



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



## BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986

House Bill 4629 (Substitute H-4 as passed by the House)  
Sponsor: Representative Bradford C. Jacobsen  
House Committee: Transportation and Infrastructure  
Senate Committee: Transportation

Date Completed: 10-18-13

### **CONTENT**

**The bill would amend the Highway Advertising Act to do the following:**

- **Modify the requirements for and the process to obtain annual and interim sign permits.**
- **Provide for digital billboard permits.**
- **Provide conditions for the replacement, maintenance, and continued existence of a nonconforming sign.**
- **Modify the requirements for a permit to manage vegetation growth near a sign.**
- **Eliminate a felony penalty for a person who removes trees or shrubs within a highway right-of-way, and instead provide for an administrative hearing process and associated fines.**
- **Require the Michigan Department of Transportation (MDOT) to develop and publish a replacement cost schedule for trees and shrubs to be removed under a vegetation management permit.**
- **Provide that MDOT could not plant vegetation that would obstruct the visibility of a billboard.**
- **Allow for a single sign face to be divided into two smaller sign faces under certain conditions.**
- **Require a permit for crossing a limited access right-of-way to erect or maintain a sign, and prescribe fines or mandatory removal of a sign for a violation.**
- **Prohibit a sign that was on property in which MDOT had a property interest, or in an adjacent area along a federally designated scenic byway if the sign did not exist before the designation.**

### Scope of the Act

The Act regulates and controls the size, lighting, and spacing of signs and sign structures in adjacent areas. The Act generally regulates any sign in an adjacent area where the facing of the sign is visible from an interstate highway, freeway, or primary highway. A permit is required for each State highway and each public road from which the sign is visible.

("Adjacent area" means the area measured from the nearest edge of the right-of-way of an interstate highway, freeway, or primary highway and, in urbanized areas, extending 3,000 feet perpendicularly and then along a line parallel to the right-of-way line. The bill would include in this definition, outside of urbanized areas, the area measured from the nearest edge of the right-of-way extending perpendicularly to the limit where a sign is visible and then along a line parallel to the right-of-way line. "Visible" means a sign that

has a message that is capable of being seen by an individual of normal visual acuity when traveling in a motor vehicle.)

Public Act 447 of 2006 placed a moratorium on annual permits for new signs after January 1, 2007, effectively capping the number of signs in the State. A permit that MDOT issued before January 1, 2007, remains in force and valid. An annual permit may be surrendered for interim permit, which allows the construction of a new sign. To apply for an interim permit, a sign owner who holds a valid annual permit for a sign must remove the sign, surrender the annual permit for that sign, and verify the removal in writing. The Department then verifies that the sign has been removed.

Under the bill, "annual permit" would mean a permit for a billboard. ("Billboard" means a sign separate from premises erected for the purpose of advertising a product, event, person, or subject not related to the premises on which the sign is located, and does not include an off-premises directional sign.)

"Interim permit" would mean a permit that can be used by the applicant to construct a sign structure that is visible from a freeway, interstate, or primary highway. ("Primary highway" would mean a highway other than an interstate highway or freeway that is a regulated route. "Regulated route" would mean an interstate highway, freeway, or primary highway required to be regulated under 23 USC 131 and any other route that is required to be regulated or may become required to be regulated by MDOT under the Highway Advertising Act or another State or Federal statute or legal requirement.)

Under the bill, within two years after a regulated route became subject to the Act, MDOT would have to exercise control over all signs and sign structures within the adjacent area of the regulated route.

### Annual Permits

The Act requires a sign owner to apply for an annual permit for each existing sign to be maintained or erected in an area where the facing of the sign is visible from an interstate highway, freeway, or primary highway. Under the bill, this requirement would apply in an area where the facing of a sign or sign structure was visible from a regulated route.

A sign owner also must apply for an annual permit if a sign becomes subject to the Act's annual permit requirements because of a change in highway designation or other reason that is out of the sign owner's control. Under the bill, an annual permit that was issued under these circumstances would not be subject to the January 1, 2007, cutoff date. The permit could not be surrendered for an interim permit.

The bill would allow MDOT to issue a permit for an existing sign that advertised a product, service, or retail business owned and operated by the sign owner if either of the following applied:

- The location for the sign met the Act's requirements.
- The sign was an existing nonconforming sign and the sign owner held an original permit for it on January 1, 2007.

A permit issued under these circumstances would not be transferable and could not be surrendered for an interim permit.

("Nonconforming sign" would mean a sign or structure, other than a nonstandard sign, that satisfies one of the following: 1) the sign was subject to the Act and legally erected before March 31, 1972, but could not be legally erected under the current provisions of the Act; and 2) the sign or sign structure was legally erected after March 31, 1972, but could not be

legally erected under the Act's current provisions. "Nonstandard sign" would mean a sign or sign structure other than a nonconforming sign, that is subject to the Act, was legally erected before March 23, 1999, and does not comply with the Act's requirement that along interstate highways and freeways, a sign located in a business area or unzoned commercial or industrial area not be erected or maintained closer than 1,000 feet to another sign structure on the same side of the highway.)

The bill also would require MDOT to issue an annual permit for a sign that 1) was in existence on the bill's effective date, and 2) became subject to the Act as a result of Federal or State action.

The Department could reinstate an annual permit if the permit holder surrendered an interim permit and paid the required renewal fees and the sign owner demonstrated all of the following:

- The sign or sign structure was in existence before January 1, 2007.
- The sign owner held a valid permit for the sign or sign structure before January 1, 2007.
- The sign or sign structure was in continuous use as a commercial billboard.
- The permit holder canceled the permit in error and MDOT issued an interim permit.

#### Digital Billboard Permits

Under the bill, in addition to meeting the requirements to apply for an annual permit, a sign owner would have to apply for, and MDOT would have to issue, a digital billboard permit for each digital billboard that was: 1) not a nonconforming sign; 2) not closer than 1,750 feet to another sign that used a digital billboard permit on either side of the highway facing the same direction of oncoming traffic; and 3) to be maintained or erected in an adjacent area where the facing of the sign or sign structure was visible from a regulated route.

"Digital billboard permit" would mean a permit for a digital billboard that is renewable on an annual basis. "Digital billboard" would mean a sign or sign structure that uses an electronic means to display a series of messages that are changed by electronic means. The term would not include a sign that contains an embedded electronic message device or a trivision sign.

("Embedded electronic message" 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. The term would not include a digital billboard or a device that displays graphics other than messages containing text or numbers. "Trivision sign" would mean a sign that uses mechanical means to display more than one message in sequence.)

The applicant would have to provide information on a form that MDOT prescribed. A sign owner would have to apply for a separate digital billboard permit for each sign or sign structure that met the 1,750-foot spacing requirement for each regulated route where the facing of the sign or sign structure was visible. The sign or sign structure owner would have to apply for a digital billboard permit that became subject to the Act because of a change in highway designation or other reason outside the control of the sign owner within two months after receiving notice from MDOT that the sign was subject to the Act.

A digital billboard permit would not be subject to the January 1, 2007, cutoff date, and could not be surrendered for an interim permit.

Unless otherwise specified in the Act, if a digital billboard were erected before the bill's effective date, the owner would have to apply for, and MDOT would have to issue, a digital billboard permit within 90 days of the bill's effective date. The requirement for 1,750 feet between digital billboards would not apply to a sign that was permitted under these circumstances.

### Interim Permits

The Act requires MDOT to issue an interim permit to a holder of a valid permit if all of the following conditions are met:

- The permit holder is in compliance with the Act.
- The permit holder surrenders the permit to MDOT upon the removal of a sign structure that has a valid permit under the Act.
- The permit holder verifies the removal of the sign structure in writing to MDOT.
- The Department verifies that the sign structure has been removed.

An interim permit may be used only for the construction of a new sign structure. It must remain in effect without expiration, with fees renewed on an annual basis.

Under the bill, a sign under an interim permit would have to meet all of the following requirements:

- Along interstate highways and freeways, the sign could not be closer than 1,000 feet to another sign structure on the same side of the highway.
- Along primary highways, the sign could not be closer than 500 feet to another sign structure on the same side of the highway.
- The sign could not be built in a location where the sign would be obscured by existing vegetation or future growth of existing vegetation.
- The sign could not be located where vegetation that obscured the sign or would have obscured the sign through normal future growth was removed without MDOT's permission.

### Nonconforming & Nonstandard Signs

Under the bill, a nonconforming sign could continue to exist as long as it was not a destroyed, abandoned, discontinued, or prohibited sign. An abandoned sign would be a nonconforming sign that had not displayed an advertising message for more than one year.

The Act defines "abandoned sign" as a sign or sign structure subject to the Act, whose owner has failed to secure a permit, has failed to identify the sign or sign structure, or has failed to respond to notice. Under the bill, this definition would apply to the terms "abandoned sign" and "abandoned or discontinued sign or sign structure".

"Destroyed sign" would mean a nonconforming sign that has been damaged by storm, fire, or other casualty that requires customary maintenance and repair in excess of 60% of the replacement cost of the sign. The term would not include a nonconforming sign that was damaged by vandalism or a negligent act of a person.

A sign owner could perform customary maintenance and repair of a nonconforming sign. The annual cost could not exceed 40% of the replacement cost of a new sign structure.

If the sign were damaged as a result of storm, fire, or casualty, the annual cost of customary maintenance and repair could not exceed 60% of the replacement cost. The 60% limitation would not apply if the damage resulted from vandalism or a negligent act of a person other than the sign owner.

"Customary maintenance and repair" would mean the repair or replacement of materials or equipment with equivalent materials 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. The term would include modifications 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 or part of the sign or sign structure upon MDOT's request. The term would not include any of the following:

- Enlargement of the sign or sign structure (which would not include a temporary copy enhancement).
- A change in the location of the sign structure, unless otherwise provided.
- An increase in the sign structure's height.
- Installation of additional signs on a sign structure.

A nonconforming sign owner could not take any action that would place the State out of compliance with Federal statutes, published rules, regulations, or the Federal-State agreement on outdoor advertising.

A sign owner could perform any action to a nonstandard sign that the Act allows, except for the following:

- Increasing the overall height of the existing sign structure
- Increasing the total square footage of the sign face or faces to a size greater than its original square footage.
- Increasing the number of sign faces to more than two.

#### Sign Permit Fees, Cancellation, & Reinstatement

Under the Act, permit fees are payable annually in advance. The fee for the first year is \$100, except for signs that existed before a highway's change in designation or jurisdiction that required the sign to be permitted. An application for renewal must be filed with MDOT at least 30 days before the permit expires. The bill would add a \$200 fee for a digital billboard permit. An application for renewing a permit would have to be filed by the permit's expiration date.

The annual permit renewal fee is \$50 for signs up to 300 square feet, and \$80 for signs larger than 300 square feet. If the fee is not paid at least 30 days before the permit expiration date, the fee is increased by \$20.

Under the bill, the annual permit renewal fee for an interim permit would be \$80, and the renewal fee for a digital billboard would be \$200. If the fee were not paid by the expiration date of the permit, the fee would be increased by \$50.

In the case of nonpayment, MDOT must send notice to the permit holder within 30 days after the permit expiration date. If the fee is not paid within 60 days of the expiration date, MDOT may cancel the permit without taking further administrative action unless the permit holder requests an administrative hearing within 60 days of the expiration date.

Under the bill, MDOT would have to send notice of nonpayment within 21 days after the expiration date, and inform the permit holder that if the fee were not paid within 60 days of the expiration date, the permit could be canceled, unless the permit holder requested an administrative hearing.

The Department could reinstate a permit that was canceled by an applicant or MDOT if MDOT determined that the cancellation was caused by an error in the permitting process.

### Vegetation Management & Permits

The Act requires a person to have a vegetation permit to trim or remove trees or shrubs within a highway right-of-way for the purpose of making a proposed or existing sign more visible.

The Department must issue permits for the management of vegetation to the owner of a sign. Under the bill, MDOT also would have to issue permits to an 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. The Department could not authorize the trimming or removal of vegetation in the median of a highway for the purpose of making a billboard more visible.

The Act sets the application fee at \$150. Under the bill, beginning October 1, 2013, MDOT would have to annually adjust the application fee to ensure that the fee covered the total cost of evaluating and processing the application. The Department could not increase the fee by an annual percentage amount greater than the consumer price index.

The permit fee is currently \$300, and may be more in special and unique situations. Under the bill, the fee would be \$500, and could be more in special and unique situations. The Department would have to annually adjust this fee according to the same method that the bill would prescribe for the application fee.

An application must be submitted during two or more annual application periods that are not less than 60 days each, as specified by MDOT. Under the bill, the application period would be at MDOT's discretion.

The Department must issue its decision on an application within 30 days after receiving it. Under the bill, this period would be 90 days.

If MDOT approves the application or approves it with modification, it must notify the applicant. The notice must include the value of the vegetation to be managed as MDOT determines 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 for plant appraisal published by the Michigan Forestry and Park Association. If the guide or supplement is more than five years old, MDOT may use another guide in consultation with representatives of the outdoor advertising industry and other interested parties. After consulting these representatives, MDOT may develop a value schedule for vegetation. If the applicant and MDOT agree, the value schedule must be used to determine the value of the vegetation to be managed.

Under the bill, MDOT would have to annually develop and publish a replacement cost schedule for trees and shrubs to be removed under a permit. It would have to 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 that was removed and a conversion factor determined by MDOT for the number of replacement trees required for any shrubs that were removed. The total cost would have to be based on MDOT's total cost for planting trees according to the most recent version of the standard specifications for construction used by MDOT and the expected cost of plants, labor, and materials required to install and establish plants for that year.

As an alternative, MDOT and the applicant could agree that MDOT would develop the value of the vegetation using the authoritative resources and methods that the Act currently provides, as discussed above.

Under the Act, an applicant may request review and reconsideration of a denial within 30 days after receiving notice. The bill would extend this period to 45 days.

The Act prohibits MDOT from planting or authorizing the planting of any vegetation that obstructs, or through expected normal growth will obstruct in the future, the visibility within the billboard viewing zone of any portion of a sign face subject to the Act. Under the bill, ground cover would be excluded from this rule. Also, if any vegetation that MDOT planted or allowed to be planted within the billboard viewing zone after January 1, 2007, obstructed the visibility of any portion of a sign face subject to the Act, MDOT would have to trim or remove at MDOT's cost, or allow the sign permit holder to trim or remove, the vegetation that obstructed the visibility of any portion of the sign face.

"Billboard viewing zone" means the 1,000-foot area measured at the pavement edge of the main-traveled way closest to the billboard having as its terminus the point of the right-of-way line immediately adjacent to the billboard. Under the bill, this term would mean a 500-foot area measured in the same fashion, except that, for a location where a vegetation permit had been granted within the five years prior to the bill's effective date, the billboard viewing zone would include the area subject to the vegetation permit.

A vegetation management permit would be valid for five years after the date it was issued. An applicant could manage vegetation as prescribed in the permit throughout the five-year period by providing proper notice to MDOT and complying with its conditions and requirements.

An applicant would have to obtain all necessary permits to gain access to the right-of-way of a highway if required by State law.

The Act requires MDOT to prepare an annual report to the Legislature regarding vegetation management. The bill would delete this requirement.

#### Vegetation Removal Penalties

Currently, if a person removes trees or shrubs within a highway right-of-way for the purpose of making a sign more visible, without a permit, he or she is guilty of a felony punishable by imprisonment for not more than two years or a fine of not more than \$25,000, or both. The bill would remove this penalty.

A person that violates this provision also may pay a penalty of up to five times the value of the trimmed or removed vegetation. The Department may recover this penalty only if a criminal action is not brought against the person within one year of the removal of vegetation. The bill would remove this condition.

If a sign owner or the sign owner's agent trims or removes vegetation without a permit, the sign owner is not eligible to obtain a permit for three years from the date of the trimming or removal. Under the bill, this provision also would apply to 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.

Under the Act, if a sign owner or a sign owner's agent removed trees or shrubs without a permit, MDOT may take certain actions. The bill would apply this to a sign owner, a sign owner's agent, a property owner, or a property owner's agent.

Under the Act, MDOT has the authority to remove the sign if a court determines that the vegetation management was in violation of local ordinance, resulted in the intentional trimming of vegetation not authorized under the permit, or was performed without a permit. Under the bill, MDOT would have to conduct an administrative hearing. After providing notice and opportunity for the hearing, MDOT could impose a fine that did not exceed five times the value of the removed or trimmed vegetation, restrict future vegetation management permits, restrict the use of the sign or sign structure for a period of one year or less, or remove the sign as described above.

#### Right-of-Way Access

Under the bill, the owner of a sign, an agent of the owner, or a property owner or the agent of a property owner with whom the sign owner had 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 right-of-way to any of these parties.

If any of the above-described parties crossed a right-of-way to erect or maintain the sign, the sign owner would be subject to the following penalties:

- A first violation penalty of a \$1,000 fine for each sign location.
- A second violation penalty of removal of the sign and sign structure and cancellation of the permit associated with the sign.

#### Prohibited Signs

The bill would prohibit signs that were erected or maintained on property in which MDOT had a security interest except as otherwise allowed in the Act or State or Federal statute or legal requirement.

The bill also would prohibit signs erected or maintained in an adjacent area along a scenic byway that did not exist prior to the designation as a scenic byway.

The Act prohibits signs that involve motion, rotation, running animation or displays, or flashing or moving lights. There is an exception for signs or sign structures with static messages that change at a rate of not more than six seconds. The bill would include using a digital billboard within this exception, and modify the change rate to eight seconds.

#### Dividing Sign Faces

Under the bill, a single sign face could be divided into two smaller sign faces if all of the following requirements were met:

- The sign was not a nonconforming sign.
- The resulting sign faces were equal in size.
- Each resulting sign face did not exceed 350 square feet in area.
- Each resulting sign face was legally permitted under the Act.
- Both before and after the larger sign face was divided, there were not more than two permits for signs at that location facing the same direction of travel.

#### Local Regulation & Control

The Act states that it occupies the whole field of regulation and control over the size, lighting, and spacing of signs except in specific circumstances. Under one exception, a county, city, village, township, or charter township may enact ordinances to regulate and



control the size, lighting, and spacing of signs, subject to some limitations. Under the bill, these governments also could regulate the operation of signs.

Under the bill, the Act would not void an ordinance or code adopted by a county, city, village, township, or charter township that regulated the operation, size, lighting, or spacing of signs and sign structures and that was more stringent than State law.

MCL 252.302 et al.

Legislative Analyst: Glenn Steffens

### **FISCAL IMPACT**

The bill would have a fiscal impact on the Michigan Department of Transportation. Revenue from the permits issued by MDOT for billboards and digital signs is deposited annually into the State Trunkline Fund (STF). Based on information from MDOT for fiscal year 2012-13, the following is a breakdown of the potential effect on revenue to the STF and on MDOT resources:

1. The amount of revenue deposited into the STF for fiscal year 2011-12 totaled \$911,300. The proposed changes could increase the revenue deposited into the STF but the amount is indeterminate and would depend on the number of additional permits issued by MDOT.
2. The bill would increase the fee for a late renewal of a permit from \$20 to \$50. Based on FY 2012-13 data, a late penalty was assessed for approximately 2,700 permits, which resulted in approximately \$54,000 in penalty revenue received by MDOT and deposited into the STF. Assuming the same number of late renewals on an annual basis, the additional revenue to the STF would be approximately \$81,000.
3. The bill would require MDOT to conduct an administrative hearing for people violating vegetation removal provisions. According to MDOT, the Department has already made the appropriate changes and is conducting those hearings in anticipation of the proposed amendment. Since there are few infractions and hearings, there would be little or no cost to MDOT from this proposed change, according to the Department.
4. The bill would require MDOT to annually develop and publish a replacement cost schedule for trees and shrubs to be removed under a permit. In FY 2012-13, MDOT was paid approximately \$94,000 for vegetation removals, approximately \$50,300 in application fees, and an estimated \$100,500 in permit fees. The Department has indicated that the proposed replacement cost schedule and permit fees charged would be comparable to those under current law; thus, MDOT does not anticipate much, if any, additional cost or any additional revenue. Due to the proposal to make the permits valid for five years compared to the current requirement that the permits be renewed annually, the Department has indicated that there could be a slight reduction in fee revenue. The amount of reduction in revenue is indeterminate and dependent on the number of permits ultimately issued; again, however, the Department expects the reduction to be negligible due to the proposed increase in the permit fee from \$300 to \$500.
5. The bill proposes for MDOT to remove, at its own cost, any vegetation planted by the Department within the billboard viewing zone. The Department states that the costs for this requirement should be minimal and absorbed within MDOT's annual appropriations.

6. The bill would remove the requirement that the Department report to the Legislature regarding the vegetation management system currently in place. There would be minimal savings to the Department from administrative costs and staff time currently devoted to fulfill this reporting requirement. According to the Department, the proposed savings would be negligible.

Finally, the bill would bring Michigan into compliance with current Federal regulations regarding billboards and digital signs. If the State failed to comply with Federal regulations, it could be penalized by the loss of up to 10% of all Federal highway funds received. In FY 2013-14, Michigan will receive an estimated \$1.1 billion in Federal highway funding. If the full penalty of 10% were levied, Michigan would stand to lose approximately \$100.0 million in Federal highway funds. These funds are used primarily for road and bridge construction and maintenance across the State.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.