Requiem for the Highway Beautification Act

Charles F. Floyd

The Highway Beautification Act is a failure. It has been unsuccessful in either removing existing billboard clutter from rural roadsides or preventing its spread. In the past several years the act has become even more ineffective, being almost totally transformed into a sign industry dominated program that is actually enriching and subsidizing the industry it was meant to regulate, and serving as a protective umbrella to shield that industry from state and local governments that desire to effectively control billboard blight. Repeal or extensive revision of the Highway Beautification Act now appears to offer the only hope for achievement of the original aims of the beautification program.

The Highway Beautification Act is a failure. Passed with much fanfare in 1965, the act was supposed to result in the removal of existing billboard clutter from our rural roadsides and the prevention of its future spread.[1] It has accomplished neither objective.

An earlier article in this journal detailed the history of the beautification program and enumerated some of the reasons for the act's lack of success (Floyd 1979a). Those who read that sad tale of environmental regulatory failure may have gained some solace from the sentiment that "Well—at least it can't get any worse." You were wrong! In the past several years the act has been almost totally transformed into a sign industry dominated program that is actually enriching and subsidizing the industry it was meant to regulate, and is serving as a protective umbrella to shield the industry from state and local governments that desire to effectively control billboard blight. Indeed, legislative proposals to repeal the act have led to the ironic situation in which environmental organizations that originally fought for the passage of the act have been supporting its repeal, while the billboard industry has become the act's vigorous champion.

The Highway Beautification Act

The Highway Beautification Act made billboard control mandatory in all states along the federally funded interstate and primary systems (most US-numbered routes). States not complying with the act's provisions could lose 10 percent of their federal highway funds. The seeds of failure were already planted in the act, however—particularly in the provision permitting new billboards in any area zoned commercial or industrial, and in the requirement that cash compensation be paid for the removal of any nonconforming sign. The first provision has meant that new signboards have gone up in areas where they are totally inharmonious, while the second has meant that very few signs have actually been removed under the act. On the contrary, denying the states and local governments the traditional right to remove nonconforming signs under their police powers after a reasonable amortization period has prevented many communities from forcing the removal of unsightly nonconforming billboards.

Control of new signs

The Highway Beautification Act has been very ineffective in controlling the erection of billboards along rural roadsides. New signs were supposed to be erected only in areas of commercial or industrial use and were made subject to size, spacing, and lighting criteria. Unfortunately for the stated objectives of the act, the Secretary of Transportation was not allowed to set any national standards, but was to enter into agreements with the states based on customary use. "Customary use" was defined in a rather curious way.

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Size and spacing standards

The federal government first proposed a maximum size of 400 square feet for new signs but later changed this to 650 square feet, even though a national inventory showed that size to be larger than all but 1.85 percent of existing billboards (U.S. Congress, House 1967, p. 961). Finally, the Federal Highway Administration developed a model agreement in cooperation with the Outdoor Advertising Association of America which was adopted by thirty-two states (Brennan 1979). The model agreement set a maximum size limitation of 1200 square feet, equal to the floor area of a medium-sized three bedroom house and approximately twice the size of the largest billboards normally erected along the interstate system. George McInturff, who served as chief negotiator of the agreements as head of the Scenic Enhancement Division of the Federal Highway Administration and who now is employed by the Outdoor Advertising Association of America as an environmental consultant, 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 1,200 square feet.[2]

"Customary spacing" in the guidelines, and in most of the states, was defined as every five hundred feet on the interstate system, and every one hundred feet on the primary system within municipalities. 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 (Brennan 1979). It is obvious, therefore, that the size and spacing requirements do not serve as any effective control of new billboards.

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 assume a much greater priority. In practice, many local communities, and particularly rural counties, have attempted to circumvent the Highway Beautification Act by zoning long stretches of rural highways as commercial and industrial areas. The absence of any requirement that such areas actually contain commercial or industrial land uses, and the acceptance by the Federal Highway Administration of such "phony" zoning makes this provision perhaps the largest loophole in the entire Highway Beautification Act.

"Phony" commercial and industrial zoning. Until recently, the Federal Highway Administration took the position that zoning created primarily to permit new outdoor advertising structures would not be recognized for purposes of the Highway Beautification Act (U.S. Department of Transportation 1975). This position was upheld in South Dakota, whose legislature had zoned virtually all land bordering federal numbered highways in the state as commercial. The court noted, for example, that billboards would have been permitted on all but four miles of the over four hundred miles of I-90 in South Dakota, and concluded: "Congress never intended to subvert the Act's stated purpose to arbitrary actions taken by the individual state legislatures."[3]

Despite this favorable ruling from the courts, a clear legislative history rejecting phony zoning to permit new billboards (Floyd and Shedd 1979, pp. 84–86), and the opinion of their own Chief Counsel supporting this position (Federal Highway Administration 1976), the Federal Highway Administration (FHWA) has almost never sought to enforce the law against phony zoning in recent years no matter how flagrant the abuse.

For example, following the earlier court decision against the state, several South Dakota counties zoned long strips of rural land along federal highways as commercial (photo 1). Lyman County, with a declining population of approximately four thousand and slightly over two hundred people employed in wholesale and retail trade, zoned twenty-nine of fifty-two miles of I-90 for commercial use in bands three hundred feet wide on each side of the road. Some of these strips extended more than three miles from any access to the highway at an interchange. The Town of Lyman, which had a population of approximately fifty and not even a single commercial enterprise, zoned four miles of I-90 as commercial (Fifth District Planning and Development Commission 1976).

A field investigation by the FHWA revealed that Lyman County had no comprehensive plan—requirment by state law before any permanent zoning ordinance can be adopted. County officials were unable to even find the zoning maps during the visit, but finally located them several months later. Despite the

Photo 1. Lyman County, S.D. "commercial" area

FHWA official's conclusions that "there is no obvious justification for the designation of such large commercial districts based upon existing or projected needs" and "the only justification [offered by county officials] for the [zoning] change was that the billboard people wanted it," the Federal Highway Administration has refused to take any action to correct this obvious abuse of the beautification act.[4]

Deming, New Mexico, a community with a 1970 population of about 8,300, zoned 35 square miles of its extraterritorial area in 1978. The new zoning included 3,342 acres as industrial and 3,065 acres as commercial, most of the latter being in narrow strips on both sides of I-10 and other federally funded highways in the area. The FHWA Division Administrator observed that:

> Most of the land zoned commercial is vacant and apparently being used for grazing and farming. It is difficult to envision the type of expansion Deming would have to undergo to actually have such a large commercial area under development in the foreseeable future. There is little doubt that these commercially zoned areas would become lined with billboards long before they were commercially developed.[5]

Despite these findings and his own conclusions that "this zoning action and ensuing erection of billboards along the Interstate appear contrary to the Highway Beautification Act," the Associate Federal Highway Administrator for Right-of-Way and Environment acquiesced to this blatant example of phony zoning.[6]

Clark County, Nevada (Las Vegas) reclassified its H-2 (General Highway Frontage District)—which permitted commercial uses only upon issuance of a conditional use permit—as a commercial zone in 1976. The county also expanded the zone to extend 660 feet on each side of the centerline of 137 miles of I-15 and US-95. Not only did this enable the state to permit a number of existing non-conforming signs, if fully utilized it could have resulted in the potential erection of 11,568 new signs.[7] This was a little blatant even for the Federal Highway Administration, and they requested that the state rescind their recognition of the zone as commercial for purposes of permitting new billboards, an action that was finally accomplished following a determination by the Nevada Supreme Court that the extensive use of the H-2 zone violated the intent of the beautification act.[8] Despite this ruling, Clark County has continued to rezone rural areas as commercial to permit billboards. For example, one parcel located approximately one-half mile from any existing commercial use was zoned commercial to permit "a one space parking lot" *and* a billboard.[9]

Following the construction of I-95, the Town of Hardeeville, South Carolina passed a zoning ordinance in 1977 (Town of Hardeeville 1977). Under this ordinance several areas along I-95 were zoned as commercial which had no potential for commercial development—except for billboards (photo 2). One parcel had no public access except through a park; two had no public access at all. Two parcels were zoned "Traveler Commercial" even though they were located approximately two miles from any interchange with I-95; one of these had no public access. The ordinance also permitted one hundred foot spacing for billboards, a violation of South Carolina's outdoor advertising control agreement with the Secretary of Transportation.

An inspection conducted in early 1981 by a Federal Highway Administration review team found that the Hardeeville zoning was not accomplished in accordance with the South Carolina Code. They concluded:

Photo 2. Hardeeville, S.C., "commercial" zoning (Note destroyed trees.)

> The zoning of these five areas does not stand the test of reasonableness. Each is either poorly served by public access or has none at all. None are directly (physically) supported by compatible adjacent land uses. None are commercially developed, other than with outdoor advertising devices.[10]

Despite these findings, the Federal Highway Administration has refused to take any action regarding either the Hardeeville phony zoning or the violation of the spacing requirements.[11] In fact, the FHWA has recently taken the position that monitoring of local zoning "will be limited to assuring that a comprehensive plan was adopted pursuant to State codes."[12]

Unzoned commercial and industrial areas. The designation of "unzoned commercial and industrial areas" is another huge loophole permitting billboards along predominantly rural roadsides. The original idea was that this designation would encompass areas that were easily recognizable to the average motorist as genuine commercial and industrial areas, but which were located in jurisdictions which lacked comprehensive zoning. It hasn't quite turned out that way. The draft agreement that was proposed in 1966 would have defined such areas as two industrial or commercial activities located within a radius of three hundred feet, and this concept was even endorsed by the Outdoor Advertising Association of America (U.S. Congress, Senate 1965). In the final agreements, however, the unzoned commercial or industrial area was defined in most states as eight hundred feet each side of only one such activity (Floyd and Shedd 1979, pp. 99–104). In practice, even the most obscure commercial or industrial use will often serve to permit several new signs.

Consider, for example, the three billboards in photo 3 on I-85 in a rural residential area of South Carolina. If one looks carefully through the supports of the nearest sign he can see a small auto repair service located on the nearby secondary road. This obscure business serves to designate this area as an "unzoned commercial area," despite the fact that South Carolina's agreement with the Secretary states that such a classification is not permitted in an area that is primarily residential in character. The FHWA's recent review agreed with this assessment, but the agency has refused to take any corrective action.[13]

Of course, if an advertiser cannot find some existing obscure commercial or industrial use, one can be created. The billboards in photo 4, and another just off to the right, are located on I-95 in South Carolina. Below the McDonald's sign is a small building with a painted sign across the back wall proclaiming the structure to be the "McDonald's District Office and Warehouse Facility."

No matter how obscure, at least these buildings can be seen from the roadway. Often, however, qualifying activities are not even visible, at least not in the normally accepted sense of the word. Consider, for example, the Rodeway Inn billboard (photo 6) located next to a residence on I-40 near Asheville, North Carolina. Photograph 5 looks slightly left of the sign towards a residential area. The arrow points out Parkway Auto Service, a small establishment located about seven hundred feet from the road behind eight homes.

The three signs shown in photograph 7 are located nearby in another area which appears to consist entirely of agricultural and residential land uses. Ah—but you have not looked carefully enough. Nestled under those trees, past the grazing cows and peaceful homes, is a small knitting plant located over eight hundred feet from the roadway (photo 8).

Although it is doubtful that 1 out of 100,000 motorists unfamilar with the area could locate these "commercial and industrial" activities, they were used by the North Carolina Department of Transportation to justify permitting these billboards on a newly con-

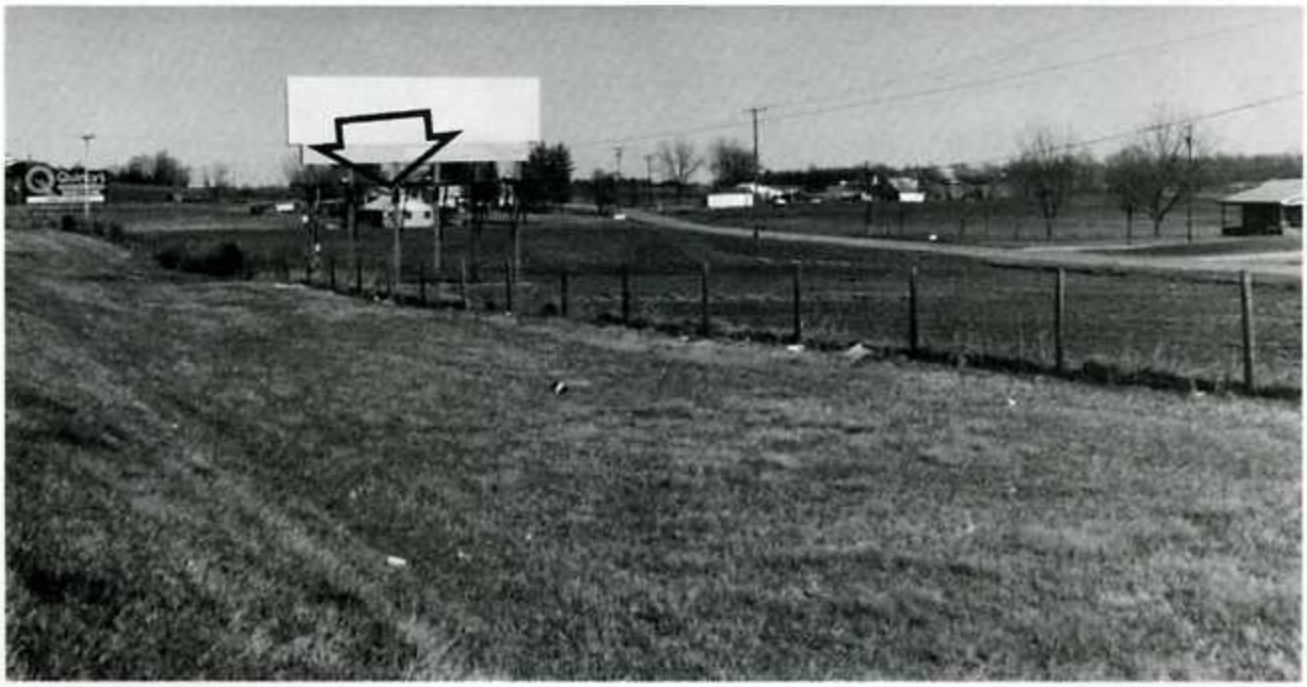

Photo 3. Unzoned commercial area on I-85 in South Carolina

structed interstate highway. Here again, the Federal Highway Administration refused to take any corrective action, contending that the signs "were erected in accordance with State and Federal regulations."[14]

Removal of nonconforming signs

Communities have traditionally eliminated nonconforming signs through amortization under the police power (Floyd and Shedd 1979, Chapter 4; Williams 1974–1975, Chap. 116; and Floyd 1982a). Despite the fact that twenty-two states were already removing nonconforming billboards under the earlier Bonus Act through their use of the police power, the 1965 Act required the payment of cash compensation to both the sign owner and owner of the land on which the sign was located.[15] Congress justified this change in policy on the basis that controls were being extended

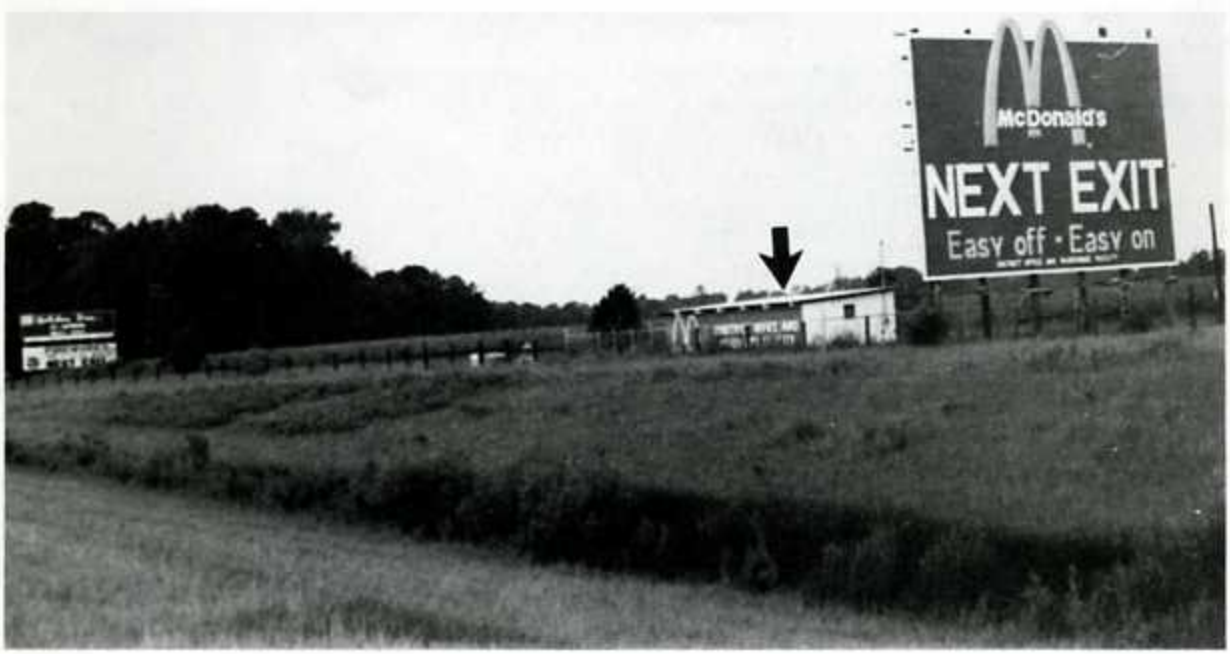

Photo 4. "McDonald's district office and warehouse facility"

The auto repair service indicated in photo 5 (above), located to the left of the billboard in photo 6 (below), is the qualifying "commercial" activity.

The "industry" justifying the permitting of the billboards in photo 7 (above) is the knitting plant indicated in photo 8 (below).

to the primary system where outdoor advertising was long established. There is considerable evidence, however, that the Congress did not fully understand the implication of this action. For example, during the debate Senator Muskie emphasized that "under the bill all that can be compensated for is whatever remains of the leaseholds or the unamortized values, so that if, in fact, the billboard has been completely amortized or the leasehold has expired, no compensation will be paid under the bill."[16] This, of course, is an almost exact description of the amortization principle which was being outlawed by the act.

This triumph for the billboard lobby was made very clear in 1972 when the Secretary of Transportation made a determination that Vermont's policy of not paying cash 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 U.S. Constitution. The court ruled against Vermont, and the state was forced to pay cash compensation.[17]

Subsequent experience has proven that the Congress's belief that the value of nonconforming signs would generally decrease over time was not justified. To the contrary, the average compensation paid for the signboards has continually risen, even though the outdoor advertising industry has generally depreciated billboards over a period of eight years or less for tax purposes. Lenient regulations regarding repair and refurbishment have allowed the sign companies to continually rebuild and repair the nonconforming signs and, in effect, to give them eternal life. Combined with unrealistically high sign appraisals, this has resulted in a continual increase in sign removal costs. A General Accounting Office report estimated future increases at 6 percent annually (Controller General of the United States 1978). Experience has shown that this estimate is much too low, with the actual average cost of signs acquired under the program rising almost 13 percent annually between fiscal years 1976 and 1980.

Congress made compensation mandatory for the removal of nonconforming signs, and 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. The first sign removed under the beautification program was acquired in May 1971, nearly a year after the "final compliance date" of July 1, 1970, that was originally set in the act for the removal of *all* nonconforming signs. Since 1971 approximately 107,000 nonconforming signs have been removed under the act at a cost in excess of $150 million. Over 133,000 nonconforming billboards remain, along with approximately 54,000 illegal signs.[18]

Although according to the Federal Highway Administration approximately 46 percent of the nonconforming signs have been removed, this figure gives a totally false impression regarding the status of the acquisition program. Most of the billboards removed have been small and obsolete signs of little value. Most of the larger and more valuable signs remain.

Public projects are normally 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 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 be the last removed. The result of this strategy is that the very limited funds appropriated for highway beautification have been dissipated with little benefit except to the outdoor advertising firms.

Furthermore, the FHWA has ruled that beautification funds can be used to remove signs that were being acquired to make way for new construction. In other words, the meager monies available for beautification have been used to remove signs that would have otherwise been acquired with construction funds. In some states over half of the beautification monies have been utilized in this way—to no benefit to the stated purposes of the Highway Beautification Act.

The FHWA recently estimated that completion of the beautification program would require an additional expenditure of approximately $995 million in 1980 dollars. With a 7 percent rate of inflation the estimated cost to complete the program in ten years would be $1.3 *billion;* a twenty year program was estimated to cost $1.9 billion. At a more realistic inflation rate of 13 percent, the comparable figures were $1.8 billion and $3.7 billion.[19] Even these estimates are too low, however, since they are based on an average cost of $1808 per sign, less than recent acquisition costs and far less than required for the more valuable signs still to be acquired.

For fiscal year 1981 the Congress appropriated $8.5 million for the sign program. Of this amount, $7.7 million was required for payments contractually obligated under the Bonus Act, leaving only $800,000 for sign removal. The fiscal 1982 appropriation allocated only $500,000 for the beautification program, approximately $7.2 million *less* than required just for bonus payments.[20] If one makes the totally unrealistic and totally incorrect favorable assumptions that (1) the entire $500,000 could be used to acquire nonconforming signs, (2) the Federal Highway Administration's estimates of the cost to complete the program are correct, and (3) there will be no further inflation, then this level of appropriations would fund the removal of all the currently nonconforming signs in slightly less than two thousand years.

The 1982 Department of Transportation appropriations act also contained a rather obscure clause that was added in the conference committee by Senator Andrews of North Dakota:

> notwithstanding any other provision of law, any determination as to whether any outdoor advertising sign, display, or device is or has been lawfully erected under State law or is entitled to compensation shall not be affected by any waiver of compensation.[21]

This provision appears to have had major benefits for one sign company. The state of North Dakota issued conditional sign permits after the passage of the 1965 Beautification Act in which the applicant waived the right to compensation if the law was subsequently changed to make the sign nonconforming. The New-

man Sign Company received 141 of these conditional permits. After the state passed a law complying with the act in 1972, it sought to remove the signs as specified in these conditional permits. Newman and other sign companies challenged the state's action, but the North Dakota Supreme Court upheld the state, as did the U.S. Supreme Court.[22] Even so, the signs will now remain, as acknowledged by Secretary of Transportation Drew Lewis in a letter to Senator Andrews.[23] The cost to the taxpayers of making these illegal signs subject to compensation was far in excess of the entire appropriation for beautification in the appropriations act. Of course, with no money to remove the signs, they undoubtedly will remain, providing a windfall profit to their owners.

The 1978 amendments

In response to lobbying 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.[24] 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 long-standing campaign to deny state and local governments the traditional right to remove nonconforming signs through the use of the police power.

This triumph of the billboard lobby, which has added an estimated 38,000 signs and $259 million to the cost of the removal program,[25] was made even more costly to the taxpayers when the Federal Highway Administrator succumbed to industry pressure and ruled that the amendment would apply to signs that were still in litigation even though they had already been removed by the effective date of the amendment (Arieff 1979). Even more significantly, the amendment has been used by the outdoor advertising industry as the basis for passage of laws in many states requiring the payment of compensation for *any* off-premise sign wherever located. Thus, the beautification act has been used as a vehicle to block local billboard removal programs, long one of the outdoor advertising industry's most cherished objectives.

For example, in 1977 New York's highest court ruled that the state could require the removal of approximately one hundred billboards in their Catskill Park without the payment of cash compensation after a six-and-a-half-year amortization period.[26] Following the passage of the 1978 amendment and the subsequent ruling by the Federal Highway Administrator requiring payment even where property rights had already been extinguished under law, the state was forced to allow the signs to remain under the threat of a loss of 10 percent of their federal aid highway funds (*Signs of the Times* 1980).

Seattle passed a sign control ordinance in 1968 which provided for the removal of nonconforming signs without cash compensation after the expiration of a ten year amortization period. Among these nonconforming signs were several located adjacent to the Alaska Skyway. In 1977 the city notified the billboard company that the signs were in violation of the ordinance and would have to be removed. The Supreme Court of Washington ruled that the billboard company must remove the signs and that it would be an unconstitutional gift of public funds for the city or state to pay cash compensation.[27] Even so, upon the request of the Outdoor Advertising Association of America the Federal Highway Administrator sent an official warning letter to the state, notifying them that penalty proceedings would be initiated within forty-five days unless they violated the order of their own Supreme Court and paid compensation for the signs in question. This is the *only* warning letter that has ever been sent to a state solely for operational deficiencies. A copy of the warning letter was also sent to the outdoor advertising industry's attorney thanking him "for your interest in the Highway Beautification Program."[28]

A somewhat similar situation occurred in San Diego. The California Supreme Court, after upholding an ordinance completely banning billboards within San Diego and requiring their removal after an amortization period, modified their opinion to require cash compensation for signs on federally funded highways as a result of the 1978 amendments.[29] This case also provided a major test for the right of communities to control or prohibit billboards. The U.S. Supreme Court struck down the San Diego ordinance on the grounds that it too severely limited *non-commercial* speech. However, the Court overwhelmingly upheld the right of a city to enact a total ban on *commercial* billboards.[30]

Vegetation destruction

Perhaps the ultimate perversion of the beautification law has been as justification for the destruction of vegetation located on the right of way in front of billboards. Illegal tree cutting, euphemistically called vegetation control by the sign industry, has long been a serious problem in many states. Under the urgings of the outdoor advertising industry, the Federal Highway Administration "solved" the problem by legalizing this illegal activity, allowing the companies to cut trees and other vegetation owned by the public under the guise of maintenance.[31] This legalized vandalism is now being permitted in a number of states, despite favorable court decisions which clearly establish that billboard

Photo 9. Vegetation destruction on I-85 in South Carolina

owners have no inherent right to be seen from the roadway.[32]

What follows is an example of how this policy has worked in actual practice. The South Carolina Department of Highways justified the issuance of a permit for the Dairy Queen sign in photo 9 on the basis that a small business was located close to the highway off a nearby secondary road. The building was not readily visible from the roadway as a business, particularly since it was hidden by a grove of hardwood trees. Even so, after the permit was issued, over one hundred trees on the right of way were destroyed under a "vegetation maintenance" agreement in order to clear the site for the billboard.[33]

The Stafford repeal bills

Many felt the 1978 amendments were the "last straw" in the perversion of the Highway Beautification Act. Among these was Senator Robert T. Stafford of Vermont, long one of the strongest supporters of billboard control. Referring to the act as the "Billboard Retention and Relief Act of 1965," Senator Stafford introduced a bill, The Federal Highway Beautification Assistance Act of 1979, that would have made the program voluntary with the states—including the payment of cash compensation for non-conforming signs.[34] In explaining his reasons for introducing the bill to repeal the mandatory features of the original act, Senator Stafford explained:

> I believe that more productive anti-billboard battles can and will take place at State and local levels, once Federal obstacles are removed. Where there is strong sentiment to preserve a State's natural beauty, strong measures will be taken. Where no such sentiment exists, roadsides will, as at present, remain ugly. But we will not be spending taxpayers money to keep them that way.[35]

The hearings of the Stafford bill produced some quite ironic testimony to those unfamilar with the history of the federal beautification program. Generally, state highway officials, local government officials, and environmental groups supported repeal, while the exist-

ing act received staunch support from the billboard industry (U.S. Congress, Senate 1979a). The bill failed in committee by a 6–6 vote when two of its co-sponsors, Senators Howard H. Baker and Pete V. Domenici, "took a walk" under billboard industry pressure and failed to vote on the measure (U.S. Congress, Senate 1979b).

In 1981 Senator Stafford, then Chairman of the Senate Committee on Environment and Public Works, offered another bill, the Billboard Deregulation Act of 1981.[36] This bill, which proposed to simply repeal the 1965 act, was again strongly opposed by the outdoor advertising industry, and it quietly died without a hearing or a committee vote.

The outdoor advertising industry offered their own deregulation bill as part of the Surface Transportation Assistance Act of 1982.[37] Among other things, the bill would:

1. change the purpose of the act from one of protecting scenic beauty to one of preserving "communications through the outdoor medium,"
2. destroy any effective federal regulation over the erection of new billboards,
3. abolish the traditional use of the police power to remove nonconforming billboards in all states and local areas, and
4. require that cash compensation be paid "upon the removal or *upon the substantial impairment of the customary use or maintenance*" of a billboard, which means that all trees on the public right-of-way blocking a clear view of billboards would have to be cut down unless the state or local community paid for the billboard (emphasis added).

This proposal would constitute perhaps the ultimate in perversion of environmental regulation; the *only* purpose of the regulation would then be to protect the regulated industry from effective regulation.

At this writing the bill's disposition is still at issue.

The national advisory committee

The Secretary of Transportation appointed a twenty-four member National Advisory Committee on Outdoor Advertising and Motorist Information in 1980 whose task was to examine the highway beautification program and make recommendations for administrative and legislative changes. The committee was very evenly divided between pro-scenic beauty and pro-billboard groups. The faction composed of representatives from the outdoor advertising industry, tourist related groups, and public officials sympathetic to the outdoor industry position sought changes that would have further perverted the act. For example, this group recommended that:

1. removal of nonconforming signs be made optional with the states—but payment of compensation remain mandatory,
2. up to two "directional" billboards per mile be permitted in rural areas, regardless of zoning or actual land use,
3. each state be *required* to adopt a policy of permitting sign companies to cut trees on the right of way in front of billboards, and
4. there be no review of local "phony" zoning actions to permit billboards, or any requirement that new billboards be located in areas of actual commercial or industrial use (FHWA 1981b).

Members of the committee who desired an effective beautification program made a number of recommendations for administrative and legislative changes. These included:

1. using the available beautification funds to achieve the maximum aesthetic improvement by ending the practices of (1) removing the signs first that have been voluntarily offered by their owners, and (2) allowing beautification funds to be used to acquire signs for right of way projects;
2. levying a user tax on billboards to generate the funds needed to pay cash compensation for the removal of nonconforming signs;
3. restricting new sign permits to sites in commercial or industrially zoned areas that are also located within three hundred feet of an actual commercial or industrial structure which is clearly identifiable as such from the traveled roadway;
4. changing the definition of an "unzoned commercial or industrial area" to require two or more commercial businesses located within four hundred feet of each other; and
5. reducing the scope of the program by (1) deregulating highways in urban areas, and (2) deregulating most of the primary system.

The Highway Beautification Act: assessment and policy alternatives

The Highway Beautification Act has been a failure in meeting its original objective of protecting scenic beauty along rural roadsides. Perhaps the most convincing proof of this contention has been provided by the outdoor advertising industry itself. The industry has been pleased with the program. The president of the Outdoor Advertising Association of America testified that the industry spent over a quarter of a million dollars defending the act in hearings that were held by the Federal Highway Administration during 1979 (FHWA 1979c); they vigorously fought Senator Stafford's attempts at repeal; and the only members of the National Advisory Committee who were in favor of continuing the program without major legislative re-

visions were those associated with the outdoor advertising industry.[38]

In view of the ineffectiveness of the current program, what are the policy alternatives? The first is to admit that the noble experiment has failed and return the responsibility for the program to the state and local governments as Senator Stafford proposed. Although repeal is certainly an admission of failure, many feel that it would be far preferable to the current travesty. Repeal would undoubtedly mean more signboards in those states that care little for their scenic beauty, but it would also remove restrictions on state and local governments that genuinely desire to control billboard blight. Ironically, therefore, complete repeal of the Highway Beautification Act offers at least some hope for achievement of the original aims of the highway beautification program.

The other alternative would be to make extensive administrative and legislative changes in the act to enable it to be effective. The dismal record of the Federal Highway Administration in enforcing the act offers little encouragement for the initiation of effective administrative changes in the near future.[39] To the contrary, the recent direction has been toward *no* federal enforcement of the act.

It is also clear that a reduction in the legislative scope of the program offers the only reasonable hope for continuation of a national highway beautification act. Essential elements of such a program would be an immediate imposition of a moratorium on new billboards along federal highways in rural areas, exemption of larger urban areas, and imposition of a user tax on all billboards subject to the beautification act to fund implementation and enforcement of the program.

The reduced scope would make the act more manageable and concentrate efforts in rural areas where they can be more effective. By and large, cities over 25,000 and urban counties now have in place effective local programs of billboard control that are actually hindered by the current act, and exemption would enable their own programs to be more effective. The imposition of the user fee would provide the funds necessary to remove nonconforming billboards and to provide enforcement (Floyd 1982a).

The Highway Beautification Act was one of the first major pieces of national environmental legislation. It may also be the first to be completely converted into legislation that does nothing but protect the supposedly regulated industry. With most environmental organizations having abandoned the act to the outdoor advertising industry, its future appears bleak—unless scenic beauty again becomes a priority objective of those who are concerned about the environment.

Notes

1. 23 U.S.C. Sec. 131.
2. 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).
3. *State of South Dakota* v. *Volpe*, 353 F. Supp. 335 (D.S.D. 1973). Later penalty proceedings against South Dakota were upheld in *State of S.D.* v. *Adams*, 506 F. Supp. 50 (D.S.D. 1980) and *State of S.D.* v. *Adams*, 506 F. Supp. 60 (D.S.D. 1980).
4. FHWA Field Trip Report by R. W. Moeller, Chief, Junkyard and Outdoor Advertising Branch, June 19, 1980.
5. FHWA, Memorandum concerning Deming Extraterritorial Zoning by John F. MacAllister, Division Administrator, June 7, 1979.
6. FHWA, Letter from Joseph M. O'Connor to L. P. Lamm, Executive Director, February 27, 1981.
7. FHWA, Junkyard and Outdoor Advertising Branch, Map and Notations, 1980.
8. *Alper* v. *State*, Nev., 621 P.2d 492 (Nev. 1980).
9. FHWA, Memorandum concerning Rezoning in Clark County by Conway C. Barlow, Division Right-of-Way Officer, February 26, 1980; and State of Nevada Department of Highways, Memorandum concerning Clark County Zoning Actions by Eldridge T. Porch, Chief Right-of-Way Agent, December 5, 1979.
10. FHWA, Highway Beautification Program Fact Finding Inspection, South Carolina, January 26–February 6, 1981.
11. Letter from Mr. Rex C. Leathers, Regional Federal Highway Administrator, September 9, 1981, and letter from Mr. R. A. Barnhart, Federal Highway Administrator, October 26, 1981, both to the author.
12. Letter from Mr. Rex C. Leathers, Regional Federal Highway Administrator, January 7, 1982, to the author.
13. Letter from Mr. R. A. Barnhart, Federal Highway Administrator, October 26, 1981, to the author.
14. Letter from Mr. Rex C. Leathers, Regional Federal Highway Administrator, January 7, 1982, to the author.
15. The Bonus Act of 1958 encouraged states to develop billboard control measures for interstate highways 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 construction projects. The act prohibited most off-premise signs along the interstate system outside cities and provided some control of on-premise signs. Twenty-five states passed enabling acts and entered into bonus agreements before the expiration of the program in 1965 (Floyd and Shedd 1979, Chapter 5).
16. U.S. Congress, Senate, *Congressional Record*, 89th Congress, 1st Session, 1965, Vol. 111, p. 23872.
17. *State of Vermont* v. *Brinegar*, 379 F. Supp. 606 (D.Vt. 1974).
18. FHWA, Annual Statistical Progress Report: Highway Beautification Program, September 30, 1981. Unpublished report.
19. FHWA, Projected Outdoor Advertising Control Program Completion Cost, July 1980. Unpublished report.
20. Public Law 97-102, December 23, 1981.
21. Ibid.
22. *Newman Signs, Inc.* v. *Hjelle*, 268 N.W.2d 741 (N.D. 1978); appeal dismissed 99 S.Ct. 1205 (1979).
23. Letter from Secretary of Transportation Drew Lewis to Senator Mark Andrews, January 27, 1982.
24. 23 U.S.C. Sec. 131(g).
25. FHWA, Projected Outdoor Advertising Control Program Completion Cost, July 1980.
26. *Modjeska Sign Co.* v. *Berle*, 373 N.E.2d 255 (N.Y. 1977).
27. *Ackerley Comm. Inc* v. *City of Seattle*, 602 P.2d 1177 (Wash. 1979).
28. FHWA, Letter from John S. Hassell, Jr., Federal Highway Administrator, to Eric M. Rubin, Oct. 1, 1980. Documents relating to this amazing episode were obtained by the author under a Freedom of Information Act request.
29. *Metromedia, Inc.* v. *City of San Diego*, 610 P.2d 407 (Cal. 1979).
30. *Metromedia, Inc.* v. *City of San Diego*, 101 S.Ct. 2882 (1981). For a more complete discussion see Charles F. Floyd (1982b).
31. FHWA, Memo from J. M. O'Connor, Assoc. Administrator for

Right-of-Way and Environment, on Vegetation Clearance Within Federal-Aid Highway Rights-of-Way—Outdoor Advertising Control, March 15, 1977.

32. For example, see *Outdoor Advertising Ass'n of Tenn.* v. *Shaw*, 598 S.W.2d 783 (Tenn. 1980).
33. See note 10.
34. U.S. Congress, Senate, *S.344*, 96th Cong., 2d sess., 1979.
35. U.S. Congress, Senate, *Congressional Record*, 96th Congress, 1st Session, 1979, Vol. 125, pp. 1924–1925.
36. U.S. Congress, Senate, *S.1548*, 97th Cong., 1st sess., 1981.
37. U.S. Congress, House, *H.R.6211*, 97th Cong., 2d sess., 1982.
38. FHWA, Transcript of Meeting of the National Advisory Committee on Outdoor Advertising and Motorist Information: Subcommittee on Legislative Changes, Feburary 5–6, 1981.
39. In March 1982 the Sierra Club filed suit against the Federal Highway Administration seeking an injunction to require enforcement of the Highway Beautification Act in South Carolina (Civil Action File No. C82-556A in the Northern District of Georgia, Atlanta Division). If successful, this action could force greatly increased administration effectiveness of the act.

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