

HOUSE BILL No. 5280

January 24, 2012, Introduced by Reps. Yonker, Dillon, Hooker, Foster, Heise, Johnson, Daley, Haines, MacMaster, Outman, Somerville, MacGregor, Potvin, Lyons, Horn, O'Brien, Pscholka, Roy Schmidt, Callton, Haveman and Lori and referred to the Committee on Transportation.

A bill to amend 1972 PA 106, entitled
"Highway advertising act of 1972,"
by amending sections 11 and 11a (MCL 252.311 and 252.311a), section
11 as amended by 2006 PA 448 and section 11a as amended by 2009 PA
86.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11. (1) Except as otherwise provided in subsection (2), a
2 person who trims or removes trees or shrubs within a highway right-
3 of-way for the purpose of making a proposed or existing sign more
4 visible may **BE ORDERED TO** pay a penalty of up to 5 times the value
5 of the trees or shrubs trimmed or removed unless the person trimmed
6 or removed the trees or shrubs under the authority of a permit
7 issued under section 11a. The value of the removed trees or shrubs
8 shall be determined by the department ~~in accordance with section~~

1 ~~11a(3)~~ USING THE MOST RECENT VERSION OF THE INTERNATIONAL SOCIETY
 2 OF ARBORICULTURE'S GUIDE FOR PLANT APPRAISAL AND THE CORRESPONDING
 3 MICHIGAN TREE EVALUATION SUPPLEMENT TO THE GUIDE FOR PLANT
 4 APPRAISAL PUBLISHED BY THE MICHIGAN FORESTRY AND PARK ASSOCIATION.
 5 THE DEPARTMENT MAY USE ANOTHER OBJECTIVE AUTHORITATIVE GUIDE IN
 6 CONSULTATION WITH REPRESENTATIVES OF THE OUTDOOR ADVERTISING
 7 INDUSTRY AND OTHER INTERESTED PARTIES, IF EITHER THE GUIDE OR THE
 8 SUPPLEMENT HAS NOT BEEN UPDATED FOR MORE THAN 5 YEARS. THE
 9 DEPARTMENT, IN CONSULTATION WITH REPRESENTATIVES OF THE OUTDOOR
 10 ADVERTISING INDUSTRY AND OTHER INTERESTED PARTIES, MAY DEVELOP A
 11 VALUE SCHEDULE FOR VEGETATION. IF AGREED TO BY BOTH THE DEPARTMENT
 12 AND THE APPLICANT, THIS VALUE SCHEDULE SHALL BE USED TO DETERMINE
 13 THE VALUE OF THE VEGETATION MANAGED. THE DEPARTMENT HAS THE BURDEN
 14 OF PROOF IN ANY ADMINISTRATIVE PROCEEDING BROUGHT FOR AN ALLEGED
 15 VIOLATION OF THIS SUBSECTION.

16 (2) A person who removes trees or shrubs within a highway
 17 right-of-way for the purpose of making a proposed or existing sign
 18 more visible without first obtaining a permit under section 11a is
 19 guilty of a ~~felony~~ **MISDEMEANOR** punishable by imprisonment for not
 20 more than ~~2 years~~ **90 DAYS** or a fine of not more than ~~\$25,000.00,~~
 21 **\$5,000.00**, or both. If no criminal action ~~pursuant to~~ **UNDER** this
 22 section has been brought against the person within 1 year of the
 23 removal of trees or shrubs without a permit, the department may
 24 proceed to recover the penalty prescribed in subsection (1). If a
 25 criminal action is brought against a person ~~pursuant to~~ **UNDER** this
 26 subsection, the department shall not proceed to recover the penalty
 27 prescribed in subsection (1).

1 (3) If a sign owner or the sign owner's agent trims or removes
2 trees or shrubs without first having obtained a permit under
3 section 11a, the sign owner ~~shall~~**IS** not be eligible to obtain a
4 permit under section 11a **TO TRIM OR REMOVE TREES OR SHRUBS** for 3
5 years from the date of **THE IMPROPER** trimming or removal of trees or
6 shrubs.

7 (4) If trees or shrubs within a highway right-of-way have been
8 trimmed or removed by a sign owner or its agent for the purpose of
9 making the sign more visible, the sign shall be considered illegal
10 and the department may remove the sign ~~pursuant to~~**IN ACCORDANCE**
11 **WITH** the procedures established in section 19 if a court determines
12 any of the following:

13 (a) The trimming or removal was in violation of a local
14 ordinance.

15 (b) The trimming or removal resulted in the intentional
16 trimming or removal of trees or shrubs that were not authorized to
17 be trimmed or removed in a permit issued under section 11a.

18 (c) The sign owner trimmed or removed trees or shrubs and did
19 not obtain a permit under section 11a.

20 (5) If a sign is removed under this section and the department
21 subsequently receives an application for a permit under section 6
22 for the same area, the department shall consider that the
23 conditions for the permit issued under section 6 remain in force
24 for spacing and all other requirements of this act.

25 Sec. 11a. (1) Subject to the requirements of this section, the
26 department is authorized to and shall issue permits for the
27 management of vegetation to the owner of a sign subject to this

1 act.

2 (2) A sign owner may apply to the department for a permit to
3 manage vegetation using the department's approved form. The
4 application shall be accompanied by an application fee of \$150.00
5 to cover the costs of evaluating and processing the application.
6 The application shall be submitted during the 2 or more annual
7 application periods not less than 60 days each, as specified by the
8 department. The application shall clearly identify the ~~vegetation~~
9 **AREA** to be managed in order to create visibility of the sign within
10 the billboard viewing zone. ~~and all proposed mitigation for the~~
11 ~~impacts of the vegetation management undertaken.~~ **THE APPLICANT**
12 **SHALL NOT BE REQUIRED TO IDENTIFY THE SPECIFIC VEGETATION TO BE**
13 **MANAGED WITHIN THE IDENTIFIED AREA.** The application shall also
14 include anticipated management that will be needed in the future to
15 maintain the visibility of the sign within the billboard viewing
16 zone for the time specified in subsection (4) and procedures for
17 clearing vegetation as determined by the department.

18 (3) Unless otherwise agreed to by the department and an
19 applicant, the department shall issue its decision on an
20 application no later than 30 days after the last day of the
21 application period. The department shall approve the application,
22 approve the application with modification, or deny the application.
23 **THE DEPARTMENT MAY, AS A CONDITION FOR ISSUING AN INITIAL PERMIT TO**
24 **MANAGE VEGETATION FOR A SIGN INSTALLED ON OR AFTER JANUARY 1, 2012,**
25 **REQUIRE THE APPLICANT TO MITIGATE ANY LOSS OF VEGETATION BY**
26 **PLANTING VEGETATION AS REQUIRED BY THE DEPARTMENT AT THAT LOCATION**
27 **OR ANOTHER LOCATION. MITIGATION SHALL NOT INCLUDE PAYMENT FOR THE**

1 **LOSS OF VEGETATION.** If the department approves the application or
2 approves the application with modification, it shall notify the
3 applicant. ~~and the notification shall include the value of the~~
4 ~~vegetation to be managed as determined by the department using the~~
5 ~~most recent version of the international society of arboriculture's~~
6 ~~guide for plant appraisal and the corresponding Michigan tree~~
7 ~~evaluation supplement to the guide for plant appraisal published by~~
8 ~~the Michigan forestry and park association. The department may use~~
9 ~~another objective authoritative guide in consultation with~~
10 ~~representatives of the outdoor advertising industry and other~~
11 ~~interested parties, if either the guide or the supplement has not~~
12 ~~been updated for more than 5 years. The department, in consultation~~
13 ~~with representatives of the outdoor advertising industry and other~~
14 ~~interested parties, may develop a value schedule for vegetation. If~~
15 ~~agreed to by both the department and the applicant, this value~~
16 ~~schedule shall be used to determine the value of the vegetation to~~
17 ~~be managed. The notification to the applicant shall also include~~
18 ~~any required mitigation for the vegetation to be managed and all~~
19 ~~conditions and requirements associated with the issuance of the~~
20 ~~permit. The permit fee shall be \$300.00, except that in special and~~
21 ~~unique situations and circumstances where the department incurs~~
22 ~~additional costs directly attributable to the approval of the~~
23 ~~permit, a fee greater than \$300.00 adequate for the recovery of~~
24 ~~additional costs may be assessed. Upon receipt of the permit fee,~~
25 ~~payment for the value of the vegetation, and compliance with MDOT~~
26 ~~conditions and requirements, the department shall, **EXCEPT AS**~~
27 **OTHERWISE PROVIDED BY LAW,** issue the permit.

1 (4) Subject to the provisions of this subsection, a permit to
2 manage vegetation shall provide for a minimum of 5 seconds of
3 continuous, clear, and unobstructed view of the billboard face
4 based on travel at the posted speed as measured from the point
5 directly adjacent to the point of the billboard closest to the
6 highway. The department and the applicant may enter into an
7 agreement, at the request of the applicant, identifying the
8 specific location of the continuous, clear, and unobstructed view
9 within the billboard viewing zone. The specific location may begin
10 at a point anywhere within the billboard viewing zone but shall
11 result in a continuous, clear, and unobstructed view of not less
12 than 5 seconds. ~~An applicant shall apply for a permit that~~
13 ~~minimizes the amount of vegetation to be managed for the amount of~~
14 ~~viewing time requested.~~ Applications for vegetation management that
15 provide for greater than 5 seconds of continuous, clear, and
16 unobstructed viewing at the posted speed as measured from a point
17 directly adjacent to the point of the billboard closest to the
18 highway shall not be rejected based solely upon the application
19 exceeding the 5-second minimum. For billboards spaced less than 500
20 feet apart, vegetation management, when permitted, shall provide
21 for a minimum of 5 seconds of continuous, clear, and unobstructed
22 view of the billboard face based on travel at the posted speed or
23 the distance between the billboard and the adjacent billboard,
24 whichever is less.

25 (5) The department shall issue permits for vegetation
26 management in a viewing cone or, at the department's discretion,
27 another shape that provides for the continuous, clear, and

1 unobstructed view of the billboard face. The department may, in its
2 discretion, issue a permit for vegetation management outside of the
3 billboard viewing zone.

4 (6) If no suitable alternative exists, ~~or the applicant is~~
5 ~~unable to provide acceptable mitigation,~~ the department may deny an
6 application or provide a limited permit to manage vegetation when
7 it can be demonstrated that 1 or more of the following situations
8 exist:

9 (a) The vegetation management would have an adverse impact on
10 safety.

11 (b) The vegetation management would have an adverse impact on
12 operations of the state trunk line highway.

13 (c) The vegetation management conflicts with federal or state
14 law, rules, or statutory requirements.

15 (d) The applicant does not have the approval of the owner of
16 the property.

17 ~~—— (e) The vegetation to be managed was planted or permitted to~~
18 ~~be planted by the department for a specific purpose.~~

19 (E) ~~(f)~~ Vegetation would be managed for a newly constructed
20 billboard. ~~or vegetation existed that obscured the billboard or~~
21 ~~would have obscured the billboard before it was constructed. In~~
22 ~~denying an application or providing a limited permit, the~~
23 ~~department shall consider previous vegetation management that was~~
24 ~~allowed at the billboard site.~~

25 (F) ~~(g)~~ The management would occur on a scenic or heritage
26 route that was designated on or before ~~the effective date of the~~
27 ~~amendatory act that added this section.~~ **JANUARY 1, 2007.**

1 (G) ~~(h)~~ The application is for a sign that has been found,
2 after a hearing in accordance with section 19, not to be in
3 compliance with this act.

4 ~~—— (i) Other special or unique circumstances or conditions exist,~~
5 ~~including, but not limited to, adverse impact on the environment,~~
6 ~~natural features, or adjacent property owners.~~

7 (7) If the department denies an application, ~~or issues a~~
8 ~~limited permit under this subsection,~~ the department shall provide
9 a specific rationale for denying ~~an~~ **THE** application. ~~or approving a~~
10 ~~limited permit.~~

11 (8) No later than 30 days after receiving a denial ~~or a~~
12 ~~limited permit under subsection (6),~~ an applicant may request the
13 review and reconsideration of the denial. ~~or limited permit.~~ The
14 applicant shall submit its request in writing on a form as
15 determined by the department. The applicant shall state the
16 specific item or items for which review and reconsideration are
17 being requested. ~~An applicant who received a limited permit may~~
18 ~~manage vegetation in accordance with that permit during the review~~
19 ~~and reconsideration period.~~

20 (9) No later than 90 days after January 1, 2007, the
21 department shall develop a procedure for review and reconsideration
22 of applications that are denied. ~~or that result in the issuance of~~
23 ~~a limited permit.~~ This procedure shall include at least 2 levels of
24 review and provide for input from the applicant. The review period
25 shall not exceed 120 days. The department shall consult with all
26 affected and interested parties, including, but not limited to,
27 representatives of the outdoor advertising industry, in the

1 development of this procedure.

2 (10) If, after review and reconsideration as provided for in
3 subsection (8), the applicant is denied a permit, ~~or issued a~~
4 ~~limited permit,~~ the applicant may appeal the decision of the
5 department to a court of competent jurisdiction.

6 (11) All work performed in connection with trimming, removing,
7 or relocating vegetation shall be performed at the sign owner's
8 expense.

9 (12) The department shall not plant or authorize to be planted
10 any vegetation that obstructs, or through expected normal growth
11 will obstruct in the future, the visibility within the billboard
12 viewing zone of any portion of a sign face subject to this act.

13 (13) The department shall prepare an annual report for
14 submission to the legislature regarding the vegetation management
15 undertaken ~~pursuant to~~ **UNDER** this section. At a minimum, this
16 report shall include all of the following items:

17 (a) The number of application periods.

18 (b) The number of applications submitted under this section.

19 (c) The number of permits approved. ~~without modifications.~~

20 ~~— (d) The number of permits approved with modifications.~~

21 **(D)** ~~(e)~~ The number of permits denied.

22 **(E)** ~~(f)~~ The number of ~~modified or~~ denied permits ~~which~~ **THAT**
23 were appealed.

24 **(F)** ~~(g)~~ The number of appeals that reversed the department's
25 decision.

26 **(G)** ~~(h)~~ The number of appeals that upheld the department's
27 decision.

1 (H) ~~(i)~~ The number of permits approved ~~which~~ **THAT** requested a
2 visibility time period exceeding 5 seconds.

3 (I) ~~(j)~~ The amount of compensation paid to the state for
4 removed vegetation.

5 (J) ~~(k)~~ The average number of days after the end of the
6 application period before an applicant was sent notice that a
7 permit was approved.

8 (K) ~~(l)~~ A summary of the reasons for which the department
9 denied ~~or modified~~ permits.

10 (L) ~~(m)~~ A summary of the amount of all revenues and expenses
11 associated with the management of the vegetation program.

12 (14) The report in subsection (13) shall contain a summary for
13 the entire state and report in detail for each department region.
14 The department shall provide the report to the legislature for
15 review no later than 90 days following the completion of each
16 fiscal year. ~~The reporting deadline for the initial report is 18~~
17 ~~months after January 1, 2007.~~

18 (15) A person who under the authority of a permit obtained
19 under this section trims or removes more trees and shrubs than the
20 permit authorizes is subject to 1 or more of the following
21 penalties:

22 (a) For the first 3 violations during a 3-year period, a
23 penalty of an amount up to ~~\$5,000.00~~ **\$1,000.00** or the amount
24 authorized as a penalty in section 11(1), whichever is greater.

25 (b) For the fourth violation during a 3-year period and any
26 additional violation during that period, a penalty of an amount up
27 to ~~\$25,000.00~~ **\$5,000.00** or double the amount authorized as a

1 penalty in section 11(1), whichever is greater, for each violation.

2 (c) For the fourth violation during a 3-year period, and any
3 additional violation, a person is not eligible to obtain or renew a
4 permit under this section **TO MANAGE VEGETATION** for a period of 3
5 years from the date of the fourth violation.

6 (16) If the department alleges that a person has trimmed or
7 removed more trees or shrubs than the permit authorizes, then the
8 department shall notify the person of its intent to seek any 1 or
9 more of the penalties provided in subsection (15). The notification
10 shall be in writing and delivered via United States certified mail,
11 and shall detail the conduct the department alleges constitutes a
12 violation of subsection (15), shall indicate what penalties the
13 department will be seeking under subsection (15), and shall occur
14 within 30 days of the filing of the completion order for the
15 trimming or removal of trees or shrubs the department alleges
16 violated the permit. Any allegation by the department that a person
17 has trimmed or removed more trees or shrubs than the permit
18 authorizes ~~shall be~~ **IS** subject to the appeals process contained in
19 subsections (8), (9), and (10). **THE DEPARTMENT HAS THE BURDEN OF**
20 **PROOF IN AN ADMINISTRATIVE PROCEEDING BROUGHT FOR AN ALLEGED**
21 **VIOLATION OF THIS SECTION.**

22 (17) As used in this act:

23 (a) "Billboard viewing zone" means the 1,000-foot area
24 measured at the pavement edge of the main-traveled way closest to
25 the billboard having as its terminus the point of the right-of-way
26 line immediately adjacent to the billboard.

27 (b) "Vegetation management" means the trimming, removal, or

1 relocation of trees, shrubs, or other plant material.

2 (c) "Viewing cone" means the triangular area described as the
3 point directly below the face of the billboard closest to the
4 roadway, the point directly below the billboard face farthest away
5 from the roadway, a point as measured from a point directly
6 adjacent to the part of the billboard closest to the roadway and
7 extending back parallel to the roadway the distance that provides
8 the view of the billboard prescribed in this section, and the
9 triangle described by the points extending upward to the top of the
10 billboard.

11 Enacting section 1. This amendatory act is curative and
12 applies to administrative proceedings pending on January 1, 2012
13 and filed after that date.

14 Enacting section 2. This amendatory act takes effect January
15 1, 2012.