

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 254\*

Short Title: Outdoor Advertising Control Act/AB.

(Public)

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Sponsors: Senator Gulley.

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Referred to: Commerce.

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March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY AND UPDATE THE OUTDOOR ADVERTISING CONTROL ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-133 reads as rewritten:

**"§ 136-133. Permits required.**

No person shall 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, except those allowed under G.S. 136-129, subdivisions (2) and (3) in this Article, or beyond 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129.1, subdivisions (2) and (3), without first obtaining a permit from the Department of Transportation or its agents pursuant to the procedures set out by rules and regulations promulgated by the Department of Transportation. The permit shall be valid until revoked for nonconformance with this Article or rules and regulations promulgated by the Department of Transportation thereunder. Any person aggrieved by the decision of the Department of Transportation or its agents in refusing to grant or in revoking a permit may appeal the decision in accordance with the rules and regulations enacted by the Department of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on the agency appeal. The Department of Transportation shall have the authority

1 to charge permit fees to defray the costs of administering the permit procedures under this  
2 Article. ~~The fees for directional signs as set forth in G.S. 136-129(1) and G.S. 136-129.1(1)~~  
3 ~~shall not exceed a twenty dollar (\$20.00) initial fee and a fifteen dollar (\$15.00) annual renewal~~  
4 ~~fee. The fees for outdoor advertising structures, as set forth in G.S. 136-129(4) and (5) shall not~~  
5 ~~exceed a sixty dollar (\$60.00) initial fee and a thirty dollar (\$30.00) annual renewal fee.~~

6 The permit fees established in the rules issued by the Department of Transportation  
7 shall be reviewed by the Board of Transportation on a biennial basis and adjusted when  
8 necessary.

9 If outdoor advertising is under construction and the Department determines that a  
10 permit has not been issued for the outdoor advertising as required under this section, the  
11 Department of Transportation may require that all work on the outdoor advertising cease  
12 until the owner of the outdoor advertising shows that the outdoor advertising does not  
13 violate this section. The stop work order shall be prominently posted on the outdoor  
14 advertising structure, and no further notice is required. The failure of an owner of  
15 outdoor advertising to comply immediately with the stop work order shall subject the  
16 outdoor advertising to removal by the Department of Transportation or its agents.  
17 Outdoor advertising is under construction when it is in any phase of construction prior to  
18 the attachment and display of the advertising message in final position for viewing by the  
19 traveling public. The cost of removing outdoor advertising by the Department of  
20 Transportation or its agents pursuant to this section shall be assessed against the owner of  
21 the unpermitted outdoor advertising by the Department of Transportation."

22 Section 2. G.S. 136-134 reads as rewritten:

23 **"§ 136-134. Illegal advertising.**

24 Any outdoor advertising erected or maintained adjacent to the right-of-way of the  
25 interstate or primary highway system after the effective date of this Article as determined  
26 by G.S. 136-140, in violation of the provisions of this Article or rules and regulations  
27 promulgated by the Department of Transportation, or any outdoor advertising maintained  
28 without a permit regardless of the date of erection shall be illegal and shall constitute a  
29 nuisance. The Department of Transportation or its agents shall give 30 days' notice to the  
30 owner of the illegal outdoor advertising with the exception of the owner of unlawful  
31 portable outdoor advertising for which the Department of Transportation shall give five  
32 days' notice, if such owner is known or can by reasonable diligence be ascertained, to  
33 remove the outdoor advertising or to make it conform to the provisions of this Article or  
34 rules and regulations promulgated by the Department of Transportation hereunder. The  
35 Department of Transportation or its agents shall have the right to remove the illegal  
36 outdoor advertising at the expense of the said owner if the said owner fails to ~~act~~remove  
37 the outdoor advertising or to make it conform to the provisions of this Article or rules  
38 issued by the Department of Transportation within 30 days after receipt of such notice or  
39 five days for owners of portable outdoor advertising. The Department of Transportation  
40 or its agents may enter upon private property for the purpose of removing the outdoor  
41 advertising prohibited by this Article or rules and regulations promulgated by the  
42 Department of Transportation hereunder without civil or criminal liability. The costs of  
43 removing the outdoor advertising, whether by the Department of Transportation or its

1 agents, shall be assessed against the owner of the illegal outdoor advertising by the  
2 Department of Transportation. Any person aggrieved by the decision declaring the  
3 outdoor advertising structure illegal shall be granted the right to appeal the decision in  
4 accordance with the terms of the rules and regulations enacted by the Department of  
5 Transportation pursuant to this Article to the Secretary of Transportation who shall make  
6 the final decision on the agency appeal."

7 Section 3. G.S. 150B-1(e) reads as rewritten:

8 "(e) Exemptions From Contested Case Provisions. – The contested case provisions  
9 of this Chapter apply to all agencies and all proceedings not expressly exempted from the  
10 Chapter. The contested case provisions of this Chapter do not apply to the following:

- 11 (1) The Department of Health and Human Services and the Department of  
12 Environment and Natural Resources in complying with the procedural  
13 safeguards mandated by Section 680 of Part H of Public Law 99-457 as  
14 amended (Education of the Handicapped Act Amendments of 1986).
- 15 (2) Repealed by Session Laws 1993, c. 501, s. 29.
- 16 (3) The North Carolina Low-Level Radioactive Waste Management  
17 Authority in administering the provisions of G.S. 104G-9, 104G-10, and  
18 104G-11.
- 19 (4) The North Carolina Hazardous Waste Management Commission in  
20 administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.
- 21 (5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public  
22 Law 93-122), as amended and federal regulations promulgated  
23 thereunder. G.S. 150B-51(a) is considered a contested case hearing  
24 provision that does not apply to these hearings.
- 25 (6) The Department of Revenue.
- 26 (7) The Department of Correction.
- 27 (8) The Department of Transportation, except as provided in ~~G.S. 136-29.~~  
28 G.S. 136-29, 136-133.1, and 136-134.1.
- 29 (9) The Occupational Safety and Health Review Board.
- 30 (10) The North Carolina Global TransPark Authority with respect to the  
31 acquisition, construction, operation, or use, including fees or charges, of  
32 any portion of a cargo airport complex.
- 33 (11) Hearings that are provided by the Department of Health and Human  
34 Services regarding the eligibility and provision of services for eligible  
35 assaultive and violent children, as defined in G.S. 122C-3(13a), shall be  
36 conducted pursuant to the provisions outlined in G.S. 122C, Article 4,  
37 Part 7."

38 Section 4. Chapter 136 of the General Statutes is amended by adding a new  
39 section to read:

40 "**§ 136-133.1. Administrative review of outdoor advertising decisions.**

41 (a) An applicant for an outdoor advertising permit, an outdoor advertising permit  
42 holder, or an outdoor advertising owner who is dissatisfied with the final decision of the  
43 Department of Transportation may file a petition for a contested case hearing under

1 Article 3 of Chapter 150B of the General Statutes within 20 days after the decision is  
2 made by the Department of Transportation, except that the venue of the hearing shall not  
3 be determined pursuant to G.S. 150B-24, but shall be Wake County.

4 (b) The burden of proof shall be on the party petitioning for review."

5 Section 5. Chapter 136 of the General Statutes is amended by adding a new  
6 section to read:

7 "**§ 136-134.2. Notification requirements.**

8 When the Department of Transportation notifies a permit applicant, permit holder, or  
9 the owner of an outdoor advertising structure that the application is denied, the permit  
10 revoked, or the structure is in violation of this Article or rules issued pursuant to this  
11 Article, respectively, it shall do so in writing by certified mail, return receipt requested  
12 and shall include a copy of this Article and all rules issued pursuant to this Article.

13 If the Department of Transportation fails to include a copy of this Article and the  
14 rules, the time period during which the permit applicant, permit holder, or owner of the  
15 outdoor advertising structure has to request a review hearing shall be tolled, until the  
16 Department of Transportation provides the required materials."

17 Section 6. G.S. 136-134.1 reads as rewritten:

18 "**§ 136-134.1. Judicial review.**

19 ~~Any person who is aggrieved by a final decision of the Secretary of Transportation~~  
20 ~~after exhausting all administrative remedies made available to him by rules and~~  
21 ~~regulations enacted pursuant to this Article is entitled to judicial review of such decision~~  
22 ~~under this Article. In order to obtain judicial review of the Secretary of Transportation's~~  
23 ~~decision under this Article, the person seeking review must file a petition in the Superior~~  
24 ~~Court of Wake County within 30 days after written copy of the decision of the Secretary~~  
25 ~~of Transportation is served upon the person seeking review. Failure to file such a petition~~  
26 ~~within the time stated shall operate as a waiver of the right of such person to review~~  
27 ~~under this Chapter.~~

28 ~~The petition shall state explicitly what exceptions are taken to the decision of the~~  
29 ~~Secretary of Transportation and what relief petitioner seeks. Within 10 days after the~~  
30 ~~petition is filed with the court, the person seeking the review shall serve copies of the~~  
31 ~~petition by registered mail, return receipt requested, upon the Department of~~  
32 ~~Transportation. Within 30 days after receipt of the copy of the petition for review, or~~  
33 ~~within such additional time as the court may allow, the Department of Transportation~~  
34 ~~shall transmit to the reviewing court a certified copy of the written decision.~~

35 ~~At any time before or during the review proceeding, the aggrieved party may apply to~~  
36 ~~the reviewing court for an order staying the operation of the decision of the Secretary of~~  
37 ~~Transportation pending the outcome of the review. The court may grant or deny the stay~~  
38 ~~in its discretion upon such terms as it deems proper. The review of the decision of the~~  
39 ~~Secretary of Transportation under this Article shall be conducted by the court without a~~  
40 ~~jury and shall hear the matter de novo pursuant to the rules of evidence as applied in the~~  
41 ~~General Court of Justice. The court, after hearing the matter may affirm, reverse or~~  
42 ~~modify the decision if the decision is:~~

43 (1) ~~In violation of constitutional provisions; or~~

1           (2) ~~Not made in accordance with this Article or rules or regulations~~  
2           ~~promulgated by the Department of Transportation; or~~

3           (3) ~~Affected by other error of law.~~

4 The party aggrieved shall have the burden of showing that the decision was violative of  
5 one of the above.

6 A party to the review proceedings, including the agency, may appeal to the appellate  
7 division from the final judgment of the Superior Court under the rules of procedure  
8 applicable in civil cases. The appealing party may apply to the Superior Court for a stay  
9 for its final determination or a stay of the administrative decision, whichever shall be  
10 appropriate, pending the outcome of the appeal to the appellate division.

11 Article 4 of Chapter 150B of the General Statutes shall govern judicial review of final  
12 agency decisions regarding outdoor advertising permits."

13 Section 7. G.S. 136-135 reads as rewritten:

14 "**§ 136-135. Enforcement provisions.**

15 Any person, firm, corporation or association, placing, erecting or maintaining outdoor  
16 advertising along the interstate system or primary system in violation of this Article or  
17 rules and regulations promulgated by the Department of Transportation shall be guilty of  
18 a Class 1 misdemeanor. In addition thereto, the Department of Transportation may seek  
19 injunctive relief in the Superior Court of Wake County or of the county where the  
20 outdoor advertising is located and require the outdoor advertising to conform to the  
21 provisions of this Article or rules and regulations promulgated pursuant hereto, or require  
22 the removal of the said illegal outdoor advertising."

23 Section 8. Chapter 136 of the General Statutes is amended by adding a new  
24 section to read:

25 "**§ 136-18.7. Fees.**

26 The Board of Transportation may establish fees to defray the costs of administering  
27 the permit procedures for the Department of Transportation's selective vegetation  
28 removal policy established pursuant to G.S. 136-18(5), (7), and (9). These fees shall be  
29 no more than necessary to ensure that the policy is entirely self-funded."

30 Section 9. G.S. 136-127 reads as rewritten:

31 "**§ 136-127. Declaration of policy.**

32 The General Assembly hereby finds and declares that outdoor advertising is a  
33 legitimate commercial use of private property adjacent to roads and highways but that the  
34 erection and maintenance of outdoor advertising signs and devices in areas in the vicinity  
35 of the right-of-way of the interstate and primary ~~highways~~ highway systems within the  
36 State should be controlled and regulated in order to promote the safety, health, welfare  
37 and convenience and enjoyment of travel on and protection of the public investment in  
38 highways within the State, to prevent unreasonable distraction of operators of motor  
39 vehicles and to prevent interference with the effectiveness of traffic regulations and to  
40 promote safety on the highways, to attract tourists and promote the prosperity, economic  
41 well-being and general welfare of the State, and to preserve and enhance the natural  
42 scenic beauty of the highways and areas in the vicinity of the State highways and to  
43 promote the reasonable, orderly and effective display of such signs, displays and devices.

1 It is the intention of the General Assembly to provide and declare herein a public policy  
2 and statutory basis for the regulation and control of outdoor advertising."

3 Section 10. G.S. 136-128 reads as rewritten:

4 **"§ 136-128. Definitions.**

5 As used in this Article:

6 (1) "Erect" means to construct, build, raise, assemble, place, affix, attach,  
7 create, paint, draw, or in any other way bring into being or establish.

8 (1a) "Illegal sign" means one which was erected and/or maintained in  
9 violation of State law.

10 (1b) "Information center" means an area or site established and maintained at  
11 safety rest areas for the purpose of informing the public of places of  
12 interest within the State and providing such other information as the  
13 Department of Transportation may consider desirable.

14 (2) "Interstate system" means that portion of the National System of  
15 Interstate and Defense Highways located within the State, as officially  
16 designated, or as may hereafter be so designated, by the Department of  
17 Transportation, or other appropriate authorities and are also so  
18 designated by interstate numbers. As to highways under construction so  
19 designated as interstate highways pursuant to the above procedures, the  
20 highway shall be a part of the interstate system for the purposes of this  
21 Article on the date the location of the highway has been approved  
22 finally by the appropriate federal authorities.

23 (2a) "Nonconforming sign" shall mean a sign which was lawfully erected but  
24 which does not comply with the provisions of State law or State rules  
25 and regulations passed at a later date or which later fails to comply with  
26 State law or State rules or regulations due to changed conditions.  
27 Illegally erected or maintained signs are not nonconforming signs.

28 (3) "Outdoor advertising" means any outdoor sign, display, light, device,  
29 figure, painting, drawing, message, plaque, poster, billboard, or any  
30 other thing which is designed, intended or used to advertise or inform,  
31 any part of the advertising or information contents of which is visible  
32 from any place on the main-traveled way of the interstate or primary  
33 system, whether the same be permanent or portable installation.

34 (4) "~~Primary systems" means that portion of connected main highways, as~~  
35 ~~now officially designated, or as may hereafter be so designated by the~~  
36 ~~Department of Transportation as primary system, or other appropriate~~  
37 ~~authorities and are also so designated by N.C. or U.S. numbers. means~~  
38 the federal-aid primary system in existence on June 1, 1991, and any  
39 highway which is not on that system but which is on the National  
40 Highway System. As to highways under construction so designated as  
41 primary highways pursuant to the above procedures, the highway shall  
42 be a part of the primary system for purposes of this Article on the date

1 the location of the highway has been approved finally by the appropriate  
2 federal or State authorities.

3 (5) "Safety rest area" means an area or site established and maintained  
4 within or adjacent to the highway right-of-way by or under public  
5 supervision or control, for the convenience of the traveling public.

6 (6) "State law" means a State constitutional provision or statute, or an  
7 ordinance, rule or regulation enacted or adopted by a State agency or  
8 political subdivision of a State pursuant to a State Constitution or  
9 statute.

10 (7) "Unzoned area" shall mean an area where there is no zoning in effect.

11 (8) "Urban area" shall mean an area within the boundaries or limits of any  
12 incorporated municipality having a population of five thousand or more  
13 as determined by the latest available federal census.

14 (9) "Visible" means capable of being seen (whether or not legible) without  
15 visual aid by a person of normal visual acuity."

16 Section 11. G.S. 136-129 reads as rewritten:

17 **"§ 136-129. Limitations of outdoor advertising devices.**

18 No outdoor advertising shall be erected or maintained within 660 feet of the nearest  
19 edge of the right-of-way of the interstate or primary ~~highways~~ highway systems in this  
20 State so as to be visible from the main-traveled way thereof after the effective date of this  
21 Article as determined by G.S. 136-140, except the following:

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

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

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

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

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

- 1 (5) Outdoor advertising, in conformity with the rules and regulations  
2 promulgated by the Department of Transportation, located in unzoned  
3 commercial or industrial areas."

4 Section 12. G.S. 136-129.1 reads as rewritten:

5 **"§ 136-129.1. Limitations of outdoor advertising devices beyond 660 feet.**

6 No outdoor advertising shall be erected or maintained beyond 660 feet of the nearest  
7 edge of the right-of-way of the interstate or primary ~~highways~~ highway systems in this  
8 State outside of the urban areas so as to be visible and intended to be read from the main-  
9 traveled way except the following:

- 10 (1) Directional and other official signs and notices, which signs and notices  
11 shall include those authorized and permitted by Chapter 136 of the  
12 General Statutes, which include but are not limited to official signs and  
13 notices pertaining to natural wonders, scenic and historic attractions and  
14 signs erected and maintained by a public utility, electric or telephone  
15 membership corporation, or municipality for the purpose of giving  
16 warning of or information as to the location of an underground cable,  
17 pipeline or other installation.
- 18 (2) Outdoor advertising which advertises the sale or lease of property upon  
19 which it is located.
- 20 (3) Outdoor advertising which advertises activities conducted on the  
21 property upon which it is located."

22 Section 13. G.S. 136-136 reads as rewritten:

23 **"§ 136-136. Zoning changes.**

24 All zoning authorities shall give written notice to the Department of Transportation of  
25 the establishment or revision of any commercial and industrial zones within 660 feet of  
26 the right-of-way of interstate or primary ~~highways~~ highway systems. Notice shall be by  
27 registered mail sent to the offices of the Department of Transportation in Raleigh, North  
28 Carolina, within 15 days after the effective date of the zoning change or establishment."

29 Section 14. This act is effective when it becomes law.