

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)*

Strengthen § 33.1-373 by strengthening penalties and allowing local communities to share in fine revenue.

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 § 33.1-373 is completely ineffective in helping to enforce penalties in regard to the placement of illegal signs in the highway rights-of-way. Penalties are now set by the Code of Virginia as \$100 civil penalties; EQAC proposes that any violation instead be classified as a Class 1 misdemeanor, as was the case prior to 1994.

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>)

§ 33.1-373. Advertising on rocks, poles, etc., within limits of highway; ~~civil penalty.~~

Any person who in any manner (i) paints, prints, places, puts or affixes any advertisement upon or to any rock, stone, tree, fence, stump, pole, mile-board, milestone, danger-sign, guide-sign, guidepost, highway sign, historical marker, building or other object lawfully within the limits of any highway or (ii) erects, paints, prints, places, puts, or affixes any advertisement within the limits of any highway shall be charged with a Class 1 misdemeanor. Unless the local governing body has entered into an agreement with the Commonwealth Transportation Commissioner pursuant to § 33.1-375.1, half of all criminal penalties collected under this section shall be paid into the Highway Maintenance and Operating Fund, and half shall be paid to the affected locality. ~~assessed a civil penalty of \$100. Each occurrence shall be subject to a separate penalty. All civil penalties collected under this section shall be paid into the Highway Maintenance and Operating Fund.~~ Advertisements placed within the limits of the highway are hereby declared a public and private nuisance and may be forthwith removed, obliterated, or abated by the Commonwealth Transportation Commissioner or his representatives without notice. The Commonwealth Transportation Commissioner may collect the cost of such removal, obliteration, or abatement from the person erecting, painting, printing, placing, putting, affixing or using such advertisement. When no one is observed erecting, painting, printing, placing, putting, or affixing such sign or advertisement, the person, firm or corporation being advertised shall be presumed to have placed the sign or advertisement and shall be punished accordingly. Such presumption, however, shall be rebuttable by competent evidence. In addition, the Commissioner or his representative may seek to enjoin any recurring violator of this section.

The provisions of this section shall not apply to signs or other outdoor advertising regulated under Chapter 7 (§ [33.1-351](#) et seq.) of this title.

(Code 1950, § 33-319; 1970, c. 322; 1993, c. 538; 1994, c. [696](#).)

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)

§ 33.1-375.1 authorizes the Commonwealth Transportation Commissioner to enter into agreements with localities for enforcement of sign restrictions. 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.html

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:

- Stronger penalties associated with sign enforcement may reduce the extent to which people post illegal signs in highway rights-of-way, particularly if there are one or more notable enforcement actions taken.
- Some legislators may support the sharing of revenues from penalties between the state and the localities as opposed to having all the revenue go to the state.

Reasons for opposition:

- While EQAC would not agree, there may be arguments made that establishing a criminal penalty for sign violations would exceed the magnitude of the infraction.
- Some legislators may oppose having any revenue go to localities.

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)

Conservation groups would be overwhelmingly in favor of 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.

.