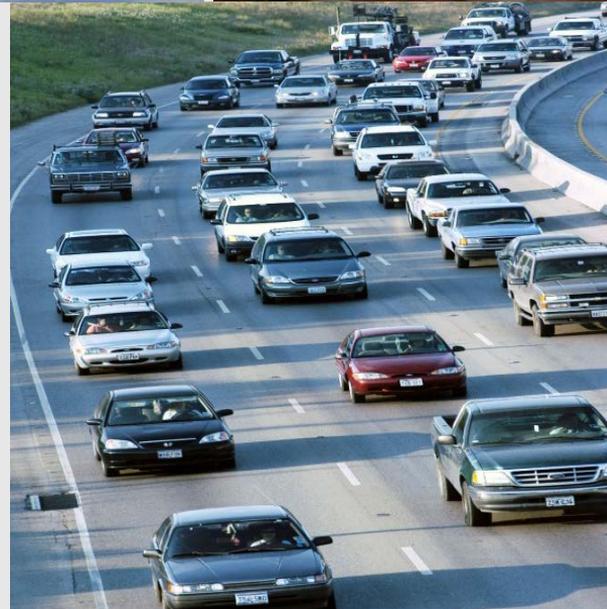




HIGHWAY BEAUTIFICATION ACT (HBA)

Discussion of Issues Related to Compliance with
SB 2006 and SB 312, 85th Legislature



The Federal Highway Beautification Act

- The control of outdoor advertising signs came into national prominence in 1956 with the creation of the Interstate Highway System. Public opinion resulted in the U.S. Congress taking action in 1958 by providing a voluntary program under which states could enter into agreement with the Federal Government to control outdoor advertising and would be eligible for bonus Federal-aid payments. Texas was among the 25 states that chose not to voluntarily control outdoor advertising at that time.
- The 89th United States Congress passed the Highway Beautification Act (HBA) on October 22, 1965. The categories of funding for a state that are put at risk by failure to maintain effective control of OAS are: National Highway System, Congestion Mitigation and Air Quality, the Surface Transportation Program and Interstate Maintenance

The Texas Highway Beautification Act

- On March 28, 1972, a Special Session of the 62nd Texas Legislature met to address the issues of compliance with the Federal HBA.
- Two months later, on May 2, 1972, an agreement was entered into by the Federal Highway Administration and the State of Texas specifically to for the purpose of carrying out national policy relative to control of OAS on regulated highways.
- The “Federal/State Agreement” became effective June 29, 1972 and requires the state to enforce the “effective control” of OAS. The consequence for failure of the department to effectively control OAS is the loss of up to 10 percent of federal transportation funding.

The Highway Beautification Act Objective

- The objective of the program is to carry out national and state law and regulations to regulate the orderly and effective display of outdoor advertising along regulated highways and roads in the state. The signs related under the program are located on private property adjacent to highway right of way. In addition, the program governs the screening of junkyards and automobile graveyards pursuant to the Highway Beautification Act.
- State statutes for the HBA are found in Transportation Code, Chapter 391.

- In 2015, *Reed v. Town of Gilbert* held that regulation of signs cannot be content-based. Based on *Reed*, in 2016 *AusPro v. TxDOT* the Texas Third Court of Appeals held that subchapters B and C of the Texas HBA were unconstitutional because the definition of “sign” was over inclusive, making it impossible for the court to determine which provisions applied to commercial speech and which applied to noncommercial speech. In summary, the issue was the display of political signs outside of the election period.
- The titles for subchapters B and C are:
 - Subchapter B – Regulations of Outdoor Advertising Generally
 - Subchapter C – License and Permit for Outdoor Advertising

- SB 2006 (85th Legislature) ~~insured~~ ensured that the Texas HBA is no longer constitutionally suspect on 1st Amendment grounds regulating commercial sign structures without regard to a sign's informational content. The proposed rule changes to comply with SB 2006 by:
 - Changing the definition of a “commercial sign” in §21.142 (2);
 - Removal of the list of exemptions which are no longer needed (on premise signs, political, free speech) and all references to exempted and nonprofit signs; and
 - Replace outdoor advertising with commercial sign under it's new definition.

- SB 312 (85th Legislature) legalized the height of all signs as they existed on March 1, 2017 ~~up to a height~~ up to a height of 85 feet and allows ~~the~~ those signs to be maintained at that height without the need of an amended permit. This in essence, treats such rebuilding as “routine maintenance” as that term is used in the rules. The proposed rule changes to comply with SB 312 are:
 - Address the height issue which effects all sections on sign height and amended permits.

Height Violations Addressed by SB 312

- Currently there are 159 individual height violations for OAS over the 42.5 feet maximum height (above the highway pavement). Of these 159 violations:
 - 35 (22%) have heights above 42.5 feet up to 50 feet
 - 81 (51%) have heights above 50 feet up to 60 feet
 - 40 (25%) have heights above 60 feet up to 85 feet
 - 3 (4%) have heights over 85 feet (2 are at 92 feet and 1 is at 102 feet)

- General Notes

- Federal HBA law does not impose height restrictions
- Of the 50 US states, 4 states do not allow OAS anywhere (Maine, Hawaii, Alaska, and Vermont). Of the 46 states allowing OAS:
 - 37 (80%) do not have any height restrictions (mimic Federal HBA)
 - 4 (3% 8%) have height restrictions below 42.5 feet (~~includes Texas~~)
 - 5 (3% 10%) have height restrictions between 42 feet and 65 feet

The Considerations

- There is a compounding effect of this change that requires nearly every rule to be amended. The amendments fall into four categories that are required to:
 1. Align the rules with SB 2006 and SB 312
 2. Reflect the new electronic application system for licenses and permits
 3. Delete sections that are now unnecessary as the result of SB 2006 and SB 312
 4. Housekeeping to clarify the rule and to reflect current right-of-way practice.