

Senate Bill 164

By: Senators Balfour of the 9th, Tarver of the 22nd, Mullis of the 53rd, Stoner of the 6th, Williams of the 19th and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Part 2 of Article 3 of Chapter 6 of Title 32 of the Official Code of Georgia
 2 Annotated, relating to the control of signs and signals on the state highway system, so as to
 3 provide for certain height limitations on such signs; to allow owners of legally erected and
 4 maintained signs to obtain permits to remove vegetation from the viewing zones of their
 5 signs if certain specified conditions are met; to provide for procedures, fees, and penalties
 6 related to the foregoing; to provide for stages of implementation by department districts; to
 7 provide for severability; to provide for related matters; to provide for an effective date; to
 8 repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Part 2 of Article 3 of Chapter 6 of Title 32 of the Official Code of Georgia Annotated,
 12 relating to the control of signs and signals on the state highway system, is amended in Code
 13 Section 32-6-75, relating to restrictions on outdoor advertising signs authorized by Code
 14 Sections 32-6-72 and 32-6-73, by striking "or" at the end of paragraph (20) of subsection (a),
 15 by striking the period at the end of paragraph (21) of subsection (a) and inserting"; or", and
 16 by adding at the end of subsection (a) a new paragraph to read as follows:

17 "(22) After July 1, 2009, exceeds 75 feet in height as measured from the base of the sign
 18 or the crown of the adjacent roadway to which the sign is permitted, whichever is higher.
 19 Preexisting signs in excess of 75 feet in height shall not be deemed nonconforming by
 20 reason of their height."

21 **SECTION 2.**

22 Said part is further amended in Code Section 32-6-75.3, relating to applications for tree
 23 trimming permits and annual renewals and criteria for trimming trees or vegetation, by
 24 revising subsection (b) and paragraph (1) and subparagraph (A) of paragraph (2) of
 25 subsection (e), as follows:

26 ~~"(b)(1)~~ So as to promote these objectives and in accordance with the provisions of this
 27 Code section, the commissioner shall provide by rule or regulation for the issuance and

28 annual renewal of permits for the trimming and removal of trees and other vegetation on
 29 the state rights of way within viewing zones with respect to outdoor advertising signs
 30 legally erected and legally maintained adjacent to said rights of way. Such rules and
 31 regulations shall include, without limitation, standards for survival of vegetation trimmed
 32 or planted.

33 ~~(2) So as to ensure that no vegetation maintenance permits are issued for the purpose of~~
 34 ~~creating new outdoor advertising signs, no owner of outdoor advertising signs erected~~
 35 ~~after January 1, 1999, or such owner's agent, will be eligible to make application for~~
 36 ~~vegetation maintenance for a period of five years from the date a new sign is permitted."~~

37 "(e)(1) The department shall evaluate each application for a permit under this Code
 38 section and require as a condition of granting any permit under this Code section that the
 39 value of the landscaping to be either provided or paid for by the applicant is not less than
 40 the department's appraised value of the benefit to be conferred by the state upon the
 41 applicant by allowing the trimming or removing of trees or other vegetation as requested,
 42 which shall be the value of the trees or vegetation to be trimmed or removed, provided,
 43 however, that a permit may be granted to an otherwise qualified applicant in a case where
 44 the value of the landscaping to be either provided or paid for by the applicant is less than
 45 the department's appraised value of the trees or other vegetation to be trimmed or
 46 removed if, in addition, the applicant pays to the department an amount equal to the
 47 amount of the difference between the value of the landscaping to be either provided or
 48 paid for by the applicant and the department's appraised value of the trees or other
 49 vegetation to be trimmed or removed outdoor advertising permit holder submit a
 50 vegetation fee of \$4,000.00, minus the costs associated with acquiring, installing, and
 51 maintaining the replacement landscaping as submitted by the outdoor advertising permit
 52 holder and approved by the department, which shall be deposited in the Roadside
 53 Enhancement and Beautification Fund for grants approved by the Roadside Enhancement
 54 and Beautification Council for roadside beautification projects. Such funds shall not be
 55 used to plant vegetation that will block or diminish motorists' view of outdoor advertising
 56 signs.

57 (2)(A)(i) No trees or vegetation shall be ~~trimmed or removed~~ under this Code section
 58 other than within a viewing zone.

59 (ii) No removal of any hardwood tree having a diameter outside bark of more than
 60 8 inches at a height of 6 inches above ground level or any historic or endangered
 61 species tree or any tree planted as part of any local, state, or federal government
 62 project shall be permitted under this Code section.

63 (iii) All hardwood trees having a diameter outside bark of 8 inches or less at a height
 64 of 6 inches above ground level may be removed from within a viewing zone.

- 65 ~~(iv) All nonhardwood trees may be removed from within a viewing zone for a~~
 66 ~~combined total of 250 feet horizontal distance parallel to the right of way.~~
- 67 ~~(v) All nonhardwood trees having a diameter outside bark of less than 12 inches at~~
 68 ~~a height of 6 inches above ground level may be removed from within a viewing zone.~~
- 69 ~~(vi) Pine trees having a diameter outside bark of 12 inches or more at a height of 6~~
 70 ~~inches above ground level shall not be removed from a viewing zone in such numbers~~
 71 ~~as to reduce stocking to less than the minimum standard for full stocking for such~~
 72 ~~trees, as determined by the Georgia Forestry Commission, over an area having a~~
 73 ~~combined total of not less than 250 feet horizontal distance parallel to the right of~~
 74 ~~way.~~
- 75 ~~(vii) The provisions of divisions (iv) and (vi) of this subparagraph notwithstanding,~~
 76 ~~in the case of any outdoor advertising sign erected on or before April 20, 1998, and~~
 77 ~~which is less than 35 feet in height as measured from the top of the sign to the ground~~
 78 ~~directly beneath or to the road level, whichever distance results in the best view or the~~
 79 ~~greatest elevation, or which is subsequently lowered to such a height, the horizontal~~
 80 ~~distance of the area within the viewing zone from which all trees, other than~~
 81 ~~hardwoods having a diameter outside the bark of more than 8 inches at a height of 6~~
 82 ~~inches above ground level, may be removed shall be increased to 350 feet."~~

83

SECTION 3.

84 Said part is further amended by adding a new Code section to read as follows:

85 "32-6-75.4.

86 (a) As used in this Code section, the term:

87 (1) 'Abandoned sign' means any sign adjacent to a state-controlled route that has not
 88 contained a message for 12 consecutive months and which has not had a message
 89 displayed within 30 days after receipt of notice by certified mail from the department.

90 The addition of a 'for rent' panel or a phone number does not qualify as a 'message' for
 91 purposes of this Code section, but self-promotional advertisements by the sign owner
 92 shall qualify.

93 (2) 'Beautification plan' means an agreement between the department and the outdoor
 94 advertising permit holder describing the replacement landscaping which will be installed
 95 at the work site by the permit holder, listing the type or types of trees to be planted, the
 96 size of such plantings, and the numbers of each tree type.

97 (3) 'Removal' or 'removed' means the elimination of trees or other vegetation from a
 98 viewing zone.

99 (4) 'Replacement landscaping' means department approved vegetation that is purchased
100 and then planted and maintained in the area of the right of way where vegetation which
101 has been removed pursuant to a vegetation permit previously existed.

102 (5) 'Self-promotional advertisement' means an advertisement covering substantially all
103 of at least one advertising surface of a sign and including more than simply a phone
104 number. Copy covering only a fraction of the surface of a sign, or copy including only
105 a phone number, shall not be a self-promotional advertisement.

106 (6) 'Viewing zone' means a conical area extending from the base of the sign to the
107 roadway which shall not exceed:

108 (A) Two hundred seventy-five feet in width at the point of the right of way fence or
109 boundary; and

110 (B) Five hundred feet in width along the edge of the roadway pavement.

111 To any extent such definition differs from Code Section 32-6-75.3(C), this definition
112 shall govern.

113 (7) 'Work site' means the specific section of the right of way between the beginning and
114 end point of the approved location where vegetation removal shall be performed.

115 (b) In accordance with the provisions of this Code section, the department shall issue a
116 permit for the removal of vegetation located on the right of way of any controlled highway
117 system adjacent to a sign which was legally erected under a department permit prior to July
118 1, 2009, whenever such vegetation prevents a viewing zone to the sign from the main
119 traveled way of such highway.

120 (c) Permit requirements:

121 (1) No vegetation shall be removed under this Code section other than that which lies
122 within a viewing zone.

123 (2) No more vegetation shall be removed pursuant to a vegetation permit than is
124 necessary to ensure that a sign has a viewing zone. Any remaining vegetation in the
125 viewing zone shall not be removed. The outdoor advertising permit holder shall be able
126 to remove vegetation within the original scope of the permit without the need for future
127 applications when an annual renewal fee of \$100.00 has been waived by the department
128 or consistently paid for all years after the original permit date.

129 (3) No vegetation along the right of way of a highway shall be removed by any
130 nondepartment personnel other than in accordance with a permit issued under this Code
131 section.

132 (4) In order to obtain a vegetation permit for signs which exceed 75 feet in height, as
133 measured from the base of the sign or crown of the adjacent roadway to which the sign
134 is permitted, whichever is higher, the owner of the sign must agree to reduce the sign to
135 75 feet in height or less within 60 days of removing vegetation in accordance with a

136 vegetation permit. The department shall have the authority to revoke the sign permit of
 137 any permit holder who does not lower the sign within 60 days of removing the vegetation.
 138 Signs which exceed 75 feet in height, as measured from the base of the sign or crown of
 139 the adjacent roadway to which the sign is permitted, whichever is higher, that are not
 140 reduced in height within such time frame shall be subject to the penalties outlined in this
 141 Code section. Lowering for the purposes hereof shall be permitted irrespective of
 142 otherwise applicable ordinances or regulations.

143 (5) The department shall have the right to refuse to issue any vegetation permits to any
 144 person, firm, or entity which the department determines is maintaining or is allowing to
 145 be maintained any abandoned signs, until such abandoned signs are removed or brought
 146 into compliance with this part.

147 (6) No permit holder shall have in their inventory of signs in Georgia any sign which
 148 depicts sexually suggestive imagery, obscene material, as that term is defined in Code
 149 Section 16-12-80, or material that is in direct conflict with the local jurisdiction's
 150 obscenity ordinance.

151 (7) No removal of any landmark, historic, or specimen tree species shall be permitted
 152 under this Code section. For purposes of this paragraph, the term:

153 (A) 'Landmark tree' means a tree or group of trees that:

154 (i) Were planted and maintained for educational purposes for more than 75 years;

155 (ii) Were planted as a memorial to an individual, group, event, or cause and are more
 156 than 75 years old; or

157 (iii) Symbolize a historically significant individual, place, event, or contribution, as
 158 recognized by a unit of local government.

159 (B) 'Historic tree' means a tree or group of trees that are reasonably determined by the
 160 department to be:

161 (i) Identified by a unit of local government to recognize an individual or group;

162 (ii) Located at the site of a historic event and significantly impact an individual's
 163 perception of the event;

164 (iii) Dated to the time of a historic event at the location of the tree, as identified by
 165 a unit of local government; or

166 (iv) Confirmed as the progeny of a tree that meets any of the above criteria.

167 (C) 'Specimen tree' means a hardwood tree or group of hardwood trees that is
 168 determined to be in excess of 75 years of age as determined by a registered forester or
 169 arborist.

170 (8) No removal of any tree planted prior to January 1, 2009, as part of any local, state,
 171 or federal government or specifically identified beautification project shall be permitted

172 under this Code section unless written approval is obtained from the sponsoring
173 jurisdiction.

174 (9) When vegetation is removed and the department determines that no replacement
175 landscaping shall be installed in the viewing zone, all root masses must remain intact in
176 order to ensure there is no soil disturbance. All substantial deposits of saw dust and wood
177 chip piles created from the removal of vegetation must be evenly distributed on the work
178 site.

179 (10) The department shall deny a vegetation permit application to the extent:

180 (A) The application is for the opening of view to a sign which is illegal or is currently
181 involved in litigation with the department;

182 (B) The vegetation was planted as a designated noise barrier, visual barrier, or to
183 provide erosion control, in which case the application shall be approved only to allow
184 cutting which will not remove such planted vegetation;

185 (C) The proposed removal would open views to a commercial junkyard for automotive
186 vehicles, in which case the application shall be approved only to allow cutting which
187 will not further expose the junkyard to motorists; or

188 (D) The work site is within 1,000 feet of a state-designated scenic area.

189 (11) Replacement landscaping:

190 (A) In exchange for permission to remove existing vegetation as outlined in this Code
191 section, the outdoor advertising permit holder shall acquire, install, and maintain
192 replacement landscaping and adhere to the policy set forth by the department in
193 coordination with interested parties after the enactment of the program. The vegetation
194 fee, as proscribed in paragraph (1) of subsection (e) of this Code section, shall be offset
195 by the costs associated with such replacement landscaping. The department shall not
196 provide any funds to the applicant if the applicant's replacement landscaping planting
197 and maintenance costs exceed \$4,000.00.

198 (B) The location of replacement landscaping replanting shall be in the area of the work
199 site from the pavement of the traveled way to the right of way fence or boundary.
200 Taller growing species of vegetation may be replaced with approved lower growing
201 varieties within the limits of the work site.

202 (C) Replacement landscaping shall consist of the planting of trees from the list
203 approved by the department. In coordination with interested parties, the department
204 shall establish such a list on or before the effective date of this Code section and it shall
205 be subject to revision from time to time. All replacement tree plantings must be
206 installed during the months of September, October, or November. The department shall
207 differentiate trees according to preferred geographic area of the state, if any, and
208 maximum height at maturity. For the safety of wildlife and motorists, the department

209 shall exclude from the approved list any trees that are known to attract deer. An
210 approved replacement landscaping plan shall require the planting of trees in a ratio of
211 twenty-two trees from the department's approved list for each site a vegetation permit
212 is granted on the right of way. Tree species may only be approved to the extent their
213 height at maturity will not obscure the clear viewing zone. All single-stemmed
214 replacement trees shall be a minimum of six feet tall at the time of planting, and
215 multi-stemmed vegetation shall be a minimum of three feet tall. If the department
216 determines the applicant's site is not feasible for the default tree replanting plan, the
217 department shall consider the acceptance of a wildflower planting equal to two times
218 the cleared vegetation area, provided the minimal area of the wildflower garden is no
219 smaller than an area of 5,000 square feet. The costs of the wildflower planting shall be
220 paid for and maintained by the permit holder and installed during the appropriate
221 planting seasons as determined by the department and in conjunction with any existing
222 wildflower program for that area and should be located at the work site or at a more
223 feasible area to the work site as determined by the department.

224 (D) The department prior to promulgation and in coordination with interested parties
225 shall establish a policy regarding the installation and maintenance of all replacement
226 landscaping to be installed by outdoor advertising permit holders.

227 (E) All replacement landscaping must be installed during the next full planting season.
228 Outdoor advertising permit holders shall be responsible for erosion control methods as
229 determined by the local Environmental Protection Division authority in cases where the
230 vegetation program goes into effect after the full planting season has begun.

231 (F) The installation of replacement landscaping must follow federal, state, and local
232 watering guidelines. If such guidelines make the installation of replacement
233 landscaping unfeasible, then a vegetation permit shall still be issued, provided that the
234 outdoor advertising permit holder submits the vegetation fee which shall be deposited
235 in the Roadside Enhancement and Beautification Fund for roadside beautification
236 projects.

237 (G) The department may determine that the work site is ineligible for replacement
238 landscaping based on local standards, unique terrain, or public safety concerns. In such
239 a case, a vegetation permit shall be issued, provided that the outdoor advertising permit
240 holder submits the full vegetation fee which shall be deposited in the Roadside
241 Enhancement and Beautification Fund for roadside beautification projects. Such funds
242 shall not be used to plant vegetation that will block or diminish motorists' view of
243 outdoor advertising signs.

244 (H) The outdoor advertising permit holder has a duty to maintain the replacement
245 landscaping for two years from the last date of installation. If the outdoor advertising

246 permit holder fails to maintain the replacement landscaping as provided for in this Code
247 section, the performance bond outlined in subparagraph (d)(2)(G) of this Code section
248 shall be forfeited.

249 (d) Permit application process and fees:

250 (1) A vegetation permit must be secured prior to performing any vegetation removal.
251 The permit shall be effective for one year from the date of issuance. Any permitted work
252 not completed during that year shall require the submission of a new application to
253 complete.

254 (2) Permit applications for vegetation removal will be made by the outdoor advertising
255 permit holder upon the forms prescribed and provided by the department and shall
256 contain the signature of the outdoor advertising permit holder. A separate application
257 must be submitted for each work site. The application must contain all required
258 information before a permit will be granted. The following is a list of all required
259 information that must be submitted with the application form:

260 (A) The name, address, telephone number, facsimile number, and e-mail address of the
261 outdoor advertising permit holder;

262 (B) The name, phone number, and address of the property owner, if easily obtainable;

263 (C) The sign's state permit number;

264 (D) A detailed site plan identifying at a minimum the following items:

265 (i) The requested limits of the work site for the proposed vegetation removal;

266 (ii) A detailed identification of the requested action, such as removal;

267 (iii) The proposed viewing zone;

268 (iv) The right of way line within the work site;

269 (v) The method by which work crews will access the right of way;

270 (vi) Proposed method for securing the site on a temporary basis;

271 (vii) The edge of pavement line within the work site;

272 (viii) A scale showing the actual distances indicated in the site plan; and

273 (ix) A table or key identifying vegetation or other icons indicated on the site plan;

274 (E) Photographic images of the sign and the existing vegetation at the work site;

275 (F) A certification that all work performed under the permit will be in accordance with
276 the department's policy regarding replacement landscaping installed by the outdoor
277 advertising permit holder; and

278 (G) An acknowledgment by the outdoor advertising permit holder that a performance
279 bond in an amount adequate to ensure the completion of the installation and
280 maintenance of the replacement landscaping must be obtained prior to work beginning.

281 After issuance of the vegetation permit but before any work begins, the original
282 performance bond must be submitted to the department. Work performed without a

283 bond in place shall violate this Code section and be subject to penalties as provided by
 284 this Code section. The performance bond shall be released upon final inspection and
 285 acceptance of the work by the department.

286 (3) An application fee in the amount of \$500.00 shall accompany the application, and
 287 both the application and fee shall be submitted to the department. Proceeds from initial
 288 application fees shall be retained by the department for outdoor advertising regulatory
 289 purposes. There shall be an annual renewal fee of \$100.00 if the outdoor advertising
 290 permit holder requests to remove vegetation within the original scope of the permit
 291 without the need for future applications. Renewal fees shall be deposited in the Roadside
 292 Enhancement and Beautification Fund for grants approved by the Roadside Enhancement
 293 and Beautification Council governments for roadside beautification. Such funds shall not
 294 be used to plant vegetation that will block or diminish motorists' view of outdoor
 295 advertising signs. Renewal fees shall be due for each calendar year following the
 296 issuance of the vegetation permit and will be due within 45 days of receipt of a renewal
 297 notice from the department.

298 (4) Within 60 days following receipt of the complete vegetation permit application, the
 299 department shall approve or deny the application. If the application is approved, the
 300 applicant shall be issued a permit. If the application is denied, the department shall
 301 advise the outdoor advertising permit holder, in writing, of the reasons for denial. If the
 302 department fails to approve or deny such application within 60 days of receipt, it shall be
 303 deemed approved.

304 (e) Vegetation fee:

305 (1) In accordance with subsection (e) of Code Section 32-6-75.3, the outdoor advertising
 306 permit holder shall submit a vegetation fee in an amount equal to \$4,000.00 minus the
 307 costs associated with acquiring, installing, and maintaining the replacement landscaping
 308 which shall be submitted by the outdoor advertising permit holder and approved by the
 309 department. The costs and expenses associated with acquiring, installing, and maintaining
 310 replacement landscaping shall be described in the registered forester's or arborist's signed,
 311 written report submitted in conjunction with the application. No adjustment to the
 312 vegetation fee shall be made after the permit has been approved

313 (2) All vegetation fees shall be deposited in the Roadside Enhancement and
 314 Beautification Fund for grants approved by the Roadside Enhancement and Beautification
 315 Council for roadside beautification projects. Such funds shall not be used to plant
 316 vegetation that will block or diminish motorists' view of outdoor advertising signs.

317 (f) Violations:

318 (1) Following notice, hearing, and a finding that a person has removed vegetation in a
 319 highway right of way for purposes of outdoor advertising in violation of this Code

320 section, a civil fine of not less than \$5,000.00 nor more than \$10,000.00, and restitution
 321 in an amount equal to the appraised value of the unlawfully removed vegetation, shall be
 322 imposed on such person.

323 (2) The department or its authorized agents shall be authorized to enter upon private
 324 lands and disassemble and remove signs without civil or criminal liability therefor
 325 pursuant to an order issued in accordance with this paragraph and as provided by Code
 326 Section 32-6-96 for disassembly and removal of illegal outdoor advertising signs where
 327 such order has been upheld in any subsequent administrative or judicial appeals.

328 (g) Effective date:

329 (1) This Code section shall become effective on July 1, 2009, and shall be implemented
 330 as a three-year pilot program by department districts as follows:

331 (A) Year one, effective July 1, 2009: First, Second, and Sixth department districts;

332 (B) Year two, effective July 1, 2010: Third, Fifth, and Seventh department districts;

333 and

334 (C) Year three, effective July 1, 2011: Fourth department district.

335 (2) As of July 1, 2012, this Code section shall become applicable to all outdoor
 336 advertising signs lawfully permitted by the department wherever located unless otherwise
 337 determined by the General Assembly.

338 (h) The department shall promulgate any forms or policies necessary to implement the
 339 program provide for by this Code section within 120 days of the effective date of this Code
 340 section."

341 **SECTION 4.**

342 In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared
 343 or adjudged invalid or unconstitutional, such declaration or adjudication shall affect and
 344 invalidate the whole of the smallest section or subsection in which such matter appears
 345 herein, but shall in no manner affect the other sections, subsections, sentences, clauses, or
 346 phrases of this Act, which shall remain of full force and effect as if the section, subsection,
 347 sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not
 348 originally a part hereof. The General Assembly declares that it would have passed the
 349 remaining parts of this Act if it had known that such part or parts hereof would be declared
 350 or adjudged invalid or unconstitutional, but would not have passed any section of this Act
 351 containing or constituting an invalid or unconstitutional provision.

352 **SECTION 5.**

353 This Act shall become effective on July 1, 2009.

354

SECTION 6.

355 All laws and parts of laws in conflict with this Act are repealed.