

## REVISE HIGHWAY ADVERTISING ACT

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**House Bill 4629**

**Sponsor: Rep. Bradford C. Jacobsen**

**Committee: Transportation and Infrastructure**

**Complete to 5-7-13**

### **A SUMMARY OF HOUSE BILL 4629 AS INTRODUCED 4-25-13**

The bill would amend the Highway Advertising Act of 1972 (MCL 252.302 et al.), under which billboards are regulated, in the following ways, intended to correct current deficiencies in the act and bring the act into compliance with federal requirements:

#### **Digital Billboards**

The bill would add to the act a definition of a "digital billboard" to mean a sign or sign structure that utilizes an electronic means to display a series of messages that are changed by electronic means. A digital billboard does not include a sign that contains an embedded electronic message device or a trivision sign.

(An *embedded electronic message device* would mean an accessory that is made part of a sign, sign face, or sign structure with a total area that is less than that of the sign face to which it is attached, and displays only static messages containing text or numbers that are directly associated with the current advertiser. A *trivision sign* would mean a sign or sign structure that uses mechanical means to display more than one message in sequence.)

A sign utilizing a digital billboard permit could not be closer than 1,500 feet to another sign utilizing a digital billboard permit on either side of the highway facing the same direction of oncoming traffic.

#### **Digital Billboard Permit**

Under the bill, a sign owner would have to apply for an annual digital billboard permit for each sign to be maintained or erected in an adjacent area where the facing of the sign was visible from an interstate highway, freeway, or primary highway. A sign owner would have to apply for a separate digital billboard permit for each sign for each highway subject to the act from which the facing of the sign is visible. The owner would have to apply for the permit for a sign that became subject to the permit requirements of the act because of a change in highway designation or other reason not within the control of the sign owner within two months after receiving notice from the Department of Transportation that the sign was subject to the permit requirements of the act.

Within 90 days after the bill's effective date, the owner of a digital billboard erected before the effective date would be required to apply for, and the department would issue, a digital billboard permit. Within two years after a highway became subject to the act as

a result of federal or state action, the department could exercise control over all signs and sign structures within the adjacent area of that highway.

### **Digital Billboard Permit Fees**

For a digital billboard permit the fee would be \$200 for the first year and the annual permit renewal fee would be \$200. The fee would be credited to the State Trunkline Fund

### **Payment of Annual Renewal Fees/Cancellation of Permits**

Currently, the act says that an annual renewal fee for a sign would increase by \$20 if the fee is not paid at least 30 days before the expiration of the permit. The bill, instead, would provide that if the annual permit fee is not paid by the expiration of the permit, the annual fee would increase by an additional \$50.

The department would be required to send notice of nonpayment within 21 days after expiration and inform the permit holder that if the annual fee as increased was not paid within 60 days after the permit expiration date, the permit could be cancelled without further administrative action unless an administrative hearing were requested within 60 days after the expiration date. The department could reinstate a previously canceled permit if through management of its permit inventory the department determined that the previous cancellation was caused by an error in the permitting process.

### **Signs Constructed Under Interim Permits**

A sign constructed under an interim permit could not be closer than 1,000 feet to another sign structure on the same side of the highway along interstate highways and freeways, or closer than 500 feet to another sign structure on the same side of the highway along primary highways. Further, a sign constructed under an interim permit could not be built in a location where the sign would be obscured, in whole or in part, by existing vegetation or by the future growth of existing vegetation. An interim permit could not be used to construct a sign in a location where vegetation that obscured the sign or would obscure the sign through normal future growth was removed without the department's permission.

(An interim permit, under the act, is defined as a permit that can be used by the applicant to construct a sign structure that is visible from a freeway, interstate, or primary highway.)

### **Permit for Sign that Advertises for Sign Owner**

The department could issue a permit for a sign that advertises a product, service, or retail business owned and operated by the sign owner if the location for the sign meets all existing requirements of the act, or if the sign was an existing nonconforming sign that advertises a product, service, or retail business and the sign owner held an original permit for the sign on January 1, 2007. A permit issued under this provision would not be eligible to be surrendered for an interim permit.

### **Signs that Subsequently Become Subject to the Act**

The department would have to issue an annual permit for a sign if the sign satisfied both of the following: (1) the sign was in existence on the effective date the bill and (2) the sign became subject to the act as a result of federal or state action.

If the owner of an existing sign or sign structure in existence before January 1, 2007, and for which the owner held a valid permit before January 1, 2007, demonstrated that the sign was in continuous use as a commercial billboard and the permit was canceled by the permit holder in error and an interim permit was issued, the department could reinstate the annual permit upon surrender of the interim permit and payment of the required renewal fees from the date of cancellation.

### **Elimination of Felony for Illegal Tree and Shrub Removal**

Currently, the act specifies that a person who removes trees or shrubs within a highway right of way for the purpose of making a proposed or existing sign more visible without first obtaining a permit would be guilty of a felony punishable by imprisonment for up to two years and/or a fine of not more than \$25,000. The bill would eliminate the felony penalty from the act.

### **Administrative Hearing and Fine**

If trees or shrubs have been trimmed or removed without a permit by a sign owner, property owner, or an agent of either, the department would be required to conduct a hearing under the Administrative Procedures Act. After providing notice and opportunity for hearing, the department could impose a fine not to exceed five times the value of the vegetation that was trimmed or removed, restrict future vegetation management permits, restrict the use of the sign or sign structure for a period of time not to exceed one year, or remove the sign.

### **Vegetation Management Permits/Application Fee**

Currently, the department has authorization to issue permits for the management of vegetation to the owner of a sign. Under the bill, the department would be authorized to issue permits for management of vegetation to an owner of a sign, agent of the owner of a sign, or a property owner or agent of a property owner with whom the sign owner had a contractual relationship to maintain the sign on his or her property. A sign owner may apply to the department for a permit to manage vegetation; the application fee is \$150. The bill would specify that beginning October 1, 2013, the department could annually adjust the application fee to ensure the fee covers the total cost of evaluating and processing the application. The fee could not increase by an annual percentage amount greater than the consumer price index.

### **New Vegetation Management Permit Fee**

Currently the act imposes a permit fee of \$300 (except in special and unique circumstances, when it can be higher). Instead, the bill imposes a permit fee of \$500, but the vegetation management permit issued under the bill would be valid for five years after the date of issuance (not just for one use). An applicant could manage vegetation in accordance with the permit through the five-year period by providing proper notice to the

department and complying with all conditions and requirements of the department. An applicant would have to obtain all necessary permits to access the right-of-way of a highway if required by other laws of the state. The bill also allows the department to charge more than \$500 in special and unique situations and circumstances where the department incurs additional costs.

The bill would specify that beginning October 1, 2013, the department could annually adjust the permit fee to ensure the fee covers the total cost of issuing the permit and the cost of all departmental responsibilities associated with the permit. The fee could not increase by an annual percentage amount greater than the consumer price index.

### **Vegetation Replacement Costs Schedule**

Under the bill, the department would be required to annually develop and publish a replacement cost schedule for trees and shrubs to be removed under a vegetation management permit. The replacement cost schedule would specify the size, number, type, and cost of replacement trees to be paid for by an applicant based on the diameter at breast height for each tree removed and a conversion factor determined by the department for the number of replacement trees required for any shrubs removed.

The total cost would be based on the department's total cost for planting trees according to the most recent version of the standard specifications for construction used by the department and the expected cost of plants, labor, and materials required to install and establish plants for that year. As an alternative, the department and the applicant could agree that the department will develop the value of the vegetation to be trimmed or removed using the most recent version of the International Society of Arboriculture's guide for plant appraisal and the corresponding Michigan Tree Evaluation supplement to the guide published by the Michigan Forestry and Park Association. The department could also use another objective authoritative guide in consultation with representatives of the outdoor advertising industry and other interested parties if either the guide or the supplement had not been updated in more than five years. The department in consultation with representatives of the outdoor advertising industry and other interested parties could develop a value schedule for vegetation.

### **Restrictions on Department Planting**

Currently, except for ground cover, the department cannot plant vegetation that obstructs, or through normal growth will obstruct in the future, the visibility within the billboard viewing zone of any portion of a sign face. The bill would add that if any vegetation planted or allowed to be planted by the department within the billboard viewing zone after January 1, 2007, obstructs the visibility of any portion of a sign face, the department would be required to trim or remove at the department's cost, or allow the sign permit holder to trim or remove, the vegetation obstructing the visibility or any portion of the sign face.

### **Sign Faces**

A single sign face could consist of not more than two smaller sign faces if the following are true: each sign face is equal in size; legally permitted under the act; and does not

exceed 350 square feet in area. A sign utilizing a digital billboard permit must not be closer than 1,500 feet to another sign utilizing a digital billboard permit on either side of the highway facing the same direction of oncoming traffic.

### **Nonconforming Signs**

A nonconforming sign could continue to exist as long as it is not a destroyed, abandoned, or prohibited sign. A non-conforming sign that has not displayed an advertising message for more than one year would be considered an abandoned sign.

[A "nonconforming sign" is defined to mean a sign that was legally erected before March 31, 1972, but could not be legally erected under current provisions of the act; or is a sign or sign structure regulated under the act that was legally erected after March 31, 1972, but could not be legally erected under the current provisions of the act. A nonconforming sign is distinguished in the bill from a "nonstandard sign," which is a sign that was erected before March 23, 1999, is not a nonconforming sign, and complies with the act except for the spacing requirements.]

A sign owner could perform customary maintenance and repair of a nonconforming sign. The annual cost of maintenance and repair could not exceed 40% of the replacement cost of a new sign structure. A sign owner could perform customary maintenance and repair of a nonconforming sign that was damaged as a result of storm, fire, or casualty. However, such maintenance and repair could not exceed 60% percent of the replacement cost of a new sign structure. The 60% limitation would not apply if the damage to the sign was caused by vandalism or a negligent act of a person other than the sign owner.

A nonconforming sign owner could not take any action that places the state out of compliance with federal statutes, published rules, or the federal-state agreement on outdoor advertising.

A sign owner could perform any action to a nonstandard sign allowed under the act except for (1) increasing the overall height of the existing sign structure; (2) increasing the total square footage of the sign face or faces to a size greater than its original square footage; or (3) increasing the number of sign faces to an amount greater than two.

### **Customary Maintenance and Repair**

As used in the bill, the term "customary maintenance and repair" would mean the repair and replacement of materials or equipment with equivalent material or equipment on a sign or sign structure that restores the structural integrity of the sign or sign structure or the functionality of the equipment. Customary maintenance and repair would include modification to the sign or sign structure that are designed to comply with state and federal worker safety regulations and requirements, modifications to the sign structure that are primarily for the conservation of energy or environmental preservation, paint, the installation of trim or borders, and removal of one or more sign faces or relocation of all of the sign or sign structures upon request by the department. Customary maintenance and repair does not include enlargement of the sign or sign structure, except as otherwise

permitted; a change in the location of the sign structure; an increase in the height of the sign structure; or installation of additional signs on a sign structure.

**Limited Access Right-Of-Way**

The owner of a sign, the agent of the owner of a sign, or a property owner or the agent of the property owner with whom the sign owner has a contractual relationship to maintain the sign on his or her property could not cross a limited access right-of-way to erect or maintain a sign. The department could not issue a permit to cross a limited access right-of-way for that purpose. If the owner of a sign, the agent of the owner of a sign, or a property owner or the agent of the property owner with whom the sign owner has a contractual relationship to maintain the sign on his or her property accessed a sign by crossing a limited access right-of-way to erect or maintain the sign, the owner of the sign would be subject to a fine of \$1,000 for the first violation for each sign location. For a second violation, the owner would be subject to the removal of the sign and sign structure and the cancellation of the permit associated with the sign.

**Prohibited Sign and Sign Structures:**

The act contains a list of the signs and sign structures that are prohibited. The bill would add the following to that list: (1) those signs that are erected or maintained upon property in which the department has a property interest except where otherwise allowed under the act, or state or federal law and (2) signs that were erected and maintained in an adjacent area along a federally designated scenic byway that did not exist prior to the designation as a scenic byway.

**FISCAL IMPACT:**

A fiscal analysis is in process.

Legislative Analyst: E. Best  
Fiscal Analyst: William E. Hamilton

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.