

Date of Hearing: June 28, 2018

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

SB 744 (Hueso) – As Amended May 3, 2017

**SENATE VOTE:** 21-12

**SUBJECT:** Outdoor advertising: exemption

**SUMMARY:** This bill exempts three existing advertising displays in the County of Imperial from specified restrictions in the Outdoor Advertising Act. Specifically, **this bill:**

- 1) Exempts three existing advertising displays located near the intersection of Interstate 8 and SR 111 in the County of Imperial from specified restrictions in the OAA under specified conditions:
  - a) The display may not advertise products or services directed at an adult population, including, but not limited to, alcohol, tobacco, gambling, or sexually explicit material. It may only advertise products, goods, services, or businesses that are made, sold, or located in the County of Imperial.
  - b) The display will not necessitate trimming, pruning, topping, or removal of existing trees in order to make the display visible or to improve its visibility, unless done as part of the normal landscape maintenance activities that would be undertaken without regard to the location of the display.
  - c) The display will only advertise products, goods, services, or businesses that are made, sold, or located in the County of Imperial.
  - d) Before the display may be used for commercial advertising, Caltrans shall determine that the display will not cause a reduction in federal aid funds or otherwise be inconsistent with any federal law, regulation, or agreement between the state and a federal agency or department.
  - e) If Caltrans is unable to make the determination required pursuant to paragraph (1), it shall request the Federal Highway Administration (FHWA) of the United States Department of Transportation to make the determination. Upon receipt of a determination by the FHWA that makes the finding described in paragraph (1), the display may be used for commercial advertising.

**EXISTING LAW:**

- 1) 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.
- 2) 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.

- 3) 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.
- 4) 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.
- 5) 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.
- 6) 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.
- 7) 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 the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

**COMMENTS:**

Purpose of the bill: According to the states, "According to the California Employment Development Department, Imperial County has an almost 20% unemployment rate – the second highest in our state. In the last year, this location has lost 2,388 employed workers. Due to the unique landscape of Imperial County, outdoor advertising along roads and highways of the county are severally limited by the OAA. Allowing an exemption to outdoor advertising in the area that meets certain criteria would provide the advertising needed to promote economic activity for tourism and local businesses of Imperial County. Providing Imperial County with the ability to promote and help local businesses will ultimately raise the economic value in the area."

Displays in Question: This bill affects three billboards in Imperial County located near the intersection of Interstate 8 and SR 111. The billboards were built in 1994 and were never permitted by Caltrans. The owner of these billboards has been cited for unlawful advertising in 2001 and 2007, though those violations were rescinded when the unlawful advertising copy was

removed. This bill is an attempt to statutorily exempt the billboards from the permitting process and certain provisions of the OAA, which would then allow the owner to display commercial advertising copy without being cited for violations.

Outdoor Advertising Act: 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 criterion laid out by the OAA and/or regulations adopted by Caltrans must be met:

A) Display Location:

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

B) Actual Display:

- Must be 500 feet from any other permitted display on same side of any highway that is a freeway.
- 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.
- 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.
- 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.
- An electronic changeable message center display must meet the above spacing requirements and be 1000 feet from another electronic message center display.
- 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.

**\*\*The displays in question violate these permitting requirements.**

Federal Highway Beautification Act of 1965: The Highway Beautification Act of 1965 (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. SB 744 does contain a provision attempting to mitigate the risk of losing federal funds by stipulating the signs may only display commercial advertisement copy as long as they do not result in the reduction of federal aid highway funds.

Bonus Segment: “Bonus Segment” is a specific segment of an Interstate highway which was covered by the Federal Aid Highway Act of 1958 and the Collier-Z’berg Act, namely, any such segment which is constructed upon right-of-way, the entire width of which was acquired subsequent to July 1, 1956 and designated as such with the Bonus Agreement in 1965. These “Bonus Segments” are subject to stricter regulations that went into effect prior to the enactment of the HBA (1965) and the OAA (1970). Per the Bonus Agreement of 1965 the State was compensated for enforcing these stricter regulations along these designated “Bonus Segments” and if the State fails to enforce these regulations the State will have to repay the additional compensation received by FHA.

Under the Code of Federal Regulations 750.101-110, only four types of displays are allowed within Bonus Segments:

- Class 1 - Official signs, erected by state or local authorities for directional, safety, or other official purposes.
- Class 2 - On-premise displays advertising business activity where the sign is located.
- Class 3 - Signs within 12 miles of advertised activities cannot exceed 20 feet in length, width, or height, or 150 square feet in area, including border and trim and cannot be within two miles of an intersection.
- Class 4 - Signs in the specific interest of the traveling public, cannot exceed 20 feet in length, width, or height, or 150 square feet in area, including border and trim and cannot be within two miles of an intersection.

Additionally, when considering applications to construct “Class 3” and “Class 4” displays, the specific parcel of land where the display will be located would have had to have been zoned commercial or industrial prior to September 21, 1959.

As noted above, the displays in question are in violation of the stricter standards of the “Bonus Segment Agreement”. Specifically, as employed and constructed today, they are not within 12 miles of advertised business activity; are larger than the maximum size permitted (20’ by 20’); and are within two miles of an intersection.

Imperial County: According to the author’s office, when the displays in question were being permitted by the County of Imperial, there was no County ordinance regulating this policy. At the time, a display owner would go to the County office, fill out a Permit Application through the Imperial County, Planning Department - Building Inspection Division. On this application, the county would approve a billboard for on premise advertising and in this case, the owner paid the fees and received a receipt with approval. In 1996, the County of Imperial passed its first regulations related to billboards and advertising structures. Current staff at the county level specified that, “according to the Planning Director, at the time of construction of these bill boards, a Conditional Use Permit was not required and a local building permit was all that was needed for signs at that time.” In 1994, when the displays referenced in SB744 were erected, the owner followed the procedures he believed were in place to allow advertising on these billboards.

While the displays in question may have gone through a county permitting process, they did not go through the current process outlined in statute at Caltrans, which has jurisdiction over such advertising displays and did so in 1994 as well.

Try Again: SB 744 is the third attempt to grant an exemption for these signs in Imperial County. AB 1570 (Salas), 2009-2010 Legislative Session, was a gut and amend in the Senate prior to the issue receiving a hearing. SB 402 (Vargas), 2011-2012 Legislative Session, was held in Senate Rules Committee.

Support: According to the County of Imperial, “This exemption for the designated outdoor displays may allow commercial advertising use, which could provide additional opportunities for local businesses to advertise to residents, commuters, travelers, and visitors passing through this major artery in our County. Furthermore, the bill could stimulate our local economy, which is much needed in a disadvantaged community such as ours that continues to struggle with high unemployment rates statewide and nationally...For these reasons, The Board of Supervisors is pleased to support SB 744.”

Opposition: According to the California State Outdoor Advertising Association (CSOAA), the Teamsters Public Affairs Council, California State Council of Laborers, and various outdoor advertising companies, “This proposal creates an uneven playing field for those outdoor companies that have maintained lawfully permitted displays. SB 744 would benefit those that have not complied with existing law, while punishing other businesses that have abided by the statute... This bill seeks to exempt three illegally constructed advertising displays located in Imperial County from the Outdoor Advertising Act. The above signed organizations understand the desire to support local businesses and local governments in their pursuit of economic development, but individual exemptions undermine existing law and disadvantage those that that have that have abided by the statute. This bill would ignore these long-established standards and carve out a special exception in violation of federal and state law.”

Policy Consideration: *Given the displays in question have never received a state permit and continue to be in violation of several provisions within the OAA and HBA; the committee may wish to consider whether it is appropriate to grant an exemption for a display that has been non-conforming to state law since 1994.*

Prior/ Related Legislation: AB 3168 (Rubio) of 2107-2018 Legislative Session. Makes changes to the Outdoor Advertising Act as it relates to “Landscaped Freeways”. (Pending in Senate Appropriations Committee)

SB 405 (Mendoza) of 2017- 2018 Legislative Session. Would have created an exemption from specified provisions of the Outdoor Advertising Act (OAA) for new advertising displays within the City of Artesia located adjacent to SR 91. (Never heard in G.O. Committee)

SB 459 (Portantino) of 2017- 2018 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 2011-2012 Legislative Session. 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 2009-2010 Legislative Session. 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) of 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 2005-2006 Legislative Session. 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 2005-2006 Legislative Session. 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 2005-2006 Legislative Session. 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 2005-2006 Legislative Session. 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 (Nunez), 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.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Blanc Image Productions

Brawley Inn

Dancing for a Dream Foundation, Inc.

Imperial County Board of Supervisors

Imperial Hardware Company

International Brotherhood of Electrical Workers (IBEW), Local Union 569

State Building and Construction Trades Council

Tortas & Beer

Valley Auto Glass

Yum Yum Chinese Food

Various Individuals

**Opposition**

Bulletin Displays, LLC  
California State Council of Laborers  
California State Outdoor Advertising Association  
California Teamsters Public Affairs Council  
Clear Channel Outdoor  
General Outdoor Advertising  
Lamar Advertising Company  
Outfront Media  
Stott Outdoor Advertising

**Analysis Prepared by:** Kenton Stanhope / G.O. / (916) 319-2531