

MARK R. HONADEL

STATE REPRESENTATIVE • 21ST ASSEMBLY DISTRICT

TESTIMONY ON ASSEMBLY BILL 258 ASSEMBLY COMMITTEE ON TRANSPORTATION

AUGUST 13, 2013

Chairman Ripp and Transportation Committee members, thank you for giving me the opportunity to testify today in favor of Assembly Bill 258.

Last session, I was the author of AB 216, which was signed into law as 2011 Act 230. That Act refined the law regarding the trimming and removal of vegetation along highway rights-of-way that blocks the visibility of outdoor advertising signs. Upon implementation of the new law, it became apparent to both the Department of Transportation (DOT) and sign owners that a couple of changes need to be made to the law. This bill is the result of negotiations between the DOT and the Outdoor Advertising Association of Wisconsin (OAAW).

This bill makes the following changes:

1. Technical Change in the Definition of "Viewing Window"

The current definition does not apply to all outdoor advertising signs. Most signs are to the right of vehicles traveling on the highway. Act 230's definition unintentionally excluded "cross-vista" signs, that is, those signs that can be read to the left.

2. Remove Language Requiring Replanting and Instead Require Compensation by Sign Owners

Act 230 required sign owners to plant replacement trees for any large tree (4 or more inches in diameter) that is removed from the right-of-way. The DOT and sign owners found that this replacement requirement is cumbersome, labor intensive, and restricts the Department's flexibility.

DOT proposed instead that it be compensated for the removed trees. The Department wanted this program to be as administratively straightforward as possible and suggested a single compensation fee of \$140 per tree. The funds collected could then be used by DOT when and where they need to plant vegetation along highway rights-of-way. This change from replanting to compensation will greatly streamline the process for both the sign owner and the DOT.

In closing, this bill simply improves last year's Act 230, which was an effort to reduce and reform complicated, overly burdensome, and unnecessary state regulations in order to promote and support economic growth. By working with both parties, this bill supports the goal of allowing state sign companies to effectively provide advertising opportunities for other state businesses, while also retaining DOT's oversight authority and protecting, maintaining, and managing vegetation along our state highways.

Working For You!



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August 13, 2013

MEMORANDUM

To: Members of the Assembly Committee on Transportation
Representative Keith Ripp, Chairman

From: Janet R. Swandby and Kathi Kilgore, Lobbyists

Re: **Support for Assembly Bill 258 – Vegetation Management Along
Highway Rights-of-Way**

Assembly Bill 258 is follow-up legislation to 2011 Act 230, which streamlined the process for the trimming and removal of vegetation in the State highway rights-of-way that blocks outdoor advertising signs. The bill addresses two issues that were discovered during the implementation of the new law.

The first portion of the proposal is a technical change to the definition of “viewing window.” It was discovered that the current definition, which has been a part of State law since 2005, does not apply to all outdoor advertising signs. Upon implementation of the new law last year, DOT staff discovered the definition of “viewing window” did not include “cross vista” signs, those signs that can be read to the left. AB 258 corrects this unintended exclusion.

The second issue to be addressed by the proposal is to remove the statutory language requiring replanting. AB 258 instead requires compensation by sign owners for the trees that are removed from the right-of-way. Act 230 required sign owners to plant replacement trees for any large tree (4 or more inches in diameter) that is removed from the right-of-way. The DOT and sign owners found this replacement requirement to be overly complicated and restricted the Department’s flexibility.

DOT approached OAAW regarding a change in this portion of the law late last Fall. The DOT proposal would require the Department be compensated for any large tree (4 or more inches in diameter) that are the removed from the right-of-way. The Department wanted this program to be administratively straightforward and suggested a single compensation fee of \$140 per tree. The funds collected could then be used by the Department when and where they need to plant vegetation along highway rights-of-way.

In conclusion, AB 258 is the positive result of negotiations between the Department of Transportation and the Outdoor Advertising Association of Wisconsin. These two changes will greatly streamline the process for both the sign owner and the DOT, which was the goal of Act 230. OAAW hopes that you will support AB 258 and vote to recommend passage of the bill. Thank you for your consideration.



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Pictures from Wisconsin's
Rustic Roads



CSW Position on AB 258

The proposed bill (AB 258) continues the previous efforts by the billboard companies to extend the life of non-conforming outdoor billboards well beyond their natural life by cutting or removing trees and vegetation in the public right-of-way of Interstates and Federal Aid Primary (FAP) highways with little or no real oversight by the Wisconsin Department of Transportation (WisDOT).

AB 258 continues the bad public policy, as well as poor fiscal policy of its predecessors that established §84.305. Trees and vegetation in the publically owned right of way, especially those planted as part of a plan for wind and snow breaks for public safety, erosion control and to limit invasive species for improved maintenance, provide natural habitat or improve aesthetics for a better travel experience are a taxpayer investment that should only be removed or sold for a higher public purpose, not a narrow private benefit; especially at a discount.

The proposed changes in this bill would be just another way that Wisconsin has failed to provide “effective control” of outdoor advertising as required by the Bonus Act of 1958 and the Highway Beautification Act (HBA) of 1965.

The Federal Highway Administration (FHWA) has already issued numerous Memorandums and Legal Opinions with regard to changes or improvements that extend the visibility or natural life of a non-conforming sign. None of the provisions of the existing §84.305, much less the changes proposed in AB 258 have been vetted by the FHWA.

A non-conforming sign must "remain substantially the same as it was on the effective date of the State law or regulations" adopted to implement the HBA. [23 *Code of Federal Regulations (CFR)* Section 750.707(d)(5)]. Thus any or all of the following are improvements to a non-conforming sign are not considered “customary maintenance” or a “change in the sign’s message”, and thus are prohibited:

- An increase in height to the sign structure and/or sign face
- An addition of any sign elements (posts, beams, braces, sign face, artificial illumination, electrical service, etc.)
- The replacement of any sign elements (posts, beams, braces, sign face, artificial illumination, electrical service, etc.)
- The removal of any natural or manmade property (trees, vegetation, noise barriers, fences, wind breaks, official signs, light poles, safety barriers, bridges or overpasses, etc.) in the public right of way
- The use of any other materials or methods to change the message on the sign other than the original materials or method at the time the sign was classified as non-conforming (i.e. painted wood or paper poster panel sign face to printed vinyl panels or banner or digital LED, etc.)

Wisconsin continues to risk the 10% penalty of our annual Federal highway funds by whittling away at the ability of WisDOT to provide “effective control” of outdoor advertising with bills like AB 258 and laws like §84.305. The Legislature may also find itself having the unpleasant task of funding the replacement of trees and vegetation that were removed to improve the visibility of non-conforming billboards, but without any Federal highway funds.

AB 258 should be voted down and §84.305 should be repealed.

Scenically Yours,

Charley Weeth

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