

The Senate Transportation Committee offered the following substitute to SB 164:

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:

SECTION 1.

10 Part 2 of Article 3 of Chapter 6 of Title 32 of the Official Code of Georgia Annotated,
11 relating to the control of signs and signals on the state highway system, is amended in Code
12 Section 32-6-75, relating to restrictions on outdoor advertising signs authorized by Code
13 Sections 32-6-72 and 32-6-73, by striking "or" at the end of paragraph (20) of subsection (a),
14 by striking the period at the end of paragraph (21) of subsection (a) and inserting in lieu
15 thereof a semicolon, and by adding at the end of subsection (a) two new paragraphs to read
16 as follows:
17

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

22 (23) After July 1, 2009, is erected without the sign owner providing, on or before 30 days
23 after the completion of construction, one copy of the structural drawings of the sign
24 structure stamped and signed by a registered professional engineer licensed in the State
25 of Georgia to the department for its records."

SECTION 2.

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

"(b)(1) So as to promote these objectives and in accordance with the provisions of this Code section, the commissioner shall provide by rule or regulation for the issuance and annual renewal of permits for the trimming and removal of trees and other vegetation on the state rights of way within viewing zones with respect to outdoor advertising signs legally erected and legally maintained adjacent to said rights of way. Such rules and regulations shall include, without limitation, standards for survival of vegetation trimmed or planted.

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

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

- 62 (2)(A)(i) No trees or vegetation shall be ~~trimmed or~~ removed under this Code section
 63 other than within a viewing zone.
- 64 (ii) No removal of any hardwood tree having a diameter outside bark of more than
 65 8 inches at a height of 6 inches above ground level or any historic or endangered
 66 species tree or any tree planted as part of any local, state, or federal government
 67 project shall be permitted under this Code section.
- 68 (iii) All hardwood trees having a diameter outside bark of 8 inches or less at a height
 69 of 6 inches above ground level may be removed from within a viewing zone.
- 70 (iv) All nonhardwood trees may be removed from within a viewing zone for a
 71 combined total of 250 feet horizontal distance parallel to the right of way.
- 72 (v) All nonhardwood trees having a diameter outside bark of less than 12 inches at
 73 a height of 6 inches above ground level may be removed from within a viewing zone.
- 74 (vi) Pine trees having a diameter outside bark of 12 inches or more at a height of 6
 75 inches above ground level shall not be removed from a viewing zone in such numbers
 76 as to reduce stocking to less than the minimum standard for full stocking for such
 77 trees, as determined by the Georgia Forestry Commission, over an area having a
 78 combined total of not less than 250 feet horizontal distance parallel to the right of
 79 way.
- 80 (vii) The provisions of divisions (iv) and (vi) of this subparagraph notwithstanding,
 81 in the case of any outdoor advertising sign erected on or before April 20, 1998, and
 82 which is less than 35 feet in height as measured from the top of the sign to the ground
 83 directly beneath or to the road level, whichever distance results in the best view or the
 84 greatest elevation, or which is subsequently lowered to such a height, the horizontal
 85 distance of the area within the viewing zone from which all trees, other than
 86 hardwoods having a diameter outside the bark of more than 8 inches at a height of 6
 87 inches above ground level, may be removed shall be increased to 350 feet."

88

SECTION 3.

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

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"32-6-75.4.

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

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(1) 'Abandoned sign' means any sign adjacent to a state-controlled route that has not
 93 contained a message for 12 consecutive months and which has not had a message
 94 displayed within 30 days after receipt of notice by certified mail from the department.
 95 The addition of a 'for rent' panel or a phone number does not qualify as a 'message' for
 96 purposes of this Code section, but self-promotional advertisements by the sign owner and

97 advertising copy benefitting charitable, nonprofit, religious, or other noncommercial
98 groups shall qualify.

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

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

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

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

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

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

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

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

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

121 (b) In accordance with the provisions of this Code section, the department shall issue a
122 permit for the removal of vegetation located on the right of way of any controlled highway
123 system adjacent to a sign which was legally erected under a department permit prior to July
124 1, 2009, whenever such vegetation prevents a viewing zone to the sign from the main
125 traveled way of such highway.

126 (c) Permit requirements:

127 (1) No vegetation shall be removed under this Code section other than that which lies
128 within a viewing zone. The conditions of vegetation removal pursuant to this Code
129 section shall in no way be limited pursuant to limitations found in Code Section
130 32-6-75.3.

131 (2) No more vegetation shall be removed pursuant to a vegetation permit than is
132 necessary to ensure that a sign has a viewing zone. Any remaining vegetation in the
133 viewing zone shall not be removed. The outdoor advertising permit holder shall be able

134 to remove vegetation within the original scope of the permit without the need for future
135 applications when an annual renewal fee of \$50.00 has been waived by the department
136 or consistently paid for all years after the original permit date.

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

140 (4) In order to obtain a vegetation permit for signs which exceed 75 feet in height, as
141 measured from the base of the sign or crown of the adjacent roadway to which the sign
142 is permitted, whichever is higher, the owner of the sign must agree to reduce the sign to
143 75 feet in height or less within 30 days of removing vegetation in accordance with a
144 vegetation permit. The department shall have the authority to revoke the sign permit of
145 any permit holder who does not lower the sign within 30 days of removing the vegetation.
146 Signs which exceed 75 feet in height, as measured from the base of the sign or crown of
147 the adjacent roadway to which the sign is permitted, whichever is higher, that are not
148 reduced in height within such time frame shall be subject to the penalties outlined in this
149 Code section, and the performance bond shall be forfeit. Lowering a sign pursuant to this
150 paragraph shall be permitted irrespective of otherwise applicable ordinances or
151 regulations. Upon completion of any project which reduces sign height by use of a new
152 support mechanism, such as a new pole, the sign owner shall provide the department a
153 written footer inspection from the applicable local or county or a licensed engineer.

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

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

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

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

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

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

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

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

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

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

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

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

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

181 (8) No removal of any tree planted prior to January 1, 2009, as part of any local, state,
 182 or federal government or specifically identified beautification project shall be permitted
 183 under this Code section unless written approval is obtained from the sponsoring
 184 jurisdiction.

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

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

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

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

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

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

200 (11) Replacement landscaping:

201 (A) In exchange for permission to remove existing vegetation as outlined in this Code
 202 section, the outdoor advertising permit holder shall acquire, install, and maintain
 203 replacement landscaping and adhere to the policy set forth by the department in
 204 coordination with interested parties after the enactment of the program. The vegetation
 205 fee, as proscribed in paragraph (1) of subsection (e) of this Code section, shall be offset
 206 by the costs associated with such replacement landscaping. The department shall not

207 provide any funds to the applicant if the applicant's replacement landscaping planting
208 and maintenance costs exceed \$4,000.00.

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

213 (C) Replacement landscaping shall consist of the planting of trees from the list
214 approved by the department. In coordination with interested parties, the department
215 shall establish such a list on or before the effective date of this Code section and it shall
216 be subject to revision from time to time. All replacement tree plantings must be
217 installed during the months of September, October, or November. The department shall
218 differentiate trees according to preferred geographic area of the state, if any, and
219 maximum height at maturity. For the safety of wildlife and motorists, the department
220 shall exclude from the approved list any trees that are known to attract deer. An
221 approved replacement landscaping plan shall require the planting of trees in a ratio of
222 twenty-two trees from the department's approved list for each site a vegetation permit
223 is granted on the right of way. Tree species may only be approved to the extent their
224 height at maturity will not obscure the clear viewing zone. All single-stemmed
225 replacement trees shall be a minimum of six feet tall at the time of planting, and
226 multi-stemmed vegetation shall be a minimum of three feet tall. If the department
227 determines the applicant's site is not feasible for the default tree replanting plan, the
228 department shall consider the acceptance of a wildflower planting equal to two times
229 the cleared vegetation area, provided the minimal area of the wildflower garden is no
230 smaller than an area of 5,000 square feet. The costs of the wildflower planting shall be
231 paid for and maintained by the permit holder and installed during the appropriate
232 planting seasons as determined by the department and in conjunction with any existing
233 wildflower program for that area and should be located at the work site or at a more
234 feasible area to the work site as determined by the department.

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

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

242 (F) The installation of replacement landscaping must follow federal, state, and local
243 watering guidelines. If such guidelines make the installation of replacement

244 landscaping unfeasible, then a vegetation permit shall still be issued, provided that the
 245 outdoor advertising permit holder submits the vegetation fee which shall be deposited
 246 in the Roadside Enhancement and Beautification Fund for roadside beautification
 247 projects.

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

255 (H) The outdoor advertising permit holder has a duty to maintain the replacement
 256 landscaping for two years from the last date of installation. If the outdoor advertising
 257 permit holder fails to maintain the replacement landscaping as provided for in this Code
 258 section, the performance bond outlined in subparagraph (d)(2)(G) of this Code section
 259 shall be forfeited. If the outdoor advertising permit holder renews the permit pursuant
 260 to paragraph (3) of subsection (d) of Code Section 32-6-75.4 for any period after two
 261 years, the permit holder shall be required to maintain the replacement landscaping
 262 during the renewal term.

263 (d) Permit application process and fees:

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

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

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

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

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

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

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

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

281 (iii) The proposed viewing zone;
282 (iv) The right of way line within the work site;
283 (v) The method by which work crews will access the right of way;
284 (vi) Proposed method for securing the site on a temporary basis;
285 (vii) The edge of pavement line within the work site;
286 (viii) A scale showing the actual distances indicated in the site plan; and
287 (ix) A table or key identifying vegetation or other icons indicated on the site plan;
288 (E) Photographic images of the sign and the existing vegetation at the work site;
289 (F) A certification that all work performed under the permit will be in accordance with
290 the department's policy regarding replacement landscaping installed by the outdoor
291 advertising permit holder; and
292 (G) An acknowledgment by the outdoor advertising permit holder that a performance
293 bond in an amount adequate to ensure the completion of the installation and
294 maintenance of the replacement landscaping and any required sign height reduction
295 must be obtained prior to work beginning. After issuance of the vegetation permit but
296 before any work begins, the original performance bond must be submitted to the
297 department. Work performed without a bond in place shall violate this Code section
298 and be subject to penalties as provided by this Code section. The performance bond
299 shall be released upon final inspection and acceptance of the work by the department.
300 (3) An application fee in the amount of \$500.00 shall accompany the application, and
301 both the application and fee shall be submitted to the department. Proceeds from initial
302 application fees shall be retained by the department for outdoor advertising regulatory
303 purposes. There shall be an annual renewal fee of \$50.00 if the outdoor advertising
304 permit holder requests to remove vegetation within the original scope of the permit
305 without the need for future applications. Renewal fees shall be deposited in the Roadside
306 Enhancement and Beautification Fund for grants approved by the Roadside Enhancement
307 and Beautification Council governments for roadside beautification. Such funds shall not
308 be used to plant vegetation that will block or diminish motorists' view of outdoor
309 advertising signs. Renewal fees shall be due for each calendar year following the
310 issuance of the vegetation permit and will be due within 45 days of receipt of a renewal
311 notice from the department.
312 (4) Within 60 days following receipt of the complete vegetation permit application, the
313 department shall approve or deny the application. If the application is approved, the
314 applicant shall be issued a permit. If the application is denied, the department shall
315 advise the outdoor advertising permit holder, in writing, of the reasons for denial. If the
316 department fails to approve or deny such application within 60 days of receipt, it shall be
317 deemed approved.

318 (e) Vegetation fee:

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

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

331 (f) Violations:

332 (1) Following notice, hearing, and a finding that a person has removed vegetation in a
333 highway right of way for purposes of outdoor advertising in violation of this Code
334 section, a civil fine of not less than \$5,000.00 nor more than \$10,000.00, and restitution
335 in an amount equal to the appraised value of the unlawfully removed vegetation, shall be
336 imposed on such person.

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

342 (g) Effective date:

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

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

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

347 and

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

349 (2) As of July 1, 2012, this Code section shall become applicable to all outdoor
350 advertising signs lawfully permitted by the department wherever located unless otherwise
351 determined by the General Assembly. Nothing contained in this Code section shall
352 render any sign existing on July 1, 2009, nonconforming.

353 (h) The department shall promulgate any forms or policies necessary to implement the
354 program provided for by this Code section within 120 days of the effective date of this
355 Code section."

356 **SECTION 4.**

357 In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared
358 or adjudged invalid or unconstitutional, such declaration or adjudication shall affect and
359 invalidate the whole of the smallest section or subsection in which such matter appears
360 herein, but shall in no manner affect the other sections, subsections, sentences, clauses, or
361 phrases of this Act, which shall remain of full force and effect as if the section, subsection,
362 sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not
363 originally a part hereof. The General Assembly declares that it would have passed the
364 remaining parts of this Act if it had known that such part or parts hereof would be declared
365 or adjudged invalid or unconstitutional, but would not have passed any section of this Act
366 containing or constituting an invalid or unconstitutional provision.

367 **SECTION 5.**

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

369 **SECTION 6.**

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