

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1583
Committee Substitute Favorable 6/11/09

Short Title: DOT Vegetation Removal Changes.

(Public)

Sponsors:

Referred to:

May 6, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO CHANGE THE DEPARTMENT OF TRANSPORTATION SELECTIVE
3 VEGETATION REMOVAL POLICIES AND PERMIT FEES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 136-18.7 reads as rewritten:

6 "**§ 136-18.7. Fees.**

7 The fee for a selective vegetation removal permit issued pursuant to G.S. 136-18(5), (7),
8 and (9) is ~~two hundred dollars (\$200.00)~~ three hundred dollars (\$300.00) per permitted site and
9 is nonrefundable."

10 **SECTION 2.** G.S. 136-93 reads as rewritten:

11 "**§ 136-93. Openings, structures, pipes, trees, and issuance of permits.**

12 (a) No opening or other interference whatsoever shall be made in any State road or
13 highway other than streets not maintained by the Department of Transportation in cities and
14 towns, nor shall any structure be placed thereon, nor shall any structure which has been placed
15 thereon be changed or removed except in accordance with a written permit from the
16 Department of Transportation or its duly authorized officers, who shall exercise complete and
17 permanent control over such roads and highways. No State road or State highway, other than
18 streets not maintained by the Department of Transportation in cities and towns, shall be dug up
19 for laying or placing pipes, conduits, sewers, wires, railways, or other objects, and no tree or
20 shrub in or on any State road or State highway shall be planted, trimmed, or removed, and no
21 obstruction placed thereon, without a written permit as hereinbefore provided for, and then only
22 in accordance with the regulations of said Department of Transportation or its duly authorized
23 officers or employees; and the work shall be under the supervision and to the satisfaction of the
24 Department of Transportation or its officers or employees, and the entire expense of replacing
25 the highway in as good condition as before shall be paid by the persons, firms, or corporations
26 to whom the permit is given, or by whom the work is done. The Department of Transportation,
27 or its duly authorized officers, may, in its discretion, before granting a permit under the
28 provisions of this section, require the applicant to file a satisfactory bond, payable to the State
29 of North Carolina, in such an amount as may be deemed sufficient by the Department of
30 Transportation or its duly authorized officers, conditioned upon the proper compliance with the
31 requirements of this section by the person, firm, or corporation granted such permit. Any
32 person making any opening in a State road or State highway, or placing any structure thereon,
33 or changing or removing any structure thereon without obtaining a written permit as herein
34 provided, or not in compliance with the terms of such permit, or otherwise violating the
35 provisions of this section, shall be guilty of a Class 1 misdemeanor: Provided, this section shall
36 not apply to railroad crossings. The railroads shall keep up said crossings as now provided by
37 law.



1 **(b)** Requests for a permit for selective vegetation thinning, pruning, or removal shall be
2 made by electronic documentation by the owner of the outdoor advertising sign or the owner of
3 the business facility to the appropriate Division of Highways office.

4 **(c)** For outdoor advertising, the three-hundred-dollar (\$300.00) nonrefundable fee
5 established in G.S. 136-18.7 shall accompany each annual outdoor advertising permit renewal
6 if a selective vegetation permit is requested for the renewal period. For business facilities, the
7 nonrefundable three-hundred-dollar (\$300.00) fee required by G.S. 136-18.7 shall accompany
8 the electronic application for selective vegetation removal.

9 **(d)** Selective vegetation thinning, pruning, or removal shall be permitted only for the
10 permittee's business facilities, or outdoor advertising signs adjacent to the highway
11 right-of-way at locations where such facilities or outdoor advertising signs have been
12 constructed. The provisions shall not be used to provide visibility to undeveloped property or
13 on-premise signs.

14 **(e)** For business facilities, the limits of selective clearing or thinning shall be restricted
15 to the area of right-of-way immediately adjacent to frontage property of the facility but not to
16 exceed 1,000 linear feet. A structural building facility must be present at the time of application
17 and located on a parcel immediately adjacent to the right-of-way and be open and operational.

18 **(f)** Vegetation eligible for removal at business facilities includes all underbrush and
19 trees less than four inches in diameter as measured four feet six inches from the ground. Trees
20 that were present at the time the facility was constructed are not eligible for removal and shall
21 be tagged with highly visible flagging by the permittee prior to vegetation removal. Native
22 dogwoods and redbuds shall be preserved. Such facilities are considered as constructed when
23 approved for occupancy.

24 **(g)** The applicant for a vegetation removal permit for a business facility shall employ
25 the services of a North Carolina licensed landscape architect or certified arborist for the initial
26 application. The landscape architect or certified arborist will submit a report under seal that
27 contains a tree inventory of existing trees in the removal zone for the business facility and
28 include the age of any tree that existed before the business facility was constructed. The report
29 will categorize tree species and include a site map of sufficient detail and dimensions. Reports
30 for subsequent applications at the same site are not required. Any dispute relating to whether or
31 not the tree existed before the business facility was constructed shall be resolved by
32 information in the report from the licensed landscape architect or certified arborist.

33 **(h)** Other than trees that existed before the business facility was constructed, those four
34 inches and greater in diameter as measured four feet six inches from the ground may be
35 removed and replaced and replanted by the permittee on a caliper inch per caliper inch basis or
36 value basis. Removal shall not exceed twenty percent (20%) density reduction per 100 linear
37 feet per site. This density reduction shall occur only once. The permittee shall submit
38 replacement plans by a licensed landscape architect for approval. All replacement trees shall be
39 in a living and healthy condition prior to subsequent vegetation removal requests; if not, then
40 vegetation removal requests will be denied.

41 **(i)** For outdoor advertising signs, vegetation removal limits shall be restricted to a
42 maximum selective vegetation removal zone for each sign face which shall be determined
43 under the provisions of G.S. 136-133.1.

44 **(j)** The selective vegetation removal request may be investigated on-site by Department
45 personnel and a representative of the applicant.

46 **(k)** If the application for vegetation removal is for a site located within the corporate
47 limits of a city or town, local officials shall be given the opportunity to review the application if
48 the city or town has previously advised the Department of the desire to review such
49 applications.

50 **(l)** For the purposes of this section, business facility means any commercial, industrial,
51 institutional, multiuse development, or office facility."

1 **SECTION 3.** Chapter 136 of the General Statutes is amended by adding a new
2 section to read:

3 **"§ 136-93.2. Monetary value of trees.**

4 The monetary value for trees removed from State rights-of-way shall be determined on an
5 annual basis by the Department. The average cost per caliper inch shall be based on the lower
6 value of either the average wholesale commercial nursery prices for hardwood and conifer
7 plants, times a 2.5 multiplier for installation and warranty or the average cost per caliper inch
8 for tree planting contracts let by the Department of Transportation in the previous calendar
9 year. The value shall be determined and published by the Department no later than December
10 15 of each year. The values established pursuant to this section shall be used in calculating the
11 monetary value of trees removed from State rights-of-way beginning January 1 of each year."

12 **SECTION 4.** G.S. 136-129 reads as rewritten:

13 **"§ 136-129. Limitations of outdoor advertising devices.**

14 (a) No outdoor advertising shall be erected or maintained within 660 feet of the nearest
15 edge of the right-of-way of the interstate or primary highway systems in this State so as to be
16 visible from the main-traveled way thereof after the effective date of this Article as determined
17 by G.S. 136-140, except the following:

18 (1) Directional and other official signs and notices, which signs and notices shall
19 include those authorized and permitted by Chapter 136 of the General
20 Statutes, which include but are not limited to official signs and notices
21 pertaining to natural wonders, scenic and historic attractions and signs
22 erected and maintained by a public utility, electric or telephone membership
23 corporation, or municipality for the purpose of giving warning of or
24 information as to the location of an underground cable, pipeline or other
25 installation.

26 (2) Outdoor advertising which advertises the sale or lease of property upon
27 which it is located.

28 (2a) Outdoor advertising which advertises the sale of any fruit or vegetable crop
29 by the grower at a roadside stand or by having the purchaser pick the crop on
30 the property on which the crop is grown provided: (i) the sign is no more
31 than two feet long on any side; (ii) the sign is located on property owned or
32 leased by the grower where the crop is grown; (iii) the grower is also the
33 seller; and (iv) the sign is kept in place by the grower for no more than 30
34 days.

35 (3) Outdoor advertising which advertises activities conducted on the property
36 upon which it is located.

37 (4) Outdoor advertising, in conformity with the rules and regulations
38 promulgated by the Department of Transportation, located in areas which are
39 zoned industrial or commercial under authority of State law.

40 (5) Outdoor advertising, in conformity with the rules and regulations
41 promulgated by the Department of Transportation, located in unzoned
42 commercial or industrial areas.

43 (b) No two outdoor advertising structures shall be erected less than 500 feet apart on
44 any route if the structures are erected on routes outside the limits of an incorporated
45 municipality.

46 (c) The fee for outdoor advertising structures specified in subdivisions (a)(4) and (a)(5)
47 of this section shall not exceed one hundred fifty dollars (\$150.00) for the initial fee and ninety
48 dollars (\$90.00) for the annual renewal fee. Thirty dollars (\$30.00) of each initial and annual
49 renewal fee collected pursuant to this section shall be used by the Department for highway
50 beautification."

1 SECTION 5. Chapter 136 of the General Statutes is amended by adding a new
2 section to read:

3 **"§ 136-133.1. Outdoor advertising selective vegetation removal.**

4 (a) The maximum removal zone for vegetation for each sign face shall be determined as
5 follows:

6 (1) The point located on the edge of the right-of-way that is the closest point to
7 the centerline of the sign face shall be point A.

8 (2) The point located 150 feet down the right-of-way line in the direction of the
9 sign viewing zone shall be point B.

10 (3) The point on the edge of the pavement of the travel way that is the closest to
11 the centerline of the sign shall be point C.

12 (4) The point 50 feet down the edge of the pavement in the direction of the sign
13 viewing zone from point C shall be point D.

14 (5) The point 375 feet down the edge of the pavement in the direction of the
15 sign viewing zone from point C shall be point E.

16 (6) Lines drawn from point A to point D and from point B to point E shall
17 define the limits of the vegetation removal area.

18 (b) With the exception of existing trees, vegetation permitted to be removed shall be
19 defined as any tree, shrub, or undergrowth within the removal zone created by points A, B, E,
20 and D. Any existing trees that were in existence before an outdoor advertising structure was
21 erected shall not be eligible for removal and shall be tagged with highly visible flagging by the
22 permittee prior to vegetation removal. Native dogwoods and redbuds shall be preserved. For
23 the purposes of this section, an existing tree is defined as a tree with a diameter of four inches
24 or greater, as measured four feet six inches from the ground. An outdoor advertising sign is
25 considered constructed when the sign is completely erected with a sign face.

26 (c) The applicant shall employ the services of a North Carolina licensed landscape
27 architect or certified arborist for the initial application for selective vegetation removal. The
28 landscape architect or certified arborist shall submit a report under seal that contains a tree
29 inventory of existing trees in the removal zone created by points A, B, E, and D for outdoor
30 advertising signs and shall include the age of any trees that existed before the outdoor
31 advertising was constructed. The report shall categorize trees and shall include a site map of
32 sufficient detail and dimensions. Reports for subsequent applications at the same site are not
33 required. Any dispute relating to whether or not the trees existed before the outdoor advertising
34 sign was constructed shall be resolved by information in the report from the licensed landscape
35 architect or certified arborist.

36 (d) Trees that existed before the construction of an outdoor advertising sign may be
37 removed if the applicant agrees to remove two nonconforming outdoor advertising signs for
38 each conforming sign at which removal of existing trees is requested. The surrendered
39 nonconforming signs must be fully disassembled before any removal of existing trees is
40 permitted and shall not be eligible for future outdoor advertising permits in perpetuity.

41 (e) Tree branches within a highway right-of-way that encroach into the removal zone
42 from the zone created by points A, C, and D may be pruned.

43 (f) No person, firm, or entity shall cut, trim, or otherwise cause to be removed,
44 vegetation that is in front of, or adjacent to, outdoor advertising and within the limits of the
45 highway right-of-way for the purpose of enhancing the visibility of outdoor advertising unless
46 permitted to do so by the Department."

47 SECTION 6. Chapter 136 of the General Statutes is amended by adding a new
48 section to read:

49 **"§ 136-133.2. Issuance or denial of a vegetation removal permit.**

50 (a) Permits to remove vegetation may be granted for businesses once open and
51 operational and may only be granted for outdoor advertising locations that have been permitted

1 at least two years and at the discretion of the Department. No more than 30 days following
2 receipt of an application for vegetation removal, the Department shall approve or deny the
3 application. If the application is denied, the Department shall advise the applicant, in writing,
4 by certified mail, of the reasons for the denial.

5 (b) The application shall be denied by the Department if:

- 6 (1) It requires the removal of trees that were in existence before the business or
7 the outdoor advertising sign was established. An existing tree shall be
8 defined as a tree that is four inches or greater in diameter as measured four
9 feet six inches from the ground.
- 10 (2) The application is for the opening of view to an outdoor advertising sign or
11 business which has been declared illegal, is currently the subject of
12 litigation, or is under investigation by the Department for nonpermitted
13 activity.
- 14 (3) The application is for the opening of view to an outdoor advertising sign that
15 was obscured from view at the time of erection of the sign.
- 16 (4) Removal of vegetation will adversely affect the safety of the traveling
17 public.
- 18 (5) Trees, shrubs, or other vegetation of any sort were planted in accordance
19 with a local, State, or federal beautification or environmental project.
- 20 (6) Planting was done in conjunction with a designed noise barrier.
- 21 (7) The applicant has not performed satisfactory work on previous requests
22 under the provisions of this section. This may not be cause for denial if the
23 applicant engages a landscape architect or certified arborist to perform the
24 work.
- 25 (8) It involves opening of views to junkyards.
- 26 (9) The application is contrary to the ordinances or rules and regulations enacted
27 by the local government within whose jurisdiction the work has been
28 requested to be performed.
- 29 (10) Illegal cutting or destruction of vegetation has occurred in the past five
30 years."

31 **SECTION 7.** Chapter 136 of the General Statutes is amended by adding a new
32 section to read:

33 **"§ 136-133.3. Appeal of decision by Department's Engineer to Secretary of**
34 **Transportation.**

35 (a) Should any permit applicant disagree with a decision of the Department pertaining
36 to the denial of a permit for selective vegetation removal, the permit applicant shall have the
37 right to appeal to the Secretary of Transportation pursuant to the procedures hereinafter set out.

38 (b) Within 30 days from the time of receipt of the decision of the Department, the
39 permit applicant shall submit a written appeal to the Secretary of Transportation setting forth
40 with particularity the facts and arguments upon which the appeal is based. The appeal shall be
41 sent to the Secretary by certified mail, return receipt requested, with a copy to the Department.

42 (c) Upon receipt of the written appeal, the Secretary of Transportation shall review the
43 written appeal and the Department's decision, as well as any available documents, exhibits, or
44 other evidence bearing on the appeal, and shall render the final agency decision, supported by
45 findings of fact and conclusions of law. The final agency decision shall be served upon the
46 appealing party by certified mail, return receipt requested, no later than 90 days after the
47 Secretary receives the written appeal. A copy of the final agency decision shall also be mailed
48 to the Department.

49 (d) A person aggrieved by a decision made pursuant to this section may seek judicial
50 review of the final agency decision pursuant to G.S. 136-134.1."

1 **SECTION 8.** Chapter 136 of the General Statutes is amended by adding a new
2 section to read:

3 **"§ 136-133.4. Selective vegetation removal permits.**

4 (a) Selected vegetation within the approved limits shall be thinned, pruned, or removed
5 by the permittee or his agent in accordance with accepted International Society of Arboriculture
6 (ISA) standards. A Division of Highways inspector may be present while work is underway.

7 (b) Routine maintenance is not allowed. However, permits are valid for the entire
8 renewal period. The permittee may remove vegetation more than one time per year. A 48-hour
9 notification shall be provided to the Department by the permittee before entering the
10 right-of-way.

11 (c) The permittee, or his agent, shall not impede the flow of traffic on the highway
12 while performing the work. Access to the work site on controlled access highways must be
13 gained without using the main travel way of the highway. The Department shall determine the
14 traffic control signage that may be required. The permittee shall furnish, erect, and maintain the
15 required signs as directed by the Department. The permittee, or his agent, shall wear safety
16 vests that conform to OSHA standards while performing work.

17 (d) Any damage to vegetation designated to remain at the site, to highway fences, signs,
18 paved areas, or other facilities shall be repaired or replaced by the permittee to the condition
19 prior to the occurrence of the damage caused by the permittee or his agent. All trimmings, laps,
20 and debris shall be removed from the right-of-way and disposed of in areas provided by the
21 permittee. No burning or burying of trimmings, laps, or debris shall be permitted on the
22 highway right-of-way. When chipping is used to dispose of trimmings, chips may be neatly
23 spread on a right-of-way at locations which the Department determines will not be harmful to
24 the environment or affect traffic safety.

25 (e) Failure to comply with all the requirements specified in the permit, unless otherwise
26 mutually resolved by the Department and the permittee, shall result in a five-year moratorium
27 for vegetation removal at the site, a summary revocation of the outdoor advertising permit, and
28 forfeiture of the performance bond as determined by the Secretary of Transportation. The
29 moratorium shall begin upon execution of a settlement agreement or entry of a final disposition
30 in the case."

31 **SECTION 9.** Chapter 136 of the General Statutes is amended by adding a new
32 section to read:

33 **"§ 136-133.5. Denial of a permit for proposed outdoor advertising.**

34 (a) Should the appropriate district engineer determine that a proposed outdoor
35 advertising structure would not conform to the standards of outdoor advertising as set out in the
36 Outdoor Advertising Control Act, the district engineer shall refuse to issue a permit for that
37 proposed outdoor advertising structure.

38 (b) When a violation of the Outdoor Advertising Control Act has been discovered, the
39 district engineer shall notify the permit applicant by certified mail, return receipt requested, in
40 the form of a letter setting forth the factual and statutory or regulatory basis for the denial and
41 include a copy of the act.

42 (c) The Department shall not issue permits for new outdoor advertising signs at a sign
43 location for a period of five years where the unlawful destruction or illegal cutting of
44 vegetation has occurred within 500 feet on either side of the proposed sign location and as
45 measured along the edge of pavement of the main travel way of the nearest controlled route.
46 For the purposes of this section, unlawful destruction or illegal cutting is defined as the
47 destruction or cutting of trees, shrubs, or other vegetation on the State-owned or maintained
48 rights-of-way by anyone other than the Department or its authorized agents, or without written
49 permission of the Department.

1 (d) Before a permit is denied, the Department shall determine and disclose evidence
2 that the unlawful destruction or illegal cutting would create, increase, or improve a view to a
3 proposed outdoor advertising sign from the main travel way of the nearest controlled route.

4 (e) The five-year period shall begin on the date the Department executes a settlement
5 agreement or final disposition of the case is entered.

6 (f) The five-year prohibition period for a new sign permit shall apply to all sign
7 locations, including the following:

8 (1) Sign locations where the unlawful destruction or illegal cutting of
9 vegetation occurs prior to the time the location becomes a conforming
10 location.

11 (2) Sign locations where a revocation of an existing permit has been upheld and
12 a sign has been removed.

13 (3) Sign locations where the unlawful destruction or illegal cutting occurs prior
14 to receipt of an outdoor advertising permit application.

15 (4) Sign locations where the unlawful destruction or illegal cutting occurs
16 following receipt of an outdoor advertising permit application, but prior to
17 final issuance of the permit by the Department of Transportation.

18 (5) Where existing trees, if they were to reach the average mature size for that
19 species, would make the proposed sign faces, when erected, not completely
20 visible from the viewing zone. For purposes of this subsection only,
21 "existing trees" are those trees four inches or greater in diameter as measured
22 four feet six inches from the ground. "Viewing zone" means the area which
23 is 500 feet as measured along the edge of the main travel way of the
24 controlled route on each side of the proposed sign structure which will have
25 a sign face.

26 (g) Outdoor advertising permits shall not be issued to a location if the zoning is not part
27 of comprehensive zoning or the zoning constitutes spot zoning or strip zoning, which shall be
28 defined as zoning designed primarily for the purpose of permitting outdoor advertising signs in
29 an area which would not normally permit outdoor advertising.

30 (h) Outdoor advertising permits shall not be issued to a location for a period of 12
31 months prior to the proposed letting of a new construction contract that may affect the spacing
32 or location requirements for an outdoor advertising structure until the project is completed.

33 (i) Outdoor advertising permits shall not be issued for a location on a North Carolina or
34 United States route designated as a scenic byway."

35 **SECTION 10.** Chapter 136 of the General Statutes is amended by adding a new
36 section to read:

37 **"§ 136-133.6. Unlawful destruction or illegal cutting.**

38 (a) When vegetation destruction occurs by mechanical, chemical, or other means
39 without a permit, and upon written notification via certified mail by the Department to the
40 permittee or property owner, all of the following shall be done within 30 days of receipt of the
41 notification:

42 (1) The outdoor advertising permit holder or, in the case of a business or private
43 property, the owner of the commercial, institutional, industrial, multiuse
44 development, or office facility or the private property owner shall employ
45 the services of a North Carolina licensed landscape architect or certified
46 arborist who shall submit a report under seal that contains a tree inventory of
47 existing trees, shrubs, or ground cover impacted. The report will categorize
48 trees by species and caliper size and include a site map of sufficient detail
49 and dimensions. In the event that trees have been destroyed and caliper size
50 cannot be determined, three plots adjacent to the site shall be inventoried,
51 each containing an area of one-tenth acre. An average caliper density per

1 acre shall be determined. This density shall be applied to the area of
2 unlawful destruction.

3 (2) The outdoor advertising permit holder or, in the case of a business or private
4 property, the owner of the commercial, institutional, industrial, multiuse
5 development, or office facility or the private property owner shall contact the
6 Department of Agriculture and Consumer Services, Pesticide Section, if
7 unauthorized pesticide applications appear to have been applied and include
8 a copy of the agency's report and findings.

9 (3) The outdoor advertising permit holder or, in the case of a business or private
10 property, the owner of the commercial, institutional, industrial, multiuse
11 development, or office facility or the private property owner shall obtain a
12 copy of a police report from local law enforcement and shall obtain and
13 complete a State Bureau of Investigation's State Property Incident Report.

14 (4) The outdoor advertising sign owner, the owner of the property on which the
15 outdoor advertising sign is located, and the individual, business, or
16 organization whose advertisement appears on the sign face shall submit
17 notarized affidavits indicating admission or denial of responsibility or
18 knowledge of the incident, as well as knowledge associated with agents or
19 assigns of the aforementioned.

20 (5) For a commercial, industrial, institutional, multiuse development, office
21 facility, or private property, the property owner and business owner, or their
22 respective agents, shall submit notarized affidavits indicating admission or
23 denial of responsibility or knowledge of the incident, as well as knowledge
24 associated with agents or assigns of the aforementioned.

25 (b) Failure to comply with the provisions of subsection (a) of this section by the outdoor
26 advertising permit holder or, in the case of a business or private property, the owner of the
27 commercial, institutional, industrial, multiuse development, or office facility or the private
28 property owner shall require referral of the case by the Department to the Department of Justice
29 for investigation.

30 (c) A violation of this section shall be a Class 2 misdemeanor and shall result in the site
31 being ineligible for a selective vegetation removal permit for a period of five years."

32 **SECTION 11.** This act becomes effective January 1, 2010, and applies to permit
33 applications and renewals submitted on or after that date and to offenses occurring on or after
34 that date.