An act to amend Sections 5216 and 5354 of, to add Section 5408.3 to, and to repeal and add Section 5485 of, the Business and Professions Code, relating to outdoor advertising.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

LEGISLATIVE COUNSEL’S DIGEST

SB 1480, Speier. Outdoor advertising.

The Outdoor Advertising Act regulates the placement of advertising displays adjacent to and within specified distances of highways that are part of the national system of interstate and defense highways and federal-aid highways. The act defines relevant terms.

This bill would revise certain definitions of the act.

Existing law provides that the annual permit fee for each advertising sign or structure is $20.

This bill would instead require the Director of Transportation of the State of California to set the annual permit fee and would prohibit the fee from exceeding the department’s reasonable costs, including indirect costs, for providing services and enforcing regulations for which the fee is charged. The bill would prohibit the fee from exceeding $100, as adjusted.

Existing law provides that the permit fee for each advertising sign or structure that an applicant has placed or maintained without a valid, unrevoked, and unexpired permit is $95.

This bill would instead authorize penalties in the amount of $100 for an advertising display placed or maintained without a valid permit in a location that conforms to applicable provisions, and in the amount of $10,000 plus $100 per day a display is placed or maintained after receiving notice if the advertising display is placed or maintained in a location that does not conform to applicable provisions and is not removed within 30 days of written notice from the department or the city or county with land use jurisdiction over the property on which the display is located.

Existing law requires that an applicant for a permit offer evidence that the owner or other person in control or possession of the property upon which the location is situated has consented to the placing of the advertising display.
This bill would require evidence of consent to be in writing and would also require an applicant to offer written evidence that the city or county with land use jurisdiction over the property has consented to the placing of the advertising display.

This bill would require the department, at the request of the city or county with land use jurisdiction over the property, to reserve a location for an applicant for a limited time in advance of receiving evidence of written consent. The bill would also authorize a city or county with land use jurisdiction over the property to adopt an ordinance that establishes standards for the spacing and sizes of advertising displays that are more restrictive than those imposed by the state.

A violation of the Outdoor Advertising Act is a misdemeanor. Because this bill would change the scope of a crime by changing the definition of a landscaped freeway, it would change the definition of a crime and would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 5216 of the Business and Professions Code is amended to read:

5216. (a) “Landscaped freeway” means a section or sections of a freeway that is now, or hereafter may be, improved by the planting at least on one side or on the median of the freeway right-of-way of lawns, trees, shrubs, flowers, or other ornamental vegetation requiring reasonable maintenance.

(b) Planting for the purpose of soil erosion control, traffic safety requirements, including light screening, reduction of fire hazards, or traffic noise abatement, shall not change the character of a freeway to a landscaped freeway.

(c) Notwithstanding subdivision (a), if an agreement to relocate advertising displays from within one area of a city or county to an area adjacent to a freeway right-of-way has been entered into between a city or county and the owner of an advertising display, then a “landscaped freeway” shall not include the median of a freeway right-of-way.

SEC. 2. Section 5354 of the Business and Professions Code is amended to read:
5354. (a) The applicant for any permit shall offer written evidence that both the owner or other person in control or possession of the property upon which the location is situated and the city or the county with land use jurisdiction over the property upon which the location is situated have consented to the placing of the advertising display.

(b) At the written request of the city or county with land use jurisdiction over the property upon which a location is situated, the department shall reserve the location and shall not issue a permit for that location to any applicant, other than the one specified in the request, in advance of receiving written evidence as provided in subdivision (a) and for a period of time not to exceed 90 days from the date the department received the request.

(c) In addition to the 90-day period set forth in subdivision (b), an additional period of 30 days may be granted at the discretion of the department upon any proof, satisfactory to the department and provided by the city or county making the original request for a 90-day period, of the existence of extenuating circumstances meriting an additional 30 days. There shall be a conclusive presumption in favor of the department that the granting or denial of the request for an additional 30 days was made in compliance with this subdivision.

SEC. 3. Section 5408.3 is added to the Business and Professions Code, to read:

5408.3. Notwithstanding Section 5408, a city or a county with land use jurisdiction over the property may adopt an ordinance that establishes standards for the spacing and sizes of advertising displays that are more restrictive than those imposed by the state.

SEC. 4. Section 5485 of the Business and Professions Code is repealed.

SEC. 5. Section 5485 is added to the Business and Professions Code, to read:

5485. (a) (1) The annual permit fee for each advertising display shall be set by the director.

(2) The fee shall not exceed the amount reasonably necessary to recover the cost of providing the service or enforcing the regulations for which the fee is charged, but in no event shall the fee exceed one hundred dollars ($100). This maximum fee shall be increased in the 2007–08 fiscal year and in the 2012–13 fiscal year by an amount equal to the increase in the California Consumer Price Index.

(3) The fee may reflect the department’s average cost, including the indirect costs, of providing the service or enforcing the regulations.

(b) If a display is placed or maintained without a valid, unrevoked, and unexpired permit, the following penalties shall be assessed:
(1) If the advertising display is placed or maintained in a location that conforms to the provisions of this chapter, a penalty of one hundred dollars ($100) shall be assessed.

(2) If the advertising display is placed or maintained in a location that does not conform to the provisions of this chapter or local ordinances, and is not removed within thirty days of written notice from the department or the city or the county with land use jurisdiction over the property upon which the advertising display is located, a penalty of ten thousand dollars ($10,000) plus one hundred dollars ($100) for each day the advertising display is placed or maintained after the department sends written notice shall be assessed.

(c) In addition to the penalties set forth in subdivision (b), the gross revenues from the unauthorized advertising display that are received by, or owed to, the applicant and a person working in concert with the applicant shall be disgorged.

(d) The department or a city or a county within the location upon which the advertising is located may enforce the provisions of this section.

(e) Notwithstanding any other provision of law, if an action results in the successful enforcement of this section, the department may request the court to award the department its enforcement costs, including, but not limited to, its reasonable attorneys’ fees for pursuing the action.

(f) It is the intent of the Legislature in enacting this section to strengthen the ability of local governments to enforce zoning ordinances governing advertising displays.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.