SCR-158
c.2
STUDY
COMMISSION
REPORTS

LEGISLATIVE RESEARCH COMMISSION

OUTDOOR ADVERTISING

RECEIVED
JAN 9 1987
INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA
LIBRARY

REPORT TO THE 1987 GENERAL ASSEMBLY OF NORTH CAROLINA

A LIMITED NUMBER OF COPIES OF THIS REPORT IS AVAILABLE FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY.

ROOM 2126, 2226
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27611
TELEPHONE: (919) 733-7778

OR

ROOM 500
LEGISLATIVE OFFICE BUILDING
RALEIGH, NORTH CAROLINA 27611
TELEPHONE: (919) 733-9390

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE SERVICES OFFICE
2129 STATE LEGISLATIVE BUILDING
RALEIGH 27611

GEORGE R. HALL, JR.
LEGISLATIVE ADMINISTRATIVE OFFICER
TELEPHONE: (919) 733-7044

GERRY F. COHEN, DIRECTOR
LEGISLATIVE DRAFTING DIVISION
TELEPHONE: (919) 733-6660

THOMAS L. COVINGTON, DIRECTOR
FISCAL RESEARCH DIVISION
TELEPHONE: (919) 733-4910

M. GLENN NEWKIRK, DIRECTOR
LEGISLATIVE AUTOMATED SYSTEMS DIVISION
TELEPHONE: (919) 733-6834

TERRENCE D. SULLIVAN, DIRECTOR
RESEARCH DIVISION
TELEPHONE: (919) 733-2578

December 15, 1986

TO THE MEMBERS OF THE 1987 GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1987 General Assembly on the matter of outdoor advertising. The report is made pursuant to Chapter 790 of the 1985 Session Laws.

This report was prepared by the Legislative Research Commission's Committee on Outdoor Advertising and is transmitted by the Legislative Research Commission for your consideration.

Respectfully submitted,

Liston B. Ramsey

J. J. (Monk) Harrington

CoChairmen
Legislative Research Commission

TABLE OF CONTENTS

Digitized by the Internet Archive
in 2013

http://archive.org/details/outdooradvertisi00nort

PREFACE

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. The Commission's membership is listed in Appendix A. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" [G.S. 120-30.17(1)].

At the direction of the 1985 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The co-chairmen of the Legislative Research Commission, under the authority of General Statute 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairmen, one from each house of the General Assembly, were designated for each committee.

The study of outdoor advertising was authorized by Section 1(33) of Chapter 790 of the 1985 Session Laws (1985 Session). That act states that the Commission may consider Senate Bill 611, which was introduced by Senator R. P. Thomas in 1985, in determining the nature, scope, and aspects of the study. Section 1 of

Senate Bill 611 provides in part: "The Legislative Research Commission may study the issue of outdoor advertising." Copies of Chapter 790 and Senate Bill 611 are included in Appendix B of this report.

The Legislative Research Commission grouped this study in its State Regulation area under the direction of Senator A. D. Guy. The Committee was chaired by Senator R. P. Thomas and Representative Charles M. Beall. The full membership of the Committee is listed in Appendix C.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Study Committee on Outdoor Advertising met four times: on April 15, September 26, October 20, and November 12, 1986. To receive as much input as possible from the public, Committee Co-Chairmen Senator R. P. Thomas and Representative Charles Beall felt that it would be helpful to meet not only in Raleigh, but also in the mountains of North Carolina and along the coast -- areas in which the tension between those concerned with preserving the natural scenic beauty of the surroundings and those favoring outdoor advertising as a legitimate means of enhancing their business activities is often most acute.

April 15 Meeting

The Committee held its first meeting in Raleigh. The agenda consisted of public comment, an analysis of legal issues, an explanation of North Carolina Department of Transportation sign control programs, and Committee member discussion of issues regarding outdoor advertising.

Mrs. Anne Browning, President of the Carolina Coalition for Scenic Beauty, organized the presentations of those favoring stricter controls on outdoor advertising. Among those criticising the current laws and practice was Mr. Charles Floyd, President of the American Coalition for Scenic Beauty, who had harsh words for the Federal Highway Beautification Act (23 U.S. Code 131). He recommended that North Carolina amend its laws to close what he considered to be large loopholes allowed by the Act, which

permit outdoor advertising signs along the interstate and federal-aid primary highways in certain areas unzoned for commercial purposes and in areas that he asserted had been locally zoned for the sole purpose of allowing the erection of billboards.

Mr. Sam Johnson, a Raleigh attorney, organized the presentations for those opposing stricter outdoor advertising controls. Most of these speakers owned or represented member businesses of the North Carolina Outdoor Advertising Association. They argued that their use of billboards along the interstate and federal-aid primary system to promote their servies and products was not only important to their economic well-being but constitues a legitimate First Amendment form of free speech. They added that their tax dollars from income enhanced by outdoor advertising benefit the State generally.

Professor Richard Ducker, Assistant Director of the University of North Carolina Institute of Government, summarized the federal, State, and local laws on outdoor advertising. He discussed several legal issues regarding local acquisition of outdoor advertising signs made nonconforming by local ordinances and the authority of counties and municipalities to set higher standards than State law for new signs along the interstate and federal-aid primary system. (See Appendix D for a copy of Mr. Ducker's remarks.)

Mr. Frank Pace, North Carolina Department of Transportation Maintenance Unit Engineer, explained the Department's program to control the erection and maintenance of outdoor advertising along the interstate and federal-aid primary system. He also discussed the agreement between the federal and State governments, setting forth the State's basic approach to implementing national policy

on outdoor advertising control (Appendix E contains a copy of the agreement), and answered questions on the nature of permits required to erect and maintain outdoor advertising displays. Committee members also asked questions about the Department's enforcement of its program. (See Appendix F for Department information on permits issued and revoked and illegal signs removed.)

Mr. Glenn Grigg, North Carolina Department of Transportation Project Engineer, discussed the State's specific information (logo) sign program. This program, scheduled for completion in 1995, authorizes the Department to install signs to which individual business logos are attached. Signs have been installed on segments of I-95 and I-85. Further installations are planned for I-77, I-26, I-40, and additional locations along I-85. (Appendix G contains a description of the logo program and scheduled future sites of logo signs.)

September 26 Meeting

The Committee held its second meeting in Southport, in Brunswick County. Representative David Redwine, a Committee member, said that he had invited the Committee to meet there, because the issues regarding outdoor advertising were of particular interest to residents of Brunswick and New Hanover Counties and the developing areas of the coast.

Representative Beall, presiding at this meeting, recognized the Committee Counsel for an explanation of a recent U.S. Fourth Circuit Court of Appeals case, in which the court upheld the validity of a Raleigh City ordinance that (1) greatly reduced the maximum permissible size of off-premise billboards and (2) imposed a five and one-half year amortization period for certain

signs made nonconforming by ordinance provisions. (See Appendix H for a more detailed summary of the court's ruling.)

The Committee then heard from the public for comments on outdoor advertising issues. Representative Beall introduced Mr. Peter Davis, a Wilmington resident representing the Carolina Coalition for Scenic Beauty and coordinating the comments of those favoring stricter outdoor advertising laws. These speakers expressed their concern that billboards along coastal roads greatly impaired the natural beauty of the coastal surroundings. They said that residents found the signs to be aesthetically offensive and that excessive outdoor advertising undermined the tourist industry and economic well-being of the area.

Ms. Leslie Johnson, Executive Director, N. C. Association of Outdoor Advertising, organized the presentations of those opposing stricter outdoor advertising laws. These speakers emphasized that the United States is based on a system of free enterprise and that outdoor advertising is an important means of sales productivity. They also maintained that governmental acquisition of existing signs through amortization seemed inconsistent with the constitutional guarantee against the taking of private property without "just compensation."

Senators Wanda Hunt, Ralph Hunt and R. L. Martin had questions regarding the statewide economic benefits of outdoor advertising and the impact that banning billboards might have on tourism and employment. Each side subsequently provided Committee members with surveys and economic figures supporting its arguments.

October 20 Meeting

Senator Thomas presided at the meeting in the Henderson County

Courthouse. After recognizing Committee Counsel for a summary of the outdoor advertising laws and recent developments in other states (see Appendix I for that summary), he informed those in attendance that Congress had recently adjourned without enacting a bill that would have substantially amended the federal laws on outdoor advertising. He then opened the floor for comments by members of the public.

Mr. Glenn Jernigan, a former State legislator from Fayetteville, introduced speakers on behalf of the Outdoor Advertising Association. These speakers linked closely their economic viability with the use of billboards along the State's highways, some because their businesses used outdoor advertising and others because they were employed by advertising companies. The Committee was told that billboard companies frequently provide space for public service messages, that drivers benefit from directional and service information on the signs, and that a healthy tourist trade is compatible with and possibly enhanced by outdoor advertising.

Mrs. Anne Browning, a Hendersonville resident representing the Carolina Coalition for Scenic Beauty, said that according to a survey conducted several years ago by the Office of North Carolina Travel and Tourism, the State's scenic beauty was the main reason tourists visited North Carolina. She added that tourism is the State's third largest and fastest growing industry. Ms. Katherine McNett, representing the Southern Environmental Law Center, stated that travelers must eat, sleep, and buy gas somewhere and that billboards simply influence their decision as to which particular place. She also referred to other states that have banned billboards or otherwise have greater restrictions on outdoor advertising. Other speakers asserted that excessive billboards could

hurt the State's economy, because industry would more likely locate facilities in states offering an environment more conducive to attracting company executives and other personnel from out of state.

November 12 Meeting

At its final meeting, the Committee reviewed the information it had gathered during the course of its study. After discussing a wide range of possible recommendations and proposed implementing legislation, the Committee formally adopted its report to the 1987 General Assembly.

FINDINGS AND RECOMMENDATIONS

I. The Committee finds that certain additional limitations on the construction of new billboards along the interstate and federal-aid primary system would enhance the State's declared policy of preventing the unreasonable distraction of drivers, attracting tourists, and protecting the natural scenic beauty along the State's highways, while continuing to allow the use of private property to advertise the services and products of North Carolina's businesses.

THE COMMITTEE RECOMMENDS that for new outdoor advertising signs other than official directional signs, along North Carolina's interstate and federal-aid primary system highways:

(a) The maximum permissible size be reduced from 1,200 square feet to 800 square feet.

(b) The minimum distance between signs be increased as follows:

(1) from 500 feet to 1,000 feet along the interstate and federal-aid primary system freeways;

(2) from 300 feet to 600 feet outside of incorporated towns and cities along non-freeway federal-aid primary highways and along secondary roads.

(3) from 100 feet to 200 feet within incorporated cities and towns along non-freeway federal-aid primary highways and along secondary roads.

(c) The Department of Transportation, in its rules governing outdoor advertising in zoned and unzoned commercial or industrial areas, define the terms "commercial" and "industrial."

II. The Committee finds that certain local regulation of outdoor advertising along interstate and federal-aid primary highways is authorized under federal and State law.

THE COMMITTEE RECOMMENDS that the North Carolina General Statutes be amended to clarify the relationship between State and local regulation of outdoor advertising along interstate and federal-aid primary highways.

PROPOSED LEGISLATION TO IMPLEMENT RECOMMENDATIONS I AND II BEGINS ON THE NEXT PAGE.

SESSION 19 87 D-132 RD

INTRODUCED BY:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO INCREASE CERTAIN RESTRICTIONS ON OUTDOOR ADVERTISING ALONG THE INTERSTATE HIGHWAYS, FEDERAL-AID PRIMARY HIGHWAYS, AND SECONDARY ROADS.

The General Assembly of North Carolina enacts:

Section 1. Article 11 of Chapter 136 of the General Statutes is amended by inserting a new section to read:

"§ 136-129.2. Certain minimum standards for outdoor advertising.

The following minimum standards shall apply to outdoor advertising erected on or after the effective date of this section, but shall not apply to outdoor advertising described in G.S. 136-129(1):

(1) The maximum area for any one sign along Interstate and federal-aid primary system highways shall be 800 square feet.

(2) Along Interstate highways and federal-aid primary system freeways, no two signs shall be spaced less than 1000 feet apart.

Outside of incorporated towns and cities, along non-freeway federal-aid primary system highways and along secondary roads, no two signs shall be spaced less than 600 feet apart.

Within incorporated towns and cities, along non-freeway federal-aid primary system highways and along secondary roads, no two signs shall be spaced less than 200 feet apart.

As used in this section, "freeway" means a divided highway for through traffic on which access is permitted only at designated access points."

Sec. 2. This act is effective upon ratification.

SESSION 19 87 D-136 RD

INTRODUCED BY:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE RELATIONSHIP BETWEEN STATE AND LOCAL REGULATION OF OUTDOOR ADVERTISING ALONG INTERSTATE AND FEDERAL-AID PRIMARY HIGHWAYS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-130.1. Local regulation of outdoor advertising.--Subject to the provisions of G.S. 136-131.1, a municipal or county zoning ordinance, or ordinance adopted pursuant to G.S. 160A-174 or G.S. 153A-121, that governs the erection and location of outdoor advertising within those areas that are subject to the provisions of this Article may establish standards and requirements applicable to such areas that are more restrictive than those established by this Article and regulations promulgated pursuant thereto."

Sec. 2. The catch line for G.S. 136-131 is rewritten to read: "Removal of existing nonconforming advertising by Department of Transportation acquisition."

Sec. 3. G.S. 136-131.1 is rewritten to read:

"§ 136-131.1. Just compensation required for the removal of billboards on federal-aid primary highways by local

authorities.--No municipality, county, local or regional zoning authority, or other political subdivision, shall, without the payment of just compensation in accordance with G.S. 136-131.2, remove or cause to be removed any outdoor advertising adjacent to a highway on the National System of Interstate and Defense Highways or a highway on the Federal-aid Primary Highway System for which there is in effect a valid permit issued by the Department of Transportation pursuant to the provisions of Article 11 of Chapter 136 of the General Statutes and regulations promulgated pursuant thereto, unless the outdoor advertising, when erected, violated the provisions of an ordinance or regulations adopted by such municipality, county, local or regional zoning authority, or other political subdivision."

Sec. 4. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-131.2. Removal of existing nonconforming advertising by local government acquisition.--If authorized by a zoning or other ordinance, a city or county may acquire by purchase, gift, or condemnation any outdoor advertising and all property rights pertaining thereto within areas subject to this Article and remove or cause to be removed such advertising from the site, if the following conditions are met:

(1) There is in effect on the date of acquisition a valid permit for the outdoor advertising issued by the Department of Transportation pursuant to this Article and regulations promulgated pursuant thereto; and

(2) The outdoor advertising was lawfully established on

the effective date of the ordinance, or amendments thereto, but fails to meet the standards and requirements of the ordinance on the date of acquisition.

In any acquisition by purchase or condemnation a city or county shall pay just compensation, as established in paragraphs 2, 3, or 4 of G.S. 136-131, and, for purposes of this section, whenever in those paragraphs the words "Department of Transportation" appear they shall be deemed to include "city" or "county."

Sec. 5. G.S. 136-132 is amended by adding a new second sentence to read:

"A city or county shall use the procedure for condemnation of real property as provided by Article 3 of Chapter 40A of the General Statutes."

Sec. 6. G.S. 40A-64 is amended by adding a new subsection (d) to read:

"The measure of compensation for the taking of outdoor advertising by a city or county pursuant to G.S. 136-131.2 shall be as provided in that section."

Sec. 7. G.S. 40A-3(b) is amended by adding immediately after the period at the end of subdivision (9) but before the last two sentences of the subsection a new subdivision to read:

"(10) Acquiring outdoor advertising for removal pursuant to G.S. 136-131.2."

Sec. 8. G.S. 160A-174(a) is amended by adding a new second sentence to read:

"Notwithstanding the provisions of G.S. 160A-297(c), a city ordinance may regulate the erection and location of signs and outdoor advertising within the right-of-way of a street or highway under the control of the Board of Transportation in a manner not inconsistent with State law, including ordinances of the Board of Transportation and regulations of the Department of Transportation."

Sec. 9. The first sentence of G.S. 153A-121(b) is rewritten to read as follows:

"This section does not authorize a county to regulate or control vehicular or pedestrian traffic on a street or highway under the control of the Board of Transportation, nor to regulate or control any right-of-way or right-of-passage belonging to a public utility, electric or telephone membership corporation, or public agency of the State, except as provided in G.S. 136-32.3."

Sec. 10. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-32.3. Local sign regulation.--Notwithstanding the provisions of G.S. 160A-297(c), a city or county zoning ordinance or ordinance adopted pursuant to G.S. 153A-121 or G.S. 160A-174 may govern the erection of signs and outdoor advertising within the right-of-way of State highways in a manner not inconsistent with the provisions of this Article and other State law, including applicable ordinances of the Board of Transportation and regulations of the Department of Transportation."

Sec. 11. The fifth sentence of G.S. 136-30 is rewritten to read as follows:

"The Department of Transportation shall have the power to control all signs within the right-of-way of State highways, except as provided by G.S. 136-32.3."

Sec. 12. This act is effective upon ratification.

LEGISLATIVE RESEARCH COMMISSION

Senator J. J. Harrington, Cochairman
Senator Henson P. Barnes
Senator A. D. Guy
Senator Ollie Harris
Senator Lura Tally
Senator Robert D. Warren

Representative Liston B. Ramsey, Cochairman
Representative Christopher S. Barker, Jr.
Representative John T. Church
Representative Bruce Ethridge
Representative Aaron Fussell
Representative Barney Paul Woodard

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1985

S

I

SENATE BILL 611

Short Title: LRC Outdoor. Adv. Study. (Public)

Sponsors: Senators Thomas of Henderson; Hipps.

Referred to: Rules and Operations of the Senate.

May 15, 1985

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE ISSUE OF OUTDOOR ADVERTISING.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission may study the issue of outdoor advertising. The Legislative Research Commission may make an interim report of this study, including recommendations, to the 1985 General Assembly, Regular Session 1986, and may make a final report to the 1987 General Assembly.

Sec. 2. This act is effective upon ratification.

CHAPTER 790
SENATE BILL 636

AN ACT AUTHORIZING STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, MAKING TECHNICAL AMENDMENTS THERETO, AND TO MAKE OTHER AMENDMENTS.

The General Assembly of North Carolina enacts:

Section 1. Studies Authorized. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1985 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

(1) Continuation of the Study of Revenue Laws (H.J.R. 17-Lilley),

(2) Continuation of the Study of Water Pollution Control (H.J.R. 141-Evans),

(3) Adolescent Sexuality Teaching (H.J.R. 275-Jeralds),

(4) Continuation of the Study on the Problems of the Aging (H.J.R. 322-Greenwood),

(5) Continuation of the Study of Municipal Incorporations (H.J.R. 389-Greenwood),

(6) School Discipline (H.J.R. 861-Colton),

(7) Bail Bondsmen and Bail Bond Forfeiture (H.B. 967-Watkins),

(8) Preventative Medicine (H.B. 1052-Locks),

(9) Life Care Arrangements (H.B. 1053-Locks),

(10) State Personnel System (H.B. 1064-Wiser),

(11) Long-Term Health Care Insurance (H.B. 1103-Locks),

(12) Itinerant Merchants (H.B. 1170-Lancaster),

(13) Manufactured Housing Zoning (H.B. 1178-Ballance; S.B. 636-Plyler),

(14) Interest Rate Regulation (H.J.R. 1227-Evans),

(15) Underground Storage Tank Leakage Hazards and other ground water hazards (H.B. 1281-Locks),

(16) Mental Patient Commitments (H.J.R. 1313-Miller),

(17) High-Level Radioactive Waste Disposal (H.B. 1373-Diamont; S.B. 655-Hipps),

(18) Stun Guns (H.J.R. 1390-McDowell),

(19) Continuation of the Study of Water Quality in Haw River and B. Everett Jordan Reservoir (H.J.R. 1393-Hackney),

(20) Authority of Boards of County Commissioners in Certain Counties over Commissions, Boards and Agencies (H.J.R. 1405-Holroyd).

(21) Superintendent of Public Instruction and State Board of Education (H.J.R. 1412-Nye),

(22) Rental Referral Agencies (H.B. 1421-Stamey),

(23) Child Abuse Testimony Study (S.B. 165-Hipps),

(24) Home Schooling Programs (S.J.R. 224-Winner),

(25) Pretrial Release (S.J.R. 297-Winner),

(26) Inmate Substance Abuse Therapy Program (S.J.R. 317-Plyler),
(27) Inmate Work-Release Centers (S.B. 406-Swain),
(28) Community College System (S.B. 425-Martin),
(29) Community Service Alternative Punishment and Restitution (S.B. 495-Swain),
(30) State Employee Salaries and Benefits (S.B. 514-Jordan),
(31) State Infrastructure Needs (S.B. 541-Royall),
(32) Commercial Laboratory Water Testing (S.B. 573-Taft),
(33) Outdoor Advertising (S.B. 611-Thomas, R.P.),
(34) Premium Tax Rate on Insurance Companies (S.B. 633-Hardison)
(35) Continuation of the Study of Child Support (S.B. 638-Marvin),
(36) Local Government Financing (S.B. 670-Rauch),
(37) Medical Malpractice and Liability (S.B. 703-Taft),
(38) Marketing of Perishable Food (S.B. 718-Basnight),
(39) Child Protection (S.B. 802-Hipps),
(40) Legislative Ethics and Lobbying (S.B. 829-Rauch),
(41) Satellite Courts (S.B. 850-Barnes),
(42) Substantive Legislation in Appropriations Bills (S.B. 851-Rand),
(43) School Finance Act (S.B. 848-Taft).

Sec. 2. Transportation Problems at Public Facilities. The Legislative Research Commission may identify and study transportation problems at public transportation facilities in North Carolina.

Sec. 2.1. The Legislative Research Commission may study the feasibility of the prohibition of investment by the State Treasurer of stocks of the retirement systems listed in G.S. 147-69.2(b)(6), or of the assets of the trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1 and G.S. 147-69.2(19) in a financial institution that has outstanding loans to the Republic of South Africa or in stocks, securities, or other obligations of a company doing business in or with the Republic of South Africa.

Sec. 3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1987 General Assembly, or the Commission may make an interim report to the 1986 Session and a final report to the 1987 General Assembly.

Sec. 4. Bills and Resolution References. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

G.S. § 120-19.4

Sec. 5. The last sentence of G.S. 120-19.4(b) is amended by deleting the citation "G.S. 5-4" and inserting in lieu thereof the following: "G.S. 5A-12 or G.S. 5A-21, whichever is applicable".

Sec. 6. G.S. 120-99 is amended by adding a new paragraph to read: G.S. § 120-99

"The provisions of G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that the chairman shall sign all subpoenas on behalf of the Committee."

Sec. 7. G.S. 120-30.17 is amended by adding a new subsection to read: G.S. § 120-30.17

"(9) For studies authorized to be made by the Legislative Research Commission, to reject another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it."

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 18th day of July, 1985.

ROBERT B. JORDAN III

Robert B. Jordan III
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

Subject: Outdoor advertising
Auth: Chapter 790 § 1 (33) (SB 636-Sen. Plyler, et al), SB 611 (Sen. R. Thomas)

Members

President Pro Tem's Appointments

Sen. R. P. Thomas
Cochair
Drawer 220
Hendersonville, NC 28793
(704) 692-6472

Mr. James W. Cash
Box 417
Clayton, NC 27520
(919) 553-7244

Sen. Ralph A. Hunt
1005 Crete Street
Durham, NC 27707
(919) 688-4889

Sen. Wanda Hunt
Post Office Box 1335
Pinehurst, NC 28374
(919) 295-6811

Sen. R. L. Martin
Post Office Box 387
Bethel, NC 27812
(919) 825-4361

Speaker's Appointments

Rep. Charles M. Beall
Cochair
Route 3, Box 322
Clyde, NC 28721
(704) 627-2423

Rep. L. M. Brinkley
Route 2, Box 3501
Ahoskie, NC 27910
(919) 332-4165

Rep. E. David Redwine
58 Craven Street
Ocean Isle Beach, NC 28459
(919) 579-2169

Rep. J. Ray Sparrow
1119 Queensferry Road
Cary, NC 27511
(919) 467-4823

Rep. LeRoy P. Spoon, Jr.
7028 Folger Drive
Charlotte, NC 28211
(704) 366-6718

LRC Member: Senator A. D. Guy
511 New Bridge Street
Jacksonville, NC 28540
(919) 346-4171

Committee Counsel: Mr. Dennis Bryan
Legislative Services Office
(919) 733-2578

A BRIEF SUMMARY OF FEDERAL, STATE, AND LOCAL LAWS AFFECTING OUTDOOR ADVERTISING

Outdoor Advertising Study Committee

Legislative Research Commission

Richard Ducker

Assistant Director

Institute of Government

The University of North Carolina at Chapel Hill

Knapp Building (059A)

Chapel Hill, NC 27514

919/966-4179

I. INTRODUCTION

A substantial number of the outdoor advertising signs displayed along North Carolina streets and highways are located along the highways that make up the National System of Interstate and Defense Highways or the Federal-Aid Primary Highway System. In many areas of the state, signs along these federal-aid highway corridors are more numerous, tend to be larger, and are more likely to be seen by more motorists than those signs that are located elsewhere. Similarly, the importance of outdoor advertising along these federal corridors is indicated by the web of federal, state, and local laws that have developed regulating the placement and display of signs in these areas.

A. Local Zoning and Sign Ordinances

In North Carolina, as in many other states, two distinct regulatory systems have developed governing the placement of signs along federal-aid highways. The first regulatory system is comprised of the provisions governing signs found in city and county zoning ordinances and special-purpose sign ordinances. Local sign and "billboard" regulations have been in effect in some North Carolina cities for more than 50 years, preceding by at least several decades the advent of comprehensive state and federal outdoor advertising control legislation. These restrictions have been adopted by units of local government under broad grants of power from the General Assembly to regulate land use through zoning (cities: G.S. Ch. 160A, Art. 19, Part 3; counties: G.S. Ch. 153A, Art. 18, Part 3) and through the power of local government to adopt ordinances under its general ordinance-making power

to protect public safety and health and promote the general welfare (cities: G.S. 160A-174; counties: G.S. 153A-121). Most municipalities and about half of all counties have adopted zoning ordinances. The sign regulations found in most are more restrictive or impose higher standards than the state regulations that apply to signs within the federal-aid highway corridor. It is common practice to restrict off-premises commercial signs to commercial and industrial zoning districts, and some municipalities have essentially prohibited all new off-premises signs from being erected within their respective jurisdictions. In addition, some jurisdictions (particularly counties) that have not adopted zoning regulate signs and outdoor advertising through separate sign ordinances. Although these sign ordinances do not purport to restrict certain types of signs to certain "zones," they may govern the location of signs through separation requirements (i.e, provisions that require signs to be located no closer than a certain distance from certain other signs, from residences, or other activities off the premises). Such ordinances may also restrict the size and type of sign and the distance the sign must be set back from property lines or the nearest roads. As a general rule, these ordinances, like zoning ordinances, are intended to apply outside the corridors of federal-aid highways as well as within them.

B. The North Carolina Outdoor Advertising Control Act

The other administrative system for regulating signs within the federal-aid highway corridors is based on the North Carolina Outdoor Advertising Control Act (G.S. 136-126 et seq.) and the North Carolina Department of Transportation (NCDOT) rules and regulations adopted pursuant to it (19A N.C. Admin. Code #2E .0201 et seq. (1984)). The North Carolina Outdoor Advertising

Control Act (OACA) was originally enacted, and has been subsequently amended, to conform North Carolina law with the Federal Highway Beautification Act of 1965, as amended, and to continue to allow North Carolina to provide "effective control" of signs along federal-aid highways, pursuant to the federal outdoor advertising control program. The Federal Highway Beautification Act, as amended, (codified as 23 U.S.C. #131) authorizes the U.S. Secretary of Transportation (USDOT) to withhold ten percent (10%) of a state's federal-aid highway funds if the state fails to provide for "effective control" of signs along federally-aided highways (23 U.S.C. #131(b)).

The general thrust of the North Carolina Outdoor Advertising Control Act (OACA) is to prohibit the placement of "outdoor advertising" within 660 feet of the right-of-way of Interstate and federal-aid highways and visible from the traveled roadway (see G.S. 136-129), and, outside of urban areas, "outdoor advertising" beyond 660 feet, if intended to be visible and read from the traveled roadway of these highways (see G.S. 136-129.1). It is important to note that the act defines "outdoor advertising" broadly, so as to sweep within its scope virtually any outdoor sign that is intended to advertise or inform motorists on the traveled portion of the roadway (see G.S. 136-128(3)). However, the exceptions to the prohibition are also broad. Several major categories of signs are specifically excepted from the coverage of the act: a) outdoor advertising which advertises the sale or lease of property upon which it is located (G.S. 136-129(2); 136-129.1(2)), and b) outdoor advertising which advertises activities conducted on the property upon which it is located (G.S. 136-129(3); 136-129.1(3)). Three other major categories of signs are allowed, but a district highway engineer must issue a permit for a sign in each category indicating its compliance with NCDOT sign standards. Those categories include i) certain directional and official signs; ii)

outdoor advertising located in areas zoned (by local governments) for commercial or industrial use, and iii) commercial advertising located in areas of commercial or industrial activity that are unzoned. (See G.S. 136-129(1),(4),(5); 136-129.1(1),(4),(5); 136-133; 19A N.C. Admin. Code # 2E .0205 (1984)). As a general rule, permits are also required for nonconforming signs that are subject to the Act.

Within the OACA corridor, new commercial off-premises outdoor advertising displays are prohibited by the act, except in areas zoned for or actually used for commercial or industrial purposes. Because the prohibition depends on local zoning in those jurisdictions where zoning has been adopted, a city or county with zoning can also determine the geographical extent to which displays of this sort are allowed or prohibited under state legislation. For example, a local unit wishing to encourage commercial off-premises signs along its federal-aid highways could zone such areas for commercial or industrial use and establish no sign standards in its local ordinance. If instead it wished to discourage their location in these corridors, it could substantially limit or eliminate the mapping of commercial or industrial zoning districts along these highways, thereby triggering the prohibition of state law. Alternatively, a unit with zoning could choose to zone areas along these highways for certain commercial or industrial uses, but prohibit such signs in these districts. In that case OACA would allow such signs if they complied with NCDOT regulations, but the prohibition of commercial off-premises signs in the zoning ordinance would also apply. As a result, no such signs wouold be allowed because of the more-restrictive local sign regulation. Because NCDOT permit decisions necessarily depend on the proper interpretation of the district boundaries of local government zoning maps, OACA requires "all zoning authorities" to give NCDOT written notice of the establishment or amendment of any commerical or industrial zoning district mapped within 660 feet of the

right-of-way of any Interstate or federal-aid highway within 15 days after the effective date of the action. (See G.S. 136-136.)

If the city or county that the federally-aided highway traverses has not adopted zoning along the 660-foot corridor, commercial off-premises outdoor advertising displays are allowed under OACA only within unzoned commercial or industrial areas. "Unzoned commercial or industrial areas" are defined generally as unzoned areas (i) within which there is located at least one structure devoted to a commercial or industrial activity or within which such an activity is conducted in the absence of a permanent structure, or (ii) within 800 feet of such an activity, as measured linearly along each side of the highway. (See 19A N.C. Admin. Code #2E .0201(c)(1984)). Although OACA permits commercial off-premises signs in such areas if the signs meet NCDOT standards, it is possible that a city or county without zoning may establish and enforce sign standards more restrictive than NCDOT's or prohibit such signs altogether in a special-purpose sign ordinance. (The legal issues posed by such a circumstance are discussed briefly in Part II(B) below.)

Since most new off-premises signs are allowed under OACA only in zoned or unzoned commercial or industrial areas, the NCDOT standards that apply to such signs are of some interest. The Federal Highway Beautification Act, as amended, does not require states to allow commercial off-premises signs in commercial and industrial areas or zones in order to maintain "effective control" (23 U.S.C.A. #131(c),(d)(Supp. 1986). If a state chooses to do so, however, standards for allowing signs in these areas are subject to federal approval. North Carolina's approved rules include the following standards: The maximum permissible area for any such sign is 1,200 square feet, the maximum height is 30 feet, and the maximum length is 60 feet (19A N.C. Admin. Code #2E .0203(1)(a)). No two sign structures on an interstate highway or

federal-aid "freeway" may be located less than 500 feet apart (Id., .0203(2)(b)(i)), or within 500 feet of an interchange, intersection at grade, or safety rest area (Id., .0203(2)(b)(ii)). For lesser highways on the Federal-Aid Primary System, the required separation distance is 300 feet (Id., .0203(2)(c)). However, the separation distances just described are measured linearly along a single side of a highway, not radially so as to include signs on the opposite side of the highway (Id., .0203(2)(f)). As a general rule, signs which include or are illuminated by flashing, intermittent, or moving lights are prohibited (Id., .0202(3)(a)).

One of the more important issues in the control of outdoor advertising is the treatment of nonconforming signs. The adoption and amendment of OACA and NCDOT's rules and regulations have resulted in a number of signs that do not conform to present standards. Ever since the major substantive provisions of OACA first became effective (October 15, 1972), the Act has authorized, but not compelled, NCDOT to acquire the property rights to signs made nonconforming under the Act. The acquisition may be made by gift, by negotiated purchase, or by condemnation. In order to qualify for purchase (and removal), a prohibited sign must have been in lawful existence on October 15, 1972, or legally erected after that date. (See G.S. 136-129.) Although all nonconforming signs are eligible for purchase and removal, the purchase and removal of certain classes of nonconforming signs has proceeded more rapidly than others. More particularly, in recent years the purchase and removal of nonconforming signs that are located outside of zoned or unzoned commercial or industrial areas has received higher priority from the federal government (which is authorized to share in 75% of the cost of removal) than nonconforming signs within these areas. (See 23 U.S.C. #131 (Supp. 1986)).

Some signs made nonconforming under OACA may not be removed at all.

Federal law (23 U.S.C. #131(o)(Supp. 1986)) and the North Carolina statutes (G.S. Ch. 136, Art. 11A) allow certain nonconforming "motorist services directional signs" to be exempted from removal if they existed on May 6, 1976, provide "directional information about goods and services in the interest of the traveling public in certain defined areas," and their removal would work a "substantial economic hardship" (G.S. 136-140.6). Individual exemptions are based upon petitions received from local units of government requesting the exemption.

II. SEVERAL LEGAL ISSUES

A. Compensation, Amortization, or Neither

Under present federal and state law, most signs located within the protected federal-aid highway corridors that are nonconforming by virtue of OACA may be acquired and removed by the state. However, no sign for which a NCDOT permit has been issued and remains unrevoked may be removed unless the owners of interests in the sign are paid "just compensation." To understand the implications of the current law, it is necessary to review briefly its origins.

Prior to the enactment by Congress of the Highway Beautification Act in 1965, one of the major debates concerned whether nonconforming signs should be removed through the exercise of the police power (through the concept of "amortization") or the owners of such signs should be paid cash compensation. Congress decided that "just compensation" should be paid. At first there was some lingering disagreement about whether "just compensation" was broad enough to include the concept of amortization as well as full cash payment. That

issue was resolved in favor of full cash compensation. The next question to emerge concerned the signs to which the "just compensation" requirement was to be applied. The 1965 Act provided that just compensation had to be paid for nonconforming signs, as variously defined (23 U.S.C. #131(g)(1966). However, many interpretations of that subsection held that the provisions applied only to signs made nonconforming by the Federal Highway Beautification Act (and by implication, local implementing legislation). North Carolina's Outdoor Advertising Control Act authorized the purchase and condemnation of nonconforming signs, but did not authorize NCDOT to rid federal-aid corridors of signs through amortization. Subsequent to the adoption of the 1965 Act, many local governments were taking the opportunity to impose higher standards on signs within the federal-aid highway corridor than the federal and state legislation required and in some cases were completely prohibiting "billboards" in where such signs were allowed under federal law. What's more, local governments were terminating nonconforming uses under the police power concept of amortization. Outdoor advertising signs that conformed to federal and state outdoor advertising control laws and thus could not be removed under those laws were being removed by local governments under zoning provisions that made those same signs nonconforming.

The amortization principle was recognized by North Carolina courts as early as 1975. In the case of State v. Joyner, 286 N.C. 366, appeal dismissed, 422 U.S. 1002 (1975), the defendant was convicted of violating a city zoning ordinance provision which required the owner of any nonconforming business in a business zoning district to comply or shut down within three years. In that decision, the North Carolina Supreme Court held that the amortization of nonconforming uses was valid under the Constitution if reasonable. Several years later, an amortization period of three years was

upheld as applied to an oversized commercial on-premises sign in Cumberland County v. Eastern Federal Corp., 48 N.C. App. 518, 269 S.E. 2d 672 (1980), rev. den., 301 N.C. 527 (1980).

In reaction to the specter of local governments eliminating federal-aid highway corridor signs that complied with federal law, subsection 131(g) was amended in 1975 to provide that "(j)ust compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under state law." This amendment did not end the confusion. It was amenable to the interpretation that the state law referred to (under which the outdoor advertising was lawfully erected, became nonconforming, and became subject to removal) was a state outdoor advertising control law (like North Carolina's) that had been adopted pursuant to federal law. Thus, it could be argued that the federal law still did not necessarily the elimination of nonconforming signs under zoning.

In 1978 Congress tried again and extended subsection 131(g) to extend the just compensation requirement to signs lawfully erected under state law "and not permitted under subsection (c) of this section, whether or not removed pursuant to or because of this section" (23 U.S.C. #131(g)(Supp.1979)). (Underlining added.) However, a number of the states whose programs for maintaining "effective control" of outdoor advertising had already been certified by the federal government (like North Carolina) were reluctant to adopt appropriate state legislation to block the use by local governments of their power to amortize signs within the federally-regulated corridor. Some states were slow to make corresponding changes in state law. Here in North Carolina, the N.C. Court of Appeals in Givens v. Town of Nags Head, 58 N.C. App. 697, cert. den. 307 N.C. 127 (1982), held that the town was authorized to amortize, and did in fact amortize (over five and a half years), a number of

federal-aid highway corridor commercial off-premises signs located in the town's commercial and industrial zoning districts that met NCDOT standards, but not those of Nags Head. Although Congress may have intended signs such as those in Nags Head to become subject to the 1978 amendments to subsection 131(g) because they were lawfully erected under state law, the court ruled that the North Carolina General Assembly had not incorporated this change into OACA. As a result, the signs in the Givens case were illegal since the amortization period had expired, and they were due no compensation.

In 1982, the North Carolina General Assembly adopted G.S. 136-131.1. at least in part so that North Carolina's program of "effective control" and its share of federal highway funds would not be jeopardized. This statute, entitled "Just compensation required for the removal of billboards on federal-aid primary highways by local authorities," provides as follows:

> No municipality, county, local or regional zoning authority, or other political subdivision, shall, without the payment of just compensation in accordance with the provisions that are applicable to the Department of Transportation as provided in paragraphs 2, 3, and 4 of G.S. 136-131, remove or cause to be removed any outdoor advertising adjacent to a highway on the National System of Interstate and Defense Highways or a highway on the Federal-aid Primary Highway System for which there is a valid permit issued by the Department of Transportation pursuant to the provisions of Article 11 of Chapter 136 of the General Statutes and regulations promulgated pursuant thereto.

This statute indicates that if a local government, by means of a zoning or special-purpose sign ordinance, enforces provisions calling for the removal of a federal-aid highway corridor sign that is subject to a valid NCDOT permit, just compensation must be paid. Its effect is to prohibit local amortization

of DOT-permitted signs located within the federal corridor. The statute provides a clear indication that local sign requirements are often more restrictive than those of the state or federal government.

Consider the scope of the statute. First, if a sign complies with both state and local regulations, the concept of amortization is inapplicable and G.S. 136-131.1 does not come into play. Similarly, the statute is inapplicable if a sign complies with local regulations but is nonconforming with respect to state regulations. In such a case, the local unit has no reason to try to amortize the sign and NCDOT has no power to do so.

G.S. 136-131.1 does apply if a sign is nonconforming under a local ordinance but complies with and is subject to a permit under state regulations. In such an instance NCDOT has no reason to amortize the sign since it complies with its own standards. A local government may, however, wish to amortize the nonconformity. The statute effectively prevents a local government from doing so without payment of compensation.

Finally, if a sign is legally nonconforming under both state and local regulations, the statute again applies. In such a case, NCDOT may use its authority under another statute (G.S. 136-121) to acquire the sign, and may do so forcibly through condemnation, so long as it pays just compensation. In contrast, it is unclear whether a local unit may acquire such a sign or have it removed. What is clear, however, is that under no circumstances may a local unit do so without providing payment.

Unfortunately, G.S. 136-131.1 leaves several important questions unanswered. First, consider how the statute applies to illegal signs, a not insignificant category of signs along some highway corridors. The prohibition against local government amortization applies to all DOT-permitted signs within the federal corridor. Since DOT issues permits for nonconforming signs

as well as conforming signs, the statute applies to all signs recognized by permit as being legally valid. The prohibition does not apply to signs that are illegal under state law and DOT regulations. No compensation apparently need be paid for such signs. G.S. 136-134 provides NCDOT with enforcement powers. What is troublesome is that G.S. 136-131.1 does not seem to contemplate the possibility that a NCDOT outdoor advertising permit may be issued for a sign that is legal under state law, but illegal under a local ordinance. G.S. 136-131.1 may be read to cast doubt upon the power of a local unit to initiate proceedings to remove a NCDOT-permitted sign that is illegal under local law without compensating the owner. If a local unit does not enjoy this power, this result seems clearly inconsistent with local sign jurisdiction within the corridor.

A second and equally important question is whether G.S. 136-131.1 really does authorize a local unit of government to purchase signs that are nonconforming under a local ordinance. G.S. 136-131.1 apparently prohibits a local unit from amortizing a sign that is nonconforming under local regulations, but recognized by NCDOT. But it is not clear that this statute alone provides adequate authorization for local governments to remove or terminate such signs or to purchase the interests in nonconforming interests in signs, even if they provide "just compensation" when they do. G.S. 136-131.1 is a bit deceiving in this regard. G.S. 136-131.1 does not state clearly <u>who</u> must pay "just compensation" if a NCDOT-permitted sign is removed. Of course, if the signs are nonconforming under state law, then NCDOT is clearly authorized by G.S. 136-131 to acquire such signs by voluntary purchase or by condemnation. Whether a local unit has this power of acquisition if the sign is <u>also</u> nonconforming under a local ordinance or if the sign is made nonconforming <u>only</u> by local ordinance is not directly

addressed. True, the statute seems to assume that local governments may exercise this power. It does refer to "payment of just compensation in accordance with the provisions that are applicable to the Department of Transportation as provided in paragraphs 2, 3, or 4 of G.S. 136-131." Paragraphs 2, 3, and 4 of G.S. 136-131 provide formulae for the determination of "just compensation" in "any acquisition, purchase, or condemnation" carried out by NCDOT. But they do not directly authorize cities and counties to exercise the power of eminent domain or condemnation for this purpose.

The language of G.S. 136-131.1 and 136-131 might be easier to construe as permitting local acquisition of nonconforming signs in the OACA corridor if there was other local government authority to support such a proposition. However, the authority for local governments to acquire voluntarily and dispose of interests in nonconforming signs does not appear to derive from other statutes either. The state enabling legislation that authorizes local governments to adopt zoning ordinances and ordinances under their general ordinance-making power offers no support for the proposition that a local government has implied power to acquire nonconforming uses simply because they are nonconforming. Likewise, the authority of cities and counties to abate public health nuisances (cities: G.S. 160A-193; counties: G.S. 153A-140) offers no direct authority. For that matter, nuisance law holds that no compensation need be paid for the abatement of a public nuisance. Simply classifying nonconforming uses as nuisances per se is unlikely to serve as an effective way to circumvent the compensation requirements of G.S. 136-131.1. A third possible source of authority might derive from the power of cities and counties to acquire property to preserve open space (G.S. 160A, Art. 19, Part 4, applicable to both cities and counties). G.S. 160A-402 authorizes local units to acquire interests in real property "so as to acquire, maintain,

improve, protect, limit the future use of, or otherwise conserve open spaces and areas." The terms "open space" or "open area" are defined to include any space or area (i) characterized by great natural scenic beauty or (ii) whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources" (G.S. 160A-407(a)). These statutes seem to imply that only property that itself qualifies as "open space" or "open area" may be purchased. Furthermore, this authority appears to depend on the context of the area in which the purchase is to be made. It might be difficult for a local government to justify the purchase of nonconforming signs in a less-than-scenic area already dominated by unattractiveness. A further disadvantage of using this authority is that it does not explicitly allow for the use of the power of condemnation in acquiring property interests for open space purposes. (See G.S. 160A-403.)

The absence of supplemental authority permitting local unit to acquire nonconforming signs is particularly important if condemnation or eminent domain is proposed. Chapter 40A of the General Statutes, the legislation authorizing and providing the procedures for the exercise of eminent domain or condemnation by local governments, provides no basis for the condemnation of nonconforming signs by local governments. No other provision of G.S. Chapters 160A or 153A does either. Normally, courts will not imply the grant of the power of eminent domain. G.S. 136-131.1 does not appear to provide the specific grant of authority required.

In summary, then, did the drafters intend for G.S. 136-131.1 to authorize local units of government to acquire nonconforming signs within the OACA corridor, either by voluntary purchase or by condemnation or eminent domain?

If their intention was to provide local governments with that power, they may not have been successful. G.S. 136-131.1 fails to provide a clear and completge authorization for cities and counties to acquire, purchase voluntarily, or condemn the interests in NCDOT-permitted signs or to dispose of them. The statute's primary purpose appears simply to be to withdraw local government power to amortize NCDOT-permitted signs made nonconforming by local ordinance as that power of authorization is normally understood.

For these reasons, the owners of interests in a federal-aid highway corridor sign that is made nonconforming by local ordinance are unlikely to be paid just compensation by anyone. The North Carolina Department of Transportation is unauthorized to acquire signs that conform to its rules, and local governments lack clear authority to acquire signs for any purpose, whether nonconforming or not. As a result, these signs are not likely to be removed by any unit of government, and no just compensation or monetary award is likely to be paid.

If it is the sense of the General Assembly that local units of government should be authorized to acquire signs made nonconforming by local ordinance, particularly by condemnation, and dispose of those interests, or to provide a monetary award for the removal of a sign, then additional enabling legislation appears to be needed.

B. Local Ordinance Standards for Proposed Signs

One question that has never been directly addressed in the North Carolina Outdoor Advertising Control Act or in NCDOT regulations is whether local ordinance provisions may set higher standards for new outdoor advertising displays than those set by the state and may prohibit such displays in areas

where they are allowed under state law. The answer to this question appears to be in the affirmative if the provision is included in a zoning ordinance. The answer is less clear if the provision is included in a sign ordinance adopted under a local unit's general ordinance-making power.

The Givens case (cited above) appears to have laid to rest many of the doubts that existed prior to it about the authority of local government to establish more restrictive standards for signs within the federal-aid highway corridors than those established by the state. In that case, the Nags Head zoning ordinance that was upheld prohibited all new off-premises signs from locating anywhere in town. Under OACA and NCDOT regulations, such signs would have been allowed in the town's commercial and industrial zoning districts, if they met various spacing and size standards. In finding that the state had not intended to preempt the application of zoning regulations to outdoor advertising, the court pointed to G.S. 160A-390 (counties: G.S. 153A-346) which provides in part:

> When regulations made under this Part require a greater width or size of yards or courts, or require a lower height of a building or fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, regulations made under authority of this Part shall govern. (Underlining added.)

Arguably, this direction could be superseded only by a clear declaration in other legislation indicating the contrary. The Outdoor Advertising Control Act does not provide such a declaration.

Although the Givens case was decided before the adoption of G.S. 136-131.1 (discussed above), that statute is consistent with the conclusion that the General Assembly in adopting OACA did not intend to preempt zoning

regulations that imposed more strict standards. G.S. 136-131.1 effectively withdraws the legal authority of local governments to amortize existing signs made nonconforming by zoning regulations, but the statute provides no evidence of an intent to extend that preemption to regulations governing new signs. Such a result is not inconsistent with federal law. The Federal Beautification Act, as amended, (23 U.S.C. #131(k)(Supp. 1986)), provides that "(s)ubject to compliance with (the just compensation requirements), nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section." Obviously this provision authorizes more restrictive requirements imposed by state or local governments, but does not compel them.

One rather confusing provision on this point is found in NCDOT regulations. It apparently provides for a certification process by which local governments may assume the responsibility for issuing those sign permits that would otherwise be issued by the state (19A N.C. Admin. Code #2E .0204 (1984)). The regulation is not clearly authorized by any OACA provision. However, NCDOT does not interpret it to suggest, nor apparently was it intended to suggest, that the certification process serves as the sole means by which local governments are entitled to establish and enforce standards applicable to proposed signs that are more restrictive than those of the state.

In summary, zoning provisions that establish standards for signs proposed for the OACA corridor that are more restrictive than those found in OACA and NCDOT regulations appear to be legally permissible and enforceable.

If, instead, however, the higher standard appears in a city or county sign ordinance adopted pursuant to a local unit's general ordinance-making

power, its validity is less certain. The support provided by G.S. 160A-390 and 153A-345 is lacking since the "preemption" provisions of these zoning statutes do not apply to standards in ordinances adopted under the general ordinance-making power. Similarly, the fact that OACA and NCDOT regulations are specifically tied to commercial and industrial zoning districts established by local government may suggest that regulations adopted under other authority are more vulnerable to preemption by the state outdoor advertising control program. Furthermore, the geographically comprehensive nature of zoning, and the fact that it applies to virtually all uses of land may make a zoning standard more capable of withstanding a preemption claim than any ordinary local ordinance. In this regard, a county sign ordinance that purported to regulate only signs in the same federal-aid highway corridor that is subject to OACA, and did not apply to signs located elsewhere in the county might highlight the preemption question.

Nevertheless, the preemption of a local ordinance will not be casually inferred. G.S. 160A-174(b)(5) and 153A-121(b)(5) both provide that a local ordinance is prempted when an ordinance purports to "regulate a field for which a State or federal statute clearly showed a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation." Subsections 174(b) and 121(b) declare that "(t)he fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude . . . ordinances requiring a higher standard of conduct or condition." The Outdoor Advertising Control Act provides little evidence of its legal interplay with local sign regulations. However, the very specific, but limited preemption of any local regulation that would eliminate existing nonconforming signs through amortization that is provided by G.S. 136-131.1 and the silence of the statute with respect to

standards governing new signs suggests that local regulations governing new signs are not subject to such preemption. Such regulations may be valid even though they establish higher standards than required under state law.

In any case this relationship between state power governing federal-corridor outdoor advertising and local control over new signs in the same corridor is not as clear from the legislation as it should be. Clarifying legislation on this topic may be appropriate.

AGREEMENT

FOR CARRYING OUT NATIONAL POLICY RELATIVE TO CONTROL OF OUTDOOR ADVERTISING IN AREAS ADJACENT TO THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS AND THE FEDERAL-AID PRIMARY SYSTEM

THIS AGREEMENT made and entered into by and between the United States of America represented by the Secretary of Transportation acting by and through the Federal Highway Administrator, hereinafter referred to as the "Administrator," and the State of North Carolina, represented by the State Highway Commission acting by and through its Chairman, hereinafter referred to as the "State".

W I T N E S S E T H:

WHEREAS, Congress has declared that Outdoor Advertising in areas adjacent to the Interstate and Federal-aid primary systems 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; and

WHEREAS, Section 131(d) of Title 23, United States Code, authorizes the Secretary of Transportation to enter into agreements with the several States to determine the size, lighting, and spacing of signs, displays, and devices, consistent with customary use, which may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are zoned industrial or commercial under authority of State law or in unzoned commercial or industrial areas, also to be determined by agreement; and

WHEREAS, the purpose of said agreement is to promote the reasonable, orderly, and effective display of outdoor advertising while remaining consistent with the national policy to protect the public investment in

the Interstate and Federal-aid primary highways, to promote the safety and recreational value of public travel and to preserve natural beauty; and

WHEREAS, Section 131(b) of Title 23, United States Code, provides that Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determined has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under Section 104 of Title 23, United States Code, until such time as such State shall provide for such effective control; and

WHEREAS, the State of North Carolina desires to implement and carry out the provisions of Section 131 of Title 23, United States Code, and the national policy in order to remain eligible to receive the full amount of all Federal-aid highway funds to be apportioned to such State on or after January 1, 1968, under Section 104 of Title 23, United States Code.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

Section I. Definitions

1. Commercial or industrial activities for purposes of unzoned commercial or industrial areas means those activities generally recognized as commercial or industrial by zoning authorities in this State, except that none of the following activities shall be considered commercial or industrial:

   (a) Outdoor advertising structures.

   (b) Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands.

   (c) Transient or temporary activities.

   (d) Activities not visible from the main traveled way.

(e) Activities more than 660 feet from the nearest edge of the right-of-way.

(f) Activities conducted in a building principally used as a residence.

(g) Railroad tracks and minor sidings.

2. Zoned commercial or industrial areas mean those areas which are zoned for business, industry, commerce, or trade pursuant to a State or local zoning ordinance or regulation.

3. Unzoned commercial or industrial areas mean those areas which are not zoned by State or local law, regulation, or ordinance, and on which there is located one or more permanent structures devoted to a commercial or industrial activity or on which a commercial or industrial activity is actually conducted, whether or not a permanent structure is located thereon, and the area along the highway extending outward 800 feet from and beyond the edge of such activity. Each side of the highway will be considered separately in applying this definition.

All measurements shall be from the outer edges of the regularly used buildings, parking lots, storage or processing and landscaped areas of the commercial or industrial activities, not from the property line of the activities, and shall be along or parallel to the edge or pavement of the highway.

4. National System of Interstate and Defense Highways and Interstate System means the system presently defined in and designated pursuant to subsection (d) of Section 103 of Title 23, United States Code.

5. Federal-aid primary highway means any highway within that portion of the State highway system as designated, or as may hereafter be so designated by the State, which has been approved by the Secretary of Transportation pursuant to subsection (b) of Section 103 of Title 23, United States Code.

6. Traveled way means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

7. Main-traveled way means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

8. Sign means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or

information contents of which is visible from any part of the main-traveled way of the Interstate or Federal-aid primary highway system.

9. Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish, but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or normal maintenance or repair of a sign structure.

10. Maintain means to allow to exist.

11. Safety rest area means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control, for the convenience of the traveling public.

12. Visible means that the advertising copy or informative contents are capable of being seen without visual aid by a person of normal visual acuity.

Section II. Scope of Agreement

This agreement shall apply to all zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way of all portions of the Interstate and Federal-aid Primary Systems within the State of North Carolina in which outdoor advertising signs may be visible from the main-traveled way of either or both of said systems.

Section III. State Control

(a) The State hereby agrees that in all areas within the scope of this agreement, the State shall effectively control, or cause to be controlled, the erection and maintenance of outdoor advertising signs, displays, and devices erected subsequent to the effective date of this agreement other than those advertising the sale or lease of the property on which they are located, or activities conducted thereon. Except as herein provided in subsection (b), the following criteria shall apply to the erection and maintenance of such outdoor advertising signs, displays and devices in all zoned and unzoned commercial and industrial areas:

(1) SIZE OF SIGNS

a. The maximum area for any one sign shall be 1,200 square feet with a maximum height of 30 feet and

maximum length of 60 feet, inclusive of any border and trim but excluding the base or apron, supports, and other structural members.

b. The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the entire sign.

c. The maximum size limitations shall apply to each side of a sign structure; and signs may be placed back-to-back, side-by-side, or in V-type construction with not more than two displays to each facing, and such sign structure shall be considered as one sign.

(2) SPACING OF SIGNS

a. Interstate and Federal-aid Primary Highways.

Signs may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of an official traffic sign, signal, or device, obstruct or physically interfere with the driver's view of approaching, merging, or intersecting traffic.

b. Interstate Highways and Freeways on the Federal-aid Primary System.

1. No two structures shall be spaced less than 500 feet apart.

2. Outside of incorporated towns and cities, no structure may be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety rest area. Said 500 feet to be measured along the Interstate or freeway from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

c. Non-freeway Federal-aid Primary Highways.

1. Outside of incorporated towns and cities - no two structures shall be spaced less than 300 feet apart.

2. Within incorporated towns and cities - no two structures shall be spaced less than 100 feet apart.

d. The above spacing-between-structures provisions do not apply to structures separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distances is visible from the highway at any one time.

e. Explanatory Notes.

1. Official and "on-premise" signs, as defined in Section 131(c) of Title 23, United States Code, and structures that are not lawfully maintained shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.

2. The minimum distance between structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway and shall apply only to structures located on the same side of the highway.

(3) LIGHTING OF SIGNS. RESTRICTIONS

a. Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date temperature, weather, or similar information.

b. Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the Interstate or Federal-aid primary highway and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

c. No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

d. All such lighting shall be subject to any other provisions relating to lighting or signs presently applicable to all highways under the jurisdiction of the State.

(b) When local zoning authorities have established effective control within zoned commercial and industrial areas, through regulations or ordinances with respect to size, lighting, and spacing of outdoor advertising signs consistent with the intent of the Highway Beautification Act of 1965 and with customary use, the State may notify the Administrator of such effective control. After notification to the Administrator of effective control by the local zoning authority, the size, lighting, and spacing requirements set forth in subsection (a) will not apply to those areas.

Section IV. Interpretation

The provisions contained herein shall constitute the standards for effective control of signs, displays, and devices within the scope of this agreement.

The provisions contained herein pertaining to the size, lighting, and spacing of outdoor advertising signs permitted in zoned and unzoned commercial and industrial areas shall apply only to those signs erected subsequent to the effective date of this agreement except for those signs erected within six months after the effective date of this agreement in zoned or unzoned commercial or industrial areas on land leased prior to such effective date, provided that a copy of such lease be filed with the State Highway Department within 30 days following such effective date.

In the event the provisions of the Highway Beautification Act of 1965 are amended by subsequent action of Congress or the State legislation is amended, the parties reserve the rights to re-negotiate this agreement or to modify it to conform with any amendment.

Section V. Effective Date

This agreement shall be effective when Federal funds are made available to the State for the purpose of carrying out the provisions of 23 USC 131.

IN WITNESS WHEREOF the parties hereto have executed this agreement this the 7th day of January, 1972.

STATE OF NORTH CAROLINA

By the State Highway Commission

D. McLauchlin Faircloth, Chairman

UNITED STATE OF AMERICA
DEPARTMENT OF TRANSPORTATION

By: _____
Federal Highway Administrator

TRAVEL SERVICES (LOGO) SIGNING

The North Carolina Department of Transportation participates in a Federal Highway Administration Program to provide for specific information (Logo) signing on fully controlled access highways (freeways) in North Carolina. This program allows the Department to install signs, called panels, to which individual business Logo signs are attached. The business Logo signs are for the travel services: gas, food, lodging, and camping.

Signing is installed whan qualifying businesses located on the crossroad at or near an interchange outside a municipality or inside a municipality smaller than 25,000 population enters into an agreement with the Department and pays the required fees. The minimum State criteria by which gas, food, lodging, and camping establishments may qualify for participation in specific information (Logo) signing for travel services within freeway rights-of-way are established by the N.C. Department of Transportation and described in Form TEB 222.

For the Interstate Highway System, the Board of Transportation has approved a series of Federal-aid projects to provide the necessary highway sign panels to which the business Logo signs are installed. Businesses participating in the program pay an annual fee of $250.00 per Logo sign with the typical signing consisting of two signs on the mainline and two signs on exit ramps, or a total annual fee of $1,000.00. Signing as shown in the attached photos is limited to the closest six gas services and to the closest four food, lodging, or camping services. However, if no panels were installed at an interchange for the desired service type, the business or a group of businesses would be required to pay the total cost of installation of the required sign panels.

The policy for the specific information (Logo) signing program allows travel services signing on fully-access controlled freeways other than the Interstate Highway System. No projects are planned on these Freeways, therefore any businesses desiring Logo signs will be required to pay the total installation cost of Logo panels for the type of service signs requested. More than one business of the same service may share the cost, reducing the cost to each business.

Businesses that pay the total cost of signing will not be required to pay an annual construction fee, but will be assessed an annual maintenance fee of $75.00 per Logo sign. If other businesses are added to existing panels, then the additional businesses will be charged the annual construction fee and that amount will be credited to the businesses that payed the total construction cost initially. Credits will be used to offset any Logo fees owed by the business earning the credit. Credits will not be allowed beyond an amount determined by the number of available positions on the sign and the numbers of businesses originally paying the total construction cost. A business cannot be credited to an amount that will reduce its equity below the maximum allowable credit. When a business applies for Logo signing, the Department will prepare a cost estimate for installing the Logo sign

panels and that cost is distributed among the participating businesses of the interchange. The following are the cost estimate amounts used at this time:

ITEM	UNIT COST
Mainline Full Size "GAS" Panel	$5,130.00
Mainline Half Size "GAS" Panel	$4,030.00
Mainline Full Size "OTHER" Panel	$4,320.00
Mainline Half Size "OTHER" Panel	$3,380.00
Ramp Full Size "GAS" Panel	$1,850.00
Ramp Half Size "GAS" Panel	$1,510.00
Ramp Full Size "OTHER" Panel	$1,490.00
Ramp Half Size "OTHER" Panel	$1,200.00
Change Mainline "GAS" to Full	$2,590.00
Change Mainline "OTHER" to Full	$2,160.00
Change Ramp "GAS" to Full Size	$ 800.00
Change Ramp "OTHER" to Full Size	$ 720.00
Trailblazer Assemblies	$ 250.00

Include the following cost additives:

Engineering Costs @ 7.5% of Sub Total
Mobilization and Traffic Control @ 10% of Sub Total

Once contracts are signed, the Department will produce signing plans sufficient for construction by either Highway Division forces or by local contractors.

Formal application for Logo signing should be made in writing to the Division Engineer for the county in which the business is located. Refer to forms TEB-228 and TEB-228A for addresses. Inquiries about the program can be directed to the Division Engineers office, or the Traffic Engineering Branch, N.C.D.O.T., P.O. Box 25201, Raleigh, NC, 27611, (919) 733-3915.

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

TRAVEL SERVICES SIGNING
MINIMUM STATE CRITERIA

The minimum State criteria by which gas, food, and lodging establishments may qualify for participation in specific information signing for travel services within freeway rights-of-way are as follows:

ALL The individual business installation whose name, symbol or trademark appears on a business sign shall have given written assurance of the business's conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color, sex, or national origin.

GAS "GAS" and associated services to qualify for erection of a business (logo) sign on a Specific Information Panel shall include:

1. Shall be located not more than 3 miles from the freeway via an all-weather road.
2. Appropriate licensing as required by law.
3. Vehicle services of fuel, oil, tire repair (by an employee) and water.
4. Restroom facilities and drinking water suitable for public use.
5. Year-round operation at least 16 continuous hours per day, 7 days a week.
6. Public Telephone.
7. An on premise attendant to collect monies, make change, and make or arrange for tire repairs.

FOOD "FOOD" to qualify for erection of a business (logo) sign on a Specific Information Panel shall include:

1. Shall be located not more than 3 miles from the freeway via an all-weather road.
2. Appropriate licensing as required by law, and a permit to operate by the health department.
3. Year-round operation at least 12 continuous hours per day to serve three meals a day (sandwich type entrees may be considered a meal) (breakfast, lunch, and supper), 7 days a week.
4. Indoor seating for at least 20 persons.
5. Public restroom facilities.
6. Public telephone.

LODGING "LODGING" to qualify for erection of a business (logo) sign on a Specific Information Panel shall include:

1. Shall be located not more than 3 miles from the freeway via an all-weather road.
2. Appropriate licensings as required by law, and a permit to operate by the health department.
3. Adequate sleeping accommodations consisting of a minimum of 10 units, each including bathroom and sleeping room.
4. Off-street vehicle parking spaces for each lodging room for rent.
5. Year-round operation.
6. Public telephone.

CAMPING "CAMPING" to qualify for erection of a business (logo) sign on a Specific Information Panel shall include:

1. Shall be located not more than 10 miles from the Freeway via an all-weather road.
2. Appropriate licensing as required by law, including meeting all State and County health and sanitation codes and having adequate water and sewer systems which have been duly inspected and approved by the local health authority (the operator shall present evidence of such inspection and approval).
3. At least 10 campsites with accommodations for all types of travel-trailers, tents and camping vehicles.
4. Adequate parking accommodations.
5. Continuous operation, seven days a week during business season.
6. Public telephone.
7. Removal or masking of said business sign by the Department during off-seasons, if operated on a seasonal basis.

TEB-222

Revised 2/24/81
Revised 12/12/85

TYPICAL MAINLINE LOGO SIGNS

OCT 22,1985

PROJ	FISCAL YEAR	ROUTE	COUNTY	PROJECT DESCRIPTION FROM TO	MILES	NOTES
I-1005 COMPLETE	85	I-85	DURHAM/VANCE	NORTH CITY LIMIT OF DURHAM VANCE COUNTY LINE	30	COMPLETED 8-15-85
I-1006 LET	86	I-85	DAVD/RAND/GUIL	US29-70 SOUTH OF LEXINGTON SOUTH CITY LIMIT OF GREENSBORO	36	LET 9-17-85
I-1007	87	I-85	ROWAN/DAVDIDSN	CABARUS COUNTY LINE US29-70 SOUTH OF LEXINGTON	24	MOVED TO FY87 TO BE LET 7-15-86
I-1008	87	I-85	VANCE/WARREN	GRANVILLE COUNTY LINE VIRGINIA STATE LINE	25	TO BE LET AFTER 12-86 AFTER I-85U IS COMPLETED
I-1009	88	I-77	MECKLENB/IREDL	SOUTH CAROLINA STATE LINE NORTH OF SR2342	47	CHECK WITH SCHEDULE FOR R-211 CHARLOTTE OUTER LOOP
I-1010	88	I-77	IRED/YADK/SURR	NORTH OF SR2342 SOUTH OF VIRGINIA STATE LINE	47	INCLUDES INTERCHANGE LIGHTING AT US421
I-1011	89	I-26	BUNC/HEND/POLK	I-40 IN ASHEVILLE NORTH OF SOUTH CAROLINA STATE LINE	37	MAY CONFLICT WITH I-2100 IN POLK CO
I-1012	90	I-40	DAVIE/FORSYTH	SR1147 IN DAVIE CO WEST OF US421 WEST OF WINSTON-SALEM	22	MAY CONFLICT WITH I-2102 IN FY90
I-1013 Revise	90>93	I-40	FORSYTH/GUILFD	US421 WEST OF WINSTON-SALEM WEST CITY LIMIT OF GREENSBORO	27	LET AFTER I-900 IS COMPLETED IN OCT,1992
I-1014	91	I-40	HAYWOOD/BUNCMB	WEST OF SR1138 EAST OF NC191	34	
I-1015 Revise	92	I-40	DURH/ORAN/WAKE	I-85 EAST OF LAKE WHEELER RD	37	REVISE LIMITS FROM I85 TO WCL OF RALEIGH AND FUNDS TO $390K
I-1016	92	I-40	CATA/IRED/DAVE	WEST OF US311 IN CATAWBA CO SR1159 IN DAVIE COUNTY	41	
I-1017	93	I-40	BUNCMB/MCDOWEL	WEST OF US25 BURKE COUNTY LINE	45	
I-1018	94	I-40	BURKE	MCDOWELL COUNTY LINE CATAWBA COUNTY LINE	27	
I-1019 Revise	94	I-85	MECKLBG/CABARS	GASTON COUNTY LINE ROWAN COUNTY LINE	34	REVISE LIMIT TO GASTON-MECK CO
I-1020 Revise	95	I-85	CLEVELAND/GAST	SOUTH CAROLINA STATE LINE MECKLNBURG COUNTY	27	REVISE LIMIT TO GASTON-MECK CO
I-1021	95	I-85	ALAMANCE/ORANG	GUILFORD COUNTY LINE DURHAM COUNTY LINE	32	
I-1022	95	I-85	GUILFORD	WEST OF NC6 ALAMANCE COUNTY LINE	12	
NEW Proposed		I-40	PEND/NEWH/DUPL	SAMPSON COUNTY LINE END AT NC132	67	NEW PROJECT
NEW Proposed		I-40	WAKE/JOHN/SAMP	EAST CITY LIMIT OF RALEIGH DUPLIN COUNTY LINE	59	NEW PROJECT

OUTDOOR ADVERTISING CONTROL PROGRAM
PERMITS ISSUED AND REVOKED STATEWIDE

YEAR	PERMITS ISSUED	PERMITS CANCELLED
1972	9,850	
1973	1,685	324
1974	509	790
1975	439	826
1976	442	2,120*
1977	2,241*	604
1978	786	1,111
1979	830	974
1980	755	921
1981	668	737
1982	602	700
1983	682	658
1984	725	769
1985	835	849
1986		

* Due to realignment of the FAP routes in July, 1976, there were numerous routes added and/or deleted resulting in numerous permits being issued and/or cancelled.

Data is based on FHWA Fiscal Year for Outdoor Advertising October 1 - September 30.

MU 4/24/86

ACTIVE PERMITTED OUTDOOR ADVERTISING SIGNS STATEWIDE
AS OF DATE STATED

DATE	NON CONFORMING	CONFORMING	GRANDFATHER	TOTAL
3/31/86	3253	5583	743	9579
3/31/85	3423	5266	842	9531
3/13/84	3516	5119	895	9530

OUTDOOR ADVERTISING PROGRAM

ILLEGAL SIGNS REMOVED STATEWIDE

YEAR	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	TOTAL
1975	36*	50	150	25	261
1976	55	150	25	30	260
1977	20	100	100	105	325
1978	182	430	161	377	1,150
1979	141	210	114	130	595
1980	-	687**	144	351	1,182
1981	303	244	188	-***	735
1982					364
1983					236
1984					836
1985					690

* Note: First Report Recorded

** Note: First & second quarter total combined

*** Note: Began reporting on an annual basis (Oct-Sept)

MU 4/23/86

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE SERVICES OFFICE
2129 STATE LEGISLATIVE BUILDING
RALEIGH 27611

GEORGE R. HALL, JR.
LEGISLATIVE ADMINISTRATIVE OFFICER
TELEPHONE: (919) 733-7044

GERRY F. COHEN, DIRECTOR
LEGISLATIVE DRAFTING DIVISION
TELEPHONE: (919) 733-6660

THOMAS L. COVINGTON, DIRECTOR
FISCAL RESEARCH DIVISION
TELEPHONE: (919) 733-4910

M. GLENN NEWKIRK, DIRECTOR
LEGISLATIVE AUTOMATED SYSTEMS DIVISION
TELEPHONE: (919) 733-6834

TERRENCE D. SULLIVAN, DIRECTOR
RESEARCH DIVISION
TELEPHONE: (919) 733-2578

September 12, 1986

MEMORANDUM

TO: Members of the LRC Study Committee on Outdoor Advertising

FROM: Dennis Bryan, Committee Counsel

SUBJECT: U.S. Fourth Circuit Court of Appeals Ruling on the Raleigh Sign Ordinance

Senator and Committee Cochairman R. P. Thomas asked me to inform the Committee members of a recent U.S. Fourth Circuit Court of Appeals ruling on the City of Raleigh's sign ordinance. The ruling is significant because it treats a number of issues that may be relevant to other local governments that have, or may adopt in the future, ordinances regulating outdoor advertising.

FACTS

In October 1983 the Raleigh City Council adopted a sign ordinance that amended a 1979 sign ordinance by reducing the maximum size of billboards from 675 square feet a) to 150 square feet on roads with four or more lanes and b) to 75 square feet on smaller roads. The new ordinance provides that existing signs that do not conform to the new standards may not be replaced, renewed, or relocated. These nonconforming signs were given a grace period (amortization period) of 5½ years by the end of which time they had to be removed.

The ordinance allows all existing signs within the city's jurisdiction along the Interstate and the Federal Aid Primary (FAP) system to remain as they are; and the 5½ year amortization provisions regarding nonconforming signs do not apply to these signs. The ordinance does, however, apply to any future signs on the Interstate and FAP system.

The provision of the 1979 ordinance regarding on-premise signs was not changed by the 1983 amendments. That provision allows "on-premise" signs, defined as signs located on the premises that "direct attention to a business, profession, commodity, service, or entertainment conducted, offered, sold, manufactured, or provided at a location on the premises where the sign is located or to which it is affixed."

Major Media of the Southeast, Inc., doing business as Naegele Outdoor Advertising Company, brought an action against the City of Raleigh in the U.S. District Court to have the ordinance declared unconstitutional. One of Naegele's arguments was that the ordinance favored commercial over non-commercial advertising, which has been held by the U.S. Supreme Court in Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1981) to violate the First Amendment. The City of Raleigh, seeking to eliminate this potential constitutional problem, again amended the ordinance in December 1984 by adding a provision allowing any sign authorized in its ordinance to contain non-commercial material in lieu of any other material.

The U.S. District Court's decision was based on the ordinance as amended both in 1983 and 1984. The U.S. District Court ruled in favor of the City of Raleigh, and Naegele Outdoor Advertising Company appealed. In a decision dated June 12, 1986, the U.S. Fourth Circuit Court of Appeals upheld the District Court's ruling.

COURT'S DECISION

The U.S. Fourth Circuit Court of Appeals, affirming the decision of the U.S. District Court (N.C. Eastern District) held in this case essentially as follows (the authority upon which the Court based its holdings is in parentheses):

1) A city may justifiably prohibit all off-premise signs for aesthetic and safety reasons. The Raleigh sign ordinance was not intended to limit certain forms of protected speech, but was rather a legitimate effort to promote an important public interest in maintaining traffic safety and the aesthetic appearance of the city. (Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1981); County of Cumberland v. Eastern Federal Corporation, 48 N.C. App. 518, 269 S.E.2d 672, petition for discretionary review denied, 301 N.C. 527, 273 S.E.2d 453.)

2) Although the ordinance does not define "commercial" or "non-commercial," the ordinance is not unconstitutionally vague, because the U.S. Supreme Court has already defined these terms. (In Central Hudson Gas & Electric v. Public Service Commission, 447 U.S. 557 (1980) the Court stated that commercial speech is "expression related solely to the economic interests of the speaker and its audience.")

3) The element of the San Diego sign ordinance found to be in violation of the First Amendment in Metromedia, Inc. v. City of Sand Diego, 453 U.S. 490 (1981) - the preference of commercial over non-commercial speech - was removed by the Raleigh City Council in the December 1984 amendment to its sign ordinance. The Raleigh ordinance now in effect does not violate the First Amendment, because it does not treat commercial speech more favorably than non-commercial speech.

4) a. Amortization of nonconforming signs is valid if reasonable. (State v. Joyner, 286 N.C. 366, 211 S.E.2d 320, appeal dismissed, 422 U.S. 1002 (1975))

b. The 5½ year amortization period established by the Raleigh sign ordinance is reasonable. (R.O. Givens, Inc. v. Town of Nags Head, 58 N.C. App. 697, 294 S.E.2d 388, cert. denied, 307 N.C. 127, 297 S.E.2d 400 (1982). The Court also cited numerous other cases in which amortization periods shorter than 5½ years were held to be reasonable.)

A major factor in determining the reasonableness of the grace period is whether the public gain outweighs the private loss by the sign owners. The U.S. District Court had based, in part, its determination that the Raleigh amortization provisions were reasonable on the following considerations:

i) Naegele's business would not be ruined;

ii) Naegele's lease agreements contain provisions that relieve it from obligations of the lease if governmental action forces sign removal;

iii) Raleigh's ordinance does not eliminate all off-premise signs but merely restricts their size and spacing.

iv) Naegele will be able to salvage at least parts of its structures for use elsewhere; and

v) All signs on Interstate and FAP system roads may remain as they are.

DB:sc
D-110

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE SERVICES OFFICE
2129 STATE LEGISLATIVE BUILDING
RALEIGH 27611

GEORGE R. HALL, JR.
LEGISLATIVE ADMINISTRATIVE OFFICER
TELEPHONE: (919) 733-7044

GERRY F. COHEN, DIRECTOR
LEGISLATIVE DRAFTING DIVISION
TELEPHONE: (919) 733-6660

THOMAS L. COVINGTON, DIRECTOR
FISCAL RESEARCH DIVISION
TELEPHONE: (919) 733-4910

M. GLENN NEWKIRK, DIRECTOR
LEGISLATIVE AUTOMATED SYSTEMS DIVISION
TELEPHONE: (919) 733-6834

TERRENCE D. SULLIVAN, DIRECTOR
RESEARCH DIVISION
TELEPHONE: (919) 733-2578

October 13, 1986

MEMORANDUM

TO: Members of the Legislative Research Commission Study Committee on Outdoor Advertising

FROM: Dennis Bryan, Committee Counsel

SUBJECT: Outdoor Advertising Law in Other States

At the September 26 Committee meeting in Southport, Representative David Redwine asked how North Carolina's outdoor advertising law compared with that of other states. The following information focuses on the law in states surrounding North Carolina and also includes developments in several other states.

Federal Backdrop

The federal Highway Beautification Act of 1965 (Public Law 89-285; 23 U.S.C. 131, which has been amended several times since 1965) requires all states to enact laws for "effective control" of outdoor advertising within 660 feet of the right of way along federal-aid primary highways. Failure to do so will result in the loss of ten percent of a state's federal-aid highway funds. State laws must be at least as strict as the federal standards set forth in the federal statutes and subsequent regulations. The U.S. Secretary of Transportation determines whether a state has provided for such "effective control."

The states whose laws are discussed in this letter have all been deemed to meet at least the minimum federal standards. A key factor in the regulation of outdoor advertising along the federal-aid primary highways, however, is the extent to which the states enforce their laws. Also, local governments in most states may regulate outdoor advertising and impose higher standards unless preempted by state law.

States in the Southeast

Restrictions placed on billboards along federal-aid primary highways in South Carolina and Tennessee are considered to be less stringent than those in North Carolina. The State of South Carolina is currently being sued by the Sierra Club for not enforcing its highway beautification act.

In Tennessee, Governor Lamar Alexander introduced legislation in March 1986 (along with major highway improvement legislation, it was the highest priority on that governor's legislative package) to reduce greatly the number of billboards along the Interstate highways. To cover the cost of removing the signs, billboard permit renewal fees would have been increased, a privilege tax on billboards would have been imposed, and the remaining costs would have been funded by the Tennessee Department of Transportation. The proposed legislation would also have provided for the use of specific information (logo) signs and would have banned tree cutting on state property in front of nearly 80% of all billboards along federal-aid primary highways. The bill, however, did not pass.

The State of Virginia began participating in a federal program available to the states prior to the enactment of the 1965 Highway Beautification Act. Virginia participation in the program at that time (Virginia was the only southern state to do so) allows Virginia now to receive additional federal funds to reduce the number of billboards along its highways for continued participation. As a result, Virginia has fewer billboards along its federal-aid primary highways than other southern states.

Virginia is also considered to have a very ambitious logo sign program. It was one of the first states to use logo signs along the Interstate highways. Financed by the federal government, Virginia began installing specific information logo signs along I-95 during the late 1960's on an experimental basis. Since then, its logo program has expanded across the state to include portions of Interstate highways 64, 85, 77, 81, 66, and 295.

Georgia law regulating outdoor advertising is similar to that of North Carolina.

Florida law is also similar to that of North Carolina, except for a provision - enacted in 1984 - banning billboards in rural areas on roads built after 1984. That enactment also made Florida law more restrictive by requiring that at least three separate commercial or industrial activities exist within 1600 feet of each other before that area can be deemed "unzoned commercial or industrial." The significance of an area being deemed "unzoned commercial or industrial" is that billboards can be erected in the area. North Carolina law requires that only

one commercial or industrial establishment exist for the area to be deemed "unzoned commercial or industrial."

Some Other States

Maine, Vermont, Hawaii, and Alaska have total bans on the erection of billboards anywhere within their boundaries. Federal law allows billboards that do not conform to federal standards but that were erected prior to the federal Highway Beautification Act (so-called "nonconforming" signs) to remain unless the state or local governing body buys the sign. In Maine and Hawaii, the state has purchased and removed most of the "nonconforming" signs.

The laws of Maryland, Oregon, and Washington prohibit the erection of billboards along the Interstate highways.

In January 1986, the Texas Highway Commission amended certain statewide requirements regarding outdoor advertising. It increased the minimum required distance between billboards on the same side of the road from 500 feet (which is the required distance in North Carolina) to 1500 feet and reduced the maximum permissible area of any sign from 1200 square feet (which is the maximum permissible area in North Carolina) to 650 square feet. The Texas Highway Commission also changed the zoning rules by requiring that at least two (previously just one was needed, which is the requirement in North Carolina) commercial or industrial activities be adjacent to each other before an area can be deemed "unzoned commercial and industrial" for purposes of allowing the erection of billboards.

Much of the activity in Texas has occurred at the local level. Over the last several years, the cities of Houston and Austin have prohibited all new billboards; and about 60% of the suburban cities in the Houston/Galveston Metro area, including Pasadena, have prohibited the construction of new billboards. Fort Worth has banned all new off-premises signs.

DB:sc
D-121