

The Commonwealth of Massachusetts

MESSAGE FROM HIS EXCELLENCY THE GOVERNOR
RETURNING, UNDER THE PROVISIONS OF
ARTICLE LVI OF THE AMENDMENTS TO THE
CONSTITUTION, WITH RECOMMENDATION
OF AMENDMENT, THE ENGROSSED BILL
FURTHER REGULATING THE ISSUANCE
OF LICENSES OR PERMITS FOR
OUTDOOR ADVERTISING.

(see Senate, No. 1675)

November 1973

The Commonwealth of Massachusetts

EXECUTIVE DEPARTMENT

STATE HOUSE

BOSTON 02133

November 30, 1973

To The Honorable Senate and House of Representatives:

In accordance with the provisions of Article LVI of the Amendments to the Constitution, I am returning, herewith, Senate Bill No. 1675 entitled "AN ACT FURTHER REGULATING THE ISSUANCE OF LICENSES OR PERMITS FOR OUTDOOR ADVERTISING."

In each of the years of my administration, I have filed or supported legislation giving the cities and towns of the Commonwealth statutory control over billboard regulation. One of the first acts of my administration was the adoption by the Outdoor Advertising Board of a regulation, which became known as Regulation 9K, which prohibited the erection or maintenance of any advertising device under state law which violated a local ordinance or by-law.

Regulation 9K permitted cities and towns to impose more stringent restrictions on billboards than those imposed by the Outdoor Advertising Board. The regulation was upheld in 1972 after long litigation before the courts.

S 1675, in its original form, would have put the provisions of the regulation on the statute books. I have long sought this goal. The bill before me, however, has been amended in a way which totally emasculates the effectiveness of the regulation which is now being enforced by the Outdoor Advertising Board. The bill requires that compensation be paid by the cities and towns before any billboard can be removed as the result of the passage of an ordinance or bylaw. The Supreme Judicial Court has ruled that compensation is not necessary. That issue has been litigated and resolved. The present regulation does not require compensation, and as a practical matter the requirement of payment of compensation would make it impossible for municipalities to exercise their options to control outdoor advertising.

I was advised by the Attorney General on a similar bill in 1972 that if the General Court acts on this matter and preempts the

field, the Board's Regulation 9K would cease to be effective if this bill becomes law in its present form. As I said last year when I refused to sign a similar bill for the same reasons, "I cannot permit the possibility of further delay in the enforcement of the principle of local control over billboards." Since then, the regulation has been enforced. I intend that it continue to be.

One final matter should be noted. The bill includes a provision which authorizes the Board to prohibit the illumination of signs between 11 o'clock P.M. and 7 —o'clock A.M. At my request, the Board has just adopted a rule, for which it believes it has authority, prohibiting illumination of billboards at all hours. The language in the bill would obviously void this rule, and would be less restrictive than that which we now have. In addition, in my judgment this type of provision is a separate issue which should be handled apart from the issue of local control over the signs themselves. The question of sign illumination is likely to be determined by either state or federal emergency energy powers.

I recommend that the text of the original S 1675, as it passed the Senate, be substituted for the present draft. Not to do so will mean that once again we have failed at the last minute to enact effective legislation to provide for local control over billboards.

I therefore recommend that the bill be amended as follows: —

By striking out all after the enacting clause and inserting in place thereof the following: —

SECTION 1. Section 29 of chapter 93 of the General Laws, as amended by chapter 143 of the acts of 1958, is hereby further amended by adding the following paragraph: —

No license or permit shall be granted for the location or maintenance of billboards, signs or other advertising devices within a city or town, except where such location or maintenance is in conformity with applicable city and town ordinances and by-laws enacted in accordance with this section; and no ordinance or by-law shall be deemed inconsistent with sections twenty-nine to thirty-three inclusive or with said rules and regulations on the ground that such ordinance or by-law prohibits the location or maintenance of a billboard, sign or other advertising device which in the absence of the ordinance or by-law would be in conformity with said sections, rules and regulations.

SECTION 2. Said chapter 93 is hereby further amended by striking out section 31 and inserting in place thereof the following section: —

Section 31. The supreme judicial and superior courts shall have jurisdiction in equity upon petition of the attorney general, of any city or town or any officer thereof, or of any interested party, to restrain the erection or maintenance of any billboard, sign or other device erected or maintained in violation of any rule, regulation, ordinance or by-law established or adopted under section twenty-nine, and to order the removal or abatement of such billboard, sign or device as a nuisance.

SECTION 3. Nothing in this act shall affect any action already taken by local municipalities in accordance with section 9K of the rules and regulations for the control and restriction of billboards, signs and other devices as promulgated by the outdoor advertising board.

Respectfully submitted,

FRANCIS W. SARGENT

Governor

Commonwealth of Massachusetts

