JOY GOEBEN

STATE REPRESENTATIVE • 5th ASSEMBLY DISTRICT

January 9, 2024

Thank you Chairwoman Vandermeer and members of the Transportation Committee for hearing **Assembly Bill 486.** This bill eliminates the definition of realignment and replaces it with "reposition." It allows for the reposition of a sign on the same parcel but not more than 25 feet in either direction along the road and not more than 660 feet away from the roadway.

It allows a sign to be transferred within a municipality or to raise, lower and rotate if a sign's visibility is reduced because of a state transportation project. **AB 486** allows for signs that cannot be repositioned to be transferred to a parcel along the same highway or transferred to another parcel with a municipality that the sigh owner and municipality agree upon.

But this bill does more than that. It makes things right. State projects are consistently taking away private business inventory. Whatever your feelings about outdoor advertising, state projects are taking away more inventory than can be made up. We should rectify a wrong that is being perpetrated against private business and this bill helps to do that.

Almost every state highway project affects outdoor advertising signs on private land near the highway. Current lay gives municipalities the option of allowing the realignment of the same "site" or paying condemnation costs that go along with the state acquiring the sign. Many instances relocation options are available for signs that would meet all State and Federal requirements but some local ordinances prevent relocation by banning construction of new outdoor advertising signs.

In many of these instances the state is paying up to 14 times the relocation cost because they now must condemn the sign and pay fair market value. **AB 486** saves Wisconsin taxpayers millions of dollars by avoiding the high cost of condemning outdoor advertising signs.

Thank you for your time today,

Joy Goeben

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To: The Assembly Committee on Transportation
From: Sen. Dan Feyen
Re: Assembly Bill 486

Good morning members of the committee, thank you for holding this hearing today.

Almost all highway projects affect outdoor advertising signs on private land adjacent to the highway. Currently, Wisconsin taxpayers have been paying more for highway improvement projects, and getting less for their tax dollar, because of the practices of the DOT and municipalities that prohibit outdoor advertising signs from being relocated or adjusted to remain visible due to construction.

This bill aims to change the process surrounding realigning or relocating a sign that is affected by a transportation project.

Current law gives municipalities the option of allowing the realignment of an affected sign on the same "site" or paying the condemnation costs associated with the State acquiring the sign. In many instances, relocation options for a sign are available that would meet all State and Federal requirements for outdoor advertising signs, but local ordinances prevent the relocation of the sign because of a municipal ban on the construction of new outdoor advertising signs. In these instances, the cost to the State can escalate up to 14 times the relocation cost because the State must condemn the sign and pay fair market value.

Relocation allows the outdoor advertising companies to continue to provide marketing services to Wisconsin advertisers and will ensure jobs for the employees of these companies. This bill also creates the ability to transfer a sign within a municipality with agreement from the sign owner and the municipality. Relocation would save Wisconsin taxpayers millions of dollars by avoiding the high cost of condemning outdoor advertising signs.

AB 486 offers the following simple solutions to sign owners, the DOT, and municipalities:

1. Allows for the "repositioning" of a sign on the same parcel 25 feet in either direction
2. Allows for signs to be raised, lowered or rotated providing substantially the same view from the roadway if the sign's visibility is reduced because of a state project
3. Allows for signs that cannot be "repositioned" to be transferred to a parcel on the same highway. If transferring the sign to a parcel on the same highway is not possible, the sign could be transferred to another parcel that the sign owner and municipality agree upon.

Lastly, I would like to add that we have been in conversations with the Department of Transportation and the League of Wisconsin Municipalities. We are currently working

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to incorporate some of the requested technical changes and we will update committee members as soon as we have a consensus.

Thank you for taking the time to hold a public hearing on this bill.

OAAW
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DATE: January 9, 2024

TO: Members of the Assembly Committee on Transportation
Representative Nancy VanderMeer, Chair

FROM: Kathi Kilgore, Executive Director and Lobbyist

RE: **AB 486, Relating to the Repositioning or Transferring of Outdoor Advertising Signs**

Almost all State highway projects affect outdoor advertising signs on private land adjacent to the highway. Examples include:

- The footprint of the project requires the removal and condemnation of the sign structure. Condemnation of sign structures costs the state taxpayers large sums of money. Outdoor advertising companies would rather be able to relocate the signs than receive payment for the condemnation of the signs.
- Changes in road grade and/or the addition of sound barrier walls diminish or eliminate the visibility of existing outdoor advertising signs. These types of changes constitute an uncompensated taking. Outdoor advertising companies would like to be able to adjust the height and position of sign structures or relocate the sign to continue the value these signs provide advertisers.
- Were it not for some local regulations, a sign could be adjusted or relocated, and the State would save the condemnation expense.

Passage of legislation in 2011 gave municipalities with prohibitive ordinances the option of allowing the realignment of an affected sign on the same "site" or paying the condemnation costs associated with the State acquiring the sign minus the costs of relocating the sign. Since passage the 2011 law, some signs have been able to be "realigned"; however, "realign" is defined too narrowly to help in more situations.

AB 486, and its Senate companion, SB 467 would do the following:

- Eliminate the definition of "realignment" and replace it with a new definition to "reposition" a sign on the same parcel within a certain distance of the initial sign site.
- Create a new definition allowing the "transfer" of a sign within the same municipality.
- Allow for a sign to be raised, lowered, or rotated providing substantially the same view from the roadway if the sign's visibility is reduced because of a state project.

- Allow for a sign that cannot be "repositioned" to be transferred to a parcel on the same highway. If transferring the sign to a parcel on the same highway is not possible, the sign could be transferred to another parcel that the sign owner and municipality agree upon. The parcel of land that the sign could be transferred to would be a site that meets the requirements of Federal and State law so the sign would remain conforming by Federal and State law but would likely remain nonconforming according to municipal ordinance.

OAAW is working with the bill sponsors to address concerns that have been raised by the Wisconsin Department of Transportation and the League of Wisconsin Municipalities.

This legislation will save Wisconsin taxpayers millions of dollars by avoiding the high cost of condemning outdoor advertising signs and allow outdoor advertising companies to continue to provide marketing services to Wisconsin advertisers. The members of the OAAW urge you to recommend passage of AB 486 and SB 467.

Thank you for your time today and your consideration.

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Written Testimony of Wisconsin Department of Transportation
Before the Assembly Committee on Transportation
January 9, 2023

Re: Assembly Bill 486, relating to outdoor advertising signs that do not conform to local ordinances and that are affected by certain transportation-related projects.

Thank you, Chairwoman Vander Meer, and members of the committee for your consideration of the department's input on Assembly Bill 486, relating to outdoor advertising signs that do not conform to local ordinances and that are affected by certain transportation-related projects.

This bill addresses nonconforming signs. A nonconforming is a sign that was lawfully erected but does not comply with laws passed at a later date, or later fails to comply with laws due to changed conditions. There are 3,242 nonconforming signs in this state that do not meet state requirements. This bill addresses only locally nonconforming signs, including those that do not have or need state permits. The department does not know how many signs in this state are nonconforming due to local requirements. The department simply lacks data to know how many signs are covered by this bill.

WisDOT's primary concern with Assembly Bill 486 is the potential conflict with the federal Highway Beautification Act (HBA), which threatens federal highway funding. The Highway Beautification Act requires States to effectively control outdoor advertising along federal-aid highway systems, including the Interstate highways, federal-aid primary highways, and the National Highway System.

The Highway Beautification Act prohibits moving nonconforming signs to a new location that would make it a nonconforming sign. This bill would allow a sign to be moved to an illegal area, by carrying its nonconforming status to the new location. Under this bill, signs could be moved in compliance with state law to a location that violates federal law. For example, a sign adjacent to an interstate highway. The sign meets state requirements but does not meet local ordinance requirements for whatever reason, perhaps zoning, size, height, or spacing to another sign. This would be a locally nonconforming sign subject to this bill. Under the bill, this sign could be transferred to any area adjacent to the same interstate highway, or anywhere within the municipality, including to a place that violates state law, which would violate federal law by placing it at a location as a nonconforming use.

Passage of this bill may cause the Federal Highway Administration (FHWA) to question whether Wisconsin is maintaining effective control of outdoor advertising on Interstate and Federal-aid primary highways as required by 23 CFR 750.701 and 23 U.S.C. 131. In fact, FHWA has already questioned this bill. In 2018, FHWA took the unusual step of

expressing concern, in writing, about 2017 Assembly Bill 594 and Senate Bill 496—bills identical to this bill. FHWA refrained from saying the bill would violate federal law, but it did say, "while a State may deem any sign to be permissible under State law, that does not necessarily make the sign allowable for purposes of the HBA if it is located adjacent to a controlled route."

Failure to maintain effective control of outdoor advertising may result in Wisconsin being subject to a ten percent reduction of Federal-aid highway funds that would otherwise be apportioned to the State under 23 U.S.C. 104. Based on the FFY 24 apportionment estimates provided by FHWA, this reduction would amount to roughly $57 million per year until the state takes steps to regain and maintain effective control.

The Department has at least six other concerns with this bill, in addition to the threat of lost federal funding.

First, the bill is unclear whether a sign owner whose sign is removed as part of a transportation project would be eligible for just compensation for the loss of the sign or be allowed to adjust or move the sign to another location, or both. Currently, a sign removed as a result of a highway project is paid just compensation but cannot also be moved. Under this bill, a sign that is 'removed' can be moved but may still require payment. The department sees no reason why a sign owner should be paid for a removed sign and also be allowed to move the sign to another location, but the bill is unclear.

Second, the bill will likely cause a lot of litigation. Whether a removed sign is eligible for both just compensation and movement to a new location is one example. The bill contains confusing terms that are another area for litigation. For example, current law prohibits "alteration" and "movement" of signs that do not conform to state requirements. This bill allows "repositioning", "transferring" and "adjusting" of nonconforming signs. Where statutes use different terms, different meanings are presumed. It's easy to imagine reasonable disagreement about whether "repositioning" or "adjusting" is a prohibited "alteration" or "movement". Similarly, the bill provides options if a sign 'cannot' be repositioned or transferred; does 'cannot' here mean physical or legal impossibility, or just that the sign owner couldn't reach favorable terms with a new landlord? The bill also provides no standard to say if a sign's 'visibility is reduced'. These are the types of disagreements decided by courts.

Third, litigation could also arise because the bill is unclear about which parties make decisions or are required to agree. The bill allows a sign to retain its nonconforming status if it 'is repositioned', or 'is transferred' or 'is raised, lowered or rotated', but does not say by whom, or with what approval. The passive language used by this bill appears to allow a sign owner to unilaterally move its own sign to an illegal area and keep its nonconforming status. A sign owner could act on its own to create a new nonconforming use, carrying its nonconforming status to ignore local laws wherever it chooses. Importantly, keeping a sign's nonconforming status is only important if it is moved to another illegal area; if it were moved to a legal area, it would no longer be a nonconforming sign.

Fourth, the bill expands the types of projects that are required to protect nonconforming signs. Current law applies only to highway projects. This bill applies to any 'transportation project' that affects a sign, including airport, harbor, and railway projects. It also applies to any local project if the department has allocated state or federal funds, including LRIP. So, for example, if the department proposes to move a nonconforming sign for an airport project, the municipality can accept the move or pay for the condemnation. The department will experience workload increases dealing with more types of projects, even though the costs of moving or buying the signs will ultimately be borne by the local government. The department has no information on the number of locally nonconforming signs near local roads or other transportation projects that are not highways and so cannot assess the impacts of this.

Fifth, the bill skirts a 2018 Wisconsin Supreme Court decision, by creating a right where none now exists. This happened in Madison a few years ago, when the City built a pedestrian overpass near a sign, partially obscuring one side of the sign but otherwise not touching the sign or the property beneath it. Local law prohibited raising the sign to restore its visibility. The sign owner sued the City for $740,000 for 'taking' the visibility of the sign. The sign owner lost because the project did not take any of its property. The Court held that "a right to visibility of private property from a public road is not a cognizable right giving rise to a protected property interest." The Court said matter-of-factly, "[P]rivate property owners abutting public roads are aware that public roads are subject to change. There is an ever-present risk that public roads may be improved in any number of ways. Streets are routinely expanded or relocated and can be elevated or modified by the construction of electrical poles, signage, or pedestrian shelters. Often roads can be closed for an extended period of time due to construction. A myriad of examples exists. Property owners are on notice that such changes may alter or obstruct the view of their private property from the public road. It is not reasonable for a property owner to rely on the fact that it is located near a public road in a certain condition at a particular moment in time." The Court also noted that the sign owner, "fails to cite any jurisdiction recognizing a right to visibility of private property from a public road in the absence of a physical taking." This bill would be the first to give such a right to signs, by paying for signs that are not physically affected by a project and by allowing a sign owner to ignore local law to move, raise, lower or rotate the sign to restore visibility. It would also give sign owners special treatment compared to other property owners.

Finally, the bill increases costs to the department by writing a blank check to a sign owner to pay whatever "costs are incurred by the sign owner in adjusting, repositioning or transferring the sign". The bill does not require these costs to be actual, necessary, or even reasonable. It is unclear whether these costs are what the sign owner itself actually paid, such as the hourly rate to its own employees, or are the fair market rates of what it would have charged another to perform that work or are costs actually paid to another for that work. Again, it is easy to imagine reasonable disagreement over the proper rate of reimbursement, ending in litigation.

Thank you for your time and consideration today. Please feel free to contact us with any questions the committee may have.

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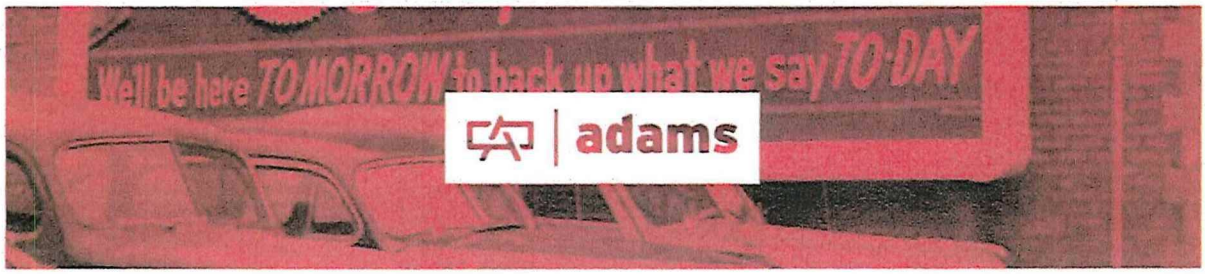

Assembly Committee on Transportation
Testimony of Devin Renner, Real Estate Manager, Adams Outdoor Advertising.

Thank you to the members of the Assembly Committee on Transportation for holding this hearing today on Assembly Bill 486, which relates to outdoor advertising signs that do not conform to local ordinances and that are affected by certain transportation-related projects.

My name is Devin Renner, and I am the Real Estate Manager for Adams Outdoor Advertising. Adams Outdoor operates 247 total structures in Dane County as well as in Racine and Kenosha.

In an ever-growing sea of streaming tv and music channels with options to opt out of ads, billboards remain one of the few mediums for local businesses to market directly to an already tuned in audience. AB 486 ensures that any relocation of billboards is done fairly and at a lower cost to the DOT, the billboard companies and to the local municipalities.

In every instance of condemnation from the DOT, state statute requires the DOT to pay 'fair market value' to both the billboard company and the property owner. The Wisconsin Supreme Court has ruled the fair market value for a billboard is to include the aggregate asset – the lease, permit, and sign and what that would bring in the marketplace. That can get into the millions of dollars.

Relocation, however, costs a fraction of that and is easily executed with very little adjustment needed from the parties involved. If local municipalities refuse to allow billboards to be relocated and force them to be condemned instead, it is only fair they then be willing to pay for it as well. It is not the responsibility of the DOT nor of taxpayers from other parts of the state to pick up the tab for a local government that refuses to engage with billboard companies.

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Testimony Requesting Amendment Changes
Assembly Bill 486
Assembly Committee on Transportation

Good morning, Chairwoman VanderMeer and Honored Members of the Committee. We are grateful that the bill authors are open to amending Assembly Bill 486 to ensure the protection of communities, taxpayer dollars, municipal approval, and property owners.

Assembly Bill 486 is a substantial change from current law, and the bill hugely favors billboard sign owners over property owners, taxpayers, and local governments.

Under this bill, if a DOT highway project significantly affects a billboard, the billboard owner has the authority to move the sign anywhere in the village or city, without municipal/community approval. There are some serious concerns about this proposed change to state law.

The bill as currently written significantly impacts property owner rights and property values. A housing complex in which the property owners purchased units based on the view can now be subject to a billboard in front of it, and there is nothing that the residential owners can do. It will decrease property values.

The bill will have a significant negative impact on densely populated communities and municipalities, as there are not many options for billboards. Smaller municipalities with county highways likewise may also run out of space for alternate billboard locations.

Municipalities should have approval over the new sign location. As municipalities cannot regulate billboard content, some municipalities and their community members do not want billboard signs that could potentially have cannabis or gentleman's club advertising near schools, churches, and community centers.

Safety needs to be considered as well. Billboard signs with certain types of advertising in highly populated and residential areas can be distracting. Any distraction on the roads causes accidents. Our communities want safe roads, and municipal approval in billboard placing should be sought.

Further, some municipalities do not want digital billboards in their village/city limits. To ensure that a traditional billboard sign is not replaced with a prohibited digital sign, the bill should be amended to ensure that all characteristics of the sign remain the same.

Finally, there are concerns that this bill could impact $57 million in federal-aid highway funding coming to Wisconsin, per the fiscal note.

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We have submitted proposed changes to the bill authors, and we are grateful that the bill authors are open to much-needed changes in this bill that will protect communities, property owners, and taxpayer dollars.

Thank you.

Clear Channel Outdoor

GET MORE WITH US.

1/8/24

RE: AB 486

To The Assembly Transportation Committee,

My name is Eric Hamme, I am the Market Manager for Clear Channel Outdoor in Milwaukee. I appreciate you taking the time to review this very important bill.

This bill is important not only the out of home companies who are responsible for the signs but to the hundreds of local companies who rely on our locations to help drive their business. Each year, between 75-80 percent of our revenue comes from local businesses, many who buy based on specific locations because they have a store or office near one of our boards or their target customers live or work near a board.

Big box stores or national companies can put their logo up anywhere and not think twice, but to the local advertisers each marketing dollar they spend hits their bottom line deeply and they build their marketing plans based on specific areas and target customers. Every time we lose a sign we have local companies impacted who lose the ability to connect with consumers in those areas.

As the advertising and marketing landscape is shifting, more and more companies are using Out Of Home (billboards) to reach their target audience. The fragmentation of TV and radio have left local advertisers to spend more dollars to chase potential customers. Out Of Home allows them an affordable and effective way to reach potential customers without the option to skip or ignore an ad.

I would also like to add that what we are looking to avoid is to have the municipalities be forced to pay the cost difference between fair market value/condemnation and the cost to relocate or reposition the sign. Keeping our signs is our top priority. We are eager to work alongside the municipalities and the DOT for a solution that can help all parties.

Sincerely,

Eric Hamme

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January 9th, 2024

Thank you for the opportunity to testify and express my opposition to AB486.

AB 486 would overrule local decisions across the state in favor of one type of landowner. While I have a deep objection to this, and believe the bill has some ambiguous drafting, the City of Madison's opposition is not just about the principle of local control.

Land use regulation is the quintessential local issue, and it does more than regulate what individual property owners can do with their land. It provides certainty and clarity to surrounding property owners. By upending this, this bill will have a real effect on unsuspecting landowners.

Ordinarily, a property owner has no right to a view. It is well established law that there is no right to be seen from the highway. While this can be frustrating for, say, a homeowner or business whose view is blocked, it is a clear and bright-line rule. AB 486 would change that clear rule only for billboards. More problematically, the bill will make this change without any notice to the surrounding property owners, and without any ability for these property owners to affect the decision.

Take for example, a restaurant that picked its location so that it could be viewed from the highway, or a TV news station that positioned its satellite and antenna based on the current height of a billboard. These businesses do not have a right to their view, or their sight line, but they should have a right to rely on their existing local land use regulations.

Zoning and land use is publicly available information, and changes are made through a public process with the opportunity for input. Under this bill, no amount of due diligence would protect or inform a local landowner. Billboards would enjoy a unique right, independent of all local land use regulations, to move and raise their signs. This right would be granted not through a local process, and without any public notice or input. In fact, the billboard could be granted this ability even if a highway project did not directly affect the parcel on which a billboard sits. If the project reduced the billboard's visibility, the billboard would be allowed to ignore local regulations.

The bill appears to grant sign companies a special right that no other property owners have - a right to maintain and protect a view. It would bestow that right without accommodation or consultation with surrounding property owners, and in contravention of local zoning and police power. I would urge you not to support it.

Thank you,

Satya Rhodes-Conway
Mayor