

Outdoor Advertising Control Pilot Programs:

How do I get one ?

Michael Dawson
Realty Officer
FHWA, North Carolina Division

NAHBA Education Conference
August 10, 2011

Current OAC Pilot Programs



South Carolina:

- upgrading certain nonconforming signs along Interstate 95 and Interstate 26

Current OAC Pilot Programs

Florida: Upgrading certain non-conforming signs in exchange for removal of other non-conforming signs.



The Laws Behind the Program



23 U.S.C. §131(a) - Highway Beautification Act

23 U.S.C. §502 - Transportation Research

The Fine Print....

- ⦿ This experimental authority extends only to statutory, regulatory, and policy provisions under Title 23 of the United States Code, and does not change the requirements under other statutes, such as the Uniform Act or NEPA.
- ⦿ All experimental authority is **extinguished** at the close of the pilot.

Program Considerations - The Big Questions:

- Is your pilot likely to result in national changes?
- Does it meet the statutory purpose?
- Is it in the public interest?
- Is there appropriate Public Involvement?
- Does it comply with NEPA?
- Are the risks proportionate to the results?

Likely to result in a proposal for change at the national level

- A pilot project must propose testing a concept, process, or procedure that, if successful, may lead to a proposal for change to a law, regulation, or national policy or practice of the national OAC Program.

Meets the statutory purpose

The proposal must promote the purposes of the HBA, as articulated by Congress at 23 U.S.C. §131(a).

Those purposes are:

- The protection of the public investment in the controlled highways
- The promotion of the safety and recreational value of public travel
- The preservation of natural beauty.

In the public interest

- A pilot proposal will only be approved by FHWA if the benefits to the public are significant and, in the judgment of the FHWA, outweigh any potential adverse effects from activities under the pilot.
- The public benefit requirement does not preclude consideration of benefits and harm to private interests.
- The defining rationale and effect of a pilot must be to serve the public interest and further the purposes of the HBA.

Complies with NEPA

- A proposed pilot project must comply with the appropriate sections of NEPA.
- FHWA approval of a Pilot Program meets the broad definition of "Federal action" in NEPA.
- A pilot proposal of limited scope or effect may be documented as a Categorical Exclusion (CE), while a larger project might require an Environmental Assessment (EA).

Public Involvement:

- The public involvement process is essential to the development of a successful pilot proposal.
- Includes partnering/consensus building with affected communities and interest groups on the terms of the pilot proposal.
- The public involvement process must satisfy the FHWA requirements in 23 CFR 771.111(h) and applies even if FHWA determines that the proposal is a CE under NEPA.

Risks Proportionate to Results

- Will the pilot improve program results or increase efficiency in government?
- Does it test a concept that might resolve a long-standing problem or issue?
- Is the pilot sample appropriate to limit risk while ensuring accurate data for analysis of the positive and negative impacts?

Proposal Process: pre-Submission

- FHWA encourages States to seek an informal initial evaluation by the FHWA Division to provide program guidance and to ensure compliance with pilot criteria.

The FHWA Division will:

- coordinate with the State DOT on NEPA
- review and evaluate the formal proposal.

A written proposal must include:

- ① Identification of Federal laws or regulations that the pilot is intended to test.
- ① Identification of each provision of the Federal laws, regs, and applicable Federal-State Agreement(s) that would require a waiver.

A written proposal must include:

- **A description of the project scope and time frame, the expected effects, potential benefits, harm, and burdens to the public and/or to private persons or entities.**

A written proposal must include:

- **A detailed description of safeguards and proposed monitoring and measurement of potential impacts Including an analysis of potential increase or decrease in administrative burden to the State.**

A written proposal must include:

- **Evidence of NEPA compliance including public involvement documentation required under 23 CFR 771.111(h) addressing the issues, concerns and interests expressed by both those in support of and those opposing the pilot.**

Proposal Processing

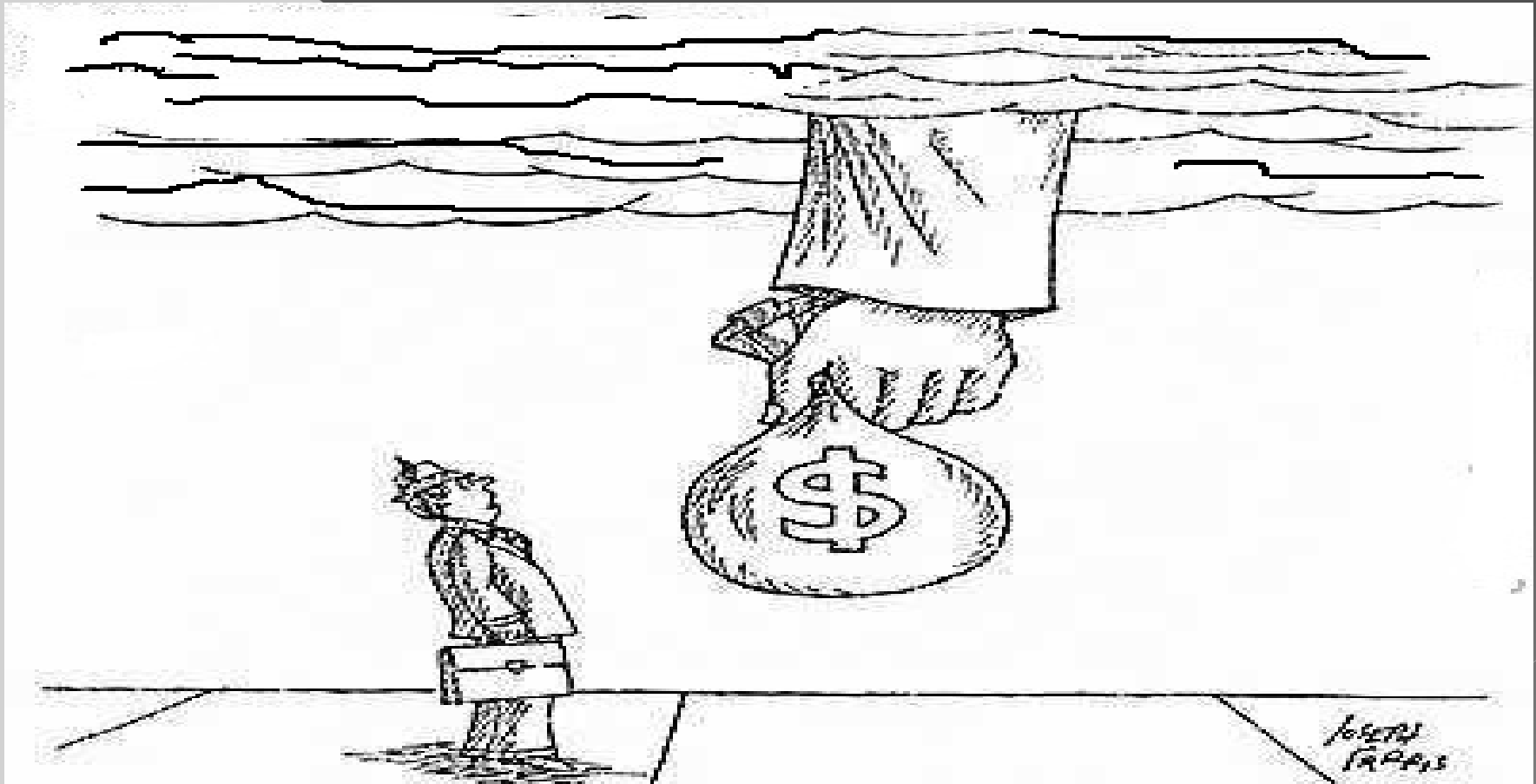
- The FHWA Division approved formal pilot submission will be sent to FHWA's Office of Real Estate Services.
- The Office of Real Estate Services and the Office of Chief Counsel will review the package. If they concur it will be forwarded to the Associate Administrator for Planning, Environment and Realty for concurrence.
- The final approval decision rests with the Associate Administrator.

Proposal Outcomes

FHWA may:

- ⦿ accept
- ⦿ accept with conditions or revisions
- ⦿ reject any pilot proposal.

Once Approved.....



So, what's the catch?

There are some strings attached

- Approval requires that the State diligently monitor compliance with the conditions of the approved pilot

There are some (more) strings attached

Under the authority of the pilot any sign that is:

- ⦿ erected
- ⦿ relocated
- ⦿ modified
- ⦿ altered in legal status
- ⦿ otherwise affected

will be in compliance with the requirements of the HBA as long as compliance with the conditions of the approved pilot continues

But wait, there's more!

- ⦿ **Any violation of such conditions, during or after the pilot, will render such sign illegal under the HBA and the State immediately must act to have such sign removed.**

The End Result?

An incredibly:

effective

thoughtful

game changing

nationally significant

We might have to name it for you!

Pilot Program!