



HOUSE BILL 581: Revisions to Outdoor Advertising Laws.

2017-2018 General Assembly

Committee:	House Finance	Date:	May 23, 2017
Introduced by:	Reps. Lewis, Saine, Goodman, Hanes	Prepared by:	Nicholas Giddings, Erika Churchill, and Billy Godwin
Analysis of:	PCS to First Edition H581-CSBAf-19v.17		Committee Co-Counsel

OVERVIEW: *The PCS to House Bill 581 would amend the laws pertaining to outdoor advertising, including the following:*

- *Establishes factors for NC DOT to follow in determining just compensation for off-premises outdoor advertising.*
- *Allows for an additional sign face to be added to a single-face sign if it conforms to customary use.*
- *Allows for any validly permitted off-premises outdoor advertising sign to be altered or reconstructed to a changeable message sign, defined as a sign that displays a series of messages at intervals by electronic or automated means.*
- *Exempts certain off-premises outdoor advertising from building permit or local building inspection requirements if a professional engineer certifies that construction is in compliance with the State Building Code.*
- *Exempts construction of outdoor advertising signs from the general contractor requirements.*
- *Specifies requirements that must be met to relocate or reconstruct certain off-premises outdoor advertising signs.*
- *Increases the fees DOT may charge for outdoor advertising structure permits.*
- *Requires DOT to approve vegetation removal subject to certain conditions.*
- *Lowers the waiting period for a permitted off-premises outdoor advertising location to receive a selective vegetation removal permit from two years to one year, and exempts certain outdoor advertising locations from that wait period.*
- *Prohibits a county or city from enacting, amending, or enforcing an ordinance prohibiting the relocation and reconstruction of certain off-premises outdoor advertising signs.*
- *Prohibits cities and counties from conditioning development approvals on the removal of outdoor advertising without the payment of monetary compensation.*

CURRENT LAW: The Outdoor Advertising Control Act is set out in Article 11 of Chapter 136 of the General Statutes. The Act is intended to control the erection and maintenance of outdoor advertising devices in order to "preserve and enhance the natural scenic beauty of the highways and areas in the vicinity of the State highways and to promote the reasonable, orderly and effective display of such signs, displays and devices." The Act was enacted in 1967 to ensure that North Carolina met federal standards for controlling billboards along its Interstate and Federal-aid Primary Highways Systems so that the State continued to receive a full allocation of federal highway funds. The Act delegates authority to the

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North Carolina Department of Transportation (NC DOT) to adopt rules enforcing federal standards along these federal highway corridors. The Act requires that a permit is needed to erect or maintain any outdoor advertising within 660 feet of the nearest edge of the right of way of the interstate or primary highway system, with some limited exceptions. Once issued, the permit is valid until revoked for nonconformance under Article 11 or under rules adopted by NC DOT. G.S. 136-133. A district engineer is required to refuse to issue a permit for a proposed outdoor advertising structure that does not conform to the standards of outdoor advertising as set out in Article 11 of Chapter 136 of the General Statutes. The applicant is to be notified of the denial and the basis for the denial by registered or certified mail. In the case of a sign located at a site where the 5-year moratorium is in effect for the unlawful destruction or cutting of vegetation, before denying the permit NC DOT is required to reveal some evidence that the unlawful acts would create, increase, or improve a view to an outdoor advertising sign.

G.S. 136-133.5 prohibits NC DOT from issuing permits for new outdoor advertising signs at a location where existing trees, if they were to reach mature height, would make the proposed sign faces not completely visible from the viewing zone. An outdoor advertising permit in an area zoned industrial or commercial under authority of State law, which is defined to include statutes, rules and local ordinances, cannot be issued if the zoning ordinance was adopted within one year prior to the filing of the permit application and is not part of comprehensive zoning or represents spot zoning for the purpose of permitting outdoor advertising signs in an area that would not normally permit such signs. Outdoor advertising permits are not be issued for a period of 12 months prior to the letting of new construction contracts that may affect spacing or location requirements for an outdoor advertising structure. Priority in spacing would be granted to the first submitted application for a permit at the location. NC DOT would also deny permits for locations on a State or US scenic byway. G.S. 136-135. No electrical utility permit may be denied to an outdoor advertising sign for which a permit has been issued by DOT, so long as the permit is valid and otherwise compliant with technical utility standards. G.S. 136-133(c).

With respect to vegetation removal surrounding existing outdoor advertising signs, G.S. 136-18(9) grants NC DOT the authority to "employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right of way in the promotion of erosion control, landscaping and general protection of said highways". The removal of vegetation in or on any right of way of a State road or State highway requires a written selective vegetation removal permit issued by NC DOT. Selective vegetation removal permits may be requested by the owner of an outdoor advertising sign or the owner of a business facility, and are valid for one year upon issuance. The permittee may remove vegetation more than once during that year, however a 48-hour notification must be provided to NC DOT prior to entering the right of way. Willful failure to substantially comply with all the requirements specified in the selective vegetation removal permit results in a five-year moratorium for vegetation removal at the site and potentially a summary revocation of the outdoor advertising permit, payment of Department investigative costs, and forfeiture of any applicable performance bond as determined by the Secretary. G.S. 136-133.4.

With each selective vegetation removal permit, an application must be submitted to NC DOT who is required to approve or deny the application within 30 days of receipt. If no decision is conveyed in writing within the 30 day period, the application is deemed to be approved. Denial must be made in writing, by registered or certified mail, and must include reason for the denial. The act requires that an application be denied when certain conditions apply. G.S. 136-133.2. In submitting a site plan to NC DOT, the statutes generally set out a maximum cut or removal zone for each sign face, with that maximum zone varying depending upon whether the site is within the corporal limits and territorial jurisdiction of a municipality and whether the highway is an interstate or other route with fully controlled access. Vegetation cutting and removal is allowed along acceleration and deceleration ramps so long as the view of the outdoor advertising sign is improved and total aggregate amount of cut area is

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not increased. G.S. 136-133.1. Vegetation cutting or removal be done in accordance with accepted International Society of Arboriculture (ISA) standards. Other terms and conditions are established concerning impeding the flow of traffic, access to the work site, traffic control signage, adherence to safety standards, property damage, and debris removal. G.S. 136-133.4. Complete removal of the vegetation in the cut zone, other than dogwoods or redbuds, may be allowed if the applicant submits a plan for replanting the cut zone area. Trees existing at the time the outdoor advertising sign was erected may only be removed if the applicant reimburses NC DOT for the established value of the trees or if the applicant agrees to remove two nonconforming signs for each sign at which the removal of trees is requested. G.S. 136-133.1. Annually, NC DOT establishes the monetary value of trees removed from State rights-of-way, published by NC DOT by December 15, for use in the following calendar year. G.S. 136-93.2.

G.S. 136-133.3 establishes a process for appeals of selective vegetation removal permit decisions, whether denial of an permit application or violations by a permittee. An applicant would have 30 days in which to submit a written appeal, by registered or certified mail to the Secretary of Transportation, setting forth the facts and arguments upon which the appeal is based. The agency would be required to render a final decision within 90 days of receiving the written appeal. The act provides that the aggrieved party may seek judicial review of the final agency decision.

For removals required by NC DOT, just compensation must be paid to the outdoor advertising owner. "Just compensation" is limited to the fair market value at the time of the taking of the outdoor advertising owner's interest in the real property on which the outdoor advertising is located and such value includes the value of the outdoor advertising. G.S. 136-131. State law does not allow use of amortization for removal of outdoor advertising located along federal-aid primary and interstate highways, in compliance with federal law. G.S. 136-131.1. "Amortization" is the practice of requiring owners of property with a nonconforming structure to remove the structure over a specified time period without the payment of compensation.

With respect to counties and cities, a city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances. However, a city ordinance must be consistent with the Constitution and laws of North Carolina and of the United States. Specially, a city ordinance is not consistent with State or federal law if either of the following apply:

- The ordinance purports to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation.
- The elements of an offense defined by a city ordinance are identical to the elements of an offense defined by State or federal law. G.S. 160A-174.

In addition, no county ordinance may regulate or control a highway right-of-way in a manner inconsistent with State law or an ordinance of the Board of Transportation. G.S. 153A-121. In 1982, the Act was amended to add a requirement that local governments pay "just compensation" whenever local action resulted in the "removal" of a sign made nonconforming by local ordinance. G.S. 136-131.1. After this, a series of lawsuits alleged that local sign regulations were 'preempted' by the State's regulatory provisions in Chapter 136 of the General Statutes, as administered by NC DOT. According to these arguments, the law provided no room for local ordinances to regulate outdoor advertising along federal corridors; the state program effectively excluded local regulation. For several years, the courts rejected the preemption argument. By the mid 2000's, NC DOT rules had been amended to include a provision defining the "sign location/site" for any sign subject to NC DOT rules. The "site" of any sign,

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including nonconforming signs, was defined to include any area within 1/100th of a mile, or 52.8 feet, of the original sign location. Other rules implied that even a nonconforming sign could be moved anywhere behind the right-of-way line within a radius of up to 52.8 feet. In Stanly County, a zoning ordinance prohibited a nonconforming sign from being replaced or moved except to bring the sign into complete conformity with the county's ordinance. In the resulting litigation, the Court of Appeals ruled that the county ordinance rule was preempted under the local-nullification rule and the North Carolina Supreme Court affirmed on this issue.¹ In 2013, the General Assembly provided that counties and cities are prohibited from restricting the repair or reconstruction of outdoor advertising, without just compensation, as long as the advertising surface area is not increased. Reconstruction includes changing an existing multi-pole to a monopole structure. G.S. 136-131.2.

Beginning in 2004, monetary compensation is required to be paid by a local government to the outdoor advertising owner when the local government requires the removal of nonconforming, off-premises outdoor advertising, unless the outdoor advertising is determined to be a public nuisance or detrimental to the health or safety of the populace or when the local government allows the removal or relocation of the advertising to an equally visible location for purposes of road widening or another governmental development project. "Monetary compensation" is defined as the fair market value, determined in accordance with the statutory factors and generally capped at five times the average amount of the annual gross revenues associated with the advertising, less any placement or agency fees, over the preceding five years. In lieu of monetary compensation, a local government can enter into a relocation, reconstruction, or removal agreement, so long as the terms of the agreement are agreeable to the outdoor advertising owner. G.S. 153A-143 and G.S. 160A-199.

BILL ANALYSIS: The PCS to House Bill 581 would amend the Outdoor Advertising Control Act and related local government statutes as follows:

Erection, Maintenance, Relocation, Modernization under DOT Permitting – Sections 4, 5, 8, 9, 10, 11, 15, 16, 20, 21, and 22.

1. Issuance/Denial/Transfer of Permits.

- **DOT 30 Day Permit Review Period. Section 15** adds a new subsection (h) to G.S. 136-133.5 requiring DOT to approve or deny a permit within 30 days of receiving the application and fee otherwise the permit is deemed granted.
- **Appeal Decisions Within 90 Days. Section 11** amends G.S. 136-133(a) to require the Secretary of Transportation, within 90 days of receiving an appeal, to (i) affirm or reject the appeal, and (ii) provide written notice of the decision to the aggrieved party.
- **Fees. Section 11** increases or establishes the following administrative fees collected by NC DOT for outdoor advertising structures:
 - Initial fee from \$120.00 to \$240.00.
 - Annual renewal fee from \$60.00 to \$75.00.
 - Addendum for relocation or reconstruction established at \$240.00.
- **Exemption From Local Permit & Inspection Requirements. Section 11** exempts off-premises outdoor advertising construction from local permitting and inspection requirements when a professional engineer certifies construction is compliant with the State Building Code.

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- **30 Day Right to Cure. Section 16** requires that DOT give a permit holder 30 days written notice by certified mail of a pending revocation and allow the permittee to cure the defect giving rise to the revocation.
- **Notification of Cancellation. Section 16** requires that DOT give a permit holder 30 days written notice by certified mail of a pending permit cancellation.
- **Sections 9 and 10** do all of the following:
 - Exempts signs being relocated, repaired, maintained, altered, or reconstructed under these sections from any additional permitting requirements.
 - Allows DOT to require an addendum to the signs existing permit to show the changes.
 - Provide that the rights under this section attach to the permit but do not run with the land.

2. Sign Placement/Relocation.

- **Section 5** specifically allows outdoor advertising signs within 660 feet of an interstate when in conformity with "customary use" in zoned commercial or industrial areas and unzoned commercial or industrial areas. **Section 4** sets forth the criteria to be used in determining whether an area is unzoned commercial or industrial for this purpose. All of following must apply to the area:
 1. Have a business license.
 2. Be listed for taxes.
 3. Have utilities, including telephone service.
 4. Have vehicular access.
 5. Have a building with a permanent foundation within 660 feet from the right-of-way of a controlled route or, if a mobile home or RV is being used as an office, it must meet State Building Code and be tied down with wheels and axles removed.
 6. Be in active operation a minimum of 6 months.
 7. Be open to the public a minimum of 20 hours per week.
 8. Be staffed by one or more employees while open.
 9. Be visible and recognizable as a commercial or industrial area from the main-traveled road.
- **Section 10** allows any lawfully permitted off-premises outdoor advertising sign to be relocated and reconstructed provided:
 - Construction work at the relocation site commences within one year of the later of the removal date or the effective date of the Act.
 - The relocation site meets all of the following criteria:
 - a. Is within 660 feet of a highway on the National System of Interstate and Defense Highways or the federal-aid primary highway system.
 - b. Is within the same zoning jurisdiction or, if the sign was originally located in an unzoned area, within the same city or county limits.
 - c. Is not within a lawfully established historic district, unless the governing board consents by resolution.
 - d. The off premises outdoor advertising sign at the relocated site conforms with customary use in areas zoned commercial or industrial under authority of State law or in unzoned commercial or industrial areas, as applicable.

Effective when it becomes law and applicable to off-premises outdoor advertising signs removed on or after January 1, 2014.

- **Section 10** also allows vegetation to be removed to improve sign visibility on the relocated site, with the landowner's written permission if on private property and pursuant to a selective vegetation permit vegetation if on the interstate right-of-way. City and county ordinances in conflict with this provision are not enforceable. **Effective** when it becomes law and applicable to off-premises outdoor advertising signs removed on or after **January 1, 2014**.
- **Section 10** also provides that legally existing, but nonconforming signs may also be relocated on the same location provided they are constructed with like material, the sign face size is not increased, the height is less than 50 feet or no more than 50 feet above a sound wall, and the site is approved by the Federal Highway Administrator. **Effective** when it becomes law and applicable to off-premises outdoor advertising signs removed on or after **January 1, 2014**.
- **Local Government Authority. Sections 9, 21 and 22** do all of the following:
 - Prohibits local governments from regulating or prohibiting the repair, maintenance, alteration, or reconstruction of permitted outdoor advertising without payment of just compensation.
 - Allows local regulation of new outdoor advertising, which does not include any sign lawfully relocated.
 - Allows local regulation of outdoor advertising which a DOT permit has been voluntarily cancelled or lawfully revoked.
 - Precludes enforcement of any conflicting local ordinances and provides that an appeal to a board of adjustments is not required for an outdoor advertising owner to invoke their rights.
 - Prohibit a county or city from enacting, amending or enforcing an ordinance to prohibit the relocation and reconstruction of any off-premises outdoor advertising sign under most circumstances.
- **Section 11** exempts off-premises outdoor advertising from building permit or local building inspection requirements if a professional engineer certifies that construction is in compliance with the State Building Code.
- **Section 9** also prohibits NC DOT from enforcing rules against a non-conforming sign without first allowing the sign to be made conforming through repair, maintenance, alteration, or reconstruction.
- **Section 20** exempts from the general contractors licensing any person engaged in construction of outdoor advertising.

3. Modernization

- **Section 9** allows for the modernization of outdoor advertising in the following ways:
 - Provides that any validly permitted off-premises outdoor advertising signs may be altered or reconstructed to changeable message signs. Changeable message signs are those that display a series of messages at intervals by digital display, mechanical rotating panels or other electronic or mechanical means.
 - Signs lawfully relocated may be altered or reconstructed to digital messaging signs upon relocation.
 - Allows a sign permanently taken down in the same jurisdiction to be, within 120 days, combined with a sign being reconstructed in the same jurisdiction provided the new sign face does not exceed 672 square feet. Sign faces are limited to a maximum of 672 square feet.

- Defines *repair, maintenance, alteration, or reconstruction* to include changing the type of pole structure and to increase the sign height up to 50 feet.
- Prohibits two digital signs facing the same direction to be within 1000 feet of each another.
- Prohibits location in a historic district, unless the governing board consents by resolution.

4. Just Compensation upon Required Removal

- **Section 8** makes various amendments to do all of the following:
 - Requires just compensation for any NC DOT taking of any lawfully erected off-premises outdoor advertising regardless of its location.
 - Enumerates 9 factors to determine just compensation for the acquisition, purchase, condemnation, or taking of an off-premises advertising sign. The stated factors are:
 1. The sales price of similar off premises outdoor advertising and all property rights pertaining thereto.
 2. The physical condition of the off premises outdoor advertising sign, including its useful life.
 3. The income generated by the rental of advertising space on the off premises outdoor advertising sign.
 4. The effects of zoning or other land use restrictions.
 5. The value of possessing an outdoor advertising permit issued by an appropriate governing body.
 6. The ability or inability to relocate and reconstruct the off premises outdoor advertising to a site reasonably comparable to or better than the condemned location within the same zoning jurisdiction or, if unzoned, within the same city or county territorial jurisdiction. This factor is to take into account the similarity of certain criteria that affect the value of outdoor advertising, but not to be considered if the applicable governmental jurisdiction allows for numerical increases in outdoor advertising signs.
 7. The advantages arising from leasehold or other property interests, including length or term of property interest, renewal rights, options to purchase, or rights of first refusal.
 8. Reasonable expectations of lease renewal for a period in excess of that stated in the lease for original and renewal terms.
 9. Any other factor that may affect the value of the property rights affected by the condemnation.
 - Allows signs condemned by NC DOT to remain in place until construction work is within 100 feet of the sign.
 - In addition to just compensation, allows an outdoor advertising owner to recover reasonable relocation and reconstruction costs, including the value of lost rental income for up to 30 days.
- **Applicability of Just Compensation Factors to Local Governments. Sections 8, 21 and 22** require just compensation be paid by counties and cities that remove, or cause to be removed, permitted signs. Just compensation is to be determined using the factors set out above.

Selective Vegetation Removal – Sections 9, 12, 13, and 14.

- **Vegetation Removal On Interstate Medians. Section 12** adds new subsection (a2) to G.S. 136-133.1 to require DOT approval of plans to increase an off-premises sign's visibility by allowing vegetation removal along or within an interstate highway median provided the sign is lawfully permitted in either (i) an area zoned commercial or industrial or, (ii) in an unzoned commercial or industrial area as defined by G.S. 136-130.1.
- **Relocation of Native Dogwoods or Redbuds. Section 12** also amends G.S. 136-133.1(b) to allow a selective vegetation removal permittee to relocate and, if necessary, replace a native dogwood or redbud to a location within 2,500 feet on either side of the sign.
- **Reduction in Wait Period to Apply for Selective Vegetation Removal Permit. Section 13** reduces the wait period from two years to one year.
- **Exemption from 1 Year Wait Period. Section 13** adds new subsection (b) to G.S. 136-133.2 to allow a relocation site for a sign lawfully relocated to be issued a selective vegetation removal permit notwithstanding the sign having been permitted for less than one year.
- **Relocation Sites Exempted from Minimal Tree Size Requirement. Section 14** amends G.S. 136-133.5(d) to exempt signs relocated under G.S. 136-131.3 from the requirement that no sign can be permitted at locations where existing trees when reaching full maturity would block the visibility of the sign face from the viewing zone. **Effective** when it becomes law and applicable to signs relocated on or after that date.
- **Section 9** also does the following:
 - Provides that a sign owner shall be allowed to remove vegetation around the sign.
 - Precludes enforcement of any conflicting local ordinances.

EFFECTIVE DATE: Except as noted above, effective when it becomes law.

ⁱ See <https://canons.sog.unc.edu/outdoor-advertising-winning-the-preemption-game/>