tions, and R. P. Guillot, B. M. Johnson, and C. F. Berger, Jr., who assisted Mr. Deel, all of the Southwest Research Institute, is acknowledged. The opinions, findings, and conclusions expressed are those of the authors and not necessarily those of the sponsors.

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# Control of Outdoor Advertising: The Georgia Experience

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**Federal legislation to control outdoor advertising on Interstate highways began with the passage of the bonus act in 1958. This act granted additional Interstate-system construction funds to states enacting appropriate controls. In 1965, the broader Highway Beautification Act, which withholds funds from all states failing to adopt acceptable legislation, was passed. Georgia responded to both laws and passed outdoor-advertising control acts that were typical of those in most states. An analysis of the Georgia experience in controlling billboards is the focus of this study. It is concluded that the legislation has failed to achieve its stated objectives. Loopholes in the act have permitted extensive billboard construction. The federal insistence on the use of eminent domain, rather than police power, to remove nonconforming signs and the meager appropriations for this purpose have meant that few signs have actually been removed. Recommendations are made to more effectively control billboard proliferation and to provide signs to give the motorist information that is more compatible with protection of the visual environment.**

The preamble to the Highway Beautification Act of 1965 declared:

> The erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate system and the primary system should be controlled to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

How effective has this act actually been in achieving these goals? This paper examines its practical effects in a typical state—Georgia—and attempts to answer this question and to formulate recommendations that will more effectively accomplish its stated objectives.

## HISTORY OF OUTDOOR-ADVERTISING CONTROL REGULATIONS IN GEORGIA

In Georgia, attempts to pass legislation controlling outdoor advertising have been lengthy and frustrating. The first was in response to the bonus act of 1958, the federal carrot that offered additional interstate construction funds to any state adopting billboard controls. This law was struck down by the Georgia Supreme Court. With the passage of the Highway Beautification Act of 1965, Congress exchanged positive for negative incentives: A state failing to pass acceptable controls lost 10 percent of its federal-aid highway funds. However, Georgia then adopted additional legislation to avoid this federal stick.

### Bonus Law and the Georgia Law of 1964

Soon after construction of the Interstate highway system began in 1956, strong concerns were expressed over the need to curb the spread of outdoor advertising along this 67 200-km (42 000-mile) national network (1). In 1958, Congress passed the so-called bonus act to encourage individual states to develop control measures and provide a degree of national uniformity should they decide to do so. Any state entering into an agreement with the federal government to control advertising along the Interstate highways that was consistent with national policy would receive a bonus of 0.5 percent of the construction cost of the highway project. The act provided for control of outdoor advertising within 210 m (660 ft) of the Interstate right-of-way. It permitted four classes of signs within the controlled area: (a) directional or other official signs; (b) on-premise signs; (c) signs within 19.2 km (12 miles) of an advertised activity; and (d) signs in the specific interest of the traveling public, i.e., signs containing information about places operated by the government, natural phenomena, historic sites, and locations of eating, lodging, camping, and vehicle services.

In 1959, an amendment was adopted that prevented controls from applying to those segments of the Interstate system that traversed (a) areas that had been zoned commercial or industrial within the boundaries of incorporated municipalities as such boundaries existed on September 21, 1959, and (b) other areas in which the state had clearly established land use as industrial or commercial as of September 21, 1959.

The 1958 act did not specify the methods to be used by a state for sign removal or acquisition of advertising rights. Any state that effected control by purchase or condemnation was declared eligible for federal reimbursement on a 90:10 ratio, provided that such cost did not exceed 5 percent of the cost of the Interstate right-of-way within the project. Twenty-five states entered

into bonus agreements before the expiration of the program on June 30, 1965; of these, three used the power of eminent domain to eliminate nonconforming signs, seven combined compensation for certain existing signs with police-power controls, and the remainder elected to use police-power measures only.

Georgia was the only state in the Southeast to enact a bonus law. In 1964, the Legislature passed Act 585, Section 1128, to "control the erection and maintenance of outdoor-advertising signs, displays and devices adjacent to the National System of Interstate and Defense Highways in Georgia."

The standards enumerated by the Georgia law were similar to those established by the bonus act, limiting control to within 210 m (660 ft) of the right-of-way, and permitting, within this limit, the following four classes of signs:

1. Directional and other official signs;
2. On-premise signs advertising the sale or lease of, or activities being conducted on, the property on which the signs were located (only one such sign was allowed to be visible to traffic proceeding in any one direction, or to be located more than 15 m (50 ft) from the advertised activity);
3. Signs within 19.2 km (12 miles) of the advertised activity; and
4. Signs in the specific interest of the traveling public (trade names were permitted on these only if they identified vehicle services, equipment, parts, fuels, oils, or lubricants offered for sale at places deemed of interest to the public).

Classes 3 and 4 signs were restricted to an area of 14 $m^2$ (150 $ft^2$), all signs were required to be more than 305 m (1000 ft) apart, and billboards were not allowed within 3.2 km (2 miles) of an interchange. The act did not provide for acquisition of signs under eminent domain, but required the removal of nonconforming signs after a 27-month amortization period.

In 1966, Georgia became the only state with a bonus agreement to have its outdoor-advertising control law overturned by the courts. In the case of Branch versus State Highway Department [222 Geor. 770, 771-2. 152 S.E. 2d 372, 374 (1966)], the Georgia Supreme Court declared the law unconstitutional because of the lack of a provision for payment of just compensation. Chief Justice Duckworth, in his ruling, stated,

> The enactment of this so-called outdoor-advertising control act was purely a legislative exercise in futility. Its sole purpose is to dictate, control, and limit uses of private property for public purpose, without a semblance of provision for first paying for such taking or damaging.

Cunningham (2) has commented that the flavor of the Georgia court's opinion can be gathered from the following excerpt:

> We believe that this matter is important enough to justify the following observations. Private property is the antithesis of Socialism or Communism. Indeed, it is an insuperable barrier to the establishment of either collective system of government. Too often, as in this case, the desire of the average citizen to secure the blessings of a good thing like beautification of our highways, and their safety, blinds them to a consideration of the property owner's rights to be saved from harm by even the government. The thoughtless, the irresponsible, and the misguided will likely say that this court has blocked the effort to beautify and render our highways safer. But the actual truth is that we have only protected constitutional rights by condemning the unconstitutional method to attain such desirable ends, and to emphasize that there is a perfect constitutional way which must be employed for that purpose....

and has concluded that the opinion lacks any analysis of the problem of nonconforming uses and is singularly unpersuasive.

The court's only argument was with the failure of the state to acquire billboards under eminent domain rather than by police power, but the entire act was overturned because the General Assembly had neglected to include a severability clause. Such a clause would have upheld the rest of the law in the event of one section or clause being judged unconstitutional. This decision cost Georgia not only the additional funds it would have received under its bonus agreement with the Secretary of Transportation, but also the cost of removing billboards that were erected between the invalidation of the 1964 act and the effective date of the 1971 act.

## 1965 Highway Beautification Act and the Georgia Response

Some revision of the Georgia act would have been required even without the unfavorable court ruling, to allow the state to comply with the Highway Beautification Act of 1965, which contained major differences from the 1958 bonus law. The clearest distinctions were the added condition that any state that failed to provide for the effective control of outdoor advertising within the 210-m (660-ft) limit would lose 10 percent of its federal-aid highway funds and the extension of outdoor-advertising controls to the federal-aid primary system. Compensation payments for sign elimination were made mandatory rather than discretionary, and the federal share of such compensation was set at 75 percent. A significant feature of the act was that all commercial and industrial zones were now recognized as exclusions, which eliminated the 1959 cutoff date. The act also provided for an unzoned commercial or industrial area, to be defined by agreement between the states and the Secretary of Transportation. All permitted signs, including directional and other official signs, were made subject to size, lighting, and space requirements. On-premise signs were exempted from all controls.

Georgia had taken immediate steps to comply with the Highway Beautification Act of 1965 by passing a constitutional amendment, ratified in 1966, that allows the state to acquire billboards and junkyards under the power of eminent domain. After the ratification of the amendment, the General Assembly passed a new Outdoor-Advertising Control Act (Vol. 1, No. 271, Secs. 1, 3; 423) in 1967. The law encompassed the Interstate and primary systems and maintained the 210-m (660-ft) control zone. The following signs were permitted within the limit:

1. Directional and other official signs,
2. On-premise signs,
3. Signs located in areas that are zoned commercial or industrial under the authority of law, and
4. Signs in a business area adjacent to an incorporated municipality (unless in conflict with local zoning laws).

There were no stipulations concerning the maximum number of signs permitted per unit distance, nor were any minimum size regulations established, except that of customary use in the outdoor-advertising industry within the state. The act did, however, contain several spacing requirements; e.g.,

1. In a business area located inside the limits of a municipality, no sign shall be within 46 m (150 ft) of another on the same side of the highway unless separated by a structure or roadway;
2. In a business area on the primary system or

within the approaches to a municipality, no sign shall be within 91 m (300 ft) of another on the same side of the highway;

3. In a business area on the Interstate system, no sign shall be within 152 m (500 ft) of another on the same side of the highway; and

4. All signs in an unzoned area, i.e., an area occupied by one or more commercial or industrial activities, shall be within 1067 m (3500 ft) of the boundary line of the property on which the activity is located and may be on either side of the road, on the Interstate system. On the primary system, the distance is limited to 640 m (2100 ft).

These spacing requirements seem stringent at first glance, but a typical example changes this impression: One small country store located on a secondary road and adjacent to an Interstate highway can result in the permitting of billboards within 1067 m (3500 ft) on each side of the property and on both sides of the highway; this constitutes a potential 28 billboard sites and there are no regulations as to the maximum size or number per site. A more readily perceived result was the opening of rural areas of the Interstate system to billboards. Since most interchanges have at least one commercial establishment, this allows sign boards for at least 1 km (0.62 mile) on each side of the interchanges.

The 1967 law also provided for the acquisition of signs through compensation, authorizing the State Highway Department to exercise the power of eminent domain. This power was upheld in Burnham versus State Highway Department [224 Geor. 543, 163 S.E. 2d 698 (1968)], which ruled that the 1966 constitutional amendment allowing payment of compensation for junkyards was constitutional, and thereby simultaneously established the validity of using eminent domain for the control of billboards.

The 1966 amendment was again the subject of litigation in National Advertising Company versus State Highway Department [230 Geor. 119, 195 S.E. 2d 895 (1973)], in which the court upheld the constitutionality of the statute providing that no outdoor advertising shall be erected or maintained within 210 m (660 ft) of the nearest edge of the right-of-way of the Interstate or primary highway system. This decision was based on the police power of the state to zone property for future use, as distinguished from taking or damaging in respect to use already in existence; no compensation payments are required. According to Justice Jordan,

> As we view the present case, what is really involved is nothing more than the exercise of specific police powers as clearly authorized by the 1966 amendment to the Constitution of Georgia . . . not with respect to eminent domain and payment of just and adequate compensation before taking private property for public purposes, but with respect only to the exercise of zoning powers, to prevent in the future . . . the erection and maintenance of certain advertising devices within a certain distance of the right-of-way of certain highways in certain areas.

Although the 1967 Georgia act was upheld by the courts, it failed to meet the requirements of the federal government. The Secretary of Transportation declared that the Georgia law did not comply with the directives of the Highway Beautification Act of 1965, and threatened to withhold 10 percent of Georgia's federal-aid highway funds. This warning prompted the state to once again revise its billboard-control regulations and resulted in the passage of the Outdoor-Advertising Control Law of 1971 (Code 95A, Art. IV, Secs 913-934).

The primary differences between the 1967 and the 1971 laws were the adoption of maximum size and minimum spacing requirements and a more stringent definition of what an unzoned commercial and industrial area is. The permissible distance for the establishment of signs in these areas was reduced from 1067 m (3500 ft) on either side of the property line of a commercial or industrial use to 183 m (600 ft) on either side of such a structure and, on the Interstate system, signs were permitted only on the same side of the road as the business activity.

The obvious deficiency that marked all of the Georgia billboard legislation up to this point was unaltered in the 1973 act: This is the arbitrary 210-m (660-ft) control zone, which gave rise to the phenomena of the jumbo sign located just outside the control limit. There are now over 250 of these jumbo signs along the Interstate highways in Georgia, and the cost of their removal is estimated to be in excess of $3 million. A 1974 amendment to the federal Highway Beautification Act of 1965 has attempted to remedy this situation by changing the arbitrary 210-m (660-ft) limit to that of signs visible from the roadway, and the Georgia law has been amended to conform to the new federal standards. However, because of the compensation feature, it was necessary to pass a constitutional amendment, and during the period between the passage of the legislation and the ratification of the constitutional amendment by the voters, outdoor advertising firms continued to erect jumbos.

## CONTROL OF OUTDOOR ADVERTISING IN GEORGIA IN PRACTICE

How effective has the Georgia Outdoor-Advertising Control Law been in controlling the erection of new billboards and in removing billboards that are nonconforming? Unfortunately, the law has been ineffective in both respects.

### Control of New Billboards

#### Size and Spacing Requirements

The 1968 amendments to the Highway Beautification Act directed the Secretary of Transportation to accept size and spacing limitations that were customary in the state. Thirty-two states, including Georgia, adopted a maximum size limitation of 112 $m^2$ (1200 $ft^2$). To put this in perspective, the industry's standard poster panel and the largest painted bulletin normally used on the Interstate system have areas of 38 and 63 $m^2$ (300 and 672 $ft^2$) respectively.

Customary spacing in Georgia, as in almost all states, was defined as every 152 m (500 ft) on the Interstate system, 91 m (300 ft) on the primary system, and 30.5 m (100 ft) on the primary system within municipalities. The numbers of signs and sign faces that this spacing permits per kilometer of highway are summarized below (1 km = 0.62 mile).

| Category of Highway | Signs | Sign Faces |
|---|---|---|
| Interstate in commercial or industrial zone | 13 | 26 |
| Primary outside of municipality | 22 | 44 |
| Primary within municipality | 66 | 132 |

This means that, if each of the signs on a primary highway within a municipality is the maximum allowable size [112 $m^2$ (1200 $ft^2$)/site], the total area of the sign faces will equal approximately 2 football fields/km of roadway.

#### Commercial and Industrial Zones

Since it is obvious that the size and spacing requirements constitute virtually no control of outdoor advertising, the designation of commercial and industrial areas becomes

all important. Under the 1959 amendments to the bonus law, billboards were not controlled in areas that were designated commercial and industrial zones of municipalities as of September 21, 1959. The Highway Beautification Act of 1965 extended this exclusion of controls (except for spacing and size limitations) to include all commercial and industrial areas, either zoned or unzoned. In the 1968 amendments the Secretary of Transportation was also directed to accept state and local determination of zoning for this purpose.

Local zoning authorities do not often consider that providing an uncluttered view for the Interstate motorist is of great importance. The real or imagined benefits to be derived by local businesses from billboard advertising usually have much greater priorities. In practice, many local communities, particularly rural counties, attempt to circumvent the intent of the highway-beautification law by zoning long stretches of highways within their borders as commercial and industrial.

### Anticipatory Commercial and Industrial Zones

Under generally accepted land use planning techniques, lands are zoned not only for the present, but also for anticipated development. This practice results in allowing billboards in vast areas of rural countryside. For example, on Interstate 85 in Gwinett County near Atlanta, an industrial zone extends approximately 6.5 km (4 miles) beyond the currently developed industrial area. On this length of highway, there are 51 billboard sites, only 4 of which would satisfy the unzoned-commercial-zone criteria by being actually located near an industrial land use.

### False Commercial and Industrial Zones

Other counties have also designated areas as commercial and industrial zones primarily to allow billboards. The most flagrant example in Georgia may be that of largely rural Columbia County near Augusta, which has zoned its entire 42 km (26 miles) of Interstate 20 as industrial. Other rural counties have zoned large areas on either side of interchanges as commercial zones, even when commercial activity is confined almost exclusively to the areas immediately adjacent to the interchange. For example, Jackson County, which contains 32 km (20 miles) of Interstate 85, has zoned 19 km (12 miles), 2.4 (1.5) on each side of 4 interchanges, as commercial.

Other counties have designated as agricultural and commercial zones areas along Interstate highways in which billboards are almost the only permitted commercial use. Morgan County has designated an agricultural and commercial Interstate zoning district that allows agriculture, residences, agricultural-related businesses, motels and trailer parks, restaurants, gasoline stations, and billboards. Glynn County has a forest and agriculture district that permits billboards.

Thus far, the Georgia Transportation Board has not accepted these and similar examples as true zoning for the purpose of the Outdoor-Advertising Control Act. If this type of zoning is accepted by the board, however, and there is considerable political pressure to do so, then any effective control of billboards in the rural areas of Georgia will be lost.

The main reason that the Georgia Transportation Board has been reluctant to accept false commercial and industrial zoning is the lack of acceptance of such zoning by the U.S. Department of Transportation. The 1968 amendments to the Highway Beautification Act (3) stated that

> The states shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the states in this regard will be accepted for the purpose of this act.

Nevertheless, the Federal Highway Administration has taken the position (4) that zoning

> which is not a part of comprehensive zoning and is created primarily to permit outdoor advertising structures, is not recognized as zoning for outdoor advertising control purposes.

They further state that

> A zone in which limited commercial or industrial activities are permitted as an incident to other primary land uses is not considered to be a commercial or industrial zone for outdoor advertising control purposes.

This position has been tested and upheld in the courts [State of South Dakota versus Volpe, U.S.D.C., S.D., Civ. 72-4024 (1973)].

### Unzoned Commercial and Industrial Areas

The other kind of area in which billboards may be legally permitted even though the predominant land use is not truly commercial or industrial is that of the unzoned commercial and industrial area. Since even the most obscure commercial or industrial use can serve to designate such an area, this section of the law definitely allows billboards to be legally erected in predominantly rural areas. For example, small family businesses that happen to back up to an Interstate highway, and that often cannot even be seen from the highway, can permit the erection of several large billboards. Ironically, junkyards in rural areas that are screened and controlled under the Highway Beautification Act have also served as the justification for permitting billboards.

The lengths to which some advertising companies will go to use this loophole are fascinating. On Interstate 75 between Atlanta and Chattanooga, a property owner erected a shed having an area of approximately 14 $m^2$ (150 $ft^2$) in a rural area and affixed a small sign designating it as a warehouse. A 63-$m^2$ (672-$ft^2$) billboard was then erected next to this warehouse, and the outdoor-advertising firm then applied for a permit based on the area being an unzoned industrial area. The Georgia Department of Transportation refused to accept this obvious maneuver, however, and eventually the sign was removed.

### Removal of Nonconforming Billboards

The effectiveness of the Highway Beautification Act in removing nonconforming Georgia billboards is summarized in a report issued by the Georgia Department of Transportation (5). From the inception of the outdoor-advertising control program, only 431 signs had been acquired at a total cost of $494 430, of which $377 152 were federal funds. Over 20 000 nonconforming signboards remained on Georgia's Interstate and federal-aid primary systems. An additional $3.5 million of federal highway-beautification funds have been allocated to the state for sign removal, however, and careful concentration of these and other funds could restore the scenic quality of significant stretches of highways.

## CONCLUSIONS AND RECOMMENDATIONS

The Georgia outdoor-advertising control law meets all the requirements of the Highway Beautification Act of 1965 as amended, and the Georgia Department of Trans-

portation is now administering the law diligently and vigorously. Even so, the declared goals of the act are definitely not being achieved in Georgia nor in the overwhelming majority of the states.

## Recommended Legislative Revisions

The present definition of commercial and industrial areas does not effectively limit billboards to placement in true commercial and industrial areas where they are a compatible activity. This is particularly true in unzoned commercial and industrial areas.

One way to close this obvious loophole in the law would be to require a dual test before permitting billboards in areas that are zoned commercial and industrial. Under these revised criteria, not only would the billboard have to be in an area zoned as commercial and industrial, but it would also have to be located near substantial development of this type. This revision would largely eliminate the problem of false or anticipatory zoning. Similarly, the criteria for an unzoned commercial and industrial area should be revised to limit billboards to unzoned areas that are truly industrial and commercial in character and not designated as such merely on the basis of a single incompatible land use.

There should also be a limit to the number of signs allowed per unit distance within commercial and industrial zones, and the size and spacing requirements should be revised to recognize that there are different types of highways and areas. For example, a large billboard that would not be out of place in a heavily industrialized area along a freeway would be inappropriate in a small commercial area along a conventional two-lane highway or city street, but the present law makes no distinction between the two kinds of areas. The adoption of these modest recommendations would not result in the complete elimination of billboard clutter, but would eliminate many of the present abuses and tend to confine billboards to areas where they are a reasonably compatible land use.

## Need for Informational Signing

Under the provisions of the Highway Beautification Act, all nonconforming signs were to be removed by July 1, 1970. However, the amendment of the act that requires payment of just compensation and the meager Congressional appropriations for highway-beautification purposes have combined to postpone this final-removal date indefinitely. In Georgia, only 2 percent of the nonconforming signs have been removed thus far.

The funds available to Georgia for sign removal can be used best by concentrating on the Interstate system in rural areas. Since many motorists desire information about available services, these removals should be combined with a system of informational signs on the right-of-way. This type of sign is specifically provided for in the Highway Beautification Act and has already received extensive testing, including that at an interchange on Interstate 95 in Georgia (3). Although this program is opposed by the outdoor-advertising companies, it can adequately meet the need of the motorist for information in a manner that will not destroy the natural beauty of the rural countryside.

Congress also seems to be very concerned about providing information for motorists. The Federal-Aid Highway Act of 1976 amends the beautification law to specifically permit information signs within the right-of-way of primary highways and to permit the retention, in specific areas, of nonconforming billboards that give directional information, if a state demonstrates that removal would work a substantial economic hardship in such defined area. The practical effect of this amendment may possibly be to destroy the billboard-control program unless alternative motorist-information services are provided.

## On-Premise Signs

The Highway Beautification Act makes no attempt to control on-premise signs, the Congress feeling that this is more properly a function of local government. Few local governments have met this challenge, however, and the sizes and heights of on-premise signs, particularly those on high-rise pylons at Interstate-highway interchanges, have steadily increased.

Ironically, this inaction on the part of local government is partially due to the highway-beautification program. The main problem was the question of the use of police power to control signs and require their removal through amortization. Fortunately, in the recent case of City of Doraville versus Turner Communications [236 Geor. 385, 223 S.E. 2d 798 (1976)], the Georgia Supreme Court appears to have joined a growing body of legal opinion cited by Dobrow (6), when it ruled that

1. Municipalities have the right to enact and enforce sign-control ordinances,
2. These ordinances can be more restrictive than the state outdoor-advertising control act, and
3. The two-year amortization period in the Doraville ordinance is reasonable and does not result in a taking of private property.

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