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Senate Bill 567 (Substitute S-1 as reported)
Senate Bill 568 (Substitute S-1 as reported)
Senate Bill 911 (as reported without amendment)
Sponsor: Senator Tom George (S.B. 567)
Senator Jud Gilbert, II (S.B. 568 & 911)
Committee: Transportation

Date Completed: 1-10-06

RATIONALE

Businesses and charitable organizations frequently use billboards and other large signs to advertise, give directions, publicize events, and display public service announcements. To date, more than 13,000 signs have been constructed along Michigan highways. Some people believe that the signs detract from the State's aesthetic qualities, have a negative impact on property values, and distract drivers, and suggest that the erection of new billboards should be prohibited for a period of time.

In another matter, some sign owners have expressed concern that unchecked vegetative growth interferes with the visibility of their billboards, and believe that they should be allowed to trim or remove trees and bushes, subject to oversight by the Michigan Department of Transportation (MDOT).

CONTENT

Senate Bill 567 (S-1) would amend the Highway Advertising Act to prohibit MDOT, until 2009, from issuing a permit for a sign unless the applicant surrendered a previously issued permit; and to allow the owner of a permitted sign that was removed to obtain an interim permit.

Senate Bill 568 (S-1) would amend the Highway Advertising Act to do the following:

- Delete a requirement that a sign owner apply for a separate sign permit for each sign for each highway subject to the Act from which the sign's facing is visible.
- Apply the prescribed \$25 permit renewal fee to all signs up to 300 square feet in size.
- Authorize MDOT to issue vegetation management permits to sign owners until 2009.
- Require an applicant for a vegetation management permit to submit a vegetation management plan, a \$50 application fee, and a tree replacement fee.
- Prescribe an annual \$50 compliance fee for trimming in connection with a renewal vegetation management permit.
- Prescribe a penalty for the unauthorized removal of vegetation.
- Revise provisions regulating the illumination of a sign.
- Prohibit signs that involve motion, running animation, or flashing or moving lights, subject to certain exceptions.
- Specify that a sign or sign structure erected or maintained in violation of the Act would be a nuisance per se; and allow MDOT to seek an injunction against use of the sign pending its removal.
- Specify that all billboards in the State would be subject to the Act.

Senate Bill 911 would amend Public Act 368 of 1925, which regulates encroachments and obstructions on highways and the use of highways by public utilities, to specify that the statute would not apply to the use of rights-of-way in the administration of the proposed vegetation management program.

Senate Bills 567 and 568 are tie-barred to each other. Senate Bill 911 is tie-barred to Senate Bill 568. Senate Bills 567 (S-1) and 568 (S-1) are described below in further detail.

Senate Bill 567 (S-1)

The Highway Advertising Act requires a sign owner to apply for an annual permit on a form prescribed by MDOT for each sign to be maintained or erected in an adjacent area (i.e., the space within 3,000 feet from the side of the road) where the sign's facing is visible from an interstate highway, freeway, or primary highway.

Under the bill, from the date it took effect until December 31, 2008, MDOT could not issue a permit for a sign unless the applicant surrendered a previously issued permit. Except for a sign removed by MDOT according to procedures set forth in the Act, if a sign for which a permit had been issued were removed for any reason, the permit holder could notify MDOT and exchange the permit for the removed sign for an interim permit with no designated sign location. If a sign were removed from an area that was nonconforming under applicable zoning designations, any sign issued under an interim permit could not be in a nonconforming area. An interim permit would have to be surrendered with an application for a permit for a sign.

The bill specifies that an issued sign permit would have to comply with the Act.

(Under the Act, "sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing, whether placed individually or on a T-type, V-type, back-to-back or double-faced display, designed, intended, or used to advertise or inform.)

Senate Bill 568 (S-1)

Annual Sign Permits

The bill would delete a requirement that a sign owner apply for a separate sign permit for each sign for each highway subject to the Act from which the sign's facing is visible.

Permit Renewal Fee

The Act prescribes an annual permit renewal fee of \$25 for signs larger than eight square feet and up to and including 300 square feet. Under the bill, this fee would apply to all signs up to and including 300 square feet. (Signs larger than 300 square feet would still be subject to a \$40 annual permit renewal fee.)

Vegetation Management Permit

Under the bill, beginning on the date it took effect through December 31, 2008, MDOT would be authorized to issue vegetation management permits to the owner of a sign subject to the Act.

A sign owner could apply to MDOT for a permit using the Department's approved form. An applicant would have to submit a vegetation management plan approved in writing by an arborist or forester certified by the International Society of Arboriculture or a local chapter of the society. The applicant would have to pay MDOT \$50 for each application.

The vegetation management plan would have to identify clearly the vegetation to be removed, trimmed, or relocated in order to permit full visibility of the sign within the motorist viewing zone (defined below). The plan would have to describe all recurring or periodic trimming that would be needed in the future to permit full visibility. Additionally, the plan would have to include a statement of the value of any tree that was to be removed. The statement of value would have to be determined by reference to the Shade Tree Evaluation Chart of the Michigan Forestry and Parks Association.

The Department would have to issue a permit to the applicant unless it determined that the submitted plan identified vegetation to be removed, trimmed, or relocated that did not impair the visibility of any portion of

the sign within the motorist viewing zone. During the first 12 months after the bill took effect, MDOT would have to issue the permit within 60 days after receiving an application. After the first 12 months, MDOT would have to issue the permit within 30 days after receiving the application. A plan could not be implemented before the applicant paid a fee to MDOT for tree replacement in the amount identified in the statement of value for any tree that was to be removed. No tree replacement fee would have to be paid if no trees were to be removed.

If MDOT took no action on an application within 30 days after receiving it, the applicant could implement the plan upon payment of the application fee and, if applicable, the tree replacement fee.

A sign owner also could apply to MDOT on a Department-approved form for a vegetation management renewal permit to perform recurring or periodic trimming of vegetation described in a plan previously submitted and implemented in connection with the sign owner's vegetation management permit. The Department would have to issue the renewal permit within 15 days after receiving an administratively complete application. No trimming in connection with a renewal permit could be performed before the owner paid a plan compliance fee of \$50 to MDOT. The Department would have to use the fee to determine compliance with the implemented plan.

All work performed in connection with a vegetation management plan would have to be performed at the sign owner's expense.

The bill would prohibit MDOT from planting or authorizing to be planted any vegetation that impaired, or through expected normal growth would impair in the future, the visibility within the motorist viewing zone of any portion of a sign subject to the Act.

If a sign owner removed vegetation not identified for removal in a vegetation management plan, the owner would have to pay to MDOT a penalty of twice the value of the removed vegetation.

(Under the bill, "motorist viewing zone" would mean the area within the right-of-way between the main traveled way and a sign for which a permit had been issued, for a distance of 500 feet before a sign along

primary highways and for a distance of 1,000 feet before a sign along interstate highways and freeways. The bill specifies that measurements would have to be made in the manner provided in Section 17 (which requires that spacing requirements be measured along the nearest edge of the pavement of the highway between points directly opposite each sign).

The Act defines "main-traveled way" as the traveled way of a highway on which through traffic is carried. The term excludes facilities as frontage roads, turning roadways, and parking areas.)

Sign Illumination

Currently, in business areas or unzoned commercial or industrial areas, signs may be illuminated so as to permit them to deliver the intended advertising message. The illumination must be used in a manner that prevents intense or brilliant beams or rays of light from being directed at any portion of the main-traveled way. The bill would delete the reference to business areas and unzoned commercial or industrial areas. Under the bill, a sign subject to the Act could be illuminated so as to allow the sign to be seen and read. The illumination, however, could not be so intense or brilliant that it interfered with safe driving.

Under the Act, a sign that contains changing illumination may not be erected in any area except in an incorporated city or village with a population over 35,000 where MDOT has determined it is consistent with customary usage in the area. The bill would delete this provision.

The bill also would eliminate a requirement that all lighting be subject to any other provisions relating to lighting of signs presently applicable to all highways under the State's jurisdiction.

Prohibited Signs

The Act prohibits the following signs or sign structures:

- Signs that purport to regulate, warn, or direct traffic movement or that interfere with, imitate, or resemble any official traffic sign, signal, or device.
- Signs that are not maintained adequately and in good repair.

- Signs erected or maintained upon trees or painted or drawn upon rocks or other natural resources.
- Signs that prevent a driver from having a clear and unobstructed view of approaching, intersecting, or merging traffic.
- Abandoned signs.

The bill also would prohibit signs that involved motion or rotation of any part of the structure, running animation or displays, or flashing or moving lights, except for a sign or sign structure with a message that changed not more than once every four seconds, if it were otherwise consistent with agreements entered into between MDOT and the U.S. Department of Transportation.

Violations of Act

Under the Act, a person who destroys trees or shrubs within a highway right-of-way for the purpose of making a sign more visible is guilty of a felony punishable by imprisonment for up to two years and/or a maximum fine of \$10,000. If a court determines that trees or shrubs within a right-of-way have been removed by the sign owner, the land owner, or an agent of either party to make the sign more visible, the sign is considered illegal and MDOT may remove it pursuant to procedures set forth in the Act. Under the bill, the penalty would apply unless MDOT had issued a vegetation management permit, and a sign could be removed if the trees or shrubs were destroyed or removed without a vegetation management permit.

The bill specifies that a sign or sign structure erected or maintained in violation of the Act would be a nuisance per se. Before or after a hearing was conducted, MDOT could apply to the circuit court in the county in which a sign was located for an order to show cause why the use of a sign erected or maintained in violation of the Act should not be enjoined pending its removal in accordance with procedures established in the Act. (Under the Act, "sign structure" means the assembled components that make up an outdoor advertising display.) (A nuisance per se is something that is a nuisance at all times and under all circumstances, regardless of its location or surroundings. A nuisance, generally speaking, is something that interferes with the use or enjoyment of property.)

Billboards Advertising Tobacco

The Act prohibits a billboard from advertising the purchase or consumption of tobacco products. The prohibition took effect on January 1, 2000. Under the bill, as of that date, all billboards in this State would be subject to the Act.

Legislative Findings & Intent

The Act contains a legislative finding that, to improve and enhance scenic beauty, the Legislature finds it appropriate to regulate and control outdoor advertising and outdoor advertising as it pertains to tobacco adjacent to the interstate highway, freeway, and primary highway systems, and outdoor advertising as it pertains to tobacco on secondary highways, major streets, and local roads within Michigan, and that outdoor advertising is a legitimate accessory commercial use of private property, is an integral part of the marketing function and an established segment of the State's economy. Additionally, the Act states that the Legislature finds it appropriate to protect minors from exposure to advertising that encourages them to possess tobacco illegally.

The bill, instead, states, "To improve and enhance scenic beauty...and to limit and reduce the illegal possession and use of tobacco by minors, the legislature finds it appropriate to regulate and control outdoor advertising and outdoor advertising as it pertains to tobacco adjacent to the streets, roads, highways, and freeways within this state and that outdoor advertising is a legitimate accessory commercial use of private property and serves an important public need as an integral part of the marketing function and an established segment of the economy of this state."

The bill would repeal Section 25 of the Act, which specifies a legislative intent that the State fund a study to analyze the effect of Public Act 533 of 1998 (which made various amendments to the Highway Advertising Act) and recommend any additional changes that should be considered.

Proposed MCL 252.307a (S.B. 567)
MCL 252.302 et al. (S.B. 568)
247.171a (S.B. 911)

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

The bills would strike an appropriate balance between the preservation of the State's aesthetic qualities and the promotion of economic activity. Senate Bill 567 (S-1), in effect, would institute a moratorium on new billboards, ensuring that Michigan's scenic landscapes were not marred by the construction of further roadside signs.

While some motorists might consider billboards and other signs eyesores, however, many others rely on them for information and directions. Under the vegetation management program proposed by Senate Bill 568 (S-1), the thousands of businesses and nonprofit organizations that employ large signs to advertise and spread public service announcements could keep their messages visible to motorists.

Opposing Argument

Senate Bill 567 (S-1) would provide an illusion of billboard management, rather than any meaningful control over the proliferation of billboards. Although the bill would prohibit MDOT from issuing new sign permits, this provision would sunset in 2009. Furthermore, the prohibition would not affect the permit applications now pending before MDOT. In more than 1,200 cases, permits have been issued but the signs have not yet been constructed on the sites, and the bill would not prohibit their construction. Thus, the bill would not institute a true moratorium. Moreover, it would not prohibit the transfer of a sign permit from one location to another. Even though the actual number of billboards might not increase under Senate Bill 567 (S-1), new ones could be built in other areas. Overall, the bill would not result in a decreased rate of sign construction.

Response: Although Senate Bill 567 (S-1) would not affect pending applications or future construction by those already holding permits, it would prevent the unchecked proliferation of billboards and other signs along the State's highways. If the bill is not enacted, the ability to erect new signs will remain virtually unlimited.

Opposing Argument

Billboards actually can have a detrimental effect on economic growth because they interrupt the natural scenery. The vegetation management that would be allowed under Senate Bill 568 (S-1) would contribute to the increased deterioration of the landscape along the State's roads and could deter some tourists from traveling in Michigan. Additionally, the \$50 compliance fee under the bill would be disproportionately low when compared with the value of the billboards to sign permit holders.

Billboards are no longer necessary, as less visually intrusive options provide viable alternatives. Tourist-oriented directional signs (TODs) and logo signs are much smaller and can be effective in guiding motorists to featured businesses. Drivers also can obtain directions and other tourist information from handheld electronic devices.

Response: Billboards help attract customers to businesses, enabling them to create more jobs, and help provide critical exposure to charitable organizations. In fact, many people report that they find billboards to be useful in obtaining important tourist-related information. Logo signs and TODs are not equivalent to billboards. They are too small to include detailed information or directions. Furthermore, Federal law allows only certain types of businesses to have their logos included on logo signs. When compared with other available methods, billboards remain the most affordable and effective option to transmit information to travelers. In order to promote economic activity, it is essential that sign owners be permitted to clear vegetation that interferes with motorists' views of relevant information.

Legislative Analyst: Julie Koval

FISCAL IMPACT

Senate Bill 567 (S-1)

The bill would reduce State revenue associated with the proposed moratorium on new highway sign permits issued by the Michigan Department of Transportation until 2009. Under the bill, MDOT would be prohibited from issuing any new highway sign permits, unless the applicant surrendered a previously issued permit.

According to MDOT, approximately 272 new permits are issued each year. Under the bill, the revenue from these new permits would not be received, which would reduce annual deposits in the State Trunkline Fund by approximately \$7,200 per year. As a point of reference, MDOT reports that, as of January 2006, there were 9,266 permits for signs less than or equal to 300 square feet and 5,518 permits for signs greater than 300 square feet.

Senate Bill 568 (S-1)

The bill would reduce State revenue associated with the requirement that a sign owner apply for a separate permit for each sign for each highway subject to the Act from which the sign's facing is visible. It is unknown how many signs would fall under the new single permit requirement.

The bill would increase State revenue by allowing MDOT to issue vegetation management permits to sign owners. This permit would cost \$50. It is unknown how many sign owners would apply for a vegetation management permit; therefore, the fiscal impact is indeterminate at this time. As part of the permit process, sign owners would be required to develop a vegetation management plan identifying vegetation to be removed, trimmed, or relocated, according to certain criteria. Sign owners would be responsible for paying a tree replacement fee for any approved tree removals under the management plan. This provision also would result in increased State revenue.

The contemplated new permit program would result in additional administrative costs to MDOT. The workload would be contingent on the number of permit requests and the activities associated with vegetation management plan review.

Furthermore, the bill would increase State revenue associated with the proposed penalty for removal of vegetation not identified for removal in a vegetation management plan. Again, it is unknown how many permit holders would be subject to the penalty of twice the value of the removed vegetation; therefore, the fiscal impact of this provision is indeterminate at this time.

Finally, the bill would increase State revenue by requiring the owners of signs equal to or less than eight square feet to pay the annual permit renewal fee of \$25. Currently, the annual permit renewal fee does not apply to these signs. According to MDOT, 135 signs would be subject to the fee. This would generate an additional \$3,375 annually.

Senate Bill 911

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Craig Thiel

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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.