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Senate Bills 567 and 568 (as introduced 6-7-05)  
Senate Bill 911 (as introduced 12-1-05)  
Sponsor: Senator Tom George (S.B. 567)  
Senator Jud Gilbert, II (S.B. 568 & 911)  
Committee: Transportation

Date Completed: 12-12-05

## **CONTENT**

**Senate Bill 567** would amend the Highway Advertising Act to prohibit the Michigan Department of Transportation (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** 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 \$10 compliance fee for trimming in connection with a renewal vegetation management permit.
- Prescribe a penalty for the unauthorized removal of vegetation.
- 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.

**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 and 568 are described below in further detail.

### **Senate Bill 567**

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. An interim permit would have to be surrendered with an application for a permit for a sign.

(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**

#### **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 prepared and signed 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.

Within 30 days after receiving an application, MDOT 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. 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. 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 the 30-day time period, 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. No trimming in connection with a renewal permit could be performed before the owner paid a plan compliance fee of \$10 to MDOT. The Department would have to use the plan compliance 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.

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. Section 17 requires that spacing requirements be measured along the nearest edge of the pavement of the highway between points directly opposite each sign.)

#### 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 with 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)

Legislative Analyst: Julie Koval

## **FISCAL IMPACT**

### **Senate Bill 567**

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 May 2005, there were 11,500 permits for signs less than or equal to 300 square feet and 6,200 permits for signs greater than 300 square feet.

### **Senate Bill 568**

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. Under the bill, MDOT would charge a penalty of twice the value of the removed vegetation. Again, it is unknown how many permit holders would be subject to the penalty; 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.