

HOUSE BILL No. 4682

May 25, 2011, Introduced by Reps. Yonker, Heise, Santana, Pscholka, Dillon, Hobbs, Hughes, Jenkins, Lori, Hooker, Johnson, Zorn, Rendon, Lindberg, Roy Schmidt, Olumba, Potvin, Daley and Liss and referred to the Committee on Transportation.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

5 (2) A sign owner may apply to the department for a permit to
6 manage vegetation using the department's approved form. The
7 application shall be accompanied by an application fee of \$150.00
8 to cover the costs of evaluating and processing the application.
9 The application shall be submitted during the 2 or more annual
10 application periods not less than 60 days each, as specified by the
11 department. The application shall clearly identify the vegetation

1 to be managed in order to create visibility of the sign within the
2 billboard viewing zone and all proposed mitigation for the impacts
3 of the vegetation management undertaken. The application shall also
4 include anticipated management that will be needed in the future to
5 maintain the visibility of the sign within the billboard viewing
6 zone for the time specified in subsection (4) and procedures for
7 clearing vegetation as determined by the department.

8 (3) Unless otherwise agreed to by the department and an
9 applicant, the department shall issue its decision on an
10 application no later than 30 days after the last day of the
11 application period. The department shall approve the application,
12 approve the application with modification, or deny the application.
13 If the department approves the application or approves the
14 application with modification, it shall notify the applicant and
15 the notification shall include the value of the vegetation to be
16 managed as determined by the department using the most recent
17 version of the international society of arboriculture's guide for
18 plant appraisal and the corresponding Michigan tree evaluation
19 supplement to the guide for plant appraisal published by the
20 Michigan forestry and park association. The department may use
21 another objective authoritative guide in consultation with
22 representatives of the outdoor advertising industry and other
23 interested parties, if either the guide or the supplement has not
24 been updated for more than 5 years. The department, in consultation
25 with representatives of the outdoor advertising industry and other
26 interested parties, may develop a value schedule for vegetation. If
27 agreed to by both the department and the applicant, this value

1 schedule shall be used to determine the value of the vegetation to
2 be managed. The notification to the applicant shall also include
3 any required mitigation for the vegetation to be managed and all
4 conditions and requirements associated with the issuance of the
5 permit. The permit fee shall be \$300.00, except that in special and
6 unique situations and circumstances where the department incurs
7 additional costs directly attributable to the approval of the
8 permit, a fee greater than \$300.00 adequate for the recovery of
9 additional costs may be assessed. Upon receipt of the permit fee,
10 payment for the value of the vegetation, and compliance with MDOT
11 conditions and requirements, the department shall issue the permit.

12 (4) Subject to the provisions of this subsection, a permit to
13 manage vegetation shall provide for a minimum of 5 seconds of
14 continuous, clear, and unobstructed view of the billboard face
15 based on travel at the posted speed as measured from the point
16 directly adjacent to the point of the billboard closest to the
17 highway. The department and the applicant may enter into an
18 agreement, at the request of the applicant, identifying the
19 specific location of the continuous, clear, and unobstructed view
20 within the billboard viewing zone. The specific location may begin
21 at a point anywhere within the billboard viewing zone but shall
22 result in a continuous, clear, and unobstructed view of not less
23 than 5 seconds. An applicant shall apply for a permit that
24 minimizes the amount of vegetation to be managed for the amount of
25 viewing time requested. Applications for vegetation management that
26 provide for greater than 5 seconds of continuous, clear, and
27 unobstructed viewing at the posted speed as measured from a point

1 directly adjacent to the point of the billboard closest to the
2 highway shall not be rejected based solely upon the application
3 exceeding the 5-second minimum. For billboards spaced less than 500
4 feet apart, vegetation management, when permitted, shall provide
5 for a minimum of 5 seconds of continuous, clear, and unobstructed
6 view of the billboard face based on travel at the posted speed or
7 the distance between the billboard and the adjacent billboard,
8 whichever is less.

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

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

20 (a) The vegetation management would have an adverse impact on
21 safety.

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

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

26 (d) The applicant does not have the approval of the owner of
27 the property.

1 (e) The vegetation to be managed was planted or permitted to
2 be planted by the department for a specific purpose.

3 (f) Vegetation would be managed for a newly constructed
4 billboard or vegetation existed that obscured the billboard or
5 would have obscured the billboard before it was constructed, **UNLESS**
6 **THE BILLBOARD IS IN A ZONE THAT IS DESIGNATED AS COMMERCIAL OR**
7 **INDUSTRIAL.** In denying an application or providing a limited
8 permit, the department shall consider previous vegetation
9 management that was allowed at the billboard site.

10 (g) The management would occur on a scenic or heritage route
11 that was designated on or before the effective date of the
12 amendatory act that added this section.

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

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

19 (7) If the department denies an application or issues a
20 limited permit under this subsection, the department shall provide
21 a specific rationale for denying an application or approving a
22 limited permit.

23 (8) No later than 30 days after receiving a denial or a
24 limited permit under subsection (6), an applicant may request the
25 review and reconsideration of the denial or limited permit. The
26 applicant shall submit its request in writing on a form as
27 determined by the department. The applicant shall state the

1 specific item or items for which review and reconsideration are
2 being requested. An applicant who received a limited permit may
3 manage vegetation in accordance with that permit during the review
4 and reconsideration period.

5 (9) No later than 90 days after January 1, 2007, the
6 department shall develop a procedure for review and reconsideration
7 of applications that are denied or that result in the issuance of a
8 limited permit. This procedure shall include at least 2 levels of
9 review and provide for input from the applicant. The review period
10 shall not exceed 120 days. The department shall consult with all
11 affected and interested parties, including, but not limited to,
12 representatives of the outdoor advertising industry, in the
13 development of this procedure.

14 (10) If, after review and reconsideration as provided for in
15 subsection (8), the applicant is denied a permit or issued a
16 limited permit, the applicant may appeal the decision of the
17 department to a court of competent jurisdiction.

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

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

25 (13) The department shall prepare an annual report for
26 submission to the legislature regarding the vegetation management
27 undertaken pursuant to this section. At a minimum, this report

1 shall include all of the following items:

2 (a) The number of application periods.

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

4 (c) The number of permits approved without modifications.

5 (d) The number of permits approved with modifications.

6 (e) The number of permits denied.

7 (f) The number of modified or denied permits which were
8 appealed.

9 (g) The number of appeals that reversed the department's
10 decision.

11 (h) The number of appeals that upheld the department's
12 decision.

13 (i) The number of permits approved which requested a
14 visibility time period exceeding 5 seconds.

15 (j) The amount of compensation paid to the state for removed
16 vegetation.

17 (k) The average number of days after the end of the
18 application period before an applicant was sent notice that a
19 permit was approved.

20 (l) A summary of the reasons for which the department denied or
21 modified permits.

22 (m) A summary of the amount of all revenues and expenses
23 associated with the management of the vegetation program.

24 (14) The report in subsection (13) shall contain a summary for
25 the entire state and report in detail for each department region.
26 The department shall provide the report to the legislature for
27 review no later than 90 days following the completion of each

1 fiscal year. ~~The reporting deadline for the initial report is 18~~
2 ~~months after January 1, 2007.~~

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

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

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

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

18 (16) If the department alleges that a person has trimmed or
19 removed more trees or shrubs than the permit authorizes, then the
20 department shall notify the person of its intent to seek any 1 or
21 more of the penalties provided in subsection (15). The notification
22 shall be in writing and delivered via United States certified mail,
23 and shall detail the conduct the department alleges constitutes a
24 violation of subsection (15), shall indicate what penalties the
25 department will be seeking under subsection (15), and shall occur
26 within 30 days of the filing of the completion order for the
27 trimming or removal of trees or shrubs the department alleges

1 violated the permit. Any allegation by the department that a person
2 has trimmed or removed more trees or shrubs than the permit
3 authorizes ~~shall be~~ **IS** subject to the appeals process contained in
4 subsections (8), (9), and (10).

5 (17) As used in this act:

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

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

12 (c) "Viewing cone" means the triangular area described as the
13 point directly below the face of the billboard closest to the
14 roadway, the point directly below the billboard face farthest away
15 from the roadway, a point as measured from a point directly
16 adjacent to the part of the billboard closest to the roadway and
17 extending back parallel to the roadway the distance that provides
18 the view of the billboard prescribed in this section, and the
19 triangle described by the points extending upward to the top of the
20 billboard.