

Date of Hearing: July 5, 2017

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

SB 405 (Mendoza) – As Amended May 3, 2017

SENATE VOTE: 22-9

SUBJECT: Outdoor advertising displays: exemptions: City of Artesia

SUMMARY: This bill creates 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. Specifically, **this bill:**

- 1) Creates an exemption from the permitting and certain other restrictions contained in the OAA for two new advertising displays within the City of Artesia located adjacent to SR 91 at the end of Roseton Avenue and near Pioneer Boulevard.
- 2) Requires the City of Artesia to develop an ordinance to provide for all of the following:
 - a) Maximum number of signs and total signage allowed
 - b) Maximum individual signage area
 - c) Minimum sign separation
 - d) Illumination restrictions
 - e) Illuminated sign hours of operation
- 3) Prohibits the advertising display from advertising products, goods, or services related to tobacco, firearms, or sexually explicit material.
- 4) Limits the advertising display to products, goods, services, or businesses that are made, sold, or located in the City of Artesia.
- 5) Requires Caltrans to ensure that an advertising display established pursuant to this bill, that is lighted or a message center (a digital billboard that refreshes not more frequently than ever four seconds), does not constitute a hazard to traffic.
- 6) Requires that if the display is a message center, the owner must make the display available for public service messages.
- 7) Requires Caltrans to determine that the display will not cause a reduction in federal highway funds before the advertising display may be placed. Should Caltrans be unable to make such a determination, the bill requires a determination be made by the Federal Highway Administration (FHA) prior to sign being placed

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.
- 8) 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: Unknown

COMMENTS:

Purpose of the bill: According to the author, "SB 405 will provide an exemption from existing outdoor advertising provisions that will allow the City of Artesia to utilize outdoor advertising displays for revenue generating purposes to promote businesses located within the area."

Signs in Question: This bill provides exemptions from the OAA for two proposed advertising displays which have not been erected in the City of Artesia. Their precise location will be located adjacent to SR 91, one on each side of the highway within one-quarter of a mile of each other,

near the Pioneer Boulevard underpass. This is a heavily travelled 12-lane freeway (6 lanes in each direction) with peak traffic of over 24,000 vehicles per hour. It is important to note, Caltrans has done a preliminary investigation of the proposed location of the displays and stated the only exemption necessary would be for a “Landscape Freeway” (see discussion below).

Shifting Responsibility: This bill exempts the signs in question from the entire OAA while allowing the City of Artesia to develop its own billboard regulations, while the state retains the responsibility for enforcing the specific provisions of the federal OAC program. This gives Artesia some flexibility, though that flexibility is constrained by the federal OAC that restricts billboard spacing, location, size, illumination, and content.

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.
- Location of property where display is to be placed must be zoned industrial or commercial.
- Must have current property owner consent, in writing, to place the display at desired location.
- 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.

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 proposed locations for the displays in question are adjacent to a “Landscaped Freeway”**

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. SB 405 does contain a provision attempting to mitigate the risk of losing federal funds by stipulating the displays may only be placed as long as they do not result in the reduction of federal aid highway funds.

Landscaped Freeways: A Classified Landscaped Freeway is a section of freeway with planting that meets the criteria of Caltrans’ Outdoor Advertising Regulations (Sec. 2500-2513). 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.

The displays in question have not gone through the permit or declassification process outlined above. However, to be fair, Caltrans has preemptively alerted the sign owner and City of Artesia that the stretch of freeway in question does not meet the requirements to declassify as non-landscaped, hence, there is no point for the proposed signs to go through the permit and declassification process. This leaves an exemption in statute as the only remedy for the city and the sign owner.

Support: According to AFSCME District Council 36, “We represent a significant portion of the employees employed by the City of Artesia. The City has been diligent in their efforts to care for the interests of their employees in spite of suffering disproportionately from the economic downturn and the end of redevelopment agencies. This is a city that has been creative and

resilient in coming up with solutions to maintain basic services to the residents. The electronic sign proposed in SB 405 (Mendoza) will provide much needed revenue for services as well as advertising for Artesia business community and public service messages for health and safety.”

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, “SB 405 would allow the City of Artesia to take jurisdiction of outdoor advertising along an Interstate Freeway in violation of State law, Federal Law and the State’s Compact with the Federal Government on Outdoor Advertising Control. Even though the City has not even applied for a permit under existing law, it seeks to carve out a section of its City from State and Federal outdoor advertising control...The regulatory structure that governs our member businesses is complex, and must consider federal, state and local considerations. We are concerned that this proposal creates an uneven playing field for those outdoor companies that have worked with federal, state and local authorities to maintain lawfully permitted displays.”

Policy Considerations: As noted the above, Caltrans has expressed the only thing preventing the proposed location of the displays from getting a state permit is the fact that it has been designated a “Landscaped Freeway” and is not eligible to be declassified. This bill exempts the proposed displays from the entire OAA and allows the City of Artesia to develop its own billboard regulations. *The committee and author may wish to consider narrowing the bill to just exempt the displays from the landscaped freeway provision of the OAA, while maintaining the jurisdiction Caltrans and subjecting the displays to the rest of the OAA.*

Suggested Amendments:

1. Narrow the exemption for the displays in question to only include Article 8 on “Landscaped Freeways” (Sections 5440-5443.5) of the Business and Professions Code.
2. Add language stating the displays in question will be subject to all other provisions of the OAA.

Prior/ Related Legislation: SB 744 (Hueso), 2017- 2018 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), 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), 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), 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), 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

City of Artesia (sponsor)
AFSCME District Council 36

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
State Building and Construction Trades Council
Stott Outdoor Advertising

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