

Legislative Analysis



BUSINESSES IN RIGHTS OF WAY

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Senate Bill 234 (Substitute H-1)

Sponsor: Sen. Jud Gilbert, II

House Committee: Transportation

Senate Committee: Transportation

First Analysis (3-8-05)

BRIEF SUMMARY: The bill would amend the Michigan Vehicle Code to allow the Michigan Department of Transportation, with local approval, to issue a permit to a business to sell or display goods, wares, produce, fruit, vegetables, or merchandise within the right-of-way of a state trunkline highway, if the permitted activities did not create an unsafe situation or interfere with transportation along the highway.

FISCAL IMPACT: Additional state administrative costs associated with the proposed permitting process would be offset by the fees that the Michigan Department of Transportation would collect for issuing the permits. The new proposed civil fine could result in additional revenue.

THE APPARENT PROBLEM:

As currently written, the Michigan Vehicle Code appears to prohibit the sale or display of merchandise within the right-of-way of a state trunkline highway, with a few exceptions. The enforcement of this prohibition, according to testimony before the House Transportation Committee, would prevent some existing businesses, such as restaurants with outdoor seating, from continuing to operate along the side of state highways if they were operating within the right-of-way. Legislation to address this through a state-local permitting process has been developed.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Vehicle Code to allow the Michigan Department of Transportation (MDOT) to issue a permit to a person, firm, or corporation to sell or display goods, wares, produce, fruit, vegetables, or merchandise within the right-of-way of a state trunkline highway, if the permitted activities did not create an unsafe situation or interfere with transportation along the highway.

(Currently under the code a person who sells or displays merchandise within a state trunkline right-of-way is, with some exceptions, responsible for a civil infraction. The prohibition also applies to a right-of-way of a highway outside the corporate limits of a city or village.)

As a condition of issuing a permit, MDOT would have to require the municipality with jurisdiction over the site to pass a resolution authorizing the activities and could require

that the municipality agree to enforce compliance with the permit. The issuance of a permit would not confer any property right, and MDOT could charge a fee in an amount not greater than the administrative cost of issuing the permit.

A permit holder who conducted activities in violation of the permit would be responsible for a civil infraction and subject to a maximum fine of \$10. Each day that the permit holder violated the permit would be a separate violation. The department could limit or revoke a permit if the permit holder conducted activities that created an unsafe situation or interfered with transportation along the highway, or violated permit conditions.

MCL 257.676a and 257.907

HOUSE COMMITTEE ACTION:

The House Committee on Transportation adopted an amendment that requires the relevant local unit of government to pass a resolution authorizing the activities that would be the subject of an MDOT permit.

ARGUMENTS:

For:

The bill would allow "sidewalk" businesses, such as outdoor restaurants and outdoor displays of merchandise, to operate along state trunkline highways, as long as the local unit of government approves and the Michigan Department of Transportation issues a permit. Current law apparently prohibits these activities, although they are not uncommon. The issue has been discussed in the context of businesses in Port Huron, but it is a statewide issue.

POSITIONS:

The Michigan Department of Transportation testified in support of the bill. (3-8-05)

The Michigan Municipal League testified in support for the bill. (3-8-05)

The Michigan Association of Counties has indicated support for the bill. (3-8-05)

The Michigan Townships Association has indicated support for the bill. (3-8-05)

The County Road Association of Michigan has indicated that it is neutral on the bill. (3-8-05)

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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.