

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 173

Short Title: Revisions to Outdoor Advertising Laws. (Public)

Sponsors: Representatives J. Bell, Shepard, McElraft, and Wray (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Commerce and Job Development, if favorable, Regulatory Reform, if favorable,
Finance

February 23, 2017

A BILL TO BE ENTITLED

AN ACT TO INCREASE PERMIT FEES FOR OUTDOOR ADVERTISING, TO CLARIFY THE STANDARDS FOR DETERMINING JUST COMPENSATION IN STATE AND LOCAL GOVERNMENT EMINENT DOMAIN ACTIONS THAT CAUSE THE REMOVAL OF LAWFULLY ERECTED OUTDOOR ADVERTISING, AND TO MAKE VARIOUS REVISIONS TO THE LAWS GOVERNING OUTDOOR ADVERTISING MODERNIZATION AND OUTDOOR ADVERTISING VEGETATION CUTTING OR REMOVAL.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 136-18.7 reads as rewritten:

"§ 136-18.7. Fees.

The fee for a selective vegetation removal permit issued pursuant to ~~G.S. 136-18(5), (7), and (9)~~ is ~~two hundred dollars (\$200.00)~~. Article 11 of this Chapter for an outdoor advertising location is (i) six hundred dollars (\$600.00) for the initial three-year period listed in G.S. 136-133.4 and (ii) two hundred dollars (\$200.00) for any subsequent three-year renewal period."

SECTION 1.(b) G.S. 136-133.4(b) reads as rewritten:

"(b) Permits are valid for a period of ~~one year~~ three years. The permittee may cut, thin, prune, or remove vegetation more than one time per year. A 48-hour notification shall be provided to the Department by the permittee before entering the right-of-way."

SECTION 2. G.S. 136-131 reads as rewritten:

"§ 136-131. Removal of lawfully existing ~~noneonforming~~ outdoor advertising.

(a) The Department of ~~Transportation~~ Transportation, or any municipality, county, local or regional zoning authority, or other political subdivision, is authorized to acquire by purchase, gift, or condemnation all outdoor advertising and all property rights pertaining ~~thereto which are prohibited under the provisions of G.S. 136-129, 136-129.1 or 136-129.2; thereto~~, provided such outdoor advertising is in lawful existence on the effective date of this Article as determined by G.S. 136-140, or provided that it is lawfully erected after the effective date of this Article as determined by G.S. 136-140. Notwithstanding any law to the contrary, this section shall apply to all acquisitions, purchases, or condemnations by the Department of Transportation that cause the removal of any lawfully erected outdoor advertising, regardless of the outdoor advertising's location and proximity to the interstates or primary systems.

In any acquisition, purchase or condemnation, just compensation to the owner of the outdoor advertising, where the owner of the outdoor advertising does not own the fee, shall be limited to the fair market value at the time of the taking of the outdoor advertising owner's interest in the real



1 property on which the outdoor advertising is located and such value shall include the value of the
2 outdoor advertising.

3 In any acquisition, purchase or condemnation, just compensation to the owner of the fee or
4 other interest in the real property upon which the outdoor advertising is located where said owner
5 does not own the outdoor advertising located thereon shall be limited to the difference in the fair
6 market value of the entire tract immediately before and immediately after the taking by the
7 Department of Transportation of the right to maintain such outdoor advertising thereon and in
8 arriving at the fair market value after the taking, any special or general benefits accruing to the
9 property by reason of the acquisition shall be taken into consideration.

10 In any acquisition, purchase or condemnation, just compensation to the owner of the fee in the
11 real property upon which the outdoor advertising is located, where said owner also owns the
12 outdoor advertising located thereon, shall be limited to the fair market value of the outdoor
13 advertising plus the difference in the fair market value of the entire tract immediately before and
14 immediately after the taking by the Department of Transportation of the right to maintain such
15 outdoor advertising thereon and in arriving at the fair market value after the taking, any special or
16 general benefits accruing to the property by reason of the acquisition shall be taken into
17 consideration.

18 The following factors shall be used in determining just compensation for outdoor advertising:

- 19 (1) The sales price of similar outdoor advertising.
- 20 (2) The physical condition of the outdoor advertising.
- 21 (3) The income generated by the rental of advertising space on the outdoor
22 advertising.
- 23 (4) The effects of zoning or other land use restrictions.
- 24 (5) The value of the outdoor advertising permit issued by an appropriate governing
25 body.
- 26 (6) The ability to relocate outdoor advertising as provided in G.S. 136-131.2(c) to a
27 site reasonably comparable to or better than the condemned location, taking
28 into account the similarity of advantages arising from lease terms, visibility,
29 traffic flow, and other criteria that affect the value of outdoor advertising. The
30 factor in this subdivision shall not be considered if the zoning jurisdiction
31 allows for numerical increases in outdoor advertising signs.
- 32 (7) Any other factor that may affect the value of the property rights affected by the
33 condemnation.

34 (b) Prior to any condemnation by the Department of Transportation under this section, the
35 Department of Transportation shall undertake the project necessitating the condemnation in
36 accordance with G.S. 133-11 to minimize adverse impacts to the displaced outdoor advertiser and
37 reduce the costs of acquiring the outdoor advertising and all property rights thereto, including
38 allowing the outdoor advertising to remain until actual construction or other work is commenced
39 on the project and within 100 feet of the outdoor advertising."

40 **SECTION 3.** G.S. 136-131.2 reads as rewritten:

41 "**§ 136-131.2. Modernization of outdoor advertising devices.**

42 (a) No municipality, county, local or regional zoning authority, or other political
43 subdivision shall, without the payment of just compensation as provided for in G.S. 136-131.1,
44 regulate or prohibit the repair or reconstruction of any outdoor advertising for which there is in
45 effect a valid permit issued by the Department of Transportation so long as the square footage of
46 its advertising surface area is not increased. As used in this section, reconstruction includes the
47 changing of an existing multipole outdoor advertising structure to a new monopole structure.

48 (b) Nothing in this section shall prohibit a municipality, county, local or regional zoning
49 authority, or other political subdivision from using its zoning authority to regulate (i) the initial
50 erection of outdoor advertising that has not been relocated pursuant to subsection (c) of this
51 section or (ii) outdoor advertising in which a permit issued by the Department of Transportation

1 pursuant to this Article has been voluntarily cancelled or lawfully revoked, and any appeals under
2 G.S. 136-134.1 have been exhausted. No decision of an administrative official charged with
3 enforcement of a local ordinance, rule, or regulation shall be effective against an owner or
4 operator of outdoor advertising for any activity authorized by this section, and no appeal under
5 G.S. 153A-345.1 or G.S. 160A-388 shall be required to protect the outdoor advertiser's rights
6 under this section.

7 (c) Any outdoor advertising adjacent to a highway on the National System of Interstate
8 and Defense Highways or a highway on the Federal-aid Primary Highway System for which there
9 is in effect a valid permit issued by the Department of Transportation pursuant to this Article shall
10 be permitted to be relocated subject to all of the requirements listed in subdivisions (1) through (3)
11 of this subsection. The right provided under this subsection to relocate outdoor advertising may be
12 assigned or conveyed by the permittee.

13 (1) The new site for relocation shall be any area within the same zoning jurisdiction
14 adjacent to a highway.

15 (2) The outdoor advertising at the relocated site shall conform with customary use
16 in areas zoned industrial or commercial under authority of State law, subject to
17 the advertising space and height limitations set in subsection (a) of this section.

18 (3) The construction work related to the relocation of the outdoor advertising at the
19 new location shall commence within one year after the later of the date of
20 removal or the effective date of this Article.

21 (d) A new site for relocation shall not be denied by the Department of Transportation due
22 to the presence of vegetation obstructing the visibility of the outdoor advertising from the viewing
23 zone. Notwithstanding any law to the contrary, the owner or operator of the outdoor advertising
24 shall be permitted to improve the visibility of the sign by removing any vegetation (i) on private
25 property upon receiving written consent of the landowner and (ii) on the right-of-way of the
26 interstate or primary highway systems in this State pursuant to a selective vegetation removal
27 permit issued under this Article."

28 **SECTION 4.** G.S. 136-133.1 reads as rewritten:

29 **"§ 136-133.1. Outdoor advertising vegetation cutting or removal.**

30 (a) The owner of an outdoor advertising sign permitted under
31 ~~G.S. 136-129(a)(4)~~G.S. 136-129(4) or ~~G.S. 136-129(a)(5)~~G.S. 136-129(5) who obtains a selective
32 vegetation removal permit, and the owner's designees, may cut, thin, prune, or remove vegetation
33 in accordance with this section, G.S. 136-93(b), 136-133.2, and 136-133.4. The maximum cut or
34 removal zone for vegetation for each sign face shall be determined as follows:

35 ...

36 (a1) Notwithstanding any law to the contrary, in order to promote the outdoor advertiser's
37 right to be clearly viewed as set forth in G.S. 136-127, the Department of Transportation, at the
38 request of a selective vegetation removal permittee, may approve plans for the cutting, thinning,
39 pruning, or removal of vegetation outside of the cut or removal zone defined in subsection (a) of
40 this section ~~along acceleration or deceleration ramps or within gores, medians, or other areas of the~~
41 primary highway system so long as the view to the outdoor advertising sign will be improved and
42 ~~the total aggregate area of cutting or removal does not exceed the maximum allowed in subsection~~
43 ~~(a) of this section.~~ safety of the traveling public is protected.

44 (b) Vegetation permitted to be cut, thinned, pruned, or removed shall be defined as any
45 tree, shrub, or underbrush within the zone created by points A, B, D, and E. Any existing tree that
46 was in existence at the time that an outdoor advertising structure was erected shall only be eligible
47 for removal in accordance with subsections (c), (d), and (e) of this section. ~~Native~~To the extent
48 possible, native dogwoods and native redbuds shall be preserved. A selective vegetation removal
49 permittee may relocate, and replace if necessary, any native dogwoods or native redbuds existing
50 within the cut or removal zone established in subsection (a) of this section to a location within
51 2,500 feet on either side of the outdoor advertising structure, as measured along the edge of the

1 pavement of the main travel way of the nearest controlled route. If a native dogwood or native
2 redbud cannot be preserved during relocation, a selective vegetation removal permittee shall
3 replace the native dogwood or native redbud with native dogwoods or native redbuds of the same
4 cumulative caliper inches. For the purposes of this section, an existing tree is defined as a tree that
5 had a diameter of four inches or greater as measured six inches from the ground at the time that
6 the outdoor advertising structure was erected. An outdoor advertising sign is considered erected
7 when the sign is completely constructed with a sign face.

8"

9 **SECTION 5.** Section 1 of this act is effective when this act becomes law and applies
10 to applications for permits received on or after that date. Section 2 of this act is effective when this
11 act becomes law and applies to determinations of just compensation made on or after that date.
12 The remainder of this act is effective when this act becomes law.