



## Private-Public Partnerships for Enforcing Outdoor Advertising Regulations: Options for Texas

The Highway Beautification Act (HBA), passed under President Johnson in 1965, is the primary legislative mandate governing the regulation of outdoor advertising in the United States. The Act requires the states to exercise “effective control” of outdoor advertising along the Interstate and primary highway system. New billboards are permitted only in areas determined to be commercial or industrial, and must conform to standards set by agreement between state and federal government. These standards govern spacing of billboards as well as size and lighting. Although the same requirements apply to existing billboards, nonconforming signs that were legal when erected are effectively allowed to remain.

Texas law also regulates outdoor advertising on state-maintained roads not controlled by the HBA. These “rural roads” account, however, for only 5 percent of the approximately 16,000 signs for which TxDOT issues permits annually. For this reason, TxDOT requested the researchers to focus primarily on the enforcement of the HBA.

Ensuring effective enforcement of laws restricting billboard construction is in the long-term interest of the billboard industry as well as the public. However, effective enforcement remains a challenge in many areas of the country. A few states have outsourced some of their HBA enforcement activities to the private sector, a possibility that the

Texas Department of Transportation (TxDOT) requested the Center for Transportation Research at The University of Texas at Austin to explore.

### What We Did...

In exploring the options for privatization, the Center for Transportation Research considered the division of responsibilities under the potential partnership arrangements with the private sector, and the associated cost to TxDOT for the contract. To make their assessment, the researchers obtained an extensive amount of information on the following:

- The legal framework for outdoor advertising regulation in Texas and the power-sharing among federal, state and local authorities.
- Current enforcement practices in Texas, including permit reviews, sign inventorying, new site inspections, documentation of violations, and other tasks. In addition to mailing a survey to all TxDOT districts, the researchers visited five districts selected for case study: Houston, Dallas, Tyler, Laredo, and San Antonio.
- The experience of HBA privatization in the states that had already gone that route (Florida, Michigan, Oklahoma) or that were seriously contemplating doing so (Georgia).

For additional perspectives, the researchers spoke with representatives of the outdoor advertising industry and TxDOT staff involved with current outsourcing of functions such as road maintenance.

Based on the information obtained, the researchers scored the option of outsourcing HBA enforcement along various criteria. From the scores, the researchers concluded that partial privatization of HBA enforcement in Texas would be feasible and, overall, advantageous. In addition, the researchers made recommendations regarding some of the specifics of an outsourced arrangement, such as the staging of implementation and contract duration.

### What We Found...

The outdoor advertising regulations are highly detailed and in some ways complex. On-premise advertisements for products or services sold at an establishment are exempt from the regulations, provided that these products or services are not “incidental” to the establishment’s principal activity. The interpretation of what is “incidental” is among the “gray areas” in which enforcers of outdoor advertising regulations must exercise judgment. Another task in which caution is needed is the determination of whether the area around the site of a proposed sign qualifies as industrial or commercial. Sham businesses intended to qualify an



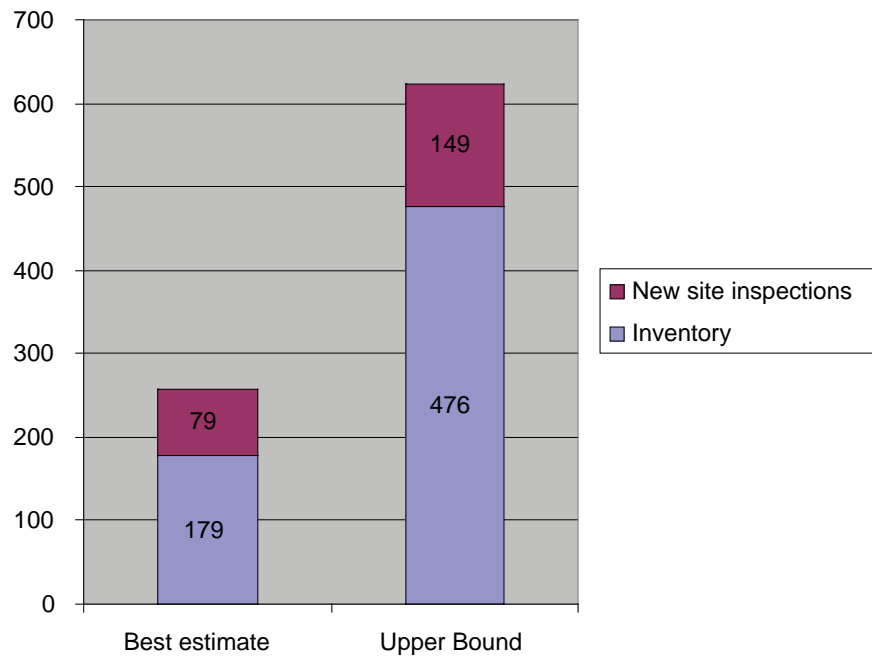


Figure 1: Estimated annual compensation from TxDOT to future contractor for HBA-enforcement activities\*

\* The estimates are based on the most current price data available at the time of the estimation (mid-2004)

area as commercial or industrial are among the problems encountered in making these determinations.

The states that have partially privatized each present a different model of privatization. Oklahoma has outsourced the taking of sign inventory, whereas Florida and Michigan have outsourced most other field activities, such as new site inspections, as well. In Florida, privatization was accompanied by transfer of responsibility for administrative decisions (e.g., permit approvals and cancellations) from the FDOT regional offices to the state headquarters in Tallahassee. FDOT has credited this centralization for increased consistency in the application of regulations, which, in turn, contributes to the avoidance of disputes. Inconsistent application of outdoor advertising creates not only feelings of grievance, but also precedents that companies can exploit to undermine the regulations.

Contract durations have varied from one year in Oklahoma to ten years in Florida. Longer contracts have the potential to benefit the contracting agency by: (1) reducing administrative costs (with less frequent re-letting) and (2)

providing the contractor with greater assurance of the ability to recover sunk costs, which is likely to reduce the bid price per year of service. The researchers found, however, that the ten-year duration of the Florida contract is excessive for recovery of sunk costs. The importance of the sunk costs is prone to exaggeration by counting as sunk certain up front costs that are more truly variable; many of the assets that may be acquired up front are highly transferable between outdoor advertising control and other uses, in which case their costs are largely variable. Moreover, shorter-term contracts have offsetting advantages: They provide the contracting agencies with greater ability to respond should initial assumptions of costs be proven incorrect or should the needs of the department change.

Enforcement practices in Texas could be improved significantly through greater specialization of labor. The enforcement system is highly decentralized, with authority and responsibility largely devolved to the 25 District offices. Particularly in the less populous Districts, the personnel involved may devote only a portion of their time to

HBA enforcement, and often a minor portion. Personnel who are more or less full-time on HBA enforcement, as in some major urban Districts, have the opportunity to become proficient at this task through experience. Specialization is further impeded by the relatively low priority that some District offices attach to HBA enforcement. Making HBA enforcement less of a career alternative increases turnover among those undertaking this work. Staff who leave take with them their accumulated knowledge of relevant regulations and their 'mental inventory' of the billboard network within their area.

Another area in which Texas could improve its enforcement is in the deployment of technology. GPS technology allows the location of signs to be measured with much greater ease and precision, and this has contributed to the avoidance and resolution of disputes with sign owners, where differences of only a few feet can be critical. Only a few TxDOT Districts currently use this technology, in contrast with the private contractors in Florida and Oklahoma. TxDOT's enforcement efforts would also benefit from the incorporation



of more advanced technology into its sign database system. Adoption of a web-based system, such as used by Oklahoma, would reduce duplication of data entry and improve communication among the parties involved.

The cost of outsourcing HBA enforcement activities in Texas was estimated on the assumption that TxDOT would employ a single state-wide contractor (see below) and on assumptions about the structure of the contractor's operations. The structure that the researchers envision would entail four full-time staff operating out of separate offices, one of which would be the main office in Austin. The other three regional offices would likely partition responsibilities geographically as follows: West Texas and the Panhandle, the South and Southeast, and the North and Northeast. Ideally the offices would be located in cities where TxDOT has a district office, to allow one employee from that TxDOT district to serve as a liaison and mentor. The contractor's office in Austin would be the base of operations for the in-house manager of the contract, who would also handle responsibilities for the Central Texas region and assist colleagues in the regional offices as needed.

The estimated costs to TxDOT, shown in Figure 1, included only the compensation to the contractor; the internal costs associated with negotiating and administering the contract cannot be predicted with much confidence *ex ante*. The estimates for inventory are based on the assumption of a complete inventory being conducted biennially, which TxDOT has advised would be sufficient for exercising "effective control." New site inspections may or may not be included in the eventual outsourced arrangement, so the estimates for this task represent optional costs. The estimates in Figure 1 do not include the capital costs for certain field equipment, such as GPS units, digital cameras, and laptop computers, since it is possible that TxDOT would supply these to the contractor. To purchase these items new would cost an estimated \$33,400; however, if TxDOT did not supply them to the contractor, they would be factored into the contract price. Excluding the cost for such equipment, the researchers' best

estimate of the cost of a contract for both inventory and new site inspections was about \$257,000 per year. A corresponding upper bound estimate was \$624,000 per year. Adjusting for the recent (2005) sharp increase in gasoline prices would bump these estimates up by only a few percentage points, since the dominant cost component would still be labor.

### *The Researchers Recommend ...*

TxDOT should outsource the development of a technologically up-to-date system for entering, storing, and accessing data on regulated outdoor advertisements. Once that system is in place, TxDOT will be positioned to outsource some of its HBA enforcement activities, which holds promise to improve level of service primarily through greater specialization of labor.

Contracts should be awarded and renewed through a competitive and open bidding process. The contract for developing the database system will be awarded separately from the contract for the enforcement activities, quite possibly to different companies. However, to reduce its administrative burden, TxDOT may wish to deal with a single contractor for enforcement activities (as in the Florida and Oklahoma systems) rather than with multiple contractors for different regions of the state (as in the Michigan system). For this contract, the researchers envision a term of about four years, long enough to allow the contractor to recoup startup capital expenses and to "learn the ropes," yet short enough to provide TxDOT with sufficient opportunities to alter the contractual arrangement.

The researchers also recommend that outsourcing of enforcement functions be phased in. The first two years of the initial enforcement contract would be devoted primarily to the inventory taking, which may involve substantial remedying of deficiencies in the most recent inventory obtained from TxDOT. The task will entail locating most signs with the use of distance measuring instruments plus a substantial amount of documentation, including taking digital images with relevant audio. As a result

of the clean-up during the initial inventory cycle, subsequent cycles will be easier to perform and will leave time for the contractor to take on non-inventory tasks such as new site inspections. During the initial cycle, TxDOT could assign some of these tasks to the contractor on a trial basis.

To find a contractor with the right skills, the researchers recommend that TxDOT avoid assigning too much weight to actual experience in outdoor advertising control as opposed to demonstrated capabilities. An important qualification should be demonstrated ability to adapt to change and to work with a wide variety of factors. The contractor will be an interlocutor between the public and private sectors and must feel comfortable in dealing with public sector demands and private sector pressures.

To obtain the best possible service at the lowest overall cost, TxDOT should write an RFP (Request for Proposals) that will encourage bidding by many competing companies. In particular, the RFP should avoid prescriptions of method that limit the contractor's flexibility unnecessarily; as much as possible, the goals set in the proposal should be performance-based. This approach could facilitate competition from smaller companies seeking strategies for avoiding large up front expenditures.



## *For More Details...*

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The research is documented in the following report:

0-4609-1 *Options for Outsourcing Outdoor Advertising Control in Texas*

To obtain copies of a report: CTR Library, Center for Transportation Research,  
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## *Your Involvement Is Welcome!*

## *Disclaimer*

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