F I S C A L I M P A C T R E P O R T

SPONSOR Griego **DATE TYPED** 02/16/05 **HB**

SHORT TITLE Outdoor Advertising Requirements **SB** 234a/SCONC

ANALYST Moser

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Transportation (DOT)

SUMMARY

Synopsis of Amendment

This proposed amendment to NMSA 1978 § 67-12-4 proposes three major revisions to the current law.

(1) SB 234 would amend § 67-12-4(A)(5) to provide that an outdoor advertising sign, display and device must be at least 750 feet from the next closest sign, display or device and at least 660 feet from the nearest edge of the right-of-way.

(2) SB 234 proposes to amend § 67-12-4(A)(5) by deleting the requirement that the state transportation commission determine whether a sign is a landmark sign of historic or artistic significance worthy of preservation.

(3) SB 234 proposes the addition of new language to be codified as § 67-12-4(D), which would provide that "on and after July 1, 2005, no new permit shall be issued by the commission unless the permit applicant conveys to the commission an existing outdoor advertising permit or the commission acquires or condemns an existing outdoor advertising structure under a permit to the applicant."

This bill also proposes several minor amendments to the existing statute, which, in our opinion is "clean up" language that has no significant impact on the Department.

Significant Issues of Amendment:

(1) The proposed amendment to § 67-21-4(A)(5) would increase the distance between outdoor advertising devices to 750 feet. The new spacing requirement would result in fewer advertising devices along a highway corridor than are presently allowed. However, the requirement that the outdoor advertising device must be at least 660 feet from the nearest edge of the right-of-way raises several concerns. The law presently provides that outdoor advertising devices must be located within 660 feet of the nearest edge of the right-of-way. The requirement that the sign, display or device be located at least 660 feet from the nearest edge of the right-of-way means that the advertising device would be farther from the roadway and, therefore, less visible. That may result in the erection of larger outdoor advertising devices that can be seen from a greater distance, but the larger signs may violate local government ordinances restricting the size of advertising devices. The larger signs would be more costly to erect and less affordable to the smaller outdoor advertising companies.

In order to prevent the proliferation of larger signs, albeit farther apart, the NMDOT recommends that the bill be revised to include the new spacing requirement, i.e., that signs, displays and devices must be located at least 750 feet from the next closest sign. However, the department also recommends retaining the language in the current law allowing the display or device to be located within 660 feet of the nearest edge of the right-of-way.

(2) The current § 67-12-4(A)(6) provides that signs that were lawfully in existence on October 22, 1965 (the effective date of the federal Highway Beautification Act), and which are determined by the state transportation commission to be landmark signs of historic or artistic significance worthy of preservation may be erected or maintained. SB 234 proposes to amend this section by deleting the reference to the state transportation commission. However, it leaves unanswered the question of who would determine whether a sign is a landmark sign of historic or artistic significance. The NMDOT recommends retaining the reference to the commission.

(3) The proposed § 67-12-4(D) provides that no new permit may be issued as of July 1, 2005 unless the applicant conveys to the state transportation commission an existing outdoor advertising permit or the commission acquires or condemns an existing outdoor advertising structure currently under permit to the same applicant. Because it is unclear under what circumstances the commission would acquire or condemn an existing outdoor advertising structure under a permit and how it would be conveyed to applicants who qualify for a permit, but do not have another permit to convey to the commission, NMDOT recommends revising the bill to provide the following:

> "On and after July 1, 2005, no new permit shall be issued by the commission unless the permit applicant conveys to the commission an existing outdoor advertising permit and otherwise complies with all rules adopted by the commission governing the issuance of permits. In the event the commission acquires or condemns an existing outdoor advertising structure under a permit to the applicant, the commission may issue the applicant a new permit subject to rules adopted by the commission."

The proposed revision would also clarify the issue whether an applicant is *guaranteed* a new permit if he conveys an existing permit to the commission or the commission acquires or condemns an existing outdoor advertising device under permit to the applicant. The issuance of a new permit should be conditioned on compliance with federal, state and local requirements, including spacing, lighting, etc. The applicant should not be entitled to a new permit, even though he has conveyed an existing permit to the commission, or had his existing structure acquired or condemned by the commission, if the application for a new permit does not comply with applicable federal, state and local requirements.

Finally, a single outdoor advertising structure may have up to four permits. Each advertising face of a single outdoor advertising structure requires a separate permit. Therefore, the number of permits does not necessarily represent or equal the same number of outdoor advertising structures. That raises the question whether an applicant who has an existing double-faced outdoor advertising structure with two permits may convey one of the permits to the commission, keep the existing billboard with just one face and now one permit, and then be issued a new permit for a different outdoor advertising structure. Alternatively, would the same applicant be required to remove an existing outdoor advertising *structure* prior to the issuance of a new *permit*?

Synopsis of Original Bill

Senate Bill 234 proposes three major revisions to the current law.

(1) Amend § 67-12-4(A)(5) to provide that an outdoor advertising sign, display and device must be at least 750 feet from the next closest sign, display or device and at least 660 feet from the nearest edge of the right-of-way.

(2) Amend § 67-12-4(A) (5) by deleting the requirement that the state transportation commission determine whether a sign is a landmark sign of historic or artistic significance worthy of preservation.

(3) The addition of new language to be codified as § 67-12-4(D), which would provide that "on and after July 1, 2005, no new permit shall be issued by the commission unless the permit applicant conveys to the commission an existing outdoor advertising permit or the commission acquires or condemns an existing outdoor advertising structure under a permit to the applicant."

This bill also proposes several minor "clean up" language amendments to the existing statute.

Significant Issues

(1) The proposed amendment to § 67-21-4(A) (5) would increase the distance between outdoor advertising devices to 750 feet. The new spacing requirement would result in fewer advertising devices along a highway corridor than are presently allowed. However, the Department of Transportation (DOT) has several concerns with the requirement that the outdoor advertising device must be at least 660 feet from the nearest edge of the right-of-way raises. The law presently provides that outdoor advertising devices must be located within 660 feet of the nearest edge of the right-of-way. The requirement that the sign, display or device be located at least 660 feet from the nearest edge of the right-of-way means

that the advertising device would be farther from the roadway and, therefore, less visible. That may result in the erection of larger outdoor advertising devices that can be seen from a greater distance, but the larger signs may violate local government ordinances restricting the size of advertising devices. The larger signs would be more costly to erect and less affordable to the smaller outdoor advertising companies.

In order to prevent the proliferation of larger signs, albeit farther apart, DOT recommends that the bill be revised to include the new spacing requirement, i.e., that signs, displays and devices must be located at least 750 feet from the next closest sign. However, DOT also recommends retaining the language in the current law allowing the display or device to be located within 660 feet of the nearest edge of the right-of-way.

(2) The current § 67-12-4(A) (6) provides that signs that were lawfully in existence on October 22, 1965 (the effective date of the federal Highway Beautification Act), and which are determined by the state transportation commission to be landmark signs of historic or artistic significance worthy of preservation may be erected or maintained. SB 234 proposes to amend this section by deleting the reference to the state transportation commission. However, it leaves unanswered the question of who would determine whether a sign is a landmark sign of historic or artistic significance. DOT recommends retaining the reference to the commission.

(3) The proposed § 67-12-4(D) provides that no new permit may be issued as of July 1, 2005 unless the applicant conveys to the state transportation commission an existing outdoor advertising permit or the commission acquires or condemns an existing outdoor advertising structure currently under permit to the same applicant. Because it is unclear under what circumstances the commission would acquire or condemn an existing outdoor advertising structure under a permit and how it would be conveyed to applicants who qualify for a permit, but do not have another permit to convey to the commission, DOT recommends revising the bill to provide the following:

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The proposed revision would also clarify the issue whether an applicant is *guaranteed* a new permit if he conveys an existing permit to the commission or the commission acquires or condemns an existing outdoor advertising device under permit to the applicant. The issuance of a new permit should be conditioned on compliance with federal, state and local requirements, including spacing, lighting, etc. The applicant should not be entitled to a new permit, even though he has conveyed an existing permit to the commission, or had his existing structure acquired or condemned by the commission, if the application for a new permit does not comply with applicable federal, state and local requirements.

Finally, a single outdoor advertising structure may have up to four permits. Each advertising face of a single outdoor advertising structure requires a separate permit. Therefore, the number of permits does not necessarily represent or equal the same number of outdoor advertising structures.

DOT raises the question whether an applicant who has an existing double-faced outdoor advertising structure with two permits may convey one of the permits to the commission, keep the existing billboard with just one face and now one permit, and then be issued a new permit for a different outdoor advertising structure. Alternatively, would the same applicant be required to remove an existing outdoor advertising *structure* prior to the issuance of a new *permit*?

ADMINISTRATIVE IMPLICATIONS

DOT feels that passage of this bill may create numerous additional administrative duties related to the conveyance, acquisition, or condemnation of existing permits /outdoor advertising structures, which, in turn, may result in the need for DOT to increase the number of permanent, specialized staff that performs duties related to the Highway Beautification Act and control of Outdoor Advertising.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The consequences of not enacting this bill are as follows:

1. With regard to § 67-12-4(A)(5), the current requirements regarding spacing between signs, displays and outdoor advertising devices would continue to apply, along with the requirements concerning distance from the nearest edge of the right-of-way. As a result, the number of signs along a roadway corridor would not, over time, necessarily be reduced. However, by leaving the current 660 ft. distance intact, it is also less likely that very large signs would be erected for visibility purposes.

2. With regard to § 67-12-4((A)(6), the state transportation commission would continue to determine whether a sign lawfully in existence on October 22, 1965 is a landmark sign of historic or artistic significance worthy of preservation.

3. Without § 67-12-4(D), there will be no finite number of outdoor advertising devices allowed in the State of New Mexico. However, the spacing requirements contained in § 67-12-4(A)(5) do effectively limit the number of outdoor advertising devices that can be erected along interstate highways and primary systems.

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