

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: October 17, 2016

TO: Honorable Members of the Rules, Elections, Intergovernmental Relations, and
Neighborhoods Committee

FROM: Sharon M. Tso *Sharon M. Tso* Council File No: 15-0002-S199
Chief Legislative Analyst Assignment No: 16-08-0669

SUBJECT: Resolution (Blumenfield - Ryu) in opposition to SB 1397 (Huff)

CLA RECOMMENDATION: Adopt Resolution (Blumenfield - Ryu) to include in the City's 2015 - 2016 State Legislative Program OPPOSITION to SB 1397 (Huff), which would allow the California Department of Transportation (Caltrans) to enter into public-private partnerships to use Changeable Message Signs (CMS) on highways for commercial advertising purposes.

SUMMARY

On August 5, 2016, a Resolution (Blumenfield - Ryu) was introduced in opposition to SB 1397, which would enable Caltrans to enter into public-private partnerships with private companies to use Changeable Message Signs (CMS) on highways for commercial advertising. The Resolution states that currently, CMS are utilized by Caltrans and the Highway Patrol (CHP) to inform motorists about important information, such as Amber Alerts and other emergency information, as well as traffic safety issues. The Resolution states that SB 1397 would change this, and with federal approval, allow Caltrans to enter into agreements with advertisers to use the signs for advertisements when not in use for emergencies.

The Resolution states that the use of CMS for non-emergency or non-traffic messages will detract from the main purpose of these signs, and would risk encouraging motorists to ignore them and thereby miss important information. The Resolution, therefore, seeks an official position of the City of Los Angeles to oppose SB 1397.

BACKGROUND

SB 1397 would permit Caltrans, following the completion of a demonstration phase and the receipt of federal approval, to enter into public-private partnerships allowing commercial advertising on CMS when they are not being used for traffic and safety-related messaging. Revenues raised through these agreements would be utilized for highway repairs. However, under current state and federal law, the use of CMS for advertising is expressly prohibited, and the use of the signs is only allowed for traffic and safety-related information, such as Amber Alerts and information on collisions.

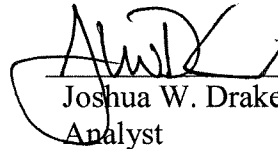
The use of CMS for non-safety or non-traffic related advertising raises significant concerns. The use of CMS for advertising could result in motorists choosing to ignore the signs altogether, and could result in motorists missing important information and reducing the effectiveness of safety messages. Further, SB 1397 contradicts the current Caltrans policy for the use of these signs, which is designed to minimize distracted driving by keeping CMS blank in times when there is no

message that needs to be conveyed to drivers. In addition, SB 1397 does not take into account local control issues and issues of content management, as the bill does not allow for local jurisdictions to choose what type of advertising, if any, is appropriate. Further, SB 1397 would put the state in a position where it is regulating speech, which could result in lawsuits against the state for regulating speech.

While California would benefit from the additional funding for road and highway maintenance that could be generated by SB 1397, this legislation would create new problems by reducing the efficacy of CMS and increasing the number of distractions on the road.

BILL STATUS

02/19/2016	Bill introduced
02/18/2016	Referred to the Senate committee on Transportation and Housing
04/20/2016	From committee: Do pass and re-referred to the Senate committee on Appropriations
05/27/2016	From committee: do pass as amended
06/02/2016	Read third time. Refused passage
06/02/2016	Motion to reconsider made by Senator Huff
06/02/2016	Reconsideration granted
06/02/2016	Ordered to inactive file on request of Senator Monning


Joshua W. Drake
Analyst

SMT:jwd

Attachments: Resolution (Blumenfield - Ryu)
SB 1397 (Huff)

RESOLUTION RULES, ELECTIONS & INTERGOVERNMENTAL RELATIONS

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, Changeable Message Signs (CMS) on highways enable the California Department of Transportation (CalTrans) and the Highway Patrol to put out important information for motorists; and

WHEREAS, CMS can be used for Amber Alerts and other emergency messages, as well as to inform motorists of traffic safety issues; and


WHEREAS, SB 1397 (Huff) would allow CalTrans to enter into public-private partnerships, upon federal approval, with advertisers to use these signs when they are not in use for emergency messages; and

WHEREAS, the use of CMS for non-emergency or traffic safety messages would detract from the main purpose of these signs, and risk encouraging motorists to ignore them and thereby miss important information; and

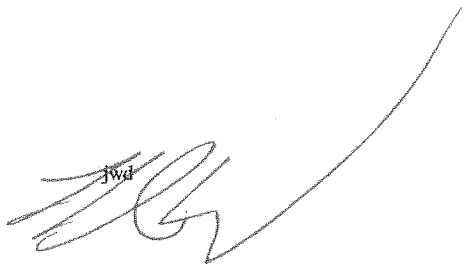
WHEREAS, SB 1397 also ignores local control of these signs as well as content management issues; and

WHEREAS, SB 1397 would damage public safety and subject motorists to even more advertising without any tangible benefit for residents of California;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2015 - 2016 State Legislative Program OPPOSITION to SB 1397 (Huff), which would allow the California Department of Transportation to enter into public-private partnerships to use Changeable Message Signs (CMS) on highways for commercial advertising purposes.

PRESENTED BY: 
BOB BLUMENFIELD
Councilmember, 3rd District

SECONDED BY: 


jwd

AUG 05 2016

ORIGINAL

AMENDED IN SENATE MAY 31, 2016
AMENDED IN SENATE APRIL 21, 2016

SENATE BILL

No. 1397

Introduced by Senator Huff

February 19, 2016

An act to add Article 4.6 (commencing with Section 172) to Chapter 1 of Division 1 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1397, as amended, Huff. Highway safety and information program.

Existing law, the Outdoor Advertising Act, provides for the regulation by the Department of Transportation of advertising displays, as defined, within view of public highways.

This bill would enact the Highway Safety and Information Act. The bill would authorize the department, subject to federal approval, to enter into an agreement pursuant to a best value *competitive* procurement ~~and competitive~~ process for a project with ~~a contractor~~ *an entity* to construct, upgrade or reconstruct, and operate a network of changeable message signs within the rights-of-way of the state highway system that would include a demonstration phase of the project as a condition precedent to the full implementation of the agreement, as specified. The bill would require the ~~person~~ *entity* with whom the department has entered into the agreement to contract and receive funds for the placement of advertisements, meeting certain standards established by the department, on the changeable message signs when they are not being used by the department. The bill would require revenues derived from the project to be allocated between the department and the ~~person~~ *entity* with whom

the department has entered into the agreement and would require those revenues received by the department to be deposited in the State Highway Account, subject to appropriation by the Legislature. The bill would authorize the department to adopt guidelines and procedures relative to advertising on changeable message signs. The bill would require the department to submit a specified report to the fiscal and policy committees of the Legislature having jurisdiction over transportation matters.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Article 4.6 (commencing with Section 172) is
2 added to Chapter 1 of Division 1 of the Streets and Highways
3 Code, to read:

4

5 Article 4.6. Highway Safety and Information Act

6

7 172. This article shall be known, and may be cited, as the
8 Highway Safety and Information Act.

9 172.2. The Legislature finds and declares all of the following:

10 (a) Pursuant to Chapter 27 of the Statutes of 2014, the
11 department has conducted a feasibility study and revenue analysis
12 on the use of advertising on changeable message signs on the state
13 highway system and determined the feasibility of implementing a
14 project and potential revenue benefits.

15 (b) The department's current network of changeable message
16 signs has proven to be an effective way to inform road users of
17 critical safety and transportation-related conditions and of other
18 important information and to protect the safe and efficient
19 utilization of the highways.

20 (c) Changeable message signs have played a critical role in the
21 success of California's Emergency Alert System, initiated by
22 Chapter 517 of the Statutes of 2002. The current network of
23 changeable message signs operated by the department, in
24 coordination with the Department of the California Highway Patrol
25 (CHP) and the Office of Traffic Safety, has helped keep our
26 children and families safer by bringing public resources and private
27 citizens together to help save lives during emergencies.

1 (d) Communicating timely information regarding laws, services,
2 and events, public service and public health and safety messages,
3 and emergency notifications is an essential public purpose that
4 advances the general health, welfare, and safety of the citizens of
5 California and persons who visit and travel through the state.

6 (e) California makes available on its Internet Web site
7 information regarding laws, services, and events, communicates
8 public service and public health and safety messages, and transmits
9 emergency notifications to users of computers, smartphones, and
10 similar online and wireless devices.

11 (f) Recent advances in technology have made it possible to
12 create a more reliable, effective, and comprehensive network of
13 changeable message signs that combine text with graphics in order
14 to rapidly and clearly communicate important information to the
15 users of California's highways more safely and effectively than
16 the current network of changeable message signs. This advanced
17 technology would increase the efficacy and reliability of the
18 network of changeable message signs, thereby enhancing the safety
19 and travel experience of the people of California and would
20 function as an extension and improvement of the existing California
21 public information and emergency messaging communication
22 efforts.

23 (g) Revenues to the state generated by an upgraded changeable
24 message sign network would provide additional funding for
25 transportation and safety initiatives, such as additional highway
26 maintenance and repair, in return for the right to place
27 advertisements on the changeable message signs in a manner that
28 is consistent with, and supports, the network's safety and public
29 communication functions.

30 (h) The network of upgraded changeable message signs shall
31 be located and upgraded in accordance with department guidelines
32 for orientation toward motorists on the traveled way and shall have
33 minimal impact outside of those rights-of-way.

34 (i) The authority to use changeable message signs for
35 commercial advertising shall require that the advertising and
36 department messaging, when displayed in combination, are
37 determined to be safe and do not create an unsafe distraction to
38 motorists, and is subject to prior authorization under federal law.

39 172.4. For purposes of this article, the following terms mean
40 the following:

1 (a) “Agreement” means a legally enforceable agreement for the
2 project to install and operate changeable message signs or the
3 network of changeable message signs, including, but not limited
4 to, a license, lease, highway improvement agreement, easement,
5 encroachment permit, or operation and maintenance agreement.

6 (b) “Best value” means a value determined by objective criteria
7 that may include, but are not limited to, revenues to the state,
8 features, experience, functions, life cycle costs, price, the capability
9 to develop and incorporate advanced sign technologies, and other
10 criteria deemed appropriate by the department.

11 (c) “Changeable message sign” means a department-owned or
12 controlled sign or official sign that is designed to display various
13 messages that provide information to the public, such as traffic
14 information or advertising, by mechanical or electronic means
15 centrally controlled through a network, including, but not limited
16 to, digital and light emitting diode (LED) technologies.

17 (d) “Demonstration phase” means the initial phase of the project
18 whereby the safety and operational and fiscal viability of placement
19 of advertising on changeable message signs in exchange for
20 revenue to the state and an upgraded changeable message sign
21 network are demonstrated.

22 (e) “Entity” means an individual, partnership, limited
23 partnership, trust, estate, association, corporation, limited liability
24 company, or other entity.

25 (e)
26 (f) “Network” means the integrated network of enhanced
27 changeable message signs. The network shall include upgraded
28 changeable message signs at existing locations and new changeable
29 message signs at additional locations as determined by the
30 department.

31 ~~(f) “Person” means an individual, partnership, limited~~
32 ~~partnership, trust, estate, association, corporation, limited liability~~
33 ~~company, or other entity.~~

34 (g) “Project” means to study, plan, design, construct, reconstruct,
35 develop, finance, maintain, rebuild, improve, repair, lease, operate,
36 or any combination of these, a state-of-the-art, full-color network
37 of changeable message signs within the rights-of-way of the state
38 highway system, or within the right-of-way of a major arterial that
39 is included within an integrated corridor management system.

1 172.6. (a) (1) Notwithstanding any other law, and subject to
2 federal approval authorizing the department to do so, the
3 department may enter into an agreement with one ~~person~~ *entity* to
4 conduct a single project, which shall include a demonstration phase,
5 in a manner that best effectuates the purposes of this article. If the
6 department is advised by the United States Department of
7 Transportation, or any of its agencies, that a display of advertising
8 authorized by this article would result in the reduction of federal
9 aid highway funds to the state pursuant to Section 131 of Title 23
10 of the United States Code, that display of advertising shall not be
11 made. The department shall conduct a best value *competitive*
12 procurement and negotiate an initial agreement to become effective
13 upon obtaining any necessary federal authorization. The department
14 may provide services for which it is reimbursed with respect to
15 preliminary design, inspection, and oversight of the project.

16 (2) *A proposal submitted to the department in response to the*
17 *best value competitive procurement shall be accompanied by a*
18 *certified check in an amount determined by the department and*
19 *specified in the request for proposals to cover the reasonable costs*
20 *of preparation of the best value procurement materials, the review*
21 *and evaluation of the proposal, and the negotiation of an*
22 *agreement with the selected entity. The department shall promptly*
23 *return the certified checks accompanying proposals not accepted*
24 *for consideration by the department.*

25 (3) *The agreement shall provide that the entity with whom the*
26 *agreement is entered will bear all reasonable costs of the project,*
27 *including, but not limited to, costs of installation, maintenance,*
28 *and operation of the project, and that reasonable costs incurred*
29 *to procure the agreement and not covered by the certified check*
30 *required under paragraph (2) shall be reimbursed to the*
31 *department.*

32 (b) The agreement described in subdivision (a) shall do all of
33 the following:

34 (1) Provide for the construction, upgrade or reconstruction, and
35 operation of changeable message signs selected for the project.
36 The department shall be responsible for the maintenance of the
37 selected changeable message signs.

38 (2) Provide for complete reversion of any ownership interest in
39 any of the privately constructed, upgraded or reconstructed, and
40 operated changeable message signs to the department at the

1 expiration of the agreement at no charge to the department and
2 free and clear of any liens or encumbrances.

3 (3) Provide that all department emergency notifications shall
4 have priority over other messaging, including advertising.

5 (4) Provide that the department, in consultation with the
6 Department of the California Highway Patrol, shall retain the
7 ability to make a determination on the safety of the changeable
8 message signs, and may take those actions deemed necessary to
9 protect public safety.

10 (5) Require the ~~person~~ *entity* with whom the agreement is made
11 to indemnify, defend, and hold harmless the department for any
12 damage, injury claim, or incident in connection with the
13 construction, upgrade or reconstruction, or operation of changeable
14 message signs performed by or under the control and supervision
15 of that ~~person~~, *entity*, or the advertising on changeable message
16 signs, excluding any advertising approved in advance or provided
17 by the department, including, but not limited to, personal injury,
18 wrongful death, defamation, and property damage.

19 (6) Provide that the department shall conduct a demonstration
20 phase of the project as a condition precedent to the full
21 implementation of the agreement described in this section. The
22 demonstration phase shall involve the construction, upgrade or
23 reconstruction, and operation of changeable message signs at
24 current and planned locations at the initiation of the project and
25 shall be conducted on routes and highway corridors at sign
26 locations selected by the department. The department shall
27 determine the number of changeable message signs needed to be
28 included in the demonstration, which number shall be sufficiently
29 substantive to evaluate the impacts and the return on investment
30 of the demonstration. The demonstration phase shall begin
31 immediately following federal approval as provided in subdivision
32 (a), and shall last until full implementation is authorized, and if
33 full implementation is not authorized, then for a period of time
34 sufficient to allow the ~~person~~ *entity* contracting with the department
35 to recover its capital and related costs for the project.

36 (7) (A) Provide that the department shall retain an independent
37 consultant to perform an evaluation of the results of the
38 demonstration phase.

39 (B) The department shall review the results of the demonstration
40 phase and the evaluation from the independent consultant and

1 determine, in its discretion, whether the placement of commercial
2 advertising with all department messaging creates an unsafe
3 distraction to motorists, and shall consider any other issues of
4 concern that are identified in the demonstration phase.

5 (C) The department may require changes to the agreement to
6 address identified issues of concern and to allow for full
7 implementation of the agreement. If, prior to full implementation,
8 the agreement is amended or otherwise modified in a way that
9 materially impacts a changeable message sign's ability to generate
10 revenues, the ~~person~~ *entity* conducting the project shall be entitled
11 to recover from the department any unreimbursed capital or
12 operating expenses.

13 (8) Provide for the ~~person~~ *entity* with whom the agreement is
14 made to contract and receive funds for the placement of commercial
15 advertisements on changeable message signs, except during times
16 and to the extent the signs are in use by the department, and to
17 share revenues generated in connection with the use of those signs
18 for commercial advertising in furtherance of the public interest.

19 (c) The network of changeable message signs shall be deemed
20 to be part of the state highway system for purposes of identification
21 and enforcement of traffic laws or for other official purposes, and
22 the purposes of Division 3.6 (commencing with Section 810) of
23 Title 1 of the Government Code.

24 (d) Revenues from changeable message signs shall be allocated
25 between the ~~person~~ *entity* with whom the agreement is made and
26 the department in accordance with the agreement as provided in
27 paragraph (8) of subdivision (b). Revenues derived from the project
28 and received by the department, and any other revenue generated
29 from advertising on changeable message signs owned by the
30 department and received by the department, shall be deposited in
31 the State Highway Account in the State Transportation Fund. This
32 revenue shall not be subject to the transfer under Section 183.1 or
33 any successor to that section. Revenues deposited under this section
34 shall be retained in the State Highway Account, subject to
35 appropriation by the Legislature, consistent with the provisions of
36 any federal authorization.

37 (e) The changeable message signs shall meet the design,
38 construction, and operating requirements in the department's
39 standards and guidelines, including, but not limited to, controls,
40 such as state-of-the-art sensors that control the brightness of the

1 display based on the surrounding ambient light levels and other
2 technologies muting adjacent glare, that focus the zone of vision
3 toward motorists on the traveled way and prevent neighborhood
4 impacts in the vicinity of the changeable message signs.

5 (f) The department shall retain the ultimate right to determine
6 whether the location of an existing changeable message sign or
7 proposed location for the placement of a new changeable message
8 sign has or will negatively impact a residential area or community.
9 If the department determines that the location of a changeable
10 message sign has or will have a negative impact on a residential
11 area or community, the department may, in its discretion, impose
12 additional requirements on its lighting or placement, require a
13 different placement, not allow its placement, or require its removal.

14 (g) Advertising on changeable message signs shall not be
15 permitted on officially designated scenic highways.

16 172.8. Advertising on changeable message signs shall be in
17 the form and under those conditions as may be determined by the
18 department and as may be set forth in standards, guidelines, and
19 procedures adopted by the department. The advertising shall not
20 compromise safety or the department's safety communication
21 functions. The upgraded network shall enhance public messaging,
22 including, but not limited to, safety campaigns, emergency
23 notifications, travel times, and traveler information and the function
24 of the network of changeable message signs. All changeable
25 message signs subject to this article shall be exempt from Section
26 5408 of the Business and Professions Code and from any and all
27 regulations promulgated in connection with Section 5408 of the
28 Business and Professions Code.

29 173. The department shall not enter into an agreement with
30 any ~~person~~ *entity* who would cause or permit any changeable
31 message sign to display or advertise alcohol, tobacco, firearms,
32 sexually explicit material, *political messages or advertisements*,
33 or any illegal activity. The department shall adopt policies and
34 guidelines in connection with the content and formatting of the
35 advertising.

36 173.2. The department may use the changeable message signs
37 for emergency messages, as needed, and shall have dedicated time
38 to use the changeable message signs for traveler information and
39 motorist safety and awareness campaigns and any other public
40 service messaging desired by the state, without providing

1 compensation to the ~~person~~ *entity* with whom it enters into an
2 agreement pursuant to this article.

3 173.4. (a) When choosing the ~~person~~ *entity* with whom to enter
4 into an agreement pursuant to Section 172.6 to effectuate the
5 purposes of this article, the department shall select, pursuant to a
6 competitive process, the ~~person~~ *entity* that the department
7 determines will provide the best value.

8 (b) The department may retain a consultant or adviser to assist
9 in preparing the best value criteria, selection of the ~~person~~, *entity*,
10 and oversight of the project. The consultant or adviser shall not
11 bid on the project or, before one year following award of a contract,
12 work as an officer or employee of, or consultant or adviser to, any
13 ~~person or persons~~ *entity or entities* seeking to bid on the project.

14 173.6. ~~No later than two years after the~~ *Promptly following the*
15 *department's review of the consultant's evaluation of the*
16 *demonstration phase of the project, and before authorizing full*
17 *implementation of the project, the department shall submit a report*
18 *to the fiscal and policy committees of the Legislature with*
19 *jurisdiction over transportation matters. The report shall include*
20 *the consultant's report and any recommended department revisions*
21 *to the project, and shall also include, but not be limited to, all of*
22 *the following:*

23 (a) The status of implementation of the agreement, including
24 the number of signs placed and the locations of the signs placed.

25 (b) The amount of revenue received, cost savings to the
26 department, and the costs incurred by the department with respect
27 to the project, including costs incurred prior to the time the
28 department entered into an agreement.

29 (c) An assessment of the effect the project has had on public
30 safety, emergency notification, traveler information, and motorist
31 safety and awareness campaigns.

32 (d) A description of the types of advertising content displayed
33 on the signs.

34 173.8. The provisions of this article are severable. If any
35 provision of this article or its application is held invalid, that
36 invalidity shall not affect other provisions or applications that can
37 be given effect without the invalid provision or application.

O