



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

## BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bill 953 (as introduced 5-4-16)  
Sponsor: Senator Tom Casperson  
Committee: Transportation

Date Completed: 5-25-16

**CONTENT**

The bill would amend the Highway Advertising Act to do the following:

- Exempt public school property from a zoning ordinance enacted by, or a zoning classification assigned by, a county, city, village, or township.
- Provide that public school property would qualify as unzoned property of a mixed public and commercial use if the public school were using or proposing to use the property for a purpose beneficial to the school.
- State that a school or high school building that met certain criteria would qualify as a permanent structure devoted to industrial or commercial purposes described in the Act's definition of "business area".
- Prohibit the Department of Transportation from requiring a signed written statement from local government as part of the documentation it may require for an annual sign permit.
- Revise the conditions that apply to an annual permit that is issued when a sign or sign structure becomes subject to the Act's permit requirements for a reason outside the owner's control.
- Allow the owner of a legally erected billboard who applied before August 1, 2015, for a digital billboard permit that was revoked or denied, to reapply for such a permit.
- Require an individual to apply for a digital billboard permit if he or she, by January 1, 2016, obtained approval from the Department and the local unit of government to convert an existing billboard to a digital billboard.
- Extend a January 30, 2015, deadline for an owner of a nonstandard sign to obtain a billboard permit without surrendering three interim permits, under specific circumstances.
- Delete a provision under which the overall height of a nonconforming sign structure may not be increased.
- Allow the website address and telephone number of an activity or attraction to be displayed on a sign that was issued a permit for a publicly or privately owned activity or attraction that is nationally or regionally known.
- Allow a person to trim or remove trees or shrubs within the right-of-way of a primary highway for the purpose of making an existing sign more visible, under certain circumstances.
- Specify that a "billboard viewing zone" would be measured from the billboard face intended for viewing, and would include a highway median.

The Act regulates the size, lighting, and spacing of signs and sign structures in "adjacent areas". The Act generally regulates any sign in an adjacent area where the facing of the sign

is visible from a regulated route. A permit is required for each regulated route from which the facing of the sign or sign structure is visible.

("Adjacent area" means the area measured from the nearest edge of the right-of-way of an interstate highway, freeway, or primary highway and, in urbanized areas, extending 3,000 feet perpendicularly and then along a line parallel to the right-of-way line or, outside of urbanized areas, extending perpendicularly to the limit where a sign is visible and then along a line parallel to the right-of-way line. "Visible" means a sign that has a message that is capable of being seen by an individual of normal visual acuity when traveling in a motor vehicle. "Regulated route" means an interstate highway, freeway, or primary highway required to be regulated under 23 USC 131 (which controls outdoor advertising along the interstate highway system) and any other route that is required to be regulated or may become required to be regulated by the Department under the Act or another State or Federal statute or legal requirement.)

### Public School Zoning & Structure

Under the bill, consistent with Section 1263 of the Revised School Code, and *Charter Township of Northville v. Northville Public Schools* (2003), public school property would be exempt from a zoning ordinance enacted by or a zoning classification assigned by a county, city, village, township, or charter township.

Public school property would qualify as unzoned property of a mixed public and commercial use under the Act, regardless of the zoning classification assigned to the property by a county, city, village, township, or charter township, if the public school were using or proposing to use public school property for a purpose that could provide a benefit, including a commercial or financial benefit, to the public school, its governing board, or its foundation.

A school building or a high school building, including an athletic field or facility, that is located on public school property and used for instructional or noninstructional school purposes and that provides a benefit, including a commercial or financial benefit, to a public school or the governing board of a public school would qualify as a permanent structure devoted to the industrial or commercial purposes described in the definition of "business area".

(The Michigan Supreme Court in *Charter Township of Northville v. Northville Public Schools* (496 Mich 285) concluded that because the Revised School Code grants the State superintendent sole and exclusive jurisdiction over local school district construction and site plans, it immunizes school districts from local zoning ordinances affecting those functions.

Section 1263 of the Revised School Code specifies the conditions under which the board of a school district may build, design, or expand a school, including review and approval of the plans to build, expand, or remodel a school by the superintendent of public instruction. The section requires the submission of plans to the local zoning authority for concurrence of the site plan, and details the maximum fees a local zoning authority may impose upon a governing board for the zoning process described in the Section. Section 1263 states that the required communication between the governing board and the local zoning authority is for informational purposes only and does not require the governing board to make any changes in its site plan.)

"Business area" means an adjacent area that is zoned by a State, county, township, or municipal zoning authority for industrial or commercial purposes, customarily referred to as "b" or business, "c" or commercial, "i" or industrial, "m" or manufacturing, and "s" or service, and all other similar classifications and that is within a city, village, or charter township or is within one mile of the corporate limits of a city, village, or charter township and contains one or more permanent structures devoted to the industrial or commercial purposes and that extends along the highway a distance of 800 feet beyond each edge of the activity.

Commercial or industrial purposes are those activities generally restricted to commercial or industrial zones in jurisdictions that have zoning. Specified types of activities and structures, including outdoor advertising, are not commercial or industrial.

Under the bill, "business area" would include an adjacent area that is zoned by a State, county, city, village, township, or charter township zoning authority as part of a comprehensive land development project or planned unit development in which commercial or industrial activity is allowed.

"Public school property" would mean property owned or leased by the governing board of a public school or property owned or leased by a foundation owned or managed by the governing board of a public school.

### Annual Permits

The Act requires a sign owner to apply for an annual permit on a form prescribed by the Department for each sign or sign structure to be maintained or erected in an adjacent area where the facing of the sign or sign structure is visible from a regulated route. The form must require information specified in the Act. The sign permit application must include a statement signed by the owner of the land on which the sign or sign structure 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 compliance with the Act. A sign owner must apply for a separate annual permit for each sign or sign structure for each regulated route subject to the Act from which the facing of the sign or sign structure is visible.

The bill would prohibit the Department from requiring a signed written statement from a county, city, village, township, or charter township as part of the documentation it may require.

### Annual Permit Surrender

The Act requires the owner of a sign or sign structure to apply for an annual permit for each sign or sign structure that becomes subject to the permit requirements of the Act because of a change in highway designation or other reason outside of the control of the sign owner within two months after receiving notice from the Department that the sign or sign structure is subject to the Act's permit requirements. Both of the following apply to an annual permit issued under this circumstance:

- The annual permit is not subject to Section 7a (which prohibits the issuance of a new annual permit for a new sign on or after January 7, 2007, among other things).
- The annual permit may not be surrendered for an interim permit under Section 7a(3).

Under the bill, the following would apply to an annual permit issued under that circumstance:

- The annual permit would not be subject to Section 7a.
- The annual permit could not be surrendered for an interim permit under Section 7a(3) for the erection and maintenance of a sign or sign structure along a regulated route that became subject to the Act before February 1, 2014.
- An annual permit could be surrendered for an interim permit as provided in Section 7a(3) for the erection and maintenance of a sign or sign structure along a regulated route that became subject to the Act after February 1, 2014.

(Section 7a(3) requires the Department to issue an interim permit to a holder of a valid permit if the holder surrenders that permit to the Department upon removal of a sign structure that has a valid permit under the Act, verifies the removal of that sign structure, and is otherwise in compliance with the Act. An interim permit may be used only for the construction of a sign structure and must remain in effect without expiration with fees renewed on an annual basis.)

#### Digital Billboard Permit

Under the Act, within 90 days after the effective date of Public Act 2 of 2014 (January 30, 2014), the owner of a digital billboard that was legally erected before January 30, 2014, was required to apply for, and the Department was required to issue, a digital billboard permit.

Under the bill, the owner of a billboard that was legally erected who applied before August 1, 2015, for a digital billboard permit that was revoked or denied could reapply for, and the Department would have to issue, a digital billboard permit.

The Act states that if, on January 30, 2014, an individual had obtained location approval from the Department and approval from the local unit of government having jurisdiction of that location to erect a digital billboard, he or she must apply for, and the Department must issue, a digital billboard permit. The bill states that if, on or before January 1, 2016, an individual had obtained location approval from the Department and approval from the local unit of government having jurisdiction of that location to convert an existing billboard to a digital billboard, he or she would have to apply for, and the Department would have to issue, a digital billboard permit.

#### Nonstandard & Nonconforming Signs

Under the Act, in addition to an annual permit, the owner of a nonstandard sign may apply for a digital billboard permit to erect and maintain a digital billboard on a nonstandard sign by applying for a digital billboard permit on a form prescribed by the Department, paying the required fee, and surrendering three interim permits to the Department. The owner of a nonstandard sign seeking a digital billboard permit must apply for a separate digital billboard permit for each sign or sign structure for each regulated route from which the facing of the sign or sign structure is visible, but may not be required to surrender more than a total of three interim permits.

Between January 30, 2014, and January 30, 2015, for the first eight nonstandard signs for which the owner applied for a digital billboard permit, the owner could not be required to surrender three interim permits. This applied only to signs located in a county having a population of at least 750,000. The spacing requirement that each sign not be closer than 1,000 feet to another sign using a digital billboard permit on either side of the highway facing the same direction of traffic applied to the first eight nonstandard signs for which the owner applied for a digital billboard permit without surrendering three interim permits.

Under the bill, the January 30, 2015, deadline described above would be extended for an owner who had applied for a digital billboard permit and had applied for, but not yet received, approval from a local unit of government having jurisdiction of the location upon which he or she sought to erect a digital billboard. The extension would be for an amount of time equal to the amount of time that elapsed between the date of application for approval to the local unit of government and the date approval was granted by the local unit of government. For these purposes, a two-sided sign or sign structure that was erected on or before January 30, 2014, would be treated as a single sign or sign structure and the owner would not be required to surrender more than three interim permits. An owner could reapply for a digital billboard permit that he or she previously applied for and was either denied or revoked before January 1, 2016. Upon a reapplication, the Department would have to issue a digital billboard permit to the owner if the owner were in compliance with these requirements.

A nonstandard sign may continue to exist and a sign owner may perform any action to a nonstandard sign that is allowed under the Act, except for the following:

- Increasing the overall height of an existing sign structure.
- Increasing the total square footage of a sign face to a size greater than its original square footage.
- Increasing the number of sign faces to more than two.

The bill would delete the provision under which the overall height of an existing nonstandard sign structure may not be increased.

The Act defines "nonstandard sign" as a sign or sign structure other than a nonconforming sign, that is subject to the Act, was legally erected before March 23, 1999, is not a nonconforming sign, and does not comply with spacing requirements that prohibit a sign structure along interstate highways and freeways located in a business area or unzoned commercial or industrial area from being erected or maintained closer than 1,000 feet to another sign structure on the same side of the highway, but otherwise complies with the Act. The bill would refer to a sign or sign structure for which a permit was legally issued before March 23, 1999. The bills also would include a sign not in compliance with the requirement that a sign structure not be erected or maintained closer than 500 feet to another sign structure along a primary highway.

A "nonconforming sign" is a sign or sign structure, other than a nonstandard sign or a sign that is erected and maintained in a business area along a scenic byway before the designation as a scenic byway, that satisfies one of the following:

- Was legally erected before March 31, 1972, but could not be legally erected under the current provisions of the Act.
- Is a sign or sign structure regulated under the Act that was legally erected after March 31, 1972, but could not be legally erected under the current provisions of the Act.

The bill would refer to a sign for which a permit was legally issued, instead of a sign erected, before that date.

#### Activity or Attraction Sign Permit

The Act allows the Department to issue a permit for a directional sign for a publicly or privately owned activity or attraction that is nationally or regionally known, that is of outstanding interest to the traveling public, and that is generally considered to be one of the following:

- A natural phenomenon.
- A scenic attraction.
- A historic, educational, cultural, scientific, or religious site.
- An outdoor recreational area.

The permit is exempt from Section 7a, is not transferable, and is not eligible to be surrendered for an interim permit. The Act contains further regulations regarding the number of signs that may advertise the same attraction, size restrictions, and location restrictions.

The message displayed on a sign for which an activity or attraction permit is issued may only identify the activity or attraction and directional information useful to the traveler in locating the activity or attraction, including mileage, route numbers, and exit numbers. The message displayed on a sign for which the permit is issued may not include descriptive words or phrases or pictorial or photographic representations of the activity or attraction or the surrounding area. The bill would allow the message displayed on the sign to include the website address and telephone number of the activity or attraction.

## Vegetation Management

The Act prohibits a person from trimming or removing trees or shrubs within a highway right-of-way for the purpose of making a proposed or existing sign more visible without a vegetation management permit, and prescribes a misdemeanor penalty of imprisonment for up to 30 days or a fine of \$10,000 or up to five times the value of the trees or shrubs trimmed or removed, whichever is greater. If a sign owner, a sign owner's agent, or a property owner or agent of a property owner with whom the sign owner has a contractual relationship to maintain the sign on his or her property trims or removes trees or shrubs without a vegetation management permit, the sign owner is not eligible for a vegetation management permit for three years. The Act prescribes further penalties the Department may impose on offenders.

The bill would allow a person to trim or remove trees or shrubs within the right-of-way of a primary highway for the purpose of making an existing sign more visible if both of the following were satisfied:

- The trees or shrubs to be removed are within 500 feet of the sign, and the sign is located in a county having a population of at least 750,000.
- The primary highway borders two counties, and each county has a population of at least 750,000.

## Billboard Viewing Zone

The Act requires a person to have a vegetation permit to trim or remove trees or shrubs within a highway right-of-way for the purpose of making a proposed or existing sign more visible. Among other things, an application for a permit must clearly identify the vegetation to be managed in order to create visibility of the sign within the billboard viewing zone.

"Billboard viewing zone" means the 1,000-foot area measured at the pavement edge of the main-traveled way closest to the billboard having as its terminus the point of the right-of-way line immediately adjacent to the billboard except that, for a location where a vegetation permit had been granted within the five years before January 30, 2014, the billboard viewing zone includes the area subject to the vegetation permit.

The bill would amend the definition to refer to the 1,000-foot area measured at the pavement edge of the main-traveled way from which the billboard face is intended to be viewed having as its terminus the point of the right-of-way immediately adjacent to the main-traveled way from which the billboard is intended to be viewed except that, for a location where a vegetation permit has been granted within the five years before January 30, 2014, the billboard viewing zone would include the area subject to the vegetation permit. The bill also provides that "billboard viewing zone" would include a highway median.

MCL 252.302 et al.

## **BACKGROUND**

There have been several noteworthy amendments to the Highway Advertising Act within the past decade. Public Act 447 of 2006 placed a moratorium on annual permits for new signs after January 1, 2007, effectively capping the number of signs in the State. A permit that the Michigan Department of Transportation issued before January 1, 2007, remains in force and valid. An annual permit may be surrendered for an interim permit, which allows the construction of a new sign. To apply for an interim permit, a sign owner who holds a valid annual permit for a sign must remove the sign, surrender the annual permit for that sign, and verify the removal. The Department then verifies that the sign has been removed.

More recently, Public Act 2 of 2014 made a number of modifications to the Act. Among other things, these amendments authorized the Department to issue digital billboard permits to owners of digital billboards, modified annual permit requirements, removed vegetation-related penalties, and allow for a single sign face to be developed into two smaller faces.

According to Department data, there are currently around 14,000 issued annual permits for signs or sign structures, not all of which are renewed every year.

Legislative Analyst: Drew Krogulecki

### **FISCAL IMPACT**

The bill would modify fee revenue to the Department of Transportation by an unknown and likely negligible amount, by modifying the conditions and circumstances for applying for permits, reapplying for permits, and surrendering permits.

Fiscal Analyst: David Zin