

HIGHWAY ADVERTISING ACT OF 1972 (EXCERPT)
Act 106 of 1972

252.311a Permit to manage vegetation.

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

(2) A sign owner may apply to the department for a permit to manage vegetation using the department's approved form. The application shall be accompanied by an application fee of \$150.00 to cover the costs of evaluating and processing the application. Beginning October 1, 2014, the department shall annually adjust the application fee to ensure that the fee covers the total cost of evaluating and processing the application. The department shall not increase the application fee by an annual percentage amount greater than the index.

(3) An application submitted under subsection (2) shall be on a form and in a manner specified by the department and shall clearly identify the vegetation to be managed in order to create visibility of the sign within the billboard viewing zone and all proposed mitigation for the impacts of the vegetation management undertaken. The application shall also include anticipated management that will be needed in the future to maintain the visibility of the sign within the billboard viewing zone for the time specified in subsection (6) and procedures for clearing vegetation as determined by the department.

(4) Unless otherwise agreed to by the department and an applicant, the department shall issue its decision on an application no later than 90 days after receipt of a completed application. The department shall approve the application, approve the application with modification, or deny the application. In deciding whether to approve an application, approve an application with modification, or deny an application, the department shall consider the vegetation management that was previously allowed at the billboard site. If the department approves the application or approves the application with modification, it shall notify the applicant. The notification required by this subsection shall include the value of the vegetation to be managed as determined under subsection (5). The notification shall also include any required mitigation for the vegetation to be managed and all conditions and requirements associated with the issuance of the permit. The permit fee is \$500.00, except that in special and unique situations and circumstances where the department incurs additional costs directly attributable to the approval of the permit, a fee greater than \$500.00 adequate for the recovery of additional costs may be assessed. Beginning October 1, 2014, the department shall annually adjust the permit fee to ensure that the fee covers the total cost of issuing the permit and the cost of all departmental responsibilities associated with the permit. The department shall not increase the permit fee by an annual percentage amount greater than the consumer price index. Upon receipt of the permit fee, payment for the value of the vegetation, and compliance with department conditions and requirements, the department shall issue the permit. Within 5 years after the issuance of a vegetation management permit under this section, if a sign owner applies to manage vegetation at the same location, he or she may trim or remove any vegetation that has regrown if that vegetation was originally trimmed or removed under the vegetation management permit, and is not required to pay the value of the vegetation that has regrown or any fees other than the application fees required under this act.

(5) The department shall annually develop and publish a replacement cost schedule for trees and shrubs to be removed under a vegetation management permit. The replacement cost schedule shall specify the size, number, type, and cost of replacement trees to be paid for by an applicant based on the diameter at breast height for each tree that is removed and a conversion factor determined by the department for the number of replacement trees required for any shrubs that are removed. The total cost shall be based on the department's total cost for planting trees according to the most recent version of the standard specifications for construction used by the department and the expected cost of plants, labor, and materials required to install and establish plants for that year. As an alternative, the department and the applicant may agree that the department will develop the value of the vegetation to be trimmed or removed using the most recent version of the international society of arboriculture's guide for plant appraisal and the corresponding Michigan tree evaluation supplement to the guide for plant appraisal published by the Michigan forestry and park association. The department may use another objective authoritative guide in consultation with representatives of the outdoor advertising industry and other interested parties if either the guide or the supplement has not been updated in more than 5 years. The department, in consultation with representatives of the outdoor advertising industry and other interested parties, may develop a value schedule for vegetation.

(6) Subject to this subsection, a permit to manage vegetation shall provide for a minimum of 5 seconds of continuous, clear, and unobstructed view of the billboard face based on travel at the posted speed as measured from the point directly adjacent to the point of the billboard closest to the highway. The department and the

applicant may enter into an agreement, at the request of the applicant, identifying the specific location of the continuous, clear, and unobstructed view within the billboard viewing zone. The specific location may begin at a point anywhere within the billboard viewing zone but shall result in a continuous, clear, and unobstructed view of not less than 5 seconds. An applicant shall apply for a permit that minimizes the amount of vegetation to be managed for the amount of viewing time requested. Applications for vegetation management that provide for greater than 5 seconds of continuous, clear, and unobstructed viewing at the posted speed as measured from a point directly adjacent to the point of the billboard closest to the highway shall not be rejected based solely upon the application exceeding the 5-second minimum. For billboards spaced less than 500 feet apart, vegetation management, when permitted, shall provide for a minimum of 5 seconds of continuous, clear, and unobstructed view of the billboard face based on travel at the posted speed or the distance between the billboard and the adjacent billboard, whichever is less.

(7) The department shall issue permits for vegetation management in a viewing cone or, at the department's discretion, another shape that provides for the continuous, clear, and unobstructed view of the billboard face. The department may, in its discretion, issue a permit for vegetation management outside of the billboard viewing zone.

(8) If no suitable alternative exists or the applicant is unable to provide acceptable mitigation, the department may deny an application or provide a limited permit to manage vegetation if 1 or more of the following situations exist:

- (a) The vegetation management would have an adverse impact on safety.
- (b) The vegetation management would have an adverse impact on operations of a state trunk line highway.
- (c) The vegetation management conflicts with federal or state law or promulgated rules.
- (d) The applicant does not have the approval of the owner of the property.
- (e) The vegetation to be managed is existing vegetation and was planted, permitted to be planted, or allowed to grow naturally by the department for a specific purpose, as shown by the department's records or the department's practices.
- (f) Existing vegetation greater than 8 feet in height would be managed for a newly constructed billboard or vegetation existed that was greater than 8 feet in height that obscured a billboard or would have obscured the billboard before it was constructed. When denying an application or providing a limited permit, The department shall consider previous vegetation management that was allowed at the billboard site.
- (g) The vegetation management would occur on a scenic or heritage route that was designated on or before January 1, 2007, unless the proposed vegetation management permit is for vegetation management for a sign that would be a conforming sign or a nonstandard sign if the sign was not located on a scenic byway or heritage route.

(h) The application is for a sign that was found, after a hearing in accordance with section 19, to not be in compliance with this act.

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

(9) If the department denies an application or issues a limited permit under this section, the department shall provide a specific rationale for denying an application or approving a limited permit.

(10) No later than 45 days after receiving a denial of a request to begin the 5 seconds of continuous, clear, and unobstructed view at a point other than a point directly adjacent to the point of the billboard closest to the highway as provided in subsection (6), or a denial or a limited permit under subsection (8), an applicant may request review and reconsideration of the denial or limited permit. The applicant shall submit its request in writing on a form as determined by the department. The applicant shall state the specific item or items for which review and reconsideration are being requested. An applicant who received a limited permit may manage vegetation in accordance with that permit during the review and reconsideration period.

(11) The department shall develop and maintain a procedure for review and reconsideration of applications that are denied or that result in the issuance of a limited permit. This procedure shall include at least 2 levels of review and provide for input from the applicant. The review period shall not exceed 120 days. The department shall consult with all affected and interested parties, including, but not limited to, representatives of the outdoor advertising industry, in the development of this procedure.

(12) If, after review and reconsideration under subsection (10), the applicant is denied a permit or issued a limited permit, the applicant may appeal the decision of the department to a court of competent jurisdiction.

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

(14) Except for ground cover, the department shall not plant or authorize to be planted any vegetation that obstructs, or through expected normal growth will obstruct in the future, the visibility within the billboard viewing zone of any portion of a sign face subject to this act. Both of the following apply to vegetation

planted or allowed to be planted by the department:

(a) If the vegetation planted or allowed to be planted by the department within the billboard viewing zone after January 1, 2007 obstructs the visibility of any portion of a sign face subject to this act, the department shall trim or remove at the department's cost, or allow the sign permit holder to trim or remove, the vegetation obstructing the visibility of any portion of the sign face.

(b) This subsection does not apply to the replacement of existing vegetation that was removed for transportation purposes.

(15) The department shall consider the impact on the visibility of a billboard before erecting or authorizing the erection of a digital information sign or any other sign within the highway right-of-way. A billboard owner may propose, and the department shall consider, the relocation of an existing sign within the highway right-of-way. A billboard owner is responsible for all costs associated with relocation of a sign under this subsection. Not later than 90 days after receipt of a billboard owner's request for the relocation of an existing sign, the department shall respond in writing to the billboard owner with 1 of the following:

(a) Notice of department approval of relocating the sign, an estimate of the cost associated with relocating the sign, and notice that all costs associated with the proposed sign relocation are the responsibility of the billboard owner.

(b) Notice of department denial of relocation of the sign and the justification for that denial that may include, but is not limited to, federal requirements, safety considerations, or emergency or operational purposes.

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

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

(b) For the fourth violation during a 3-year period and any additional violation during that period, a penalty of an amount up to \$25,000.00 or double the amount authorized as a penalty in section 11(1), whichever is greater, for each violation.

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

(17) If the department alleges that a person has trimmed or removed more trees or shrubs than the permit authorizes, then the department shall notify the person of its intent to seek 1 or more of the penalties provided in subsection (16). The notification shall be in writing and delivered via United States certified mail, and shall detail the conduct the department alleges constitutes a violation of subsection (16), and shall indicate the penalties the department is seeking under subsection (16). Notification shall occur within 30 days after the filing of the completion order for the trimming or removal of trees or shrubs the department alleges violated the permit. Any allegation by the department that a person has trimmed or removed more trees or shrubs than the permit authorizes is subject to the appeals process contained in subsections (10), (11), and (12).

(18) As used in this section:

(a) "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 has been granted within the 5 years prior to the effective date of the 2013 amendatory act that amended this subdivision, the billboard viewing zone includes the area subject to the vegetation permit.

(b) "Vegetation management" means the trimming, removal, or relocation of trees, shrubs, or other plant material.

(c) "Viewing cone" means the triangular area described as the point directly below the face of the billboard closest to the highway, the point directly below the billboard face farthest away from the highway, a point as measured from a point directly adjacent to the part of the billboard closest to the closest edge of the highway and extending back parallel to the highway the distance that provides the view of the billboard prescribed in this section, and the triangle described by the points extending upward to the top of the billboard.

History: Add. 2006, Act 448, Eff. Jan. 1, 2007;—Am. 2009, Act 86, Imd. Eff. Sept. 3, 2009;—Am. 2014, Act 2, Imd. Eff. Jan. 30, 2014.