

## NAHBA SURVEY

**QUESTION: Have any states been threatened with withholding of the fed'l 10% as provided for in the agreements? If so, was it actually withheld?**

Oklahoma – Mitch Surret	No actual threats, but several times there has been hints of the consequences because of proposed legislation.
Texas – Tim Anderson	Has not been threatened
Scenic America – Tom Pelikan	To the best of Scenic America's knowledge, the 10% penalty provision has only been invoked twice. The most recent effort dealt with South Dakota back in the mid 1970s. In that case, the Secretary of Transportation temporarily withheld the 10 percent and gave South Dakota some time to fix its law. The U.S. Court of Appeals for the 8th Circuit upheld that approach. Here's the citation: South Dakota v. Adams, 587 F.2d 915 (8th Circuit, 1978). The other incident involved Vermont's removal of billboards without compensation in the early 1970s. Again, the Department withheld the 10 percent and again, in Vermont v. Brinegar, 379 F. Supp. 606 (U.S. District Court, Vermont, 1974), the court upheld the withholding. To the best of our knowledge, the penalty provision hasn't been invoked since.
Florida – Juanice Hagan	Florida has never received a penalty; however, FHWA has discussed the possibility on several occasions.
Louisiana – Susan Stafford	Louisiana has been threatened verbally, but I don't think we have been formally threatened.
Oregon – Jimmy Odom	The Governor of Oregon, back in the late 1970's actually received a letter from FHWA in Washington stating their intent to withhold the 10% because Oregon was allowing off-premise business identification signs outside commercial or industrial zones. The issue was eventually resolved to FHWA's satisfaction before the 10% was withheld.

	Don't know if we still have a copy of the letter, but I will look for it and if you need a copy, let me know and I will scan it and send it via email.
Iowa – Steven Westvold	Iowa was cited in 1971 because we did not have enabling state legislation passed. Iowa appealed the citation and was given until the end of the next legislative session to comply (spring 1972). No funds were withheld as complying legislation was passed late in the 1972 session.
Iowa – Steven Westvold	Clyde: If I had the time I could unearth our copy of Iowa's "Official" citation and our very formal appeal, which I believe was presented in Washington D.C. by someone representing the then Iowa State Highway Commission. I wasn't on board at the time, but have had both documents in my hands a number of years ago. Again, we did not lose any money.
Maryland – Gary Bowman	Maryland hasn't been threatened with a penalty, since we try to conform with our agreement.
Georgia – Clyde Johnson FHWA	Only one state (South Dakota) has ever been officially cited and the 10% penalty applied. This happened very early in the program (I believe it was around 1973). All funds withheld were later released to the state.
Georgia – Clyde Johnson FHWA	The only state I know that was sanctioned was SD in '73. I know we "threaten" several others later but to my knowledge (and it's slipping) we did not "officially" sanction any other state.
Arizona - Ronald Hill FHWA	As Clyde has indicated, probably only one state has had the "official" sanction applied, but I would guess that several others have had some sort of sanction threatened in some formal correspondence. I know that my Division Administrator, several years ago, threatened a statewide 10 percent penalty. Others may have threatened withholding in counties, cities or state districts.

<p>OAAA – Myron Liable</p>	<p>My recollection of the facts are that SD was penalized twice - one in 1973 over a statewide zoning and unzoned issue. Approximately \$3M was reserved and then restored after new legislation was enacted. In 1977, about \$2.5 was permanently withheld and another \$7M reserved but restored due to noncomplying legislation being found unconstitutional and voided by the state supreme court. Alabama, New York, Oklahoma were also penalized in 1977 for failure to control signs beyond 660 feet; in all cases, funds were reserved, but restored after complying legislation enacted. In Vermont, in 1973, the state was penalized for failure to pay just compensation for nonconforming sign removals; \$7.3M was reserved, but restored after the state agreed (via the courts) to pay for the signs. In the late 1960's and early 1970's there were numerous states sent penalty notifications due to HBA enforcement matters, primarily for not having executed the required federal-state agreement and/or not having compliance legislation. In all cases, the penalty actions were dropped and by 1972 all states had the required federal-state agreement.</p>
<p>OAAA – Myron Liable</p>	<p>Clyde:  You are right that SD has been the only state to lose money over HBA noncompliance.  The four states that were sent formal penalty letters in 1977 (NY, SD, AL, and OK) due to noncompliance with controls beyond 660' eventually got the federally reserved funds back.  I was personally involved in the NY state issue and it was not a pretty picture when the Governor of the state, the two U.S. Senators and others started writing letters and making phone calls to the Administrator over our (FHWA) strong arm tactics! But, the state DOT was instrumental in changing the state law and regulations, and all was</p>

	<p>forgiven. You may recall that both Dave Levin (the right of way chief at that time) and Joe O'Connor were involved in the decision-making. Dick Moeller had just become the HBA branch chief.</p>
<p>Washington DC – Bob Black FHWA</p>	<p>There have been numerous "threats" of sanction. Only one State, South Dakota, actually had the sanction imposed for about a year. Four States received formal letters threatening sanctions in 1977, Alabama, New York, Oklahoma, and South Dakota. They all passed laws that averted the sanction except for SD. The withheld money was later given to South Dakota when it came into compliance. I believe there were some earlier threats against States. Missouri got sanctioned in 1972 but quickly came into compliance and did not lose any money. I think there were other formal actions, too, but only SD lost money for a time.</p>
<p>Utah – Lyle McMillan</p>	<p>I have several letters from the local FHWA office threatening the penalty if we obeyed state law. The penalty hasn't happened in spite of our obedience to the law. We are now in the process of amending the State Federal Agreement to conform to the state law.</p>
<p>West Virginia – Bill Light</p>	<p>The State of West Virginia has never been threatened by violating the Federal Agreement, we have requested in writing what action would the Fed's take if we were to allow a violation, and they responded the 10%.</p>