. We are very pleased to have him here this morning.

Governor Volpe?

I must say that the chairman of the full committee has a conflict. He expects to be here later, as I understand it. He will be distressed finding out you were the first witness and he didn't have a chance to say hello.

STATEMENT OF HON. JOHN VOLPE

Mr. VOLPE. Thank you very much, Mr. Chairman.

This is very pleasant, if I might say so, to be back in this room where I testified a few times during my service, particularly as Secretary of Transportation, and to have the pleasure of seeing the chairman.

S. 344, which you have before you for consideration, would make outdoor advertising control voluntary with the States. There would be no penalty for failure to provide effective control and little incentive for compliance, other than for Federal assistance in sign removal, if the State elected to pay compensation.

I am convinced that S. 344 would probably mean the death of the beautification program for all practical purposes.

In 1970, after we carefully reviewed the beautification program, I stated as follows to the Senate Committee on Roads, this committee's predecessor:

> We feel strongly that the program has made and will continue to make a significant contribution toward enhancing the visual quality of the Nation's highways.

I thereafter wrote to the Governor of each State and advised each that we expected full compliance with the act in the future. At that time, 15 States had not yet enacted the necessary compli-

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ance laws and a number of others had not executed the required agreements.

The next 18 months illustrate the difficulty in achieving state compliance with the act, even under the threat of a 10-percent penalty. Fifteen States resisted to the point of requesting hearings, and one went to Federal District Court to challenge our action. To think that there would be meaningful compliance with the act under this bill, with no penalty and no incentive or bonus, I don't believe is realistic.

Mr. Chairman, I believe the gut issue here is compensation. Supporters of the bill would prefer to have compensation optional rather than mandatory. In order to achieve this, they would scuttle the national program and rely on State and local action to control billboards. If they are truly interested in protecting the highway environment, I respectfully submit that this is exactly the wrong approach to use.

On April 17, 1971, at Freeport, Maine, I spoke at a ceremony held for the removal of the first billboard. Among other things, I said this:

> This program also represents a triumph for constitutional fair play and our free enterprise system. We realize that while the beauty of our landscape is more important than billboards, the billboard itself is not intrinsically evil. Therefore, this legislation provides just compensation for those whose signs are taken to benefit the commonwealth.

"Constitutional fair play." I feel just as strongly about those words today as I did in 1971. Fair play is the basic foundation of our democracy. It means simply that no persons shall be deprived or suffer unjustly because of the needs or desires of the many.

Since that day in April 8 years ago, much progress has been made under the beautification program. Several months after the Maine ceremony I participated in similar ceremonies in Colorado, Utah, Idaho, and Wyoming. I told Federal Highway Administrator Frank Turner that I wanted 100,000 signs taken down that first year, and I held FHWA's feet to the fire to see that they did it, even though I was told we wouldn't get more than 10,000 down.

I am gratified to note that 93,000 signs actually came down that first year. For the next 3 years, sign removals averaged 100,000 per year. In fiscal 1977, this figure dropped to about 25,000, largely due to reduced funding, and it has been dropping ever since.

I believe that one of the reasons for Senator Stafford's introduction of his bill is the lack of recent substantial progress, and I agree. But I do not feel that we should repeal or radically amend the law, as his bill would. We need a constant, reliable level of funding, say $50 million a year which was the authorization level I proposed to the Congress and which was accepted at that time. I also propose, as I did in the past, that this come from the highway trust fund. Highway beautification is for the benefit of the motorist, just as the basic highway system is. And it should be paid for out of highway use taxes.

There has been opposition in the past to financing beauty out of the trust fund. Trust fund receipts for this year are projected at about $8 billion. An expenditure of $50 million would be slightly over one-half of 1 percent of this figure.

Senator Stafford proposed increasing the Federal share to 80 percent. This is commendable, and I would support it; even a change to a 90-10 ratio, for that matter.

I would also propose making these funds available for State administration or permit systems and other control activities. These are of benefit to the traveling public and their cost can be a substantial burden to the State.

S. 344 proposes that signs only be permitted in a commercial or industrial zone if there is commercial or industrial activity. This is good since it prevents signs from being erected in undeveloped areas which are zoned commercial in contemplation of some future use.

I would suggest a similar amendment to the Highway Beautification Act, to apply to signs erected 2 or more years after the Federal amendment, in order to allow State legislatures time to act. This amendment would discourage State and local zoning actions taken primarily to allow billboards.

Senator Stafford advised me that section 131(o), which exempts directional signs in economically distressed areas, is a loophole. I understand, however, that no such exemptions have been approved to date. Quite a few have been asked for, but none have been approved to date. But I agree that there is a potential for abuse in this area. Therefore, I propose that this section be repealed.

Instead, recognizing the need for directional information, I recommend that the logo program be made more workable. I believe that the program should be privately operated, under strict Federal standards and State controls, particularly with respect to location, number, size, design, and message content of the signs, which will be located, on private property. This will get the State out of the sign business and will permit motorist-oriented businesses not visible from the highway to identify themselves to the motoring public. If possible, I would like to see that program made mandatory.

S. 344 does not provide for size, lighting, and spacing criteria for signs in commercial or industrial areas, which the Highway Beautification Act does. I believe these control should be continued.

Likewise, S. 344 does not stipulate any method for defining an unzoned commercial area. The Highway Beautification Act requirement that such an area be defined by agreement between the State and the Secretary should also be retained.

In the States which have implemented the program, there is a noticeable visual impact and substantial progress in sign removal. Vermont is one of those States.

On the other hand, the States that have in effect ignored the requirements of sign removal make it appear that the program is a failure. The record shows clearly that over 500,000 signs have been removed and at least that many have been prevented from going up because of the control provisions of the act.

In these days of lack of confidence in Government, it is good to see a Government program that has worked. Mr. Chairman and members of the committee, as a former Governor, I would say that I am generally opposed to unnecessary governmental programs. The highway beautification program is not in that category and I believe should be continued. Let's not retreat. Let's push forward and get the job done.

Thank you, Mr. Chairman.

Senator BENTSEN. Thank you very much, Governor Volpe.

You said in your testimony that you pushed for 100,000 billboards a year in the way of removal. Then that had dropped off because of lack of funding. If we had a stable and constant funding program, is it your view that the 100,000 would have continued in the way of elimination?

Mr. VOLPE. I think with the funding, Mr. Chairman, and aggressive action necessary both at the Federal level as well as the State level, yes, that it would have continued at about the 100,000 level.

Senator BENTSEN. I have been very concerned about the fact that the Office of Management and Budget apparently vetoed the Federal Highway Administration's request for funds. The chairman of the full committee and I both have been urging funding of the Beautification Act for the elimination of the billboards.

I find the proposal to take it out of the trust fund a very interesting one. I want to give that some study. That way it would remain more in the control of this committee. Those of us who want to see the act implemented would be able to see it move better.

Mr. VOLPE. Without touching the general fund.

Senator BENTSEN. Yes.

One of the things that you stated is that in those States that have worked to implement the program you see visual results with the removal of the billboards. You go on to say that other States that have ignored the requirements of sign removal make it appear that the program is unworkable.

Do you feel that those States that have ignored the program, if you pass S. 344, would suddenly see the light and start removing billboards?

Mr. VOLPE. If they have not removed very many. Every State has removed some, if I remember correctly, except one. You must remember that it is about 7 years since I actively worked at this program, so I am drawing on memory and trying to refresh my memory during the last 3 or 4 days, 5 days, only. But with very minimal exceptions they have all taken down some.

But as I indicated in my testimony, it took several years before 15 States finally came into compliance, only after we threatened to take away their funds, and one took us to court. We won the battle in court.

Now I think if you take the Federal participation out, my humble opinion is that the program will practically come to a halt, except in some States where the Governor or legislature feels very strongly about it, supported by the people, there may be some States where perhaps the program may be continued, but I don't think at the pace it has gone on.

Senator BENTSEN. Thank you, Governor.

Senator Stafford?

Senator STAFFORD. Thank you very much, Mr. Chairman.

I apologize to Governor Volpe that I wasn't here when he started. I want to extend my welcome to the former Governor of Massachusetts from the former Governor of Vermont. I am not sure we agree completely on this particular issue, but I am very happy you are here, Governor, and have this chance to express many views to

us which we will weigh carefully, and some of which I certainly do agree with.

I think you made the point yourself that there has been something like 7 or 8 years since you have been directly involved in either serving as Highway Administrator, as you did under Eisenhower, or Secretary of Transportation, as you did later. So it would be fair to say that you have had no experience in the implementation of the highway beautification program under the impact of the 1977 and particularly the 1978 amendments to the act. Is that correct?

Mr. VOLPE. That is correct.

Senator STAFFORD. I would point out that this Senator supported the program even through the 1977 amendments, and it was not until the 1978 amendments that were adopted—following that, the administration failed to ask for any money for the program—that this Senator concluded that the program was not accomplishing anything, and indeed that the States very well could do better by themselves than for us to stand still and mark time, as we seem to be doing, under the Federal program.

The 1978 amendments in the opinion of this Senator were particularly unfortunate in that they eliminated the police power of municipalities, in your Commonwealth, my State, and all across the Nation, to take down signs under the police power and amortization over a period of years of signs which really had nothing to do with the Federal Highway Beautification Act.

It seemed to me that this, along with the lack of money, brought the program virtually to a halt at the present time. That is the reason for this Senator's proposal that we give it back to the States and let those that want to go ahead, go ahead, and those that are not interested follow whatever course their people wish.

I know we made progress back when you were Secretary and the program was moving ahead. As I have said, this Senator was supporting its following.

Mr. VOLPE. I know you did.

Senator STAFFORD. As I understand it, about 88,000 nonconforming signs have been taken down and something like 200,000 nonconforming signs still remain standing.

Mr. VOLPE. That is approximately right. That 88,000 figure, as you have indicated, was as of, I believe, September of last year. The figures that I have are as of March 31, so there is some addition. I think it is 93,000, 94,000 that have actually been taken down, as contrasted to that 88,000 figure.

Senator STAFFORD. The two figures are pretty close together?

Mr. VOLPE. Yes.

Senator STAFFORD. If memory serves me, something like $13 million was actually made available for the program last year. This had to cover junkyard coverings or streets and beautification of rights-of-way as well as billboard elimination.

I have seen an estimate that at that level of funding it would take about 100 years to get the remaining 200,000 signs down.

Would you believe that?

Mr. VOLPE. I think you are right.

Senator STAFFORD. That is certainly not much progress.

Mr. VOLPE. Not if you don't give them the funding.

Senator STAFFORD. A lot of signs did come down that were simply illegal. I think that is probably the basis for most of the 100,000 signs a year that came down back when you were Secretary of Transportation. Would that be a fair statement?

Mr. VOLPE. Yes. Those were illegal rather than nonconforming signs. Plus the fact, Senator, that we did get down a lot of billboards that although they were nonconforming nevertheless were illegal under the new law, or were erected after the law was passed, as a matter of fact, in quite a few cases, illegally. They did not get compensation.

Senator STAFFORD. The amendments of 1978 to the act make it necessary for States to compensate owners of any sign taken down even if the sign is not removed for Federal beautification purposes. This means that if a local government decides by local zoning to remove signs in the commercial or industrial area where no removal is required by Federal law, the State must still pay full compensation.

As a former Governor, do you believe such an amendment is an intrusion into areas of State responsibility and could hamper billboard control?

Let me stop there, Governor Volpe. The question is, as a former Governor, do you believe that the amendments of 1978 are an intrusion into areas of State and local responsibility and will hamper billboard control?

Mr. VOLPE. I would have to agree with you that as a former Governor, I don't like the Federal Government telling me sometimes some of the things we ought to do when I think we have the wherewithal, and the desire to get the job done might be a little different than what another State might want or different from what the Federal Government might want.

On the other hand, I think that we are in a position where this is a national program. We have invested a tremendous amount of money in the Federal-aid highway program. Originally, if I remember correctly, when General Clay made the estimate in 1955, it was going to cost something like $28 to $30 billion. I don't have to tell you what the highway program has cost. Of course, there has been a slight amount of inflation since that time. Then the Congress, of course, in its good judgment, has expanded the program some, advanced the criteria substantially to make it a better program, widened the lanes and so forth.

That is a tremendous investment in our highway program. Now, I am not talking about billboards in the commercial zones. I am talking about the beautiful scenic areas in your State and some of the western part of my State and a great many of the Western States, practically every State of the Union. It is a shame that you have that beautiful scenic highway with all of that beauty that I saw last fall on a delayed repeat of my 45th honeymoon up through your State and up through Canada, that I wouldn't have been able to see those beautiful trees and mountains if we had a series of billboards along that interstate highway.

So I would agree there. Under the commercial areas, where a person puts up a sign illegally and so forth, my opinion is that he is not entitled to reimbursement.

Senator STAFFORD. Governor, thank you very much. You remind me of Ogden Nash:

I think that I shall never see a billboard lovely as a tree. If we can't make the billboards fall, we may never see at all.

Senator BENTSEN. Governor, when we have a 90–10 participation on interstate Federal funds, and you having had experience as Secretary of Transportation, it would seem to me that we have a very strong personal interest from the Federal viewpoint in trying to see that we get some uniformity on the Interstate System so we don't have a hodgepodge of approaches to this concern of elimination of illegal billboards and to see they are properly replaced. Do you agree with that?

Mr. VOLPE. Completely, sir. Let me add to that this was one of the strongest arguments that was made when this bill was passed way back in 1956. That was the first interstate highway program bill. I remember so clearly President Eisenhower feeling so strongly about this. I testified on that bill as the vice president of the American Association of State Highway Officials.

It just seems to me that I can remember as commissioner of public works in Massachusetts that to get agreement between two States, whether it be Vermont and Massachusetts, or New Hampshire and Massachusetts, or Connecticut and Massachusetts, sometimes as to where a roadway was going to join was a tremendous problem.

The interstate program made it possible for those things to immediately be put into place because you had an agency and a body that would resolve the conflicts that might prevail. I feel the same about the billboards. They are a part of the total highway staying humane. The billboard wouldn't be worth a dime if we hadn't put the highway there. There wouldn't be a billboard there, as a matter of fact.

I feel strongly if we are going to continue and complete the job in removal of billboards and highway beautification, that we have two things to do. I think you have to have the Federal control and reimbursement for those signs that are entitled to them; and, second, it has to be uniform so we have the same kind of situation throughout the States.

That is why I say even with the local signs I don't think they should have some 5 feet wide and 3 feet long and painted red and others 18 inches high and 3 feet long and painted green, unless you do it for a particular purpose. We are doing it in some of our subways and other things today, directional signs, that tell you that the G line or A line is green and so forth. That is good.

So I think that as much as I like to preserve the rights of States to undertake and do a great deal of things they are capable of doing, I think in this situation with the reimbursement policy, I don't think it should be done on a hit-or-miss basis, which pretty much would be the score if you return this back to the States.

In essence, as I said in my testimony, I know my State was in the sign business. We went down to visit some of the sign shops they had in connection with their maintenance shops. I don't think that is the kind of thing the States ought to be involved in.

Senator BENTSEN. Thank you very much, Governor.

Mr. VOLPE. It was my pleasure to be here, Senator.

Senator BENTSEN. We appreciate very much your testimony.

Our next witnesses will be composed of a panel, with Mr. Ross Barrett, Metromedia, Inc., Los Angeles, Calif.; Mr. George McInturff, Washington, D.C.; and Mr. Harold Newman, Fargo, N. Dak.

Gentlemen, if you would come forward.

Gentlemen, the Chair would appreciate your limiting your formal presentation to 5 minutes each. Your full statement will be placed in the record. We will further amplify your testimony by questions.

Mr. Barrett, if you would begin.

STATEMENTS OF ROSS BARRETT, METROMEDIA, INC., LOS ANGELES, CALIF.; GEORGE McINTURFF, WASHINGTON, D.C.; AND HAROLD NEWMAN, FARGO, N. DAK.

Mr. BARRETT. Mr. Chairman, with all due respect for the legislative knowledge of the committee members, I would like to begin by reminding all of us here this morning of the purposes of the 1965 act.

In essence, the act was intended to preserve the beauty of Federal-aid highways in scenic and rural areas and to prevent the undue proliferation of outdoor advertising in commercial and industrial areas. There was never any intention to abolish or to unduly restrict the outdoor advertising medium.

On the contrary, the record plainly states that the intention was to administer the act in a manner that would provide for the orderly and reasonable development of outdoor advertising.

Using those clearly defined objectives as the guidelines it is apparent that the Highway Beautification Act has worked, is working, and if given the opportunity will continue to work in the future.

There are some hard statistics which prove the results that have been achieved. Some of them have been referred to earlier by Governor Volpe. The General Accounting Office reports there were originally 729,000 signs eligible for removal.

The most recent Federal Highway Administration report states that more than 488,000 of those signs have indeed been removed. This is an enormous figure. By all odds, it is the greatest reduction in outdoor advertising signs in the history of this country. To regard the removal of almost half a million signs as a symptom of failure of the Highway Beautification Act seems incomprehensible.

A good deal has been made of the fact 393,000 of those signs were illegal prior to the passage of the act. Senator Stafford has referred to this on a number of occasions in the past 2 days and indicated his belief those signs would have come down whether or not the act was passed.

With all due respect, Senator, I disagree with that completely. The fact is those signs were standing illegally before the act was passed and after the act was passed they were removed.

There has also been some criticism because of the 289,000 signs that became nonconforming under the act, only 95,000 had been removed as of the FHWA report of March 31, 1979. To evaluate that figure fairly, it seems to me there have to be two factors considered.

First, this is the greatest number of large-size advertising signs ever taken down. It reverses a 75-year trend which has existed in this country since the advent of the automobile.

Second, you know better than anyone that it takes a long time to get a complex national program into operation. I won't belabor that point since Governor Volpe has made it so clear.

But the actual removal of signs is really only one part of the effectiveness of the act. It doesn't take into account the tremendous amount of signs that have not been erected because of the act. This preventive protection has occurred at no cost whatever to either the Federal Government or to the State governments.

We heard Mr. Lamm of FHWA testify yesterday that his estimate, of which he seemed somewhat unsure, was between 215,000 and 220,000. I think that is a substantial underestimate. We have taken figures for annual sign permits from three widely disbursed States in this country—California, Florida, and New Jersey—and when you compare the sign permits issued after compliance laws passed because of the act compared to the sign permits issued prior to those compliance laws, you find a reduction of some 50 percent.

I think a more accurate figure for signs that have not been erected on our streets and highways because of the act would be 500,000.

Finally, I would like to give to the committee a figure which I believe has never before been brought to the attention of the Senate.

Each year the Outdoor Advertising Association of America publishes a document known as the Buyer's Guide. It lists, for those who wish to use this medium, the availability of outdoor advertising in some 7,900 different locations throughout the United States.

Those figures are obtained by certified statements from all known advertising companies whether they are members of the Outdoor Advertising Association or not.

The purpose of this information is to help the companies sell space. Therefore, they have a real incentive to report accurately and completely.

In 1966, all companies reported a total of 296,911 facings. In 1978 the same group reported a total of 233,470 facings. In other words, during the effective period of the act, the standardized outdoor advertising industry has reduced its number of signs by more than 63,000.

Senator BENTSEN. I will have to ask you to summarize, Mr. Barrett. Your time has expired.

Mr. BARRETT. In summary, Mr. Chairman, it is our belief that S. 344 would simply turn the clock back 14 years, to 1965. At that time the very same groups from the environmental groups who now support Senator Stafford's bill were clamoring for the 1965 Highway Beautification Act because they were dissatisfied with the way billboards were controlled by the individual States.

We would urge that the Federal act be maintained and continued in substantially its present form.

Senator BENTSEN. Thank you. I will ask the members to hold their questions until we get the testimony of all the witnesses. Then we will go through them.

The next witness is Mr. George McInturff of Washington, D.C.

STATEMENT OF GEORGE McINTURFF

Mr. McINTURFF. I am George McInturff. I am a consultant on environmental affairs, primarily outdoor advertising control. My principal client is the Outdoor Advertising Association of America.

In 1974, I retired from the Federal service after 33 years. The last 8 years of that service was spent in administering the highway beautification program.

The Federal Highway Administrator in 1966 asked me to take over the outdoor advertising control program under the newly passed Highway Beautification Act, which I did, and I continued in that capacity until my retirement in June 1974.

In this capacity, Mr. Chairman, I visited every State except Alaska and Hawaii. I conferred with the Governors of a number of States, State legislatures, and the State highway officials.

Governor Volpe has already indicated the difficulty which the Department had in convincing the States to comply with the Highway Beautification Act, even though we had the penalty as a weapon or as an incentive to comply.

Governor Volpe, of course, gave us very strong support beginning in 1970. But I know in my own mind if you make the program voluntary with the States, there is no way that we will have anywhere near the highway beautification program that we now have. I would estimate that probably between 30 and 40 States will drop the program.

I would like to mention one other thing. Earlier this year the American Association of State Highway and Transportation Officials made a survey of the States to determine whether or not they would be interested in or receptive to an optional program, such as S. 344 represents. As I understand it, 30-odd States said they would. Approximately 12 or 15 said they would prefer to keep the Highway Beautification Act as it now stands.

To me it is surprising that any State would oppose the S. 344 provisions, for the simple reason that no State is happy when it is subjected or possibly can be subjected to a penalty. A penalty situation is just not popular with any State, I don't care how enthusiastic they are about the particular problem involved.

Moreover, S. 344 would increase the Federal matching ratio from 75 to 80 percent. This 5-percent increase is something that every State would be happy to see. In fact, we have heard of one State that indicated they voted for S. 344's approach simply because of the 5-percent increase.

Yesterday Professor Floyd complained about the lack of progress under the highway beautification program. He cited Georgia. Several months ago I was down in South Carolina and I visited with one of the officials of the highway department. He told me that in South Carolina the Highway Beautification Act had made a vast improvement on the primary system in that State. So there is progress being made, I think.

Senator BENTSEN. Thank you very much. Our next witness is Mr. Harold Newman from Fargo, N. Dak.

STATEMENT OF HAROLD NEWMAN

Mr. NEWMAN. Senator, I would like to make one correction. I reside in Jamestown, N. Dak., rather than Fargo.

Senator BENTSEN. All right. If that is the way you feel about it.

Mr. NEWMAN. Thank you.

I am the owner of Newman Signs, an outdoor advertising company operating in North and South Dakota, Montana, Minnesota, and New Mexico.

I founded this company in 1956. At that time I had one other employee. Many of my signs, in those days, I personally erected. I now have 85 employees and I operate in five States.

For the last 14 years I have been operating under the Highway Beautification Act of 1965. During this period of time I spent $2 million bringing my operation into conformity with the act. If S. 344 were to pass and the States given a free hand to change their regulations in any way they saw fit, it could be disastrous to my business.

Under the Highway Beautification Act, the laws and regulations are similar enough so that I know where I stand. With little or no uniformity my operation would be much more difficult.

I drive hundreds of miles a week on North Dakota highways. I can notice a marked difference in the number of signs visible from the highway since the sign removal program began.

Commissioner of Highways Walter Hjelle, has come out against S. 344 and in favor of retaining the Highway Beautification Act. The State of North Dakota has removed 54 percent of its nonconforming signs and 82 percent of the illegal signs and they don't want to see this progress wasted. We agree with Mr. Hjelle.

S. 344 would be a step backwards. The Highway Beautification Act should be retained.

Thank you.

Senator BENTSEN. Thank you very much.

I would ask that the members hold their questions to 10 minutes. Then we will make another round if we have time. We are obviously having some problems on time. We have a lot of witnesses yet to be heard.

I will address my first question to Mr. Barrett. We hear a lot about the opinions of people who oppose the billboards and also opinions of people who favor billboards. I would be interested in knowing if there is any reliable information on what the public thinks about billboards.

Mr. BARRETT. Senator, there is some considerable amount of information. I would say that the most reliable information would be in the form of three plebiscites that have been held in the last 19 years, starting in 1960 in the State of Oregon when a group in that State put an initiative on the ballot that would have prohibited all billboards in the State. It failed by a vote of 65 percent to 35 percent.

In 1973, a group of four councilmen in the city of Seattle drafted a similar measure. They got it on the city ballot in Seattle. It failed by approximately 62 to 38.

As late as November 1977 the supervisor, now mayor, of San Francisco persuaded the board of supervisors to put a measure on the San Francisco ballot. It was very ingeniously worded. I would like to mention this to you because I think it has to do with amortization versus compensation. The wording very closely went like this: Should the board of supervisors adopt, as a matter of

policy, a program which will prohibit billboards after allowing a sufficient period of time for the billboard owners to recover their investment. That was defeated by a vote of 58 to 42 percent.

We have similar public opinion polls by people like Arthur Little, Louis Harris & Associates and so forth. They all bear out the fact that the general public, while they want to see billboards regulated and they certainly don't want to see billboards in scenic and rural areas, feel that billboards serve a useful purpose if they are properly and reasonably regulated, as we believe the 1965 act as amended does regulate.

Senator BENTSEN. Mr. Barrett, yesterday we heard Professor Floyd testify about the beautification law. He said if it was any good, that the billboard companies would hate it. But instead, they love it.

Now, you are in the billboard business. How do you respond to that?

Mr. BARRETT. First of all, Mr. Chairman, I am concerned with Dr. Floyd's line of reasoning. I assume that what he means is unless a law is so harassing and so restrictive on the industry which it regulates, that it isn't any good. I don't really think that is what Congress intends to do with this law or any other law.

I can assure you that the billboard industry does not love the Highway Beautification Act. In fact, I can assure you that there are some members of this industry that might despise it. But we have learned to live with the act, as Mr. Newman has pointed out. We think it is a reasonable act.

I would say to you, Mr. Chairman, that it has improved the appearance of the Federal highways and, indeed, it has improved the appearance of the outdoor advertising medium.

Senator BENTSEN. Let me ask one more question. Yesterday Professor Floyd was talking about San Diego. He said that not allowing them to use their police power for amortization of signs stopped the elimination of some 12,000 signs. That is quite a statement. How would you respond to that?

Mr. BARRETT. Mr. Chairman, if that is an example of the accuracy of Professor Floyd's figures, he gave you some very bad information yesterday. We happen to be involved in that suit. The litigation involves 1,600 signs, not 12,000 signs. So he was off by approximately 10,400.

The other thing about that is I think it is interesting to note while the city of San Diego has been attempting since 1972 to remove 1,600 signs under the police power, the State of California, using compensation, has actually acquired over 2,000 signs in that same period of time.

Senator BENTSEN. I yield to the chairman of the full committee.

Senator RANDOLPH. Thank you very much, Mr. Chairman.

As you know, circumstance caused me to be late in arriving for the hearing yesterday. The same situation arose this morning. Senator Byrd and I were meeting with officials of United Airlines who are not only now pulling out their service to West Virginia, but also now going to pull out their service entirely in Atlanta, Ga. So we begin to see deregulation at work in the airline industry. We are affected by the service we have had from Charleston to Atlanta.

I would have liked to have greeted the former Secretary of Transportation. He served as Secretary of Transportation from 1969 to 1973. I know, and as far as I understand the record, he worked very effectively on the matter of implementation of the act of 1965 while he was Secretary of Transportation.

Mr. Barrett, What is Metromedia?

Mr. BARRETT. Senator, Metromedia is essentially a communications company. Our outdoor advertising division is in operation in more than 14 major markets. We also are in the broadcast business. We have television and radio stations.

Senator RANDOLPH. Channel 5?

Mr. BARRETT. Channel 5 in Washington, Senator; that is right. We have two family entertainment companies, the Ice Capades and the Harlem Globetrotters. We have a syndicated television operation, syndicating such shows as Merv Griffin and others.

Senator RANDOLPH. Thank you for the company background. Could you restate for the record your estimate of the number of signs not erected?

Mr. BARRETT. Senator Randolph, our best estimate is 500,000 signs.

Senator RANDOLPH. How do you arrive at that estimate?

Mr. BARRETT. We calculated the signs based on annual permits which were applied for in three major States which have annual permit laws. Not all States have such laws.

We took the States of California, Florida, and New Jersey. We compared the number of annual permits issued on an annual basis after they had passed compliance laws, compared to the number of permits issued in the same number of years prior to the time their compliance law did pass.

We projected that percentage to the total shown on the FHWA report of March 31, 1979, showing the total nonconforming signs and illegal signs for all. In other words, they bear the same relationship to the total as the totals in the FHWA report.

It is also the best way I know how to make the estimate, Senator. It is an estimate, I would admit.

Senator RANDOLPH. I think it is a valid approach, but I wanted to have your feeling based on your experience. I understand it.

Mr. McInturff, how many years did it take, in your opinion, for the Beautification Act to be effective? How can we make it more effective now at this period?

Mr. MCINTURFF. Senator, to answer your first question, we began negotiating agreements and conferring with the States on the necessary State legislation in early 1967.

When I first testified before this committee in June 1967, we at that time had agreements with three States—Rhode Island, Vermont, and Virginia. It took us until 1973 to sign up the last State, which was South Dakota. So that is a period of 6 years.

To make the program effective, I would say, first of all, you must keep the penalty. If you drop the penalty, the program will die, as Governor Volpe indicated.

Second, I agree with Governor Volpe that a steady system of funding, say $50 million a year, would get the program back on track, and forceful administration on the part of the Federal Highway Administration. Those three things.

Senator BENTSEN. Mr. Chairman, we have the Finance Committee meeting on the windfall profits tax under consideration. Do you mind presiding as I go down and say a word for Texas and the Nation at that meeting?

Senator RANDOLPH [presiding]. I know Texas needs no spokesman, but I am sure you will do it well.

I know that Senator Stafford will indulge me when you find fault with Fargo, N. Dak.—not fault with it. You live in Jamestown. Is that correct?

Mr. NEWMAN. I do.

Senator RANDOLPH. Where is Jamestown in reference to Fargo?

Mr. NEWMAN. About 100 miles west of Fargo, in central North Dakota.

Senator RANDOLPH. Where is Grand Forks?

Mr. NEWMAN. North of Fargo, 100 miles.

Senator RANDOLPH. A long time ago I took a football team from West Virginia there. We played on Thanksgiving in Fargo, and on Saturday night in Grand Forks. We only had 16 men suited and yet we played two games in 2 days. Now we see they run with two, in and out. Isn't that correct?

Mr. NEWMAN. That is correct.

Senator RANDOLPH. Thank you for the nostalgia.

Mr. NEWMAN. If I may comment, I am sure the football players in those days were much heartier than they are now.

Senator RANDOLPH. Senator, if you would question the witnesses?

Senator STAFFORD. I would like to, Mr. Chairman, briefly.

First, let me direct one to Mr. McInturff. That is, I have read your distinguished career in the Federal Government. I simply would emphasize that your experience as far as administering the Highway Beautification Act terminated before the 1977 or 1978 amendments to the act. Is that correct?

Mr. MCINTURFF. True.

Senator STAFFORD. So you had no experience with the difficulties which might have been created by either one of those amendments insofar as the implementation of the act is concerned?

Mr. MCINTURFF. That is true, Senator. But, on the other hand, in the period of 1967–72, I think we had troubles far more difficult in convincing the States to comply than they are now facing.

Senator STAFFORD. You also had some money to administer the program.

Mr. MCINTURFF. Beginning in fiscal 1971. And prior to that, I think we had $2 million in fiscal 1970 and nothing in 1968 and 1969.

Senator STAFFORD. Mr. Barrett, I would add to his list of activities with Metromedia, I think the eastern version of one of your publications is mailed out of my hometown, Reader's Digest.

Mr. BARRETT. You are absolutely right, Senator. Our metro mail division handles the promotional mailings for Reader's Digest in our Rutland, Vt., plant.

Senator STAFFORD. You gentlemen have in effect stated that a stable legislative environment is a valuable part of this regulatory program. You had, I would say, a fairly stable regulatory program in the years that Mr. McInturff was connected with it. I ask, therefore, why the industry pressed for the amendments which

were adopted in 1976 and 1978. I would invite any member to comment.

Mr. BARRETT. The Senator is speaking primarily for the 1978 amendments which have been the subject of considerable interest in these hearings.

I would say that we were interested in the 1978 amendments because we were convinced that the cities were using zoning to circumvent congressional intent of mandatory compensation with respect to paying for the taking down of billboards on Federal-aid highways. That was our basic purpose.

Senator STAFFORD. Might I ask you, Mr. Barrett, what the profit margin on a billboard is?

Mr. BARRETT. Senator, if you have Professor Floyd's book handy, I am sure he has provided you with a copy, he quotes from Metromedia's annual statement which says the outdoor advertising division makes an operating profit in the order of 28 or 29 percent.

If you would allow me, sir, I would like to point out where that goes very quickly. First of all, of course, 50 percent goes to the Federal Government in Federal income tax. Thirty percent of our profits are distributed to stockholders in the form of dividends. The great majority of what we have left in the way of cash goes into reinvestment to replace signs that are lost through natural attrition, through the development of areas.

In Houston, for example, Senator Bentsen's home city, we lose 7 percent of our structures a year just by virtue of development.

Senator STAFFORD. Let me ask one final question directly. Then, Mr. Chairman, I intend to submit some further questions in writing for responses in writing, in view of the time constraints we are all facing.

Mr. Barrett, you have suggested that possibly 500,000 signs might have gone up had it not been for the Federal Highway Beautification Act. So my question is, if S. 344 were adopted, could not those 500,000 signs go up in the future? Why does the industry favor a law that not only prohibits more billboards but in fact seeks to eliminate nonconforming ones that are presently in existence?

Mr. BARRETT. Senator, I testified earlier that in our opinion the 1965 Beautification Act had indeed improved the quality of the outdoor medium, and really, sir, that is true.

Now since the act, you will find that billboard companies have been much more careful in their selection of structures. They have tried to stay out of the scenic and rural areas. They have built more carefully. They have built better structures. They have built better looking structures. Frankly, we would like to keep it that way.

Now I suspect that if S. 344 was passed, there probably would be more signs. I would not say, though, that the quality of the medium would be increased. In fact, I would say it would probably be decreased.

Senator STAFFORD. Does anybody else wish to comment?

If not, Mr. Chairman, I will reserve my right to have written questions submitted for written responses.

Thank you, Mr. Chairman.

Senator RANDOLPH. Thank you, Senator.

Senator PRESSLER. Mr. Chairman, I have just a few questions.

Senator RANDOLPH. Senator Pressler, I did not see you come in. Thank you.

Senator PRESSLER. Mr. Chairman, I have been busy with Commerce Committee surface transportation hearings. I was absent yesterday working on the truck safety bill.

I do have an opening statement that I wish to present when I introduce the witness from South Dakota in the next panel

Also, I have a statement from the Governor of South Dakota that I am going to present very briefly.

But I did have just a couple questions for this panel. Any one of you could answer if you wish.

The first is that the Federal Government has spent something like $100 million so far on billboard control. Do you believe there is a noticeable difference in the beauty of our roadsides? Has this hampered small businesses to get their message to travelers?

Mr. BARRETT. In answering the first part of that question, Senator, I would comment, as I think the GAO commented in their report of last year, that GAO did say, if you recall, there has been a noticeable benefit under the program, particularly on the Interstate System.

I would say that with reference to smaller businesses, and there is a member of the panel more expert on that than I, but in listening to testimony over the past few weeks, I would say with reference to the smaller businesses there has been a real hardship, particularly in the case of the hotel-motel groups. Hopefully I think that was the purpose of subsection (o). I think that if that could be administered with a little more humanity, a lot of those problems would go away.

Mr. MCINTURFF. I would agree.

Mr. NEWMAN. I would agree.

Senator PRESSLER. Another question I have concerns the 1978 amendments to the Highway Beautification Act which require that compensation be paid for all signs removed, regardless of the reason for removal. This means States and localities are no longer allowed to remove signs under their local zoning ordinances. What impact will this provision have on the effectiveness of the Highway Beautification Act, particularly in view of the increased cost of the program and the decreased level of funding?

Mr. BARRETT. Senator, I can't really answer that question without having a little firmer knowledge of what the funding situation will be.

I would say, sir, that when your business is being taken, the question of whether the Federal Government is going to pay for it or the city is going to pay for it is one that you are really not that concerned about. You are hopeful to get paid for your private property by somebody who is taking it. It may slow it down somewhat, but it certainly shouldn't stop it. It certainly will not interfere with the fairness which was injected in the 1965 act to begin with.

I am sure, Senator, you are more familiar with the record than I am, but there was certainly never any question in the minds of this Congress about whether or not private property should be paid for when it was taken.

As a matter of fact, you will recall, sir, that the bill said this was not to be permissive. This was to be mandatory.

Senator PRESSLER. I will have one or two more questions later on if I may.

Thank you very much.

Senator RANDOLPH. Thank you, Senator.

Senator PRESSLER. I might add, Mr. Chairman, with your permission, when the next panel comes, I would like to present the witness from South Dakota.

Senator RANDOLPH. Yes; we shall want you to do that.

Senator Stafford, anything?

Senator STAFFORD. I have no more questions of this panel, Mr. Chairman.

Senator RANDOLPH. We thank you, Mr. Barrett, Mr. McInturff, and Mr. Newman, for your testimony.

[Responses from Mr. Barrett to written questions follow:]

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TEL: 213-462-7111

ROSS BARRETT
Senior Vice President

August 15, 1979

Honorable Robert T. Stafford
United States Senate
Washington, D. C. 20510

Dear Senator Stafford:

Following my testimony at the Washington Hearings of the Sub-committee on Transportation of the Public Works Committee your legislative aide handed me a set of written questions on which you wished further information.

The information sought by these questions has required us to contact transportation departments of several different states. We now have at hand the responses they have made to the questions and we are supplementing this with additional material from our own files. As soon as we have completed the information, it will be forwarded to you.

Unfortunately, it seems to be practically impossible to provide precise data on the questions that you have asked. We are doing our best and will get back to you as promptly as we can.

In the meantime, I wanted you to know that we are giving attention to your request.

Sincerely,

Ross Barrett

Ross Barrett

METROMEDIA, INC.
5746 SUNSET BOULEVARD
LOS ANGELES, CALIF. 90028
TEL: 213-462-7111

ROSS BARRETT
Senior Vice President

August 24, 1979

Honorable Robert T. Stafford
United States Senate
Washington, D. C. 20510

Dear Senator Stafford:

Following through on my letter of August 15th, 1979, I am enclosing with this letter answers to the written questions which a member of your staff handed to me following my testimony at the Washington Hearings of the Sub-committee on Transportation of the Senate Public Works Committee.

Sincerely,

Ross Barrett

Ross Barrett

Enc.

Mr. Barrett

You quoted several figures on billboard permits. How many of those permits that were issued after the California law were given to large national advertising companies, such as yours? How many went to such national companies in the 10 years prior to the California law? Please provide similar figures for Florida and New Jersey. Also, what is the number of signs permitted under each permit, and the average size of signs now, compared with the earlier period?

This question deals with three different states which all have different regulations. In order to answer these questions in a logical, concise manner, we will handle them state by state.

CALIFORNIA

The information requested regarding the number of permits issued to national companies during the ten years prior to the California law, and after the California law was passed, is almost impossible to discern, according to representatives of the Outdoor Advertising Section, Department of Transportation, State of California. We learned that most of the records that would provide this sort of information were discarded in early 1970. There are files in Sacramento which would provide this information, but it would have to be done by a physical examination of each and every active permit application filed. The best estimates are that this procedure would take up to three months to produce, and there is no guarantee that the State of California would provide this information to our company.

Under California law, a permit for the construction of a sign covers the structure itself, i.e., one permit could cover a back-to-back sign, or a single-faced sign. Size is no criterion, as the permit costs the same for a 12' x 25' poster panel or a 14' x 48' painted bulletin (industry standards).

The average size of signs now and before the Act remains the same. The vast majority of outdoor advertising structures in California are a 12' x 25' poster panel or a 14' x 48' painted bulletin.

FLORIDA

In requesting information from the Department of Transportation in Florida, we were told that the information relating to the number of

permits given to national companies in the ten years prior to their Act and the period following their Act was not "readily available". The State of Florida has, in the past, given us figures on total permits issued, but indicates that any information sought in this area would be difficult, if not impossible, to produce.

The State of Florida permit procedure calls for a permit on each individual facing of a sign, i.e., a back-to-back sign would require two permits. This applies to both poster panels and painted bulletins.

As in California, the average size, both before the Act and after the Act, is a 12' x 25' poster panel and a 14' x 48' painted bulletin.

NEW JERSEY

New Jersey highway officials inform us that the only records they can readily provide are for the total number of permits issued each year. They indicate that the only other breakdown they use is a county-by-county total of signs. They do not have the ability to provide information as to how many permits any given sign company has obtained during a given year.

The permit procedure in New Jersey is that, one application could cover from one to four separate sign facings; however, the cost would vary as to the number of facings applied for. There is also a cost factor in the size of signs as they are applied for, i.e., a sign of 50 sq. ft. or less would be at a certain level, and the larger the sign, the higher the cost of the permit.

New Jersey outdoor advertising signs, like California and Florida, are basically of a 12' x 25' or 14' x 48' configuration.

SERIES OF QUESTIONS ON BILLBOARD VALUE For Mr. Barrett

QUESTION NO. 1: What is the average capital expenditure your company makes to erect a billboard along the Interstate System? What is the average cost of annual maintenance?

ANSWER: The outdoor advertising business conducted by Foster and Kleiser involves the utilization of display signs throughout heavily traveled commercial and industrial areas of a particular market. Some of these signs are on interstate highways, but we do not differentiate between signs on interstates or signs on city streets.

Foster and Kleiser uses a group standard cost system for construction of its signs. Each month, actual labor, material and other costs, and an overhead factor on labor, are accumulated in a work-in progress account for all sign construction activity. At the end of each month, the total costs of construction are divided by the number of structures completed and the unit cost of construction is transferred to each sign (region by region). We, therefore, have no actual cost for each structure; only an average cost as of a given point in time. To develop such a factor would require a complete cost analysis for each structure, based upon cost information which would be available as of a given point in time. To develop such information would be an onerous, time consuming, difficult task.

QUESTION NO. 2: What is the average rental income from such a billboard?

ANSWER: Foster and Kleiser operates in nine regional markets throughout the United States. Each market establishes its own rental income based on factors within that market, i.e., population, competing media, cost of doing business, etc.; therefore, there is no "average" rental that can be cited within this answer. We are, however, enclosing 1979 rate books for both posting and painted bulletins for all markets in which we operate.

QUESTION NO. 3: What is the average period needed to amortize such a sign?

ANSWER: Depreciation of advertising structures for financial statement and tax purposes is conducted on a group account method (See IRS Reg. Section 1.167 (a)-7) for all displays without regard to individual displays or individual areas.

The use of group accounts alleviates the necessity of maintaining separate depreciation records and calculations on each element in the account. Depreciation is calculated for the entire amount as a whole and not for each item within. When a normal retirement occurs, the full cost of the asset unadjusted for depreciation is removed from the asset account and charged to the reserve.

The depreciable useful lives used for financial statement and tax purposes for current acquisitions is twelve years for new structures and nine years for used structures. For financial statement purposes, the straight-line method of depreciation is employed. For income tax purposes, the declining balance method of depreciation is utilized.

QUESTION NO. 4: What is the average cost compensation paid to you, if such a sign is removed?

ANSWER: Since, as mentioned before, we operate in nine regional areas and in eight different states, once again, there will be no "average" cost for compensation awarded. As an example, the average cost of construction in Texas and in Florida would be much lower than in New York or Chicago, since the labor market is less in the Southwest than it is in the Northeast.

In order to provide some guide, however, we are enclosing state compensation schedules for the removal of outdoor advertising structures for each of the markets in which we operate, with the exception of New York, which does not have one.

QUESTION NO. 5: Of your signs on the Interstate System, signs that have been removed to date, on average, how long had they been standing?

ANSWER: As we have indicated before, we do not keep our records separately for signs on interstates or city streets. This information is also difficult to obtain, since many of the companies we own have been purchased within the last four or five years and, in many cases, the records kept by our predecessors were less than informative. Once a sign has been removed and the lease is terminated, the lease is filed with thousands of other leases, and the task of researching each of these leases for the information required would be enormous.

Senator STAFFORD. Mr. Chairman, while the next panel is coming to the witness table, I would ask unanimous consent in three instances. First, a letter written to me by former Governor Volpe when he was Secretary of Transportation, dated December 31, 1971, be made a part of the record. Second, that several items which this Senator has placed in the Congressional Record, including letters from some 20 States regarding S. 344, be in the hearing record. (See p. 295.) And third, several letters discussing the issues in S. 344 be included in the record representing the views of the Pennsylvania Roadside Council and the Tourist Industry in Nevada. (See p. 336.)

Senator RANDOLPH. Without objection, we shall have that information that you have mentioned made a part of the record.

[Governor Volpe's letter follows:]

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

December 31, 1971

Honorable Robert T. Stafford
United States Senate
Washington, D. C. 20510

Dear Senator ~~Stafford~~ Bob:

Thank you for your letter of November 23. I have just today answered Governor Davis's request that I suspend imposition of the penalty provided for in Title I of the Highway Beautification Act of 1965 while Vermont removes all billboards in the State without paying compensation. A copy of my letter is enclosed.

I regret that I was unable to grant that suspension. As you may know, section 131(b) of Title 23, United States Code, provides for the withholding of ten percent of a state's annual Federal-aid highway trust fund apportionment as long as it does not provide for effective control of outdoor advertising, as defined in section 131(c). In a 1966 opinion, the Attorney General held that failure of a state to pay just compensation for the billboards removed under Federal law would require a final determination of non-compliance with the Act and the imposition of the ten percent penalty.

Section 131(b) does give me the power to suspend application of the penalty, but the legislative history indicates that the power was to be used to aid states that are unable to come into compliance in time, not to exempt a state from the affirmative duties imposed by the Act.

Vermont has long been the leader in the field of billboard control. Its present statute does more than the laws of any other state, Vermont having chosen to remove all billboards anywhere. I wish I could do more to help, but the Vermont program goes beyond my statutory authority under the Act.

Sincerely,

John

Enclosure

Senator RANDOLPH. The next panel, according to the list, consists of six panelists. There will be Fields, Keszler, Pearlman, Brown, Maxon and a second Brown, and Burwell.

It has been suggested that Mrs. Marion Fuller Brown testify first; and Senator Pressler has indicated, very properly, that he have the privilege and pleasure of introducing the witness from South Dakota, Lloyd Keszler.

Now I think, Senator Pressler, that you might proceed, before any of the witnesses are heard, to introduce your constituent. Would you do that?

Senator PRESSLER. I will do that very briefly. Then he can testify in whatever order you had arranged.

Senator RANDOLPH. We had possibly thought Mr. Keszler would be closing the panel discussion. But this can be adjusted.

Senator PRESSLER. Fine.

With those adjustments, very briefly, I have a statement from the Governor of South Dakota, Gov. Bill Janklow, regarding his support for this bill, which I am cosponsoring with Senator Stafford. Governor Janklow cites some of the problems of the tourist industry and also some of the particular problems that we have regarding highway signs and the desire to deal with this problem at the State and local level. I will submit that statement for the record, along with a letter from Governor Janklow to Senator Bentsen, urging support of the bill S. 344, which I have cosponsored. (See p. 352.)

Senator PRESSLER. Yesterday I had hoped to make an opening statement, but I was detained in debate in the Surface Transportation Subcommittee of the Commerce Committee on truck safety legislation. I have been getting a message this morning requesting my presence there.

Nevertheless, the importance of this matter brings me here to testify in favor of S. 344 and to commend my distinguished colleague, Senator Stafford, for sponsoring it. I was pleased to be one of the original cosponsors.

I do have a statement which I will not read in its entirety but will summarize briefly (complete statement appears at p. 5). Most importantly, I wish to point out that South Dakota is primarily a rural State with many small communities which depend on advertising along major roads and interchanges to keep local businesses economically viable.

I might say I come from one of those small communities, Humboldt, S. Dak., which is along the interstate. We would very much like to let people know in a tasteful sign what is available in terms of camping and food and gas.

But frequently travelers have no way of knowing. There is a sign that says, "Gas, Food Available," but travelers may turn off the interstate late at night and there may not be any.

In addition, I think that travelers would be benefited by a more balanced approach to this whole highway sign idea, particularly in a State like South Dakota which is so sparsely populated. I come from an area of that State which is most directly affected.

Lloyd Keszler from Sturgis, S. Dak., is the manager of South Dakota Black Hills, Badlands, and Lakes Association. We sometimes think it is only the tourist area of the State, the Black Hills,

that is concerned. But let me say, coming from Humboldt, S. Dak., that we in the eastern part of the State are also interested in this matter.

While my State is concerned about regulating outdoor advertising to promote highway beautification and safety, there are also areas where outdoor advertising is beneficial and necessary for the economic well-being of residents.

I believe individual States are in the best position to make the decision about the outdoor advertising for their own unique situations.

The bill Senator Stafford introduced allows for that kind of decisionmaking to happen. It allows the States the option of participating in the Federal program or establishing a program of their own. If a State wishes to set its own program, it may do so without fear of Federal sanction of withdrawing highway funds.

I believe it is very important to fairly compensate the owners of signs which are removed. Senator Stafford's bill would provide the States with several options in that area also.

If a State elects to participate in the Federal program, there would be Federal matching funds available for compensation. If a State prefers to formulate its own program, it could decide what form of compensation would be provided.

The Highway Beautification Act has been in existence almost 15 years. Criticism concerning the act's functioning, particularly in the past several years, has been growing. GAO issued a report to Congress last year calling for a reassessment of the program. I understand the Federal Highway Administration is in the process of holding hearings on the beautification program throughout the country.

Senator Stafford, by requesting these hearings, and the chairman have provided this committee with an opportunity to review the highway beautification program. I want to thank you both for that.

Again, I look forward to hearing from the witnesses here today.

I want to say how proud I am to present to this committee Mr. Lloyd Keszler from Sturgis, S. Dak. He is manager of South Dakota Black Hills, Badlands, and Lakes Association. This is South Dakota's oldest and largest private travel promotion agency.

I might say that tourism is our No. 2 industry in South Dakota. That is something not widely known. Agriculture is our top industry. But with the Badlands and the Black Hills, many families come to camp in South Dakota. Mr. Keszler is going to tell you a bit about that.

But this organization for promoting tourism in South Dakota has been around 39 years. It has been cited nationally on many occasions as a leader in the industry.

Lloyd has been manager for 17 years. I am very proud to have him before this committee. His testimony will be very reflective of the thinking of our State.

Mr. Chairman and Mr. Stafford, thank you very much for this opportunity. I will submit my remarks for the record. I thank you for calling on Mr. Keszler in the order that you had planned.

Senator RANDOLPH. Thank you, Senator Pressler.

We are gratified that you are giving us the benefit of your experience and the benefit of your close attention to current prob-

lems. I know Senator Stafford and I, and other members, welcome you here.

Senator STAFFORD. That is right.

Senator RANDOLPH. We do, indeed.

I don't want to play favorites between North Dakota and South Dakota. Did you ever hear of a college in South Dakota called, I believe the correct name is South Dakota Wesleyan College?

Senator PRESSLER. Maybe they have changed the name now to Spearfish College.

Senator RANDOLPH. South Dakota Wesleyan.

Senator PRESSLER. Wesleyan?

Senator RANDOLPH. Yes.

Senator PRESSLER. Yes. Dakota Wesleyan.

Senator RANDOLPH. But it is in South Dakota.

Senator PRESSLER. That is one of our fine institutions

Senator RANDOLPH. West Virginia played this same football team. We made them welcome, except with the score.

We do understand now that in the order we have suggested, Senator Stafford would like for Mrs. Marion Fuller Brown to testify first.

STATEMENTS OF MARION FULLER BROWN, YORK, MAINE; LLOYD KESZLER, BLACK HILLS, BADLANDS, AND LAKES ASSOCIATION, RAPID CITY, S. DAK.; STEVE PEARLMAN, ENVIRONMENTAL ACTION, INC., WASHINGTON, D.C.; YALE MAXON, BERKELEY, CALIF.; W. LYONS BROWN, GARDEN CLUBS OF AMERICA, LOUISVILLE, KY.; AND DAVID G. BURWELL, NATIONAL WILDLIFE FEDERATION, WASHINGTON, D.C.

Mrs. MARION FULLER BROWN. Mr. Chairman, and members of the committee, I appreciate your courtesy in allowing me the privilege of testifying at this hearing.

I am here to support Senator Stafford's bill, S. 344, to speak for many citizens across the Nation who have neither the time nor money to come to Washington, whose early enthusiasm for the 1965 Highway Beautification Act has been displaced by disappointment, frustration, and I even must say outright anger at some times, after waiting 14 years for the original objectives of the Beautification Act to be carried out.

I quote the original objectives:

> To protect the public investment in highways, to promote safety and recreational value of public travel, and to preserve nature's beauty.

The hope for any kind of a reasonable coordinated approach to achieve a satisfactory balance between travelers' needs and environmental preservation of our scenic roadsides has all but vanished under the Federal program. Our past reliance on promises of private commercial interests in outdoor advertising and national roadside businesses to effect this balance at the Federal level has been a failure.

The succession of weakening amendments, passed by Congress in 1968, 1974, 1976, and 1978, have increased tremendously the scope of compensation, allowed circumvention of the original intent of the law, and weakened the administration of the law—all in the interest of the billboard and roadside businesses.

The use of the courts by the outdoor advertising industry in State after State has delayed removal of billboards, adding to the State's cost while the companies continue to earn income on noncomplying billboards.

The use of the law's loopholes by the industry has increased the number of billboards. The failure of Congress and successive administrations to appropriate adequate funds has been a serious obstacle to the removal of billboards and, has in effect, repudiated the present billboard removal program based on cash compensation.

Despite years of public and private testimony identifying the problems, plus at least three costly Government reviews and studies making recommendations to Congress, no amendments—except elimination of 660-foot limitation—have been passed to correct problems and weaknesses in original law—only those to weaken it further and increase payments to the outdoor advertising industry.

I request that my views published in Summary Report of the Commission on Highway Beautification in 1973 and my testimony on S. 3161 before the Public Works Committee in 1974 be made a part of the record showing many of these recommendations.

Senator RANDOLPH. That will be incorporated in the record. (See p. 233.)

Mrs. BROWN. Many of us are convinced that there is very little hope that the present law can be amended at the Federal level to carry out a truly effective program. They see Senator Stafford's bill as a way for those States who really want to control visual blight on their roadsides to do so without enormous cost to taxpayers created by present Federal law and a more realistic way to amend their own State laws.

I would like to talk briefly about the implementation of Maine's law. Since 1930, Maine has had control over off-premise advertising under a permit system. In 1959, legislation was passed to comply with the Federal Government's 1958 Bonus Act, using amortization as the method for removing nonconforming billboards, which we did up until 1969. In 1969, as a member of Maine's Legislature, I sponsored a major revision of Maine's law to bring the State into compliance with the 1965 Federal Highway Beautification Act.

Maine is one of the very few States that have fully implemented the law, but in so doing vividly illustrated the Highway Beautification Act's loopholes and weaknesses and what can be expected in other States unless they are allowed to make drastic changes in their laws.

MANY BILLBOARDS WILL REMAIN

One, our experience in Maine showed that many billboards will remain. Secretary of Transportation Volpe, as he told you, was present at Freeport, Maine, in April of 1971 when the first billboard was removed and paid for under the Federal Act; $6,000 was paid.

By 1977, Maine had removed all noncomplying billboards, 2,180 out of a total under permit of 4,773. That left still standing 2,593 legal billboards.

Nowhere do I find in FHA statistics any figures showing the significant number of billboards that will remain in each State

when all noncomplying billboards are removed. Nor are there any statistics on new permits issued over the past 14 years.

NEW BILLBOARDS WILL CONTINUE TO BE ERECTED

In Maine, 587 new permits were issued between 1974 and 1977. Maine's outdoor advertising report to U.S. Department of Transportation said:

> New commercial and industrial activities and zoned areas continue to create additional conforming areas for off-premise signs. It appears that new signs cannot be prevented from legally being erected in such areas where nonconforming signs have previously been removed under the act. This situation will no doubt become a target of severe criticism by the public as it becomes evident in those states now proceeding with the program.

RURAL AREAS SCENIC BEAUTY NOT PROTECTED UNDER THE LAW

A study in Maine showed that 90 percent of the new billboards erected between 1974–77 were in unzoned areas, which were usually rural and the most scenic. Some areas that were zoned commercial were actually rural in nature, and erection of billboards destroyed scenic roadsides. No way will the citizens of other States be able to discern any great improvement in their roadside environment under present law unless States make substantial changes.

THE ACT FAVORS LARGE OUTDOOR ADVERTISING COMPANIES AND NATIONAL ROADSIDE BUSINESSES

Billboard companies in Maine were able to acquire new sites in prime locations and hold them for future use, precluding local businessmen from having a sign in their own area.

MANDATORY COMPENSATION REQUIREMENTS ARE COSTLY AND AN OBSTACLE TO REMOVAL

Many local businesses cooperated with law by promptly removing their billboards, while major billboard companies, some 10 years later, have noncomplying billboards still standing earning income as they continue to make appeals to Maine's courts.

Maine's law from the beginning said that where no Federal funds were available, billboards could be removed under the State's police power by amortization. The courts have held, in at least three cases in Maine, that the use of police power and a reasonable period for amortization was legal. But these very cases have been costly to Maine citizens and served to delay removal for years of noncomplying billboards. Why should taxpayers be forced to buy back their scenic rights and required to pay companies that have flouted the law?

The very significant 1978 amendments dealing with compensation passed by Public Works Committee and Congress without public hearings was a major victory for billboard interests and a major defeat for billboard removal programs in many States. It is an unprecedented limitation and usurpation of States and local government's traditional rights to remove nonconforming billboards through use of States' police power and amortization procedure.

This amendment and subsequent ruling by Federal Highway Administration is an attack on the authority of our State. It has created confusion concerning some 550± billboards erected in so-called hiatus period between 1965–69 by billboard companies and individuals who were well aware of the national policy and that these billboards would become noncomplying. At the time there were no Federal funds and the billboards were ruled to be covered by the 5-year amortization period ending October 1, 1974, under our Maine law. As of October 1, 1974, 250 billboards were voluntarily removed, principally by individual sign owners, without any cash compensation. The State had to bring legal action against a major billboard company in 1974. Maine's law court has ruled that these signs should be removed through the amortization process—but the companies have further delayed removal after 5 years for amortization and another 4½ years in court.

How can Congress or Federal Highway Administration justify requiring compensation to one sign company, who could afford to proceed through the courts and cause this long delay in removal, when in the first instance billboards were erected flouting the law and courts have ruled in favor of the fairness of Maine's law?

AMENDMENTS AND NEW MAINE LAW IN 1977

In response to attempts by Outdoor Advertising Co. and roadside businesses to circumvent the intent of Maine's law, legislation was passed in 1972 to stop erection of high-rise on-premise signs and in 1973 to prevent erection of jumbo signs beyond 660 feet limitation.

However, it became clear in Maine that the Beautification Law had not slowed the rate at which new billboards were being erected, and that preservation of our roadsides natural beauty was a false promise. We had paid billboard companies and individuals over $1 million of taxpayers' money to remove illegal billboards only to have them erected in legal areas.

The citizens of Maine became increasingly disappointed with the adverse effects that billboards were still creating under Highway Beautification Act and Maine's law. A statewide poll showed a majority of Maine people—62 percent—supported passage of a much stronger billboard law. As a result, a bill was passed in 1977 similar to Vermont's law calling for removal of all billboards and providing an alternate system of uniform business directional signs, supplemented by sign plazas and additional tourist information centers. There has been another 2-year court battle when a national billboard company challenged the law. The Federal district court has found the law constitutional. My latest information is that state and billboard companies are negotiating for the removal program. Meanwhile, the 1979 Maine Legislature defeated an attempt by billboard companies to overturn this recent 1977 law.

CONCLUSIONS

The great difficulties in organizing the widespread public, sympathetic toward a highway beautification program, versus the strong organized lobby, ever present and well funded in Washington, long ago convinced me that the ordinary citizen could be more productive at their State level. The Federal law and FHA rulings have

become so complicated that most ordinary citizens can't possibly understand them or the implications for their States. I wonder how many Congressmen do. Thus, I welcomed Senator Stafford's initiative in filing S. 344 for four very basic reasons:

One: The mandatory Federal program will not do the job promised the public in 1965, but they have not been told this. Even if fully implemented, the public would perceive little change in the proliferation of billboards adjacent to their roadsides.

Two: The tremendous costs of mandatory compensation now estimated at over $1 billion cannot be justified. The States and local communities should be returned the prerogative of removing billboards by whatever method their State law will allow.

Three: It is wrong to continue intruding on police power of the State and local government.

Four: Citizens at the local and State level can better understand and dictate the kind of billboard controls they want, and can strengthen their laws for more effective control of billboards where they so desire.

In closing, Mr. Chairman, I urge Congress to conscientiously review the present program with its obvious loopholes and obstacles that prevent achieving the purposes of the law and support the present bill before you. I appreciate this opportunity to make the foregoing comments and thank the committee.

Senator BENTSEN. Thank you very much.

Mr. Steve Pearlman, please.

STATEMENT OF STEVE PEARLMAN

Mr. PEARLMAN. Mr. Chairman, members of the subcommittee, my name is Steve Pearlman, legislative representative of Environmental Action, Inc.

Since 1973, Environmental Action has, among other things, coordinated the activities of the Highway Action Coalition, an umbrella organization of national and local citizen groups. These include Environmental Action, Environmental Policy Center, Friends of the Earth, National Association of Railroad Passengers, and the Sierra Club.

Last year these groups, along with many other organizations, worked actively, but unsuccessfully, against amendments to the Highway Beautification Act during consideration of the Surface Transportation Assistance Act of 1978.

Since that bill passed, the Highway Action Coalition has become essentially dormant. Today I represent officially only the Environmental Action, Inc.

The Highway Beautification Act, as passed in 1965, declared as its purpose: "To protect the public investment in * * * highways, to promote the safety and recreational value of public travel, and to preserve natural beauty."

That purpose continues to this day to be stated in section 131 of title 23. However, other provisions of that section, as well as FHWA regulations and practices derived from its authority, now work to insure that the stated goal will never be met.

The act, as currently written, prevents States and communities from removing hundreds of thousands of nonconforming interstate and primary highway billboards under exercise of their traditional

zoning and land-use control powers, as has been explained by previous witnesses.

This has mandated a tremendous financial burden on States wishing to regulate outdoor advertising, which most of them cannot or will not be able to meet.

Furthermore, the Highway Beautification Act continues to allow States wishing to avoid sign removal to do so under any number of gaping loopholes which I elaborate in my written testimony.

Moreover, vastly insufficient Federal financial assistance has resulted in only 31 percent of all nonconforming signs having been removed as of December 31, 1978. Lack of Federal enforcement of the requirement that States provide effective control over the erection and maintenance of outdoor advertising or else lose 10 percent of their Federal highway apportionment has permitted many States to simply ignore the law; for example, New Jersey and Missouri have removed none of their nonconforming signs, Louisiana has removed only 9 percent of its illegal signs without any reduction in Federal highway assistance.

While theoretically the Highway Beautification Act could be made to achieve its stated goals if it were properly enforced and if it were properly funded, more realistically there would have to be changes in the act, including a rollback of the 1978 amendments, to make it work. Ideally, Congress would follow the advice offered by the GAO, which stated:

> If the Congress wants to strengthen the removal program, GAO recommends that it amend the act to encourage the States to remove all signs except those on-premise and landmark signs, or remove all signs except on-premise signs, landmark signs and signs in areas of actual commercial or industrial use.

Senator Stafford, however, believes that these changes are unlikely to be adopted given the history of recent congressional amendments to the Highway Beautification Act.

We greatly admire and appreciate Senator Stafford's many efforts on behalf of highway beautification over the years. We have great respect for his judgment on how, politically, highway beautification is most likely to be enhanced.

While we might continue to hope that Congress and FHWA would strengthen the act, we have very reluctantly come to the conclusion that S. 344 represents a more realistic approach to billboard removal. With one important reservation We support Senator Stafford's bill.

We propose that S. 344 be amended to reinstate the control, as opposed to the acquisition, aspect of the Highway Beautification Act. Federal highway beautification restrictions should continue to govern currently nonexistent signs where compensation is not an issue.

We recommend that all requirements of S. 344 applicable to States wishing to avail themselves of Federal assistance for billboard removal be extended to cover all billboards not presently in existence in all States.

Such a provision would cost Federal, State, and local government nothing and would not entail the issue of "just compensation" on which the billboard lobby based its arguments for change in 1978.

Thank you.

Senator BENTSEN. Thank you very much.

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Senator BENTSEN. The next witness is Mr. David Burwell, the National Wildlife Federation. Mr. Burwell?

STATEMENT OF DAVID G. BURWELL

Mr. BURWELL. Thank you, Mr. Chairman. I will summarize an already short statement, with a request the complete statement be included in the record.

Senator BENTSEN. It will be. (See p. 263.)

Mr. BURWELL. The National Wildlife Federation has a continuing interest in the highway beautification program since 1965. We support S. 344 as the best remedy to a bad situation. The statewide system of control contemplated by section 131(c) of the bill will insure effective regulation of billboards in participating States and close up some of the loopholes in coverage that existed even prior to the amendments contained in section 122 of the Surface Transportation Assistance Act of 1978.

However, there is no getting around the fact that the 1978 amendments dealt a crippling blow to outdoor advertising. Senator Stafford was completely accurate in his remarks accompanying his introduction of this bill when he stated that the "just compensation" of the act had transformed the act into "more a protection for billboards than the cause for their removal."

If the Highway Beautification Act is to make any sense at all, it must be interpreted to allow noncompensatory State control of billboards pursuant to traditional State police powers to regulate public health, safety and welfare. This interpretation, however, is not consistent either with the interpretation of the amendment adopted by the Federal Highway Administration or the words of the amendment itself, which appear to require "just compensation" for all signs removed, whether removal is pursuant to Federal or State law.

The Federal Highway Administration has interpreted this amendment to require full compensation at fair market value for all signs removed, even if the signs are removed pursuant to traditional State police power to regulate outdoor advertising through zoning restrictions.

This interpretation, while obvious, is not necessary. We suggest that S. 344 be amended to adopt Representative Howard's interpretation that section 131, which we quoted earlier, in its present form, places no restriction on State control over outdoor advertising. This could be done not by further amendments to Section 131 (g) and (k) but by the addition of a new subsection (r) defining "just compensation" as follows:

> For purposes of this section, just compensation means the fair market value of any sign, display or device remaining after imposition of State controls with respect to any such sign, display or device pursuant to subsection (k) of this section.

This in our view is not only proper but the only available interpretation of section 131 that is constitutional. Our Federal Government is, after all, a government of enumerated powers. The enumerated powers of Congress are contained in article I, section 8, of the Constitution. Federal controls over outdoor advertising certainly are allowable under the commerce clause of section 8, as well as the last paragraph of section 8 that grants Congress the power to

make all laws that are "necessary and proper" for the execution of these enumerated powers.

There is nothing, however, in the Constitution that allows the wholesale Federal usurpation of state police powers contained in section 131 as presently interpreted. Nothing in the commerce clause allows such an interpretation

Moreover, it is hard to imagine how the just compensation section is necessary and proper to implementation of the Highway Beautification Act since, as Senator Stafford pointed out, it does not regulate outdoor advertising but, rather, protects such advertising from legitimate State regulation.

Subsections 131 (g) and (k), as presently interpreted, serve no legitimate congressionally stated commercial purpose. Section 131 must be amended to clarify a congressional intent not to interfere with legitimate noncompensatory State regulation of outdoor advertising or the amendments to subsections 131(g) and 131(k) must be eliminated altogether.

Thank you.

Senator BENTSEN. Thank you very much for your testimony.

Senator BENTSEN. Our next witness will be Mrs. W. Lyons Brown, the Garden Clubs of America.

STATEMENT OF MRS. W. LYONS BROWN

Mrs. W. LYONS BROWN. Mr. Chairman, I will try to summarize as much as I can, but may I request that my entire statement be included in the record, and also the policy on billboards which will save a lot of time, which was previously submitted at another hearing before this committee?

Senator BENTSEN. We would be pleased to have it. We will insert it in its entirety in the record. (See p. 267.)

Mrs. W. LYONS BROWN. Thank you.

I am Mrs. W. Lyons Brown of Ashbourne, Harrods Creek, Ky., member and past chairman of the Conservation Committee, National Affairs Committee of the Garden Club of America. I am trustee of the Nature Conservancy and other organizations.

I am speaking first for the Garden Club of America. I thank you for the opportunity to present our views on this hearing on the future direction of the highway beautification program and to support the legislative change as contained in Senator Stafford's bill.

I want to say also that I am in a little bit different position than the others who are testifying for the bill in that my main source of livelihood, because I am really a farmer, is the distilling business for which our family has been working for four generations, over 109 years. In that capacity, I would like to say that the views might be a little bit different since the alcoholic beverage industry is one of the five largest users of outdoor advertising in our country. I will speak to that later.

But the Garden Club of America is a nonprofit organization and has worked over a long period of history for control of outdoor advertising. As early as 1920 we took leadership. We supported the bill of 1958 and the Bonus Act and also worked very hard for the 1960 bill and were active in the 1965 hearings for the Highway Beautification Act. But we never did support the final bill because

we felt it contained weaknesses, in particular the mandatory just compensation.

We opposed the outdoor advertising in unzoned commercial areas which we felt would open the door to proliferation because of disappointments in the results after 14 years of eroding amendments, permissive exemptions, frustration and confusion over State and Federal regulation.

The Conservation Committee of the Garden Club of America has come to the conclusion that the Act, with the amendments of 1968, 1974, 1976, and 1977, will never achieve its original goals. I won't quote the goals because you know them well.

But we feel that it should be dismantled. We feel that the laws that now stand have been so emasculated it is too weak, infirm or impotent to ever be effective and that further amendments would only be like Band-Aids.

The cost of sign removal and junkyard control is out of all proportion to the meager results and more so when it is evident that signs will still stand even when the program is completed.

I understand from the GAO, the General Accounting Office, even they recognize that at the present rate it would take over 100 years to complete the present rate of funding.

We feel that the interest in highway beautification has been relegated to the lowest national priority of environmental issues because of crises and pressing critical emergencies of supply of energy to run our energy-oriented civilization and all the other problems which are demanding the attention of Congress.

We conclude that if the program cannot go forward instead of backward under the present Highway Beautification Act and its amendments, that it is time to cut lines and try again.

Therefore, we see no course but to look to the bill, S. 344, introduced by Senator Stafford, which does return responsibility to the States. It provides that where a State chooses to pay for billboards removed from interstate or primary roads, that Federal assistance will be available for them. I am not altogether positive as to how that will work, but we do give our support to the intent of the bill. We will work through member clubs and Governors of our States, and have already begun to do this, thinking the bill was so ineffective to try to strengthen controls.

I listed what is wrong with the Beautification Act. So have other members. I will skip that part. But I would like to say that the figures that were mentioned don't really add up all the way. You said over $100 million. But actually it was $107 million, plus the bonus payments of $24 million, which totals $132 million is what we have spent to date to remove the number of billboards that you noted, 480,000—91,000 are nonconforming and 202 remain standing—for a total of 555.

But to think of taking down that amount of signs for that few amount, even if it is almost half a million, that is not counting all the signs that are on premise signs, because all controls have been removed from them.

I would like to say that in my own State there are a few things I hadn't seen written anywhere else in all the voluminous material. But I talked to my own representative of the Federal Division Administration, Mr. Robert Johnson, in Frankfurt, to ask how he

felt it would work if we returned to the States. He commented that the funding was inadequate, that Kentucky, even with the bonus, was one of the first States to be involved in the Bonus Act, and they have made progress—80 percent removal. But those are the signs on the primary roads that are classed as legal and conforming that are the disaster. In our State, 90 percent of the signs are in that category. I cannot tell you, members of the committee, and you, Mr. Chairman, how disastrous it is to drive through a beautiful State like Kentucky, and we are trying to build up tourism, and to see these signs that are circumventing the original intent.

Senator BENTSEN. Thank you very much, Mrs. Brown. Your time has expired.

Mrs. W. LYONS BROWN. Can I say one more little thing that is interesting about the distillers?

Senator BENTSEN. Go right ahead.

Mrs. W. LYONS BROWN. We pay to the Federal Government the second largest amount of the income tax as a source of revenue. It is a very competitive business. As the mother of two chairmen of the board of two distilling companies, you might think I would have some influence on curtailing the billboards.

We invited Secretary Volpe, who was here just a few moments ago, and Mr. Robert Cowan, chairman of the board of the Distilled Spirits Council of the United States, and several other panelists, to a big panel we had for a conference in 1972. I asked Mr. Cowan, the organization is called DSCUS, I asked him to speak from the point of view of users about outdoor advertising; would they welcome better controls and better placement? The greatest problem is the location of the signs in areas where they should not be. As you may not know, the distilling industry itself, by its own choice, limited itself not to having television or radio as a way of advertising. They also limited themselves never to use anything that might offend.

I asked could they not also curtail the use of billboards? Mr. Cowan answered that advertising itself is a very competitive business between the industries, that billboards do give brand identification, that in order to supply the $13 billion that we pay in taxes they have to work very hard for that competition, but that it would be ineffective to take off an Old Forrester ad or Jack Daniels ad because it would be quickly replaced by a detergent or gasoline ad or something else.

Senator BENTSEN. Thank you very much, Mrs. Brown. I have now let you run over by 3 minutes.

Mr. Yale Maxon.

STATEMENT OF YALE MAXON

Mr. MAXON. Thank you, sir. I have come 3,000 miles.

Senator BENTSEN. I know you have. You are from Berkeley, Calif. We are pleased to have you here.

Mr. MAXON. It is the first time in 50 years I have been back to Washington, D.C. I came here as a raw lad just out of Stanford University. Our then president was Secretary of Interior. With the brashness of youth, two of us went to the Interior Department and went to the door and said: "Could we speak with the Secretary?" They said: "Yes, of course. Come in."

Senator BENTSEN. Times have changed.

Mr. MAXON. That is right.

Senator BENTSEN. Now you travel 3,000 miles and they try to hold you to 5 minutes.

Mr. MAXON. I hope you will give me a little latitude, sir, because I would appreciate it.

As a young man, I lived 15 years in Hawaii, a State then and now without billboards. It did something to me. I realize that this is the motive power behind the fact that I have spent for the last 25 years a considerable portion of my time trying to preserve the natural beauty of our country from the defacement that takes place when a big placard is stuck between you and the view. I am speaking in one-syllable words, but I feel it very strongly. That is the reason I am here.

I was for 5 years president of the California Roadside Council, and since its 1977 merger with the Planning and Conservation League have been chairman of the league's relevant committee. Hence, my testimony today represents the views of some 2,000 members of a major California conservation organization. The president of the Washington State Roadside Council has also authorized me to speak for that group.

We support Senator Stafford's bill, as others have said, reluctantly, because the original 1965 bill I think was an honest effort to control billboard blight and the pollution of the marvelous beauty of this country.

However, it has been changed particularly by the 1978 amendments, so it is now doing the opposite.

I would like to say, however, that the original Highway Beautification Act of 1965 was from the start an imperfect instrument for accomplishing its purposes. The chief inherent fault of it arose from the decision to pay compensation to both landowner and billboard owner for removal of signs adjacent to major U.S. highways. Prior to 1965, numerous decisions of State courts and of the U.S. Supreme Court had clearly established that offsite commercial billboards adjacent to public thoroughfares are not a bona fide use of the private property on which they are located but are, instead, a use of public property—that is, the highway—for private gain.

Governor Volpe spoke of constitutional fair play. That means respect for the decisions of the courts. I will quote the Massachusetts Supreme Court in 1935, in a 1935 decision which the U.S. Supreme Court declined to overturn, hence it is the law, said the court:

> (Billboards) constitute a franchise upon the public highways. . . . (The billboard interests) are not asserting a natural right. . . . They are seizing for private benefit an opportunity created for quite a different purpose by the expenditure of public moneys.

Said the Supreme Court of the Philippines in a decision which the U.S. Supreme Court likewise refused to overturn; hence it is the law: "Outdoor advertising is essentialIy a use of the public highways, either than a bona fide use of the private property on which it may be situated."

In Governor Volpe's recent words, "The billboards wouldn't be worth a dime if the highway weren't there."

That, gentlemen, is the law, and hence the argument, that billboards are private property and, therefore, when they are ordered down, compensation must be paid, is legally speaking not a valid one; because in the constitutional sense, this is not a taking. It is a land-use regulation which says in effect: you can take your billboard, but you can't put it here. It is a land-use regulation.

This is a fundamental distinction. I am omitting the citations. I could give them but I am trying to save time. Since these leading cases, a long line of court decisions has upheld these principles. Hence, if neither the billboard owner nor the owner of land adjacent to the public highway has any right to use the highway in this manner, it was in our view an unnecessary waste of public funds for the Congress to write into the 1965 Act provisions for compensation.

Prior to 1965, numerous State, county and municipal jurisdictions limited or totally forbade the use of tax-supported highways for private gain by the owners of commercial offsite signs. This was normally accomplished through zoning laws which classified such displays as a nonpermitted use and required, after a suitable period for amortization, that they be taken down as public nuisances.

I suppose I am going to be pushed to compress this into 5 minutes, so I will try to compress this. Of course, I would like to read the whole thing.

Having substituted the new and unjustified principle of compensation for the established and widely functioning principle of zoning, accompanied by amortization as the basic Federal mechanism for securing billboard removal, Congress then compounded the problem by mandating that this new and unjustified principle be accepted by the States, under the semi-coercive condition of otherwise forfeiting 10 percent of their Federal highway funds.

This was felt very keenly at the State level. In my own State, for example, our so-called acceptance of the Federal law in 1967, contained the following language:

> The sole intent of the legislature in enacting this paragraph (re: compensation) is to comply with Federal law, and it is otherwise not the intent of the Legislature to in any manner relinquish any of its powers relating to the removal of advertising displays under the police power.

And in a letter State Attorney General Evelle Younger urged removal of the mandatory language of section 131——

Senator BENTSEN. If you would summarize, please, now.

Mr. MAXON. Yes. I am trying to.

Senator BENTSEN. Your time has expired.

Mr. MAXON. Five minutes isn't long, sir, when you come 3,000 miles.

Senator BENTSEN. I was brought into politics under the 5-minute rule in the House and finally learned. I quote Mark Twain when he said: "I apologize for this long letter. I didn't have time to write a short one."

Mr. MAXON. To put it briefly, the 1978 amendments have now gone a step further to purportedly require that any sign taken down, as has been mentioned, as a result of any laws should be accompanied by compensation. Although the 1978 amendments will ultimately be held by most courts to be beyond powers of Congress, the sweeping language—"removal of any outdoor advertising

sign"—in which they are clothed may well act to inhibit the lawful exercise of the police power by many local governments.

Thus in California, just as we are meeting here, a California bill, S.B. 462 is now being debated in committee. Hearings are being held today on a bill which starts: "In order to comply with Federal law," and ends by saying that all billboard removals in California must be accompanied by compensation.

Now Federal law, as I understand it, doesn't stretch that far. The powers of Congress don't stretch that far to say that the zoning authority of all the States is hereby overruled.

But at any rate, the advertising interests are trying to put that across.

They did put across a similar bill in the State of Oregon which the Governor vetoed just a few days ago. So I think this is a question of calculated deception of the outdoor advertising people which they are trying to make the most of.

Senator BENTSEN. On that strong statement, why don't we go to questions.

Senator STAFFORD. Mr. Chairman, I would suggest, in case it hasn't been done, that the full text of each witness' statement be made a part of the hearing record.

Senator BENTSEN. That has been done, but that will be reiterated. We would be delighted to have it in its entirety.

Mr. MAXON. I realize you are under constraints, too. I thank you for the time you have allowed me.

Senator BENTSEN. Our next witness, representing the Farm Bureau, is Mr. C. H. Fields.

Senator PRESSLER. Mr. Chairman, my witness, Mr. Lloyd Keszler, has not been called on.

Senator BENTSEN. Fine. Mr. Keszler.

Senator PRESSLER. I already introduced him.

Senator BENTSEN. We are very pleased to have you here, Mr. Keszler.

STATEMENT OF LLOYD KESZLER

Mr. KESZLER. Mr. Chairman, members of the committee, I am Lloyd Keszler, manager of the South Dakota Black Hills, Badlands, and Lakes Association, and also a representing member of the South Dakota Roadside Business Association.

The Black Hills, Badlands, and Lakes Association is an organization 39 years old, composed of private individuals and chambers of commerce. Our membership consists of about 2,500 members, representing the communities of South Dakota with a sole purpose to promote the travel industry in our State.

The Roadside Business Association is an organization of highway sign users. They have been in existence for about 15 years.

South Dakota is a rural State with a population of approximately 680,000 people. The State's second largest industry is tourism. The tourist paid approximately $10 million in gas taxes and about $8 million in sales taxes in 1978. About 9 million persons visited South Dakota in 1978.

The results of many studies show that the most effective means of advertising of goods and services to the traveling public is outdoor advertising.

In a survey done by the University of South Dakota in 1976, the overwhelming majority of South Dakota travelers found billboards to be useful to them in making their decision where to stop for travel services.

The University of South Dakota survey shows 4,500 persons interviewed with the following results: Over 76 percent said billboards were either very important or somewhat important in making their decision where to stop for travel services.

Outdoor advertising created no major scenic problems for South Dakota travelers.

Highway advertising was the media through which the majority of the travelers first became aware of the existence of businesses at which they stopped.

Billboard advertising appears to be more important for small-town business and those not associated with chains or franchises. As the signs go, so go the communities' businesses.

In that regard, I would like to submit at this time the "Economic Impact of Nonconforming Billboard Removal" by Dr. Calvin Kent of the University of South Dakota, dated November 30, 1977. (See p. 367.) It has some important facts that I want to respectfully call to the attention of the committee.

Mr. KESZLER. South Dakota, at the start of the Highway Beautification Act in 1965, had in excess of 25,000 signs. There are now approximately 5,000 signs remaining adjacent to our interstate and primary systems.

According to national figures of the U.S. Department of Transportation, South Dakota ranks very near the top of States in sign removal. Yet we have never been in compliance with the Federal law.

South Dakota ranks among the top in sign removal. Other States which have barely removed any signs yet remain unaffected by the Federal Department of Transportation.

By the number of signs we have taken down, you can see that South Dakota does not believe in billboard abuse, that we are concerned, and that we do watch out for our scenic areas. We do, however, feel that the State can and will control our legislation of roadside advertising as is evident in past performance.

In 1977, Paul Pfeiffer, Administrative Law Judge of Washington, D.C., conducted hearings in South Dakota regarding South Dakota's noncompliance.

Judge Pfeiffer spent a week in South Dakota touring the State and hearing testimony. Judge Pfeiffer ruled: (1) That South Dakota is a unique State and that the U.S. Department of Transportation should consider this in negotiating fair and reasonable controls over outdoor advertising in this State; and (2) that the U.S. Secretary of Transportation suspend the withholding of any of South Dakota's highway aid funds.

That did not happen.

Just to give you an example of the difference Judge Pfeiffer could be talking about, Discover America Travel Organization said that the average U.S. vacationer travels 600 miles on his vacation. South Dakota's average tourist travels 3,800 miles.

In those times when Congress should be concentrating on the economic and energy problems, South Dakota tourism is down 40 percent. This is a loss of $7 million in State revenue.

In a year of serious deterioration to the industry, there is a strong possibility that S. 344 could be one bright light on the horizon.

Please put your thoughts to economics and energy and give the States back control of billboards, back in the hands of the States where it belongs.

Our association voted unanimously on June 12, 1979, to support S. 344. We again ask you to support this legislation and give the States back the rights to control outdoor advertising.

Thank you.

Senator BENTSEN. Thank you very much, Mr. Keszler.

Now do we have Mr. Fields prepared to testify?

We have the same rule of a time limitation on you, whether you want to speak with the panel or separately.

STATEMENT OF C. H. FIELDS, AMERICAN FARM BUREAU FEDERATION, WASHINGTON, D.C.

Mr. FIELDS. Mr. Chairman, I only came three-tenths of a mile so I have no excuse not to be brief.

The board of directors of the American Farm Bureau Federation recently adopted a position in favor of the enactment of S. 344. We believe the goal of highway beautification can best be achieved by removing the mandatory provisions of the act and giving the States some flexibility in working out the most acceptable and reasonable ways of achieving beautification.

Farmers in many areas of the country have been adversely affected by the administration of the Highway Beautification Act of 1965 and the various regulations that have been promulgated to carry it out.

In recent years many family farms have called for direct marketing operations to eliminate a part or all of the so-called middlemen services and costs between producers and consumers. These marketing techniques include roadside markets and pick-your-own operations in which consumers harvest the crop they are purchasing from the grower. In many of the urbanized areas this type of marketing has made it possible for small farms to remain in operation while paying higher costs of production.

This kind of marketing activity on farms, which is quite popular with consumers, is not feasible in many instances without the use of highway signs. In some places the roadside markets cannot be located on the farm where production takes place and must be placed a few miles away to take advantage of traffic density. This means that in some instances the necessary signs cannot be located entirely on the actual plot of land on which the farm market is situated.

The interpretation of subsection (c) of section 131 of the act has varied from time to time, with the result that it has not been clear whether farmers can erect or maintain signs for on-farm marketing, particularly where it is not feasible for all such signs to be located on premises of the marketing operations.

Unfortunately, subsection (c) in S. 344 does not clarify this uncertainty. We recommend that the language in that subsection of the bill be amended to give States some flexibility in the development of their systems of control so as to permit reasonable advertising of farm marketing activities.

We also recommend that S. 344 be amended to apply to section 136 of the act, as well as section 131. Control over junkyards should also be restored to the States. The efforts of some States to interpret Federal requirements under this section have resulted in harassment, some very angry farmers, some lawsuits and other unpleasant developments.

Some enforcers of this law have told farmers they cannot have their own farm machinery and equipment parked in sight of a highway and that it must be stored in sheds or barns. Other farmers have been told, for example, that a fuel storage tank installed on the highway side of a farmhouse would have to be moved to the other side of the house so as not to be unsightly to highway users.

With State governments in control of this program, we feel that such unreasonable actions can be minimized and that the highway beautification program can be developed and enforced in a reasonable manner.

We urge this subcommittee to report S. 344 favorably with the amendments we have indicated.

We appreciate this opportunity to present the Farm Bureau's views.

Senator BENTSEN. Thank you.

The Highway Beautification Act has been passed in order to provide a national program for control of outdoor advertising. It is a mandatory program. There was a lot of disparity in responses received in regard to it at the time the bill was passed. S. 344 would take that program and convert it to voluntary participation. How do you perceive this as providing for effective control of outdoor advertising on a nationwide basis?

Mr. FIELDS. We are not an organization that believes that all wisdom lies in Washington, D.C. We think that the people out in the States are perfectly able to do this, and given some flexibility can do it and do a better job than from Washington, D.C.

Senator BENTSEN. You really think they will take down more billboards?

Mr. FIELDS. I think they will where they think they should be taken down and where the people in that State decide they want them to be taken down. Then they will be taken down.

Senator BENTSEN. What do you think? Do you think you will actually have more billboards taken down or do you think the net effect is that you will have more billboards?

Mr. PEARLMAN. I think the net effect would be more billboards taken down. I think someone estimated that up to a million previously exempt signs became protected by the Highway Beautification Act because of the 1978 amendments. Those signs will probably never come down under existing law. I also suggested that existing Federal Law be kept for all new signs so you don't have a proliferation of new billboards. I think S. 344 should be changed to that extent.

Senator BENTSEN. Let me make a point that a number of you have stated your concerns about removing nonconforming signs and billboards and using police power, and further emphasizing that it appears to be an infringement on the rights of States and communities. Let me make a couple of observations on this philosophy.

First, the Beautification Act applies only to interstate and primary Federal-aid highways. Actions under this law do not alter State power or local powers on highways, streets, roads that are not on the interstate or primary system.

Second, the Interstate System, for example, was constructed with 90 percent Federal money. I believe the Federal Government has a strong vested interest in actions taken on that system.

In your particular testimony you go on to state that the act has mandated a tremendous financial burden on States wishing to regulate outdoor advertising. Most States simply cannot or will not meet this burden.

Now that issues seems to go back to the same issue that I raised time and time again in these hearings. That is the need for adequate funding for a consistent, well defined program of compensation.

When you say that the act prevents the State from acting, I would suggest the problem is really a failure to provide funds for the States to act.

Senator PRESSLER. Mr. Chairman, if the gentleman would yield, could I get my State represented at the table somehow to participate in some of these questions?

Senator BENTSEN. I don't want South Dakota to be isolated. You can be part of the act. My grandparents came from that great State.

Mr. PEARLMAN. There is still a problem of the local share or the State share, even if the Federal program is funded. The States have not come up with their share in the past, even when there has been sufficient funding.

Senator BENTSEN. What disturbs me on that is we are running a tremendous Federal deficit. Every State in the Union—every State—has had a surplus. Not one of them has had a deficit in this last fiscal year.

Mr. PEARLMAN. I am not suggesting we get rid of the State share.

Senator BENTSEN. When you talk about the burden and their not being able to do it——

Mr. PEARLMAN. One reason they are not doing it is they are not being made to do it. The act is not being enforced. They are supposed to be making an effort to get those signs down, and yet we don't find FHWA withholding 10 percent of Federal highway funding as the law mandates if such an effort is not being made. This act has been in effect for a long time. I am just being realistic about what I think will be done. If it was enforced and funded, we might have a different situation.

Mrs. MARION FULLER BROWN. Basically I feel that my disappointment with the compensation feature is even, if it is totally carried out, the public will perceive very little change in the proliferation of billboards. As we have shown in the implementation of the act in Maine where we have fully complied with the taking down of

signs, we were having billboards go back up at a higher rate than they had prior to 1965 Highway Beautification Act. I have the figures in my testimony which shows this.

Therefore, I don't think it is proper to tell the public they are going to have an improved scenic quality of their highways when you can keep putting up new legal billboards in new created zoned or unzoned areas.

If there were a cutoff date, and it was suggested there would be no more new zoned commercial areas or unzoned commercial areas, this would prevent increasing new billboards but there is no cutoff date.

Our State proved with 547 billboards going up in 3 years that it wasn't going to be long before we would overtake the 2,000 that had been taken down. There we were spending $1 million in that State only to end up with the same number of billboards later on.

One more thing I would like to bring into the discussion which has not been discussed. Congress did pass a Clean Air Act and Clean Water Act which all the States had to pass laws to comply with. I happened to be in the Maine legislature at the time. Now this was to remove pollution out of our rivers and out of our air. But neither Congress or the taxpayers were asked to pay those businesses to remove that pollution, as has been done in removing visual pollution from our roadsides.

I feel we have somewhat a comparable situation here. They have had to make this a cost of their business. It all comes back to the taxpayer. He will pay it, in the long run, I know.

I have a small statement. In reading the very early testimony of Congress in the debate of the 1965 law, I believe that Congress quite seriously believed there was going to be a very abrupt transition in the outdoor advertising business and there was going to be wholesale removal of billboards. Therefore, they were trying to really provide a compensation for a legitimate hardship situation.

I don't think that 14 years is an abrupt change in the outdoor advertising business.

Senator BENTSEN. Let me say our figures certainly show there are substantially less billboards nationally today than there were at the time the 1965 act was passed.

You also stated in your statement on page 3 that even after many had been removed, all noncomplying billboards, roughly 2,600 legal billboards existed. You go on to state a significant number of billboards will remain in each State when all noncomplying billboards are removed.

We ought to go back to the concept of the act. I don't think it is the perception that the initial act was designed to remove all billboards. The act was to control the location of those billboards. That is what it would do.

Mr. Chairman?

Senator PRESSLER. Mr. Chairman, just a point, if you would yield. On the question you asked, what would happen if Mr. Stafford's and other bills were passed? Why don't we get probably a response from the South Dakota delegate? Would that be proper now?

Senator BENTSEN. Why don't you ask that later. We have asked that question repeatedly of many witnesses.

Senator RANDOLPH. Mr. Chairman, my feeling on the legislation, as you and Senator Stafford and other Senators know, is that I am in opposition to the pending bill. I have given a statement during the hearings. It would not be, I think, helpful to question the witnesses. I have listened to them, as many as I could, with the problems that I have taking me from the hearings. I wish I could have heard all the witnesses.

I do promise, Senator Stafford, to read what the witnesses have said who are favoring your legislation.

Senator STAFFORD. Thank you.

Senator BENTSEN. Senator Stafford?

Senator STAFFORD. Thank you, Mr. Chairman.

First, I want to thank all of the present panel who have come here almost exclusively at their own expense and have traveled long distances as private citizens to express their viewpoints on this piece of legislation.

Earlier this morning we heard discussion of a poll with respect to billboard laws. I would like to ask Mrs. Marion Fuller Brown if there was not a poll taken at some point in Maine on the question of whether or not there should be stronger billboard legislation.

Mrs. MARION FULLER BROWN. Yes. After we had fully implemented the law in 1977, a poll was taken and the statewide poll showed that the majority of the people, 62 percent, supported passage of a much stronger billboard law. As a result of this, we did pass legislation to remove all billboards.

Senator STAFFORD. Thank you.

Do you perceive that there are great difficulties in organizing widespread public opinion sympathetic toward a highway beautification program versus a strong organized lobby, ever present and well funded, in Washington? Has that convinced you that the ordinary citizen would be more productive at the State level?

Mrs. MARION FULLER BROWN. I believe in my testimony in 1972 that I spoke as early as that that I felt that citizens could at their own State level work more comprehensively toward a law. I feel that, for instance, the law has become unduly complicated so that very few private citizens can understand it. And I have even found many legislators in our own State who don't understand it. I am not sure my own Congressmen and people here do.

I also feel that it is very difficult and expensive for people to organize themselves to come to Washington—it is a burden on all of us who do not have a staff to have to provide 25 copies. It becomes almost a frightening experience for a lay person to come before Congress or even the FHWA hearings. So I think it deters the whole thing. I think they could work better at the State level.

Senator STAFFORD. I think on pages 6 and 7 of your statement you have four conclusions or reasons for supporting S. 344. Am I correct in that?

Mrs. MARION FULLER BROWN. Yes.

Senator STAFFORD. They all appear in detail on those pages.

Mrs. MARION FULLER BROWN. Yes; they do. I would be happy to read them, but it takes time.

Senator STAFFORD. I would like you to read them.

Mrs. MARION FULLER BROWN. The mandatory Federal program will not do the job promised the public in 1965. They have not been

told this. Even if fully implemented, the public will perceive little change in the proliferation of billboards adjacent to the roadsides.

Two, the tremendous costs in the mandatory compensation now estimated at over $1 billion cannot be justified and would mean continued proliferation of billboards. The States and local communities should be returned the prerogative of removing billboards by whatever methods their State law would allow.

Three. It is wrong to continue intruding on police power of the State and local governments.

Four, citizens at the local and State level can better understand and dictate the kind of billboard controls they want and can strengthen their laws for more effective control of billboards where they so desire.

Senator STAFFORD. Thank you very much, Mrs. Brown.

I have one question for Mr. Maxon. Then I may have others I will submit in writing. But this will be my final one.

The question is, Mr. Maxon, do you believe that the law as now written can be administered in a way that will achieve the stated goals of the act?

Mr. MAXON. No, sir, I do not. I certainly don't. Furthermore, if I might just take this opportunity to mention something that I brought along as an addendum to my testimony, but did not intend to read, it is titled "Public Attitudes Toward Billboards, Documentation From 14 Polls."

All of those 14 polls which are part of my written testimony indicate that the people of the United States do not appreciate billboards and do not want them up.

Now it is true that in those three areas—Oregon, Seattle, and San Francisco—there were plebiscites held. The outdoor advertising interests spent, and I haven't the precise figure, but they spent on the order of 10 or 20 times as much as the people who were on the other side could spend. They snowed the people.

For example, in San Francisco they said: "Don't let them take it away our freedom of speech." Now the Supreme Court has held that the billboard is not protected as a freedom of speech organ when there are other means of free speech. So in other words, they were crying about the first amendment but that is not a legitimate reason for protecting billboards.

There was a lot of misrepresentation at the polls, that is true, but when people are not subjected to that extraordinary pressure which the power of advertising or which the power of unlimited funds or almost unlimited funds can give, then they respond differently.

Senator STAFFORD. Thank you very much.

Senator BENTSEN. Senator Pressler?

Senator PRESSLER. I presented an opening statement and I presented a statement from our Governor in support of this legislation.

I would like to ask again the question that the Senator from Texas asked. What would be the impact—I might address this to Mr. Keszler—in South Dakota if we passed this bill? What would happen in terms of highway signs?

Mr. KESZLER. Senator, I think that South Dakota has shown an example that we don't comply with the law. We have tried to

comply, but we haven't. Yet, I say we had 25,000 signs at the start in 1965 and have gone down to 5,000 signs. I think that answers the question, that we are still trying.

Senator PRESSLER. Very good. Would you please expand on Judge Pfeiffer's tour of South Dakota and his findings? Who exactly is Judge Pfeiffer?

Mr. KESZLER. Judge Pfeiffer was staff at the Department of Transportation. He was requested by the Governor to have a Federal hearing. He came out in 1977. He is an administrative law judge in Washington, D.C.

He came out to South Dakota. I might say I felt he did a good job. I think when he came back he was very cognizant of South Dakota. He traveled that State from east to west, north to south, and spent 4 days just traveling the highways to get a feeling of it before he went and took the decision and came back with a feeling that South Dakota almost by the letter of the law was not complying. But they were trying and had basically complied.

Senator PRESSLER. I think in South Dakota, you mentioned in your testimony—some of the other States may want to comment on this—maybe every State feels they are unique. But I come from a little town of Humboldt, S. Dak., which has about 450 people. We are on the interstate. There is a sign on the interstate which says "Gas and Food." But there isn't gas and food available at certain hours. There is a campground available.

The problem with the Highway Beautification Act is it allowed exemptions for urban areas in certain circumstances. We certainly don't want to put up a bunch of gawdy signs, but would wish to have a tasteful sign that would really tell tourists before they stop and turn off the interstate on those long stretches of road. It would seem such a sign would be of value to a tourist. Is that not correct?

Mr. KESZLER. Our study that I presented from Mr. Kent of the University of South Dakota I think has all of those facts and figures in it. That was done strictly through the traveling public and no South Dakotan was interviewed for it. It was strictly outside people. I think they pretty well proved that the service was where they needed it.

I might tell you one interesting sign that is legal in South Dakota that is a function of the Department of Transportation. We have the Black Hills National Cemetery. They have a nice sign right below that which says "no services."

Senator STAFFORD. People who are there probably don't care.

Senator BENTSEN. You mean nobody complains?

Senator RANDOLPH. Just to comment on the subject matter that has developed this mixture. Senator Pressler will not misunderstand. You used the word "tasteful".

Senator PRESSLER. I used it.

Senator RANDOLPH. I am recalling a sign that I saw recently. The sign said "Beer and Bible and other items for sale." Would that be a tasteful sign?

Mr. KESZLER. I wouldn't think so.

Senator RANDOLPH. It did attract people who went inside the establishment. Just in a spirit of levity.

Mr. PEARLMAN. Senator, if I may add, in defense of S. 344, there are a couple of provisions, sections (d) and (e) and (f), that do

permit signs in the right-of-way, more tasteful signs, with the Secretary of Transportation in consultation with the States designing signs that would give travelers appropriate information without detracting from the view.

Mrs. MARION FULLER BROWN. I don't know how many go to Vermont, but here is where tasteful signs informing the people have already been up at least a couple of years. I am on the Travel Advisory Council in Maine where we have spent a year and a half working out our system. We find with the interstate symbols that we can provide a great deal of information to the traveling public on uniform signs, much more than billboards are going to tell them.

They are beginning to put these up in our State. I think that all States have a right under either Senator Stafford's law or the present law to do much more with sign classes, information centers and directional signs. They have just never taken advantage of it.

Mr. MAXON. I think one positive aspect of Senator Stafford's bill is that it refers to the possibility of information centers. In California we have now 88 combined roadside rest stops and information centers. I do think that for the long term this is one thing that will be an alternate to the billboard announcing a coming attraction, because the billboard announcing a coming attraction is not a tasteful addition to the scenery. It violates the intent of the Highway Beautification Act, at least I think so. But an information center combined with the roadside rest center seems to be a good way to go in the future.

Senator Stafford's bill provides for such centers. I think that is the kind of opening we will need in the future to a way out of this real dilemma.

I can understand that a person who has a business, who is off the road a bit, does want the traveling public to know it. But if his only way of telling them it is there is to put up a sign and everybody else puts up a sign to show they are there, you end up with something rather unpleasant for the traveling public. That is part of the problem.

Senator PRESSLER. Let me get one thing straight. I am one of the original cosponsors of Senator Stafford's bill. How many people here today support that bill? Just put up your hands.

Everybody supports it. Who opposes?

Mrs. MARION FULLER BROWN. Not for all the same reasons.

Senator PRESSLER. It is a very interesting bill. Each State has——

Mr. PEARLMAN. I have suggested an amendment that Senator Stafford's bill be expanded for all new signs in States.

Mr. MAXON. I would like to concur with that.

Senator PRESSLER. This is an unusual panel, with a diversity of bills, all supporting the same piece of legislation. I have used up my time. I do have one more question. Again it is mainly directed to Mr. Keszler or anybody else who wants to comment on it. You may want to submit a written answer because the question is rather complicated.

Even though South Dakota has taken several thousand signs down, South Dakota still is not in compliance with the Federal law. Why is that?

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Mr. KESZLER. The reason they are not in compliance is because we call it terminology, but it probably goes a little deeper than that. Actually we allowed no police power basically or policing—we didn't allow anything financial to take down the billboard. We put the law in, but we didn't allow financial moneys tagged onto the bill.

The Federal Government said if we tied no moneys to the bill, how are we going to implement the bill? That is why they came back and said we were not in compliance at this time.

Senator PRESSLER. Thank you, Mr. Chairman. I would like to submit for the record approximately 10 letters I have from prominent South Dakotans in support of the Stafford bill. Thank you very much.

Senator BENTSEN. We would be delighted to have them in the record. They will be included. (See p. 357.)

If there are no further questions——

Senator STAFFORD. Mr. Chairman, would you indulge me in just one further brief inquiry?

I noticed Mrs. Lyons Brown reaching for the mike once or twice. I wonder if she is aware of the Garden Club's program as far as the beautification program is concerned.

Mrs. W. LYONS BROWN. The Garden Club of America, which I represent, is in support of Senator Stafford's bill. But I would like to say that the other big organization, which is called the National Council of State Garden Clubs, has more in numbers than ours but has not had quite as long a history of concern over billboards. We are very much alined with them on conservation issues. We exchange information with our counterparts.

I can assure you that garden clubs naturally are concerned about beauty, Mr. Chairman. That was the first precept. We are intending to work for the passage of stronger enactment in our own States.

I am fortunate now in being for the first time in my life in a decisionmaking position on my own planning commission in Jefferson County. They are working toward better billboards.

Senator STAFFORD. Thank you, Mrs. Brown.

I am pleased also to see Mrs. Kelly from the Garden Club here in the audience. Finally, I will comment on what you said about the distilleries and the billboards, which caused me to speculate privately that some day we might, if we are not careful, see a billboard which says Sow Old Forrester when gasohol gets in.

Mrs. W. LYONS BROWN. I didn't get to finish on that subject, but the distillers would welcome curtailment and better controls. It would be helpful to them. And they, like everyone else, are—I speak for two whom I spoke to yesterday—offended by proliferation of billboards and also they are concerned about misuse of the product, and they have big programs to try control, to have better safety on our highways.

Obviously billboards are not—they create hazards in the wrong place. It is one of their worst features.

Senator BENTSEN. Thank you very much.

Senator RANDOLPH. Mr. Chairman, would you indulge me 30 seconds? Senator Stafford has spoken in a vein of energy needs. Is that right, Bob?

Senator STAFFORD. That was my suggestion about SO Old Forrester.

Senator RANDOLPH. I want you to know in our hill country, West Virginia, there is a feeling that the energy problem could be solved with just pulverizing West Virginia coal and then that coal being sprayed with West Virginia moonshine. I am only saying that is a feeling among some people.

Senator BENTSEN. Thank you very much, Mr. Chairman, for that contribution.

Let me say we appreciate your testimony very much. As one who has very strongly supported funds for removing billboards and seeing they are properly placed, my difference happens to be in the fear that recognition of private property rights and compensation for it, and as one who has long been thinking of garden clubs and hard-working Rose Barion, I hope my opposition to S. 344 will not put me out of the club.

Thank you very much.

[Whereupon, at 12:30 p.m., the subcommittee was recessed, to reconvene subject to the call of the Chair.]

[Statements supplied for the record by today's witnesses follow:]

STATMENT BY ROSS BARRETT
BEFORE THE SENATE SUB-COMMITTEE ON TRANSPORTATION
WASHINGTON, D.C. - JULY 17TH AND 18TH, 1979

MR. CHAIRMAN AND GENTLEMEN, MY NAME IS ROSS BARRETT. I AM SENIOR VICE PRESIDENT OF METROMEDIA IN CHARGE OF OUR OUT-OF-HOME ADVERTISING GROUP. FOR TEN YEARS, I WAS PRESIDENT OF OUR FOSTER & KLEISER DIVISION WHICH HAS OUTDOOR ADVERTISING FACILITIES IN LOS ANGELES, CHICAGO, NEW YORK AND ELEVEN OTHER MAJOR MARKETING AREAS IN THE UNITED STATES.

I WOULD LIKE TO BEGIN BY REMINDING ALL OF US OF THE PURPOSES OF THE 1965 HIGHWAY BEAUTIFICATION ACT. THE CONGRESS CLEARLY OUTLINED THOSE PURPOSES DURING THEIR ORIGINAL HEARINGS.

VERY SIMPLY, THE ACT WAS INTENDED TO PRESERVE THE BEAUTY OF FEDERAL-AID HIGHWAYS IN SCENIC AND RURAL AREAS AND TO PREVENT THE UNDUE PROLIFERATION OF OUTDOOR ADVERTISING IN COMMERCIAL AND INDUSTRIAL AREAS. THERE WAS NEVER ANY INTENTION TO ABOLISH NOR TO UNDULY RESTRICT THE OUTDOOR ADVERTISING MEDIUM. ON THE CONTRARY, WHEN YOU READ THE RECORD, YOU SEE THAT THE INTENTION WAS TO ADMINISTER THE ACT IN A MANNER THAT WOULD PROVIDE FOR THE ORDERLY AND REASONABLE DEVELOPMENT OF OUTDOOR ADVERTISING.

USING THOSE CLEARLY DEFINED OBJECTIVES AS THE GUIDELINES, IT IS APPARENT THAT THE HIGHWAY BEAUTIFICATION ACT HAS WORKED, IS WORKING, AND IF GIVEN THE OPPORTUNITY WILL CONTINUE TO WORK IN THE FUTURE.

THERE ARE SOME HARD STATISTICS WHICH PROVE THE POSITIVE RESULTS THAT HAVE BEEN ACHIEVED BY THE 1965 HIGHWAY BEAUTIFICATION ACT. BASED ON THE LATEST REPORT OF THE GENERAL ACCOUNTING OFFICE, DATED

MARCH 27, 1978, THERE WERE ORIGINALLY SOME 729,000 SIGNS ELIGIBLE FOR REMOVAL UNDER THE FEDERAL HIGHWAY BEAUTIFICATION PROGRAM.

BASED ON THE MOST RECENT FEDERAL HIGHWAY ADMINISTRATION REPORT OF MARCH 31, 1979, MORE THAN 488,000 OF THOSE SIGNS HAD BEEN REMOVED. THAT IS AN ENORMOUS FIGURE. BY ALL ODDS, THE GREATEST REDUCTION IN OUTDOOR ADVERTISING SIGNS IN THE HISTORY OF THE UNITED STATES. TO REGARD THE REMOVAL OF ALMOST HALF A MILLION SIGNS AS A SYMPTOM OF FAILURE OF THE HIGHWAY BEAUTIFICATION ACT SEEMS INCOMPREHENSIBLE.

MUCH HAS BEEN MADE ABOUT THE FACT THAT 393,000 OF THOSE SIGNS WERE ILLEGAL PRIOR TO THE PASSAGE OF THE ACT. THE POINT IS THEY WERE STANDING ILLEGALLY BEFORE THE ACT AND AFTER THE ACT THEY WERE REMOVED.

THERE HAS ALSO BEEN CRITICISM BECAUSE OF THE 298,000 SIGNS WHICH BECAME NON-CONFORMING UNDER THE ACT, ONLY 95,000 HAD BEEN REMOVED AS OF THE FHWA REPORT OF MARCH 31, 1979. TO GET A TRUE EVALUATION, TWO FACTORS SHOULD BE CONSIDERED.

FIRST, THIS REPRESENTS THE GREATEST NUMBER OF LARGE-SIZE ADVERTISING SIGNS THAT HAS EVER BEEN TAKEN DOWN. IT REVERSES A 75-YEAR TREND WHICH HAS EXISTED IN THIS COUNTRY SINCE THE ADVENT OF THE AUTOMOBILE.

SECOND, WE ALL KNOW THAT IT TAKES A LONG TIME TO GET A COMPLEX NATIONAL REGULATORY PROGRAM INTO ACTUAL OPERATION. THAT IS PARTICULARLY TRUE OF PROGRAMS REQUIRING NEGOTIATED AGREEMENTS BETWEEN THE FEDERAL GOVERNMENT AND EACH OF THE 50 STATES--AS WAS THE CASE WITH THIS PROGRAM. ALTHOUGH THE ACT IS DATED 1965 IT WAS 1974, NINE YEARS LATER, WHEN THE LAST STATE PASSED COMPLIANCE LEGISLATION.

THE VERY FIRST EXPENDITURE FOR THE REMOVAL OF NONCONFORMING SIGNS DID NOT OCCUR UNTIL FISCAL YEAR 1971-- SIX YEARS AFTER PASSAGE OF THE ACT. ACCORDING TO THE GAO REPORT, MORE THAN 75% OF THE ACTUAL EXPENDITURES FOR SIGN REMOVAL HAVE OCCURRED DURING THE LAST THREE YEARS THE REPORT COVERS.

THE POINT IS THAT THE SIGN REMOVAL PROGRAM OF THE HIGHWAY BEAUTIFICATION ACT IS STILL IN ITS EARLY STAGES. TO REPEAL IT, OR MAKE RADICAL CHANGES AT THIS TIME WOULD CUT IT OFF JUST AS IT IS BECOMING MOST PRODUCTIVE.

BUT THE ACTUAL REMOVAL OF SIGNS IS REALLY ONLY ONE PART OF THE EFFECTIVENESS OF THE 1965 BEAUTIFICATION ACT. IT DOES NOT TAKE INTO ACCOUNT THE TREMENDOUS NUMBER OF SIGNS WHICH HAVE NOT BEEN ERECTED BECAUSE OF THE ACT. THIS PREVENTIVE PROTECTION HAS OCCURRED AT NO COST WHATEVER TO EITHER THE FEDERAL GOVERNMENT OR STATE GOVERNMENTS.

LET ME GIVE YOU THREE DOCUMENTED EXAMPLES FROM WIDELY DIFFERENT SECTIONS OF THE COUNTRY. DURING THE TEN YEARS PRIOR TO THE PASSAGE OF CALIFORNIA'S HIGHWAY BEAUTIFICATION COMPLIANCE LAW THE NUMBER OF PERMITS ISSUED ANNUALLY FOR ADVERTISING SIGNS AVERAGED 30,483. IN THE TEN YEARS AFTER THAT LAW BECAME EFFECTIVE THE ANNUAL AVERAGE DROPPED TO 13,053--A REDUCTION OF MORE THAN 17,000 OR 43%.

IN THE STATE OF FLORIDA, DURING THE SEVEN YEARS SINCE THE PASSAGE OF THEIR COMPLIANCE LAW OUTDOOR ADVERTISING PERMITS DROPPED FROM AN ANNUAL AVERAGE OF 32,293 TO AN AVERAGE OF 13,011--A REDUCTION OF MORE THAN 19,000 OR NEARLY 60%.

THE STATE OF NEW JERSEY HAS HAD ONE OF THE STRICTEST SIGN PERMIT LAWS IN THE NATION SINCE 1930. THAT STATE PASSED ITS HIGHWAY BEAUTIFICATION COMPLIANCE LAW LATE IN 1971. DURING THE SEVEN PRIOR YEARS ADVERTISING SIGN PERMITS AVERAGED 20,046. IN THE SEVEN YEARS FOLLOWING THAT LAW THE ANNUAL AVERAGE DROPPED TO 17,233 -- A REDUCTION OF NEARLY 3,000 OR MORE THAN 14%.

IT CAN BE REASONABLY ESTIMATED THAT THE HIGHWAY BEAUTIFICATION ACT HAS BEEN RESPONSIBLE FOR PREVENTING THE CONSTRUCTION OF APPROXIMATELY 500,000 SIGNS THAT WOULD BE ON OUR STREETS AND HIGHWAYS TODAY WERE IT NOT FOR THE REGULATIONS AND RESTRICTIONS CREATED BECAUSE OF THAT ACT.

AND AGAIN, I WOULD POINT OUT, THIS IS A PRODUCTIVE BENEFIT OF THE LAW THAT HAS NOT COST ONE DOLLAR OF COMPENSATION.

FINALLY, I WANT TO GIVE YOU A FIGURE WHICH I BELIEVE HAS NEVER BEFORE BEEN MADE PUBLIC.

EACH YEAR THE OUTDOOR ADVERTISING ASSOCIATION OF AMERICA PUBLISHES A DOCUMENT KNOWN AS THE BUYER'S GUIDE. IT LISTS, FOR THE ADVERTISERS WHO WISH TO USE THIS MEDIUM, THE AVAILABILITY OF OUTDOOR ADVERTISING IN SOME 7900 DIFFERENT LOCATIONS THROUGHOUT THE UNITED STATES. FIGURES FOR THESE LISTINGS ARE OBTAINED BY CERTIFIED STATEMENTS FROM ALL KNOWN OUTDOOR ADVERTISING COMPANIES WHETHER OR NOT THEY ARE MEMBERS OF THE OUTDOOR ADVERTISING ASSOCIATION. THE PURPOSE OF THIS INFORMATION IS TO HELP THE COMPANIES SELL SPACE. THIS PROVIDES A STRONG INCENTIVE TO REPORT ACCURATELY AND COMPLETELY.

In 1966 all companies reported a total of 296,911 advertising facings. In 1978 this same group reported a total of 233,470 facings. In other words, during the effective period of the 1965 Highway Beautification Law there has been a reduction of 63,441 standardized outdoor advertising signs in the United States. The vast majority of those 63,000 signs have been removed from rural and scenic areas.

In summary you see that approximately ONE MILLION outdoor advertising signs have either been removed or have not been erected as a result of the Highway Beautification Act. You see that FAR FROM PROLIFERATING the standardized outdoor advertising industry has actually experienced a reduction of 63,000 signs or some 22% since the Act was passed.

Surely these statistics prove that the Highway Beautification Act has had a substantial effect in restricting and regulating outdoor advertising signs on the nation's federal-aid highways.

S-344, the bill under consideration, would turn the whole problem of sign control back to the states. In Senator Stafford's own words, his bill would DISMANTLE the Highway Beautification Act of 1965.

A small minority who oppose billboards has taken some satisfaction from the General Accounting Office Report on billboard removal which was issued on March 27, 1978. While certain observations in that report are both accurate and constructive, it exhibits a basic lack of understanding concerning the intent of Congress in passing the Highway Beautification Act. Let me be specific.

In that portion of the study which covers the potential impact of sign removal on selected highways, the GAO details the results of observations on two stretches of the Federal-aid system, one in Georgia and one in Kentucky. Their study indicates that 40% of the signs on those highways would be removed under the Highway Beautification Act. They seem to find that a disturbingly small percentage. We must ask what other business in the United States could stand a 40% loss for beautification purposes. The GAO then points out that FHWA officials commented that other sections of highways could be selected where as many as 99% of existing signs would be removed.

We are most intrigued, however, with the GAO's final comment in this section. It reads as follows: "We agree that there have been noticeable benefits under the program, particularly on the interstate system. We believe that our evaluation of selected highway sections, however, shows that there are situations where many legal signs will remain after the program is completed."

Once again, we must come back to the initial purposes of the Act. It was to provide effective control not total prohibition. Surely effective control would contemplate the continued legal existence of some advertising signs. Yet the GAO in its recommendation to Congress gives as recommendation Number One the removal of ALL signs except those providing on-premise identification and landmark signs.

MR. CHAIRMAN, THE HIGHWAY BEAUTIFICATION ACT OF 1965 HAS PRODUCED SPECIFIC AND SUBSTANTIAL IMPROVEMENTS IN THE APPEARANCE OF THE FEDERAL-AID HIGHWAY SYSTEM. IT HAS NOT BEEN PERFECT. IT HAS NOT SATISFIED EVERYONE. NO FEDERAL LAW EVER DOES. IT HAS BEEN RESPONSIBLE FOR THE REMOVAL OR FOR PREVENTING THE CONSTRUCTION OF APPROXIMATELY ONE MILLION SIGNS DURING THE PAST 14 YEARS. IT IS A RARE FEDERAL PROGRAM OF ANY TYPE THAT COULD CLAIM TO HAVE BEEN MORE EFFECTIVE.

IN CLOSING, WE STRONGLY URGE THAT THE FEDERAL HIGHWAY BEAUTIFICATION PROGRAM SHOULD BE CONTINUED IN SUBSTANTIALLY ITS PRESENT FORM. TO REPEAL IT WOULD BE IMPRACTICAL AND WASTEFUL. TO TURN THE MATTER BACK TO THE 50 STATES -- AS THE STAFFORD BILL PROPOSES -- WOULD BE TO TURN THE CLOCK BACK TO 1965. IT WAS BECAUSE OF DISSATISFACTION WITH STATE CONTROL OF BILLBOARDS THAT THE HIGHWAY BEAUTIFICATION ACT WAS PASSED IN THE FIRST PLACE.

I AM GEORGE MCINTURFF. I LIVE IN STEVENSVILLE, MD. I AM A CONSULTANT ON ENVIRONMENTAL AFFAIRS, PRIMARILY OUTDOOR ADVERTISING CONTROL. MY PRINCIPAL CLIENT IS THE OAAA.

IN JUNE, 1974, I RETIRED FROM THE FEDERAL GOVERNMENT AFTER 33 YEARS SERVICE. THIS CONSISTED OF SIX YEARS DURING W.W. II WITH THE MARINE CORPS, 13 YEARS WITH THE FBI, AND 14 YEARS WITH THE FHWA.

IN APRIL 1966, FEDERAL HIGHWAY ADMINISTRATOR, REX WHITTON, ONE OF THE FINEST GENTLEMEN I'VE EVER KNOWN, ASKED ME TO TAKE OVER THE OUTDOOR ADVERTISING CONTROL PROGRAM UNDER THE HIGHWAY BEAUTIFICATION ACT OF 1965, WHICH HAD JUST BEEN PASSED LATE IN THE PREVIOUS YEAR. I DID, AND I'VE BEEN INVOLVED IN KEEPING BILLBOARDS WHERE THEY BELONG EVER SINCE. IN JUNE 1967, LOWELL BRIDWELL, WHO HAD REPLACED REX WHITTON AS FEDERAL HIGHWAY ADMINISTRATOR, ANNOUNCED TO THIS COMMITTEE THAT I WAS THE ONLY PERSON AUTHORIZED TO SPEAK FOR HIM AND FRANK TURNER, THEN DIRECTOR OF PUBLIC ROADS, IN THE NEGOTIATIONS WITH EACH STATE REQUIRED BY THE HIGHWAY BEAUTIFICATION ACT. DURING THE NEXT FIVE YEARS, I VISITED EVERY STATE EXCEPT ALASKA AND HAWAII, AND CONFERRED OR MET WITH GOVERNORS, STATE HIGHWAY OFFICIALS, STATE LEGISLATORS, AND OTHERS IN ATTEMPTING TO GET THE BEAUTIFICATION ACT ON TRACK.

IN 1967, WHEN I APPEARED BEFORE THIS COMMITTEE WITH LOWELL BRIDWELL, WE HAD SIGNED AGREEMENTS WITH THREE STATES, VERMONT, RHODE ISLAND AND VIRGINIA. FOR THE NEXT FIVE YEARS, CONVINCING THE STATES TO COMPLY WITH TITLE I OF THE HIGHWAY BEAUTIFICATION ACT WAS MY MAIN MISSION IN LIFE. IN 1968 AND 1969, PROGRESS WAS SLOW, ALMOST NONEXISTENT. IN 1970, WHEN CONGRESS AUTHORIZED MEANINGFUL FUNDING AND SECRETARY VOLPE NOTIFIED THE STATES TO COMPLY OR BE PENALIZED, THE ACTION PICKED UP, BUT PROGRESS WAS STILL SLOW. FIFTEEN STATES RESISTED COMPLIANCE TO THE POINT OF DEMANDING HEARINGS, ELEVEN WERE NOTIFIED FORMALLY IN FEBRUARY 1972 THAT THEY WERE ON THE BRINK OF LOSING 10% OF THEIR HIGHWAY FUNDS, AND THE LAST STATE TO COMPLY DID SO ABOUT THE TIME I RETIRED.

To think that the Highway Beautification Program is now in trouble is to me somewhat ridiculous. Critics point out deficiencies or slow progress in isolated States, which may truly be dragging their feet. The fault is not with the program, it's with FHWA for not insisting on compliance, and with Congress, for not funding the Program on a steady basis. I look back on the battle we had to get Nevada to comply, and I hear that they have removed most of their nonconforming signs and their Governor is in favor of keeping the Act. They don't want to see their progress wasted and they think the other States should be made to comply.

Yesterday, we heard Professor Floyd complain about the lack of progress, particularly in Georgia. A month or so ago I visited the highway department in South Carolina. There, an official of the department told me that the sign removal program had made a vast improvement on the primary system in that State.

Every now and then, I am asked how, after working to save the Program I can work for the OAAA. If they had a different goal, a different objective, I couldn't. They know where signs belong and where they don't, and I knew they knew this, and believed it, long before I considered working with them. I also know that in the last few years, the OAAA has done more to save the Highway Beautification Act from weakening amendments than any combination of conservationists. I also know that they have done this because they recognize the Act as reasonable regulation, which restricts their activities to places where they belong, but does not prohibit them, as some extremists would like. When I hear newcomers to Highway Beautification refer to the Act as the Billboard Barons Relief Act, I wonder if they are really as expert as they would like us to believe.

To make the Highway Beautification Program optional would be like saying to those who pollute our air and water, "comply if you want to, but don't bother if it's too much trouble." If we care about the view from the road, let's insist on its protection.

Thank you.

MARION FULLER BROWN'S VIEWS REGARDING SUMMARY REPORT OF THE COMMISSION ON HIGHWAY BEAUTIFICATION -- DECEMBER, 1973 -

We support the great majority of the recommendations in this report, and urge Congress, the President, and the States to act without delay in implementing them. With respect to control of roadside advertising, removal of the 660 foot limitation for controlled areas is particularly important. It also is vitally important that coordination of planning and design processes for improved visual quality of highway corridors be given high and continuing priority, and that present provisions of the Federal-aid highway program and applicable environmental laws be used to their full extent to achieve and maintain this quality.

There are, however, several proposals in this report which we do not support, or where we differ over the interpretation; and we believe the report fails to deal with certain other issues which must be faced with candor and determination if our highways are to reflect the best that American technology and leadership can provide. Congress and the President should be fully aware that there was substantial testimony in the Commission's hearings by many qualified groups and representatives of State and local government calling for strengthening the evident weaknesses

of the Highway Beautification Act of 1965, and supporting the following recommendations, which we now also endorse:

1. Improved control of directional signing

   A. Definition of "directional signs." Sec. 131(c)(1) lists certain "directional and other official signs" as one of the categories of signs permitted to remain in zones where advertising is otherwise prohibited. In 1972 and 1973 proposals were made by Congress to expand this category. We believe any such amendment would seriously weaken the law unless a clear definition of "directional sign" is provided. Since 1972 billboards throughout the country have systematically been altered to include incidental directional information. As a result, today an estimated 80 percent of existing nonconforming billboards could claim to be "directional signs."

   Any expansion of this exception made in the name of assuring that motorists will have needed directional information should be carefully limited to avoid creating a loophole for jumbo signs and other billboards to remain standing. Where certain additional types of directional information may appear to be justified, it can

and should be provided by unobtrusive, effectively designed signs or graphic displays.

It is recommended that Congress, by legislative directive, and the Administration, by national standards, clarify the definition of "directional signs" so as to assure that the exception in favor of these signs is not used as a means of subverting the objectives of the beautification program.

B. Expansion and upgrading of officially-sponsored information services. Sec. 131(f) authorizes signs within the right-of-way of Interstate highways giving specific information in the interest of the traveling public; and Sec. 131(i) authorizes States to maintain maps, directories and other advertising materials in safety rest areas, and to establish information centers in rest areas for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable.

Where these provisions of the law have been implemented, they have met with public acceptance and use, and have demonstrated that travel infor mation can be provided to motorists by combinations of several effective methods of service. However,

the incentive to expand development of these services is lacking so long as removal of roadside commercial advertising is delayed. Any claim that the present haphazard pattern of so-called commercial directional billboards is essential to the traveling public is merely an excuse to delay progress in providing the public with a comprehensive and coordinated system of information services which it deserves.

It is recommended that the Department of Transportation increase its active encouragement of the States to utilize the authority provided in Sec.131 (f) and 131(i) to develop information facilities and services, and that States expand their programs in this field, wherever possible working in cooperation with other State local and private agencies also concerned with disseminating highway travel information.

It is further recommended that the scope of Sec. 131(f) and 131(i) be expanded to authorize establishment of these informational facilities and services in areas adjacent to the Federal-aid Primary System as well as the Interstate System.

It is further recommended that Sec. 319(a) and (b) be amended to expand the authority of these sections to include Federal participation

in the costs of establishing information centers in rest areas for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable.

C. Schedules for removal of nonconforming signs. Proposed legislation in 1972 and 1973 called for delaying removal of nonconforming signs containing directional information until all other types of signs were removed. If enacted this establishment of priorities by Congress would have conflicted with the programs already underway in many States, added to the cost of these programs, and possibly delayed overall achievement of effective control of signs called for in the Highway Beautification Act. In practice, such a priority treatment of directional billboards favors national chain advertisers, and is discriminatory and detrimental to small independent businesses which cannot afford to compete with large advertising companies for sign sites on major highways.

We believe that schedules for removal of nonconforming signs should be determined by the State highway departments in accordance with their overall program plans, their local conditions, and their

development of expanded motorist information services.

We seriously question the need for a Congressional mandate which limits the States' ability to carry out their programs, and which may provide additional opportunities for pressure to unnecessarily delay implementation of their sign removal programs in the most efficient and economical manner.

II. Improving effective control of advertising in commercial and industrial areas.

Under present law zoned commercial and industrial areas and unzoned areas of commercial and industrial activity as determined by Federal-State agreements are excluded from the main prohibition of roadside advertising. These areas include large segments of Interstate and Federal-Aid Primary highways where billboards may remain subject to certain minimal limits on size, lighting and spacing. This provision of the law, Sec. 131(d), should be thoroughly reevaluated in the light of its impact in some States if the ultimate goals of Congress to correct and prevent further blight of highway corridors are to be

achieved.

New commercial and industrial zoning by municipalities is a continuing process. Frequently these zones contain extensive undeveloped areas in hopeful expectation of attracting actual development in the future. In unzoned areas, occassional commercial establishments are scattered along highways, often as nonconforming uses or variances to the general pattern of land-use in the vicinity. Under the present terms of the Highway Beautification Act, all such areas are opened up to billboard development, and threaten to grow into "billboard alleys" and strip development which prejudice future orderly development of highway corridors.

Moreover, the public neither understands or approves of a sign control program which pays advertisers to take down their signs today only to let them go back up in the same or nearby locations in the future without any visible change in the character of the neighborhood.

The shortcoming of the present law appears to be its failure to tie the presence of billboards to actual commercial or industrial development in which roadside advertising is a compatible

activity. The character and design of commercial and industrial areas vary widely. Many shopping centers or industrial parks would suffer serious economic disadvantage if indiscrimninate commercial signs were allowed around them. A more realistic and economically valid approach is needed for effectively controlling advertising signs in commercial and industrial areas.

It is recommended that the Secretary of Transportation and the States review their agreements relating to control of signs in zoned and unzoned commercial and industrial areas, and revise them where it is necessary in order to correlate the areas where roadside advertising is permitted with the actual use of such land for substantial commercial or industrial development, and, further, to correlate standards for size, lighting and spacing of permitted signs with the character of such development in the interest of the best possible coordination of highway corridor development and local land use planning.

It is further recommended that Congress consider establishing a deadline after which new commercial and industrial zones or unzoned commercial and industrial activity will not automatically create

exceptions to the area where roadside advertising is prohibited.

In the alternative, it is recommended that Congress amend the law to authorize States to acquire roadside advertising rights as part of the cost of construction of highways as a means of protecting the public highway investment from future detrimental effects of changes in areas of zoned or unzoned commercial and industrial activity. The States had and effectively used this authority under the 1958 Bonus Act.

III. Providing effective control of on-premise signs.

Much of the sign clutter which the public finds objectionable and which deteriorates the visual environment of streets and highways can be traced to lack of control of on-premise signs. We believe the blanket exclusion of on-premise signs from regulation under the Highway Beautification Act of 1965 was a mistake, and we note that the 1958 Bonus Act recognized the need for regulating these signs along Interstate highways, and provided certain minimum standards for their control. As a result of the present exception, on-premise signing in many areas now has gone beyond its logical justification as identifying business property to passerby, and is directed to motorists on nearby highways.

The present unregulated competition of these signs to outdo each other is both costly and wasteful. Moreover, in light of the practice of providing brand name and logogram markers on official service signs, many forms of on-premise signing (particularly high-rise pylons near interchanges) is unnecessary. Much of the pressure to overload motorists with advertising messages while driving

is also being eliminated as information is provided by officially-sponsored information services along the highways.

We support the recommendation that independent consideration should be given to regulation of on-premise advertising by State and local government as a means of creating better local highway corridor environments.

However, we believe there is a responsibility for Federal leadership in providing national standards for regulation of the size, lighting, spacing and number of on-premise signs erected for the purpose of being seen from Interstate highways, as was recognized in the 1958 Bonus Act.

We believe there also is a responsiblity for Federal advisory guidance for States and local governments in developing technically sound and administratively effective programs for regulation of on-premise signing. The goal of such programs should be to plan and manage the available space for on-premise signs so as to provide essential identification of business activities without endangering the safety of traffic operations and the visual quality of local environments. At a time when energy conservation must have high priority, such management of local signing seems preferrable

to more extreme measures for indiscrimninate reduction of such signs.

It is recommended that Sec. 131(c) be amended to provide that in areas adjacent to Interstate highways on-premise signs and signs advertising the sale or lease of land where they are located be made subject to national standards in accordance with the policy stated herein.

It is further recommended that the Secretary of Transportation, in consultation with the States and the Secretary of Housing and Urban Development, develop advisory guidelines for correlation of the effective control of on-premise signing with land development in highway corridors.

IV. Improving methods of compensation for hardships due to sign removal.

The Commission's report is neither complete nor candid unless it deals squarely with the problems created by the requirement of the present law that States must pay cash compensation to signowners and landowners when nonconforming signs are removed from controlled areas of the roadside. More than any other facet of the law, this one was the subject of critical testimony at the Commission's hearings.

We support the basic purpose of the law to minimize economic hardship caused by removal of existing nonconforming signs. However, after almost eight years of frustrating ex-

perience, it is clear that the approach used in the present law has done more harm than good.

State law regarding elimination of nonconforming land uses under zoning codes provide for relief of economic hardship in a variety of ways, generally by allowing amortization periods. Under the 1958 Bonus Act some 22 States successfully used this procedure in sign control along Interstate highways. State and Federal courts have ruled that these procedures do not constitute unlawful taking of private property rights.

By requiring cash compensation for removal of signs along Interstate and Federal-Aid Primary highways the present law has had the following results:

- It has created confusion regarding the States sovereign police powers, and their right to use this power in controlling signs on other parts of their highway systems.
- It has been used to attack the authority of cities and counties to enforce local sign control ordinances without cash compensation.
- It has led to widespread litigation which in some States has stalled orderly implementation of the sign control program.
- Payment of full value for nonconforming signs which later are relocated in other sites has led to questioning whether the present compensation procedures result in windfalls to the advertising industry.

- Administration of the present compensation procedure has become excessively complex. A survey of State experience has reported that administrative overhead for acquiring signs is as much as 40 percent of capital outlay.
- Compensation under FHWA's suggested national schedules calls for payment of business losses which are not compensable under eminent domain laws and constitutions of many States, thereby creating further conflict with State law.
- Erection of new signs prior to enactment of State laws complying with the Federal law has greatly increased the number of signs which would qualify for cash compensation under the Commission's present proposals, and make the 1966 estimate of the total cost of compensation completely invalid. Reported experience of the States to date indicates that since 1965 States have removed 9,829 compensated signs at a total cost of $10,015,196.

To eliminate the conflict between Federal law and State laws, and make the compensation program more realistic in relieving actual hardship, we urge that Congress replace the present Sec. 131(g) with a new approach based on the following policies:

(1) States should be allowed to determine the form and amount of relief for hardships due to removal of nonconforming signs in accordance with the constitutions and laws of the State.

(2) Where a State pays monetary compensation for remoal of signs, Federal participation in such payment shall be authorized.

(3) Wherever a State does not pay monetary compensation for removal of signs, the Secretary of Transportation may approve Federal payments in the nature of equitable relief to minimize economic hardships to signowners and landowners.

(4) Federal payments for equitable relief may be based on costs of relocation of nonconforming signs, or on present value of a sign, as may be appropriate. Value may be determined by reference to replacement cost less depreciation, gross rent multipliers, market sales, or other approved bases, as circumstances may indicate is desirable.

(5) The Secretary should be authorized to approve Federal participation in costs of State acquisition of advertising rights in roadside areas where such acquisitions are appropriate.

(6) Administrative procedures for processing sign removal projects should be simplified as much as possible.

This recommendation is made with the hope it will receive serious and sympathetic consideration by the Congress. The national program for systematic elimination of roadside advertising signs which have become nonconforming under the States' sign control laws is unique in its magnitude and impact on the advertising industry and on the States. It calls for an appropriately designed method of implementation.

The recommendation made here draws on precedents in other situations where Congress has provided relief from economic hardship while achieving important national goals of the Federal-aid highway program. These approaches have been successfully applied to payment of costs of utility relocation, and in the Uniform Relocation Assistance and Real Property Acquisition Act of 1970. It is a reasonable and workable solution to the problem which, more than any other, has vexed Congress, the Administration, the States, and the public for 8 long years, and which must be solved if the high expectations of the highway beautification program are to be realized.

STATEMENT OF MRS. MARION FULLER BROWN
MEMBER OF THE COMMISSION ON HIGHWAY BEAUTIFICATION
BEFORE THE
U.S. SENATE COMMITTEE ON PUBLIC WORKS
RELATING TO
S. 3161 HIGHWAY BEAUTIFICATION ACT OF 1974

Mr. Chairman and Members of the Committee --

I appreciate very much your courtesy in allowing me the privilege of testifying in person at this hearing.

Your Committee is to be complimented for its continuing interest in highway beautification in the face of other demands which have high priority. However, it once again seems imperative that the Highway Beautification Act of 1965 be protected from any downgrading or weakening of its program that is barely getting underway in a majority of the States after eight long years. In fact this is the time for legislative action to increase the effectiveness of the law, correct aspects of the program where experience has shown there is a need, reaffirm the original goals of the law, and encourage Federal authorities to work in closer harmony with the State transportation departments according to the traditional Federal-State cooperation in highway matters. By this I mean to emphasize the importance of allowing States sufficent flexibility in dealing with their own peculiar situations, always, however, consistent with the national goals Congress has established.

As a Member of the Commission on Highway Beautification, I am in agreement with many of the recommendations in the Commission's final report, filed December 31, 1973. There are, however, several proposals in the report, as well as in legislation proposed to Congress in 1972 and 1973, to which I have taken strong exception, or on which I differ in specific interpretation. For the sake of brevity, I call your attention to my statement to the Senate Committee on Public Works regarding S. 502, the Federal-Aid Highway Act of 1973. I have attached a copy of this statement to my remarks today, and I request that it be made part of the record of this hearing as many features of that 1973 bill are identical with S. 3161 which is now before you.

In my testimony today I would like to deal with matters I raised in the Commission's final report which were not dealt with there as fully or candidly as I feel was justified

by the considerable testimony they received in the seven public hearings of the Commission. In my opinion they must be faced squarely and answers must be found for them if the highway beautification program is to move forward without further delay. Although these are my own views as a Member of the Commission, they have public support from many qualified groups throughout the fifty States.

I would like to speak briefly and specifically to five problems:

PROVIDING ADEQUATE DIRECTIONAL INFORMATION FOR MOTORISTS

There is no question that motorists need information as they travel, but it is highly questionable whether billboards, which have provided a limited amount of information in the past, are the best or proper medium in light of the declared policy of Congress to "protect the public investment in highways, to promote safety and recreational values of public travel, and to preserve beauty." Certainly there is no justification for the proposals of the 1972 and 1973 bills which would have expanded the categories and numbers of directional billboards allowed to remain or be erected along the highways. Feasible alternatives to billboards are being used in several States, and more development of travel information systems can occur under the present law. The proclaimed reliance on unwanted and unsightly commercial signs for travel information is in fact a self-serving claim of special interests. And in this regard I invite attention to two recent Highway Research Board publications on this subject, which I have attached to my remarks. They are entitled: "An Exploratory View of Tourist Information Systems" and "Information Versus Esthetics: The Gut Issue in Billboard Control." The first of these describes motorist information programs now underway in Vermont, Nebraska and Oregon. The second reviews the present provisions for directional information and offers an evaluation of their effectiveness in meeting motorists' needs. I would request that these items be made part of the record of these hearings.

I have four specific recommendations for improvement of directional information in light of the ongoing program of removing nonconforming billboards.

First: Congress should strengthen its expression of intent that the Secretary of Transportation and the States make greater use of and accelerate development of the types of information now authorized in Sec. 131(c)(1), 131(f) and 131(i) of the law. These authorize directional and other official signs, travel information in rest areas and similar

locations, and official signs with information in the specific interest of the traveling public.

Second: Sec. 131(f) should be amended to authorize posting of information of specific interest to the traveling public on the right-of-way of Primary System highways, as it now is on Interstate highways. This is provided for in S. 3161.

Third: Sec. 319(a) should be amended to authorize Federal participation in construction of information centers in rest areas and other roadside sites along Interstate highways.

In connection with my next recommendation I would like to call attention to the Department of Transportation's published explanation of the scope of Sec. 131(c)(1), a copy of which is attached for the record. Under DOT's interpretation, a broad range of signs for publicly and privately owned tourist attractions are allowed under standards for size, lighting, spacing and numbers. Such signs can and do meet many motorist information desires; and therefore, my fourth recommendation is that Congress should make clear that directional and other official signs referred to in Sec. 131(c)(1) are limited to those described in the present National Standards, and do not include commercial billboards with directional messages on them.

Concerted efforts to interprete directional signs as including commercial signs and billboards containing any form of directional message actually undermine the purpose and effect of billboard control. Their result would be to proliferate billboards under another name, and give legitimacy to virtually all billboards that now are nonconforming. The Commission has been advised that in one typical State, Michigan, 80 percent of the present nonconforming billboards now contain messages that could be considered directional. The 1972 proposal of a moratorium on removing directional signs encouraged the addition of directional messages in the hope of escaping removal, despite the fact that commercial areas adjacent to the highway were available for tourist-oriented business to use.

One of the glaring facts that became apparent in the Commission's hearings is that there is little incentive for States to move forward with their own uniform directional signing, information centers, and other facilities so long as obstacles continue to be placed in the way of removing nonconforming billboards. Along with this, it unfortunately appears that States which have wished to engage in developmental work on information systems have been hampered by Federal policies and red tape in getting approval of their

projects.

It is clearly incumbent on Congress and the Administration to see that progress in this direction is not further impeded by creating more exceptions or delays that hamper this part of the program. I am convinced that the public wants progress in this direction; and as an indication of public attitudes on billboards, I submit for the record an abstract of the report entitled "A Comprehensive Evaluation of Highway Sign and Billboard Regulations", prepared by the University of Akron for the Ohio Department of Highways and U.S. Bureau of Public Roads in 1967. It shows solid public support for strict and systematic control of roadside advertising.

MORE EFFECTIVE CONTROL OF BILLBOARDS IN COMMERCIAL AND INDUSTRIAL AREAS

The provision of the present law (Sec. 131-d) that all zoned commercial and industrial areas, and all unzoned commerical and industrial areas as defined by the States' agreements with the Secretary of Transportaion, shall be open to billboards has created serious problems. This is particularly serious in States where signs have actually been removed only to have more signs go up under permits in newly created zones. There is no prospect of stabilizing the pattern of roadside advertising as long as billboards are allowed to move into every new commercial or industrial zone created by local ordinances and unzoned area created by building a new roadside commercial establishment. In Maine we already have seen new signs go up in areas where they previously had been removed as these changes in roadside land use have occurred.

This has brought much criticism from the public, which sees it in the long run as frustrating the goal of Congress for achieving any permanent protection of Interstate and Primary highways. In addition, the automatic exception for these areas has led in one instance to State legislation designating practically all its interstate mileage as commercial and industrial in order to permit billboards. In this case the Secretary's refusal to approve such action was upheld by the U.S. District Court. In commenting on this matter, the court said:

> These commercial corridors afforded the State "virtually no protection from outdoor advertising and subjecting the Interstate traveler to an array of billboards in the midst of an area obviously agricultural. For example....

on Interstae 90, crossing the State east to west, there would be only two short segments from one border to the (approximately 380 miles) in which billboards would not be permitted. Each of them would have been approximately two miles long." (South Dakota v Volpe, 353 F. Supp. 335 at 340, January 1973)

The court also quoted the remarks of Senator Randolph in the 1965 debates which clearly indicated that such action would be contrary to Congressional intent, (89 Congressional Record 26820) I have attached a copy of this decision to my statement.

I recognize that new commercial and industrial zones must be provided by local government when community growth requires them. But designation of extensive areas of vacant rural land as being available for commercial or industrial use should not automatically open it up to billboards. The true test should be whether there is substantial development of these uses at the time, and whether billboards are compatible with the particular kind of commercial or industrial development that occurs. These same tests apply also to unzoned areas.

Therefore, I urge Congress to establish a deadline after which new commercial or industrial zoning or unzoned commercial or industrial activity will not automatically open up these areas to billboards, but will control them by standards providing a realistic basis for long-range stabilization of advertising along highways.

EFFECTIVE CONTROL OF ON PREMISE SIGNS ADJACENT TO INTERSTATE HIGHWAYS

As a New Englander I strongly believe in solving local problems at the community level wherever possible. I support the Commission's recommendation that local governments should regulate on-premise signs along local roads, but I believe the growth of on-premise signs around the interchanges of the Interstate System is a nationwide problem calling for a national solution. In effect, these signs are another attempt to circumvent the objective of Highway Beautification and they have reduced incentives to use alternatives which can provide the same information through official signing.

The 1958 Bonus Law controlled on-premise signs, and the National Standards promulgated under that law are still being used by some of the original Bonus States. The present

law (Sec. 131-c) could easily be amended to require that in all States the on-premise signs adjacent to Interstate highways must conform to National Standards relating to size, height, lighting, spacing and numbers. I recommend that Congress amend the present law in this way.

PROBLEMS OF COMPENSATION

Although the provisions of the Highway Beautification Act requiring cash compensation for removal of nonconforming signs have always been controversial, and the Commission's hearings produced extensive testimony on a variety of problems resulting from them, neither the Commission's report nor S. 3161 deal with this subject, except as to the present hiatus regarding Federal participation in compensation payments.

The mandatory requirement for cash compensation has all but stopped removal of nonconforming signs in many States, and these difficulties will become even worse if Congress applies it to removal of signs beyond 660 feet from the highway and to all nonconforming signs erected prior to the enactment of S. 3161. Actually S. 3161 will create a new hiatus.

Some of the main problems created by mandatory cash compensation are discussed in my separate remarks in the Commission's Summary Report, and I trust they have already been studied. While I believe they amply justify revision of this feature of the law, I want to emphasize today the question of whether Congress is really prepared to commit the public to paying what it will cost under this method of dealing with sign removal hardships.

A survey in September 1973 by the Right-of-Way Committee of the American Association of State Highway and Transportation Officials (AASHTO) reports that up to that time 9,829 compensated sign removals had cost $10,080,196. Standardized signs paid for under FHWA's National Schedules averaged $1,982 per sign. Signs paid for under schedules developed by individual States for their own use averaged $1,746 per sign. Using FHWA's current estimate (November 1973) that there are some 296,300 nonconforming signs yet to be removed, the toal cost of their removal would range between $525 million and $600 million.

To this must be added the costs of Administration, which the States must pay without Federal participation. For example, Caolifornia found its average payment for signs was $1,670,

and its average overhead expense was $680, or 41 percent of the capital outlay. This high cost of administering removal of nonconforming signs was verified by a survey of the Highway Beautification Commission in January 1974 which estimated the States' administrative costs over the next 5 years would be over $65 million.

All this does not take into account the added cost of cash compensation for removal of jumbo signs in areas beyond 660 feet from the highway -- of which there are thousands -- and nonconforming signs lawfully erected between the date of the 1965 law and the present time -- surely amounting to many more thousands.

Estimates of a total future cost for cash compensation will depend on what action Congress takes to expand the scope of the law, but I urge Congress to study the implications of the AASHTO committee's survey, and other cost data which may be obtainable. If Congress is not prepared to fund this cost, fully and with assurance that nonconforming signs will be removed within a reasonable time, I believe it should candidly tell the American people that they cannot expect to have effective control of billboards along their highways.

To do this would be a tragedy; but to continue the present stalemate is a senseless travesty. The history of highway beautification since 1965 indicates that Congress is not willing to fund this program on its present basis, and successive Administrations have not been willing to release funds for this purpose even to the extent they are appropriated. The plain fact is that Congress must find a more realistic and publicly acceptable method for dealing with sign removals and situations where economic hardship arise. Ironically, these problems seem to have been solved with much less difficulty under the 1958 Bonus Act, and are handled effectively under local sign control ordinances throughout the country every day.

I proposed constructive recommendations on this matter in the Commission's Summary Report, and I wish to emphasize them again today. I believe the problems of compensation could be solved by the States, and cases of resulting economic hardship could be relieved by the following revisions of Sec. 131(g) of the present law:

(1) Amend Sec. 131(g) to add a statement that the form and extent of compensation should be determined by State law, making it clear that where State law allows owners to be compensated by postponing actual removal of nonconforming signs for an amortization period, this procedure will be

accepted as complying with the Federal law;

(2) Authorize Federal participation in the cost of removing signs when cash compensation is required by State law or when States acquire advertising rights by eminent domain.

(3) When State law does not require cash compensation and actual hardship to signowners or landowners is demonstrated, authorize the Secretary of Transportation to provide special payments in the nature of equitable relief in accordance with appropriate principles of valuation.

I wish to emphasize that this approach is not new, but merely brings the beautification program into line with policies and procedures which the Federal-Aid Highway Program has successfully used in similar situations in the past. The 1965 Highway Beautification Act calls for the States to use their police power to zone billboards out of certain roadside areas, but then says they may not use their police power to eliminate nonconforming signs which result -- something which is fundamental and well-accepted in zoning practice. Congress did not hamper the States in this way when it directed that access to Interstate highways must be eliminated; and it did not do this when it directed that utilities be removed from Interstate rights-of-way. Nowhere else in the Federal-aid highway law, so far as I am aware, has Congress required the States to treat private interests as property rights when it is contrary to the States' laws and constitutions.

On the other hand, where Congress has recognized that economic hardships have resulted from other aspects of the highway program, it has authorized Federal participation in special payments as a form of equitable relief. This method was considered satisfactory in relieving hardships caused by forced removal of utilities, and for assisting homeowners and small businessmen meet costs of relocation which were not compensible under State eminent domain law. Why is it not acceptable for removing billboards?

LAND ACQUISITION FOR SCENIC ENHANCEMENT

Before concluding my statement I would like to mention two other matters.

Acquisition of land and easements for scenic enhancement under Title III of the Highway Beautification Act has been an effective and popular part of the States' overall program; but since 1970 it has had insufficient funding due, in part, to shifting priority for use of beautification funds to bill-

board control. It would facilitate the States' advance planning and simplify their administration of these activities if they were allowed the option of acquiring scenic interests either as part of the process of acquiring right-of-way or rest area sites or with beautification funds.

I understand that the Administration may now favor such a modification of the law, and I wish to support this recommendation.

THE NEED FOR HIGHWAY BEAUTIFICATION RESEARCH AND DEVELOPMENT

Finally, I wish to call attention to the Commission's recommendation that during the next few years high priority be given to support for research and development projects relating to highway beautification. Numerous witnesses in the Commission hearings either noted the need for research, or else opened up new ideas which, with refinement, offer the prospect of greatly improving the pleasure and efficiency of highway travel, and the quality of roadside environment.

I believe that even a modest amount of special support by Congress for specific research on highway beautification would yield substantial benefits, and go far to guarantee that many of the problems which now seem difficult would be effectively and economically solved in the years ahead.

In closing, Mr. Chairman, I wish to repeat my feeling about the importance of the action you are being asked to take this year. I do not see how Congress in good conscience can continue to approve this program without correction of those features which have proved to be obvious loopholes and obstacles to achieving the purpose of the law. As a Member of the Highway Beautification Commission I want this program to succeed, I am sure it can succeed with your help in providing a sound basis for it in the law.

Thank you.

Statement of

STEVEN C. PEARLMAN

Legislative Representative

ENVIRONMENTAL ACTION, INC.

My name is Steven C. Pearlman, Legislative Representative of Environmental Action, Inc., a national citizen's organization originally formed to coordinate Earth Day in 1970.

Since 1973, Environmental Action has, among other things, coordinated the activities of the Highway Action Coalition, an umbrella organization of national and local citizen groups (including Environmental Action, Environmental Policy Center, Friends of the Earth, National Association of Railroad Passengers, and the Sierra Club) concerned with federal transportation policy and its impacts on our society. Last year these groups, along with the National Association of Counties, National League of Cities, a number of states, and many other organizations worked actively, but unsuccessfully, against amendments to §131 of Title 23 U.S.C. (the Highway Beautification Act) during consideration of the Surface Transportation Assistance Act of 1978.

Since the four year highway and public transportation bill passed Congress last year, the Highway Action Coalition has become essentially dormant. Today I represent officially only Environmental Action, Inc.

The Highway Beautification Act (hereinafter HBA) as passed in 1965 declared as its purpose:

> "that the erection and maintenance of outdoor advertising...adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty."

While that purpose continues to this day to be stated in

§131 of Title 23, other provisions of that section, as well as FHWA regulations and practices derived from its authority, now work to ensure that the stated goal will never be met.

While some highway beautification has indeed been achieved since the passage of the Highway Beautification Act in 1965, the law could more aptly be described today -- in the words of a great friend of highway beautification, Senator James Stafford of Vermont -- as the Billboard Protection Act.

The Act as currently written prevents states and communities from removing hundreds of thousands of nonconforming Interstate and primary highway billboards under exercise of their traditional zoning and land use control powers.[1] This has mandated a tremendous financial burden on states wishing to regulate outdoor advertising. Most states simply cannot or will not meet this burden, with the result that hundreds of thousands of signs which would otherwise be removed are effectively protected by federal law.

Furthermore, the HBA continues to allow states wishing to avoid sign removal to do so under any number of gaping loopholes. For example: (1) designation of commercial or industrial zones where in reality no such activities occur; (2) exemptions for directional signs in cases of alleged "economic hardship"; and (3) lack of criteria or prioritization for sign removal, so that worthless, uneconomical signs on seldom used routes are often the first to be removed and "compensated."

Moreover, vastly insufficient federal financial assistance or even enforcement of the Act's requirements has resulted in only 31% of all nonconforming signs having been removed to date (not including the hundreds of thousands of signs rendered compensable by the 1978 amendments). Lack of federal enforcement of

the requirement that states provide "effective control" of the erection and maintenance of outdoor advertising or lose 10% of their federal highway apportionment has permitted many states to simply ignore the law. For example, New Jersy and Missouri have removed none of their nonconforming signs; Rhode Island, Virginia, Florida, Georgia, Tennessee, Wisconsin and Louisiana have removed less than 10% of theirs. In fact Louisiana has removed only 9% of its illegal, noncompensable signs, without any reduction in federal highway assistance.

Theoretically, the Highway Beautification Act could be made to achieve its stated goals if it were properly enforced and funded. More realistically, major changes in the Act, including a roll back of the 1978 amendments and greatly increased appropriations, would be required to get the program moving again. Ideally, Congress could follow the advise offered by the General Accounting Office in its report entitled "Obstacles to Billboard Removal":

> "In the light of the problems and limited progress by most states in removing nonconforming signs, it appears that the objectives of the Highway Beautification Act will not be accomplished in the near future. GAO therefore recommends that the Congress reassess the program. If the Congress wants to strengthen the removal program, GAO recommends that it amend the act to encourage the States to-
>
> Remove all signs except those on-premise and landmark signs or
>
> Remove all signs, except on-premise signs, landmark signs, and signs in areas of actual commercial or industrial use.

Senator Stafford, however, believes that these changes are unlikely to be adopted given the history of recent congressional amendments of the HBA. Senator Stafford has proposed legislation, S.344, which, basically, would make state participation in the Highway Beautification Program voluntary. States willing to participate would be eligible for 80% federal funding for removal of non-conforming signs. States wishing to regulate billboards solely under state or local authority

would be able to do so without federal restriction. Those states wishing to do nothing to regulate billboards, of course, would no longer be limited by the few remaining meaningful restrictions of the Highway Beautification Act.

We greatly admire and appreciate Senator Stafford's many efforts on behalf of highway beautification over the years. We have great respect for his judgment on how, politically, highway beautification is most likely to be enhanced.

While we might continue to hope that Congress and FHWA would strengthen the HBA, we have very reluctantly come to the conclusion that S.344 represents a more realistic approach to billboard removal. With one important reservation, we support Senator Stafford's bill.

We propose that S.344 be amended to reinstate the "control" as opposed to the "acquisition" aspect of the Highway Beautification Act. Federal highway beautification restrictions should continue to govern currently non-existent signs where compensation is not an issue. Under the Stafford bill, no restiction on new signs would bind any state not choosing to take part in the federal program.

According to FHWA, "a total of 218,321 additional signs would have been erected if the control aspects of the Highway Beautification Program had not been in operation."[2] This may be one of the few accomplishments of the HBA which still has force and meaning today.

We recommend that all requirements of S.344 applicable to states wishing to avail themselves of federal assistance for billboard removal be extended to cover all billboards not presently in existence in all states. Such a provision would cost federal, state and local government nothing and would not entail the issue of "just compensation" on which the billboard lobby based its arguments for change in 1978.

FOOTNOTES

1. Secretary of Transportation Brock Adams summarized in a letter to Congressman Peter Kostmayer on August 17, 1978 the potential impacts of the proposed amendment to the HBA which passed Congress later that year:

> "We are very concerned that these amendments would seriously undermine the integrity of the outdoor advertising control program and would inject the federal government into areas which have long been the responsibility of state and local government.
>
> The Highway Beautification Act has consistently been interpreted to require compensation only in those cases where signs are removed in furtherance of the Act. Typically, localities also regulate activities such as outdoor advertising pursuant to zoning ordinances that terminate nonconforming uses after a period of time by amortization. Section 116 of the bill would prohibit removal without compensation even under such local zoning ordinances. Federal protection would thus be provided for outdoor advertisers against legitimate local regulation that is not related to the specific purposes of the Highway Beautification Act. This would represent an unprecedented intrusion by the federal government into the prerogatives of localities to control land uses within their jurisdiction. Moreover, by requiring zoning authorities to give sign owners special treatment, it would raise constitutional problems of discriminatory treatment. Since most of these signs are not reached by the federal Act, they would in effect be guaranteed the right to stay up or receive compensation for removal, a protection not granted any other commercial interests. Local authorities would be inclined to leave signs up rather than pay compensation and therefore undermine their own zoning laws." (Emphasis added)

2. "Highway Beautification Program Digest", April 30, 1979, Federal Highway Administration, Junkyard and Outdoor Advertising Branch, Real Property Acquisition Division, Office of Right-of-Way, Washington D.C., p. 24.

National Wildlife Federation

1412 16TH ST., N.W., WASHINGTON, D.C. 20036

202—797-6800

July 18, 1979

Statement of David G. Burwell, National Wildlife Federation Staff Attorney, Before the Transportation Subcommittee of the Senate Committee on Environment and Public Works, Regarding S.344, the Federal Highway Beautification Act of 1979.

Mr. Chairman, I appreciate the opportunity to testify before the committee on the regulation of outdoor advertising. My comments will be very brief.

My name is David G. Burwell and I am a staff attorney with the National Wildlife Federation, a 4.1 million member organization dedicated to the conservation and wise use of the natural resources of the North American Continent. The Federation has had a continuing interest in the Federal Highway Beautification Program since its inception in 1965.

We support S. 344 as the best remedy to a bad situation. The statewide system of control contemplated by Section 131(c) of the bill will ensure effective regulation of billboards in participating states and close up some of the loopholes in coverage that existed even prior to the amendments contained in Section 122 of the Surface Transportation Assistance Act of 1978.

However, there is no getting around the fact that the 1978 Amendments dealt a crippling blow to federal efforts to control outdoor advertising. Senator Stafford was completely accurate in his remarks accompanying his introduction of this bill when he stated that the "just compensation" amendments to Subsections (g) and (k) of Section 131 had transformed the Act

into "more a protection for billboards than the cause for their removal."

If the Highway Beautification Act is to make any sense at all it must be interpreted to allow non-compensatory state control of billboards pursuant to traditional state police powers to regulate public health, safety, and welfare. States were certainly allowed such control prior to passage of the 1978 Amendments and there is legislative history in support of a Congressional intent to preserve that power. For example, Representative James Howard stated, with respect to the 1978 amendments:

> The provisions of the bill do no more than clarify existing law and assure the continued orderly removal of signs consistent with the law. In this regard the provisions do not propose anything that is new. Rather, they are intended to strengthen and fully effectuate the Beautification Act's purposes.

This interpretation, however, is not consistent either with the interpretation of the Amendment adopted by the Federal Highway Administration or the words of the Amendment itself, which appear to require "just compensation" for all signs removed, whether removal is pursuant to federal or state law. The Federal Highway Administration has interpreted this Amendment to require <u>full</u> compensation at <u>fair market value</u> for all signs removed, even if the signs are removed pursuant to traditional state police power to regulate outdoor advertising through zoning restrictions.

This interpretation, while obvious, is not necessary. We suggest that S. 344 be amended to adopt Representative Howard's interpretation that Section 131, in its present form, places no restriction on state control over outdoor advertising. This could be done not by further amendments to Section 131(g) and (k), but by the addition of a new subsection (r) defining "just compensation" as follows:

> (r) For purposes of this section, just compensation means the fair market value of any sign, display or device remaining after imposition of state controls with respect to any such sign, display or device pursuant to subsection k of this section.

This is, in our view, not only proper but the only available interpretation of Section 131 that is Constitutional. Our federal government is, after all, a government of enumerated powers. The enumerated powers of Congress are contained in Article I, Section 8. Federal controls over outdoor advertising certainly are allowable under the commerce clause of Section 8, as well as the last paragraph of Section 8 that grants Congress the power to make all laws that are "necessary and proper" for the execution of these enumerated powers.

There is nothing, however, in the Constitution that allows the wholesale federal usurpation of state police powers contained in Section 131 as presently interpreted. Nothing in the commerce clause allows such an interpretation. Moreover, it is hard to imagine how the just compensation section is

"necessary and proper" to implementation of the Highway Beautification Act since, as Senator Stafford pointed out, it does not regulate outdoor advertising but rather protects such advertising from legitimate state regulation.

Subsections 131(g) and (k), as presently interpreted, serve no legitimate Congressionally stated commercial purpose. Section 131 must be amended to clarify a Congressional intent not to interfere with legitimate non-compensatory state regulation of outdoor advertising or the amendments to Subsections 131(g) and 131(k) must be eliminated altogether.

Thank you.

STATEMENT OF MRS. W.L. LYONS BROWN, CONSERVATION COMMITTEE OF THE GARDEN CLUB OF AMERICA AT THE PUBLIC HEARING ON HIGHWAY BEAUTIFICATION REASSESSMENT BEFORE THE SENATE PUBLIC WORKS COMMITTEE - JULY 18, 1979

Mr. Chairman,

I am Mrs. W.L. Lyons Brown, of Ashbourne, Harrods Creek, Kentucky 40027, member and past chairman of the Conservation Committee, National Affairs Committee of The Garden Club of America; Trustee of The Nature Conservancy and other conservation organizations. I am speaking for The Garden Club of America. Thank you for the opportunity to present our views on this hearing on reassessment and future direction of the Highway Beautification Program, particularly of Title 23 of the U.S. Code 131 and 136, and also on the proposed legislative change as contained in Senator Stafford's Bill S 344.

The Garden Club of America, a private non-profit organization, has member clubs from coast to coast and in Hawaii. It has a long history, since its founding in 1913, of involvement in conservation and environmental issues. We have worked for protection of ~~national~~ natural areas, wise land use and scenic beauty. Accordingly, as early as 1920, we took leadership in protesting against outdoor advertising on rural roadsides.

In 1958, we were strong supporters of the Federal Aid Highway Act to control billboards on highways, which gave the bonus payments of 1/2 of 1% of the cost of the new 42,500 mile Interstate Highway System to the 25 states which elected to enter the program. (Now 23 still are participating).

Although we were active in the hearings which led to the enactment of the Highway Beautification Act of 1965 (PL 89-285) and agreed with its intent as stated in Section 131(a) to promote "safety and recreational value of public travel to preserve the natural beauty" of our highways and 136(a) to control junkyards adjacent to the Interstate and primary systems, we did not support the final bill because we felt it contained weaknesses which would make its administration difficult. We opposed in particular the "mandatory just compensation" provision. I submit again our policy on outdoor advertising and the permitting of billboards in unzoned commercial areas which opened the door to proliferation.

I attach herewith for the record a copy of our Policy on Billboard and Sign Control presented at the June 6, 1972 hearing before the Commission on Highway Beautification.

Because of disappointment in the results of the Highway Beautification Act and after 14 years of eroding amendments, permissive exemptions, frustration and confusion over state and federal regulations, and many loopholes freeing the outdoor advertising industry to erect more and bigger signs and more billboards, the Conservation Committee of The Garden Club of America has come to the conclusion that:

1. The Highway Beautification Act with its amendments of 1968, 1974, 1976, 1977 will never achieve its original goals of "CONTROL OF ----OUTDOOR ADVERTISING SIGNS, DISPLAYS AND DEVICES ADJACENT TO THE INTERSTATE AND PRIMARY SYSTEM --- TO PROTECT PUBLIC INVESTMENT IN SUCH HIGHWAYS, TO PROMOTE THE SAFETY AND RECREATIONAL VALUE OF PUBLIC TRAVEL AND TO PRESERVE NATURAL BEAUTY" and that it should be dismantled.

2. that the law as it now stands has been so emasculated that it is too weak, infirm and impotent to ever be effective and that further amendments would only be band-aids.
3. that the cost of sign removal and junkyard control is out of all proportion to the meager results and is an outrage when more signs are evident in some states than in 1965 because of the exemptions.
4. that the interest in Highway Beautification has been relegated to the lowest national priority of environmental issues because of crises and pressing critical emergencies of supply of energy to run our energy-oriented civilization, of air and water quality, the crucial decisions of the Nuclear Regulatory Commission, the disposal of hazardous wastes and radioactive materials and all the other issues before our Congress and government agencies.
5. and finally, we conclude that if the program cannot go forward instead of backward under the Highway Beautification Act, then it is time to cut lines and abandon it. We could then return to the states the responsibility for Highway Beautification.

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6. therefore, we see no immediate course except to look to the bill S 344 introduced by Senator Stafford, the Federal Highway Assistance Act, which does return responsibility to the states for highway beautification. It provides that where a state chooses to pay for billboards removed from interstate or primary roads, that federal assistance will be available. We give this bill our support and will work through member clubs and the governors of our states to learn about out state statutes and to urge strengthening of the control and removal program. This will allow states to remove billboards that are non-conforming or illegal through police power, a cheap and direct way, which will save both federal and state expenditures.

WHAT IS WRONG WITH THE HIGHWAY BEAUTIFICATION ACT?

These are some reasons leading to the above conclusions:

- The slow progress of sign removal and junkyard control in relation to time, effort and cost to the federal government are clearly evident in the Digest of the Department of Transportation of April 30, 1979 and the Report of the Comptroller General. The figures give the shocking information that in 14 years and $132,144,218 of expense, only 480,394 signs have been removed and 555,482 remain standing. The illegal signs of 388,519 blow up the figure unjustifiably as they were mostly handbills and posters nailed on trees or posts.

This is the Table I of the Digest of the Department of Transportation April 30, 1979

	In 1965	Removed	Remaining
Non-conforming	775,217	91,875	202,220
Illegal		388,519	92,603
Conforming	260,659	-0-	260,659
	1,035,876	480,394	555,482

- The cost to the federal government for the 480,394 signs removed (i.e. the taxpayers) is $88 million plus administrative expenses shown in Table 8.2 totalling $107,513,569 plus bonus payments of $24,030,649, an unbelievable $132,144,218. At this price, added to frustrations between federal and state responsibility as to when and how the mandatory compensation shall be paid, we can no longer afford this program.

- The Federal Highway Administration estimates the cost of removing signs made non-conforming by the Highway Beautificaaion Act at $515 million. (But this figure seems low as some high rise signs and bulletins are now valued between $7,000 to $15,000.) The General Accounting office estimates $823 million more. At the present rate of funding, it will take 110 years to complete the program. A far different date than that given by Secretary Volpe in 1972 when he addressed a conference of The Garden Club of America on sign control called "Less Signs - More View" and stated that non-conforming and illegal signs would be gone by our bicentennial year.

The greatest tragedy is that under the present Act, it can never really be completed as there are thousands of signs which will remain as they were made legal by the permissive exemptions of all areas zoned commercial and industrial use, as well as "unzoned commercial and industrial areas". This last category is the most abused as it has allowed the billboard industry to use completely rural lands as commercial with no visible industry on them except the signs themselves. There is also the flagrant example of the 23 mile stretch of federal highway in Camden County, Georgia that has over 300 signs in a rural countryside but called unzoned commercial - inflicting their unwanted messages on the captive motorist for the financial benefit of the outdoor advertising industry. As to on-premise signs to identify a place of business, they are like malignant cancers, they get bigger and uglier. The Highway Beautification Act made them exempt from all controls and, therefore, created a new species of high signs on tall poles in and around every gasoline station clearly visible from the interstate. They thus circumvented not only the 660' from right of way provision, but also the 1973 provision of "to the limit of visibility". The signs are classified as legal as they are on-premise signs. In some devious cases, strips of narrow land have been bought extending great distances from the place of business to the edge of the interstate right of way where signs were placed. There is also a great variance in state laws which differ in definition as to the distance a sign may be from a structure and still called on-premise. In some cases, it is as far as 2,000 feet.

Mandatory Compensation - The most devastating headache has been the provision making payment of compensation mandatory for the removal of all non-conforming signs. Even those states that had been before using their police powers to remove signs under the Bonus Act were now required to pay for removal. This works in the interest of the billboard industry at the expense of the federal government and the taxpayer. It often happens that sign companies receive payments up to $5,000 for signs which have already been amortized on their own books down to zero. Signs have been erected by companies with the knowledge that they would be paid for taking them down. All the time between the building of the sign and removal, sometimes years later, the billboard industry collects revenues.

> At this point, may I introduce a recommendation that non-conforming signs should not be deductible as business expense by the outdoor advertising companies. This would make them decidedly unprofitable and might make their expense so great that they could not be maintained.

Another example of failure, is that the size and spacing requirements of billboards has now to be negotiated by each state with the Secretary of Transportation. The size of 1200 square feet was adopted by 32 states. Mr. Charles F. Floyd in his thought-provoking paper on "The Highway Beautification Act in Practice" points out

this is equal to the floor area of a medium size 3 bedroom house and is twice the size of the largest billboard on the interstate.

I will not quote other instances of ineffectiveness which may be duplicated by others who are testifying but will add information on my own state, the Commonwealth of Kentucky.

1. To assess how the Highway Beautification Act was working, I called on the Federal Division Administrator, Mr. Robert E. Johnson, in Frankfort, Kentucky. He reported that the funding was inadequate, that it would take years to complete the program, although Kentucky has had 80% removal, but the problem is the signs on th ' ary roads that are classed as legal and conforming.
2. That it was unnecessarily costly as police power could not be used and that the allocation of funds from the D.O.T. were made according to the requests by the states. Some states received more in proportion than others.
3. There were changes made in the interpretation of the law, making enforcement very difficult. A curious example is this:

   No advertising is permitted within the right of way or at interchanges which is, of course, federal property. However, shelters for children and people waiting for buses were authorized to be built on this property. Suddenly, advertising signs appeared on some of them, inside and out. Mr. Johnson requested prompt removal of the signs, but directions came from the D.O.T. that the interpretation of the law did not prohibit advertising on shelters because they were not specifically mentioned as such. In other words,

shelter don't count as places for advertising, so immediately advertising companies have seized upon this relaxation of the law and are offering to pay for building the shelters as well as to maintain them because they are deriving income from leasing this space.

Junkyard Abatement - In Kentucky, the junkyard abatement and screening progressed somewhat in the beginning of the program. 287 yards were screened but 326 remain. Fences or planting were put up around them. They were approved as acceptable, but some of the fences were boards with only a small crack between them which left a little visibility but a change in the law in the 1977 amendment now requires a different kind of screening and defines how much visibility is allowed,which is none, or not to see through at all. Obviously, enforcement has not been successful and little progress has been made. Planting cannot be assured of being without visibility.

Advantages of S 344

The greatest advantage of returning responsibility to the states for a Highway Beautification Program is that it will allow those states which care about natural beauty and the aesthetic appeal of uncluttered scenic highways to further and strengthen their own programs. It is evident that the states most conscious of the importance of tourism have so far been making the greatest effort to free the states of billboard blight and junkyards. It will

increase competition between states to attract visitors. In Kentucky, tourism is our fourth largest source of income, the first three are whisky, tobacco and thoroughbred race horses. Certainly, now that yens, marks and ryials are being spent by the foreign visitors who are coming to the United States by plane loads with low cost dollars in their pockets, they are attracted to the states which have natural beauty on the highways. Florida, even with climate, Disney World and early retirement as inducements, will have to do something about the solid roads of signs on U.S. 1 every 200' and the devastation of clutter spoiling the magical beauty of the Florida keys on the highway through them.

The states which entered into agreement with the Secretary of Transportation to control signs under the Bonus Act will continue to retain payments according to provisions in S 344.

The bill specifically limits signs on highways and interstates to the following:

A. Official Signs

B. Public service signs consistent with national standards

C. Signs lawfully in existence on October 22, 1965

D. Signs advertising the sale or lease of property on which they are located

E. Signs advertising activities conducted on the premises on which they are located

F. Landmark signs

G. Signs in areas zoned industrial or commercial under authority of state law and actually developed for such use

To be eligible for federal assistance, a state must follow the specified requirements listed in the bill including providing information for travelers at rest and information centers.

A state is not required to pay compensation but if it elects to do so, federal funds will make up 80% of the cost of signs.

We believe that this bill and its intent will improve the visual quality of our highways and we will work toward its passage.

Respectfully submitted,

Sara Sanderson Brown

Mrs. W.L. Lyons Brown
Conservation Committee
The Garden Club of America

ADDENDUM TO THE REMARKS OF MRS. W.L. LYONS BROWN AT THE HEARINGS ON HIGHWAY BEAUTIFICATION REASSESSMENT BEFORE THE PUBLIC WORKS COMMITTEE - JULY 18, 1979

In addition to these statements made as a conservationist and representative of The Garden Club of America, I present this personal note. My efforts for Highway Beautification sign control and land use are strongly affected by the fact that my main source of livelihood is the distilling business for which our family have been working for four generations, over 109 years. Distillers are among the five largest users of outdoor advertising in our country. I am well aware that there has been increasing use of billboards in the last 20 years. The total annual budget for outdoor advertising alone is over $35 million and the industry provides the second largest source of revenue to the federal government after the income tax. Last year's figure was 13 billion for alcoholic beverage industry. On the panel of speakers at which Secretary Volpe spoke on billboards in 1973, I invited Mr. Robert Coyne, Chairman of the Board of the Distilled Spirits Council of the United States to speak on the panel representing the point of view of users of outdoor advertising. I knew that the distilling industry had denied to itself through mutual agreement, the most obtrusive of all advertising media: television and radio. They also circumscribed any themes which might offend or injure as moderation is encouraged at all times and every effort is made to support safety on the highways. As these are all voluntary precepts, I asked Mr. Coyne if it might be possible in the future for the industry to elect curtailment equally in their use of billboards in another self regulation agreement. Mr. Coyne's answer on the panel was: "Advertising

and promotion efforts of the distilling industry are confined by self-regulation and also by law to a narrow area. It devolves almost entirely to a battle of brands. Outdoor advertising does promote brand identification. For the liquor industry unilaterally to declare outdoor advertising as offlimits would bring questions of feasibility. Furthermore, it would be aesthetically ineffective since an Old Forester or Jack Daniel's ad lost to the highways would be quickly replaced by a detergent or gasoline ad without any gain for the public edification". This puts the responsibility for cleaning up the view of our countryside from the highways back to the industry which puts up the billboards and, also, to wise government for control of the location and size of them. Responsibility also falls on citizens, business, local, state and national organizations to help achieve this through proper persuasion of our officials as to its importance.

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CALIFORNIA
ROADSIDE COUNCIL
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Yale Maxon

Testimony for Presentation re:

Senator Stafford's S. 344

Senator Bentsen and Gentlemen of the Subcommittee:

My name is Yale Maxon. As a young man I lived for 15 years in Hawaii, an area then and now free from billboard blight, and as a consequence of that experience I have, during the past quarter century, devoted many hours to attempting to restore the natural beauty of California's roadsides. For five years I was president of The California Roadside Council, and since its 1977 merger with the Planning and Conservation League have been chairman of the League's relevant committee. Hence my testimony today represents the views of some 2,000 members of an active conservation organization. I am also authorized to represent the Washington State Roadside Council at these hearings.

We support Senator Stafford's S.344. Since S.344 would appear, on its face, to weaken the federal government's control over visual roadside blight, some explanation is perhaps called for. Let me say at once that the so-called Highway Beautification Act of 1965 was, from the start, an imperfect instrument. As modified by subsequent amendments it has become a major obstacle to highway beautification, and in its current form is an unconscionable fraud and burden on the American taxpayer.

The chief inherent fault of the 1965 Act arose from the decision to pay "compensation" to both landowner and billboard owner for removal of signs adjacent to major U.S. highways. Prior to 1965 numerous decisions of state courts and of the U.S. Supreme Court had clearly established that off-site commercial billboards adjacent to public thorofares are not a bona fide use of the

private property on which they are located but are instead a use of public property — the highway — for private gain.

Said the Massachusetts Supreme Court in 1935, in a decision which the U.S. Supreme Court later declined to overturn:

"[Billboards] constitute a franchise upon the public highways.. [The billboard interests] are not asserting a natural right....They are seizing for private benefit an opportunity created for quite a different purpose by the expenditure of public moneys." [General Outdoor Advertising Company v. Department of Public Works. 193 N.E. 799, appeal dismissed, 297 U.S. 725.]

Said the Supreme Court of the Philippines in a decision which the U.S. Supreme Court likewise refused to overturn:

"Outdoor advertising is essentially a use of the public highways, rather than a bona fide use of the private property on which it may be situated." [Churchill & Tait v. Rafferty, 32 P.I. 580, appeal dismissed, 248 U.S. 591.]

Since these early leading cases a long line of court decisions have upheld specifically the right of state or local governments to require removal of non-conforming billboards without compensation if the terms of removal are reasonable. [People v. Southern California Outdoor Advertising Co (1956); City of Los Angeles v. Gage, 127 Cal. App. 2d 442 (hearing denied by State Supreme Court); National Advertising et al. v. County of Monterey, 1 Cal 3d 875 (1970); Metromedia Inc. v. City of Pasadena, 30 Cal Rptr. 131 (1963); City of Escondido v. Desert Outdoor Advertising Inc. Cal. (1973); Metromedia Inc. v. City of San Diego Cal. (21 March 1979)1.]

Hence if neither the billboard owner nor the owner of land adjacent to the public highway had any "right" to use the highway in this manner, it was, in our view, an unnecessary waste of public funds for the Congress to write into the 1965 Act provisions for "compensation."

Prior to 1965 numerous state, county and municipal jurisdictions limited or totally forbade the use of tax-supported highways for private gain by the owners of commercial off-site signs. This was normally accomplished through zoning laws which classified such displays as a non-permitted use and required--after a suitable period for amortization--that they be taken down as public nuisances.

Having, however, substituted the new and unjustified principle of "compensation" for the established and widely functioning principle of zoning accompanied by amortization as the basic federal mechanism for securing billboard removal, Congress then compounded the problem by mandating that this new and unjustified principle be accepted by the states, under the semi-coercive condition of otherwise forfeiting 10% of their federal highway funds.

This major blow against states' rights was keenly resented at the state level. In my own state, for example, the state's "acceptance" in 1967 of the federal terms contained the following language:

"The sole intent of the Legislature in enacting this paragraph [re compensation] is to comply with federal law, and it is otherwise not the intent of the Legislature to in any manner relinquish any of its powers relating to the removal of advertising displays under the police power." [Statutes, 1967, Outdoor Advertising Act.]

And in a letter of 28 March 1972 to the Staff Director, Federal Commission on Highway Beautification, State Attorney General Evelle Younger urged removal of the mandatory language of Section 131 of the federal Act to permit the alternate method of zoning and amortization to effectuate billboard removal. Thus passage of S.344 would precisely accomplish what the Attorney General of California recommended seven years ago.

Wrote he: "California cases have held that a county zoning ordinance may require the removal of an advertising display without payment of compensation provided a reasonable amortization period for removal of the sign is given to the owner.

The Highway Beautification Act penalizes the use of this legitimate power by reducing state highway funds by ten per cent if compensation is not paid. The entire tenor of this punitive measure is in violation of the spirit which prompted the Highway Beautification Act.

"One solution to this frustrating problem would be an amendment to Section 131 removing the mandatory provision for paying compensation, and allowing any state to elect to implement the federal standards either by:

(1) paying compensation with the use of federal-state funds as now directed by the Act, or

(2) removing non-conforming billboards under the state or local agency's police power as successfully and lawfully done in the past, as long as this is done over an amortization period reflective of the value of the sign so as not to deprive the owner of his property without due process."

A third fault in the 1965 Act resulted from a subsequent amendment which provided that no billboard removals under the Act could be carried out unless Congress had appropriated the funds to pay for the 75% federal share. In years when funds were not appropriated, or were scanty, removals ground to a halt or proceeded at snail's pace. The effect of all this in practical terms, is shown by the unremarkable record of removals during the 14-year period since 1965. During these years only one in three of the thousands of billboards covered by the Act has been removed.

The next step in the mounting travesty of "beautification" came last year when in an effort to extend the false and unjustified principle of "compensation" beyond the narrow beachhead of the Highway Beautification Act the lobby of the Outdoor Advertising Association of America (OAAA) was able to secure an amendment specifying that "removal of any outdoor advertising sign...whether or not removed pursuant to or because of this section" must be accompanied by

compensation! This is another outrageous assault on states' rights--one which in our view goes far beyond the legitimate field of federal action.

Altho the 1978 amendments will ultimately be held by most courts to apply only to the removal of signs adjacent to the Interstate and Primary System, the sweeping language ["...removal of any outdoor advertising sign..."] in which they are clothed may well act to inhibit the lawful exercise of the police power by many local governments. Indeed, an article in "Signs of the Times", the trade journal of the Outdoor Advertising Association, boasts that they will no doubt result in "the elimination of amortization in most ordinances of larger communities."

Needless to say, a law whose actual effect will be to constrain the actions under the police power of "larger communities throughout the country" --whether or not those actions are related to highway beautification along the Interstate and Primary System--~~represents~~ constitutes a reprehensible attempt to control, through a calculated deception regarding the extent of federal authority, the legitimate sphere of authority of state and local government.

Indeed, as I speak here today, hearings are under way in Sacramento on a bill, S.B. 462, which is designed--through just such a calculated deception--to take maximum advantage of the ambiguity created by the purposefully over-broad language of the 1978 amendments.

"To insure compliance with federal law", begins the key section of S.B.462, "no [lawfully erected] advertising display...shall be removed until just compensation is paid to the owner or owners of such advertising display and to the owner or owners of the land on which such display is located whether or not such...display is removed pursuant to or because of this chapter or any other statute, ordinance or regulation of any governmental entity."

Six days ago a similar bill which had passed both houses of the Oregon legislature was vetoed by the Governor of that state. I am informed that

in an attempt to secure its passage outdoor advertising interests contributed several hundred dollars to each member of both houses of the legislature, and likewise even to the candidates hoping to replace them!

Thus the 1965 Act having substituted the new, unnecessary, and financially extravagant principle of mandatory compensation, has now been amended in such a manner as to appear to justify massive inroads against the legitimate and necessary powers and prerogatives of state and local government.

Let me give one more example of the mischief that the 1978 amendments are causing. Altho some 140 California towns and small cities have total bans against billboards, passage in 1972 of a total prohibition against off-site commercial signs by San Diego--the second largest city in the state--raised the constitutional question of whether a total restriction in a "large metropolitan area" was permissible. Four months ago the State Supreme Court held that it was. In thus sustaining the city's total ban the Court held, in effect, that the citizens of San Diego had the right to create for themselves an urban environment which would maximize traffic safety while simultaneously providing pleasant living and working conditions, free from billboard blight.

Recently however, the Court, in response to a petition by the outdoor advertising interests based on the 1978 amendments to the federal Act, has agreed to hear new arguments. Thus the right of the people of San Diego to determine the safety and visual quality of their urban environment is now threatened by the new and outrageous claims of federal preemption suggested by the loose language of the 1978 amendments.

These examples show, I believe, that the Highway Beautification Act in its present form is a betrayal of the hopes and efforts of Lady Bird Johnson whose aim it was to promote a more beautiful America. Instead the Act has become an intolerable burden on, and intrusion into, the legitimate powers of state and local government.

I have discussed the inequity of paying "compensation" for the curtailment of "rights" which do not exist. I shall now speak of costs. Members of this Committee do not need to be told that there is a taxpayers' revolt under way in this country. Inflation is of double-digit proportions. In such circumstances it makes sense to zero in on needless expenditures by government.

A flagrant example of needless expenditure is the continuing payment of "compensation" for removal of billboards adjacent to federal highways, especially since the courts have made it clear that there is no legal requirement for such payments.

Passage of S.344 would eliminate most of these needless expenditures and would, in addition, have the following advantages:

1. - It would terminate the mandatory compensation provisions of the Highway Beautification Act which constitute the chief difficulty with the present law. This would mean a major reduction in the cost of completing the beautification program which, according to the General Accounting Office, could, under the present system, run to over a billion dollars.

2. At the same time it would retain the compensation capability of the present law for the benefit of those few states that might wish to employ it.

3. It would bring to an end the unwarranted interference of the federal government with long-established zoning and land-use functions of state and local government.

4. It would restore the availability of the system of voluntary bonus payments to promote outdoor advertising controls--the system based on the 1958 law which was acceded to, cooperatively, by approximately half of the states and which was functioning satisfactorily up until the time that Lyndon Johnson forced the 1965 law--at too high a price--upon a reluctant Congress.

5. It would provide--again by voluntary agreement rather than by federal fiat--for the possibility of "signs...giving specific information in the interest of the travelling public."

6. And finally, it would provide for federal-state funding of what may well be the preferred future mode of conveying information in the specific interest of the traveller: i.e., information systems set up within safety rest areas. At the end of 1978 California had in operation 88 such combined safety rest and information areas along its major thorofares, with others under construction. Needless to say, such information systems are visually far superior to highway billboards.

In sum, since the 1965 Act as amended increases both the difficulty and the expense of highway beautification, and in addition constitutes unwarranted interference with the proper functioning of state and local government, we support Senator Stafford's bill as the best solution to an intolerable situation.

S.344 will remove the punitive provisions of the 1965 Act which in practice force the states to pay "compensation"—whether or not they regard such payments as wise or necessary—while restoring the optional provisions of the 1958 Act.

Passage of S.344 will assure that the thrust of the federal effort supports, rather than impedes, beautification. It will save the taxpayers hundreds of millions of dollars by eliminating unnecessary payments. And it will free the states and cities of this country from the entanglements of counterproductive federal red tape as they seek to carry out a function that they are fully and uniquely qualified to perform.

Respectfully submitted,

Yale Maxon

Yale Maxon

Past president, California Roadside Council
Current Chairman, Roadside Council Committee
PLANNING AND CONSERVATION LEAGUE

Addendum To Testimony

of Yale Maxon

re S.344

PUBLIC ATTITUDES RE BILLBOARDS:

DOCUMENTATION FROM FOURTEEN POLLS

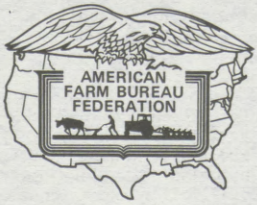
"It would appear that wherever billboards continue to exist, they do so despite the contrary force of public opinion." This comment accompanies a 1977 study by the California Roadside Council from which the following data have been abstracted. The data indicate that whether tested at the national, state, or local level, public sentiment is opposed to the visual pollution of the environment caused by the presence of billboards.

PUBLIC ATTITUDES RE BILLBOARDS;

DOCUMENTATION FROM FOURTEEN POLLS

Title or Description	Area	Year	Finding
Poll # 1 Maryland State Auto Club	Maryland	1957	25,000 questionnaires were sent out to motorists and AAA members asking whether recipients would favor or oppose a ban on billboards within 1000' of all controlled access freeways in the state. 95% favored the total ban.
Poll # 2 Trendex Nationwide News Poll	U.S.A.	1957	Respondents were asked whether they favored or opposed strict limitation of outdoor advertising along major state highways. 65% favored strict limitation.
Poll # 3 University of Akron	I-90 between Cleveland & Erie, Pa.	1967	2051 motorists were asked "Should any commercial advertising billboards be allowed at all on 90?" 71% said none should be allowed.
Polls# 4, #5 and # 6	San Diego	1971	Three groups of students of Professor Jack Haberstroh, Professor of Advertising at San Diego State University, contacted San Diego residents with the following question: "The City Council of San Diego early next year will consider an ordinance which would ban all billboards except those used for the purpose of identification of the property, or advertising goods and services available on that property. Are you in favor or not in favor of such an ordinance?"
Poll #4 Mailed Random Survey of 195 S.D. residents	San Diego	1971	In answer to the above question, 82% favored the ordinance.
Poll # 5 Personal Contact of 200 individuals at busy traffic locations	San Diego	1971	In answer to the above question, 76% favored the ordinance.
Poll # 6 Random phone survey of 200	San Diego	1971	In answer to the above question, 66% favored the ordinance.
Poll # 7 State Planning Office	Maine	1973	In response to the question "Should the State pass legislation to ban billboards on State Highways?" 61 % said "yes".
Poll # 8 Opinion Research of California	Long Beach	1974	In the course of in-home interviews on "Citizen Attitudes Toward Future Development" with 602 persons statistically representative of the city's population as a whole, "Provide more stringent regulations of commercial signs and billboards" rated in desirability above each of the following: "Create more parks..." "Expand program of landscaping roadways and center strips." "Restrict strip commercial zoning."

Poll # 9 City Planning Commission	San Gabriel	1976	Survey questionnaire was sent out to 1104 businesses. Of the 165 who responded, 79% said billboards should not be permitted in San Gabriel.
Polls # 10, #11 and # 12	San Diego	1976	Four-year follow-up of Polls 4, 5 and 6 by graduate student of Professor Jack Haberstroh of San Diego State University (see above). All respondents were asked the following question: "In 1972 the City Council of San Diego passed an ordinance banning all billboards except those used for the purposes of identification of property, or advertising goods or services available on that property. This ordinance has been under appeal and in the courts for the last four years. Are you in favor or not in favor of seeing this ordinance enforced?"
Poll # 10 Mailed Random Survey of 188 San Diego residents	San Diego	1976	76% favored enforcement of San Diego's total ban on commercial off-site billboards.
Poll # 11 Personal Contact with 200 San Diego residents at busy traffic locations	San Diego	1976	82% favored enforcement of San Diego's total ban on off-site commercial billboards.
Poll # 12 Random phone contacts with 200 San Diego residents	San Diego	1976	79.5% favored enforcement of San Diego's total ban on off-site commercial billboards.
Poll # 13 City Staff Survey	Visalia	1977	City staff interviewed by telephone 896 households regarding the city's signs. 69% answered that the city would be more attractive if it had more stringent regulations on commercial signs.
Poll # 14 Random Telephone Survey of 42 S.F. residents	San Francisco	1977	Graduate students of the Urban Studies Program at Antioch College/West, under the direction of Professor Irwin Mussen, sought citizen reaction to a proposal of the City Planning Department to eliminate billboards throughout the city. 69% favored the proposed ordinance.



★FARM BUREAU★

the nation's largest general farm organization

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
BEFORE THE SUBCOMMITTEE ON TRANSPORTATION
OF THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
REGARDING S. 344, CONTROL OF OUTDOOR ADVERTISING
AND THE HIGHWAY BEAUTIFICATION ACT

Presented by
C. H. Fields, Assistant Director, National Affairs

July 18, 1979

Washington Office—425 - 13th Street, NW, Washington, DC 20004. Phone—202-638-6315

S.Hrg 10

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Farm Bureau is a voluntary, dues-supported organization, made up of families in 49 states and Puerto Rico, encompassing more than 2800 county units, and representing more than 75 percent of the commercial farmers and ranchers in this country.

The Board of Directors of the American Farm Bureau Federation recently adopted a position in favor of the enactment of S. 344. We believe the goal of highway beautification can best be achieved by removing the mandatory provisions of the Act and giving the states some flexibility in working out the most acceptable and reasonable ways of achieving beautification. Clearly, people in some states have a more intense interest in this issue than others. We believe that S. 344 will provide a program in which federal funds will be used more effectively and will, at the same time, give recognition to local and state planning and zoning authority.

Farmers in many areas of the country have been adversely affected by the administration of the Highway Beautification Act of 1965 and the various regulations that have been promulgated to carry it out.

In recent years, many family farms have developed various direct marketing operations to eliminate a part of all of the so-called "middlemen" services and costs between producers and consumers. These marketing techniques include roadside markets and "pick-your-own" operations, in which consumers harvest the crop they are purchasing from the grower. In many of the urbanized areas, this type of marketing has made it possible for small farms to remain in operation while paying higher costs of production.

This kind of marketing activity on farms, which is quite popular with consumers, is not feasible in many instances without the use of highway signs. In some places the roadside markets cannot be located on the farm where production takes place--but must be placed a few miles away to take advantage of traffic density. This means that in some instances the necessary signs cannot be located entirely on the actual plot of land on which the farm market is situated.

The interpretation of subsection (c) of Section 131 of the Act has varied from time to time, with the result that it has not been clear whether farmers can erect or maintain signs for on-farm marketing, particularly where it is not feasible for all such signs to be located on premises of the marketing operations.

Unfortunately, subsection (c) in S. 344 does not clarify this uncertainty. We recommend that the language in that subsection of the bill be amended to give states some flexibility in the development of their systems of control so as to permit reasonable advertising of farm marketing activities.

We also recommend that S. 344 be amended to apply to Section 136 of the Act, as well as Section 131. Control over junkyards should also be restored to the states. The efforts of some states to interpret federal requirements under this section have resulted in harassment, some very angry farmers, some lawsuits and other unpleasant developments. Some enforcers of this law have told farmers they cannot have their own farm-

machinery and equipment parked in sight of a highway, and that it must be stored in sheds or barns. Other farmers have been told, for example, that a fuel storage tank installed on the highway side of a farmhouse would have to be moved to the other side of the house so as not to be unsightly to highway users.

With state governments in control of this program, we feel that such unreasonable actions can be minimized and that the highway beautification program can be developed and enforced in a reasonable manner.

The beautification of the nation's highways is a laudable goal that most farmers support, but federal direction and control to achieve that goal is neither necessary nor effective. Experience has shown that such central authority has not worked, and the need to amend the act is indicated by complaints which come not only from the outdoor advertising industry but also from property owners, travelers and local businesses. The low priority of the present program is clearly demonstrated by the fact that the President's current budget proposal does not include funding for it.

We urge this Subcommittee to report S. 344 favorably with the amendments we have indicated.

We appreciate this opportunity to present Farm Bureau's views.

APPENDIX A

MATERIAL SUBMITTED BY SENATOR STAFFORD

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, TUESDAY, FEBRUARY 6, 1979 No. 12

Senate

By Mr. STAFFORD:

S. 344. A bill to amend section 131, title 23, United States Code; to the Committee on Environment and Public Works.

FEDERAL HIGHWAY BEAUTIFICATION ASSISTANCE ACT OF 1979

Mr. STAFFORD. Mr. President, I am introducing today the Federal Highway Beautification Assistance Act of 1979. This bill would return to the States responsibility for highway beautification. Where a State chooses to pay for billboards removed from interstate or primary roads, Federal assistance would be available.

There are many reasons for dismantling the Highway Beautification Act of 1965. The purposes this act was intended to achieve have been to a large degree perverted. The act has become more a protection for billboards than the cause for their removal.

I would like to explain why the existing beautification program is not achieving its original goals.

By and large, travelers do not see many results after 13 years of the program's existence. While 91,000 nonconforming signs had been removed through last March, 214,779—or more than two-thirds— remained standing.

Even were the program to be fully implemented, results would be hard to see. Under the law, existing signs may remain and new signs may be erected in any so-called commercial or industrial area. The number and size of these commercial or industrial zones can be great depending upon a State's zoning laws and practices. In fact, signs exist in many areas which are zoned commercial or industrial but which are rural in character.

Existing law provides that States have full authority to zone areas for commercial or industrial use. Interpreted literally, this means a State could zone all land along interstate routes as commercial or industrial. In such a State, there would be no sign removal program.

This, in fact, was tried in one State with similar actions in two others. The Federal Highway Administration has refused to recognize such obvious attempts to circumvent the intent of the act. But in the face of substantial public pressure from Members of Congress, it may be difficult for the agency to continue this policy.

If States, at the behest of sign owners, may pick and choose exactly where signs are to be permitted, I fear Federal money will pay for billboards the true worth of which is nearly zero. Meanwhile, our roadsides will show very little visual improvement.

A report from the General Accounting Office estimates that at the completion of its program, the State of Oregon will still have 40 percent of its off-premise signs standing. I might note that Oregon is one of the more aggressive billboard control States.

Another example of the proliferation of signs permitted under current law is a 23-mile stretch of interstate highway in Georgia. There are currently 300 signs visible along this route. After all nonconforming signs are removed, 189 will remain.

Now I would like to review the cost of this program. Before the 1978 amendments which added greatly to overall cost, GAO estimated that State and Federal governments would have to spend $500 million to remove remaining signs. Even then that was a very conservative estimate. Thus, if the program were completed, it could cost at least twice that amount, or roughly $1 billion.

The President's budget for 1980 contains no funding for the highway beautification program. In recent years, Congress has also stinted its funding. As funding for the program decreases, sign removal is slowed or stopped. Until Federal funds are available, no signs come down. And at current funding levels at least 100 years will be required to remove nonconforming signs.

There are advantages to turning the program back to the States. A State which fears injury to its tourist industry from sign removal would be able to determine which signs should remain standing. Under the existing system, needs to alleviate hardship cases have to be dealt with through administratively complex Federal regulations.

Turning the program back to the States will permit more experimentation with alternative information systems. The Federal law currently hampers such innovation, as has been the case in my State of Vermont.

Changing the mandatory nature of the Federal law will remove Federal interference with State and local governments' authority to control advertising under their police powers. In some States this will mean faster billboard removal.

Finally, the change I am proposing will eliminate the need for Congress to spend undue amounts of time amending a program which, as it is constituted, has little if any popular support from environmentalists, businesses, or the States.

There will be those who ask why we do not strengthen the Federal program. My personal preference would be just that: to eliminate the myriad loopholes in the law. But public sentiment for more beautiful roads on the national level seems too weak to stand up against a strong, organized industry lobby.

I believe that more productive anti-billboard battles can and will take place at State and local levels, once Federal obstacles are removed. Where there is strong sentiment to preserve a State's natural beauty, strong measures will be taken. Where no such sentiment exists, roadsides will, as at present, remain ugly. But we will not be spending taxpayers' money to keep them that way.

In summary, then, the legislation I introduce today is designed to save Federal funds and to end needless and counterproductive Federal regulation, as well as to get the Federal Government out of the hair of State and local governments.

Clearly, the time has come to end the mandatory features of the Highway Beautification Act of 1965. The Congress and the Nation have tried to make the law work as it was intended to—but it has not turned out that way. It is time to concede that the mood of the Congress and of the Nation have changed. And, also to concede that the law has changed—and not for the better.

It is my hope and expectation that environmental organizations will agree with my view that the existing law no longer promotes the cause of highway beautification; indeed, that the law may be an enemy of that cause under certain circumstances.

I anticipate that State and local officials who have had to deal with the changes and complexities of the present law may agree the time for change has come.

And, of course, surely we can expect that the outdoor advertising industry will welcome the opportunity to free itself of Federal regulation under a law it has opposed for so long.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD, together with a section-by-section analysis, and a brief statement on the effect of the most recent amendment of 1978 to the Highway Beautification Act.

There being no objection, the bill and material were ordered to be printed in the RECORD, as follows:

S. 344

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Federal Highway Beautification Assistance Act of 1979."

SEC. 2. Section 131 of title 23, United States Code, is amended to read as follows:

"§ 131. Control of Outdoor Advertising

(a) The Congress hereby finds and declares that it is in the public interest for the Federal government to assist the States in controlling the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) A State may establish a statewide system to control the erection and maintenance of outdoor advertising signs, displays, and devices adjacent to the Interstate and primary systems. Whenever a State which has established an effective statewide system of control, as defined in subsection (c) and determined by the Secretary, shall acquire by purchase or condemnation signs, displays, or devices lawfully erected and maintained adjacent to the Interstate or primary system, the Federal share of such acquisition shall be 80 per centum. Any State electing to provide such compensation shall provide: (1) compensation for the taking from the owner of such sign, display, or device; and (2) compensation for the taking from the owner of real property on which the sign, display, or device is located, of the right to erect and maintain such sign, display or device thereon.

(c) An effective statewide system of control is one which provides that signs, displays, or devices, if located within six hundred and sixty feet of the right-of-way within urban areas or if located outside urban areas and visible from the main traveled way of the system, shall be limited to (1) directional and official signs and notices, which signs and notices shall be limited to official signs and notices, public utility signs, service club and religious notices, public service signs and directional signs consistent with the national standards as in effect on the date of enactment of this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, (3) signs, displays, and devices advertising activities conducted on the premises on which they are located, (4) signs lawfully in existence on October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which

would be consistent with the purposes of this section, and (5) signs, displays and devices in areas zoned industrial or commercial under authority of State law and actually developed for such use or in unzoned commercial or industrial areas.

(d) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. The Secretary may also, in consultation with the States, provide within the rights-of-way of the primary system for areas in which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. Such signs shal conform to national standards to be promulgated by the Secretary.

(e) In order to provide information in the specific interest of the traveling public, the State highway departments are authorized to maintain maps and to permit information directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas and other travel information systems within the rights-of-way for the purposes of informing the public of places of interest within the State and providing such other information as a State may consider desirable. The Federal share of the cost of establishing such an information center or travel information system shall be that which is provided in section 120 for a highway project on the Federal-aid system to be served by such center or system.

(f) Any State highway department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall be entitled to such payments unless the State maintains the control required under such agreement.

SECTION-BY-SECTION ANALYSIS OF THE FEDERAL HIGHWAY BEAUTIFICATION ASSISTANCE ACT OF 1979

Sec.1. Title of the Act.

Sec. 2. Creates a new section 131 of title 23, United States Code, as follows:

Sec. 131. (a) Declares it a national policy for the Federal government to assist the States in controlling outdoor advertising.

(b) Permits States to establish a statewide program of billboard control and provides that where the State program meets the requirements of subsection (c), Federal funds will make up 80 per cent of the cost of the State's purchase of signs along the Interstate or primary systems. A State is not required to pay compensation but where it elects to do so, Federal funds will be made available.

(c) To be eligible for Federal assistance, a State must limit signs within 660 feet of the road in urban areas or visible from the road outside urban areas, to (1) specified directional and official signs and notices, (2) signs for the sale or lease of property on which the signs are located, (3) on-premise signs, (4) landmark signs, and (5) signs in commercial and industrial areas.

(d) Requires the Secretary to provide within the Interstate right-of-way for signs giving information of use to travelers and permits the Secretary to provide for such signs along the primary system.

(e) Permits States to provide travelers' information and advertising at safety rest areas and provides for Federal asistance in establishing information centers or systems.

(f) Retains payments to States which entered into agreements with the Secretary to control signs along the Interstate System under the Bonus Act.

BACKGROUND

The Highway Beautification Act, enacted in 1965, requires the states to pass laws prohibiting billboards along Interstate and primary highways, except that signs can be permitted in commercial and industrial zones. The Act further requires compensation for signs removed, on a 75-25 federal-state matching basis. A state that fails to pay for signs removed faces the loss of 10 per cent of its Federal highway funds.

Several state courts have ruled that signs removed pursuant to local ordinances stricter than, and not related to, the Federal Highway Beautification Act, are not entitled to compensation, whether or not the signs are adjacent to Interstate or primary highways.

EFFECT OF 1978 AMENDMENTS

The amendment in the 1978 Surface Transportation Act requires payment of compensation for removal of any off-premise sign adjacent to an Interstate or primary route. This would severely restrict zoning practices in urban areas where billboards, along with other types of nonconforming land uses, have traditionally been removed under the police powers of the jurisdiction, without compensation, but with provision for amortization.

One example of the effect of the change can be seen by looking at a recent decision by Maryland's Court of Appeals. An urban renewal ordinance in Baltimore's oldtown area required removal of all off-premise signs in the area after a five-year amortization period. Sign owners challenged the ordinance, claiming that two signs adjacent to a Federal-aid primary street had to be compensated under the Highway Beautification Act. Both signs were in commercial or industrial zones and thus were permissible under the Act. The Court decided that the control exercised by the city, which was stricter than required by the Act, was not subject to the Act's compensation requirements. Had the 1978 amendment been in effect, the sign owners would have had to receive compensation or Maryland would have lost 10 per cent of its Federal-aid highway funds. Similar situations exist in many States.

One point to be noted in connection with the amendment is that it will substantially increase the costs of the Highway Beautification Act without promoting highway beautification. Signs which previously were removed for local purposes without compensation may have to be paid for out of very limited Highway Beautification funds. The change greatly increases the number of signs covered by the compensation requirement, thus slowing down sign removal along rural portions of the Interstate where the Federal program was intended to have its greatest effect.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, TUESDAY, MARCH 13, 1979 No. 30

Senate

U.S. HIGHWAY BEAUTIFICATION PROGRAM IS IN TROUBLE

● Mr. STAFFORD. Mr. President, earlier in this session, I introduced S. 344. This is a bill that recognizes the fact that the present Highway Beautification law is a failure. From a worthy and effective concept to beautify our highways, the law has been so weakened that it is now merely a tool to protect the billboard companies.

S. 344, I believe, provides a method to enable the States to have a choice: they can continue in the existing regulatory program or they can drop out of it, obtaining a freedom from Federal regulations to permit billboards or to take them.

Since I introduced S. 344, the New York Times and Newsweek magazine have carried interesting articles pointing out exactly what I have been saying—that the Federal program is a shambles. Mr. President, I ask that the two following articles be printed in the RECORD.

[From the New York Times, Mar. 8, 1979]

U.S. HIGHWAY BEATIFICATION PROGRAM IS IN TROUBLE

WASHINGTON, March 7 (AP)—Along the nation's interstate and primary highways there are 197,791 signs and billboards that the Government would like to get rid of and 10,608 junkyards it would like to see screened. But some states are not cooperating and, even if they did, the Federal Government does not have the money to pay for the removal.

As a result, the nation's highway beautification program, started with fanfare in 1965 by President Johnson and his wife, Lady Bird, is in trouble.

President Carter did not include a penny for the program in his budget for the fiscal year 1980 after earmarking $13.1 million for it this year.

Richard W. Moeller of the Federal Highway Administration said that the Office of Management and Budget had decided not to seek funds in 1980 because it wanted a complete reassessment of the program.

"We're contemplating a series of public hearings on the program, and we hope soon to appoint an advisory committee to analyze and give direction," said Mr. Moeller, chief of the agency's junkyard and outdoor advertising branch. "The committee would include industry representatives, environmentalists, highway users, consumers and others."

He said the lack of 1980 budget money did not mean that the project would come to an immediate halt.

"We have about $65 million in the pipeline in some form or another, mostly funds that have been allocated to states for the removal of outdoor advertising signs and the screening of junkyards," he said. "Some states could operate for five years with money already allotted to them; others don't have much."

Mr. Moeller said that in 1978 states asked for $52 million for highway beautification, "but I had only $9.5 million to give out."

The concept started in 1958 as a voluntary program, with states receiving an incentive of 0.05 percent of their Federal highway funds if they controlled advertising signs within 660 feet of interstate highways.

But only about half the states participated, and in 1965 prodded by Mr. Johnson and his wife and over the objection of the outdoor ad industry, Congress passed the Highway Beautification Act.

The act extended billboard control to other primary Federal highways and to junkyards and offered incentives for landscaping around highways. States not complying could lose 10 percent of Federal highway money.

Signs along the designated highways were allowed only in areas zoned commercial or industrial and junkyards only in industrial areas.

The act also said that "just compensation" must be paid to those whose signs were removed and those who screened junkyards. However, many local governments assumed authority in this area and did not offer compensation. A 1976 amendment to the act required local governments to make such payments, which are provided by the Federal Government.

So far only four states have had Federal highway money withheld because of noncompliance, and three—New York, Alabama, and Oklahoma—had the funds restored when they quickly came into compliance.

The Government withheld $4.08 million from South Dakota in the 1978 fiscal year and $4.298 million in 1979. Last November, Transportation Secretary Brock Adams ruled that South Dakota could not recover the 1978 funds but that the 1979 money would be restored if the South Dakota Legislature acted to put the state in compliance by March 31.

Under the just compensation plan, 98,215 signs have been removed from beside highways nationwide, but 197,791 remain. Only 1,413 of 12,953 junkyards have been shielded.

How much Federal money would it take to remove all noncomplying signs and screen all junkyards? "At least $52 million a year," Mr. Moeller replied.

Senator Robert T. Stafford, Republican of Vermont, has proposed legislation to

let states decide if they want to be involved in highway beautification, and Mr. Moeller said that this would be discussed as part of the reassessment.

"It would help us in one way," he said. "States that did not want to cooperate could get out. That would leave more money to spend on states interested in highway esthetics. I feel a substantial number would get out."

[From Newsweek Magazine, Mar. 5, 1979]

LADY BIRD'S BILL

When the late President Lyndon Johnson signed the Highway Beautification Act in 1965, he said that it would "bring the wonders of nature back into our daily lives." Today, the program is widely considered a failure, and may soon be abolished.

The act, which LBJ once referred to as "Lady Bird's bill" because it was one of her pet projects, was designed in part to eliminate unsightly billboards along 43,000 miles of federally funded interstate highways. It prohibited "outdoor advertising signs" within 660 feet of the road and restricted them to land zoned for commercial use; existing signs that didn't comply with the new law were to be pulled down. So far, 88,000 offending road signs have been removed—but 208,000 others remain.

One reason why so many signs are still standing is that the Highway Beautification Act left enforcement of their removal to the states. While some complied with the new law, others virtually ignored it. A Transportation Department report shows that Missouri and New Jersey have zero per cent compliance, and that Georgia has actually put up 573 new, nonconforming signs since the act took effect. According to the report, the Northwest has the best compliance record (85 per cent) and the Southeast the worst (14 per cent).

JUNKYARDS

The program has also suffered from erratic funding; annual appropriations have ranged from $75.5 million in 1967 to $10 million in 1971. The current budget provides for only $13 million, and that must go toward landscaping highways, screening roadside junkyards—and sign removal. At that rate, says Richard Moeller, the Federal Highway Administration's overseer of the act, "it will take 110 years" to tear down all the billboards.

The program was dealt a major blow late last year when Congress passed an amendment requiring states to compensate advertisers for every sign taken down (at a cost of $2,000 to $15,000 per sign), even if the signs are removed under local ordinances and have been up long enough to repay the owners' initial investment. A spokeswoman for the Garden Club of America charges that this has created "a bonanza for the billboard industry." Many garden-clubbers and environmentalists who backed the 1965 legislation have withdrawn their support, while billboard-trade organizations are now in favor of the program.

TROUGHS

Its time we admit the Highway Beautification Act is a failure and seek its repeal," says Vermont Sen. Robert F. Stafford, who introduced a bill last month that would let states and cities enforce their own beautification policies. And President Carter has eliminated all funds for sign removal from his proposed 1980 budget, pending the outcome of a Transportation Department study of whether the program is worth maintaining. One person who thinks so is Lady Bird Johnson. "In my experience, I have found there are troughs and crests in the establishment of many programs," says the former First Lady. "If the majority of citizens want the beauty of landscaped highways where scenery is not obscured by billboards or blight, I firmly believe we can continue toward that goal." ●

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, WEDNESDAY, MARCH 21, 1979 No. 35

Senate

HOW BILLBOARD REMOVAL LAW BECAME BILLBOARD PROTECTION

Mr. STAFFORD. Mr. President, this week's issue of Congressional Quarterly contains a most interesting article discussing the status of the so-called Highway Beautification Act. The thrust of the article is that the beautification law has become nothing more than a billboard protection law.

Or, as one bilboard lobbyist described it, quoting a friend in Congress, it is legislation that "protects highway advertising as well as allows certain signs to be removed." That is exactly what the law now provides: full protection for those billboards that the industry wants to keep, full compensation whenever a sign outlives its usefulness.

Earlier in this session, I introduced S. 344. This is a bill that recognizes the fact that the Beautification Act has been a flop. S. 344 allows States the flexibility of dropping out of the Federal program and going their own way—either erecting billboards or removing them—or remaining inside the Federal program. What could be fairer?

Because this issue is an important one for its own sake, as well as for the fact that it is so symbolic of the failure of Federal regulations, I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

HOW BILLBOARD REMOVAL LAW BECAME BILLBOARD PROTECTION

The billboard industry wrote the words. Two influential members of Congress delivered the message.

The results: A flip-flop in Federal Highway Administration policy that made the billboard industry eligible for an estimated $18 million in taxpayer money and turned the Highway Beautification Act into what amounts to a billboard protection law.

The obscure regulatory flip-flop provides a case study of the impact of behind-the-scenes pressure from individual members of Congress and lobbying groups on a federal agency's decision-making.

At issue is the Federal Highway Administration's interpretation of one small provision of a transportation funding bill enacted last fall in the hectic closing days of the 95th Congress.

The provision, part of the 1978 Surface Transportation Assistance Act (PL 95-599), amended the 1965 Highway Beautification Act (PL 89-285) to require federal compensation for all roadside billboard signs removed by state and local governments, no matter what the reason for their removal. (1978 Weekly Report pp. 2409, 3273; 1965 Act, Congress and the Nation Vol. II, p. 476)

Under prior law, federal compensation was required solely for signs removed for highway beautification.

The change in the law was sought by the billboard industry. However, the Federal Highway Administration's (FHWA) interpretation of the new law did not jibe with the industry's wishes.

An angry billboard lobby complained to the House Public Works Committee. Chairman Harold T. Johnson, D-Calif., and Surface Transportation Subcommittee Chairman James J. Howard, D-N.J., passed the word along to the FHWA. FHWA changed its interpretation, and the billboard industry got its way.

As a result, taxpayers were faced with two unpleasant prospects: Preserving 9,000 roadside signs that otherwise would have been torn down, or spending $18 million that otherwise would not have been spent.

LONGSTANDING CONTROVERSY

The controversy over billboard compensation has been raging for more than a decade in Congress, FHWA and the courts.

Federal highway beautification money is funneled through the states, each of which oversees its own program and is required to match a portion of the federal contribution.

The billboard industry has maintained consistently since passage of the 1965 Act that the federal government is required to provide compensation for every billboard taken down since that time, for whatever reason, and whether removed by federal, state or local action.

The Federal Highway Administration has maintained that compensation must be paid solely for signs removed by state programs for highway beautification.

FHWA's position has enabled many local governments to use their zoning authority to remove billboards for reasons other than highway beaulification and not pay compensation.

FHWA's position also has permitted the federal government to concentrate its limited funding in areas it considered most needy, and has left local governments free from federal involvement in local zoning affairs. FHWA's view has been upheld by numerous state and federal courts, including the U.S. Supreme Court.

As of mid 1978, about 100,000 of an estimated 200,000 illegal signs had been taken down under the state programs with the help of federal funds.

No figures are available on the number of signs taken down by local action without

federal compensation.

To get from Congress what it could not get from the courts and FHWA, the billboard industry approached individual members of Congress to ask for a change that ultimately resulted in the 1978 amendments to the Highway Beautification Act.

NO EFFECTIVE DATE

One of the 1978 amendments was the provision requiring federal compensation for billboard removal regardless of the cause of the action. However, the bill didn't specify when the change was to become effective.

To answer that, FHWA in a Dec. 5 memo to its regional offices declared that the provision should be applied only to signs ordered to be removed after Nov. 6, 1978, the date on which President Carter signed the transportation funding bill into law.

Three months later, however, a new memo came forth from FHWA.

Following a series of meetings and telephone calls between FHWA and the House Public Works Committee, FHWA issued a revised policy incorporating the change the billboard industry wanted. "Since its issuance," FHWA said in a March 6 message to regional administrators, the Dec. 5 memo "has been the subject of considerable discussion with the House Committee on Public Works and Transportation. The committee has expressed concern that the Dec. 5 memorandum does not reflect the true scope of the 1978 amendments."

Under the revised policy issued by FHWA on March 6, a new category of signs became eligible for federal compensation—those signs "that were the subject of pending litigation" on Nov. 6.

$18 MILLION IN TAX FUNDS

According to an FHWA estimate, the new policy added an estimated 9,000 signs to the pool of those whose removal would require federal compensation.

The 9,000 signs were those whose condemnation by local government action—for local zoning purposes rather than for highway beautification—had been challenged but not resolved in lawsuits as of Nov. 6. They included an estimated 800 signs in New Mexico, 400 in Maine, 1,300 in North Dakota and as many as 5,000 in Louisiana.

Coincidentally, a Feb. 21 U.S. Supreme Court decision had confirmed North Dakota's right to condemn signs without federal compensation. However, because those signs had been involved in litigation as of Nov 6, the signs now can remain standing.

At an average value estimated by FHWA at about $2,000 per sign, the policy change overnight made taxpayers liable for new compensation payments of approximately $18 million.

KEEPING THE SIGNS UP

The money isn't likely to be spent, however.

"It probably won't cost the taxpayers any money, because the signs won't come down," commented Vernon A. Clark, president of the Outdoor Advertising Association of America (OAAA).

The reason for this is because the Carter administration has asked that no money be given the Highway Beautification program in fiscal 1980.

Ironically, this means the federal government probably will end up using its revised interpretation of the beautification program to block removal of signs already condemned by state and local governments.

If a state decided to buck the federal policy and remove signs on its own, the penalty would be harsh.

Under the provisions of the Beautification Act, if a billboard is taken down—for whatever purpose—and federal compensation is not paid, the federal government must penalize the offending state by withholding 10 percent of its federal aid highway funds.

POLICY IMPACT PLAYED DOWN

The impact of the policy change and how it came about are being played down by Rep. Howard, top FHWA officials and the billboard lobby. Rep. Johnson could not be reached for comment.

"If those [FHWA] people believed they were right, I don't think they would have budged just because of a little heat from Congress," commented the OAAA's Clark. Clark declined to comment on any other aspect of FHWA's action, or his association's role in that action.

However, William "Red" Reynolds, executive director of the Roadside Business Association, another billboard industry group, outlined for a reporter the events following FHWA's Dec. 5 memo.

"When we saw the Dec. 5 memo," Reynolds said, "we indicated to the Public Works Committee that we objected to that, and we asked that some new language be drafted."

Next, Reynolds said, "Someone on the Public Works Committee—I can't recall who— came back to me and asked if the revised language was adequate, if it did the job, and I took it to my [Roadside Business Association legislative] committee, and they said it was okay, and we agreed to it."

The policy revision suggested by his association, Reynolds said, was incorporated in the committee draft and subsequently included in the policy memo issued by FHWA in March.

Howard said he supported the additional federal compensation requirement because it would have been "unfair" to take down the signs without federal compensation. "I would just feel that you've got to be fair in this," he said.

He said he wants locally condemned billboards to come down, and will attempt to get fiscal 1980 money for highway beautification back in the budget so that the $18 million can be paid out and the billboards taken down.

He saw nothing improper in acting to ensure that the industry's view be embraced by FHWA policy. That view "would have gotten credibility only if the congressional intent did not conform with what the FHWA had issued in the first place," he said.

FHWA reacted to a reporter's queries concerning the policy change by assembling a staff of eight officials to answer questions, including Deputy Administrator John S. Hassell Jr., who defended closed meetings with members of Congress and their staffs concerning the interpretation and enforcement of laws as "the routine of the way we do business."

"There was nothing illegal or improper about it," Hassell said of FHWA's actions. The agency's initial policy statement resulted from a misunderstanding, he said. "We used verbiage that was not fully understood in its impact." He called the revision a "refinement, not a basic change."

Hassell acknowledged that the change in enforcement policy could mean "a great expense" to the government, and that Nov. 6, 1978—the day the new law was signed by the president—would have been "preferable"

to making the law retroactively.

Nonetheless, he argued, because the new law neglected to establish an effective date, "there are several ways to construct its meaning."

The FHWA officials freely admitted that a series of telephone conversations and meetings between them and Reps. Johnson and Howard had preceded FHWA's policy shift, but none was able to cite the subject matter, specific place, time or date of any one meeting or phone call.

"Between me and you and the lamppost," an FHWA official familiar with the controversy later commented, "you were fed a line of out-and-out lies."

KOSTMAYER, STAFFORD ANGERED

Though the 1978 legislative changes in the Highway Beautification Act and the recent FHWA policy change on billboard compensation have attracted scant public attention, they have drawn some fire from Senate Public Works Committee ranking Republican Robert T. Safford, R-Vt., and Rep. Peter Kostmayer, D-Pa., who unsuccessfully opposed the legislation weakening the 1965 Beautification Act last year.

Kostmayer's attempt to delete the weakening amendments from the surface transportation funding bill was defeated in the House by a 76-199 vote. (1978 Weekly Report p. 2611).

After learning of the new FHWA policy statement concerning federal compensation, Kostmayer wrote Transportation Secretary Brock Adams March 9 that he was "dismayed at the weakness and unprofessional attitude displayed by members of your staff. If they want to work for the billboard industry or the Public Works Committee, they ought to hire on with those fellows. In the meantime they are working for the taxpayers of this country, and it's something they ought to keep in mind."

Kostmayer said he intended to work to reverse the weakening of the beautification program.

Stafford on Feb. 6 introduced a proposed Federal Highway Beautification Assistance Act of 1979 (S. 344) which would dismantle the remainder of the federal program and turn the entire beautification function over to the states.

"There are many reasons for dismantling the Highway Beautification Act of 1965," Stafford remarked on the Senate floor Feb. 6. "The purposes this act was intended to achieve have been to a large degree perverted. The act has become more a protection for billboards than the cause for their removal."

Turning the program over to the states, he explained, would allow states that want to preserve their billboards to keep them and states that want to continue to remove them to do so without federal interference.

PROGRAM CRITICISMS

"The way it's been perverted is just unreal," commented Dr. Charles F. Floyd, a national authority on highway beautification and professor and chairman of the University of Georgia Real Estate and Urban Development Department.

In Georgia, he noted, billboard companies had been given contracts using federal highway beautification funds to clear brush from the roadsides. He said the companies had used the funds to cut down trees—also purchased with federal beautification funds—that were blocking the view of their billboards.

Floyd also claimed—and a FHWA official confirmed—that many of the billboards torn down so far under the federal program had been located on the least-traveled roads.

"They take the signs offered by the billboard companies first," Floyd said. "Naturally the companies are going to offer the ones they don't want anymore. Instead of aiming for the highest cost-benefit ratio, you're aiming for the lowest cost-benefit ratio."

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, WEDNESDAY, MARCH 21, 1979 No. 35

Senate

GAO: "OBSTACLES TO BILLBOARD REMOVAL"

Mr. STAFFORD. Mr. President, last year the General Accounting Office issued a report entitled "Obstacles to Billboard Removal." In part, the study made the following recommendation:

In the light of the problems and limited progress by most states in removing nonconforming signs, it appears that the objectives of the Highway Beautification Act will not be accomplished in the near future. GAO therefore recommends that the Congress reassess the program. If the Congress wants to strengthen the removal program, GAO recommends that it amend the act to encourage the States to—

Remove all signs except those on-premise and landmark signs or

Remove all signs, except on-premise signs, landmark signs, and signs in areas of actual commercial or industrial use.

This analysis was made before Congress last year extended the requirements for compensation to possibly as many as 1,000,000 additional billboards and signs. The views of the GAO, taken in the light of the 1978 act, demonstrate clearly that we must act soon on my legislation, S. 344, which would create greater flexibility, allowing States to free themselves from the chains of Federal billboard regulation.

Mr. President, I ask unanimous consent that the summary of the GAO report be printed at this point in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

OBSTACLES TO BILLBOARD REMOVAL

The Highway Beautification Act has served as a catalyst in efforts by the States to curb proliferation of new signs and to remove some existing signs along Interstate and primary highways. GAO evaluated the program at Federal Highway Administration headquarters and State offices in 10 States.

To understand this report, definitions are necessary. Signs which are located on-premise, or in zoned and unzoned industrial and commercial areas, and meet State permit requirements as to size, lighting, and spacing according to the State-Federal agreement are classified by the Highway Administration as legal and can be freely erected and maintained. As a result of these exemptions permitted under the act, many signs will remain after the program is completed.

In 12 years since the act's passage, States have reported removing about 440,000 signs at a cost of about $82 million to the Federal Government. Most had been erected illegally—erected in locations contrary to State laws—and were removed relatively easily.

However, the States have been less effective in removing about 298,000 nonconforming signs—these are signs that had been erected legally but do not comply with States laws passed after the Federal act.

As of March 31, 1977, only about 78,000 of these had been removed. It could take an additional 21 years to remove all the nonconforming signs and could cost over a billion dollars.

GAO believes that the program as it is now structured may not achieve the overall objective of preserving natural beauty along the highways. The general lack of support for the program, the legal complexities that may result between States and sign owners, the numerous exemptions granted under the law, and the differences in State and local rules all appear to hamper achieving the aesthetic results of sign removal.

For example, in some States about 90 percent of the signs yet to be removed are on primary routes. Many are along the highways leading into small communities and commingled with numerous other legal signs. Many advertise local businesses—restaurants, insurance agencies, and car dealers—and churches. Undoubtedly these activities and the public benefit from sign messages, and their users will look for places to erect new signs.

This situation comes about because of the exceptions to the sign removal law. Perhaps the most significant is signs that are on premises and are exempt from removal. Another major factor—zoning—also affects the number of signs on highways.

In some cases, signs in commercial- or industrial-zoned areas are in environments where there are no commercial or industrial businesses—the rural land is merely zoned for such business. A more appropriate criterion for allowing such signs would be the actual use to which the land was put rather than how it was zoned. This would restrict such signs to areas that have already suffered visual blight from industrialization.

Strong economical and political considerations have brought about the exceptions currently granted in the law. It may not be practicable to require the removal of all signs in commercial- and industrial-zoned areas. To the extent that these areas are industrialized, highway signs may not create the visual blight they do in rural areas. However, areas zoned commercial and industrial, but lacking development, should not be allowed to retain their signs.

RECOMMENDATIONS TO THE CONGRESS

In the light of the problems and limited progress by most States in removing nonconforming signs, it appears that the objectives of the Highway Beautification Act will not be accomplished in the near future. GAO therefore recommends that the Congress reassess the program. If the Congress wants to strengthen the removal program, GAO recommends that it amend the act to encourage the States to—

Remove all signs except those on-premise and landmark signs or;

Remove all signs, except on-premise signs, landmark signs, and signs in areas of actual commercial or industrial use.

The Department of Transportation believes that prohibiting signs in commercial and industrial areas may not accomplish a great deal aesthetically and that the Congress would probably not accept the imposition of further controls in those areas. It agrees, however, that actual land use would be a more appropriate criterion than zoning.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, MONDAY, MARCH 26, 1979 No. 37

Senate

BILLBOARDS: THE "VEGETATION" ISSUE

Mr. STAFFORD. Mr. President, one of nature's glories is the arrival of spring, the flowers, the sudden new growth of vegetation. That is a glorious time of year, unless you happen to be the owner of a billboard. Then the growth and flowering of vegetation, often financed by the Federal taxpayers, becomes a bane.

So what does the billboard owner do? The owner arranges to have the State, with Federal compliance, chop down that pesky vegetation, so that the billboard will shine ever brightly. It reminds me of the Ogden Nash poem:

> I think that I shall never see,
> A billboard lovely as a tree,
> Perhaps, unless the billboards fall,
> I'll never see a tree at all.

Now it is the other way around. With your tax dollars, we are planting trees. Then, with your tax dollars, we are cutting them down. All so that motorists can see those billboards.

Mr. President, I ask unanimous consent that an article, which discusses this issue, be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Pittsburgh Press, May 9, 1978]

BILLBOARD INDUSTRY FIGHTING TO BEAT DOWN BRUSH, LAWS

(By William Steif)

WASHINGTON.—The national billboard industry is being given a crucial role that ultimately could keep its signs visible along even the most scenic federal highways.

Some state governments are entering into agreements with the industry in which billboard interests will help the state clear trees and bushes from interstate highway and primary road rights-of-way.

The billboard industry has already agreed with California, Michigan and Georgia to help direct road crews to bulldoze vegetation that hides signs aimed at the motoring public.

Through these state agreements, the industry not only seeks to improve billboard visibility but to increase the value of the signs. That could pay off because many of the signs don't conform to federal-state standards and eventually are to be purchased, with 75 percent federal funds, under the 1965 billboard-control law.

The reason state governments enter into such agreements is that the industry would agree to "maintain" some rights-of-way. But one official of the Federal Highway Administration said the arrangements are "like setting the fox to guard the henhouse."

The policy permitting the states to enter into pacts with the industry emerged from a "vegetation battle" within the Department of Transportation.

The battle began when the Roadside Business Association complained that states were deliberately blocking billboards with federally funded landscaping on rights-of-way of the 42,000-mile interstate and 350,000-mile primary road systems. RBA lobbies in behalf of rural sign owners.

On Dec. 30, 1976, a highway administration directive to the states said, "Adoption of rules which guarantee the visibility of all outdoor advertising signs . . . would have an adverse effect on highway beautification and would be contrary to policy." The 1976 memo said the agency could not approve state-industry agreements.

Thereafter, a former agency official now lobbying for the billboard industry visited Associate Administrator Joe O'Connor and discussed the industry's needs. Richard Sullivan, chief counsel of the House Public Works Committee, also discussed the matter with O'Connor and on March 15, 1977, the highway agency reversed its position and in a memo written by O'Connor said states and the industry could enter into pacts to maintain rights-of-way.

The RBA lobbyists visited Administrator William M. Cox and sought to persuade him to issue rules barring the states from deliberately blocking billboards with vegetation. For months a covert struggle took place within DOT, but Cox's proposed rules were never issued before he left the agency May 1 to return to Kentucky to run for lieutenant governor.

Behind the vegetation battle is a determined industry push to shoot the 1965 billboard control law full of loopholes and make it inoperative. Backers of the law already say that if the industry wins, the law should be repealed and enforcement turned over to the states.

Mr. STAFFORD. I close by reminding myself again—

Perhaps, unless the billboards fall, I'll never see a tree at all.

Mr. President, I yield the floor.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, TUESDAY, MARCH 27, 1979 No. 38

Senate

S. 344: STATES SUPPORT NEW FLEXIBILITY IN BILLBOARD CONTROL EFFORT

● Mr. STAFFORD. Mr. President, the American Association of State Highway Officials (AASHTO) recently conducted a poll of the State highway and transportation departments seeking their opinion of S. 344. This is my bill to return flexibility and vigor to the billboard control program.

By a wide margin—38 to 13—the State highway directors expressed support for S. 344. While I cannot tell my colleagues how each State voted specifically—AASHTO policy keeps those votes secret—it is clear that the great preponderance of the States see strong advantages to cutting away the impossible burdens of the present billboard protection law.

Since the law is not working, I believe my bill offers the only reasonable response, allowing States to do what they wish in regard to billboards.

Mr. President, I submit for the RECORD a letter from AASHTO on this issue.

The letter follows:

AMERICAN ASSOCIATION OF
STATE HIGHWAY AND
TRANSPORTATION OFFICIALS,
Washington, D.C., March 20, 1979.

Hon. ROBERT T. STAFFORD,
U.S. Senator,
Washington, D.C.

DEAR SENATOR: As a followup to my earlier letter to you, and in response to your letter of March 14th, ASSHTO has now completed its balloting process on the support in principle of conversion of the highway beautification program to a voluntary state program.

The final balloting was 38 Member Departments in favor of such a conversion and 13 opposed.

AASHTO has traditionally operated under the concept of secret ballot, so that a vote cast by an individual is not identified. We would prefer to continue in that vein of protecting confidentiality. For your information, the 13 negative votes represented one New England State, one Middle Atlantic State, two Southern States, 2 Midwestern States, and 5 far Western States.

With 38 affirmative votes, AASHTO has now developed a policy position since this represents a consensus of over two-thirds of the States.

Sincerely.

H J. RHODES,
Deputy Director.

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Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, WEDNESDAY, MARCH 28, 1979 No. 39

Senate

CALIFORNIA OFFERS ITS STRONG SUPPORT FOR A GREATER STATE PARTICIPATION IN THE BILLBOARD CONTROL PROGRAM

● Mr. STAFFORD. Mr. President, increasing interest appears to be developing in my proposal (S. 344) that would return the highway beautification program to those States wishing to resume control. This week I received a letter from an official of the State of California expressing that State's strong support for S. 344.

Such strong backing for S. 344 from the Nation's most populated State represents a major step forward for this legislation. Mr. President, because of its importance, I ask that this letter be printed in the RECORD.

The letter follows:

STATE OF CALIFORNIA,
Washington, D.C., March 22, 1979.

Hon. ROBERT T. STAFFORD,
U.S. Senate, Washington, D.C.

DEAR SENATOR STAFFORD: I take this opportunity to inform you that the California Department of Transportation fully supports your S. 344, a bill to allow the States to either remain or withdraw from participation in thhe Highway Beautification Act program.

We have analyzed your proposal and have found ourselves willing to lend any assistance possible in speeding the measure to enactment.

Your statement in the March 21, 1979 *Congressional Record* beginning on page S. 3014 makes a most convincing argument.

Please let us know what specific steps we can take to assist you.

Best wishes.

Sincerely,

JOHN H. INGRAM,
California Department of Transportation.●

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, WEDNESDAY, MARCH 28, 1979 No. 39

Senate

SENATOR STAFFORD DISCUSSES BILLBOARD CONTROL ON THE CBS MORNING NEWS

● Mr. CHAFEE. Mr. President, the steady erosion in the effectiveness of the Federal Highway Beautification Act was examined in a recent report carried on the CBS Morning News. CBS pointed out that many believe that the highway beautification law had become the "Billboard Protection Act."

During this CBS segment, our distinguished colleague, Senator STAFFORD, appeared to discuss his billboard control legislation, S. 344.

I ask that a transcript of this segment from the CBS Morning News be printed in the RECORD.

The material follows:

TRANSCRIPT

SCHIEFFER. Back when Lyndon Johnson was President, one of Lady Bird Johnson's pet projects was cleaning up the nation's roadsides. Mrs. Johnson's campaigning resulted in Congress passing a law, a clean-up law, but that law may not be doing what Mrs. Johnson thought it would. Neil Strawser explains.

NEIL STRAWSER. The aim of the Highway Beautification Act of 1965 was a federally funded highway like this one—landscaped, junkyards kept out of sight, and billboards kept 600 feet off the right of way. But now critics say it is becoming the Highway Billboard Protection Act. Some states are taking advantage of an original exemption to extend the commercial zones along highways, where signs are said to conform. And a 1978 amendment has curtailed the power of states and localities to remove offensive signs. Owners must be compensated, even if the signs have already paid for themselves. One of the Senate's most vocal billboard critics, Robert Stafford, says the act might as well be repealed.

Sen. ROBERT STAFFORD. Well, in my opinion, to put it very briefly, I think the program, as it now exists, is really protecting billboards in this country, instead of getting down nonconforming billboards on the Interstate, the primary system of the country. And so, that's why I have proposed we turn the program back to the states, so the states who want to go ahead and get billboards down can do so, and those that don't want to won't have to. And in the process, we'll avoid some government regulation, red tape, bureaucracy, and save some federal dollars.

STRAWSER. Stafford predicts the billboard lobby will fight his legislation, and apparently he is right. The big outdoor advertising association of America would not comment, but another major group did.

WILLIAM REYNOLDS [Roadside Business Assoc.]: We see too much good in the program. We see that federally regulated is easier to work with than if we had it go back to the states, such as the senator is proposing.

STRAWSER. But is this one industry that does not want deregulation?

REYNOLDS. I would say, yes, sir I am—emphatically.

STRAWSER. Why?

REYNOLDS. Look at the airline industry Look what happened to it when it got deregulated. It's a total chaos.

STRAWSER. The billboard lobby contends that polls show Americans want highway signs. Senator Stafford concedes public sentiment against signs is now weak, because environmentalists who won the 1965 act have gone on to other fights. His bill may not pass, but he hopes they hear the new call to arms for the second battle of highway beautification.—Neil Strawser, CBS News, Washington.●

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, MONDAY, APRIL 9, 1979 No. 45

Senate

THE PRESS CONTINUES TO DISCUSS THE SORRY STATE OF THE PRESENT BILLBOARDS PROTECTION ACT

● Mr. STAFFORD. Mr. President, earlier in this session of the Congress I introduced S. 344, a bill that offers to the States the flexibility to continue to participate in the so-called Federal Highway Beautification Act, or to act independently of that law. Such an optional approach is the way in which the billboard control program began in the late 1950's; it remains as sound an approach today.

Passage of S. 344 is essential for several reasons:

First. It will lessen the imposition of Federal regulations in areas where regulation has not worked and is not needed.

Second. It recognizes that the 1965 Beautification Act has been perverted, actually producing a sharp consolidation among the billboard companies, leaving the lush residual and protected market to companies that now typically churn out annual profits greater than 20 percent of their annual revenue.

Third. At present rates, it could take nearly a century to complete the billion dollar Federal billboard removal program. That is absurd.

Fourth. My bill recognizes that the present law essentially is written to protect the billboard companies, at the expense of the American taxpayer.

Fifth. And it will allow those States that want to drop out of the program to do so, while those who want to remain to do so. What could be fairer?

A number of news stories, as well as editorials, have appeared in various newspapers in recent weeks discussing the sorry state of the Federal Highway Beautification Act. Mr. President, I ask that these articles be printed in the RECORD.

The articles follow:

[From the Atlanta Journal and Constitution, Feb. 4, 1979]

FOES, BACKERS CHANGE SIDES—HIGHWAY BEAUTIFICATION PROGRAM MAY DIE

(By Brenda Bell)

WASHINGTON.—The federal highway beautification program, coaxed from Congress in 1965 by Lyndon Johnson in a virtuoso display of presidential arm-twisting, is being abandoned by his Democratic successor, Jimmy Carter.

And that's just as well with many of the people who hailed the legislation back then. In a strange twist, the former instigators of highway beautification—an amalgamation of garden clubs members and environmentalists—are now ready to nudge it into the grave.

"Johnson's original idea has been perverted . . . it's gotten turned on its head," said Kathy Cudlipp, a former Senate staffer familiar with the convoluted history of the Highway Beautification Act and the impassioned conflicts generated by the seemingly inocuous, apple-pie legislation restricting highway billboards and junkyards.

The genesis of her argument is this: states with their own tough policies against billboards dislike the federal requirement that they compensate sign owners—to the tune of $3,000 to $4,000 per sign—for removal of billboards they formerly whisked away without payment. And billboards still proliferate in violation of the law in those states such as Georgia and Missouri, which never cared anyway.

Ms. Cudlipp's former employer, Sen. Robert Stafford, R-Vt., will soon introduce a bill that, in effect, repeals the 13-year-old beautification act, termed "a bonanza for the billboard industry" by a spokeswoman for the Garden Club of America.

As if to prove her point, a large segment of the billboard industry—which has sought concessions in the law since its inception—now wants to keep the program alive.

"We'd like to see it stay. It's healthy for the environment and healthy for industry," said the director of the largest billboard trade organization in the country. Classing Stafford with a "handful of rabble-rousers," he said the senator merely wants to save money for his home state, which has been fighting billboards since 1923.

Somewhere in the middle is Lady Bird Johnson herself. She has always been the patron saint of the highway beautification program that her husband, the former president, foisted upon a reluctant Congress and a wide range of hostile interest groups, including road builders, motel and billboard owners, wrecking and junking associations and county officials.

In a statement issued from her office in Austin last week, Mrs. Johnson suggested that people who still believe in highway beautification should communicate their interest to their representatives in Congress. It can reinstate the funding Carter has cut if it wants to.

"In my experience I have found there are troughs and crests in the establishment of many programs. If the majority of citizens want the beauty of landscaped highways where scenery is not obscured by billboards or blight, I firmly believe we can continue toward that goal although we may be delayed in its realization," said the former First Lady.

That mild statement constitutes her first public utterance—despite several recent attempts to elicit one—in defense of her pet project, targeted by the Carter administration as one of my government programs the country can easily do without. Carter's 1980 budget eliminates all funds for the spasmodic highway beautification effort, pending the outcome of a study to determine whether it should be revived or left to expire.

Thus what once seemed like a good idea—control and removal of unsightly billboards and junkyards along federal interstate and primary highways—edges toward its demise. According to at least one nationwide poll, there will be few mourners.

"It's not something that captures the imagination of the American public," observed Ms. Cuddlipp.

How did the apple pie go sour? People like Ms. Cuddlipp, who acknowledges she long ago abandoned objectivity on the issue, blame what they see as congenital defects in the 1965 legislation and subsequent pressure for changes by the billboard industry.

The "real crusher," they say, was congressional passage last year of several new amendments sought by the industry and abetted by Lady Bird's fellow Texans, Sen Lloyd Bentsen and House Majority Leader Jim Wright. Bentsen, head of the subcommittee where the amendments originated in the Senate, and Wright, former chairman of a national commission which spent a couple of million dollars reviewing the beautification program, supported the changes.

But the problem started with money, which Congress has dispensed fitfully. The high mark was in 1967, when $78.5 million was appropriated for the three major beautification objectives: screening of junkyards, removal of outdoor advertising signs which don't conform with regulations and scenic "enhancement" through purchase of easements along interstate and other federal highways (the only places where the law applies). Funding dropped to almost nothing the next year—only enough to pay administrative salaries.

Since then, it has fluctuated wildly: $10 million in 1971, $48 million in 1974, $13 million in 1978. According to the Federal Highway Administration, at the current rate of funding it will take 110 years to remove 200,000 remaining billboards.

Those statistics, combined with a recent General Accounting Office report which questions whether the program is worth the effort or the money, helped convince Carter's budget analysts that it isn't.

BILLBOARD LAW REPEAL DEBATED

(By Brenda Bell)

WASHINGTON.—If politics makes strange bedfellows, so do the laws the politicians make.

Consider this peculiar coupling major segments of the nation's billboard industry are lining up against the proposed repeal of the Highway Beautification Act of 1965—a law that was intended not to please billboard owners, but to subject their business to unprecedented federal restrictions.

Spokesmen for the Outdoor Advertising Association of America, a organization of primarily urban advertisers comprising the industry's largest trade group, and the Roadside Business Association, representing motels and other such billboard users in rural and outlying areas, praise the beautification act as a "worthy" endeavor that should continue—despite President Carter's elimination of all funds for the program in his 1980 budget.

"It's kept well over 1 million new signs off the interstate system," boasted one lobbyist in what seemed a curious endorsement from the industry. If the various states were left to their own devices, he said, billboards would proliferate in some states and be absent from others and there would be no "continuity" along the interstate system.

"You'd wind up with the damnedest billboard mess you ever saw," said the OAAA spokesman, who asked that his name not be used. We're not interested in cluttering up highways."

What about the anti-billboard faction's charge that the original intent of the act has been subverted by public apathy and an influential industry which now benefits from the law? I suspect if you dislike the industry you could draw up all types of statements like that. There's always a handful of people who would be against anything," he said.

The intent of the law was to create highway beautification—it's just done the reverse," countered Ellen Kelly of Baltimore, head of the policy committee for the Garden Club of America, one of the original backers of the legislation. It's lining the pockets of the billboard association."

We call it the billboard protection and compensation act," said Vic Maerki, an aide to Sen. Robert Stafford (R-Vt.), who is sponsoring the repeal legislation. Stafford's home state chafes under the federal regulations, which have made it more difficult and expensive for Vermont to continue waging its 56 year-old anti-billboard program—one of the toughest in the country.

In Stafford's view, the beautification act now gives the industry the best of both worlds. Billboard owners, who must be compensated for signs which are removed under the law, offer up for cash payment signs which would formerly have been written off as worthless due to changing advertising trends or traffic patterns. Almost all the so-called "non-conforming" signs removed in Ohio were volunteered for sale by their owners.

At the same time, he argues, certain other signs are protected because there's not enough money to pay for their removal. The situation could be exacerbated if Carter succeeds in eliminating funds for the program during fiscal 1980 and the beautification act remains on the books—minus the appropriations needed to carry it out.

Maerki expects many original supporters of the highway beautification act—mostly garden clubs and environmental groups—to support Stafford's bill. Plenty of other groups who opposed the 1965 law to begin with—wrecking firms, junkyards, motels, state and local governments—should also be happy to see it fall by the wayside.

[From the San Jose Mercury News, Feb. 11, 1979]

LADY BIRD, BILLBOARD LOBBY ARE NOT HAPPY—"BEAUTIFICATION'S" NOT SO PRETTY END

(By Monroe W. Karmin)

WASHINGTON.—After 14 years, Lady Bird Johnson's cherished highway beautification program appears to be doomed, a casualty of both Jimmy Carter's fiscal austerity and Congress' loss of enthusiasm.

On Capitol Hill, an environmentalist, Sen. Robert T. Stafford, R-Vt., recently introduced legislation to allow states to withdraw from Lady Bird's program.

So bleak does the future appear for beautification that Mrs. Johnson, whose husband pushed the bill through the 1965 Congress as a present for his wife, departed from the customary silence she has maintained on public issues since she left the White House.

"Of course, I regret the omission of highway beautification funds from the budget," Lady Bird declared in a statement from Austin, Texas, "but I do understand the urgency of curtailing all possible spending in order to hold down inflation."

In translation, this means Mrs. Johnson is not happy but, because she and Carter are fellow Democrats, she won't criticize the president.

The irony in highway beautification's ugly ending, however, is that while the Carter administration seems bent upon killing the program, the billboard industry wants to save it.

"We're disappointed the president has chosen not to fund the act," said a spokesman for the Outdoor Advertising Association of America, the largest billboard industry organization.

This role reversal—the industry favoring more beautification money, the government giving none—suggests why the nation's first major environmental program is headed for the junkyard.

Since 1965, highway beautification has been designed to the billboard industry's specifications, so much so that the industry prefers federal law to stricter state laws such as those in Sen. Stafford's Vermont.

Over the last 14 years, Lady Bird's act has been:

Riddled by a succession of industry-supported exceptions that permit more and more billboards to be erected and to remain standing.

Changed to require federal and state governments to pay "just compensation" to billboard owners for signs removed not only under federal law but under state and local law, too.

Starved for funds with which to pay sign owners by a Congress that steadily has lost interest in the program.

The reason is explained by John S. Hassell, Jr., the deputy federal highway administrator. At the rate Congress now is financing the program, he estimates it will take 110 years to complete the billboard acquisition task and more than 300 years to control junkyards.

The choice, therefore, came down to putting vast sums into beautification or nothing at all. Richard J. Sullivan, chief counsel of the House Public Works committee that oversees the program, tells what happened:

"While the garden clubs, the League of Women Voters, and the environmentalists have become dormant on highway beautification, the billboard people have been as busy as ever."

Despite its dreary prospects, however, there is a difference of opinion over whether the program has been a success or a failure.

Both deputy highway administrator Hassell and the Outdoor Advertising Association claim success, not so much in the number of billboards removed but in the number that were not built because of the act.

DOT estimates that nearly 307,000 billboards have not been put up since Lady Bird got her present in 1965.

This positive appraisal is not shared by the environmentalists. "A complete failure is the verdict of Professor Charles F. Floyd of the University of Georgia. "The law has been abandoned by its former friends, and totally mutilated by the billboard industry."

The General Accounting Office has also chartered the programs' progress, or lack thereof.

After passage of the 1965 act, an inventory showed there were 729,135 signs eligible for removal, including 430,731 illegal signs that could be taken down without payment to owners.

"Illegal signs were easily removed at little cost," GAO reported. "Many of the illegal signs were hand-bill type posters tacked to posts and other small signs that were removed by highway maintenance crews without notifying the owners."

On the other hand, the report said, progress in removing non-conforming signs—those for which compensation must be paid—"has been slow."

Of the 298,404 signs identified as non-comforming, according to latest figures, only one-third have come down, at a federal cost of $137 million, leaving approximately 200,000 signs remaining to be acquired.

Dwindling acquisition money is not the only obstacle to future progress, GAO concluded. It noted these other impediments:

From the beginning, the Highway Beautification Act permitted so-called "on-premise" signs that advertise business conducted on the property on which they are located.

"The result," said Floyd, "has been huge gas station signs towering above the landscape at almost every interchange and the unchecked spread of sign clutter along our highways."

The original beautification act also permitted signs to remain standing in commercial and industrial areas, both those zoned for that purpose and unzoned areas where industry and commerce was being conducted.

In 1968, Congress further directed the secretary of transportation to accept state and local decisions on zoning and commercial and industrial activity.

"In practice, therefore, many local communities, and particularly rural counties," declared Floyd, "attempt to circumvent the Highway Beautification Act by zoning long stretches of rural highways as commercial and industrial areas."

The original act directed the federal government to work out, with the states, regulations covering the size and spacing of billboards. In 1968, however, Congress decided to accept size and spacing limitations that were "customary" in the states.

As a result, Floyd noted, 32 states adopted a maximum size limitation "equal to the floor area of a medium size three-bedroom house and approximately twice the size of the largest billboards normally erected along the interstate system."

In 1976, Congress made another significant change, allowing non-conforming directional signs to remain standing if it could be shown that removal would cause "economic hardship" to an area.

"This provision has the potential of completely halting the removal of rural signs," Floyd contended.

In 1978, Congress voted to permit certain flashing electronic signs to remain standing if they advertise a business conducted on the premises.

"It is difficult to conceive of any change in the Highway Beautification Act that would be more counter to its original intent," Floyd said. "Not only are they aesthetically undesirable, but they create very definite safety hazards."

By far the most controversial change, however, came last year when Congress decreed that "just compensation" must be paid for billboards removed from the highway system under state and local as well as federal law.

Simply stated, this means beautification will cost lots more money—both for the federal government, which pays 75 percent of the cost of sign removal, and for state governments, which pays 25 percent.

"We're in favor of the principle of reasonable regulation" declared an Outdoor Advertising official, "providing that, when signs are to be removed, the government abides by the principle of just compensation."

If the industry is pleased with what Congress has done to highway beautification, Stafford, the environmentalist, is not.

On Feb. 6, the senator introduced legislation to allow states to withdraw from the Highway Beautification Act program.

"The purposes this act was intended to achieve have been, to a large degree, perverted," Stafford concluded. "The act has become more a protection for billboards than the cause for their removal."

[From the Sun, Feb. 12, 1979]

THE 1965 HIGHWAY BEAUTIFICATION ACT WEAKENED; BILLBOARDS BLOSSOMING

(By Stephen E. Nordlinger)

WASHINGTON.—Motorists heading south on Interstate 95 toward warmth and sunshine are going to be treated to a new burst of billboards and huge signs in south Georgia just before crossing the Florida border.

The signs have been put up in Jimmy Carter's home state after Georgia officials rezoned to commercial use a long stretch of the major north-south highway deliberately to allow the big advertisements, federal officials said.

Groves of pines are to be chopped down, some belonging to the federal government, to insure good visibility for the billboards that have been erected at several interchanges.

The action in Georgia is the latest display of the weakness of the federal law designed to make driving on highways more appealing by removing or preventing signs and junkyards.

Because of it, a key Maryland court decision has been effectively nullified.

The federal law, known as the Highway Beautification Act of 1965, was the pet project of Lady Bird Johnson. But critics now call it the Highway Sign Protection Act. One of the nation's early environmental laws has been extensively eroded under presaure from the outdoor advertising industry.

The law allows signs to go up in commercial and industrial zones. Although some officials at the Federal Highway Administration thought that Georgia had circumvented the law by deliberately "spot zoning" Interstate 95, top members of the highway administration said it would be hard to gather enough proof to cut off federal highway funds as a penalty.

Georgia, which already has 24,000 signs that fail to conform to the law, was merely told not to do it again.

This case was but one in a string of triumphs for the outdoor advertisers.

Their biggest victory after years of chipping away at the law came in a little-noticed move by Congress in the closing days of the session last fall.

A rider was attached to the $54 billion highway bill that experts say is going to effectively block attempts by states and cities to use their land-use and police powers for controlling signs.

According to officials at the highway administration, the action, taken without hearings and over the opposition of the Carter administration, effectively nullifies a key decision by the Maryland Court of Appeals two years ago that allowed Baltimore city to remove signs in its Old Town section as part of its urban renewal program.

This ruling had been used by federal authorities to inform cities across the country that they could use their police powers to remove signs without compensating the owners if the signs had been fully amortized so the owners recovered their value.

The congressional rider, pressed by the powerful outdoor-advertising industry, now requires compensation for all signs that are to be removed from federally aided roads whether or not they have been amortized.

This will cost federal and local governments more than $1 billion, according to the Department of Transportation, a costly burden that experts believe will discourage the removal of signs in the future.

So sweet has the law become for the industry, represented by the Roadside Business Association and the Outdoor Advertising Association of America speaking for the urban segment of the business, that it has switched its course.

Once opposed to the measure, the industry warmly embraces it and is prepared to turn its formidable lobby to its defense this year on Capitol Hill.

The administration is taking a different view of the law.

President Carter is asking for no new funds in his 1980 budget for the program, even though it was pushed through Congress by his Democratic predecessor, Lyndon B. Johnson, at the behest of his wife.

The President wants to hold up funds until a study is finished by the Federal Highway Administration to determine whether the program is worth preserving. Congress's most vocal critic of billboards, Senator Robert F. Stafford (R., Vt.), who comes from a state where they are strictly regulated, has made up his mind about the value of the law. He introduced a bill last week that would repeal it.

Senator Stafford said he would prefer strengthening the law, but he contended that "public sentiment for more beautiful roads on the national level seems too weak to stand up against a strong, organized industry lobby." Lady Bird Johnson herself is still defending the law—but only mildly. In a statement issued by her office in Austin, Texas, she commented there are "troughs and crests in the establishment of many programs."

"If the bill were any good, the outdoor advertisers wouldn't like it, but they love it, said Charles F. Floyd, chairman of the real estate department at the University of Georgia, who is about to publish a book on the program.

"The law doesn't prevent new billboards and it doesn't remove the existing ones. It's totally in favor of the industry."

Over the 14 years since President Johnson signed the beautification law, proclaiming it a major environmental measure, only about 88,000 signs have been taken down of the 296,000 that fail to meet the law's standards. Thousands of those still standing are jumbo signs that loom above farmland near major highways.

In Maryland, 357 so-called nonconforming signs have been removed, 18 per cent of the state's original total of 1,997, according to the Federal Highway Administration. Maryland ranks 34th among the 50 states in the percentage of signs removed.

A big reason for the slow pace is the failure of Congress to provide much money to buy signs. Only $111 million has been spent by the federal government, which pays three-quarters of the cost, with an additional $56 million remaining unspent.

Congress appropriated only $13 million for this year, a far cry from the $48 million five years ago. According to Richard Moeller, chief of the program at the highway administration, it will take an estimated 110 years to complete the program at this pace.

There are big exemptions in the law, carved out by the advertising industry even before last year. These huge signs near service stations, motels and other roadside businesses, called "lollypops" in the trade, are left untouched.

And there is the exemption for signs in commercial and industrial areas along highways. There are more than 260,000 signs in this category.

"We think it has been a very good program," said William Reynolds, executive director of the Roadside Business Association, in an interview on the much-amended bill. This is a marked departure from the congressional testimony of his predecessor in 1965, James R. Hartzell, who said, "Americans overwhelmingly are in favor of outdoor advertising."

Mr. Reynolds strongly defended the 1978 amendment requiring compensation for all removed signs as "fair" in view of the compensation given other private property taken by the public.

But Mr. Floyd, in an interview, strongly dissented, contending that the value of an outdoor sign derives from exposure on the public roads and that once its value has been amortized the owners have been fully compensated. This is in line with the Maryland Court of Appeals decision.

When the highway bill was passed last fall, all of the Maryland delegation in the House supported the industry-backed amendment except Representative Gladys Noon Spellman (D., 5th), nd Newton I. Steers, Jr. (R., 8th). There was no vote on the amendment in the Senate.

Although most of the road signs may remain, some citizens are taking the issue into their own hands.

When billboard owners in Tennessee, Arizona, Kansas and a few other states chopped down cottonwoods, poplars and other trees last year to make their signs more visible environmentalists took action. They formed Joyce Kilmer Brigades and sawed off the legs of the billboards.

The brigades were named for the writer of a poem which begins, "I think that I shall never see a poem lovely as a tree."

The confrontation is a sign of the emotion still behind the billboard issue 14 years after the passage of Lady Bird Johnson's bill.●

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PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

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Senate

S. 344: THE LOUISVILLE COURIER-JOURNAL DISCUSSES BILLBOARD CONTROL

Mr. STAFFORD. Mr. President, the Louisville Courier-Journal recently carried an editorial discussing the sorry state of the present Federal effort to control the proliferation of highway billboards. The editorial terms the program a "beached whale" and "a welfare program for sign owners." The Federal effort, the paper notes, is "so weak and riddled with exemptions" that it has become useless.

While the editorial overstates the moneys that have already been spent on billboard removal—the figure is closer to $100 million than $1 billion—it must be noted that the potential cost of the present program is well in excess of that $1 billion figure.

I do not believe it is wise to spend some $1.3 billion to perpetuate a program designed simply to assure the continuation of substantial profits to the billboard industry. Nor is it wise to continue, as the law does, to intrude on the police powers of local government.

Mr. President, my bill, S. 344, would enable States to drop out of the program and to act as they see fit. Such a flexibility is needed to make billboard control realistic. I ask that this Courier-Journal editorial be printed in the RECORD.

The editorial follows:

[From the Louisville, Ky., Courier-Journal, Jan. 6, 1979]

THE WAR AGAINST BILLBOARDS IS STILL WAGED WITH BLANKS

Visual pollution doesn't cause cancer, at least so far as anyone has yet established. And the U.S. has far to go in controlling the kinds of pollution that do.

Thus it's not surprising that, despite the grand promise of the federal Highway Beautification Act of 1965 and subsequent legislation, the billboards still march across the countryside, their ranks thinned only slightly by barrages of federal or state laws that have been loaded mostly with blanks.

Courier-Journal stories last weekend described the low priority assigned by Kentucky and Indiana to enforcement of billboard restrictions. That approach, unfortunately, probably is more typical than otherwise of other states.

For that, the federal government must shoulder the largest part of the blame. The law, as amended at various times since 1965, is so weak and riddled with exemptions that one expert on the subject quite fairly describes it as the "billboard protection and compensation act." But both Kentucky and Indiana have been inexcusably weak in doing what is possible under the law.

The two states have erred in different directions. Kentucky has almost completed the purchases of "non-conforming" signs—those were erected before they became illegal. Its record, according to a General Accounting Office report, is the third best in the nation. Indiana has done only 11 percent of that job. But Kentucky, according to the same agency, leads the nation in the number of illegal signs—those erected after passage of the law banning them. At last count, there were 14,983 of these signs along the major routes.

That's more than a violation of federal law. Kentucky hasn't yet taken the first step to enforce its own 1976 billboard law, which was supposed to complement the federal requirement. Nor has it any present intention of doing so. In fact, state officials say Congress may be about to scrap the entire Highway Beautification Act, and why spend money if the signs may go right back up next year or the year after? That's not sound reasoning. No law gives public officials the option of basing enforcement on which way the political winds are blowing.

But it is true that there has been little from Washington to inspire zeal in conforming with the law. The program for buying up old billboards is now stalled for lack of federal money. The Federal Highway Administration says $30 million has been authorized for the highway beautification program next year but only $13.1 million appropriated. Most of that will go for administration, leaving the taxpayer to wonder what's to be administered.

The program, it must be conceded, is a beached whale. More than a billion dollars has been spent to remove highway signs, yet more signs have sprouted as the old ones disappeared. In essence, it has been not much more than a welfare program for sign owners.

There is a better way, and it's not to repeal the law and let the nation's highways become a billboard jungle. The key is to serve the purpose without allowing visual anarchy. Many of the signs do present useful information to the traveler looking for food, fuel, or a place to spend the night. Something more informative than the "gas, food, lodging next right" rights is helpful to many motorists.

The law already permits making those signs more careful by identifying the gas stations, restaurants and motels at approaching interchanges. Little has been done to implement this provision, probably because it's so easy to ignore or circumvent the law. That approach may need refining or supplementing. But it's better than either legalized blight or depriving the traveler of helpful information.

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Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, TUESDAY, APRIL 24, 1979 No. 48

Senate

S. 344: NEWSDAY ANALYZES THE INADEQUACIES IN THE PRESENT FEDERAL BILLBOARD CONTROL EFFORT

Mr. STAFFORD. The Long Island newspaper, Newsday, recently carried two long and very interesting articles evaluating the state of the current Federal billboard control law and S. 344, my bill to add flexibility to the billboard control effort.

As these articles point out, the billboard industry has become the most vocal supporter of the Highway Beautification Act. In fact the billboard industry is probably the only supporter left for the present Federal billboard law. Certainly, the states are not supporters; 38 of the states have urged the passage of S. 344.

The articles follow:

[From Newsday, Apr 17, 1979]

SIDES SWITCH ON BILLBOARD LAW

(By Anthony Marro)

WASHINGTON.—A month ago, Charles F. Floyd, a professor at the University of Georgia, a staunch advocate of billboard controls and an expert on the Highway Beautification Act of 1965, wrote a letter to friends about the current state of the law.

The good news, he said, is that President Carter has cut all funds for the program in his fiscal-1980 budget and that Sen. Robert T. Stafford (R-Vt.) has introduced legislation to repeal the act.

And lest anyone think it strange for a proponent of controls on outdoor advertising to hail plans to kill the program, Floyd quickly told them the bad news: "Recent events have changed . . . the act into an almost totally industry-dominated program that is actually promoting the billboard industry beyond [its] wildest dreams. And it's getting worse every day."

On the other hand, spokesmen for the two major outdoor advertising groups, William Reynolds of the Roadside Business Association and Vernon Clark of the Outdoor Advertising Association of America, did not return repeated calls to their offices; but both have made it clear that they will oppose Stafford's proposal to undo the 1965 act. Floyd is one of the more outspoken critics of the current program, but he is not alone.

There is a consensus among many of the original backers in Congress and in the environmental movement that the act, often called the "Lady Bird bill" because it was pushed through Congress at the urging of President Lyndon Johnson's wife, has been turned upside down. They say it has been gutted and reshaped by its former opponents, while all but abandoned by its former friends. It is, in the critics' view, a classic example of how a piece of legislation can be eroded and modified over the years by a persistent lobby until it comes to serve the very group it was designed to restrict.

The Highway Beautification Act grew out of one of the fiercest environmental battles of the 1960s. Intended to screen junkyards and remove billboards along the 43 000 miles of federally financed interstate roads—although the states may use the money on any roads—it was passed reluctantly by Congress after a *tour de force* of arm-twisting, pressuring, debating, threatening and calling in the chips by Lyndon Johnson, who had committed himself to the plan.

A key provision held that outdoor advertising devices could not be maintained within 600 feet of any such road, except in areas zoned "commercial" or "industrial."

From the start, there were—in the view of its backers—major weaknesses in the law, starting with its exemption of "on premise" signs, which allow service stations and motels to maintain huge signs, no matter how close to the road. A second problem, in the view of the law's backers, was that enforcement was left largely to the states and many ignored the law. A recent study showed that in some states, including Missouri and New Jersey, few signs have been taken down and that in Georgia 573 new nonconforming signs have gone up.

"The purposes this act was intended to achieve have been to a large degree perverted," says Stafford, who wants to turn the program back to the states. "The act has become more a protection for billboards than the cause of their removal."

Government statistics show that since the law took effect 14 years ago, nearly 100,000 nonconforming billboards and signs have been removed from the roadsides. But 197,791 remain.

More important, a new amendment to the law, slipped through at the end of last year's session without public hearings and with little formal debate, requires that the states and the federal government pay billboard companies for removal of signs ordered down, even when they are in clear violation of state and local zoning and even when they have been fully amortized so that sign owners have more than recovered their investment.

At an average cost of about $2,000 a sign, removal could cost hundreds of millions of dollars.

And, at the rate of financing that Congress has authorized in recent years, it could take about 110 years to bring about.

Other statistics show that many of the signs that have been removed have been from secondary roads—that is, signs that were out of the way and that were made obsolete by changing traffic patterns or that the billboard companies didn't want anyway.

"They've got the law just the way they want it," a Senate aide said. "They can keep their billboards almost anywhere they want them, and they can get the taxpayers to pay them for signs that they don't want any more."

And as the Carter administration tries to hold off any new financing, at least long enough to "reassess" the whole program, and as Stafford tries to scrap it entirely, the organizations that originally protested most strongly against the act are expected to fight hardest to keep it.

If the law has been "perverted," as Stafford, Floyd and other former supporters say, it was done with the help of Congress, a good many states and to some degree the Federal Highway Administration.

Although top officials at the highway agency defend their record in administering the act, there has been considerable muttering at lower and middle levels that the agency has become too cozy with the industry it regulates. There are charges that several recent policy decisions have been written—literally—by industry lobbyists.

One aspect of the situation that upsets some environmentalists is the willingness of the highway agency to let the states give permission to sign companies to cut away trees and shrubs so that motorists can have a better view of the billboards. That is done even though some of the trees were paid for with funds provided under the Highway Beautification Act.

"That's the federal government at its absolute worst," said Vic Maerki, an aide to Stafford. "The billboard issue aside, that's the sort of thing that infuriates taxpayers."

Those actions (in Georgia the tree-cutting permits actually are called "beautification permits") infuriated at least a few persons in Tennessee who, vigilante-like, cut down billboards owned by persons who had cut down trees.

Some members of Congress and even some employees within the highway agency also were infuriated by a recent decision by agency officials that extended the compensation requirements of the 1978 amendment to include about 9,000 signs that state and local governments already had ordered taken down, but that were still standing pending the outcome of lawsuits by sign owners.

The decision, a reversal of earlier policy, followed heavy lobbying by the industry. It means that it now would cost the states, which pay one-third of the bill, and the federal government about $18 million for removal of those signs—even though the 9,000 signs were ordered down before the amendment was passed.

After the new policy was revealed, Rep. Peter H. Kostmayer (D-Pa.) suggested in a letter to Transportation Secretary Brock Adams that the highway agency officials had sold out to the billboard lobby.

"If they want to work for the billboard industry . . . they ought to hire on with those fellows," the congressman wrote. "In the meantime, they are working for the taxpayers of this country, and it's something they ought to keep in mind."

The record in New York State has been mixed. There were 5,769 signs in "noncompliance" at the time the law took effect, most of them within the 600-foot limits. In the 14 years since, only 1,230 (21 per cent) have been taken down, ranking the state 30th in terms of compliance.

The law allows the federal agency to withhold 10 per cent of the highway construction matching money from a state that refuses to comply with the law. But that penalty has rarely been invoked. Though several states, including New York, were threatened with penalties, only one, South Dakota, has forfeited such funds—$9 million in the past two years. Moreover, since 1965 the law has been eroded steadily by the outdoor-advertising lobby and its friends in Congress.

In addition, Congress ordered the highway agency to accept local decisions on what constituted commercial zones. That permitted states to allow long, thin stretches of land along interstate roads to be downzoned commercial, even though there was no real or anticipated commercial use except the erection of billboards.

Congress also increased the maximum size permitted, enabling the industry to erect monumental billboards outside the 600-foot strip that could be read from the roads.

Indeed, a recent study by the General Accounting Office concluded that there simply isn't much public backing for the law. "The general lack of support for the program, the legal complexities that may result between states and the sign owners, the numerous exemptions granted under the law, and the differences in state and local rules all appear to hamper achieving the aesthetic results of sign removal," the study said. It recommended that the whole program be reassessed.

Lady Bird Johnson, in a statement released recently through her office in Austin, Texas, said that many programs go through their ups and downs but that she was confident the philosophy behind the Highway Beautification Act is sound and will prevail.

Stafford and some of his congressional colleagues who support him are less sure and they argue that the law has been recast to the point that it does more harm than good.

The effect of the 1978 amendments, he said in introducing his bill to revoke the act and let the individual states run their own programs, is to "substantially increase the cost of the Highway Beautification Act without promoting highway beautification."

Stafford's bill would allow states with little concern for highway beauty to permit billboards. And it would allow states with strict antisign laws, such as Vermont, to use their police powers to order the removal of signs without paying the stiff compensation now required by federal law.

The result: In the heated debate that is expected when Stafford's bill comes up for a hearing next month, many of the original backers of the Highway Beautification Act will be lined up to support Stafford's bill, while staunch opponents of the act will argue to keep the greatly changed version on the books.

"That's the best evidence of what's happened to the law," Floyd said. "If the law was any good, the industry would hate it. But the fact is that the industry loves it."

ON A GEORGIA HIGHWAY, MORE SIGNS, FEWER TREES

WASHINGTON.—Travelers riding south along Route I-95 in Georgia these days find large, new billboards at intersections in Glynn and Camden Counties, advising them where to eat, sleep, buy fuel or bask in the sun.

The signs—several dozen have been erected and many more are due to follow—are similar to many of the nearly 200,000 along the nation's roads. But their presence has sparked a feud within a federal agency, outraged some environmentalists and raised questions about the viability of federal laws designed to control outdoor advertising.

Permits for the Georgia signs were approved late last year by Federal Highway Administration officials—more than a decade after the enactment of the Highway Beautification Act, which was designed to curb roadside advertising. Since the law was enacted, more than $200 million in tax money has been spent to enforce it.

The new Georgia signs were approved despite warnings by some in the agency that the decision could set a precedent that would lead to more billboards along the nation's main roads. And they were approved over strong objections that the agency was caving in to local politicians and businessmen. Agency documents show that Richard Moeller, the chief of the department's junkyard and outdoor advertising section, fumed to superiors that of the agency was going to let "any two-bit politician" manipulate zoning to permit signs, the agency might as well "fold our tent" and go out of business.

Moeller, in a telephone interview, said he did not have any particular "two-bit politician" in mind but had been referring to a situation where local businessmen and politicians have worked together to reshape zoning, thus circumventing the federal law. He said that although he was angry about the decision by his superiors, "these are difficult decisions." He said he believes they did what they felt was right.

At issue were decisions by two counties, later endorsed by the state, to zone land around nine Route I–95 interchanges that are within the borders of the counties. The zoning change allowed more than 100 signs to be erected along the recently opened four-lane road, which runs from South Carolina to Florida.

Environmentalists say that state and federal agencies added insult to injury when they permitted sign companies to cut down trees on the federal right-of-way along the road. Critics claim the purpose of the tree removal was to give motorists a clear view of the signs.

Federal laws permit signs in commercial and industrial zones and give local communities considerable leeway in setting their own zoning. But the federal agency sometimes has refused to recognize such zoning where it seemed to be intended specifically to permit billboards rather than to allow commercial growth. In the Georgia case, agency documents show, some factors convinced agency aides that the zoning was intended solely to evade the law. Among them were the following:

The downzoning called for about 4,000 acres to be classified commercial, though a regional planning commission earlier had concluded that Camden County would need only about 100 more acres of commercially zoned land by the year 2000.

The members of the Coastal Areas Planning and Development Commission—a local business promotion group that helped devise the new zoning plan and urged the counties to enact it—included owners of the two sign companies that benefited most directly from the changes and an official of a company that owned land at the interchanges.

Some proponents of the zoning changes had said at public hearings that the purpose of the changes was to permit the signs.

The federal agency came under considerable pressure to approve the new zonings, most of it from area businessmen and members of the Georgia congressional delegation. Their argument was that without such signs, motorists could drive the 110-mile stretch of road without being made aware of local services or of the lures of Georgia's ocean resorts. "These signs are needed on I–95," said Edwin Fendig Jr., an official of a St. Simons Island company that had obtained many of the new sign permits. "People could drive from South Carolina to Florida and not even know they'd been through the state."

Some federal officials—including those in the agency's legal office—argued that the rezonings were blatantly illegal, that to permit them would set a dangerous precedent and that, as one said, "the integrity of the entire beauty program [is] at stake." Some aides grumbled privately about the fact that a strong backer of the new zoning was Thomas Moreland, who is the head of the Georgia Department of Transportation.

John Hassel, the second in command at the federal agency, had worked under Moreland in Georgia before taking his federal post. In a recent interview, Hassel said he had been aware of the situation in Georgia but had not been contacted about it by Moreland and had not made the decision to permit the rezoning. One of Hassel's subordinates, Lester Lamm, said he had made the decision on his own, over the objection of some staff members, because he felt that the state was "not sufficiently in contravention" of the law to warrant stiff penalties.

The only way to challenge the new zonings, he said, was to withhold 10 per cent of the federal highway funds pledged to the state—an action he feared would stir great opposition in the Congress and possibly lead to further weakening of the law. He said the fact that Hassel and President Carter are both from Georgia did not influence him. Lamm said he put Georgia on notice that his decision should not be regarded as precedent in other parts of the state.

But George Henry, director of the coastal development group and an advocate for the signs, said recently that other Georgia counties plan to follow the pattern set in Camden and Glynn.—Marro.●

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, WEDNESDAY, APRIL 25, 1979 No. 49

Senate

S. 344: The Governors of New York, Idaho, Wisconsin, and Virginia State Their Strong Support

Mr. STAFFORD. Recently I wrote to the governors of the various states to seek their views on S. 344, my bill that would add new flexibility to the Federal billboard control law

Several governors have already been kind enough to respond, expressing their views on this issue. Among the first to write to me to express their strong support for S. 344 are the Governors of New York, Idaho, Wisconsin, and Virginia. (Previously, I included in the RECORD the strong support of California for S. 344.)

Governor Carey of New York, for example, offered this conclusion:

"By enacting the amendments to the 1978 Highway Act, Congress has taken away the traditional freedom of the localities to adopt whatever land use controls they consider to be in their own best interest. State government is further threatened with a finding, by the Federal Highway Administration, of noncompliance and the accompanying penalties, in the event local zoning ordinances are enforced . . . You may be assured of New York's support for 344."

In his analysis, Governor Dreyfus of Wisconsin summed up his position as follows:

"I support S. 344 because it would return the basic decision-making power on sign regulation to the state. A state electing to go its own way would not be penalized by the withholding of highway funds, while states choosing to qualify would be eligible for 80 percent federal funding of sign acquisition costs. I do not know what course Wisconsin might choose under such a law, but I certainly agree that we should be allowed to make the decision."

Governor Evans of Idaho offered support of equal strength, again pointing out the severe problem of the 1978 amendments to the basic law:

"We agree with the scope and intent of S. 344. There is far too much detailed interference in the Beautification Program from the Federal level . . . We believe Federal Legislation which pre-empts a State or or its political subdivision from exercising their responsibilities and which creates obligations to the State regardless of its financial capability and without consideration for the availability of Federal matching funds is an unacceptable infringement on States Rights."

While I intend to place other letters, both positive and negative ones, in the RECORD at a later date, I submit these initial four letters for the RECORD.

The letters follow:

STATE OF NEW YORK,
EXECUTIVE CHAMBER,
Albany, April 16, 1979.

Hon. ROBERT T. STAFFORD,
Senate Office Building,
Washington, D.C.

DEAR SENATOR STAFFORD: Thank you for your letter of March 27 relating to S. 344 which would amend the Highway Beautification Act by making participation voluntary on the part of the states. We in New York strongly support this proposed legislation and have advised several members of our Congressional Delegation and the American Association of State Highway and Transportation Officials of this fact.

We have been particularly troubled by the Beautification Act in its present form. New York was one of the very few states singled out for alleged noncompliance and threatened with a loss of highway funds. As a result of this selective enforcement, we have had to remove some signs which were essential to the tourist industry at a time when we are strongly promoting tourism in our state.

Many of our local governments have adopted strong zoning regulations controlling outdoor advertising in their own communities. By enacting the amendments to the 1978 Highway Act, Congress has taken away the traditional freedom of the localities to adopt whatever land use controls they consider to be in their own best interest. State government is further threatened with a finding, by the Federal Highway Administration, of noncompliance and the accompanying penalties, in the event local zoning ordinances are enforced.

You may be assured of New York's support for S. 344 and our Transportation Commissioner, W. C. Hennessy, will be glad to testify to our position at the forthcoming hearings.

Sincerely,

HUGH L. CAREY.

OFFICE OF THE GOVERNOR,
STATE CAPITOL,
Boise, April 18, 1979.

Hon. ROBERT T. STAFFORD,
U.S. Senate, Committee on Environment and Public Works, Washington, D.C.

DEAR SENATOR STAFFORD: We agree with the scope and intent of S. 344. There is far too much detailed interference in the Beautification Program from the Federal level.

There is the possibility that special interest groups would influence State Legislatures to materially alter existing State Laws to an extent that the progress and substantial funds expended to date would be lost. Idaho entered into the program in 1967 and as a consequence has completed 92% of the billboard program and 97% of

the junkyard program at a total expenditure of 2.0 million dollars.

We also strongly support continued funding for those states that elect to complete the program.

Probably the most needed change in current Federal legislation is the removal or alteration of the Amendments contained in the 1978 Surface Transportation Act.

As we interpret the Act, the State is obligated to pay for signs removed under local zoning ordinances whether or not there are State or Federal funds available to make such payments. It can be argued that the local entity should be liable for such payments if they, by their actions, created the liability. However, it is the State's Federal aid funds that are in jeopardy and therefore in the absence of payment by the local entity, the State must pay to avoid a penalty.

This puts the State entity into a position of having to divert extremely scarce project funds to lower priorities at the whim of local zoning jurisdictions.

We believe Federal legislation which preempts a State or its political subdivision from exercising their responsibilities and which creates obligations to the State regardless of its financial capability and without consideration for the availability of Federal matching funds is an unacceptable infringement on States Rights.

Thank you Senator Stafford for allowing us to comment on this proposed legislation. If further information is necessary, please don't hesitate to call on us.

Sincerely,

JOHN V. EVANS,
Governor.

OFFICE OF THE GOVERNOR,
STATE CAPITOL,
Madison, April 18, 1979.

Hon. ROBERT T. STAFFORD,
Dirksen Senate Office Building, Committee on Environment and Public Works, Washington, D.C.

DEAR SENATOR STAFFORD: I appreciate the opportunity to comment on S. 344, your bill to allow states greater flexibility in regulating outdoor advertising signs along interstate and federal aid primary highways.

Wisconsin, as a state of great scenic beauty and numerous tourist attractions, has recognized the value of billboard regulation by voluntarily enacting a state sign control law in 1959 and qualifying to receive the one-half percent federal aid bonus provided by the Federal-Aid Highway Act of 1958. However, our experience under the "mandatory" statutes enacted to comply with the Highway Beautification Act of 1965 has been mixed. Thousands of illegal signs have been removed and the erection of countless others has been prevented. At the same time, the acquisition of nonconforming signs has been a difficult and slow moving process—we still have over 19,000 to be acquired. And, as noted by the General Accounting Office report you referred to, there is no way for a passing motorist to know whether any given sign is legal, illegal or nonconforming.

I do not blame the federal law for all of our problems. Any state effort to strictly regulate outdoor advertising is bound to generate some degree of complexity. However, the present system creates such a byzantine interrelationship among local ordinances, state law, federal law, state administrative rules and federal regulations that it is difficult for state employees to understand the law and nearly impossible to explain it to the public.

In addition, as you note, the 1978 Surface Transportation Act created a new problem by requiring that compensation be paid for the removal of any sign along a controlled highway, even when the sign is removed solely because of a local ordinance. This has brought Wisconsin's local certification program (in which we delegate some aspects of sign control enforcement to communities that adopt standards consistent with state and federal law) to a halt.

I support S. 344 because it would return the basic decisionmaking power on sign regulation to the state. A state electing to go its own way would not be penalized by the withholding of highway funds, while states choosing to qualify would be eligible for 80 percent federal funding of sign acquisition costs. I do not know what course Wisconsin might choose under such a law, but I certainly agree that we should be allowed to make the decision.

Sincerely,

LEE SHERMAN DREYFUS,
Governor.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE GOVERNOR,
Richmond, April 18, 1979.

Hon. ROBERT T. STAFFORD,
U.S. Senate, Committee on Environment and Public Works, Washington, D.C.

DEAR SENATOR STAFFORD: It is a pleasure, on behalf of Governor Dalton, to respond to your March 27, 1979 communication requesting comments on the subject bill.

We share your concern over zoning intrusions and preemption of state and local police powers under the Federal Outdoor Advertising program pursuant to the 1978 Surface Transportation Act, as amended. There is considerable support for the argument that the existing program is not achieving its original goals, and would require 100 years and roughly one billion dollars to complete at current funding levels. If all the nonconforming signs were purchased and removed, the states could conceivably have fifty percent or more of their signs left standing.

When fully considered, we support in principle, the conversion of the highway beautification program to a voluntary state program.

Sincerely,

GEORGE M. WALTERS.●

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, THURSDAY, APRIL 26, 1979 No. 50

Senate

S. 344: The Billboard Companies Strike It Rich

Mr. Stafford. One issue that I believe needs to receive the careful and full attention of the Congress this year is the Federal program for the control of billboards along our highways.

As now written, the so-called Highway Beautification Act may cost the Federal taxpayers something well over $1 billion, while leaving many billboards standing. It has become a law where the Federal Government has overridden local zoning authorities.

The only reasonable way out, I believe, is to pass S. 344, legislation giving the states the option of dropping out of the Federal program. This would enable those states that so wish to pursue billboard control or allow billboards to remain, as they see fit, without the pressure of Federal regulations.

To place the issue in perspective, it must be noted that the billboard companies are flourishing as never before, churning out profits from their protected status under the present "beautification" law. The New York Times last year carried a very interesting article that analyzed the billboard industry, pointing out how it has prospered and consolidated into fewer and bigger companies under Federal regulation, enabling the rich to grow richer.

For Billboards, the Signs Are Bullish

(By Stan Luxenberg)

Bedeviled by environmentalist attacks, Federal regulations and buyer resistance, the billboard industry has had at least its share of problems. But for those companies left after the great shakeout of the last decade, all the vital signs—some 250,000 of them—are looking up.

Sales have climbed by 20 percent in the last two years, to $462 million in 1977. New advertisers have come aboard. And this week a study will be announced that for the first time will provide the industry with a sharply competitive selling tool—a scientific basis for comparing the exposure of billboard advertising with other media.

ALTERNATIVE TO TV

The report, prepared by the Axiom Market Research Bureau Inc., a subsidiary of the J. Walter Thompson Company, will tell buyers how many working wives they can reach or how many users of suntain oil, for example, will see their messages. Among the report's conclusions: Motorists who see billboards tend to travel on business more than the average television viewer . . . are more highly educated than the general population . . . include more women and young people than had generally been thought.

Outdoor advertising is benefitting from the strong demand for all forms of advertising. Cost is an important factor. Advertisers, faced with television's steep price increases, are turning to what is one of the cheapest forms of mass communication.

And while the Federal Highway Beautification Act of 1965 and a scarcity of usable land have limited the number of billboards, the Outdoor Advertising Association of America Inc., expects its 325 members to enjoy a 10 to 12 percent increase in revenues this year, up from $462 million in 1977, due to greater usage and price increases. Many billboard companies' operating profit margins now are more than 20 percent.

Foster & Kleiser, a division of Metromedia Inc., is the industry leader with 35,000 structures. It expects to grow as strongly this year as in 1977 when its revenues climbed by 15 percent to $80 million and operating income grew by 23 percent to $20.3 million. The outdoor advertising division of the Combined Communications Corporation, a media conglomerate recently purchased by the Gannett Company, showed an operating profit margin of 30 percent last year. Combined's outdoor unit, the second largest, expects sales to rise more than 12 percent from 1977's $70 million.

Wall Street analysts are optimistic about the industry. "It's a reasonably good growth business that generates cash above and beyond what has to be reinvested in new signs and structures," said John S. Reidy, vice president for research of Drexel Burnham Lambert Inc.

Tobacco and liquor, banned from television, continue to hold their places as the largest users of outdoor advertising, but recently a wider range of products has begun appearing on billboards. In the last two years as TV costs jumped 40 percent, Foster & Kleiser, for example, gained a number of major new customers, including Kraft Inc., the Campbell Soup company, Hi-C, and Anheuser-Busch Inc. Last year Alka-Seltzer tried its "Plop plop, fizz fizz" campaign on billboards and this year is expanding into 100 markets. "There has been more interest in the last two years than ever before," said Gordon Asch of Asch Advertising Inc., whose billings in outdoor advertising were $17 million in 1977, up from $13 million the year before.

SOME DROPOUTS

The highway act, which banned signs within 660 feet of Federally-funded highways except in commercial zones, drove out some billboard companies and, as a result, strengthened those remaining. In Michigan's lower peninsula, for example, the number of companies declined from 15 to four, according to John H. Dingeman, of Dingeman Advertising Inc., which is based in Traverse City, Mich., and owns more than 1,000 bill-

boards. "We lost a lot of locations," Mr. Dingeman recalled. However, his business has actually grown through acquisitions as smaller Michigan companies closed up and sold their legal structures.

The National Advertising Company, a subsidiary of the 3M Company, had 85,000 structures when the act went into effect, all in rural, restricted areas. Since then, National has been moving into commercial zones. It now has 50,000 structures, two-thirds of them in urban areas. The company expects that the number of its signs will continue decreasing, with the move into the cities but that sales will increase.

The Outdoor Advertising Trade Association, whose member businesses have been based mainly in cities, supported the highway act. Association spokesmen said the legislation benefited the industry by closing down some of the more unsightly structures that gave billboards a bad time.

Federal officials point out that while the legislation has discouraged construction of signs and resulted in the removal of many, there are illegal signs that have been left untouched in some states. To tear down a billboard, the Government must pay fair market value to the owner. So far the Government has paid for 91,651 signs, but the funding is limited and boards cost an average of $1,500. At the current rate of funding, said Richard Moeller of the Federal Highway Administration, it would take 40 years to eliminate the 214,000 illegal billboards that remain.

The member companies of the Outdoor Advertising Association generally construct and own billboards, renting space to advertisers who either supply the posters or purchase them from the outdoor companies. The companies rarely purchase land. Much of the leased land is only temporarily vacant and owners permit the signs, hoping the rents will cover taxes. The billboards often are forced out to make room for new buildings or other more permanent uses. This means that companies constantly lose locations and must scout for new ones. Foster & Kleiser has a turnover each year of about 10 percent.

"GRAB" THE VIEWER

Like other advertising media, billboard space is priced according to the audience it reaches. For $123,000 a month Foster and Kleiser will provide a package of 580 poster panels in Los Angeles, the fullest coverage offered. The same comprehensive coverage in Dallas requires 128 posters and costs $18,000. A giant Foster & Kleiser billboard outside Chicago's O'Hare Airport—seen by 200,000 people a day—sells for $12,000 a month.

Since people only view billboards for a few seconds, the messages must be simple and catchy. "You have to grab a person, get the brand name across and communicate some idea of the product," said Patricia B. Greenwald, senior vice president and research director of deGarmo Inc. The firm used outdoor advertising extensively with its campaign for Lorillard Inc.'s True Cigarettes. True had originally been sold as a low-tar brand. When the company wanted to promote the idea that the cigarette also provided good taste, it used billboards featuring a picture of the pack and the concise headline, "unexpected taste."

Lorillard liked the results.●

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, MONDAY, APRIL 30, 1979 No. 51

Senate

S. 344: New Mexico, Texas, and Vermont Express Their Endorsement

Mr. Stafford. The states continue to send in word of support for S. 344, my bill to add flexibility to the Federal billboard control law. Recently, I received letters from the Governors of New Mexico, Texas, and Vermont endorsing this legislation. Of course, such endorsements are not really unexpected. Thirty eight states supported passage of S. 344 in a poll conducted recently by the American Association of State Highway and Transportation officials.

For example, Governor King of New Mexico offered this observation on S. 344:

". . . I am inclined to agree that Senate Bill 344 is the answer to our sign control problems. . . . I feel that New Mexico is unique to the majority of states and that Senate Bill 344 will permit us to pursue a sign control program that will be more effective, less costly, and suit the needs of New Mexico as oppose to the populous states. . . . In summation, I do support Senate Bill 344 and appreciate your efforts to pass this legislation."

Governor Clements of Texas wrote to me with this comment:

"Texas is, and always has been, a strong advocate of highway beautification. We have been one of the leading states in signboard removal under the present program since our law was enacted in 1972. In addition, a limited signboard control program was even tested during the 1930's. We do believe, however, that the method and extent of beautification is something that we should decide in accordance with our own standards and available finances. Therefore, please be advised that I am pleased and anxious to offer my support for S. 344. . . ."

Governor Snelling of Vermont provided this comment:

"(W)e feel Vermont has led the nation in its control of billboards. I am delighted, however, with your proposal to turn administration of this activity over to the State. S. 344 would appear to do this in a most satisfactory manner."

Ronald E. W. Crisman, Vermont's Secretary of Transportation, added:

". . . We support S. 344 wholeheartedly. It will help other states to accomplish what Vermont has without the exorbitant costs that Vermont has incurred."

Mr. President, I submit these letters for the Record.

State of New Mexico,
Santa Fe, April 12, 1979.

Hon. Robert T. Stafford,
U.S. Senator, Committee on Environment and Public Works, U.S. Senate, Washington, D.C.

Dear Senator Stafford: This is in response to your letter dated March 27, 1979, requesting my thoughts and observations of Senate Bill 344 introduced by you.

After reviewing your Bill and considering the 13 years of opposition by the business community and sign industry here in New Mexico to the Highway Beautification Act, I am inclined to agree that Senate Bill 344 is the answer to our sign control problems. It will relieve the rigid control administered by the State to avoid the 10-percent federal fund allocation penalty and it will reduce our costs considerably.

I feel that New Mexico is unique to the majority of states and that Senate Bill 344 will permit us to pursue a sign control program that will be more effective, less costly, and suit the needs of New Mexico as opposed to the populous states.

As to my analysis of the zoning intrusions imposed by the 1978 Amendments to the Beautification Act, I feel that it places an undue burden on the state to be purchasing signs zoned out of existence by local zoning authorities without the state having any input into such zoning regulations even though the state may have to pay for such signs. In my brief investigation, it also appears that the 1978 Amendments will force New Mexico to purchase at least five or six hundred signs that we presently consider illegal and non-compensable.

In summation, I do support Senate Bill 344 and appreciate your efforts to pass this legislation.

Sincerely,

Bruce King,
Governor.

State of Vermont,
Montpelier, Vt., April 5, 1979.

Hon. Robert T. Stafford,
U.S. Senator, Senate Office Building, Washington, D.C.

Dear Bob: I have read your letter of March 27 enclosing a copy of S. 344 regarding the Federal Highway Beautification Act.

As you know, we feel Vermont has led the nation in its control of billboards. I am delighted, however, with your proposal to turn administration of this activity over to the state. S. 344 would appear to do this in a most satisfactory manner.

I am asking Secretary Crisman to comment to you directly regarding your request of analysis of zoning intrusions imposed by the 1978 Highway Act. To this end, I have forwarded your letter to him.

Sincerely,

Richard A. Snelling,
Governor.

STATE OF VERMONT,
Montpelier, Vt., April 23, 1979.

Hon. ROBERT T. STAFFORD,
U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR STAFFORD: We support S-344 wholeheartedly. It will help other states to accomplish what Vermont has without the exorbitant costs that Vermont has incurred.

It is very necessary for the control of outdoor advertising to be returned to the states under the state's police powers. To demonstrate this point, the Maine Outdoor Advertising Association stated during a hearing on Maine's proposed billboard law that they were voluntarily controlling outdoor advertising at the present time and added that it was possible under the Highway Beautification Act to have 47,000 signs in Maine and that they were holding the number down to about 4500 signs.

The zoning intrusions imposed by the 1978 Highway Act and the recent interpretation of Mr. Lorenzo Cosanova, Chief Counsel of the wording "legally in existence" to include those signs removed before November 6, 1978 but which were the subject of pending litigation on that date, may very well cost the State of Vermont $60-$80,000 more. Most of the signs in litigation at this time were not legally maintained.

A review of your bill section by section follows:

(a) We agree with this section as long as it remains that the Federal Government will assist the states and does not mandate that the states control outdoor advertising based on federal standards.

(b) We agree with this section if wording is added to allow the states to enact stricter controls than those stated in (c). We suggest line 12 be amended to read, "(c) and determined by the Secretary, [shall acquire] acquires by purchase, etc." This change would insure the states the right to elect to pay compensation and not make the payment mandatory.

(c) We agree with this section without change. Subsection (5) will assist other states to remove signs that do not appear to conform to the Highway Beautification Act.

(d) We agree with this section if the signs on primary highways are for expressways and freeways and not conventional highways.

(e) and (f) We agree with these sections without change.

We appreciate the opportunity to comment on S-344 and congratulate you for your stand on this very important matter.

Please do not hesitate to contact me if you have any questions or need any assistance whatsoever.

Sincerely,

RONALD E. W. CRISMAN,
Secretary.

OFFICE OF THE GOVERNOR,
Austin, Tex., April 18, 1979.

Hon. ROBERT T. STAFFORD,
U.S. Senator,
Washington, D.C.

DEAR SENATOR STAFFORD: I am in receipt of your letter of March 27, 1979, requesting my thoughts and observations on S. 344 whereby you propose to amend the Federal Highway Beautification Act of 1965. I appreciate the opportunity to convey my thinking on this matter at this time, particularly in view of the fact that Texas was one of the 38 states which previously indicated support of your proposal.

The history of the program in Texas reflects very clearly that the Legislature enacted our present law only in a last ditch move to protect Federal highway funds. I find that to date even after we have expended some $19,000,000 for sign control and removal, of which $14,250,000 represented Federal funds and $4,750,000 were State funds, we still are faced with approximately 11,000 nonconforming signs. Perhaps a limited program could be supported but not as presently formulated.

I am greatly concerned about the Federal intrusion upon inherent zoning authority of a State and its local governmental units. We recently had a test case which originated prior to the Surface Transportation Assistance Act of 1978. The City of Lubbock adopted a comprehensive zoning ordinance in 1975 providing for gradual elimination of nonconforming signboards through amortization. Lubbock Poster Company, the owner of some 285 signboards, brought suit against the City challenging the validity of the ordinance and further contending that Federal funds would be jeopardized should the signboards have to be removed without compensation. The lower and intermediate courts, deciding the case in accordance with accepted zoning law, concluded that the ordinance was valid and that the Federal Highway Beautification Act of 1965 had no relevancy with respect to the City's action. Our Supreme Court declined to hear the case on appeal. With this case as a precedent, it appears that Texas will have no choice but to engage the Department of Transportation in lengthy litigation if that Department attempts to force payment of State funds when any of such signboards are required to be removed. Local zoning authority has always been recognized as an accepted and necessary governmental function in this state.

Texas is, and always has been, a strong advocate of highway beautification. We have been one of the leading states in signboard removal under the present program since our law was enacted in 1972. In addition, a limited signboard control program was even tested during the 1930's. We do believe, however, that the method and extent of beautification is something that we should decide in accordance with our own standards and available finances. Therefore, please be advised that I am pleased and anxious to offer my support for S. 344.

In your comments before the Senate, you advised that the time has come to end the mandatory features of the Highway Beautification Act of 1965. I respectfully call to your attention that these mandatory provisions also cover the screening or removal of junkyards. The junkyard program is, in the final analysis, subject to virtually all of the same objections that apply to the signboard program. The major difference is simply one of degree, although mandatory compensation where removal is accomplished through zoning has not as yet been ordered. I strongly recommend that S. 344 be extended to cover all the present mandatory provisions of the original Act of 1965, thus leaving the states free to handle any and all phases on a voluntary basis in cooperation with local governmental units.

If there is any way in which I can assist you in this matter, please feel free to call on me.

Sincerely yours,

WILLIAM P. CLEMENTS, Jr.,
Governor of Texas.●

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, MONDAY, MAY 7, 1979 No. 56

Senate

S. 344: STATEMENT OF SENATOR STAFFORD REGARDING BILLBOARD CONTROL

● Mr. STEVENS. Mr. President, our colleague from Vermont (Mr. STAFFORD) is absent due to illness today. If he had been here, he would have placed a statement in the RECORD, together with the letters of the Governors of two States, discussing the present Federal billboard control law. I ask that Senator STAFFORD's remarks and the letters be printed in the RECORD.

The material follows:

S. 344: DELAWARE AND CONNECTICUT ADD THEIR ENDORSEMENTS TO A FLEXIBLE BILLBOARD POLICY

Mr. STAFFORD. States continue to notify me of their support for S. 344, my bill that would add flexibility to the Federal billboard control law. Recently, I received letters from the Governors of Delaware and Connecticut endorsing this legislation. Of course, these endorsements are not really unexpected. In a poll conducted recently by the American Association of State Highway and Transportation officials, 38 states stated support for pasage of S. 344.

Governor du Pont of Delaware, for example, offered this observation:

"Delaware's Department is in complete agreement with your observations, and agrees that the program should not be mandatory in the states . . . Delaware will go on record as approving your bill."

Governor Grasso of Connecticut wrote to me with this comment:

"We feel that the local zoning laws are effective and when used reflect the feelings of the communities they serve. S. 344 would allow the state to continue to remove nonconforming signs with or without federal aid, at its own pace, and with a program that would serve the local community and provide the results intended by the Beautification Act of 1965 without the continuing threat of the loss of federal aid."

Mr. President, I submit these letters for the RECORD.

STATE OF DELAWARE,
EXECUTIVE DEPARTMENT,
Dover, April 25, 1979.

Re S. 344.
Hon. ROBERT T. STAFFORD,
U.S. Capitol,
Washington, D.C.

DEAR SENATOR STAFFORD: I have had personnel of the Delaware Department of Transportation who work closely with the control of outdoor advertising review your S. 344. Delaware's Department is in complete agreement with your observations, and agrees that the program should not be mandatory in the states.

They did want me to point out that Section 131, lines 17 and 18, contains only the word "compensation" rather that "just compensation". We all realize there is a difference, with the latter already defined by the courts many times. "Compensation" may be subject to a broader definition and conceivably could result in payment of larger sums of taxpayers' money. You may wish to look into this part a little further.

Delaware will go on record as approving your bill.

Sincerely,

PIERRE S. DU PONT IV,
Governor.

STATE OF CONNECTICUT,
EXECUTIVE CHAMBERS,
Hartford, April 20, 1979.

Hon. ROBERT T. STAFFORD,
Committee on Environment and Public Works, Washington, D.C.

DEAR SENATOR STAFFORD: Thank you for your correspondence dated March 27, 1979 in which you request our views concerning your proposed legislation S. 344 and the zoning intrusions imposed by the 1978 Highway Act.

The State of Connecticut is comprised of 169 towns. Each of these towns has its own form of government and is authorized by Connecticut law to enact its own zoning laws. These laws include the use of non-conforming structures, the acquisition of these structures and the use of off-premise (outdoor) advertising. The laws also include the form of compensation to be paid for the removal of non-conforming signs and or structures. In most cases the form of compensation is through amortization which conflicts with the requirements of the 1978 Highway Act and constitute a zoning intrusion.

Our legislature is considering this very issue, the payment of compensation for the acquisition of non-conforming signs. It appears, if passed, cash will be paid in those instances that violate federal law and amortization will be allowed when federal law is not at issue.

We feel that the local zoning laws are effective and when used reflect the feelings of the communities they serve. S. 344 would allow the state to continue to remove nonconforming signs with or without federal aid, at its own pace, and with a program that would serve the local community and provide the results intended by the Beautification Act of 1965 without the continuing threat of the loss of federal aid.

Thank you for giving me the opportunity to be of assistance to you. If you have any additional inquiries please do not hesitate to contact my office.

With best wishes,
Cordially,

ELLA GRASSO,
Governor.●

ELLA GRASSO
GOVERNOR



STATE OF CONNECTICUT
EXECUTIVE CHAMBERS
HARTFORD

September 7, 1979

Honorable Robert T. Stafford
United States Senator
Committee on Environment and
Public Works
Washington, D.C. 20510

Dear Senator Stafford:

Thank you for your letter asking for our views on S.344 concerning the Highway Beautification Act of 1965. On April 20, 1979 I replied to your request.

As part of my comments I indicated that the towns could pass their own zoning ordinances and that many of the town ordinances included the acquisition of non-conforming signs by amortization. While this is true, in two recent legal cases these ordinances have been held to be invalid because of the existence of and the overiding position of Section 8.2 of our Connecticut General Statutes. This Section specifically enjoins local communities from prohibiting non-conforming buildings, uses and structures existing at the time of the regulations. Thus, while a local community might pass an ordinance providing for amortization, it appears as a result of these recent court decision, that the town may not enforce the ordinance.

Please include this additional information as a part of my April reply.

With best wishes,

Cordially,

Ella Grasso

ELLA GRASSO
Governor

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, TUESDAY, MAY 8, 1979 No. 5

Senate

S. 344: STATEMENT OF SENATOR STAFFORD REGARDING BILLBOARD CONTROL

● Mr. BAKER. Mr. President, our colleague from Vermont (Mr. STAFFORD) is absent due to illness today. He had intended to place a statement in the RECORD, together with letters from the Governors of several States, discussing the present Federal billboard control law. I ask that Senator STAFFORD's remarks and the letters be printed in the RECORD.

The material follows:

S. 344: THE STATES HAWAII, UTAH, WASHINGTON, NEVADA, AND NEBRASKA OFFER THEIR VIEWS

The Governors continue to send in comments on S. 344, my bill that would add flexibility to the Federal billboard control law. Previously I placed in the Record letters from a number of Governors stating strong support for S. 344. This is not surprising since 38 states expressed support for S. 344 in a poll by the American Association of State Highway and Transportation Officials (AASHTO). But, of course, there are states that for one reason or another do not support S. 344. Recently, I received letters from five of those states: Hawaii, Utah, Washington, Nevada, and Nebraska. Mr. President, while each of these governors expressed reservation over my bill, many of these governors also have agreed that the present law has been a failure and that change is needed.

Governor Matheson of Utah offered this view:

"Although I would prefer that the State had complete control of this program, I fear that, without the threat of federal sanction, the State legislature may be inclined to give up all control of outdoor advertising. . . . The Highway Beautification Act has been a great burden to taxpayers of this Nation, and an unpopular program at the State level; however, I feel that the accomplishments of the program must be maintained."

Governor List of Nevada offered this assessment:

"We do agree that provisions of the 1978 Surface Transportation Act, requiring State payment of compensation for removal of offpremise signs adjacent to the primary and interstate systems by local governmental authorities, are an unreasonable Federal intrusion into the local government's exercise of constitutional police powers . . .

"Rather than making outdoor advertising control voluntary, we urge that the program be strengthened. This could be accomplished by establishing a national completion date for compliance, removing the Federal requirement for compensation and allowing state and local governments to amortize and remove signs through the legitimate exercise of police powers. As an option to states which may still desire to compensate, Federal participation should remain available."

The Nebraska state engineer, Mr. David O. Coolidge, said:

"I do not feel that S. 344 is comprehensive enough to correct the problems created by the 1965 Beautification Act."

I would, of course, note that these states, under my bill, can remain in the existing program, avoiding some of the problems mentioned.

Mr. President, I submit these letters for the RECORD.

The letters follow:

STATE OF WASHINGTON,
OFFICE OF THE GOVERNOR,
April 16, 1979.

HON. ROBERT T. STAFFORD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STAFFORD: Thank you for your letter of March 27 regarding your proposed legislation, S. 344, concerning the Highway Beautification Program. I have requested information from the Department of Transportation regarding your inquiry. I completed a review of this information and must conclude I do not support conversion of Highway Beautification to a voluntary state program.

I recognize that the program has not accomplished all the goals which were intended when the Highway Beautification Act was proposed in 1965. There has been a great deal of progress made by this state, however, in the area of removal of nonconforming signs. As of December 31, 1978, removal of 9,609 signs from the Federal-Aid and Primary routes, either by compensation or by voluntary action has been accomplished. Still remaining are only 166 nonconforming signs.

I believe the control of billboards, as a result of the Federal law, has had a positive reaction from the people of this state. That is not to say there have not been problems as a result of the removal of some types of signs.

Therefore, as I reflect on the effort completed by our state, I must conclude, the program is too far advanced to now shift to a voluntary program. The end result of such a change in the Federal program could be a weakening of state laws. This would then allow the re-establishment of billboards in locations where public dollars have already been used for removal.

Sincerely,

DIXY LEE RAY,
Governor.

STATE OF UTAH,
OFFICE OF THE GOVERNOR,
Salt Lake City, April 16, 1979.

Hon. ROBERT T. STAFFORD,
U.S. Senator, Committee on Environment and Public Works, Washington, D.C.

DEAR SENATOR STAFFORD: The legislation proposed in S. 344 would have very little effect on this State. Utah is in the process of completing the removal of all non-conforming signs as intended by the original Highway Beautification Act. We have been able to accomplish this program, and still maintain a satisfactory relationship with the outdoor advertising industry. This industry remains healthy, and does oppose the elimination of state and federal controls on outdoor advertising.

Although I would prefer that the State had complete control of this program, I fear that, without the threat of federal sanction, the State legislature may be inclined to give up all control of outdoor advertising.

The Highway Beautification Act has been a great burden to taxpayers of this Nation, and an unpopular program at the State level; however, I feel that the accomplishments of the program must be maintained.

Sincerely,

SCOTT M. MATHESON,
Governor.

EXECUTIVE CHAMBERS,
Honolulu, April 17, 1979.

Hon. ROBERT T. STAFFORD,
U.S. Senate, Committee on Environment and Public Works, Washington, D.C.

DEAR SENATOR STAFFORD: Thank you for your letter of March 27, 1979, concerning S. 344 to amend the Section on Control of Outdoor Advertising.

The bill, as proposed, would not affect our State. Hawaii had effectively controlled outdoor advertising long before the enactment of the Highway Beautification Act of 1965. As such, we did not encounter the problem of removing nonconforming signs as did many of the other States. Also, it should be noted that Hawaii's Statutes do not provide any exception for commercial or industrial zones. All billboards are controlled.

I appreciate this opportunity to offer my views on your proposal.

With warm personal regards, I remain,

Yours very truly,

GEORGE R. ARIYOSHI.

STATE OF NEBRASKA,
Lincoln, April 17, 1979.

Hon. ROBERT T. STAFFORD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STAFFORD: Enclosed is a copy of a response I have received from the Nebraska Department of Roads with regard to S. 344.

I believe it is self-explanatory.

If you wish further assistance in this matter, please don't hesitate to contact me.

Sincerely,

CHARLES THONE,
Governor.

STATE OF NEBRASKA,
Lincoln, Nebr., April 12, 1979.

Hon. CHARLES THONE,
Governor of Nebraska,
State Capitol Building,
Lincoln, Nebr.

DEAR GOVERNOR THONE: We have reviewed the Bill S. 344 introduced by Senator Stafford for amendment to the Federal Beautification Act of 1965. Our first observation of the proposed amendment is that it only pertains to outdoor advertising. The Beautification Act also included screening or removing junkyards located within 1,000 feet of the Interstate and Primary Highway Systems. It would appear that if this is truly an effort to conserve the public funds and return the controls to local governmental entity the entire program should be dealt with rather than dealing with only a portion of the Program which has received the most complaints and has had the biggest lobby efforts.

Junkyyard operations are generally family owned and do not have the finances to lobby effectively against a Program. The junkyard owners have generally cooperated with the Program.

Nebraska is one of the states that signed the Bonus Agreement with the Federal Highway Administration to control advertising along the Interstate Highway System prior to the 1965 Beautification Act and receives one half of one percent of the construction costs in the controlled areas. The Federal Highway Administration advised that if Nebraska wishes to opt out of this agreement, the Secretary would have to approve such a request and the State would then have to return all of the funds received to date. S. 344 in its present state, does not make the Bonus Agreement optional, so Nebraska would have to continue to control along the Interstate unless the Federal Highway Administration agreed to dropping the controls. This is one of the areas receiving the most criticism of the Advertising Control Program.

S. 344 would make controlling advertising on the Primary System optional with each state. The first benefit from such a program would be that highway funds would not be used to acquire signs except on construction projects.

Another benefit to the Department would be the reduction of the criticism received from that portion of the public which wishes to erect advertising signs, however; we will have to justify to those citizens who are in favor of advertising controls how the program can be dropped considering the time, effort, and funds that have been spent to date.

I do not feel that S. 344 is comprehensive enough to correct the problems created by the 1965 Beautification Act.

We have attached a copy of an editorial from the World Herald regarding Advertising Control.

Very truly yours,

DAVID O. COOLIDGE,
Director-State Engineer.

VIEWS FROM ROAD CAN BE EVEN BETTER

Fields are turning to green and the beauty of our Midlands countryside soon will be in full bloom—with this exception: the places where billboards and junkyards still block or blemish the view.

Some encouraging word does come from the Nebraska Department of Roads: More than 28,000 signs have been removed from roads in the State since Nebraska entered the federal beautification program in 1972. This puts Nebraska about midway among states in signs removed. Some junk yards also have been screened or removed.

Also commendable was the elimination of 23,000 of the signs voluntarily through agreements between the state and landowners.

Barney Warlick, director of the state's sign permit program, says money is available to

keep the program going this year. Although, as he says, the main goal of the Department of Roads is to build and maintain roads, we see no reason why this cleanup program shouldn't also be continued—with a stepped up pace.

We should be proud to show the beauty of our land to all who travel the highways.

THE STATE OF NEVADA,
EXECUTIVE CHAMBER,
Carson City, Nev., April 20, 1979.

Hon. ROBERT T. STAFFORD,
Committee on Environment and Public Works, U.S. Senate, Washington, D.C.

DEAR SENATOR STAFFORD: Regarding your request for comments on Senate Bill No. 344, please be advised that Nevada has achieved great success in the control of outdoor advertising without damaging our vital tourist industry.

Of the eight hundred and eighteen nonconforming signs eligible for purchase in Nevada, we have bought and removed six hundred and ninety-five, or eighty-five percent The remaining one hundred and twenty three signs are the objects of condemnation suits which have been filed. Additionally, working in concert with the Bureau of Land Management, we have removed about twelve hundred other noncompensable, illegal signs. In so doing, we expended more than $3.6 million, of which about $2.7 million was Federal money. Moreover, we will expend an additional $1.9 million to purchase and remove the signs which are now involved in the condemnation process.

Nevada currently ranks seventh nationwide in terms of progress in sign control and we believe any lessening of Federal requirements, to make the program voluntary, would seriously jeopardize our past accomplishments and future progress. It would result in a large and undeserved windfall to the organized outdoor advertising industry, which has resisted the State's efforts to remove signs, and would be unfair to the many small businesses which voluntarily sold their signs rather than resist the government's acquisitions.

We do agree that provisions of the 1978 Surface Transportation Act, requiring State payment of compensation for removal of off-premise signs adjacent to the primary and interstate systems by local governmental authorities, are an unreasonable Federal intrusion into the local government's exercise of constitutional police powers. For that matter, the Federal requirement that states pay just compensation for removal of signs to comply with Federally-mandated beautification standards contradicts other Federal regulations—those denying participation in removal of pre-existing signs which violate any specific provisions prior to being purchased. The states are thus placed in the position of exercising police powers to remove signs that are substantially the same as those which are eligible for purchase.

Rather than making outdoor advertising control voluntary, we urge that the program be strengthened. This could be accomplished by establishing a national completion date for compliance, removing the Federal requirement for compensation and allowing state and local governments to amortize and remove signs through the legitimate exercise of police powers. As an option to states which may still desire to compensate, Federal participation should remain available.

Your courtesy in soliciting the views of the State of Nevada is appreciated. I very much hope the foregoing information is helpful.

Sincerely,

ROBERT LIST,
Governor.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, WEDNESDAY, MAY 16, 1979 No. 62

Senate

STATEMENT OF SENATOR STAFFORD ON FLEXIBLE BILLBOARD CONTROL PROGRAM

S. 344. COLORADO, MONTANA, MAINE, AND IOWA SUPPORT FLEXIBLE BILLBOARD CONTROL PROGRAM.

Mr. STAFFORD. The Governors of Colorado, Montana, and Maine have been kind enough to write to me to express their support for S. 344, my bill that would allow states greater flexibility in controlling billboards. In addition, the director of the Iowa Department of Transportation has written to me with the views of that State. Their voice is loud and clear on this issue. For example, Governor Lamm of Colorado states:

"We certainly support your Senate bill 344 allowing States more flexibility under the Federal Highway Beautification Act."

Governor Brennan of Maine has this to say:

"Given the continually changing Federal legislation in this respect it would certainly appear to be helpful to provide greater flexibility to the states in making their own determinations relative to this beautification issue."

Governor Judge of Montana has written to state:

"As we read, S. 344 would at least afford the opportunity for a program of some kind. Another thing we see S. 344 as doing is giving states, which have major policy problems in relation to the existing law, the flexibility needed to meet and solve their individual problems. This may well be the major benefit of S. 344.

Raymond L. Kassel, Director of the Iowa Department of Transportation, offers this observation:

"I believe that the approach taken in your bill is what the program needs. Placing responsibility on the several states to control outdoor advertising may be the only way that the goals and objectives of the program are ever going to be met. Your bill should not and does not compromise or undermine the efforts of those states like Iowa who are attempting to make the program work."

I submit these letters for the RECORD.

The letters follow:

MAY 2, 1979.

HON. ROBERT T. STAFFORD,
U.S. Senate, Committee on Environment and Public Works, Washington, D.C.

DEAR SENATOR: We certainly support your Senate Bill 344 allowing States more flexibility under the Federal Highway Beautification Act.

One of the benefits of this bill would be the additional five percent Federal participation on the purchase of nonconforming billboards. We still have approximately 1,500 nonconforming signs to purchase.

We were glad to see that S.B. 344 eliminates 23 USC 131(g). We do not feel we should have to expend funds to purchase illegal signs, as the FHWA has interpreted the 1978 Act.

Thank you for requesting our comments. We hope you are successful wtih S.B. 344.

Very truly yours,

RICHARD D. LAMM,
Governor.

MAY 2, 1979.

HON. ROBERT T. STAFFORD,
U.S. Senator, Committee on Environment and Public Works, Washington, D.C.

DEAR SENATOR STAFFORD: This is our reply to your letter of March 27 concerning S. 344. Montana was among the states that expressed favor for your bill to AASHTO. The principal reason for this is that our Department of Highways feels that, having removed a substantial number of signs, it has an obligation to continue purchasing, removing and enforcing its outdoor advertising control program.

Following enactment of the Federal Highway Beautification Act in 1965, Montana very reluctantly enacted an outdoor advertising control law. The law that was passed did not meet Federal requirements and was not accepted by the Secretary of Transportation. It was only under the imminent possibility of loss of Federal Aid Highway funds that the Legislature passed an acceptable law during an extraordinary session in 1971.

Now that we have an acceptable outdoor advertising control law, we have made considerable progress in the acquisition and removal of non-conforming signs. We have taken down virtually all the signs having a value of $100.00 or less and have purchased the non-conforming signs owned by all major billboard companies except 3-M Company, with whom we are negotiating for purchase of their non-conforming signs. Having progressed this far, the Department of Highways feels it has a strong commitment to continue the present program in order to avoid giving an unfair advantage to sign owners who are unwilling to sell and remove their non-conforming signs.

There doesn't appear to be an easy answer to the question of the effect S. 344 would have in Montana. In view of Montana's reluctance to enter the sign control program at the beginning, we have to face the possibility that our state may elect to discontinue its program altogether. However, as we read it S. 344 would at least afford the opportunity for a program of some kind. Another thing we see S. 344 as doing is giving states, which have major policy problems in relation to the existing law, the flexibility needed to meet and solve their individual problems. This may well be the major benefit of S. 344.

There are some questions of concern to me if the present mandatory federal program is discontinued, or if S. 344 is enacted. Would a State have the option to continue its program and still receive federal support? If a state drops out of the program could new signs be erected at locations where signs had previously been acquired and removed? If so, would the Federal government require a payback of the Federal funds involved in the original acquisition and removal costs?

As to the question of zoning intrusions imposed by the 1978 Highway Act, I think it is wrong, in theory, for the Federal government to limit or undermine local authority. However, actual conflicts over this in Montana should be minimal.

Sincerely,

THOMAS L. JUDGE,
Governor.

MAY 8, 1979.

Hon. ROBERT T. STAFFORD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STAFFORD: This will respond to your recent letter transmitting a copy of S. 344 and your floor statement, all related to legislation that you have proposed to allow states greater flexibility under the Federal Highway Beautification Act.

As you may be aware, the State of Maine has passed legislation to require the removal of all off-premise bill-boards. While that issue is presently before the courts on appeal, my administration is committed to providing the State matching funds necessary to assure the effectiveness of this removal program. Assuming that appropriate Federal funding is made available and that court actions continue to be favorable, the State of Maine will remove its billboards over the course of the next two to three years.

For the above reasons your proposed legislation may not have a great impact on the State of Maine. However, given the continually changing Federal legislation in this respect it would certainly appear to be helpful to provide greater flexibility to the States in making their own determinations relative to this beautification issue.

Thank you for keeping us advised in this regard and the best of luck in your endeavors.

Sincerely,

JOSEPH E. BRENNAN,
Governor.

MAY 9, 1979.

Hon. ROBERT T. STAFFORD,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR STAFFORD: I have read your letter of March 27, 1979 and the material provided on S. 344 with much interest. I agree with the approach that you are taking. Allowing states to develop their own mechanisms to control outdoor advertising may very well speed up the program and certainly will reduce the cost of accomplishment.

In my judgment the totally controlled Federal program approach has not worked. Some states had advertising control programs before the passage of the Federal Highway Beautification Act. With preexisting local support, those states have succeeded. Other states have lacked the local support necessary. Where this is the case, they have embarked on a passive effort to spend Federal funds and accomplish the minimum necessary to avoid the Federal penalty of reduced highway funding.

One of my initial concerns in reviewing your bill and statement was the effect it would have on funding for the Iowa program. I was relieved to discover that the bill does not disrupt Iowa's ongoing program. Initially Iowa entered the outdoor advertising control program with great reluctance. Today, however, we are making a good faith effort to assure its success.

For your information with the exception of 450 interstate jumbos, all but 25 of the 7,000 nonconforming signs that existed in Iowa have been purchased. All of these signs will be removed by 1982. Forty percent of an estimated 52,000 abandoned and illegal signs have been removed from Iowa's roadways. In an effort to make the interstatae advertising control program work, Iowa was a pioneer in the development of the interstate Logo program. The entire Iowa interstate system will have Logo signing by the fall of 1980. This signing provides needed motorist information.

As we get closer to removing all of the illegal signs, it is becoming more and more apparent that motorist information and tourist signing on the primary highway systems are problems that have not yet been resolved. Currently Federal regulations authorize the extension of Logo to the primary highways. In Iowa, however, Logo signing on the primary system is impractical. Existing regulations for off the right-of-way privately owned directional signing are so strict that they do not even recognize the categories of motorist information signing that could be signed through the Logo program.

Section 2 of S. 344 which amends Section 131 (Control of Outdoor Advertising), Subsection (c)(1) of the U.S. Code would tie off right-of-way directional signing to existing national standards. In my judgment this is a mistake. Iowa and the program need the ability to continue to examine alternatives to meet the motorist information needs of the traveling public on the primary highway system. I suggest that you eliminate the language "as in effect on the date of enactment of this section." This would maintain directional signing consistent with national standards while allowing the several states and the Federal government to continue to work out solutions to primary highway directional signing.

In conclusion, I believe that the approach taken in your bill is what the program needs. Placing responsibility on the several states to control outdoor advertising may be the only way that the goals and objectives of the program are ever going to be met. Your bill should not and does not compromise or undermine the efforts of those states like Iowa who are attempting to make the program work.

I believe it would be a mistake for your bill to lock in and prevent reexamination of ten-year old national signing standards. If the program is to work, an effort should be made to carefully preserve the possibility for change and improvement.

If your staff needs additional information about the Iowa advertising control program, I will be happy to answer their questions.

Very truly yours.

RAYMOND L. KASSEL,
Director.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, WEDNESDAY, MAY 23, 1979 No. 66

Senate

S. 344: OHIO AND ALABAMA ADD THEIR ENDORSEMENT OF A FLEXIBLE BILLBOARD POLICY

● Mr. STAFFORD. Mr. President, States continue to notify me of their support for S. 344, my bill that would add flexibility to the Federal billboard control law. Recently, I received letters from Ohio and Alabama endorsing this legislation.

For example, David L. Weir, director of the Ohio Department of Transportation, said:

I wish to advise that the State of Ohio and the Ohio Department of Transportation support, in principle, the conversion of the highway beautification program to a voluntary state program.

Rex K. Rainer, highway director of the State of Alabama, explained:

We favor your approach that will allow individual States to make their own choice in the matter.

Of course, these endorsements are not unexpected. In a poll conducted recently by the American Association of State Highway and Transportation officials, 38 States stated support for passage of S. 344.

Mr. President, I submit these letters for the RECORD.

The letters follow:

OHIO DEPARTMENT OF TRANSPORTATION,
Columbus, Ohio, May 14, 1979.

Hon. ROBERT T. STAFFORD,
Congress of the United States,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STAFFORD: Governor Rhodes has referred your letter of March 27, 1979 to this department for direct response to you. I wish to advise that the State of Ohio and the Ohio Department of Transportation support, in principle, the conversion of the highway beautification program to a voluntary state program.

We would like to see Section 122 (c) and (d) of the 1978 Highway Act be incorporated as it affects the bonus portion of your bill.

We do not feel this bill would change Ohio's current program but we feel we would have a little more flexibility and could more easily program activities to our financial condition. Relative to the zoning intrusion by the 1978 Highway Act, we are unable to evaluate the effect since this department does not maintain a record of local zoning ordinances.

Since your proposed bill is silent on the subject, we would recommend the incorporation of junk yard control as a voluntary program. The purpose of including junk yards would be to allow the existing state law to operate as intended in each state. For instance, in Ohio, a home rule state, our legislature enacted legislation prior ot the 1965 Highway Beautification Act. The Legislature, in its wisdom, placed the authority with local government to carry out the provisions of junk yard control. However, Federal restrictions are trying to be imposed on this state which are in conflict with Ohio's law. If this recommended change does not take place, we would not receive any relief in this area because the 1965 act will continue to remain in force.

Your consideration of the above, especially that of junk yard control, would be appreciated and, as stated earlier, you can count on Ohio to support the voluntary concept.

Very truly yours,

DAVID L. WEIR, P.E.,
Director.

STATE OF ALABAMA,
HIGHWAY COMMISSION,
Montgomery, Ala., May 11, 1979.

Hon. ROBERT T. STAFFORD,
United States Senator, Committee on Environment and Public Works, Washington, D.C.

DEAR SENATOR STAFFORD: Governor James has referred your letter relevant to S. 344 to this office for reply.

The Alabama Legislature was slow to enact legislation to enable the State to comply with the Federal Highway Beautification Act. The State Legislature reacted in a similar manner when legislation was necessary to extend control beyond 660 feet to comply with the amended Federal Act. This seems to indicate a lack of broad support for the present outdoor advertising control program in our State.

We cannot predict with any certainty what the reaction of Alabama's lawmakers would be should S. 344 become the Federal law. We do, however, favor your approach that will allow individual States to make their own choice in the matter.

Since Alabama did not have any local governments pursuing more vigorous advertising sign removal programs than did the State and Federal government, the 1978 amendments did not significantly affect our State.

Thank you for the information furnished with your letter and if we can be of further service, please advise.

Yours very truly,

REX K. RAINER,
Highway Director.●

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, MONDAY, JUNE 4, 1979 No. 70

Senate

S. 344: HOW THE BILLBOARD INDUSTRY BEATS THE LAW

● Mr. STAFFORD. Mr. President, in its April issue, Planning, the magazine of the American Planning Association, carried a most interesting article discussing the failure of the present Federal billboard control law. In this article, Charles F. Floyd, the respected chairman of the Department of Real Estate and Legal Studies at the University of Georgia, states that:

The effectiveness of the billboard control program is perhaps the environmental movement's greatest failure.

Because of the significance of Professor Floyd's views, and the fact that we soon will conduct hearings on S. 344 and the issue of billboard control, I ask that this article be printed in the RECORD.

The article follows:

HOW THE BILLBOARD INDUSTRY BEATS THE LAW

(By Charles F. Floyd)

Passage of the federal Highway Beautification Act in 1965 promised an end to the billboards cluttering the rural landscape. In reality, however, the act largely has been a failure, its lofty aims destroyed by crippling amendments, the power of industry lobbyists, and the indifference of its former supporters. This story about the rise, fall, and impending demise of billboard control along our nation's highways focuses on a typical state, Georgia.

Although many states and local communities have been battling billboards since these eyesores came into vogue around the turn of the century, a strong push for national legislation came only after the beginning of the interstate highway program. The so-called Bonus Act was passed in 1958 to encourage the states to pass laws controlling billboards on the interstate system. The carrot was a small bonus in interstate highway construction funds.

Twenty-five states—located primarily in the Northeast, the Midwest, and along the Pacific coast—entered into bonus agreements before 1965. Among these states was Georgia, the only one in the Southeast to enact implementing legislation and the only bonus state to have its outdoor advertising control law overturned in the courts.

The 1958 federal law did not specify the methods to be used by a state to remove existing signs that did not comply with the new law. Of the 25 states that entered into bonus agreements, only three exercised the power of eminent domain (purchase) to eliminate nonconforming signs. The remainder elected to use their powers of regulation to force removal of the offending signs after an amortization or phaseout period.

At that time, the Georgia supreme court was hostile to all types of land-use controls and, in an opinion that is almost hysterical in tone, declared the amortization provision in the Georgia law unconstitutional. This decision, which is widely quoted because it is so at variance with prevailing legal opinion in other states, not only deprived Georgia of several million dollars in bonus payments but also opened the floodgates to the billboarders. It would cost the state around $20 million to remove nonconforming signboards that were erected along Georgia's interstate highways between the time the Georgia Bonus Act was declared unconstitutional in 1966 and the effective date of the subsequent 1971 act.

The Highway Beautification Act of 1965, sometimes called the Ladybird Johnson Act, could be described more accurately as the Billboard Baron's Financial Relief Act. The act was born with noble intentions—to make billboard control mandatory in all the states and to extend control to billboards along the primary highway system (most U.S. highways and some state highways). But what emerged offers a classic case of a law that was gutted by a powerful industry lobby.

First, all areas zoned for commercial and industrial use, plus "unzoned commercial and industrial areas," were exempted from any but the most minimal controls. For many years, the outdoor advertising industry has advanced the notion that billboards are a commercial land use and should be permitted in any commercial zone. The opposite is true, of course. Billboards are not a land use; they are a use of the road, and their value is derived solely from their visual intrusion on the road.

This principle has been recognized by many courts to justify stringent regulation or prohibition of off-premises advertising. Thes exemption from control is too broad, since it lumps ugly commercial strips with research parks and rural areas that happen to be zoned for future commercial development. The practical effect of the exemption has been to allow billboards where they are totally inharmonious and also in areas that are almost totally rural.

Second, on-premises signs (those signs that identify a place of business) were exempted from any controls. The result has been huge gas station signs towering above the landscape at almost every highway interchange.

The most devastating triumph of the billboard lobby was the provision making monetary compensation mandatory for the removal of all nonconforming signs. Even those

states that had been using their police powers to remove signs under the Bonus Act now were required to pay for removal. This forced compensation, combined with meager appropriations for the program, has meant that very few signboards actually have been removed. Nationwide, only 30 percent of the nonconforming signs have been purchased; at the present level of funding, it will take another 109 years to buy the 215,000 remaining signs.

Georgia passed an Outdoor Advertising Control Act in 1967 in an obvious attempt to establish the very minimum criteria that would allow the state to comply with the Highway Beautification Act. Signs were allowed in any area that local authorities had zoned commercial or industrial, and the state highways within two to eight miles of municipalities. No limitations were placed on the number of signs permitted per mile, nor were any minimum size regulations established.

The Georgia law also provided that billboards could be erected in unzoned commercial and industrial areas. On the interstate system, these areas were defined as the land 3,500 feet on each side of the property line of any commercial or industrial activity. The existence of one small country store on a secondary road near the interstate could justify the permitting of billboards for 3,500 feet on both sides of the highway—a potential 28 billboard sites—and with no regulations regarding maximum size or number per site.

The more obvious result of this provision in the law was that it allowed billboards in rural areas near interchanges. Since most such areas had at least one commercial establishment, signboards were allowed for two-thirds of a mile or more on each side of every interchange.

Under pressure from John Volpe, then U.S. Secretary of Transportation, who ruled that the Georgia law did not comply with the federal law, the state revised its billboard control regulations in 1971 to set maximum size and spacing requirements and to tighten the definition of unzoned commercial and industrial areas. A glaring deficiency that had marked all national and Georgia billboard legislation up to this point remained in the 1971 Georgia law, however.

Framers of the Bonus Act, the 1958 federal law, felt it was necessary to establish some limit of control, and for somewhat obscure reasons this limit was set at 660 feet from the edge of the right-of-way. Beyond that, billboarders could do what they liked. The billboard industry responded in predictable fashion to this loophole by creating the phenomenon of the jumbo sign located just outside the control limit. There are now over 250 of these jumbos along the interstate highways in Georgia, with the cost of removal estimated in excess of $3 million.

Unfortunately, the Georgia law has been pitifully ineffective in two respects. It has failed to control the erection of new billboards, and it has done almost nothing to remove nonconforming billboards.

The Highway Beautification Act directed the U.S. Secretary of Transportation to accept the size and spacing limitations that were customary in the states. Thirty-two states, including Georgia, adopted a maximum size limitation of 1,200 square feet (equal to the floor area of a medium-sized, three-bedroom house and approximately twice the size of the largest billboards along the interstate system).

The billboard industry pushed for minimum spacing requirements since these limits prevent competitors from erecting signs that can obstruct each other. Under the Georgia law and most state laws, it is possible to have up to 42 billboards a mile along any portion of the interstate system that is zoned commercial or industrial and up to 70 billboards a mile along the primary system. Within municipalities, the number of allowable signs reaches the rather absurd level of 212 a mile. If each of these signs were of the maximum allowable size, the total area of the sign faces would equal three football fields for each mile of roadway.

Since the size and spacing requirements amount to virtually no control, the designation of commercial and industrial areas becomes all important. The Bonus Act allowed billboards only in commercial and industrial zones of municipalities designated by September 1959. The 1965 Highway Beautification Act eliminated this freeze and, in fact, removed most controls on all commercial and industrial areas, either zoned or unzoned. The size and spacing limitations were the only controls. The 1968 amendments directed the Secretary of Transportation to accept state and local zoning.

Local zoning authorities, though, often place more importance on the real or imagined benefits of billboard advertising than on uncluttered views for the motorist. Many local communities, particularly rural counties, have tried to circumvent the Highway Beautification Act by zoning long stretches of rural highways as commercial and industrial.

Largely rural Columbia County, near Augusta, Georgia, zoned its entire 26 miles of Interstate 20 as industrial. Camden County recently zoned about 750 acres for commercial use at each of five interchanges, even though less than 50 acres in the whole county are used commercially. Still other counties have designated areas along interstate highways as agricultural and commercial zones, but billboards are almost the only permitted commercial use.

The "unzoned commercial and industrial area" provision has served as a gigantic loophole in the law, permitting billboards to go up in predominantly rural areas. For example, small family businesses that happen to back up to an interstate highway—and that in many cases cannot even be seen easily from the highway—will permit the erection of several large billboards. Ironically, junkyards in rural areas that [illegible] screened and controlled under the Highway Beautification Act also have served as the [illegible] justification for permitting billboards.

Some firms are ingenious in taking advantage of the loophole in the Highway Beautification Act. One property owner on Interstate 75 in Georgia erected a small shed in a rural area and put up a sign designating it a warehouse. A large billboard was erected next to this "warehouse," and an outdoor advertising firm then applied for a permit based on the area's being an "unzoned industrial" area.

It is difficult to conceive of a billboard removal program that could have been more ineffective than the one carried out nationally under the Highway Beautification Act. In fact, it is difficult to imagine how any expenditure of public funds could have been more ineffective.

Most public projects are planned so as to increase benefits and decrease costs. The billboard removal program has been designed to *minimize* the benefit-to-cost ratio. Congress directed that the first signs to be removed would be those voluntarily offered by the billboard companies. Nonconforming signs along heavily traveled rural highways would be the last to be removed. This strategy has meant that the very limited funds appropriated for highway beautification were dissipated in paying billboard firms for obsolete signs.

Georgia's Outdoor Advertising Control Act of 1971 rendered nearly 24,000 legally erected billboards nonconforming, but by mid-1978 only around 500 of these signboards had been removed. At the present rate, all of the billboards that were nonconforming in 1971 will come down by the year 2431—461 years after the deadline originally set in the 1965 Highway Beautification Act.

The national program has been weakened further by amendments contained in the 1976 Federal Highway Act. This law directed the states to retain until the end of the program all nonconforming rural signboards containing directional information. Moreover, the 1976 law allowed the states to retain these billboards permanently where their removal might cause economic hardship. This last provision has not been used yet in Georgia or any other state, mainly because so few signs actually are being removed.

Still not satisfied, the billboard industry is lobbying hard to amend the 1965 law further to permit "private directional signs" in all rural areas. This euphemism describes any billboard that contains directional information—a definition that covers an estimated 80 percent of the existing signboards. Only a few hours and a few gallons of paint are needed to change the others. Needless to say, the proposed amendments would almost completely gut what still remains of the billboard control program.

Illegal signs (those erected in violation of the law) also present a problem. The Georgia statute requires their removal within 30 days after official notification. Thereafter, the owner is subject to a fine of $1,000 per day, and the offending sign may be removed by the state.

Even so, there are now an estimated 7,000 illegal billboards in Georgia. Nearly 300 of these cases have been turned over to the state attorney general for legal action, and some of them have been buried in that office for over five years. The attorney general has not allowed the state department of transportation to take down illegal signs as provided in the law, nor has he ever sought to fine the owner of an illegal billboard.

Perhaps the ultimate perversion of the Highway Beautification Act has been in "vegetation control," i.e., the killing of trees. Illegal tree cutting along the highway right-of-way in front of billboards has been a serious problem in Georgia, as in most states. Recently, however, the Georgia transportation department solved the legal problem involved. It succumbed to pressure from the billboard industry and allowed the companies to cut these trees legally. Some of the pine trees removed along interstate 95 to give a better view of billboards were over 50 feet high.

Georgia's poor record in controlling billboards along its highways is a typical one. The Highway Beautification Act simply is too weak to be effective.

Imagine a clean water act that set as a standard for commercial and industrial rivers a pollution level that was twice the pollution level found in all but the worst industrial streams. Imagine further that the "commercial and industrial" designation would apply to all streams that received the effluent from at least one country store or were located in an area that the local governments hoped would become commercial or industrial sometime in the distant future. All nonconforming firms would be allowed to continue polluting until they were paid to stop. In addition, state and local governments that were using their police powers to require firms to reduce levels of pollution would be forced to drop these programs and pay compensation to the polluters from funds that would not be appropriated.

Imagine how effective this program would be in cleaning up our water! The Highway Beautification Act has been equally effective in reducing visual pollution along our highways.

The ineffectiveness of the billboard control program is perhaps the environmental movement's greatest failure. Extensive revision of the Highway Beautification Act is essential if the original objectives are to be achieved.●

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125 WASHINGTON, TUESDAY, JUNE 5, 1979 No. 71

Senate

S. 344: KENTUCKY ADDS ITS ENDORSEMENT

● Mr. STAFFORD. Mr. President, Calvin G. Grayson, the secretary of the Kentucky Department of Transportation, recently wrote to Members of the Senate expressing that State's strong support for S. 344, my bill to grant greater flexibility in the billboard control effort. Mr. Grayson urged "your wholehearted support for Senator STAFFORD's proposal. This Department stands ready to offer any assistance which may be helpful in insuring the proposal's speedy passage and enactment into law." I ask that a copy of this letter be printed in the RECORD.

The letter is as follows:

DEAR SENATOR ——: My staff and I have reviewed legislation introduced by Senator Robert T. Stafford which would amend 23 USC 131, "Control of Outdoor Advertising." Senator Stafford's proposal, entitled the "Federal Highway Beautification Assistance Act of 1979" (S. 344), would create a voluntary program of federally-assisted highway billboard removal. States could remain or withdraw from participation in this Highway Beautification Act program.

The present mandatory billboard removal program, due to statutory and regulatory misinterpretation and special interest group pressure, has become unworkable and totally ineffective. President Carter's FY80 budget recommendation has, in fact, included no appropriation request for the program. Senator Stafford should be applauded for his effort to make the program flexible enough to meet the varying needs of the individual states, and effective in achieving the goals for which it was created.

I would encourage your wholehearted support for Senator Stafford's proposal. This Department stands ready to offer any assistance which may be helpful in insuring the proposal's speedy passage and enactment into law.

Very truly yours,

CALVIN G. GRAYSON, P.E.,
Secretary.●

Washington Roadside Council INCORPORATED
P.O. Box 5217 • Seattle, Washington 98105

WASHINGTON ROADSIDE COUNCIL BOARD OF TRUSTEES (Revised 6/1/78)

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Lloyd Thorson Spokane
Fred Utevsky Seattle

June 11, 1979

Senator
Dear ~~Friends~~:

As you may know, the Federal Highway Administration is holding a series of hearings across the country for the purpose of soliciting ~~the~~ comments about the future direction of the Highway Beautification program, and, in particular, outdoor advertising and junk yard control.

As you will see from our first response enclosed, we are indeed concerned with what has happened with the Highway Beautification Act of 1965 which we believe has been a failure because of amendments perverting the original beautification purposes introduced in the act.

We hope to engender public support for a repeal of the Act and amendments and Department of Transportation actions. This will negate the billboard industries destruction of the original act.

We hope we have your support.

Sincerely,

John D. Spaeth

John D. Spaeth, President
Washington RoadsideCouncil

JDS:mp

Enclosure

Basic objectives of Washington Roadside Council, Inc.

To foster the conservation of the scenic beauty of our cities, countryside, and highways with a view to preventing their defacement from uncontrolled signs and other unsightly practices; to maintain or restore their scenic beauty by landscaping and other forms of planning.

To promote the enjoyment of public travel and the prevention of highway accidents, and to assure the safety and convenience of the travelling public.

Recipient of Municipal League's 1967 Outstanding Organization Award.

Washington Roadside Council INCORPORATED
P.O. Box 5217 • Seattle, Washington 98105

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John B. Strander Tukwila
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Lloyd Thorson Spokane
Fred Utevsky Seattle

June 4, 1979

FHWA
Docket # 79-10
Notice to Federal Highway Administration
Room 4205
HCC-10
400 7th Street SW
Washington, D.C. 20596

Dear Sirs:

The Highway Beautification Act of 1965 has become the billboard protection act through crippling amendments.

Gigantic loopholes permit new billboard clutter and horrendous hurdles now impede elimination of existing signs. Per example, (1) commercial and industrial areas zoned or not are exempted from the Act with absurdly permissive sign standards for size, number and spacing; (2) on-premise signs are exempted also with very permissive standards; (3) required cash compensation for sign removals was the most devastating amendment, Congress and the President have sliced federal funding and local taxes can't possibly pay the price if permitted; (4), finally, the 1978 amendment requiring compensation for removal under ANY state or local zoning or environmental control is an unprecedented decapitation of traditional local authority.

Seattle, Washington has banned new billboards outright because the city's legal authority to remove 200 non-conforming signs under traditional zoning power has been challenged in a case now before the state supreme court.

The Washington Roadside Council believes the Highway Beautification Act has been largely a failure and agrees with Senator Robert Stafford that it should be repealed to undo amendments perverting beautification purposes originally intended.

Basic objectives of Washington Roadside Council, Inc.

To foster the conservation of the scenic beauty of our cities, countryside, and highways with a view to preventing their defacement from uncontrolled signs and other unsightly practices; to maintain or restore their scenic beauty by landscaping and other forms of planning.

To promote the enjoyment of public travel and the prevention of highway accidents, and to assure the safety and convenience of the travelling public.

Recipient of Municipal League's 1967 Outstanding Organization Award.

These remarks will be followed by a letter discussing three-part comments requested in FHWA Highway Beautification program re-assessment, notice of public hearings.

Sincerely,

John D. Spaeth, President
WASHINGTON ROADSIDE COUNCIL

JDS:mp

PRC PENNSYLVANIA ROADSIDE COUNCIL, INC.

225 S. 15th Street (Mezzanine)
Philadelphia, PA 19102
Telephone 215 732 9136

June 4, 1979

Senator Robert T. Stafford
Dirkson Senate Office Bldg. #5219
Washington, D. C., 20510

Dear Senator Stafford:

Thank you for the material recently sent to us on S.344. Because of your record of support for the preservation of scenic beauty, we have reviewed your bill with special care, hoping to be able to give it our support. Unfortunately, based upon the recommendations of our Legislative Chairman's report (copy enclosed) and the discussion of the Board of Directors, we cannot support the bill as it now stands. Our reservations are based on the following:

1) Paragraph 131 (b). Even though mandatory controls leave much to be desired, with voluntary controls Pennsylvania would probably be one of the first states to withdraw from the program. Many areas of the state will revert to ugly billboard alleys which will threaten not only the scenic beauty of the state, but also its economic well being as much of our tourist industry is dependent on maintaining that scenic beauty. What about the interstate highways? What will happen to them?

2) Paragraph 131 (b) Compensation--Although this paragraph says states may choose to control signs by either compenation or condemnation, both require payment (in our opinion)which is again dependent on Congress appropriating funds for the program--which has a past history of average, meager or no funding. Why is no mention made of the amortization principle if the division of government removing the sign has already set a precedent?

3) Paragraph 131 (f) Will the promise of a bonus be enough incentive to ensure the continued participation of the 23 states now in the program? Why not make withdrawl from the program to mean not only loss of the bonus but also include a penalty which would require the repayment of funds previously acquired?

4) We believe that there is sentiment for outdoor advertising control in scenic areas and that with enough publicity, the public will be moved to action. How many taxpayers know how their dollars have benefitted the outdoor advertising industry? Enclosed is some material from the local government of State College, PA which last year won a struggle in its efforts to control signs by zoning. This attempt to usurp local authority led to the borough's efforts to get the Pennsylvania Association of Boroughs to adopt a resolution similar to the one adopted by the Borough of State College. (copy enclosed). Studies conducted in California

PRC

PENNSYLVANIA ROADSIDE COUNCIL, INC.

225 S. 15th Street (Mezzanine)
Philadelphia, PA 19102
Telephone 215 732-9136

June 11, 1979

several years ago and one done by the Highway Beautification Commission in 1973 also indicate that the public favors sign control. Do we not have an obligation to protect this public interest and prevent our interstate highways from becoming billboard alleys at the whim of a state's legislators?

Pennsylvania Roadside Council is aware that any success achieved by those concerned with protecting scenic beauty is dependent of all of us speaking with one voice. For this reason we are writing to you--in hopes that you will be able to provide legislation which we can all support. We thank you for yourconsideration and look forward to hearing from you.

Sincerely,

Ruth H. Becker

Ruth H. Becker
Executive Director

RHB/r
Enclosures--2
c.c. Governor Thornburgh, Secretaries Larsen, Jones;
Congressmen Edgar , Kostmayer, Schulze, Ertel;
Calloway , G.C.F.GA; Clothier, Keystone Auto; Dorsey, O.R.C.; Edwards, CCA;
Floyd, U.of GA; Keefe, O.R.C.; Kelly, G.C.A.; Lacey, N.N.S.G.C.; Maxon, Cal.;
Moeller, U.S.DoT; Mostek, Ill. Aud.; Murphy, V.F. Aud.; Gilkey, West Penn
Auto; PA For. Assn., Clark; Ross, Pa. DoT; Sandford, NJ R.C.; Spaeth, WRC;
Swope, P.F.W.C.; Warner, G.C.F.P.; Winsor, PA Env. Coun.; W.H. Whyte, NY;
Short, C.R.P.C.

PENNSYLVANIA ROADSIDE COUNCIL, INC.

225 S. 15th Street (Mezzanine)
Philadelphia, PA 19102
Telephone 215 732 9136

TO: RUTH H. BECKER, EXECUTIVE DIRECTOR
FROM: J.A. LAUMAN, LEGISLATIVE CHR.
RE: STAFFORD AMENDMENT
DATE: 4/30/79

I am of the opinion that there would be two advantages to Senator Stafford's amendments: (1) There would be potentially fifty different outdoor advertising control acts which the billboard industry would have a difficult time coping with; and (2) states that are aggressive in the matter of billboard control would be able to enact more restrictive legislation than permitted under current Federal law. The possibility exists that no control of outdoor advertising would occur which would not be desired by the industry because of the confusion it would create, such as no limit to the amount of billboards per mile. In my opinion these advantages are not persuasive, with the exception of eliminating the requirement of payment of compensation for removal of any off-premises signs adjacent to an interstate or primary route.

The disadvantages of Senator Stafford's bill are that it requires compensation to billboard owners in order to obtain Federal aid and does not provide any penalty if no state-wide sign control program is established. It does not provide for amortization as an alternative to actual compensation. The standards set forth in proposed section 131(c) appear to be the same as those currently in existence and would, therefore, not be an improvement.

In my opinion Senator Stafford's amendments should be opposed by the Pennsylvania Roadside Council and action should be taken to encourage him to amend the Highway Beautification Act of 1965 to eliminate loopholes, which he has stated would be his personal preference. He feels that the public sentiment for more beautiful roads on a national level is too weak to stand up against the billboard lobby. Perhaps his amendments can be a catalyst for renewed efforts by environmental groups to strengthen the 1965 Act.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

J. A. Lauman, Jr.

RESOLUTION

To Support Strengthening of Billboard Control and Removal as Part of the Federal Surface Transportation Act.

WHEREAS, the Boroughs of Pennsylvania find that community appearance and safety are essential to the well-being of the community; and,

WHEREAS, the appearance of the countryside surrounding each Borough reflects upon the image of that Borough; and,

WHEREAS, uncontrolled location and design of billboards both in the Borough and countryside contributes to a cluttered and ugly environment, and also creates traffic safety problems; and,

WHEREAS, the Surface Transportation Act, as amended in 1976 and 1978, directed states to retain all nonconforming billboards where removal may cause economic hardship; resulted in loss of local government use of police powers to control signs due to federal requirements that nonconforming sign removal be compensated by local government; removed sign sizes of up to 1,200 square feet; permitted up to 212 billboards per mile in municipalities; allowed the elimination of federal funds for sign removal compensation, and allowed removal of trees and other natural or project vegetation within the public right-of-way blocking billboards; and,

WHEREAS, the previous amendments to the Surface Transportation Act infringe upon borough government use of the police power, render local and county governments helpless in controlling billboard removal and encourage the proliferation of billboards,

NOW, THEREFORE, BE IT RESOLVED that the Pennsylvania State Association of Boroughs opposes the amendments to the Surface Transportation Act that prevent removal and control of billboards and urges all senators and representatives from Pennsylvania to reinstate funds for billboard removal, eliminate previous amendments that prevent national billboard removal and control, and propose amendments to strengthen billboard control.

ADOPTED by the State College Borough Council as a Resolution this 4th day of June, 1979.

BOROUGH OF STATE COLLEGE

By Ingrid P. Holtzman
Ingrid P. Holtzman
President of Council

Attest: Carol B Fairbanks
Secretary

VAUGHAN, HULL, MARFISI & COPENHAVER, LTD.
ATTORNEYS AND COUNSELORS

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A. GRANT GERBER

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ELKO, NEVADA 89801

TELEPHONE
AREA CODE 702
738-4031

PARALEGAL
WALTER I. LEBERSKI

July 9, 1979

Senator Robert T. Stafford
United States Senate
Room 5219, Dirkson Building
Washington, D.C., 20510

Dear Senator Stafford:

I represent the Stockmen's Hotel, Elko, Nevada.

My client wants to go on record in support of your bill, S.344. We agree with your stand that "the time has come to end the mandatory features of the Highway Beautification Act of 1965." We believe that it will save federal funds and needless and counterproductive federal regulations as well as getting the Federal Government out of the hair of state and local governments. We also agree that by allowing states to control their own sign programs they will be able to halt the inequities that have resulted economically throughout a state because of the inflexible rules established by the Federal Highway Administration. Also a state like the State of Nevada has problems far different than the more heavily populated eastern states or the states with heavy vegetation, such as in the south. Your bill will give some necessary flexibility to the states so that they will be able to develop an intelligent program to meet local needs.

I attended the workshop put on by the Federal Highway Administration in Washington D.C. on May 15th and was appalled at the flagarant manner in which the agency is refusing to comply with the clear requirements set down by Congress in recent amendments. But the thing that concerns me the most is the intent by the agency to begin developing a system of federal signs, planned and packaged in Washington D.C., to be used to direct the traveling public on the interstate highway system.

I am enclosing a copy of my remarks to the Federal Highway Administration at the hearing in San Francisco.

If I can be of assistance in helping to get your bill through the Congress, I would appreciate the opportunity.

Very truly yours,

A. Grant Gerber

A. GRANT GERBER

AGG/kv

TESTIMONY BEFORE FHWA

June 12, 1979

BY: A. GRANT GERBER

Mr. O'Connor, my name is Grant Gerber, my address is 1379 Lamoille Road, Elko, Nevada, and I represent the Stockmen's Hotel from Elko, Nevada.

The Highway Beautification Act has given the Federal Highway Administration its opportunity to hasten the trend toward centralization in this Country and to do its part in making certain that all Americans fit into the mold that the central planners believe all good Americans should fit into. By giving to the Federal Highway Administration the power and authority to decide what is to be seen by individual Americans as they cross this great land of ours, the Congress has given the Agency the authority to shape and change lives and attitudes. At the time that Congress passed this law, I think the legislators had no idea that the end result as now envisioned by the Federal Highway Administration, would be for a federal agency to direct people and inform them of where to stop for gas, meals, lodging, entertainment, etc., across the entire country. But that's where this act is taking us. The Federal Highway Administration apparently has plans, as soon as it can get the funding, to develop a system of signs that it will control, both as to content and to placement, that will direct all travelers on the interstates. (Pause) It's

a great way to build an empire. (Pause) Then to develop where the signs are to be placed and what's to be put on them, the Agency will have to have innumerable hearings, they will have to send out teams of investigators, teams of economists, motel and hotel inspectors and gas station inspectors, to make certain that the rooms, eating places and services that they will be advertising, will meet their standards, because they certainly won't want to be directing people to facilities, goods and services that do not meet federal standards.

I don't believe that the people of this country want to have some central planners in Washington, D.C., telling them where they should stop for goods and services and determining for them what they are going to see as they travel the interstate and what side trips they should take. Further, I'm certain that they would be opposed to having their tax money squandered in such a fashion.

The Congress of the United States has started to recognize that the Highway Beautification Act is not such a great idea and that it is causing economic hardship and going to cause more problems for the traveling public in certain situations. But I don't think that they realize and have thought through the effect that this is going to have on the nation, the fact that this act is increasing the trend toward eliminating the individuality of the States and people.

The Highway Beautification Act should be abolished for two basic reasons. One, that it is limiting the freedom of Americans, and two, that the cost is exorbitant.

The Act itself has been administered by the Federal Highway Administration in a discriminatory, unfair and heavy-handed way. Depending on the region, the State and the amount of pressure put on by the Federal Highway Administration, the Act has been either ignored or completely complied with. I believe that part of this comes as a result of the relative fear that the various states have of the Federal Government carrying out its threat of withholding 10% of the highway funds earmarked for a state. On page 30 of the Highway Beautification Program Digest, if you want to turn to that, that's table two, you can see this tremendous discrimination. Starting down from the top, you've got states like Massachusetts that have removed 19% of their non-conforming signs; New Jersey, that hasn't removed any; and Vermont, that has removed 100%. That is discrimination in enforcement. In this regard, I am really not proud of my state. They have buckled under to the Federal Government, to the point of removing in excess of 85% of the signs that the Act calls for. It seems that states with some backbone have stood up to the Federal Government and to my knowledge, the Federal Government has not in any case withheld the 10%. The program is a shambles and yet the Federal Highway Administration is wanting to spend an additional half a billion dollars to remove the remainder of the signs. Then we don't know what the tremendous cost will be to replace those signs with signs designed and packaged in Washington, D.C., but you can be sure that the Federal Government always spends more to do something than private enterprise.

The Highway Beautification Act was passed in 1965. The states didn't show any enthusiasm to comply with the law, so five years later the Federal Government began putting pressure on by threatening states that didn't comply with a 10% penalty reduction in highway funds. As signs were condemned and torn down and the impact began to be felt, businesses that rely on outdoor advertising began to suffer loss of business. The hardest hit were those tourist oriented businesses located at isolated rural interchanges, in small by-pass towns and near remote recreational areas. These businesses had no optional means by which to advertise their services and products and when their signs were removed, the loss of business that they suffered was catastrophic. During 1973, Congress, in its wisdom, set up the Highway Beautification Commission, chaired by Jim Wright, to study the entire Act. Its purpose was to develop recommendations which would make the Act less damaging to business. Nationwide hearings were held. After two years of study, the Commission submitted to Congress its recommendations. The Commission concluded the Act was too inflexible and in Congress the awareness that this Act was wrong for America was growing. As a result, there was a recommendation for the enactment of some sort of preferential treatment to signs giving directional information of interest to the traveling public. This was a step in the right direction, but just a step. Prompted by the findings and recommendations of the Highway Beautification Study Commission, Congress enacted two amendments, to lessen the impact of the 1965 act. The first, 23 USC, Sec. 131 (q)(2)(2), required the Secretary of Transportation to "encourage States to adopt programs to

assure the removal of signs, displays or devices providing necessary directional information on June 1, 1972 about facilities in the interest of the traveling public be deferred until all other nonconforming signs are removed." The other amendment was an exemption amendment, Subsection 131(0), which authorized the Secretary to approve a states request to exempt from compulsory removal any existing, nonconforming directional signs, displays or devises which (1) were in existent on May 5, 1976, (2) provide directional information about goods and services in the interest of the traveling public and (3) are such that removal would work a substantial economic hardship in a specific area defined by each state.

These amendments emphasize that Congress has determined that the Highway Beautification Act of 1965 has been harmful to the traveling public, to roadside business and to the nation at large in requiring the removal of most commercial signs, displays and devises located along the Interstates. Subsection 131(0), represents a small step by the Congress to provide some relief from this ill considered act, but the Federal Highway Administration has consistently and unlawfully avoided its responsibility in this area and has thumbed its nose at Congress and has refused to comply. Congress looked at it again in 1978 and concluded that the Federal Highway Administration wasn't complying and attached the following managerial language to its conference report, "The Conferees emphasized that we expect the Secretary to expedite the implementation of Subsection 0 to carry out this Congressional intent." A year later, the Secretary still hasn't

implemented this. The best that they have done is hold a work shop in Washington D.C. and invited those of us back that were concerned about this act. But by this time in many states, many people had already been eliminated from interest because their signs are all down. At the workshop, all that the Agency did was try to justify the Agency rules that had been tacked on in addition to the requirements placed by Congress.

Under the system of government that the Founding Fathers set up, there is a separation of powers. The Executive Branch, here in the role of the Federal Highway Administration, is not free to impose new or additional restrictions or burdens not initially approved or intended by the Congress. The imposed additional burdens and restrictions added by the Federal Highway Administration in Subsection 131(0), have exceeded the clear intent of Congress and is a violation of the separation of powers. The basis for regulations, by an Agency, must be the law itself and must implement the legislative criteria only. In the three years since the enactment of subsection 131(0), no request for exemption from any State has been approved by the Federal Highway Administration. The Federal Highway Administration has drug its feet on implementing this act and has browbeat Legislators and Governors in certain states, to keep them from passing, enabling legislation. In Idaho, Illinois and Utah, legislation was passed by both houses but was vetoed by the respective Governors upon threats by regional Federal Highway Administration personnel, to the effect that if their subsection 131(0) legislation was signed into law, their state might be subject to the 10% penalty provision.

Several states, including Arizona, Arkansas, Nevada, North Carolina, New Mexico and Pennslyvania have submitted request for sign exemptions, but the Federal Highway Administration has either taken no action or denied all requests for these exemptions. To comply with one of the strange requirements added to 131(0) by the Federal Highway Administration, the New Mexico Highway Department contracted with New Mexico State University to conduct an economic impact anaylsis. This study cost the State of New Mexico $123,00.00. Dr. Paul Zickefoose, who conducted the study, stated that the guide lines imposed by the Federal Highway Administration were unworkable This was also the view of Mr. Darrel Harp, director of legal services of the New York Department of Transportation, In the presentation by Mr. Darrel Harp at the Washington, D.C. workshop, he stated that the restrictions are so contradictory that they cannot be met in any situation.

Subsection 131(0), as passed by Congress, clearly indicates that the primary responsibility was for the state to define the area to be studied and to establish the degree of economic hardship in such areas and to determine the method of economic analysis by which it will demonstrate hardship. The Federal Highway Administration has ignored this and rejected all attempts by states to comply with the Congressional Act.

Finally on April 30th of this year, the Federal Highway Administration announced that public hearings were to be held for the purpose of reassessing the entire Federal Highway Beautification Act. This action has been anticipated for some time, as

the agency itself has admitted that the act has been administered in a discriminatory fashion. Congress is starting to recognize that this act is another step toward chipping away the freedoms of Americans and that the cost is far outweighing any pretended benefit. Future costs for this program will run in the billions.

I recommend that the Congress recognize that this act violates the principles of freedom laid out in the Constitution and that it is a tremendous waste of tax payers fund. The Act must be repealed! But until the Act is repealed, the FHWA should start complying with the Act and its amendments.

A. Grant Gerber

A. GRANT GERBER

APPENDIX B

MATERIAL SUBMITTED BY SENATOR PRESSLER

Office of the Governor
STATE OF SOUTH DAKOTA

William J. Janklow
GOVERNOR

July 17, 1979

The Honorable Lloyd Bentsen, Chairman
Transportation Subcommittee
Environment and Public Works Committee
United States Senate
Washington, D. C. 20500

Dear Senator Bentsen:

Enclosed is a copy of the testimony I personally gave to a federal hearing in Denver concerning the possible repeal of the federal Highway Beautification Act of 1965.

I do support the passage of Senate Bill 344 for the reasons stated in the testimony. My primary objection to the Highway Beautification Act would be solved if Senate Bill 344 is enacted into law. States would regain the power to regulate or not regulate billboards as they see fit. I have always believed that these powers should reside at the state and local level, not at the federal level of government.

I appreciate very much the opportunity to express my position on this important legislation.

Sincerely,

William J. Janklow

WJJ:jo

State Capitol Building *Pierre, South Dakota 57501* *(605) 773-3212*

Office of the Governor
STATE OF SOUTH DAKOTA

William J. Janklow
GOVERNOR

TESTIMONY PRESENTED BY GOVERNOR BILL JANKLOW

AT FEDERAL HEARING CONCERNING THE POSSIBLE

REPEAL OF THE FEDERAL HIGHWAY BEAUTIFICATION ACT

MONDAY, JUNE 18, 1979, IN DENVER, COLORADO

I wish as Governor of the sovereign state of South Dakota to make a statement supporting and encouraging the repeal of the Federal Highway Beautification Act 23 USC 131.

No federal law in my experience has caused more unnecessary controversy and divisiveness than the federal billboard control laws. The attempted implementation and good faith compliance with the federal law has pitted the South Dakota tourism industry against the South Dakota highway construction industry. It has set the East River section of our state against the West River where tourism is a critical element of the economy. It has legislative session after legislative session distracted state lawmakers from truly necessary and meaningful work.

South Dakota is a rural, agrarian state. It has a population of approximately 680,000 people. Its second largest industry due to the beautiful Black Hills and Mt. Rushmore and other scenic areas across the state is tourism.

Study after study has shown that the only effective means of advertising of goods and services necessary to the traveling public is so-called lead-in outdoor advertising. That is, a number of signs advertising the goods or services facing the same direction of travel and spaced over reasonable intervals on a route leading to the place of business. No other effective means of relaying information to the traveling public who are by and large strangers to the area being traveled has been developed.

State Capitol Building *Pierre, South Dakota 57501* *(605) 773-3212*

Rural, farm states such as South Dakota are greatly discriminated against under the existing federal beautification law. Eastern, southern and western states with megapolis running into megapolis and miles and miles of industrial and commercial activities are, by and large, hardly effected by the federal law which exempts signs located in industrial and commercially zoned areas. South Dakota, on the other hand, does not have the industrial or commercial activity to support any signing, and, in effect, all rural signing is totally eliminated under the federal law.

The resulting economic hardship on South Dakota and similar states is without justification in law or in fact.

Furthermore, the requirement of the federal law that the state regulate and control land use within sight of the federal interstate and primary highways is but an indirect effort to violate and circumvent the Tenth Amendment to the United States Constitution and give effect to a federal power in an area reserved exclusively to the states, i.e., land use control. This is a dangerous precedent which cannot be left to stand. The complex but basic underlying constitutional issues are lost in the political fog.

I cannot believe that the founding fathers of this nation would condone let alone even comprehend a federal statute forcing the states to undertake a constitutionally prohibited action under threat of loss of federal funds which were legitimately paid into a trust fund by the citizens of all the states.

South Dakota, as a small rural state, has thousands of miles of highways and a very limited population for tax base for purposes of funding necessary construction and maintenance. Every dollar of highway construction and maintenance money is absolutely necessary when, in fact, the state is constantly getting farther and farther behind in its maintenance program due to lack of funds. When dollars are matched against principle, due to our desparate fiscal situation, lawmakers are faced with but one choice due to the political pressures exerted.

Under the existing circumstances in my state the federal beautification sanctions are nothing more than blackmail.

The tourism businesses by and large are located in the smaller communities adjacent to the interstate and primary systems throughout western South Dakota. Tourism by its nature is a summer economic boon to our state. Students who are freed of school activities are the primary source of employees for this industry. The students in turn utilize the funds made from their summar jobs to support and continue their educations.

Oftentimes these tourism businesses are the major or sole economic mainstay of these small towns and communities. The towns rely on the businesses. The businesses rely on the tourists. The tourists rely upon the signs for needed directional information. As the signs go, so go the communities, businesses, jobs and millions of dollars in local, state and federal taxes generated by these businesses.

The federal beautification law is in fact in direct conflict with national policy, as set forth throughout the federal code, established to prevent or mitigate the out-migration of people from rural to urban areas. The tourism business, developed and maintained through the use of reasonable outdoor advertising, has been the largest single factor in preserving numerous of our small towns and communities. The federal beautification law would undermine and destroy the benefits derived by these communities, our state and nation in these respects.

It is in the national interest that we do all within our power to preserve and maintain the small town environment. Urban problems are already out of control and we need not compound them.

I personally believe that the federal beautification statues have been vindictively enforced against South Dakota in an arbitrary and capricious manner.

South Dakota at the outset of this program in 1966 had in excess of 25,000 signs. There are now approximately 5,000 signs remaining adjacent to our interstate and primary systems. South Dakota, according to national figures of the U. S. Department of Transportation, ranks very near the top of all states in sign removal. Yet, today, we have had the penalty imposed and are again threatened by another penalty under the beautification laws for so-called noncompliance with technical statutory language.

No other state has had the penalty imposed in the nature that it has been imposed against South Dakota and, while South Dakota ranks among the top in sign removal, other states which have barely removed any signs whatsoever remain unaffected by the federal department of transportation.

I believe this program exemplifies the epitome of bureaucratic bungling.

Let the record show that President Carter, personally, has totally eliminated funding for the practical enforcement of the Highway Beautification Act. We are advised that this is the continued intent of the Carter Administration.

Nevertheless, while the President has indicated he feels the federal program is totally worthless, the U. S. Department of Transportation continues its uneven and arbitrary enforcement of this Act.

To expend money and time on a few signs in light of the current national needs and priorities of attention is incredulous and wasteful. In fact, I personally believe it to be crazy to spend millions of administrative dollars attempting to invoke a national policy for controlling signs - a local problem in any event - in light of the energy, health, transportation and many other critical needs of the nation.

To spend federal money for administration or otherwise of such a ridiculous program is irresponsible, especially in light of the uncontrolled deficit, inflationary federal budget and spending patterns.

I believe that the Federal Highway Beautification Act is irrational, devisive, and totally unnecessary and unjustified.

Aesthetic zoning, where any two people will differ as what is beautiful, and especially where it is beyond the express powers of the federal government, and concerning a subject of local control, is intolerable and must cease. If beauty is to be the subject of law, let it be dictated and determined by the law of the local governments which are close to the people.

I most sincerely and wholeheartedly recommend that the Federal Highway Beautification Act, 23 USC 131, be repealed and that the decision of aesthetic control of outdoor advertising be returned to the states and local governments where it rightfully belongs.

-30-

Al's Oasis, Inc.
Alfred Mueller, President
I-90, Exit 260
Chamberlain, South Dakota 57325

1979 JUN 28 AM 9:53
13 PM

June 25, 1979

Senator Larry Pressler
U.S. Senate
Washington, D.C.

Dear Senator,

Thank you for sending me a copy of Senate Bill 344. I wish to take this opportunity to thank you for your efforts for trying to obtain favorable legislation in regards to the billboard law that has been a thorn in the side of the people involved in the tourist industry in South Dakota for the past several years.

I'm sure my feelings are no different than anyone else in the tourist industry. We in South Dakota feel we can control our billboards to the benefit of the industry and to the people of the state without the interference of Washington. It would certainly be for better law if it was directed to the jurisdiction of South Dakota rather than the bureaucrats in Washington.

Most of us are not concerned about the compensation of our billboards as we are in retaining them.

Because it is of vital concern to the small businesses in South Dakota, we estimated at one time the loss of the billboards in our state would cost the state of South Dakota between 4 and 5 million in additional revenue with the drop in tourism, which at present is approximately 30%, a more recent figure would be between 20 and 30 million loss in revenue.

Any efforts that you can put forth on this would certainly be appreciated by all members of the Roadside Business Association.

Sincerely,

Al Mueller
Al's Oasis

16 1979 JUL

SOUTH DAKOTA'S **BLACK HILLS BADLANDS and LAKES** association

"REPRESENTING THE SOUTH DAKOTA TOURIST INDUSTRY"

EXECUTIVE COMMITTEE
Lloyd West, President
Deadwood
Tone LaBreche, Vice President
Mitchell
Pete Johnson, Treasurer
Sturgis
John Woodsend
Hot Springs
Delbert Sebade
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L. W. Pullen
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Al Mueller
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Jerry Junek
Spearfish
John Brockelsby
Rapid City

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Mitchell
Tom Wheeler
Murdo
Gene Olson
Oacoma
Richard T. Stoll
Piedmont
Herman Jones
Rapid City
Nancy Brady
Rapid City
Earl Brockelsby
Rockerville Area
Tom Broadhurst
Spearfish
Bob Lee
Sturgis
Ted Hustead
Wall

HONORARY
R. I. Howlett
Sioux Falls
Hoadley Dean
Rapid City
E. C. Murray
Rapid City
Don Howe
Lead

LLOYD KESZLER, Manager
GARY LUNDSTROM, Assistant Manager
Box 539 • Sturgis, South Dakota 57785
Telephone: Area Code (605) 347-3646

July 5, 1979

Senator Larry Pressler
Dirkson Office Building
Washington, D.C. 20510

Dear Senator Pressler:

On June 12th the Board of Directors of Black Hills, Badlands and Lakes Association met and reviewed Senate Bill (S-344). The Association voted unanimously to support the Stafford Bill. (S-344).

The Black Hills, Badlands and Lakes Association is an organization of 2500 members representing the communities of western South Dakota with a purpose solely to promote the Travel Industry to our area.

Our Association has been working on billboard legislation for 17 years and the Stafford Bill (S-344) has our support. It gives the States the opportunity to control highway advertising. In a survey of our members 95% of our members claim roadside advertising as their number one reason for persons coming to their establishment. In a year of serious deterioration to the industry due to the energy situation and the prospect for the energy problem to worsen in the future, there is a strong possibility that the Stafford Bill could be one bright light on the horizon.

We would appreciate it if you would pass our views on to the committee and support S-344.

Sincerely,

Lloyd Keszler
Executive Secretary

The Black Hills
REPTILE GARDEN

PHONE 605/342-5873

BOX 620
RAPID CITY, SOUTH DAKOTA 57709

June 26, 1979

38
1979 JUN 29 PM 3:57

Senator Larry Pressler
Dirksen Office Bldg.
Washington, D.C. 20510

Dear Larry:

Enclosing copies of the Roadside Business newsletter which covers some information brought out by South Dakotans in the Denver area. We will have a letter to you from the director of the Black Hills, Badlands and Lakes Assoc. and other interested parties so it will be available for the July hearings in Wasnington.

Best of luck.

Sincerely friend,

Earl

Earl Brockelsby

EEB/rm
enc.

Roadside Business Association
NEWSLETTER

RBA

POST OFFICE BOX 2697 / SPRINGFIELD, VIRGINIA 22152 / (703) 323-5902

REASSESSMENT HEARINGS NEAR COMPLETION

JUNE 21, 1979

Dallas, Texas -

Three more sets of Reassessment Hearings were held this past week in Denver, Dallas, and Atlanta. The Dallas hearings are considered to be among the most informative of those held to date. There were 80 persons in attendance; 67 who signed up as speakers, and approximately 55 who stayed to be called as witnesses.

The five states of Texas, New Mexico, Oklahoma, Louisiana, and Arkansas were well represented, with New Mexico providing the most in-depth coverage. Speaking on the many problems facing New Mexicans were members of the State Highway Department; two rural sign companies; two motorist service businessmen and the Mayor of the by-passed community of Santa Roas, New Mexico; an industry attorney; and a former highway director.

There appeared to be more emphasis placed on the many problems which can be resolved with the continuation of the program at this hearing rather than a strong plea from sign operators to retain the program as is. The Federal Highway Administration hearing officer complimented the witnesses on the interesting and informative cross section of data presented.

Dr. Charles Floyd of Georgia led off the witnesses, followed by several Environmentalists calling for an end to mandatory compensation.

Nineteen speakers, rural owners and users of outdoor advertising, supported the RBA position.

Denver, Colorado -

Ed Glassgow, Executive Director, South Dakota Hospitality Association, reported that 56 witnesses presented testimony before the FHWA hearing officers in Denver. All, except Governor Lamm of Colorado and a private citizen, supported the need for outdoor advertising.

Three representatives from South Dakota appeared, including Governor William Janklow, who testified that most of the problems with the program lie directly at the FHWA. Along with Governor Janklow, Ed Glassgow and Bill Hustead of Wall Drug, presented supportive testimony.

-MORE-

Equally critical testimony regarding the method in which the FHWA has handled the beautification program came from representatives of Utah.

Several representatives of "tourist related" associations were in attendance but did not testify. Rather, they chose to submit formal testimony to the Docket (closing date July 15).

Ed Glassgow presented four points that reflect the problems South Dakota is experiencing with the FHWA and the Beautification Program: 1) South Dakota does not agree with the principle that "FHWA knows best"! 2) South Dakota would prefer to handle the program themselves; 3) They resent the federal coercion to impose federal concept on zoning; and 4) There has been an unfair application of the act with no exercise of judgement on the part of the FHWA.

Utah, along with other states, resents the unyielding attitude of the FHWA and their manipulation of the Governor by FHWA officials relating to state legislative proposals on Section 131 (o).

Atlanta, Georgia -

The hearings were hot and heavy in Atlanta. Hot because of the poor air-conditioning and heavy because of the top-quality witnesses who made good presentations.

There were approximately 75 in attendance with 52 who signed up to speak, and approximately 46 who made presentations.

Leading off the witnesses were 2 State Representatives, Mrs. Ann Bectsel from Alabama and Mrs. Fran Carlton from Florida. Both testified to the importance of outdoor advertising and urged the continuation of the program as is. Dean Gieser, Director of Tourism for the state of Florida, followed the two representatives with sound tourism figures which further support the need for highway signs.

Representatives of the Garden Club of Georgia voiced their opposition to highway signs and supported the continuation of planting more vegetation to block existing permitted signs.

Joe Ryan, Executive Director of Florida Attractions Association, presented an overview of the economics that are lost as a result of sign removal. Charles Thompson, Director of Outdoor Advertising for Stuckey's, along with Ed Sanders of Wayfara Stores, supplied the FHWA with actual gross revenues for several stores throughout the U.S., showing comparative dollars lost after sign removal. These gentlemen came prepared with sound documentation supporting the need, not only for retention of existing signs, but the need to develop new locations for growth that meets the increased numbers of travelers.

Several representatives of the Georgia Coastal Area Planning and Development Commission presented constructive testimony to offset many of the present inequities in the existing program. In supporting the current program, the Commission recommended revisions which would: 1) adequately guard against proliferation of billboards; 2) recognize the need for private enterprise to communicate with the traveling public; 3) limit

July 10, 1979 63 1979 JUL 13 AM 9:47 PH

The Honorable Larry Pressler
United States Senate
Dirksen Building
Washington, D. C. 20510

Dear Larry:

Thank you for your letter regarding s.344. I am rather slow in responding, but we moved and the letter had to be forwarded.

The other evening at a meeting for the tourist industry here in Rapid City, Senator McGovern did not sound optimistic about the passage of the bill. He felt it did not have support to get it out of committee. I am skeptical of this. What do you feel? Which of the committee is against it and why? Arethere any groups which might be contacted in their states to lobby for it?

I feel this whole matter is extremely worthwhile, and that is is going well. Your efforts are really appreciated by the South Dakota tourist industry. Much good luck to you and Senator Stafford. Following are notes you might wish to use in support of your bill.

S.344 should not be strengthened, because of the finances required to do so. After paying in hugh sums over the past 15 years, the program has largely failed. Pouring in more money certainly isn't going to guarantee success, and the taxpayer is presently in a state of revolt as it is.

Turning control to the states will enable allowances to be made for individual differences instead of favoring certain areas and large cities. This does not mean I favor leaving scenic areas wide open for uninhibited billboard erection, but that states should be allowed to set up and control the matter.

Sincerely,

D. S. Ferweda (Doris)

D. S. Ferweda
102 East Texas
Rapid City, SD 57701

71

H & H El Centro Motel
RESTAURANT & GIFT SHOP
"Your Badlands Host"
KADOKA, SOUTH DAKOTA 57543
(605) 837-2287

1979 JUL 17 AM 11:05

July 12, 1979

Mr. Larry Pressler
U.S. Senate
Washington D.C. 20501

Dear Larry:
I am writing in regard to the Highway Beautification Act and the hearings that are being held to consider S. 344. It is imperative to the tourism business in the state of South Dakota that no further restrictions be placed on outdoor advertising. This would be the end for many businesses along I-90 as well as a damaging blow to the small towns that depend on billboards to advertise and provide information to the traveler. Our state is suffering the effects of this supposed gas shortage, or energy crises, and it definitely can't stand and should not have to stand any further restrictions on advertising.

I would strongly recommend that the control of outdoor advertising be returned to the State and local governments. South Dakota is a rural state and should not have to comply with advertising regulations that are appropriate for the areas that have one city that grows into another. This particular law does not fit every state and I don't feel that it is equality.

Thank you Larry, for your interest in this vital issue and problem to the tourism industry in the state of South Dakota.

Sincerely,

Vernon Uhlir

PRESIDENT
AL MUELLER
CHAMBERLAIN, S. D. 57325

VICE-PRESIDENT
GARY LUNDSTROM
NEMO, S. D. 57759

SECRETARY-TREASURER
TED HUSTEAD
WALL, S. D. 57790

LEGAL COUNSEL
R. G. SCHMIDT
PIERRE, S. D. 57501

14 PM
1979 JUL 12 AM 10:57

SOUTH DAKOTA
ROADSIDE BUSINESS
ASSOCIATION, INC.
P. O. BOX 8
PIERRE, S. D. 57501
TELEPHONE 224-5813

June 27, 1979

The Honorable Larry Pressler
United States Senate
Washington, D. C. 20510

Dear Senator Pressler:

Thank you for sending me a copy of S. 344. Also thank you for sending a summary of the bill and the situation that we face in South Dakota.

I stopped at Al's Oasis and visited with Al Mueller a couple of days ago, and he told me that he had written to you in support of S. 344. As you know, Al is President of the South Dakota Roadside Business Association and I'm sure that he's expressing the feelings and opinions of the Association members.

I am sure that you are aware that Ed Glassgow, Executive Director of the South Dakota Hospitality Association, testified at the Denver hearing and he has reported that all of those testifying at the hearing, except Governor Lamm of Colorado and a private citizen, supported the need for outdoor advertising. Along with Governor Janklow, my son Bill presented supportive testimony at that meeting. I agree with Governor Janklow that most of the problems with the Beautification program lie directly at the FHWA. I think that all control of outdoor advertising should be with the states, because all states are different. Federal control of highway advertising has been tried now ever since the Beautification Bill was passed in 1965 and it has been generally agreed without success. So I think that we should return the control of outdoor advertising to the states where it belongs.

I think our Association is in favor of reasonable controls and that our members should police themselves so that we have attractive signs.

I know that you have heard from Earl Brockelsby, Ed Glassgow and Lloyd Keszler, Manager of the Black Hills, Badlands and Lakes Association, and that they all support S. 344.

Sincerely,

Ted Hustead, Secretary-Treasurer
South Dakota Roadside Business Association
510 Main Street
Wall, South Dakota 57790

TH:gee

OLD WEST MUSEUM
3 MILES WEST OF CHAMBERLAIN, S. DAK.
P.O. Box 275 Chamberlain, S. Dak. 57325

1979 JUL 2 AM 10:40

Senator Pressler -

Thank you for the interest in the beautification bill.

As for S Dak and other rural states the only way we can stay in business is billboards.

I think each state should be allowed to pass their own billboard law - one that would fit the needs and desires of the state itself. We have no urban areas in our area - the feds. billboard law would remove everything from Mitchell to Rapid City - a distance of 270 miles

Thanks again for the interest
Keep up the good work.

Sincerely Jene Olson

PHONE 578-2292 P.O. BOX 387

F. L. THORPE & CO.
MANUFACTURERS OF
ORIGINAL BLACK HILLS GOLD JEWELRY
DEADWOOD, SOUTH DAKOTA 57732
July 3, 1979

Larry Pressler
United States Senate
Washington, D. C
20510

RECEIVED
18 JUL 1979 PM
WASHINGTON OFFICE

Dear Larry:

Thank you very much for the copy of Senate Bill #344 and the accompanying report on what it does to South Dakota.

Although we do not use highway signs in our business, many of the companies that buy from us do, and I am in favor of anything that will allow these folks to advertise their off road businesses.

I do believe that the original law was passed for more congested areas and should not apply quite as strongly to South Dakota.

If the tourist industry does not receive a boost in the near future on the gas situation, we may not need the signs.

I think perhaps a lot of the problem is not in the gas, but in the general economy.

Sincerely,

Lloyd B. West

Lloyd B. West

LBW/mg

APPENDIX C

REPORT SUBMITTED BY LLOYD KESZLER

THE ECONOMIC IMPACT OF NONCONFORMING BILLBOARD REMOVAL

A Report Prepared for the
Interim Committee on Billboard Advertising
Rep. Beverly Halling, Chair

by
Dr. Calvin A. Kent
with
Dr. Gene Iverson
and
Dr. Jerry Johnson
Public Finance Project
Business Research Bureau
University of South Dakota
Vermillion, South Dakota 57069

30 November 1977

ECONOMIC IMPACT OF NONCONFORMING BILLBOARD REMOVAL

Introduction

The purpose of this chapter is to determine the economic impact on the State of South Dakota from the removal of nonconforming billboards as required by the Federal Highway Beautification Act. In order to do this, it is necessary to determine how many visits or stops by South Dakota travelers were due to the existence of nonconforming billboards. In addition, it must be determined what the gross receipts, sales tax payments, property taxes, and payroll of the affected firms were. These figures are first computed for those travelers who were sampled by the interview teams during the summer of 1977 and expanded to include all of the touring public in South Dakota.

In order to determine the number of stops which would not have been made had nonconforming billboards been removed, the following adjustments were made to the survey sample described in the previous report. Since this study is only concerned with the traveling public, it was necessary to remove from the sample those who were interviewed but living in the region or nearby. For that reason, those who answered the first question in the questionnaire, that they were currently within 50 miles of their home, were eliminated from inclusion in further calculations. The only travelers who were remaining in the sample were those who indicated that they were either 50 to 100 miles from home or over 100 miles from home when interviewed. This constituted over 96 percent of all those questioned.

To make sure that the highway signs which provided the travelers

File
Billboard
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information were nonconforming signs, eliminated from the sample were those travelers who answered question nine by indicating that it was an on-premise sign by which they learned of the business which they were then patronizing. For those travelers still remaining in the sample, it was necessary to determine if the off-premise billboard was the factor which determined whether or not they stopped at that business. To make this determination, retained in the sample were those who answered question 12 by indicating that they would not have stopped at that business had they not seen highway advertising for that business.

The result of this process was to reduce the number of interviews from 4,294 to 1,656. This meant that 37.7 percent of those interviewed during the summer of 1977 across the State of South Dakota would not have patronized the business where they were interviewed in the absence of nonconforming, off-premise highway billboards. Table I gives the breakdown, by type of business and by region, of those who indicated that nonconforming, off-premise highway signs were the reason for their stop.

As can be determined from Table I, 46 percent of those who were interviewed at tourist attractions would not have stopped had the off-premise billboards not been there. Service stations and restaurants owed approximately 35 percent of their business to off-premise signs. For campgrounds, the percentage was about 37 percent with motels and hotels finding approximately 26.7 percent of their traveler business directly linked to nonconforming highway billboard advertising.

The results, when arrayed by region, are what one would have anticipated before the survey was conducted. There is a tendency as the counties become less populated with fewer retail establishments,

TABLE I

NUMBER AND PERCENT OF TRAVELERS
WHOSE DECISION TO STOP WAS DUE TO
OFF-PREMISE HIGHWAY SIGNS BY BUSINESS AND REGION

	TOTAL TRAVELERS INTERVIEWED	NUMBER OF TRAVELERS STOPPING DUE TO OUTDOOR ADVERTISING	PERCENT OF TRAVELERS REMAINING IN THE SURVEY
Statewide	4,394	1,656	37.7
By Business			
Hotel/Motel	791	243	30.7
Restaurants	969	341	35.2
Service Stations	868	306	35.3
Campgrounds	532	198	37.2
Tourist Attractions	1,233	567	46.0
By Region			
1	337	90	26.7
2	930	362	38.9
3	80	35	43.8
4	856	250	29.2
5	567	183	32.3
6	150	59	39.3
7	764	350	45.8
8	233	108	46.4
9	32	10	31.3
10	443	208	47.0

for billboard advertising to become more important as the determining factor for tourist stops. The exceptions for this are Region Two, which is Pennington County where Mt. Rushmore and the related tourist attractions can be found; and Region Three which is Brown County in the northeastern part of the State. Region Nine also failed to follow the general pattern as there are only a few tourist related businesses in that area.

To further refine the sample those travelers who indicated that they would have stopped within 25 miles for the same type or similar service were dropped. This elimination was consistent with the Department of Transportation guidelines which required that the economic impact of billboard removal on the region be measured not the impact on firms using outdoor advertising. This study assumes that those who indicated that they would have stopped within 25 miles do not represent spending which would be lost to the economic region even though those dollars would be lost to the individual firms.

To make this calculation, the percentage for those who indicated that they would not have stopped within 25 miles for the same or similar service are given in Table II. These percentages were taken times the percentage of travelers whose stop was the result of nonconforming highway signs as given in Table I, are arrayed in Table II. The correct interpretation of the last column of Table II is as follows. For the state as a whole, 16.4 percent of the travelers would not have stopped at a given business or a similar business within the region where they were traveling had nonconforming billboards not been available to them as sources of information. For specific types of businesses, almost 33 percent of those at tourist attractions, 15 percent at

TABLE II

PERCENT OF SOUTH DAKOTA TRAVELERS
WHOSE DECISION TO STOP WAS DUE
TO OFF-PREMISE HIGHWAY SIGNS
WHO WOULD NOT HAVE STOPPED
WITHIN 25 MILES BY TYPE OF BUSINESS

	NUMBER AND PERCENT OF TRAVELERS STOPPING DUE TO NONCONFORMING HIGHWAY SIGNS		PERCENT WHO WOULD NOT HAVE STOPPED WITHIN 25 MILES	PERCENT OF TOTAL TRAVERLERS WHO WOULD NOT HAVE STOPPED WITHIN 25 MILES
Statewide	1,656	37.7	43.6	16.4
By Business				
Hotel/Motel	243	30.7	43.2	13.3
Restaurants	341	35.2	41.7	14.7
Service Stations	306	35.3	35.3	12.5
Campgrounds	198	37.2	32.0	11.9
Tourist Attractions	567	46.0	71.1	32.7

restaurants, 12 percent of those at campgrounds and motels and almost 13 percent of the service station patrons would not have spent their dollars either at that business or within the area. These figures represent the economic loss to the regions of sign removal.

Expenditures by the Traveling Public

For those remaining in the sample, it was necessary to determine how much was spent at each stop which they make. These results are tabulated in Tables III and IV. Table III gives the percentage distribution of expenditures which are made at each stop by those who were traveling in South Dakota. In Table IV is arrayed the median expenditures for each stop by travelers in South Dakota. As Table IV notes, the typical South Dakota traveler spent $8.86 on each stop that he made.

When these statistics are broken down by each type of business, South Dakota travelers spent on the average $22.63 each time they stopped at a motel, $8.24 at a restaurant, $9.13 at a service station, $9.55 at a campground and $8.11 at each of the tourist attractions they visited. Regional spending patterns tended to be somewhat similar and to vary around the State average. The only significant departure from the State average was in Region 9 which can be explained by the fact that there were only a small number of respondents left in the sample and none of these stopped at a motel/hotel or tourist attraction which was the higher expenditure category.

Loss of Income

The first of the economic impacts to be determined was the loss of business income which would result from the decrease in traveler stops

TABLE III

PERCENTAGE DISTRIBUTION OF EXPENDITURES AT
EACH STOP BY SOUTH DAKOTA
TRAVELERS BY TYPE OF BUSINESS

Range of Expenditures	TYPE OF BUSINESS					
	Hotel/ Motel	Restau- rants	Service Stations	Camp- grounds	Tourist Attractions	For All Businesses
0 - $5	2.5	29.3	19.0	17.2	23.3	19.9
$6 - $10	2.5	28.4	36.3	28.8	19.4	23.1
$11 - $20	16.9	12.9	18.0	14.1	8.6	13.1
$21 - $50	35.4	9.1	7.2	8.6	6.7	11.7
$51 - $100	4.1	1.5	.3	1.5	1.1	1.5
Over $100	5.3	2.9	2.6	5.1	3.9	3.8
Missing	33.3	15.8	16.7	24.7	37.0	26.9

TABLE IV

MEDIAN EXPENDITURES FOR EACH STOP BY TRAVELERS IN SOUTH DAKOTA BY BUSINESS AND BY REGION

	MEDIAN EXPENDITURE PER STOP
Statewide	$ 9.61
By Business	
Hotel/Motel	$22.63
Restaurants	8.24
Service Stations	9.13
Campgrounds	9.55
Tourist Attractions	8.11
By Region	
1	$11.11
2	10.19
3	9.46
4	9.45
5	11.27
6	9.10
7	8.90
8	11.90
9	4.50
10	8.00

resulting from the removal of the nonconforming billboards. In order to establish how much income would be lost, it was necessary to first ascertain the amount of gross receipts being earned by the firms that use nonconforming billboard advertising. Table V arrays the number of firms which used nonconforming outdoor advertising. For the State as a whole, 831 firms were identified whose billboards would be removed under the Highway Beautification Act. Two hundred and sixty two of these were hotels/motels, 164 were restaurants, 253 were service stations, 60 were campgrounds, and 92 were tourist attractions. These statistics are further broken down by region and by county in Table V.

Information on the income of these firms was obtained from the computerized sales tax file maintained by the Department of Revenue of the State of South Dakota at the University was accessed and the gross receipts for 1976 were obtained from that file. Gross receipts for 1977 were only available through July of 1977 so the previous year was used. In order to isolate the impact of the touring public, receipts for only the second and the third quarter (March to September) were used as this is the heavy tourist season in the State,in addition to annual receipts. The Department of Commerce estimated a 10 percent growth in state income attributable to hotel/motel business for the first six months of 1977. It may be appropriate to inflate these receipts by that amount to determine the 1977 situation.

The necessary financial data was not available on the sales tax file for all 831 firms using nonconforming billboards. For that reason, the analysis proceeded to construct what is known as a "representative firm" for each of the business types being studied. The gross receipts

TABLE V

DISTRIBUTION BY REGION
OF FIRMS USING NON-CONFORMING
BILLBOARDS IN SOUTH DAKOTA: 1976

REGION	TOTAL	HOTEL/ MOTEL	RESTAU- RANT	SERVICE STATIONS	CAMP- GROUNDS	TOURIST ATTRACTIONS
Statewide	831	262	164	253	60	92
Region I						
Minnehaha	46	19	7	16	3	1
Region II						
Pennington	105	40	10	14	17	24
Region III						
Brown	16	4	5	5	2	0
Region IV						
Davison	47	11	8	20	5	3
Region V						
Beadle	17	7	6	1	0	3
Brookings	19	6	6	6	1	0
Codington	19	8	4	6	0	1
Lawrence	48	20	9	4	4	11
Hughes	16	6	4	5	0	1
Yankton	19	5	5	8	0	1
Total	138	52	34	30	5	17
Region VI						
Walworth	13	4	4	3	1	1
Meade	15	2	1	5	3	4
Total	28	6	5	8	4	5
Region VII						
Butte	14	6	2	5	0	1
Fall River	19	4	3	5	3	4
Campbell	2	1	0	1	0	0
Sully	3	1	1	1	0	0
Hyde	2	1	0	0	1	0
Stanley	7	0	2	4	0	1
Tripp	9	4	1	4	0	0
Gregory	9	2	4	3	0	0
Charles Mix	15	4	3	6	0	2

(cont. on next page)

Table V (cont.)

REGION	TOTAL	HOTEL/ MOTEL	RESTAU- RANT	SERVICE STATIONS	CAMP- GROUNDS	TOURIST ATTRACTIONS
Hanson	9	3	2	4	0	0
Brule	36	11	7	14	2	2
Custer	19	6	0	2	3	8
Bon Homme	14	4	2	7	0	1
Hutchinson	13	5	4	4	0	0
Turner	7	1	0	5	0	1
Lincoln	10	2	4	2	0	2
Clay	10	4	3	3	0	0
Union	21	4	4	11	1	1
Lake	13	2	3	6	0	2
Kingsbury	7	3	1	2	0	1
Grant	9	4	2	2	1	0
Spink	9	3	2	4	0	0
Day	3	0	0	3	0	0
Marshall	9	2	1	2	0	4
Roberts	9	3	3	2	0	1
Total	278	80	54	102	11	31
Region VIII						
Perkins	9	4	1	4	0	0
Corson	3	2	1	0	0	0
Dewey	8	3	1	4	0	0
Potter	4	1	1	1	1	0
Edmunds	3	0	0	3	0	0
Hand	3	3	0	0	0	0
Clark	6	2	1	3	0	0
Miner	3	1	1	0	0	1
Moody	4	0	1	2	0	1
McCook	10	4	3	2	1	0
Total	53	20	10	19	2	2
Region IX						
McPherson	3	1	2	0	0	0
Faulk	3	1	1	1	0	0
Douglas	2	0	2	0	0	0
Hamlin	6	0	4	2	0	0
Total	14	2	9	3	0	0
Region X						
Harding	4	1	1	2	0	0
Haakon	12	3	2	5	1	1
Jackson	23	2	5	6	5	5
Shannon	4	1	0	1	1	1
Bennett	8	3	1	3	0	1
Jones	16	8	1	5	1	1
Lyman	13	3	3	5	2	0
Todd	5	2	2	1	0	0
Buffalo	1	1	0	0	0	0
Jerauld	4	1	1	2	0	0
Aurora	11	3	3	4	1	0
Sanborn	5	0	3	2	0	0
Total	106	28	22	36	11	9

sales tax payments for the representative firm was taken to be the average of the gross receipts for all of the firms of that business type for which financial data was available.

Table VI shows the calculations for determining the average gross receipts and sales tax payments for each of the types of firms. For the motel/hotel group, financial data was obtained on 153 of the 262 establishments which used nonconforming billboard advertising. This was slightly more than 58 percent of the firms in the group. The average gross receipts for the hotels/motels were $70,705 and the average sales tax payments were $3,227. For the other four business types, similar calculations were made with restaurants averaging $127,597 in gross receipts and $5,430 in sales taxes. For service stations, gross receipts averaged $261,386 and sales taxes, $2,230. Campgrounds have average gross receipts of $39,276 with sales tax figures being $1,382. For the tourist attractions in the State, the average gross receipts were $104,609 and sales taxes averaging almost $3,300. These averages are used to represent the typical firm and are employed in the calculation of total gross receipts lost in the State as well as the sales tax loss for the State.

Table VII indicates the methodology which was employed to estimate the loss of income or gross receipts to the regions of the State of South Dakota resulting from compliance with the Highway Beautification Act. In column one, we have listed the number and types of firms using nonconforming billboards. The second column indicates the average receipts for the representative firms in those industries as determined in Table VI. The estimated total receipts in column three is found by multiplying column one by column two. Column four is the estimated

TABLE VI

AVERAGE GROSS RECEIPTS AND
SALES TAX COLLECTIONS FOR
TOURIST RELATED BUSINESSES
IN SOUTH DAKOTA: SUMMER 1976

TYPE OF FIRM	NUMBER WITH DATA	TOTAL NUMBER	PERCENT WITH DATA	AVERAGE GROSS RECEIPTS	AVERAGE SALES TAX
Motel/Hotel	153	262	58.4	$ 70,705	$3,227
Restaurants	88	164	54.6	127,597	5,430
Service Stations	105	253	41.5	261,386	2,230
Campgrounds	18	60	30.0	38,276	1,382
Tourist Attractions	38	92	41.3	104,609	3,295

TABLE VII

STATEWIDE INCOME LOSSES DUE TO
NONCONFORMING BILLBOARD REMOVAL

NUMBER AND TYPE OF FIRMS	AVERAGE FIRM RECEIPTS	ESTIMATED TOTAL RECEIPTS	ESTIMATED PERCENTAGE BUSINESS LOSS	ESTIMATED LOSS OF TOTAL RECEIPTS	ESTIMATED PERCENTAGE REGIONAL INCOME LOSS	ESTIMATED REGIONAL LOSS OF SUMMER RECEIPTS	ANNUAL MULTIPLIER	ESTIMATED REGIONAL LOSS OF ANNUAL RECEIPTS
Hotel/Motel								
262	$ 70,705	$ 18,524,710	30.7	$ 5,687,085	13.3	$ 2,463,786	1.49	$ 3,671,041
Restaurants								
164	127,597	20,925,908	35.2	7,365,919	14.7	3,076,108	1.78	5,475,472
Service Station								
253	261,386	66,130,658	35.3	23,344,122	12.5	8,266,332	1.92	15,871,357
Campgrounds								
60	38,276	2,296,560	37.2	854,320	11.9	854,320	1.14	973,925
Tourist Attractions								
92	104,609	9,624,028	46.0	4,427,053	32.7	3,147,057	1.40	4,405,880
Total 831	*	115,267,937		41,678,499		17,807,603		30,397,675
Multiplier						x2.68		x2.68
Income Loss						$47,724,376		$81,465,769

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loss of business to each firm which would result if nonconforming billboards were removed. These are taken from Table II. The fifth column gives the resulting loss of total receipts to each firm. As can be seen in Table VII, the total receipts of the firms using billboard advertising are estimated to be in excess of $115,000,000 and the estimated losses of gross receipts to be in the neighborhood of $42 million, or 36 percent.

As was indicated previously, not all of the business lost by a single firm will be lost to the economic region as travelers will purchase the same or similar services elsewhere within a given geographical area. Column six gives the estimated percentage loss of business to the region if the billboards advertising that type of business are removed. This calculation was also made in Table II. The seventh column indicates the amount of business that will be lost to the regions if billboard advertising is not employed. That figure is in excess of $17 million.

This figure only indicates the loss of receipts from the two summer quarters. It can be contended that this estimate is conservative as billboard advertising will have some effect during the off-season period as well. If one assumes that billboards will have the same influence on traveler behavior during the off-season, as during the summer, then these figures can be expanded through the use of an annual multiplier. The annual multiplier merely represents the percentage that total sales for these firms represented when compared to tourist season sales. For example, in the hotel/motel industry, annual sales were 149 percent of summer sales. These annual multipliers for all

types of firms are given in column eight.

By use of the annual multiplier, the estimated regional loss of annual receipts given in Table VII is determined to be in excess of 29 million. Since it is likely that billboard advertising has more effect during the peak summer months than during the off season, the figures given for estimated annual loss of receipts must be viewed as the upper boundary of possible losses due to billboard removal. It is probable that the annual losses will be somewhat less than the $30 million dollars given at the end of column eight.

One of the more firmly established principles of economics is what is known as the multiplier effect. Changes in income and spending are magnified many times as money circulates through the economy. If new spending is injected into an economy, it is spent several times as the original recipient buys additional goods and services within the area and these purchases of goods and services generate additional income which is respend again.

An appropriate multiplier to be used in a region depends upon essentially (1) the expenditure patterns with that region and (2) the outflows from the region. From previous efforts at the computation of multipliers by the Business Research Bureau, it has been shown that the expenditure patterns by income class does not tend to vary significantly from the national averages. Unique to each region, however, is the outflow from the region. This uniqueness results in widely varying regional multipliers.

From previous multiplier studies in South Dakota, some idea as to the outflows can be estimated. Though differences do exist, those

multipliers which have been estimated range from 2.44 to 3.88. The higher multiplier was one estimated for the Yankton Sioux Reservation. This appears rather large and would seem inappropriate for the remainder of the State. It's magnitude resulted due to the high propensity to consume on the part of the Indian population. Those estimated in the non-Indian populous tend to be smaller due to a higher level of savings and taxes. In addition to the savings and taxes, the size of the multiplier depends upon how close a given region lies to a major shopping center. If the shopping center is within the region, the multiplier tends to be larger as the flow of the expenditure dollars tend to remain within the region. On the other hand, if the region lies relatively close to a major shopping center, then the dollars will tend to flow out of one region into the shopping area. In summary, the magnitude of the multiplier depends very much upon the characteristics of the region and can and will vary significantly from one region to the next.

Selected as an appropriate multiplier for this study was 2.68. This multiplier was selected as a reasonable representative value based upon the fact that it is one which was computed for a region well balanced between rural and urban characteristics. Further, it represents a multiplier computed whereby the outflows are representative of what might be expected for the remainder of the State. This multiplier was calculated for the expenditures made at the EROS station in Northern Minnehaha County.

Assuming that the 2.68 multiplier applies to the State, then the loss of income to the regions due to the loss of summer business is almost $48 million and the annual loss almost $81.5 million. This $80 million loss

represents 1.9 percent of the total gross income for businesses within the State for 1976. Assuming 10 percent growth, the 1977 figure is $89.6 million.

Regional Income Losses

The loss of income for each of the ten study regions is arrayed in Tables VIIa through VIIj. These estimates were calculated in the same fashion as those for the State with the following modifications. For each region the average gross receipts used were those for the firms in that region using nonconforming billboards. As was noted above, information was not available for all such firms in each region. The first column of the Tables indicates the total number of firms and the number of those firms for which financial data was available is in parenthesis.

In some cases, it was necessary to use the State averages for gross receipts rather than averages generated on a regional basis. There are several reasons for this:

1. The policy of the Department of Revenue, in accord with State law, is not to allow public release of sales tax data unless information for three or more firms is available. In those regions where financial data was not obtained for three or more firms of a business type, the State average was used as a proxy.
2. Unless the number of firms from which data was obtained in a region equaled or exceeded 30 percent of the total number of the firms of that type using nonconforming billboard advertising then the State average was substituted. It was the opinion of the project staff that

TABLE VIIa

REGIONAL INCOME LOSSES
DUE TO NONCONFORMING
BILLBOARD REMOVAL FOR
REGION I

NUMBER AND TYPE OF FIRM	AVERAGE FIRM RECEIPTS	ESTIMATED TOTAL RECEIPTS	ESTIMATED PERCENTAGE REGIONAL INCOME LOSS	ESTIMATED REGIONAL LOSS OF SUMMER RECEIPTS	ANNUAL MULTIPLIER	ESTIMATED REGIONAL LOSS OF ANNUAL RECEIPTS
Hotel/Motel 19 (7)	$ 64,671	$1,228,749	13.3	$ 163,423	1.49	$ 243,501
Restaurants 7 (7)	186,392	1,304,744	14.7	191,797	1.78	341,399
Service Stations* 16 (3)	261,386	4,182,176	12.5	522,772	1.92	1,003,722
Campgrounds* 3 (1)	38,276	114,828	11.9	13,664	1.14	15,577
Tourist Attractions* 1 (1)	104,609	104,609	32.7	34,207	1.40	47,890
Total				925,863		1,652,089
Multiplier				X2.68		X2.68
Income Loss				$2,481,312		$4,427,598

TABLE VII b

REGIONAL INCOME LOSSES
DUE TO NONCONFORMING
BILLBOARD REMOVAL FOR
REGION 2

NUMBER AND TYPE OF FIRM	AVERAGE FIRM RECEIPTS	ESTIMATED TOTAL RECEIPTS	ESTIMATED PERCENTAGE REGIONAL INCOME LOSS	ESTIMATED REGIONAL LOSS OF SUMMER RECEIPTS	ANNUAL MULTIPLIER	ESTIMATED REGIONAL LOSS OF ANNUAL RECEIPTS
Hotel/Motel 40 (26)	$174,298	$6,971,920	13.3	$ 927,265	1.49	$ 1,381,625
Restaurants 10 (5)	340,995	3,409,950	14.7	501,262	1.78	892,247
Service Stations* 14 (6)	290,138	4,061,932	12.5	507,742	1.92	974,863
Campgrounds* 17 (8)	62,907	1,069,419	11.9	127,260	1.14	145,077
Tourist Attractions* 24 (11)	116,506	2,796,144	32.7	914,339	1.40	1,280,075
Total				2,977,868		4,673,887
Multiplier				X2.68		X2.68
Income Loss				$7,980,686		$12,526,017

TABLE VII c

REGIONAL INCOME LOSSES
DUE TO NONCONFORMING
BILLBOARD REMOVAL FOR
REGION 3

NUMBER AND TYPE OF FIRM	AVERAGE FIRM RECEIPTS	ESTIMATED TOTAL RECEIPTS	ESTIMATED PERCENTAGE REGIONAL INCOME LOSS	ESTIMATED REGIONAL LOSS OF SUMMER RECEIPTS	ANNUAL MULTIPLIER	ESTIMATED REGIONAL LOSS OF ANNUAL RECEIPTS
Hotel/Motel 4 (1)	$ 70,705	$ 282,820	13.3	$ 37,615	1.49	$ 56,046
Restaurants 5 (3)	262,099	1,310,495	14.7	192,642	1.78	342,904
Service Stations* 5 (2)	261,386	1,306,930	12.5	163,366	1.92	313,663
Campgrounds* 2 (0)	38,276	76,552	11.9	9,109	1.14	10,385
Tourist Attractions* 0 (0)	0	0	0	0	0	0
Total				402,732		722,999
Multiplier				X2.68		X2.68
Income Loss				$1,079,322		$1,937,634

TABLE VII d

REGIONAL INCOME LOSSES
DUE TO NONCONFORMING
BILLBOARD REMOVAL FOR
REGION 4

NUMBER AND TYPE OF FIRM	AVERAGE FIRM RECEIPTS	ESTIMATED TOTAL RECEIPTS	ESTIMATED PERCENTAGE REGIONAL INCOME LOSS	ESTIMATED REGIONAL LOSS OF SUMMER RECEIPTS	ANNUAL MULTIPLIER	ESTIMATED REGIONAL LOSS OF ANNUAL RECEIPTS
Hotel/Motel 11 (8)	$ 77,340	$ 850,740	13.3	$ 113,148	1.49	$ 168,591
Restaurants 8 (5)	294,730	2,357,840	14.7	346,620	1.78	616,952
Service Stations* 20 (6)	130,304	2,606,080	12.5	325,760	1.92	625,459
Campgrounds* 5 (1)	38,276	191,380	11.9	22,774	1.14	25,962
Tourist Attractions* 3 (1)	104,609	313,827	32.7	108,362	1.40	1,517,070
Total				916,664		2,954,034
Multiplier				x2.68		x2.68
Income Loss				$2,456,659		$7,916,811

TABLE VII e

REGIONAL INCOME LOSSES
DUE TO NONCONFORMING
BILLBOARD REMOVAL FOR
REGION 5

NUMBER AND TYPE OF FIRM	AVERAGE FIRM RECEIPTS	ESTIMATED TOTAL RECEIPTS	ESTIMATED PERCENTAGE REGIONAL INCOME LOSS	ESTIMATED REGIONAL LOSS OF SUMMER RECEIPTS	ANNUAL MULTIPLIER	ESTIMATED REGIONAL LOSS OF ANNUAL RECEIPTS
Hotel/Motel 52 (28)	$ 67,195	$3,494,140	13.3	$ 464,721	1.49	$ 692,434
Restaurants 34 (21)	108,805	3,699,370	14.7	543,807	1.78	967,977
Service Stations* 30 (11)	208,090	6,242,700	12.5	780,338	1.92	1,498,248
Campgrounds* 5 (1)	38,276	191,380	11.9	22,774	1.14	25,962
Tourist Attractions* 17 (7)	179,954	3,059,218	32.7	1,000,364	1.40	1,400,510
Total				2,812,004		4,585,131
Multiplier				X2.68		X2.68
Income Loss				$7,536,170		$12,288,151

TABLE VII f

REGIONAL INCOME LOSSES
DUE TO NONCONFORMING
BILLBOARD REMOVAL FOR
REGION 6

NUMBER AND TYPE OF FIRM	AVERAGE FIRM RECEIPTS	ESTIMATED TOTAL RECEIPTS	ESTIMATED PERCENTAGE REGIONAL INCOME LOSS	ESTIMATED REGIONAL LOSS OF SUMMER RECEIPTS	ANNUAL MULTIPLIER	ESTIMATED REGIONAL LOSS OF ANNUAL RECEIPTS
Hotel/Motel 6 (4)	$ 30,252	$181,512	13.3	$ 24,141	1.49	$ 35,970
Restaurants 5 (1)	127,597	637,985	14.7	93,783	1.78	166,936
Service Stations* 8 (3)	313,078	2,504,624	12.5	313,078	1.92	601,109
Campgrounds* 4 (0)	38,276	153,104	11.9	18,219	1.14	20,770
Tourist Attractions* 5 (3)	28,741	143,705	32.7	46,991	1.40	65,788
Total				496,212		824,785
Multiplier				x2.68		x2.68
Income Loss				$1,329,848		$2,210,423

TABLE VII g

REGIONAL INCOME LOSSES
DUE TO NONCONFORMING
BILLBOARD REMOVAL FOR
REGION 7

NUMBER AND TYPE OF FIRM	AVERAGE FIRM RECEIPTS	ESTIMATED TOTAL RECEIPTS	ESTIMATED PERCENTAGE REGIONAL INCOME LOSS	ESTIMATED REGIONAL LOSS OF SUMMER RECEIPTS	ANNUAL MULTIPLIER	ESTIMATED REGIONAL LOSS OF ANNUAL RECEIPTS
Hotel/Motel 80 (46)	$ 33,692	$2,695,360	13.3	$ 358,482	1.49	$ 534,139
Restaurants 54 (22)	69,762	3,767,148	14.7	553,770	1.78	985,711
Service Stations* 102 (43)	354,829	36,192,558	12.5	4,524,069	1.92	8,686,213
Campgrounds* 11 (1)	38,276	421,036	11.9	50,103	1.14	57,117
Tourist Attractions* 31 (8)	17,076	529,356	32.7	173,099	1.40	242,339
Total				5,659,523		10,505,519
Multiplier				x2.68		x2.68
Income Loss				$15,167,752		$28,154,790

TABLE VIIh

REGIONAL INCOME LOSSES
DUE TO NONCONFORMING
BILLBOARD REMOVAL FOR
REGION 8

NUMBER AND TYPE OF FIRM	AVERAGE FIRM RECEIPTS	ESTIMATED TOTAL RECEIPTS	ESTIMATED PERCENTAGE REGIONAL INCOME LOSS	ESTIMATED REGIONAL LOSS OF SUMMER RECEIPTS	ANNUAL MULTIPLIER	ESTIMATED REGIONAL LOSS OF ANNUAL RECEIPTS
Hotel/Motel 20 (14)	$ 51,277	$1,025,540	13.3	$136,397	1.49	$ 203,231
Restaurants 10 (8)	91,131	911,310	14.7	133,962	1.78	238,452
Service Stations* 19 (11)	156,951	2,982,069	12.5	372,759	1.92	715,697
Campgrounds* 2 (2)	38,276	76,552	11.9	9,109	1.14	10,384
Tourist Attractions* 2 (2)	104,609	209,218	32.7	68,414	1.40	95,779
Total				720,641		1,263,543
Multiplier				x2.68		x2.68
Income Loss				$1,931,318		$3,386,295

TABLE VII i

REGIONAL INCOME LOSSES
DUE TO NONCONFORMING
BILLBOARD REMOVAL FOR
REGION 9

NUMBER AND TYPE OF FIRM	AVERAGE FIRM RECEIPTS	ESTIMATED TOTAL RECEIPTS	ESTIMATED PERCENTAGE REGIONAL INCOME LOSS	ESTIMATED REGIONAL LOSS OF SUMMER RECEIPTS	ANNUAL MULTIPLIER	ESTIMATED REGIONAL LOSS OF ANNUAL RECEIPTS
Hotel/Motel 2 (2)	$ 70,705	$141,410	13.3	$ 18,808	1.49	$ 28,023
Restaurants 9 (1)	127,597	1,148,373	14.7	168,810	1.78	300,483
Service Stations* 3 (2)	261,368	784,104	12.5	98,013	1.92	188,185
Campgrounds* 0 (0)	0	0	0	0	0	0
Tourist Attractions* 0 (0)	0	0	0	0	0	0
Total				285,631		516,691
Multiplier				x2.68		x2.68
Income Loss				$765,491		$1,384,731

TABLE VII j

REGIONAL INCOME LOSSES
DUE TO NONCONFORMING
BILLBOARD REMOVAL FOR
REGION 10

NUMBER AND TYPE OF FIRM	AVERAGE FIRM RECEIPTS	ESTIMATED TOTAL RECEIPTS	ESTIMATED PERCENTAGE REGIONAL INCOME LOSS	ESTIMATED REGIONAL LOSS OF SUMMER RECEIPTS	ANNUAL MULTIPLIER	ESTIMATED REGIONAL LOSS OF ANNUAL RECEIPTS
Hotel/Motel 28 (17)	$ 41,055	$1,149,540	13.3	$ 152,889	1.49	$ 227,804
Restaurants 22 (12)	65,953	1,450,966	14.7	213,292	1.78	379,659
Service Stations* 36 (18)	171,592	6,177,312	12.5	772,164	1.92	1,482,554
Campgrounds* 11 (4)	27,740	305,140	11.9	36,312	1.14	41,396
Tourist Attractions* 9 (3)	193,414	1,740,726	32.7	569,217	1.40	796,903
Total				1,743,874		2,928,316
Multiplier				x2.68		x2.68
Income Loss				$4,673,582		$7,847,886

the State average would be more representative than the regional statistic when only a small number of observations were available.

In cases where the State average was used an asterix has been placed in the first column as a designator. The only area of the State where the use of these State averages is likely to seriously bias the results is in Region 9 where little billboard advertising is used.

Because of the small number of interviewees remaining in the sample who indicated that they would not have stopped within the region if non-conforming advertising had been removed, it was not possible to determine an estimated percentage income loss which was unique for each region and each type of business within that region. To compensate, the statewide averages, developed in Tables V and VI, were used. The use of the statewide averages for expected percent of business lost gives a slight bias to the calculations. As the regional figures in Table I indicate, the impact of billboard advertising is generally greater in the less populated areas. The statewide averages will understate somewhat the losses in those areas and overstate the losses elsewhere. The degree of this bias is not determinable.

In Table VIII, the regional income losses are estimated. This is accomplished by taking the gross receipts in each county and dividing those receipts into the losses of regional income calculated in Tables VIIa to VIIj. These figures ranged from a low of .42 percent in Region I (Minnehaha County) to 5.97 percent in Region X, which contains the State's most sparsely populated counties.

TABLE VIII

REGIONAL INCOME LOSSES
DUE TO BILLBOARD REMOVAL
AS A PERCENT OF REGIONAL INCOME
(1976 DATA)

REGION	GROSS RECEIPTS (In $000)	ESTIMATED LOST SALES (In $000)	PERCENTAGE INCOME LOSS
I	$1,044,694	$ 4,428	.42
II	601,902	12,526	2.08
III	281,704	1,938	.69
IV	182,747	7,917	4.33
V	785,218	12,288	1.57
VI	112,220	2,210	1.97
VII	994,119	28,155	2.83
VIII	228,040	3,386	1.49
IX	70,588	1,385	1.96
X	131,403	7,848	5.97

Loss of Sales Tax Revenue

Because of the diminished income to tourist related businesses due to the removal of nonconforming billboard signs, there will be a reduction in sales tax receipts for the State of South Dakota. That reduction is calculated as follows: In 1976, total gross sales subject to sales tax were $4,282,000,000. Total remittances were $101,243,000 (both figures excluded the sale of farm products, which are either untaxed or taxed at a lower rate). Even though South Dakota's sales tax has a nominal rate of four cents on the dollar, because of exclusions and deductions, the effective tax rate is 2.36 cents, which can be devised by dividing the total remittances into the total sales tax base.

Assuming that the decrease in income, resulting from the removal of highway billboards is 81.5 million dollars, then $1,922,592 would have been the sales tax loss had the billboards not been in place during the year 1976. The South Dakota Division of Tourism indicates at least a ten percent increase in 1977 gross sales for South Dakota tourist oriented firms. If that increase is correct, that figure should be boosted to approximately 2.1 million for the current year.

Impact on Employment

The decreases in income to firms which are now using nonconforming billboard advertising, will cause many to reduce the level of employment which they now maintain. Unfortunately, this study cannot reach definate conclusions regarding the adverse effects on employment of billboard removal. This is because usable employment data was only received from 148 of the firms which would be affected by the Highway Beautification Act. Because of the small number of responses, regional data was

impossible to generate and only the most tentative of conclusions regarding statewide effects can be offered.

Table IX indicates the average number of employees, full time, part time, and seasonal, employed in the various firms which responded to the survey questionnaire. The number in parenthesis indicates the number of firms which responded. It is probable that the negative employment impacts will center upon the part time and seasonal employees of these firms.

In Table X, a rough estimate has been made of the potential loss of employment in the State. This table assumes that the firms which answered the questionnaire are representative of the other firms. The table also assumes that the unemployment effect is continuous in that a ten percent reduction in receipts will lead to a ten percent reduction in employment. In actuality employment is not a continuous function, with employment tending to be sticky on both the down and up side with firms tending to maintain a given level of employees until there are significant changes in the level of economic activity which they are experiencing.

The estimated losses of employment were calculated by taking the number of firms affected times the average number of employees to get the estimated total employment. Employment totaled 10,319 for the State for all firms in the State for which the Highway Beautification Act has applicability. These figures were then multiplied by the estimated percentage regional loss statistics generated previously in this report, to indicate the estimated total loss of employment by each firm type. This calculation indicates that 1,629 employees would be laid off. This figure does not include the secondary and tertiary unemployment affects

TABLE IX

AVERAGE NUMBER OF EMPLOYEES
IN TOURIST RELATED BUSINESSES
IN SOUTH DAKOTA: 1977

TYPE OF BUSINESS	FULL TIME EMPLOYEES	PART TIME EMPLOYEES	SEASONAL EMPLOYEES	TOTAL EMPLOYEES
Hotel/Motel (53)	4.64	3.64	4.27	12.55
Restaurants (20)	7.64	7.50	8.00	23.14
Service Stations (36)	3.14	2.10	1.75	5.24
Campgrounds (17)	1.60	4.0	9.25	14.85
Tourist Attractions (15)	3.62	6.0	3.10	12.72

TABLE X

ESTIMATED LOSS OF
EMPLOYMENT IN
TOURIST RELATED FIRMS
DUE TO BILLBOARD REMOVAL

NUMBER AND TYPE OF FIRMS	AVERAGE NUMBER OF EMPLOYEES	ESTIMATED TOTAL EMPLOYMENT	ESTIMATED PERCENTAGE REGIONAL LOSS	ESTIMATED LOSS OF EMPLOYMENT
Hotel/Motel 258	12.55	3,238	13.3	430
Restaurants 161	23.14	3,726	14.7	548
Service Stations 247	5.24	1,294	12.5	162
Campgrounds 60	14.85	891	11.9	106
Tourist Attractions 92	12.72	1,170	32.7	383
TOTAL		10,319		1,629

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which will result from the negative multiplier effect of reduced income within the region.

No one has completed a reliable employment multiplier for any of the regions in South Dakota. Employment multipliers elsewhere have ranged widely, but tend to average around 1.7, meaning that each loss of a primary employee leads to a loss of .7 additional employees in the secondary sectors of the economy. If this multiplier is true for South Dakota, then the employment loss will total almost 2,800. A majority of these are likely to be part time and seasonal employees, particularly students for whom the tourist industry offers ideal part time employment. Again, it should be noted that this statistic is considerably less reliable than others used in this report.

Losses in Property Tax Revenue

The reduced business associated with billboard removal would also be expected to lead to a decrease in property tax receipts by local governments in South Dakota. Again, the statistical reliability of the property tax data which follows is severely limited by the small number of firms (148) which responded to the questionnaire requesting such data. On the basis of those firms which did reply, Table XI has been constructed. Using the average property tax payments made by the responding firms, (which are given in the second column of the table) the estimated property tax payments by the firms using nonconforming outdoor advertising were slightly less than $2,000,000.

The analysis in Table XI assumes that the property taxes will diminish as income is reduced. This assumption is open to the question; Since the property tax is notoriously nonresponsive to changes in income,

TABLE XI

ESTIMATED LOSS OF PROPERTY TAXES
DUE TO BILLBOARD REMOVAL

NUMBER AND TYPE OF FIRMS	AVERAGE PROPERTY TAX PAYMENT	ESTIMATED TOTAL PROPERTY TAX PAYMENTS	ESTIMATED PERCENTAGE REGIONAL LOSS	ESTIMATED LOSS OF PROPERTY TAX PAYMENTS
Hotel/Motel 258	$3,500	$903,000	13.3	$120,099
Restaurants 161	2,400	386,400	14.7	56,800
Service Stations 247	1,736	428,792	12.5	53,599
Campgrounds 60	944	56,640	11.9	6,740
Tourist Attractions 92	1,833	168,636	32.7	55,144
TOTAL		$1,943,468		$292,382

the general pattern is for property taxes to remain fairly constant as business declines until that point is reached where the business is either sold or goes bankrupt. At that point, a rather dramatic diminution in assessed valuation is generally recorded. The statistics given then are only a rough approximation of the possible process of property tax erosion which could result. Granted the assumptions and qualifications upon which the figures are based, the estimated property tax loss is $292,382. This figure does not take into consideration reductions in other property values, which may be indirectly affected by the loss of traveler dollars..

Nonquantifiable Effects

Impact on Firms Not Using Outdoor Advertising. The proceeding sections have attempted to determine the dollar losses to the State's economy from compliance with the billboard provisions of the Federal Highway Beautification Act. The reduction in State income which will result from billboard removal will also produce other negative impacts on the State's economy which are not subject to quantification. The statistics given in this report have assumed that traveler behavior will not be altered other than to reduce stops at establishments currently using outdoor advertising. This assumption does not properly describe the behavior of South Dakota travelers. A study done in 1974 in Nebraska, found that the removal of billboards tended to increase the "pass through" effect, whereby tourists merely passed through Nebraska on their way to somewhere else. This pass through effect has been noted in a previous report as the major problem of the tourist industry in South Dakota.

The Nebraska statistics showed that the average length of stay in Nebraska for traveling parties who visited no attractions was two nights. This increased as the number of attraction visits increased, reaching an average of 3.42 nights for those who made one or more attraction stops and rising to over five nights for those who made stops at more than three attractions. The ability of billboard advertising to induce impromptu attraction stops was a significant factor in increasing the length of stay for Nebraska tourists. There is no reason to expect any different results for the neighboring State of South Dakota.

If attractions are not being visited the result is that restaurants, motels/hotels, and service stations are not being patronized either, whether those firms use billboard advertising or not. Current Federal regulations do not allow for billboards to be maintained which advertise tourist attractions even if economic hardship from removal of those attraction billboards can be demonstrated. Considering the key position of attractions in retaining tourists, it is likely that the statistics presented in this report under estimate the full impact of billboard removal.

Impact of Gasoline Tax Revenues. Another nonquantifiable effect is the impact on gasoline sales and gallonage taxes. The study has shown an expected decrease of 12.5 percent in the gross receipts of service stations. Much of this can be attributed to the reduced sales of gasoline. Currently in South Dakota, State gasoline tax revenues are used in part to match federal highway funds. This matching is on very favorable terms to the State, with the federal share of Interstate Highway construction costs being 91.04 percent and 73.15 percent for

most other highway programs. If the State is not in compliance with the Federal Highway Beautification Act, it could lose up to 4.2 million dollars of these funds. Those 4.2 million dollars would require $1,129,000 state gasoline tax dollars for matching purposes.

In fiscal year 1977, the gasoline tax of eight cents per gallon raised $31,036,000 for the Department of Transportation. The amount needed to match the federal funds which are subject to possible withdrawal, amounts to only 3.6 percent of the total gasoline tax receipts transferred to the Highway Department. This represents an interesting paradox in that the decrease in traveler related business will diminish the amount of revenue available for the Department of Transportation to match the federal funds which are possibly going to be withheld. At least part of the 4.2 million dollars in federal highway funds may not be recouped by South Dakota since the removal of billboard advertising reduces the gasoline tax dollars available for matching purposes.

Impact on Small Towns. Another factor which cannot be quantified is the impact on small towns of what appears to be relatively slight decreases in business. The removal of nonconforming billboards has been shown in this report to more severely impact the small communities of the State. Rural sociologists have pointed out that even apparent trivial decreases in business in small towns can have substantial negative effects. This is because these decreases are more visable and likely to become better known in small communities. According to these sociologists, the result is a negative attitude about the community by its residences which discourages expansion of existing businesses or attraction of new ones.

Impact of Alternative Forms of Advertising

On the other side of the dispute, certain factors can be mentioned which may have caused this study to overestimate the impact of billboard removal. This study has not considered alternative means available to the travelers for receiving information about tourist related business. While some of these alternatives look promising, such as expansion and upgrading of tourist rest stops, other alternatives, such as increased radio and newspaper advertisng, do not. At least some of the business lost due to the reduction in outdoor advertising can be regained through alternate media. These alternatives are more likely to benefit those businesses in the larger communities.

This study has also not considered what the effects would be if the State were to launch a vigorous outdoor advertising campaign within the guidelines of the Highway Beautification Act. Several states have already done this with positive results. In addition, there exists the possibility that federal courts would find reasonable local zoning statutes not in conflict with Federal law. Many city and county governments located on or near Interstate and primary highways could establish commercial zones in which billboard advertising would be allowed. This zoning also would reduce the impact of billboard removal.

Phase in Effects

An additional factor which may have caused the results of this study to be an overstatement is the fact that billboard removal will take place over a relatively long span of time. Currently, the government is making only limited funds available to pay its share of the cost of outdoor

advertising removal. The effects of billboard removal will not be immediate and can be spread over a large number of years while alternatives are being developed. How effective this spreading out will be in terms of reduction of the overall negative impact cannot be determined statistically.

This study has also not considered that some billboards should be allowed to remain in South Dakota because of the economic impact which their removal represents to the region where the businesses are located. Hopefully, the statistics in this report and the data base accumulated can be used to request exemptions under the economic hardship provisions of the Federal law.

APPENDIX D

LETTERS AND STATEMENTS SUBMITTED FOR THE RECORD

TESTIMONY OF

WILLIAM C. HENNESSY, COMMISSIONER

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

Thank you for this opportunity to comment on S.344. First, I wish to advise you that Governor Carey and the State of New York are strongly in favor of the amendment to the Highway Beautification Act introduced by Senator Stafford, and we urge you to give the amendment serious consideration.

No other program, in my memory, has ever been administered by our Department of Transportation which has been so confused, chaotic or controversial. In New York, tourism is our second largest industry, directly generating four billion dollars a year to our economy. This industry is largely dependent upon highway advertising signs with over one-fourth of our total tourist income directly related to highway advertising. It is most difficult to wholeheartedly enforce the Federal Beautification Laws which are ill conceived, poorly organized, badly administered and failing in fulfillment, when enforcement cuts so strongly into our economy.

In 1978, when Section 131(g) of the Highway Beautification Act was amended to require payment of just compensation for the removal of any sign lawfully erected and in existence on November 6, 1978, the Federal Government suddenly thrust itself into the unfamiliar position of overruling local government in determining what zoning restrictions and land use controls are within the best interest of a community. This amendment also placed state government in the precarious position of being in non-compliance with the Act and, therefore, subject to penalty if any Agency, adhering to the dictates of state or local law,

exercises the prerogatives which have been traditionally theirs.

New York's highest courts have upheld the right of government to remove signs without compensation, providing an amortization period sufficient to allow a sign owner to recover his investment and avoid a substantial financial loss is given. Now we are told these court decisions and the statutory amortization periods are meaningless; the owners of signs must be paid if the signs are removed.

This misguided amendment was added at the same time a very limited appropriation was made to the Beautification Program. Adding to the total confusion was FHWA's own 1980 budget submission which requested no new money for the program.

The upshot is a classic "Catch 22," to wit, the states have been mandated to compensate for certain nonconforming signs removed under local zoning ordinances.

But what are we to use for compensation? Since there is no federal money available to pay for such sign removal, signs cannot legally be acquired and the intent of the local zoning is thwarted.

Additionally, in 1976 the Congress amended the Act to allow the states to develop a system of signing, within the highway right of way, to provide information about goods and services in the interest of the travelling public. The Secretary of Transportation was directed to develop national standards for these signs.

New York State has such a program, approved by the Federal Highway Administration on an experimental basis, which we believe to be

highly successful. Our program recognizes the valid advertising needs of a wide variety of tourist oriented businesses.

Recently, however, FHWA published the national standards limiting the information that may be provided on such signs to gas, good, lodging and camping. Thus FHWA has determined the travelling public is interested in only these types of facilities, thereby precluding signing for many tourist enterprises which have benefited from New York State's program.

I mention this as an example of the narrow administration of this complex and controversial law. Surely the tourist information contemplated by Congress as being of interest to the motorist was far greater than the national standards established by FHWA.

Of course, New York is especially sensitive to the Beautification Laws and related penalties. In 1977, we were one of the few states singled out for selective enforcement and only by reluctantly agreeing to enter into an extremely demanding stipulation with FHWA, were we able to have 10 per cent of our 1978 highway apportionment released.

Interestingly, upon our review of the comparison of removal statistics published in the FHWA Highway Beautification Program Digest, we find that more than one third of the states clearly ranked lower than New York in removing signs--yet such states were found in compliance while New York was not.

No matter how well intentioned the Highway Beautification Act may have been when first proposed, I think the one thing we can all agree upon today is that it just isn't working.

Businesses which depend upon tourism see rigid sign control enforcement as a threat to their existence and, therefore, actively oppose the law. The elected officials who represent the tourist areas are equally strong in their opposition.

Thus, the state officials who must administer the program find themselves at odds, not only with portions of the public and elected officials, but also with sister state agencies which have the responsibility of promoting business.

Even before the 1978 amendments, the General Accounting Office estimated it would cost $500 million to remove the remaining, nonconforming signs from the nation's highways.

A more realistic figure now would be closer to $1 billon and even then we would not attain the goals originally conceived by Mrs. Johnson.

In New York, we have spent approximately $4.5 million dollars in acquiring less than one-third of the total inventory of nonconforming signs and sites, not including signs subject to local control.

One billion dollars on a program this unpopular, this controversial, and so potentially detrimental to the state's tourist industry is even more ridiculous when compared to our other needs.

Late last summer, a state and federal disaster was declared at the Love Canal in Niagara Falls, New York.

Chemical wastes deposited years ago threatened the lives of hundreds of persons living adjacent to the canal. By the end of this

summer, the City of Niagara Falls and the State of New York will have spent nearly $30 million on relocation and clean-up costs.

Despite the declared federal disaster, all involved federal agencies have agreed to participate in payments totalling less than one-third of our costs.

With many other Love Canals and energy saving mass transit demands throughout our country, does it really make any sense to commit a billion dollars and perhaps more to the continuation of a program to control advertising? Where are our priorities?

I urge the Congress to reconsider the Billboard Control Program and support S.344, the amendment introduced by Senator Stafford. Remove the penalty provisions from the Beautification Act and give the individual states the choice of continuing in partnership with the federal government, if that is their desire. Let those states which choose to prohibit off-premise advertising have that option, but, allow those states which feel they need signs for the benefit of their economy to select that alternative.

Thank you.

THE AMERICAN INSTITUTE OF ARCHITECTS

David Olan Meeker, Jr., FAIA
Executive Vice President

July 18, 1979

The Honorable Lloyd Bentsen
Chairman, Transportation Subcommittee
Senate Environment & Public Works
Committee
4204 DSOB
Washington, D.C. 20510

SIR

Dear Senator Bentsen:

On behalf of The American Institute of Architects I wish to take this opportunity to reiterate our support for S.344, the Federal Highway Beautification Assistance Act of 1979.

Although saddened by the steady erosion of guidelines draining the original act of much of its authority and protective power, we have reached the conclusion that repeal is a necessary action so as to give state governments authority to set higher standards of highway beautification and environmental protection.

In conjunction with our continuing efforts to safeguard our environment from the possible onslaught of outdoor signs, displays and devices which may proliferate once control is passed back to the states, the AIA strongly urges penalties and guidelines be amended into the bill to insure the beautification of our national highway system. Attached, also for the record, please find a copy of the Institute's Model Sign Control Ordinance. We believe it can be of assistance in formulating a strong safeguard system.

In summary, the Institute supports the intent of S.344, and recommends its passage.

Sincerely,

David Olan Meeker, Jr., FAIA
Executive Vice President

1735 NEW YORK AVENUE, N.W. • WASHINGTON, D. C. 20006 • (202) 785-7300

THE AMERICAN INSTITUTE OF ARCHITECTS

MODEL SIGN CONTROL ORDINANCE

Prepared under the auspices of

COMMISSION ON ENVIRONMENT

1965

INTRODUCTION

(Not part of the ordinance)

The sign control ordinance which follows is just that. In the interests of simplicity and in order to avoid duplicating what most ordinances already do well enough, sections on the building code and structural aspects of signs are not included. The principal features are the restriction of advertising to the bus ness of the premises on which the sign is located and the restriction in total sign area permissable per site. The reasons for the ordinance are set forth in the first section of the ordinance, entitled Purpose and Scope.

Th s document is in two major parts. The first one is the sign ordinance itself, constructed and worded as simply as possible and with a minimum of regulatory material. The second part contains material which is an extension of and suggests alternatives for the provisions of the ordinance.

Communities will vary in their requirements for sign control. Obviously, a town of 2,000 people will differ from a big complex of several million people, as will a small agricultural community with very low population density from a busy commercial center. The types of zones within a municipality and the types of restrictions of the zoning ordinance will vary considerably even between towns of the same size. Accordingly, this sign ordinance is not intended to cover all conditions and should be taken as a guide, to be adjusted in any manner which seems appropriate for the locality.

It should be noted, also, that there is another type of sign control regulation which has to do mostly with billboards and is the province of state and federal bureaus or agencies and is applicable to freeways, scenic highways and other major inter-city arteries. An example of this type of regulation is that of the U. S. Bureau of Roads and is frequently referred to as the Federal or National Standards. Another is the "Highway Beautification" legislation recently passed by Congress.

FOR
THE COMMITTEE ON AESTHETICS
OF
THE AMERICAN INSTITUTE OF ARCHITECTS
by
Arthur Rigolo, Corresponding Member

MODEL SIGN ORDINANCE

1. PURPOSE AND SCOPE

The purpose of this code is to regulate all exterior signs so as to protect health, safety and morals and to promote the public welfare. The principal features are the restriction of advertising to the business of the premises on which the sign is located and the restriction of the total sign area permissable per site.

In order to maintain the same level of attention, signs have had to become more aggressive, more numerous and more expensive. In some areas they threaten to go and in others already have gone, out of control, thus defeating the very purpose for which they were created. Accordingly, it becomes necessary to reduce destructive competition between signs.

Furthermore, lack of control has caused dangerous conflicts between advertising signs on the one hand and traffic control signs and signals on the other, thus destroying the effectiveness of both. The great increase in automotive traffic has greatly aggravated this danger. There should be no dispute over the priority in importance as between traffic controls and advertising signs.

Furthermore, outdoor signs suspended from or placed on top of structures and otherwise erected above the ground frequently are dangerous to the public, especially during high winds.

Furthermore, the uncontrolled use of signs and of their shapes, motion, colors, illumination and their insistent and distracting demand for attention can be injurious to the mental and physical well-being of the public and can be destructive to adjacent property values and to natural beauty.

Accordingly, it has become necessary in the public interest to regulate the sizes, location, character and other pertinent features of all exterior signs in the City of _____.

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2. SIGN STANDARDS BY ZONE (OR DISTRICT)

2.1 General

2.1.1 The following sign standards by zone are intended to include every zone in the City of _____. The zones are as defined by the zoning ordinance and official zoning map. Only signs as described herein and as may be described under Temporary Signs and Exceptions will be permitted in each particular zone.

2.1.2 If any zone is omitted from this ordinance, or if a new zone is created after the enactment of this ordinance, no signs shall be permitted therein until this ordinance shall be amended to include this zone.

2.2 Residential

2.2.1 General. This section of the code shall apply to all zones designated by the zoning ordinance as Residential Single Family, Duplex, Multiple Family, High-Rise Apartment or any variety of these.

2.2.2 Size. One sign not exceeding two (2) square feet in area shall be permitted per dwelling unit. For multiple dwellings one or more additional signs totaling twelve (12) square feet in areas shall be permitted.

2.2.3 Location. Permitted signs may be anywhere on the premises, except as restricted by the zoning ordinance, except that they may not project beyond any property line and except that, if ground mounted, the top shall be not over five (5) feet above the ground and, if building mounted, shall be flush mounted, shall not be mounted on any roof of the building and shall not project above the roof line.

2.2.4 Content. The sign per dwelling unit shall indicate only the name of the occupant and may include the address. The additional sign area permitted for multiple dwellings shall be only for identification of the building.

2.2.5 Illumination. Illumination, if used, shall be what is known as white and not colored light and shall not be blinking, fluctuating or moving. Light rays shall shine only upon the sign or upon the property within the premises and shall not spill over the property lines, in any direction, except by indirect reflection.

2 3 Business

2.3 1 General. This section of the code shall apply to all zones designated by the zoning ordinance as Business or Commercial or any variety of these.

2.3.2 Size. A total sign area of one and one-half (1-1/2) square feet for each lineal foot of building frontage or one-half (1/2) square foot for each lineal foot of lot frontage, whichever results in the larger sign area, but the maximum total area of all permitted signs for any establishment shall not exceed two hundred (200) square feet.

Where frontage is on more than one (1) street, only the signs computed with the frontage of that street shall face that street.

2.3.3 Location. Signs may be flat wall signs, and located anywhere on the surface of the building. Signs may be projecting signs only where, in compliance with the zoning ordinance, there is no building setback and, then, may project no more than six (6) feet beyond the street property line, but no closer than two (2) feet to a curb line and must have a minimum clearance of eight (8) feet above a public sidewalk and fifteen (15) feet above public driveways or alleys. When a projecting sign is closer than twelve (12) feet to a corner of the property, its projection shall be no more than a distance equal to one-half the horizontal distance from the sign to that corner.

Where a building does not cover the full area of the property, a sign may be freestanding, or ground supported, and may be located anywhere back of the street setback lines except as may be further limited by the zoning ordinances. Such a sign may extend up to twenty (20) feet above the average ground level at the base of the sign except as may be required by the zoning ordinance.

Signs may be on the vertical faces of marquees and may project below the lower edge of the marquee not more than twelve (12) inches. The bottom of marquee signs shall be no less than eight (8) feet above the sidewalk or grade at any point. No part of the sign shall project above the vertical marquee face.

Signs shall not project above the roof line.

2.3.4 Content. Signs allowed in this zone shall be identity signs only, as defined elsewhere in this code, except for highway oriented establishments.

2.3.5 Illumination. Illumination of signs is permitted but in accordance with the restrictions hereinafter especially set forth for illumination.

2.3.6 Highway-Oriented Establishments. Automobile service stations, new and used car lots, garden shops and other such which may be defined as outdoor merchandising or highway-oriented-enterprises may be permitted to have, per establishment, one identity sign not over twenty (20) feet high above ground level, building mounted, roof mounted or ground mounted, with no part or projection closer to a street property line than twenty (20) feet except as may be required by the zoning ordinance.

The maximum area for this sign shall be forty (40) square feet for one face or eighty (80) square feet for the two (2) faces of a double-faced sign.

Incidental signs indicating services, products, prices, trade information, or other information not including product advertising, may be attached to the structure or may be listed on one permanently installed sign structure at least twenty (20) feet from any property line.

No products or product containers or signs shall be closer to a street property line than twenty (20) feet.

The total sign area, excepting the identity sign, shall not exceed eighty (80) square feet.

2.4 Industrial

2.4.1 General. This section of the code shall apply to all zones designated by the zoning ordinance as Industrial or any variety of it.

2.4.2 Size There is permitted in this zone, for each industrial establishment, one (1) identity sign for each street frontage, each with a maximum area of one (1) square foot for each lineal foot of building street frontage or one-half (1/2) square foot for each lineal foot of property street frontage, whichever is greater.

2.4.3 Location: Requirements shall be the same as for Business Zones. See Section 2.3.3.

2.4.4 Content: Signs permitted in this zone shall be identity signs only, except for highway oriented establishments. The latter shall be in accordance with Section 2.3.6

2.4.5 Illumination. Illumination of signs is permitted but in accordance with the restrictions hereinafter set forth for illumination.

2.5 Non-Conforming Uses.

Any building or land use not conforming to the zoning ordinance provisions for the zone in which it is located shall, nevertheless, comply with all the provisions of this sign ordinance for the conforming zone.

3. TEMPORARY SIGNS

The following signs shall be permitted anywhere within the city and shall not require a permit:

3.1 Construction Signs which identify the architects, engineers, contractors and other individuals or firms involved with the construction, but not including any advertisement of any product, and signs announcing the character of the building enterprise or the purpose for which the building is intended, during the construction period, to a maximum area of sixteen (16) square feet for each firm. The signs shall be confined to the site of the construction and shall be removed within fourteen (14) days of the beginning of the intended use of the project.

3.2 Real Estate signs advertising the sale, rental or lease of the premises or part of the premises on which the signs are displayed, up to a total area of twelve (12) square feet. Such signs shall be removed within fourteen (14) days of the sale, rental or lease.

3.3 Political Campaign signs announcing the candidates seeking public political office and other data pertinent thereto, up to an area of thirty-two (32) square feet for each premise. These signs shall be confined within private property and removed within fourteen(14) days after the election for which they were made.

3.4 Street Banners advertising a public entertainment or event, if specially approved by the City Council and only for locations designated by the City Council, during and for fourteen (14) days before and seven (7) days after the event.

3.5 Show Window signs in a window display of merchandise when incorporated with such a display. They need not be related in content with the display.

4. EXEMPTIONS

The following types of signs are exempted from all the provisions of this ordinance, except for construction and safety regulations and the following requirements:

4.1 Public Signs. Signs of a non-commercial nature and in the public interest, erected by, or on the order of, a public officer in the performance of his public duty, such as safety signs, danger signs, trespassing signs, traffic signs, memorial plaques, signs of historical interest and the like.

4.2 Institutional Signs setting forth the name or any simple announcement for any public, charitable, educational or religious institution, located entirely within the premises of that institution, up to an area of twenty-four (24) square feet. Such signs may be illuminated in accordance with the regulations contained hereinafter. If building mounted, these signs shall be flat wall signs and shall not project above the roof line. If ground mounted, the top shall be no more than six (6) feet above ground level.

4.3 Integral. Names of buildings, dates of erection, monumental citations, commemorative tablets and the like when carved into stone, concrete or similar material or made of bronze, aluminum, or other permanent type construction and made an integral part of the structure.

4.4 Private Traffic Direction. Signs directing traffic movement onto a premise or within a premise, not exceeding three (3) square feet in area for each sign. Illumination of these signs shall be permitted in accordance with the section hereinafter included on illumination. Horizontal directional signs on and flush with paved areas are exempt from these standards.

4.5 Small Signs. Signs not exceeding two (2) square feet in area, attached flat against the building, stationary and not illuminated, announcing only the name and occupation of building tenant.

4.6 Rental. Signs on the premises announcing rooms for rent, table board, apartment or house for rent and not exceeding four (4) square feet in area.

4.7 Vehicles. Signs on vehicles of any kind, provided the sign is painted or attached directly to the body of the original vehicle and does not project or extend beyond the original manufactured body proper of the vehicle.

5. NON-CONFORMING SIGNS

Signs existing at the time of the enactment of this ordinance and not conforming to its provisions but which were constructed in compliance with previous regulations shall be regarded as non-conforming signs which may be continued for a period of five (5) years from the date of their construction or three (3) years from the date of the enactment of this ordinance, whichever is longer, if properly repaired and maintained as provided in this code and continue to be in conformance with other ordinances of this municipality. At the end of this period they shall be removed by the owner, agent, or person having beneficial use of the structure or land on which the signs are located.

Any sign existing in violation of Division 6 (Prohibited Signs) of this code shall be removed, altered or repaired in accordance with the provisions of this ordinance within six (6) months after the date of passage of this ordinance.

Non-conforming signs which are structurally altered, relocated, or replaced shall comply immediately with all provisions of this code.

6. PROHIBITED SIGNS

Prohibited are signs which:

6.1 Contain statements, words, or pictures of an obscene, indecent, or immoral character, such as will offend public morals or decency.

6.2 Contain or are an imitation of an official traffic sign or signal or contain the words "stop", "go slow", "caution", "danger", "warning", or similar words.

6.3 Are of a size, location, movement, content, coloring, or manner of illumination which may be confused with or construed as a traffic control device or which hide from view any traffic or street sign or signal.

6.4 Advertise an activity, business, product or service no longer conducted on the premises upon which the sign is located.

6.5 Move in any manner or have a major moving part. Only minor decorative parts may move.

6.6 Contain or consist of banners, posters, pennants, ribbons, streamers, strings of light bulbs, spinners, or other similarly moving devices. These devices when not part of any sign are similarly prohibited, unless they are permitted specifically by other legislation.

6.7 May swing or otherwise noticeably move as a result of wind pressure because of the manner of their suspension or attachment.

7. ILLUMINATION

7.1 The light from any illuminated sign shall be so shaded, shielded or directed that the light intensity or brightness will not be objectionable to surrounding areas.

7.2 No sign shall have blinking, flashing or fluttering lights or other illuminating device which has a changing light intensity, brightness or color. Beacon lights are not permitted.

7.3 No colored lights shall be used at any location or in any manner so as to be confused with or construed as traffic control devices.

7.4 Neither the direct, nor reflected light from primary light sources shall create a traffic hazard to operators of motor vehicles on public thoroughfares.

7.5 No exposed reflective type bulbs and no strobe light or incandescent lamp which exceeds fifteen (15) watts shall be used on the exterior surface of any sign so as to expose the face of the bulb, light or lamp to any public street or adjacent property.

8. PERMITS AND FEES

8.1 Permit Requirements. No sign shall be erected, altered or relocated without a permit issued by the building official, except as otherwise provided herein. Where electrical permits are required, they shall be obtained at the same time as the sign permit.

8.2 Applications. The permit application shall contain the location of the sign structure, the name and address of the sign owner and of the sign erector, drawings showing the design and location of the sign and such other pertinent information as the building official may require to insure compliance with the ordinances of the city.

8.3 Fees. Fees for sign permits shall be as fixed from time to time by the governing body of the city.

8.4 Nullification. A sign permit shall become null and void if the work for which the permit was issued has not been completed within a period of six (6) months after the date of the permit.

8.5 Permit Exceptions. The following operations shall not be considered as creating a sign and, therefore, shall not require a sign permit:

8.5.1 Replacing Copy. The changing of the advertising copy or message on an approved painted or printed sign or billboard or on a theatre marquee and similar approved signs which are specifically designed for the use of replaceable copy.

8.5 2 Maintenance. Painting, repainting, cleaning and other normal maintenance and repair of a sign or a sign structure unless a structural change is made.

8.5.3 Temporary Signs, per Section 3 and signs under Exception, Section 4 of this code are also exempt from permit requirements.

9. STRUCTURAL REQUIREMENTS

All signs shall comply with the pertinent requirements of the building code of the City of _____.

10. INSPECTION, REMOVAL, SAFETY

10.1 Inspection. Signs for which a permit is required may be inspected periodically by the building official for compliance with this and other codes of the municipality.

10.2 Tagging. All signs requiring permits shall display, in a place conspicuous to inspectors, a tag supplied by the building official and containing such data as he may designate.

10.3 Maintenance. All signs and components thereof shall be kept in good repair and in safe, neat, clean and attractive condition..

10.4 Removal of Sign. The building official may order the removal of any sign erected or maintained in violation of this code. He shall give thirty (30) days notice in writing to the owner of such sign, or of the building, structure or premises on which such sign is located, to remove the sign or to bring it into compliance. The building official may remove a sign immediately and without notice if, in his opinion, the condition of the sign is such as to present an immediate threat to the safety of the public.

10.5 Abandoned Signs. A sign shall be removed by the owner or lessee of the premises upon which the sign is located when the business which it advertises is no longer conducted on the premises. If the owner or lessee fails to remove it, the building inspector shall give the owner fifteen (15) days written notice to remove it. Upon failure to comply with this notice, the building official or his duly authorized representative may remove the sign at cost to the owner.

Where a successor to a defunct business agrees to maintain the signs as provided in this code, this removal requirement shall not apply.

11. ADMINISTRATION AND PENALTIES

11.1 Enforcement (Building Official). The building official is hereby authorized and directed to enforce all of the provisions of this code. Upon presentation of proper credentials, the building official or his duly authorized representative may enter at reasonable times any building, structure or premises in the City of _____ to perform any duty imposed upon him by this code.

11.2 Interpretation. Where there is any ambiguity or dispute concerning the interpretation of this code, the decision of the building official shall prevail, subject to appeal as provided herein.

11.3 Sign Code Board of Appeals. There shall be appointed by the mayor a Sign Code Board of Appeals, hereinafter referred to as "The Board". It shall consist of five (5) members, one each as follows: a member of the Planning Board or the Board of Zoning Adjustment, a representative of the sign industry or the advertising profession, a representative of the sign-using businesses, an architect or graphic designer, a member of the Art Commission. The building official shall be an ex-officio member and shall act as secretary to the board.

The initial appointees of the board shall have different terms ranging from one (1) to five (5) years. Thereafter, appointments shall be for five years to maintain five (5) year terms and yearly appointments.

11.4 Right of Appeal. Any person aggrieved by any decision or order of the building official may appeal to the Sign Code Board of Appeals by serving written notice to the building official who, in turn, shall immediately transmit the notice to the board, which shall meet to hear it within thirty (30) days thereafter. The building official shall take no further action on the matter pending the board's decision, except for unsafe signs which present an immediate and serious danger to the public, as provided elsewhere in this code.

11.5 Duties of the Board. The board shall hold public hearings on all appeals and shall permit all interested persons to offer oral or written testimony. The board shall serve written notices of the appeals and public hearings to all interested persons at least seven (7) days prior to the hearing. After the close of the hearing, the board, by a majority vote, may affirm, annul, or modify the order or action of the building official and hereby has the authority to to do.

11.6 Appeal from Decision of Board. Anyone may appeal the decision of the board directly to the city council upon written notice of appeal to the (city manager) (city clerk). This appeal shall be heard at the next regularly scheduled meeting of the city council. The city council may accept, reject or modify the action of the board or may grant a variance to this code where it finds that strict application of its provisions would result in practical difficulties or unnecessary hardships. Any modification of the ruling of the board shall require a two thirds majority of the city council.

11.7 Severability. If any part of this code is found to be invalid, then all valid parts that are severable from the invalid parts shall remain in effect. If any part of this code is found to be invalid in one or more of its several applications, the part shall remain in effect in all valid applications that are severable from the invalid applications.

11.8 Penalties. Any person who violates this code shall be guilty of a misdemeanor and, upon conviction, shall be punishable by a fine of not more than $500, or by imprisonment for not more than one month, or by both.

12. DEFINITIONS

12.1 Area, or Surface Area, of Sign. That area enclosed by one rectangle, the sides of which make contact with the extreme points or edges of the sign, excluding the supporting structure which does not form part of the sign proper or of the display.

The area of a sign composed of characters or words attached directly to a large, uniform building wall surface shall be the smallest rectangle which encloses the whole group.

12.2 Building Line. A line beyond which no building may extend, as established by ordinance. A building line in some instances may coincide with the property line.

12.3 Location. A lot, premise, building, wall or any place whatsoever upon which a sign is located.

12.4 Marquee. A canopy or covering structure projecting from and attached to a building.

12.5 Multiple Dwelling. Any building housing more than two (2) families, unless otherwise defined by the zoning ordinance.

12.6 Person. Any individual, corporation, association, firm, partnership, and the like, singular or plural.

12.7 Projection. The distance by which a sign extends over public property or beyond the building line.

12.8 Roof Line. This shall mean either the edge of the roof or the top of the parapet, whichever forms the top line of the building silhouette and, where a building has several roof levels, this roof or parapet shall be the one belonging to that portion of the building on whose wall the sign is located.

12.9 Sign. Any letters, figures, design, symbol, trademark, or illuminating device intended to attract attention to any place, subject, person, firm, corporation, public performance, article, machine, or merchandise whatsoever and painted, printed or constructed and displayed in any manner whatsoever out of doors for recognized advertising purposes. However, this shall not include any official court or public notices nor the flag, emblem or insignia of a government, school or religious group when displayed for official purposes.

Interior signs, if located on a window or within a distance equal to the greatest dimension of the window and if obviously intended for viewing from the exterior, shall be considered an exterior sign for purposes of this ordinance

12.10 Sign, Electric. Any sign containing electric wiring. This does not include signs illuminated by an exterior floodlight source.

12.11 Sign, Identity. Any sign which carries only the name of the firm, the major enterprise or the principal product offered for sale on the premises, or a combination of these.

12.12 Sign, Projecting. A sign, other than a wall sign, which projects from and is supported by a wall of a building or structure.

12.13 Sign, Roof A sign located on or above the roof of any building.

12.14 Sign, Temporary. A banner, pennant, poster or advertising display constructed of cloth, canvas, plastic sheet, cardboard, wallboard or other like materials and intended to be displayed for a limited period of time.

12.15 Sign, Wall - Flat. One affixed directly to or painted on or otherwise inscribed on an exterior wall and confined within the limits thereof of any building and which projects from that surface less than twelve (12) inches at all points.

12.16 Vehicles. Automobiles, trucks, trailers, railroad cars, construction equipment and other such mobile equipment whose major purpose is other than the display of advertising.

APPENDIX

(Intended to offer suggestions to those who will adapt this ordinance for their communities.)

1. Purpose and Scope. Off-premises signs, a much greater increase in sign area and a relaxation in illumination requirements may be permitted in certain areas, such as a "Times Square", a midway and the like.

2. Sign Standards by Zone. Larger communities will have a number of different zones in each category and it may be desirable to vary and to enlarge upon the regulations. On the other hand, it might serve some small communities best for the code not to set standards by zone but by characteristic and simply according to the following example: "Size: No sign anywhere within the limits of the Borough of _____ shall be larger than _____ sq. ft. except by special permission of the Borough Council." At any rate, this ordinance must be coordinated with the Zoning Ordinance.

2.3.2 Size. This method of determining the permitted area of sign is the simplest because it is least subject to dispute and requires the least amount of computation. Other methods include a sign area on a ratio to building or property area and sign area on a ratio to building envelope area.

2.3.3 Location. Some sign codes practically prohibit projecting signs by limiting projection over public thoroughfare right-of-way to something like eighteen (18) inches.

2.3.4 Content. It may be desirable to allow some off-premises or "billboard" advertising in some types of commercial districts.

2.3.6 Highway Oriented Establishments. Off-premise signs, some distance along the thoroughfare from the establishment, might be allowed. This would give notice of the approach of automobile service stations, restaurants, etc. Some highway billboard control legislation provides for this. Care should be exercised to limit distance, number, size and content of signs.

3. Temporary Signs. For better control, these signs may be required to have a permit, with or without payment of fee.

3.2 Real Estate tract advertising may be entitled to more than twelve (12) square feet. This may be provided for on a basis proportional to the size of the tract but not exceeding a given total (say 120 square feet). Such signs should not be permit exempt.

In addition, it may be necessary to allow one or two off-premises signs, located near a major thoroughfare surrounding the tract.

5. Non-Conforming Signs. This is a crucial provision which may be the subject of much opposition. Provisions in typical ordinances vary widely. Some classify signs according to dollar value and limit the time for removal accordingly. (5 years for over $100, 60 days for less than $100).

7. Illumination. Some codes permit illumination of signs during only those hours when the establishment is open for business. However, the street illumination derived from signs after working hours may be desirable.

If the building code or the electrical code of the city does not cover electrical work for signs, this shortcoming should be corrected.

8. Permits and Fees. Regulations may require that signs be installed, relocated, etc., only by persons who are licensed by the city for this kind of work. Furthermore, these licensees may be required to be bonded and carry insurance. Fees are collected for yearly renewals. This system, although bureaucratic, does provide experienced people, thus reducing the work for city employees.

8.3 Fees. These will vary. A two dollar minimum increasing 10 cents for each square foot of sign area, is one example.

9. Structural Requirements. It is assumed that the building code contains provisions for the construction of signs. If not, it should be amended to do so, or these may be made a part of this ordinance.

11.3 Sign Code Board of Appeals. Appointments may differ, but the objective should be to get qualified people. Representation from the sign industry, obviously, should be limited and, maybe, not represented because of conflict of interest.

12.1 Area of Sign. This method is the simplest, clearest and least subject to dispute. It would also have the effect of resulting in signs with simpler and, therefore, less disturbing outlines. Other methods compute the composite areas of the polygonal shapes obtained by enclosing the sign in straight lines, or the areas of the rectilinear and circular shapes enclosing the sign, etc.

PRESENTATION

TO THE

SENATE ENVIRONMENT

AND

PUBLIC WORKS COMMITTEE,

U. S. SENATE

PRESENTED BY:

RUSSELL F. MCKINNON
EXECUTIVE VICE PRESIDENT
AUTOMOTIVE DISMANTLERS & RECYCLERS OF AMERICA
1000 VERMONT AVENUE, N.W.
WASHINGTON, D.C. 20005
AUGUST 10, 1979

THE AUTOMOTIVE DISMANTLERS AND RECYCLERS OF AMERICA (ADRA) IS A BUSINESS LEAGUE OF SOME 5,000 SMALL BUSINESSES IN THE U.S. THAT RECYCLES USED PARTS FROM AUTOS, TRUCKS, CONSTRUCTION EQUIPMENT, BUSSES, MOTORCYCLES AND FARM EQUIPMENT. THE ASSOCIATION ALSO REPRESENTS SOME 100 BUSINESSES IN CANADA, AUSTRALIA, NEW ZEALAND AND SWEDEN. IN THE UNITED STATES, TOTAL SALES ARE ESTIMATED TO BE AT LEAST $5 BILLION A YEAR. IT HAS ALSO BEEN ESTIMATED THAT THERE ARE ABOUT 15-20,000 AUTO DISMANTLERS AND RECYCLERS IN THE UNITED STATES.

THE PRINCIPLE FUNCTION OF OUR INDUSTRY IS THE RECYCLING OF USED AUTOMOTIVE PARTS TO: NEW CAR DEALERS, USED CAR DEALERS, BODY SHOPS AND THE GENERAL PUBLIC. BY-PRODUCTS OF THE INDUSTRY INCLUDE "CORE PARTS" THAT ARE SOLD TO THE PARTS REBUILDING (REMANUFACTURING) INDUSTRY. "CORE PARTS" INCLUDE: ENGINES, TRANSMISSIONS, ALTERNATORS, GENERATORS, AND OTHER PARTS THAT CAN BE REBUILT FOR REUSE. OUR INDUSTRY IS THE PRINCIPLE SUPPLIER OF "CORE PARTS" TO THE PARTS REBUILDING INDUSTRY.

ADDITIONALLY, THE AUTOMOTIVE DISMANTLING AND RECYCLING INDUSTRY IS A MAJOR SUPPLIER OF SCRAP TO SCRAP PROCESSORS. ONCE THE USED PARTS AND THE "CORE PARTS" HAVE BEEN REMOVED FROM THE VEHICLE, THE REMAINING "HULK" IS THEN SOLD FOR SCRAP. THE "HULK" THAT IS SOLD, ACCORDING TO THE AVERAGE GENERAL MOTORS CAR[1], CONTAINS THE FOLLOWING AMOUNTS OF MATERIALS:

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[1]THIS WOULD BE A COMPOSITE VEHICLE, BASED ON MATERIALS USED IN ALL 1978 VEHICLES GENERAL MOTORS SOLD. ALSO SHOWN ARE FIGURES PROJECTED FOR 1987 GENERAL MOTORS CARS.

Material	Weight in pounds of 1978 car	Weight in pounds of 1987 car
Iron	625	293
Steel	2,070	1,690
Aluminum	120	180
Lead	22	22
Rubber	100	80
Glass	95	80
Zinc	18	9
Plastic	190	255
Other Materials	260	210
	3,490-3,500[2]	2,800-2,815[2]

In recycling scrap, our indsutry holds the position of being the principle supplier of ferrous scrap to scrap processors, supplying 35-40% of the total ferrous scrap obtained by processors. In the future, the industry has tremendous potential for recycling aluminum and for recycling platinum group metals (presently in catalytic converters).

In the past three years, between 9 and 10 million vehicles have been de-registered each year.[3] It can safely be estimated that between 90% and 95% of these vehicles are actually recycled by the scrap processing industry, and of that total, our industry,

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[2] Totals are based on estimates and should not be added from above list.

[3] This is according to R. L. Polk & Co., Motor Statistical Division.

AUTOMOTIVE DISMANTLERS AND RECYCLERS, HANDLES 70% TO 80% OF THE VEHICLES, OR ABOUT 7 TO 8 MILLION VEHICLES A YEAR. ACTUAL TOTALS ARE NOT KEPT BY DISMANTLERS, THUS THE FIGURES COULD BE SLIGHTLY LOWER.

ENERGY

IN RECYCLING USED AUTOMOTIVE PARTS, "CORE PARTS" AND SCRAP, AUTOMOTIVE DISMANTLERS AND RECYCLERS SAVE TREMENDOUS SUMS OF ENERGY. IT HAS BEEN CONSERVATIVELY ESTIMATED THAT THE INDUSTRY SAVES 80 MILLION BARRELS OF OIL A YEAR THROUGH RECYCLING USED AUTO PARTS. ADDITIONAL SAVINGS ARE OBTAINED BY:

1. RECYCLING "CORE PARTS" RETAINING 95% OF THE ENERGY USED IN THE ORIGINAL MANUFACTURING OF THE PART
2. RECYCLING SCRAP, SUCH AS ALUMINUM WHICH RETAINS 95% OF THE ENERGY USED IN ITS MANUFACTURE

ADDITIONAL SAVINGS COULD BE ATTAINED BY RECYCLING:

1. ALL SCRAP VEHICLES FIRST THROUGH AUTO DISMANTLERS THEN THROUGH SCRAP PROCESSORS
2. MORE WASTE OIL
3. MORE SCRAP TIRES
4. PLATINUM GROUP METALS FROM CATALYTIC CONVERTERS
5. GLASS
6. PLASTIC

FURTHER ENERGY SAVINGS COULD ALSO BE ACHIEVED BY THE FEDERAL GOVERNMENT FOR THE U.S., IF RECYCLING IN GENERAL WAS ENCOURAGED, SPECIFICALLY IF THE RECYCLING OF USED AUTO AND TRUCK PARTS WAS ENCOURAGED, AND IF THE RECYCLING OF SCRAP METAL WAS ENCOURAGED. DISMANTLERS AND RECYCLERS ARE SAVING SIGNIFICANT AMOUNTS OF ENERGY AND RAW MATERIALS NOW, -- AND HAVE THE POTENTIAL FOR SAVING MUCH MORE ENERGY FOR OUR COUNTRY. THE UNITED STATES SHOULD TAKE ADVANTAGE OF THIS POTENTIAL.

THE INDUSTRY IS ALSO SAVING THE CONSUMER MONEY. THE REUSE OF AUTOMOTIVE PARTS SAVES THE GENERAL PUBLIC UP TO FIFTY PERCENT OF THE COST OF A NEW PART. USED AUTOMOTIVE PARTS ALSO SAVE CONSUMERS MONEY IN THE REPAIR OF DAMAGED VEHICLES. ADDITIONAL SAVINGS ARE INCURRED WHEN DISMANTLERS AND RECYCLERS PURCHASE SALVAGE VEHICLES FROM INSURANCE COMPANIES, THUS PROVIDING ADDITIONAL SOURCES OF INCOME FOR INSURANCE COMPANIES HOLDING DOWN INSURANCE PREMIUMS.

Position on Beautification

WHILE THE INDUSTRY HAS BEEN SERVING THE PUBLIC AS A MAJOR SOURCE OF REPAIR PARTS BY SAVING ENERGY AND BY SAVING RAW MATERIALS, THE INDUSTRY HAS ALSO HAD A VERY POSITIVE ATTITUDE TOWARD HIGHWAY BEAUTIFICATION.

IN 1962, THE INDUSTRY STARTED ITS OWN "BEAUTIFICATION AND IMPROVEMENT" PROGRAM, AND SINCE THAT TIME HAS GIVEN OUT OVER 135 AWARDS FOR RECYCLERS THAT CLEANED AND IMPROVED THE APPEARANCE AND EFFICIENCY OF THEIR OPERATIONS. AT THE TIME OF THE DRAFTING OF THE "HIGHWAY BEAUTIFICATION ACT OF 1965" OUR INDUSTRY PROVIDED EXPERT ADVICE AND ASSISTANCE. IN FACT, ONE OF OUR MEMBERS, JAMES FINNELL, WAS VERY SUPPORTIVE OF THE ACT IN 1964 AND 1965, AND IN 1965 WAS INVITED TO THE WHITE HOUSE BY THEN PRESIDENT JOHNSON IN RECOGNITION OF HIS SUPPORT FOR HIGHWAY BEAUTIFICATION. IN 1975, OUR ASSOCIATION WAS MOST ACTIVE IN SUPPORT OF SEMINARS THAT WERE HELD AROUND THE COUNTRY BY THE FEDERAL HIGHWAY ADMINISTRATION TO EXPLAIN THE IMPACT OF THE LAW ON OUR INDUSTRY. WE ASSISTED IN MAKING THE LAW MORE UNDERSTANDABLE TO SMALL BUSINESS MEN AND WOMEN IN OUR INDUSTRY WHO OFTEN HAVE ONLY 3 TO 5 EMPLOYEES.

It is with this spirit of cooperation that ADRA would like to participate in the review of the "Highway Beautification Act of 1965." ADRA believes that the physical facilities of its members and their relationship to the environment, along with the now diminishing problem of abandoned vehicles, are part of a larger problem -- that of recycling solid waste. So long as the recycling process is operating under advantageous conditions, defunct automobiles and trucks will be speedily disposed of by parts dealers and by scrap processors. The number of true hulks, which parts dealers will need to keep on their premises will be reduced and other "hulks" will be transported to scrap processors for reduction to metal scrap. Of course, where a facilitiy is not involved in the recycling process, such as is the case with auto graveyards, the objective should be to remove hulks from these yards and introduce them into the parts and metal scrap cycle. If the recycling process is working well, the number of facilities needed to store hulks will be reduced. Consequently, less effort and less expense will be required to screen the facilities of used parts dealers and scrap processors.

To keep the recycling process operating under optimum conditions, a number of propositions should be considered:

1. Recycling should be encouraged
2. Recycling of used automotive parts should be encouraged
3. Recycling of scrap metal should be encouraged, and freight rate differentials should be eliminated to encourage scrap usage

4. Tax Incentives should be instituted to encourage usage of recyclable materials
5. If yards must be removed, then they should be relocated and just compensation should be given
6. All governments -- Federal, State, and Local, should be sensitive to balancing objectives that affect the recycling process rather than sacrificing the recycling process to other legitimate concerns.

Regarding the content and the administration of the Highway Beautification Act, we would suggest that the committee consider the following:

1. That the term "Junkyard" be dropped and that a more positive term be used that would encourage recycling, e.g. solid waste facilities, solid waste recycling facilities, recycling facilities
2. That the act be administered as uniformly and as equitably as possible
3. That instances of inequitable treatment in the administration of the act be investigated and rectified
4. That an information program be started to inform the public and industry of the goals and procedures of the program
5. That screening be accomplished by the most cost-effective method so that tax dollars are not wasted
6. That new guidelines for states be established
7. That voluntary screening of effected industries be encouraged with appropriate tax credits

8. Finally, that an industrial and public advisory committee be established to help the Federal Government effectively design and implement a program of screening auto dismantling yards, auto recycling yards, scrap processors and such other solid waste facilities. (We would suggest that this advisory committee be limited to the above type of facilities and not include industries affected by the outdoor advertising section of the present law, since the control of highway signs is a completely different problem.) Members of the committee might include such organizations as: Automotive Dismantlers & Recyclers of America, Institute of Scrap Iron & Steel, and Keep America Beautiful, among others.

As we have in the past, since 1962, ADRA supports the effort to keep America beautiful and supports the overall goal of the "Highway Beautification Act of 1965." We pledge our support for an information program and for an advisory committee. We would like to continue our cooperative efforts with Government and in particular the Federal Highway Administration, to make this law a reality. We pledge our support to this end.

Thank you for the opportunity to make this presentation. We hope that we have been of service to this committee. With our written text, we are submitting a number of supporting documents.

Enclosures for the Record

1. ADRA Education Foundation Library of Materials
2. List of Award Winning Albums available on loan
3. Presentation to the National Academy of Science on Platinum Group Metals
4. R.L. Polk figures on scrappage/deregistration of vehicles
5. ADRA Energy Statement
6. ADRA Brochures
7. Reprint on Used Parts from Kiplinger
8. ADRA Certification Program brochure
9. Statement submitted by ADRA on the National Energy Plan II
10. Automotive Dismantling -- A National Resource
11. ADRA Statement for the White House Conference on Balanced National Growth and Economic Development
12. The Auto Dismantling Industry, a Survey of Solid Waste Management Practices in Four Cities, U.S. Environmental Protection Agency, Washington, D.C., 1973
13. The Production and Consumption of Automobiles, Report to the Illinois Institute for Environmental Quality, R. Stephen Berry and Margaret Fulton Fels, University of Chicago, Chicago, IL, 1972.

DRURY DEVELOPMENT CORPORATION
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Cape Girardeau, Missouri 63701
••••••••••••
Phone 314-334-8281

July 18, 1979

The Honorable Senator Robert Stafford
Room 5219
Dirksen Office Building
Washington, D.C. 20013

Dear Senator Stafford:

I am writing you today to offer my thoughts concerning Senate Bill 344. I strongly approve of the passage of the bill.

I work for a small motel chain located in the midwestern region of the United States. At present, my company owns and operates fifteen motels. We are actively expanding our chain and hope to have twenty motels opened by early 1980. In connection with our motel operation we have begun a small outdoor advertising operation in some areas and in other areas we lease signs from the large outdoor advertising companies.

In the past three years the large billboard companies have gained control over the market to such an extent that space is now going for as much as $5,000 a month. A small, reasonably priced motel just cannot pay that much money per month and remain competitive.

The original concept behind the Highway Beautification was valid. However, the Act has become so laced with exceptions that it is no longer meaningful. It is my belief that the giants in the advertising business have grown so accustomed to operating under the law that they are now using the law to control their market.

A motel chain such as ours needs outdoor advertising of some nature to direct its customers to the motels. We traditionally limit each property to four or five billboards. They have been highly effective and at present, they are the only advertising that we are doing. If all billboards were removed from the landscape we would need some sort of "logo signing" to survive.

If you are desirous of any further information, please do not hesitate to call me or write to me.

Yours very truly,

Bill Darmstaedter

William Darmstaedter

WD/lev

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520 S. W. YAMHILL ST.
PORTLAND, OREGON 97204

ALFRED A. HAMPSON
RICHARD V. BAYLESS
DOUGLAS B. GORDON

TELEPHONE
(503) 223-1332

July 9, 1979

Sen. Robert T. Stafford
U.S. Senate
Senate Office Building
Washington, D.C. 20510

SB 344

Dear Senator Stafford:

I am sending you a statement by Tom McCall, former Governor of Oregon, concerning Senate Bill 344.

The repeal of the Highway Beautification Act of 1965 and its 1978 amendments would be of great help to the State of Oregon and its cities and counties in their effort to get rid of the great mess of billboards that still exist in Oregon.

The repeal of the Ladybird Act and its amendments, without the enactment of legislation which would stop the erection of new billboards along Federally aided highways would be a disaster for many states which have made no provisions to stop the wild proliferation of billboards.

Sincerely,

Alfred A. Hampson

Alfred A. Hampson

AAH/tir
Enclosure

JUNE 5, 1979 Statement by Former Oregon Governor, Tom McCall at the Federal Highway Administration hearing, Portland, Oregon, on Highway Beautification Act of 1965:

"I'm one of those guys who's the bane of such public hearings -- the guy who wants to give you the broad view and is set to drone forth his philosophy for hours.

But I got in from Colorado Springs late last night and only this morning learned of this proceeding -- so I'll try to say what I want to as telegraphically as possible.

Twice in three weeks in Colorado, I have spoken out against the sprawl, smog and visual misery that's taking over the Front Range of that magnificent state. While I've been focussing there, Oregon has been losing ground in protecting life's natural amenities.

The state legislature is striking an inconceivable blow against Oregon's vaunted livability in the form of HB 2967, which smothers court-confirmed precedent by requiring local government to pay for the signs they order removed.

In the present Jarvis-Gann era, passage of this bill would simply mean that no more billboards in local jurisdictions would come down in Oregon. The precedent for phasing-out boards is an

old one. Not only have the courts spoken in favor of the Oregon approach, but as long ago as 1917 my grandfather, Sam McCall -- the first three-time governor of Massachusetts -- asked his legislature to remove billboards where they sullied scenic areas, even if they had to be taken down without compensation.

It was argued in the Oregon senate yesterday that HB 2967 involves a matter of fairness to people who own property -- personal property -- and they should be compensated.

No matter, the bill was sent back to committee; you never hear the argument that the public also is a party which deserves compensation WHEN A BILLBOARD IS ERECTED AND LOOMS THERE IN A SPACE THAT BELONGS TO THE PUBLIC ESTHETICALLY.

No business has the right, in the name of narrow profit, in other words, to commit visual pollution against me or my family. For this reason I never used a political billboard in four statewide campaigns for secretary of state and governor. (And you notice how pesky and unsightly and pervasive political lawnboards have become and how literally millions come down without one penny of compensation.)

In a period of diminishing resources, there may be an additional context for viewing this problem. In September of

1973, I as governor signed an executive order banning all outdoor display lighting in Oregon. There was no compensation involved because I was using the police powers of the state to bring home the point to Oregon's citizens that we were entering a prolonged energy-caused emergency.

Today when citizens are facing reduced driving due to the gasoline shortage, it is equally imperative that we not flaunt society's profligacy -- and inattention to a clean nest -- by keeping forests of billboards. As we travel less miles, a constant number of billboards becomes proportionately more obnoxious to the motorist.

Compensation for some billboards and land sites in Portland can run as high as $20,000.00. But the total value of signs rests on the fact that they are dominating "my eye space, my view, my esthetic freedom". But, logistically, every citizen thus interfered with cannot be compensated; so we classify his case collectively as "the public interest" and it is in the public interest that the signs are removed without compensation. Actually, in all fairness, there ought to be a public kitty into which the signboard industry should contribute payments to compensate the public for visual inconvenience, each time a sign is installed.

A Utopian thought, surely, when special interests are marching increasingly against citizen rights in a quickening slide of

environmental standards on the pretense of coping with this emergency or that. And speaking of rights, even as a 30-year newsman, I see no First Amendment problem in bringing down the boards. You can turn off TV and radio commercials and skip the ads in the newspapers, but the signboards are always there peering at you, inescapably.

The original Highway Beautification Act of 1965, when thought up by Ladybird Johnson was to remove the billboards from our highways. After the billboard company lobbyists got through with it, it became the single largest obstical for the beautification of our highways.

It brought a new concept into local planning that a state had to pay to get rid of a nuisance. After the Highway Beautification Act of 1967, the state can no longer take the billboards down by the exercise of police power or the state will lose 10% of its highway construction funds.

The Highway Beautification Act has become an act to "vest in" billboards forever.

What to do.

New Billboards. Adopt legislation that no new billboards may be erected within sight of a Federally aided highway unless the owner and land owner waive all rights of compensation in the

event that it is ever removed.

Existing Billboards. The value of a billboard was created by public money used to build the street or highway.

Provide legislation that a billboard company is not entitled as an element of "just compensation" for the value of its position adjacent to a highway. I do not think that a billboard should be treated any differently than any other property which is affected by zoning. Up until the intrusion of Congress into local affairs, a state, city or county could deal with the problem of billboards by the exercise of police power with the removal of the billboard after a reasonable time.

If the Ladybird Act is repealed, there should be enacted legislation in its place that would provide:

(1) No new billboards may be erected within sight of a Federally aided highway or if that is too strong, none can be erected which are larger than 300 square feet and only with a waiver of their right to compensation.

(2) Provide a reasonable way to remove those which are now up by (a) Amortization; or

(b) Compensation for the structure, not its earning capacity derived from the highway built by public money;

(c) Provide special provisions that deal with information that the traveler needs -- small tasteful signs rather than huge signs -- information rather than advertising;

(d) Provide Federal help in the establishing of information and advertising gazebos in the rest areas;

We know what a billboard is.

We know what an information sign is.

Let us have Federal legislation that provides reasonable regulation so that information signs are not treated as billboards.

(e) Finally, provide that no company which owns billboards visible from a Federal aided highway may give or provide at reduced cost any billboard to any political candidate.

I won't insist that they invade your privacy, though they surely do mine -- but I would strongly counsel that the Ladybird Act be strengthened, rather than having it nibbled away at by a lobby persistent and powerful to almost the same degree that the container and beer and pop industries are in their obsessive vendetta against Oregon-type Bottle bills.

In both situations, the industries involved are contributing to the visual littering of America. In both situations, the forces of environmental degradation are so potent every reasonable law and regulation available to Federal, State and local government for restraining their excessive zeal for unwarranted profits must be exercised to the hilt."

National Campground Owners Association
The National Trade Association of the Commercial Campground Industry

PLEASE REPLY TO:

July 17, 1979

The Honorable Lloyd Bentsen
Chairman, Subcommittee on Transportation
Senate Committee on Environment and Public Works
4204 Dirksen Senate Office Building
Washington, DC 20510

Attn: Dick Harris
Re: Hearings, July 17

Dear Mr. Chairman:

The National Campground Owners Association (NCOA) is a trade association of the commerical campground industry, representing more than 2,700 of the nation's most successful private campgrounds, and providing national representation for 39 individual state campground associations as well. Campground owners as well as others in the tourism industry are heavily dependent on roadside advertising. Therefore, NCOA wishes to make certain this subcommittee is fully aware of the adverse effect of the Highway Beautification Act on the camping industry and millions of camping enthusiasts. We do not believe the intent of the Highway Beautification Act was anything but one of improving everyone's enjoyment of our beautiful country.

The effects of this Act upon the travel and tourism industry could not have been intended when it was first being considered. Campers are travelers -- they are pioneers in a sense -- constantly seeking out ways to get away from their everyday environment, often trying new roads, visiting unfamiliar parts of this country.

Being strangers in the area, they need help in finding accommodations and attractions. They need location information, recognizable at highway speeds. They must be aware far enough in advance of an exit to allow recognition, decision, and safe slowing-down of their vehicle. Please keep in mind that often these are not professional drivers and they are driving a vehicle more difficult to handle than their regular vehicle, a vehicle with which the driver has often had limited experience. Sizes of signs and distances from exits designed for the use of automobile drivers, professional drivers, and others already generally familiar with the area are not adequate for the totally new arrival, piloting an unaccustomed vehicle.

What happens if there is not adequate location information available from the highway? What happens if a last-minute decision is made to exit? Will there be time? What about traffic following

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behind? Can they avoid this large swaying vehicle? If the exit is by-passed, how do you turn such a vehicle to get back to the right road? How many extra miles will this require? Safety, gas consumption and travel enjoyment all suffer.

I urge you to consider that tourism in general and campers specifically have a real need for highway signs. The rule as now written permits some signage, although inadequate, but only for facilities relatively close to major highways. Unfortunately a great many campgrounds are too distant to qualify for any signage. Parks chosen because of their beauty, as a recreation area, lose out. The parks closest to major highways are not necessarily the ones the traveler needs help in finding. Away from populated areas, roads may not be well-marked. A clear, well-lit sign is a very welcome sight. Of course there is no commercial or industrially zoned land within many miles. The chance for adequate signage under today's laws is nil.

I hope you will consider that we have all gotten into a situation in which a well-intended law has created unreasonable problems. We could throw out the whole highway beautification program. Or we could accept that much of it is good and use our time and energy to correct the problem areas.

To accomplish the latter, let me suggest the following actions: (1) Develop adequate signage for tourist-related industry, recognizing this as a special need, just as valid for the public at large as the removal of highway billboards. (2) Allow easy recognition by name of each facility without forcing affiliation with an organization which licenses its name to many locations. (3) Permit tourist information signs to stay in place, even if slated for removal, until conforming new signs are already in place, thus avoiding time periods we now have when there is no information sign usable by the tourist.

If you can't make the present law responsible to the needs of the traveling public, then we have no alternative than to say

Remove no more signs and return sign control entirely to the individual states.

Sincerely,

David T. Hodgin

David T. Hodgin
President
National Campground Owners
Association

July 5, 1979

NATIONAL RESTAURANT ASSOCIATION

The Honorable Lloyd Bentsen
Chairman, Subcommittee on Transportation of the
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20501

Dear Senator Bentsen:

I am writing on behalf of the National Restaurant Association to present for your consideration our views and suggestions concerning S. 344, the proposed "Highway Beautification Act of 1974." The National Restaurant Association is a business league of some 9,000 firms. We represent many times that number of foodservice establishments through our membership of hundreds of multiunit firms plus the organizational membership of 47 affiliated State restaurant associations. Through this broad-based membership, engaged in all types of foodservice in virtually every state of the Union, our member companies provide employment for some eight million people.

At the outset, let me express our support for the general purpose of legislation of this type, namely, the beautification of our nation's highway system. We concur with the principal thrust of S. 344 to return the responsibility for highway beautification to the States. In our view, subsection (d) of Section 131 of S. 344 provides a necessary flexibility and discretion in the Secretary and the States to permit the erection and maintenance of signs, within the rights of way near interchanges and in other specified areas, which give specific information in the interests of the traveling public.

The recommendations of the Commission on Highway Beautification emphasized the importance of such signs providing specific information to the traveling public. More specifically, I am referring to those signs which assist the traveler in locating service facilities, such as gas stations, and food and lodging establishments. We believe that the Commission's recommendations and the material it developed is a useful standard for the Secretary and the States to follow in determining the types of informational signs that should be authorized in these specified areas of the rights of way. We recommend that service facilities of this nature be given as examples in subsection (d) of Section 1311 in S. 344.

Washington Office
International Square—Suite 850
1850 K Street, N.W.
Washington, D.C. 20006
(202) 296-0350

NATIONAL RESTAURANT ASSOCIATION

We place great value on the contents of the Commission's report for, as you know, the Commission was composed of distinguished Members of Congress and others who were specifically charged with the responsibility of studying numerous areas concerning highway beautification and thereafter making recommendations to achieve a workable and effective beautification program that will best serve the public interest.

Without going into a detailed analysis of the Commission's report, with which I am sure you are familiar, I would like to emphasize several points which bear directly on our area of concern. A review of the Summary Report of the Commission reveals repeated references supporting the need for this type of sign. Here are a few examples taken from that Summary.

a. Recommendation No. 2 suggests that Congress consider making some distinction between advertising signs which simply advertise products and those which provide information of potential usefulness to motorists regarding services and facilities in which travelers might have a specific interest, such as "lodging, eating, automobile servicing...." The report points out that the need for such businesses to get information to motorists is important to the safety and convenience of motorists as well as to economic well-being of the businesses.

b. Recommendation No. 3 suggests that Congress reevaluate the standards for official and directional signs and signs giving specific information to travelers as it appears that "improvements in the use of these types of signs can do much to get needed directional information to motorists."

c. The first additional recommendation points out that one of the areas of greatest concern is the need to provide directional information for motorists and that this need is even more acute when faced with the energy crisis. There is a need to continue to provide essential directional information to motorists and a suggested solution is to make clear that a "directional sign" is any sign "which provides directional information about facilities providing certain services or goods of particular interest to motorists while traveling, such as gas, food, lodging...."

I believe it is fair to say that the findings of the deKadt and Sindlinger studies, which reflect the public's attitudes toward signs providing information to the traveling public, were influen-

tial in the Commission's deliberations and are reflected in its recommendations. Several of the findings of these studies bear directly on this subject and some of them are summarized below for emphasis.

a. Signs giving directional information, such as the location of gas stations, restaurants, lodgings, etc. are considered helpful by a majority of the population. Three quarters of the public felt that this type of sign should be permitted.

b. Signs of this type were considered next in importance to signs giving advance warning of junctions and were needed by at least half of all interstate travelers on their last trip.

c. The great majority of interstate travelers feel that the general appearance of interstate roads is good to excellent.

d. Highway billboards are not unpopular with the American people and 67.4 percent felt that they performed a service. A majority placed signs advertising food and lodging in the "very important" category.

e. A substantial number felt that signs that help travelers (such as distances to and locations of services they frequently require) should be retained.

In view of the above, we urge your consideration of an amendment to subsection (d) of Section 131, S. 344 which would specifically note as examples those signs which provide informational assistance to the traveling public, such as those pertaining to availability of automotive services, and food and lodging facilities. This will effectuate the apparent needs and desires of the public and also assist the economic well-being of the many businesses involved.

We appreciate the opportunity to express our views on this legislation and thank you for your kind invitation to do so. Naturally, we will be pleased to meet with you or members of your staff to discuss this matter further or provide any additional information which you feel would be of assistance.

Sincerely,

Robert Neville

Robert Neville
Washington Counsel

RN/jlw

Statement of
William V. Reynolds,
Executive Director
Roadside Business Association

Mr. Chairman, Members of this Sub-Committee, we thank you for the opportunity to submit for the record the views of the Roadside Business Association in opposition to S-344.

Membership of the Roadside Business Association is composed of roadside businesses and sign operators which serve the traveling public. This membership represents the interests of the sector of private business services available to the travelers while motoring through rural and small towns of America. These services consist of places to sleep, to eat, and to buy gasoline; places to see, to camp, to buy auto repairs; places where one can find recreation such as resorts, attractions, theme parks, etc.,.

About 60% of these signs which supply this directional information are owned by sign operators who maintain the signs for the businesses based on a monthly or annual fee. The other 40% of the signs are owned by the individual businesses. In most cases, the roadside businesses which own their signs are the smaller businesses which can least afford to lose them without compensation.

The principal thrust of S-344 is to remove the compulsory requirements for compensation. The RBA is strongly opposed to the elimination of this provision on the basis that it is unfair and discriminatory. When private property is taken for a public interest it should be paid

for. This principle was strongly supported by both Houses of Congress when the Federal Highway Beautification Act was passed in 1965 and it has received the consistant support of Congress ever since.

Since the present Act was passed, the placement and maintenance of signs have conformed to the size, spacing, and lighting regulations. Under S-344, some States could and would abandon these standards creating inequities between the States, the advertisers, and the sign owners.

Summarily, the present Act has had the benefit of 14 years of experience and input from all interested parties. It has yielded dramatic and visual results in terms of outdoor advertising control. With minor revisions, proper implementation, and adequate funding, it will meet the intended objectives.

S-344, on the other hand, represents a step backward and would destroy the incentives which have led to the success of the present Federal Highway Beautification Act.

* * *

STATEMENT
OF
VICTOR G. ATIYEH
GOVERNOR, STATE OF OREGON

BEFORE THE
SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
SUBCOMMITTEE ON TRANSPORTATION

REGARDING
S 344
HIGHWAY BEAUTIFICATION ASSISTANCE ACT OF 1979
WASHINGTON, D.C.
JULY 19, 1979

The State of Oregon has led the Nation in implementing the Highway Beautification Program. Highway beautification in Oregon began with the use of the Bonus Act of 1957, progressed through work under the Highway Beautification Act of 1965, and into the acts of the Oregon Legislature 1971, 1975 and 1977. The record clearly indicates that working with interested citizens and with the support of the Legislature, our State has developed an effective program. I have been a strong supporter of this program and I might add, leadership of the program began with Governor McCall and carried through Governor Straub's Administration, as well.

Through the early legislation during the priod 1963 to 1967, 7,000 signs were removed. Illegal, abandoned and voluntary removals from 1969 to 1976 saw 2950 signs removed. Non-conforming signs that were purchased and removed under the Highway Beautification Act total 2,000 signs, making a grand total of 11,950 signs removed from the visibility of Oregon's Interstate and Primary Highway systems since the program began. The program is essentially complete in Oregon.

We are aware that many other states have not made a similar effort. Indeed, one fifth of the states have not even removed 10 percent of their non-conforming signs. Nationwide, the record has not been a whole lot better ------less than a third of all non-conforming signs have been removed over the thirteen years the federal program has been in effect. The program has been further constrained by rigid and self-defeating interpretations by the Federal Highway Administration.

I am in strong support of S. 344, which would turn the program back to the states.

I would further like to see S. 344 amended to allow states to permit reasonable and necessary business identification signs and expand the "exempt" signs category to include church and civic organization signs, signs of a governmental unit, off-premises residential directional signs, temporary civic signs, special event signs, church directional signs and similar signs. The actual amendatory language is attached for your consideration.

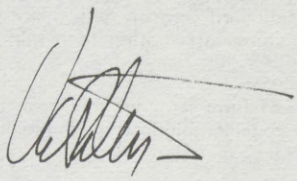
We feel that the intent of the Beautification Act was to get rid of the "billboard blight" that confronted the motorist when driving down the Interstate and Federal Aid Primary Highways. It was not intended that all off-premises signs outside of commercial and industrial zones should come down, even if they are strictly of an informational or directional nature. This has, in fact, been the interpretation of the Federal Highway Administration. As a result, many rural businesses in Oregon can no longer be found by the motorist and people drive many extra miles looking for a rural business. This wastes gas, causes safety problems and imposes an economic hardship on the businesses. The federal law must be flexible enough to allow some means to identify rural businesses.

Oregon leads the nation in providing alternative information systems to the motorists. We have more logos on our interstate system than all the

rest of the states combined, 686 - logos and 145 - Supplemental Logos. You must realize, however, that these are limited to gas, food, lodging, and camping and a limited number of logos per sign. Oregon has also instituted motorist information centers (gazebos) in fourteen rest areas throughout the state that provides graphic information relating to travel related activities and businesses that are located throughout the State of Oregon. No other state in the United States has gone this far either in the logo program or in the gazebo program. We have recognized the need for alternative methods of providing information to the traveling public and have moved ahead in that area. Important as these systems are, gaps still remain which can only be addressed through a statutory change.

Oregon has complied with the federal law and is now suffering hardships because of the inflexibility of the law itself. We feel that the inflexibility of the current Act is its major weakness. The Stafford Bill (S.344) along with our amendment should correct this problem. However, if S.344 is not passed, we feel that the suggested amendments to the existing law is certainly needed to make the program more workable.

In closing, I want to make it clear that we support the Beautification Program. I want to see the program work, and I am confident that S.344, along with our amendment, will make this possible.



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

WILLIAM G. MILLIKEN
GOVERNOR

August 27, 1979

Honorable Robert T. Stafford
United States Senator
United States Senate
Washington, D.C. 20510

Dear Senator Stafford:

I have read with considerable interest your letter of March 27, 1979, explaining the need and desirability of Senate Bill #344.

Michigan has had an aggressive billboard control program since 1972, having removed approximately 27,600 (22,200 illegal plus 5,400 nonconforming) billboards. We have observed that the total impact of the present law is not necessarily reflected in the number of nonconforming signs removed, but rather in the total signs removed under provision of the law. This is substantiated by the Federal Highway Administration, who has indicated that on a nationwide basis, approximately 481,000 illegal signs have been removed in addition to the 91,000 nonconforming signs mentioned in your presentation to Congress.

Michigan's acquisition program has totaled approximately $14 million and with an estimated $12 million additional needed to complete the program, we are confident if federal funds were made available, Michigan could complete the program in three to four years.

I agree there are problems with the existing legislation and, as you have mentioned, uniformity of enforcement between the states and the cost of completing the project are of major concern. Because of these concerns we would be reluctant to support legislation which would eliminate completely the federal minimum requirements and to rely on the various states for billboard control. We could reasonably expect, under these conditions, to experience a complete breakdown of uniform billboard control, with many states abolishing controls completely. Other adjacent states attempting to retain controls would be under severe pressure to follow suit.

The present laws only set minimum requirements for billboard control and each state has considerable latitude in placing additional restrictions if they so desire.

The question of the cost of the program is a concern to us all. It is true that the past rate of funding has been inadequate to complete the project in a reasonable time; however, other alternatives may be available.

Recent court decisions have indicated the viability of the amortization principle in removing billboards. This would allow retention of existing nonconforming signs until the sign owners have amortized the sign value, at which time it would be removed at no cost to the public. This means of compensating the sign owner would require a change in the Highway Beautification Act over the objections of the sign industry; however, it may offer an alternative to the present contemplated high cost of the program.

Michigan has not encountered any significant jurisdictional problems in the zoning area. Our law requires an active business within 800 feet of the sign location, in addition to commerical or industrial zoning, to qualify as a legal sign location. This requirement has eliminated indiscriminate zoning changes for the purpose of legalizing sign locations.

In summary, I agree that problems exist with the present billboard program; however, I am reluctant to support a bill which would eliminate in its entirety federal minimum requirements. In addition, I would suggest that the feasibility of using amortization as a means to remove signs be more fully explored with the ultimate objective of amending the Highway Beautification Act to legalize this approach.

I would like to thank you for your courtesy in asking for my comments on the proposed legislation. If I can be of any further help, please contact me.

Warm personal regards.

Sincerely,

William G. Milliken

Governor

OREGON ROADSIDE COUNCIL

September 5, 1979

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Senator Stafford
US Senate Office Building
Washington, D.C. 20510

Dear Senator Stafford:

Our Board of Directors has voted to support S.344, your bill to replace the Highway Beautification Act, and we shall urge Oregon's congressional delegation and the members of the Senate Environmental and Public Works Committee to demand its passage.

However, we have some reservations and suggested amendments on which we would like your serious consideration. Even in a state like Oregon where, practically speaking, all billboards outside cities and business zones in counties are now removed there are risks involved in eliminating the Lady Bird bill. We are not all that certain that our state legislators, all of whom were offered sizable campaign contributions from the billboard companies in the 1978 elections, care that deeply about keeping the rural highways let alone the cities and county urban areas free of billboards. Some kine of bonuses or penalties or combinations thereof is still needed to compel the states to continue billboard control and removal.

Something should be done about the carte blanc permission for billboards in commercial and industrial zones. That is where the proliferation still remains, and our lax state standards (federal too?) are a detriment to local efforts at this time. For example, Portland has banned billboards on its freeways through commercial and industrial zones since 1952 but the state and federal regulations permit a billboard every 500 feet. Along other streets zoned commercial and industrial Portland limits billboards to 3 in 3000 feet yet the state and federal regulations permit one billboard every 100 feet, which is no control at all because the billboard companies cannot obtain leases that close together. Several Oregon cities permit no billboards as do many cities throughout the nation. San Diego is such an example.

We suggest that the control zones in urban areas also include all visible signs, not limited to 660 feet from the rights-of-way. Hillsides overlooking highways, rivers along side of highways, low buildings all make it possible for signs to be seen beyond 660 feet. Richfield Oil Co. at one time maintained a huge sign on the mountain backdrop to Portland's downtown area which was visible for miles.

We further suggest that compensation for billboard removal be stopped entirely. No way can the money be found to pay for them, and it would require a century as you have pointed out in your statement introducing S344. Also you mentioned 40% of Oregon's billboards still remain up even though the primary and interstate program has been completed. I suspect that percentage is too low, if non-state highway mileage is included. For example, Portland has 1024 billboards up, none of which are along the interstate system and few of which are along primary highways as practically all of its arterial streets are non-state highways or are on the

urban system, not eligible for federal aid for billboard compensation.

Also mandatory compensation to both land owner and the leassee violates local zoning regulations, which create non-conforming uses other than billboards to be removed or presented retroactively. Of serious concern is the current rezoning of agricultural and forest lands to arrest urban sprawl and to save these natural resources for future generations. Likewise cities are correcting over-zoning for apartments to revive and improve older neighborhoods. Compensation for any one non-confirming use sets a precedent requiring that all be compensated. That cost could be trillions.

We look forward to your early reply and action on the above recommendations.

Sincerely yours,

Lloyd T. Keefe

Lloyd T. Keefe, President
OREGON ROADSIDE COUNCIL

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