

Legislative Analysis



HIGHWAY ADVERTISING AMENDMENTS

Phone: (517) 373-8080
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Senate Bill 964 as enrolled

Sponsor: Sen. Tom Casperson

House Committee: Transportation and Infrastructure

Senate Committee: Transportation

Complete to 12-28-18

Analysis available at
<http://www.legislature.mi.gov>

(Vetoed by the Governor 12-27-18)

SUMMARY:

Senate Bill 964 would amend the Highway Advertising Act of 1972 to make a number of changes, described below, regarding billboards, permits required for erecting or maintaining them, and restrictions on their placement and size.

Definitions

The bill would remove the definition of the phrase *annual permit* (“a permit for a billboard under this act”) and add a definition for *permit* (“a license required under this act to maintain or erect a billboard visible from a *regulated route*”). Throughout the act, the phrase *annual permit* would be changed to *permit* wherever it is used. Further, the bill would remove the word “annual” from a provision requiring the Michigan Department of Transportation (MDOT) to “establish an *annual* expiration date for each permit.”

Regulated route is defined by the act to mean an interstate highway, freeway, or primary highway required to be regulated under 23 USC 131 (the federal Highway Beautification Act of 1965) and any other route that is or may be required to be regulated by MDOT.

The bill would add a definition for *permit holder* (a person that has been issued a permit or to whom a permit or interim permit has been transferred) and add a definition for *sign owner* that stipulates that a sign owner need not be the permit holder (and vice versa).

The bill would add language to the existing definition of *business area* to provide that it also includes an adjacent area that is zoned by a local zoning authority as part of a comprehensive land development project or planned unit development in which at least 75% of the total current actual use and planned development and use is, and will remain, commercial or industrial.

Digital billboards

The bill would require MDOT to approve a digital billboard permit, upon application by the owner, for up to three signs that were permitted and erected before March 1, 2016 in the city of Detroit, as long as the signs are not nonstandard or nonconforming signs as defined by the act¹ and are not located on a scenic highway. The signs would be exempt

¹ A *nonconforming sign* is a sign or sign structure that was legally erected at some point in time, but could not be legally erected under the current provisions of the act. *Nonconforming sign* does not include a nonstandard sign or a

from the requirement in the act that digital billboards must be at least 1,750 feet apart from one another.

The bill would also remove language that allowed existing or approved digital billboards to be issued a digital billboard permit under extensively revised provisions that were enacted by Public Act 2 of 2014.²

Those revisions also allowed the owner of a nonstandard sign to apply to erect a digital billboard on the nonstandard sign by paying a fee and surrendering three interim permits to MDOT. However, for the first year after Public Act 2 of 2014 took effect, an owner of a nonstandard sign in Wayne, Oakland, or Macomb County could apply for a digital billboard permit for up to eight nonstandard signs without surrendering the interim permits. Moreover, for that first year, those digital billboards could be as close as 1,000 feet to another digital billboard, rather than the 1,750 minimum distance generally required between digital billboards.

The bill would remove the language that limited the exceptions described above to the first year after Public Act 2 of 2014 took effect, making the exceptions (no interim permit surrender, a 1,000-foot minimum distance) permanent going forward.

Permits

As noted above, the bill uniformly changes the current act's "annual permit" to "permit." In a provision that currently increases a renewal fee by \$50 if it is not paid before the expiration date of the permit, the bill would specify that the renewal fee would increase "\$50 for that year."

Currently, the act requires MDOT to send notice of a permit's cancellation to a permit holder by certified mail within 60 days after the date the permit was canceled, and the notice must advise the permit holder that he or she may request reinstatement of the permit within 60 days of receiving the notice. The bill would instead require the notice to advise the permit holder that he or she may submit a new application for a permit within 60 days if either of the following conditions is met at the time the application is submitted:

- The permit holder surrenders an interim permit.
- The sign advertises a product, service, or retail business that is owned and operated by the sign owner and either conforms with the requirements of the act or is a nonconforming sign for which the owner held a permit on January 1, 2007.

(The bill would remove current provisions requiring the surrender of an interim permit upon application for a new permit by a permit holder whose permit was canceled due to nonpayment of renewal fees.)

sign erected and maintained in a business area along a scenic byway before the designation as a scenic byway. A ***nonstandard sign*** is a sign or sign structure, other than a nonconforming sign, that was legally erected before March 23, 1999 and complies with the act except in regard to certain spacing requirements.

² Public Act 2 of 2014 (HB 4629): <http://legislature.mi.gov/doc.aspx?2013-HB-4629>

The act currently prohibits the issuance of a permit for a sign that is prohibited under section 18(a), (b), (c), or (d) of the act. The bill would not allow a permit to be issued for a sign that is prohibited under section 18 for any of the reasons enumerated in that section.³

Highway or freeway closure

The bill would prohibit MDOT from charging a renewal fee for a sign located on a limited access highway that is subject to a full closure for more than 120 days at the time of renewal.

The bill would also provide that if a limited access freeway is closed for more than 120 days, a permit holder must apply for, and MDOT must approve, relocation of a sign located in the adjacent area where the facing of the sign is visible from that limited access freeway, if the sign met applicable spacing and zoning requirements. The height or size of the sign would not be changed at the new location. The bill says that a sign relocated under these provisions would be restored to its original location and status within 60 days after the sign is notified by MDOT that the limited access freeway is reopened for full use.

Minimum distances

Currently, the act prohibits a sign structure along an interstate highway and freeway, with some exceptions, from being erected or maintained closer than 1,000 feet to another sign structure. A sign structure along a primary highway cannot be erected or maintained closer than 500 feet to another sign structure.

Under the bill, the 500-foot minimum distance would also apply to signs and sign structures along roadways that are part of the National Highway System

National Highway System would mean a designation provided to certain highways by MDOT and approved by the U.S. Department of Transportation and the United States Congress, the purpose of which is to provide an interconnected system of principal arterial routes that service major population centers, international border crossings, ports, airports, public transportation facilities, and interstate and interregional travel that meets national defense requirements.

[Note: Because the National Highway System includes all of the Interstate Highway System, it is unclear whether the bill intends to apply the 500-foot minimum only to roadways in the National Highway System that are not interstate highways, or if the bill intends to revise the minimum distance requirement for signs along all interstate highways from 1,000 feet to 500 feet.]

Customary maintenance and repair

The act currently allows a sign owner to perform customary maintenance and repair of a nonconforming sign, but the annual cost of customary maintenance and repair cannot exceed 40% of the *replacement cost* of a new sign structure made using equivalent materials and equipment.

³ Section 18: <http://legislature.mi.gov/doc.aspx?mcl-252-318>

The bill would add a more specific definition of ***replacement cost***: The total sum of the costs incurred if a new sign and sign structure were erected at a conforming location with equivalent materials and equipment at current market prices.

The bill would also remove from definition of ***customary maintenance and repair*** the removal of one or more sign faces or relocation of all or part of the sign or sign structure upon request by MDOT.

Violations of the act

Under current law, MDOT may remove signs and their supporting structures erected or maintained in violation of the act. MDOT must first mail to the sign owner a notice of the violation and that the sign is subject to removal, or post a notice on the sign if the address cannot be determined. The bill would also require the notice to be sent to the permit holder.

If the sign or structure is not removed or brought into compliance with the act within 60 days after the notice is sent or posted, the sign or structure is considered abandoned. The bill would change this time period to 30 days.

Under the bill, a person who erected a sign without a valid permit would be subject to a fine assessed daily for the duration of the violation, beginning on the date the notice is received as indicated on the certified mailing card. The fine would be:

- \$100 per day for the first 30 days
- \$150 per day for the next 30 days (days 31-60)
- \$175 per day for the next 30 days (days 61-90)
- \$200 per day after that (days 91+)

In addition to the fines, the bill would allow MDOT to recover gross revenue a person earned as a result of his or her violation of the act if the sign met all of the following:

- Was located in a business area
- Occupied an area greater than 300 square feet
- Was attached to the exterior of a public or private building

The bill would allow an individual aggrieved by a departmental action or inaction to represent himself or herself in a contested case hearing under the act. (An employee of MDOT could represent MDOT.)

Repealers

Finally, the bill would repeal Sections 18b and 18c of the Act. (Section 18b allowed MDOT to enter into a voluntary agreement for a pilot program to address concerns and issues related to outdoor advertising control. Section 18c created the Michigan Billboard Advisory Council within MDOT.)

The bill would take effect 90 days after its enactment.

MCL 252.302 et al.

FISCAL IMPACT:

The federal Highway Beautification Act of 1965, codified in 23 USC 131, requires that states “effectively control” outdoor advertising along certain federal-aid highway systems.

The Highway Advertising Act of 1972 gives to the Michigan Department of Transportation the authority to license, regulate, control, and prohibit outdoor advertising signs under circumstances and conditions described in the Act. The Act also establishes permitting fees and designates fee revenue to the State Trunkline Fund (STF). Sign permit fees currently generate approximately \$1.0 million per year for credit to the STF. This figure includes routine billboard permit fee revenue, fees associated with billboard permit transfer fees and vegetation removal permits, and penalties assessed on billboard permit violations.

STF revenue is appropriated for preservation of the state trunkline highway system and for MDOT administration, including costs of administering the right-of-way and highway sign permit programs.

The department indicates that there could be minimal reductions in fee revenue related to the suspension of a renewal fee if the renewal occurs when a road is completely closed for 180 days. However, there could be some increase in revenue from penalties; the bill raises penalties for noncompliance with the Act.

Vetoed 12-27-18:

In his veto message, Governor Snyder wrote:

The bill would delete provisions that were included in a 2014 revision of the Act dealing primarily with new regulation of digital billboards. That language provided for a narrow window for billboard companies to convert nonstandard signs to meet spacing requirements. The proposed removal will increase the number of digital billboards within an already crowded space.

Senate Bill 964 also amends the Act related to MDOT licensure and approval of signs where there is substantial vegetation creating limited sightlines. Prior to changing the law here, additional public discussion and input should be solicited.

Lastly, provisions under this bill would create uncertainty in administration for permit holders in areas where construction projects have closed portions of the highway, including a lack of clarity on the definition of a closure, when and how to move a sign under those circumstances, and how a fee would be assessed in that situation.

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