

SUBJECT: Prohibiting new billboards adjacent to and visible from certain roads

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Krusee, Deshotel, Harless, Hill, Macias, Murphy
0 nays
3 absent — Phillips, Harper-Brown, Haggerty

WITNESSES: For — Margaret Lloyd, Scenic Texas; (*Registered, but did not testify:* Pam Holm, Houston City Council; R. Bruce LaBoon, on behalf of Harlon Crow; Girard Kinney, Scenic Austin; Stan St. Pierre, Magnolia Chamber of Commerce, City of Montgomery, Woodlands Association, Magnolia Parkway Chamber of Commerce, and Cameron County; Miles McKinney, Community Association of The Woodlands; Woody Mitchell).

Against — Tim Anderson, Clear Channel Outdoor; Lee Vela, Outdoor Advertising Association of Texas and Clear Channel Outdoor.
(*Registered, but did not testify:* Beau Burkett, Beau Burkett Media LLC; Curtis Ford, Media Choice LLC; Michael Morrill, Metro Outdoor Advertising; Chris D'Agostino, D'Agostino Outdoor LLC; Brett E. Gilbreath, SignAd Ltd.)

On — Amadeo Saenz, Texas Department of Transportation.

BACKGROUND: The Texas Department of Transportation (TxDOT) issues permits for billboards and other off-premise signs located along the state highway system. Municipalities cannot regulate billboards outside their city limits or extraterritorial jurisdictions. In 2001, the 77th Legislature enacted SB 1128 by Bernsen, which added Transportation Code, sec. 391.252, prohibiting the erection of new billboards adjacent to and visible from mostly rural sections of specified state and federal highways.

DIGEST: CSHB 410 would amend Transportation Code, sec. 391.252, to prohibit new billboards and other off-premise signs along five additional sections of state highway, including:

- State Highway 105 between the boundary line between Grimes and Montgomery Counties and the western city limits of the city of Conroe;
- Farm-to-Market Road 1488 between the eastern city limits of the city of Hempstead and Interstate Highway 45;
- U.S. Highway 90A between U.S. Highway 59 and State Highway 6 in the city of Sugar Land;
- Farm-to-Market Road 149 between the boundary line between Grimes and Montgomery Counties and the northern city limits of the city of Pinehurst; and
- State Highway 25 between the southern city limits of the city of Electra and the western city limits of the city of Windthorst.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 410 would help protect tourist attractions and a growing source of economic benefit for many parts of the state. Texas is blessed with some of the nation's most beautiful scenery, especially along its rural roadways. Billboards and other forms of outdoor advertising diminish the intrinsic value of our natural landscape and discourage tourism, especially in rural areas with limited economic resources. However, as cities have restricted new billboard construction in recent years, private interests have increasingly turned to rural areas, which are beyond local control.

The 77th Legislature recognized these facts when it enacted SB 1128 in 2001. CSHB 410 would extend TxDOT's regulatory jurisdiction into five more scenic rural areas beyond the control of municipalities but where local residents strongly support banning new billboards. The bill would not change the law's "grandfathering" feature, thereby allowing the state's 35,000 existing signs and billboards to remain in place.

Billboards derive their commercial value directly from their proximity to public roads paid for by taxpayers and built for their use and benefit. This indirect government subsidization makes it appropriate for the state to regulate this type of advertising where municipalities cannot. Excessive outdoor advertising can discourage business location and devalue adjacent property. However, increased regulation does not necessarily mean economic hardship for advertisers. Houston recognized its billboard proliferation problem 20 years ago when some 10,000 billboards cluttered its roadways. Since then, Houston has reduced this number almost by half, yet the city continues to thrive.

Business has not been penalized in other states that have successfully restricted billboards along roadways while promoting tourism and preserving nature. Technological progress is making other forms of advertising more readily available, affordable, and effective, further reducing any adverse economic impact of stricter billboard regulation.

TxDOT's 2002 study of the feasibility of joining the National Scenic Byways Program (NSBP) found several potential problems, including the lack of a legal mechanism to facilitate corridor management, as well as adverse impacts and limited benefits for landowners. Given the contentiousness of land use regulation in Texas, legislative designation of roadways for billboard restriction would be the best alternative until these and other concerns can be addressed.

OPPONENTS
SAY:

The bill would continue a trend in diminishing the rights of businesses and landowners one area at a time. In 2001, scenic byway advocates agreed to a limited number of rural highways where new billboards would be banned in lieu of creating a state scenic byways program. In each subsequent session, these advocates have attempted to restrict advertising along more roadways without any compensation to those affected.

Current law already is creating problems for advertising companies in the restricted areas. Many of their grandfathered billboards are non-conforming, but companies cannot negotiate new terms with property owners when leases expire because they cannot replace the billboards with new ones. Outdoor advertising is relatively inexpensive and cost-effective compared to other methods, especially for small businesses and start-up firms. This is particularly true in small towns and rural areas, where most advertisers are local, not regional or national businesses. If billboards did not work, businesses would not rent them. Restricting their use hurts local economies, especially in small towns and regional shopping hubs serving rural areas.

The state acquires private property for highways through its power of eminent domain. Landowners have little if any say in where those roads are built. But once they are built, landowners should be allowed to derive additional benefits from leasing billboards on their own land if they so choose. They should not be penalized for a decision they did not make based on the aesthetic values of others.

OTHER
OPPONENTS
SAY:

A better resolution of this ongoing issue would be to create a state scenic byways program allowing Texas communities to participate in the National Scenic Byways Program (NSBP) on a local-option basis. The NSBP seeks to conserve natural landscapes and stimulate tourism through corridor management. It provides matching grants for overlooks, hike-and-bike trails, and other enhancements to communities whose states designate roads as scenic byways and ban new outdoor advertising along them.

The bill also should define “scenic” more precisely and provide flexibility for some types of outdoor advertising in rural areas.

NOTES:

The committee substitute added State Highway 25 between the southern city limits of the city of Electra and the western city limits of the city of Windthorst.

CShB 410 is similar to several other bills filed this session that would regulate billboard construction in counties across the state. HB 412 by Eissler and Strama would replace criminal penalties with administrative penalties and fines for non-conforming billboard placement. HB 2243 by Branch would give a commissioners court the authority to restrict billboards in its county, and HB 2242 by Branch would restrict the construction of new billboards along any state road or highway. HB 2239 by Deshotel and SB 1346 by Seliger would establish a state scenic byways program.

CShB 410 originally was sent to the Local and Consent Calendars Committee, which transferred it to the Calendars Committee.