



OUTDOOR ADVERTISING

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March 8, 2017

Senator Lee Beyer
Senate Committee on Business and Transportation

RE: SB 778

Chairman Beyer and Members of the Committee,

I am writing to you in support of SB 778 on behalf of Meadow Outdoor Advertising and the Oregon Outdoor Advertising Association. Meadow Outdoor Advertising is a family owned billboard company headquartered in The Dalles, Oregon. We operate throughout the Northwest and have 22 employees, mostly based in Oregon.

Currently Oregon does not pay just compensation for outdoor advertising signs (OAS) acquired for public projects.

The purpose of SB 778 is, firstly, to encourage ODOT to seek accommodation for or the relocation of OAS within a project area when acquiring property for public projects and, secondly, to require the payment of just compensation when accommodation or relocation of an OAS is not possible.

The motivation for this bill is to a) prevent unnecessary inefficiencies on highway projects, b) bring "takings" rules in Oregon in line with national norms, c) adjust Oregon's regulatory structure in light of a recent federal Supreme Court decision (Horne V. Dept. of Ag.) and d) ensure that Oregonians and Oregon businesses are treated fairly. We will discuss each of these briefly below.

For background, the number of OAS affected by ODOT projects in Oregon is relatively small, averaging less than one per year over the past decade. However each "taking" creates great hardship for the sign owner when it does occur. In the last decade Meadow lost four OAS due to "takings" for highway projects and as a result has suffered uncompensated damages of \$200,700.78.

Regarding preventing inefficiencies, the proposed legislation requires the identification of OAS during the planning phase of projects and encourages accommodations for or the coordination of the relocation of OAS within the project area. Billboard companies always prefer to relocate their signs rather than have them "taken." The proposed legislation creates the opportunity for a win-win

situation, with ODOT either accommodating the OAS or facilitating its expeditious relocation and thereby saving public funds that would otherwise be expended to acquire the OAS. At the same time, the billboard company is able to keep and continue operating their OAS. In situations where an OAS cannot be relocated within the project area the proposed legislation requires the payment of just compensation for the OAS, that is, its real market value. Currently this is not a requirement of Oregon's existing statute regulating OAS, the Oregon Motorist Information Act. Consequently ODOT habitually seeks to avoid paying just compensation or covering the cost of relocation, arguing that OAS are personal property and, as such do not necessitate the payment of just compensation. (See attached excerpts from the ODOT Right of Way Manual. A CFR outlining the procedure for acquiring personal property is erroneously cited in support of this approach. CFR 49 Part 24 Subpart D.) Unfortunately this practice perpetually leads to legal disputes resulting in unnecessary expenditures by ODOT and ODOJ, not to mention the payment by ODOT of sign owners' legal fees once settlements are reached. Avoiding this expensive and time consuming legal dance by passing legislation encouraging the accommodation or relocation of OAS or, if relocation is not possible, requiring the payment of just compensation makes economic sense. It is our belief that passing this legislation has the potential to save Oregon money by streamlining public projects and eliminating unnecessary and counter-productive legal battles.

Regarding bringing Oregon's "takings" rules in line with national norms, under the Code of Federal Regulations OAS taken as part of federally funded projects may only be acquired through the payment of just compensation (see attached 23 CFR 750 Subpart D). Oregon's neighbors all have laws on the books requiring the payment of just compensation for the "taking" of OAS (See attached Washington, Idaho and California Statutes). Not only is ODOT apparently knowingly ignoring the Code of Federal Regulations in order to avoid paying just compensation, a practice which we believe may jeopardize the federal dollars attached to the appropriate enforcement of the Highway Beautification Act, but this approach is also at odds with Oregon's own Department of Revenue which treats OAS as real property (See attached Oregon Department of Revenue Rule ODR Rule 150-308.090). By legislating that ODOT must pay just compensation when taking an OAS Oregon will be bringing its rules and practices in line with federal regulations, with Oregon's own approach to OAS and in line with what our neighboring states have acknowledged and legislated as a fair and just practice.

Regarding the recent federal Supreme Court case, *Horne V. Dept of Agriculture* (see attached Decision and Excerpts), the decision stipulates that a public entity acquiring property for a public purpose must pay just compensation, whether the property being taken is personal property or real property. As such, whether ODOT considers OAS personal or real property, this Supreme Court decision clearly requires that just compensation be paid. Passing legislation to require this in Oregon is simply a move to bring Oregon's rules in line with this recent legal precedent

Finally, Oregon is a state where everyone can expect to be treated fairly. We are proud of that fact! Unfortunately, when it comes to the acquisition of OAS for public projects, Oregon's current regulations are not in keeping with Oregon's ethos. This legislation will correct that.

I encourage you to support SB 778. I believe it is good for Oregon. It will save tax-payer money, streamline highway projects, bring Oregon's laws up to date and in line with national norms and correct an unfair practice that is out of keeping with Oregonians way of life.

Sincerely,



J. Chris Zukin

General Manager, Meadow Outdoor Advertising

Enclosures:

- 1) Excerpts from the ODOT Right of Way Manual. Chapter 5 "Acquisitions" and Chapter 6 "Relocations"
- 2) 23 CFR 750 subpart D. "Acquisition of Rights of Sign and Sign Site Owners"
- 3) Washington State Just Compensations Statute
- 4) Idaho Just Compensation Statute
- 5) California Just Compensation Statute
- 6) Oregon Dept. Of Revenue Rule 150.308.090 "Billboards as Real Property"
- 7) Horne V. US Dept. of Ag. Excerpts from Majority Opinion
- 8) Horne V. US Dept. of Ag. Full Decision