

Approved: 2-21-00  
Date

MINUTES OF THE HOUSE COMMITTEE ON TRANSPORTATION.

The meeting was called to order by Chairperson Rep. Gary Hayzlett at 1:40 p.m. on February 9, 2000 in Room 519-S of the Capitol.

All members were present except:

Representative Vaughn Flora, excused  
Representative Phill Kline, excused

Committee staff present:

Bruce Kinzie, Revisor of Statutes  
Hank Avila, Research Department  
Ellie Luthye, Committee Secretary

Conferees appearing before the committee:

Joe Krahn, Chief, Bureau of Right-of-way, Kansas Department of Transportation  
Joyce Bishop, Kansas City, Kansas  
James Tobaben, Chief, Bureau of Transportation Planning, Kansas Department of Transportation

Others attending:

See attached list

**HB 2745 - highway advertising control act, definitions**

Chairman Hayzlett opened hearings on **HB 2745** and called on Joe Krahn from the Department of Transportation. He told the committee that KDOT is responsible for administering the Kansas Highway Advertising Control Act and this law was enacted in 1972 to comply with the federal Highway Beautification Act. He continued the federal law had been amended to require states that elect to have a scenic byway program to prohibit the erection of new signs along sections of the interstate system, as well as sections of the federal-aid primary system, which have been designated as scenic byways. The penalty for non-compliance is reduction in state federal funds by 10%. (Attachment 1)

Representative Ballou questioned whether current signs would be subject to this penalty and Mr. Krahn responded that signs placed before March, 1972 would be grandfathered in. Mr. Krahn suggested perhaps a more equitable solution would be to penalize the area that is in violation and shut off federal funds to that area and not the whole state.

Joyce Bishop, a citizen from Kansas City, Kansas, voiced her concern for, and support of, the removal of nonconforming and illegal signs currently in existence. (Attachment 2)

There being no opponents to appear Chairman Hayzlett closed hearings on **HB 2745**.

**HB 2746 - uniform act regulating traffic, defining accident report**

Chairman Hayzlett opened hearings on **HB 2746**.

Joe Tobaben, Department of Transportation, spoke in support of **HB 2746** concerning the submission of motor vehicle accident report. He told the committee this bill would allow for the electronic submission of accident reports prepared by computer from law enforcement agencies to the Department of Transportation while continuing to allow all current methods of submittal. He said this would provide an opportunity to improve the efficiencies of motor vehicle accident data collection and reporting. (Attachment 3)

Following questions by the committee Chairman Hayzlett closed hearings on **HB 2746**.

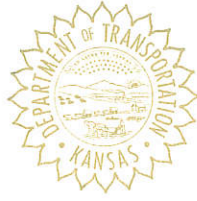
Chairman Hayzlett adjourned the meeting at 2:30 p.m.

The next meeting of the House Transportation Committee is scheduled for Tuesday, February 15, 2000 in Room 519-S.

# HOUSE TRANSPORTATION COMMITTEE GUEST LIST

DATE: 2/9/00

NAME	REPRESENTING
Bill Watts	KDOT
Nancy Bogina	KDOT
Jim Tobaben	KDOT
Joseph Krahn	KDOT
Richard D. Ross	KDOT
Deborah Divine	BUR Corporation
Patrick Arno	FHWA
Joyce S. Bishop	Citizen of KKS
Tom Whitaker	KS Motor Carriers Assn
Tom Bruno	MGA, Inc.
Bill Brady	KS Gov't Consulting



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Bill Graves  
GOVERNOR

**TESTIMONY BEFORE  
HOUSE TRANSPORTATION COMMITTEE  
REGARDING HOUSE BILL 2745  
KANSAS HIGHWAY ADVERTISING CONTROL ACT  
February 9, 2000**

Mr. Chairman and Committee Members:

I am Joseph Krahn, Chief of the Bureau of Right of Way for the Department of Transportation (KDOT). On behalf of KDOT, I am here today to testify on House Bill 2745 regarding the Kansas Highway Advertising Control Act.

KDOT is responsible for administering the Kansas Highway Advertising Control Act. This law was enacted in 1972 to comply with the federal Highway Beautification Act. The federal law has been amended to require states that elect to have a scenic byway program to prohibit the erection of new signs along sections of the interstate system as well as sections of the federal-aid primary system which have been designated as scenic byways. The proposed amendment to K.S.A. 68-2232 (b), defining business area, brings Kansas into conformity with the prohibition required by federal law.

The federal Highway Beautification Act enacted in 1965 required states to effectively control outdoor advertising along the interstate and federal-aid primary highway systems. The federal law has been amended by changing the definition of primary system to mean "the federal-aid primary system in existence on June 1, 1991, and any highway which is not on such system but which is on the National Highway System." A highlighted copy of the amended federal law is attached to my testimony. We have patterned our proposed change starting on Page 2 of the bill at Line 30 to track with the language used in the federal law. The highways on the attached Kansas Outdoor Advertising Control Highway Designation Map

colored in red, green, and blue are the routes that would be subject to the provisions of the Highway Advertising Control Act if H.B. 2745 is enacted. This is essentially the same coverage we had before the federal law was amended and the National Highway System was created. The red and green freeways and some of the blue primary highways shown on the map are now part of the National Highway System. The brown routes are not subject to state regulation now and will not be if H.B. 2745 is enacted. A map of the National Highway System is also attached. The proposed amendment to K.S.A. 68-2232 (m) brings Kansas into conformity with current federal law.

The penalty for failure to effectively control outdoor advertising would amount to just under 24 million dollars per year at the current funding level.

We urge you to favorably consider this bill. I would be glad to try to answer any questions.

## SEC. 1046. CONTROL OF OUTDOOR ADVERTISING.

(a) FUNDING- Section 131(m) of title 23, United States Code, is amended by adding at the end the following new sentence: 'Subject to approval by the Secretary in accordance with the program of projects approval process of section 105, a State may use any funds apportioned to it under section 104 of this title for removal of any sign, display, or device lawfully erected which does not conform to this section.'

(b) REMOVAL OF ILLEGAL SIGNS- Section 131 of such title is amended by adding at the end the following new subsection:

`(r) REMOVAL OF ILLEGAL SIGNS-

`(1) BY OWNERS- Any sign, display, or device along the Interstate System or the Federal-aid primary system which was not lawfully erected, shall be removed by the owner of such sign, display, or device not later than the 90th day following the effective date of this subsection.

`(2) BY STATES- If any owner does not remove a sign, display, or device in accordance with paragraph (1), the State within the borders of which the sign, display, or device is located shall remove the sign, display, or device. The owner of the removed sign, display, or device shall be liable to the State for the costs of such removal. Effective control under this section includes compliance with the first sentence of this paragraph.'

(c) SCENIC BYWAY PROHIBITION- Such section is further amended by adding at the end the following new subsections:

**`(s) SCENIC BYWAY PROHIBITION- If a State has a scenic byway program, the State may not allow the erection along any highway on the Interstate System or Federal-aid primary system which before, on, or after the effective date of this subsection, is designated as a scenic byway under such program of any sign, display, or device which is not in conformance with subsection (c) of this section. Control of any sign, display, or device on such a highway shall be in accordance with this section.**

**`(t) PRIMARY SYSTEM DEFINED- For purposes of this section, the terms 'primary system' and 'Federal-aid primary system' mean the Federal-aid primary system in existence on June 1, 1991, and any highway which is not on such system but which is on the National Highway System.'**

## Scenic Byways Designated by the Secretary of Transportation

1. Flint Hills Scenic Byway – designated by Secretary in 1995.

US-177 from Cassoday north to Council Grove, for a total of 46 miles. Butler, Chase, and Morris Counties.

2. Post Rock Scenic Byway – designated by Secretary in 1998.

K-232 near I-70 interchange north to junction of K-18, for a total of 16 miles. Ellsworth, Lincoln, and Russell Counties.

3. Gypsum Hills Scenic Byway – designated by Secretary in 1999.

US-160 from junction of US-183 north of Coldwater east to the city limits of Medicine Lodge, for a total of 41 miles. Comanche and Barber Counties.

Two proposed byways have been selected following the first phase of evaluations and are in the process of completing Corridor Management Plans which are required for designation:

1. Cuesta Trails Scenic Byway

US-166 from US-77 junction east to US-75 junction, 65 miles. Cowley and Chautauqua Counties.

2. Glacial Hills Scenic Byway

K-7 from Leavenworth north to Kansas-Nebraska State Line, 64 miles. Leavenworth, Atchison, and Doniphan Counties.

02/07/00

JK:pm

HOUSE TRANSPORTATION COMMITTEE MEETING

1:30 PM, Wednesday, February 9, 2000

Testimony from Joyce S. Bishop

Regarding

HOUSE BILL 2745

As I read the proposed changes to KSA 68-2232, I am left uncertain of what was to be accomplished that would provide any improvement as to the visual state Kansas's highways are in today.

I would suggest that in addition to the proposed changes, that section 68-2242 be removed from the Highway Advertising Control Act:

**“Removal of signs subject to availability of federal funds. Notwithstanding any other provision of this act, no sign shall be removed or subject to removal if the federal share of the just compensation to be paid upon removal of such sign is not available to make such payment.”**

**I would ask that in it's place or in addition to this section, wording be added requiring that the 10% currently available for Transportation Enhancement first be used to clean up our highways by removal of nonconforming and illegal billboards. After this has been accomplished statewide, the funds could then be used for the other 11 purposes outlined.**

I have provided copies of information regarding a current authorization for five billboards along the Frontier Military Scenic Byway in Wyandotte County, and the effort to stop these after they were approved by a majority of the Unified Government Commissioners.

I have been told by more than one individual in Kansas City that it would not be economically feasible to remove nonconforming and illegal signs currently in existence

which were allowed to be erected against the intentions of the Highway Beautification Act of 1965. I have been told not enough funds are available to accomplish this.

At the same time, KDOT staff has told me that funds are available through transportation enhancement and scenic byway grants to pay for removal of such nonconforming signs. However, these funds have never been applied for this purpose. The fear has been that no sooner would a sign be removed than another sign would be erected in some other part of a city.

This year Kansas will receive 95 million in Surface Transportation funds. Of this amount, 10%, or 9.5 million is available for transportation enhancement. This can be in any of 12 categories, which include such things as bike paths, historic buildings, improving waterways, scenic beautification and none other than removal of nonconforming and illegal billboards.

If the 9.5 million available this year were to be divided between the five major urban areas in the state, it would go a long way toward accomplishing the elimination of all nonconforming illegal signs on Kansas's highways. I know it is not possible this year but you can make it possible in future years. It will take time to clean up the whole state. However, in the end Kansas will be a much more desirable place to live than it currently is. Other sources of funding and grants can be temporarily designated for such things as bike paths, historic buildings, etc. until the statewide clean up can be accomplished. At that time use of the funds can be made available for the other 11 worthy purposes designated.

As to how to prevent elected officials from approving spot and strip zoning to provide a place for installation of illegal and nonconforming signs, I don't know what could be offered to force them to do the right and decent thing for the environment and the communities they represent. I would appreciate if this committee could make prohibition of such actions a priority this session.



In closing, I would like to share with you this story. October 22, 1965 President Lyndon Johnson signs the Highway Beautification Act. He gives the first pen and a kiss to Lady Bird Johnson, who started it all by telling her husband he ought to do something about highway beautification. He says, "This bill does not represent all we want, or all we need, or all the national interest requires. But it is a first step. There will be other steps." The President, who had a gall bladder operation two weeks earlier, described his trip home on the George Washington Memorial Parkway: "I saw Nature at its purest... And not one foot of it was marred by a single unsightly man-made obstruction—no advertising signs, no junkyards. Well, doctors could prescribe no better medicine for me."

President Johnson took the first step. Please, as Kansas Legislators, take another step.

"Beauty belongs to all the people."

President Lyndon B. Johnson

**Attachments:**

- A. **"Unified Board OKs I-435 billboard applications"**, *Kansas City Star Neighborhood News*, February 2, 2000.
- B. **"Letter to the Editor" regarding "Unified Board OKs I-435 Billboard Applications"** from Joyce & Tom Bishop, February 5, 2000.
- C. **"Unified Government Mayor Wants Billboard Issue Reconsidered"**, *Kansas City Star Neighborhood News*, February 9, 2000.
- D. **"A History and Overview of the Federal Outdoor Advertising Control Program"**, taken from the *"Outdoor Advertising Control Manual"* produced by the Federal Highway Administration

# Neighborhood News

www.kansascity.com

THE KANSAS CITY STAR.

Wednesday, February 2, 2000

## Unified Board OKs I-435 billboard applications

By STEVE NICELY  
The Kansas City Star

After an hour of debate, Wyandotte County's Unified Board of Commissioners last week approved applications for five interstate billboards, subject to restrictions.

Three of the billboards would be located along Interstate 435 about 1 1/4 miles

north of Leavenworth Road. One would be near Interstate 435 and Swartz Road in Edwatsville, and one would be at Interstate 70 and 61st Street.

The applicants were three property owners, one of whom applied for three billboards and two who applied for one each.

The restrictions, which are not yet finalized, generally would require the

billboard owners to advertise goods and services sold in Wyandotte County.

On a 7-3 vote, the commission approved the applications even though the signs apparently would be in violation of the federal Highway Beautification Act and could jeopardize federal highway funds in Kansas. The act forbids "spot zoning" of land solely for erecting a billboard.

"It's clearly spot zoning," Unified Government Chief Counsel Hal Walker told the commission. "The federal government could act on it. The reality is they probably won't."

Attorney Dan Denk told the commission he wanted the same consideration for his client, Roy Radloff, that the

See BILLBOARDS, Page 16

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WYANDOTTE  
& LEAVENWORTH

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## BILLBOARDS: Board gives OK

Continued from Page 1

commission last year granted to real estate broker Mike Jacobi for a billboard next to Interstate 70, west of 78th Street.

Radloff owns the land along I-435 where three billboards would be located north of Leavenworth Road.

A staff survey of billboard policies in other cities found that the Unified Government's policy was the most liberal on the Kansas side of the metropolitan area. Shawnee, Merriam and Lenexa have banned new billboards.

Currently, only six billboards are on Interstate 435 between Kansas City International Airport and Interstate 35 in Johnson County, all are in Wyandotte County.

The survey also found that Fort Worth, Texas, and Fontana, Calif., the locations of the Texas Motor Speedway and the California Speedway, have banned new outdoor advertising signs. A similar racetrack, the Kansas Speedway, is under construction northwest of Interstates 435 and 70.

"The five billboards for which applications have now been received require the liberalization of an already liberal policy," Steven A. Speise, director of planning and zoning, said in a written report to

the commission.

But Denk said he counseled 41 billboards on the south side of Interstate 70 between Lawrence and Bonner Springs. The Kansas Department of Transportation approved all of them, he said.

Commissioner Pat Huggins Petty questioned the wisdom of all those billboards.

"It's kind of like a black hole," Petty said. "You open the door and when do you close it?"

Petty cited the many billboards advertising Walk Drug Store along Interstate 90 in South Dakota as an extreme example of visual pollution.

But Kansas City Kansas Area Chamber of Commerce President Dan Schenkein, who was born and raised in South Dakota, cited the Walk Drug ad campaign as proof of the effectiveness of billboards. He said Walk Drug, in Wall, S.D., attracted 1.5 million visitors a year, the second-largest draw in South Dakota after Mount Rushmore.

Schenkein said the Unified Government had committed a large investment for development of 400 acres next to the Kansas Speedway. Without billboards to promote it, Schenkein said, the project was destined for failure.

Unified Government Mayor Carol Marinovich said Kansas City had too many roadside signs and she did not want Wyandotte County highways to have the same look.

"The dilemma we face is, what is too much?" she said.

The other applicants were James

Holland for the billboard at Interstate 435 and Swartz Road, and Carleton Kleitz for the one at Interstate 70 and 61st Street.

Sherman Smith, an owner of EPS Media, represented Holland and Kleitz at the commission meeting. EPS would erect the signs and lease the space.

Smith contended that no state had ever had its highway funds cut because of billboards. He said the commission had authority to regulate billboards, but he added that the commission should not be concerned about too many of them because the terrain in Wyandotte County contained only "a handful" of sites that a legitimate billboard company would be interested in.

Marinovich said Jacobi had agreed to restrictions and asked whether the applicants would be willing to enter into similar covenants. She said she would.

Jacobi's attorney, David J. Schenkein, said he would be a Marinovich supporter.

The commissioners who voted in favor of special-use permits for the billboards were Bill Young, Nathan Barnes, Bill Miller, Don DeSore, Ernest Lewis, Joe Vanght and Tom Cooley. Those who opposed were Petty, J. Swanson and Tom Bruns.

Marinovich, who normally votes only to break ties, did not vote.

To reach Steve Nicely, a Wyandotte County reporter, call (816) 234-5323 or send e-mail to [snicely@star.com](mailto:snicely@star.com).

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Letter to the Editor:

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**Unified Board OKs I-435 Billboard Applications**

My thanks to Steve Nicely for his article titled, "Unified Board OKs I-435 Billboard Applications".

As I understand it, the Commission approved installation of five new billboards. Three are to be placed on I-435 (the Frontier Military Scenic Byway) 1.5 miles north of Leavenworth Road, one at I-435 and Swartz Road, and one at I-70 and 61<sup>st</sup> Street.

**The only Commissioners opposed to the billboards were Pat Huggins Petty, J.J. Swanson, and Tom Bruns. The Commissioner for the area most effected, the Piper area, Joseph W. Vaught voted for the billboards.**

I asked Steve Speace in the UG Planning Department 573-5010 to see what would could be done to reverse the Commission's current and prior actions concerning billboards. He said it could not be changed as the action was already approved and a precedent set by the allowance of the Jacobi billboard last year. I asked if last years precedent setting action could be undone. He said the only way that could happen would be if the billboard were to be purchased back from Jacobi by the UG and removed.

A letter was distributed to the Board of Directors of the Prairie Oaks Homeowner's Association on 2/2/00 asking them to contact their elected officials to stop this action.

My husband contacted Mike Jacobi, the realtor who was granted permission for a billboard at 86<sup>th</sup> and I-70 last year. Mike said his was not the only one granted, but two others were also allowed last year. He said he had originally wanted the sign to be located on Parallel. However, he was told by UG staff that Parallel is a designated Parkway where billboards are not allowed. He said "**they**" suggested he request to have it placed at it's current illegal location along I-70 at 86<sup>th</sup> Street, a predominately agricultural/residential area instead.

I contacted the Federal Highway Administration in Topeka and was referred to a **Pat Arno (785)267-7284**. Pat said it should not have been approved, but said it was a matter for Kansas Department of Transportation (KDOT), not his office. He called me this morning to tell me that he has become involved, and he would be meeting with city officials today regarding the matter.

I faxed information regarding this matter to **Cathy O'Hara, (785)296-0009** Right of Ways, and **E. Dean Carlson (913) 721-5338** Executive Director at KDOT, as well as **Kenneth Wykle (202)366-3244** the Federal Highway Administrator in Washington, as well as all of our area Federal, State and Local elected officials.

I received a call on Friday from a **Joe Krune (877)461-6817** at KDOT who said KDOT was unaware of the Commissions action which went totally against KDOTs as well as the FHA's policies. In addition, strip zoning such as this is not allowed. **By their action, they placed \$24,000,000.00 of Federal Highway funding in jeopardy.**

Joe gave the example of a similar situation in South Dakota where the state lost funding. After the South Dakota incident, other states no longer tried to circumvent the law, (with the exception of Kansas) of which he is aware. He said they had been in contact with Kansas City officials and hopefully action would be taken to reverse their previous actions.

At this point, I pulled up information on the Highway Beautification Act of 1965 on the Internet. According to the "History and Overview of the Federal Outdoor Advertising Control Program", taken from the "Outdoor Advertising Control Manual":

**RECOGNITION OF ZONING**

The labeling of long stretches adjacent to controlled highways as "commercial" or "industrial" solely to permit billboards and thereby circumvent the intent of the Highway Beautification act may subject the State to the 10 percent penalty. **Likewise, the spot zoning of tracts near highway interchanges to allow only signs is a circumvention of the law.**

## **SCENIC BYWAY PROHIBITION**

**Prohibit the erection of any new signs on the Interstate and primary system (other than exempt signs) that are designated a scenic byway.**

According to the "Prairie Delaware Piper Master Plan" prepared for the UG by Gould, Evans Goodman Associates dated June 7, 1999:

### **EXISTING CONDITIONS**

This area of Wyandotte County/Kansas City, Kansas includes some exceptionally **rich scenic views and attractive rural landscapes**. **These rolling hills between the Missouri and Kansas Rivers offer a visual character not found elsewhere within the community**. The quality of life that the current residents enjoy should be maintained with each new development in this area.

### **SCENIC CORRIDORS**

**... One particularly prominent example is along the northbound lanes of I-435, north of Donahoo Road**. Other corridors follow valleys along roadways. **Where possible, these corridors should be used as an amenity for future development**.

### **IMPACT REVIEW**

As part of the planning process, the **citizens of the Prairie/Delaware/Piper area have expressed a strong interest in maintaining the rural character of the community**. To implement this through the regulatory process, **it is important to understand the impacts of each potential development on the surrounding neighborhoods and overall community**. Typical impact review includes traffic impact, environmental impact and fiscal impact. The results of an impact analysis can be used as part of a land use development approval process.

### **EXISTING AND FUTURE LAND USE PLAN MAPS**

**Both of these maps show the area where the billboards were to be situated as being currently and in the future remaining, agricultural/open space/vegetation/rural residential**.

The placement of such outdoor advertising undermines the revitalization of Kansas City, Kansas and Wyandotte County. In addition, the placement of any billboards on Federal highways jeopardizes federal highway funding in the amount of \$24,000,000.00 for the entire State of Kansas.

**I would ask any individual or group who is concerned for the future, appearance, and quality of life of Kansas City, Kansas and Wyandotte County, to contact the UG Commissioners and request they reverse their decision on this matter.**

**I would encourage attending the February 17<sup>th</sup> Commission Meeting. Letters to Federal and State officials are also encouraged.**

**Calls to the UG Ethics Commission Administrator, George Fredrickson (913) 621-3294, as well as the Legislative Auditor, Tom Standish (913)573-2932 would also be advised to get to the bottom of why some of the UG elected officials feel the need to circumvent the laws of our country and state thus jeopardizing highway funding for all Kansas roadways.**

Thank you in advance to the citizens who are going to make the calls that will help keep Kansas City, Kansas, Wyandotte County, and the State of Kansas a more desirable place to live. If we as citizens choose to do nothing, anything can happen. Please contact your elected officials.

Joyce and Tom Bishop  
Kansas City, Kansas  
homesteadah@earthlink.net

# Unified Government mayor wants billboard issue reconsidered

By STEVE NICELY  
The Kansas City Star

Unified Government Mayor Carol Marinovich has called for the Unified Board of Commissioners to re-

consider its recent approval of five billboards along interstate highways in Kansas City, Kan.

Marinovich said the board should reconsider the issue at a Feb. 17 meeting because federal highway

funds could be threatened and because some constituents were upset.

Officials of the Kansas Department of Transportation and the Federal Highway Administration

urged revisiting the issue because the billboards apparently would violate terms of the federal Highway Beautification Act. The act allows billboards on land zoned for commercial or industrial uses but does not allow "spot zoning" solely for billboards.

Unified Government Chief Counsel Hal Walker told the commission Jan. 27 that approving the five signs amounted to spot zoning, but he said he doubted that the federal government would act on it.

The board approved the billboards on a 7-3 vote. Marinovich, who normally votes only to break ties, did not vote.

Piper residents Joyce and Tom Bishop called the billboard issue to the attention of state and federal highway officials, who disagreed with Walker's assessment that no penalties would be imposed.

"The feds were less than pleased," said Joe Krahn, chief of KDOT's Bureau of Right of Way, which administers the state's highway beautification laws. "We hope they (the commissioners) will rescind the action and not jeopardize highway funding."

Krahn said the federal law authorizes withholding 10 percent of federal highway funds from states that violate the act.

The government imposed the 10-percent penalty against South Dakota years ago, and a court upheld the action, Krahn said. Since then, most states have followed the guidelines.

Krahn said the Federal Highway Administration recently added another penalty option that withdraws federal funds from cities and counties that violate billboard rules but does not penalize entire states.

When isolated violations occur, the Federal Highway Administra-

tion can notify the state it won't participate in highway projects within the offending city or county.

Joyce Bishop, a former staff member for the Kansas Legislature and whose husband is a former Kansas House member from Wichita, said the billboards make Kansas City, Kan., and Wyandotte County vulnerable.

"Wyandotte County could lose every federal (highway) dollar they've got," she said.

Of the five billboards approved, three were for property owner Roy Ratliff along Interstate 435, about 1½ miles north of Leavenworth Road. Two other Kansas City, Kan., property owners who won approval for billboards were James Holland, who wants to put a sign at I-435 and Swartz Road, and Carleton Kleitz, who proposes one at Interstate 70 and 61st Street.

Krahn said the state would investigate a few other billboards approved in Wyandotte County last year. One of those, at 86th Street on the south side of Interstate 70, is owned by Mike Jacobi, a real estate broker and co-founder of the movement to consolidate the Kansas City, Kan., and Wyandotte County governments.

Another sign, near 110th Street and I-70, was approved by the Edwardsville City Council. Edwardsville City Administrator Boris Sztorch said the city's commercial zoning was in compliance with federal standards because the council rezoned an entire tract, not just part of one, commercial.

But the council turned down two other billboards because officials believed they would have involved spot zoning.

"We don't want to jeopardize any of that (federal) money," Sztorch said.

**Class 4 - Signs in Specific Interest of Public**

**Highway Beautification Act of 1965, As Amended**

**Directional Signs**

**Official Signs**

**On-Property Signs**

**Public Utility Signs**

**Service Club Notices**

**Religious Notices**

**Public Ser. Signs on School Bus Stop Shelters**

**Public Service Information Signs**

**Landmark Signs**

**Free Coffee Signs**

**Off-Property Signs in C/I Areas**

**Poster Panel**

**Painted Bulletin**

**Jumbo Signs**

**Junior Panel**

**Some Considerations in Allowing Signs**

**Economic Hardship Signs**

**Guidelines for State Rules and Regulations**

**Sign Permits**

**Maintenance and Continuance of Nonconforming Signs**

**Acquisition and Removal of Signs**

**Just Compensation**

**Determination of Just Compensation**

**Approval of Sign Acquisition**

**Uniform Act**

**Payment of Just Compensation**

**Sign Removal**

**Program Administration**

## Vegetation Clearance

## Motorist Information Signs

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### A HISTORY AND OVERVIEW OF THE FEDERAL OUTDOOR ADVERTISING CONTROL PROGRAM

**NOTE:** *This is the text material from the Outdoor Advertising Control Manual used for a number of technical assistance presentations. It is being presented here as an invaluable overview of this complex program, and contains many valuable insights. For specific guidance and current policy, contact your FHWA Division, Region or Headquarters office.*

#### THE BONUS PROGRAM

The initial Federal attempt at controlling outdoor advertising was enacted in the Federal-Aid Highway Act of 1958, Public Law 85-381, April 16, 1958.

The Act provided that States which voluntarily agreed to control outdoor advertising adjacent to Interstate highways in accordance with national standards presently codified at 23 CFR 750, Subpart A, would receive a bonus of one-half of one percent of the highway's cost of construction. The eligibility to participate in the program expired on June 30, 1965.

The bonus States must still comply with the provisions of the Highway Beautification Act of 1965 as well as adhere to the national standards and the terms of the required bonus agreement.

The 23 States participating in the bonus program include California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, West Virginia and Wisconsin.

#### Top of Page

#### Federal-Aid Highway Act of 1958

Established the voluntary Bonus Program to control outdoor advertising signs adjacent to the Interstate System.

First Federal government attempt to control outdoor advertising signs adjacent to highways.

Provided a monetary incentive to the States of ½ of 1 percent of the construction cost of Interstate highways for those route sections that meet the criteria in the National Standards.

States control signs under this program under State law.

Controls signs within 660 feet [201 meters] of the Interstate.

Allows only certain signs:

- Directional and official signs.
- On-premise signs - sale, lease or activity.
- Signs within 12 air miles of advertised activity.
- Signs in the specific interest of the traveling public, i.e. historic sites, natural phenomena, naturally suited for outdoor recreation, and places for camping, lodging, eating, and vehicle service and repair.

No compensation was required by the Federal government.

- Localities could remove signs by exercising their power of land use control, i.e. amortization under zoning ordinances.
- States could exercise their right of eminent domain such as the purchase of negative easements.

\$44 million has been paid to the 23 Bonus States to date under this program.

No Federal funds are available to pay \$10 million in outstanding claims from 21 Bonus States.

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## **THE OUTDOOR ADVERTISING CONTROL PROGRAM**

President Lyndon B. Johnson signed the Highway Beautification Act, Public Law 89-285, on October 22, 1965. The first section of the law sets forth the basic program objectives: "The erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty."

The law mandated State compliance and the development of standards for certain signs as well as the removal of nonconforming signs. Expeditious removal of illegal signs was required by Federal regulations.

While the States are not forced directly to control signs, failure to impose the required controls could result in a substantial penalty.

The penalty for noncompliance with the Act is a 10 percent reduction of the State's annual Federal-aid highway apportionment.

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## **EFFECTIVE CONTROL UNDER THE 1965 LAW AND AMENDMENTS**

The States must provide continuing "effective control" of outdoor advertising or be subject to a loss of 10 percent of their Federal-aid highway funds. The States have established control procedures, usually through sign permit systems, inventories, and periodic surveillance of the controlled routes, in order to discover illegal signs and monitor other signs and areas controlled by the Act. The States are required to take action under the provisions of State law to have any illegal signs expeditiously removed.

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### **Highway Beautification Act of 1965**

Increased the scope of controlling signs to include the primary system and applied to all States.

Controlled signs within 660 feet - this resulted in many jumbo signs being erected beyond 660 feet.

Is a mandatory program with a 10 percent penalty of a State's annual highway apportionment if the State is not providing effective control.

Bonus States must continue to control signs under both programs.

Compensation was required for signs removed because of the Act.

Federal participation was 75 percent.

Funded out of General Fund - Last appropriation made in 1983.

Allows only certain signs:

- Directional and official signs.
- On-property signs - sale, lease or activity
- New signs in commercial and industrial areas consistent with the size, lighting and spacing criteria in the State/Federal agreements.



Provided for Logo signs on the Interstate System.

Provided for information centers in safety rest areas.

Required control of junkyards adjacent to the Interstate and primary highways.

- Junkyards located outside of industrial areas and within 1,000 feet of controlled highways.
- Payment of just compensation was required with 75 percent Federal participation.

Provided for landscaping and scenic enhancement.

- This was a popular part of the overall highway beautification program because it provided 100 percent Federal funding.

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#### **1968 Amendments to the Highway Beautification Act of 1965**

Amended 1965 Act to require acceptance of State and local determinations of "customary use" for size, lighting, and spacing for signs in commercial and industrial areas.

Allowed States to remain eligible for bonus payments if they complied with their 1958 Bonus agreement.

A State that received bonus payments under the bonus program could also at the same time be subject to the 10 percent penalty under the 1965 Act.

Nonconforming signs did not have to be removed unless Federal funds were available for participation.

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#### **Federal-Aid Highway Act of 1970**

Created the Highway Beautification Commission to study highway beautification problems and make recommendations for change needed to increase the effectiveness and workability of the program.

#### **Federal-Aid Highway Act of 1974**

Extended control beyond 660 feet of the right-of-way to all signs outside urban areas and visible from the main-traveled way with the purpose of their message being read from the controlled highway.

Added landmark signs as an allowed category of signs that were in existence on October 22, 1965.

Increased the number of signs eligible for compensation before they could be removed.

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#### **Federal-Aid Highway Act of 1976**

Provided for Secretary approval for exemption of signs from removal in a defined area for which it could be demonstrated that removal would cause a substantial economic hardship in such defined area - submissions made were not approved.

Required the Secretary to encourage the States to adopt programs to assure that removal of certain signs providing necessary directional information about facilities in the interest of the traveling public, be deferred until all other nonconforming signs are removed.

Provided 100 percent Federal participation for signs removed and relocated prior to the 1974 Amendments, which had to be moved again because of those Amendments.

Authorized Federal participation in the establishment of tourist information centers and alternate information

systems.

Directed a restudy of the Federal regulations and National standards for both directional signs outside the right-of-way and Logo signs within the right-of-way.

Allowed for extension of the optional Logo program to the primary system.

De-emphasized landscaping and scenic enhancement by eliminating the availability of 100 percent Federal funding for the program.

Authorized but did not appropriate funds for landscaping and litter removal.

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### **Surface Transportation Assistance Act of 1978**

On November 6, 1978 the Surface Transportation Assistance Act of 1978 (Public Law 95-599) amended 23 U.S.C. 131 in essentially three areas, i.e.

1. required the payment of just compensation for the removal of lawfully erected signs not permitted under subsection 131(t); whether or not removed pursuant to or because of the Highway Beautification Act (HBA) (e.g. signs subject to removal or removed by localities due to more restrictive local control), (this requirement overrides traditional zoning and land use control which have provided for the termination of nonconforming uses through amortization);
2. allowed electronic variable message on-premise signs in bonus States;
3. created a new category of exempt signs that advertise free coffee by nonprofit organizations.

Those signs affected by the just compensation amendment due to stricter local controls included those signs in existence on or after November 6, 1978 and those signs removed prior to November 6, 1978 but that were the subject of litigation as of November 6, 1978. On a national basis 38,027 signs were in existence on November 6, 1978. Also on a national basis 258 signs had been removed prior to November 6, 1978 but were the subject of litigation as of November 6, 1978. Therefore, on a national basis there were 38,285 1978 Amendment signs identified in a one-time tabulation.

We essentially refer to the 1978 Amendment signs as being those that fall in the first group in the first paragraph above, i.e. that were lawfully erected adjacent to controlled highways but were subject to removal because of more restrictive local controls.

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### **Intermodal Surface Transportation Efficiency Act of 1991**

(ISTEA), Public Law 102-240, December 18, 1991.

In general the ISTEA:

- Provided funding from highway funds for control and removal of outdoor advertising, thus linking the availability of funding to the requirement for acquisition and removal of nonconforming signs under the Highway Beautification Act of 1965.
- Required removal of illegal signs.
- Prohibited new signs on designated scenic byways.
- Redefined the primary system.
- More specifically, the ISTEA enacted December 18, 1991 included several significant provisions concerning the control of outdoor advertising. Section 1046 amended 23 U.S.C. 131 in four areas:

#### **Primary System Defined**

Apply the scope of control to include the Interstate System, the primary system as it existed on June 1, 1991, and roads added to the National Highway System;

- New subsection 131(t) in Title 23 United States Code defines the primary system for purposes of outdoor advertising control, i.e. the terms 'primary system' and 'Federal-aid primary system' mean the Federal-aid primary system in existence on June 1, 1991, and any highway which is not on such system but which is on the National Highway System.
- **This means that any highway which was on the Federal-aid primary (FAP) system as of June 1, 1991, will remain subject to control regardless of any subsequent change in its functional classification. Of course, the Interstate System remains subject to control.**
- Further, following Congressional approval of the designated National Highway System (NHS), any highway which is not on either of the foregoing but which is part of the approved NHS will also be subject to control. However, for purposes of outdoor advertising control, we are not recognizing the NHS until it is approved by Congress.
- Following approval of the NHS there will be highways, or sections of highways, not on the NHS that will still be subject to control because they were on the FAP as of June 1, 1991. State law must be sufficient to maintain effective control of outdoor advertising under 23 U.S.C. 131.

## Funding

Provide funding from the Highway Trust Fund rather than the General Fund to

remove nonconforming signs. By making funds available, States were now required to remove nonconforming signs in order to meet the requirement for effective control purposes.

## Removal of Illegal Signs

- Require removal of illegal signs by owners within 90 days of enactment, or by State if owner does not remove sign, with removal cost in either case paid by the owner;
- The Congressional mandate to remove illegal signs within a relatively short period of time may be significant as some States may not be able to demonstrate reasonable progress or a good faith effort and thereby be found to not be providing effective control required under the Highway Beautification Act of 1965.
- States not providing effective control may be subject to the 10 percent sanction of highway funds on an annual basis until compliance is achieved. No specific time limit was mandated by which the States were to remove these illegal signs.
- To enable us to measure reasonable progress and good faith effort, we have asked for quarterly reports on the removal of illegal signs including the following information:
  - a. Number of illegal sign notices sent by the State during the quarterly period and since December 18, 1991.
  - b. Number of illegal signs removed by the owner or others during the quarterly period.
  - c. Number of illegal signs removed by the State during the quarterly period.
- The number of illegal signs remaining varies as some States are updating their inventories. The tabulation of September 30, 1992 indicates some 25,000 illegal signs remain.
- STP funds are available to the States for the physical removal of illegal signs and control costs that are project related.

## 4. Scenic Byway Prohibition

Prohibit the erection of any new signs on the Interstate and primary system (other than exempt signs) that are designated a scenic byway.

New subsection 131(s) in Title 23 United States Code provides that if a State has a scenic byway program, the State may not allow the erection along any highway on the Interstate System or Federal-aid primary system which before, on, or after the effective date of this subsection, is designated as a scenic byway under such program of any sign, display, or device which is not in conformance with subsection 131(c). New signs allowed under 131© include

directional and official signs and notices, sale or lease signs, on-property signs and free coffee signs.

States that have a scenic byways program must withhold the issuance of permits for new signs on Interstate and primary highways that are designated a scenic byway under the State's program. This includes the prohibition of new signs in zoned or unzoned commercial and industrial areas adjacent to designated scenic byways.

States should consider withholding permits for signs on routes under consideration as a designated Interstate or primary scenic byway until a final determination has been made.

Additional guidance on controlling outdoor advertising signs on scenic byways was issued on June 14, 1993. It explains that since the passage of ISTEA, several questions have come up regarding outdoor advertising on scenic byways. Section 1046© of ISTEA added a new subsection (s) to 23 U.S.C. 131, Control of Outdoor Advertising.

Section 131(s) prohibits the erection of new signs which do not conform to subsection 131© in areas adjacent to Interstate and primary highways which are designated as a scenic byway by a State before, on or after December 18, 1991. The precise effect of this subsection is to extend the current prohibition on the erection of outdoor advertising signs adjacent to a controlled highway into commercial or industrial areas or economic hardship areas if such highway is designated as a scenic byway under a State scenic byways program.

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#### **What is a State Designated Scenic Byway?**

Neither Section 131(s) nor the ISTEA legislative history defines this term explicitly. The actual label and specific identifying characteristics, including termini, for these designated scenic byways were, and are, the responsibility of each State. State law governs the issue of what constitutes a designated scenic byway. According to past inventories a significant number of miles of byways are on Federal-aid Interstate or Primary System routes and are therefore currently subject to the new outdoor advertising control prohibition.

Scenic byways designated before, on, or after December 18, 1991, need not be continuous. A State may wish to exclude from existing or future scenic byway designation highway sections that have no scenic value, and which have been designated solely to preserve system continuity. We do not find that Section 131(s) restricts a state from taking administrative action to remove from scenic byway designation any section lacking in scenic value which was included for continuity purposes. However, the exclusion of a highway section must have a reasonable basis. The Federal interest is in preventing action designed solely to evade Federal requirements.

The characteristics of a scenic byway are not restricted to visual beauty. The criteria developed by the National Scenic Byway Advisory Committee established by §1047 of the ISTEA are natural, scenic, historical, cultural, recreational or archeological qualities. The designation of a scenic byway for cultural or historical purposes, for example, could easily involve areas of commercial or industrial activity. If such areas are included in the designated scenic byway they would be subject to the scenic byway prohibition at 23 U.S.C. 131(s).

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#### **What is a State Scenic Byway Program?**

Again, ISTEA is not explicit other than to emphasize that scenic byways subject to outdoor advertising control must be designated by a State under its scenic byway program. The essential element of a program is action made under authority of State law, policies or administrative procedure that authorizes establishment of such routes or designates specific routes as scenic. In short, if a State has a designated scenic byway, it is construed to have a scenic byway program for purposes of 23 U.S.C. 131(s).

The State highway agency may be the cognizant agency for both outdoor advertising control and the designation of State scenic byways. Often it is not. These duties often cut across organizational or even agency lines. It is essential that State highway staff when considering permits for signs on controlled highways have current knowledge of State designated scenic byways. To improve the information sharing and coordination, a list of the scenic byways contact persons for each State has been issued. FHWA encourages these officials to meet in order to improve mutual understanding of their respective responsibilities, obtain a listing of State scenic byways and their termini, and review the criteria for designating State scenic byways. There should be a formal record of designated scenic byways available to the public. This task should be completed no later than October 1, 1993 with a listing of scenic byways

including termini provided to FHWA.

It is FHWA's responsibility to ensure that the State highway agency is fully cognizant of this new dimension of control of outdoor advertising. Failure to comply with Section 131(s) subjects a State to a reduction of its Federal-aid highway apportionments for failing to effectively control outdoor advertising.

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### Significant Subsequent Events

On January 9, 1992 the Federal Highway Administration (FHWA) issued a memorandum to all field offices as interim guidance on implementation of the provisions of the ISTEA that effect the control of outdoor advertising.

On February 20 the FHWA sent letters to every Governor advising of the ISTEA provisions affecting the control of outdoor advertising and cautioning that a State may lose vitally needed Federal-aid highway funds if it does not have an effective outdoor advertising control program.

On March 6, 1992 the FHWA published in the Federal Register a notice setting forth the goals and objectives for States to achieve in order to maintain effective control and requested the States to advise the FHWA by June 18, 1992 of its process, program and timetable to ensure that effective control is achieved and maintained. The FHWA also issued a memorandum to all field offices advising of this notice.

On May 8, 1992 the FHWA published in the Federal Register a Notice of Proposed Rulemaking (NPRM) on the removal of nonconforming signs. The notice set forth four options for the removal of nonconforming signs, required the States to develop a plan for the acquisition and removal of nonconforming signs and established a docket for comments.

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### Dire Emergency Supplemental Appropriations Act of June 22, 1992

Public Law 102-302.

- This Act, in part, amended 23 U.S.C. 131(n) making the expenditure of section 104 funds for the purpose of acquiring and removing nonconforming signs entirely discretionary with respect to the States. This meant that a State may use Federal-aid funds to acquire nonconforming signs but if it chooses not to do so, there is no risk of penalty. 720
- As a result of the above statutory change concerning nonconforming signs, the FHWA published in the Federal Register on July 16, 1992 a notice titled, "Removal of Nonconforming Signs"; which was a withdrawal of the May 8 Notice of Proposed Rulemaking and closed the docket.
- Also on July 16 the FHWA published in the Federal Register a notice titled, "Intermodal Surface Transportation Efficiency Act of 1991 Amendments to 23 U.S.C. 131, Control of Outdoor Advertising"; which rescinded that portion of the March 6 notice concerning nonconforming signs. The March 6 notice is still in effect regarding the prohibition of signs on scenic byways and the removal of illegal signs.

The use of highway funds to remove nonconforming signs is now discretionary on the part of the States. Although it seems unlikely that many of the States would use their highway funds for this purpose, this could rise to a significant cost if a number of States would choose to do so.

As of September 30, 1992 the States had reported some 90,000 nonconforming signs remaining which are subject to removal.

The cost to remove these signs is estimated at over \$400 million in Federal funds.

All 104 funds including STP funds are available to the States for the acquisition and removal of nonconforming signs, as well as section 1047 funds for removal of any outdoor advertising signs adjacent to scenic byways.

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### LAND USE AND POLICE POWER

Controls required by the Act are universally achieved by the exercise of State police power and land use controls. The police power enables States to reasonably regulate for health, safety, moral, and general welfare. The Federal law does not control any sign on its own, for it must rely on State police power law to enforce the land use control concepts.

Two distinct enforcement impacts emanate from the "effective control" provisions:

1. The removal of illegal signs, and
2. The reasonable enforcement of land use control concepts that are applicable to nonconforming signs such as abandonment, discontinuance, destruction, and customary maintenance requirements, which if violated, would render the nonconforming signs illegal and subject to removal without compensation.

An illegal sign is one which is erected and/or maintained in violation of State law.

A sign is considered to be nonconforming if it was lawfully erected prior to the effective date of the State law, but does not conform to the law's requirements.

A nonconforming sign must be maintained in accordance with applicable State law. Failure to do so may result in loss of the right to operate the sign and require removal of the sign without compensation.

A conforming sign is one that complies entirely with all provision of the State law. Only conforming signs can remain or be erected adjacent to controlled highway systems after the effective date of the State law. The greatest impact of land use and police power controls have been to prevent the erection of signs which do not conform to the Highway Beautification Act.

To achieve effective control a State must take 3 steps:

1. Enact legislation
2. Enter into agreement
3. Enforce State law

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## IDENTIFICATION OF HIGHWAYS SUBJECT TO CONTROL

Interstate highways are identified by route number beginning with "I", such as I-95. In many States, the Federal-aid primary system largely coincides with the U.S. numbered highways, such as U.S. 1 or U.S. 66. Since not all U.S. highways are on the primary system and, conversely, not all primary highways have U.S. numbers, it is best to determine from the State highway department what highways are on the primary system. They will usually have maps or lists of these roads. Toll highways could be included as a controlled route.

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## THE CONTROL AREA

1. Inside urban areas--outdoor advertising is controlled within 660 feet from the edge of the right-of-way.
2. Outside urban areas--outdoor advertising is controlled to the limits of visibility. In commercial and industrial areas, conforming signs must be erected within 660 feet of the controlled highway.

The urban area boundary definition and maps are available from the respective State department of transportation or highway agencies. Generally, the law states that urbanized areas or urban places of 5,000 population or more are considered urban areas. The boundaries of these urban areas are set by agreement between State, Federal, and local governments.

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## STATE/FEDERAL AGREEMENTS--TERMS

Another feature of "effective control" included the mandatory State agreement with the Federal government that set forth sign controls in commercial and industrial areas based on customary usage within the individual States.

The objective of the Highway Beautification Program legislation was to limit billboards to areas of similar land use (i.e., commercial and industrial areas). In so doing, the areas not having commercial or industrial character would be protected from the intrusion of off-premise outdoor advertising signs. In pursuit of this concept, the erection of new off-premise signs (conforming signs) in commercial areas is subject to the provisions of the State/Federal agreements for size, lighting, and spacing criteria.

Acceptable Standards for size, lighting and spacing must be consistent with customary use (not to be exceeded), orderly and effective display (no proliferation or hazards), and purposes of the Act (no conflict with objectives).

In the lighting provision of most State/Federal agreements off-premise signs in commercial and industrial areas that contain, include, or are illuminated by any flashing, intermittent, or moving light(s) are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

In 1978, Congress amended 23 U.S.C. 131 to allow signs advertising activities conducted on the property on which the signs are located to change their message at reasonable intervals by electronic process or by remote control. The reasonableness in the frequency of message changes has been left up to the individual States. During debate in the Senate, the congressional intent was made clear that this change did not affect off-property signs.

FHWA has interpreted the lighting provision in the various State/Federal agreements relative to flashing lights, etc. to include surfaces that reflect light in a flashing manner including reflective disks [even though not CEVMS] and rotating slats [tri-vision] that may have the effect of flashing or moving lights. The applicable State law and agreement should be interpreted on an individual State basis looking at past practices and court interpretations. Case law in a given State may be considered determinative in deciding whether to allow off-premise signs using rotating slats (tri-vision or bi-vision), glow cubes, or moving reflective disks.

Federal regulations provide that where the agreement and State law permit control by local zoning authorities, the State may certify to FHWA upon receipt of a written determination from the locality that their controls reflect customary use and that these controls may govern in lieu of the size, lighting and spacing criteria set forth in the agreement, consistent with customary use [must have been lawful] and the intent of the Highway Beautification Act of 1965. The local controls may be more restrictive or less restrictive.

There is increased interest in several States to allow the erection of off-premise commercial electronic variable message signs (CEVMS). We have historically considered that the prohibition of flashing, intermittent, or moving light or lights in most of the various State/Federal agreements applies to all off-premise CEVMS regardless of message interval.

In summary, in deciding whether to allow off-premise signs using rotating slats, glow cubes, or moving reflective disks, the applicable State law and agreement should be interpreted on an individual State basis looking at customary use, and if applicable, Court interpretations.

Off-premise message center type signs using internal lighting are not yet approved for general off-premise application.

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## IDENTIFICATION OF COMMERCIAL AND INDUSTRIAL AREAS

### **Zoned Areas**

A function of police power is zoning, which is a widespread public exercise usually delegated by the States to local governmental entities. Where the land adjacent to the highway is zoned, it is necessary to know the location of commercial and industrial zones in order to know where billboards may be permitted. Zoning jurisdictions, such as cities or counties, maintain zoning maps for public inspection which show such locations. Zones established by the zoning authorities as commercial or industrial zones, under comprehensive zoning, are those for commerce, industry, or trade.

## **Unzoned Areas**

Where there is no zoning in effect within a jurisdiction, signs may be permitted in unzoned commercial or industrial areas, which are also defined by the agreement between the State and the Federal government.

Generally speaking, such an area would include as parameters the land within a specified distance of an established and visible commercial or industrial activity usually limited to the same side of the highway as the activity. Each State transportation or highway department has an approved unzoned commercial and industrial area definition if off-premise advertising is allowed.

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## **RECOGNITION OF ZONING**

The labeling of long stretches adjacent to controlled highways as "commercial" or "industrial" solely to permit billboards and thereby circumvent the intent of the Highway Beautification Act may subject the State to the 10 percent penalty. Likewise, the spot-zoning of tracts near highway interchanges to allow only signs is a circumvention of the law.

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## **RECOGNIZED SIGN CATEGORIES UNDER FEDERAL LAW AND REGULATIONS**

There are several categories of signs recognized under Federal law and regulations. The States can allow all exempted sign categories set out in the Federal law and regulations and still maintain necessary minimum compliance. On the other hand, the State law can be more restrictive, ranging from the stricter control of one specific program element to a total ban of all off-premise outdoor advertising signs as in the case of the States of Alaska, Hawaii, Maine, Rhode Island, and Vermont.

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## **BONUS PROGRAM - INTERSTATE**

**Class 1** - Official signs (directional, official and notices).

No size, lighting or spacing limitations.

**Class 2** - On-premise signs.

No size or spacing limits within 50 feet of advertised activity.

Up to 20 feet in length, width or height, but not to exceed 150 sf. beyond 50 feet of advertised activity.

**Class 3** - Signs within 12 miles of advertised activities.

Up to 20 feet in length, width or height, but not to exceed 150 sf.

**Class 4** - Signs in the specific interest of the traveling public.

Up to 20 feet in length, width or height, but not to exceed 150 sf.

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## **HIGHWAY BEAUTIFICATION ACT OF 1965, AS AMENDED**

**Directional signs** Up to 20 feet in height or length, but not to exceed 150 sf.

Directional signs are permitted as an exempt category of sign under 23 U.S.C. 131(c)(1) which specifically mentions only natural wonders, and scenic and historical attractions as qualifying for this type of sign. Since it also provided that these signs include, but not be limited to signs for these attractions, the National Standards expanded the list of



qualifying activities to include cultural, scientific, educational, and religious sites, and areas of natural scenic beauty or naturally suited for outdoor recreation. The National Standards at 23 CFR 750.154 apply to all directional signs as defined at 23 CFR 750.153(r).

The selection method and criteria required at 23 CFR 750.154(f) applies to both privately and publicly owned activities or attractions, i.e. subsections 154(f)(1) and 154(f)(2) apply only to privately owned activities or attractions, whereas subsection 154(f)(3) applies to selection methods and criteria for all directional signs. Therefore, before the State permits the erection of any directional sign, it must develop specific selection methods and criteria to be used in determining whether or not an activity qualifies for this type of signing, whether it be publicly or privately owned, and submit these requirements to the FHWA Division office.

In summary, although it would appear that 23 CFR 750.153(r) might allow directional signs for any publicly owned place, such activities or attractions must qualify as one of the types of activities or attractions listed in subsection 153(r) and meet the selection method and criteria developed by the State under subsection 154(f)(3).

These signs contain directional information about public places owned or operated by Federal, State, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public. The directional sign cannot exceed 150 square feet in area and must comply with stringent spacing and lighting requirements. It may contain only identification of the activity and directional information; advertising and the use of logos is prohibited.

#### **Official Signs** (including historical markers)

No size, lighting or spacing limitations

State, county, or city officials may erect signs under authority of law.

The following criteria should be applied in determining whether specific signs conform to the requirements for "official signs and notices" within the meaning of 23 U.S.C. 131 (c)(1) and the National Standards for Directional and Official Signs as set forth in 23 CFR 750.153(n):

"Official signs and notices means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in Federal, State or local law for the purpose of carrying out an official duty or responsibility..."

This should be viewed as a four-part test:

1. The sign must be erected and maintained by a public officer or agency.
2. The sign must be erected within the territorial jurisdiction or zoning jurisdiction of the public officer or agency. This means that the officer or agency must exercise some form of governmental authority over the area upon which the sign is located. Governmental authority means the authority to enact or administer the law.
3. The sign must be erected pursuant to direction or authorization contained in Federal, State or local law. This means that the officer must be directed by statute and/or must have the specific authority by statute to erect and maintain signs and notices.
4. The sign must be erected for the purpose of carrying out an official duty or responsibility. There are no restrictions on the message content so long as the activity being described is in furtherance of an official duty or responsibility. The State must determine whether the activity relates to an official duty or responsibility.

In summary an "official" sign must be erected for the purpose of carrying out an official duty or responsibility. We have not defined "official duty or responsibility" in either Federal law or regulations. Therefore, what is and is not an official duty or responsibility is a question of State or local law. "Official" signs do not create a large opportunity for abuse because there are other controls on what is an "official" sign. These controls are both political and legal (depending on the State and the situation). When questions arise that involve advertised activities, we will defer to the State or local government to determine that the erection of and operation of the sign is by public officers or a public agency within its territorial or zoning jurisdiction and for purposes of carrying out an official duty or responsibility.

## **Sale or Lease Signs**

No size, lighting or spacing limitations

There are no Federal controls or regulations concerning for sale or lease signs when located on the property which is for sale or lease except for such signs along the Interstate highways in the Bonus States.

## **On-Property Signs**

No size or spacing limitations

On-property signs advertise goods or services offered by business enterprises on the property where the sign is located.

In the Bonus States, there are size, lighting, and spacing controls for such signs along the Interstate. These States may now allow the installation of on-premise electronic variable message signs as the result of a Federal legislative change in 1978. Such signs had been previously prohibited in Bonus States.

Signs are exempt from control if they solely advertise activities conducted on the property on which they are located. However, sufficient flexibility is provided in the Federal regulations for the individual States to provide for the differences that exist in State laws with respect to the critical term, "property" and further to provide for differing State desires with respect to criteria. The intent of the Federal regulations is to provide a broad general requirement for on-property criteria. It would be advantageous for the States to develop a property test and a purpose test.

State laws or regulations are to contain criteria for determining exemptions. The only limitation imposed is that the criteria must be sufficiently specific to curb attempts to improperly qualify outdoor advertising as on-property signs, such as signs on narrow strips of land contiguous to the advertised activity when the purpose is clearly to circumvent 23 U.S.C. 131.

All States are to develop regulations to determine which signs are indeed on-property signs and preclude the improper qualification of signs that are not on-property. Examples of such regulations include:

- a. A property test and a purpose test.
- b. A test to preclude signs located on narrow strips of land contiguous to the advertised activity qualifying as an on-premise sign.

Suggested factors for consideration include: the effect of leases or easement in the property test, what should be considered in determining when the purpose is clearly to circumvent 23 U.S.C. 131, intervening land uses separating the sign from the activity, whether the activity advertised is visible from the controlled highway, and a rational relationship between the site where the activity is advertised and that part of the property on which the activity takes place. The criteria should identify how large and/or complicated holdings will be treated such as multiple uses of property under a single ownership.

## **Public Utility Signs**

No size, lighting or spacing limitations

Signs providing a warning or certain information essential to the operation of publicly or privately owned utilities.

## **Service Club Notices**

Limited to 8 sf.

No lighting or spacing limitations

## **Religious Notices**

Limited to 8 sf.

No lighting or spacing limitations

### **Public Service Signs on School Bus Stop Shelters**

Signs identifying the donor or sponsor of school bus stop shelters may not exceed 32 square feet.

The public service message must occupy not less than 50 percent of the sign.

### **Public Service Information Signs**

Public service information such as time, date, temperature, weather or similar information may be advertised on electronic variable message signs located in commercial and industrial areas.

### **Landmark Signs**

No size or spacing limitations

This category of sign was added by the Federal-aid Highway Amendments of 1974, Public Law 93-643, and permitted signs lawfully in existence on October 22, 1965, including those on farm structures or natural surfaces, of historic or artistic significance, the preservation of which is consistent with the attempt to keep a part of the American heritage intact for future generations.

### **Free Coffee Signs**

No size, lighting or spacing limitations.

The Surface Transportation Assistance Act of 1978, Public Law 95-599, added another exempt category of sign. This exemption allows signs to be erected outside of the highway right-of-way which advertise the distribution of free coffee by nonprofit organizations.

### **Off-property signs in Commercial and Industrial Areas**

Subject to size, lighting and spacing criteria in individual State/Federal agreements.

The Federal/State agreements specify the size, lighting, and spacing requirements for billboards in these areas.

Generally, the sizes of these billboards are as follows:

**POSTER PANEL 12 x 25 = 300 sf.**

30 sheets, or posters. These billboards are lithographed or silkscreened, prepasted, and applied in sections on location. Poster panels are concentrated along primary, secondary and tertiary arteries.

**PAINTED BULLETIN 14 x 48 = 672 sf.**

They are either hand painted in the studio or painted on location. Painted bulletins are located along Interstate and primary highways.

**JUMBO SIGNS Usually range between 1,200 and 2,500 sf.; sometimes exceeding 5,000 sf.**

Jumbo signs are located beyond 660 feet of Interstate and primary highways.

**JUNIOR PANEL 6 x 12 = 72 sf.**

Although a few junior panel or eight sheet billboards are located along primary highways, most are concentrated in urban areas, along city streets not controlled by the Highway Beautification Act.

## SOME CONSIDERATIONS IN ALLOWING AN OFF-PROPERTY SIGN

1. Sign must be erected off of the highway right-of-way.
2. Location must be in a zoned or unzoned commercial or industrial (C/I) area.
3. Have written permission of property owner.
4. Be in compliance with local zoning ordinance.
5. The C/I activity qualifying an unzoned area must be within \_\_\_\_\_ feet of the highway, and be visible from the controlled highway.
6. In an unzoned C/I area, the sign must be erected within \_\_\_\_\_ feet of the qualifying activity, on the same side of the highway.
7. Outside incorporated municipalities, the sign must be at least \_\_\_\_\_ feet from any other off-property sign; within incorporated municipalities, \_\_\_\_\_ feet from any other off-property sign.
8. Flashing or intermittent light or lights that create glare for the traffic on the highway is not permitted.
9. Vegetation may not be cut in the right-of-way to provide visibility to a new sign.
10. Meet State vegetation clearance requirements.
11. A sign may not create a traffic hazard, i.e., a site distance problem, for traffic on the controlled highway.
12. An annual sign permit must be secured from the State Highway Department.
13. A business in a residence does not constitute a C/I use.
14. Meet State requirements for size, lighting and spacing in C/I area.
15. Be in compliance with State law and regulations.
16. Sign owner has an outdoor advertising business license.
17. On Interstate or primary highway.
18. May not be erected adjacent to an Interstate or primary highway designated as a scenic byway.

### 13. Economic Hardship Signs

No signs in this category yet approved

Certain nonconforming signs may be eligible for retention if the following criteria were met:

1. The sign was in existence on May 5, 1976.
2. It provided directional information about goods and services in the interest of the traveling public.
3. Removal would work a substantial economic hardship in a specific area defined by the States. Individual claims of hardship are not allowed by Federal regulation. This regulation requires that to allow these retentions a determination must be made that economic hardship exists throughout the defined area.

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### GUIDELINES FOR STATE RULES AND REGULATIONS

Do State law or regulations:

- A. Prohibit the erection of new signs other than the following:
1. Directional and official signs?
  2. For sale or lease signs?
  3. On-property signs?
  4. Free coffee signs by nonprofit organizations?
  5. Signs in commercial or industrial areas?
- B. Assure that signs erected in commercial or industrial areas comply with size, lighting, and spacing criteria?
- C. Assure that directional and official signs comply with the National Standards (including development of specific selection methods and criteria to be used in determining whether or not an activity qualifies for this type of signing)?
- D. Provide for the expeditious removal of illegal signs?
- E. Provide for the removal of nonconforming signs with just compensation?
- F. Assure that landmark signs comply with Federal regulations? (if State recognizes landmark signs)
- G. Establish criteria for determining which signs have been erected with the purpose of their message being read from the controlled highway?
- H. Contain criteria to determine when customary maintenance ceases and a substantial change has occurred?
- I. Contain criteria to define destruction, abandonment, and discontinuance?
  - J. Contain criteria for determining on-premise/on-property sign exemptions?
- K. Prohibit new signs on designated scenic byways located on Interstate and Federal-aid primary highways?

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**SIGN PERMITS**

Almost all State laws require permits for certain controlled signs. Permit system requirements may be obtained from the State department of transportation or highway agency. Generally, signs which have been granted a permit will display a small tag bearing the permit or identification number. Failure to obtain a permit, where required, prior to erecting a sign almost always renders the sign illegal under the State law and subject to removal.

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**MAINTENANCE AND CONTINUANCE OF NONCONFORMING SIGNS**

Nonconforming signs must remain substantially the same as they were on the effective date of the State law or regulations that made them nonconforming. Reasonable repair and maintenance of the sign, including a change of advertising message, is not a change which would terminate nonconforming rights.

Each State must develop its own criteria to determine when customary maintenance ceases and a substantial change has occurred which would terminate nonconforming rights. When nonconforming rights are terminated under State law, the sign must be removed as an illegal sign without compensation.

Nonconforming signs may continue as long as they are not destroyed, abandoned, or discontinued. If permitted by State law and reerected in kind, exception may be made for signs destroyed due to vandalism and other criminal or tortious acts.

A clarification of the definition of what constitutes a blank sign under Federal regulations was issued on January 17, 1977. This guidance essentially indicated that

23 CFR 750.707(d)(6)(ii) provides that where an existing nonconforming sign ceases to display advertising matter, a reasonable period of time to replace advertising content must be established by each State.

When a sign remains blank for the established period, it loses its nonconforming status or rights and must be treated as an abandoned or discontinued sign. Blank is defined as void of advertising matter. An "available for lease" or similar message that concerns the availability of the sign itself does not constitute advertising matter. A sign with such a message is treated as abandoned or discontinued after expiration of the time period established by the State. When a sign displays such a message, the sign owner is in fact acknowledging that the sign facing is without live copy.

Similarly, a sign whose message has been partially obliterated by the owner so as not to identify a particular product, service or facility is treated as a blank sign.

The regulation further provides that where new content is not put on a structure within the established period, the use of the structure as a nonconforming outdoor advertising sign is terminated and shall constitute an abandonment or discontinuance; where a State establishes a period of more than one year as a reasonable period for change or message, it shall justify that period as a customary enforcement practice within the State; this established period may be waived for an involuntary discontinuance such as the closing of a highway for repair in front of the sign.

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## ACQUISITION AND REMOVAL OF SIGNS

The acquisition aspect of the Highway Beautification Program concerns the matter of the removal of nonconforming signs from protected areas and the payment of compensation to the sign and site owners. Nonconforming signs were lawfully erected prior to the enactment of State law. The acquisition portion of the program is based upon the concept of eminent domain, where the public welfare is promoted by the taking of property from the owner and appropriating it to some particular use.

Federal funds will participate in the cost to remove nonconforming signs including the payment of just compensation.

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## JUST COMPENSATION

Federal law required that just compensation be paid for the rights and interests of the sign and site owner for:

1. Removal of signs as a result of the Highway Beautification Act.
2. Removal of signs as a result of stricter State or local controls within the area controlled by Federal law.
3. Removal of signs pursuant to other legal purposes within the controlled area. Implies the removal is still related to outdoor advertising control.

Failure to pay just compensation in the form of cash could subject the State to a 10 percent penalty action. The Federal requirements are applicable only along the Interstate and Federal-aid primary highways.

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## DETERMINATION OF JUST COMPENSATION

1. Schedules--the valuation of signs and sites can be developed through the use of schedules and formulas, as well as other methods for the purpose of minimizing administrative and legal expenses.
2. Appraisals--the State may use its approved conventional appraisal procedures such as are used for

appraisals of property for transportation related projects. This is required if the sign is acquired through eminent domain.

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## APPROVAL OF SIGN ACQUISITION

The State must develop an order of priorities for the acquisition and removal of nonconforming signs.

A sign removal project may consist of any grouping of signs. The project is programmed in accordance with normal Federal-aid procedures for right-of-way projects.

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## UNIFORM RELOCATION AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (Uniform Act)

Certain provisions of the Uniform Act apply to the acquisition and removal of nonconforming signs.

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## PAYMENT OF JUST COMPENSATION

A sign owner is entitled to receive payment for the right, title, and interest in a sign, and if applicable, any leasehold value in a sign site.

The site owner is entitled to the right and interest in the site, which is usually calculated as the right to erect and maintain the existing nonconforming sign on the site, based on the remaining economic life of the sign.

There must be satisfactory indication of ownership of the sign and compensable interest, for example, a lease or other agreement with the property owner, and an affidavit, certification, or other evidence of ownership.

After evidence that the right, title, or interest pertaining to the sign has passed to the State or that the sign has been removed, the owners will be paid by the State.

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## SIGN REMOVAL

Nonconforming signs acquired by the States can be removed by either:

1. **Owner retention**--similar to right-of-way project activity.
2. **State removal**--by utilizing personnel of a force account basis or by contract.

Illegal signs must be removed by the owner or by removal with State personnel on a force account basis or by contract.

The State, in cooperation with the owner, may choose to relocate a nonconforming sign to a conforming location to the extent that the relocation cost does not exceed the cost to acquire the sign, less salvage value.

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## PROGRAM ADMINISTRATION

1. Inventory - it is essential for the control program.
  - a. It serves as the fundamental control document and should include an accurate accounting of all relevant data for each sign.
  - b. It serves as a surveillance tool which will be useful in determining:

1. Illegal sign erection.
2. Illegal maintenance.
3. It can be used as a control for the acquisition of nonconforming signs.
4. It may be used as evidence in a court case concerning the legality of a sign or signs.
2. Surveillance - routine route inspection and an adequate reporting system are critical for effective control.

A surveillance routine utilizing an accurate inventory will result in:

- a. The discovery of new illegal signs.
- b. The detection of unlawful expansion of nonconforming signs, such as addition of lighting, addition of panels, tack-ons, etc.
- c. Starting the "clock" on the "blank sign" rule.
- d. Assurance that permits are current and that new signs are erected in the proper location, etc.
3. Removal of illegal signs in an expeditious manner. In order to accomplish this control task, there must be an adequate reporting system or mechanism that triggers issuance of proper notification to the offender immediately upon discovery by surveillance personnel.

There must also be adequate coordination with the appropriate parties to assure prompt physical removal if the sign owner fails to remove the sign.

4. Permits and licenses - optional by the State. The Federal law does not require a permit or license system. Most States have adopted such a system as a control measure and most have proved to be a valuable administrative tool. Fees received may offset the administrative costs of the control program and/or the permit or license system.
5. Acquisition - removal with compensation. Removal and is at the discretion of the State. Nonconforming signs must be acquired or relocated to conforming sites. The States establish the priority for removals.
6. Coordination - all levels of government.
  - a. State - internal coordination
    - Administration - personnel and priorities
    - Right-of-Way - acquisition
    - Maintenance - control and removal
    - Legal - condemnation, police power
  - b. State - external coordination
    - FHWA - programming, policy
    - Local jurisdictions
    - Zoning authorities
    - Planning officials
    - Court system
    - State and local police
    - Private contractors - removal
    - Sign owners
    - Site owners
    - Fee appraisers.

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**VEGETATION CLEARANCE**



Should vegetation within the right-of-way be destroyed to improve the visibility of adjacent land uses?

While the issue of vegetation clearance is related to any land use on the other side of the right-of-way, it is most usually connected with outdoor advertising. In 1977 guidance was issued which permitted, but did not require, States to enter into agreements with billboard companies to clear trees and other vegetation on the public highway right-of-way to enhance the visibility of billboards.

In May, 1990 as one of our scenic enhancement initiatives, we clarified our 1977 memorandum that permitted vegetation clearance to improve the visibility of outdoor advertising signs and stated that because it is Federal Highway Administration policy to be sensitive to environmental concerns, such vegetation clearance can no longer be endorsed.

We recognized that maintenance of highway rights-of-way for safety and other highway operations is a State responsibility, but noted the clearing of vegetation to improve the visibility of signs(nonconforming) subject to removal under the Highway Beautification Program, or to improve the visibility of other land uses, was not environmentally responsive.

Sign owners and other property owners want to keep their signs and activities visible from the highway and environmentalists want to discourage or prevent the destruction of vegetation including trees solely to increase the visibility of adjacent land uses.

It is FHWA policy to assist States to maintain and preserve the roadside in a safe, pleasant, and forgiving manner for the highway user but overall maintenance of the roadway and roadside has largely been the responsibility of the States.

The 10 percent penalty authorized by the Highway Beautification Act for a State's failure to maintain effective control over outdoor advertising on the Interstate and Federal-aid primary Systems is not related to the issue of proper maintenance of the highway right-of-way as such vegetation clearance takes place within the right-of-way.

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#### MOTORIST INFORMATION SYSTEMS

Several alternate information systems are allowed within the highway right-of-way. These systems are addressed here due to the distinct differences as to location, placement, and purpose that these information systems have in relation to the off right-of-way signs allowed by the law. These systems function as traffic control devices and provide directional information to the motorist and do not have as their primary purpose to act as an advertising medium.

The Manual on Uniform Traffic Control Devices (MUTCD) provides the basic principles that govern the design and usage of traffic control signs, specific interest signs (logos), and Tourist oriented directional signs (TODS). The Highway Beautification Act does not regulate traffic control signs.

Traffic control signs include signs such as stop signs, yield signs, one way, do not enter, no right turn, etc.

Regulatory signs such as speed limit, do not pass, no parking, etc. inform highway users of traffic laws or regulations and indicate the applicability of legal requirements that would not otherwise be apparent.

Warning signs are used when it is necessary to warn traffic of existing or potentially hazardous conditions on or adjacent to a highway or street. They are generally diamond-shaped and include curve, winding road, cross road, narrow bridge, etc.

Guide signs serve to provide direction to destinations as the motorist approaches an intersection or interchange. These signs may show distances or identify routes and are identified with white letters or symbols on a green background.

General service signs have white lettering on a blue background and are utilized on highways where desirable or necessary motorist services exist.

Recreational and cultural interest area signs have white lettering on a brown background and are allowed where a demonstrable need exists for this special type of signing. They include categories such as fishing, marina, winter recreation area, picnic area, etc.

Specific service (logo) signs provide motorists with business identification and directional information about four categories of essential motorist services which are gas, food, lodging, and camping.

Tourist oriented directional signs provide motorists with business identification and directional information about businesses, including seasonal agricultural products, services and activities the major portion of whose income or visitors are derived during the normal business season from motorists not residing in the immediate area of the business or activity. These signs are limited to nonfreeway type highways.

The Highway Beautification Act authorizes States to provide information in the interest of the traveling public such as to maintain maps and permit information directories and advertising pamphlets at safety rest areas and travel information system centers within the highway right-of-way.

May 5, 1994/minor rev. July 8, 1997

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United States Department of Transportation - **Federal Highway Administration**



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**TESTIMONY BEFORE  
HOUSE TRANSPORTATION COMMITTEE**

**REGARDING HOUSE BILL 2746  
ELECTRONIC TRANSMISSION OF MOTOR VEHICLE ACCIDENT REPORTS**

**February 9, 2000**

Mr. Chairman and Committee Members:

I am James Tobaben, Chief of Transportation Planning for the Department of Transportation. On behalf of the Department of Transportation, I am here today to testify on House Bill 2746 regarding the submission of motor vehicle accident reports.

The Department of Transportation is statutorily responsible for the collection and management of the reportable motor vehicle accident data submitted by law enforcement agencies in the state. Current law (8-1611) allows law enforcement agencies to submit written (paper) reports or "consolidated magnetic tape reports prepared by computer." This legislative request would allow for the electronic submission of accident reports prepared by computer from law enforcement agencies to the Department of Transportation.

This amendment would support utilization of current technologies and enhance the opportunity to provide a more efficient process for both local law enforcement and the Department of Transportation. The amendment would provide another option for those law enforcement agencies that choose to submit their reports electronically, while continuing to allow all current methods of submittal.

In summary, passage of this legislation would provide an opportunity to improve the efficiencies of motor vehicle accident data collection and reporting and enable the Department to move toward a more automated process statewide.

House Transportation Committee  
February 9, 2000  
Attachment 3