

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 805

(Senator Klausmeier)

Finance

**Transportation - State Highway Administration - Sale or Lease of Highway
Naming Rights**

This bill authorizes the State Highway Administration (SHA) to sell or lease the naming rights for all or part of a State highway to a private entity, if it is determined that doing so is consistent with federal regulations governing the distribution of federal highway funds to the State. The term of a contract must be for a period of at least one year. This authority is limited to public relations or advertising purposes and may not be construed to require that any highway sign or mailing address be altered. Private entities that purchase or lease naming rights may erect outdoor signs along the highway to advertise the designation and the private entity; however, all costs associated with a sign must be paid by the private entity. Outdoor signs authorized by the bill (1) may not be erected without prior SHA approval; (2) may not detract from the safety of the traveling public; (3) must be aesthetically appropriate; (4) may not include a name that is, among other things, profane, sexually explicit, or offensive; and (5) are subject to Regulation of Outdoor Advertising provisions in the Transportation Article and other specified laws. All proceeds from the sale or lease of naming rights must be credited to the Transportation Trust Fund (TTF).

Fiscal Summary

State Effect: TTF revenues increase potentially significantly in FY 2014 and subsequent years due to selling or leasing naming rights. Expenditures are not materially affected.

Local Effect: The bill does not materially affect local operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Current Law: SHA may name or rename any State highway.

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. Chapters 466 and 467 of 2011 (SB 410/HB 289) prohibit the placement or maintenance of signs on State highway rights-of-way without SHA authorization and establish a civil penalty of \$25 per commercial sign for violations.

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.

Chapter 318 of 2011 (HB 109) prohibits SHA from issuing outdoor sign permits for signs along or near a scenic byway located on a federal aid primary highway.

In accordance with federal regulations, a highway right-of-way must be devoted exclusively to public highway purposes and state highway departments must keep the right-of-way free of all public and private installations, facilities, or encroachments, except (1) if a state highway administrator finds it is in the public interest and will not impair the highway or interfere with the free and safe flow of traffic; (2) a state highway administrator approves it as constituting a part of a highway or as necessary for its operation, use, or maintenance; or (3) if it is an informational site established and maintained in accordance with specified federal regulations.

Background: SHA is responsible for more than 5,200 miles or approximately 16,800 lane miles of road, 2,500 bridges, 3,500 small stream crossing structures, and 80 miles of sound barriers. It also has responsibility for planning, designing, constructing, and maintaining these roads and bridges to safety and performance standards while considering sociological, ecological, and economic concerns.

Due to the economic downturn and growing state budget shortfalls, many states are seeking to identify new revenue sources for transportation projects. A bill was introduced in Florida (HB 313 of 2011) that would have authorized the sale of naming

rights and lease space for commercial advertising to be displayed on state transportation property. In addition, the Massachusetts Bay Transportation Authority coordinates advertising on a variety of transportation facilities, including outdoor billboards it owns throughout eastern Massachusetts. In 2012, the Virginia General Assembly passed bills (SB 639/HB 1248 of 2012) expanding and clarifying its highway naming rights program. A bill (HB 1051 of 2013) was recently introduced in the Washington State Legislature authorizing the sale of rights to name or rename a state transportation facility.

Highway Signs

Federal and State laws require SHA to regulate signs within State highway rights-of-way and outdoor advertising signs on private property adjacent to State roads. SHA is responsible for official traffic safety signs and informational signs that are either required by State law or authorized by SHA permit. SHA prohibits private signs along State highway medians and rights-of-way and reserves State property for official traffic control signs or devices.

Numerous federal and State requirements impact how and where outdoor advertising occurs along highways. In addition, many local zoning and sign ordinances dictate the size, illumination, and location of signs. Some local jurisdictions prohibit new off-premise outdoor advertising signs altogether. When SHA does issue permits, the requirements vary depending on whether the sign is for a business located on the property on which the sign will be placed (on-premise) or for businesses located elsewhere (off-premise). SHA sign permit fees range from \$10 to \$35 per advertising face, and the permits must be renewed annually.

In March 2012, the Federal Highway Administration (FHWA) issued a new policy directive addressing sponsorship acknowledgment and sponsorship agreements within the public right-of-way (Order 5160.1). The policy order underscores that using highway rights-of-way for advertising purposes is not allowed, but authorizes states to develop sponsorship agreements in accordance with specified principles and with FHWA approval.

State Revenues: TTF revenues increase potentially significantly in fiscal 2014 and subsequent years to the extent State highway naming rights are sold or leased. The bill's impact depends largely on the extent to which strong private entity interest exists and SHA negotiates lucrative sale and lease rates.

Small Business Effect: The bill has a meaningful impact to the extent small businesses benefit from purchasing naming rights to a State highway.

Additional Comments: SHA advises that FHWA has expressed concern about the proliferation of advertising signs and that failing to control advertising could lead to the loss of 10% of most federal highway aid.

Additional Information

Prior Introductions: HB 1186 of 2011, a similar bill, received a hearing in the House Ways and Means Committee, but no further action was taken.

Cross File: None.

Information Source(s): Maryland Department of Transportation, Federal Highway Administration, Florida Legislature, Massachusetts Bay Transportation Authority, Virginia Department of Transportation, Washington State Legislature, Department of Legislative Services

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