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MEMORANDUM

October 1, 2014

TO: Department of Transportation Board of Directors
FROM: Rudy Malfabon, Director
SUBJECT: October 13, 2014 Transportation Board of Directors Meeting
Item # 11: Briefing on Proposed Digital Billboard Policy

Summary:

During the 77th Legislative Session, Assembly Bill No. 305 was passed. This bill amended NRS 410.400 to add a definition for "commercial electronic variable message signs", which then required the Department to amend Nevada Administrative Code ("NAC") Chapter 410 to formally recognize Digital Billboards. Preliminary revisions to the language of NAC 410.350 "Sign Construction: Illumination; commercial electronic variable message signs", was drafted. The Department conducted two (2) workshops, one in Southern Nevada and one in Northern Nevada this past spring to present the proposed changes to the attendees. The Department received comments from the attendees and after considering those comments, the Department is proposing additional changes which will be presented to the public in a second round of workshops.

Background:

The State Legislature created NRS Chapter 410 Beautification of Highways to establish a statutory basis for the regulation and control of Off-Premise Outdoor Advertising and Junkyards to be consistent with the federal Highway Beautification Act. These statutes provided a basis for NAC Chapter 410. The NAC provides further clarification of policies and rules used in the management of permits for off-premise outdoor advertising signs and junkyards. State law and federal regulation require a permit for any junkyard or off-premise advertising sign (billboard) that is located within 660-feet of any Interstate and Primary Highway System, which is readable from the main travel way. These regulations cover all Interstates, US routes and some state routes.

Since the enactment of the Highway Beautification Act, billboard signs have been strictly regulated especially when it comes to the use of lighting and movement. Signs were not allowed to use intermittent, flashing or moving lights. As technology evolved, the FHWA regulations were also modified to insure compliance with the Beautification Act. The NRS requires that the state regulation maintain consistency with federal regulation.

In compliance with federal regulations and the NAC's, commercial electronic variable message signs ("CEVMS"), are permissible signs adjacent to controlled highway facilities. CEVMS included any sign that has a changeable message, including Tri-Vision signs and digital billboards. While digital billboards fall into the CEVMS category, when they were first introduced, the Department had concern that the digital technology behind these signs may not comply with the Highway Beautification Act

Because several other states shared similar concern, the FHWA provided a Guidance Memorandum dated September 25, 2007. This memo advised that CEVMS did not violate a prohibition on intermittent, flashing or moving lights and that issuing permits for these types of signs would be consistent with the Highway Beautification Act. After the FHWA issued this memo and after discussions with the local FHWA office the Department started issuing permits for digital billboard signs.

The FHWA guidance memo was challenged in the State of Arizona and the state appeals court there found inconsistency with Arizona state law and some of the technology used in CEVMS. This resulted in the State of Arizona proposing and passing legislation to formally recognize CEVMS in its state law.

The above ruling in Arizona caused the billboard industry to seek a similar legislative solution in Nevada. The passing of Assembly Bill 305 formally recognized CEVMS and thereby insured consistency with federal regulation.

NAC 410.350 is being amended to account for the new digital technology being used by today's CEVMS and to be consistent with the NRS. During the workshops that were performed, the Department received significant interest in the proposed rules surrounding the digital billboards. Both the billboard industry as well as opposition groups participated in the workshops. Numerous questions were raised concerning brightness, acceptable standards for brightness, length of messages and hacking of the billboard system. The Department has also performed additional research and have contacted several other western states to learn from their experiences.

Analysis:

Review of the proposed language revisions to NAC 410.350 is being performed and due to the large turn out and suggestions received, the Department is planning on a second round of workshops once the new proposed language is reviewed by the Attorney Generals Office. Once that review is complete further public input will be sought and then propose any changes to the LCB prior to having formal public hearings.

List of Attachments:

- A. Assembly Bill 305
- B. NAC 410.350 – showing the first round of proposed changes

Recommendation for Board Action:

Informational item only.

Prepared by:

Paul A. Saucedo, Chief R/W Agent

Assembly Bill No. 305—Assemblymen Horne
and Carrillo (by request)

CHAPTER.....

AN ACT relating to outdoor advertising; revising provisions relating to the promulgation of regulations by the Board of Directors of the Department of Transportation specifying the operational requirements for certain signs; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the Board of Directors of the Department of Transportation is required to prescribe regulations governing the issuance of permits for advertising signs, displays or devices and the inspection and surveillance of such signs, displays or devices. (NRS 410.400) This bill requires the Board to prescribe regulations specifying the operational requirements for signs known as commercial electronic variable message signs which conform to any regulations promulgated by the Secretary of the United States Department of Transportation.

EXPLANATION - Matter in *bolded italics* is new, matter between brackets ~~permitted material~~ is material to be omitted

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 410.400 is hereby amended to read as follows:
410.400 1. The Board shall prescribe:

(a) ~~Regulations~~ *Except as otherwise provided in paragraph (b), regulations* governing the issuance of permits for advertising signs, displays or devices and for the inspection and surveillance of advertising signs, displays or devices; ~~and~~

(b) *Regulations specifying the operational requirements for commercial electronic variable message signs which conform to any national standards promulgated by the Secretary of Transportation pursuant to 23 U.S.C. § 131; and*

(c) Such other regulations as it deems necessary to implement the provisions of NRS 410.220 to 410.410, inclusive.

2. The Department shall assess a reasonable annual fee for each permit issued to recover administrative costs incurred by the Department in the issuance of the permits, and the inspection and surveillance of advertising signs, displays or devices.

3. No fee may be collected for any authorized directional sign, display or device, or for authorized signs, displays or devices erected by chambers of commerce, civic organizations or local governments, advertising exclusively any city, town or geographic area.



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4. No fee may be collected for any temporary sign, display or device advertising for or against a candidate, political party or ballot question in an election if the sign, display or device is:

(a) Erected not more than 60 days before a primary election and concerns a candidate, party or question for that primary or the ensuing general election; and

(b) Removed within 30 days after:

(1) The primary election if the candidate, party or question is not to be voted on at the ensuing general election.

(2) The general election in any other case.

↳ The Department may summarily remove any temporary political sign for which no fee has been paid if the sign is erected before or remains after the times prescribed.

5. All fees collected pursuant to this section must be deposited with the State Treasurer for credit to the State Highway Fund.

6. *As used in this section, "commercial electronic variable message sign" means a self-luminous or externally illuminated advertising sign which contains only static messages or copy which may be changed electronically.*

Sec. 2. This act becomes effective upon passage and approval for the purpose of adopting regulations and on January 1, 2014, for all other purposes.

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Nevada Department of Transportation
Public workshops: 5/13/2014 and 5/21/2014
PROPOSED REVISIONS TO NAC 410.350

NAC 410.350 Sign construction: Illumination; commercial electronic variable message signs. (NRS 410.400)

1. Signs ~~shall not be erected or maintained which shall be so must not be placed with~~ illuminated that they interfere with the effectiveness of or obscures any official traffic sign, device or signal. Signs must not include or be illuminated by flashing, intermittent or moving lights, except any parts necessary to give public service information such as the time, date, temperature, weather or similar information. Signs must not cause beams or rays of light to be directed at the traveled way if the light is of such intensity or brilliance ~~or is likely to be mistaken for a warning or danger signal or as~~ to cause glare or impair the vision of ~~any the~~ driver of any motor vehicle, or ~~to~~ interfere with any driver's operation of a motor vehicle. Illumination or lights for signs must not resemble or simulate any lights used to control or warn traffic or danger signals.

2. Commercial electronic variable message signs include trivision signs and digital billboard signs. A digital billboard shall contain static messages only, and shall not have movement, or the appearance or optical illusion of movement during the static display period, of any part of the sign structure. Each static message shall not include flashing or the varying of light intensity. A digital billboard is an off-premise sign utilizing digital message technology, capable of changing the static message or copy on the sign electronically.

3. A commercial electronic variable message sign, including, without limitation, a trivision sign, may be approved as an off-premise outdoor advertising sign in an urban area if the sign does not contain flashing, intermittent or moving lights, ~~does not cause a glare on the roadway~~ and the following conditions are met:

(a) An existing sign may be modified or updated if the sign conforms with established criteria relating to zoning, size, lighting and spacing.

(b) A message on a trivision sign may have a minimum display time of six (6) seconds and a maximum change interval of three (3) seconds. A message on a digital billboard sign may have a minimum display time of six (6) seconds and a maximum change interval of two (2) seconds.

(c) A trivision sign must contain a mechanism that will stop the sign in one position if a malfunction occurs. A digital billboard sign shall be operated with systems and monitoring in place to either turn the display off, show a "full black" image or freeze the image on the display in one position in the event of a malfunction.

(d) A digital billboard must have a light sensing device that will automatically adjust the brightness as ambient light conditions change in accordance with the recommended brightness criteria as set forth by the Outdoor Advertising Association of America Best Practice Guidelines.

(e) A digital billboard installed and operated in compliance with this section shall not be considered flashing, intermittent or moving light or lights.

(f) If a sign is installed that does not comply with the provisions of this subsection, the owner of the sign shall correct the violation or remove the sign at the owner's expense.

(g) Prior approval from the Department is required to modify existing signs to include the commercial electronic variable message sign, and a new permit fee of \$150 will be charged.

[Dep't of Highways, Outdoor Advertising Control Manual p. 11, eff. 1-28-77]—(NAC A by Dep't of Transportation by R058-97, 12-11-98)