

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE

The meeting was called to order by Chairman Les Donovan at 8:30 A.M. on February 16, 2006 in Room 527-S of the Capitol.

All members were present except:
Anthony Hensley- excused

Committee staff present:
Hank Avila, Kansas Legislative Research Department
Bruce Kinzie, Revisors of Statutes
Maggie Breen, Committee Secretary

Conferees appearing before the committee:
Sally Howard, General Counsel, KDOT
John Lay, George Lay Signs, Wichita
Paul Finney, Bailey Hotel, Humboldt
Larry Baer, League of Kansas Municipalities

Others attending:
See attached list.

Chairman Donovan said SB 253 - Highway advertising control act of 1972, amendments was tabled last year due to differences. The parties involved have been working together to find a workable solution to these differences.

Bruce Kinzie reminded the committee that the bill needed to be untabled. Senator Wilson made a motion to pull SB 253 from the table. Senator Petersen seconded the motion. The motion carried.

Chairman Donovan opened the hearing on SB 253.

Bruce said there is a Substitute for SB 253 but not all of the parties have had a chance to see it and there might still be some fine-tuning to be done on it. He said Sally Howard would cover the changes in the substitute bill.

Sally Howard, General Counsel, KDOT, said Substitute for SB 253 is almost a complete overhaul of outdoor advertising. It's the Highway Beautification Act, as the act has been codified in the Kansas statutes. A substantial part of the bill is that there is now a permit requirement. They made it a pay-to-play type of program. The fees now are much more in line with the cost of the program. It's the cost of the industry doing business in Kansas. They increased the application fee to \$250. They will now issue a permit and the sign owner has 12 months to erect the sign or the permit goes away. Extensions may be requested if there is a reason for the delay. After that, there is a biannual license. The cost of the license depends on the size of the sign. A structure of less than 33 square foot will now cost \$20 every 2 years; structures between 33 and 300 square feet are \$75 every 2 years; and those over 300 square feet are now \$150 every 2 years. The fee is per structure. They previously charged \$10 per county, no matter how many signs you had there. Bigger sign companies were being charged about 34 cents per sign while the smaller companies who had one or two signs were charged \$10 per sign. The most you could be charged per year before the change was \$250, regardless of how many signs you had in the state of Kansas. That raised about \$11,000 per year. The cost of administering the program is approximately \$280,000 per year. The fees they are now proposing will generate about \$350,000 every two years. It doesn't pay all of the fees but it will pay a lot more than it does now. All of the other changes are geared towards clearing up sloppy language and more clearly define things such as unzoned commercial areas. They included language from the agreement they have with the Federal Highway Administration along with some language other states are using. They also included a right to appeal if someone isn't agreement with a decision made by KDOT. Another issue of concern to the industry is a vegetation control policy. Right now, Kansas doesn't have a policy and a lot of other states don't either. The industry questions if they can get on KDOT's right-of-way and clear vegetation to make their signs visible. There has been conflicting guidance from Federal Highway which makes developing a policy tricky. The department has made a commitment with the industry to get with them to develop a policy within one year of when the bill passes. (Attachment 1)

CONTINUATION SHEET

MINUTES OF THE Senate Transportation Committee at 8:30 A.M. on February 16, 2006 in Room 527-S of the Capitol.

Senator Palmer presented a problem regarding the removal of a sign by KDOT in a small community in her district. She felt the situation was handled very poorly. She is very concerned that the small communities need to be permitted to have signs to help them with economic development. She thinks the needs and concerns of these small communities in rural areas should be looked at now, while the whole highway advertising control act is being amended.

Senator Petersen questioned the definition of visible including the words "whether legible or not legible." He questioned how they came up with it.

Ms. Howard. said it was a change in federal regulations but agreed to check the matter further.

John Lay, George Lay Signs, Wichita, said he was also Vice President of the Kansas State Sign Association representing 30 companies in Kansas. He's worked a lot with Ms. Howard and KDOT staff to put the bill together. One of the biggest challenges has been to create a balance of the interest of the really small billboard companies up through the huge media groups. He just learned that Viacom Outdoor in Kansas is now known as CBS Outdoor. So they deal with big operations in cities as well as small operations in the most rural areas. The bill presented last February would have been very damaging to their businesses. They believe the compromises they have worked out will allow them to stay in business and to retain opportunities to grow their businesses and still keep Kansas in compliance with federal mandates. A lot of the compromises have caused pain to their members and have not been easy ones. But they believe it is now a balanced bill. (Attachment 2)

Paul Finney, Bailey Hotel, Humboldt, said he has been involved in the historical preservation of their downtown. Today their downtown is economically devastated. They were adversely affected when US highway 169 bypassed the city in the early eighties and they've gone downhill ever since. Many other small towns have experience the same fate. The bypassing of cities with our interstate highways along with Lady Bird's law to limit outdoor advertising has created a compounded effect. You can't even see Humboldt from Highway 169 so we don't have anybody going through our town. There is a sign that says Humboldt but people don't know the size of the town and if they have anything to offer. Other small towns have this same problem. In the cities, we have just the opposite. The freeways and highways go right through the cities, people can see the businesses and there are billboards hanging on the side of the road. We have a dichotomy of how we are treating advertising in the cities and in the small towns. It's the limitation and the regulation of outdoor advertising that makes it as lucrative as it is today. He knows the industry has worked very hard on the bill and it's been greatly improved from a year ago. He appreciates what's been done. But he does object to the codification of the federal regulation that greatly restricts the commercial development in rural areas for the purpose of billboards. He thinks we should quit looking at the federal regulation as fixed and start doing something to get it changed. We have a probusiness administration in the White House and it's time to get some of these things changed. (Attachment 3)

Chairman Donovan asked the next conferee, Larry Baer, if the item he objects to in his written testimony, page 10, lines 4 through 16, had been removed.

Larry Baer, League of Kansas Municipalities, said no it hadn't, it now appears on the bottom of page 13 in subsection (g) and they still have a problem with it. He has visited with Ms. Howard this morning and he thinks they are already on their way to finding a compromise on subsection (g). Their biggest dilemma on this is that while they were contacted last summer regarding potential changes, somehow they didn't stay in the loop. They haven't had sufficient time to look at the rest of the bill. The language they most objected to was on the review and certification of local zoning provisions by the department. That has come out and they appreciate it. (Attachment 4)

Chairman Donovan suggested that all parties get together and get the language fixed. He wants to work the bill next week.

The meeting adjourned at 9:28 a.m. The next meeting is scheduled for February 20, 2006.

KANSAS

DEPARTMENT OF TRANSPORTATION
DEB MILLER, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

TESTIMONY BEFORE THE SENATE TRANSPORTATION COMMITTEE

REGARDING SUBSTITUTE SENATE BILL 253 RELATING TO THE HIGHWAY ADVERTISING CONTROL ACT OF 1972

February 16, 2006

Mr. Chairman and Committee Members:

Good morning. I'm Sally Howard, Chief Counsel for the Kansas Department of Transportation. I appreciate the opportunity to testify on the Substitute for Senate Bill 253, which substantially modifies the Highway Advertising Control Act of 1971, K.S.A. § 68-2231, et seq..

You may recall that SB 253 was before this Committee in February, 2005. After members of the industry voiced their concerns, this Committee appropriately tabled the bill and urged KDOT and the industry to work together to see if we could reach an agreement. We have done this. For months, KDOT and representatives of the industry have worked together and now stand before you in support of Substitute for Senate Bill 253 which is better for both KDOT and the Outdoor Advertising Industry.

The federal Highway Beautification Act of 1965 was enacted to control the placement of billboards along the nation's highways; to preserve this great country's scenic beauty. The Act recognizes that outdoor advertising is a legitimate, commercial use of private property adjacent to the highway, but that the erection and maintenance of advertising signs along the highways should be regulated. KDOT is required to enforce the Highway Beautification Act, and the Federal Highway Administration is authorized to withhold federal highway dollars if KDOT fails to do so.

Kansas initially adopted the Highway Advertising Control Act in 1972, and has not substantively reviewed the legislation since that time. Substitute SB 253 will substantially change currently existing legislation. The biggest changes that you will see are the new permitting requirements and modification of the fees paid by sign owners.

Under existing legislation no permit is required, consequently, KDOT isn't always aware of a new sign along our highway system until after it has been erected. Unfortunately, if we later find that the sign is illegal, we must require the sign owner to remove the sign. This causes unnecessary conflict for both KDOT and the sign owner. The new legislation requires a permit, and then requires a license for each structure that is erected. This change will help KDOT determine whether signs are legal before they are erected, and will also maintain an accurate

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Attachment 1

inventory of the outdoor signs that are erected on our highways, which is required by the Federal Highway Administration.

The fee structure in the proposed legislation has been completely restructured so that, as the industry said, it is a “pay to play” system. Industry and KDOT agreed to increase the current application fee from \$5 to \$250. In addition, an increase in the renewal fees has been agreed to. Currently, KDOT charges a renewal fee of \$10 in each county in which the licensee operates, regardless of the number of signs in that county. The maximum fee that a licensee currently pays is \$250. Under this fee structure, largest sign companies paid only thirty-four cents per sign. KDOT worked with industry to develop a tiered structure when setting permit renewal fees. The proposed biennial renewal fees are listed below and it is estimated this fee change will generate approximately \$350,000 every two years:

<u>Fee</u>	<u>Per structure</u>
\$20	32 square feet or less
\$75	33- 300 square feet
\$150	Larger than 300 square feet

Finally, to minimize the impact of the new fees, we propose these fees be phased in over a two year period. Owners of signs in our inventory prior to December 31, 2006 will pay 50 percent of the new fee in 2007, and the remaining 50 percent fee in 2008. After that time the full rate will go into effect.

This proposed legislation will allow for automatic changeable facing signs, which have been allowed in neighboring states for some time. We have better defined what is meant by “unzoned commercial area,” and might I add that this was the subject for considerable debate. After hearing industry concerns about vegetation control policies, we have agreed to meet with industry representatives to develop a policy and to be sure the policy is implemented within one year from the date this legislation is enacted. Substitute SB 253 also provides the sign owners the right to appeal agency decisions with which they are aggrieved.

As you can see from your review of Substitute SB 253, we have nearly completely rewritten the Highway Advertising Control Act. I believe these changes were necessary to bring us closer to the practices of surrounding states, to help defray the cost of our administration of this Act, and to substantially improve this agency function.

Thank you Mr. Chairman. I would be happy to answer any questions.

George Lay **Signs** Inc.

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Senator Leslie Donovan Sr.
Senator Dennis Wilson
Senator Anthony Hensley
Senator Pat Apple
Senator Mark S. Gilstrap
Senator Phillip B. Journey
Senator Peggy Palmer
Senator Mike Petersen
Senator Vicki L. Schmidt

February 16, 2006

Mr. Chairman and Senators of the Transportation Committee,

My name is John Lay, and I am President of George Lay Signs Inc in Wichita, and Vice President of the Kansas State Sign Association. Our association represents 30 companies in Kansas, and was formed over 30 years ago in response to changes in our industry brought about by highway beautification crusades of the 1960s. I feel like history is repeating itself, as I can recall dinner hour conversation with my Dad 40 years ago about Lady Bird Johnson and highway beautification. Dad also made a lot of trips to Topeka when these federal mandates reached the state level in 1968. The outcome of those 1968 trips to Topeka is our current billboard law. Now my kids ask "are you going to Topeka again?"

During and between all these trips to Topeka, I've spent many hours working on revisions to this Senate bill, both in sessions with my peers, and with Ms. Howard and KDOT staff. It has been challenging to balance the interests of the smallest billboard operators – the one man shops, up through the huge media groups. In fact just Tuesday I learned that Viacom Outdoor in Kansas City is now known as CBS Outdoor. So to say that I'm representing a diverse group is quite an understatement.

Today I'm here to express my support for Substitute SB253. When I spoke to you last February, the bill would have been very damaging to our businesses. Since then, we have worked out compromises with KDOT that will keep us in business and retain opportunities to grow our businesses, while keeping Kansas in compliance with FHWA mandates. Some of these compromises have been painful to our members, and our meetings with KDOT alternated between heated and intense moments, and conciliatory ones.

We believe that what we have presented to you is a balanced bill that will:

- 1) Provide a meaningful framework to KDOT for regulation and enforcement of billboard laws
- 2) Retain limited opportunities for construction of new billboards in commercial and industrial areas
- 3) Prohibit construction of the largest and most closely spaced billboards
- 4) Provide opportunities for billboard owners to update their sign structures to keep up with modern safety standards and production methods
- 5) Provide for reasonable fees to be paid to KDOT to offset costs of providing the regulatory function
- 6) Require KDOT to develop a reasonable program within a year to authorize vegetation control on the right of way near billboards
- 7) Provide for administrative reviews on any disputes with KDOT requiring removal of signs

Thank you for your time and attention to this bill.

John Lay, President
George Lay Signs Inc.

Mr. Chairman, members of the committee, thank you for the opportunity to speak today.

I am Paul Finney of Humboldt, where I have been involved in the historic preservation of our downtown.

I want to speak today of the economics of the small towns of our state as affected by the regulation of Outdoor Advertising.

Let me historically set the stage for this discussion:

In the hay days of our small towns such as Humboldt, when highway 169 went through center of town, we had a lot of gas stations and a vibrant downtown that included most any service and supply that one would need on a day-to-day basis.

Today our downtown is economically devastated. U.S. highway 169 by passed the down in the early eighties and we've gone down hill ever since. There are many other small towns which have had the same experience. Walmart in our neighboring towns of Iola and Chanute has played a role clearly, and it has put stores in those towns out of business also.

But the by passing of these three towns and many others in Kansas has been devastating. In the fifties when I was growing up, the freight moved around town on the Sante Fe railroad and most passengers moved through town on the highway.

But the by passing of the town by U.S. HWY 169 makes us one of the towns that most people traveling today know nothing of. The cars and trucks fly by at 65 miles per hour. They can't even see our town from the highway, only a sign announcing the exit.

When the highway went through town we had great patronage of some 13 or more gas stations, each of which employed several people on different shifts, sold tires and performed mechanical repairs.

People would stop to check out our stores as happens in other towns today that are not by passed.

In the cities it is different. The highways and freeways go through the cities, not around them. Drivers can see the stores and billboards dot the landscape advertising all manner of businesses.

The cause of this difference is Lady Bird Johnson's law to limit outdoor advertising ostensibly to protect the beauty of our rural areas.

Not pointed out when the so-called Lady Bird law was passed by Congress during her husband's administration, was that she owned a number of TV stations and thus was in the advertising business herself, and this bill would limit her competition.

The control of outdoor advertising is what has made it so lucrative, by limiting the supply.

When governments legislate to correct a perceived evil--in this case the blighting of our scenery along our roads--it nearly always creates unintended consequences.

The unintended consequence in this case is the near impossibility of rural billboards, especially near towns that are by passed and have little commerce or industry on the new road. And now with Lady Bird's

law, there is generally no way of advertising to bring them in off the road.

The informational signs announcing the existence of services in towns that KDOT erects do not have the pulling power of a commercial sign. They are also difficult to get and difficult to see as they are small.

The difference between the large cities and small towns is the absence of commercial or industrial areas along the highways that by pass small towns. And this difference has a lot to do with zoning. The highways and freeways go through the commercial and industrial areas of the cities which are zoned as such.

The by passes of our towns go through agricultural areas. Federal regulations related to Lady Bird's law prohibit zoning land commercial just for the purpose of outdoor advertising.

I believe this these federal regulations should be modified to relieve the small town problem I have pointed out. The regulations could be modified to allow small town businesses to advertise without turning it into a blight of our country side.

I intend to work toward this goal, hopefully with the support of our Outdoor Advertising Industry.

My reason for appearing today is to ask you not to codify the federal regulations as SB 253 does in its present form. With the change of the federal regulations to a more pro-business and pro-small town stance these codified regulations would hamstring Kansas small towns from advertising outdoors as do their big-city competitors.

Our small towns have produced our most famous Kansans including Alf Landon, Dwight Eisenhower and Bob Dole, Walter Johnson, and most of our governors. Most of our presidents have come from small towns. Our nation's small towns have been the incubators of many of our greatest citizens who go off into the larger world and make great accomplishments. The sum total of all of America's accomplishments has made us world's greatest civilization to date.

Without flourishing stores and services, our small towns become much less attractive places to live. Unless we correct this problem, these towns will go into further decline.

Historic preservation is one avenue to save the buildings in our small towns. But without flourishing commerce, there will be no use for these buildings.

Government having helped create the demise of small town business districts by by passing the towns and regulating signage nearly out of existence in these areas, now offers some grants to restore the buildings it helped empty. This is a classic case of how government legislates to correct a problem it created with previous legislation. And we wonder why our taxes go up.

So I ask you today to please delete the language of this bill which codifies the federal regulation prohibiting and or limiting zoning for outdoor advertising.

These regulations are harming the economies and even the social fabric one of our most important institutions: our small towns.



League of Kansas Municipalities

Date: February 16, 2006
To: Senate Transportation Committee
From: Larry R. Baer
Assistant General Counsel
Re: SB 253

Thank you for allowing me to appear before the committee and comment on SB 253 on behalf of the League of Kansas Municipalities and its member cities. We initially signed up to oppose SB 253. However, after signing up we learned that a compromise bill was being offered and that a portion of the language in SB 253 that we objected to had been removed. Thus, the League is appearing as a neutral party desiring to make comments on SB 253.

SB 253 proposes to make many changes to current law regarding highway advertising, and, as originally written, included the requirement that local zoning regarding signs be subjected to review and certification by the Kansas Department of Transportation. Because the League firmly believes that zoning and land use regulation within the corporate limits of cities are local issues, the League objected to this language and other proposed changes regarding zoning and land use regulation. This was done through conversations with KDOT last summer.

We now understand that the language regarding review and certification of the local zoning provisions has been removed from the compromise bill, but that other language which we had objected to remains in the bill. This language appears in the original bill on page 10, lines 4 through 16. We still believe that this language should be deleted.

Because we were not part of the compromise bill group, we do not know what, if any other, language regarding local zoning remains in the bill or may have found its way into the compromise legislation. Therefore, the League respectfully asks the Committee to take no action on the proposed substitute for SB 253 until we have had an opportunity to fully review the substitute bill and make comment regarding any language contained in it that may effect issues and decisions that should rightfully be made at the local level.

Thank you. I will be happy to stand for questions.