



HOUSE BILL 645: Revisions to Outdoor Advertising Laws.

2019-2020 General Assembly

Committee:		Date:	May 7, 2019
Introduced by:	Reps. Saine, Dixon, Jones, Wray	Prepared by:	Nicholas Giddings Staff Attorney
Analysis of:	Third Edition		

OVERVIEW: *House Bill 645 would amend the laws pertaining to outdoor advertising, to do all of the following:*

- *Allow for relocation and reconstruction of certain outdoor advertising signs, with specified criteria to be met.*
- *Increase the maximum amount of vegetation that may be cut under a selective vegetation removal permit.*
- *Require the North Carolina Department of Transportation to approve vegetation removal subject to certain conditions.*
- *Reduce the waiting period for a permitted outdoor advertising location to receive a selective vegetation removal permit from two years to one year, and exempt certain outdoor advertising locations from that waiting period.*

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 and was enacted in 1967 to ensure that North Carolina met federal standards for controlling billboards along its Interstate and Federal-aid Primary Highway Systems so that the State continued to receive a full allocation of federal highway funds. The Act delegates authority to the North Carolina Department of Transportation (DOT) to adopt rules enforcing federal standards along these federal highway corridors. The Act requires a permit 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 DOT. G.S. 136-133.

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. 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.

G.S. 136-133.5 prohibits 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. G.S. 136-18(9) grants 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

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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 DOT. The owner of an outdoor advertising sign, or the owner of a business facility, may apply to DOT for a selective vegetation removal permit. If DOT approves the application, the permit is valid for one year upon issuance.

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 corporate 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 not increased. G.S. 136-133.1. 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 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.

BILL ANALYSIS:

Section 1 would add to the stated policy declaration within the Outdoor Advertising Control Act a statement declaring that outdoor advertising is an important and distinct medium of communication for commercial and noncommercial messages, and that it is in the public interest that outdoor advertising signs are erected, maintained, and clearly visible.

Section 2 would make various changes and additions to the definitions applicable to the Outdoor Advertising Control Act, including:

- Creating a definition of "customary use" with regard to size, lighting, and spacing for outdoor advertising signs in areas zoned commercial or industrial and unzoned commercial or industrial areas.
- Removing local regulation from the definition of "state law."

Section 3 would add a new section to Article 11 of Chapter 136 of the General Statutes related to unzoned commercial or industrial areas, which would be an area that is not currently zoned and within 660 feet of the right-of-way of the interstate or primary system, having at least one commercial or industrial activity meeting the following criteria:

- Have a business license.
- Be listed for taxes.
- Have utilities.
- Have vehicular access.
- 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.
- Be in active operation a minimum of 6 months prior to applying for an outdoor advertising permit.
- Be open to the public a minimum of 20 hours per week.
- Be staffed by one or more employees while open.
- Be visible and recognizable as a commercial or industrial area from the main-traveled road.

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Section 4, *effective for outdoor advertising signs removed on or after January 1, 2017*, would add a new section to Article 11 of Chapter 136 of the General Statutes regarding the relocation of existing outdoor advertising signs that would do the following:

- Authorize any legally erected outdoor advertising sign to relocate within a two mile radius of the existing sign location when the property on which an outdoor advertising sign is located is acquired by DOT, or any public or private condemnor, and the acquiring party requires removal of the sign.
- Create criteria that must be followed when an outdoor advertising sign is relocated, including the following:
 - The relocation site is within 660 feet of a highway on the National System of Interstate and Defense Highways or the federal-aid primary highway system.
 - The relocation site is within an area zoned commercial or industrial located within the same zoning jurisdiction provided it is not located within a view corridor, or, if the sign was originally located in an unzoned area, within the same unzoned city territorial limits or the same unzoned county territorial limits.
 - The off premises outdoor advertising sign at the relocated site conforms with customary use in areas zoned commercial or industrial or in unzoned commercial or industrial areas, as applicable.
 - The relocation site is not within a lawfully established historic district, unless the governing board consents by resolution.
 - Construction on the relocation begins within 1 year of the date of removal or the effective date of this Act, whichever is later.
 - The square footage of the advertising surface area is not increased. However, in addition to other sign characteristic changes or alterations resulting from the relocation, the height of the sign may be increased, not to exceed 50 feet.
 - In lieu of relocation due to the presence of a sound wall, the height of the outdoor advertising sign may be increased, not to exceed 50 feet above the top of the wall.
- Provide that any outdoor advertising sign not required to be removed by DOT or a public or private condemnor that acquires the property wherein the sign is located may still be relocated and reconstructed, provided the relocated distance is not more than 250 feet from the lot boundaries on which the sign was previously located and the above listed criteria are followed. If a sign is relocated under this provision, it cannot be relocated again under this provision for 10 years from the date of the previous relocation, however, the sign may still be relocated on the same sign location or site without regard to this time limitation.
- Create a customary use exception for any sign that is legally existing, but would not be conforming to customary use if relocated on the same site, allowing the sign to be relocated on the same site, subject to the following requirements:
 - The structural members of the sign at the relocated site are of like material.
 - The size of the sign face or faces is not increased.
 - The height of the sign at the relocated site does not exceed 50 feet, except that the sign height may be 50 feet above the top of a sound wall.

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- The relocation is not denied by the Federal Highway Administrator or certain other federal officials.
- Provide that vegetation removal permits cannot be denied by DOT for new sites when the outdoor advertising is relocating to that site.
- Provide that when determining just compensation, a fact finder may consider the actual relocation of the sign.

Section 5 would expand the maximum cut or removal zone under a selective vegetation removal permit and require DOT to approve plans for selective vegetation removal outside of the cut or removal zone. This section would also allow a selective vegetation removal permittee to remove a native dogwood or redbud, however, the permittee would be required to replace the removed dogwood or redbud with the same species totaling at least twice the caliper inches to a location within 2,500 feet on either side of the sign.

Section 6 would reduce, by one year, the wait time required before an applicant can submit an application for a selective vegetation removal permit, and provides that this waiting period does not apply to permit applications related to outdoor advertising which has been relocated.

Section 7, *effective for outdoor advertising signs removed on or after the date this act becomes law*, would provide that the prohibition on DOT issuing permits for new outdoor advertising in locations where existing trees would obscure the visibility of the outdoor advertising would not apply to outdoor advertising that is being relocated as a result of condemnation.

Section 8 is a severability clause that provides that if any provision of this act is found to be invalid, it would not affect other provisions of this act that can be given effect without the invalid provision.

EFFECTIVE DATE: Except as otherwise provided above, this act would become effective when it becomes law.

Howard Marsilio, counsel to House Transportation, substantially contributed to this summary.