

LEGISLATIVE INITIATIVE

(Completed form to be provided to the Board's Legislative Committee)

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL:

Sign enforcement in highway rights-of-way.

PROPOSAL: *(Provide a brief description of the proposal)*

Delete a provision in § 33.1-375.1 of the Code of Virginia establishing specific authorities, and associated limitations, allowing Fairfax County to assume responsibility for sign enforcement within highway rights-of-way. By doing so, Fairfax County would assume the same authorities all other localities have in this regard and would not be encumbered by limitations that are currently applicable only to Fairfax County.

SOURCE: *(Provide the name of the agency, board, or commission generating the proposal and the date of the proposal)*

Environmental Quality Advisory Council, August 11, 2010.

BACKGROUND:

*(Succinctly summarize the current law and explain why the law needs to be changed; identify the issues involved; note the impact of the proposal or why the proposal is important to Fairfax County; include any other information that might be helpful to the Board in making a decision as to the merits of the proposal; note any previous Board of Supervisors' action or previous General Assembly study or action on this issue. **This section should provide a synthesis of the proposal and should be no more than one paragraph, two if necessary; the Board wants concise information in the Legislative Program. Please use "Additional Background Information" on the next page to more fully explain the proposal.**)*

Through independent research and communications with county and state staffs, EQAC has determined that the authority granted in § 33.1-375.1 of the Code of Virginia actually hinders the county from enforcing prohibitions on the placement of signs in highway rights-of-way. Worse, it is EQAC's view that this authority confuses citizens because it makes it appear that broad categories of such signs are legal. By removing the language specifically related to Fairfax County's authority, Fairfax County would retain the authority that has been granted to all other Virginia localities to enter into an agreement with the Commonwealth Transportation Commissioner to enforce sign restrictions, without the specific limitations that currently apply only to Fairfax County.

EQAC would also retain text establishing that penalties and costs collected through these enforcement efforts would be paid to the affected locality. This text currently applies only to Fairfax County; the retention of this text and the

deletion of the Fairfax County-specific text would have the effect of expanding its applicability state-wide.

RECOMMENDATION:

(Do not fill out-- This will be indicated by the Legislative Director and County Executive)

LEGISLATIVE INITIATIVE INFORMATION SHEET

(Supplemental background information to be used by staff to pursue actual legislation)

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL:

Sign enforcement in highway rights-of-way.

PROPOSED NEW OR REVISED STATUTORY LANGUAGE:

(Indicate actual wording change to Va. Code; use Code citation and please indicate whether you have had the County Attorney's office review the proposed new or revised statutory language; specific Code language can be copied from the web by typing the specific Section number at: <http://leg1.state.va.us/000/src.htm>)

§ 33.1-375.1. Commissioner may enter into certain agreements; penalties.

A. ~~The Commonwealth Transportation Commissioner may enter into agreements with the local governing body of Fairfax County authorizing local law enforcement agencies or other local governmental entities to act as agents of the Commissioner for the purpose of (i) enforcing the provisions of § [33.1-373](#) and (ii) collecting the penalties and costs provided for in that section. However, no local governing body shall enter into any such agreement until it has held a public hearing thereon.~~

B. ~~Notwithstanding the provisions of § [33.1-373](#), the penalties and costs collected under this section shall be paid to the affected locality.~~

C. ~~Notwithstanding the foregoing provisions of this section, the following signs and advertising shall not be subject to the agreements provided for in subsection A:~~

~~1. Signs and advertising supporting an individual's candidacy for elected public office or other ballot issues, provided this exception shall not include signs and advertising in place more than three days after the election to which they apply.~~

~~2. Signs and advertising promoting and/or providing directions to a special event to be held at a specified date stated on the sign or advertising, provided this exception shall not include special event signs in place more than three days after the conclusion of the special event.~~

~~3. Other signs and advertising erected from Saturday through the following Monday.~~

D. ~~Notwithstanding the foregoing provisions of this section, the Commissioner may enter into agreements with the local governing bodies of localities to which~~

~~the foregoing provisions of this section do not apply to authorize those governing bodies to act as agents of the Commissioner and the Department in enforcing the provisions of § [33.1-373](#). The limitations applicable to agreements entered into under subsections A through C shall not apply to agreements entered into under this subsection.~~

B. Notwithstanding the provisions of § [33.1-373](#), the penalties and costs collected under this section shall be paid to the affected locality.

~~C. E.~~ If a county acts as an agent of the Commissioner under this section, the county shall require each of its employees and any volunteers who are authorized to act on behalf of the county to comply with the provisions of this section and any other applicable law. If a lawfully placed sign is confiscated by an employee or volunteer authorized to act for the county in violation of the authority granted under this section, the sign owner shall have the right to reclaim the sign within five business days of the date of such confiscation.

(1998, c. [835](#); 1999, c. [195](#); 2003, c. [311](#); 2010, cc. [497](#), [777](#), [832](#).)

ADDITIONAL BACKGROUND INFORMATION:

(Additional information may be necessary to fully develop the idea. Please assume that government relations staff may need additional technical information to fully explain the proposal and the necessity for the proposal.)

None.

RELATED FEDERAL OR STATE STATUTES OR REGULATIONS, OR ANY PERTINENT COURT DECISIONS OR LEGAL OPINIONS:

(Self-explanatory, the latter is particularly important)

§ 33.1-373 establishes restrictions on advertising within highway rights-of-way. EQAC is proposing a modification to this section as well. However, EQAC's proposals are independent of one another and can stand on their own.

A Supreme Court decision on signs allows states and localities to regulate signs of all kinds on public property. [City Council v. Taxpayers for Vincent, 466 U.S. 789 (1984), <http://supreme.justia.com/us/466/789/case.html>]

ANY APPROPRIATE ANALYSES, FINANCIAL ESTIMATES, STATISTICS:

(Provide any local, state or national information that would be helpful in persuading legislators as to the merits of the proposal; this is key technical information)

Progressive communities nationwide are cracking down on illegal signs because they are: 1. blight, 2. a recognized safety hazard, and 3. the general public is sick and tired of them.

Some recent media links from across the United States are:

Daytona Beach, FL 7/5/2010

"I don't like that we have laws on the books and we just ignore them," he said.

"That's not fair to the guy who has a sign and did things the right way, and the furniture guy on U.S. 1 who has 12 signs ... Enough is enough."

<http://www.news-journalonline.com/news/local/east-volusia/2010/07/15/ormond-sign-issue-remains-hot-topic.html>

Olathe, Kansas 7/16/2010

"Crews in Olathe began a sign sweep on Friday morning to remove the signs from right of ways, medians and intersections.... City officials said the congestion of signs can become a distraction to drivers and slow down the flow of traffic."

<http://www.kctv5.com/news/24285047/detail.html>

Orange, VA 6/10/2010

"We are being trashed by people putting signs up that won't be taken down... If you can't enforce it, what good is it?" he said about the ordinance. "I'm told these [signs] aren't permitted, but we don't do anything about it."

<http://www2.orangenews.com/news/2010/jun/30/sign-here-ar-260732/>

Salt Lake City, UT 7/1/2010

"no election cycle is complete without a litany of letters to the editor about candidates failing to remove their campaign signs. Some folks, it seems, liken them to litter once the ballots have been cast."

<http://www.sltrib.com/sltrib/opinion/49855737-82/signs-campaign-sign-election.html.csp>

Norco, California 7/3/2010

"Recent complaints triggered the study session and the city's plans to revise its sign ordinance. Officials plan to designate certain areas in Norco as kiosks for community signs and leave others posted temporarily."

http://www.pe.com/localnews/stories/PE_News_Local_D_wstudy04.2278e54.htm

!

Phoenix, AZ 7/31/2010

"The Neighborhood Services Department lost one staffer whose job was to remove illegal signs and three others who removed graffiti, Boling said. In previous years, city staff would remove anywhere from 10,000 to 20,000 signs annually. That number has dropped to about 2,140.

<http://www.news-journalonline.com/news/local/east-volusia/2010/07/15/ormond-sign-issue-remains-hot-topic.html>

PROS/CONS OF THE ISSUE:

(Why would a legislator want to support the proposal, what reasons would he/she give for opposing the proposal)

Reasons for support:

- As of April 2010, twelve counties had entered into agreements with the Commonwealth Transportation Commissioner allowing them to enforce restrictions on the posting of signs in highway rights-of-way. None of these localities is burdened with the limitations that would be imposed on Fairfax County should it enter into a similar agreement.
- While adoption of the proposed legislation would not, by itself, establish that Fairfax County would choose to assume enforcement authority, it would remove significant impediments that have worked against such an assumption of authority.

Reasons for opposition:

- Fairfax County would not be obligated to assume enforcement authority and could, for a variety of reasons, choose not to do so. A legislator could therefore oppose the proposal absent some sort of commitment on the part of Fairfax County to pursue enforcement authority.
- The legislation would remove limitations that would currently apply to Fairfax County (and only Fairfax County) in regard to its ability to remove political signs, signs promoting special events to be held on specific dates, and signs erected from Saturday through the following Monday. Any legislator who would support the posting of such signs in rights-of-way may oppose legislation that would make it easier for the county to remove such signs and impose penalties for their placement.

POSSIBLE SUPPORT OR OPPOSITION BY ORGANIZATIONS:

(List any organizations or groups, if any, which might be in favor of or against the proposed legislative change)

While on its surface, it would not appear that this change would strengthen sign enforcement authority, it is EQAC's view that the removal of limitations placed on Fairfax County would remove impediments to the assumption of enforcement authority by the county, which could ultimately result in strengthened enforcement efforts. Therefore, conservation groups would likely support these proposed changes. So would anyone tired of the blight on local and state highways. Some politicians, many in the real estate industry, sign printers, and illegal sign installers would be opposed.

STAFF CONTACT PERSON(S):

(Provide name and phone number of County staff person(s) best able to assist in any further necessary research or best able to provide "expert testimony" at a General Assembly committee meeting, if deemed necessary by County legislative staff)

This proposal has been prepared by EQAC and not by county staff. EQAC's staff liaison is:

Noel Kaplan, Senior Environmental Planner
Fairfax County Department of Planning and Zoning
703-324-1369

If technical guidance is needed, please contact:

Michael Congleton, Senior Deputy Zoning Administrator and Property
Maintenance Code Official, Department of Code Compliance, 703-324-1377.