Billboard Control Under the Highway Beautification Act—A Failure of Land Use Controls

Charles F. Floyd

Billboard control and removal under the Highway Beautification Act has largely been a failure, achieving little toward the accomplishment of stated Congressional goals. Crippling amendments, "loopholes" in the designation of commercial and industrial zones, the exemption of on-premise signs, a lack of national standards, reliance upon the use of eminent domain rather than the police power to remove noncomforming signs, inadequate appropriations for the program, and general indifference among former supporters have been the main causes of the Act's ineffectiveness. Extensive amendment and vigorous administration are essential if the Act is ever to be effective.

Perhaps no environmental or land-use issue evoked more discussion and debate during the 1950s and 1960s than did aesthetics and sign control. This movement culminated in the Highway Beautification Act of 1965 which promised to control:

> The erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the interstate system and primary system . . . in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

In practice, however, the Act has largely been a failure, achieving little toward the accomplishment of the stated Congressional goals. Crippling amendments, problems arising from reliance upon the use of eminent domain rather than the police power to remove nonconforming signs, "loopholes" in the designation of commercial and industrial zones, the exemption of on-premise signs, a lack of national standards, and general indifference among former supporters have been the main causes of the Act's ineffectiveness.

The Bonus Act

Local governments have been attempting to control billboards since these eyesores became prevalent around the turn of the century.[1]

A strong push for national billboard legislation came after the beginning of the interstate highway system in 1956. Two years later Congress passed the so-called "Bonus Act," which encouraged individual states to develop control measures consistent with national standards by offering a federal-aid highway bonus payment in the amount of one-half of one percent of the cost of interstate highway construction projects. The Act prohibited most off-premise signs along the interstate system and provided some control of on-premise signs.[2] Later amendments ex-

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empted from control those segments of the interstate system which traversed (1) areas that had been either zoned commercial or industrial within the boundaries of incorporated municipalities as of September 1959, or areas in which the state had clearly established land use as industrial or commercial as of that date, and (2) older rights-of-way incorporated into the interstate system.[3]

Twenty-five states, located mostly in the Northeast, the Midwest, and along the Pacific Coast, passed enabling acts and entered into bonus agreements before the expiration of the program on June 30, 1965 (Johnson 1970). The Bonus Law did not specify the method to be used in effecting the required outdoor advertising controls. Only three states utilized the power of eminent domain to eliminate nonconforming signs; seven states combined compensation for certain existing signs along with police power controls; the remainder relied solely upon the police power. Six of these states had their laws tested in the courts and all were upheld with the exception of Georgia's. In an opinion which is widely quoted because it is so in variance with prevailing legal opinion in other states, the Georgia Supreme Court declared the law unconstitutional because it did not provide compensation in the acquisition of nonconforming signs.[4]

Even though it was the first attempt to develop national advertising control legislation, the Bonus Act has been much more successful in achieving its stated objectives than has the 1965 Beautification Act. The primary reasons for the Bonus Act's success were:

- It provided for definite national standards.
- The freeze date on the designation of new commercial and industrial zones kept these areas from proliferating to an extent that would undermine the purposes of the Act.

An alternative to the passage of the Highway Beautification Act would have been to amend the Bonus Act to make outdoor advertising control along the interstate system mandatory for all of the states and to eliminate some of the Bonus Act's loopholes. In retrospect, there is little question that this approach would have been far more effective in controlling billboards than the one actually adopted in the 1965 Act.

The Highway Beautification Act

The year 1965 marked the passage of the Highway Beautification Act, sometimes called the Ladybird Johnson Bill but more accurately described as the Billboard Protection and Compensation Act. The Act was conceived with lofty intentions—to make billboard control mandatory in all the states and to extend control to the primary system (most US-numbered and some state-numbered highways). What emerged offers a classic case of a powerful industry gutting environmental legislation. On the positive side, billboard control was made mandatory (a state would lose 10 percent of its federal-aid highway funds unless it complied with the Act), and regulation was extended to the primary system.[5] The costs, however, both in monetary and other terms, were enormous.

First, *all* areas zoned for commercial and industrial use, including "unzoned commercial and industrial areas," were exempted from any but the most minimal controls. The exemption is much too broad, lumping research parks and rural areas that happen to be zoned for possible future commercial development with ugly commercial strips. The practical effect of the provision has been to allow billboards in commercial areas where they are totally inharmonious, and also in areas which are almost totally rural in character.

Second, on-premise signs, those signs that identify a place of business, were exempted from any controls. The result has been huge gas station signs towering above the landscape at almost every interchange and the unchecked spread of sign clutter along our highways.

The most devastating triumph of the billboard lobby, however, was the provision making payment of compensation mandatory for the removal of all noncomforming signs. As will be shown, this forced compensation feature, combined with meager appropriations for the program, has meant that very few signboards have actually been removed under the Act.

The Highway Beautification Act in practice

How effective has Title I of the Highway Beautification Act of 1965 been in (1) controlling the erection of new billboards and (2) removing billboards that are nonconforming? The record indicates that the Act has been ineffective in both respects.

Control of new billboards

Size and spacing standards. The Highway Beautification Act required that each state enter into an agreement with the Secretary of Commerce (later Secretary of Transportation) to "provide effective control of outdoor advertising," including size and spacing requirements for billboards permitted in commercial and industrial areas. The Secretary was not allowed to set national standards for size and spacing limitations, however, but was to accept what was "customary" in each state.

In an attempt to set a basis for the negotiations with the states, and to assist in developing the required cost estimate for Congress, the Bureau of Public Roads developed draft standards for directional and official signs, a draft definition of unzoned commercial and industrial areas, and draft criteria for the size, spacing,

and lighting of signs permitted in commercial or industrial zones. Following the publishing of these criteria in the Federal Register, a series of public hearings was held in each state (Federal Register 1966).

The proposed standards were opposed within both the billboard industry and Congress because they would have established some restrictions on the sign companies' activities. The regulations set a maximum size limitation of 300 square feet—400 square feet if the sign was located more than 150 feet from the edge of the right-of-way. Billboards were also required to be set back 25 feet from the right-of-way, and a maximum of six signs per mile was established. No signs were to be allowed within 2000 feet of an entrance or exit ramp for an interchange or rest area, in effect creating a "blocked out zone" for approximately one and one-half miles at each interchange as a safety feature.

As a result of the opposition that developed during the hearings, when these proposed guidelines were presented to Congress in January 1967 they had been watered down considerably. The maximum size had been increased to 650 square feet with no setback requirement, while the maximum number of signs per mile had been increased to twenty-one.

Even these reduced standards met considerable opposition from the billboard lobby and its supporters in Congress, and the proposed standards were vigorously attacked during the hearings on the Beautification Act that were held by both Houses in 1967. The primary questions at issue were what constituted "customary use," and how much right the Secretary had to set any type of minimum standards. The Federal Highway Administrator testified that:

> We received a lot of testimony on what constitutes "customary use," and as you might suspect, it was certainly not unanimous in its presentation. We finally wound up with, for example, a size proposal of 650 feet. Just as a matter of interest, *this size is larger than all but 1.85 percent of existing signs* (U.S. Congress, House, 1967, p. 961). (Emphasis added.)

Finally, in a May 24 letter to Representative Kluczynski, Chairman of the Subcommittee on Roads of the House Public Works Committee, Transportation Secretary Boyd abandoned the proposed standards, and stated that "subject to supporting evidence, state determination of customary use will be accepted with respect to size, lighting, and spacing of signs" (U.S. Congress, Senate, 1967). Essentially, this was defined to encompass almost everything the sign companies wanted. F. C. Turner, Federal Highway Administrator, later wrote to Congressman Wright, then also Chairman of the Commission on Highway Beautification, that:

> The Federal Highway Administration, *in cooperation with the Outdoor Advertising Association of America, Inc.*, developed a model agreement which could be utilized by any state during the negotiation process (Commission on Highway Beautification 1973). (Emphasis added.)

This "model agreement" set a maximum size limitation of 1200 square feet that was adopted by thirty-two states. The square footage is equal to the floor area of a medium-sized three bedroom house and is approximately twice the size of the largest billboards normally erected along the interstate system. George McInturff of the Outdoor Advertising Association of America later testified:

> That size limit is the outer limit of what is used by the industry in major urban areas within the United States. . . . I doubt greatly that more than one sign out of 2,000 now erected, or erected since those controls were established, even approaches that 1200 square feet.[6]

"Customary spacing" in the guidelines, and in most of the states, was defined as every 500 feet on the interstate system, every 300 feet on the primary system, and every 100 feet on the primary system within municipalities. The billboard industry favored the spacing requirements since they prevent a competitor from erecting another sign close enough to block an unobstructed view out of an existing billboard. Under the spacing requirements it is possible to have 10.5 billboard sites per mile on each side of the road along an interstate highway, a total of 21 sites on both sides. Since two faces are permitted at each site, 42 billboards per mile are allowed along any portion of the interstate system that is zoned commercial or industrial. On the primary system, the comparable figures are 35 sites and 70 faces per mile. Within municipalities the allowable sites reach the somewhat absurd level of 106 per mile with 212 possible sign faces. If each of these signs were of the maximum allowable size (1200 square feet per site), the total area of the sign faces would be equal to approximately three football fields for each mile of roadway (Commission on Highway Beautification 1974).[7] (Table 1 illustrates the difference between proposed and final regulations under the Highway Beautification Act).

Commercial and industrial zones. Since the size and spacing requirements contained in most of the agreements amount to virtually no control of outdoor advertising, the designation of commercial and industrial areas becomes all important. Unfortunately, local zoning authorities often do not place great importance on providing an uncluttered view for the interstate motorist. The real or imagined benefits to be derived for local businesses through billboard advertising usually assumes a much greater priority. In practice, therefore, many local communities, and particularly rural counties have attempted to circumvent the Highway Beautification Act by zoning long

Table 1. Guidelines for size and spacing agreements in commercial and industrial areas

	Highway Beautification Act		
	Proposed in Federal Register January 28, 1966	Proposed in report to congress, January 10, 1967	Final guidelines
Maximum size	300 sq. ft.; 400 sq. ft. if located more than 150 feet from right-of-way	650 sq. ft.	1200 sq. ft.
Maximum height from ground	30 feet	None	None
Setback from right-of-way	25 feet	None	None
Maximum number per mile on:			
interstate	6	21	42
primary-rural	6	21	70
primary-cities	6	21	212
Allowable square footage per mile:			
interstate	2,400	13,650	25,200
primary-rural	2,400	13,650	42,000
primary-cities	2,400	13,650	127,200
"Blocked-out" zone from interchange	2,000 feet	2,000 feet	500 feet outside municipality. None within municipality.
Number of firms needed to qualify as "Unzoned commercial and industrial area"	2	2	1

Source: Federal Register, January 28, 1966. Senate Document No. 6, 90th Congress, 1st Session. Highway Beautification Commission, *Hearings*, 1974, pp. 413–419.

stretches of rural highways as commercial and industrial areas. The absence of any requirement that such areas actually contain commercial or industrial land uses, and the Congressional insistence that state and local zoning actions be accepted for the purposes of the Act, makes this provision perhaps the largest loophole in the entire Highway Beautification Act.

"Anticipatory" commercial and industrial zones. Under generally accepted planning techniques lands are zoned not just for the present, but also for anticipated development some years into the future. Because there is no requirement in the Beautification Act that restricts billboards to areas of actual commercial or industrial land use, this practice results in signboards being allowed in vast areas of rural countryside. For example, on Interstate 85 in Gwinnett County near Atlanta an industrial zone extends approximately four miles beyond the currently developed industrial area. In this four miles there are fifty-one billboard sites, only four of which are actually located near any type of commercial or industrial land use.

"False" commercial and industrial zones. Many states or local communities have classified areas as commercial and industrial zones that fail to qualify for this designation under any accepted land use standards. Consequently, it is difficult to reach any conclusion other than the obvious one that they were zoned primarily to allow billboards. In some cases, strips along the entire length of rural highways have been zoned solely for this purpose. Other rural counties have designated large areas on either side of interchanges as commercial zones, even though such activities are confined almost exclusively to the areas immediately adjacent to the interchange. Still others have classified strips along interstate highways as agricultural-commercial zones, in which billboards are almost the only permitted commercial use. Several states passed legislation to comply with the Highway Beautification Act that zoned vast areas as commercial or industrial. The most obvious was Wyoming, which zoned *all* lands outside of municipalities within 660 feet of the rights-of-way of interstate and primary highways as commercial (U.S. Congress, House, 1967, p. 1005). South Dakota zoned all land within 660 feet of interstate and primary highways up to fifteen miles from mu-

"Unzoned commercial area"—cars are repaired behind the house that fronts on a nearby secondary road.

nicipal limits as commercial (Commission on Highway Beautification 1973, pp. 644–645). Georgia zoned similar areas from two to eight miles from municipal limits, varying with municipal population size.[8]

These flagrant examples of false commercial and industrial zoning were not accepted by the U.S. Department of Transportation. Even though the Highway Beautification Act gives the states full authority to zone commercial and industrial for the purposes of the Act, the Federal Highway Administration has taken the position that zoning created primarily to permit outdoor advertising structures will not be recognized (U.S. Department of Transportation 1975).

Unzoned commercial and industrial areas. The designation of "unzoned commercial and industrial areas" is another gigantic loophole permitting billboards in predominantly rural areas. The U.S. Department of Transportation initially proposed that at least two businesses be located in such an area to qualify it as commercial (Federal Register 1966). On the other hand, much of the billboard industry took the position that billboards should be allowed in any area that *might* be suitable for commercial and industrial development, even though there were no such firms there at all. In the definition that was finally accepted, even the most obscure commercial or industrial use will serve to permit signs. For example, small family businesses that happen to back up to an interstate highway—and that in many cases cannot even readily be seen from the highway—will permit the erection of several large billboards. Ironically, junkyards in rural areas that are screened and controlled under the Highway Beautification Act have also served as the justification for permitting billboards.

Four of the states, California, Hawaii, Oregon, and Colorado, do not allow signs in unzoned commercial and industrial areas, while another four, New Hampshire, Massachusetts, Washington, and Vermont, require a minimum of two or three activities to qualify. (Vermont has since prohibited all billboard advertising within the state). The remainder of the states, except South Dakota, require only one activity and allow signs within 400 to 1000 feet (Commission on Highway Beautification 1974).

The ingenuity shown by some advertising companies to get a foot into this loophole are fascinating. In Georgia one property owner erected a small shed in a rural area and put up a sign designating it as a warehouse. A large billboard was erected next to this "warehouse" and the outdoor advertising firm then applied for a permit based on the area's being an unzoned industrial area. In South Carolina, a large national advertising company helped set up a small radio repair shop in a residence that happened to be

located near Interstate 95, and then used this "business" as justification to erect several large billboards.

The case of South Dakota. The Federal Highway Administration refused to accept the South Dakota law which zoned vast areas as commercial, and Secretary of Transportation Volpe invoked the ten percent penalty in federal-aid highway funds. The Secretary's determination that South Dakota was not providing "effective control," as called for under the Act, was challenged in federal district court, but the action was upheld. The court found that the State had:

> zoned commercial corridors through the State corresponding to the federally assisted highway systems, affording the State virtually no protection from outdoor advertising and subjecting the Interstate traveler to an array of billboards in the midst of an area obviously agricultural. For example, under the South Dakota law, on Interstate 90, crossing the State east to west, there would be only two short segments from one border to the other in which billboards would not be permitted. Each of these excepted segments would have been approximately two miles long. The Secretary reasonably concluded that these provisions were obviously inconsistent with the Act's purpose.[9]

Although South Dakota did pass new legislation and sign an agreement with the Secretary of Transportation (who returned the withheld federal-aid highway funds), this did not end South Dakota's efforts to circumvent the Highway Beautification Act. Local communities passed zoning ordinances designating large areas along interstate and primary highways as commercial, and these zoning determinations were accepted for purposes of the Highway Beautification Act by the State.

For example, Lyman County, with a population of approximately four thousand people, passed a zoning ordinance in 1975. Despite the fact that the county's population had been declining since 1910, and only slightly over two hundred persons were employed in wholesale and retail trade within the entire county, 29 of the 52 miles of I-90 within the county, comprising approximately 2,200 acres, was zoned for commercial use. These commercial zones were 300 feet wide on each side of the highway and sometimes extended more than three miles from any access to the interstate at an interchange. The town of Lyman, which had a population of approximately fifty and not a single commercial enterprise, zoned four miles of I-90 as commercial (Fifth District Planning and Development Commission 1976).

After the billboard industry successfully challenged the state's new law on the grounds of improper delegation of power, South Dakota passed still another act.[10] This act was a blatant attempt to not only circumvent the intent of the Highway Beautification Act but to use it to protect and enrich the billboard industry.[11] Among its provisions were:

- "Direction signs," which are allowed in all types of areas, were defined to include billboards.
- Local government control of outdoor advertising was pre-empted and local ability to require removal of any type of nonconforming signs through amortization under the police power was eliminated.
- Depreciation of the sign could not be taken into account in determining compensation.
- All noncomforming billboards could be "repaired or replaced by a sign of substantially the same kind," in effect giving all these signs eternal life.

"Unzoned commercial area"—farm machinery is repaired in the building to the right of the sign.

- The state was required to secure negative easements rather than use traditional zoning powers to control the erection of new signs.

In addition, the unzoned commercial and industrial area was defined to include:

- All land on both sides of the road within one mile in either direction of the property boundaries of any commercial or industrial activity.
- All land within one thousand feet of the right-of-way that is traversed by a railroad.
- "All pockets of land" lying between zoned or unzoned commercial and industrial areas which are not more than one thousand feet apart.
- "All other unzoned lands, *or zoned lands without regard to zoning classification*," as determined by any board of county commissioners. (Emphasis added.)

Determining that the South Dakota law "failed to provide for effective control of outdoor advertising," Secretary of Transportation Brock Adams invoked an approximate $4.5 million penalty on the State in November 1978.[12] He also reserved ten percent of the State's current allocation, pending possible revision of the South Dakota law by March 31, 1979. South Dakota has appealed this decision to the courts.

The 660 foot control zone. Framers of the 1958 Bonus Law felt that some limit of control was necessary, and for somewhat obscure reasons this was set at 660 feet (⅛ mile) from the edge of the right-of-way. These limits were continued in the Highway Beautification Act of 1965. The billboard industry responded in predictable fashion to this loophole by creating the phenomena of the "jumbo" sign. These are very large billboards, usually 1200 to 2500 square feet in size, but sometimes even larger. By 1973 the states estimated that there were nearly five thousand of these jumbos located just beyond the 660 foot control limit (Commission on Highway Beautification 1974). Several thousand more were erected before state laws were changed to comply with a 1974 amendment to the Highway Beautification Act which extended the control zone to the limit of visibility. The cost of removing the existing jumbos is now estimated at $77 million.[13]

Removal of nonconforming signs

Communities have traditionally eliminated nonconforming signs through amortization under the police power (Floyd and Shedd 1979, Chapter 4; Dobrow 1975; Travers 1974; and Williams 1974–75, Chap. 116). Almost all of the "Bonus" states used this method, but Congress decided upon compensation in the Highway Beautification Act, supposedly because control was being extended to the primary system (Floyd 1979).

In 1972 the Secretary of Transporation made a determination that Vermont's policy of not paying compensation for the removal of nonconforming billboards did not constitute "effective control" under the meaning of the Highway Beautification Act. The State challenged this mandatory compensation provision on the basis that (1) such action was not authorized under a proper construction of the Act, and (2) the provision violated the Tenth Amendment to the Federal Constitution. The court ruled against Vermont, and the State agreed to pay compensation.[14]

Congress made compensation mandatory for the removal of nonconforming signs, declared in a 1968 amendment that no signs are required to be removed unless the federal share of compensation is available, but has since failed to appropriate the funds necessary to complete the program within any reasonable time.

"Jumbo" billboards—compare to size of truck

In May 1971 Secretary Volpe attended ceremonies in Shreveport, Maine, marking the removal of the first sign purchased under the Highway Beautification Act. The outdoor advertising company was awarded $6,000 in compensation for this sign which had a town property tax valuation of some $820 (U.S. Congress, Senate, 1974). This event occurred nearly a year after the "final compliance date" of July 1, 1970, that was originally set in the Highway Beautification Act for the removal of all noncomforming signs.

Approximately 91,650 nonconforming signs had been removed under the Highway Beautification Act as of March 31, 1978; this is 30 percent of all nonconforming signs. Expenditures on the outdoor advertising control program, including administrative expenses, totaled $107.5 million through June 30, 1978 (Floyd and Shedd 1979, pp. 124–127).

State sign removal programs have varied widely, with some of the states removing all or almost all nonconforming signs, while others have removed few, if any. Eleven states had acquired less than 10 percent of their total nonconforming signs while only fourteen had purchased more than 50 percent.

The Federal Highway Administration estimates the total cost of removing signs made nonconforming by the Highway Beautification Act at approximately $515 million.[15] This represents a considerable underestimation, however, since the figure was derived by employing an average acquisition cost per signboard based on past experience, and the remaining signs are acknowledged to have a much greater average value than those removed during the early part of the program. The General Accounting Office estimates the removal cost at $823 million (Comptroller General 1978). Even if the lower FHWA cost estimate is correct, at the current level of appropriations the sign removal program could not be completed in less than *110 years.*

Most public projects are planned so as to *maximize* the benefit-to-cost ratio; the billboard removal program has been designed to *minimize* the benefit-to-cost ratio. In 1976 amendments Congress directed that the first priority for removal be signs voluntarily offered by the billboard companies, while other nonconforming signs along heavily traveled rural highways will be the last removed. This strategy has resulted in the very limited funds that have been appropriated for highway beautification being dissipated to little benefit except to the outdoor advertising firms.

The program has been further weakened by another amendment contained in the 1976 Federal Highway Act. In addition to directing the states to retain nonconforming rural signboards giving directional information until the end of the program, the amendments also allowed the states to keep these billboards permanently where their removal might cause "economic hardship."[16] This provision has the potential of completely halting the removal of rural signs.

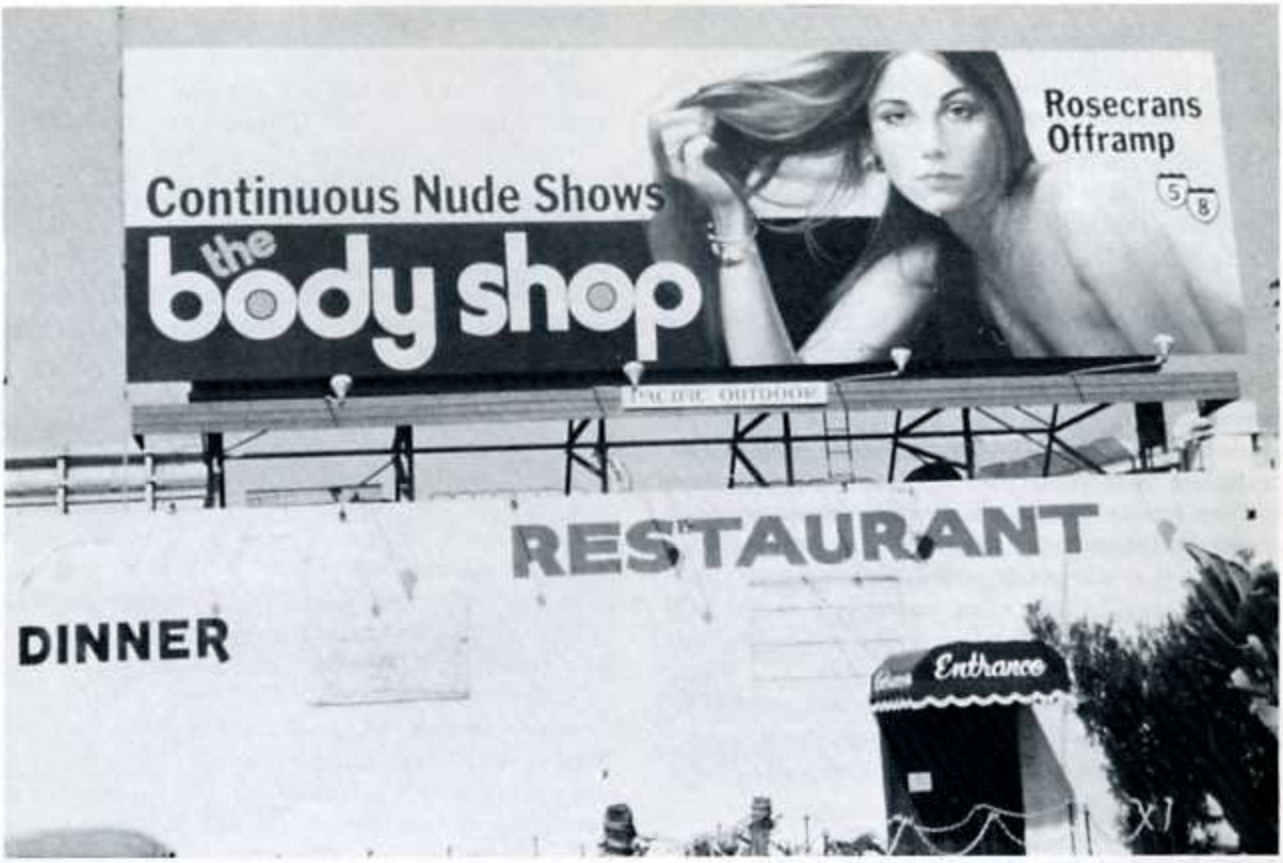
Still not satisfied, the billboard industry is lobbying hard to further amend the Act to permit "private directional signs" in all rural areas. This euphemism describes any billboard that contains directional information, a definition that covers an estimated 80 percent of existing signboards. Only a few hours and a few gallons of paint are needed to change the others. Needless to say, the proposed amendment would almost completely gut what still remains of the billboard control program.

1978 Amendments. In response to requests from the outdoor advertising industry, the Act was amended in 1978 to require that compensation be paid whenever a nonconforming sign is removed under *any* state or local land-use control, environmental, or zoning law.[17] Previously, compensation was required only where signs were removed because of the Act; it was not required where signs were removed because they were nonconforming under other state conservation or environmental laws, or under local comprehensive zoning ordinances. The amendment represents an unprecedented limitation on local zoning authorities and a victory by the industry in its longstanding campaign to deny state and local governments the traditional right to remove nonconforming signs through the use of the police power.

This Congressional action comes at a time when the principle of compensation through an amortization period has met with increasing acceptance in the courts (Floyd and Shedd 1979, Chap. 4; Dubrow 1975; and Environmental Law Review 1976.) In a major challenge by the sign industry, the amortization provision in Denver's sign ordinance was upheld by the Tenth Circuit Court of Appeals.[18] Other examples of amortization period held to be reasonable include the six and one-half years allowed for removal of all advertising signs in the Catskill and Adirondack Parks of New York,[19] the three year amortization period provided prior to mandatory removal of billboards in the Village of Minnetonka's residential communities,[20] the ten month period allowed for removal of billboards in Boothbay, Maine,[21] and the two year period enacted by Doraville, Georgia, provided before removal of signs within five hundred feet of an expressway.[22]

Billboard control under the Highway Beautification Act: an assessment

Billboard control under the Highway Beautification Act has largely been a failure, both in removing nonconforming signs and in preventing the spread of billboard clutter to much of the rural countryside. In particular:



Motorist information sign

- The requirement that size, spacing, and lighting would be in accordance with "customary use" has meant that for all practical purposes there are no restrictions on billboards in the areas that are designated as commercial and industrial zones.
- These ineffective regulations have tended to shield the billboard industry from more effective regulation at the state or local level.
- The designation of commercial and industrial zones has been so loose that local or state governments desiring to circumvent the Act can do so with almost complete impunity.
- The designation of "unzoned commercial and industrial areas" is so loosely defined that even very obscure commercial or industrial uses will permit billboards.
- Only a relatively small number of nonconforming billboards have actually been removed, and at the present level of funding the program could not be complete is less than 110 years.
- Ineffective regulations have permitted billboard companies to continually rebuild and refurbish nonconforming signs, in effect, to give them eternal life. Allowing the billboard companies to rebuild their signs continually has meant that the cost of acquisition continues to rise rather than to decline as was stated Congressional intent.
- The mandatory compensation provision has hindered the use of the police power to remove signs at the state and local level.
- Adequate alternative motorist information systems have not been provided.

This gloomy assessment of the program's effectiveness is shared by many observers, including the General Accounting Office, which recently completed a study of the Highway Beautification Act (Comptroller General 1978). That study concluded:

> The program as it is now structured may not achieve the overall objective of preserving natural beauty along the highways. A general lack of support for the program, the legal complexities that may result between States and sign owners, the numerous exemptions granted under the law, and the differences in State and local rules all appear to hamper achieving the aesthetic results of sign removal. . . . It appears that the objectives of the Highway Beautification Act will not be accomplished in the near future.

Senator Robert T. Stafford (R-Vt.), one of the Act's strongest supporters over many years, recently evaluated the billboard control program in discussing the 1978 amendments (Congressional Record 1978):

> This program is only a small part of the total Federal-aid scheme but, in my opinion, is one which functions the least well, raises more controversy, and provides fewer benefits than any other program element.
>
> It seems to me that we have succeeded in tying the hands of those States, such as my own, which want to move aggressively to clear highways of billboards. At the same time we have achieved very little in States which are less interested in the scenic value of their roads. We are fostering the worst of two worlds. And at the funding levels provided by Congress since the program began in 1965 it is evident that the program has little support from its creators. . . . In some instances it seems as if *the Beautification Act has been turned around and now promotes rather than discourages billboards. . . . I want my colleagues to consider the possibility that repeal of the highway beautification experiment may ultimately prove to be the only way to further the goals originally sought.* (Emphasis added.)

Steps toward an effective billboard control program

What are some realistic ways that the Highway Beautification Act could be amended so as to become more effective?

Control of new billboards

The proliferation of billboards in commercial and industrial zones that are actually primarily rural is the greatest loophole in the Highway Beautification Act. This loophole could be eliminated by:

- Initiating a freeze on the designation of additional commercial and industrial zones similar to that in the Bonus Act.
- Redefining "unzoned commercial and industrial areas" to limit this designation to areas of significant commercial and industrial activity.
- Requiring that billboards be located near actual commercial or industrial uses. This would eliminate the problem of anticipatory or false commercial and industrial zones.

Some control of on-premise signs is also necessary to eliminate obvious abuses such as the huge signs that tower over the landscape near interchanges. These regulations would not need to be complex; only size and height limitations are essential.

The size and spacing limitations for billboards in commercial and industrial areas should also be reassessed. The present requirements are so broad that they provide no real limitation on outdoor advertisers and serve merely to shield the industry from effective local regulation. The requirements should either be revised so as to be effective or else be eliminated.

Alternative motorist information services should be provided. A first step would be to establish "logo" information signing on all rural freeways. These signs, which are located on the right-of-way, display panels

showing brand names, trademarks, and names of business establishments. Separate blue panels are erected in advance of interchanges for gas, food, lodging, and camping facilities (U.S. Department of Transportation 1974). Firms near the interchange and meeting certain criteria can furnish panels containing a brand name logo or other type of name identification to be placed on these panels. A few states, notably Virginia and Oregon, have made extensive use of the logo signs, and a number of other states have begun similar programs. After years of experimentation there are no longer valid reasons to delay implementation of such a program.

Removal of nonconforming signs

The principle of mandatory compensation for the removal of nonconforming signs under the Highway Beautification Act appears to be firmly established, and it is unlikely that Congress would be willing to eliminate this provision. Even so, the removal program could be made much more realistic and effective. First, rules and regulations regarding the replacement, repair, and refurbishment of nonconforming signs should be revised so that these signs would actually depreciate as the years advance. This is consistent with generally accepted practices regarding nonconforming uses and would make it possible to eliminate these signs over a reasonable period of time.

Second, the monies that are available for sign removal should be utilized for maximum benefit rather than frittered away as is current practice. Nonconforming signs on the heavily traveled interstate system should be completely removed before any funds are expended on the primary system. Exceptions to this rule could be made for especially scenic roads, but the program should definitely involve removal of all nonconforming signs on a particular stretch of highway. Partial removals leave little discernible visual improvement for the average motorist.

These steps would make it possible to conduct a meaningful billboard removal program within a reasonable period of time. Obviously, this is not being achieved under the current program.

Billboard control: the forgotten environmental issue

The outdoor advertising industry has been able to dismember the Highway Beautification Act almost unimpeded in recent years and reduce it to near total ineffectiveness because the Act has been virtually abandoned by environmentalists. Even though billboard control was one of the first important environmental issues, it now is seemingly out of vogue with these groups.

Effective billboard control can still be achieved under the Highway Beautification Act if significant public support can be mobilized in support of extensive amendments and vigorous administration. Otherwise, perhaps it would be preferable to acknowledge failure as Senator Stafford suggests, and repeal the Act.

In his proposed budget for fiscal year 1980 President Carter has recommended that funds be discontinued for the Highway Beautification program. On February 6th, Senator Robert Stafford, the program's greatest supporter in the Congress, introduced a bill to repeal the mandatory provisions of the act. The Senator explained that "The purposes this act was intended to achieve have been to a large degree perverted. The act has become more a protection for billboards than the cause for their removal." Senator Stafford was attacked as a "rabble-rouser" by an official of the Outdoor Advertising Association of America, who praised the act as "a worthy endeavor that should continue." Hearings on the bill are scheduled for this summer.

Notes

1. For a review of these local efforts see Floyd and Shedd (1979); Travers (1975a, 1975b); and Williams (1974–1975, Chapter 11, 120–127).
2. Federal Aid Highway Act of 1958, 23 U.S.C. Sec. 131.
3. Public Law 86-342 (1959).
4. The flavor of the Court's opinion can be gathered from the following excerpt:

   > We believe this matter is important enough to justify the following observations. Private property is the antithesis of Socialism or Communism. Indeed, it is an insuperable barrier to the establishment of either collective system of government. Too often, as in this case, the desire of the average citizen to secure the blessings of a good thing like beautification of our highways, and their safety blinds them to a consideration of the property owner's rights to be saved from harm by even the government. The thoughtless, the irresponsible, and the misguided will likely say that this court has blocked the effort to beautify and render our highways safer. But the actual truth is that we have only protected constitutional rights by condemning the unconstitutional method to attain such desirable ends, and to emphasize that there is a perfect constitutional way which must be employed for that purpose. . . . *State Highway Department v. Branch*, 222 Ga. 770, 152 S.E. 2d 372 (1966).

5. 23 U.S.C. Sec. 131.
6. Testimony given before a public hearing to consider a challenge to the constitutionality of the State College Borough, Pennsylvania, Sign Ordinance 888 (March 13, 1978).
7. For a review of legal issues concerning the Highway Beautification Act see Cunningham (1973).
8. Georgia Laws, 1967 Session, No. 271.
9. *State of South Dakota v. Volpe*, 353 F. Supp. 335 (S.D. S.D. 1973).
10. *Hogen v. South Dakota State Board of Transportation*, 245 N.W. 2d 493 (1976).
11. House Bill No. 786, 52d Sess., Legislature of the State of South Dakota (April 1, 1977).
12. Final Determination and Order by Secretary of Transportation Brock Adams, November 9, 1978.
13. Letter from G. B. Saunders, Chief, Real Property Acquisition Division, Federal Highway Administration (June 17, 1977).
14. *State of Vermont v. Brinegar*, 379 F. Supp. 606 (D.C. Vt. 1974).

15. Saunders letter, *op. cit.*
16. 23 U.S.C. Sec. 131(o).
17. Public Law 95-599, Nov. 6, 1978. 92 Statutes at Large 2689.
18. *Art Neon Co. v. The City and County of Denver*, 448 F. 2d 118 (10th Cir. 1973) *cert. denied* 417 U.S. 932 (1974).
19. *Modjeska Sign Studios, Inc. v. Berle*, 402 N.Y.S. 2d 359, 373 N.E. 2d 255 (N.Y. Ct. of App. 1977).
20. *Naegele Outdoor Advertising Company of Minnesota v. Village of Minnetonka*, 281 Minn. 492, 162 N.W. 2d 206, 213 (Minn. Sup. Ct. 1968).
21. *Inhabitants of the Town of Boothbay and State of Maine v. National Advertising Company*, 347 A2d 419 (Sup. Judicial Ct. of Me. 1975).
22. *City of Doraville v. Turner Communications Corporation*, 236 Ga. 385, 223 S. E. 2d 798 (Ga. Sup. Ct. 1976).

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U.S. 301 in South Georgia fourteen years after the passage of the Highway Beautification Act