

2009 HOUSE TRANSPORTATION

HB 1529

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1529

House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: 02/05/09

Recorder Job Number: 8783

Committee Clerk Signature

*Janette Cook*

Minutes:

**Representative Mike Brandenburg** introduced HB 1529. He explained that near Lehr, North Dakota, Cindy and Carmen Essig have been in business for nearly fifteen years. They own a business called, "Photos by Cindy". There is no cell phone service in their area, so when people come out to find her place, they may have trouble finding it. They can't use their cell phones. The problem is that they are unable to continue posting a business sign to help people find their place. The DOT agreed to let them keep the sign up until they came in this session and tried to find a solution. It is important to their business.

**Representative Weisz:** Will this conflict with the Highway Beautification Act?

**Representative Mike Brandenburg:** It is a problem. Right now, you can put a sign on land that you own, but not on land that you rent. In this case, the Essigs just rent this land. The sign has been up there for about fifteen years. I understand that it is tied to federal funding. I think that every time you have a rule, there is an exception. I would like you to let my constituents talk about the situation they have, and we can try to resolve this. This is why we have two bills here.

**Chairman Ruby** looked in the Code and it states that no sign may be erected or maintained within 660 feet from the nearest edge of the right-of-way.

**Representative Mike Brandenburg:** The sign is off the edge of the right-of-way, but not 660 feet back from the edge of the road on the land that they rent right now.

**Representative Gruchalla** asked for explanation for the directions to their farm.

**Representative Mike Brandenburg** explained that they are less than two miles off the main highway.

**Representative Gruchalla** made the point that in this isolated area one sign may not be a problem, but closer to a town there could be many signs.

**Cindy Essig**, owner of "Photos by Cindy", presented testimony in support of HB 1529 and explained her situation. She provided the committee samples of her work to look at. See attachment #1. She understands that no one will change the law for one person, but wanted to let the committee know where she is standing.

**Representative Potter:** How did you get notification about removing your sign?

**Cindy Essig:** We got a certified letter that said that I need to take my sign down. If I don't take it down, they will take it down and charge me for it.

**Chairman Ruby:** Is there an exception for farm signs, even if you are renting the land like you are?

**Cindy Essig:** Yes, that is the way I understand it. The only way that we could have a sign, is if we own all the land between our property and the sign.

**Ron Henke, Office of Project Development Director for the North Dakota DOT**, spoke in **opposition** to HB 1529. See attached testimony #2. Mr. Henke also provided a brochure, "Roadside Advertising in North Dakota". See attachment #3.

**Representative Weiler:** How did this sign actually come to your attention?

**Ron Henke:** We have district personnel out driving all the time to see where improvements can be made. They are familiar with the areas, and they notice these things. We have to take appropriate measures.

**Representative Weiler:** Are there a bunch of these signs up or is this an isolated incident?

**Ron Henke:** I think that they pop up every once in awhile.

**Representative Weiler:** When they pop up, do you normally just notify the people with a certified letter, and they take the sign down?

**Ron Henke:** We do provide notification. That is part of our policy. It is a certified letter that comes from our director. We give the owner an opportunity to take the sign down, or we can take it down and back charge for cost.

**Chairman Ruby:** How did the exception for the Ag sign come about?

**Ron Henke:** I do not have that background information. It is in state law that way. We do allow signs on rented property. The land has to be connected, so you need to own everything in between.

**Chairman Ruby:** Is it possible to change that provision without being in conflict with federal code?

**Ron Henke:** To date we have not had an issue with our federal partners as far as I know. Federal rules do give some tests as far as determining if the property is contiguous. The tests specifically identify the requirements.

**Harold Newman, President of Outdoor Advertising,** spoke neutrally on HB 1529. He has lived with the Highway Beautification Act since 1964. He has knowledge of the law and feels that it was a good law for New Jersey, but a lousy one for North and South Dakota. It does mean \$3,000,000 a year to North Dakota. South Dakota tried to forget it, and the federal took the money away from them. So, the federal government is serious. Now, how do we get

around this issue? The only criteria for putting up a billboard or an off premise sign is for the business owner to go to the local county or township for the rules in that particular county and get the property zoned commercial. The purpose could be that maybe later on they may put a service station there. In the meantime, they may want to put up a simple sign. That is legal. Is it fair? Probably not.

**Representative Weiler:** Cindy, have you attempted to have the property zoned commercial?

**Cindy Essig:** Yes, we were told that it would be doable for us, but we had to own all the land in between our place and the sign to zone it commercial.

**Carmen Essig:** And our taxes would go up terrible.

**Harold Newman:** The ownership has nothing to do with it. It is the zoning.

**Representative Mike Brandenburg:** I have checked into this also. In Logan County there are no organized townships. So, you will have to go to the county to deal with this issue. So, then you are going to go through the whole county process instead of just dealing with the township. It will make it hard. When it is zoned commercial, then taxes will go up. They don't own the land either. The land owner may not want the land zoned commercial.

**Representative R. Kelsch:** But, Carmen and Cindy could have a farm sign. On their brochures or cards she could have directions that state to turn at the farm sign.

**The hearing was closed on 1529.**

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1529

House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: 02/05/09

Recorder Job Number: 8871

Committee Clerk Signature

*Jeanette Cook*

Minutes:

**Chairman Ruby** asked the committee's wishes on HB 1529.

**Representative R. Kelsch** moved a **Do Not Pass on HB 1529**.

**Representative Griffin** seconded the motion.

**Representative Frantsvog**: We decided that neither of these bills can be of any help, is that correct?

**Representative Weisz**: This bill will help, but it will cost the state \$23 million to be in violation of the Highway Beautification Act.

**Chairman Ruby**: They could do what Mr. Newman said and try to zone a portion of the land commercial. Then they could put the sign up on that portion. They would have to pay commercial property taxes on it.

A roll call vote was taken. **Aye 14 Nay 0 Absent 0**

**The motion passed.**

**Representative Gruchalla** will carry the bill.

Date: 2-5-09

Roll Call Vote #: \_\_\_\_\_

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

BILL/RESOLUTION NO. 1529

House TRANSPORTATION Committee

☐ Check here for Conference Committee

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

Action Taken ☐ Do pass ☒ Don't Pass ☐ Amended

Motion Made By Kelsch Seconded By Griffin

Representatives	Yes	No	Representatives	Yes	No
Representative Ruby - Chairman	✓		Representative Delmore	✓	
Rep. Weiler - Vice Chairman	✓		Representative Griffin	✓	
Representative Frantsvog	✓		Representative Gruchalla	✓	
Representative Heller	✓		Representative Potter	✓	
Representative R. Kelsch	✓		Representative Schmidt	✓	
Representative Sukut	✓		Representative Thorpe	✓	
Representative Vigasaa	✓				
Representative Weisz	✓				

Total Yes 14 No 0

Absent Gruchalla

Bill Carrier Gruchalla

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

**REPORT OF STANDING COMMITTEE**

**HB 1529: Transportation Committee (Rep. Ruby, Chairman) recommends DO NOT PASS**  
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1529 was placed on the  
Eleventh order on the calendar.



2009 TESTIMONY

HB 1529

I want to thank you for allowing me to come before you at this session.

We are Carmen and Cindy Essig. My husband and I have ranched north of Lehr for 30 years. 14 years ago I started a photography business called "Photos by Cindy" out on the ranch. It has become a very successful business. My photo sessions include weddings, high school graduates, families, passport pictures, and also Old Time pictures. Among many props, we have built an old west saloon where I take the Old Time pictures with the Old West costumes. This is a big hit with people that are vacationing or that come for reunions and centennials. I have clients coming from all areas of the state, from the Bismarck area to Fargo to Aberdeen, SD. Since we live in a very rural area, (25 miles from the nearest town with businesses), it is important for me to have a sign for my clients to find me. Also, cell service is not available where we live so if people get lost, they are on their own.

I do have a sign up now, not realizing that it wasn't legal when we put it up. The state Highway dept. is now telling me to take it down, since we don't own all the land between my business and the sign. Our ranch and my business is 2 miles off the highway. I was also told that it is ok to put a sign advertising our ranch, in the same place as I have my Photos by Cindy sign, I just can't advertise my business.

It's interesting to me that this state wants to help small businesses and encourage economic development, but won't let me keep up my sign to help strengthen my business.

Thank you for your attention and concern.

**HOUSE TRANSPORTATION COMMITTEE**

**February 5, 2009**

**8:00 a.m. – Fort Totten Room**

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

**HB 1529**

Good morning, Mr. Chairman and members of the committee. I'm Ron Henke, Office of Project Development Director for the North Dakota Department of Transportation (NDDOT). I'm here to oppose HB 1529.

In 1965 the Highway Beautification Act was passed. The purpose of the 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. The Code of Federal Regulations, Title 23 Part 750.709, puts into regulation the intent of Congress as it relates to "on-property" or "on-premise advertising." The Code of Federal Regulations, Title 23 Part 750.706, puts into regulation the intent of Congress that commercial and industrial areas be validly zoned for purposes of erecting outdoor signs. The Highway Beautification Act requires states to "effectively control" outdoor advertising along certain Federal-aid highway systems. The highway systems are: the Interstate system, the Federal-aid primary system, and the National Highway System. The Title 23 federal code, states that failure to comply with the Highway Beautification Act can subject a State to the loss of ten percent of its Federal-aid highway funds.

It is our opinion, that if HB 1529 passes, it would violate the Code of Federal Regulations, Title 23 Part 750.709. The Code of Federal Regulations defines a sign to be "on-property" or "on-premise advertising" as follows:

- A sign which consists solely of the name of the establishment or which identifies the establishment's principal or accessory products or services offered on the property and is on the property
- Sign that solely advertise the sale or lease of property on which it is located
- Signs that solely advertise activities conducted on the property on which they are located and is on the property

A violation to the Code of Federal Regulations, Title 23 Part 750.709, could subject the State of North Dakota to a ten percent loss of Federal-aid highway funds.

I have also attached a pamphlet called, Roadside Advertising in North Dakota, which has information on commercial advertising signs.

Mr. Chairman, this concludes my testimony and I will be happy to answer any questions the committee may have. Thank you.

**DISTRICT OFFICE ADDRESSES:**

Bismarck District Office  
ND Dept. of Transportation  
Airport Road  
Bismarck, ND 58504-6003

Valley City District Office  
ND Dept. of Transportation  
1524 Eighth Avenue SW  
Valley City, ND 58072-4200

Devils Lake District Office  
ND Dept. of Transportation  
316 Sixth Street South  
Devils Lake, ND 58301-0817

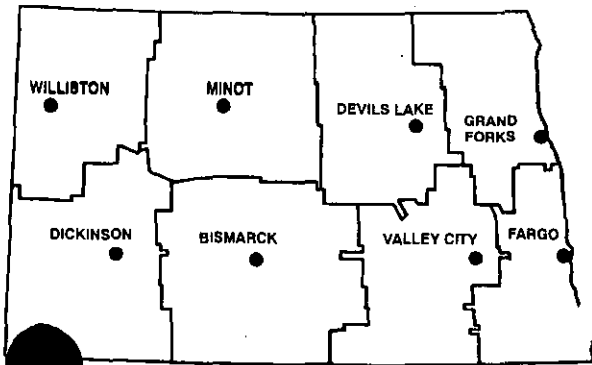
Minot District Office  
ND Dept. of Transportation  
1305 Hwy. 2 Bypass East  
Minot, ND 58702-1396

Dickinson District Office  
ND Dept. of Transportation  
1700 Third Ave. West, Ste. 101  
Dickinson, ND 58601-3009

Grand Forks District Office  
ND Dept. of Transportation  
1951 North Washington  
P.O. Box 13077  
Grand Forks, ND 58208-3077

Williston District Office  
ND Dept. of Transportation  
605 Dakota Parkway West  
P.O. Box 698  
Williston, ND 58802-0698

Fargo District Office  
ND Dept. of Transportation  
503 38th Street South  
Fargo, ND 58103-1198



# Roadside Advertising in North Dakota



## What Does State Law Say?

Sign structures cannot be erected on state highway right of way and a permit is required for all commercial advertising signs which can be seen from the edge of the highway right of way. The area selected to erect a commercial message sign must be zoned either commercial or industrial, which is generally in towns. (See Example 1.)

If there is no zoning in the area considered for signing, but there is an ongoing business activity adjacent to the highway that is also unzoned, the area can be considered an unzoned commercial zone. Therefore, any commercial signing can be placed within 600 feet of the business in either direction and on either side of the highway. Measurements begin from the used portion of the business including parking and storage areas. (See Example 2.)

Cities which use their extra territorial zoning jurisdiction and zone beyond their city limits, must use comprehensive zoning and not simply spot-zone next to the highway for the sole purpose of signing. In other words, the area must be zoned for commercial activities, not just for the purpose of erecting billboards.

In addition to zoning, there are spacing requirements:

### Location

### Spacing of Signs

Interstate Highways . . . . . At least 500 feet apart

Federal and Primary Highways  
(outside incorporated city limits) . . . . At least 300 feet apart

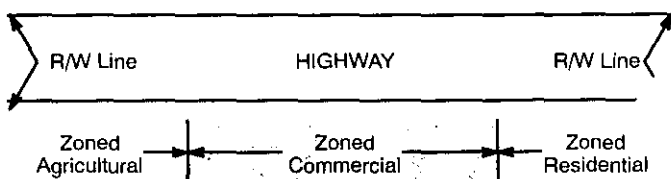
Federal and Primary Highways  
(inside incorporated city limits) . . . . At least 100 feet apart

There are also size limitations and special legal provisions depending on the type of sign (official, directional, commercial, farm directional, or on premise).

With the exception of commercial advertising signs, all other signs are exempt from the permit, permit fee, and strict zoning requirements.

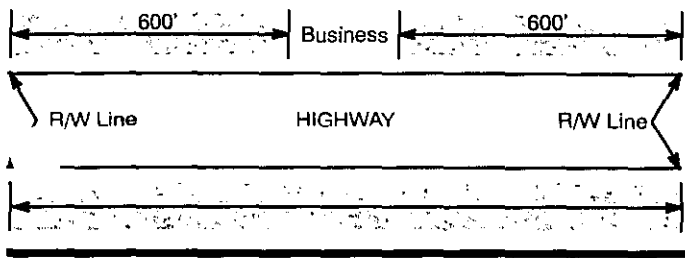
This is only a basic overview of rules for outdoor advertising in North Dakota. Signs cannot be erected or exist unless state billboard laws are followed, which can be explained further by the North Dakota Department of Transportation (NDDOT.)

### EX. 1: ZONED COMMERCIAL OR INDUSTRIAL



R/W = Right of Way

### EX. 2: UNZONED COMMERCIAL OR INDUSTRIAL



## How Do I Get a Permit for a Commercial Advertising Sign?

If you have an existing sign or plan to erect one, here's what you need to do.

1. Contact the NDDOT district office. They can determine if the location you want is legally permissible. If it is, you'll be given a permit application.

Contact the landowner to get a verbal or written lease. The landowner can simply sign the permit application or write a simple lease agreement:

(name of person erecting sign) has the right to erect a sign on my land at (location).

(landowner's signature)

3. Complete the permit application and return it to the district office with a one-time permit fee of \$50 for the life of the sign. (See reverse side for district office addresses.) NOTE: Zoning status must be completed and signed by proper zoning authority.

The district office will mail permit and fee receipt to sign owner after approval is made.

5. Contact your local city or county officials to see if they have any regulations in regards to erecting your sign.
6. The department will accept a conditional second party permit and will retain the permit until such time a permitted sign is installed or the initial permit installation period expires. Upon expiration of the initial one year time period, if no sign is installed under the initial sign permit, the first party will be notified of the revocation of the sign permit, and the second party will be notified of the acceptance of the conditional sign permit pending the submission of the sign permit fee. Should the first party install the sign in accordance to the initial permit and within the required time frame, the second party conditional permit will be returned with notification of the reasoning i.e. sign spacing etc.