

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 289

(Delegate Pena-Melnyk, *et al.*)

Environmental Matters

Judicial Proceedings

State Highway Administration - Unauthorized Signs on Highway Rights-of-Way

This bill prohibits the placement or maintenance of signs on State highway rights-of-way without authorization from the State Highway Administration (SHA) and establishes a civil penalty of \$25 per commercial sign for violations. SHA and local jurisdictions retain civil penalty payments they collect. SHA, a law enforcement officer, or a local government may remove and destroy any unauthorized signs without a court order. SHA or a local government may seek an injunction against further commercial sign violations. The District Court has exclusive original jurisdiction for any civil cases arising from violations. The bill repeals a provision limiting the duration of election-related signs along State highways and deletes an obsolete reporting requirement.

For enforcement purposes, the presence of any sign in a State highway right-of-way is evidence that it was placed or maintained at the direction of, or with the consent and approval of, the party whose name, business, location, or product representation is advertised on it. During the first three months after initiating a sign removal program, SHA or a local jurisdiction may only issue warnings. Enforcement must be on a viewpoint and content neutral basis.

Fiscal Summary

State Effect: Potential significant increase in Transportation Trust Fund (TTF) revenues to the extent SHA elects to impose a civil penalty for illegal commercial signs. Potential minimal general fund expenditure increase for the District Court to the extent the bill results in additional clerical and court time for illegal commercial sign court cases.

Local Effect: Potential increase in revenues for local governments that elect to impose a civil penalty for illegal commercial signs within their jurisdiction. Potential increase in expenditures for local governments that choose to use the bill's enforcement authority.

Small Business Effect: None.

Analysis

Current Law: Subject to specified exceptions, a person may not erect or maintain any outdoor sign outside the limits of any municipal corporation and within 500 feet of a State highway unless the person has a permit issued by SHA for that sign. Among the exceptions, a permit is not required for an outdoor sign that advertises a candidate or the support or defeat of any proposition. Such a sign, however, is subject to certain restrictions, including that the sign must, in the absence of more restrictive local time limitations, not be erected more than 45 days prior to the election and be removed within 15 days after the primary election if the candidate is not a candidate in the general election and within 15 days after the general election.

A person may not erect or maintain any outdoor sign along or near any federal aid primary highway, unless the person has been issued a permit. Federal law and regulations require states to control advertising on the sides of federally funded highways. Failure to control the outdoor advertising could result in the loss of federal highway aid.

A State highway's right-of-way is at least 40 feet wide. Any person who removes, damages, or defaces any SHA sign, signal, or marker is guilty of a misdemeanor and subject to a fine of up to \$100.

Background: Illegal signs along State highways have become a serious fiscal and safety concern. SHA advises that sign removal is claiming a growing portion of limited highway maintenance resources. In fiscal 2010, SHA spent approximately \$383,895 on the removal of 36,000 illegal signs. Furthermore, illegal signs along State highways distract motorists and create traffic hazards. A 2006 Virginia Tech report found that, when a driver glances away from the forward roadway for more than two seconds, the driver's risk of a crash or near-crash event is doubled.

SHA advises that the bill makes current prohibitions against posting illegal signs more enforceable and that, presently, SHA lacks effective civil enforcement authority and effective criminal statute applicable to violators.

There is some concern that placing durational limits on the display of election-related signs may limit constitutional rights under the First Amendment.

State Fiscal Effect: TTF revenues increase due to the bill's civil penalty provision. The bill sets a civil penalty of \$25 per commercial sign for violations, which may accrue to SHA. *For illustrative purposes*, assuming approximately 36,000 illegal commercial signs are removed annually, SHA may seek up to \$900,000 annually in penalty revenue.

SHA advises that the U.S. Department of Transportation's Federal Highway Administration has expressed concern about the proliferation of illegal advertising signs within the State's right-of-way and failing to control outdoor advertising could lead to the loss of 10% of most federal highway aid.

General fund expenditures for the District Court may increase for additional clerical and court time associated with civil cases arising from commercial sign violations. The magnitude of the impact cannot be quantified at this time.

Additional Information

Prior Introductions: HB 216 of 2010, a similar bill, passed the House with amendments was referred to the Senate Judicial Proceedings Committee, and had no further action taken on it. Its cross file, SB 779, received an unfavorable report from the Senate Judicial Proceedings Committee. HB 130 of 2009, a similar bill, passed the House with amendments and then received a favorable with amendments report from the Senate Judicial Proceedings Committee, but no further action was taken. HB 921 of 2008, a similar bill, received a hearing in the House Environmental Matters Committee, but no further action was taken. SB 155 of 2005, a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: SB 410 (Senator Raskin) - Judicial Proceedings.

Information Source(s): City of Salisbury; Town of Bel Air; Baltimore City; Prince George's and Montgomery counties; Judiciary (Administrative Office of the Courts); Department of State Police; State Board of Elections; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 11, 2011
ncs/lgc Revised - House Third Reader - March 29, 2011

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