



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

BILL ANALYSIS



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

Senate Bill 964 (as introduced 4-26-18)
Sponsor: Senator Tom Casperson
Committee: Transportation

Date Completed: 5-23-18

CONTENT

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

- Delete provisions under which digital billboards erected before January 30, 2014, must be issued a permit and are exempt from a prohibition against a sign being closer than 1,750 feet to another sign using a digital billboard permit.
- Extend the time period, from January 30, 2014, through the effective date of the bill, during which certain owners' first eight nonstandard signs for which they applied for a digital billboard permit did not require the surrender of three interim permits, and impose certain sign location requirements on those sign owners.
- Require the Michigan Department of Transportation (MDOT) to return or credit any interim permits surrendered by those sign owners or permit holders for a nonstandard sign.
- Require MDOT to rescind approval for a location or cancel a digital billboard permit if the sign or digital billboard were not erected within 36 months after the date the approval was granted or the digital billboard permit was issued.
- Allow a permit holder to submit a new application for a permit after receiving a notice stating a permit was canceled if the permit holder surrendered an interim permit.
- Require MDOT to suspend the payment of a permit fee for a sign located on a regulated route that was closed for more than 60 days until the route was reopened.
- Create the "Highway Advertising Enforcement Fund" within the State Treasury, and require all fines and fees collected under the Act to be deposited into the Fund.
- Require the Auditor General to review money deposited into the Fund by December 31, 2022, and determine whether the money collected was sufficient to fund the Outdoor Advertising Program.
- Create an increasing daily fine for a person who erected and maintained a sign without a valid permit issued under the Act.
- Delete a provision under which an interim permit remains in effect without expiration with fees renewed on an annual basis.
- Require a permit holder for a sign located in an area adjacent to a limited access freeway that was closed for more than 120 days to apply for relocation of the sign to another location for which the permit holder held a permit.
- Require a sign relocated from a limited access freeway that was closed for 120 days to be restored to its original location after the freeway was reopened.

- **Allow an increase in height of a nonstandard sign located in a city with a population of more than 600,000 that was permitted on or before March 23, 1999, and that was permitted by a local jurisdiction for a height of at least 60 feet.**
- **Require MDOT to mail a sign owner, permit owner, or both if they differed, a notice that the sign or its supporting structure violated the Act and was subject to removal.**
- **Revise definitions of terms used throughout the Act.**

The bill would repeal Sections 18b and 18c of the Act. (Section 18b allowed MDOT to enter into a voluntary agreement as proposed by the Michigan Billboard Advisory Council, or MDOT, if the Council no longer exists, and approved by the State Transportation Commission with the Federal Highway Administration for a pilot program to address concerns and issues related to outdoor advertising control. Section 18c created the Michigan Billboard Advisory Council within MDOT for the purpose of advising MDOT and the Commission regarding voluntary agreements, lighting, and other general policy for the effective control of outdoor advertising.)

The bill would take effect 90 days after it was enacted.

Definitions

The Act defines "annual permit" as a permit for a billboard under the Act. The bill would delete this definition and the term from the Act. Under the bill, "permit" would mean a license required under the Act to maintain or erect a billboard visible from a regulated route. "Permit holder" would mean a person that has been issued a permit or a person to whom a permit for a specific sign location has been transferred. "Sign holder" would mean a person that demonstrates ownership of a sign structure, regardless of whether that person holds a permit for the sign.

Under the Act, "business area" means an adjacent area that is zoned by a State, county, township, or municipal zoning authority for industrial or commercial purposes, customarily referred to as "b" or business, "c" or commercial, "i" or industrial, "m" or manufacturing, and "s" or service, and all other similar classifications and that is within a city, village, or charter township or is within one mile of the corporate limits of a city, village, or charter township or is beyond one mile of the corporate limits of a city, village, or charter township and contains one or more permanent structures devoted to the industrial or commercial purposes and that extends along the highway a distance of 800 feet beyond each edge of the activity.

Under the bill, "business area" would include an adjacent area that is zoned by a county, city, village, township, or charter township zoning authority as part of a comprehensive land development project or planned unit development in which commercial or industrial activity is the primary use of the zoning. "Primary use" as used in "business area" would mean that at least 75% of the total actual and planned development is, and will remain, commercial or industrial.

Digital Billboard Exemption Deletion

Under the Act, within 90 days after January 30, 2014, the owner of a digital billboard that was legally erected before that date was required to apply for, and MDOT was required to issue, a digital billboard permit. A digital billboard permitted under these provisions or the provision below is exempt from a prohibition against a sign being closer than 1,750 feet to another sign using a digital billboard permit on either side of the highway facing the same direction of oncoming traffic, and MDOT may not require any form of consideration for a digital billboard permitted under these provisions other than payment of the appropriate application fee and annual renewal fees as required under the Act.

If on January 30, 2014, an individual had obtained location approval from MDOT and the local unit of government having jurisdiction of that location to erect a digital billboard, he or she had to apply for, and MDOT had to issue, a digital billboard permit.

The bill would delete these provisions.

Nonstandard Signs

Under the Act, in addition to an annual permit, the owner of a nonstandard sign may apply for a digital billboard permit to erect and maintain a digital billboard on a nonstandard sign by applying for a digital billboard permit, paying the required fee, and surrendering three interim permits to MDOT. The owner must apply for a separate digital billboard permit for each sign or sign structure for each regulated route from which the facing of the sign or sign structure is visible, but may not be required to surrender more than three interim permits.

Beginning on January 30, 2014, and ending one year after that date, for the first eight nonstandard signs for which the owner applied for a digital billboard permit, the owner could not be required to surrender three interim permits. This provision applied only to signs located in a county having a population of at least 750,000. The spacing requirement that prohibits signs from being closer than 1,000 feet to another sign using a digital billboard permit on either side of the highway facing the same direction in traffic applies to the first eight nonstandard signs for which the owner applied for a digital billboard permit. The bill would delete the time period specified in these provisions, and state that the provisions would apply only to an owner who, between January 30, 2014, and the effective date of the bill, had applied for one or more of the eight digital billboard permits that did not require the surrender of three interim permits.

The Department would have to return or credit any interim permits surrendered by a sign owner or a permit holder described above who surrendered those interim permits for a nonstandard sign, if the sign owner or permit holder would have been exempt from surrendering the interim permits under those provisions.

Under the Act, a nonstandard sign may continue to exist and a sign owner may perform any action to a nonstandard sign that is allowed under the Act, except the following:

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

Under the bill, the prohibition against increasing the overall height of an existing sign structure would not apply to a nonstandard sign located in a city with a population of more than 600,000 that was permitted on or before March 23, 1999, and that was permitted by a local jurisdiction for a height of at least 60 feet.

Departmental Notices

The Act requires, MDOT to send notice of a permit's cancelation to the permit holder using one of the following methods:

- For a permit that was canceled between 2011 and January 29, 2014, by certified mail to the permit holder's address on file within 60 days after January 30, 2014.
- For a permit that was canceled on or after January 30, 2014, by certified mail to the permit holder's address on file within 60 days after the date the permit was canceled.

The notice must advise the permit holder that he or she may request reinstatement of the permit within 60 days after the date of the notice.

The bill would delete these provisions. Under the bill, MDOT would have to send notice of a permit's cancellation to the permit holder within 60 days after the permit was canceled. The notice would have to advise the permit holder that he or she could submit a new application for a permit within 60 days after the date of the notice, if, at the time the application was submitted, the permit holder surrendered an interim permit.

The Act also requires MDOT to mail by certified mail a notice to the owner of a sign that the sign or its supporting structure violates stated specified provisions of the Act and is subject to removal. If the owner's address cannot be determined, MDOT must post a notice on the sign. The bill would require MDOT to mail by certified mail a notice to the sign owner, permit holder, or both if they were different, and would require MDOT to post a notice on the sign if it could not determine the owner's or the permit holder's address.

Highway Advertising Enforcement Fund

The bill would require MDOT to deposit all fines and fees collected under the Act into the proposed Highway Advertising Enforcement Fund. The Fund would be created within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund. The Treasurer would have to direct the investment of the Fund, and credit to it interest and earnings from Fund investments.

Money in the Fund at the close of the fiscal year would have to remain in the Fund and could not lapse to the General Fund. The Department would be the administrator of the Highway Advertising Enforcement Fund for auditing purposes, and would have to spend money from the Fund to administer the Act.

No later than December 31, 2022, the Auditor General would have to review the money deposited into the Fund, and determine if the money collected in each of the three immediately preceding years under the Act was sufficient to fund the Outdoor Advertising Program, and recommend a fine and fee structure to the Michigan Legislature to achieve these goals.

Fines

A person that erected and maintained a sign without a valid permit issued under the Act would be subject to a fine that would have to be assessed daily for the duration of the violation beginning on the date the notice was received as indicated on the certified mailing card. The fine amounts would be as follows:

- \$100 per day for the first 30 days after the notice was received.
- \$150 per day for the 31st through 60th day after the notice was received.
- \$175 per day for the 61st through the 90th day after the notice was received.
- \$200 per day for the 91st day and each subsequent day after the notice was received.

In addition to the fines, MDOT could recover gross revenue a person earned as a result of his or her violation of the Act if all of the following applied:

- The sign was located in a business area.
- The sign occupied an area greater than 300 square feet.
- The sign was attached to the exterior of a public or private building.

Permit Changes

Except as otherwise provided, the Act prohibits MDOT from issuing an annual permit for a new sign on or after January 1, 2007. The bill would refer to a permit.

Under the Act, on and after January 1, 2007, MDOT must issue an interim permit to a holder of a valid permit if all of the following conditions are met:

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

An interim permit issued under the provisions above must only be used for the construction of a sign structure, and must remain in effect without expiration with fees renewed on an annual basis. The bill would delete the requirement that the permit remain in effect without expiration with fees renewed on an annual basis.

After construction of a sign structure under an interim permit is complete, the Act requires MDOT to issue renewable permits annually for the completed sign structure. The bill would require MDOT to issue a permit for the completed sign structure if it were in compliance with the Act.

Under the Act, if a permit holder for a sign structure that existed on January 1, 2007 requires additional permits for any reason, or if the owner of a sign meeting requirements for a sign that was erected in compliance with certain spacing requirements applied for a permit before July 1, 2011, MDOT may issue a valid renewable permit renewable on an annual basis without complying with the prohibition against issuing new permits on or after January 1, 2007, even if the permit holder has more than two valid permits as a result. Under the bill, if a permit holder for a sign structure that existed on January 1, 2007, required additional permits for any reason, MDOT could issue a permit without complying with the prohibition against issuing new permits even if the permit holder had more than two valid permits as a result.

Under the Act, the owner of an existing sign or sign structure whose permit was canceled due to nonpayment of renewal fees may apply for a new annual permit by submitting an application for a new annual permit and surrendering an interim permit. The bill would delete this provision.

The bill would require MDOT to suspend the payment of a permit fee for a sign located on a regulated route that was closed for more than 60 days until the regulated route was reopened for full use.

Sign Relocation on Limited Access Freeway

Under the bill, if a limited access freeway were closed for more than 120 days, a permit holder for a sign located in the adjacent area where the facing of the sign was visible from that freeway would have to apply for, and MDOT would have to approve, relocation of the sign to another location for which the permit holder held a permit issued under the Act, if the sign met applicable spacing and zoning requirements and the height or size of the sign were not changed at the new location. If the sign were a digital billboard, the relocation of the sign would not be subject to the provisions relating to the owner of a nonstandard sign who may apply for a digital billboard permit on a nonstandard sign. A permit holder could make modest modifications to a sign that was relocated to accommodate the relocation. A sign that was relocated would have to be restored to its original location and status not later than 60 days

after the limited access freeway was reopened for full use. At least 30 days before the reopening of the freeway, MDOT would have to notify a permit holder of the reopening.

Sign Rules

Under the Act, along primary highways, a sign structure may not be erected or maintained closer than 500 feet to another sign structure. Under the bill, this also would apply to sign structures along roadways that were a part of the national highway system.

("Primary highway" means a highway other than an interstate highway or freeway that is a regulated route.)

Beginning on January 30, 2014, and ending one year after that date, for the first eight nonstandard signs for which the owner applied for a digital billboard permit without having to surrender three interim permits, each sign cannot be closer than 1,000 feet to another sign using a digital billboard permit on either side of the highway facing the same direction of traffic. The bill would delete the time period referred to in this provision. The bill specifies that the provision would only apply to a sign whose owner, between January 30, 2014, and the bill's effective date, had applied for one or more of the eight digital billboard permits that did not require surrender of three interim permits.

Under the Act, certain spacing requirements, among other things, may not be construed to cause a sign that was legally erected before March 23, 1999, to be defined as a nonconforming sign. The bill would delete this provision.

Nonconforming Sign Replacement

Under the Act, a nonconforming sign may continue to exist as long as it is not a destroyed, abandoned, discontinued, or prohibited sign.

A sign owner may perform customary maintenance and repair of a nonconforming sign. The annual cost of the customary maintenance and repair must not exceed 40% of the replacement cost of a new sign structure constructed using equivalent materials and equipment. Customary maintenance and repair of a nonconforming sign that is damaged as a result of storm, fire, or casualty must not exceed 60% of the replacement cost of a new sign structure constructed using equivalent materials and equipment. The bill would delete reference to construction using equivalent materials and equipment.

The Act defines "customary maintenance and repair" as 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. In addition to certain modifications, customary maintenance and repair includes removal of one or more sign faces or relocation of all or part of the sign or sign structure upon request by MDOT. Under the bill, customary maintenance and repair would not include this removal or relocation.

Formal Hearing

Under the Act, if a person is aggrieved by any action or inaction of MDOT, he or she may request a formal hearing on the matter involved. The hearing must be conducted by MDOT in accordance with the provisions for contested cases in the Administrative Procedures Act. Under the bill, an employee of MDOT could represent the Department at the hearing, and an individual could represent himself or herself at the hearing.

MCL 252.302 et al.

BACKGROUND

Public Act 447 of 2006 amended the Highway Advertising Act to place a moratorium on annual permits for new signs after January 1, 2007, effectively capping the number of signs in the State. A permit that the Michigan Department of Transportation issued before January 1, 2007, remains in force and valid. An annual permit may be surrendered for an 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. The Department then verifies that the sign has been removed.

More recently, Public Act 2 of 2014 made a number of modifications to the Act. Among other things, these amendments authorized the Department to issue digital billboard permits to owners of digital billboards, modified annual permit requirements, removed vegetation-related penalties, and allow for a single sign face to be developed into two smaller faces.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill could have a minor positive fiscal impact on the State within five fiscal years. The bill would not have an impact local units of government.

The bill would require all fines and fees under the Highway Advertising Act to be deposited into the proposed Highway Advertising Enforcement Fund, which would be created within the Treasury Department. Currently, those fines and fees are directed to the State Trunkline Fund, and the Department of Transportation reports that the current fine and fee structure does not independently sustain its outdoor advertising program. Under the bill, MDOT would be the administrator of the new Fund; however, housing the Fund within the Treasury Department would allow for an accurate accounting of expenditures from the Fund and the revenue generated by the fines and fees. The bill would require the Auditor General to determine, not later than December 31, 2022, whether the revenue for the new Fund was sufficient to cover the costs of administering the outdoor advertising program and to make recommendations for a fine and fee structure that was self-sustaining for the program. Once a new fine and fee structure was adopted, it is likely that the outdoor advertising program would no longer be a drain upon MDOT's budget. The Department reports that it regulates over 15,000 billboards on Michigan roads. Renewal fees, late fees, application fees, and transfer fees totaled \$1,011,440 in FY 2015-16, \$1,092,468 in FY 2016-17, and \$602,920 to date in the current fiscal year.

Fiscal Analyst: Michael Siracuse

SAS\S1718\s964sa

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.