

## CONCURRENCE IN SENATE AMENDMENTS

AB 3168 (Rubio)

As Amended August 24, 2018

Majority vote

ASSEMBLY: 72-0 (May 21, 2018)

SENATE: 39-0 (August 29, 2018)

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Original Committee Reference: **G.O.**

**SUMMARY:** Makes changes to the Outdoor Advertising Act as it relates to "Landscaped Freeways". Specifically, **this bill:**

- 1) Adds "covering soundwalls or fences" to the exempted characteristics of a freeway that do not constitute landscaping.
- 2) Adjusts the criteria for determining a landscaped freeway. Specifically, it requires at least 1,000-foot or greater section of a freeway that has been landscaped with an average width of 20 feet of landscaping on department-owned property at the same or elevated grade of the freeway way if the advertising display is designed to be viewed primarily by persons traveling on the main-traveled way of the landscaped freeway.
- 3) Defines "average width of 20 feet" as any 1,000-foot section freeway that averages at least 20 feet of total property contiguous to all sides of the main traveled way between the outer edge of the shoulders and the freeway right-of-way boundaries, including median plantings, that otherwise meets the definition of a landscaped freeway
- 4) Requires California Department of Transportation (Caltrans) determine the average width by dividing the square footage of a landscaped area by its length.
- 5) Clarifies all existing landscape freeway classifications shall remain in effect until Caltrans receives a request for a new classification review in accordance with applicable regulations. Authorizes Caltrans to assess fees, no more than \$500, in conducting a reclassification of currently designated landscape freeway.
- 6) Expands the ability of Caltrans to allow any lawfully erected display to be increased in height at its permitted location, provided the height increase or conversion would not cause a reduction in federal aid highway funds or an increase in the number of displays within the state which does not conform to OAA.
- 7) Expands the ability of a governmental entity to enter into a relocation agreement for a lawfully erected display with Caltrans, provided the relocation would not cause a reduction in federal aid highway funds or an increase in the number of displays within the state that does not conform to OAA.
- 8) Allows a relocated advertising display may be converted to a message center pursuant to a relocation agreement. Requires Caltrans to issue a permit, without any additional consideration, for any display that is being placed pursuant to a relocation agreement with another governmental entity if the relocated display conforms with the provisions of this bill.

**The Senate amendments:**

- 1) Provide more specificity for how Caltrans determines the average width of a landscaped freeway.
- 2) Authorize Caltrans to assess fees, no more than \$500, in conducting a reclassification of currently designated landscape freeway.
- 3) Clarify when a static display may be converted to message center pursuant to a relocation agreement under this bill.
- 4) Make technical and clarifying changes.

**EXISTING LAW:** Establishes the OAA, which regulates the placement of advertising displays adjacent to and within specified distances of highways that are part of the national system of interstate, defense highways, and federal-aid highways.

- 1) Prohibits any advertising display from being placed or maintained on property adjacent to a section of a freeway that has been landscaped if the advertising display is designed to be viewed primarily by persons traveling on the main-traveled way of the landscaped freeway.
- 2) Defines "Landscaped Freeway" as a section or sections of a freeway that is improved by the planting at least on one side or on the median of the freeway right-of-way of lawns, trees, shrubs, flowers, or other ornamental vegetation requiring reasonable maintenance.
- 3) Clarifies planting for the purpose of soil erosion control, traffic safety requirements, including light screening, reduction of fire hazards, or traffic noise abatement does not change the character of a freeway to landscaped.
- 4) Provides for limited exemptions to the prohibition on advertising along system and landscaped freeways, including exemptions for signs advertising the property's sale or lease, signs designating the premises or its owner, and signs advertising goods or services manufactured or produced on the property itself.
- 5) Allows a governmental entity from entering into a relocation agreement or Caltrans from allowing any legally permitted advertising display to be increased in height at its permitted location or relocated if a noise attenuation barrier has been erected in front of the display or if a building, construction, or structure, including, but not limited to, a barrier, bridge, overpass, or underpass, has been or is then being erected by any government entity that obstructs the display's visibility within 500 feet of the display and the relocation of the display or increase in height of the display would not cause a reduction in federal aid highway funds or an increase in the number of displays within the jurisdiction of a governmental entity which does not conform to the act.
- 6) Provides that the OAA generally does not apply to on premise advertising displays, which include those advertising the sale of the property upon which it is placed or that advertise the business conducted, services rendered, or goods produced or sold on the property. Local governments regulate on premise displays, except for certain safety requirements.

- 7) Allows a single advertising structure exemption for each of several cities, including an exemption for advertising on street furniture in San Francisco, several billboards situated on the grounds of the Oakland-Alameda County Coliseum complex, and structures within the Mid-City Recovery Redevelopment Project Area within Los Angeles.
- 8) Requires the Department of Transportation (Caltrans) to assess penalties for a violation of the OAA, as specified. If an advertising display is placed or maintained in a location that does not conform to the relevant statutes or local ordinances, and is not removed within thirty days of written notice from the department or the city or the county with land use jurisdiction over the property upon which the advertising display is located, a penalty of \$10,000 plus \$100 for each day the advertising display is placed or maintained after the department sends written notice shall be assessed and the gross revenues received by the violator shall be disgorged. Caltrans may also request recovery of its legal costs.
- 9) Provides, by contractual agreement, for Caltrans to administer the federal Outdoor Advertising Control (OAC) program, which has restrictions similar to California's OAA program, including maximum sign size, sign spacing, location, illumination, and content. If the state fails to properly administer the federal program, the state shall lose 10% of its federal highway funding.

**FISCAL EFFECT:** According to Assembly Appropriations Committee, this bill contains negligible state costs.

**COMMENTS:**

*Purpose of the bill:* According to the author: "For decades, municipalities have had to seek legislative "carve outs" to allow them to erect billboards on a landscaped section of freeway within their jurisdiction. This approach is costly and increases the number of billboards currently permitted in California. AB 3168 gives cities flexibility to relocate permitted signage outside of municipal boundaries on to sections of landscaped freeway, still conforming to State and Federal regulations, while not adding any more new signage on California highways. AB 3168 will also resolve long-standing questions over whether plantings not visible from the freeway are adequate to constitute a "landscaped freeway" as defined in Code. Finally, it clarifies that landscaped freeway displays can be modified to modern digital signs on the same conditions as other freeway billboards."

*Background:* The state OAA regulates the placement of advertising displays (billboards) and signs along interstate or primary highways, landscaped freeways and similar specified highways. The OAA, along with related federal provisions, is intended, among other things, to promote highway beautification and provide a consistent framework for the regulation of advertising displays along freeways and highways. The OAA sets standards for the advertising structures, including their size, identification and location, and requires compliance with permit application procedures and conditions administered by Caltrans.

In order for an outdoor advertising display application to be considered for a permit adjacent to an Interstate or primary highway the following criteria laid out by the OAA and/or regulations adopted by Caltrans must be met:

## 1) Display Location:

- a) Must be outside the right of way of any highway.
- b) Must be outside of any stream, or drainage channel.
- c) There must be an existing business activity within 1000 feet of proposed display location on either side of the highway.
- d) Location of property where display is to be placed must be zoned industrial or commercial.
- e) Must have current property owner consent, in writing, to place the display at desired location.
- f) Must have written permission (building permit) from the local government having jurisdiction where the display is to be located.
- g) Location may not be adjacent to a landscaped freeway.
- h) Location may not be adjacent to a scenic highway.
- i) If adjacent to a bonus segment of an Interstate freeway, copy, size, and spacing is more restrictive.

## 2) Actual Display:

- a) Must be 500 feet from any other permitted display on same side of any highway that is a freeway.
- b) Must be 300 feet from any other permitted display on same side of any primary highway that is not a freeway in an unincorporated area.
- c) Must be 100 feet from any other permitted display on same side of any primary highway that is not a freeway and is within the limits of an incorporated city.
- d) Must be 500 feet from an interchange; intersection at grade or safety roadside rest if the highway is a freeway and the location is outside the limits of an incorporated city and outside the limits of an urban area.
- e) An electronic changeable message center display must meet the above spacing requirements and be 1000 feet from another electronic message center display.
- f) Maximum height for the advertising display area is, 25 feet in height and 60 feet in length, not to exceed an overall maximum of 1200 square feet.

*Federal Highway Beautification Act of 1965:* The Highway Beautification Act (HBA) was created to protect the public investment, promote the safety and recreational value of public travel, and to preserve the natural beauty of highways in the nation.

The HBA specifies that states have the responsibility to enforce provisions regarding the placement and maintenance of outdoor advertising signs, displays and devices along the Interstate and National Highway System. In 1968 Caltrans entered into a contractual agreement with the Federal Highway Administration (FHA) to implement and enforce the federal OAC program. Many of the OAA provisions are similar to those contained in federal law, originally established in 1965 through the HBA.

The penalty for failure to enforce federal law is severe: 10% of federal highway funds with the potential to apply the penalty retroactively. Presently, California receives \$3.5 billion from the federal government, and stands to lose up to \$350 million.

*Landscaped Freeways:* A Classified Landscaped Freeway is a section of freeway with planting that meets the criteria of Caltrans' Outdoor Advertising Regulations. It is used in the control and regulation of Outdoor Advertising Displays. A stretch of freeway designated landscaped is grounds for permit denial for an advertising display location. However, an administrative process exists within Caltrans to declassify a freeway as non-landscape, thus permitting a display if all other permit requirements are met. It is important to note that the FHA generally leaves the classification of Landscaped Freeways up to the state, meaning declassifying or exempting stretches of landscaped freeway to place advertisements will not result in potential loss of federal highway funds. Below are Caltrans' Outdoor Advertising Regulations (Sec. 2500-2513) that set criteria for a freeway to be designated landscaped:

- 1) Landscaping is within State right-of-way.
- 2) Landscaping is continuous (no gaps of more than 200 feet).
- 3) Landscaping is ornamental (lawns, trees, shrubs, flowers, or other plantings designed primarily to improve the aesthetic appearance of the highway).
- 4) Landscaping is at least 1000 feet long.
- 5) Landscaping is on at least one side of the freeway.
- 6) Landscaping requires reasonable maintenance.

There has been consternation among local governments and the outdoor advertising industry about the classification process and the regulations that ultimately decide whether a freeway is "landscaped." Their argument is that the standards have very little specificity, which makes the process too subjective based on which Caltrans official determines classification. Once an area is classified as landscaped, local governments or sign operators have to turn to the legislature to receive a one-off exemption. This bill seeks to add more clarity in statute to what freeways should be classified as landscaped. Specifically, it provides covering sound walls or fences with plants (e.g. ivy) as non-landscaped, clarifies that the distance of landscaping must be more than 2,000 feet, provides a 20 foot landscaping width requirement and requires landscaping to be visible from the freeway. It is very important to note, this bill does not allow any displays in a declassified area unless they comply with all other provisions of the OAA and obtain all necessary local permits. That said, by being more specific in statute and increasing the landscaped distance to 2,000 feet, this bill, if signed, will almost certainly open up stretches of landscaped freeway –that otherwise would not – to be legally permitted for outdoor advertising.

*Permit Relocation:* Current law allows "relocations" of billboard on landscaped freeways within the same jurisdiction. However, many smaller communities do not have existing billboards that they can relocate; likewise, there are communities that would prefer that displays within their communities are removed -- frequently because of public projects. Caltrans has taken advantage of this relocation provision, as their jurisdiction is the entire state, by allowing landscaped freeway displays to be "relocated" to different communities. Local communities do not have this option. This bill would allow a local government to relocate a legally permitted display from one landscaped freeway section to another.

In practice, a local government wanting to place a sign on a landscaped freeway would first go to Caltrans and request declassification. Once denied, under this bill, they would have the option to relocate an existing legal permit on a landscaped freeway to the desired location that had been denied declassification. If the local government does not have access to another permit they want to relocate, they would be able to look to other local communities and/or sign operators in other jurisdictions to partner with and relocate their permit to the local government's desired location. It is important to note that this process may only take place as long as the proposed location complies with all permitting requirements of the OAA and does not result in an increase in displays in the state.

*Prior/Related Legislation:* SB 405 (Mendoza), of the current legislative session. Exempts from the OAA advertising displays located in specific geographic areas in the City of Artesia. (Pending in the Assembly G.O. Committee)

SB 744 (Hueso) of the current legislative session. Creates an exemption to the OAA for several existing billboards in the County of Imperial provided the advertising displays are approved by either Caltrans or the FHA. (Pending in the Assembly G.O. Committee).

SB 459 (Portantino) of the current legislative session. Creates an exemption to the OAA for two existing billboards in the City of Upland provided the advertising displays are approved by either Caltrans or the FHA. (Held in the Senate Transportation and Housing Committee).

AB 1373 (Santiago), Chapter 853, Statutes of 2016. Created an exemption to the OAA in downtown Los Angeles provided the advertising displays are approved by either Caltrans or the FHA.

SB 1199 (Hall), Chapter 869, Statutes of 2016. Created an exemption to the OAA for two billboards in the City of Inglewood, provided that such billboards do not result in a reduction of federal funding.

SB 684 (Hill), Chapter 544, Statutes of 2013. Permitted existing advertising displays that advertised businesses and activities within the boundary limits of an RDA project to remain and be considered "on-premise displays" until January 1, 2023. The city or county could then apply to Caltrans for an extension, showing "good cause" beginning on January 1, 2022.

SB 31 (Padilla), Chapter 542, Statutes of 2013. Recasts the arena advertising exception to exempt from the OAA specified advertising displays authorized before January 1, 2019 by local ordinance, at a venue with a capacity of 15,000 seats or more that is capable of providing a permanent venue for professional sports.

SB 694 (Correa), Chapter 545, Statutes of 2013. Exempts from the Outdoor Advertising Act (OAA) advertising displays at current or future high-speed rail stations.

SB 402 (Vargas) of 2012. Would have created an exemption to the OAA for several existing billboards in the County of Imperial. (Held in Senate Rules).

AB 1570 (Salas) of 2010. Would have created an exemption to the OAA for several existing billboards in the County of Imperial. (Gut and amended in Senate).

AB 2339 (Solorio), Chapter 493, Statutes of 2008. This bill expanded the definition of an "on premise" display to include those displays advertising products, goods, or services sold on the premises of an arena of at least 5,000 seats and is located on public land, provided certain conditions were met.

AB 1499 (Benoit) of 2006. Would have created an exemption to the Act, to permit the City of Riverside to erect an outdoor advertising display along Highway 91 to promote economic activity for the Riverside Plaza. (Vetoed by Governor)

AB 801 (Jones) of 2006. Would have created an exemption from the Outdoor Advertising Act for one sign in the County of Sacramento. (Vetoed by Governor)

AB 2441 (Klehs) of 2006. Would have authorized an advertising display in the redevelopment zone of the City of San Leandro subject to specified conditions. (Vetoed by Governor)

AB 1518 (J. Horton) of 2006. Would have exempted, from the prohibition against placing advertising displays adjacent to landscaped freeways, any billboard located on property owned by the Lennox School District, subject to certain conditions. (Died pending Concurrence in Assembly)

AB 762 (Núñez), Chapter 725, Statutes of 2003. Creates an exemption to the OAA by allowing the National Latino Arts Council to place an advertisement on the roof of a not-for-profit educational academy.

SB 1480 (Speier), Chapter 972, Statutes of 2002, requires the applicant for a state billboard permit to have the written consent of the city or county with land use jurisdiction as well as the owner of the property site for the billboard

SB 190 (Perata), Chapter 54, Statutes of 2001. Exempted a certain development of highway advertising in Oakland from existing laws protecting landscaped highways permitted the City of Artesia to erect an advertising display alongside a landscaped highway. Permitted the City of Artesia to lease one billboard space adjacent to the 91 Freeway on city property.