

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

2

SENATE BILL 254*
Commerce Committee Substitute Adopted 4/7/99

Short Title: Outdoor Advertising Control Act/AB.

(Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

1 AN ACT TO INCREASE VARIOUS OUTDOOR ADVERTISING PERMIT FEES,
2 CHANGE THE ADMINISTRATIVE REVIEW AND JUDICIAL REVIEW OF
3 OUTDOOR ADVERTISING DECISIONS, EXPAND CURRENT NOTIFICATION
4 REQUIREMENTS, AND MODIFY AND UPDATE THE OUTDOOR
5 ADVERTISING CONTROL ACT WITH RESPECT TO VENUE
6 REQUIREMENTS, DEFINITIONS, AND PARTIES RESPONSIBLE FOR
7 PAYMENT OF REMOVAL OF ILLEGAL OUTDOOR ADVERTISING.
8

9 The General Assembly of North Carolina enacts:

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

11 "**§ 136-133. Permits required.**

12 No person shall erect or maintain any outdoor advertising within 660 feet of the
13 nearest edge of the right-of-way of the interstate or primary highway system, except those
14 allowed under G.S. 136-129, subdivisions (2) and (3) in this Article, or beyond 660
15 feet of the nearest edge of the right-of-way of the interstate or primary highway system,
16 except those allowed under G.S. 136-129.1, subdivisions (2) and (3), without first
17 obtaining a permit from the Department of Transportation or its agents pursuant to the
18 procedures set out by rules and regulations promulgated by the Department of
19 Transportation. The permit shall be valid until revoked for nonconformance with this

1 Article or rules and regulations promulgated by the Department of Transportation
2 thereunder. Any person aggrieved by the decision of the Department of Transportation or
3 its agents in refusing to grant or in revoking a permit may appeal the decision in
4 accordance with the rules and regulations enacted by the Department of Transportation
5 pursuant to this Article to the Secretary of Transportation who shall make the final
6 decision on the agency appeal. The Department of Transportation shall have the authority
7 to charge permit fees to defray the costs of administering the permit procedures under this
8 Article. The fees for directional signs as set forth in G.S. 136-129(1) and G.S. 136-
9 129.1(1) shall not exceed a ~~twenty dollar (\$20.00)~~ forty dollar (\$40.00) initial fee and a
10 ~~fifteen dollar (\$15.00)~~ thirty dollar (\$30.00) annual renewal fee. The fees for outdoor
11 advertising structures, as set forth in G.S. 136-129(4) and (5) shall not exceed a ~~sixty~~
12 ~~dollar (\$60.00)~~ one hundred twenty dollar (\$120.00) initial fee and a ~~thirty dollar (\$30.00)~~
13 sixty dollar (\$60.00) annual renewal fee."

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

15 "**§ 136-134. Illegal advertising.**

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

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

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

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

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

33 **"§ 136-133.1. Administrative review of outdoor advertising decisions.**

34 (a) An applicant for an outdoor advertising permit, an outdoor advertising permit
35 holder, or an outdoor advertising owner, who is dissatisfied with the initial decision of the
36 Department of Transportation, may file a petition for a contested case hearing under
37 Article 3 of Chapter 150B of the General Statutes within 30 days after the decision is
38 made by the Department of Transportation.

39 (b) If outdoor advertising is under construction and the Department determines
40 that a permit has not been issued for the outdoor advertising, the Department of
41 Transportation may require that all work on the outdoor advertising cease until the owner
42 of the outdoor advertising shows that the outdoor advertising does not violate G.S. 136-
43 133. The stop work order shall be prominently posted on the outdoor advertising

1 structure, and no further notice of the stop work order is required. The failure of an
2 owner of outdoor advertising to comply immediately with the stop work order shall
3 subject the outdoor advertising to removal by the Department of Transportation or its
4 agents. Outdoor advertising is under construction when it is in any phase of construction
5 prior to the attachment and display of the advertising message in final position for
6 viewing by the traveling public. The cost of removing outdoor advertising by the
7 Department of Transportation or its agents pursuant to this section shall be assessed
8 against the owner of the unpermitted outdoor advertising by the Department of
9 Transportation. No stop work order may be issued when the Department of
10 Transportation process agent has been served with a court order allowing the sign to be
11 constructed. The party subject to a stop work order may file a petition for a contested
12 case hearing under Article 3 of Chapter 150B of the General Statutes within 30 days after
13 the stop work order is issued.

14 (c) As used in this section, the term 'initial decision' shall be defined by the
15 Department in the rules issued pursuant to this Article."

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

18 **"§ 136-134.2. Notification requirements.**

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

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

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

29 **"§ 136-134.1. Judicial review.**

30 ~~Any person who is aggrieved by a final decision of the Secretary of Transportation~~
31 ~~after exhausting all administrative remedies made available to him by rules and~~
32 ~~regulations enacted pursuant to this Article is entitled to judicial review of such decision~~
33 ~~under this Article. In order to obtain judicial review of the Secretary of Transportation's~~
34 ~~decision under this Article, the person seeking review must file a petition in the Superior~~
35 ~~Court of Wake County within 30 days after written copy of the decision of the Secretary~~
36 ~~of Transportation is served upon the person seeking review. Failure to file such a petition~~
37 ~~within the time stated shall operate as a waiver of the right of such person to review~~
38 ~~under this Chapter.~~

39 ~~The petition shall state explicitly what exceptions are taken to the decision of the~~
40 ~~Secretary of Transportation and what relief petitioner seeks. Within 10 days after the~~
41 ~~petition is filed with the court, the person seeking the review shall serve copies of the~~
42 ~~petition by registered mail, return receipt requested, upon the Department of~~
43 ~~Transportation. Within 30 days after receipt of the copy of the petition for review, or~~

1 within such additional time as the court may allow, the Department of Transportation
2 shall transmit to the reviewing court a certified copy of the written decision.

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

11 (1) In violation of constitutional provisions; or

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

14 (3) Affected by other error of law.

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

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

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

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

25 "**§ 136-135. Enforcement provisions.**

26 Any person, firm, corporation or association, placing, erecting or maintaining outdoor
27 advertising along the interstate system or primary system in violation of this Article or
28 rules and regulations promulgated-adopted by the Department of Transportation shall be
29 guilty of a Class 1 misdemeanor. In addition thereto, the Department of Transportation
30 may seek injunctive relief in the Superior Court of Wake County or of the county where
31 the outdoor advertising is located and require the outdoor advertising to conform to the
32 provisions of this Article or rules and regulations promulgated-adopted pursuant hereto, or
33 require the removal of the said illegal outdoor advertising."

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

36 "**§ 136-18.7. Fees.**

37 The fee for a selective vegetation removal permit issued pursuant to G.S. 136-18(5),
38 (7), and (9) is two hundred dollars (\$200.00)."

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

40 "**§ 136-127. Declaration of policy.**

41 The General Assembly hereby finds and declares that outdoor advertising is a
42 legitimate commercial use of private property adjacent to roads and highways but that the
43 erection and maintenance of outdoor advertising signs and devices in areas in the vicinity

1 of the right-of-way of the interstate and primary ~~highways~~ highway systems within the
2 State should be controlled and regulated in order to promote the safety, health, welfare
3 and convenience and enjoyment of travel on and protection of the public investment in
4 highways within the State, to prevent unreasonable distraction of operators of motor
5 vehicles and to prevent interference with the effectiveness of traffic regulations and to
6 promote safety on the highways, to attract tourists and promote the prosperity, economic
7 well-being and general welfare of the State, and to preserve and enhance the natural
8 scenic beauty of the highways and areas in the vicinity of the State highways and to
9 promote the reasonable, orderly and effective display of such signs, displays and devices.
10 It is the intention of the General Assembly to provide and declare herein a public policy
11 and statutory basis for the regulation and control of outdoor advertising."

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

13 **"§ 136-128. Definitions.**

14 As used in this Article:

- 15 (1) "Erect" means to construct, build, raise, assemble, place, affix, attach,
16 create, paint, draw, or in any other way bring into being or establish.
- 17 (1a) "Illegal sign" means one which was erected and/or maintained in
18 violation of State law.
- 19 (1b) "Information center" means an area or site established and maintained at
20 safety rest areas for the purpose of informing the public of places of
21 interest within the State and providing such other information as the
22 Department of Transportation may consider desirable.
- 23 (2) "Interstate system" means that portion of the National System of
24 Interstate and Defense Highways located within the State, as officially
25 designated, or as may hereafter be so designated, by the Department of
26 Transportation, or other appropriate authorities and are also so
27 designated by interstate numbers. As to highways under construction so
28 designated as interstate highways pursuant to the above procedures, the
29 highway shall be a part of the interstate system for the purposes of this
30 Article on the date the location of the highway has been approved
31 finally by the appropriate federal authorities.
- 32 (2a) "Nonconforming sign" shall mean a sign which was lawfully erected but
33 which does not comply with the provisions of State law or State rules
34 and regulations passed at a later date or which later fails to comply with
35 State law or State rules or regulations due to changed conditions.
36 Illegally erected or maintained signs are not nonconforming signs.
- 37 (3) "Outdoor advertising" means any outdoor sign, display, light, device,
38 figure, painting, drawing, message, plaque, poster, billboard, or any
39 other thing which is designed, intended or used to advertise or inform,
40 any part of the advertising or information contents of which is visible
41 from any place on the main-traveled way of the interstate or primary
42 system, whether the same be permanent or portable installation.

- 1 (4) "~~Primary systems~~"~~means that portion of connected main highways, as~~
2 ~~now officially designated, or as may hereafter be so designated by the~~
3 ~~Department of Transportation as primary system, or other appropriate~~
4 ~~authorities and are also so designated by N.C. or U.S. numbers.~~ means
5 the federal-aid primary system in existence on June 1, 1991, and any
6 highway which is not on that system but which is on the National
7 Highway System. As to highways under construction so designated as
8 primary highways pursuant to the above procedures, the highway shall
9 be a part of the primary system for purposes of this Article on the date
10 the location of the highway has been approved finally by the appropriate
11 federal or State authorities.
- 12 (5) "Safety rest area"means an area or site established and maintained
13 within or adjacent to the highway right-of-way by or under public
14 supervision or control, for the convenience of the traveling public.
- 15 (6) "State law"means a State constitutional provision or statute, or an
16 ordinance, rule or regulation enacted or adopted by a State agency or
17 political subdivision of a State pursuant to a State Constitution or
18 statute.
- 19 (7) "Unzoned area"shall mean an area where there is no zoning in effect.
- 20 (8) "Urban area"shall mean an area within the boundaries or limits of any
21 incorporated municipality having a population of five thousand or more
22 as determined by the latest available federal census.
- 23 (9) "Visible"means capable of being seen (whether or not legible) without
24 visual aid by a person of normal visual acuity."

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

26 **"§ 136-129. Limitations of outdoor advertising devices.**

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

- 31 (1) Directional and other official signs and notices, which signs and notices
32 shall include those authorized and permitted by Chapter 136 of the
33 General Statutes, which include but are not limited to official signs and
34 notices pertaining to natural wonders, scenic and historic attractions and
35 signs erected and maintained by a public utility, electric or telephone
36 membership corporation, or municipality for the purpose of giving
37 warning of or information as to the location of an underground cable,
38 pipeline or other installation.
- 39 (2) Outdoor advertising which advertises the sale or lease of property upon
40 which it is located.
- 41 (2a) Outdoor advertising which advertises the sale of any fruit or vegetable
42 crop by the grower at a roadside stand or by having the purchaser pick
43 the crop on the property on which the crop is grown provided: (i) the

1 sign is no more than two feet long on any side; (ii) the sign is located on
2 property owned or leased by the grower where the crop is grown; (iii)
3 the grower is also the seller; and (iv) the sign is kept in place by the
4 grower for no more than 30 days.

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

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

10 (5) Outdoor advertising, in conformity with the rules and regulations
11 promulgated by the Department of Transportation, located in unzoned
12 commercial or industrial areas."

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

14 **"§ 136-129.1. Limitations of outdoor advertising devices beyond 660 feet.**

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

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

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

29 (3) Outdoor advertising which advertises activities conducted on the
30 property upon which it is located."

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

32 **"§ 136-136. Zoning changes.**

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

38 Section 14. Sections 1 and 8 become effective July 1, 1999. The remaining
39 sections become effective when this act becomes law.