

1999 DRAFTING REQUEST

Bill

Received: **09/24/98**

Received By: **nilsepe**

Wanted: **As time permits**

Identical to LRB:

For: **Transportation**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **nilsepe**

May Contact:

Alt. Drafters:

Subject: **Transportation - highways**

Extra Copies: **TNF**

Topic:

Outdoor advertising signs

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	nilsepe 09/25/98	gilfokm 10/11/98		_____			
/P1			jfrantze 10/12/98	_____	lrb_docadmin 10/12/98		
/P2			lrb_docadmin 10/14/98 ismith 10/14/98	_____ _____ _____	lrb_docadmin 10/14/98		

FE Sent For:

<END>

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/P1		<i>12-10-13</i> <i>KMG</i>	jfrantze 10/12/98	_____	lrb_docadmin 10/12/98		
FE Sent For:			<i>IS</i> <i>10/14</i>	<i>IS/KM</i> <i>10/14</i>			

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1?	nilsepe	1/1-10-11-98 kmq	10/12	10/12	Yes		

FE Sent For:

<END>

-0305

**Department of Transportation
FY 99-01 Biennial Budget Issue Paper**

Division: Executive Division

Program Name: Outdoor Advertising Signs

Brief Statement of Issue: Should sec. 84.30, Stats., be amended to comply with federal law regarding the location of outdoor advertising signs in order to preserve the attractiveness of Wisconsin for tourists and other motorists?

Background/Overview:

Federal law does not allow outdoor advertising signs to be visible from the Interstate and other federally financed highways where the zoning laws "primarily" permit non-commercial uses. Failure to adhere to this requirement jeopardizes 10% of the federal funding Wisconsin receives for highway purposes.

Outdoor advertising in Wisconsin is regulated by sec. 84.30 Stats. This statute reads in part:

84.30 Regulation of outdoor advertising.

84.30(1) Legislative findings and purpose. To promote the safety, convenience and enjoyment of public travel, to preserve the natural beauty of Wisconsin, to aid in the free flow of interstate commerce, to protect the public investment in highways, and to conform to the expressed intent of congress to control the erection and maintenance of outdoor advertising signs, displays and devices adjacent to the national system of interstate and defense highways, it is hereby declared to be necessary in the public interest to control the erection and maintenance of billboards and other outdoor advertising devices adjacent to said system of interstate and federal-aid primary highways and the Great River Road.

84.30(2)(b) "Business area" means any part of an adjacent area which is (zoned) for business, industrial or commercial activities under the authority of the laws of this state; or not zoned, but which constitutes an unzoned commercial or industrial area as defined in par. (k). In adjacent areas along the interstate system business areas shall be limited to commercial or industrial zones within the boundaries of incorporated municipalities, as those boundaries existed on September 1, 1959, and all other areas where the land-use as of September 1, 1959, was clearly established by state law as industrial or commercial.

The Office of General Counsel receives an average of 16 cases per year dealing with sign and outdoor advertising activities.

A Wisconsin Court of Appeals decision takes Wisconsin out of compliance with federal law. In *WISDOT v. OCT*, 135 Wis.2d 195 (Ct. App. 1986), WISDOT denied a sign permit in an area zoned "highway use district" because the primary uses articulated in the zoning law were uses permitted in residential and agricultural districts. WISDOT disregarded the fact that arts and crafts shops and veterinary clinics were permitted as conditional uses in the district. The court considered the language of s. 84.30(2)(b) in light of the federal sign law and concluded that by permitting veterinary clinics and arts and crafts shops as primary activities on properties within the zoning district, the locals had made the district a "business area" within the meaning of s. 84.30(2)(b), Stats. Accordingly, the court upheld the OCT's ruling that the district was a business area.

The court of appeals equivocated on the use of the term "primary" within its decision. The result has been not only jeopardy to Wisconsin's share of federal funds, but also an inability to deny sign permits in residential or agricultural areas adjacent to state and federal highways. The result has been a proliferation of outdoor advertising signs in areas contrary to the state's vital interest in making sure that Wisconsin preserves its attractiveness and criticism of WISDOT by state and local officials for issuing permits.

The Court of Appeals took the word "primary" and mis-construed it to mean "a use which may be permitted as a primary use under the zoning laws." Thus, any district which allows ANY business use at all, even on a conditional basis, as the primary use of a property, may have billboards erected upon it. The decision does not reflect the intent of congress or the legislature. Correcting the court of appeals legislatively would involve simply making clear in the statute that conditional zoning uses may not be considered in determining whether an area is zoned primarily for business.

The impact of this legislative change is potentially huge. Outdoor advertising regulation is very difficult.

Analysis/Alternatives:

Correcting the Court of Appeals legislatively would involve simply making clear in the statute that conditional zoning uses may not be considered in determining whether an area is zoned primarily for business for outdoor advertising purposes.

Alternatives:

1. Null - Do nothing.

Impact

- (1) Proliferation of outdoor advertising signs along uniquely scenic and beautiful areas of the state.
- (2) Potential loss of significant federal dollars due to non-compliance with federal law. Failure to comply may result in a 10% loss in revenue for a program of 40 million dollars.

2. Clarify Wis. Statutes.

The only means of controlling outdoor advertising is to change the statute (sec. 84.30 Stats.) to comply with federal law regarding the location of outdoor advertising signs. The outdoor advertising sign industry carries great weight regarding the regulation of outdoor advertising.

Recommendations:

Amend sec. 84.30, Stats. to comply with federal law regarding the location of outdoor advertising signs to preserve the attractiveness of Wisconsin for tourists and other motorists.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0305/2

PEN... King

PI

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Act: head: TRANSPORTATION
Act: sub: Other Transportation

D - Note

Don't open cat.

AN ACT ...; relating to: the budget

Analysis by the Legislative Reference Bureau

With exceptions, current law generally prohibits the erection of outdoor advertising signs that are visible from interstate or federal aid highways, in conformity with the federal Highway Beautification Act. One exception allows highway-visible outdoor advertising signs to be erected in business areas, areas that are zoned for business, industrial or commercial use, and in certain unzoned areas in which commercial or industrial activity is conducted from devoted, permanent structures. The court of appeals has held that conditional uses may be considered in determining whether an area is in fact a business area in which highway-visible outdoor advertising signs may be erected, even though the area is zoned primarily for uses other than business, industry or commerce. *Transp. Dept. v. Transp. Com'r.*, 135 Wis. 2d 195 (Ct. App. 1986). This bill specifies that uses of zoned property authorized by special zoning permission, including uses by conditional use, variance or special exception, will not be considered when determining whether the area is a business area.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

↓

(END)

△△

Sec. #. CZ, 84.30 (2m)

84.30 (2m) ^B ^{CS} CONDITIONAL USES AND SPECIAL EXCEPTIONS NOT CONSIDERED.

No P - No uses of real property authorized

by special zoning permission, including uses by

conditional use, special exception,

zoning variance or conditional permit, may

be considered when determining whether the

area is a business area.

(END)

-0305/pidn
:King:

The draft language is based on
ss. 59.69(15)(g), 60.63(8) and 62.23(7)(i)?,
stats. (P) Do you want to grandfather signs ^{curr} currently
located in "business areas", similar to
s. 84.30(5), stats?

-PEN

The language is broader than the
request, which addresses only conditional uses. ok?

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0305/P1dn
PEN:kmgjf

October 12, 1998

The draft language is based on ss. 59.69 (15) (g), 60.63 (8) and 62.23 (7) (i) 7., stats. The language is broader than the request, which addresses only conditional uses. OK?

Do you want to grandfather signs currently located in "business areas", similar to s. 84.30 (5), stats.?

Paul E. Nilsen
Legislative Attorney
261-6926



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0305/P
PEN:kmg:jf

500N

102

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

NOT In Editor
In-box

1 AN ACT <sup>Don't
Gen Cat</sup> relating to: the budget.

Analysis by the Legislative Reference Bureau
TRANSPORTATION
OTHER TRANSPORTATION

→ With exceptions, current law generally prohibits the erection of outdoor advertising signs that are visible from interstate or federal aid highways, in conformity with the federal Highway Beautification Act. One exception allows highway-visible outdoor advertising signs to be erected in business areas areas that → are zoned for business, industrial or commercial use and in certain unzoned areas in which commercial or industrial activity is conducted from devoted, permanent structures. The court of appeals has held that conditional uses may be considered in determining whether an area is in fact a business area in which highway-visible outdoor advertising signs may be erected, even though the area is zoned primarily for uses other than business, industry or commerce. *Transp. Dept. v. Transp. Com'r.*, 135 Wis. 2d 195 (Ct. App. 1986). This bill specifies that uses of zoned property authorized by special zoning permission, including uses by conditional use, variance or special exception, will not be considered when determining whether the area is a business area.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

see change
Pg. 2, 14



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0305/P2

PEN:kmg:ijs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TRANSPORTATION

OTHER TRANSPORTATION

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The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

NOTE TO DRAFTING FILE for LRB-0305:

Per the drafter, this draft has been redrafted to a “/1” as no problems remain in the draft that require resolution before introduction of the budget bill. There are no changes between the “/PX” and the “/1.”

DOA:.....Etzler - Outdoor advertising signs

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TRANSPORTATION

OTHER TRANSPORTATION

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