

2011 SENATE POLITICAL SUBDIVISIONS

SB 2066

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee  
Red River Room, State Capitol

SB 2066  
January 7, 2011  
12637 Tape # 54:00 end

Conference Committee

*Mary Jo Wocken*

## Explanation or reason for introduction of bill/resolution:

Relating to political signs

## Minutes:

**Senator Andrist:** Samantha, our legal intern has done some extensive research concerning SB 2066.

**Senator Olafson:** In section 24.01-12 of the Century Code , it addresses signing in the highway right of way.

**Senator Andrist:** Interested in the political sign language 24:12.

**Senator Olafson:** I wanted to see if section 24:12 was in the Century Code.

**Senator Laffen:** He started it designated group of signs called political signs. Do this read the bill as a new classification?

**Senator Lee:** This regulates the language of where signs in general can be placed in the highway right of way.

**Senator Andrist:** Let the Department of Transportation relax the standards somewhat of the Highway Beautification Act.

**Senator Olafson:** In section 24:01:12, the third sentence, shows three lines of clutter, it states where to print, place and fixed to stone, etc.

**Senator Lee:** Section 24:02 gives the definition, section 24:03 discusses the limitations of outdoor advertising. It states the distance regulation, and is pretty straightforward.

**Senator Olafson:** As a member of this committee, he understands the bill as it written  
**Senator Dotzenrod:** Section 17:03 in the subsection paragraph states the accepted out of rule of 660 feet. Political signs is the exception to the rule.

**Senator Laffen:** Is it legal for political signs to go up to the right of way line?

**Senator: Olafson:** It is illegal to be there.

**Senator Lee and Senator Laffen** both stated that it says political signs need to be right on the line.

**Senator Olafson:** What about campaign signs in the rural areas?

**Senator Laffen and Senator Lee**, discussed about where to put signs and the need to have signs moved out of the highway right of way.

**Senator Olafson:** Signs need to be regulated. Continued discussion among senators at the table concerning the placement of signs in the rural areas.

Senator Andrist: Signs are covered by Sub-section 3, part of subsection 4. We need to make sure we are not allowing people to sell products.

Senator Andrist: Should we make a motion on this bill?

Senator Lee: I make a motion to due pass SB 2066

Senator Dotzenrod: Second this motion

Passed 5 Yea 0 No

Carrier: Senator Lee

Date: 1-7-2011  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2066

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Sen Lee Seconded By Sen Dotzenrod

Senators	Yes	No	Senators	Yes	No
Senator John Andrist	✓				
Senator Lonnie Laffen	✓				
Senator Judy Lee	✓				
Senator Curtis Olafson	✓				
Senator Jim Dotzenrod	✓				

Total (Yes) 5 No 0

Absent \_\_\_\_\_

Floor Assignment Senator Judy Lee

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2066: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends DO PASS (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2066 was placed on the Eleventh order on the calendar.**

2011 HOUSE POLITICAL SUBDIVISIONS

SB 2066

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee  
Prairie Room, State Capitol

SB 2066  
March 10, 2011  
Job # 15265

Conference Committee

Committee Clerk Signature *Ron Henke*

### Explanation or reason for introduction of bill/resolution:

Relating to political signs.

### Minutes:

Testimony #1

**Chairman Johnson:** Opened the hearing on SB 2066.

**Ron Henke, Director, Office of Project Development:** (See testimony #1).

**Rep. Zaiser:** What is a temporary sign? As you know there are a lot of billboards out there which have permanent signs that have political advertising on it.

**Ron Henke:** We look at a temporary sign as something around thirty days.

**Rep. Zaiser:** That political sign has been up for four or five months.

**Ron Henke:** That is probably a billboard, which is not considered a political sign. You can advertise and a billboard has a permit and it is in the correctly zoned area and stuff like that.

**Rep. Kretschmar:** Do you have any regulations in the size of the signs?

**Ron Henke:** There are some size limitations, but that is in Chapter 16 of the law. It is nothing that is regulated necessarily under Chapter 24.

**Rep. Koppelman:** What has the problem been and what types of signs do you regulate and would this change it? I have seen some signs while driving down the Interstate Highway where a farmer on his or her land will put a sign or paint something on a building or whatever. Do you have any regulatory authority over that even though it is on private property?

**Ron Henke:** The is considered an on premise sign as long as the business is on the land that they own. There are regulations that they have to be on premise, but that is our regulation and it is legal. As far as how we have been doing this in the past; we been sending letters to the political parties at the beginning making them aware that political

signs cannot be placed on highway right of way. We don't get into the sizes and stuff but they can't be on highway right of way. We have had to, if we become aware of a sign that is on highway right of way and it is a political sign, we will send a letter to that individual or the appropriate party and let them know the sign is in violation of the highway beautification act and that it has to be removed and we give them 30 day timeframe.

**Rep. Koppelman:** Even if it is on private property?

**Ron Henke:** No only on highway property.

**Rep. Koppelman:** How would this change anything because this says it is not deal with signs that are not on the right of way?

**Ron Henke:** The way the Highway Beautification Act said, it defines any sign that is visible from any highway within 660 feet. What this does is the federal government has been taken to court a few times on this and they have looked at political signs as being more of a freedom of speech; therefore it is not regulated under the Highway Beautification Act. If there are signs out there advertising and they are not a billboard; they are not permitted, there are not commercial, they are not on premise, they are not a TOD sign that has been approved. Those signs we would have the landowners identify and they have to take them down.

**Rep. Koppelman:** This only deals with interstate highways?

**Ron Henke:** This is any state highway.

**Rep. Koppelman:** I see where somebody is selling pumpkins and they will put a semi-truck up and put a big banner on the truck saying pumpkins are for sale or whatever. Those are temporary but how do you deal with that?

**Ron Henke:** As you are aware these signs pop up all over the place. When we become aware of them; if they don't meet the criteria of those billboards, TOD signs or on premise signs we let the people know they need to have them removed. We have a lot of miles to cover so we don't necessarily look for them all the time unless we become aware of them. We will look for them as we drive.

**Rep. Koppelman:** I think of one sign I pass every time I drive home from Bismarck to West Fargo and I think it is around Valley City somewhere and it is an old farm building and on the side it says protect what is right and it is hunting, fishing and trapping on the other side of the building. I think now here is somebody exercising their free speech rights. You could argue it is a political statement or a free speech statement, certainly. But it is not advocating a particular candidate for office; it is not advocating a particular vote on an initiated measure so it wouldn't be protected under this bill I don't think. It has been there a long time; obviously no one has taken it down; how does that fit?

**Ron Henke:** I don't know the sign exactly. I am sure we have looked into it and I would guess since is so visible from the interstate. I can check into it. It might be considered a non premise sign?



**Rep. Koppelman:** I think it is refreshing that they can express their opinion. I don't think your bill is written would protect that sort of thing.

**Ron Henke:** So far the areas that we are aware that the federal government latched the highway beautification are only on political signs.

**Rep. Klemin:** Before that sign said what it does now on the building at one point in time we had a constitutional amendment on hunting, fishing and trapping it was a political sign supporting passage of that constitutional amendment. After it passed they changed the sign.

Opposition:

**Christopher Dodson, ND Catholic Conference:** I am not sure I could phase this as opposition or concern. There are some constitutional issues here do relate to religious speech. It is well established that you cannot distinguish between non commercial speech types so wherever political speech is allowed you have to allow religious speech and view point speech. You can restrict commercial speech. You cannot distinguish between types of commercial speech. In the 95 session this section of the code was amended and at that time I raised these concerns with the DOT and they assured me that yes they looked into the Supreme Court cases and I was right that all though it allowed certain types of speech, they would not restrict religious speech view point speech on signs because of the Supreme Court cases so if you allow any non commercial speech you have to allow any other non commercial speech in the same size etc. Here again we are putting into the code an exception for a particular type of political sign that explicitly means all types of political signs and all type of religious speech and view point speech. I hope that is the understanding on the enforcement of it. Otherwise, it does raise constitutional issues and we would like to avoid lawsuits if we could.

**Rep. Koppelman:** If you can't distinguish do you see a way the bill could be fixed to accommodate that concern while still maintaining the intent of the bill?

**Christopher Dodson:** I would have to think about statutorily, but in my previous life as an attorney in dealing with sign cases some of them were facial challenges where the entire statue was struck down if it did not allow all of non commercial speech explicitly but in other cases they were not facial challenges and they simply cannot be enforced against other non commercial speech even though one particular type of speech allowed it. I am not sure what the best solution of that is? This goes back to Metromedia versus San Diego some decades ago and there are Supreme Court decisions since then.

**Chairman Johnson:** Mr. Hinke may I asked you a question. When you identified the Federal Beautification Act and you want to just identify what a political sign is. In the Highway Beautification Act does it allow for these signs or is it a ban on these signs?

**Ron Hinke:** The Highway Beautification Act doesn't directly address them. There is no language in there that says you cannot put up political signs. It is silent. They are more general in nature.

**Chairman Johnson:** Are we saying we are going to allow this kind of sign or are we going to not allow this kind of sign?

**Ron Hinke:** The bill that we presented would allow that and it would help us so that everybody knows what is allowed. It is still not on highway; it is on private property.

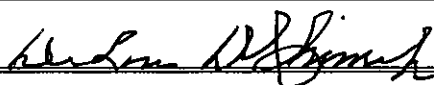
Hearing closed.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee  
Prairie Room, State Capitol

SB 2066  
March 18, 2011  
Job #15650

Conference Committee

Committee Clerk Signature 

## Minutes:

**Chairman Johnson:** Discussed the proposed bill SB 2066. Was the bill that would allow political signs to be up right now?

**Rep. Koppelman:** If you recall Mr. Dodson was here in opposition to the bill. His point was constitutionally and based upon court decisions he believes you can't distinguish between types of non commercial speech so if we say political signs; you would have to allow religious signs or any kind of sign that is not a commercial sign. As we looked at it and we consulted with Rep. Klemin about this too. I don't think there is a good way to amend this to try to deal with that. I don't mind the bill the way it is. I think it does single out political speech but so do other laws we have in North Dakota. My recommendation is that we, unless someone else has an amendment that they think would help the situation, we need to move on the bill as is.

**Do Pass Motion Made by Rep. Koppelman; Seconded by Rep. Klemin:**

Discussion:

**Rep. Klemin:** Just to mention this religious speech issue. I think that is going to apply regardless of what this bill or the law says from a constitutional standpoint so it really doesn't make any difference to me whether we say religious speech separately somewhere or not. It is still going to be there and they can make that argument if they ever had to do, which they probably won't.

**Vote:            14    Yes    0    No    0    Absent    Carrier: Rep. Koppelman**

Date: 3-18-11  
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2066

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended  Adopt  
Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Rep. Koppelman Seconded By Rep. Klemin

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Kilichowski	✓	
Vice Chairman Hatelstad	✓		Rep. Shirley Meyer	✓	
Rep. Beadle	✓		Rep. Mock	✓	
Rep. Devlin	✓		Rep. Zaiser	✓	
Rep. Heilman	✓				
Rep. Klemin	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Pietsch	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Koppelman

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2066: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2066 was placed on the Fourteenth order on the calendar.**

2011 TESTIMONY

SB 2066

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**SENATE POLITICAL SUBDIVISION COMMITTEE**  
**January 6, 2011 – 9:30 a.m. – Red River Room**

**North Dakota Department of Transportation**  
**Ron Henke, P.E., Project Development Director**

**SB 2066**

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Members of the committee, my name is Ron Henke and I serve as Project Development Director for the North Dakota Department of Transportation (NDDOT). I'm here today to introduce and support SB 2066.

The purpose of this bill is to clarify that political signs are not subject to regulation under NDCC Chapter 24-17.

In 1965, the federal Highway Beautification Act was passed. The purpose of the federal act was to protect public investment in highways, to promote safety and recreational value of public travel, and to preserve natural beauty by controlling outdoor advertising. NDCC Chapter 24-17 was enacted in response to the federal act. The proposed change to NDCC section 24-17-02 is the addition of a definition for "Political signs." The addition of this language would define a "Political sign" as a temporary sign erected on private property, which includes signs that solicit votes or support for, or opposition to, any candidate or any political party under whose designation any candidate is seeking nomination or election. Political signs may also contain messages concerning any public question on the ballot in an election held under the laws of the state. Political signs do not include signs which have been issued a legal billboard permit by a city, county, or the state of North Dakota.

The second proposed change is to NDCC section 24-17-03. The addition further defines "Political signs" as temporarily installed signs on private property, which do not include any form of commercial advertising.

If these two changes are enacted, the DOT and political parties will have clear guidance as to what temporary political signs can contain and where they must be located. In working with our Federal Highway Division in North Dakota they have currently agreed that political signs are temporary in nature and that if these signs are not located on highway right of way, the Federal Highway Division in North Dakota would not consider this a violation of the Highway Beautification Act (Code of Federal Regulation, Title 23 Part 750)

I would be happy to answer any questions at this time. Thank you.

## Political Signs Near Highways

Any type of signage along federal highways is controlled by the Highway Beautification Act. Signage along state highways is addressed in NDCC section 24-01-12. NDCC section 39-10-07.2 addresses the issue of unauthorized signs along the highway, such as the issue of a local community member selling produce, the sale of such goods is also addressed in NDCC section 24-17-03(3). NDCC section 24-17 addresses the policies and enforcement of the law, however there is not currently a specific section that addresses the placement of political signs along the highway. NDCC section 24-17-12 specifically addresses the issue of enforcement of the provision. Nevada and Wisconsin have specific state statutes that address the placement of political signs along highways.

These are findings based on my preliminary research, if the committee would like more information please contact Legislative Council.



**24-01-12. Regulation of advertising signs on highways.**

No person, firm, corporation, or limited liability company may place, put, or maintain any sign, billboard, or advertisement within the limits of a public highway, or in any manner paint, print, place, put, or affix, or cause to be painted, printed, placed, or affixed, any advertisement on or to any stone, tree, fence, stump, pole, mileboard, milestone, danger sign, danger signal, guide sign, guidepost, billboard, building, or other object within the limits of a public highway, or place, put or maintain any sign or billboard upon private property within one thousand feet [304.8 meters] of any highway grade crossing in such place or manner as to obstruct or interfere with a free and clear view of such crossing from any highway or railroad intersecting thereat. None of the provisions of this section prohibit the placing of public notices on billboards erected for that purpose by authority of the governing body of a municipality. Any advertisement in or upon a public highway or private property which, in the judgment of the director, may be deemed to be a hazard to traffic, or in the future may tend to create a hazard to traffic, may be taken down, removed, or destroyed by direction or authority of the department in the case of the state highway system, by the board of county commissioners in the case of the county road system, and by the board of township supervisors in the case of township roads.

**39-10-07.2. Display of unauthorized signs, signals, or markings.**

1. No person may place, maintain, or display upon or in view of any **highway**, any unauthorized **sign**, **signal**, marking, or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad **sign** or **signal**, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of an official traffic-control device or any railroad **sign** or **signal**.

2. No person may place or maintain nor may any public authority permit upon any **highway** any traffic **sign** or **signal** bearing thereon any commercial advertising.

3. This section may not be deemed to prohibit the erection upon private property adjacent to **highways** of **signs** giving useful directional information and of a type that cannot be mistaken for official **signs**.

4. Every such prohibited **sign**, **signal**, or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the **highway** is hereby empowered to remove the same or cause it to be removed without notice when located on **highway** right of way.

5. No person may place, maintain, or display upon or within the right of way of any **highway** any **sign**, post, pole, mailbox, or **signal** which has a red lamp or red reflector visible to traffic. The provisions of this subsection do not apply to official traffic devices, lamps, or reflectors on motor vehicles or bicycles, or railroad **signals** or **signs**.

6. This section does not prohibit the use of portable battery-powered warning devices emitting a flashing red light placed upon a **highway** to alert oncoming traffic to a disabled or stopped motor vehicle.



**Brian Sandoval**  
Governor  
**Susan Martinovich, P.E.**  
Director



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## Political Sign Rules & Regulations

### No political sign can be placed within state highway right of ways.

As you conduct your campaign for public office please keep in mind that it is illegal to place signs within the right-of-way of state highways. State highways include not only the well numbered rural routes but many country roads and city streets. The provisions of Nevada Revised Statute 405.020, 405.030 and 405.110 and Nevada Administrative Code 410.440 prevent the placement of any advertising signs, including political signs within state highway right of way or roads which are owned or controlled by the Nevada Department of Transportation (NDOT). In addition, the federal and state "Highway Beautification Acts" limit the placement of any sign on private property if that sign is located within 660 feet of a National Highway System route. NHS routes include all freeways, interstate, expressways, most U.S. routes and some state routes including several city streets (see maps).

NDOT has previously published several notices regarding the erection of political signs. This pamphlet is intended to summarize NDOT's enforcement of the laws on political signs and supplements the more detailed regulation. The term political sign includes any temporary or portable display or device advertising for or against a candidate for public office or a political party or political point of view.

### Rules for all state highways:

No signs are permitted in state highway right of way. This includes the right of way along freeways, interstate, expressways, highways and many city streets. NDOT's right of way in urban areas often includes any sidewalks and some clear distance on either side of the street.

NDOT employees will remove signs erected in the highway right of way and usually take them to the nearest maintenance station. In most cases owners of the sign or their representatives can drop by the station to get their signs. NDOT will try to remove the signs so as not to damage them. Removed signs will be retained for 30 days and then disposed of.

If you have a question about the right of way for state highways, please call the nearest NDOT district office. In Clark County call the District I Office in Las Vegas at (702) 385-6540, in Tonopah call (775) 482-2375, in northwestern Nevada call the District II Office in Sparks at (775) 834-8300, in Winnemucca call (775) 623-8000, in northeastern Nevada call the District III Office in Elko at (775) 777-2700, and in Ely call (775) 289-1700.

### Additional rules for the National Highway System (NHS):

Political signs adjacent to and within 660 feet of any NHS highway must meet federal spacing, size, zoning, and lighting requirements and a permit must be obtained from the appropriate NDOT district office except as noted below. A nonrefundable fee of \$200.00 will be charged for this permit. The following highways are part of the NHS and are under federal and state regulation: I-15, I-215, I-515, I-80, I-580, U.S. 6, U.S. 50, U.S. 93, U.S. 95, U.S. 395, S.R. 88, S.R. 318, S.R. 360, S.R. 593, S.R. 650, S.R. 651 and S.R. 720, Tropicana Avenue from U.S. 95 to Rainbow Boulevard, and Rainbow Boulevard from Tropicana Avenue to U.S. 95, in the Las Vegas metropolitan area and McCarran Boulevard in the Reno - Sparks metropolitan area (see map).

A permit is not required for smaller political signs (4'x 8' or smaller) that are placed on private property near the NHS.

### General Rules:

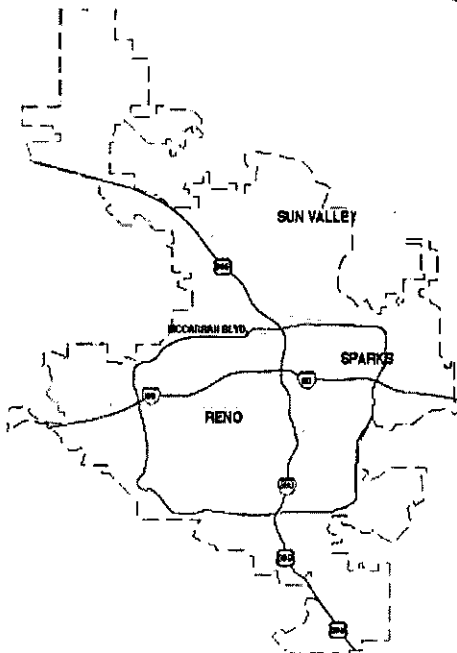
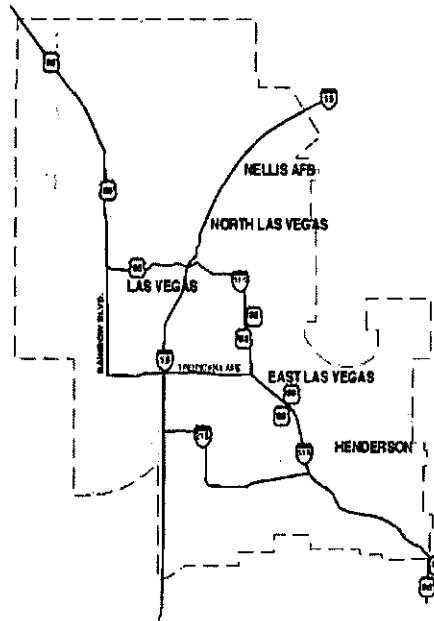
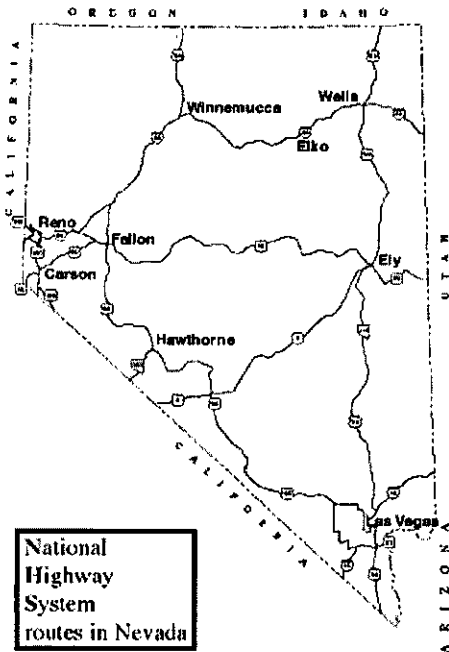
The following rules apply to all signs located near state highway right of way including NHS routes.

1. Political signs must not distract drivers.
2. The sign cannot resemble official traffic signs.

- 3. The sign cannot block view of oncoming traffic.
- 4. Political signs erected on private property that is adjacent to a state highway may be erected no more than 60 days before a primary election and must be removed within 30 days after the primary election. Signs for candidates or questions appearing on the general election ballot do not have to be removed until 30 days after the general election.

Apart from state requirements, local governmental agencies can and do have varying criteria regarding placement of political signs on city and county roads. These local restrictions vary greatly among the various entities and must be checked locally.

For further information, or if you have any questions please call the Nevada Department of Transportation's Right of Way Division. In northern Nevada, (775) 888-7480 and in southern Nevada, (702) 385-6540.



1263 South Stewart Street, Carson City, Nevada 89712 - Telephone: 775-888-7000 - Fax: 775-888-7115 - Email:  
[info@dot.state.nv.us](mailto:info@dot.state.nv.us)

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- Memorials on state highways
- Outdoor advertising
- Outdoor advertising program coordinators
- Permits
- Property and right of way use
- Signs- directional, informational
- Signs- political, campaign

[Doing Business](#) > [Rules, permits and licenses](#) > [Property](#) >

## Political and campaign signs

Any signs along roadways, including political/campaign signs, pose potential hazards. Improperly placed signs can:

- Obstruct a motorist's view
- Distract a driver's attention
- Compound damages or injuries in the event of a crash
- Endanger the safety of individuals who are erecting signs along busy highways
- Present obstacles to crews who maintain (mow) roadways

Political/campaign signs, especially larger billboard-type signs, are particularly dangerous when placed in vision areas at intersections.



### Signs prohibited on state highway right of way

Wisconsin law prohibits the placement of signs on any rural or urban portion of the state highway system right of way. This prohibition applies to commercial advertising and covers political signs, posters and banners. As a general rule, highway right of way in rural areas extends to beyond both shoulders and ditches and any adjoining fence line.

[Wisconsin Administrative Code Trans 201.16](#) details the conditions under which political/campaign signs may be placed adjacent to the state highway system (state, federal and interstate highways)

Local municipalities may have additional guidelines regulating the placement of political signs along county highways or local roads and streets.

### Signs on private property

Political signs are allowed on private property along the state highway system without a billboard permit as long as the signs:

- Do not exceed 32 square feet in size
- Contain no flashing lights or moving parts
- Are put up less than 45 days before the election\*
- Are removed within one week after the election\*

\* The Department has suspended enforcement of the restrictions limiting these signs to 45 days prior to and one week after the election. The suspension of enforcement activity will continue until the applicable Administrative Rule can be revised. The need to revise

the rule was prompted by a 2004 ruling of a Federal District Court in Wisconsin that suggests these time limits may inappropriately limit political speech.

When placing political yard or lawn signs on private property adjacent to the state highway system, keep the following guidelines in mind:

- In urban areas, signs are prohibited from the roadway area to at least one foot past the sidewalk
- In urban areas without sidewalks, signs must be at least 15 feet from the pavement edge
- Signposts, street name marker posts and most utility poles are all within highway right of way
- Signs are **not** allowed within highway medians

### **Dealing with improper political signs**

Highway maintenance workers will remove political signs found within state highway right of way – especially if the signs pose a safety hazard.

Highway crews are asked to make reasonable attempts to preserve campaign signs that are taken down and to provide campaign offices with an opportunity to claim the signs.

Sec. 86.19, Wis. Statutes does provide for a \$10 to \$100 fine for signs that violate the law.

For more information:

Regional outdoor advertising program coordinators

Deborah Brucaya  
Wisconsin DOT  
Bureau of Highway Operations  
P.O. Box 7986  
Madison, WI 53707  
[deborah.brucaya@dot.wi.gov](mailto:deborah.brucaya@dot.wi.gov)  
(608) 266-3813



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Questions about the content of this page:  
Deborah Brucaya, [deborah.brucaya@dot.wi.gov](mailto:deborah.brucaya@dot.wi.gov)  
Last modified: September 2, 2008

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## **24-17-01. Declaration of policy.**

It is hereby declared to be in the public interest reasonably to regulate advertising devices along the highways hereinafter specified while, at the same time, recognizing that both the convenience of travel and the interests of the economy as a whole require a reasonable freedom to advertise. It is the intention of the legislative assembly in this chapter to provide a statutory basis for the reasonable regulation, but not the prohibition, of outdoor advertising through zoning principles and standards consistent with the public policy relating to the areas adjacent to the state highway system pursuant to 23 U.S.C. 131 and 23 U.S.C. 319 and rules and regulations promulgated thereunder. It is further declared to be in the public interest to review all rights now acquired by the state of North Dakota for the use and benefit of the department of transportation pertaining to the right and control over the erection, location, or maintenance of billboards, signs, or any form of advertising adjacent to the state highway system, to determine and designate such areas adjacent to the state highway system as are necessary for the restoration, preservation, and enhancement of scenic beauty and to vacate to the owner such property rights acquired in areas not so determined and designated.

**Source.** S.L. 1967, ch. 291, § 1.

**Cross-References.** Advertising signs not to obstruct or resemble railroad crossing signs, see § 24-09-12.

Municipal power to regulate advertising in public places, see § 40-05-01.

Regulation of advertising signs on highways, see § 24-01-12.

Constitutionality of Chapter.

### **Constitutionality of Chapter.**

This chapter is not an unconstitutional exercise of police power nor a violation of equal protection, due process or freedom of speech. Newman Signs, Inc. v. Hjelle, 268 N.W.2d 741 (N.D. 1978), appeal dismissed, 440 U.S. 901, 99 S. Ct. 1205, 59 L. Ed. 2d 449 (1979).

**Collateral References.** Highways <key> 84, 86, 153, 154.

3 Am. Jur. 2d, Advertising, §§ 13-17.

39A C.J.S. Highways, § 141(1); 40 C.J.S. Highways, § 218.

Municipal power as to billboards and outdoor advertising, 58 A.L.R.2d 1314.

Nuisance: billboards and other outdoor advertising signs as civil nuisance, 38 A.L.R.3d 647.



Height of free standing advertising signs, validity of regulations restricting, 56 A.L.R.3d 1207.

Eminent domain: determination of just compensation for condemnation of billboards or other advertising signs, 73 A.L.R.3d 1122.

Roof signs, validity and construction of ordinance prohibiting, 76 A.L.R.3d 1162.

Governmental liability for failure to post highway deer crossing warning signs, 59 A.L.R.4th 1217.

#### **Law Reviews.**

A Survey of North Dakota Environmental Law, Robert E. Beck, 49 N.D. L. Rev. 1 (1972).

#### **24-17-02. Definitions.**

1. "Commissioner" shall mean the director of the department of transportation of this state or authorized agents as provided in section 24-02-01.3.

2. "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

3. "Maintain" means to exist.

4. "Outdoor advertising" means a sign, display, or device of any kind or character including statuary, erected or maintained for outdoor advertising purposes, upon which any poster, bill, printing, painting, or other advertisement of any kind whatsoever may be placed for advertising purposes and shall include but not be limited to any card, cloth, paper, metal, painted, or wooden sign of any character placed for outdoor advertising purposes, on or affixed to the ground or any tree, wall, bush, rock, fence, building, structure, or thing, either privately or publicly owned. The terms "sign, display, or device" comprehend all forms of outdoor advertising and the use of one such term in this chapter includes all forms of outdoor advertising.

5. "State highway system" shall mean the state highway system as defined in subsection 45 of section 24-01-01.1.

**Source.** S.L. 1967, ch. 291, § 2; 1983, ch. 311, § 1; 1989, ch. 72, § 12.

**Cross-References.** Word defined by statute always has same meaning, see § 1-01-09.

#### **24-17-03. Outdoor advertising distance limitations.**

Subject to this chapter, after January 1, 1968, or any later date established by the Congress of the United States in relation to 23 U.S.C. 131, or waiver of that date pursuant to title 23 of the

United States Code, no sign may be erected or maintained within six hundred sixty feet [201.17 meters] from the nearest edge of the right of way and visible from the main traveled way of any highway that is a part of the state highway system in this state except the following:

1. Official signs and notices and directional signs and notices, including signs and notices pertaining to natural wonders, scenic and historic attractions, and outdoor recreational areas subject to the national standards to be promulgated by the secretary of transportation.

2. Signs advertising the sale or lease of property upon which they are located.

3. Signs specifically advertising activities conducted, services rendered, goods sold, stored, produced, or mined, or the name of the enterprise that is located on property used for the purpose advertised or on property contiguous to the advertised activity which is under the same ownership, lease, rent, or control as the property with the advertised activity.

4. Signs in unzoned commercial or industrial areas, which now or hereafter qualify as such, pursuant to the agreement between the director and the secretary of transportation according to 23 U.S.C. 131.

5. Signs relocated by reason of the construction or reconstruction of the state highway system.

6. Official highway signs within interstate rights of way giving specific information for the traveling public pursuant to 23 U.S.C. 131(f) and the rules and regulations promulgated thereunder.

7. Signs calling attention to the location of buried utility lines.

**Source.** S.L. 1967, ch. 291, § 3; 1969, ch. 267, § 1; 1975, ch. 244, § 1; 1977, ch. 238, § 2; 1983, ch. 311, § 3; 1995, ch. 264, § 1.

#### Prohibitory and Regulatory Provisions.

##### Prohibitory and Regulatory Provisions.

The prohibitory and regulatory provisions of this act became effective January 1, 1968. *Newman Signs, Inc. v. Hjelle*, 268 N.W.2d 741 (N.D. 1978), appeal dismissed, 440 U.S. 901, 99 S. Ct. 1205, 59 L. Ed. 2d 449 (1979).

#### 24-17-03.1. Outdoor advertising beyond distance limitations.

Subject to the provisions of this chapter, no sign may, after July 1, 1977, be erected or maintained beyond six hundred sixty feet [201.17 meters] from the nearest edge of the right of

way, located outside of urban areas, visible from the main traveled way of the **highway** system, and erected with the purpose of their message being read from such main traveled way except the following:

1. Directional and official **signs** and notices, which **signs** and notices shall include, but not be limited to, **signs** and notices pertaining to natural wonders, scenic, and historical attractions which are required or authorized by law.

2. **Signs**, displays, and devices advertising the sale or lease of property upon which they are located.

3. **Signs**, displays, and devices advertising activities conducted on the property on which they are located.

**Source.** S.L. 1977, ch. 238, § 1.

#### **24-17-04. Removal of signs.**

Repealed by S.L. 1983, ch. 311, § 10.

#### **24-17-05. Compensation for removal of signs.**

The director is directed to acquire by purchase, gift, condemnation, or exchange, signs lawfully erected which do not conform to this chapter or the rules established by the director. Owners of advertising structures, signs, displays, or devices acquired by the director pursuant to this section, and the owners of the land upon which such displays are located must be paid just compensation for the reasonable damages, if any, suffered by the reason of such removal.

Just compensation must be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected and maintained under state law, provided that federal matching funds are appropriated, allotted, and made available to this state under title 23, United States Code, for the purpose of providing just compensation for the removal of such signs, displays, or devices. A municipality, county or local zoning authority, or political subdivision may not remove or cause to be removed any advertising structures, except such structures that encroach upon the right of way, without paying compensation in accordance with this section.

**Source.** S.L. 1967, ch. 291, § 5; 1975, ch. 244, § 2; 1983, ch. 311, § 4.

**Cross-References.** Eminent domain, see N.D.C.C. ch. 32-15.

#### Abandoned Signs.

## Expansion, Reconstruction or Alteration of Nonconforming Sign.

### Abandoned Signs.

Trial court did not err in determining that signs which were destroyed by the elements or vandalism and not reconstructed within one year, or which contained no advertising copy for one year, were abandoned and noncompensable. *Newman Signs, Inc. v. Hjelle*, 317 N.W.2d 810 (N.D. 1982).

### Expansion, Reconstruction or Alteration of Nonconforming Sign.

State was not required to compensate nonconforming sign owner on removal of the sign for the value of the sign due to expansion, reconstruction or substantial alteration made during the five-year amortization period provided in former section 24-17-04. *Newman Signs, Inc. v. Hjelle*, 268 N.W.2d 741 (N.D. 1978), appeal dismissed, 440 U.S. 901, 99 S. Ct. 1205, 59 L. Ed. 2d 449 (1979).

Compensation for signs lawfully erected prior to January 1, 1968, which were subsequently expanded or substantially altered, was limited to the value of the signs prior to expansion or alteration. *Newman Signs, Inc. v. Hjelle*, 317 N.W.2d 810 (N.D. 1982).

### Collateral References.

Determination of just compensation for condemnation of billboards or other advertising signs, 73 A.L.R.3d 1122.

### 24-17-06. Highway corridor board — Members.

Repealed by S.L. 1983, ch. 311, § 10.

### 24-17-07. Organization of the board.

Repealed by S.L. 1983, ch. 311, § 10.

### 24-17-08. Compensation of board members.

Repealed by S.L. 1983, ch. 311, § 10.

### 24-17-08.1. Agreement between board and secretary of transportation ratified.

The agreement between the board and the secretary of transportation, dated January 31, 1972, is hereby ratified on behalf of the director who shall succeed to the board's obligations, duties, and authority under said agreement.

**Source.** S.L. 1983, ch. 311, § 2.

### 24-17-09. Duties and powers of the director.

1. The director is authorized:

a. To designate tracts of land adjacent to the state highway system which are necessary for the restoration, preservation, and enhancement of scenic beauty.

b. To regulate the erection, construction, or placing of any sign, display, or device within six hundred sixty feet [201.17 meters] of the nearest edge of the right of way and to adopt standards relating to size, lighting, and spacing thereof in conformity with 23 U.S.C. 131, provided the rules are not more restrictive than those provided thereunder.

c. To establish permits authorizing the erection, construction, placement, replacement, repair, and maintenance of any outdoor sign, display, or device, which is within six hundred sixty feet [201.17 meters] of the nearest edge of the right of way and visible from any place on the main traveled way of the state highway system; to establish a fee schedule for such permits and to prescribe rules for the issuance thereof.

d. To determine unzoned commercial or unzoned industrial areas along the state highway system by agreement with the secretary of transportation of the United States pursuant to 23 U.S.C. 131.

e. The director may designate which tracts of land are necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to the state highway system. The director shall acquire, improve, and maintain said tracts of land the director deems necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to the state highway system, and said tracts of land may be beyond six hundred sixty feet [201.17 meters] of the nearest edge of the right of way.

2. The interest in any land directed to be acquired and maintained under this section may be a fee simple or any lesser interest, as determined by the director to be reasonably necessary to accomplish the purposes of this section. The acquisition may be by gift, purchase, exchange, or, subject to section 32-15-01, condemnation under the right and power of eminent domain in the same manner that the director may acquire right of way for construction, reconstruction, widening, alteration, changing, locating, relocating, aligning, realigning, or maintaining a state highway.

**Source.** S.L. 1967, ch. 291, § 9; 1983, ch. 311, § 5; 2007, ch. 293, § 15.

**Effective Date.** The 2007 amendment of this section by section 15 of chapter 293, S.L. 2007 became effective April 5, 2007, pursuant to an emergency clause in section 47 of chapter 293, S.L. 2007.

**Cross-References.** Eminent domain, see N.D.C.C. ch. 32-15.

Opening and vacating highway, see N.D.C.C. ch. 24-07.

### Rights of Lessees of Signs.

#### **Rights of Lessees of Signs.**

Where sign owners agreed, as a condition for receiving permits, to remove signs upon the expiration of the permits or any renewal period (irrespective of whether interim permitted signs were illegal or were in another category of priority for removal), the advertisers who leased advertising space on the signs did not have a clear legal right to require the Commissioner to keep the signs in place after he required sign owners to remove them. *Old Broadway Corp. v. Backes*, 450 N.W.2d 734 (N.D. 1990).

#### **DECISIONS UNDER PRIOR LAW**

### Adoption of Rules.

#### **Adoption of Rules.**

The Administrative Agencies Practice Act, chapter 28-32, does not apply to the adoption of rules and regulations under the **Highway** Beautification Act, chapter 24-17. *Newman Signs, Inc. v. Hjelle*, 268 N.W.2d 741 (N.D. 1978), appeal dismissed, 440 U.S. 901, 99 S. Ct. 1205, 59 L. Ed. 2d 449 (1979).

#### **24-17-10. Rules.**

The director may adopt the rules necessary to accomplish the purpose of this chapter and to comply with 23 U.S.C. 131, pursuant to chapter 28-32.

**Source.** S.L. 1967, ch. 291, § 10; 1981, ch. 336, § 21; 1983, ch. 311, § 6.

### Rights of Lessees of Signs.

#### **Rights of Lessees of Signs.**

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#### **DECISIONS UNDER PRIOR LAW**

### Adoption of Rules.

#### **Adoption of Rules.**

The procedures in the Administrative Agencies Practice Act, N.D.C.C. ch. 28-32, for adoption of rules

and regulations do not apply to the adoption of rules and regulations under the **Highway** Beautification Act, N.D.C.C. ch. 24-17. Newman **Signs**, Inc. v. Hjelle, 268 N.W.2d 741 (N.D. 1978), appeal dismissed, 440 U.S. 901, 99 S. Ct. 1205, 59 L. Ed. 2d 449 (1979).

The provisions of former sections 24-17-13 and 24-17-14 governed over the conflicting provisions in this section for the procedure in the adoption of rules and regulations. Newman **Signs**, Inc. v. Hjelle, 268 N.W.2d 741 (N.D. 1978), appeal dismissed, 440 U.S. 901, 99 S. Ct. 1205, 59 L. Ed. 2d 449 (1979).

#### **24-17-11. Unlawful advertising.**

Any advertising sign which violates the provisions of this chapter or the rules adopted by the director is hereby declared to be illegal. The director shall give thirty days' notice, by certified mail, to the owner thereof to remove the same if it is a prohibited sign, or cause it to conform to rules promulgated by the director if it is an authorized sign. If the owner fails to act within thirty days as required in the notice, or if the director is unable to ascertain the ownership of the sign, then such sign must be deemed abandoned and the director may remove such sign, and to this end the director may enter upon private property for the purpose of removing such sign without liability for the director's actions.

**Source.** S.L. 1967, ch. 291, § 11; 1983, ch. 311, § 7.

#### **24-17-12. Enforcement.**

The director shall enforce the provisions of this chapter and the rules adopted by the director through the remedy of injunction or other appropriate legal proceedings, and may not act except through such proceedings, except as set forth in section 24-17-11. Neither the director nor any other agency nor political subdivision of this state may, by plantings, obstruct the view or in any other way interfere with the effectiveness of any sign legally in place under the provisions of this chapter and the rules adopted by the director.

**Source.** S.L. 1967, ch. 291, § 12; 1983, ch. 311, § 8.

#### **24-17-13. Hearings.**

Repealed by S.L. 1981, ch. 336, § 24.

#### **24-17-14. Publication of resolutions, rules or regulations.**

Repealed by S.L. 1981, ch. 336, § 24.

#### **24-17-15. Appeals to district court — Application of chapter 28-32.**

Any person or persons, jointly and severally, aggrieved by a decision of the director under this chapter may appeal therefrom to the district court pursuant to chapter 28-32.

**Source.** S.L. 1967, ch. 291, § 15; 1981, ch. 336, § 22; 1983, ch. 311, § 9.

#### Applicability of Appeal Provisions.

##### **Applicability of Appeal Provisions.**

Where board had delegated its authority to issue permits for the erection of advertising signs along interstate highways to the state highway commissioner, the effect of a denial of a permit by the commissioner was a denial of a permit by the board and the appeal provisions of this section were applicable. Newman Signs, Inc. v. Hjelle, 300 N.W.2d 860 (N.D. 1980).

#### **DECISIONS UNDER PRIOR LAW**

##### Practice.

##### **Practice.**

Except as to appeals, this section makes the Administrative Agencies Practice Act, N.D.C.C. ch. 28-32, inapplicable to proceedings under the Highway Beautification Act, chapter 24-17. Newman Signs, Inc. v. Hjelle, 268 N.W.2d 741 (N.D. 1978), appeal dismissed, 440 U.S. 901, 99 S. Ct. 1205, 59 L. Ed. 2d 449 (1979).



11)

**HOUSE POLITICAL SUBDIVISION COMMITTEE**  
**March 10, 2011 – 9:00 a.m. – Prairie Room**

**North Dakota Department of Transportation**  
**Ronald J. Henke, P.E., Director, Office of Project Development**  
**SB 2066**

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Members of the committee, my name is Ron Henke, and I serve as Director for the Office of Project Development for the North Dakota Department of Transportation (NDDOT). I'm here today to introduce and support SB 2066.

The purpose of this bill is to clarify that political signs are not subject to regulation under NDCC Chapter 24-17.

In 1965, the federal Highway Beautification Act was passed. The purpose of the federal act was to protect public investment in highways, to promote safety and recreational value of public travel, and to preserve natural beauty by controlling outdoor advertising. NDCC Chapter 24-17 was enacted in response to the federal act. The proposed change to NDCC section 24-17-02 is the addition of a definition for "Political signs." The addition of this language would define a "Political sign" as a temporary sign erected on private property, which includes signs that solicit votes or support for, or opposition to, any candidate or any political party under whose designation any candidate is seeking nomination or election. Political signs may also contain messages concerning any public question on the ballot in an election held under the laws of the state. Political signs do not include signs which have been issued a legal billboard permit by a city, county, or the state of North Dakota.

The second proposed change is to NDCC section 24-17-03. The addition further defines "Political signs" as temporarily installed signs on private property, which do not include any form of commercial advertising.

If these two changes are enacted, the DOT and political parties will have clear guidance as to what temporary political signs can contain and where they must be located. In working with our Federal Highway Division in North Dakota they have currently agreed that political signs are temporary in nature and that if these signs are not located on highway right of way, the Federal Highway Division in North Dakota would not consider this a violation of the Highway Beautification Act (Code of Federal Regulation, Title 23 Part 750)

I would be happy to answer any questions the committee may have. Thank you.