IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

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COURT OF APPEALS
STATE OF ARIZONA
FILED MAY 06 2010
PHILIP G. URRY, CLERK
BY

NO. 1 CA-CV 09-0489

SCENIC ARIZONA, INC., an Arizona corporation; NEIGHBORHOOD COALITION OF GREATER PHOENIX, INC., an Arizona corporation,
Plaintiffs/Appellants

v.

CITY OF PHOENIX BOARD OF ADJUSTMENT, a municipal agency; AMERICAN OUTDOOR ADVERTISING, LLC, a Nevada limited liability company,
Defendants/Appellees

On appeal from Maricopa County Superior Court
Cause No. LC2008-000497-001DT

APPENDIX TO BRIEF OF AMICI CURIAE THE SIERRA CLUB AND SCENIC AMERICA, INC.

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ATTORNEY FOR AMICI CURIAE THE SIERRA CLUB AND SCENIC AMERICA, INC.

your district. If you have any doubts about this, then—and mark this well—you will vote for the Cramer amendment because at least that will insure the primary system in your district will have the protection of the zoning laws and control adopted by your own State.

Before you vote on the Cramer amendment, either for or against it, ask yourself if you know in your own district which roads are covered by this legislation.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan [Mr. CEDERBERG].

Mr. CEDERBERG. Mr. Chairman, I regret it is necessary to consider this legislation under the circumstances that we are tonight when it is obvious that Members had planned to go to the White House. Not only that, I think most of the Members were invited to meet Madame Chiang at the Chinese Embassy and now this will not be possible. I cannot see any reason why it is necessary that this legislation be completed tonight but I guess that is the decision that has been made.

Mr. Chairman, I rise in support of the Cramer amendment. I suppose the only thing we can say is as the majority leader of the other body indicated that it looks as if we are going to spend most of next year cleaning up the legislation that we passed this year anyway. So maybe next year we can come back and take a good hard look at this and maybe have a little more time to consider what this is going to do to the small motel operator and the small gas station man and the small businessman in resort areas who are right off the primary roads where they do not have an opportunity to tell their customers where they are located. In my State tourism is a very big business and unless the entrepreneur, whatever his business may be, can advise the people who are coming to our State to enjoy the attractions where he is located, then they are going out of business. Unless this legislation is substantially changed, it is going to give us some real problems so far as our State is concerned.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois [Mr. KLUCZYNSKI].

Mr. KLUCZYNSKI. Mr. Chairman, this amendment offered by the gentleman from Florida hits the heart of the bill and just guts it. I am opposed to it and I hope it is defeated by a great majority vote.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida [Mr. CRAMER].

The question was taken; and on a division (demanded by Mr. CRAMER) there were—ayes, 95, noes, 107.

Mr. GERALD R. FORD. Mr. Chairman, I demand tellers.

Tellers were ordered and the Chairman appointed as tellers Mr. CRAMER, and Mr. KLUCZYNSKI.

The committee again divided, and the tellers reported that there were—ayes 113, noes 145.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. TUTEN

Mr. TUTEN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TUTEN: On page 15, line 24, after the word "spacing" place a comma and add these words "consistent with customary use."

And on page 16, line 7, after "Secretary" add this sentence: "The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes and the actions of the States in this regard will be accepted for the purposes of this Act."

Mr. CRAMER. Mr. Chairman, I ask unanimous consent that the amendment be reread. It was not possible to hear it. I also ask unanimous consent that the time of reading it not be taken out of the time of the gentleman from Georgia.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk reread the amendment.

Mr. TUTEN. Mr. Chairman and Members of the Committee, I rise as a member of the Public Works Committee, who has a real desire to support this bill. It is not my intention, Mr. Chairman, to consume time or to weaken the bill. It is my desire to cooperate with our great President and our lovely and gracious First Lady. Mrs. Johnson is rendering a wonderful service, and I know of nothing as pretty as a bird except a "Lady Bird."

The sign industries in my State, and yours, would like to support this bill subject to some modification of title I, section (d). They have great confidence in Secretary Connor, but they want some protection incorporated into the bill. I am using the Secretary's own language in my amendment.

As a result of questions raised in the committee, Secretary Connor wrote a letter to the Honorable JOHN C. KLUCZYNSKI, chairman of the Subcommittee on Roads. This letter appears on pages 4 and 5 of the committee report. On page 5 the letter states, and I quote:

> It is the intention of the administration that the regulations, insofar as they are consistent with the purpose of this act, shall be helpful to the advertising industry and that, for instance, standards of size which may be adopted would be insofar as possible, consistent with the standard size billboards in customary use.

My amendment makes the bill conform to the Secretary's intent in his own language. If we intend to conform to "customary use"—these are the Secretary's words—let us word the bill accordingly. The first part of my amendment—page 15, line 24, after the word "spacing" place a comma and add these words: "consistent with customary use."

On page 4 of the report in chapter 2 of Secretary Connor's letter, he says—and I quote:

> It should be kept in mind that, under the administration's bill, the States have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will, of course, be accepted for the purposes of this act.

If we contend that a State should be protected in the right to zone, let us word the bill accordingly. The second part of my amendment, page 16, line 7, after "Secretary," add this sentence:

> The States shall have full authority under their own zoning laws to zone for commercial or industrial purposes and the actions of the States in this regard will be accepted for the purposes of this act.

This does not take too much authority away from the Secretary. It makes it possible for most of us to support this bill without being unfair to the people back home.

Mr. Chairman, I urge you to support my amendment.

I urge you to vote for my amendment and join me in support of this bill.

Mr. EDMONDSON. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the gentleman who has just addressed the Committee is one of the ablest members of the Committee on Public Works and has made very constructive contributions to this bill on a number of matters. So it is with great reluctance that I rise in opposition to him on any matter. I am quite certain that in the major part of what he has offered there is nothing inconsistent with the position of the Department of Commerce as stated in the letter which appears in the report of the committee and as stated in a letter to the chairman of the full committee dated today, from Secretary of Commerce Connor, which makes it very clear:

> The Secretary is not granted authority under this bill to tell the States what areas may be zoned commercial or industrial under authority of the State law. This determination is entirely up to the States and the States will be free to exercise their traditional authority, under State law, to zone areas commercial or industrial.

So far as that particular part of the gentleman's amendment is concerned it conforms very precisely and exactly to what the Secretary's understanding of the bill is, and I see no particular harm in its adoption.

But the first part of his amendment would insert language in line 24 of page 15 "consistent with customary use" after the word "spacing" which is not on all fours with the Secretary's position.

The gentleman referred to the Secretary's letter as it appears on page 5 of the report. The Secretary in his letter stated that standards of size which may be adopted would be, insofar as possible, consistent with standard-sized billboards in customary use. I think it is his intention with reference to size to recognize that question and that difference in the different States and try to conform to the State practice.

But this amendment deals with questions of lighting and questions of spacing, absolutely vital, I think, to the proper implementation of this bill. Much more important than the question of size, when you get right down to it, is this question of spacing, because the matter of proliferation, of which the gentleman from Minnesota spoke so eloquently a little while ago, must be approached from the standpoint of spacing in these commercial and industrial zones.

The phrase which has been used by the gentleman from Georgia in his

amendment would make customary use apply not only to size, but also to spacing and also to lighting, and it would greatly extend the intention of the Secretary of Commerce in connection with an orderly and effective administration of this bill.

Now, on that difference, I very definitely feel that this amendment should be rejected.

Mr. TUTEN. Mr. Chairman, will the gentleman yield?

Mr. EDMONDSON. I yield to the gentleman.

Mr. TUTEN. Mr. Chairman, I would like to say that I intended customary use to extend to other than the size.

Mr. EDMONDSON. I am quite certain that the gentleman said that. I am not attempting to say that he did something that he did not intend to do, but I do not think it is entirely fair, if the gentleman will forgive me, to say that this conforms exactly to the language of the Secretary as appears in his letter, when the Secretary's letter limits his commitment to standards of size and does not make a commitment with reference to customary use on spacing and on lighting. And these are vital questions in connection with the orderly development of this program.

Now, Mr. Chairman, the gentleman from Georgia has been completely straightforward with us throughout on this thing, and I am quite certain that he did not intend to mislead on this point. But I have personally read to him, as I have presented to you, this language and I feel that there should be an understanding on the part of the members of the Committee as it votes on this amendment, that this is not in accordance with the position of the Secretary of Commerce as it has been stated previously.

Mr. WRIGHT. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, as can be observed, there is disagreement on our side of the Committee with regard to this amendment. I do not believe there is disagreement really as to the intent or the purpose of the Congress in enacting this legislation, but primarily a disagreement as to whether this amendment which has been offered by our colleague, the gentleman from Georgia [Mr. TUTEN], a member of the Committee, is necessary.

If we are to accept the words contained in the letters of the Secretary of Commerce, the gentleman's amendment would not be necessary. But on the other hand, if we fully accept these words of the Secretary of Commerce as governing, then his amendment can do no harm. It might do some good. It might give some relief to the great concern and the fear that has been expressed here today that the Secretary of Commerce is getting broad, unrestrained, discretionary authority to determine sizing, spacing and lighting in an entirely new area of law.

Mr. Chairman, we asked the Secretary of Commerce and his representatives repeatedly in their appearances before our committee just what criteria they intended to use in exercising this discretionary authority, and their answer on every occasion was:

> That which is customary within the industry and which is in keeping with the standard and accepted practices in an area.

Therefore, Mr. Chairman, what harm does it do to write it into the law? This is what the Secretary says he intends to do. How can we harm the bill by writing it into the bill?

Mr. Chairman, I quote to you from the letter of the Secretary of Commerce in which he said:

> Standards which may be adopted would be insofar as possible consistent with standard billboards in customary use.

Now, Mr. Chairman, what is wrong with writing it into law? In regard to the other portion of the amendment, it is taken verbatim, word for word, from the Secretary's letter.

Let me quote again to you what the Secretary—no longer ago than yesterday—reiterated in this pledge. I quote from his letter:

> The Secretary is not granted authority under this bill to tell the States what areas may be zoned commercial or industrial under authority of the State law.

Mr. OLSEN of Montana. Mr. Chairman, will the gentleman yield?

Mr. WRIGHT. Yes, I yield to the gentleman from Montana.

Mr. OLSEN of Montana. I just recall that a few moments ago the gentleman from Georgia asked the gentleman from Oklahoma to yield and said that he did not limit his amendment to customary use with respect to size. Well, what the gentleman has just read now from this letter of the Secretary of Commerce says, for instance:

> Standards of size which may be adopted would be insofar as possible consistent with standard-sized billboards in customary use.

The gentleman is in agreement with the gentleman from Georgia who offered the amendment?

Mr. WRIGHT. I do not understand what it is the gentleman is saying, but what I want to say is this: The Secretary of Commerce——

Mr. OLSEN of Montana. What I am saying, if the gentleman will yield further, is the gentleman from Georgia does not limit his amendment to standard size.

Mr. WRIGHT. Mr. Chairman, I yield no further. We have acknowledged that. The gentleman from Georgia has acknowledged that the Secretary of Commerce in regard to these other matters says he intends to comply with the standards, with the practice and customary use in these other areas too. There is no attempt to conceal or disguise that fact. What we are trying to do is to write the bill, as the gentleman from Florida said, not by letter but by legislation.

If it will remove any fear in the mind of any person that we are giving unduly broad, unrestrained authority to the Secretary to do something that is not even intended, if it will remove any fear concerning any future Secretary who might consider himself not to be guided or led by the present Secretary, let us adopt the amendment. Let us give him exactly what he says he wants and let us remove this unreasoning fear which I believe is unreasoning because I trust the Secretary of Commerce. The amendment itself does no harm, and it may do some good.

Mr. CRAMER. Mr. Chairman, I rise in support of the pending amendment.

Mr. Chairman, I wish to congratulate the gentleman from Texas. This, of course, goes a good way toward accomplishing what my amendment would have done. I was rather shocked at the reaction to my amendment which would have done a similar thing, only it would have gone further. Despite the fact that the letter from the Secretary said that is what he intended to do, that there would be no reluctance to writing it into the bill, if that is what he intends to do, let us say that is what he intends to do. A similar amendment was offered in committee and it was turned down summarily.

All this does is to state specifically in the proposed bill what the Secretary said he intends to do anyway. I cannot understand why the Secretary, the administration, or anybody else would be reluctant to accept language in the bill which they say they are going to accomplish by administrative action anyway. This will take a lot of the disturbing factors out of the legislation as it relates to areas zoned industrial or commercial. It does nothing with regard to areas used for industrial or commercial purposes.

I will have an amendment, if this is adopted, that would do the job the Secretary says he wants to do.

Mr. ICHORD. Mr. Chairman, will the gentleman yield?

Mr. CRAMER. I yield to the gentleman from Missouri.

Mr. ICHORD. I want to know how far this amendment extends. Does this amendment apply only to the industrially and commercially zoned areas of the State? How about the rural areas? If this amendment is adopted would the State be able to establish zones where signboards may be permitted in rural areas?

Mr. CRAMER. It should be clearly understood that that is the point I am trying to make. This amendment only goes to what the Secretary said he wanted to do relating to areas zoned industrial or commercial. The amendment I shall offer to it will go the second step the Secretary said he wanted with regard to those areas outside of the areas zoned commercial. Here is what he says.

If we are going to do what he says he wants to do with regard to areas zoned commercial why not do what he says he wants to do with regard to areas not zoned? Why not give the farmer in America a break as well as those in the city areas?

Here is what he says he wants to do:

> The purpose of the administration language is to make sure that any zoned commercial or industrial areas along our interstate and primary highways will be designed on the same basis as those which are actually zoned.

REVIEW OF HIGHWAY BEAUTIFICATION—1967

[90–1]

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ROADS

OF THE

COMMITTEE ON PUBLIC WORKS
HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

FIRST SESSION

ON

H.R. 7797

APRIL 5, 6, 12, 13, 18, 19, 20; MAY 2, AND 3, 1967

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Secretary BOYD. No; I am talking about something Mr. Bridwell has said.

Mr. WRIGHT. I was going to come to some of that.

Secretary BOYD. Well, we are speaking the same language. I am committed to what he says, and vice versa. So far we are happy with it.

Mr. BRIDWELL. And I am going to continue to be happy with it, Mr. Wright.

Secretary BOYD (reading):

> Just for one example, there has been considerable discussion before the committee that regulation of outdoor advertising in zoned commercial and industrial areas should be left to local control. This has been requested by the few States in which we have started negotiations. In each instance we have said we would accept this position if the regulation was undertaken by an agency which had the authority and actually conducted a program of comprehensive land use control. This fact has been known for some time by the outdoor advertising industry and by the staff of this committee.

Mr. WRIGHT. Well, that sounds like a clear answer and I am very grateful for that answer.

I think that you erred very grievously in the promulgation of your proposed standards and in the subsequent promulgation of your draft standards, because I think they have no tangential reference to customary use. I think they did violence to the law which required customary use.

Mr. EDMONDSON. Will you yield?

Mr. WRIGHT. Yes, I will be happy to yield.

Mr. EDMONDSON. I just wanted to note certain language familiar to the Secretary for the record, further language of that subsection (d), which says:

> The States shall have full authority under their own zoning law to zone areas for commercial or industrial purposes. The actions of the State in this regard will be accepted for the purposes of this Act.

Secretary BOYD. Yes, sir. We have no argument on this score whatsoever.

Mr. WRIGHT. I think basically the crux of the disagreement lies not in necessarily determining what is or is not a commercial or industrial area, particularly wherein it is zoned by a State, but it is determining what are acceptable and customary uses standards within those commercial areas.

Secretary BOYD. Well, this, Mr. Wright, gets into a completely different problem which, as Mr. Bridwell testified, there is very respectable testimony to the effect that 500-foot spacing is a good practice.

Now, one would think that a good practice would represent customary usage. But the fact of the matter is other witnesses from the advertising industry have said: "Yes, that is a good practice, but we do not follow it. We have not done a good job in self-regulation."

Now, the query arises: Should we follow what is termed by the industry to be a good practice or should we, without regard to good practice, even though acknowledged by the industry, say, "Well, it is not done that way," and therefore it is customary use and therefore we might as well forget it? I do not know.

Mr. WRIGHT. Simply in that regard, I would direct your attention, the law clearly says customary use. Whether that is right or wrong I do not attempt to say, but I do believe I can say to you with some authority that in the absence on the floor of the House of subsection

(d), this Highway Beautification Act of 1965 would not have passed the House. That is my opinion.

Secretary BOYD. I believe you, too.

Mr. WRIGHT. Therefore, in fairness to our colleagues on the floor of the House, who considered and voted for the adoption of subsection (d), I think it must be carried out.

Secretary BOYD. Well, as I get it, the import of your statement is that subsection (d) means that whatever is in place now stays in place and that this act has no validity whatsoever.

Mr. WRIGHT. Absolutely not. No. It does not mean that at all, that everything has to stay in place. But that which is standard practice, that which is customary use would be allowed to be erected and maintained.

Now, there was some discussion on the floor of the House as to what customary use means. I think it means that it is customarily used.

Now, those billboards that are grotesquely out of size, those that are hideously crowded together in an atypical or uncustomary fashion should be subject to the control of these standards; but those that follow the standards of customary use under the law may be erected and maintained.

Mr. BRIDWELL. Mr. Wright, may I attempt to make a couple of points here and hopefully shed a little light?

As I am sure you are aware, I did follow quite closely the development of this legislation when it passed and the consideration of the amendments on the floor.

"Customary use," as you are well aware, came from a letter which Secretary Connor addressed to this committee, and in that letter—and I know because I drafted it—the attempt was made to use the words "customary use" to illustrate the point of size of signs.

In the debate on the floor when Mr. Tuten offered the amendment, this question was specifically raised, "Does this refer only to size?" Because the text of the letter from Secretary Connor was read. And Mr. Tuten specifically stated that, no, he was not referring only to size, that he meant it to cover size, spacing, and lighting.

So I do not think there has ever been any question on our part or the part of anyone else that we were referring to customary use involving size, spacing, and lighting within zoned and unzoned commercial and industrial areas.

Now, 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. Now, it seems to me that pretty reasonably covers customary use when over 98 percent of the signs are included in the size category.

Secretary BOYD. It is larger.

Mr. BRIDWELL. As a matter of fact, we may be too liberal on it. That is kind of on the high side of customary use.

I think this same type of thing occurred in relation to spacing and lighting.

Mr. WRIGHT. Let me ask you one question. May I interrupt you to ask a question about spacing?

Mr. BRIDWELL. Surely.

Mr. WRIGHT. You made reference in your testimony initially and again reference has been made to the 500-foot spacing recommendation.

Let me direct your attention to the draft standard which stipulates on the freeway operation, "No billboard may be erected nearer than 2,000 feet to the exit for an interchange." Do you believe that to be consistent with customary use?

Mr. BRIDWELL. No, sir; because I believe the safety requirement overwhelmed customary use on that particular item.

Mr. WRIGHT. Overwhelmed it?

Mr. BRIDWELL. Yes sir. In other words, that the safety requirement in the act, in that particular application, was so great that customary use had to be set aside.

Mr. WRIGHT. Talk about safety—first of all, I am somewhat amazed at your statement that the requirement had to be set aside. Let me read you the act again:

> In order to promote the reasonable orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices to size, lighting and spacing consistent with customary use as determined by agreement between the several States and the Secretary may be erected and maintained.

It says they may be.

Mr. BRIDWELL. Yes, sir; and I direct your attention to the words "consistent with the purposes of this act," and then go back to the purposes. Obviously, one of the purposes is safety.

Mr. WRIGHT. All right. Read the sentence again. Obviously this is defining what is consistent with purposes of the act. It is not leaving it up to you to define it; it is defining the intent of Congress that customary use is consistent with the purposes of the act.

You cannot read that sentence any other way: "In order to promote the reasonable orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section"—"while remaining consistent with the purposes of this section"—"signs, displays, and devices to size, lighting, and spacing consistent with customary use"—does it not say it is the opinion of Congress that "customary use" is, therefore, by definition, consistent with the purposes of this section?

Secretary BOYD. Mr. Wright, read section 131(a), which said signs on the primary system "should be controlled in order to protect public investment in such highways, to promote the safety and recreational value of public travel, and preserve natural beauty."

Mr. WRIGHT. Correct.

Secretary BOYD. The Federal Highway Administration, on the basis of studies it has made, is thoroughly and completely satisfied that signs within 2,000 feet of the intersection of the turnoffs are unsafe, and I believe able to document that.

Now, if it is the intent of Congress that "customary use" as stated in subsection (d) of section 131 of greater value than the safety of the traveling public, we are getting a new interpretation.

Mr. WRIGHT. Mr. Secretary, do not put me in that position.

Secretary BOYD. I did not put you there, sir.

Mr. WRIGHT. I am not making an ascertainment or interposing my judgment as to what is of relatively greater importance as between beauty, safety, or customary use. I am reading the act.

I do not think any legal interpretation of that act could be other than that the insertion of subsection (d) on the floor of the House, where it was discussed, debated, understood, voted upon, and embraced by a majority of the Members of the House, overrides and by definition stipulates what is meant in the earlier sections.

Now, if you look at the legislative history of the act, I do not think you could come to any other interpretation.

Mr. BRIDWELL. Mr. Wright, if I may say so, I have gone back and read the floor debate on this and, as I am sure you are aware, during the discussion of the amendment offered by Mr. Tuten, there was no discussion of the relationship of customary use to safety per se. It just simply was not discussed.

Mr. WRIGHT. Right. In fact, this is not a safety bill, fellows; this is a beautification bill and we all know that.

Secretary BOYD. Yes, sir. But I think to follow——

Mr. WRIGHT. We passed the safety bill, you know. That is another bill.

Secretary BOYD. But to follow the line you are pursuing here, I guess I come out with the conclusion that "customary use" is, per se, safe, and I cannot accept that either.

Mr. EDMONDSON. Will the gentleman yield?

Mr. WRIGHT. I will be glad to yield. I am not through pursuing this idea here, because I do not think you have to say it is, per se, safe; it is the law.

Mr. EDMONDSON. Just clarification, if the gentleman will, on the 2,000-foot rule, the rule referred to by the gentleman from Texas about prohibiting signs within 2,000 feet of an interchange on an Interstate System.

That would not apply, would it, if that area within the 2,000 feet, say 500 or 300 feet, were an area where there was commercial or industrial activity?

Mr. BRIDWELL. Would not apply to on-premise signs, Mr. Edmondson.

Mr. EDMONDSON. In other words, if there were filling stations and restaurants within 300 feet of the interchange, the position of the Department would be that you had to go out 2,000 feet to set up a sign in that area that did not pertain to the premises?

Secretary BOYD. No, sir. I am saying the law gives us no authority at all on the subject of on-premise advertising.

Mr. EDMONSON. I am aware of that. But I say if there is clearly commercial or industrial activity within 300 or 600 feet of the interchange, and it is recognized and even zoned for commercial and industrial activity, surely the Department would not then take the position that no signs could be erected within 2,000 feet; would they?

Secretary BOYD. I would think that it would be very difficult to support such a ruling. It would seem to me, in that circumstance, that the problem is already there and it is beyond the power of this law to do anything about it. Therefore, if there is that type of activity, I do not know how we could say there would be an absolute prohibition on other signs.

Mr. EDMONDSON. Recognizing the presence of commercial and industrial activities and on-premise signs as safety factors that certainly would be serious.

Secretary BOYD. From a safety point of view, I do not see how one could distinguish between on-premise and off-premise advertising.

Mr. WRIGHT. I thank the gentleman from Oklahoma for making that clarifying question and the Secretary for making the clarification. I was under the impression that what we were talking about was in commercial and industrial areas, and I believe that is the only area in which these standards that we are discussing are really applicable. So that this colloquy between Mr. Edmonson and yourself, Mr. Secretary, clarifies to a great extent the misunderstanding I had had. I had had the impression that your 2,000-foot prohibition upon the erection of any outdoor advertising sign—we are not talking about on-premise signs in any of this—would apply in commercial and industrial areas. That was the impression I had.

Secretary BOYD. I do not see how we could make it stick, although I would certainly say that based on my understanding from the Bureau of Public Roads about the relative safety of signs, that on the approaches to intersections, I would oppose any signs within that area. But that is not within the purview of the law, so——

Mr. WRIGHT. Well, all right, I will read you this proposal, the proposal promulgated by your Department. It says:

> No sign may be located within 2,000 feet of an interchange, or intersection at grade, or rest area (measured along the interstate highway or freeway from the sign to the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way.

All right, 2,000 feet is almost half a mile.

Secretary BOYD. Yes, sir.

Mr. WRIGHT. A fellow is driving down the highway in the city, in the commercial area, say he is going through the city 50 miles an hour. This is about 30 seconds before he gets to that intersection.

Secretary BOYD. Yes, sir.

Mr. WRIGHT. Or to the nearest exit before the intersection.

Secretary BOYD. Yes, sir.

Mr. WRIGHT. All right, we are going to measure 30 seconds.

We are driving along the highway now—no more signs—(watching clock).

Mr. MCCARTHY. Will the gentleman yield?

Mr. WRIGHT. No.

We are driving on the highway, not even approaching the intersection yet——

Mr. MCCARTHY. Will the gentleman yield?

Mr. WRIGHT. Certainly not now—all right, now we approach the exit.

Secretary BOYD. Yes, sir.

Mr. WRIGHT. Do we need that much time?

Secretary BOYD. Absolutely.

Let me give you a couple of instances. First, there are signs within the 2,000-feet area. There are signs indicating where you go if you get off on that ramp. And one of the problems is that if there are signs, commercial as well as directional signs, the driver can become confused.

The second thing is, Mr. Wright, that you are obviously assuming that your driver is always on the right-hand lane so he can get into the ramp without having to weave across the other traffic lanes, and some of our citizens do not drive that way.

Mr. WRIGHT. You make a good point. I am one of those that gets confused. I am not questioning here in this manner—I am just wondering if 2,000 feet, which is a half mile, is a realistic measure?

Secretary BOYD. We have a slide which shows accident rates related to the nearness of intersections that we could show on the screen here that that had some bearing on our judgment in this matter.

Mr. WRIGHT. Let me just ask one or two questions here. I think we are coming nearer to an understanding of one another's position.

Now, in regard to the relationships—first of all, let me clarify one thing. Discussion has been had about negotiations with the staff of this committee. I should like to make it clear, if my understanding is correct, for the record, that the committee did not ask for these negotiations. If I am correct, Mr. Secretary Boyd asked if the committee would sit down and talk with him about this.

Is this correct or am I mistaken?

Secretary BOYD. I think you are correct. Certainly the only commitment I know in connection with our discussions with the staff was my commitment that we would not seek to negotiate any agreements with the States during the pendency of those conversations.

Mr. BRIDWELL. Mr. Wright, may I also add——

Mr. WRIGHT. Surely.

Mr. BRIDWELL (continuing). I believe I had also made a specific comment in relation to Mr. Enfield, and once again I would stress on the part of each of the committee staff members that they were excellent discussions. They also included the staff members from the Senate Public Works Committee. They were very helpful and I have nothing but the highest praise for the way the staff members conducted themselves and the contributions they made.

Mr. WRIGHT. I appreciate that as a member of the committee and I know others do as well.

I would like to ask a further question with respect to your testimony concerning your relations with the States. You say if a State is making progress, that you would recommend no penalty against that State.

Mr. BRIDWELL. Yes.

Mr. WRIGHT. What in your judgment constitutes "progress?"

Mr. BRIDWELL. Well, hopefully, it would be an agreement, Mr. Wright, and under a perfect set of circumstances, with the legislative authority to enter into an agreement and the necessary implementing legislation.

I think a step backward from that is an agreement in which the executive branch of the State government would then submit legislation for implementation.

How far back down you go I am not prepared to say except that if a State is holding discussions, and we have every indication that things are going well toward looking for an agreement, then I do not see any problems.

I think it is apparent that our purpose here is not to penalize the State; our purpose here is to do the job that Congress spelled out for us in the Highway Beautification Act of 1965. So the emphasis is on accomplishing the job, not figuring out who you can penalize.

Mr. WRIGHT. I have a copy of a resolution that had been passed by

the Texas Senate, and perhaps now by the Texas House as well. The essential language is as follows:

Whereas, the Congress did enact the Highway Beautification Act of 1965, and

Whereas, the Highway Beautification Act provides that standards for size, lighting and spacing of signs are to be determined by agreement between the several States and the Secretary of Transportation

And whereas the Highway Beautification Act provides, among other things, 10 percent penalty,

Now, therefore, be it resolved, by the Senate and State of Texas, and House concurring, that due to the uncertainty and indecision at the Federal level relative to this matter, and due to the fact that the Federal decision will not be forthcoming until after this session of the Texas legislature adjourns, the Texas State Highway Commission is hereby authorized and directed to negotiate at the proper time with the Secretary of Transportation relative to the features of this Act that may be finally agreed upon, to the end that a full and complete report of such negotiations may be furnished to the Texas legislature prior to the start of the 1961 session of the said legislature,

And so forth.

Would you call that progress?

Mr. BRIDWELL. Yes, sir, and I would suggest that in the specific phrasing of the act, "at the appropriate time," the time is now to start the negotiations.

Mr. WRIGHT. Very well.

Mr. CLAUSEN. Will the gentleman yield?

Mr. WRIGHT. I do not know whether it has been passed by both Houses or not.

I have taken up far too much time. There is much more I would like to ask.

Mr. EDMONDSON. Will the gentleman yield?

Mr. WRIGHT. Yes.

Mr. EDMONDSON. For one question. It has to do with the question of priorities that has been raised by the gentleman from Florida, priorities assigned by the Congress and by the administration for beautification.

Normally, when we talk about priorities around here, we ask how much money are we spending on a particular project, and let's get this thing in perspective.

It is my understanding that the maximum period covered by beautification legislation, all three kinds, is 10 years on title III; that the total amount of money scheduled to go into beautification in all three titles over that period has not been estimated by anybody yet—over $3.5 billion during that proposed time period.

Now, on the other hand, the staff informs me that we can logically expect a minimum of $35 billion to be spent on construction during that same period of time, 10 years. So would you say, if the figures are accurate, that we do not propose to spend during the next 10 years under the existing planning and programing even one-tenth as much money on beautification and scenic improvements along the highway as we are proposing to spend on construction? Would that be an accurate statement?

Mr. BRIDWELL. As we are proposing to spend on what?

Mr. EDMONDSON. Highway construction, Federal dollars allocated to Federal construction?

Mr. BRIDWELL. No, sir.

I think the whole context of the highway beautification program has been in the nature of something from less than 5 percent, certainly,

Sec. 4. EXEMPTION

The appropriation made by this act is exempt from the provisions of sections 35-173 and 35-190, Arizona Revised Statutes, relating to quarterly allotments and lapsing of appropriations.

Sec. 5. EMERGENCY

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor — May 18, 1970

Filed in the Office of the Secretary of State — May 18, 1970

CHAPTER 214

House Bill 195

AN ACT

RELATING TO HIGHWAYS; PROVIDING FOR THE REGULATION OF OUTDOOR ADVERTISING WITHIN CERTAIN DISTANCES FROM INTERSTATE, SECONDARY OR PRIMARY SYSTEMS; PRESCRIBING PENALTIES, AND AMENDING TITLE 18, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 7, ARTICLE 1.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 18, Arizona Revised Statutes, is amended by adding chapter 7, article 1, sections 18-711 to 18-720 inclusive, to read:

ARTICLE 1.

REGULATION OF CERTAIN ADVERTISING DISPLAYS

18-711. DEFINITIONS

In this article, unless the context otherwise requires:

1. "Business area" means an area outside municipal limits embracing all of the land on the same side of the highway on which one or more commercial or industrial activities are conducted, including all land within one thousand feet measured in any direction from the nearest edge of the actual land used or occupied for such activity, including its parking, storage and service areas, its driveways and its established front, rear and side yards, constituting an integral

part of such activity and which is zoned, under authority of law, primarily to permit industrial or commercial activity. However, when one or more commercial or industrial activities are located within one thousand feet of a freeway interchange, the business area shall extend three thousand feet measured in each direction parallel to the freeway from the center line of the crossroad.

2. "Commission" means the state highway commission.

3. "Freeway" means a divided arterial highway on the interstate or primary system with full control of access and with grade separations at intersections.

4. "Information center" means a site established and maintained at a safety rest area for the purpose of informing the public of places of interest within the state and providing other information the commission considers desirable.

5. "Interstate system" means that portion of the national system of interstate and defense highways located within this state as may now or hereafter be officially designated by the commission and approved by the secretary of transportation pursuant to title 23, United States code.

6. "Main-traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders, on which through traffic is carried. In the case of divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads or parking areas.

7. "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard or other thing which is designed, intended or used to advertise or inform, the message of which is visible from any place on the main-traveled way of the interstate, secondary or primary systems.

8. "Primary system" means that portion of connected main highways located within this state as may now or hereafter be officially designated by the commission and approved by the secretary of transportation pursuant to title 23, United States code.

9. "Safety rest area" means a site established and maintained by or under public supervision or control for the convenience of the traveling public within or adjacent to the right-of-way of the interstate or primary systems.

10. "Secondary system" means that portion of connected highways located within this state as may now or hereafter be officially designated by the commission and approved by the secretary of transportation pursuant to title 23, United States code.

11. "Unzoned commercial or industrial area" means an area not zoned under authority of law in which land use is characteristic of that generally permitted only in areas which are actually zoned commercial or industrial under authority of state law, embracing all of the land on the same side of the highway on which one or more commercial or industrial activities are conducted, including all land within one thousand feet measured in any direction from the nearest edge of the actual land used or occupied by such activity, including its parking, storage and service areas, its driveways and its established front, rear and side yards, constituting an integral part of such activity. However, when one or more commercial or industrial activities are located within one thousand feet of a freeway interchange, the unzoned commercial or industrial area shall extend three thousand feet measured in each direction parallel to the freeway from the center line of the crossroad. As used in this paragraph, "commercial or industrial activities" does not include:

(a) Outdoor advertising structures.

(b) Agricultural, forestry, grazing, farming, and related activities.

(c) Transient or temporary activities including but not limited to wayside fresh produce stands.

(d) Activities not visible from the main-traveled way.

(e) Activities conducted in a building principally used as a residence.

(f) Railroad tracks and minor sidings, and above ground or buried utility lines.

18-712. OUTDOOR ADVERTISING AUTHORIZED

A. The following outdoor advertising may be placed or maintained along interstate, secondary and primary systems within six hundred sixty feet of the edge of the right-of-way:

1. Directional or other official signs or notices that are required or authorized by law, including but not limited to, signs pertaining to natural wonders, scenic and historical attractions.

2. Signs, displays, and devices advertising activities conducted on the property upon which they are located.

3. Signs, displays, and devices advertising the sale or lease of property upon which they are located, subject to the prohibition under paragraph 2 of subsection A of section 18-713.

4. Signs, displays, and devices placed after April 1, 1970, in business areas.

5. Signs, displays, and devices placed after the effective date of this article in zoned or unzoned commercial or industrial areas inside municipal limits.

6. Signs, displays, and devices lawfully existing on April 1, 1970, which are located in business areas, and in zoned commercial or industrial areas outside municipal limits.

7. Signs, displays, and devices lawfully existing on the effective date of this article which are located in zoned or unzoned commercial or industrial areas inside municipal limits.

B. Outdoor advertising authorized under paragraphs 1, 4, and 5, subsection A of this section shall conform with standards contained, and shall bear permits required, in regulations promulgated by the commission under the provisions of this article. Outdoor advertising authorized under paragraphs 6 and 7, subsection A of this section need not conform to standards contained, but shall bear permits required, in regulations promulgated by the commission under the provisions of this article.

18-713. OUTDOOR ADVERTISING PROHIBITED

A. No outdoor advertising shall be placed or maintained adjacent to the interstate, secondary or primary systems at the following locations or positions or under any of the following conditions or if it is of the following nature:

1. If within view of, directed at, and intended to be read from the main travelled way of the interstate, primary or secondary systems, excepting outdoor advertising authorized under section 18-712.

2. If it advertises the sale or lease of subdivided property and is not located on such subdivided property.

3. If visible from the main-traveled way and simulating or imitating any directional, warning, danger or information sign permitted under the provisions of this article, or if likely to be mistaken for any such permitted sign, or if intended or likely to be construed as giving warning to traffic, such as by the use of the words "stop" or "slow down."

4. If within any stream or drainage channel or below the flood water level of any stream or drainage channel where the outdoor advertising might be deluged by flood waters and swept under any highway structure crossing the stream or drainage channel or against the supports of the highway structure.

5. If visible from the main-traveled way and displaying any red, flashing, blinking, intermittent, or moving light or lights likely to be mistaken for a warning or danger signal, excepting that part necessary

to give public service information such as time, date, weather, temperature or similar information.

6. If any illumination thereon is of such brilliance and so positioned as to blind or dazzle the vision of travelers on the main-traveled way.

7. If existing under a permit as required by this article and not maintained in safe condition.

8. If obviously abandoned.

9. If placed in such a manner as to obstruct, or otherwise physically interfere with, an official traffic sign, signal, or device or to obstruct, or physically interfere with, the vision of drivers in approaching, merging, or intersecting traffic.

10. If placed upon trees, or painted or drawn upon rocks or other natural features, excepting signs permitted under paragraph 2, subsection A, of section 18-712.

18-714. STANDARDS FOR OUTDOOR ADVERTISING; DIRECTIONAL AND OTHER OFFICIAL SIGNS; BUSINESS AREAS; ZONED OR UNZONED COMMERCIAL OR INDUSTRIAL AREAS WITHIN MUNICIPAL LIMITS

A. Direction and other official signs authorized under paragraph 1, subsection A of section 18-712, shall comply with regulations which shall be promulgated by the commission relative to their lighting, size, number, spacing and such other requirements as may be appropriate to implement this article, which regulations shall not be inconsistent with such national standards as may be promulgated from time to time by the secretary of transportation of the United States pursuant to subdivision (c) of section 131 of title 23, of the United States code.

B. After April 1, 1970, outdoor advertising placed in business areas shall comply with the provisions of this article and the following standards:

1. Size of outdoor advertising shall not exceed one thousand two hundred square feet in area with a maximum vertical facing dimension of twenty-five feet and a maximum horizontal facing dimension of sixty feet, including border and trim, and excluding base or apron supports and other structural members. Such size limitations shall apply to each facing of outdoor advertising. The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof, which will encompass the entire advertisement. Two advertising displays not exceeding three hundred fifty square feet

each may be placed in a facing. Back to back or V-type signs may be placed, with the maximum area allowed for each facing.

2. Spacing of outdoor advertising shall be such that it is not placed:

(a) Within five hundred feet from other outdoor advertising on the same side of a freeway.

(b) Within five hundred feet of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way at an interchange, scenic overlook, or safety roadside rest area on any portion of a freeway.

(c) Within three hundred feet from other outdoor advertising on the same side of any portion of the primary system which is not a freeway.

3. Minimum spacing distances from other outdoor advertising shall not apply to outdoor advertising which is separated by a building or other obstruction in such a manner that only one display located within the minimum distances set forth herein is visible from the highway at any one time. Spacing distances shall be measured along the nearest edge of the pavement to a point directly opposite the outdoor advertising.

4. Outdoor advertising authorized under paragraphs 2 and 3 of subsection A of section 18-712 shall not be counted and measured from in determining compliance with the spacing requirements of this subsection.

C. After the effective date of this article, outdoor advertising placed in zoned or unzoned commercial or industrial areas within municipal limits shall comply with the following standards:

1. The size of outdoor advertising shall not exceed that set forth in paragraph 1, subsection B of this section.

2. Spacing of outdoor advertising shall be such that it is not placed:

(a) Within five hundred feet from other outdoor advertising on the same side of a freeway.

(b) Within one hundred feet from other outdoor advertising on the same side of any portion of the primary system which is not a freeway.

3. It shall have the same standard as paragraph 3, subsection B of this section.

4. It shall have the same standard as paragraph 4, subsection B of this section.

18-715. REMOVAL DATES FOR NONCONFORMING OUTDOOR ADVERTISING; AUTHORITY TO ACQUIRE OUTDOOR ADVERTISING AND PROPERTY RIGHTS; COMPENSATION; REMOVAL

A. Outdoor advertising lawfully in existence along the interstate or federal-aid secondary or primary systems on September 1, 1965 which does not conform to the provisions of this article, shall not be required to be removed until July 1, 1975. Any other outdoor advertising lawfully erected which does not conform to the provisions of this article shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

B. If compensation is required by federal law, and if federal participation in such compensation is required by federal law, nonconforming outdoor advertising shall not be required to be removed until federal funds for the federal share of compensation therefor as required by such federal law have been made available to the commission.

C. The commission shall acquire by gift, agreement, purchase, exchange, eminent domain or other lawful means, all right, title, leasehold, and interest in any outdoor advertising together with the right of the owner of the real property on which such outdoor advertising is located to erect and maintain such outdoor advertising thereon, when the outdoor advertising is prohibited by this article. Damages resulting from any taking of property in eminent domain shall be ascertained in the manner provided by law.

D. When outdoor advertising is placed after the effective date of this article, contrary to provisions of this article or the regulations promulgated by the commission, or when a permit is not obtained as prescribed in this article, the outdoor advertising shall be deemed unlawful. The commission shall give notice by certified mail of its intention to remove advertising deemed unlawful to both the owner or the occupant of the land on which such outdoor advertising is located and the owner of the outdoor advertising, if the latter is known, or if unknown, by posting notice in a conspicuous place on such outdoor advertising. Within seven days after such notice is mailed or posted the owner of the land or the outdoor advertising may make a written request to the commission for a hearing to show cause why the outdoor advertising should not be removed. The commission shall designate a hearing officer, who shall be an administrative employee of the state highway department, to conduct and preside at such hearings. When a hearing is requested under this provision, the hearing shall be held within thirty days thereafter and the party requesting the hearing shall be given at least five days notice of the time of

such hearing. All hearings shall be conducted at state highway department administrative offices. A full and complete record and transcript of the hearing shall be taken. The presiding officer shall within ten days after the hearing make a written determination of his findings of fact, conclusions and decision and shall mail a copy of the same, by certified mail, to the owner or the party who requested the hearing. If the decision is adverse to the party, the party may within ten days after the decision is rendered, petition the superior court of the county wherein the outdoor advertising is located to determine whether the decision of the hearing officer was lawful and reasonable. If the decision of the court upholds that of the commission, all costs from the time of the administrative hearing, including court costs, shall be borne by the owner of the land or the outdoor advertising or both. If a hearing before the commission is not requested, or if there is no appeal taken from the commission's decision of such hearing, or if the commission's decision is affirmed on appeal, the commission shall immediately remove the offending outdoor advertising. The owner of the outdoor advertising or the owner or occupant of the land or the owner of the outdoor advertising and the owner or occupant of the land shall be liable for the costs of such removal. The commission shall incur no liability for such removal.

18-716. AGREEMENT WITH SECRETARY OF TRANSPORTATION; OUTDOOR ADVERTISING REGULATIONS; PERMITS

The commission shall:

1. Enter into the agreement with the secretary of transportation provided for by section 131 (d) of title 23 of the United States code setting forth the standards governing the size, lighting, and spacing of outdoor advertising authorized under paragraphs 4 and 5, subsection A of section 18-712, and defining an unzoned commercial or industrial area. If the standards and definitions contained in the agreement do not agree substantially with the provisions of this article, the agreement shall not become effective until the legislature by statute amends this article to conform with the terms of the agreement.

2. Prescribe and enforce regulations governing the placing, maintenance, and removal of outdoor advertising. Such regulations shall be consistent with the public policy of this state to protect the safety and welfare of the traveling public, the provisions of this article, the terms of the agreement with the secretary of transportation, and the national standards, criteria, and rules and regulations promulgated by the secretary of transportation pursuant to section 131 of title 23, United States code.

3. Define by rules or regulations, unzoned commercial or industrial areas along the interstate and primary systems. The definitions shall be consistent with the definition of these areas set forth in this

article and set forth in the agreement with the secretary of transportation.

4. Issue permits to place or maintain, or both, outdoor advertising authorized under paragraphs 1, 4, 5, 6 and 7, subsection A of section 18-712, and establish and collect fees for the issuance of such permits. The fees shall be not more than the actual costs to the commission. All fees collected under the provisions of this article shall be paid to the state treasurer for credit to the state highway fund.

18-717. CONTROL OF ADVERTISING DISPLAYS ALONG INTERSTATE, SECONDARY AND PRIMARY HIGHWAYS BY MUNICIPALITY OR COUNTY

If an incorporated municipality or county desires to control outdoor advertising along interstate, secondary and primary highways, it may do so upon request to the commission and certification by the commission to the secretary of transportation that the municipality or county has enacted comprehensive zoning ordinances and by ordinance regulates the size, lighting, and spacing of outdoor advertising in zoned commercial and industrial areas along interstate, secondary and primary highways, provided that municipalities or counties may not assume control of outdoor advertising under the provisions of this section if the ordinance provisions are less restrictive than the provisions of this article.

18-718. ADVERTISING DISPLAYS IN SAFETY REST AREAS; INFORMATION CENTERS

In order to provide information in the specific interest of the traveling public, the commission may authorize advertising displays at safety rest areas and at information centers.

18-719. CONSTRUCTION OF ARTICLE

The provisions of this article shall be cumulative and supplemental to other provisions of law and shall not be construed as affecting or enlarging any authority of counties, cities or towns pursuant to any other provisions of law which may exist to enact ordinances regulating the size, lighting, and spacing of outdoor advertising.

18-720. PENALTY

A person who violates any provision of this article or any regulation of the commission made and promulgated under this article is guilty of a misdemeanor.

Sec. 2. EMERGENCY

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor — May 18, 1970

Filed in the Office of the Secretary of State — May 18, 1970

CHAPTER 215

House Bill 228

AN ACT

RELATING TO COUNTIES; AUTHORIZING EXPENDITURE OF PUBLIC FUNDS FOR CLOTHING ALLOWANCES FOR CERTAIN COUNTY OFFICERS, AGENTS AND EMPLOYEES, AND AMENDING TITLE 11, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-265.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 11, chapter 2, article 4, Arizona Revised Statutes, is amended by adding section 11-265, to read:

11-265. AUTHORITY TO PROVIDE ALLOWANCES

Counties may expend public funds to provide clothing allowances for county officers, agents and employees who are engaged in public safety work, when such clothing is regarded as a condition of employment, and the county may reimburse such officers, agents and employees for clothing damaged or destroyed in the line of duty.

Approved by the Governor — May 18, 1970

Filed in the Office of the Secretary of State — May 18, 1970

CHAPTER 216

House Bill 236

AN ACT

RELATING TO MOTOR CARRIERS; PRESCRIBING PENALTIES, AND AMENDING SECTION 40-660, ARIZONA REVISED STATUTES.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Sec. 40-660, Arizona Revised Statutes, is amended to read:

RAI

ARIZONA-FEDERAL AGREEMENT PROVIDING FOR THE REGULATION OF OUTDOOR ADVERTISING IN AREAS ADJACENT TO THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS AND THE FEDERAL AID PRIMARY HIGHWAYS SYSTEMS.

THIS AGREEMENT, made and entered into this 18th day of November 1971, by and between the UNITED STATES OF AMERICA, represented by the Secretary of Transportation, acting by and through the Federal Highway Administrator, hereinafter referred to as the Administrator, and the STATE OF ARIZONA, represented by the Arizona Highway Commission, acting by and through the Director of Highways, hereinafter referred to as the State.

WITNESSETH:

WHEREAS, House Bill 195 enacted by the Twenty-ninth Legislature of the State of Arizona Second Regular Session and signed into Law by the Governor of Arizona on May 18, 1970, provides for the regulation of outdoor advertising along Interstate and Primary highway systems, amending Title 18, Arizona Revised Statutes by adding chapter 7, article 1, sections 18-711 to 18-720 inclusive; and

WHEREAS, the Arizona Highway Commission is directed by section 18-716, Arizona Revised Statutes to enter into agreement with the Secretary of Transportation provided for by section 131(d) of title 23 of the United States code; and

WHEREAS, section 131(d) of title 23, United States Code provides for agreement between the Secretary of Transportation and the several states to determine the size, lighting, and spacing of signs, displays, and devices, consistent with customary use, which may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Primary systems which are zoned industrial or commercial under authority of State Law or in unzoned commercial or industrial areas, which areas are also to be determined by agreement; and

WHEREAS, the purpose of said agreement is to promote the reasonable, orderly, and effective display of outdoor advertising while remaining consistent with the national policy to protect the public investment in Interstate and primary highways, to promote the safety and recreational value of public travel and to preserve natural beauty; and

WHEREAS, the State of Arizona desires to implement and carry out the provisions of section 131 of title 23, United States Code, in order to remain eligible to receive the full amount of all Federal Aid Highway funds to be apportioned to such state on or after January 1, 1968, under section 104 of title 23, United States Code.

NOW THEREFORE, the parties hereto do mutually agree as follows:

DEFINITIONS

1. "Business area" means an area outside municipal limits embracing all of the land on the same side of the highway on which one or more commercial or industrial activities are conducted, including all land within one thousand feet measured in any direction from the nearest edge of the actual land used or occupied for such activity, including its parking, storage and service areas, its driveways and its established front, rear and side yards, constituting an integral part of such activity and which is zoned, under authority of law, primarily to permit industrial or commercial activity. However, when one or more commercial or industrial activities are located within one thousand feet of a freeway interchange, the business area shall extend three thousand feet measured in each direction parallel to the freeway from the center line of the crossroad, provided further that the business area shall not extend beyond the limits of the established commercial or industrial zone.

2. "Commission" means the state highway commission.

3. "Freeway" means a divided arterial highway on the interstate or primary system with full control of access and with grade separations at intersections.

4. "Information center" means a site established and maintained at a safety rest area for the purpose of informing the public of places of interest within the state and providing other information the commission considers desirable.

5. "Interstate system" means that portion of the national system of interstate and defense highways located within this state as may now or hereafter be officially designated by the commission and approved by the secretary of transportation pursuant to title 23, United States code.

6. "Main-traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders, on which through traffic is carried. In the case of divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads or parking areas.

7. "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard or other thing which is designed, intended or used to advertise or inform, the message of which is visible from any place on the main-traveled way of the interstate, secondary or primary systems.

8. "Primary system" means that portion of connected main highways located within this state as may now or hereafter be officially designated by the commission and approved by the secretary of transportation pursuant to title 23, United States code.

9. "Safety rest area" means a site established and maintained by or under public supervision or control for the convenience of the traveling public within or adjacent to the right-of-way of the interstate or primary systems.

10. "Secondary system" means that portion of connected highways located within this state as may now or hereafter be officially designated by the commission and approved by the secretary of transportation pursuant to title 23, United States code.

11. "Unzoned commercial or industrial area" means an area not zoned under authority of law in which land use is characteristic of that generally permitted only in areas which are actually zoned commercial or industrial under authority of state law, embracing all of the land on the same side of the highway on which one or more commercial or industrial activities are conducted, including all land within one thousand feet measured in any direction from the nearest edge of the actual land used or occupied by such activity, including its parking, storage and service areas, its driveways and its established front, rear and side yards, constituting an integral part of such activity. As used in this paragraph, "commercial or industrial activities" does not include:

(a) Outdoor advertising structures.

(b) Agricultural, forestry, grazing, farming, and related activities.

(c) Transient or temporary activities including but not limited to wayside fresh produce stands.

(d) Activities not visible from the main-traveled way.

(e) Activities conducted in a building principally used as a residence.

(f) Railroad tracks and minor sidings, and above ground or buried utility lines.

12. "Zoned commercial or industrial area" means an area zoned under authority of law primarily to permit industrial or commercial activity.

SCOPE OF AGREEMENT

This agreement shall apply to the regulation of outdoor advertising in all business areas, unzoned commercial or industrial area and zoned commercial or industrial area within 660 feet of the nearest edge of the right-of-way of all portions of the interstate and primary highway systems within the State of Arizona in which outdoor signs, displays and devices may be visible from the main-traveled way of said systems.

OUTDOOR ADVERTISING CONTROL

The State hereby agrees that, in all areas within the scope of this agreement, the State shall effectively control or cause to be controlled, the erection and maintenance of outdoor advertising signs, displays, and devices.

OUTDOOR ADVERTISING AUTHORIZED

1. New.

All outdoor advertising authorized by Title 18, Arizona Revised Statutes, chapter 7, article 1, sections 18-711 to 18-720 inclusive, to be erected in areas zoned commercial or industrial under authority of law or in business areas or unzoned commercial or industrial areas as defined in this agreement, shall after the effective date of this agreement be subject to the specifications for size, lighting, and spacing as set forth in this agreement and may be placed and maintained along the interstate and primary highway systems within six hundred sixty (660) feet of the edge of the right-of-way.

2. Existing.

Outdoor advertising lawfully existing within 660 feet of the edge of the right-of-way along the interstate and primary systems in areas zoned commercial or industrial under authority of law or in business areas or unzoned commercial or industrial areas as defined in this agreement may continue to be maintained as is but need to conform only to the specification for lighting as set forth in this agreement.

OUTDOOR ADVERTISING SPECIFICATIONS

1. Spacing.

Spacing is defined as the minimum distance from other outdoor advertising allowed by the act or these regulations.

On the same side of a freeway - 500 feet.

On the same side of a primary highway not a freeway:

(a) Outside municipal limits - 300 feet

(b) Within municipal limits - 100 feet

Minimum spacing does not apply when outdoor advertising is separated by a building or other sight obstruction in such a manner that only one display located within the minimum distances specified is visible from the highway at any one time.

Spacing distances shall be measured along the nearest edge of the pavement to a point directly opposite the outdoor advertising.

- On-premise or sale-of-property outdoor advertising shall not be counted or measured in spacing specifications.

All designated interstate alignment whether present freeway or not shall be considered a freeway for these specifications.

No outdoor advertising shall be erected at interchanges between the intersecting road and a point 500 feet beyond the point of pavement widening at the exit from or entrance to the main-traveled way on interstate highways and primary freeways located outside of municipal limits.

No outdoor advertising shall be placed within five hundred feet of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way at scenic overlooks or safety roadside rest areas on any portion of a freeway.

2. Size.

Maximum area is 1200 square feet.

Maximum vertical facing dimension is 25 feet.

Maximum horizontal facing dimension is 60 feet. (Includes border and trim, and excludes base, apron supports and other structural members.)

Size limitations apply to each facing.

The maximum area is measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the entire advertisement.

Two advertising displays may be placed in a facing if maximum area for each does not exceed 350 square feet.

Back to back or V-type signs may be placed with maximum area allowed for each facing.

3. Lighting.

Outdoor advertising may be illuminated except as follows:

If visible from the main-traveled way and displaying any red, flashing, blinking, intermittent, or moving light or lights likely to be mistaken for a warning or danger signal, excepting that part necessary to give public service information such as time, date, weather, temperature or similar information.

If any illumination thereon is of such brilliance and so positioned as to blind or dazzle the vision of travelers on the main-traveled way.

MUNICIPAL OR COUNTY CONTROL

If an incorporated municipality or county desires to control outdoor advertising along interstate or primary highways, it may do so upon request to the commission and certification by the commission to the secretary of transportation that the municipality or county has enacted comprehensive zoning ordinances and by ordinance regulates the size, lighting, and spacing of outdoor advertising in zoned commercial and industrial areas along interstate and primary highways, provided that municipalities or counties may not assume control of outdoor advertising under the provisions of this paragraph if the ordinance provisions are less restrictive than the provisions of this agreement.

GENERAL

The provisions contained herein shall constitute the acceptable standards for effective control of outdoor advertising signs, displays, and devices within the scope of this agreement.

Nothing contained herein shall be construed to abrogate or prohibit the state, a municipality or county from adopting standards which are more restrictive in controlling outdoor advertising than the provisions of this agreement.

In the event the provisions of the Highway Beautification Act of 1965 as amended in 1968 are further amended by subsequent action of Congress, or the provisions of chapter 7, article 1, sections 18-711 to 18-720 inclusive, Arizona Revised Statutes, are amended by subsequent action of the Legislature of the State of Arizona, the parties reserve the right to renegotiate this agreement or to modify it to conform with any amendment.

EFFECTIVE DATE

The provisions contained in this Agreement which conform with the current Arizona Revised Statutes shall become effective when signed and executed on behalf of both the State of Arizona and the United States of America.

The provisions contained in this Agreement which may not conform with the current Arizona Revised Statutes shall become effective when signed and executed on behalf of both the State of Arizona and the United States of America, pursuant to the resolution of the Highway Commission of October 1, 1971 and shall remain in effect until the end of the next regular session of the Arizona Legislature.

IN WITNESS WHEREOF, the State has caused this Agreement to be duly executed in its behalf, and the Secretary of Transportation has likewise caused the same to be duly executed in his behalf as of the dates specified below.

For the United States of America

Federal Highway Administrator

For the State of Arizona

Director of Highways
Arizona Highway Department

SURFACE TRANSPORTATION ASSISTANCE ACT OF 1978

P.L. 95-599, see page 92 Stat. 2689

House Report (Public Works and Transportation Committee) No. 95-1485, Aug. 11, 1978 [To accompany H.R. 11733]

Senate Report (Environment and Public Works Committee) No. 95-833, May 15, 1978 [To accompany S. 3073]

House Conference Report No. 95-1797, Oct. 14, 1978 [To accompany H.R. 11733]

Cong. Record Vol. 124 (1978)

DATES OF CONSIDERATION AND PASSAGE

House September 28, October 15, 1978

Senate October 3, 15, 1978

The House Report (this page) and the House Conference Report (p. 6693) are set out.

HOUSE REPORT NO. 95-1485

[page V]

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within the geographic limits of the specific economic hardship area. It is not uncommon for enterprises to be located some distances from the interstate and Federal-aid primary highways which are traveled by the public to whom they offer their goods and services upon whose patronage their economic well-being is dependent. This situation exists, for example, where highways have bypassed towns, where businesses are located along access-controlled highways and some distances from the interchange that provides access to their establishments, and where natural and other attractions are not in close proximity to the highway. In such instances, measurable substantial economic hardship, such as the loss of sales, income, and jobs attributable to the removal of directional information signs, may impact a specific area with geographic limits that do not extend to the sites of such signs along the highway. To make subsection (o) realistic and workable, it is recommended that the subsection be amended to delete the language that only directional information signs located within the geographic limits of the specific economic hardship area may be retained.

Subsection (c) of section 116 would amend subsection (o) of section 131, title 23, United States Code, to carry out these two recommendations.

SECTION 117—ELECTRONIC SIGNS

The Bonus Act of 1958 clearly permits the display of on-premise signs along the Interstate System which advertise the sale or lease of, or activities being conducted upon, the real property where the signs are located. Regulations have been promulgated, however, binding the 24 States which have signed bonus agreements to prohibit such on-premise signs along the interstate which contain, include or are illuminated by flashing lights. In addition, the Department of Transportation has characterized as a flashing light electronic information displays which neither flash nor animate static information, but where the only movement is the periodic changing of information against a solid, colorless background. These displays are engineered for maximum legibility and readibility, having constant light level controls and glare reducing screens. The Department's attempt to equate these devices with flashing signs would be prohibited under this section, and the Secretary would be required to revise existing bonus agreements to permit the display of these devices in on-premise areas.

The Secretary would also be required to revise agreements under 23 U.S.C. 131(d) relating to the display of outdoor advertising in commercial and industrial areas in any case where the same prohibitive standards are being applied to such devices.

The messages should not be displayed in a manner which could cause traffic hazards.

SECTION 118—HIGHWAY BRIDGE REPLACEMENT PROGRAM

Due to the seriousness and extensive cost of the national bridge problem, the Special Bridge Replacement Program must be substantially improved. This provision contains several major changes in the program.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT 1670

Mr. CHAFEE. Mr. President, I send to the desk an unprinted amendment and ask that it be considered.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. CHAFEE) proposes unprinted amendment No. 1670.

NATIONAL TRANSPORTATION POLICY STUDY COMMISSION

Page 58, line 6, insert:

SEC. 146. Section 154(c) of the Federal-Aid Highway Act of 1976 is amended by striking out "December 31, 1978" and inserting in lieu thereof "July 1, 1979."

EXTENSION OF THE REPORTING DATE OF THE NATIONAL TRANSPORTATION POLICY STUDY COMMISSION

Mr. CHAFEE. Mr. President, as a member of the National Transportation Policy Study Commission, I offer this amendment today to extend the reporting date of the final report of the Commission from December 31, 1978, to July 1, 1979. This amendment has already been adopted in the House Public Works and Transportation Subcommittee.

As you are aware, Mr. President, and I am sure you are aware, the Transportation Commission was established by the 1976 Federal-Aid Highway Act and given the mandate of examining all modes of transportation, both domestic and international, and both passenger and freight, the final report is to contain recommendations to Congress and to the President on transportation policy that must be implemented to bring about a more responsive balanced transportation system through the year 2000. As you can readily tell, this is a job of great magnitude.

Unfortunately, because of start-up difficulties, the Commission completed hiring its top staff only in June of 1977. This means that the bulk of the study has only been underway for less than a year. Congress originally envisioned a 2-year study for this critical Commission, and I think it only appropriate that the reporting deadline be extended to allow the full 2-year time period. I wish to stress at this point that no new additional appropriations are anticipated to meet the 6-month extension.

I believe that we should provide the time needed by those of us on the commission to deliberate the alternative policy recommendations being developed.

That completes by statement. I move that the amendment be agreed to.

Mr. BENTSEN. Mr. President, I have discussed the amendment with the manager of the bill for the minority. It certainly appears to be a worthwhile contribution and a necessary one, the extension for 6 months to complete the study. I support it and yield back the remainder of my time.

Mr. CHAFEE. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 1671

(Purpose: To amend the Federal Aid to Highways Act)

Mr. JACKSON. Mr. President, I call up my amendment which is at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Washington (Mr. JACKSON) proposes an unprinted amendment numbered 1671.

Mr. JACKSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 31, after line 6, insert the following:

(c) Clause (3) of subsection (c) of section 131 of title 23, United States Code, is amended by inserting immediately after "devices," the following "including those which may be changed at reasonable intervals by electronic process or by remote control,". (d) Subsection (j) of section 131 of title 23, United States Code, is amended by inserting immediately after "agreement" at the end of the first sentence, the following: "; provided that permission by a State to erect and maintain information displays which may be changed at reasonable intervals by electronic process or remote control and which provide public service information or advertise activities conducted on the property on which they are located shall not be considered a breach of such agreement or the control required thereunder.

Mr. JACKSON. Mr. President, the purpose of this amendment is to clarify the on-premise exemption under section 131 to accommodate improvements in sign technology. We need to update what is permissible under the Bonus Act agreements that many States entered into before this modern technology existed.

Current law permits signs visible from the highway if they describe activities being conducted on the premises. However, confusion in the interpretation of these Bonus Act agreements has resulted in extensive litigation, and differing interpretations between State highway departments as to the interpretation of these agreements has compounded the confusion.

Purely and simply, what this amendment will allow is the use of electronic signs on the premises of businesses adjacent to interstate highways. It does not extend beyond this as some have advocated to off premise commercial and industrially zoned properties. That is an entirely different matter.

The Federal Interstate Highway Systems now use these electronic information displays to communicate important highway safety information, such as warnings to the motoring public. They have proven to be of positive safety and public information benefit.

Mr. President, the second part of my amendment insures that States which permit the use of these modern information displays will not be penalized under the Bonus Act. By this subsection the Secretary of Transportation would take the necessary action to make the Bonus Act contracts comply with the purpose of the amendment.

Mr. STAFFORD. Mr. President, will the manager of the bill yield me some time?

Mr. BENTSEN. If I might just comment for a moment, then I will yield.

From what I have seen of the Senator's amendment, I think it is a clarification that will be helpful and deals with the on-premise signs.

I have great concern about the House version which would go off premise and would mandate it, in effect, instead of just a study of regulations.

Therefore, I hope the Senator from Vermont is going to deal with that particular question because, as I understand it, he shares the same concern.

Mr. STAFFORD. Mr. President, I do, indeed, share the same concern as the distinguished manager of the bill on the majority side, with respect to further electronic signs beyond those which might be under this amendment authorized onpremise for activities carried on premise.

Mr. BENTSEN. I yield such time as the Senator desires.

Mr. STAFFORD. Mr. President, I thank the manager of the bill for yielding me time, which I will not require at any great length.

I have examined the existing law and the amendment of the distinguished Senator from Washington (Mr. JACKSON).

Mr. President, I want to register my concern over any proliferation of these electronic signs off premise. My concern is that these signs, if sanctioned off premise, may be a threat to highway safety.

No one at this time can say with certainty that those signs are more hazardous than regular billboards.

We can say with assurance that an illuminated sign diverts the motorist's attention more than a nonilluminated one.

We also know that flashing signs are more distracting than illuminated ones.

And we have good evidence that 25 percent of automobile accidents involve distractions—by signs and other objects—as a principal cause.

As I understand the distinguished Senator's amendment it removes any Federal barrier only to electronic signs which provide public service information or advertise activities on the property on

which they are located. This does not change Federal regulations forbidding these signs in commercial or industrial areas, where the signs are not on-premise. Is that correct?

Mr. JACKSON. That is correct.

Mr. STAFFORD. Is it fair to say that permitting these signs only onpremise is as far as the Senator from Washington believes it advisable to go, given the lack of experience in judging the effect they may have on the traveling public?

Mr. JACKSON. I think that is a fair statement.

Mr. STAFFORD. Would the Senator agree that a good assessment of the effect of electronic signs on highway safety should be made before these signs are permitted to proliferate further?

Mr. JACKSON. I think that is imperative.

Mr. STAFFORD. I thank the Senator from Washington.

Mr. President, I say to the managers of the bill that, having long been deeply interested in the highway beautification program, I personally will not object to the acceptance of this amendment.

Mr. JACKSON. Mr. President, I thank the distinguished Senator from Vermont and the distinguished Senator from Texas who have been consulted in connection with this amendment. I think it will greatly clarify the existing law. I appreciate the cooperation. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Is all time yielded back?

Mr. CHAFEE. No, not on this side.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I am deeply interested in this whole subject, as is, of course, the Senator from Washington and the Senator from Vermont.

As we know, we originally got into a bonus system for the States willing to agree to more restrictive agreements 7 years prior to passage of the Highway Beautification Act. Those States are continuing to receive this bonus.

It seems to me we have got to be careful here to make certain that those States receiving the bonus are, indeed, putting some more extensive restrictions on themselves, or are adhering to more severe restrictions than are on the other States which are not entitled to the bonus.

To a degree, this amendment, it is true, is a question of interpretation. I understand that. But it seems to be chipping away a bit on the restrictions that are imposed in order to receive the bonus.

Now, it is a close call, and there are many who would maintain, and I find it hard to dispute, that these electronic signs were not the type that they were attempting to prohibit when the agreements were signed and the bonuses granted.

Mr. President, I am not going to object to this, on the part of the minority in connection with this bill I am not going to object, but I do think it behooves us on the committee to monitor this bonus provision which, I believe, gives an additional half of 1 percent of individual interstate apportionments to the different States that originally made this commitment around 1958. We must look to see if, indeed, they are doing anything more than States who are not getting the bonus.

The States getting the bonus are controlling on-premise signs, something not covered by the Highway Beautification Act, but if we keep chipping away at what the on-premise restrictions, I am not sure they should still be entitled to the bonus.

I am prepared to support the amendment and yield back the remainder of my time.

Mr. JACKSON. Mr. President, I thank the distinguished Senator from Rhode Island for his statement. I just say that at the time the original legislation was adopted, this technology was not known. It is now being used, however, by State highway departments for safety purposes. I am sure we have seen all those signs.

I feel very strongly, as both of my colleagues have expressed it here, Mr. President, that we should not extend the sign business in terms of what is now prohibited by law. It is only in connection with that interpretation that this amendment is offered.

Mr. CHAFEE. Mr. President, just one minute. I say that I certainly agree with the Senator from Washington. I think the colloquy the Senator from Vermont had is going to be very valuable when we go to the conference.

Mr. JACKSON. I agree, and I thank the Senator.

Mr. RANDOLPH. Mr. President, Senators BENTSEN, CHAFEE, and STAFFORD have discussed this amendment proposed by the knowledgeable Senator from Washington (Mr. JACKSON).

I do feel it is important to indicate for the record that no member of our Committee on Environment and Public Works has been closer to the continuing development of highway beautification than has the Senator from Vermont (Mr. STAFFORD).

He has brought to it a commitment and expertise which we all recognize.

After having studied the amendment, we feel it is equitable, it is valid, and can well be a part of this legislation.

So from the standpoint of the committee we are ready to accept the amendment.

The PRESIDING OFFICER. Is all time yielded back?

Mr. RANDOLPH. I yield back the remainder of my time.

Mr. JACKSON. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1672

(Purpose: To provide authorizations for the priority primary program)

Mr. STEVENSON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an unprinted amendment numbered 1672.

Mr. STEVENSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 3, line 13, strike $1,475,000,000 and insert in lieu thereof, $1,600,000,000.

On page 8, after line 11, insert:

(3) In the case of priority routes, $125,000,000 per fiscal year of the sums authorized for each of the fiscal years ending September 30, 1979, and September 30, 1980 by subsection (a)(1) of this section for such routes shall not be apportioned. Such $125,000,000 of each such authorized sum shall be available for obligation on the date of apportionment of funds for each such fiscal year, in the same manner and to the same extent as the sums apportioned on such date, except that such $125,000,000 shall be available for obligation at the discretion of the Secretary of Transportation only for projects of unusually high cost or which require long periods of time for their construction. Any part of such $125,000,000 not obligated by such Secretary on or before the last day of the fiscal year for which authorized shall be immediately apportioned in the same manner as funds apportioned for the next succeeding fiscal year for such routes, and available for obligation of the same period as such apportionment.

Mr. STEVENSON. Mr. President, this amendment would add $125 million per year to the Federal-aid primary program. These funds would not be apportioned like ordinary primary program moneys. They would be available for obligation at the discretion of the Secretary of Transportation, but only for primary system projects of unusually high cost or which require unusually long periods of time for their construction. Because of the need to use regular primary program apportionments to maintain primary system routes, funds are not available to upgrade or add needed capacity to high-priority, heavily used primary system roads.

Consequently, the House bill contains $125 million for such a Federal aid primary program. The purpose of this amendment is to add to the Senate bill the same amount for the same purpose.

The amendment I am offering will help provide the States with the extra help they need to finance these needed highway projects. Two Illinois projects are good examples of the type of project that this amendment is designed to assist—the Rockford-Decatur expressway and the Chicago-Kansas City highway.

The Rockford-Decatur route runs for 156 miles through the center of Illinois. Because of the heavy traffic on this route, which will reach over 20,000 vehicles per day in the near future, the State of Illi-

sure me that no amendments were adopted that were not germane?

Mr. HOLLENBECK. Yes, I can assure the gentleman of that.

Mr. ASHBROOK. I thank the gentleman.

Mr. HOLLENBECK. Mr. Speaker, further reserving the right to object, I concur in the judgment of my colleague that the amendment he offers represents a constructive compromise with the Senate. It will also permit the National Academy to be completed at the earliest possible moment.

I urge the House to adopt the amendment offered by my colleague, Mr. FUQUA.

Further, Mr. Speaker, I join my colleague in urging the House to adopt this amendment to the Senate amendment to H.R. 11291 authorizing appropriations for fiscal year 1979 for the National Fire Prevention and Control Administration and for the Center for Fire Research.

Arson is an extremely important problem, and I fully concur that greater efforts should be applied toward its prevention. I was, however, concerned that the establishment of a de facto arson squad by the NFPCA was inappropriate, and more important, in an era of limited funds I believe that there are other areas where the Federal Government can better spend its money in assisting States and local governments to reduce arson. Specifically, as my colleague mentioned, assembling better arson statistics, developing better training for arson investigators, developing more advanced arson detection and prediction techniques as well as the support of public education are necessary. I believe the amendment supports those general needs. While the report called for by the amendment would specifically examine some of the issues raised in determining whether a Federal fire investigation capability is desirable, the report would also seek to pinpoint important areas for research on the prediction and detection of arson.

Finally, the amendment will enable us at last, 5 years after the enactment of the Federal Fire Prevention and Control Act, to establish the National Fire Academy. The Appropriations Committee has appropriated money for the construction of Academy facilities. Those funds together with the proceeds of the sale of the Majorie Webster site will permit completion of a National Academy. After all the delays, we should get on with that job. On this point I, however, join my colleague, in urging those responsible for selecting a new site to bear in mind that a major reason for a central National Fire Academy is to permit fire service personnel and other professionals concerned with fire prevention and control from all over the country and from other countries as well to assemble, to exchange ideas and to learn from each other the newest and the most advanced techniques. Therefore, I hope that a new site would be highly accessible.

Mr. Speaker, to conclude, I urge my colleagues to adopt the amendment which I understand the Senate will accept.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

A motion to reconsider was laid on the table.

SURFACE TRANSPORTATION ASSISTANCE ACT OF 1978

Mr. HOWARD. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 11733) to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, for highway safety, for mass transportation in urban and in rural areas, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. HOWARD).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 11733, with Miss JORDAN in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on Friday, September 15, 1978, all time for general debate had expired. Pursuant to the rule, the Clerk will now read by titles the amendment in the nature of a substitute recommended by the Committee on Public Works and Transportation now printed in the reported bill as an original bill for the purpose of amendment, and said substitute shall be read for amendment by titles instead of by sections. No amendment to title V of said substitute, and no amendmbent to said substitute changing or modifying said title, shall be in order except amendments recommended by the Committee on Ways and Means.

The Clerk will read.

The Clerk read as follows:

H.R. 11733

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Surface Transportation Assistance Act of 1978".

TITLE I

SHORT TITLE

SEC. 101. This title may be cited as the "Federal-Aid Highway Act of 1978".

REVISION OF AUTHORIZATION FOR APPROPRIATIONS FOR THE INTERSTATE SYSTEM

SEC. 102. (a) Subsection (b) of section 108 of the Federal-Aid Highway Act of 1956, as amended, is amended by striking out "the additional sum of $3,625,000,000 for the fiscal year ending September 30, 1980," and all that follows down through the period at the end of the sentence and by inserting in lieu thereof the following: "the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1980, the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1981, the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1982, the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1983, the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1984, the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1985, the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1986, the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1987, the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1988, the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1989, and the additional sum of $2,333,000,000 for the fiscal year ending September 30, 1990.".

(b) $3,500,000,000 of the sum authorized for each of the fiscal years ending September 30, 1980, September 30, 1981, September 30, 1982, and September 30, 1983, by the amendment made by subsection (a) of this section shall be apportioned in accordance with the applicable provisions of chapter 1 of title 23 of the United States Code. $500,000,000 of each such authorized sum shall be available for obligation on the date of each such apportionment in the same manner and to the same extent as the sum apportioned on such date except that (1) the obligation of such $500,000,000 shall be at the discretion of the Secretary of Transportation, (2) half of such $500,000,000 shall be obligated only for projects on those routes in rural areas which are on the National System of Interstate and Defense Highways on the date of enactment of this subsection which are essential for the completion of continuous sections of such System, (3) half of such $500,000,000 shall be obligated only for projects on those routes in urban areas which are on such System on the date of enactment of this subsection which are of unusually high cost or which would otherwise require long periods of time for their construction, and (4) any part of such $500,000,000 not obligated before October 1 of the fiscal year for which such sum is authorized shall be immediately apportioned in the same manner as was the $3,500,000,000 authorized for such fiscal year, and such part of such $500,000,000 shall be available for obligation for the same period as is the apportionment of such $3,500,000,000. A project which has received Federal financial assistance from any such $500,000,000 shall not be eligible for withdrawal of approval by such Secretary under section 103(e) (3) or (4) of title 23, United States Code.

AUTHORIZATION OF USE OF COST ESTIMATES FOR APPORTIONMENT OF INTERSTATE FUNDS

SEC. 103. The Secretary of Transportation shall apportion for the fiscal year ending September 30, 1980, the sums authorized to be appropriated for such periods by section 108(d) of the Federal-Aid Highway Act of 1956, as amended, for expenditures on the National System of Interstate and Defense Highways, using the apportionment factors contained in revised table 5 of Committee Print 95-49 of the Committee on Public Works and Transportation of the House of Representatives.

HIGHWAY AUTHORIZATION

SEC. 104. (a) For the purpose of carrying out the provisions of title 23, United States Code, the following sums are hereby authorized to be appropriated:

(1) For the Federal-aid primary system in rural areas, including the extensions of the Federal-aid primary system in urban areas, and the priority primary routes, out of the

dicapped persons shall be denied access to any route on the Interstate System if such vehicle does not exceed 25,000 pounds per single axle-weight and the width thereof does not exceed 102 inches.".

FEDERAL SHARE

SEC. 115. (a) The first sentence of subsection (a) of section 120 of title 23, United States Code, is amended by striking out "70 per centum" each place it appears and inserting in lieu at each such place "80 per centum".

(b) Subsection (d) of section 120 of title 23, United States Code, is amended by striking out "70 per centum" and inserting in lieu thereof "80 per centum".

(c) The first sentence of subsection (f) of section 120 of title 23, United States Code, is amended by striking out "70 per centum" and inserting in lieu thereof "80 per centum".

(d) Subsection (g) of section 131 of title 23, United States Code, is amended by striking out "75 per centum" and inserting in lieu thereof "80 per centum".

(e) Subsections (i) and (j) of section 136 of title 23, United States Code, are each amended by striking out "75 per centum" and inserting in lieu thereof "80 per centum".

(f) Subsection (e) of section 148 of title 23, United States Code, is amended by striking out "70 per centum" and inserting in lieu thereof "80 per centum".

(g) Subsection (b) of section 155 of title 23, United States Code, is amended by striking out "70 per centum" and inserting in lieu thereof "80 per centum".

(h) Subsection (a) of section 215 of title 23, United States Code, is amended by striking out "70 per centum" and inserting in lieu thereof "80 per centum".

(i) Subsection (a) of section 118 of the Federal-Aid Highway Amendments of 1974 (Public Law 93-643) is amended by striking out "70 per centum" and inserting in lieu thereof "80 per centum".

(j) (1) The first sentence of subsection (d) of section 402 of title 23, United States Code, is amended by inserting "provisions relating to the Federal share," immediately after "other than".

(2) Subsection (d) of such section 402 is amended by inserting immediately after the first sentence thereof the following new sentence: "The Federal share payable to implement highway safety programs under this section shall be 90 per centum of the cost thereof.".

(k) The last sentence of subsection (c) of section 408 of title 23, United States Code, is amended by striking out "title shall not exceed 70 per centum" and inserting in lieu thereto "section shall not exceed 90 per centum"

(l) The amendments made by subsections (a) through (k) of this section shall take effect with respect to obligations incurred after the date of enactment of this section.

(m) Section 120 of title 23, United States Code, is amended by adding at the end thereof the following new subsection:

"(i) Notwithstanding any other provision of this section or of this title, the Federal share payable on account of any project under this title in the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands shall be 100 per centum of the total cost of the project.".

CONTROL OF OUTDOOR ADVERTISING

SEC. 116. (a) Subsection (g) of section 131, title 23, United States Code, is amended by striking the period at the end of the first sentence and adding the following "and not permitted under subsection (c) of this section, whether or not removed pursuant to or because of this section.".

(b) Subsection (k) of section 131, title 23, United States Code, is amended by striking the first word and inserting in lieu thereof the following: "Subject to compliance with subsection (g) of this section for the payment of just compensation, nothing".

(c) Subsection (c) of section 131, title 23, United States Code, is amended to read as follows:

"(c) The Secretary shall approve the request of a State to permit retention of directional signs, displays, and devices lawfully erected under State law in force at the time of their erection which do not conform to the requirements of subsection (c), where such signs, displays, and devices were in existence on May 5, 1976, and where the State demonstrates that such signs, displays, and devices (1) provide directional information about goods and services in the interest of the traveling public, and (2) are such that removal would work a substantial economic hardship in any specific area defined by such State.".

ELECTRONIC SIGNS

SEC. 117. (a) Clause (3) of subsection (c) of section 131 of title 23, United States Code, is amended by inserting immediately after "devices" the following "including those which may be changed by electronic process or by remote control,".

(b) Subsection (d) of section 131 of title 23, United States Code, is amended by adding at the end thereof the following new sentence: "Nothing in this section shall authorize the Secretary to prohibit the use of any sign, display, or device which may be changed by electronic processes or by remote control in any commercial or industrial area (whether zoned or unzoned) subject to this subsection.".

(c) The Secretary of Transportation shall make such revisions in agreements entered into with State highway departments under section 131 of title 23, United States Code, as in effect on June 30, 1965, to make bonus payments for the control of outdoor advertising signs, displays, and devices in order to carry out the amendments made by subsection (a) of this section.

(d) The Secretary of Transportation shall make such revisions in agreements entered into with States under section 131 of title 23, United States Code, relating to the control of outdoor advertising in any commercial or industrial area (whether zoned or unzoned) as may be necessary to carry out the amendments made by subsection (b) of this section.

HIGHWAY BRIDGE REPLACEMENT PROGRAM

SEC. 118. (a) Section 144 of title 23 of the United States Code is amended to read as follows:

"§ 144. Highway bridge replacement program.

"(a) Congress hereby finds and declares it to be in the vital interest of the Nation that a highway bridge replacement program be established to enable the several States to replace highway bridges, in whole or in part, over waterways, other topographical barriers, other highways, or railroads when the States and the Secretary find that a bridge is significantly important and is unsafe because of structural deficiencies, physical deterioration, or functional obsolescence.

"(b) The Secretary, in consultation with the States, shall (1) inventory all those highway bridges on any Federal-aid system which are bridges over waterways, other topographical barriers, other highways, and railroads; (2) classify them according to serviceability, safety, and essentiality for public use; (3) based on that classification, assign each a priority for replacement; and (4) determine the cost of replacing each such bridge, in whole or in part, with a comparable facility.

"(c) The Secretary, in consultation with the States, shall (1) inventory all those highway bridges on public roads, other than those on any Federal-aid system, which are bridges over waterways, other topographical barriers, other highways, and railroads, (2) classify them according to serviceability, safety, and essentiality for public use; (3) based on that classification, assign each a priority for replacement, and (4) determine the cost of replacing each such bridge, in whole or in part, with a comparable facility.

"(d) Whenever any State or States make application to the Secretary for assistance in replacing a highway bridge, in whole or in part, which the priority system established under subsections (b) and (c) of this section shows to be eligible, the Secretary may approve Federal participation in replacing such bridge, in whole or in part, with a comparable facility. The Secretary shall determine the eligibility of highway bridges for replacement for each State based upon the unsafe highway bridges in such State. In approving projects under this section, the Secretary shall give consideration to those projects which will remove from service those highway bridges most in danger of failure.

"(e) Funds authorized to carry out this section shall be apportioned on October 1 of the fiscal year for which authorized. Funds authorized to carry out this section for the fiscal year ending September 30, 1979, September 30, 1980, September 30, 1981, and September 30, 1982, shall be apportioned to the States in accordance with table 1 of Committee Print 95-49 of the Committee on Public Works and Transportation of the House of Representatives. Funds authorized to carry out this section which are apportioned under this section shall be available for expenditure for the same period as funds apportioned for projects on the Federal-aid primary system under this title. Any funds not obligated at the expiration of such period shall be reapportioned by the Secretary to other States in accordance with table 1 of Committee Print 95-49 of the Committee on Public Works and Transportation of the House of Representatives.

"(f) The Federal share payable on account of any highway bridge replaced, in whole or in part, under this section shall be 80 per centum of the cost thereof.

"(g) To carry out this section, there is authorized to be appropriated out of the Highway Trust Fund, $100,000,000 for the fiscal year ending June 30, 1972, $150,000,000 for the fiscal year ending June 30, 1973, $25,000,000 for the fiscal year ending June 30, 1974, $75,000,000 for the fiscal year ending June 30, 1975, and $125,000,000 for the fiscal year ending June 30, 1976, to be available until expended. Of the $2,000,000,000 per fiscal year for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, and September 30, 1982, authorized by paragraph (6) of section 202 of the Highway Safety Act of 1976, $1,600,000,000 shall be apportioned as provided in subsection (e) of this section. $200,000,000 per fiscal year of the amount authorized for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, and September 30, 1982, shall be available for obligation on the date of each such apportionment in the same manner and to the same extent as the sums apportioned on such date except that the

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

SURFACE TRANSPORTATION ASSISTANCE ACT OF 1978

Mr. HOWARD. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 11733) to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, for highway safety, for mass transportation in urban and in rural areas, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. HOWARD).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 11733, with Miss JORDAN in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on Thursday, September 21, 1978, title I had been considered as having been read and open to amendment at any point.

Are there any amendments to title I?

Mr. HOWARD. Madam Chairman, I move to strike the last word.

Madam Chairman, I yield to the gentleman from Pennsylvania (Mr. ROONEY).

Mr. ROONEY. Madam Chairman, I thank the gentleman for yielding at this time.

Madam Chairman, first, I want to commend you and the distinguished Chairman of your full Committee on what I consider outstanding surface transportation legislation. The bill addresses all areas of surface transportation within your jurisdiction in a very comprehensive and timely fashion. I believe that you, your fellow committee members and your staff should be commended on an outstanding bill and an excellent report. Of course, certain of the bill's provisions affecting railroads lie within the jurisdiction of the Committee on Interstate and Foreign Commerce as acknowledged in the letter appearing on pages 71 to 72 of the report.

One of these matters over which our committees have joint jurisdiction is energy impacted rail highway crossings addressed by section 123 of the bill and discussed on page 24 of the report. In the report you mention two worthwhile projects brought to the attention of the committee, one of which is in Allentown, Pa.

I am particularly interested in confirming which project in Allentown, Pa., the report addresses, because Allentown lies within my district. Is not that project the proposed grade separation between a multitrack ConRail mainline and Basin Street in Allentown?

Mr. HOWARD. Yes. Some time ago, representatives of Lehigh County visited with our committee staff and explained the problem of trains, particularly long coal trains, interrupting traffic on Basin Street which is a major artery across the Lehigh Valley of Pennsylvania. In this case, immediate steps by the Federal Government should be taken to alleviate the traffic congestion by building a grade separation. It was projects such as these that heightened the committee's realization that this is a national problem closely related to our national energy goal of increased coal usage. We would expect the FHWA could begin immediate implementation of this section, particularly with respect to projects such as the Basin Street crossing.

Mr. ROONEY. I thank the distinguished gentleman for his explanation and for his support of this provision which is so important to both the railroad and highway systems, as well as our national energy goals.

Mr. TREEN. Madam Chairman, will the gentleman yield?

Mr. HOWARD. I yield to the gentleman from Louisiana.

Mr. TREEN. Madam Chairman, I would like to commend the gentleman from New Jersey (Mr. HOWARD) and the gentleman from Pennsylvania (Mr. SHUSTER) for presenting the House with a fine piece of legislation.

I am particularly interested in section 122 authorizing the appropriation, out of the highway trust fund, of $50 million annually for the repair of public roads impacted by energy development.

I would like to ask my colleagues from the committee a question. Section 122 speaks of repairing public roads "which have incurred a substantial increase in use as a result of transportation activities to meet national energy requirements and will continue to incur such use for such purpose."

The roads in my congressional district are in terrible condition as a result of the transportation of heavy oil field equipment, drilling pipe and other supplies and materials. This equipment is used both onshore and on the Outer Continental Shelf for oil and gas exploration and production. The fabrication of the gigantic rigs for offshore use also results in highway use by extremely heavy trucks, which damage the highways built on the soft coastal soil.

Your report notes that highways are used for the transportation of essential energy commodities such as oil, natural gas, coal, and uranium. Most oil and gas is transported by pipeline, but the equipment to explore for and extract these minerals is carried over our Federal and State highways. I hope that the committee intended for States to be eligible for these special funds for the repair of roads heavily used in the transportation of equipment needed in each stage of mining these four important energy resources—oil, natural gas, coal, and uranium—whether or not the commodities are themselves transported over those highways.

Mr. HOWARD. Madam Chairman, I can assure the gentleman that the provision is intended to authorize the repair of highways in just such circumstances as the gentlemen describes, as well as those highways used for the transportation of those valuable energy resources. As the gentleman well knows, the committee put great emphasis on road maintenance in this bill. We were especially concerned about the deterioration of those roads that are vital for the transport of our scarce energy resources and the transportation of the equipment necessary for the extraction of those resources.

Mr. SHUSTER. Madam Chairman, will the gentleman yield?

Mr. HOWARD. I yield to the gentleman from Pennsylvania.

Mr. SHUSTER. Madam Chairman, I thank my colleague from Louisiana for raising this question. Other Members have asked similar questions before the bill came to the floor. The members of the committee were, indeed, concerned about repairing the highway damage from energy extraction equipment. The gentleman is from a State with a high level of energy activities and I would point out that the bill expressly provides for funds for roads incurring a substantial increase in the use of such roads as a result of energy activity now occurring and to occur in the future.

Mr. TREEN. Madam Chairman, I thank the gentlemen. I know I speak for the entire Louisiana delegation in thanking the committee for its foresight in including this provision, which is of importance to the achievement of our Nation's energy goals.

AMENDMENTS OFFERED BY MR. HARSHA

Mr. HARSHA. Madam Chairman, I offer two amendments dealing with the bridge replacement program, and I ask unanimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The CHAIRMAN. The Clerk will report the amendments.

The Clerk read as follows:

Amendments offered by Mr. HARSHA: Page 111, line 21, strike out the period and insert in lieu thereof a comma and the following: "except that subsection (b) of section 502 of such Act of 1946 and section 9 of the Act of March 3, 1899 (30 Stat. 1151) shall not apply to any bridge constructed, reconstructed, or replaced, in whole or in part, with assistance under this title, if such bridge is over waters which are not subject to the ebb and flow of the tide, and which are not used and are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce.".

Page 151, after line 10, insert the following:

ACCELERATION OF BRIDGE PROJECTS

SEC. 159. The Secretary of Transportation shall carry out a project to demonstrate the feasibility of reducing the time required from the time of a request for project approval through completion of construction of bridge projects required to replace unsafe bridges. Not to exceed $30,000,000 of the amount authorized for the fiscal year ending September 30, 1979, by section 202(d) of the Highway Safety Act of 1978 to be apportioned under section 144(e) of title 23, United States Code, shall be set aside before any such apportionment and shall be available for obligation to carry out this section in the same manner and to the same extent as if such funds were apportioned under chapter 1 of title 23, United States Code. Not later than six months after completion of such

provides an additional local source of transit financing to complement the Federal Government's substantial investment. Bridges that are contributing to the support of a federally funded transit system, and which consequently have insufficient funds to carry out required bridge replacement work should be eligible for funding under the bridge replacement program.

The committee report states that major bridges, which cannot be financed from each State's limited apportionment, are intended to be financed from the Secretary's discretionary funds. The report also identifies a number of bridges which the committee intends to have priority eligibility for discretionary funding. One such designated bridge is the Golden Gate Bridge in California. The report then states that—

> It is the intent of the Committee that only bridges on the Federal Aid System . . . will be eligible for replacement in whole or in part under the discretionary program.

Now my problem is that the Golden Gate Bridge, which is made eligible under subsection (1), and which clearly is the type of major bridge intended to be financed from the discretionary funds, is not on the Federal aid system even though the approaches to the bridge from each direction are on the system.

Will the gentleman from New Jersey clarify for me the committee's intent on this matter?

Mr. HOWARD. Madam Chairman, will the gentleman yield?

Mr. DON H. CLAUSEN. I yield to the gentleman from New Jersey.

Mr. HOWARD. Madam Chairman, the gentleman from California raises an important point which is in need of clarification. If a major, significantly important bridge is otherwise eligible under subsection (1), the committee intends that it be eligible for discretionary funds if it is directly connected to a road on the Federal aid system, even though the bridge itself may not be technically designated as on the Federal aid system. The committee intends a functional test to apply, rather than a technical one. In other words, if the Secretary finds that a major bridge is significantly important, and qualifies under subsection (1), it is intended that the bridge be eligible for discretionary funds even though the Federal Highway Administration has not technically designated it as on a Federal aid system. The functional test is that the bridge be directly connected to an onsystem road, and that bridge is in fact a critical link in the efficient operation of the Federal aid system. If those criteria are met, it is the committee's intent that the bridge be eligible for discretionary funds.

Mr. DON H. CLAUSEN. Thank you. That clarifies the interpretation of the language of the committee report.

AMENDMENTS OFFERED BY MR. KOSTMAYER

Mr. KOSTMAYER. Madam Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. KOSTMAYER:

On page 105 strike out line 2 through line 11.

On page 105 strike out line 12 through line 24.

On pages 107 and 108 strike out section 117 in its entirety.

Mr. KOSTMAYER. Madam Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

Mr. HARSHA. Madam Chairman, reserving the right to object, what subject do these amendments deal with?

Mr. KOSTMAYER. The Highway Beautification Act of 1965.

Mr. HARSHA. Madam Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection.

Mr. KOSTMAYER. Madam Chairman, in 1965 the Congress enacted legislation known as the Highway Beautification Act. The purpose of that legislation was to facilitate the removal of billboards in the United States on Federal interstate and primary highways. To encourage that, the Congress provided a very generous system of cash compensation to the owners of billboards when they were removed. This legislation applied only to Federal interstate and primary highways. It did not apply to State roads or to other highways.

The Committee on Public Works and Transportation now has changed the Highway Beautification Act, I think altering it very dramatically for the worse, in that billboards which are taken down not as a result of the Federal law, but billboards which are removed as a result of a local ordinance, must be compensated in the same way, with a very generous cash system rather than under the current system of amortization.

Up until this time, local laws have approved compensation through the process of amortization under which the billboard is removed after a period of years. At the end of that time, the billboard comes down. The billboard owners have been justly compensated under current law which my amendments seek to preserve.

But, now the committee seeks to extend Federal compensation for signs removed not under the Beautification Act, but also as a result of local zoning or land use control. Secretary Adams of the Department of Transportation tells us that this will cost the Federal Government $1.3 billion. The reason for that is that the law sets the Federal share of compensation at 80 percent. As for the remaining 20 percent, the local municipalities simply cannot afford to compensate the billboard owners when those billboards are removed in the same manner that the Federal Government has been doing so. I think it is important for the members of the committee to understand that I am not opposed to compensating billboard owners when we remove their billboards under the Federal law.

Mr. PHILLIP BURTON. Madam Chairman, will the gentleman yield?

Mr. KOSTMAYER. I yield to the gentleman from California.

Mr. PHILLIP BURTON. Madam Chairman, I would initially like to commend the committee for what I think is a first-rate piece of legislation. It treats a number of longstanding problems, I think, with enormous skill.

I deeply regret—and it is not surprising in any major bill—that there can be one item on which there is disagreement. I would like to join with my colleague from Pennsylvania (Mr. KOSTMAYER) in urging that this one item be deleted.

The bill itself is very, very good. I respect the effort and concern of the committee members, but in this instance I fully support our colleague from Pennsylvania (Mr. KOSTMAYER), and urge support of his amendment.

Mr. KOSTMAYER. I thank the gentleman from California. And I add that my amendments are supported by the National Association of Counties, the National League of Cities, by the administration, by the States of New York, California, Pennsylvania Massachusetts, Vermont, and Maine, among others.

I further would tell the Members that if these amendments are not adopted and States fail to comply then it could cost them 10 percent of their Federal highway funds. That is not all this legislation does. It does two other things which I will explain in some detail.

The first is the hardship exemption. A State may apply to the Secretary of Transportation for an exemption. In other words, they may say, "These five counties of our State are a hardship area. May we have billboards in these five counties?"

The Secretary of the Treasury will render a decision allowing the States to have billboards in the hardship area, or not to have billboards in the hardship area. The committee has changed that. They have denied to the Secretary any discretion.

As soon as a State applies for a hardship exemption, the committee now says the Secretary of Transportation must grant it. What happens is the billboard companies want an exemption and they fill out the application and they take it to the State and the State puts it in a State envelope and sends it to the Department of Transportation, and now the Department of Transportation cannot say yes or no; they are required under the committee bill to say yes. The Secretary of Transportation is denied the discretion he has in current law.

The committee also has said a billboard may be erected outside the hardship area if it gives directions to a facility inside the hardship area. If a hardship area is in the extreme eastern part of Pennsylvania, the committee would allow a billboard in the opposite end of the State, in extreme Western Pennsylvania if it tells the traveling public about a facility in the eastern part of the State within a hardship area.

This is a plain and simple gutting of the Highway Beautification Act.

The CHAIRMAN. The time of the gentleman from Pennsylvania (Mr. KOSTMAYER) has expired.

(By unanimous consent, Mr. KOSTMAYER was allowed to proceed for 3 additional minutes.)

Mr. KOSTMAYER. Madam Chairman, this hardship exemption was passed in 1976. I think, and the Secretary of Transportation thinks it should have a little more time to see whether or not it works.

The committee seeks a third and final change. Current law allows what are called computer-controlled signs—what that means is they have flashing billboards whose messages change frequently—only on premise, that is on the property owned by the person. If a fellow owns a motel alongside the road, he can erect these flashing billboards on premise but he is restricted from other areas, from commercial areas and highways. The committee now allows electronic boards off premise. It is a very drastic altering of the current law.

The Secretary of Transportation wrote to me:

The provisions of the 1978 bill would produce a profound change in the direction of the Highway Beautification Program and undermine efforts to control scenic life along our highways. We do not believe such a change is warranted or desirable.

Let me emphasize finally that this will involve the Federal Government in local land-use decisions. Up until now the Federal Government has compensated billboard owners only for billboards removed under Federal law. This bill will require the Federal Government to compensate billboards removed under local laws. If a historic district in the City of Baltimore decides to remove a board, they are able under current law to do so and compensate the billboard owner through the process of amortization. Under these changes the city of Baltimore would have to compensate in cash the owner of the billboard. Neither the city of Baltimore nor any city in this country can afford to meet those costs.

I ask the Members to keep the Federal Government out of local land-use decisions and let them make minimum standards for billboards on Federal highways, but not superimpose Federal requirements on local communities.

Mr. HOWARD. Madam Chairman, I rise in opposition to the amendments.

Madam Chairman, the provision in the committee bill is designed to clarify the compensation provisions of that statute and preclude action which is in opposition to the statutory scheme. The congressional intent underlying the Beautification Act was to assure the prompt removal of billboards along major highways and to prevent other new signs from being constructed in those areas. The statute was predicated on a policy of direct compensation to private individuals who owned the signs and the property on which they were erected in order to avert litigation and assure expeditious removal of billboards. This dual policy of sign removal and assured compensation was first reaffirmed shortly after the statute was enacted in an opinion of the Attorney General interpreting the statute. DOT policy reflected this view from 1966–76. The only Federal court decision on this issue likewise found such intent manifest in the statute. (On the State level, this issue has been decided by four State courts with two rendering decisions consistent with the Federal district court decision and two ruling that police power removal without compensation was consistent with the statute.)

Madam Chairman, I believe the crux of the issue is equity. This House, and the Congress as a whole, have repeatedly said that individual owners must be compensated for the taking of their property. The provision in the committee bill merely reaffirms what has always been the congressional intent.

Examine the legislative history. When the Congress was first considering the Beautification Act of 1965, the question of just compensation was one of the major issues. This matter was debated at length by the House Committee on Public Works. The committee, and ultimately the Congress, decided that just compensation should be paid, rather than removing signs by police power without payment. The requirement for payment was reinforced by enactment of the Federal Aid Act of 1974, when the Congress provided for payment of compensation for the removal of signs that were lawfully erected under State law after October 22, 1965, and before January 1, 1968, the so-called "hiatus period." The House Committee on Public Works, in its report on the 1974 legislation, said:

> * * * subsection (g) of section 131 would be amended to assure that just compensation will be paid for all signs required to be removed which were lawfully erected under State law. This amendment would eliminate the previous ambiguities by assuring that all lawfully erected signs will be treated alike.

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. There are no loopholes by which new signs not already contemplated by the Beautification Act can be constructed. Moreover, only signs which are otherwise legally in place can be eligible for compensation. If the current ambiguity remains, local subdivisions inevitably will continue to circumvent the act and attempt to remove signs through the exercise of local police power without compensation. This will effectively bring the beautification program to a halt since attempts inconsistent with the Beautification Act will undoubtedly be challenged individually in the courts, jurisdiction by jurisdiction. This will lead to protracted delays in the removal of the billboards at issue in these suits and to the expenditure of considerable funds in litigation. Failure to support our position will not serve to further enhance the scenic environment for the purposes of the Beautification Act.

We should do what is fair, Madam Chairman. We should defeat the amendment.

Mr. SHUSTER. Madam Chairman, I move to strike the last word.

Madam Chairman, I rise in strong opposition to this amendment.

In 1965 the Committee on Public Works and Transportation reported it felt strongly:

> That in all economic fairness compensation must be paid to those individuals who will lose their signs.

And there has been example after example which has been referred to by the distinguished chairman of the subcommittee, the gentleman from New Jersey (Mr. HOWARD) where there have been those who have attempted to ignore the act's compensation requirements. We are talking about where, in many cases, little farmers, people in local areas, have land on which there is a sign and from it they receive very modest compensation, $60 a year, $120 a year. It does not seem like much, but to these little farmers and people in rural areas across America, this is meaningful.

Just to buy this amendment here today to make it easier to deny compensation to the many people, particularly throughout rural America, who own the land and who have relied on this modest income would be very unfair.

Lastly, the point should be made that study after study shows that the traveling public across this land wants signs. Certainly they do not want the glitter and glare which have been overkill as far as signs are concerned, but the American people need direction, particularly the traveling public; and they are looking for that by way of signs. We should not go too far and, in effect, undo the good work which has previously been done in highway beautification.

Madam Chairman, for those reasons, I strongly urge the defeat of this capricious amendment.

Mr. RISENHOOVER. Madam Chairman, will the gentleman yield?

Mr. SHUSTER. I yield to the gentleman from Oklahoma.

Mr. RISENHOOVER. Madam Chairman, I thank the gentleman for yielding.

I would like to associate myself with his remarks and with the remarks of the subcommittee chairman. I commend them on a very good job with section 116.

Madam Chairman, I respect my colleague from Pennsylvania but the realistic facts and impact necessitate the inclusion of section 116 in H.R. 11733.

As a matter of fact, the committee feels that the so-called integrity of outdoor advertising program is at stake, and thus the need for section 116.

Section 116 does not change the existing act. Let me assure you this is not the case. Section 116 is not new legislation. The law now reads section 131(g) "Just compensation shall be paid upon the removal of any outdoor advertising signs, displays, or device lawfully erected under state law."

Thus the 1965 act overlays the total spectrum of the interstate and primary system. As to effective control and compensation, the committee's purpose in enacting section 116 was to clarify the 1965 act, not extend or damage it.

DOT estimates over $1 billion as a cost to carry out the provisions of section 116. This, my friends, simply is not supported by the facts.

The actual costs to the taxpayer may well be less by enacting section 116. I make this statement based on my opinion that the current costs of litigation will be reduced, and proposed removals in commercial and industrial areas will not materialize as my colleague preassumes.

Remember, and some of my colleagues here today were here in 1965. This Act, "The Lady Bird Act" was passed by agreeing to the just compensation mandates, and further, the act was implemented as a controlling act through "effective control." It was not and I repeat, not a prohibitive act.

Will section 116 preempt local government? That issue was resolved by the Congress in 1965. The Congress then mandated each State to comply with the act or suffer a penalty of 10 percent of all highway funds.

I ask you, if the States complied, and they all did, then was not the congressional intent of the 1965 act known to all local governments? So, my friend and colleague from Pennsylvania may have misunderstood the history of this act.

Now, let us turn to the question of committee hearings. As a committee member, I have been close to the implementation of the act, and I believe that section 116 is absolutely the only method of informing those who administer this act that Congress did indeed mandate the payment of just compensation when signs were removed from the Interstate and primary highway system.

Finally I ask, my colleagues, in consideration of the deletion of this amendment, to remember that this great country, in its founding, through the 5th and the 14th amendments, assured the general public that the taking of private property would be compensated.

The Congress has spoken to this issue. Specifically, the Congress spoke to this issue and to the taking of signs in 1965 and again while enacting the Uniform Relocation Act. This Congress today would take a giant step backward to agree to the deletion of section 116, as our friend from Pennsylvania asks.

I urge you, in fairness and equity, to vote against the amendment to strike section 116.

Mr. BREAUX. Madam Chairman, will the gentleman yield?

Mr. SHUSTER. I yield to the gentleman from Louisiana.

Mr. BREAUX. Madam Chairman, I also rise in strong opposition to the gentleman's amendment.

I think the committee has done a good job. What we have arrived at is a compromise position which I think is working and has worked.

Again, Madam Chairman, I strongly oppose the gentleman's amendment.

Mr. DON H. CLAUSEN. Madam Chairman, will the gentleman yield?

Mr. SHUSTER. I yield to the gentleman from California.

Mr. DON H. CLAUSEN. Madam Chairman, I rise in opposition to the amendment.

Having been a member of the Highway Beautification Commission, I think the gentleman from New Jersey (Mr. HOWARD) has certainly stated the case very well.

The matter of removing these nonconforming outdoor advertising signs on the basis of police power versus just compensation would not stand the test of scrutiny and time.

For all the reasons the gentleman from New Jersey stated, what we are attempting to do is to move in the direction of a transitional program whereby the informational and directional signs will give information to the traveling public, but at the same time, wherever there is the type of sign which is not in keeping with the landscape, certainly there has to be compensation. That is only fairness and equity.

Madam Chairman, I commend the gentleman for their opposition to the amendment.

Mr. SHUSTER. Madam Chairman, I thank the gentleman and I yield back the balance of my time.

Mr. HARSHA. Madam Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Madam Chairman, let me point out that this matter has been going on in the Committee on Public Works and Transportation and in previous Congresses since way back when we enacted the so-called Bonus Act back in the late 1950's. Over the years we have tried to perfect the outdoor beautification provisions of the highway legislation. Congress after Congress, in its wisdom, has felt that just compensation should be paid to those property owners who had to remove signs which were lawfully erected.

Madam Chairman, that is what we are dealing with, signs which were lawfully erected. The bureaucrats downtown have urged the States to pay just compensation, in accordance with the law, for signs which are required to be taken down pursuant to this legislation. Those same bureaucrats, however, are down there trying to undermine the law by encouraging communities not to pay just compensation for the elimination of the signs which should be eliminated, although they were lawfully constructed.

Madam Chairman, this legislation is merely an attempt to make it abundantly clear that it is the intent of this Congress that just compensation shall be paid to those people who have to remove lawfully erected signs, but now find them nonconforming with the Federal regulations.

Let me correct one statement which the author of the amendment made, and that was that every community will have to pay just compensation for every sign constructed or erected all over the Nation, wherever the community may be. Nothing could be further from the truth. This legislation is intended to apply only to signs which are constructed in the vicinity of the Federal-aid highways which are part of the Interstate System and the primary system. Therefore, let us not be misled by feeling that some of the communities are going to have to pay just compensation for any sign which may exist regardless of where it goes. This legislation is intended to deal only with the primary system and the Interstate System, and it is an effort on the part of this Congress to restate what was unequivocally the intent of previous Congresses—that just compensation should be paid to these people who have to take down lawfully constructed signs.

Madam Chairman, we do not feel that people should be deprived of their property without due process of law, and that is what this boils down to.

Therefore, Madam Chairman, I urge the defeat of the amendment.

Mr. GOLDWATER. Madam Chairman, will the gentleman yield?

Mr. HARSHA. I yield to the gentleman from California.

Mr. GOLDWATER. I thank the gentleman for yielding.

I think the gentleman has made a very persuasive argument. This is a matter of equity. Former Congresses have spoken on it. I think it was the intent of Congress that there be just compensation, and I would personally urge defeat of this amendment.

Mr. WALGREN. Madam Chairman, I move to strike the requisite number of words, and I yield to the gentleman from Pennsylvania (Mr. KOSTMAYER).

Mr. KOSTMAYER. Madam Chairman, I want to correct two things which have been said here. The first is we are not interested in compensating the billboard owners. Nothing could be further from the truth.

The gentleman from Ohio (Mr. HARSHA) could not be more wrong. The committee bill extends compensation requirements beyond the Beautification Act. That is why the amendment is being offered. I believe that the billboard companies should be compensated. Should they be compensated through the cash system as the Federal Government does now, or should they be compensated through the process of amortization, which is the local prerogative. I think the Members should understand what my amendments do is to keep the law as it is now, not change it, but keep the law as it is now. It is the Committee on Public Works and Transportation which is attempting to change the law. No one is interested in denying compensation.

Second, regarding the electronic signs the gentleman made reference to, I discussed this with the gentleman. He wants the signs to be changed every 15 seconds. The gentleman does not regard that as a flashing sign. I think if a sign changes every 15 seconds, that is a flashing sign. The committee members contend that regarding compensation, they are only interested in making a clarification. The committee is making a very basic and fundamental change, and it is likely this change will stop the taking down of billboards. Why is the Secretary of Transportation in agreement with me? Why is the National League of Cities in agreement with me? Why is the National Association of Counties in agreement with me? Why is every environmental lobbyist in agreement with me? And why are the

billboard lobbies on the side of the Committee on Public Works and Transportation?

The final thing I would say to the gentleman from Washington, Mr. DICKS, is that the Senator from Washington, Mr. JACKSON, has said that we ought to have hearings just because of the safety questions of these flashing signs. I will be happy to provide the Senate testimony in which the Senator from Washington said that.

Mr. HOWARD. Madam Chairman, will the gentleman yield?

Mr. WALGREN. I yield to the gentleman from New Jersey.

Mr. HOWARD. I thank the gentleman for yielding.

I would just say: Why are the counties and why are the cities opposed to just compensation which would be wiped out by this amendment? They are opposed because they would like to be able to order all the signs down and not pay any money, not even the 25 percent. So naturally if they are thinking only of their own pocketbooks and not of justice, they would be in favor of the amendment.

Mrs. FENWICK. Madam Chairman, will the gentleman yield?

Mr. WALGREN. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank the gentleman for yielding.

Madam Chairman, I rise in support of this amendment. I think we have a good law and we ought to stick to it.

Mr. DICKS. Madam Chairman, will the gentleman yield?

Mr. WALGREN. I yield to the gentleman from Washington.

Mr. DICKS. I thank the gentleman for yielding.

I would just point out to my dear friend, the gentleman from Pennsylvania, that Senator JACKSON was an author of section 117. Obviously he has read and understands this because he knows that this is not a flashing sign. I think the gentleman does a disservice when he says that the signs that are under consideration in section 117 are flashing signs. They simply are not. If somebody is going to change the time every 15 seconds, it just seems to me that is not a flashing sign.

The CHAIRMAN. The time of the gentleman has expired.

The question is on the amendments offered by the gentleman from Pennsylvania (Mr. KOSTMAYER).

The question was taken; and the chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. KOSTMAYER. Madam Chairman, I demand a recorded vote, and pending that I make the point of order that a quorum is not present.

Madam Chairman, I withdraw my point of order that a quorum is not present.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 76, noes 199, not voting 157, as follows:

[Roll No. 620]

AYES—76

AuCoin
Bellenson
Bingham
Bonior
Brinkley
Brodhead
Burton, Phillip
Carr
Chisholm
Coughlin
D'Amours
Dellums
Dingell
Downey
Drinan
Early
Eckhardt
Edgar
Edwards, Calif.
Ertel
Fenwick
Fisher
Ford, Tenn.
Frenzel
Gephardt
Giaimo
Gore
Gradison
Green
Hannaford
Harris
Holtzman
Kastenmeier
Kildee
Kostmayer
Leach
Lehman
Levitas
McClory
McCloskey
McKay
Markey
Mattox
Mikva
Ottinger
Panetta
Pickle
Pike
Pursell
Reuss
Roncalio
Rosenthal
Roybal
Ryan
Sawyer
Scheuer
Seiberling
Simon
Solarz
Spellman
Stark
Steers
Stockman
Stokes
Studds
Thompson
Tsongas
Udall
Vanik
Walgren
Waxman
Weiss
Whalen
Whitehurst
Wolff
Yates

NOES—199

Abdnor
Akaka
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Annunzio
Archer
Ashbrook
Badham
Bafalis
Baldus
Bauman
Benjamin
Bennett
Bevill
Boggs
Boling
Bonker
Bowen
Brademas
Breaux
Breckinridge
Brooks
Brown, Mich.
Broyhill
Buchanan
Burgener
Burke, Fla.
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Byron
Carter
Cederberg
Chappell
Clausen, Don H.
Clawson, Del
Cleveland
Coleman
Collins, Tex.
Corcoran
Cornell
Daniel, Dan
Daniel, R. W.
Danielson
Delaney
Derwinski
Devine
Dicks
Dornan
Duncan, Oreg.
Duncan, Tenn.
Edwards, Okla.
Emery
English
Evans, Ga.
Evans, Ind.
Fary
Fithian
Flippo
Foley
Ford, Mich.
Forsythe
Fountain
Fowler
Frey
Gaydos
Ginn
Goldwater
Gonzalez
Goodling
Grassley
Guyer
Hall
Hamilton
Hammer-schmidt
Hanley
Harsha
Hawkins
Heckler
Hefner
Hightower
Holt
Howard
Hubbard
Huckaby
Hughes
Hyde
Ireland
Jenkins
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Jordan
Kasten
Kazen
Kelly
Krebs
LaFalce
Lagomarsino
Lederer
Leggett
Livingston
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Long, Md.
Lott
Lujan
Luken
McCormack
McDonald
McFall
McHugh
Mahon
Marriott
Martin
Mathis
Mazzoli
Meyner
Michel
Mikulski
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Moakley
Mollohan
Moore
Moorhead, Pa.
Moss
Murphy, Pa.
Murtha
Myers, Gary
Myers, John
Myers, Michael
Natcher
Nedzi
Nichols
Nolan
Nowak
O'Brien
Patten
Perkins
Pettis
Poage
Preyer
Price
Pritchard
Quayle
Rahall
Rangel
Regula
Risenhoover
Roberts
Robinson
Roe
Rogers
Rooney
Rousselot
Runnels
Santini
Satterfield
Schulze
Sebelius
Sharp
Shuster
Skelton
Slack
Smith, Iowa
Snyder
Spence
Staggers
Stangeland
Steed
Stratton
Stump
Taylor
Treen
Van Deerlin
Vander Jagt
Volkmer
Waggonner
Walker
Walsh
Wampler
White
Whitley
Whitten
Wilson, Bob
Wilson, Tex.
Wright
Wylie
Young, Alaska
Young, Fla.
Young, Mo.
Zablocki

NOT VOTING—157

Addabbo
Alexander
Ammerman
Andrews, N. Dak.
Applegate
Armstrong
Ashley
Aspin
Barnard
Baucus
Beard, R.I.
Beard, Tenn.
Bedell
Biaggi
Blanchard
Blouin
Boland
Broomfield
Brown, Calif.
Brown, Ohio
Burke, Calif.
Burton, John
Butler
Caputo
Carney
Cavanaugh
Clay
Cochran
Cohen
Collins, Ill.
Conable
Conte
Conyers
Corman
Cornwell
Cotter
Crane
Cunningham
Davis
de la Garza
Dent
Derrick
Dickinson
Diggs
Dodd
Edwards, Ala.
Eilberg
Erlenborn
Evans, Colo.
Evans, Del.
Fascell
Findley
Fish
Flood
Florio
Flowers
Flynt
Fraser
Fuqua
Gammage
Garcia
Gibbons
Gilman
Glickman
Gudger
Hagedorn
Hansen
Harkin
Harrington
Hefner
Hillis
Holland
Hollenbeck
Horton
Ichord
Jacobs
Jeffords
Jenrette
Johnson, Colo.
Kemp
Keys
Kindness
Krueger
Latta
Le Fante
Lent
Lundine
McDade
McEwen
McKinney
Madigan
Maguire
Mann
Marks
Marlenee
Meeds
Metcalfe
Milford
Miller, Calif.
Mitchell, N.Y.
Moffett
Montgomery
Moorhead, Calif.
Mottl
Murphy, Ill.
Murphy, N.Y.
Neal
Nix
Oakar
Oberstar
Obey
Patterson
Pattison
Pease
Pepper
Pressler
Quie
Quillen
Railsback
Rhodes
Richmond
Rinaldo
Rodino
Rose
Rostenkowski
Rudd
Ruppe
Russo
Sarasin
Schroeder
Shipley
Sikes
Sisk
Skubitz
Smith, Nebr.
St Germain
Stanton
Steiger
Symms
Teague
Thone
Thornton
Traxler
Trible
Tucker
Ullman
Vento
Watkins
Weaver
Wiggins
Wilson, C. H.
Winn
Wirth
Wydler
Yatron
Young, Tex.
Zeferetti

The Clerk announced the following pairs:

On this vote:

Mr. Eilberg for, with Mr. Gammage against.

Mr. Moffett for, with Mr. Cornwell against.

Mr. Conyers for, with Mr. Murphy of Illinois against.

Mr. Mottl for, with Mr. Corman against.

Mr. Richmond for, with Mr. Rostenkowski against.

Mr. PURSELL and Mr. AuCOIN changed their vote from "no" to "aye."

So the amendments were rejected.

The result of the vote was announced as above recorded.

● Mr. CORRADA. Madam Chairman, I rise in support of H.R. 11733, the Surface Transportation Assistance Act of 1978. This bill represents a comprehensive yet flexible approach to our Nation's surface transportation needs, be they those of our defense urban centers or our spread out rural areas.

H.R. 11733 places welcome emphasis on highway safety and maintenance programs, both on and off the Federal system while maintaining a steady flow of funds into highway construction programs.

Liberalization of transfer of funds from one program to another in most noninterstate construction as well as increasing the Federal share in noninterstate and safety programs will create more flexibility and allow more State participation in many programs.

Control of Outdoor Advertising

House bill

Subsections (a) and (b) of this section would clarify existing law by clearly setting forth that just compensation must be paid upon the removal of any lawfully erected sign which is not permitted under subsection (c) of section 131, title 23, United States Code.

Subsection (c) amends subsection (o) of section 131 of title 23 to require the Secretary to approve State requests to retain directional signs erected lawfully under State law and to remove the limitation that only directional information signs located within the geographical limits of a specific economic hardship may be retained.

Senate amendment

The Senate amendment requires that compensation must be paid for the removal of signs which have at no time conformed to Federal beautification standards, regardless of the reason for their removal.

States may, however, impose stricter limitations on outdoor advertising than those established in the Highway Beautification Act. In which case, the Federal requirement for compensation would not apply.

Conference substitute

The Conference agreement accepted the House language on compensation and struck all references to the economic hardship provision amendment contained in the House bill.

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 approve 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 Congessional intent and to assist those State which desire to utilize its provisions in doing so.

Electronic Signs

House bill

The Department of Transportation has characterized as a flashing light electronic information displays which neither flash nor animate state information, but where the only movement is the periodic changing of information against a solid, colorless background. These displays are engineered for maximum legibility and readibility, having constant light level controls and glare reducing screens. The Department's attempt to equate these devices with flashing signs would be prohibited under this section, and the Secretary would be required to revise existing bonus agreements to permit the display of these devices in on-premise areas.

The Secretary would also be required to revise agreements under 23 U.S.C. 131(d) relating to the display of outdoor advertising in commercial and industrial areas in any case where the same prohibitive standards are being applied to such devices.

Senate amendment

The Highway Beautification Act provides that just compensation be paid for the removal of billboards along Interstate and primary roads which do not conform to Federal criteria. Seventy-five percent of such compensation is provided by the Federal Government; the remainder is paid by the States.

This section further clarifies the Act's requirement for compensation. It stipulates that compensation must be paid for the removal of signs which have at no time conformed to Federal beautification standards, regardless of the reason for their removal.

States may, however, impose stricter limitations on outdoor advertising than those established in the Highway Beautification Act. In which case, the Federal requirement for compensation would not apply.

Conference substitute

Senate provision.

ADVERTISING BY NONPROFIT ORGANIZATIONS

House bill

This section permits advertising in distribution by nonprofit organizations of free coffee to travelers on the Interstate and primary systems.

Senate amendment

No comparable provision.

Conference substitute

House provision.

HIGHWAY BRIDGE REPLACEMENT PROGRAM

House bill

First, this section provides for an annual authorization of $2 billion.

The bill provides that $1.8 billion of the $2 billion be apportioned to each State yearly to replace, in whole or in part, deficient highway bridges on all public roads regardless of what they cross. The remaining $200 million shall be assigned, at the discretion of the Secretary, to those deficient highway bridges whose replacement costs are in excess of $10 million.

The information contained in table 1 of House Public Works and Transportation Committee Print 95–49 provides the basis for apportionment of the $1.8 billion for each of the fiscal years 1979, 1980, 1981, and 1982. The apportionment factors are based on the ratio of each State's deficient bridges on the Federal-aid system in terms of replacement costs. Each State is assured a minimum of ½ of 1 percent of the total apportioned and no State would receive more than 5 percent of the total apportioned.

Second, the section increases the Federal share of the Federal-State matching ratio from the current 75/25 percent to 90/10 percent.

This section provides that at least 25 percent and up to 35 percent of apportioned funds can be obligated for bridges on public roads which are off the Federal-aid system. An inventory of off-system bridges is also required so that priorities can be assigned to these bridges.

Subsection (k) requires the Secretary to review the procedures used in approving or disapproving applications submitted under the high-

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PUBLIC LAW 95-599 [H.R. 11733]; Nov. 6, 1978

SURFACE TRANSPORTATION ASSISTANCE ACT OF 1978

For Legislative History of Act, see p. 6575

An Act to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, for highway safety, for mass transportation in urban and in rural areas, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Surface Transportation Assistance Act of 1978".

Surface Transportation Assistance Act of 1978.
23 USC 101 note.

TITLE I

SHORT TITLE

SEC. 101. This title may be cited as the "Federal-Aid Highway Act of 1978".

Federal-Aid Highway Act of 1978.
23 USC 101 note.

REVISION OF AUTHORIZATION FOR APPROPRIATIONS FOR THE INTERSTATE SYSTEM

SEC. 102. (a) Subsection (b) of section 108 of the Federal-Aid Highway Act of 1956, as amended, is amended by striking out "the additional sum of $3,625,000,000 for the fiscal year ending September 30, 1980," and all that follows down through the period at the end of the sentence and by inserting in lieu thereof the following: "the additional sum of $3,250,000,000 for the fiscal year ending September 30, 1980, the additional sum of $3,500,000,000 for the fiscal year ending September 30, 1981, the additional sum of $3,500,000,000 for the fiscal year ending September 30, 1982, the additional sum of $3,200,000,000 for the fiscal year ending September 30, 1983, the additional sum of $3,625,000,000 for the fiscal year ending September 30, 1984, the additional sum of $3,625,000,000 for the fiscal year ending September 30, 1985, the additional sum of $3,625,000,000 for the fiscal year ending September 30, 1986, the additional sum of $3,625,000,000 for the fiscal year ending September 30, 1987, the additional sum of $3,625,000,000 for the fiscal year ending September 30, 1988, the additional sum of $3,625,000,000 for the fiscal year ending September 30, 1989, and the additional sum of $3,625,000,000 for the fiscal year ending September 30, 1990.".

23 USC 101 note.

(b) Subsection (b) of section 108 of the Federal-Aid Highway Act of 1956, as amended, is further amended by adding at the end thereof the following: "Beginning with funds authorized to be appropriated for fiscal year 1980, no such funds shall be available for projects to expand or clear zones immediately adjacent to the paved roadway of routes designed prior to February, 1967.".

AUTHORIZATION OF USE OF COST ESTIMATES FOR APPORTIONMENT OF INTERSTATE FUNDS

SEC. 103. The Secretary of Transportation shall apportion for the fiscal year ending September 30, 1980, the sums authorized to be appropriated for such periods by section 108(b) of the Federal-Aid Highway Act of 1956, as amended, for expenditures on the National System of Interstate and Defense Highways, using the apportionment factors

23 USC 104 note.

System or the primary system. For the purposes of this subsection, the term 'free coffee' shall include coffee for which a donation may be made, but is not required.". "Free coffee."

CONTROL OF OUTDOOR ADVERTISING

SEC. 122. (a) Subsection (g) of section 131, title 23, United States Code, is amended by striking the period at the end of the first sentence and adding the following "and not permitted under subsection (c) of this section, whether or not removed pursuant to or because of this section.".

(b) Subsection (k) of section 131, title 23, United States Code, is amended by striking the first word and inserting in lieu thereof the following: "Subject to compliance with subsection (g) of this section for the payment of just compensation, nothing".

(c) Clause (3) of subsection (c) of section 131 of title 23, United States Code, is amended by inserting immediately after "devices," the following: "including those which may be changed at reasonable intervals by electronic process or by remote control,".

(d) Subsection (j) of section 131 of title 23, United States Code, is amended by inserting immediately after "agreement" at the end of the first sentence, the following: ": *Provided*, That permission by a State to erect and maintain information displays which may be changed at reasonable intervals by electronic process or remote control and which provide public service information or advertise activities conducted on the property on which they are located shall not be considered a breach of such agreement or the control required thereunder.".

ENFORCEMENT OF VEHICLE WEIGHT LIMITATIONS

SEC. 123. (a) Not later than the one-hundred-eightieth day after the date of enactment of this section, the Secretary of Transportation, hereunder referred to as the "Secretary", in consultation with each State shall inventory the existing system of penalties for violations of vehicle weight laws, rules, and regulations on any portion of any Federal-aid system in such State. Each State shall annually thereafter report to the Secretary its current inventory. Inventory, consultation. 23 USC 141 note. Annual report.

(b)(1) Not later than the one-hundred-eightieth day after the date of enactment of this section, the Secretary, in consultation with each State, shall inventory the existing system in such State for the issuance of special permits. Each State shall annually thereafter report to the Secretary its current inventory. Inventory, consultation. Annual report.

(2) For purposes of this subsection, the term "special permit" means a license or permit issued pursuant to State law, rule, or regulation which authorizes a vehicle to exceed the weight limitation for such vehicle established under State law, rule, or regulation. "Special permit."

(c) Not later than January 1 of the second calendar year which begins after the date of enactment of this section and each calendar year thereafter the Secretary shall submit to Congress an annual report together with such recommendations as the Secretary deems necessary on (1) the latest annual inventory of State systems of penalties required by subsection (a) of this section; (2) the latest annual inventory of State systems for the issuance of special permits Annual report and recommendations to Congress.

The recommendations described in paragraph (2) shall be formulated in conjunction with the recommendations of the cost allocation study under section 506 of the equitable distribution of the highway excise taxes.

Consultation and filing with congressional committees.

(b) INTERIM REPORTS.—The Secretary of the Treasury, in consultation with the Secretary of Transportation and the staff of the Joint Committee on Taxation, shall file an interim report with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on or before April 15, 1980, and a second interim report on or before April 15, 1981.

Approved November 6, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-1485 (Comm. on Public Works and Transportation) and No. 95-1797 (Comm. of Conference).
SENATE REPORT No. 95-833 (Comm. on Environment and Public Works).
CONGRESSIONAL RECORD, Vol. 124 (1978):
Aug. 18, 21, 28, S. 3073 considered in Senate.
Sept. 15, 21, 22, 27, 28, considered and passed House.
Oct. 3, considered and passed Senate, amended, in lieu of S. 3073.
Oct. 15, Senate and House agreed to conference report.

PUBLIC LAW

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SECTION 1. SHORT TI

(a) SHORT TITLE.—
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(b) TABLE OF CONTE

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Sec. 2. Amendment of 19
Sec. 3. Policy with respe

TITLE I—PROVISIONS

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Sec. 101. Widening of b
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Sec. 103. Earned income
Sec. 104. Increase in and
Sec. 105. Advance paym
Sec. 106. Application of

Sec. 111. Repeal of nont
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Sec. 112. Unemploymen

Sec. 121. Payments to r

PART

Sec. 131. Deferred com
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Sec. 132. Certain privat
Sec. 133. Clarification
independent
Sec. 134. Tax treatmen
Sec. 135. Certain cash

PAR

Sec. 141. ESOPS.
Sec. 142. Certain lump
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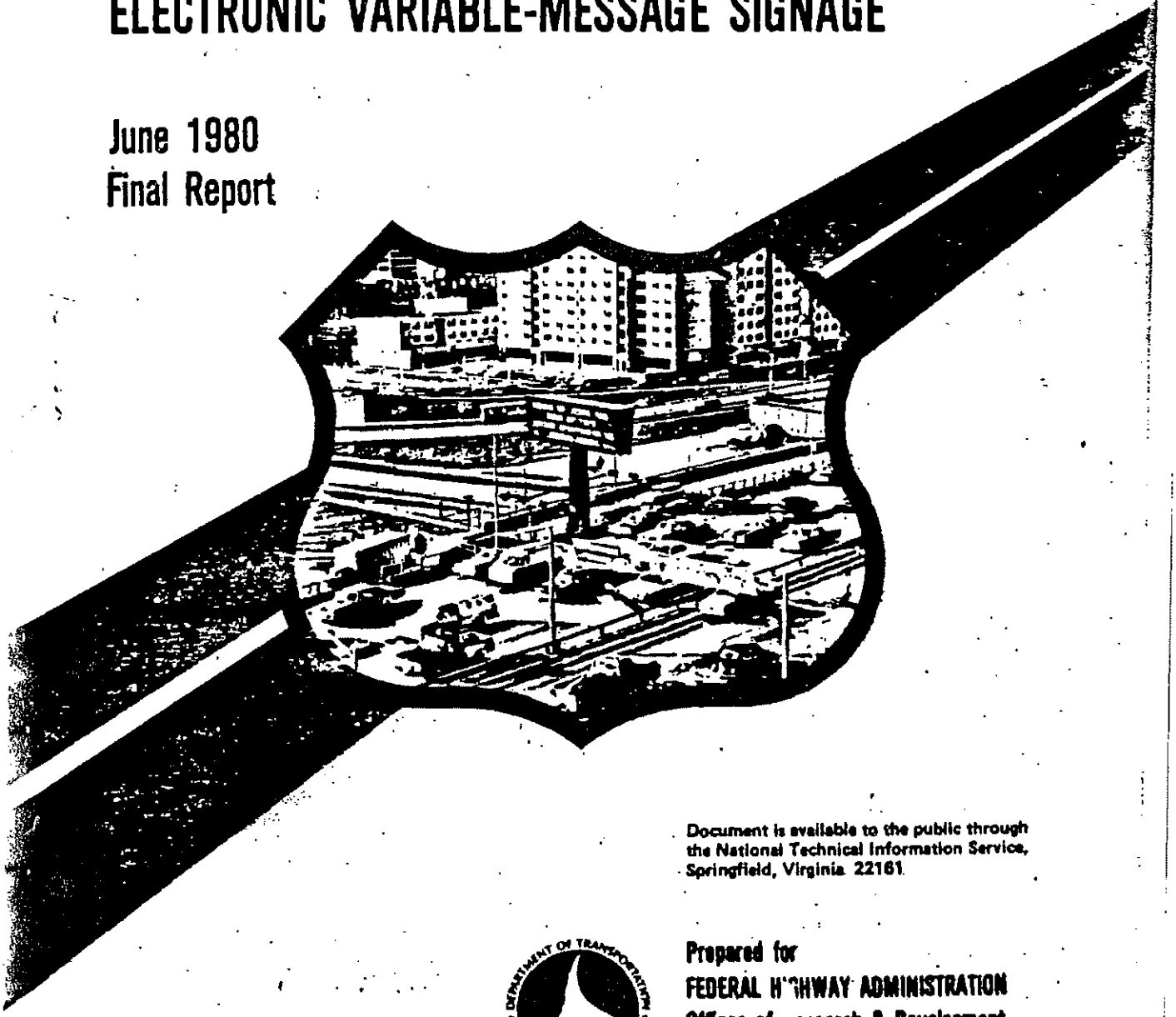
Sec. 143. Qualified pl
securities.

Report No. FHWA/RD-80/051

SAFETY AND ENVIRONMENTAL DESIGN CONSIDERATIONS IN THE USE OF COMMERICAL ELECTRONIC VARIABLE-MESSAGE SIGNAGE

June 1980
Final Report



Document is available to the public through the National Technical Information Service, Springfield, Virginia 22161.

Prepared for
FEDERAL HIGHWAY ADMINISTRATION
Offices of Research & Development
Environmental Division
Washington, D.C. 20590

EXECUTIVE SUMMARY

Historical Background

National standards and Federal-State agreements providing for control of outdoor advertising prohibit display of commercial signs that use flashing, intermittent or moving lights, or that have animated or moving parts. In 1978 the Congress amended the Highway Beautification Act to provide that it would not be considered a breach of such agreements to permit signs to display information which is "changed at reasonable intervals by electronic process or remote control and which provide public service information or advertise activities conducted on the property on which they are located."

This research report, prepared by the Federal Highway Administration's (FHWA) Office of Research, is intended to provide background information for the development of standards for the use of on-premise commercial electronic variable-message signs (CEVMS) displaying such public service information and advertising messages along Interstate System highways. The report is based on a critical review of reported research, operational experience, and legislative history relating to CEVMS and to outdoor advertising generally.

The Technology

Currently available technology and display media enable the electric sign manufacturing industry to offer a wide variety of CEVMS to advertisers. This study has considered four basic types of signs which the signing industry has indicated best represent current CEVMS technology. These are: (1) alternating time-and-temperature displays, often incorporated into otherwise static on-premise signs; (2) "multiple message center" signs, capable of displaying, on a single sign cabinet, a wide variety of messages in words, digits, or symbols, either [illegible] predetermined repetitive sequence or via real-time control; (3) "automated reader board" signs, in which messages on continuous tapes are shown on display panels and may be controlled remotely to change the styles and colors of a message, and produce a repeated series of constantly changing messages; and (4) the so-called "UNEX" signs, developed by one manufacturer, which are capable of producing a virtually unlimited range of graphic or alpha-numeric messages on a grid of optical shutters which are electronically and/or remotely controlled. The sign types considered in this study may be used for on-premise advertising either by being mounted on walls or rooftops, or as free-standing structures on single or multiple cabinet supports. These signs can display a variety of colors, character sizes and styles, and many other characteristics of graphic display media such as contrast and shading, but the four mentioned above are those which the industry seems to feel best represent CEVMS technology.

The 1978 amendments to the Highway Beautification Act provide an opportunity for the electric sign industry to increase the use of CEVMS along the Interstate System. This report discusses the potential implications of such increased use in the context of the three areas of public interest that Congress sought to protect through the Highway Beautification Act, namely: (1) promotion of highway safety; (2) preservation and enhancement of natural beauty along highways; and (3) protection of highway investment.

Highway Safety Considerations

The review of reported research on highway safety considerations pertaining to roadside advertising demonstrates that studies based on accident investigations have generally had limited value because of: (1) lack of specific data relating accident locations to roadside features and traffic operational situations; or (2) sampling or statistical deficiencies. In addition, studies relying only or mainly on accident data often do not reflect such occurrences as "near misses" or traffic impedences that are widely recognized as relevant to safety, and which may or may not be attributable to the presence of roadside advertising. While some accident studies have reported a positive relationship between accidents, high driving task demands, and the presence of roadside advertising, other studies have reached opposite conclusions. Although a trend in recent findings has begun to point to a demonstrable relationship between CEVMS and accidents, the available evidence remains statistically insufficient to scientifically support this relationship.

Human Factors Considerations

Human factors research techniques for measuring and explaining driver behavior in varying traffic and environmental situations are capable of providing more precise, reliable, and valid data about the potential effects of roadside advertising signs on safety. For example, using both field investigations and simulation techniques to measure eye movement patterns and microperformance

variables, driver responses to selected stimuli such as CEVMS can be examined relative to information processing capacity and driver task demands. The literature examined from related fields indicates that, under favorable driving conditions (traffic, weather, road, and vehicle condition, etc.), there is likely to be little adverse impact on performance due to the presence of roadside advertising signs since the driver retains sufficient spare processing capacity to attend to such signs without compromising his performance on his primary (vehicular control) task. Under very low task demand conditions (extremely light traffic, uniform pavement and geometric design, great distances between decision points, etc.), the presence of unusual environmental features, (possibly including roadside signs), may serve to stimulate the motorist as he drives. However, as the demands of the driving task increase, roadside advertising must compete with more vital information sources (such as official signing, delineation, other traffic, weather, road, and vehicle conditions) for the driver's attentional capacity. Since this capacity is finite, a CEVMS with high attention-getting properties (and this is a primary criterion against which a successful CEVMS is judged by advertisers) may distract the driver from his primary task long enough for him to make an error which could lead to an accident.

The enormous flexibility of display possessed by CEVMS makes it possible to use them in ways that can attract drivers' attention at greater distances, hold their attention longer, and deliver a wider variety of information and image stimuli than is possible by the use of conventional advertising signs. Exploitation of this potential by advertisers seeking to reach an audience of highway users increases the risk of overloading drivers' capacities to process information, and, consequently, the likelihood of driver error under road and traffic conditions in which drivers may already be heavily stressed. Although the nature of these risks has been recognized in the research literature, further study is needed to quantify and categorize it.

Aesthetic Considerations

Harsh visual contrast with the ambient environment is generally considered to be unaesthetic, as is a dense clustering of signs and sign structures. The existence of these conditions in many commercial areas has led to criticism of on-premise signing practices in the past. Manufacturers of CEVMS claim that their signs are designed and constructed to avoid characteristics that are generally associated with deterioration of the visual quality of roadsides, and that these signs have the added capability of reducing the need for the separate conventional signs of multiple businesses since CEVMS can display their messges in repeated series on a single sign. To date, however, these claimed benefits have not been empirically tested. The capability of CEVMS for commanding and holding attention permits them to dominate their surroundings, and involves the risk of incompatibility with the natural or man-made environment in which they reside. It should be noted that the "electrical spectacular" displays most often associated with Times Square or Las Vegas, and more recently with major-league sports stadiums, are, in fact, electronic variable message signs. Without the proper control, there is little reason to believe that signs such as these will be kept away from the highway right-of-way.

Highway Investment Considerations

Direct impairment of the public investment in scenic enhancement of highway rights-of-way results from trimming, destroying, or removing trees and shrubs in order to increase the visibility of billboards on adjacent land. A substantial record of unauthorized and unlawful destruction exists, the costs of which have been difficult to recover under current laws and enforcement methods. In a few States vegetation removal is authorized under agreements between State highway agencies and sign owners, but experience is not sufficient to evaluate either long or short term effects on highway investment. Where excessive numbers of on-premise electric signs compete with official traffic control devices, additional expenditures sometimes have been necessary in order to make the latter readily recognizable by motorists. Excessively numerous or poorly designed, maintained, or located outdoor advertising signs may indirectly damage highway investment through their association with the deterioration of roadside land use and value. Where changes in roadside land use and value result in premature functional obsolescence of adjacent highways, highway investment is adversely affected. Currently CEVMS represent substantial business investments and are concentrated in urban commercial and industrial districts where high ADT volumes are customary. These factors have reduced the risk that they will directly or indirectly affect highway

investment. As use of CEVMS is extended to suburban and rural locations, where land use may be in transition, these factors can be expected to have less effect, and risks to the highway investment from use of CEVMS may be similar in kind to those associated with billboards generally.

Conclusions

Based on this review of reported research and operational and legislative experience, it appears that the following aspects of CEVMS can affect some aspects of traffic safety, highway investment, and the quality of the roadside visual environment, and therefore should be considered in any development of standards for use of such signs.

Longitudinal location

Spacing and density

Lateral location

Interaction with traffic signs

Duration of on-time

Duration of off-time

Duration of message change interval

Total langth of information cycle

Rate of intensity or contrast change

Flashing signs and lights

Brightness and contrast

Animation and message flow

Size of sign and lettering

Primacy of information

Maintenance requirements

Operational experience with CEVMS should be compiled and evaluated, and well-designed and funded research studies should be carried out in order to remove the uncertainty that now exists regarding many aspects of this form of signage and its impact on traffic safety, environmental quality, and highway investment.

display can portray any message in any language, letter style and in any letter size, thus eliminating the essence of visual information obsolescence (American Sign and Indicator Corporation, 1976).

Summary. Development of CEVMS to the level of refinement that the electric sign industry has now achieved gives business users of outdoor signs a greatly increased capability for visual communication with their target audience. It has been customary to speak of this type of sign in terms of "jump clock" panels and the segmented series of phrases that make up the "message center" displays. These types of signs, however, now represent only the earliest generations and simplest examples of this category. The present interest of the electric sign industry is to promote use of its most advanced systems, utilizing remotely-controlled, computer-programed matrices of lamps or optical cells on which an unlimited variety of messages in words and graphics can be displayed against a broad range of backgrounds.

Several aspects of this prospect should be considered when sufficient data can be compiled from operational experience. These include the costs of signs, installation, operation, and maintenance. The action of market forces also needs analysis to evaluate the prediction that CEVMS can reduce proliferation of static message signing, and to assess the availability of this signing to various segments of the business community.

Also to be considered is the expansion of functions that is reflected by the successive generations of CEVMS. The first generation utilized "jump clock" displays for public service information, and so projected a favorable general image for the business using the sign. The second generation "message center signs" raised direct commercial advertising messages to a position of parity with public service messages. Either type of message, however, had to be displayed in a series of segments or phases, the length of which depended on the size of the lightbank panel. Normally the message had to be short, and delivered in telegraphic style. The capability of later generations of CEVMS to combine words and graphics, lightbanks or matrices of optical cells, and a virtually unlimited program memory, opens the possibility of going far beyond display of simple advertising information. Increased familiarity with the techniques now available may encourage advertisers to think that "entertainment" which enhances the "attractiveness" of commercial messages now is a desirable function for on-premise signing. Prototypes are already in use, in on-premise and off-premise situations. The photographs in Figure 7 were taken several seconds apart from a sequence appearing on a CEVMS in Times Square, New York City.

Consideration of the implications of increased future use of CEVMS require that all of the foregoing factors be put in perspective. The moderate, low-keyed uses that have characterized the relatively simple types of CEVMS in the past may not continue in the future as more complex and versatile types of displays are promoted. Past experience with the operation of market forces as arbiters of prevailing use does not encourage the belief that they can assure compatibility with public interests associated with highways, or be of much aid to efforts of the electric sign industry to steadily improve the design quality and communications effectiveness of commercial advertising practice (Oliphant, 1976). Accordingly, the next sections of this report will discuss the role of regulatory standards in protecting the public interests that are affected by CEVMS, and the research basis for developing appropriate standards.

IV. REGULATION OF COMMERCIAL ELECTRONIC VARIABLE-MESSAGE SIGNAGE: POLICY ISSUES

A. Legislative History of the 1978 Amendments to the Highway Beautification Act. Efforts of the electric sign industry to expand the the use of EVM signing in commercial advertising have raised questions regarding the eligibility of such signs for display in areas where outdoor advertising is controlled by State laws enacted in compliance with the Highway Beautification Act (23 U.S.C. 131) and related regulations.

Pursuant to the outdoor advertising control provisions of the Federal-Aid Highway Act of 1958, national standards applying to advertising signs permitted in areas adjacent to Interstate System highways prescribe the following prohibitions: (National Standards, 1960)

> No sign may be permitted which contains, includes, or is illuminated by any flashing, intermittent or moving light or lights.
>
> No lighting may be permitted to be used in any way in connection with any sign unless it is so effectively shielded as to prevent beams or rays from being directed at any portion of the main-traveled way of the Interstate System, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with the driver's operation of a motor vehicle.
>
> No sign may be permitted which moves or has animated or moving parts.

Other related provisions prohibit signs which appear to direct traffic, which imitate or resemble official traffic signs, or which prevent drivers from having clear and unobstructed views of official signs and approaching or merging traffic.

All of these prohibitions were incorporated into the bonus agreements entered into by the 23 States that currently participate in the outdoor advertising control program under the 1958 Federal-Aid Highway Act. Such agreements have remained in effect under successive highway beautification acts and Federal regulations (23 USC 131(j)). Therefore, in bonus States, commercial use of EVM signs has been subject to these prohibitions, and generally has been barred by them.

The Highway Beautification Act of 1965 replaced the program of bonus incentives for control of billboards with a program that promoted State compliance with national standards by use of financial penalties. The national standards contemplated use of State zoning to establish and maintain "effective control" of roadside areas. The concept of effective control authorized States to permit certain types of signs in the controlled areas, including directional signing in rural areas, general commercial advertising in zoned and unzoned commercial and industrial areas, and on-premise signing wherever it occurred. National standards containing prohibitions against use of flashing, intermittent or moving lights were issued for directional signs and for outdoor advertising in commercial and industrial areas, but no national standards were issued for on-premise signs (23 USC 131(c)(3)). The main basis for control of on-premise signing in the 1965 Federal law, therefore, was implicit in the necessity of developing a working definition of this class of sign. The definition in the Federal highway regulations, which serves as the minimum scope of the exemption, is as follows:

> A sign which consists solely of the name of the establishment or which identifies the establishment's principal or accessory products or services offered on the property is an on-property sign (23 C.F.R. 750.709).

Recent efforts of the electric sign industry to expand the commercial use of EVM signs along Interstate System highways have raised questions of whether these signs would be prohibited under States' bonus agreements. State highway agencies understandably have been cautious in the absence of clear Federal guidance. In 1978, failing to obtain immediate favorable rulings from FHWA, the National Electric Sign Association sought and obtained an amendment of the Federal law which was designed to permit CEVMS. This amendment revised the exemption for on-premise advertising signs in controlled areas to read as follows:

> signs, displays, and devices, <u>including those which may be changed at reasonable intervals by electronic process or remote control</u> advertising activities conducted on the property on

which they are located . . . (underlining indicates new language added) (23 USC 131(c)).*

In addition, as a means of obtaining modification of existing prohibition of such signage in Federal-State bonus agreements, the provisions of the present law dealing with standards for such agreements were amended as follows:

> Any State highway department which has, under this section and 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: Provided that permission by a State to erect and maintain information displays which may be changed at reasonable intervals by electronic process or remote control and which provide public service information or advertise activities conducted on the property on which they are located shall not be considered a breach of such agreement or the control required thereunder. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this section shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section (23 USC 131(j)). (Underlining indicates new language added.)

Nothing in the 1978 amendments relating to CEVMS changed the status of these signs when used in off-premise advertising, either as directional signs or as general outdoor advertising in zoned or unzoned commercial and industrial areas. The national standards for these forms of signage prohibited use of flashing, intermittent or moving lights, and moving or animated parts; and FHWA interpreted CEVMS as falling within the scope of these prohibitions.

The practical effect of these amendments was limited to the national standards for bonus agreements relating to on-premise signs adjacent to highways of the Interstate System where, as earlier noted, questions had been raised as to whether CEVMS were to be considered as signs using flashing lights or animated or moving parts. By this change in the minimum standards States having bonus agreements were authorized to permit CEVMS to be used in on-premise signing, but no State, bonus or non-bonus, was required by the Federal law to permit them if it chose to adopt regulations that were more restrictive than the Federal standards.

The legislative history of this action emphasized the distinction between conventional electric signs utilizing flashing, intermittent or moving lights and the type of signs on which the only movement is a periodic change of message against a solid, colorless background. This distinction was elaborated by the following statement of the National Electric Sign Association (NESA) in the legislative hearings (National Electric Sign Association, 1978, pp 246-247):

> An electronic information display does not flash or animate static information. The only movement is the changing of information against the solid colorless background. The face of the display can either be a lamp matrix board or a solid matrix of optical shutters which can be individually opened or closed under computer control, exposing light to form graphics or messages as a unit. Time, date, temperature, weather, directional information, or other public service or commercial messages of interest to the traveling public may thus be offered efficiently with constant light level control and low energy cost.

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*One of the goals of this report will be to establish a satisfactory definition of the word "reasonable" as used in the passage of the law cited above.

Electronic information displays are engineered for maximum legibility and readability. Their light is produced by soft incandescent bulbs screened with a special louvred sun screen to reduce glare. Most such displays contain automatic dimmers, so that, as daylight decreases, the intensity of light they emit is reduced.... Thus the 'garish' quality of some bright lights at nighttime, offensive to some, is eliminated.

An example of the type of sign described as an electronic information display by NESA is shown in Figure 8A. Although the NESA testimony cited above states that electronic information display technology will eliminate "the garish quality of some bright lights at nighttime," the legislative language that was used to legitimize CEVMS contains no assurance that this result will be achieved. The sign shown in Figure 8B qualified as an electronic information display under the 1978 amendment and, at the same time, illustrates the qualities that are objectionable in many highway environments.

Congressional authorization of the use of CEVM signing in on-premise outdoor advertising provides general criteria and specifications for these displays, but leaves several important tasks to be performed by the agencies administering the law. Initially, working definitions and standards are needed for the key terms of the Federal law, such as "reasonable intervals" for message changes, "electronic processes," "remote control," and others. Also, since Federal law authorizes States to impose stricter limitations on the display of outdoor advertising than are required for compliance with Federal standards, a frame of reference for evaluating State actions relating to this form of signage is needed by Federal officials.

The Federal interest in on-premise CEVMS, as currently authorized in 23 U.S.C. 131, is indicated by the stated purpose of this legislation, namely: ".... to protect the public investment in .... [Interstate and Federal-aid primary] highways, to promote the safety and recreational value of public travel, and to preserve natural beauty." Accordingly, regulation of CEVMS on business premises should be considered in terms of the following aspects: highway safety, human factors, visual or aesthetic effects, and highway investment impacts.

The activity of the electric sign industry at the State level during recent legislative sessions did not result in making available any significant amount of research data or documented experience regarding commercial EVM signage, either from the industry or public highway agencies. State highway and transportation agencies generally lacked funds, manpower and time to undertake major studies of the impacts of the proposed expansion of this sign use. Efforts to introduce this subject into the National Cooperative Highway Research Program for FY 1980 also were unsuccessful. Accordingly, at the request of the FHWA Office of Right of Way, the present staff study was initiated by the Office of Research to review existing relevant technical and policy research literature, reported operational experience, and professional opinion regarding application of EVM signing to advertisement of on-premise activities in areas adjacent to Interstate highways.

B. Public Interest in Highway Safety. Considerations of the general health and safety of the public, and of highway traffic safety in particular, have regularly been cited to justify regulation of outdoor advertising signs. With equal regularity, this justification has been the subject of controversy, chiefly because of the difficulty of obtaining conclusive proof of the conflicting claims.

In the earliest billboard ordinances, references to health and safety asserted that billboards in urban settings were obstructions to open view of streetside spaces, and thus provided places for criminal activity, accumulations of litter and discarded articles, untended growth of weeds or shrubs, or neglected and deteriorated

U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: INFORMATION: Off-Premise Changeable Message Signs

Date: JUL 17 1996

From: Director, Office of Real Estate Services

Reply to Attn. of: HRE-20

To:

Regional Administrators

A number of States are taking the position that certain off-premise changeable message signs are consistent with State law and do not violate the lighting provisions of their State/Federal agreement. The State of Georgia recently amended its State law to allow off-premise signs having panels or slats that rotate provided they meet State criteria for frequency of message change and spacing. The State of Oklahoma recently considered amending its State law to also allow these signs. Because of the increased use of changeable message signs, we believe it is timely to restate our position concerning these signs.

The Federal Highway Administration (FHWA) has always applied the Federal law 23 U.S.C. 131 as it is interpreted and implemented under the Federal regulations and individual State/Federal agreements. Because there is considerable variation among the States, the importance of these agreements cannot be overstated. In the twenty-odd years since the agreements have been signed, there have been many technological changes in signs, including changes that were unforeseen at the time the agreements were executed. While most of the agreements have not changed, the changes in technology require the State and FHWA to interpret the agreements with those changes in mind. Changeable message signs are acceptable for off-premise signs, regardless of the type of technology used, if the interpretation of the State/Federal agreement allows such signs. In nearly all States, these signs may still not contain flashing, intermittent, or moving lights.

The FHWA will concur with a State that can reasonably interpret the State/Federal agreement to allow changeable message signs if such interpretation is consistent with State law. The frequency of message change and limitation in spacing for these signs should be determined by the State. This interpretation is limited to conforming signs, as applying updated technology to nonconforming signs would be considered a substantial change and inconsistent with 23 CFR 750.707(d)(5).

Barbara K. Orski

Barbara K. Orski

FHWA:HRE-20:RPHarter:gs:62026:June 24, 1996
cc: Reader Chron HRE-20
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2/28/08-087

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House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

HOUSE BILL 2364

AN ACT

AMENDING SECTIONS 28-7901, 28-7902, 28-7903 AND 28-7905, ARIZONA REVISED STATUTES; RELATING TO OUTDOOR ADVERTISING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 28-7901, Arizona Revised Statutes, is amended to read:

28-7901. Definitions

In this article, unless the context otherwise requires:

1. "Business area" means an area that is outside municipal limits, that embraces all of the land on the same side of the highway on which one or more commercial or industrial activities are conducted, including all land within one thousand feet measured in any direction from the nearest edge of the actual land used or occupied for such activity, its parking, storage and service areas, its driveways and its established front, rear and side yards, that constitutes an integral part of such activity and that is zoned, under authority of law, primarily to permit industrial or commercial activity. If one or more commercial or industrial activities are located within one thousand feet of a freeway interchange, the business area shall extend three thousand feet measured in each direction parallel to the freeway from the center line of the crossroad but shall not extend beyond the limits of the established commercial or industrial zone.

2. "ELECTRONIC VARIABLE MESSAGE BOARD" MEANS THE CABINET, FACING AND INTERNAL COMPONENTS SET INTO OR ATTACHED TO AN OUTDOOR ADVERTISING DEVICE AUTHORIZED IN SECTION 28-7902, SUBSECTION A, PARAGRAPHS 4 AND 5, AND IS CAPABLE OF CHANGING THE COPY BY ELECTRONIC PROCESS.

~~2.~~ 3. "Freeway" means a divided arterial highway on the interstate or primary system with full control of access and with grade separations at intersections.

~~3.~~ 4. "Information center" means a site that is established and maintained at a safety rest area to inform the public of places of interest in this state and that provides other information the board considers desirable.

~~4.~~ 5. "Interstate system" means the portion of the national system of interstate and defense highways located in this state that are officially designated by the board and approved by the United States secretary of transportation pursuant to 23 United States Code.

~~5.~~ 6. "Main traveled way":

(a) Means the portion of a roadway for the movement of vehicles, excluding shoulders, on which through traffic is carried.

(b) In the case of a divided highway, means the traveled way of each of the separated roadways for traffic in opposite directions.

(c) Does not include facilities such as frontage roads or parking areas.

~~6.~~ 7. "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard or other thing that is designed, intended or used to advertise or inform and the message of which is visible from any place on the main traveled way of the interstate, secondary or primary systems.

~~7.~~ 8. "Primary system" means that portion of connected main highways located in this state that are officially designated by the board and approved by the United States secretary of transportation pursuant to 23 United States Code.

~~8.~~ 9. "Safety rest area" means a site established and maintained by or under public supervision or control for the convenience of the traveling public within or adjacent to the right-of-way of the interstate or primary systems.

~~9.~~ 10. "Secondary system" means that portion of connected highways located in this state that are officially designated by the board and approved by the United States secretary of transportation pursuant to 23 United States Code.

~~10.~~ 11. "Tourist related advertising display" means any outdoor advertising that advertises a specific public or private facility, accommodation, goods or service, at a particular location or site, including an overnight lodging, campsite, food service, recreational facility, tourist attraction, educational or historical site or feature and automotive service facility or garage.

~~11.~~ 12. "Unzoned commercial or industrial area" means an area that is not zoned under authority of law and in which land use is characteristic of that generally permitted only in areas that are actually zoned commercial or industrial under authority of state law, that embraces all land on the same side of the highway on which one or more commercial or industrial activities are conducted, including all land within one thousand feet measured in any direction from the nearest edge of the actual land used or occupied by this activity, its parking, storage and service areas, its driveways and its established front, rear and side yards, and that constitutes an integral part of this activity. As used in this paragraph, commercial or industrial activities do not include:

(a) Outdoor advertising structures.

(b) Agricultural, forestry, grazing, farming and related activities.

(c) Transient or temporary activities, including wayside fresh produce stands.

(d) Activities not visible from the main traveled way.

(e) Activities conducted in a building principally used as a residence.

(f) Railroad tracks and minor sidings and aboveground or underground utility lines.

Sec. 2. Section 28-7902, Arizona Revised Statutes, is amended to read:

28-7902. Outdoor advertising authorized

A. The following outdoor advertising may be placed or maintained along an interstate, secondary or primary system within six hundred sixty feet of the edge of the right-of-way:

1. Directional or other official signs or notices that are required or authorized by law, including signs pertaining to natural wonders and scenic and historic attractions.

2. Signs, displays and devices advertising activities conducted on the property on which they are located.

3. Signs, displays and devices advertising the sale or lease of the property on which they are located.

4. Signs, displays and devices lawfully placed after April 1, 1970 in business areas.

5. Signs, displays and devices lawfully placed after either:

(a) July 1, 1974 in zoned or unzoned commercial or industrial areas inside municipal limits.

(b) April 1, 1972 in unzoned commercial or industrial areas outside municipal limits.

6. Signs, displays and devices that are lawfully existing on April 1, 1970 and that are located in business areas and in zoned commercial or industrial areas outside municipal limits.

7. Signs, displays and devices lawfully existing on either:

(a) July 1, 1974 that are located in zoned or unzoned commercial or industrial areas inside municipal limits.

(b) April 1, 1972 in unzoned commercial or industrial areas outside municipal limits.

8. Nonconforming tourist related advertising displays that are lawfully erected and in existence on May 5, 1976, that are located in defined hardship areas, that provide specific directional information to the traveling public and that are approved by the United States secretary of transportation pursuant to 23 United States Code section 131(o).

9. A sign located in a charter city adjacent to an interstate highway with a changing message for identification of businesses that are located on separate contiguous parcels and that are part of a single development approved by a city council as part of a development agreement entered into before April 22, 1990. The changing message may not contain words or phrases that continuously travel or scroll in a manner that presents a message longer than may be displayed on the sign at one instant in time. The director may adopt rules governing the interval within which a message may be displayed or changed. This paragraph does not alter, change or affect any other statute, rule, regulation, policy or interpretation concerning the use of signs with changing messages or the ownership of property on which the signs are located.

B. Outdoor advertising authorized under subsection A, paragraphs 1, 4 and 5 shall conform with standards contained and shall bear permits required in rules adopted by the director under this article, except that the authorized outdoor advertising along highways in the secondary system that are not state highways need only bear permits required by the responsible county or municipal authority.

C. Outdoor advertising authorized under subsection A, paragraphs 6 and 7 need not conform to standards contained but shall bear permits required in rules adopted by the director under this article, except that the authorized outdoor advertising along highways in the secondary system that are not state highways need only bear permits required by the responsible county or municipal authority.

D. OUTDOOR ADVERTISING AUTHORIZED UNDER SUBSECTION A MAY INCLUDE A SIGN WITH AN ELECTRONIC VARIABLE MESSAGE BOARD DISPLAYING ONLY STATIC NONANIMATED MESSAGES, THAT ARE NOT CHANGED MORE THAN ONCE EVERY SIX SECONDS. NO MINIMUM TIME LIMIT SHALL APPLY TO PERIODS OF TIME DURING WHICH NO MESSAGE IS DISPLAYED. THIS SUBSECTION DOES NOT ALTER, CHANGE OR EFFECT EITHER OF THE FOLLOWING:

1. ORDINANCES PASSED BY COUNTIES OR MUNICIPAL AUTHORITIES CONCERNING OUTDOOR ADVERTISING.

2. SIGNS AUTHORIZED UNDER SUBSECTION A, PARAGRAPH 2.

E. OUTDOOR ADVERTISING AUTHORIZED UNDER SUBSECTION D IS ONLY ALLOWED IF DONE IN ACCORDANCE WITH ORDINANCES OF THE CITY OR COUNTY IN WHICH THE ADVERTISING OCCURS.

~~D.~~ F. If preservation would be consistent with this article, signs may be preserved or maintained if they were lawfully in existence on October 22, 1965 and if the director determines, subject to the approval of the United States secretary of transportation as provided for by 23 United States Code section 131(c), that they are landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance.

Sec. 3. Section 28-7903, Arizona Revised Statutes, is amended to read:

28-7903. Outdoor advertising prohibited

A. Outdoor advertising shall not be placed or maintained adjacent to the interstate, secondary or primary systems at the following locations or positions, under any of the following conditions or if the outdoor advertising is of the following nature:

1. If it is within view of, directed at and intended to be read from the main traveled way of the interstate, primary or secondary systems, except outdoor advertising authorized under section 28-7902.

2. If it is visible from the main traveled way and simulates or imitates a directional, warning, danger or information sign permitted under this article, if it is likely to be mistaken for any such permitted sign or if it is intended or likely to be construed as giving warning to traffic, such as by the use of the words "stop" or "slow down".

3. If it is within any stream or drainage channel or below the flood water level of any stream or drainage channel where the outdoor advertising might be deluged by floodwaters and swept under any highway structure crossing the stream or drainage channel or against the supports of the highway structure.

4. If it is visible from the main traveled way and displays a red, flashing, blinking, intermittent or moving light or lights likely to be

mistaken for a warning or danger signal, except that part necessary to give public service information such as time, date, weather, temperature or similar information AND EXCEPT AS PROVIDED IN SECTION 28-7902, SUBSECTION D.

5. If an illumination on the outdoor advertising is of such brilliance and in such a position as to blind or dazzle the vision of travelers on the main traveled way.

6. If it exists under a permit as required by this article and is not maintained in safe condition.

7. If it is obviously abandoned.

8. If it is placed in a manner that either:

(a) Obstructs or otherwise physically interferes with an official traffic sign, signal or device.

(b) Obstructs or physically interferes with the vision of drivers in approaching, merging or intersecting traffic.

9. If it is placed on trees or painted or drawn on rocks or other natural features, except signs permitted by section 28-7902, subsection A, paragraph 2.

B. At interchanges on freeways or interstate highways outside municipal limits, an outdoor advertising sign, display or device shall not be erected in the area between the crossroad and a point five hundred feet beyond the beginning or ending of pavement widening at the exit from or entrance to the main traveled way.

Sec. 4. Section 28-7905, Arizona Revised Statutes, is amended to read:

28-7905. Outdoor advertising standards

A. After April 1, 1970, outdoor advertising placed in business areas, and after April 1, 1972, outdoor advertising placed in unzoned commercial or industrial areas outside municipal limits, shall comply with this article and the following standards:

1. The size of outdoor advertising shall not exceed one thousand two hundred square feet in area with a maximum vertical facing dimension of twenty-five feet and a maximum horizontal facing dimension of sixty feet, including border and trim and excluding base or apron supports and other structural members. These size limitations apply to each facing of outdoor advertising. The area shall be measured by the smallest square, rectangle, triangle, circle or combination of the smallest square, rectangle, triangle or circle that will encompass the entire advertisement. Two advertising displays not exceeding three hundred fifty square feet each may be placed in a facing. Back to back or V-type signs may be placed, with the maximum area allowed for each facing.

2. Spacing of outdoor advertising shall not be:

(a) Within five hundred feet of other outdoor advertising on the same side of a freeway.

(b) Within five hundred feet of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way at a scenic overlook or safety roadside rest area on any portion of a freeway.

(c) Within three hundred feet of other outdoor advertising on the same side of any portion of the primary system that is not a freeway.

3. Minimum spacing distances from other outdoor advertising do not apply to outdoor advertising that is separated by any building or other obstruction in such a manner that only one display located within the minimum distances set forth in this subsection is visible from the highway at any one time. Spacing distances shall be measured along the nearest edge of the pavement to a point directly opposite the outdoor advertising.

4. Outdoor advertising authorized under section 28-7902, subsection A, paragraphs 2 and 3 shall not be counted and measured from in determining compliance with the spacing requirements of this subsection.

5. AN ELECTRONIC VARIABLE MESSAGE BOARD IS NOT IN VIOLATION OF SECTION 28-7903, SUBSECTION A, PARAGRAPH 4, IF:

(a) THERE IS NO MORE THAN ONE ELECTRONIC VARIABLE MESSAGE BOARD FACING IN THE SAME DIRECTION OF TRAVEL PER SITE.

(b) IT IS NOT WITHIN A ONE THOUSAND FOOT RADIUS OF ANOTHER ELECTRONIC VARIABLE MESSAGE BOARD.

(c) IT DOES NOT EXCEED TWO HUNDRED SQUARE FEET IN AREA.

(d) IT IS NOT CHANGED MORE THAN ONCE EVERY SIX SECONDS WITH A ONE SECOND INTERVAL BETWEEN CHANGING MESSAGES.

(e) IT DISPLAYS A STATIC, NONANIMATED MESSAGE.

(f) A PERMIT IS OBTAINED BEFORE INSTALLATION UNDER AN ELECTRONIC VARIABLE MESSAGE BOARD PERMIT SYSTEM AS REQUIRED IN RULES ADOPTED BY THE DIRECTOR. FEES FOR AN ELECTRONIC VARIABLE MESSAGE BOARD PERMIT SHALL NOT EXCEED THE ACTUAL COSTS TO THE DEPARTMENT.

6. AN ELECTRONIC VARIABLE MESSAGE BOARD SHALL NOT BE PLACED IN VIOLATION OF 23 UNITED STATES CODE SECTION 131 OR SECTION 28-7907.

B. After July 1, 1974, outdoor advertising placed in zoned or unzoned commercial or industrial areas inside municipal limits shall comply with the following standards:

1. The size of outdoor advertising shall not exceed the limits provided in subsection A, paragraph 1 of this section.

2. Spacing of outdoor advertising shall not be:

(a) Within five hundred feet of other outdoor advertising on the same side of a freeway.

(b) Within one hundred feet of other outdoor advertising on the same side of any portion of the primary system that is not a freeway.

3. It shall meet the standards prescribed in subsection A, paragraphs 3 and 4 of this section.

4. AN ELECTRONIC VARIABLE MESSAGE BOARD IS NOT IN VIOLATION OF SECTION 28-7903, SUBSECTION A, PARAGRAPH 4, IF:

(a) THERE IS NO MORE THAN ONE ELECTRONIC VARIABLE MESSAGE BOARD FACING IN THE SAME DIRECTION OF TRAVEL PER SITE.

(b) IT IS NOT WITHIN A ONE THOUSAND FOOT RADIUS OF ANOTHER ELECTRONIC VARIABLE MESSAGE BOARD.