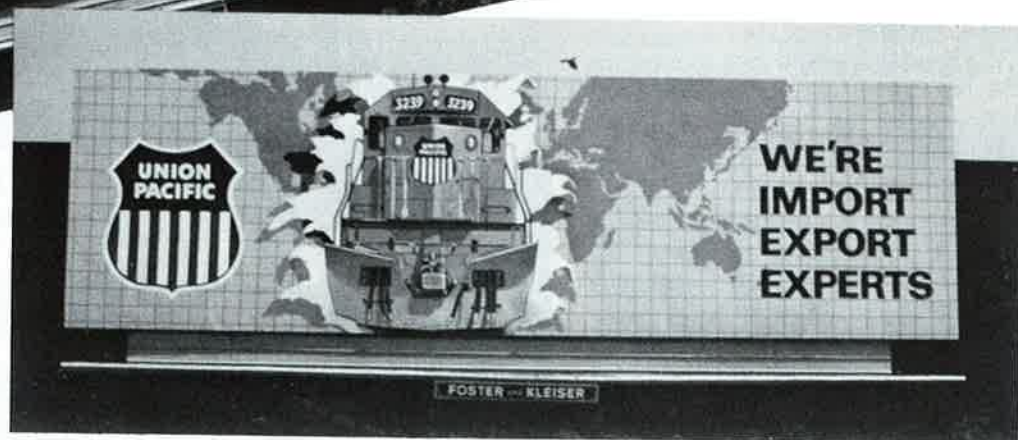


# The Highway Beautification Program: A Federal Viewpoint

by Myron F. Laible



The Highway Beautification Program has been the subject of four major studies and five amendments since 1965. These studies typify the conflicts in the program as well as difficulties in arriving at a unified or concise program objective.

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First, let's look at highway beautification in the context of the overall transportation program. The classical federal-aid highway program is considered a partnership arrangement, with the states selecting and then building the highways. The federal government participates in the cost of the program and provides oversight in order to protect the national interest.

How does beautification fit into this scheme? It is a regulatory program to control the erection and maintenance of outdoor advertising signs and junkyards along federal-aid primary and interstate routes. In effect, it is a federal overlay onto state and local land use controls. States were required to enact highway beautification controls that mirrored the federal legislation or be subject to a 10% reduction in their federal-aid highway apportionment.

The federal interest in highway beautification began prior to 1965. The impetus for controlling outdoor advertising arose in 1956 with the advent of the interstate highway program.

In 1958, Congress enacted a voluntary program under which states could enter into agreements with the federal government to control outdoor advertising and thereby become eligible for a bonus payment in the amount of one-half of 1% of the construction costs of the interstate highways in the state. To date, the Federal Highway Administration (FHWA) has paid over \$40 million in bonus claims to the 23 states still in the program. Currently, FHWA has approximately \$5 million in outstanding claims it is unable to honor due to lack of congressional appropri-

ations. It is estimated that approximately \$91 million will be necessary to reimburse the states to complete the bonus program.

The 1965 Act replaced the voluntary program (carrot approach) with the mandatory compliance law (stick approach). It was an outgrowth of President Johnson's message to Congress in February 1965 and a follow-up to the National Conference on Natural Beauty in May of that year. Approximately 1,000 conservationists, legislators, industry representatives, government officials and citizens took part. The momentum of that conference resulted in passage of the Act.

The coalition which was put together for the passage of the Act quickly fell apart. The diverse views of those parties with strong interests or stakes in the program became apparent. The congressional intent was set out in broad, elusive terms which made implementation of the Act hostage to specific topical issues. Issues such as cash compensation, signs in commercial or industrial areas, and funding have re-

mained controversial from the program's inception.

The beautification program has been the subject of four major studies and five amendments since 1965. These studies typify the conflicts in the program as well as difficulties in arriving at a unified or concise program objective.

The first study of the beautification program was announced in 1969. It was a Department of Transportation study and was an outgrowth of the controversy surrounding the slow implementation of the program. The House Committee on Public Works, in a report dated September 1970, H. Rept. 91-40, succinctly phrased a major problem which persists today, 13 years later:

Much of the difficulty of enacting and administering an outdoor advertising control law in a manner satisfactory to all concerned lies in the fact that those concerned often possess widely divergent views, frequently totally incompatible. Certain conservation elements hold out for

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total elimination of outdoor advertising; no compromise is acceptable. Some outdoor advertising or tourist-industry officials are equally adamant in their dislike or distaste for any control whatsoever. Although the vehement expression of radically different points of view appears to be commonplace in today's world, it is a condition which does not foster an easy road to achievement.

The Department's primary recommendation was to provide adequate funding, preferably from the Highway Trust Fund. The program has been funded since its inception from the General Fund. Additional recommendations that were eventually enacted by amendments of the Act include controlling signs to the limit of visibility and allowing establishment of signs containing certain tourist-oriented advertising.

A second restudy of the program was mandated by the federal-aid Act of 1970. Representative Jim Wright of Texas was the chairman of the 11-person panel. This commission held seven public hearings, sponsored symposiums on specific topics of the law, and conducted two public opinion surveys. A final report, issued in December 1973, provided a series of recommendations for outdoor advertising controls.



Generally, the commission reported that no one seemed satisfied with the Act as written. The sign industry interests cited technical problems in administration of the law. The environmentalists felt it was not strict enough and might undermine state and local efforts to remove signs. The states felt that the federal requirements were

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inflexible. Uncertainties regarding funding and complexities within the law increased administrative costs out of proportion to other highway programs.

The third major review of the program and its objectives was conducted by the General Accounting Office (GAO). It issued a report in 1978 entitled "Obstacles to Billboard Removal." The GAO concluded that the program as now structured may not meet the overall objective of preserving natural beauty along highways.

Four areas were emphasized in that report. It cited the general lack of support for the program by states. Another concern was the legal complexities and conflicts that were generated between states and sign owners. The report also cited

dies, the FHWA decided in 1979 to formally reassess the program. This reassessment was announced to the public in the *Federal Register* of April 30, 1979. The FHWA solicited public suggestions for regulatory or legislative changes in the program by this notice and in a series of public hearings held across the country in mid-1979. This reassessment is still underway.

As a part of this effort, the most recent beautification study was initiated by the Department of Transportation in July, 1979, when it created the National Advisory Committee on Outdoor Advertising and Motorist Information (NAC). The 25-person membership of the NAC was carefully selected by former Secretary of Transportation Neil Goldschmidt to represent a balance between pro- and anti-billboard interests. Because of this balance, the committee report, issued in September 1981, was inconclusive. Rather than a strong recommendation for the direction and structure of the program, the NAC report was a series of majority and minority resolutions with the majority often being determined by a narrow margin. Thus, the committee adopted much of both the pro- and anti-billboard proposals, many of which were contradictory.

The following few areas of consensus among the committee can be identified. The committee recognized the special importance of on-premise signs, including electronic ones, and unanimously recommended that the current exemption from federal requirements be continued. The

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the numerous exemptions and changes to the federal law that were felt to dilute the Act's original intent. Finally, the differences in state and local rules were found to hamper achieving esthetic sign removal results. The GAO recommended that Congress reassess the program.

Partially in response to these stu-



committee agreed that sign owners should be allowed to repair all destroyed nonconforming billboards. Also, commercial and industrial areas should be subject to some form of actual use requirement in order to qualify as areas in which signs may be allowed.

The issue of compensation created the most controversy. While a majority of the committee recommended retaining the existing compensation requirement, a majority also recommended repealing the program in its entirety primarily because the compensation requirement interfered with the traditional use by states and localities of amortization to remove signs.

The anti-billboard interests tended to view the current program as federal protection for the industry because of the Act's broad compensation requirement. Thus, anti-billboard supporters favored reducing the scope of the federal program and recommended repeal of the Act unless deficiencies in enforcement and funding were remedied. Billboard interests supported the existing law but wanted the regulations affecting them reduced. Likewise, there was no consensus among the states on the direction of the program. States that would like to control billboards viewed the federal law with its compensation requirement as burdensome. States that would like to allow more billboards also viewed the federal program as burdensome because it required them to control and remove signs. States that felt the program had a very low priority were distressed that the controversy regarding it never seemed to diminish.

Controversies over the program that surfaced in the studies outlined above are reflected in decreases both in funding and expenditures. The amount of appropriations, as well as the number of sign removals, peaked in the mid-70's and is significantly lower today. Appropriations have ranged from a high of \$49 million in 1974 to \$5 million in 1983. Sign removal expenditures peaked in 1976 at over \$26 million nationwide and declined to approximately \$5.7 million in 1982.

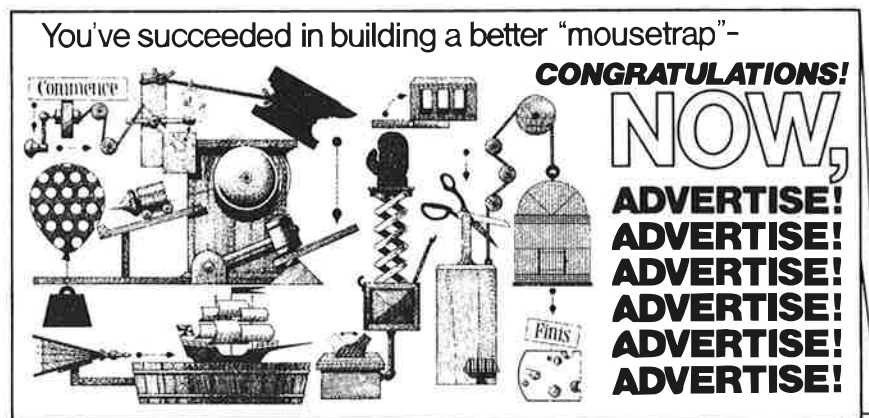
Yet the task of removing nonconforming signs is less than one-half completed. To date, nearly 111,000 nonconforming signs have been removed at a cost of approximately \$156 million. This represents 46% of the total nonconforming signs identified for removal. It is estimated that close to \$800 million in federal funds would be necessary to complete the removal program. The number of nonconforming signs to be acquired and the acquisition cost of the program were greatly increased by the 1978 amendments to the Act which required compensation for all signs removed along controlled highways, whether or not such signs were removed pursuant to the Act.

Two recent lawsuits have raised issues that affect the highway beautification program. The Supreme Court's 1981 decision in *Metromedia, Inc. v. City of San*

of discretion that the Secretary of Transportation has in administering the Act.

What lies ahead for highway beautification? In the words of the NAC Report, "There are no easy answers and no clear path to resolving the outdoor advertising dilemma."

A program redefinition that takes into consideration fiscal constraints is in order. There is a need for a concise beautification goal that is tangible and achievable. The vague, elusive policy enunciated in the original Act has certainly not contributed to a focused program generating a consensus of support. Without a consensus of all parties to the highway beautification mission, the process of developing a viable federal highway beautification program will simply continue to be surrounded by controversy, encumbered by complexity, and without a firm commitment for the future.



Billboard interests supported the existing law but wanted the regulations affecting them reduced.

*Diego*, which struck down San Diego's outdoor advertising control ordinance as violative of the First Amendment, provided only vague guidelines for the regulation of commercial speech without infringing on non-commercial speech.

In an ongoing lawsuit filed in Federal Court in Atlanta, the Sierra Club is attempting to force the DOT and FHWA to penalize the state of South Carolina for allegedly failing to comply with the Act (for failure to exercise effective control over the erection and maintenance of billboards). This suit raises two major issues of importance for the program: whether a private party has standing to enforce the Act; and the amount

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