

News Coverage of the Scenic Kentucky Testimony at the Kentucky Transportation Cabinets' Public Hearings of May 22, 2015 on changes to the Cabinets Administrative Regulations

The Public Hearings were from 9:00 am to noon and covered Static Advertising Devices, Electronic Advertising Devices, Removal and Pruning of Vegetation, and Definitions. Scenic Kentucky stated its vigorous opposition to the several significant changes to the Static Devices, Electronic Devices and Removal of Vegetation. The statements presented at the hearing can be found elsewhere on the website. What is recorded here are the articles from the Lexington Herald-Leader and the Louisville Courier Journal.

Proposed regulations would let companies erect digital billboards, cut trees along Kentucky highways

By Will Wright

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Environmental groups and billboard industry representatives wrangled in Frankfort on Friday over proposed new regulations that would allow digital LED billboards throughout the state and let billboard owners cut trees on public rights of way that block visibility of their outdoor advertisements.

Environmental groups, including Scenic Kentucky and the Sierra Club, argued in a public hearing that the proposed rules could lead to an explosion of light-polluting billboards, environmental destruction and property devaluation.

Lobbyist for the outdoor advertising industry countered that the regulations would actually decrease the number of billboards in the state, and that vegetation would be removed in an environmentally responsible manner.

The regulations were presented by Kentucky Transportation Cabinet officials Friday as a compromise proposal after about 18 months of meetings between the industry, environmentalists and state officials. However, the environmental groups made clear Friday that they aren't happy with the proposed rules.

The billboard industry has long pushed state lawmakers to create a new law that would allow them to cut vegetation on public rights of way that obstruct the view of billboards located on private property, but the General Assembly has repeatedly rebuffed the idea.

The industry now hopes to bypass lawmakers by asking the Transportation Cabinet to create regulations that rely on the authority of existing laws to accomplish the same outcome.

Transportation Cabinet spokesman Chuck Wolfe said existing state billboard regulations are outdated and difficult to enforce, noting that they don't specifically address LED billboards that have already begun popping up in some locations.

In addition, he said federal officials have been pressuring the cabinet to improve weak enforcement of billboard regulations. Without change, the federal government could take away 10 percent of federal highway funds, Wolfe said.

"If you rely on legislation, there's no guarantee that it's going to be passed anyway, or that it's going to be passed in a way that's agreeable to everyone involved," Wolfe said. "There was give and take on all sides, but the cabinet's position is that we have, at the end of the day, a new set of regulations that are practical and enforceable and treat everyone fairly."

The regulations could take effect as early as October after being reviewed by the legislature's Administrative Regulation Review Subcommittee and the Interim Joint Committee on Transportation.

If approved, the regulations would allow billboard companies to take down four traditional billboards to create one new LED billboard, or the companies could take down three static billboards to convert one static billboard into an LED billboard, which has an electronic screen that cycles through advertisements.

Industry lobbyist Leigh Ann Thacker said this swapping policy would decrease the number of billboards in the state.

"The idea that it's a proliferation of boards is completely unfounded," Thacker said. "It doesn't expand new opportunities for new locations."

The environmental groups argued that LED billboards will create light pollution that affects nearby residents, causes dangerous distractions for drivers and tarnishes the aesthetics of Kentucky's highways.

"Time and again, they have proven to be a nuisance and dangerous," said Paul Bergmann, executive director of Scenic Kentucky, which works to lessen the environmental and visual impact of cell phone towers, billboards and road expansions.

Digital billboards are illegal in parts of Arizona because of light pollution.

A study in *Traffic Injury Prevention*, a journal that covers crash prevention and injury control, found that digital billboards hold the gaze of drivers for longer than traditional "static"

billboards whether during night or day, but there were no data in the study to suggest that it was enough to cause a safety hazard.

Thacker said the lights in LED billboards would emit about the same amount of light as a street lamp.

Environmentalists also took issue with a change that would allow billboard companies to trim trees and other plants that obstruct the view of their billboards.

Under the proposed rules, before applying for a permit from the state highway department the companies must hire a certified arborist to accompany them to the scene of the billboard and must discuss with the U.S. Department of Fish and Wildlife which types of plants will be affected by the trimming.

Ruth Bamberger, a member of the Cumberland chapter of the Sierra Club, said she worried that certain endangered plants, along with the habitat for bees and butterflies, could be damaged by billboard companies.

Bamberger said the bee and monarch butterfly populations have dropped dramatically in recent years. If billboard companies made a point to replant certain types of plants, they could reduce any collateral damage to these struggling populations, she said.

"I would hope the billboard industry and transportation cabinet would take into consideration the type of plants that would bring these populations back," said Bamberger, who advocated using milkweed to attract bees.

Thacker said the industry would work with arborists, the U.S. Department of Fish and Wildlife and environmental groups to make sure the correct trees, flowers and shrubs are protected and replanted.

"If milkweed is a good suggestion, we'll certainly take that into consideration," Thacker said. "We really do want to partner not only with the cabinet, but with Scenic Kentucky and the Sierra Club to make sure we are doing this in a thoughtful manner."

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Billboard proposal draws environmentalists' ire

Environmentalists and billboard industry clash over proposed billboard regulations

[Tom Loftus](#), The Courier-Journal, May 23, 2015



Trees partially cover a billboard along I-64 in Louisville. The Kentucky Transportation Cabinet plans to hold a public hearing on new proposed sign regulations. Some environmental groups are opposing the new proposed regulations, saying it would mean more trees being cut down. By Matt Stone, The C-J May 22, 2015 (Photo: Matt Stone/The C-J)

FRANKFORT, Ky. – Proposed state regulations would give billboard companies the authority to cut trees that block the view of their signs — a power the companies have sought, but failed to get, from the General Assembly for years.

But environmental groups raised a wide range of objections to the proposal Friday at a hearing at the Kentucky Transportation Cabinet.

"No billboard improves safety since their purpose is to divert your attention and read their message," said Paul Bergmann, executive director of Scenic Kentucky. A billboard, he said, "creates many an unsightly condition and certainly does not improve on the natural aesthetic beauty of the Kentucky countryside."

But Leigh Ann Thacker, lobbyist for the Outdoor Advertising Association of Kentucky, said the proposed regulations have been written to avoid environmental damage. "There really is no clear-cutting involved here," he said. "We're really only talking about trimming and cutting around the board."

The two sides also clashed on other aspects of the package of regulations, with environmentalists expressing concerns they could lead to the spread of new billboards and the industry saying the result will actually be fewer billboards.

For many years the billboard industry has unsuccessfully sought legislation in the General Assembly permitting it to remove vegetation from the roadside public rights-of-way that block the view of billboards.

Thacker said that midway in the 2013 legislative session, the industry dropped its push for a law allowing trimming vegetation that blocks the boards and instead began negotiations with the Transportation Cabinet on regulations that would allow tree removal in "a thoughtful manner."

Meanwhile, because some federal funding is contingent on Kentucky's "effective control" of billboards, the cabinet decided it needed to update its regulations to account for changes in the industry such as the emergence of electronic billboards in recent years, said Chuck Wolfe, cabinet spokesman.

The result of more than a year of discussion was the package discussed Friday that pleased the billboard industry but troubled Scenic Kentucky and two other environmental groups — the Kentucky Resources Council and the Cumberland Chapter of the Sierra Club.

Tom FitzGerald, director of the Kentucky Resources Council, stressed in written remarks submitted at the hearing that the General Assembly has repeatedly rejected efforts by the billboard industry to change policy that forbids removal of trees in public rights-of-way to improve billboard visibility.

FitzGerald's statement said allowing a private entity to remove trees on public land is unconstitutional unless there is some public benefit. But he said there is nothing in the proposed regulation "that provides a benefit or 'public service' to the state or its citizens in return for the financial benefit derived by the advertising device owner."

Bergmann made similar arguments, as did Ruth Bamburger, of the Cumberland Chapter of the Sierra Club. "We need to consider the public good, the common good of the people and the need for green spaces and the aesthetics of the areas," Bamburger said.

Thacker, however, testified that the proposed regulations have safeguards. She said they require a billboard company to hire a certified arborist to oversee any vegetation removal and that the plan must be approved by the U.S. Fish and Wildlife Service "to make sure there are no species that are being harmed." And she said the regulations prohibit cutting certain kinds of trees like redbuds and dogwoods.

Scenic Kentucky also questioned other parts of the new regulations that drop some long-established restrictions on the building of new billboards and that potentially "open up many new billboard locations" throughout the state.

But Patrick Harrington, general manager for Out Front Media, said other restrictions in the regulations would block proliferation of new billboards. "Possibly there could be a place here or there in the state, but very, very few places where you will be allowed to put more boards up," Harrington said in an interview after the hearing.

Harrington and Thacker said the new regulations would result in fewer billboards. That's because part of the new regulation allowing electronic billboards requires that four existing regular billboards be removed for each new electronic billboard that is permitted.

The environmental groups expressed aesthetic and safety concerns about electronic billboards and asked that any authorization of electronic billboards be delayed at least until after a federal lawsuit relating to permitting of such boards is resolved. FitzGerald also warned in his remarks that the regulation could result in a significant increase in electronic billboards before many local governments and zoning commissions have had time to adopt local ordinances governing their use.

The cabinet is expected to finish writing the regulations this summer, but then the regulations must be reviewed by legislative committees, which will hold additional hearings. It is likely to be sometime this fall before the committees finally decide on any new billboard regulations.

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