

## **PREPARED TESTIMONY OF SCENIC KENTUCKY PRESENTED AT THE MAY 22<sup>ND</sup> PUBLIC HEARINGS BEFORE THE KENTUCKY TRANSPORTATION CABINET ON THE DRAFT CHANGES TO THE CABINET’S ADMINISTRATIVE REGULATIONS**

The three position papers copied below were presented at the Friday May 22<sup>nd</sup> public hearings held by the KYTC. The Public Hearings were from 9:00 am to noon. They addressed Static Advertising Devices, Electronic Advertising Devices, Removal and Pruning and Definitions. Scenic Kentucky addressed the first three. The Scenic Kentucky responses are presented in full.

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**RESPONSE TO KYTC APRIL, 2015 DRAFT – STATIC ADVERTISING DEVICES** – a proposal to amend the Kentucky Administrative Regulations (KAR’s) to permit many additional static advertising device (billboard) locations and with fewer locational requirements across the commonwealth.

Scenic Kentucky vigorously opposes the rewriting of the existing KAR’s to permit the increase of allowable locations for the static advertising devices (billboards) across the Commonwealth of Kentucky. The purpose of these devices is to attract your attention to read their message. Expanding the number of these billboard sites across the state can only increase the potential highway hazard that billboards are to the motoring public. In addition, billboards are known to devalue adjacent properties and to have a significant impact on the quality of life for the adjacent property owners.

Specifically, Scenic Kentucky has concerns for the modifications to the regulations addressing the “Kerr Areas” amendment and the dropping of the 10 businesses requirement in the area under the signed Bonus Act agreement with FHWA.

**Bonus Act / the “Kerr Area” Change** – A statement is made that this regulation standard of the “Bonus Act”, which restricts the location of static advertising devices (billboards) on Interstates and Parkways, was modified to bring this requirement into conformance with Federal Law. This proposed change would seem to open many new sites for billboard development under this change. Does the Cabinet say that they were in violation of the Bonus Act (where the Kerr amendment originated) since June 21, 1961! Scenic Kentucky cannot understand this change except as an opening allowing many new boards along the Commonwealth’s Interstates and Parkways.

**Bonus Act / the Requirement for 10 businesses to be in the area for a Static Advertising Device (billboard) to be established** – Back in 1961, Kentucky voluntarily increased the national standard from one (1) or two (2) commercial or industrial enterprises to ten (10) commercial or industrial enterprises, before a billboard could be placed adjacent to any Interstate across the Commonwealth. Other requirements included one business being in operation since 1959 and the 10 businesses being

within 1,620 feet, not just 660 feet -- said to really affect the more mountainous areas of the state. This whole 10 business element has been removed. This amounts to a significant easing of a standard that has held up for some 54 years and kept Kentucky free of the billboard proliferation common in Indiana, Ohio, Georgia, Florida and many other states. Dropping the 10 business requirement only benefits the outdoor advertising industry at a cost to the scenic beauty of the Commonwealth's Interstate system. How many new billboard sites does this open up across Kentucky, 100, 200, 500? Scenic Kentucky opposes the removal of the 10 business requirement as a significant change that will open up many new billboard locations along the Interstate and limited access roadways across the Commonwealth.

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**RESPONSE TO KYTC APRIL, 2015 DRAFT – ELECTRONIC ADVERTISING DEVICES** -- a proposal to amend the Kentucky Administrative Regulations (KAR's) to permit the establishment of electronic advertising devices (LED Billboards).

Scenic Kentucky vigorously opposes the rewriting of the existing KAR's to permit the establishment and expansion of electronic advertising devices. New LED boards and conversions are dangerous to the motoring public and not beneficial to the surrounding area. Time and again, they have proven to be a nuisance and dangerous. Sweden has prohibited them. Israel has studied them and found them to increase traffic accidents. Adjacent property owners have lost privacy, property value and the comfort of their residence.

**Background** -- LED type billboards were not allowed under the earlier interpretation of the "Highway Beautification act". An FHWA change allowing LED boards that were once prohibited as intermittent, flashing or moving lights has brought about a national protest and a lawsuit from Scenic America. That case is in court at this time. Duke University and Georgetown University lawyers have worked with SA in opposing this changed interpretation. The lawsuit has drawn in national organizations such as the American Planning Association, the Garden Clubs of America, the International Dark Sky Association and the Sierra Club in opposition to the change. However, the FHWA change has caused numerous states to draft similar amendments to match the new FHWA approach. What is the rush? There is a Federal lawsuit pending that could make the issue mute. Scenic Kentucky does not want to see boards permitted in the interim grandfathered forever across the Commonwealth.

**Other states actions** -- Other states and localities have taken action: Arizona courts have ruled that digital billboards are illegal on their state and federal roadways. Federal and state courts have upheld the constitutional right of municipalities in New Hampshire to ban electronic message centers altogether.

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**Ilogical Proposals** – The draft regulations will allow trade-offs that favor the billboard industry. Illegal boards are recognized for trade. A small billboard, as small as 50 square feet, may be “exchanged” for a board up to 670 square feet. Three or four static boards, depending on the type of roadway, may be traded for a new LED board that carries six messages changes every minute. And the boards are very bright, dimmed at night to levels the Dark Sky Association would consider daylight bright.

**Need to verify** – Scenic Kentucky believes that the addition of LED boards will have a significant economic impact on the work of the cabinet. The Cabinet does not know how many billboards are out there and of what type – legal, legal non-conforming, or illegal – and size. Per Ronald Reagan, “TRUST BUT VERIFY”. Site visits will be required. If these expenses are not covered, the public is subsidizing these commercial enterprises. The public should not be subsidizing this or any “private benefit” permitting process.

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**RESPONSE TO KYTC APRIL, 2015 DRAFT – REMOVAL AND PRUNING OF VEGITATION** -- a permit procedure for removal of vegetation by noncommercial and commercial entities (advertiser) to allow their viewing near state roads and highways.

Scenic Kentucky vigorously opposes granting of permits to prune and remove vegetation along the Commonwealth of Kentucky’s highways for the sole purpose of viewing off right-of-way, off-premise advertising devises (billboards) for the following reasons:

**One** -- Section 2 of the draft (603 KAR 5.155) specifically addressed granting a permit to prune or remove vegetation for purposes of:

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- a) Improving the safety of the traveling public;
  - b) Eliminating hazard to personal property;
  - c) Enhancing the visibility for the traveling public; and
  - d) Elimination of unsightly conditions and improving roadway aesthetics.

These are roadway maintenance concerns – not billboard visibility issues.

It is Scenic Kentucky’s contention that any such pruning and removal of vegetation permit for the billboard industry totally violates each of these purpose statements. No billboard improves safety since their purpose is to divert your attention to read their message. Billboards create, not eliminate, highway hazards. And no billboard is more enhancing of visibility for the traveling public, whether in a man-made or a natural environment; as noted, it purpose is to get your attention and is thus a distraction, not an enhancement. Finally, no billboard eliminates but creates many an unsightly

condition and certainly does not improved on the natural aesthetic beauty of the Kentucky countryside.

**Two** -- Contrary to the staff determination that there is no economic impact caused by these permits, Scenic Kentucky strongly believes there will be a substantial economic impact to review and sign-off on each and every permit. President Ronald Reagan said various times "TRUST BUT VERIFY".

This would certainly be true related to any such pruning and clearing permit for a billboard. It is Scenic Kentucky's contention that site visits will be required to determine the accuracy of the submittals for the location of the trees to be pruned or removed and those to not be touched. It is also a common practice to have areas staked out where little or nothing is to be disturbed. Site visits would be required to verify that the work is in compliance with the permit. If these visits and related processing work do not constitute a staff expense, then the public is subsidizing this effort that benefits these commercial enterprises. The public should not be subsidizing this or any "private benefit" permitting process.