

## The Federal Highway Beautification Act and Puerto Rico

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Volume: 36 | No: 3

Page : 25

Issued : 01/24/2008

Puerto Rico is infected by a billboard epidemic. Huge outdoor signs with an area of more than 150 square feet placed in areas other than where the business or goods advertised are located (offpremises) are springing up all over Puerto Rico. Billboards up and down our main thoroughfares and highways mutilate our scenery, one of our most important natural resources. It is no wonder that we have been ranked among the less desirable island environments in the world. *Borinquen Preciosa* has become the ugly *Borinquen* of vulgar commercial advertising.

As one contemplates the ongoing degradation of our environment, one wonders about the rule of law. In this case, one wonders about the application of the Federal Highway Beautification Act to Puerto Rico given the fact that almost all our main highways were built with federal financial aid.

The Federal Highway Beautification Act provides that “the Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to the interstate system and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel and to preserve natural beauty.” (23 USC 131(a.))

Puerto Rico is within the primary system covered by the act due to the large number of our thoroughfares and highways such as the Minillas stretch, Baldorioty Avenue and the Luis A. Ferré Expressway, built with federal financial aid. All of these are cluttered with billboards. And again one wonders how this can be, given the provisions of the Federal Highway Beautification Act. The Code of Federal Regulations (23 CFR §750.704) establishes these provisions as follows:

“...Signs adjacent to the interstate and federal-aid primary systems, which are visible from the main-traveled way and within 660 feet of the nearest edge of the right of way, and those additional signs beyond 660 feet outside of urban areas, which are visible from the main-traveled way and erected with the purpose of their message being read from such main-traveled way, shall be limited to the following:

1. Directional and official signs and notice, which shall conform to national standards promulgated by the secretary in Subpart B, Part 750, Chapter I, 23 CFR, National Standards for Directional & Official Signs;
2. Signs advertising the sale or lease of property upon which they are located;
3. Signs advertising activities conducted on the property on which they are located;

4. Signs within 660 feet of the nearest edge of the right of way within areas adjacent to the interstate and federal-aid primary systems, which are zoned industrial or commercial under the authority of state law;
5. Signs within 660 feet of the nearest edge of the right of way within areas adjacent to the interstate and federal-aid primary systems, which are unzoned commercial or industrial areas, which areas are determined by agreement between the state and the secretary; and
6. Signs lawfully in existence on Oct. 22, 1965, which are determined to be landmark signs.

Few of the billboards visible from the main-traveled ways in Puerto Rico comply with these requirements. They are not signs advertising the sale or lease of property upon which they are located. Nor are they signs advertising activities conducted on the property on which they are located. None of them were lawfully in existence Oct. 22, 1965.

Compliance would then have to be found by determining the zoning of the areas wherein the billboards are located. They can only be located in commercial or industrial areas zoned as such or in unzoned commercial or industrial areas through an agreement between the Commonwealth and the U.S. secretary of Transportation. To my knowledge, the Commonwealth has not entered into such an agreement defining unzoned commercial or industrial areas in which billboards can be erected in Puerto Rico. There may be one, but all my efforts to obtain this agreement have been unfruitful. For the purpose of this column, I assume it does not exist.

Therefore, only those billboards visible from the main-traveled ways, which are erected within areas zoned as commercial or industrial by the Planning Board or by the municipalities, comply with the location requirement of the Federal Highway Beautification Act. It is obvious that many of the billboards that have been erected are not in commercial or industrial areas.

But location is not enough to make billboards legal because they must also comply with size, lighting and spacing requirements to be determined by agreement between the Commonwealth and the federal secretary of Transportation. Local law provides requirements as to size, lighting and spacing, but I have been unable to find that the provisions of local law were determined by agreement between the Commonwealth and the U.S. secretary of Transportation. Further, I have serious doubts as to whether the billboards that we see along our highways comply even with the requirements of local law.

Signs not permitted under the above criteria, that is, under 23 CFR §750.704, must be removed by the Commonwealth (23 USC 131). This means enforcement of the regulations under the Federal Highway Beautification Act as to the erection of billboards along our highways built with federal aid is a responsibility of the Commonwealth. Under local law, this responsibility falls to the local Regulations & Permits Administration, which must control the erection and maintenance of billboards along the thoroughfares and highways that form part of the primary highway system.

Noncompliance has its consequences as to the federal financial aid that Puerto Rico receives for highway construction. These consequences are spelled out in 23 USC 131(b):

“Federal-aid highway funds apportioned...to any state [Commonwealth], which the secretary determines has not made provision for effective control of the erection and maintenance along...the primary system of outdoor advertising signs, displays and devices, which are within 660 feet of the nearest edge of the right of way and visible from the main-traveled way of the system...shall be reduced by amounts equal to 10 per centum of the amounts, which would otherwise be apportioned to such state [Commonwealth] under section 104 of this title, until such time as such state [Commonwealth] shall provide for such effective control.”

Are billboards along the primary highway system in Puerto Rico under the effective control of the Commonwealth government? This is the question that begs for an answer as we ride along the highways of our island Commonwealth.

