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SFA**BILL ANALYSIS**

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Senate Bill 445 (as enrolled)
Sponsor: Senator Leon Stille
Senate Committee: Local, Urban and State Affairs
House Committee: Transportation

PUBLIC ACT 533 of 1998

Date Completed: 1-20-99

RATIONALE

According to the Michigan Department of Transportation, more than 17,000 billboards located along the State's highways and roads have received permits as required by the Highway Advertising Act. These billboards, and the billboard industry in general, are regulated by the Act, which not only requires a sign owner to obtain an annual permit for a sign and pay a yearly \$5 permit fee, but also allows billboards to be erected in areas zoned commercial and industrial with a permit, provides for the removal of illegal signs without just compensation, requires just compensation to be paid upon the removal of legally built, nonconforming billboards to meet a public need, limits the size of billboard structures, requires minimum spacing between advertising structures, and requires that lights on billboards not interfere with oncoming traffic. Despite these regulations, some people believe that the State has experienced considerable billboard growth, and that the State's enforcement efforts have suffered from inadequate regulations and underfunded regulatory programs.

CONTENT

The bill amended the Highway Advertising Act to do the following:

- **Require a sign visible from more than one State highway or public road to comply with outdoor advertising requirements for each highway and road from which the sign is visible.**
- **Increase from \$5 to \$100 the annual permit fee for the first year, and establish a \$25 renewal fee for signs up to 300 square feet and \$40 for signs greater than 300 square feet.**
- **Establish a felony penalty for a person who destroys trees or shrubs within a highway right-of-way to make a proposed**

or existing sign more visible.

- **Prohibit signs erected after the bill takes effect from being stacked one on top of each other, and prohibit existing signs or sign structures from being modified to provide for a sign to be stacked.**
- **Increase the distances required between signs located along certain highways.**
- **Specify a legislative intent that the State fund a study to analyze the bill's effect and make recommendations of any additional changes to the Act.**

Legislative Findings

The Act contains a legislative finding that outdoor advertising is a legitimate commercial use of private property. The bill specifically refers to a legitimate "accessory" commercial use.

Local Regulations

The Act states that it occupies the whole field of sign regulation, except that a city, village, township, or charter township may enact ordinances to regulate and control the size, lighting, and spacing of signs and sign structures, but an ordinance may not permit a sign or sign structure that is otherwise prohibited under the Act. The bill adds that the ordinance may not require or cause the removal of lawfully erected signs or sign structures subject to the Act without the payment of just compensation. In addition, a sign erected or maintained within a local government that has an ordinance regulating signs also must comply with applicable provisions of the Act. The bill deleted the requirement that a local government certify to the State that it regulates and controls the size, lighting, and spacing of signs and sign structures, and submit a copy of its ordinances to the Department of Transportation.

The Act also provides that a city, village, charter township, or township vested by law with authority to enact zoning codes has full authority under its own zoning codes or ordinances to establish commercial or industrial areas, and the actions of a local government in doing this must be accepted for the Act's purposes. The bill adds that except as provided above, zoning that is not part of a comprehensive zoning plan and is taken primarily to permit outdoor advertising structures may not be accepted for purposes of the Act. A zone in which limited commercial or industrial activities are permitted as incidental to other primary land uses is not be a commercial or industrial zone for outdoor advertising control purposes.

Signs Subject to Regulation

Currently, a person may not engage in outdoor advertising by erecting, using, or maintaining any signs in an adjacent area where the facing of the sign is visible from an interstate highway, freeway, or primary highway, except as provided in the Act. The bill adds that a sign having a facing visible from more than one State highway or other public road must comply with the requirements for outdoor advertising for each State highway and each public road from which it is visible. (The Act defines "adjacent area" as the area measured from the nearest edge of the right-of-way of an interstate highway, freeway, or primary highway and extending 3,000 feet perpendicularly and then along a line parallel to the right-of-way line.)

Permits

A sign owner is required to apply for an annual permit for each sign to be maintained or erected in an adjacent area where the facing of the sign is visible from an interstate highway, freeway, or primary highway. An application form must include certain information about the applicant and the sign, including a description of where the sign is or will be situated. Under the bill, a sign owner must apply for a separate sign permit for each sign for each highway subject to the Act from which the facing of the sign is visible. The owner must apply for the permit for signs that become subject to the Act because of a change in highway designation or other reason not within the control of the sign owner within two months after the sign becomes subject to the Act. The bill requires that the application contain a precise, instead of a general, description of where the sign is or will be situated.

Under the bill, a sign permit application must include a statement signed by the owner of the land on which the sign is to be placed, acknowledging that no trees or shrubs in the

adjacent highway right-of-way may be removed, trimmed, or in any way damaged or destroyed without the written authorization of the Department. The Department may require documentation to verify the zoning, the consent of the land owner, and any other matter considered essential to the evaluation of the compliance with the Act.

The bill provides that a permit may not be issued for a sign that violates the Act unless it is eligible for removal compensation under the Act.

Under the Act, a permit is not required if a person is advertising his or her own business, products, or profession by means of a sign located on the person's premises. The bill revises the provision to exempt from the permit requirements the owner of a sign that advertises the sale or lease of real property upon which it is located or an on-premises sign. (The bill defines "on-premises sign" as a sign advertising activities conducted or maintained on the property on which it is located. The property boundary must be determined by tax rolls, deed registrations, and apparent land use delineations. When a sign consists principally of brand name or trade name advertising and the product or service advertised is only incidental to the principal activity, or it brings rental income to the property or sign owner, the sign must be considered the business of outdoor advertising and not an on-premises sign. Signs on narrow strips of land contiguous to the advertised activity, or signs on easements on adjacent property, when the purpose is clearly to circumvent the Act's intent, are not considered to be on-premises signs.)

Permit Fees

Previously, a permit fee of \$5 was payable annually in advance, to be credited to the State Trunk Line Fund. Permits expired on June 30 of each year and permit fees could not be prorated after the first year. An application for a permit renewal had to be filed with the Department before June 1 preceding the expiration date.

The bill increases the fee to \$100 for the first year, except that signs are subject to the permit renewal amount (described below) if they existed prior to a highway's change in designation or jurisdiction that requires signs to be permitted. The Department is required to establish an annual expiration date for each permit and may change the expiration date of existing permits to spread the permit renewal activity over the year. Permit fees may be prorated the first year. An application for a permit renewal must be filed with the Department at least 30 days before the expiration date.

Under the bill, for signs greater than eight square feet and up to and including 300 square feet, the annual permit renewal fee is \$25. For signs greater than 300 square feet, the annual permit renewal fee is \$40. Signs of the service club and religious category, as defined in rules promulgated by the Department, are not subject to an annual renewal fee.

Destroying Trees, Shrubs

Under the bill, a person who destroys trees or shrubs within a highway right-of-way in order to make a proposed or existing sign more visible is guilty of a felony punishable by imprisonment for up to two years and/or a fine of not more than \$10,000. If a court determines that trees or shrubs within a highway right-of-way have been removed by the sign owner, the land owner, or an agent of either party to make a sign more visible, the sign is considered to be illegal and the Department may remove it pursuant to the procedures contained in the Act.

Size and Placement

The Act provides that all signs erected or maintained in business areas or unzoned commercial and industrial areas must comply with size requirements and limitations, as specified in the Act. The bill adds that for signs erected after its effective date, signs on a sign structure may not be stacked one on top of another. For signs erected prior to the bill's effective date, the sign or sign structure may not be modified to provide a sign or sign structure that is stacked one on top of another.

The Act defines "business area" and "unzoned commercial or industrial area", and describes activities that are not considered commercial or industrial. The bill adds the following to those activities: animal husbandry; activities in a building located on property that is used principally for residential purposes or for agricultural activities already cited in the Act; activities that have not been in continuous operation of a business or commercial nature for at least two years; public utility facilities, whether regularly staffed or not; structures associated with on-site outdoor recreational activities such as riding stables, golf course shops, and campground offices; activities conducted in a structure for which an occupancy permit has not been issued or that is not a fully enclosed building, having all necessary utility service and sanitary facilities required for its intended commercial or industrial use; and, a storage facility for a business or other activity not located on the same property, except a storage building having at least 10 separate units that are

available to be rented by the public.

Distances Between Signs

The bill increases the required distances between sign structures as follows:

- From 500 feet to 1,000 feet for signs located on the same side of a highway in a business area or unzoned commercial or industrial area along interstate highways and freeways.
- From 100 feet to 500 feet for signs located along primary highways within the limits of an incorporated municipality.
- From 300 feet to 500 feet for signs located along primary highways in areas outside of the limits of an incorporated municipality.

The Act provides that the distance requirements do not apply to signs separated by a building or other visual obstruction in such a manner that only one sign located within the spacing distances is visible from the highway at any time. Under the bill, this exemption applies provided that the building or other visual obstruction has not been created for the purpose of visually obstructing either of the signs at issue.

The bill provides that a sign that is erected in compliance with the spacing requirements that were in effect at the time when the sign was erected, but that does not comply with the spacing requirements as modified by the bill, is not considered unlawful under the Act's provisions requiring just compensation for the removal of lawful signs.

Sign Removal

The Act permits the Department to remove signs and their supporting structures erected or maintained in violation of the Act. Previously, there had to be posted on the sign a notice that the sign or its supporting structure violated the Act and was subject to removal. Where a sign bore a permit number, written notice of the violation and removal of the sign and structure also had to be given the permittee by certified mail. The bill deleted those requirements, and requires, instead, that notice of a violation must be mailed to the owner by certified mail. If the owner's address cannot be determined, a notice must be posted on the sign.

Under the Act, if a sign or sign structure is not removed or brought into compliance within 60 days following the date of posting or mailing of a written notice or within further time as the Department may allow, the sign or sign structure is considered abandoned. The bill requires the Department to

conduct a hearing pursuant to the Administrative Procedures Act, at which it must confirm that the sign is abandoned, that due process has been observed, and that the sign may be removed by the Department without payment of compensation and at the owner's expense. The Act provides that a sign or sign structure considered abandoned, or any sign or sign structure erected or maintained in violation of the Act that is not eligible for removal compensation, must be removed by the Department. The bill deleted a requirement that the removal be after 60 days following the date of posting or mailing written notice.

Previously, if a sign in violation of the Act was eligible for removal compensation, the Department could proceed with removal at State expense upon payment of just compensation. The bill deleted that provision.

The Act requires just compensation to be paid from the State Trunk Line Fund for the removal of any sign or sign structure lawfully in existence before the Act took effect but not in compliance with the Act's provisions concerning size, lighting, and distance, or signs that were lawfully erected after the Act took effect but became unlawful because of a change in a highway designation or zoning. The bill provides that a sign owner must secure and keep in force a permit, unless the sign is exempt because it is an on-premises sign or a sign advertising the sale or lease of the real property on which it is located. Compensation may not be paid for any sign (including a noncomplying sign that was lawfully erected before the Act took effect or a sign that became unlawful due to a highway designation or zoning change) that has been removed by the Department because it is abandoned.

Study of the Act

The bill specifies that it is the intent of the Legislature that the State fund a study to analyze the effect of the bill and make recommendations to the Legislature of any additional changes to the Act that should be considered. At a minimum, the study must consider all of the following: whether regulatory authority under the Act should be extended to counties; whether height restrictions of signs and sign structures should be regulated and, if so, whether distinctions should be made between areas of the State; and, the effect of changes to the Act on the ability of businesses to advertise their goods and services within the State.

MCL 252.302 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Billboards are cluttering more and more of Michigan's natural beauty, which draws visitors to the State and contributes to tourism, the State's second largest industry. The bill takes steps to improve the regulation of the billboard industry by increasing billboard permit fees to provide adequate funding for the Department's billboard program; increasing the distance between signs; banning the construction of new double-decker billboards; providing greater protection of vegetation along highway rights-of-way; making it clear that a multisided sign must comply with requirements for each roadway from which the sign can be seen, and that each side must have a permit; allowing a nonconforming sign to be removed without compensation if it does not have a permit; allowing the Department to reject zoning that is taken in order to permit billboards; and, updating the Act's definitions and provisions. The bill also recognizes the need to examine the proliferation of billboards in the State, by specifying a legislative intent that the State fund a study to analyze the bill's effect and to recommend any additional changes to the Act.

Although some people might consider bill to be merely a small step, the legislation represents a significant compromise between the original proposal, which included much greater restrictions, and the Act that the bill amended. According to the Outdoor Advertising Association of Michigan, the Act has worked in reducing the number of billboards over the past two decades, and the industry already is sufficiently regulated by the Federal government, the State, and local government. As originally proposed, the bill was called a punitive measure that threatened jobs, small businesses, and charities. The enrolled legislation, however, is very different from that version, and recognizes the need for further study of additional regulations and the effect on businesses' ability to advertise.

Supporting Argument

Damage to vegetation along highways is a serious problem. According to the Department of Transportation, it is facing an increased onslaught on its rights-of-way due to a greater number of illegal tree cuttings. Reportedly, illegal cuttings occur about seven times per year in each of the Department's seven regions, with an average loss of trees and plants of \$5,000 per occurrence. While the loss of foliage clearly mars the appearance of the landscape, it also can lead to

soil erosion or a build-up of silt in drainage ditches, which can cause problems beneath a roadway. In addition, when tree cutters use chippers to grind up the trees, they often leave piles of chips behind, which then smother the underlying vegetation. According to the Department, the worst offenders are property owners involved with billboards, car dealerships, and hotels. The bill helps to address this problem in two ways. First, sign permit applications must acknowledge that no trees or shrubs in the adjacent right-of-way may be removed or harmed without the Department's authorization. In addition, someone who destroys trees or shrubs to make a sign more visible may be imprisoned for up to two years and fined up to \$10,000. If the sign owner or land owner is the offender, the Department may remove the sign without paying compensation.

Supporting Argument

Sign control, rather than sign clutter, is good for business. When regulations effectively limit the size and number of signs, the viewer actually sees more. As a result, businesses do a more effective selling job at a lower cost, and the quality of life in the community improves. According to Scenic America, chaotic overabundance of billboards almost invariably accompanies an area's deterioration and lowers property values. Moreover, sign control is essential to communities that depend on tourism. Reportedly, almost all of America's premier vacation resorts have recognized that sign control helps attract tourists' dollars and aids the local economy. Considering the importance of tourism to this State and its communities, controlling the proliferation of billboards in Michigan is critical. The bill's enhanced regulations will help the State and local economies, as well as benefit both businesses that use outdoor advertising and businesses that rely on tourism.

Response: Clearly, local communities have an interest in regulating billboards. Under the Act, however, the authority to adopt sign control ordinances is limited to cities, villages, and townships. Counties also should have the same authority. According to an article in the *Petoskey News Review* (6-26-95), the Grand Traverse County Planning Commission adopted a resolution in 1995 urging the State to give counties the power to govern billboards.

Legislative Analyst: L. Arasim

FISCAL IMPACT

Based on FY 1997-98 data, the Department of Transportation received \$91,138 from the \$5 permit charge. The amount of revenue generated

by the new fees will depend on the number and size of the signs. Based on the current number of permits issued, annual revenue will be approximately \$570,000. Costs will depend on the number of signs removed under the Act and the number of violations.

Fiscal Analyst: B. Bowerman

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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.