



SENATE BILL 183: Selective Vegetation Removal/State Highways

2011-2012 General Assembly

Committee:	Senate Finance	Date:	May 11, 2011
Introduced by:	Sen. Brown	Prepared by:	Heather Fennell
Analysis of:	PCS to Second Edition S183-CSTD-32		Committee Counsel

SUMMARY: *The PCS to Senate Bill 183 would amend the State's Outdoor Advertising Control Act by establishing statutory standards for selective vegetation removal within the rights-of-way of the State highway system, increasing the fee for a selective vegetation removal permit, establishing standards for the issuance or denial of a selected vegetation removal permit, and establishing a process for appeals of selective vegetation removal permit decisions. The bill would become effective October 1, 2011 and apply to permit applications or renewals submitted on or after that date and to offenses occurring on or after that date. The PCS provides vegetation in the newly expanded removal zone that meets the following criteria is not eligible for removal:*

- *The vegetation was planted for a federal beautification or environmental project, or in conjunction with a noise barrier.*
- *The vegetation was planted after the erection of the sign but before May 1, 2011.*

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." G.S. 136-18 grants the Department of Transportation (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". Pursuant to its rulemaking authority, the Department has established a Selective Vegetation Removal Policy that is set out in the North Carolina Administrative Code. The policy provides for selective thinning, pruning, replacement, relocation, or removal of vegetation within highway rights of way for the purpose of opening views to office, institutional, commercial and industrial facilities and legally erected forms of outdoor advertising which are located directly adjacent to State highway rights of way. When removal of vegetation is allowed, it must be performed by the permittee in compliance with the policy and at no cost to the Department of Transportation. Under G.S. 136-18.7, the fee for a selective vegetation removal permit is \$200.

BILL ANALYSIS: The PCS to Senate Bill 183 would establish statutory standards for selective vegetation removal within the rights-of-way of the State highway system. Many of the provisions in the bill are substantially similar to existing provisions of the North Carolina Administrative Code.

Section 1 of the bill would increase the fee for a selective vegetation removal permit from \$200 to \$400 for each permitted site. The fee would be nonrefundable.

Section 2 of the bill prohibits the removal of vegetation in or on any right of way of a State road or State highway without a written selective vegetation removal permit issued pursuant to provisions in the bill and in accordance with DOT rules. Requests for a permit would be made to the appropriate person in the Division of Highways office, on a form prescribed by DOT. Permits may be requested by the owner of an outdoor advertising sign or the owner of a business facility. If the permit application is for a site

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located within a municipality, the municipality would have 30 days to review and comment on the application provided it has advised DOT in writing of its desire to review such applications and has identified the name of the local official who should receive notice. Local governments would be prohibited from regulating the removal of vegetation as authorized by DOT.

Section 3 of the bill establishes a standard for determining the monetary value of trees removed from State rights-of-way. Values would be determined and published by DOT annually by December 15, for use in the following calendar year.

Section 4 of the bill would amend the law concerning permits for the erection or maintenance of outdoor advertising. The bill increases the initial fee from \$120 to \$150, and the annual renewal fee is increased from \$60 to \$90. The bill provides that \$30 of each initial and annual fee is to be used by DOT for highway beautification projects. 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.

Section 5 of the bill establishes standards for the cutting or removal of vegetation pursuant to a selective vegetation removal permit issued to the owner of an outdoor advertising sign. The bill prescribes a maximum cut or removal zone for each sign face; the maximum zone varies 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. The permit applicant must submit a site plan to DOT, and DOT may conduct an on-site investigation. The bill sets out a procedure for resolving disputes concerning the accuracy of information on the site plan. 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. Under specified conditions, a selective vegetation removal permit is not required for activities conducted from the private property side of a controlled access fence and with the consent of the landowner. In certain instances, DOT would have the authority to revoke an outdoor advertising permit for the unlawful destruction or illegal cutting of vegetation within highway right-of-way.

Section 6 of the bill establishes standards for the issuance or denial of a selected vegetation removal permit. DOT would be required to approve or deny a permit within 30 day of receipt of the application; 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 bill requires that an application be denied when certain conditions apply.

Section 7 establishes a process for appeals of selective vegetation removal permit decisions. 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 bill provides that the aggrieved party may seek judicial review of the final agency decision.

Section 8 requires that vegetation cutting or removal be done in accordance with accepted International Society of Arboriculture (ISA) standards. Selective vegetation removal permits would be valid for a period of 1 year and cutting or removal may occur more than one time during that year. The permittee must give a 48-hour notice to DOT before entering the right-of-way. 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. Willful failure to comply with requirements specified in the permit could result in a 5-year moratorium for vegetation removal at the site or a summary revocation of the outdoor advertising permit.

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Section 9 establishes a procedure and standards for denial of a permit for proposed outdoor advertising. A district engineer would be required to refuse to issue a permit for a proposed outdoor advertising structure that would not conform to the standards of outdoor advertising as set out in the Outdoor Advertising Control Act. The applicant would 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 DOT would be required to reveal some evidence that the unlawful acts would create, increase, or improve a view to an outdoor advertising sign.

The bill would prohibit 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 could not be issued if the zoning 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 would also not be issued for certain locations where new construction contracts 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. DOT would also deny permits for locations on a State or US scenic byway.

EFFECTIVE DATE: The bill would become effective October 1, 2011 and apply to permit applications or renewals submitted on or after that date and to offenses occurring on or after that date.

Brenda J Carter, counsel to Senate Transportation, substantially contributed to this summary.

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