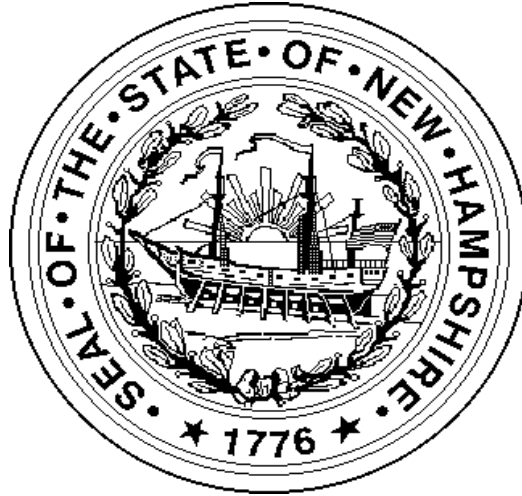


OUTDOOR ADVERTISING CONTROL



Chapter 236 Sections 69 through 88

Scenic & Cultural Byway

Chapter 238:24



**State of New Hampshire
Department of Transportation
Bureau of Traffic
TEL: (603) 271-8124**

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TITLE XX

TRANSPORTATION

CHAPTER 236

HIGHWAY REGULATION, PROTECTION AND CONTROL REGULATIONS

Outdoor Advertising

Section 236:69-88

236:69 Policy. – It is hereby declared to be the policy of this state and in the public interest to provide for maximum visibility along the interstate system, federal aid primary system, and turnpike system, and connecting roads or highways; to prevent unreasonable distraction of operators or motor vehicles; to prevent confusion with regard to traffic lights, signs or signals or other interference with the effectiveness of traffic regulations; to promote maximum safety, comfort and well-being of users of the interstate system, federal aid primary system, and turnpike system; to preserve and enhance the natural scenic beauty or the aesthetic features of the interstate system, federal aid primary system, turnpike system and adjacent areas; to promote the reasonable, orderly and effective display of advertising devices along such systems; and to regulate advertising devices along such systems in a manner consistent with customary use in this state. To implement this declared policy and cooperate with the United States government in the construction and maintenance of public highways in accordance with Title 23, United States Code as amended and supplemented, this subdivision provides for the regulation of advertising devices on the interstate and federal aid primary highway systems.

Source. RSA 249-A:1. 1961, 269:1. 1969, 429:1. 1971, 245:1. 1981, 87:1, eff. April 20, 1981.

236:70 Definitions. – As used in this subdivision:

I. The words "advertising device" shall include any billboard, outdoor sign, notice, poster, display figure, painting, message, placard or any other device which is designated or intended to attract or which does attract the attention of operators of motor vehicles on the interstate system, federal aid primary system, and turnpike system and shall include a structure erected or used in connection with the display of any such device and all lighting or other attachments used in conjunction therewith.

II. The words "on-premise signs" shall mean advertising devices which are to be erected and maintained on property for the following purposes:

(a) To set forth the name and address of the owner, lessee, or occupant of such property;

(b) To list information required by law to be posted or displayed thereon;

(c) To set forth the name of the business or profession conducted on such property, or to identify the goods or services produced or sold on such property;

(d) To indicate the sale or leasing of the real property upon which they are placed.

III. The words "directional and informational signs" shall mean directional and informational signs in the specific interest of the traveling public, or other official signs and signals erected or maintained by state or other public agencies having jurisdiction, provided the erection of such signs is not inconsistent with the standards to be promulgated by the United States Secretary of Transportation under section 131(f) of the Federal Highway Beautification Act of 1965, or provided they are business directional signs established as official signs to provide directional information for eligible motorist-oriented privately owned businesses. For the purposes hereof, informational signs are deemed to be in the specific interest of the traveling public only if they contain information about public places operated by federal, state or local governments, natural phenomena, historic sites, areas of natural scenic beauty or naturally suited for outdoor recreation, and places for camping. The commissioner of transportation is vested with authority to determine whether informational signs are in the specific interest of the traveling public.

IV. The words "interstate system" shall mean all highways which are a part of the national system of interstate and defense highways described in subsection (e) of section 103 of Title 23, United States Code, and such highways as may be so reclassified from time to time as provided in subsection (f) of section 103 of Title 23, United States Code.

V. The words "federal aid primary system" shall mean all highways which are a part of the federal aid system described in subsection (b) of section 103 of Title 23, United States Code, and such highways as may be so reclassified from time to time as provided by subsection (f) of section 103 of Title 23, United States Code that were in existence on June 1, 1991, and any highway which was not on the system but was included in the National Highway System as defined in section 1046(c) of the Intermodal Surface Transportation Efficiency Act of 1991.

VI. "Commercial or industrial activities" shall mean those activities generally recognized as business, industrial or commercial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

- (a) Outdoor advertising structures;
- (b) Agricultural, forestry, grazing, farming and related activities, including but not limited to wayside fresh produce stands;
- (c) Transient or temporary activities;
- (d) Activities conducted in a building used principally as residence;
- (e) Railroad tracks and minor sidings; and
- (f) Activities which are not visible from the main traveled way.

VII. The words "zoned commercial or industrial areas" shall mean those areas zoned for business, industrial or commercial use pursuant to a municipal zoning ordinance, regulation or bylaw.

VIII. The words "unzoned commercial or industrial area" shall mean any area not zoned by any municipality in which, if an advertising device is or might be located therein, such device is or would be so located that there are at any time 2 or more separate businesses, industrial or commercial activities of a permanent nature conducted no greater than 1,000 feet apart; such 1,000 feet being measured between points on the

outer edge of the regularly used buildings, parking lots, or storage or parking areas, provided, however, that no such advertising device may be located more than 500 feet from the nearest such business, industrial or commercial activity measuring from the point on the outer edge of the regularly used buildings, parking lots, storage or processing areas of such activity nearest to such device.

IX. The word "erect" shall mean to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish; but it shall not include any of the foregoing activities when performed as an incident to a change of advertising message or customary maintenance or replacement of the sign structure.

X. The word "maintain" shall mean to allow to exist.

XI. The words "federal highway adjacent area" shall mean an area which is adjacent to and within 660 feet of the nearest edge of the right-of-way of any interstate or federal aid primary highway, which 660 foot distance shall be measured horizontally along a line normal or perpendicular to the center line of the highway, or which is visible from the main traveled way.

XII. The words "political sign" shall mean an advertising device intended to promote the candidacy or election of any public official which device is basically impermanent in nature.

XIII. The words "turnpike system" shall mean any portion of the Spaulding turnpike or the F. E. Everett turnpike, as established by RSA 237, which are not defined as an interstate system or a federal aid primary system in paragraphs IV and V of this section, or any other turnpike which may be constructed or established in this state.

XIV. The words "turnpike adjacent area" shall mean an area which is adjacent to and within 660 feet of the nearest edge of the right-of-way of any turnpike system, as defined in paragraph XIII of this section, which 660 foot distance shall be measured horizontally along a line normal or perpendicular to the center line of the highway, or which is visible from the main traveled way.

XV. The words "primary or secondary highways and roads of and within the state" shall mean all highways and roads within the state whether they be highways which are considered as being within the interstate system, the federal aid primary system or roads or highways within the federal highway adjacent area turnpike system or turnpike adjacent area.

XVI. "Federal aid secondary system" means all highways which are a part of the federal aid system described in subsection (c) of section 103 of Title 23, United States Code, and such highways as may be so reclassified from time to time as provided in subsection (f) of section 103 of Title 23, United States Code.

XVII. "Urban area" means an area with a population of 5,000 or more persons as delineated on the urban area boundary maps on file with the department of transportation and as established by the commissioner of the department of transportation and responsible local officials of the state of New Hampshire, and which have been approved by the secretary of the United States department of transportation or his designee.

XVIII. The words "nonconforming sign" shall mean any advertising device which was lawful when erected and which complies with all sections of this subdivision except RSA 236:73 or 74.

XIX. The words "farm sign" shall mean an advertising device displaying information relating to the promotion, production or selling of New Hampshire grown or locally

processed agricultural products, which is further differentiated from other advertising devices displaying similar information by additional restriction in size, and lesser restrictions in location and spacing.

XX. The words "'recreational and cultural interest area sign" shall mean a sign that meets the physical standards set by the federal government in the "'Manual on Uniform Traffic Control Devices" (MUTCD), which shall be used as destination, directional, informational, or supplemental guide signs. Recreational and cultural interest area signs shall be available to alpine and nordic ski areas that are recognized by the state in state-sponsored publications and shall be used on the primary or secondary highways and roads of and within the state. Recreational and cultural interest area signs shall be designed to direct the traveling public to the recreational facility. The ski area listed on the sign shall pay for all costs associated with signs approved under this section.

Source. RSA 249-A:2. 1961, 269:1. 1969, 429:1. 1971, 245:1. 1973, 360:2. 1975, 21:1. 1977, 87:1. 1979, 242:2. 1981, 87:1; 476:2. 1985, 402:6, I(a)(7), (b)(7). 1987, 209:3-5, eff. July 14, 1987. 1999, 288:3, eff. Sept. 14, 1999. 2003, 67:2, eff. July 26, 2003.

236:71 Licenses. – No person shall erect or maintain more than 10 advertising devices in federal highway or turnpike adjacent areas other than such devices described in RSA 236:73, III, IV and V without first obtaining a license from the commissioner of transportation. The fee for such license shall be paid annually in advance. The fee for persons erecting or maintaining 50 or more advertising devices shall be \$150 and for persons erecting or maintaining less than 50 but more than 10 such devices, the fee shall be \$100. An application for a license or renewal of a license shall contain the name and residence or principal address of the applicant and such other reasonable information as the commissioner may from time to time require and shall be accompanied by the annual fee. Licenses granted under this section shall expire on April 1 following the date of issue, and fees therefor shall not be prorated. All applications for renewal of licenses shall be filed with the commissioner on or prior to March 15 preceding their expiration. Applications for a license or renewal of a license shall be granted except as otherwise provided in RSA 236:78. All fees collected hereunder shall be deposited in the highway fund.

Source. RSA 249-A:3. 1961, 269:1. 1963, 3:1. 1969, 429:1. 1971, 245:1. 1977, 563:45. 1981, 87:1. 1985, 402:6, I(b)(7).

236:72 Permits. – No advertising device other than such a device described in RSA 236:73, III, IV and V shall be erected or maintained in a federal highway or turnpike adjacent area without a permit issued by the commissioner of transportation. Application for a permit or renewal of a permit shall contain the name and residence or principal business address of the applicant, the location of the device to be permitted and its size, excluding border and trim, base or apron, supports and other structural members, the number of faces carrying advertising, a signed statement of the owner of the property upon which the device to be permitted is or will be located that he has consented to such device, the amount of rental compensation being paid to the said owner, and such other reasonable information or requirements as the commissioner may require. However, on

an application for renewal of a permit the commissioner may waive the requirement for furnishing a signed consent statement from the owner of the property on which the device is located. Permits shall expire on April 1 following the date of issue and fees shall not be prorated. Applications for renewal of a permit shall be filed prior to March 15 preceding expiration of the permit. Only one permit shall be required for double face or v-type devices, but fees shall be charged with respect to each face used for advertising. Advertising copy may be changed at any time without requiring a new permit. Applications for a permit or renewal of a permit shall be granted except as provided in RSA 236:78, and each application shall be accompanied by fees in accordance with the following schedule:

I. For sign faces of 50 square feet or less, \$50.

II. For sign faces of more than 50 square feet but less than 350 square feet, \$75.

III. For sign faces of 350 square feet or more, \$100.

All fees collected hereunder shall be deposited in the highway fund.

Source. RSA 249-A:4. 1961, 269:1. 1969, 429:1. 1971, 245:1. 1977, 563:46. 1981, 87:1. 1985, 402:6, I(b)(7). 1990, 3:102, eff. Feb. 20, 1990.

236:72-a Business Directional Sign Permit Fee. – For any new official business directional signs authorized after July 14, 1987, and beginning April 1, 1988, for all official business directional signs authorized by the commissioner to serve privately owned businesses, an annual permit fee of \$10 shall be collected by the commissioner. Permits shall expire on April 1 following the date of issue or renewal and fees shall not be pro-rated. All fees collected under this section shall be deposited in the highway fund.

Source. 1987, 209:8, eff. July 14, 1987.

236:73 Restriction of Advertising. – After January 1, 1970, no advertising devices shall be erected or maintained within a federal highway adjacent area and after January 1, 1972, no advertising devices shall be erected or maintained within a turnpike adjacent area except the following:

I. Advertising devices located in a zoned area erected and maintained without violation of RSA 236:71, 72 and 74 follows:

(a) Adjacent to segments of the interstate system legally zoned on September 21, 1959, as commercial or industrial, except that after July 1, 1977, no such advertising devices shall be maintained outside urban areas in locations beyond 660 feet from the highway right-of-way and visible from the main traveled way.

(b) Along the federal aid primary and turnpike systems in a zoned commercial or industrial area, except that after July 1, 1977, no such advertising devices shall be maintained outside urban areas in locations beyond 660 feet from the highway right-of-way and visible from the main traveled way.

II. Advertising devices located along the federal aid primary or turnpike systems in an unzoned commercial or industrial area and erected and maintained without violation of RSA 236:71, 72 and 74 other than such devices located in such an area determined by the commissioner of transportation to be predominantly residential, except that after July 1, 1977, no such advertising devices shall be maintained outside urban areas in locations

beyond 660 feet from the highway right-of-way and visible from the main traveled way.

III. On premise signs which are to be erected and maintained on the property for the purpose of setting forth:

(a) The name and address of the owner, lessee, or occupant of the property;
 (b) Information required by law to be posted or displayed on the property;
 (c) The name of the business or profession conducted on the property, or an identification of the goods or services produced or sold on such property, provided, not more than one such sign, visible to traffic proceeding in any one direction on any one interstate, federal aid primary or turnpike highway and advertising activities being conducted on the real property where the sign is located shall be permitted more than 50 feet from the advertised activity; and

(d) Advertising devices indicating the sale or leasing of the real property upon which they are placed, provided, not more than one such sign advertising the sale or lease of the same property shall be permitted in such a manner as to be visible to traffic proceeding in any one direction on any one interstate, federal aid primary or turnpike highway.

IV. Directional, informational or official signs:

(a) Within the right-of-way as determined by the commissioner of transportation to be in the specific interest of the traveling public and which conform to national standards as promulgated by the Secretary of Transportation; and

(b) Off the right-of-way as may be permitted under rules adopted by the commissioner of transportation. Such signs may include signs directing the traveling public to privately owned resorts, hotels, restaurants or other commercial establishments catering to the traveling public where the commissioner of transportation determines that such a sign is necessary to the continued operation of such commercial establishment and that traffic safety is best served by providing such a sign to the traveling public thereby avoiding confusion on the part of the motorist. Any such directional sign shall be erected and maintained by the commercial establishment involved under rules adopted by the commissioner, and which conform to national standards as promulgated by the Secretary of Transportation; or

(c) Within the right-of-way or off the right-of-way of primary or secondary highways and roads of and within the state, but not highways on the interstate system or turnpike system, business directional signs subject to specific approval and issuance of permit by the commissioner of transportation, provided that any such business directional sign shall be erected and maintained by the applicant under rules adopted by the commissioner pursuant to RSA 541-A.

V. Political signs which are placed within a federal highway or turnpike adjacent area by supporters of the candidate shall be subject to removal at any time by the department of transportation if such signs create a traffic hazard; provided, the areas allowed shall be restricted to federal aid primary and turnpike highways and not interstate highways. The candidate shall cause such political signs to be removed within the period specified for their removal in RSA 664:17.

V-a. Farm signs located in federal highway adjacent areas except interstate highway adjacent areas, provided that such signs shall be maintained without violation of RSA 236:71, 72, and 74, and further provided that such signs may be erected and maintained only by farms actively engaged in the production, processing, or selling of New Hampshire grown agricultural products.

VI. No sign which is to be permitted under paragraphs II, IV and V of this section may be permitted to be erected or maintained, in any manner inconsistent with standards, criteria, and rules and regulations to be promulgated by the commissioner of transportation that are necessary in order to meet the requirements of section 131 of Title 23, United States Code. No advertising device, notwithstanding any other provision of this subdivision, will be permitted which does not conform to the national standards found in chapter 1, part 20 of Title 23, Code of Federal Regulations.

Source. RSA 249-A:5. 1961, 269:1. 1963, 3:2. 1969, 429:1. 1971, 245:1. 1975, 448:2. 1977, 87:2. 1981, 87:1; 476:3. 1985, 402:6, I(a)(7), (b)(7). 1987, 209:9, eff. July 14, 1987.

236:73-a "RV Friendly" Markers. –

I. Subject to the prior approval of the Federal Highway Administration, the department of transportation shall incorporate the use of "RV friendly" markers on specific business directional signs for business establishments that cater to the needs of persons driving recreational vehicles. A business establishment that qualifies for a business directional sign and that also qualifies as "RV friendly" may request that an "RV friendly" marker be displayed immediately adjacent to such establishment's business logo sign on the appropriate background sign panel. The business applicant shall pay all costs of the "RV friendly" marker. For purposes of this section, the "RV friendly" marker to be displayed shall be such marker as may be approved by the Federal Highway Administration in the Manual on Uniform Traffic Control Devices.

II. In accordance with the provisions of RSA 21-L:12, and subject to the approval of the Federal Highway Administration, the department shall adopt rules, pursuant to RSA 541-A, necessary to implement the provisions of this section, including rules setting forth the minimum requirements for business establishments to qualify as "RV friendly." Such requirements shall include, but shall not be limited to:

(a) Roadways shall be hard surface, such as gravel, compacted stone dust, pavement, or other firm surface, and at least 12 feet wide with a minimum swing radius of 50 feet for entering and exiting the facility.

(b) Roadway access and parking facilities shall be free of any obstructions up to 14 feet above the surface.

(c) Facilities requiring short-term parking shall have 2 or more spaces that are 12 feet wide and 65 feet long with a swing radius of 50 feet to enter and exit the spaces.

(d) Fueling facilities with canopies shall have a 14-foot clearance and facilities selling diesel fuel shall have pumps with non-commercial nozzles.

(e) Fueling facilities shall allow for pull-through with a swing radius of 50 feet.

(f) Campgrounds shall have 2 or more spaces that are 18 feet wide and 45 feet long.

Source. 2007, 87:1, eff. Aug. 10, 2007

236:73-b Liquor Stores. – The department of transportation shall design, locate, and erect along state highways suitable signs to advertise nearby state liquor stores.

Source. 2009, 144:152, eff. July 1, 2009.

236:74 Regulation of Erection and Maintenance of Certain Advertising Devices. – Subject to the provisions of RSA 236:71, 72 and 73 and except as otherwise provided in RSA 236:77, after January 1, 1970, erection and maintenance of advertising devices located in federal highway adjacent areas and after January 1, 1972, erection and maintenance of advertising devices located in turnpike adjacent areas, other than such devices permitted under RSA 236:73, III, IV and V shall be governed by the following provisions:

I. General. With respect to advertising devices located in federal highway or turnpike adjacent areas:

(a) No device may be erected or maintained that is inconsistent with the following:

(1) No sign may be permitted which attempts or appears to attempt to direct the movement of traffic or which interferes with, imitates or resembles any official traffic sign, signal or device.

(2) No sign may be permitted which prevents the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic.

(3) No lighting may be permitted to be used in any way in connection with any sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of the interstate, federal aid primary or turnpike highways, or is of such low intensity or brilliance as not to cause glare or not to impair the vision of the driver of any motor vehicle, or does not otherwise interfere with any driver's operation of a motor vehicle.

(4) No sign may be permitted to be erected or maintained upon trees, or painted or drawn upon rocks or other natural features, or upon utility poles.

(5) No sign may be permitted which is obsolete, not clean and in good repair, or that is not securely affixed to a substantial structure.

(6) No advertising device which is not in conformance with state law shall be permitted to be re-erected if destroyed or abandoned. An exception may be granted by the commissioner for advertising devices destroyed due to acts of vandalism or other criminal or tortious acts.

(b) An advertising device shall not be maintained without the attachment thereto of a weatherproof label, which label shall be provided by the commissioner of transportation, and shall contain the number of the permit.

(c) An advertising device shall not be maintained unless the name of the permittee appears legibly thereon. Whether a name appears legibly shall be determined by the commissioner of transportation in accordance with such standards as he may from time to time prescribe.

II. Size. With respect to advertising devices located in federal highway or turnpike adjacent areas or in view of any interstate, federal aid primary or turnpike highway:

(a) Advertising devices may be erected with, but only with, an area not exceeding 750 square feet and with a maximum height of 20 feet and a maximum length of 50 feet, excluding border and trim, base or apron, supports and other structural members; provided that the commissioner shall permit the maintenance of devices of larger size if lawfully erected prior to January 1, 1970 and otherwise permitted by the provisions of this subdivision.

(b) The maximum size limitations shall apply to each facing. Two advertising devices not exceeding 350 square feet each may be erected in a facing.

(c) Farm signs maintained under RSA 236:73, V-a may be erected with an area not exceeding 48 square feet and with a maximum height of 8 feet and maximum length of 12 feet, excluding border and trim, base or apron, supports, and other structural members; provided that the maximum size limitation shall apply to each facing. Two farm signs not exceeding 24 square feet each may be erected in a facing.

III. Lighting. Advertising devices located in federal highway or turnpike adjacent areas may be lighted, subject only to such restriction with respect to devices to be erected as may from time to time be prescribed by the commissioner.

IV. Location. With respect to advertising devices located in federal highway or turnpike adjacent areas:

(a) Advertising devices shall not be erected or maintained in such a manner as to obscure or otherwise physically interfere with an official traffic sign, signal or device or to obstruct or physically interfere with the driver's view of approaching, merging, or intersecting traffic, as determined by the commissioner.

(b) Required spacing for advertising devices to be erected or maintained on one side of an interstate, turnpike or limited access federal aid primary highway shall be not less than 500 feet provided, however, that such spacing shall not apply to devices which are separated by a building or other obstruction in such manner that only one such device is visible from such highway at any one time.

(c) No advertising device may be erected with respect to an interstate, limited access federal aid primary, or turnpike highway within 500 feet of an interchange or safety rest area located on the same side of the highway on which such sign might otherwise be erected. For purposes of RSA 236:74, IV(c) such distance of 500 feet shall be measured along the edge of the main traveled way of any such highway from the point of beginning or ending of pavement widening with respect to an exit from, or an entrance to, such main traveled way, to or from an interchange or a safety rest area, provided, however, that with respect to an interchange which consists of an entrance or an exit only, such distance shall be measured from the center line of the highway intersected by any such highway in the direction from such interchange in which there is no entrance or exit, as the case may be.

(d) Required spacing for advertising devices to be erected or maintained on one side of a nonlimited access federal aid primary highway in municipalities of 4,000 population or more shall be:

(1) One hundred feet where the distance between center lines of 2 highways intersecting any such highway is less than 1,000 feet provided that not more than 3 devices shall be erected or maintained between such intersecting highways; and

(2) Three hundred feet where the distance between center lines of intersecting highways is 1,000 feet or more.

(e) Required spacing for advertising devices to be erected or maintained on both sides of a nonlimited access federal aid primary highway in municipalities of less than 4,000 population shall be 300 feet.

(f) In this paragraph, the following shall apply: Back-to-back advertising devices, devices erected on a v-type structure, and 2 devices erected in a single facing shall be considered one advertising device. The word "highways" or the words "intersecting highways" shall not include alleys, undeveloped rights-of-way, private ways or driveways. Distances from advertising devices which are erected or maintained or are

able to be erected, or distances to such devices, shall be measured along the edge (nearest to any such devices or any locations in which such devices are able to be erected) of the main traveled way of an interstate, federal aid primary or turnpike highway from or to points on such edge directly opposite such devices or locations. Advertising devices permitted under RSA 236:73, III, IV, and V shall not be considered advertising devices for purposes of any measurement or determination made under this paragraph, or for purposes of any other requirements of this paragraph. Advertising devices permitted under RSA 236:73, V-a shall not be considered advertising devices for purposes of any measurement or determination made under subparagraph (b), (d), or (e), but for such advertising devices to be erected or maintained on both sides of a federal aid primary highway, the required spacing shall be 1,000 feet.

(g) Farm signs to be erected or maintained under RSA 236:73, V-a shall be located not farther than 10 miles from the property where the advertised activities are located.

V. Height. With respect to advertising devices located adjacent to any interstate, federal aid primary, or turnpike highway, no advertising device shall exceed a height of 50 feet from the base of the structure.

Source. RSA 249-A:6. 1961, 269:1. 1969, 429:1. 1971, 245:1. 1981, 87:1; 476:4, 5. 1985, 402:6, I(b)(7). 2000, 109:1, 2, eff. July 7, 2000.

236:75 No Advertisements of Any Kind Upon Certain Objects. – Notwithstanding any provisions of the law to the contrary, it shall be unlawful to affix, attach or display any advertisement upon any object of nature, utility pole, telephone booth, or highway sign, directly in such a manner that the object of nature, utility pole, telephone booth, or highway sign, is utilized as an integral part of the sign's support as distinguished from being only incidentally a support to the sign, such as the earth or ground upon which a sign is affixed. This prohibition shall extend to all primary and secondary highways and roads of and within the state without exception for any type of advertising. The owner of an object upon which an advertisement is placed in violation of this section shall be entitled to remove and destroy the advertisement and the advertisement owner shall not be entitled to damages or compensation therefor. The object owner shall be entitled to collect the costs associated with the removal and destruction from the advertisement owner or the person who is responsible for placing the advertisement on the object in violation of this section.

Source. RSA 249-A:6-a. 1973, 360:3. 1981, 87:1, eff. April 20, 1981. 2003, 136:1, eff. Jan. 1, 2004.

236:76 Highways in Juxtaposition – Nothing herein shall prevent an owner of land from using, or permitting the use of, his land for outdoor advertising purposes where said owner's land abuts a highway parallel to, or nearly parallel to and less than 660 feet from the edge of right-of-way of an interstate, federal aid primary or turnpike highway provided that the advertising or informative contents of advertising devices erected and maintained on said land shall not be visible from the main traveled way of an interstate, federal aid primary or turnpike highway.

Source. RSA 249-A:7. 1961, 269:1. 1969, 429:1. 1971, 245:1. 1981, 87:1, eff. April 20, 1981.

236:77 Nonconforming Signs Lawfully Erected. – At any time following the end of the fifth year after a sign becomes nonconforming the commissioner of transportation may, by registered or certified mail, revoke the permit and order the removal of such nonconforming sign, which order shall be final on the date of mailing. Until the end of said 5-year period no nonconforming sign may be ordered to be removed unless it violates RSA 236:74, I(a), (b) or (c). In no event, however, may a nonconforming sign be ordered removed from a federal highway adjacent area if its removal would require just compensation to be paid pursuant to RSA 236:80 and the federal share of just compensation to be paid under section 131 of Title 23, United States Code, is not available to make such payment.

Source. RSA 249-A:8. 1961, 269:1. 1969, 429:1. 1971, 245:1. 1979, 242:3. 1981, 87:1. 1985, 402:6, I(b)(7).

236:78 Denial or Revocation of License or Permit; Nuisances; Orders for Removal. –

I. A license under this subdivision may be denied or revoked, or a renewal denied, only: (a) for false or misleading information given in the application for such license or renewal or (b) for the erection or maintenance of advertising devices in violation of the provisions of this subdivision or rules and regulations of the commissioner of transportation adopted pursuant to this subdivision. A permit under this subdivision may be denied or revoked, or a renewal denied only: (a) pursuant to RSA 236:77 or (b) for failure to obtain or have a license, or (c) for false or misleading information given in the application for such permit or renewal, or (d) for the erection or maintenance of the advertising device permitted or to be permitted in violation of the provisions of this subdivision or rules and regulations adopted by the commissioner of transportation. The department shall notify an applicant, licensee, or permittee of a denial, nonrenewal, or revocation 30 days prior to taking final action. The applicant, licensee, or permittee may, within that 30 days, correct such information or violation, in which case the application, license, or permit shall be renewed or shall not be denied or revoked. The applicant, licensee, or permittee may also appeal the decision or action to the commissioner or designee within the 30-day period after such notice. Denial, revocation, and nonrenewal shall become final 30 days after such notice unless an appeal is filed. Hearings on denials, revocations, or nonrenewals shall be held in accordance with RSA 541-A. If a revocation of a license or permit or a determination that there should be a denial of a license or permit, or renewal thereof, is made after such a hearing the licensee or permittee, or applicant for such license or permit, or renewal thereof, shall have a right to a rehearing and a right of appeal as provided in RSA 541.

II. Any advertising device, other than a nonconforming sign or any other advertising device maintained under permit, which is erected or maintained in violation of this subdivision or the rules and regulations of the commissioner of transportation adopted pursuant hereto shall be deemed a nuisance. A determination that an advertising device is a nuisance and an order for its removal shall be made by the commissioner only after a

hearing upon 30 days' notice in writing to the owner of such device, provided, however, that such a determination and order for removal may be made without a hearing and without notice where a permit for such a device has been revoked or denied or renewal of such permit has been denied. If the commissioner cannot reasonably ascertain the name and address of the owner of the device, notice may be given by 3 publications of notice in a newspaper in the county where the device is located once in each week for 3 successive weeks, the last publication to be at least 30 days prior to such hearing. The owner of the device may within such 30 days correct any violation of the provisions of this subdivision or the rules and regulations of the commissioner adopted pursuant hereto, and in such case the device shall not be required to be removed and no hearing will be held. Application for a license or permit within such 30 days shall be deemed a correction of any failure to obtain such a license or permit. If a determination that an advertising device is a nuisance is made after such a hearing, the owner of such device shall have a right to a rehearing and a right of appeal as provided in RSA 541. Notwithstanding any provisions of RSA 541, no advertising device shall be required to be removed prior to a final determination that the license or permit should be denied or revoked or renewal thereof denied or that such device is a nuisance.

Source. RSA 249-A:9. 1961, 269:1. 1969, 429:1. 1971, 245:1. 1979, 242:4. 1981, 87:1. 1985, 402:6, I(b)(7). 1997, 34:1, eff. Jan. 1, 1998.

236:79 Removal. – After an order for removal has become final, the owner of the advertising device may remove it at his own expense. If such device has not been removed within 30 days after such an order has become final, the commissioner of transportation, or his duly authorized agents, may enter upon the property where it is located and remove it without incurring any liability by reason of such entry and at the expense of such owner.

Source. RSA 249-A:10. 1961, 269:1. 1969, 429:1. 1971, 245:1. 1981, 87:1. 1985, 402:6, I(b)(7).

236:80 Just Compensation. –

I. Just compensation shall be paid to the owner of the advertising device and to the owner of the land upon which it is located upon the removal, on or after January 1, 1970, of any such device required to be removed by reason of nonconformity with the provisions of this subdivision which is lawfully existing on January 1, 1970 or lawfully erected thereafter, provided no compensation shall be paid to the owner of any advertising device or to the owner of the land on which it is located if the reason for removal was failure to obtain a license or permit pursuant to RSA 236:71 and 72.

II. Each such removal, whether by the owner of the advertising device, by the commissioner of transportation, or otherwise, shall be deemed to constitute a taking by the state of the following:

(a) From the owner of such device, all right, title and interest in and to such device, and his leasehold related thereto.

(b) From the owner of the real property on which such device is located, the right to erect and maintain such device.

III. The foregoing right to compensation of the owner of land shall be in lieu of any right to receive or retain rental from the owner of such device for the sign location for the period after removal of such device, and such right to receive or retain rental shall terminate upon such removal.

IV. Such compensation shall be paid to the person or persons entitled thereto upon presentation to the commissioner of such information as he may reasonably require, provided that the claim for compensation is filed within 90 days after removal is completed.

V. If the commissioner and a claimant do not reach agreement on the amount of compensation payable to such claimant in respect to any removal within 120 days after the filing of such claim, the claimant may institute an action to have such compensation determined as an assessment of damages suffered by the claimant as of the date of the removal. Such an action shall be instituted by filing a petition for assessment of damages in the superior court, in the county wherein the advertising device and land are located, or wherein the claimant resides or has its principal place of business in this state. The petition shall be filed no later than one year after the filing with the commissioner of such compensation claim. The court shall assess the damages by jury, or by the court without the jury, and award interest from the date as of which damages are assessed, and costs, to the claimant.

VI. If funds become available, the commissioner of transportation is authorized to negotiate the removal of advertising devices prior to the end of the 5-year period and is authorized to pay just compensation.

VII. The provisions of RSA 498-A relative to eminent domain procedures shall not apply to this subdivision.

Source. RSA 249-A:11. 1961, 269:1. 1969, 429:1. 1971, 245:1. 1973, 231:1, 2. 1981, 87:1. 1985, 402:6, I(b)(7).

236:81 Penalty. – Whoever erects or maintains an advertising device in violation of the provisions hereof and required to be removed shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Source. RSA 249-A:12. 1961, 269:1. 1969, 429:1. 1971, 245:1. 1973, 529:43. 1981, 87:1, eff. April 20, 1981.

236:81-a Injunctive Relief. – In addition to any other remedy provided by this subdivision or by law, the commissioner of the department of transportation may obtain a mandatory injunction to enjoin the violation of any provision of this subdivision relative to outdoor advertising control.

Source. 1988, 245:10, eff. June 29, 1988.

236:82 Acceptance of Federal Funds. – The commissioner of transportation may accept any allotment of funds by the United States, or any department or agency thereof, for the foregoing purposes.

Source. RSA 249-A:13. 1969, 429:1. 1971, 245:1. 1981, 87:1. 1985, 402:6, I(b)(7).

236:83 Agreement With United States Secretary of Transportation Relating to the Erection of Advertising Devices. – The commissioner of transportation may enter into agreements with the Secretary of Transportation or appropriate federal official of the United States as provided by section 131 of Title 23, United States Code, provided that any such agreement shall be consistent with, and not more restrictive than, the provisions of this subdivision, except that the reclassification of the federal aid systems from time to time shall not be considered more restrictive than the provisions of this subdivision, and except that the agreement executed by the former commissioner of public works and highways and the federal highway administrator on June 14, 1963, under the provisions of this subdivision is hereby reaffirmed so that the commissioner of transportation may maintain the control required to receive and to continue to receive bonus payments from the federal government with respect to the control of outdoor advertising on the interstate system. Any expenditures of money by the commissioner in connection with agreements authorized by the section shall be payable from any funds available to the commissioner.

Source. RSA 249-A:14. 1969, 429:1. 1971, 245:1. 1981, 87:1. 1985, 402:6, I(b)(7). 1987, 209:6, eff. July 14, 1987.

236:84 Rulemaking. –

I. The commissioner of transportation may adopt rules under RSA 541-A which are reasonable and consistent with, but not more restrictive than, the provisions of this subdivision relative to:

- (a) Informational and directional signs; provided that the commissioner shall adopt rules relative to signs for churches.
- (b) Applications for sign licenses.
- (c) Applications for sign permits.
- (d) Procedures relative to signs placed in accordance with RSA 236:88-a.
- (e) Any other matters required in administering this subdivision.

II. The reclassification of a highway to or from the interstate, federal aid primary, or federal aid secondary system, or the designation of a highway to or from the turnpike system, shall not constitute the adoption of a rule under this section.

Source. RSA 249-A:15. 1969, 429:1. 1971, 245:1. 1981, 87:1. 1985, 402:6, I(b)(7). 1987, 209:7, eff. July 14, 1987. 2000, 65:1, eff. June 16, 2000. 2001, 200:1, eff. Sept. 3, 2001.

236:85 Separability. – If any provisions of this subdivision or the application of such provisions to any person or circumstances shall be held invalid, the validity of the remainder of this subdivision and applicability of such provision to other persons or circumstances shall not be affected thereby.

Source. RSA 249-A:16. 1969, 429:1. 1971, 245:1. 1981, 87:1, eff. April 20, 1981.

236:86 Information Sites. –

I. The commissioner of transportation shall, in consultation with the Secretary of Transportation or appropriate federal official of the United States as provided by subsection (f) of section 131 of Title 23, United States Code, provide within the rights-of-way for areas at appropriate distances from interchanges on the interstate system, on which signs, displays and devices giving specific information in the interest of the traveling public may be erected and maintained. Such signs shall conform to national standards.

II. The development of a cooperative information service at any rest area is authorized, subject to approval of the Secretary of Transportation or appropriate federal official, where applicable, in accordance with subsection (i) of section 131, of Title 23, United States Code. Such service shall be coordinated and controlled through the division of travel and tourism development, department of resources and economic development, with the cooperation of the department of transportation, and these agencies shall have the responsibility of training any personnel which may be hired. Expanded information services may include, but not necessarily be limited to, sign plazas, racks of advertising brochures, computers, and equipment deemed by the division of travel and tourism development as necessary for the distribution of tourist-related information to the traveling public.

III. The fees collected pursuant to RSA 230:52, II shall be deposited in a special account for the division of travel and tourism development to be expended to create and maintain the cooperative information services, and for this purpose are hereby continually appropriated.

IV. Notwithstanding the provisions of paragraphs II and III, the division of travel and tourism development may utilize funds from the sale of posters, advertising, and promotional materials to purchase additional materials for resale. Any profit accruing from these sales shall be deposited to unrestricted general fund revenue.

V. Individual businesses and organizations may assist in development of an information service plan, with final approval given by and design designated by the division of travel and tourism development, and subject to approval of the Secretary of Transportation or appropriate federal official, where applicable, in accordance with subsection (i) of section 131, of Title 23, United States Code.

Source. RSA 249-A:17. 1969, 429:1. 1971, 245:1. 1981, 87:1. 1985, 402:6, I(b)(7). 1987, 209:2, eff. July 14, 1987. 1999, 250:2, eff. July 9, 1999; 317:12, eff. July 1, 1999.

236:87 School Bus Shelters. – School bus shelters for school children where used for or constructed to carry advertising matter, when approved by the superintending school committee of the town in which they are located, and upon payment of applicable license and permit fees may be placed or maintained outside the right-of-way and carry not more than 2 panels each thereon for the identification of sponsors. No such panel shall exceed 32 square feet or extend beyond the sides of such shelter and at least 60 percent of its area must be devoted to public service, safety or other noncommercial use. Each such shelter shall, to the satisfaction of the superintending school committee, be constructed of durable material, with concrete floor raised above ground level, kept clean, well painted or otherwise suitably maintained at all times and kept free from snow, or the commissioner may order its removal.

Source. RSA 249-A:18. 1971, 245:1. 1981, 87:1, eff. April 20, 1981.

236:88 Advertising Devices Within Highway Rights-of-Way. – Except as provided in RSA 236:88-a, any advertising device so located as to be within the right-of-way of any interstate, federal aid primary, federal aid secondary, or turnpike highway shall be deemed to be illegally located. Removal and disposal of said device shall be effected after 10 days' written notice to the owner of said device, provided the identity and mailing address of the owner are displayed on the device, by the department of transportation.

Source. RSA 249-A:19. 1971, 245:1. 1981, 87:1. 1985, 402:6, I(a)(7). 2001, 200:2, eff. Sept. 3, 2001.

236:88-a Location/Direction Signs for Businesses Within Highway Rights-of-Way.

I. Notwithstanding RSA 236:88 or any other provision of law to the contrary, a business owner whose property abuts upon and has legal driveway access to the right-of-way of any class I, class II, or class III highway may, upon obtaining the approval of the department, place a sign within the adjacent right-of-way of his or her business being conducted at that location. The placement of such sign shall be in accordance with the Roadside Design Guide published by the American Association of State Highway and Transportation Officials (AASHTO).

II. Any such sign shall comply with all local municipal rules, regulations, and other requirements.

III. Any such sign shall:

(a) Not impose a danger to the traveling public.

(b) Not unreasonably interfere with the maintenance of the state right-of-way.

(c) Be permanently affixed to the ground.

(d) Meet reasonable size, style, and lighting standards consistent with the state of development and commercial activity in the area.

(e) Be removed if the business activity is no longer conducted at that location.

IV. The cost of construction, installation, maintenance, disposal, moving, and removing of such sign shall be at the expense of the business owner.

V. A sign placed in accordance with this section shall not be construed to give its

owner any property or other rights in its location, and if the state changes or widens the highway, or redesigns its maintenance practices, the business owner shall move or remove the sign, as the department may determine necessary.

VI. The department shall be authorized to remove any sign if it determines that the provisions of this section have not been met; provided that 30 days' notice shall be given to the owner of the sign unless the sign constitutes a safety hazard.

VII. Notwithstanding any law or rule to the contrary, a municipality may place a sign within the right-of-way of any class I, class II, or class III highway if such sign meets the requirements of this section and with the approval of the department of transportation and the governing body of the municipality.

VIII. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the administration of this section.

Source. 2001, 200:3, eff. Sept. 3, 2001.

HJR 25 – FINAL VERSION

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2004 SESSION

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HOUSE JOINT RESOLUTION 25

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Four

A RESOLUTION requested by the joint legislative committee on administrative rules relative to a certain rule proposed by the department of transportation.

Whereas, the joint legislative committee on administrative rules has considered a rule proposed by the department of transportation, Tra 601.15, which allows businesses with driveway access to a highway to place advertising signs within the state right-of-way; and

Whereas, the Federal Highway Administration has submitted written testimony to the committee that Tra 601.15 conflicts with federal statutes, 23 U.S.C. Sections 109(d) and 402(a), and federal regulations, 23 C.F.R. sections 1.23(b) and 655.603(a); and

Whereas, the state right-of-way is public property and Tra 601.15 permits commercial signs on this public property but does not permit non-commercial signs, an action which the committee has determined violates Part I, Article 22 of the New Hampshire Constitution and Amendment I and Amendment XIV to the United States Constitution; and

Whereas, the Federal Highway Administration has submitted written testimony to the committee indicating that implementation of Tra 601.15 will likely result in the withholding of federal highway funds and other testimony has indicated that the amount of highway funds at risk is \$125-\$140 million annually, which loss was not included in the department's fiscal impact statement for final proposal 2003-87 which included Tra 601.15; and

Whereas, the committee voted on December 4, 2003 to enter a final objection to Tra 601.15 and to sponsor a joint resolution opposing it on the grounds that it is contrary to legislative intent because it violates federal statutes and regulations, violates the New Hampshire and United States Constitutions, and has a substantial economic impact not recognized in the fiscal impact statement; now, therefore, be it

Resolved by the Senate and House of Representatives in General Court convened:

That the department of transportation is prohibited from adopting rule Tra 601.15; and

That the general court establish a committee to study the issue of advertising signs in the state rights-of-way in light of the possible conflicts with federal law and the state and federal constitutions and to determine whether there are alternatives that would not have the potential for loss of federal highway funds to the state; and

That the membership, compensation, duties, and report of the committee shall be as follows:

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house.

(b) Three members of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

III. The committee shall study the issue of advertising signs in the state rights-of-way in light of the possible conflicts with federal law and the state and federal constitutions and to determine whether there are alternatives that would not have the potential for loss of federal highway funds to the state.

IV. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

V. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2004.

Approved: June 1, 2004

Scenic and Cultural Byways System

Section 238:24

238:24 Advertising Devices on Scenic and Cultural Byways. – Notwithstanding any provisions of law to the contrary, advertising devices as defined in RSA 236:70, I, shall not be erected on any primary system highway that has been designated as a scenic and cultural byway, provided that:

I. The council shall remove any scenic and cultural byway designation, highway sections that:

(a) Have no scenic or cultural value; and

(b) Have been designated or would be designated solely to preserve system continuity.

II. Nothing in this section shall preclude the council from removing from any scenic and cultural byway designation, highway sections that are adjacent to property that is used for intensive commercial or industrial purposes. In this section, "intensive" means an area containing more than 5 zoned commercial or industrial activities located within one continuous mile.

III. Advertising devices erected before the effective date of this section may be maintained.

IV. On-premise signs, as defined in RSA 236:73, III, and directional, informational, or official signs, as defined under RSA 236:73, IV, may be erected and/or maintained.

Source. 1995, 106:3, eff. June 15, 1995.