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SENATE BILL 183
Transportation Committee Substitute Adopted 4/28/11
Finance Committee Substitute Adopted 5/19/11
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Short Title: Selective Vegetation Removal/State Highways.

(Public)

Sponsors:

Referred to:

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CERTAIN STATUTORY STANDARDS FOR SELECTIVE
VEGETATION REMOVAL WITHIN THE RIGHTS-OF-WAY OF THE STATE
HIGHWAY SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. 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).~~ G.S. 136-93, 136-133.1, and 136-133.4 is four hundred dollars (\$400.00) per permitted site and is nonrefundable. The fee may be used by the Department of Transportation for the costs of administering the permit process and for highway beautification planting."

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

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

(a) No opening or other interference whatsoever shall be made in any State road or highway other than streets not maintained by the Department of Transportation in cities and towns, nor shall any structure be placed thereon, nor shall any structure which has been placed thereon be changed or removed except in accordance with a written permit from the Department of Transportation or its duly authorized officers, who shall exercise complete and permanent control over such roads and highways. No State road or State highway, other than streets not maintained by the Department of Transportation in cities and towns, shall be dug up for laying or placing pipes, conduits, sewers, wires, railways, or other objects, ~~and no tree or shrub in or on any State road or State highway shall be planted, trimmed, or removed,~~ and no obstruction placed thereon, without a written permit as hereinbefore provided for, and then only in accordance with the regulations of said Department of Transportation or its duly authorized officers or employees; and the work shall be under the supervision and to the satisfaction of the Department of Transportation or its officers or employees, and the entire expense of replacing the highway in as good condition as before shall be paid by the persons, firms, or corporations to whom the permit is given, or by whom the work is done. The Department of Transportation, or its duly authorized officers, may, in its discretion, before granting a permit under the provisions of this section, require the applicant to file a satisfactory bond, payable to the State of North Carolina, in such an amount as may be deemed sufficient by the Department of Transportation or its duly authorized officers, conditioned upon the proper compliance with the requirements of this section by the person, firm, or corporation granted such permit. Any



1 person making any opening in a State road or State highway, or placing any structure thereon,
2 or changing or removing any structure thereon without obtaining a written permit as herein
3 provided, or not in compliance with the terms of such permit, or otherwise violating the
4 provisions of this section, shall be guilty of a Class 1 misdemeanor: Provided, this section shall
5 not apply to railroad crossings. The railroads shall keep up said crossings as now provided by
6 law.

7 (b) Except as provided in G.S. 136-133.1(g), no vegetation, including any tree, shrub,
8 or underbrush, in or on any right-of-way of a State road or State highway shall be planted, cut,
9 trimmed, pruned, or removed without a written selective vegetation removal permit issued
10 pursuant to G.S. 136-133.2 and in accordance with the rules of the Department. Requests for a
11 permit for selective vegetation cutting, thinning, pruning, or removal shall be made by the
12 owner of an outdoor advertising sign or the owner of a business facility to the appropriate
13 person in the Division of Highways office on a form prescribed by the Department. For
14 purposes of this section, G.S. 136-133.1, 136-133.2, and 136-133.4, the phrase "outdoor
15 advertising" shall mean the outdoor advertising expressly permitted under G.S. 136-129(a)(4)
16 or G.S. 136-129(a)(5). These provisions shall not be used to provide visibility to on-premise
17 signs.

18 (c) For outdoor advertising, vegetation cut or removal limits shall be restricted to a
19 maximum selective vegetation cut or removal zone for each sign face pursuant to the provisions
20 of G.S. 136-133.1.

21 (d) If the application for vegetation cutting, thinning, pruning, or removal is for a site
22 located within the corporate limits of a municipality, the municipality shall be given 30 days to
23 review and provide nonbinding comments on the application if the municipality has previously
24 advised the Department in writing of the desire to review such applications and the name of the
25 local official to whom notice of such application should be directed. Local governments are
26 prohibited from regulating vegetation cutting, trimming, pruning, or removal within the limits
27 of interstate or primary highway rights-of-way by any permittee or other person authorized by
28 the Department, including anyone authorized under G.S. 136-133.1(g)."

29 **SECTION 3.** Article 7 of Chapter 136 of the General Statutes is amended by
30 adding a new section to read:

31 **§ 136-93.2. Monetary value of trees.**

32 The monetary value for existing trees removed and eligible for reimbursement to the
33 Department as provided in G.S. 136-93 or G.S. 136-133.1 from State rights-of-way shall be
34 determined on an annual basis by the Department. In determining the value of existing trees
35 removed, the average cost per caliper inch shall be based on the lower value of either the
36 average wholesale commercial nursery prices for hardwood and conifer plants, times a 2.5
37 multiplier for installation and warranty or the average cost per caliper inch for tree planting
38 contracts let by the Department in the previous calendar year. The values shall be determined
39 and published by the Department no later than December 15 of each year. The values
40 established pursuant to this section shall be used in calculating the monetary value of trees
41 removed from State rights-of-way beginning January 1 of each year. If the Department fails to
42 publish changes in values by December 15, then the values existing on December 15 shall be
43 applicable to existing trees removed and eligible for reimbursement for the following year."

44 **SECTION 4.** G.S. 136-133 reads as rewritten:

45 **§ 136-133. Permits required.**

46 (a) No person shall erect or maintain any outdoor advertising within 660 feet of the
47 nearest edge of the right-of-way of the interstate or primary highway system, except those
48 allowed under G.S. 136-129, subdivisions (2) and (3) in this Article, or beyond 660 feet of the
49 nearest edge of the right-of-way of the interstate or primary highway system, except those
50 allowed under G.S. 136-129.1, subdivisions (2) and (3), without first obtaining a permit from
51 the Department of Transportation or its agents pursuant to the procedures set out by rules

1 adopted by the Department of Transportation. The permit shall be valid until revoked for
2 nonconformance with this Article or rules adopted by the Department of Transportation. Any
3 person aggrieved by the decision of the Department of Transportation or its agents in refusing
4 to grant or in revoking a permit may appeal the decision in accordance with the rules adopted
5 by the Department of Transportation pursuant to this Article to the Secretary of Transportation
6 who shall make the final decision on the agency appeal. The Department of Transportation
7 shall have the authority to charge permit fees to defray the costs of administering the permit
8 procedures under this Article. The fees for directional signs as set forth in G.S. 136-129(1) and
9 G.S. 136-129.1(1) shall not exceed a forty dollar (\$40.00) initial fee and a thirty dollar (\$30.00)
10 annual renewal fee. The fees for outdoor advertising structures, as set forth in G.S. 136-129(4)
11 and (5) shall not exceed a ~~one hundred twenty dollar (\$120.00) initial fee~~ one hundred fifty
12 dollar (\$150.00) initial fee and a sixty dollar (\$60.00) annual renewal fee.

13 (b) If outdoor advertising is under construction and the Department of Transportation
14 determines that a permit has not been issued for the outdoor advertising, the Department may
15 require that all work on the outdoor advertising cease until the owner of the outdoor advertising
16 shows that the outdoor advertising does not violate this section. The stopwork order shall be
17 prominently posted on the outdoor advertising structure, and no further notice of the stopwork
18 order is required. The failure of an owner of outdoor advertising to comply immediately with
19 the stopwork order shall subject the outdoor advertising to removal by the Department of
20 Transportation or its agents. Outdoor advertising is under construction when it is in any phase
21 of construction prior to the attachment and display of the advertising message in final position
22 for viewing by the traveling public. The cost of removing outdoor advertising by the
23 Department of Transportation or its agents pursuant to this section shall be assessed against the
24 owner of the unpermitted outdoor advertising by the Department of Transportation. No
25 stopwork order may be issued when the Department of Transportation process agent has been
26 served with a court order allowing the sign to be constructed.

27 (c) No electrical permit shall be denied to an outdoor advertising sign described in
28 G.S. 136-129(4) and G.S. 136-129(5) for which the Department has issued a permit which has
29 not been revoked, and the electrical permit is otherwise compliant with technical utility
30 standards."

31 **SECTION 5.** Article 11 of Chapter 136 of the General Statutes is amended by
32 adding a new section to read:

33 **"§ 136-133.1. Outdoor advertising vegetation cutting or removal.**

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

- 39 (1) The point located on the edge of the right-of-way that is the closest point to
40 the centerline of the sign face shall be point A.
- 41 (2) The point located 200 feet down the right-of-way line in the direction of the
42 sign viewing zone shall be point B.
- 43 (3) The point on the edge of the pavement of the travel way, including
44 acceleration and deceleration ramps, that is the closest to the centerline of
45 the sign shall be point C.
- 46 (4) The point 50 feet down the edge of the pavement in the direction of the sign
47 viewing zone from point C shall be point D.
- 48 (5) The point 380 feet down the edge of the pavement in the direction of the
49 sign viewing zone from point C shall be point E; provided, however, the
50 following shall apply within the corporal limits and territorial jurisdiction of
51 any city, as defined in Chapter 160A of the General Statutes:

1 a. On interstates or other routes with fully controlled access, the point
2 340 feet down the edge of the pavement in the direction of the sign
3 viewing zone from point C shall be point E.

4 b. On highways other than interstates and other routes with fully
5 controlled access, the point 250 feet down the edge of the pavement
6 in the direction of the sign viewing zone from point C shall be point
7 E.

8 (6) Lines drawn from point A to point D and from point B to point E shall
9 define the limits of the vegetation cut or removal area.

10 (b) Vegetation permitted to be cut, thinned, pruned, or removed shall be defined as any
11 tree, shrub, or underbrush within the zone created by points A, B, D, and E. Any existing tree
12 that was in existence at the time that an outdoor advertising structure was erected shall only be
13 eligible for removal in accordance with subsections (c), (d), and (e) of this section. Native
14 dogwoods and native redbuds shall be preserved. For the purposes of this section, an existing
15 tree is defined as a tree that had a diameter of four inches or greater as measured six inches
16 from the ground at the time that the outdoor advertising structure was erected. An outdoor
17 advertising sign is considered erected when the sign is completely constructed with a sign face.

18 (c) The applicant for a selective vegetation removal permit shall submit to the
19 Department a site plan locating thereon any trees existing at the time that the outdoor
20 advertising sign was erected, as defined in subsection (b) of this section, that are requested to
21 be cut, thinned, pruned, or removed, and noting their species and total caliper inches. The
22 applicant shall also tag, with highly visible material or flagging, any tree that is, at the time of
23 the application for a selective vegetation removal permit, greater than four inches in diameter
24 as measured six inches from the ground and requested to be cut, thinned, pruned, or removed.
25 The selective vegetation removal request may be investigated on-site by Department personnel
26 and a representative of the applicant. In the event that the Department disputes the accuracy of
27 the existing tree information on the site plan noted above, the Department shall notify the
28 applicant in writing and may request the following:

29 (1) A tree survey.

30 (2) That the applicant amends the site plan.

31 (3) That the applicant deletes the trees in dispute from the desired cutting.

32 If a notice of disputed tree information is received from the Department, the applicant can
33 either employ the services of a North Carolina licensed landscape architect or certified arborist
34 to perform a tree survey, amend the site plan, or notify the Department in writing that any or all
35 of the disputed trees are deleted from the application. If the applicant selects a tree survey, the
36 landscape architect or certified arborist will submit a report under seal that contains a tree
37 inventory of existing trees in the removal zone for the outdoor advertising structure and include
38 the age of any tree that existed at the time that the sign was erected. The report will categorize
39 tree species and include a site map of sufficient detail and dimensions. A tree survey will not be
40 required for subsequent applications to cut, thin, prune, or remove trees at the same site for
41 trees that have been previously permitted. Any dispute relating to whether or not the tree
42 existed at the time the outdoor advertising sign was erected shall be conclusively resolved by
43 information in the report from the licensed landscape architect or certified arborist.

44 (d) Except as provided in subsection (e) of this section, trees existing at the time the
45 outdoor advertising sign was erected may only be removed within the zone created in
46 subsection (a) of this section if the applicant satisfies one of the following two options selected
47 by the applicant: (i) reimbursement to the Department pursuant to G.S. 136-93.2 or (ii) trees
48 that existed at the time of the erection of the sign may be removed if the applicant agrees to
49 remove two nonconforming outdoor advertising signs for each sign at which removal of
50 existing trees is requested. The surrendered nonconforming signs must be fully disassembled

1 before any removal of existing trees is permitted and shall not be eligible for future outdoor
2 advertising permits in perpetuity.

3 (e) Complete removal of trees of any age, except for native dogwoods and native
4 redbuds, and all other vegetation shall be permitted in the cut and removal zone established in
5 subsection (a) of this section if the applicant for the selective vegetation removal permit agrees
6 to submit to the Department a plan for beautification and replanting at the site for which the
7 vegetation removal permit is made. The Department shall develop rules for compensatory
8 replanting, and shall, in consultation with the applicant and local government representatives,
9 determine which sites must be replanted, and the types of plants and trees to be replanted. The
10 replanting shall be conducted by the applicant or his agents in accordance with the rules
11 adopted by the Department. If the conditions detailed in this subsection are agreed to by the
12 applicant and approved by the Department, there shall be no reimbursement to the Department
13 under G.S. 136-93.2 for removal of trees that existed at the time the outdoor sign was erected,
14 nor shall the applicant be required to remove two nonconforming outdoor advertising signs for
15 removal of existing trees at the site. The fee for a selective vegetation permit imposed under
16 G.S. 136-18.7 of four hundred dollars (\$400.00) per permitted site shall be non-recurring for
17 those sites at which the applicant for a permit agrees to submit and implement a replanting and
18 maintenance plan approved by the Department as detailed in this subsection.

19 (f) Tree branches within a highway right-of-way that encroach into the zone created by
20 points A, C, and D may be cut or pruned. Except as provided in subsection (g) of this section,
21 no person, firm, or entity shall cut, trim, prune, or remove or otherwise cause to be cut,
22 trimmed, pruned, or removed vegetation that is in front of, or adjacent to, outdoor advertising
23 and within the limits of the highway right-of-way for the purpose of enhancing the visibility of
24 outdoor advertising unless permitted to do so by the Department in accordance with this
25 section, G.S. 136-93(b), 136-133.2, and 136-133.4.

26 (g) Notwithstanding any law to the contrary, the owner of an outdoor advertising sign
27 defined by subsection (a) of this section or the owner's designees may, working only from the
28 private property side of the fence, without charge and without obtaining a selective vegetation
29 removal permit, cut, trim, prune, or remove any tree or other vegetation except for native
30 dogwoods or native redbuds that is (i) less than four inches in diameter at the height of the
31 controlled access fence, (ii) located within 200 feet on either side of the existing sign location
32 as defined by point A and point B in G.S. 136-133.1(a)(1) and (2), and (iii) a distance of three
33 feet from a controlled access fence within the limits of the highway right-of-way. The activities
34 permitted by this subsection must be performed from the private property owner side of the
35 controlled access fence and with the consent of the owner of the land that is used to access said
36 fence.

37 (h) No additional funds from the Highway Trust Fund shall be used for the purpose of
38 vegetation replacement under the provisions of this section.

39 (i) The Department may revoke an outdoor advertising permit for the unlawful
40 destruction or illegal cutting of vegetation within the right-of-way of any State-owned or
41 State-maintained highway only if both of the following conditions are met:

42 (1) The unlawful destruction or illegal cutting occurred within 500 feet of either
43 side of the corresponding sign location measured along the edge of
44 pavement of the main-travel way of the nearest controlled route and was
45 willfully caused by one or more of the following:

46 a. The sign owner.

47 b. The permit holder.

48 c. The lessee or advertiser employing the sign.

49 d. Any employees, agents, or assigns of persons listed in
50 sub-subdivisions a. through c. of this subdivision, including, but not
51 limited to, independent contractors hired by any of the above

1 persons, or the owner of the property upon which the sign is located,
2 if expressly authorized by the above persons to use or maintain the
3 sign.

- 4 (2) There is substantial, material evidence that the unlawful destruction or
5 illegal cutting of vegetation would create, increase, or improve a view to the
6 outdoor advertising sign for passing motorists from the main-traveled way of
7 the nearest controlled route."

8 **SECTION 6.** Article 11 of Chapter 136 of the General Statutes is amended by
9 adding a new section to read:

10 **"§ 136-133.2. Issuance or denial of a selective vegetation removal permit.**

11 (a) Except as provided in G.S. 136-133.1(g), permits to remove vegetation may be
12 granted for outdoor advertising locations that have been permitted for at least two years prior to
13 the date of application. The Department shall approve or deny an application submitted
14 pursuant to this section, including the fee required by G.S. 136-18.7 and all required
15 documentation, within 30 days of the receipt of an application for a selective vegetation
16 removal permit. If written notice of approval or denial is not given to the applicant within the
17 30-day period, then the application shall be deemed approved. If the application is denied, the
18 Department shall advise the applicant, in writing, by registered or certified mail, return receipt
19 requested, addressed to the party to be noticed, and delivering to the addressee, the reasons for
20 the denial.

21 (b) The application shall be denied by the Department if any of the following apply:

- 22 (1) The application is for the opening of a view to an outdoor advertising sign
23 which has been declared illegal, is currently the subject of litigation, or the
24 outdoor advertising sign owner has received written notification of an
25 investigation by the Department for impermissible activity.
- 26 (2) The application is for the opening of a view to an outdoor advertising sign
27 that was obscured from view at the time of erection of the sign.
- 28 (3) Removal of vegetation will adversely affect the safety of the traveling
29 public.
- 30 (4) Trees, shrubs, or other vegetation of any sort that are requested to be cut,
31 thinned, pruned, or removed were planted in accordance with a local, State,
32 or federal beautification or environmental project but only to the extent that
33 such planting was done prior to the erection of the outdoor advertising sign
34 the visibility of which is sought to be enhanced. Any beautification or
35 environmental projects that were planted after the erection of the outdoor
36 advertising sign, but before May 1, 2011, and that were planted beyond 250
37 feet as measured down the edge of the pavement of the travel way from
38 point C, as defined in G.S. 136-133.1(a)(3), shall not be eligible for removal.
- 39 (5) Trees, shrubs, or other vegetation of any sort that are requested to be cut,
40 thinned, pruned, or removed were planted in conjunction with a designed
41 noise barrier but only to the extent that such planting was done prior to the
42 erection of the outdoor advertising sign the visibility of which is sought to be
43 enhanced. Any plantings done in conjunction with a designed noise barrier
44 that were planted after the erection of the outdoor advertising sign but before
45 May 1, 2011, that were planted beyond 250 feet as measured down the edge
46 of the pavement of the travel way from point C, as defined in
47 G.S. 136-133.1(a)(3), shall not be eligible for removal.
- 48 (6) The applicant, or the applicant's designee, has not performed satisfactory
49 work authorized by previous permits issued under the provisions of this
50 section. The Department may not deny an application for a permit if the

1 work authorized by previous permits issued pursuant to this section was
2 performed by a landscape architect or certified arborist.

3 (7) The selective vegetation removal, cutting, or pruning involves opening of a
4 view to a junkyard.

5 (8) Unlawful destruction or illegal cutting of vegetation as defined in
6 G.S. 136-133.1(i) has occurred within five years preceding the date of filing
7 an application with the Department for a selective vegetation removal
8 permit."

9 SECTION 7. Article 11 of Chapter 136 of the General Statutes is amended by
10 adding a new section to read:

11 "**§ 136-133.3. Appeals of selective vegetation removal permit decisions.**

12 (a) An applicant for a selective vegetation removal permit issued pursuant to
13 G.S. 136-133.2 may appeal a decision of the Department pertaining to the denial or
14 conditioning of a permit for selective vegetation removal pursuant to the provisions of this
15 section.

16 (b) Within 30 days of service of the Department's decision to deny or condition a
17 selective vegetation removal permit issued pursuant to G.S. 136-133.4, the applicant shall
18 submit a written appeal to the Secretary of Transportation setting forth with particularity the
19 facts and arguments upon which the appeal is based. The appeal shall be sent to the Secretary
20 by registered or certified mail, return receipt requested, addressed to the Secretary, and
21 delivering to the addressee, with a copy to the Department official who issued the decision.

22 (c) Upon receipt of the written appeal, the Secretary of Transportation shall review the
23 written appeal and the Department's decision, as well as any available documents, exhibits, or
24 other evidence bearing on the appeal, and shall render the agency's final decision, supported by
25 findings of fact and conclusions of law. The final agency decision shall be served upon the
26 appealing party by registered or certified mail, return receipt requested, addressed to the
27 applicant, and delivering to the addressee, within 90 days after the Secretary receives the
28 written appeal. A copy of the agency's final decision shall also be delivered to the Department
29 official who issued the initial decision.

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

32 SECTION 8. Article 11 of Chapter 136 of the General Statutes is amended by
33 adding a new section to read:

34 "**§ 136-133.4. Selective vegetation removal permits.**

35 (a) Selected vegetation within the approved limits shall be cut, thinned, pruned, or
36 removed by the permittee or the permittee's agent in accordance with accepted International
37 Society of Arboriculture (ISA) standards.

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

41 (c) The permittee, or the permittee's agent, shall not impede the flow of traffic on any
42 highway -while performing vegetation removal authorized by a permit. Access to the work site
43 on controlled access highways must be gained without using the main travel way of the
44 highway. The Department shall determine the traffic control signage that may be required. The
45 permittee shall furnish, erect, and maintain the required signs as directed by the Department.
46 The permittee, or the permittee's agent, shall wear safety vests that conform to OSHA standards
47 while performing the work.

48 (d) Any damage to vegetation designated to remain at the site, to highway fences, signs,
49 paved areas, or other facilities shall be repaired or replaced by the permittee to the condition
50 prior to the occurrence of the damage caused by the permittee or the permittee's agent. All
51 trimmings, laps, and debris shall be removed from the right-of-way and disposed of in areas

1 provided by the permittee. No burning or burying of trimmings, laps, or debris shall be
2 permitted on the highway right-of-way. When chipping is used to dispose of trimmings, chips
3 may be neatly spread on a right-of-way at locations which the Department determines will not
4 be harmful to the environment or affect traffic safety.

5 (e) Willful failure to substantially comply with all the requirements specified in the
6 selective vegetation removal permit, unless otherwise mutually resolved by the Department and
7 the permittee, shall result in a five-year moratorium for vegetation removal at the site, a
8 summary revocation of the outdoor advertising permit if such willful failure meets the
9 standards in G.S. 136-133.1(i), payment of Department investigative costs, and forfeiture of
10 any applicable performance bond as determined by the Secretary. The moratorium shall begin
11 upon execution of a settlement agreement or entry of a final disposition in the case."

12 **SECTION 9.** Article 11 of Chapter 136 of the General Statutes is amended by
13 adding a new section to read:

14 **"§ 136-133.5. Denial of a permit for proposed outdoor advertising.**

15 (a) When a district engineer determines that a proposed outdoor advertising structure
16 would not conform to the standards of outdoor advertising as set out in the Outdoor Advertising
17 Control Act, the district engineer shall refuse to issue a permit for that proposed outdoor
18 advertising structure.

19 (b) When a violation of the Outdoor Advertising Control Act has been discovered, the
20 district engineer shall notify the permit applicant by registered or certified mail, return receipt
21 requested, addressed to the party to be noticed, and delivering to the addressee, in writing, the
22 reason for the denial and the statutes or rules forming the basis for the denial and include a
23 copy of the Act.

24 (c) The Department shall not issue permits for new outdoor advertising signs at a sign
25 location for a period of five years where the unlawful destruction or illegal cutting of
26 vegetation has occurred within 500 feet on either side of the proposed sign location and as
27 measured along the edge of the pavement of the main travel way of the nearest controlled route.
28 For the purposes of this section, unlawful destruction or illegal cutting is defined as the
29 destruction or cutting of trees, shrubs, or other vegetation on the State-owned or State-
30 maintained rights-of-way by anyone other than the Department or its authorized agents, or
31 without written permission of the Department. Before a permit is denied pursuant to this
32 subsection, the Department shall reveal substantial, material evidence that the unlawful
33 destruction or illegal cutting would create, increase, or improve a view to a proposed outdoor
34 advertising sign from the main traveled way of the nearest controlled route and that the
35 unlawful destruction or illegal cutting was related to the erection or maintenance of the sign.
36 The five-year period shall begin on the date the Department executes a settlement agreement or
37 final disposition of the case is entered. The five-year prohibition period for a new sign permit
38 shall apply to all sign locations, including the following:

- 39 (1) Sign locations where the unlawful destruction or illegal cutting of vegetation
40 occurs prior to the time the location becomes a conforming location.
- 41 (2) Sign locations where a revocation of an existing permit has been upheld and
42 a sign has been removed.
- 43 (3) Sign locations where the unlawful destruction or illegal cutting occurs prior
44 to receipt of an outdoor advertising permit.
- 45 (4) Sign locations where the unlawful destruction or illegal cutting occurs
46 following receipt of an outdoor advertising permit application, but prior to
47 the issuance of the permit by the Department.

48 (d) The Department shall not issue permits for new outdoor advertising signs at a sign
49 location where existing trees, if they were to reach the average mature size for that species,
50 would make the proposed sign faces, when erected, not completely visible from the viewing
51 zone. "Existing trees" are those trees that at the time of the permit application are four inches or

1 greater in diameter as measured six inches from the ground. "Viewing zone" means the area
2 which is 500 feet as measured along the edge of the main-traveled way of the controlled route
3 on each side of the proposed sign structure which will have a sign face.

4 (e) An outdoor advertising permit requested pursuant to G.S. 136-129(a)(4) shall not be
5 issued to a location if the zoning to commercial or industrial zones was adopted within one year
6 prior to the filing of the permit application and is not part of comprehensive zoning or
7 constitutes spot zoning, which, for purposes of this subsection, shall be defined as zoning
8 designed primarily for the purpose of permitting outdoor advertising signs and in an area which
9 would not normally permit outdoor advertising. Zoning shall not be considered "primarily for
10 the purpose of permitting outdoor advertising signs" if the zoning would permit more than one
11 principal commercial or industrial use, other than outdoor advertising, and the size of the land
12 being zoned can practically support any one of the commercial or industrial uses.

13 (f) Outdoor advertising permits shall not be issued to a location for a period of 12
14 months prior to the proposed letting of a new construction contract that may affect the spacing
15 or location requirements for an outdoor advertising structure until the project is completed. The
16 prohibition authorized by this subsection shall not extend for a period longer than 18 months.
17 Priority in spacing shall be given by the Department to the first submitted application for an
18 outdoor advertising permit at the location.

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

21 **SECTION 10.** G.S. 136-127 reads as rewritten:

22 "**§ 136-127. Declaration of policy.**

23 The General Assembly hereby finds and declares that outdoor advertising is a legitimate
24 commercial use of private property adjacent to roads and highways but that the erection and
25 maintenance of outdoor advertising signs and devices in areas in the vicinity of the
26 right-of-way of the interstate and primary highway systems within the State should be
27 controlled and regulated in order to promote the safety, health, welfare and convenience and
28 enjoyment of travel on and protection of the public investment in highways within the State, to
29 prevent unreasonable distraction of operators of motor vehicles and to prevent interference with
30 the effectiveness of traffic regulations and to promote safety on the highways, to attract tourists
31 and promote the prosperity, economic well-being and general welfare of the State, and to
32 preserve and enhance the natural scenic beauty of the highways and areas in the vicinity of the
33 State highways and to promote the reasonable, orderly and effective display of such signs,
34 displays and ~~devices~~ devices, and to secure the right of validly permitted outdoor advertising to
35 be clearly viewed by the traveling public. It is the intention of the General Assembly to provide
36 and declare herein a public policy and statutory basis for the regulation and control of outdoor
37 advertising."

38 **SECTION 11.** The department of shall adopt temporary rules to administer this
39 act.

40 **SECTION 12.** Sections 11 and 12 are effective when it becomes law. The
41 remainder of this act becomes October 1, 2011, and applies to permit applications or renewals
42 submitted on or after that date and to offenses occurring on or after that date.