

MEMORANDUM

TO: James B. Schroeder
Director
Community Development Department

DATE: January 26, 1987

FROM: Alice M. Reimche
City Clerk

SUBJECT: Letter Regarding the Passage of Legislation to
Reform the Nation's Highway Beautification Program
and Control the Proliferation of Billboards

Attached hereto is a copy of a letter from Victoria Greenfield, Office of Legislative Affairs, National Wildlife Federation, Washington D. C. regarding the passage of legislation to reform the nation's highway beautification program and control the proliferation of billboards which was presented to the Lodi City Council at its Regular Meeting of January 21, 1987.

Following discussion, Council referred the matter to the Planning Commission for review and recommendation.

ALICE M. REIMCHE
City Clerk



NATIONAL WILDLIFE FEDERATION

1412 Sixteenth Street, N.W., Washington, D.C. 20036-2266 (202) 797-6800

January 7, 1987

Mr. Ron Stein
City Attorney
City of Lodi
221 West Pine Street
Lodi, CA 95240

Dear Mr. Stein:

The National Wildlife Federation is working with a broad-based national coalition, including the National League of Cities, for the passage of legislation to reform the nation's highway beautification program and control the proliferation of billboards. This bipartisan coalition of U.S. Senators and Representatives, state and local elected officials, national organizations, and private citizens urgently needs your experience and support as we prepare for action on this issue early in the 100th Session of Congress.

Why are these reforms needed? Because the current federal law pre-empts local land use controls on billboards and benefits the billboard industry at the expense of local governments. Over the past twenty years, taxpayers have paid the billboard industry over \$200 million to take down old billboards which were promptly replaced by a greater number of new billboards. The U.S. General Accounting Office reports that for every single billboard taken down, five go up in its place. Over 320,000 new billboards have gone up since the 1965 Highway Beautification Act was passed -- the very act that was intended to curtail roadside visual pollution.

Secretary of Transportation Elizabeth Dole and FHWA Administrator Raymond Barnhart call the current highway beautification program "unworkable and in great need of reform". The program's fiscal, legal, and programmatic shortcomings have been well documented by the General Accounting Office Department of Transportation Inspector General. Among them:

- Current law promotes the annual erection of thousands of new billboards along federal roads and provides perpetual federal cash payments to the billboard industry. It does this by paying (courtesy of the taxpayer) the industry to take down billboards along one segment of highway and allowing more to be erected elsewhere.

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- Current law pre-empts traditional state and local land use controls by forcing states and localities to pay cash for billboard removal even though state courts have approved removal of billboards under local land use laws.
- Current law pays the billboard industry to stop polluting -- a special treatment of billboard companies not enjoyed by any other industry or non-conforming land use. So far the federal government has paid the billboard industry over \$200 million and current law requires another \$1 billion to be paid to the industry from the public Treasury for removal of signs which are no longer legal.
- Current law allows billboard companies to destroy trees on publicly-owned rights-of-way so that privately-owned billboards become more visible!

Because of your experience and efforts to improve and retain the scenic and visual amenities of your own communities, we are asking your support for reforms to the Highway Beautification Act which would:

- Prevent the construction of new billboards on federal interstate or primary highways.
- Return control over removal of existing billboards to states and localities unless otherwise stipulated by state law. Localities should be able to remove billboards using their constitutionally-approved zoning powers.
- Repeal the unnecessary and wasteful federal requirement of cash payments for billboard removals. This would eliminate a \$1 billion obligation on the federal Treasury.
- Prohibit the destruction of trees and vegetation on federal highway rights-of-way by billboard companies for the sole purpose of making billboards more visible.

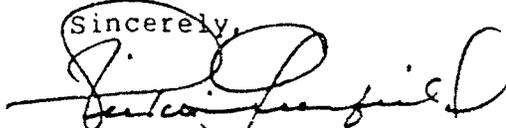
Last year, despite an all-out effort by the powerful billboard industry to derail reform efforts, the Senate unanimously passed strong legislation which would have put the Highway Beautification Act back on track. The legislation, although defeated in the eleventh hour of Congressional debate, served to put the billboard industry on notice. Please help us send a clear message to the 100th Congress that the billboard industry's "free ride" is over. We ask that you review the enclosed materials and

- write to your Congressional delegation urging them to support long-overdue reforms;

- publicize the issue of billboard reform in newsletters, action alerts, etc., to constituents, colleagues or organization members;
- pass a resolution or policy statement in support of better billboard control law and the return of basic land use and zoning rights to state and local governments.

We appreciate your assistance. We look forward to talking to you in the next several weeks.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Greenfield". The signature is written in a cursive style with a large initial "V".

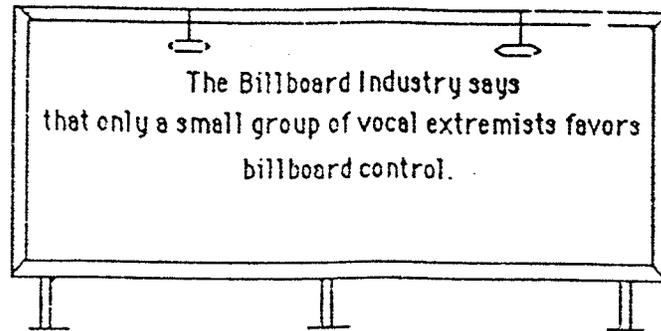
Victoria Greenfield
Office of Legislative Affairs

Working for the Nature of Tomorrow

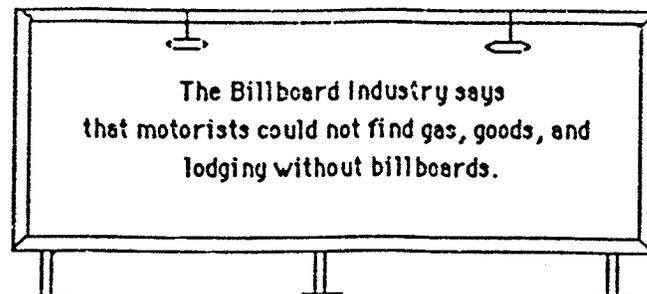


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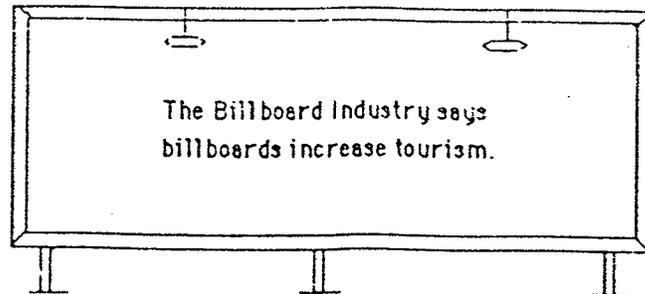
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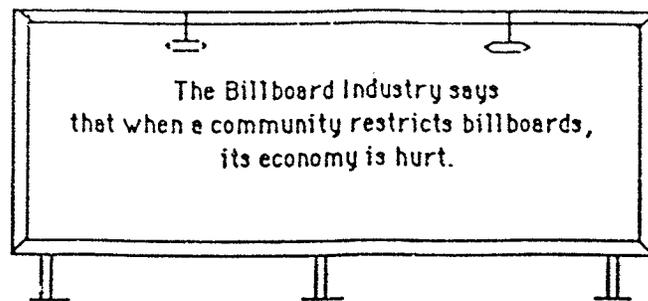
THE TRUTH IS that the combined membership of the national organizations supporting billboard control is over 6,000,000 individuals. Over 100 business, professional, and conservation organizations have joined Secretary of Transportation Elizabeth Dole and the General Accounting Office in advocating tougher state and local controls on billboards. Among these organizations are the National League of Cities, American Institute of Architects, American Lung Association, and the American Farmland Trust. Four states and more than 500 cities, counties, and municipalities have billboard bans and/or restrictions in their communities. Since 1985, over 150 major American newspapers have editorialized against billboards.



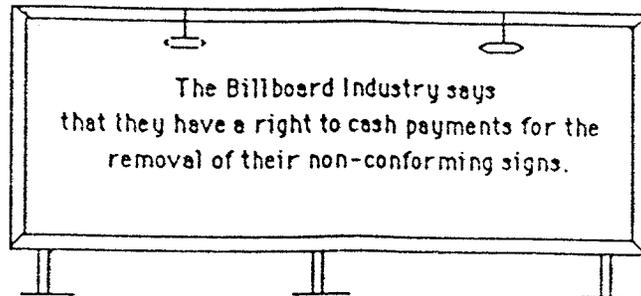
THE TRUTH IS that 85% of all billboards advertise products that have nothing to do with roadside services. The States of Vermont, Virginia, and New York use alternative information signs that convey directions without obstructing scenery. These signs are less costly than billboard rentals, allowing more small businesses to advertise.



THE TRUTH IS that the States of Oregon, Vermont, and Maine banned highway billboards in order to attract tourists and protect their tourist industries. Palm Springs, Lake Tahoe, Santa Fe, Hilton Head, Scottsdale, Williamsburg, Boca Raton, Martha's Vineyard, and other premier American vacation resorts have all banned billboards. The Lancaster County, Pennsylvania Tourist Bureau is leading an effort to clean up billboards. Hawaii banned billboards in 1926; tourism is now the state's number one industry. In 1986, Hawaii welcomed the 5 millionth visitor to the islands.



THE TRUTH IS that America's fastest growing city -- Austin, Texas -- and America's fastest growing state -- Alaska -- both banned billboards. The three American cities voted most conducive to business, best to retire to, and most attractive for their size -- San Diego, Seattle, and Portland -- have all banned new billboards and enacted tough on-premise sign controls. The business communities (often including Chambers of Commerce) in Houston, Philadelphia, Miami, and Mobile are leading the campaigns for billboard control in those cities. Montgomery County, Maryland; Fairfax County, Virginia; Boulder, Colorado; Raleigh, North Carolina; and Marin County, California all combine strict sign controls with rapidly growing, healthy economies.



THE TRUTH IS that the 5th Amendment requires payment of "just compensation" only when private property is taken for public use. Courts have long held that billboard regulation does not violate the Constitution, since regulation by state and local zoning authorities does not entail a confiscation of private property. In spite of this, the Highway Beautification Act requires cash payments to the Billboard Industry for sign removal. Although cash compensation is not constitutionally required, many state courts have concluded that amortization (a "grace period" during which non-conforming billboards continue to generate revenue prior to their relocation) is an acceptable alternative for the regulation of billboards.

The cash payment requirement has already cost taxpayers over 200 million dollars since 1965. The payment obligation has also effectively stymied state and local efforts to remove non-conforming billboards. In FY 1985, states could only afford to pay the Billboard Industry to remove 623 billboards out of the 124,000 eligible for removal. According to the G.A.O. , "Accomplishing the goal of the Highway Beautification Act will require either additional federal funding or a change in the compensation requirement of the Act."

Working for the Nature of Tomorrow



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Beauty and the Blight: The Struggle for Billboard Reform

*"Billboards are an act of aggression against the
American landscape."*

William F. Buckley

Twenty-two years ago Congress passed legislation establishing a national policy and program for the control of outdoor advertising along federally funded interstate and primary highways. The law was the Highway Beautification Act of 1965. In it Congress finds and declares that:

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 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.

Under the Act, states are required to develop and administer billboard control programs consistent with the national policy. The Secretary of Transportation is authorized to withhold 10% of the annual federal-aid highway funds from states without an effective sign control program. Each state now administers such a program, although "effectiveness" varies from state to state. In addition State and local governments may, if they choose, set standards that are stricter than the national ones. For example, Hawaii, Vermont, Maine, Oregon and Alaska have banned billboards entirely. The Department of Transportation, through the Federal Highway Administration (FHWA), oversees the state programs and the administration of the federal funds appropriated for sign control, but the states themselves are responsible for billboard removal.

Since its passage, the Highway Beautification Act has undergone several significant changes. The result is a program at odds with its own stated purpose and intent. Both public

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and private sector analysts, supporters of the 1965 legislation, proponents of effective billboard controls and the current Administration, call the law "unworkable" at best. The Inspector General of the Federal Highway Administration says that the Act has been steadily "transformed into a sign-industry-dominated program that is actually enriching and subsidizing the industry it was to regulate."¹ Until recently efforts by private individuals, national organizations, and members of Congress to get the program "back on track" have been overpowered by the billboard industry.

However, several recent studies by the U.S. Department of Transportation, the General Accounting Office, and independent researchers confirm the analyses of critics. A 1984 Department of Transportation study of the program in Florida and Alabama concludes that the program "has not significantly improved the aesthetic quality or the recreational value of the region's primary and interstate highways" because "liberal implementing regulations" allowed a large number of new signs to be erected, while few had been removed.² Likewise the General Accounting Office found that in 1983 five new billboards were erected for each one that was removed under the provisions of the Act (Figure 1). The Coalition for Scenic Beauty, a national organization based in Washington, D.C., reports that thousands of new billboards are being erected at an unprecedented rate and that despite the objectives embodied in the Highway Beautification Act, there are 14 billboards for every 10 miles of highway in the U.S.

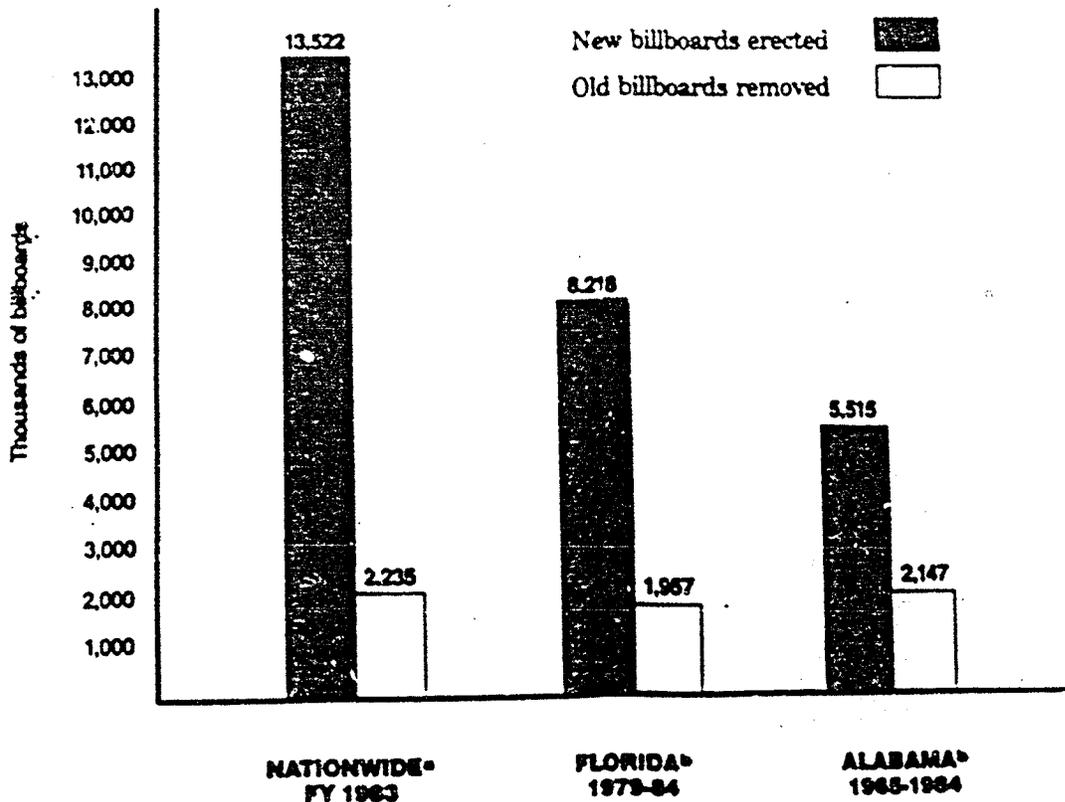
The Cash Payment Issue, Loopholes and Other Problems

The inclusion of certain provisions in the Highway Beautification Act and importantly, the omission of others, has made effective billboard control difficult from the start. For example, the '65 Act only regulates billboards within 660 feet of the highway. This permitted giant billboards to be erected beyond that limit. These became known as "jumbos" because they were so much larger than billboards erected prior to 1965.

In addition, the '65 Act also exempted from billboard control all "commercial and industrial" areas which would be bisected by the Interstate and primary federal highway system. This permitted the construction of new billboards in any area zoned for commercial or industrial use or in any area considered commercial or industrial regardless of zoning. In practice, this has meant that billboards could be erected virtually everywhere. For example, many rural counties have designated narrow strips along the entire length of the Interstate Highway System as industrial or commercial zones, thus permitting billboards in areas otherwise totally rural in character. Wyoming, for example, zoned all lands outside municipalities and within 660 feet of the highway right-of-way as commercial for the sole purpose of allowing billboards.³

Additional loopholes in the program allow the destruction of trees and other vegetation on the public right-of-way strictly for the purpose of making billboards more visible -- a practice totally inconsistent with the law's purpose "to preserve natural beauty." Ironically, many of the trees cut down each year were planted under Title 3 of the Highway Beautification Act. Their destruction for this purpose represents a significant waste of both resources and millions of dollars.⁴

Figure 1
Growth of Billboard Pollution
(on Federal Interstate and Primary Highways)



^a GAO Report CED-85-34, January 3, 1985, "The Outdoor Advertising Control Program Needs to be Reassessed." (Data from 45 states.)
^b Inspector General, Department of Transportation, Report on Audit of Highway Beautification Program, FHWA Region 4, Report No. R-4-FH-4-158.

Moreover, amendments mandating cash payments for billboard removal have neutralized the effectiveness of the Act, and created a "windfall profit" vehicle for the billboard industry.

The Highway Beautification Act required states to remove "non-conforming" and "illegal" signs, and to "restrict the construction and erection of new ones. "Non-conforming" signs are those erected legally before the law became effective but which do not now comply with state and local law. Owners of these signs must be paid for their removal: the federal government pays 75% and the states pay the remaining 25%. "Illegal" signs are those erected or maintained contrary to state law. The Act required that "illegal" signs be removed "expeditiously" and did not require payment of any kind.

Initially, Congress was slow to provide funding for billboard removal and, in 1968, approved provisions allowing "non-conforming" signs to remain unless federal funds were available for compensation. The first federal funds for the program were not provided until 1970. But the most far-reaching of the alterations to the Act occurred in 1978 when Congress passed industry-backed amendments requiring cash payments in all cases where non-conforming signs are removed -- whether the removal was due to Highway Beautification Act requirements or not. In effect, the amendment said that cash was required for billboards removed because of state and local land use control and zoning law.

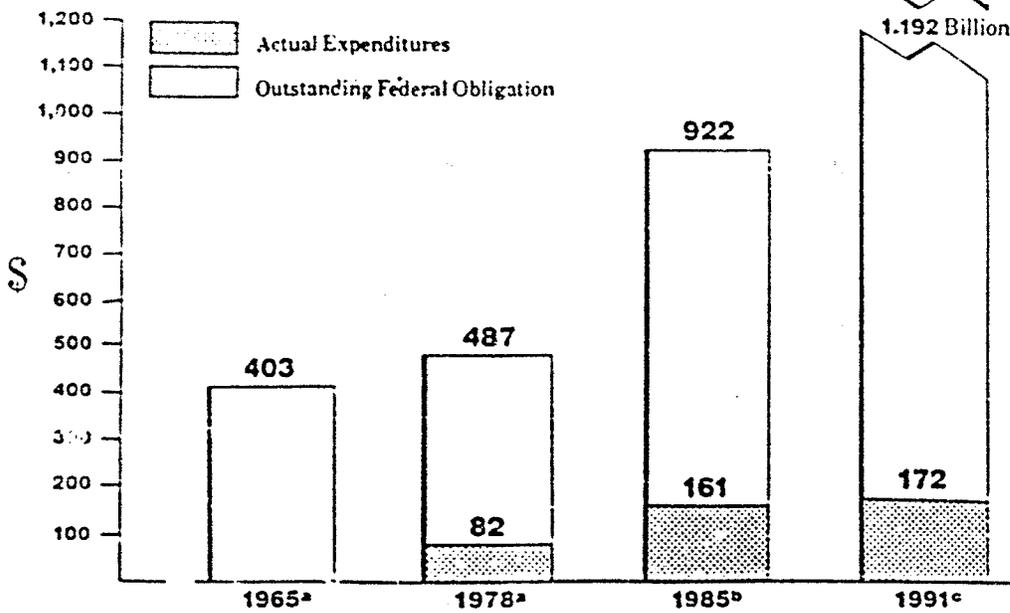
The result of the '78 Amendment was to increase the cost of billboard control by increasing the number of signs that could not be removed without cash payments (Figure 2). According to the Federal Highway Administration, this made an additional 38,000 signs eligible for payment and increased the cost of their removal by another \$334 million in federal funds.⁵ Since 1965, taxpayers have paid the billboard industry over \$200 million to take down old billboards only to have them replaced by more and larger billboards.⁶ Annual program expenditures, which peaked at \$27 million in FY'76, have declined steadily, dropping to \$2 million in FY'82. Today the General Accounting Office estimates that it would cost \$922 million to remove just the remaining non-conforming billboards (figure 2). The Administration has not requested new program funds since FY'82, and the Congress has appropriated no new funds since FY'84.

State and Local Efforts

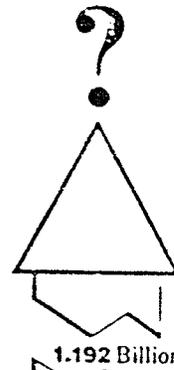
Several states, notably Alaska in 1959, Vermont in 1967, Maine in 1969, and Hawaii in 1926, have determined that the natural scenic beauty of the state is a public benefit which overrides the private interests of the billboard industry.⁷

Figure 2

Cost to Federal Taxpayers to Remove Nonconforming Billboards Under the Highway Beautification Act (in millions)



True cost unknown due to fact that Act permits perpetual payments for nonconforming signs and allows new signs to become nonconforming, hence eligible for payments.



a GAO Report CED-78-38, March 27, 1978. "Obstacles to Billboard Removal."

b GAO Report RCED-85-34, January 3, 1985. "The Outdoor Advertising Control Program Needs to be Reassessed."

c Assumes inflation rate of 5%, compounded annually, and expenditure of all federal appropriations through FY 1985. Also assumes no further federal appropriations are made to remove billboards.

In all cases, the battle to establish effective controls by these states was hard-won but successful. And in every case, despite predictions by the billboard industry of dire economic consequences, advertising, sales, property values, tourism, and other economic barometers for these areas are at excellent levels.

Hundreds of local communities, including the most affluent and picturesque, have prohibited billboards within their jurisdictions, or have established various controls over them. San Diego, Scottsdale, Austin, Little Rock, Boulder, Palm Springs, and Houston are among the numerous communities which enforce strict controls or prohibit billboards altogether. Again, however, the battles have been difficult and initially costly, in large part because of the costs and loopholes of current federal law.

The Highway Beautification Act is the first piece of legislation at the federal, state, or local level to mandate payments of cash to billboard companies for billboard removal. These provisions ignore numerous court rulings which consider billboards to be "a private use of the public right-of-way" and a form of "pollution which should be stopped without payment of cash compensation."⁸ Many state and local officials now argue that the '78 Amendment constitutes an unprecedented limitation of local zoning authority and effectively allows the billboard industry to deny state and local governments the traditional right to use police power to remove billboards.⁹ The Government Accounting Office report confirms that the '78 Amendment "has hindered sign removal ... in localities that had planned to remove signs without paying monetary compensation."¹⁰ The report further states that in lieu of monetary compensation these localities would have allowed sign owners to retain their signs for a specified period of time in order to recoup their investment. Virtually all state courts considering the issue have held that amortization is a reasonable alternative form of compensation.

The Road to Reform

Support for billboard reform and the Highway Beautification Act has increased dramatically in the past five years as the problem worsened and the ineffectiveness of the program became more obvious. However, progress toward specific Congressional action has been slow. In part this is due to the time it takes to accurately assess a program after it has been established but, for the most part, there has been a failure to fully appreciate the extent to which the loopholes in the Act could and would be exploited.

The billboard industry, through the powerful Outdoor Advertising Association, is responsible for the highly

successful campaign against reforms. Over the past three years the billboard industry has paid over \$318,000 in honoraria to members of Congress. Honoraria is money which goes directly to the personal benefit of members. This is the second highest amount paid by any industry in the U.S. and does not include sizeable campaign contributions or billboard space donated to candidates for Congressional Office.¹¹

In addition to blocking reforms, the industry has introduced, and continues to offer, numerous amendments which attempt to remove or reduce restrictions on billboards. Several of these have been added to the Act and now serve as a protective shield for the industry against cities and towns that want to implement effective controls.

Nevertheless, the momentum for billboard reform is stronger than ever. In 1986, the U.S. Senate unanimously approved major reforms in the Highway Beautification Act. The Senate Highway Bill's billboard provisions sought to:

- ban construction of new billboards along federal highways;
- allow state and local governments the option of using their own zoning authority to take down billboards;
- prohibit tree cutting along the public right-of-way in front of billboards;
- end mandatory federal payments to the billboard industry;
- require an annually updated inventory of billboards along federal highways;
- end billboard exemptions for warning labels on certain product advertisements.

However, unlike the Senate bill, the House Highway Legislation contained provisions weaker in some cases than current law. Negotiations, between the House and Senate Conference committees broke down at the eleventh hour over the issue of cash payments and other unrelated issues. The House held that cash payments should continue to be paid to the billboard industry; the Senate, supported by the Reagan Administration, held that cash payments should not be a requirement.

Despite the failure of the legislation, the 1986 Congressional action on billboard reform was significant for several reasons: first, it was the first time in over two decades that billboard reform legislation even made it out of a Congressional committee; second, the issue emerged as "a

contender" despite a full and difficult schedule facing members of the 99th Congress; third, the issue survived as a primary issue until the very end of the Congressional session and received active debate until the day of adjournment. This occurred despite the effective abilities and vast resources used by the industry against the Senate program; and fourth, the issue received and continues to receive strong support from a broad coalition, including business, public interest groups, environmental organizations, and individual citizens. In addition, the issue has received extensive coverage in the press and in editorial cartoons.

Congressional leaders say the issue of billboard reform will be among the first to receive attention as the 100th Congress opens in January. In view of the recent progress and the continued and growing support for the issue, the possibility for meaningful billboard reforms emerging from this Congress are greater than at any time since 1965.

December 1986

Prepared by: National Wildlife Federation
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Washington, DC 20036

Contact: Victoria Greenfield
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(202) 637-3730

Notes

1. Charles F. Floyd, AICP, "Requiem for the Highway Beautification Act", American Planning Association Journal, Autumn 1982, p. 441.
2. "The Outdoor Advertising Program Needs to Be Reassessed", General Accounting Office, RCED-85-34, Jan. 3, 1985.
3. "Billboard Pollution in America", Coalition for Scenic Beauty, Washington, D.C., 1984-85, p. 13.
4. Ibid.; p. 19.
5. FHWA, Projected Outdoor Advertising Control Program Cost, 1981.
6. GAO Report , RCED-85-34, Jan. 3, 1985.
7. "Billboard Pollution in America", Coalition for Scenic Beauty, Washington, D.C., 1984, p. 26-27.
8. General Advertising Co., Inc. v. Dept. of Public Works, 289 Mass. 149, 198 N.E. 799, 813 (Mass. Sup. Jud. Ct. 1935) app. dismissed 296 U.S. 542 (1935) and 297 U.S. 725 (1936). Keibro, Inc. v. Myrick, 113 Vt. 64, 30 A.2d 527 (1943); New York State Thruway Authority v. Ashley Motor Court, 179 N.E.2d 566 (New York Court of Appeals, 1961); Modjeskca Sign Studios, Inc. v. Berle, 402 N.Y. S.2d 359, 373 N.E.2d 255 (N.Y. Ct. of Appeals, 1977).
9. For examples of state/local problems see Charles F. Floyd, "Requiem for the Highway Beautification Act", Journal of American Planning Association, Autumn 1982; Bruce Brenner, "Outdoor Advertising Control Under the Highway Beautification Act: A Review of State Statutory and Case Law", Transportation Research Board, Study No. 5A, March 1979; Edward H. Ziegler, Jr., "Local Control of Signs and Billboards: An Analysis of Recent Regulatory Efforts", Zoning and Planning Law Report, Vol. 8, No. 10, Nov. 1985.
10. "The Outdoor Advertising Control Program Needs to Be Reassessed", General Accounting Office, RCED-85-34, Jan. 3, 1985.
11. Figures provided by Common Cause, 1986.