



Sign Task Force Report
To the Oregon Legislature

House Bill 2273 (2007)

January 30, 2009

INTRODUCTION

The 2007 Legislature passed House Bill 2273, which created a Sign Task Force to discuss issues related to sign regulation. The law changed the state's sign regulations to address a 2006 Oregon Supreme Court decision and directed the Sign Task Force to examine the following issues:

- a) Permitting of tri-vision signs;
- b) Ownership, use and other issues regarding relocation credits;
- c) Emerging technologies in the outdoor sign industry;
- d) Increasing the penalties for violation of outdoor sign regulations;
- e) Just compensation related to required removal of outdoor advertising signs;
and
- f) Any other issues relating to the regulation of the outdoor sign industry the task force determines appropriate.

BACKGROUND

Outdoor advertising signs ("billboards")¹ must have a permit in order to be installed in a location visible from a state highway. The number of permits in Oregon is capped at the number in existence in 1977 when Oregon began to limit the number of signs. A sign permit can also be used to relocate a billboard to a new location.

Oregon has a cap-and-replace sign permit system. An owner must remove a permitted sign, and trade in that permit, to get a permit to build a new sign. The system allows permits to be banked for future use if an existing sign is removed but not reinstalled immediately at a new location. A permit banked for future use is called a relocation credit. Currently there are about 1700 standing sign permits and 700 banked relocation credits.

Each relocation credit is individually owned, and credits can be sold by the owner. A few billboard companies own most of the credits. A segment of the industry wanted to explore ideas for freeing up credits so they would have a chance to build outdoor advertising signs along state highways while maintaining the permit cap. Ownership of relocation credits was a prominent theme that came up during the 2007 Legislative Session.

¹ State law requires permits on "outdoor advertising signs." Under HB 2273 (2007) those are signs posted for compensation, or signs not at the location of a business or an activity open to the public. "Billboard" is the common term for a large sign structure owned by one person or company who leases out advertising space to others. That term, however, is not used in the law. Also, signs other than billboards can be outdoor advertising sign subject to permit requirements. "Billboard" and "outdoor advertising sign" are used interchangeably in this report because that is the common understanding of the type of sign being addressed by the Task Force.

MEMBERSHIP

The bill described the interests to be represented in the Sign Task Force membership. The following people were appointed.

Legislators

Senator Rick Metsger
Representative Tobias Read

Sign companies with fewer than 300 sign permits and relocation credits

Dale Clark, Clark Signs
Chris Daugherty, Icon Groupe
Corey Shumway, Lamar Outdoor (resigned)
Chris Colvin, Lamar Outdoor (replacement)

Sign companies with 300 or more sign permits or relocation credits

Rich Gaston, CBS Outdoor
Terry Sandblast, Clearchannel Outdoor
J. Chris Zukin, Meadow Outdoor

Scenic

Peter Frost, Western Environmental Law Center

Land owners

Kevin Howard

Companies that advertise on outdoor signs

Kris Levesque, R/West Advertising

Attorney General

Phil Schradle

Department of Transportation

Amy Joyce

ISSUES ADDRESSED

The Sign Task Force addressed several topics during the course of its work, but spent much of its time addressing relocation credits. A summary of each topic is shown below, along with arguments in favor and opposition that arose from discussion by Sign Task Force members. Each section ends with a recommendation, or a statement explaining that the Task Force did not reach a consensus recommendation.

Aggregation of Relocation Credits

Permits and relocation credits (also referred to as credits) specify the maximum size of a sign, and they vary from a few square feet up to the statutory size limit. Some credits are too small to be used for billboard purposes, and current law does not allow owners to combine credits or permits. The Sign Task Force explored whether the law should be changed to allow an owner to combine (aggregate) small relocation credits and permits into a single larger credit. For credits 100 square feet or less, sign companies own 98; others own 40. For credits under 250 square feet, sign companies own 139, others own 49.

Argument in favor: Changing the law to allow credits to be combined would reduce the total number of credits and permits, while creating the opportunity for those who do not have many credits to generate credits that are usable in the billboard business. This proposal addresses the ownership and use of relocation credits.

Argument in opposition: While the total number of credits would go down, due to their small size the credits being eliminated probably would not be used to build signs. Instead, the proposal would result in more signs because it generates credits of a size that could realistically be used to build a billboard.

Sign Task Force members reached consensus that a possible solution would be to allow aggregation of small credits and permits with restrictions. The restrictions may include allowing aggregation of credits and permits for signs under 100 square feet (or possibly 250 square feet), or limiting the “established location” (which restricts where the sign can be relocated in the future).

Communalization of Relocation Credits, Or Deleting Need for Credits

Another idea explored by the Sign Task Force was to change the law to remove individual ownership from the permits and relocation credits, or institute a simple cap permit system. One method to remove ownership would be to limit the time a relocation credit could stay in the bank before it would be open to acquisition by anyone with a viable permit application. Another proposed system would require anyone who owns a credit to use it for a permit application, but someone who does not own one would not be required to obtain one. Under this system a person could erect a sign without a relocation credit. Once the number of signs erected equaled the cap, no one could build a sign.

Argument in favor: Allowing the acquisition of credits from those who do not use them, or ending the need for a credit, does not raise the cap. The suggested changes allow anyone who identifies a legal site for a sign to obtain a permit as long as the cap is not exceeded. Such a plan reduces the potential risk of the permit system being perceived as a restriction on fair trade or a state-imposed monopoly.

Argument in opposition: Phil Schradle, the Attorney General's representative on the Sign Task Force indicated that a forced communalization of credits (limiting the time a credit may be banked and offering it for sale), likely would be legally challenged as a

government taking requiring just compensation. The second method, which effectively makes existing credits worthless, also likely would be challenged as a taking. Under this scenario credits would not be needed to receive a permit, and once the cap has been reached any remaining relocation credits could not be used. In addition, making credits unnecessary to obtain a permit may lead to an increase in the number of signs posted.

The Sign Task Force membership did not reach consensus on this issue.

LED (Light Emitting Diode) Technology on Outdoor Advertising Signs

Current law prohibits outdoor advertising signs that have electronic variable message elements (also known as electronic billboards or LED billboards). The Sign Task Force considered whether the law should be changed to allow LED billboards. The current industry standard for LED billboards is to show a static image for at least eight seconds, to take no longer than two seconds to change the image, and not to show any image that appears to flash or move.

Argument in Favor: Some Sign Task Force members indicated that LED billboards have not been shown to be more distracting than traditional billboards. One sign structure could show up to eight different messages resulting in fewer billboard structures necessary for the same number of ads. Images are changed remotely by computer so that vinyl and other materials no longer end up being produced and thrown away, and workers no longer travel to change the sign resulting in reduced carbon emissions and increased worker safety. Non-outdoor advertising signs are already allowed to have electronic variable messages.

Argument in opposition: Other Sign Task Force members countered that LED billboards have not been shown to be safe. Few studies exist, and those that conclude they are safe have significant bias and other problems in their methodology. The Federal Highway Administration (FHWA) is currently conducting a study with results expected late 2009. Some Sign Task Force members argued the results of the study were needed before pursuing a legislative change to allow LED billboards. The members also added that LED billboards use large amounts of electricity, and most vinyl used today is recyclable.

A pilot program was suggested. The Department of Transportation (ODOT) drafted an example of what a pilot might look like. The proposal would have allowed up to five signs for five years, with restrictions on location, and a requirement that potential owners bid for such a permit. ODOT would study the signs erected under the pilot and present findings to a future Legislative Assembly.

Those in favor of LED billboards opposed the pilot as restrictive and effectively a ban. They felt a five year pilot was too short to guarantee a return on investment. Some of those generally opposed to LED billboards also opposed the pilot as premature considering the ongoing FHWA study. Regarding the pilot proposal to study the signs erected, those opposed suggested that since four such signs already exist in Salem

they (rather than new signs under a pilot) could be studied, and that ODOT does not have the expertise or resources to study LED signs.

The Sign Task Force did not reach consensus on this topic. Possible ways to move forward include waiting for the FHWA study and re-visit the topic in the next Legislative session (likely 2010), or consider a pilot program with limitations but that allows real opportunity to participate.

Penalties for Violations

Some outdoor advertising signs are installed or maintained in violation of Oregon law. Examples of violations include installing a sign without a permit, using flashing lights, changing the size of a sign outside of its permit specifications, and crossing access-controlled right of way to reach a sign. ODOT sends notices of violation to offenders and the law allows 30 days to correct the violation. Current law allows ODOT to assess up to \$100 per day of violation after the 30 days has elapsed. The Sign Task Force considered whether penalties for violations of sign laws should be raised, whether any increase should be retroactive, and whether there should be a range of penalties depending on severity of violation or other factors.

Argument in favor: The penalty is too low to dissuade people from building illegal billboards. At the current level sign owners can still make a profit on an illegal sign even if ODOT assesses the penalty. Raising the penalty to \$1000 per day, or taking the profits or revenues accumulated over the life of the violation, would mean a person could not profit while violating the law.

Argument opposed: No member opposed the general idea of raising penalties.

The Sign Task Force recommends raising penalties to \$1000 per day of violation or assessing the total revenues over the life of the violation, whichever is larger. The Task Force recommends making the new penalty amount prospective rather than retroactive. The Task Force also recommends that ODOT write an administrative rule including a matrix for penalties based on severity of violation, frequency of violation by the owner, and other relevant factors.

Just Compensation for Removal of Legal Outdoor Advertising Signs

ODOT acquires private property from owners to build highway projects. Occasionally a billboard is within the acquisition. In addition, the law provides for removal of non-conforming signs (legal when constructed, but no longer complies with the law) upon payment of compensation. When this occurs ODOT pays the cost to relocate the sign. The Sign Task Force considered whether this should be changed so that in some cases ODOT would compensate the sign owner based on a calculation of the projected income the sign would have generated. The Sign Task Force also reviewed existing statutes regarding removal of non-conforming signs and found they need updating.

Argument in favor: Some members of the Task Force support a law change allowing ODOT to treat a billboard as real property. The Oregon Department of Revenue

considers billboards real property for tax purposes. As real property, ODOT should pay just compensation for the income the sign would generate over its useful life if it could not be relocated to a similar market site. Such a law change could include provisions to increase the likelihood the sign could be relocated, such as suspending the 100-mile relocation limit or reducing spacing restrictions. Just compensation would be rare, but would fully compensate the owner when it happens.

Argument in opposition: Other members opposed changing the current compensation system. The cost increase to the state would be exponential: moving a sign may cost \$25,000 to \$100,000. The billboard companies indicate they may claim as much as \$1,000,000 in lost income for a sign in the Portland market. That type of cost increase would come from the Highway Trust Fund, and equates to a reduction in construction or maintenance elsewhere. Such a claim could even prevent a project from moving forward due to high cost. Industry representatives agree that ODOT works well with them in being as flexible as possible in finding relocation sites.

All members agree the antiquated provisions in this part of the law need to be updated. The legislature should consider codifying the flexible approaches used in practice by ODOT to make relocation due to right of way acquisition as feasible as possible, and consider relaxing portions of the regulations where necessary to successfully relocate the sign. The members did not reach consensus on changing to an income method for calculating compensation.

Process for Segmenting an Existing Scenic Byway

New or relocated outdoor advertising signs are not allowed in Scenic Byways. However, current law allows a Scenic Byway to be segmented so that a piece of the highway is taken out of the Scenic Byway designation. The effect of segmentation is that an outdoor advertising sign could be relocated to the segmented section because it is no longer part of the Scenic Byway. The Sign Task Force considered whether ODOT should write a process for someone to make a request for segmentation.

Argument in Favor: The Sign Task Force acknowledged that although the law has allowed segmentation, no one has requested segmentation, likely in part because there is no process to follow. Having a process in place would mean existing law could be utilized.

Argument Opposed: No one on the Task Force opposed the creation of a process, as all acknowledge the law provides for segmentation.

The Sign Task Force recommended ODOT engage in rule-making to formally adopt a process for a person to request segmentation of a Scenic Byway. Some members cautioned that a process should require identifying grant money awarded for the section proposed to be segmented, as a successful segmentation could require the state or the Scenic Byway organization to refund federal grant money.

Encouraging Removal of Legal Outdoor Advertising Signs from Scenic Byways

Permitted outdoor advertising signs (OAS) are allowed to remain if they were in place before a highway was designated a Scenic Byway. The sign can be reconstructed in the same spot. Nothing in law requires removal of such signs. The Sign Task Force considered a proposal to provide incentives for an owner to voluntarily take down a permitted outdoor advertising sign in particularly scenic locations within a Scenic Byway. There are 216 outdoor advertising signs along Scenic Byways; about 25 of those are outside city limits. Of those, perhaps half (12-15) are in truly scenic areas. (Requirements for commercial or industrial zoning and proximity to commercial or industrial activity keep down the number of OAS in scenic vistas.)

Argument in favor: The Sign Task Force supported offering an incentive to voluntarily remove signs installed in particularly scenic areas of a Scenic Byway, which would achieve the goal of increased beauty at a small cost. Scenic Byways are designated precisely because of their visual beauty. A billboard in such an area detracts from that beauty. Relatively few billboards exist in the more scenic or remote areas of Oregon's Scenic Byways. Under current law removed signs would be required to be relocated outside of a Scenic Byway.

Argument opposed: No one expressed opposition to this idea.

The Sign Task Force recommends creating an incentive in law for owners to voluntarily remove permitted signs in particularly scenic portions of Scenic Byways. Incentives might include issuing more than one relocation credit, allowing relocation to an urban (not scenic) area of the Scenic Byway, or suspending the 100-mile relocation requirement. Such a plan would require developing a method to determine if the sign is in a truly scenic spot such that it should be eligible for an incentive.

Assessment/Fees

Owners pay ODOT \$10 per year to keep each relocation credit. The Sign Task Force considered whether the law should impose an assessment on these credits to generate revenue for general transportation purposes or should explore increased fees.

Argument in Favor: Owners pay a nominal yearly amount to keep their credits. They report that for tax purposes they treat these assets as having no value. However, they claim the credits are worth up to hundreds of thousands of dollars when sold. Those who try to purchase credits claim that often they are not available at any price. Some Sign Task Force members recommended the state impose an assessment to more reasonably reflect their true value, and to encourage some movement in the marketplace for credits. Such an assessment could be based on size, location, and length of time the credit has been in the bank. The more valuable the credit (size and location) and the longer it has been banked (keeping other potential users from using it), the higher the rate. Those members in favor suggested revenues could go to underfunded transportation needs such as senior and disabled transit.

Argument in opposition: Other Sign Task Force members argued that the credits generate no income while in the bank, so an assessment on credits is not an appropriate way to generate funds. The permit and credit fees have not been raised in about eight years, and in that time the Sign Program's functions have expanded and personnel increased. Permit and credit fees need to be increased to cover the costs of the program, and possibly include expanded personnel and updated technology.

The Sign Task Force recommends ODOT staff, industry representatives, and interested members of the public meet and decide on new fee amounts needed to run the Outdoor Advertising Sign Program efficiently. The Sign Task Force also suggested considering possible capital improvements (computer system) and dedicated field staff. ODOT already has statutory authority to write the fee administrative rule to support the program's costs; therefore no statutory change is needed.

Vegetation Control

The Sign Task Force discussed the permitting process for cutting of vegetation on right of way for the purpose of making an outdoor advertising sign more visible. Within the last two years ODOT wrote maintenance guidance on how its Maintenance Districts should process applications for cutting vegetation. After discussion, the consensus was that there are no problems with the vegetation control process that need to be addressed by the Legislative Assembly.

Height Limitations

State law does not limit the height of the overall structure of an outdoor advertising sign; only the size of the sign face is limited. Most local jurisdictions do have a height limit. Sign Task Force members briefly discussed whether adding a height limit to state law was desirable, but the issue did not rise to a level of being addressed at this time.

CONCLUSION

The Sign Task Force addressed the most pressing issues in Oregon's sign regulation, and came to general consensus on several issues. The Task Force membership agreed that the legislature should consider allowing aggregation of small sign permits and credits and should raise penalties for violators of the law. Regarding compensation for signs removed in acquisitions or due to non-conforming status, the legislature should update antiquated language in the just compensation portion of the law, and consider codifying flexible approaches or lifting certain regulations to accomplish relocations in such cases. The legislature should create incentives in the law to encourage the voluntary removal of signs in particularly scenic portions of Scenic Byways. In addition to changes at the statutory level, interested parties should meet and agree on fee increases to support the effective administration of state sign regulation, and ODOT should write rules delineating the process for requests for segmentation of a Scenic Byway.