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August 21, 1979

Assemblyman Eugene Chappie, Chairman
Assembly Local Government Committee
State Capitol, Room 2114
Sacramento, CA 95814

Dear Chairman Chappie and Members of the Committee:

The Planning and Conservation League (PCL) strongly opposes SB 462 (Dills), which would restrict local government's police power and require local governments to pay full compensation for the removal of billboards along California's state highways.

Proponents of the bill argue that compensation should be required for areas not covered by federal guidelines under the federal Highway Beautification Act. However, PCL, the League of California Cities, and the County Supervisors Association of California (who oppose SB 462) believe the bill would result in unwarranted state pre-emption of local government's ability to regulate outdoor advertising under the police power.

Current law mandates cities and counties to pay the cost of amortizing billboards when zone changes phase out their use. This is a well-established and equitable procedure which has protected the public interest, while enabling the billboard industry to equitably recoup its investment. Requiring condemnation and fair-market value compensation for all signs, regardless of the reason for their removal, unnecessarily exceeds the current requirements in both state and federal law to the detriment of local government and its citizens.

The costs of paying fair market value to the billboard owner, as well as paying rental value to the landowner, is so prohibitive that local government's exercise of its police power to remove advertising structures would be eliminated as a practical matter. As the attached editorial from the Sacramento Bee (June 23, 1979) indicates, local governments would be required to compensate billboard owners at prices that were wholly unanticipated when local zoning ordinances allowing the use were passed.

Thus, an unfair and unreasonable burden is placed on local government finances, particularly in this post-Proposition 13 era. Of course, this situation will be significantly aggravated if the Gann Initiative to limit state and local government spending becomes law.

In summary, SB 462 will prevent local government from exercising its zoning authority over the removal of billboards by imposing prohibitive condemnation costs on ordinances for their removal. Continued visual degradation of our scenic roadsides would result, regardless of local sentiment to the contrary. PCL urges your "NO" vote when SB 462 (Dills) is heard before the Assembly Local Government Committee on August 22, 1979.

Sincerely,

David Abelson

DAVID F. ABELSON
EXECUTIVE DIRECTOR

cc: Senator Ralph C. Dills

THE SACRAMENTO BEE (JUNE 23, 1979)

Billboard Boondoggle

Within the last few years, most of California's cities and counties have passed billboard ordinances outlawing new billboards in certain areas and requiring existing billboards to be removed after their owners have been compensated for the loss. The local communities, rather than paying $5,000 to $12,000 for each billboard they remove, have allowed the old billboards to stay up for usually six or seven years after the ban, during which time the billboard owners can recoup their investment. This method of compensation — the only one the cities can afford — has been approved by the California Supreme Court.

Now that the six or seven years are up in most communities, however, outdoor advertisers are pushing a bill in the state Legislature which would require the cities and counties that have been paying by waiting to pay again in cash. The bill would not allow any billboard to be removed until its owners had been paid its current fair market value. Not only would this amount to double payment for the signs, but the new cash payments would be even higher than they would have been when the ordinances were first passed. Precisely because of the bans on new billboards, old advertisers have enjoyed a kind of monopoly, which has raised the value of their signs.

Few local governments nowadays have the money to enforce even the billboard removals they have paid for under the old program. Requiring millions of dollars in additional payments would simply put an end to the billboard removal programs. Yet the bill to require these balloon payments passed the state Senate this month by a vote of 21 to 8. Because it has received so little public attention, it could slip through the Assembly unchallenged as well.

Considering how intractable most environmental problems are, it would be a terrible shame to lose one of the few easy and straightforward beautification programs on the books. The billboard owners have not been cheated by the current method of compensation, nor have the cities and counties overstepped their legal bounds in banning the billboards. There are simply no reasonable grounds for scuttling these billboard removal programs just as they are about to have some effect. The bill should be defeated.

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League of California Cities

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

FROM: S. RUSSELL SELIX, JR., ATTORNEY

SUBJECT: SB 462 (DILLS) - STATE PREEMPTION OF CITY CONTROL OF BILLBOARDS AND OTHER SIGNS -

REQUEST FOR OPPOSITION

WHAT THE BILL DOES:

Senator Dills' SB 462 would prohibit any governmental entity from causing the removal of any billboard or advertising display which was initially lawfully erected unless the government condemns the property through the use of eminent domain and provides compensation to the owner of the billboard or other sign.

LEAGUE POSITION:

As you are all well aware, the League strongly opposes this measure as an unprecedented intrusion upon local government police power. The existing law in virtually all states permits cities and counties to require the amortization of signs or other nonconforming uses under the police power.

However, proponents of the bill have tried to characterize the measure as necessary legislation to make California's law comport with their views of fairness and federal requirements. In order to eliminate this confusion we want the committee to carefully analyze each of the issues raised.

1. HOW A SIGN ORDINANCE WORKS - PAYING BY WAITING - NOT A TAKING.

   Many cities and counties have found that billboards and advertising structures can cause serious distractions to motorists and create significant blighting influences on neighborhoods, thereby decreasing property values. Even though these signs were erected in compliance with the law at the time they were initially established, it is clear that cities and counties have the authority to require the eventual removal of these structures by allowing the property owner a reasonable amortization period in which to recover his investment. It must be emphasized that this does not allow for the immediate removal of any structure. At a minimum, the city must permit the sign owner to recover the full investment made into the structure. Courts across the nation have consistently affirmed the fact that these amortization provisions do not result in the taking of property without just compensation.

   The precise period of amortization is determined by the city or county. In most communities these time periods last five to ten years after the enactment of the ordinance. In addition, as part of a local zoning ordinance, a sign program almost always includes an opportunity for individual sign owners to seek a variance allowing an additional period of time to avoid imposing any hardship upon that property owner. Thus, in all cases, the sign owner and property are ensured of a reasonable flow of revenue after the ordinance is enacted.

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2. THE BILL WILL RESULT IN DOUBLE PAYMENT TO SIGN OWNERS.

When a city or county decided to outlaw a particular type of sign or billboards located in specific zones, it had two ways to compensate the sign owner. The city or county could have purchased the sign directly. Alternatively it could allow the sign to remain for a long enough period of time to ensure that the sign owner recovers the investment made in the sign. During this amortization period the sign owner receives revenue that would not have been received if the city or county had immediately bought the sign.

SB 462 would require the city to purchase the sign after this amortization period has run and the additional revenue received. Thus, the city or county would be forced not only to endure the sign that, several years ago, it found it necessary to outlaw, but also undoubtedly to pay cash for the sign at an inflated value over what it might have cost when the ordinance was first passed. While the city or county expends cash only once, this is truly a form of double payment to the sign owner.

3. THE LEGISLATION IS NOT NEEDED IN ORDER TO INSURE COMPLIANCE WITH 1978 AMENDMENTS TO THE FEDERAL HIGHWAY BEAUTIFICATION ACT.

Existing state law already provides for compensation whenever any compensation is required by federal law. The federal government has not requested amendment to state law to insure compliance with federal law. Moreover, the federal law only applies to billboards and only those located within 660 feet of the right-of-way of major highways. In addition, the federal law has provided for federal funding to provide for the immediate removal of those signs. On the other hand, SB 462 applies to all signs and thus bears no relationship to the federal law.

4. CITIES HAVE NOT DISCRIMINATED AGAINST BILLBOARDS.

Billboard owners complain because not many other property uses, which complied with the law in effect when they were initially established, are required to be removed under the police power. However, the authority under which cities are causing the billboards to be removed is applicable to all property. The law allows for the eventual amortization of any use when a city's zoning laws change to outlaw such existing uses. There is no discrimination between billboards and other properties. Many cities have applied non-conforming provisions to all uses within the city which become non-conforming. The time required for removal may appear shorter for billboards than for other land uses because the investment involved in a billboard is often much less than the investment to establish a major use for residential, commercial or industrial purposes.

5. SIGN ORDINANCES DO NOT GENERALLY REQUIRE THE REMOVAL OF BILLBOARDS WITHIN SHORT PERIODS OF TIME.

Most city sign ordinances require the removal of non-conforming structures over a long period of time, usually five to ten years. However, many ordinances have a graduated scale for various classes of billboards and other signs measured by the size of the sign and the investment involved. Typically, a program that requires some signs to be removed within 90 days or one year applies only to A-frame signs that might be placed on a sidewalk, might have been painted by hand on the back of a piece of plywood, and involve an investment of perhaps $50.

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6. THIS IS AN UNPRECEDENTED INTRUSION INTO LOCAL DECISIONS.

In virtually every state in the nation, police power authority is delegated to local governments to provide for the amortization of nonconforming billboards and other advertising structures. Even if you believe that a sign amortization program is not fair, the decision of whether to implement such programs should be left up to a city or county to determine the precise equities and consequences involved in their community.

SB 462 presents one of the most serious challenges of the year to local home rule, and we urge your local government committee to defeat SB 462 (Dills).

cc: Senator Ralph Dills

SB 462 (DILLS)

PREEMPTION OF CITY CONTROL OF BILLBOARDS AND OTHER SIGNS

Arguments and Responses

(Attachment to Legislative Bulletin of May 25, 1979)

Brief Analysis of the Bill. SB 462 prohibits any government entity from causing the removal of any billboard or advertising display which was lawfully erected unless the government condemns the property through the use of eminent domain and provides compensation to the owner of the billboard or other sign.

Proponents' Argument. The bill simply enforces the Constitutional provision that no property can be taken unless just compensation is paid.

City Response. This issue was recently before the California Supreme Court in the case of Metromedia, Inc. v. City of San Diego. In that case, the court upheld the ability of cities to require the eventual removal of signs under the police power. San Diego ordinances and other ordinances considered by the court established an amortization program whereby signs in existence on the date a program was established prohibiting such signs could remain in existence for a limited period of time and were subject to amortization. The court found that an amortization program does not constitute a taking of property so long as the program is reasonable and provides sufficient time for the billboard owner to recover his investment in the structure. During the amortization period, billboard owners receive the benefit of increased revenues due to the fact that no additional billboards may be constructed and also obtain tax benefits due to the amortization requirements. To require compensation after the billboards have enjoyed those benefits for several years makes those signs extremely profitable and inordinately expensive to remove due to these monopoly benefits.

Proponents' Argument. The legislation is needed in order to insure compliance with the Federal Surface Transportation Act of 1978.

City Response. Existing state law already provides for compensation whenever compensation is required by federal law. Thus, no amendment to state law is necessary to insure compliance with federal law. Moreover, the federal law only applies to signs located within 660 feet of the right-of-way of federally-funded highways. In addition, the federal law provides for federal funding to provide for the immediate removal of those signs. On the other hand, SB 462 applies to all signs and thus bears no relationship to the federal law.

Proponents' Argument. Cities have discriminated against billboards under existing law and this bill is necessary to eliminate such discrimination.

City Response. Billboard owners complain because not many other property uses, which complied with the law in effect when they were initially established, are required to be removed under the police power. However, the authority under which cities are causing the billboards to be removed is applicable to all property. The law allows for the eventual amortization of any use when a city's zoning laws change to outlaw such existing uses. There is no discrimination between billboards and other properties. Many cities have applied non-conforming provisions to all uses within the city which become non-

conforming. The time required for removal appears shorter for billboards than for other land uses because the structures involved in establishing a billboard and the investment required is often much less than the investment to establish a major use for residential, commercial or industrial purposes.

Proponents' Argument. Some cities' sign ordinances require the removal of billboards within short periods of 90 days to one year.

City Response. Most city sign ordinances require the removal of non-conforming structures over a long period of time, usually five to ten years. However, many ordinances have a graduated scale for various classes of billboards and other signs measured by the size of the sign and the investment involved. Typically, a program that requires some signs to be removed within 90 days or one year applies only to A-frame signs that might be placed on a sidewalk, might have been painted by hand on the back of a piece of plywood, and involve an investment of perhaps $50.

AMENDED IN SENATE MAY 18, 1979

AMENDED IN SENATE MAY 9, 1979

AMENDED IN SENATE APRIL 23, 1979

SENATE BILL No. 462

Introduced by Senators Dills, Johnson, Montoya, Cusanovich, Alex Garcia, Zenovich, and Greene

February 27, 1979

An act to amend Sections ~~5212,~~ 5230, 5271, 5408.1, 5412, 5414, 5417, and 5441 of, and to repeal Sections 5211, 5409, 5411, 5413, and 5418 of, the Business and Professions Code, relating to outdoor advertising.

LEGISLATIVE COUNSEL'S DIGEST

SB 462, as amended, Dills. Outdoor advertising.

(1) Existing law defines a freeway for purposes of the Outdoor Advertising Act as a highway in respect to which the owners of abutting lands have no right or easement of access to or have only limited or restricted right of easement of access.

This bill would delete such definition.

~~(2) Existing law further defines freeway for purposes of the Outdoor Advertising Act as a divided arterial highway for through traffic with full control of access and with grade separation at intersections.~~

~~This bill would revise such definition to provide that a freeway, for such purposes, means the main travelled way of a divided arterial interstate or primary highway for such traffic and with such access and grade separations.~~

~~(3)~~

(2) Existing law provides that, if federal law requires the states to pay just compensation for the removal of any advertising display, the owners of such display and the owners

of the land shall be paid just compensation. The law provides for the payment of such compensation upon the filing of a written claim and provides for the filing of an action in cases of dispute as to whether such compensation is to be paid or as to the amount of compensation.

This bill would revise such provisions by requiring that no advertising display which was lawfully erected shall be removed until just compensation is paid whether or not such display is removed pursuant to the Outdoor Advertising Act or any other statute, ordinance, or regulation of any governmental ~~agency~~ *entity*. The bill would require that the determination of the amount of compensation to be paid is to be made in accordance with provisions of law relating to eminent domain. The bill would delete the provisions relating to the filing of a written claim and the filing of an action resolving such claim. The bill would delete obsolete provisions relating to the payment of compensation for the removal of advertising displays prior to 1969.

~~(4)~~

(3) Existing law provides that if compensation is required by federal law, no advertising shall be required to be removed unless and until federal funds for the federal share of compensation ~~therefore~~ *therefor* have been appropriated by the federal government and made immediately available to the Director of Transportation and notification of such appropriation and immediate availability has been received. Such provision would not apply to the removal of any advertising display for which no federal share is payable.

This bill would instead provide that from state funds appropriated by the Legislature for such purposes and from federal funds made available for such purposes, the California Transportation Commission would be authorized to allocate funds to the director for payment of just compensation authorized by specified provisions.

~~(5)~~

(4) The bill would make other conforming and technical changes in the law relating to outdoor advertising.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5211 of the Business and
2 Professions Code is repealed.
3 ~~SEC. 2. Section 5212 of the Business and Professions~~
4 ~~Code is amended to read:~~
5 ~~5212. "Freeway," for the purposes of this chapter~~
6 ~~only, means the main traveled way of a divided arterial~~
7 ~~interstate or primary highway for through traffic with full~~
8 ~~control of access and with grade separations at~~
9 ~~intersections.~~
10 ~~SEC. 3.~~
11 *SEC. 2.* Section 5230 of the Business and Professions
12 Code is amended to read:
13 5230. The governing body of any city, county, or city
14 and county may enact ordinances, including, but not
15 limited to, land use or zoning ordinances, imposing
16 restrictions on advertising displays adjacent to any street,
17 road, or highway equal to or greater than those imposed
18 by this chapter, provided that the provisions of Section
19 5412 are complied with.
20 ~~SEC. 4.~~
21 *SEC. 3.* Section 5271 of the Business and Professions
22 Code is amended to read:
23 5271. Except as otherwise provided in this chapter,
24 the provisions of this chapter apply only to the placing of
25 advertising displays within view of highways located in
26 unincorporated areas of this state, except that the placing
27 of advertising displays within 660 feet from the edge of
28 the right-of-way of, and the copy of which is visible from,
29 interstate highways or primary highways, including the
30 portions of such highways located in incorporated areas,
31 shall be governed by this chapter.
32 ~~SEC. 5.~~
33 *SEC. 4.* Section 5408.1 of the Business and Professions
34 Code is amended to read:
35 5408.1. (a) No advertising display shall be placed or
36 maintained beyond 660 feet from the edge of the
37 right-of-way of an interstate or primary highway if such
38 advertising display is located outside of an urban area or

1 within that portion of an urban area that is not a business
2 area, is visible from the main traveled way of such
3 highway, and is placed with the purpose of its message
4 being read from such main traveled way, unless such
5 advertising display is included within one of the classes of
6 displays permitted by Section 5405 to be placed within
7 660 feet from the edge of such highway. Such display may
8 be placed or maintained within the portion of an urban
9 area that is also a business area if such display conforms
10 to the criteria for size, spacing and lighting set forth in
11 Section 5408.
12 (b) Any advertising display which was lawfully in
13 existence on January 1, 1976, but which does not conform
14 to the provisions of this section, shall not be required to
15 be removed until January 1, 1980, and until just
16 compensation is paid for its removal pursuant to Section
17 5412.
18 (c) For purposes of this section, an urban area means
19 an area so designated in accordance with the provisions
20 of Section 101 of Title 23 of the United States Code.
21 ~~SEC. 6.~~
22 *SEC. 5.* Section 5409 of the Business and Professions
23 Code is repealed.
24 ~~SEC. 7.~~
25 *SEC. 6.* Section 5411 of the Business and Professions
26 Code is repealed.
27 ~~SEC. 8.~~
28 *SEC. 7.* Section 5412 of the Business and Professions
29 Code is amended to read:
30 5412. To ensure compliance with federal law,
31 notwithstanding any other provision of this chapter, no
32 advertising display which was lawfully erected within
33 this state shall be removed until just compensation is paid
34 to the owner or owners of such advertising display and
35 the owner or owners of the land upon which such display
36 is located, whether or not such advertising display is
37 removed pursuant to or because of this chapter or any
38 other statute, ordinance, or regulation of any
39 governmental entity. *This section applies only to displays*
40 *which were lawfully erected in compliance with all state*

1 *and local laws in effect when erected.*
2 ~~SEC. 9.~~
3 *SEC. 8.* Section 5413 of the Business and Professions
4 Code is repealed.
5 ~~SEC. 10.~~
6 *SEC. 9.* Section 5414 of the Business and Professions
7 Code is amended to read:
8 5414. Determination of the amount of just
9 compensation required by Section 5412 to be paid to the
10 owner or owners of such advertising display and the
11 owner or owners of the land upon which such advertising
12 display is located shall be made in accordance with Title
13 7 (commencing with Section 1230.010) of Part 3 of the
14 Code of Civil Procedure.
15 ~~SEC. 11.~~
16 *SEC. 10.* Section 5417 of the Business and Professions
17 Code is amended to read:
18 5417. From state funds appropriated by the
19 Legislature for such purposes and from federal funds
20 made available for such purposes, the California
21 Transportation Commission may allocate funds to the
22 director for payment of just compensation authorized by
23 Sections 5412 and 5441.
24 ~~SEC. 12.~~
25 *SEC. 11.* Section 5418 of the Business and Professions
26 Code is repealed.
27 ~~SEC. 13.~~
28 *SEC. 12.* Section 5441 of the Business and Professions
29 Code is amended to read:
30 5441. Any advertising structure or sign which is now,
31 or hereafter shall be, in violation of the provisions of
32 Section 5440 shall be removed within three years from
33 the date when the project for the landscaping of a section
34 or sections of a freeway shall have been completed or
35 accepted, and the character of such section or sections
36 shall have been changed from a freeway to a landscaped
37 freeway, provided that the provisions of Section 5412 are
38 complied with.

O