

House Bill 179

By: Representatives Burns of the 157th, Roberts of the 154th, England of the 108th, Bryant of the 160th, Hamilton of the 23rd, 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 state highway system, so as to modify the procedures whereby
3 owners of legally erected and maintained signs obtain and renew permits for the installation
4 of signs; to change certain conditions relating to permits to remove vegetation from the
5 viewing zones of outdoor signs; to provide for related matters; to provide for severability;
6 to provide for the Department of Transportation to promulgate forms and policies; to provide
7 for an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **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 state highway system, is amended by revising subsection (a) of Code Section
12 32-6-74, relating to applications for permits for outdoor advertising signs, as follows:

13 ~~"(a) Applications for permits and the renewal thereof authorized by subsections (a) through~~
14 ~~(d) of Code Section 32-6-79 shall be made to the department upon forms prescribed by the~~
15 ~~department. The applications shall contain the signature of the applicant and such other~~
16 ~~information as may be required by the department and shall be verified under oath by the~~
17 ~~person, firm, or corporation making the application. Permits and renewals thereof shall be~~
18 ~~issued for and shall be valid only if the sign is erected and maintained in accordance with~~
19 ~~this part during the 12 month period next following the date of issuance. The fee for the~~
20 ~~initial issuance of a permit shall be \$50.00. The fee for the renewal of a permit shall be~~
21 ~~\$25.00. The money received from permit fees shall be used to help defray the expenses of~~
22 ~~administering this part, Code Section 48-2-17 to the contrary notwithstanding. Upon receipt~~
23 ~~of a properly executed application and the appropriate fee for the erection or maintenance~~
24 ~~of a sign which may be lawfully erected or maintained pursuant to this part, the department~~
25 ~~shall, within 60 days, issue a permit or renewal authorizing the erection or maintenance,~~
26 ~~or both, of the sign for which application was made except when a person, firm, or~~

27 ~~corporation is maintaining or allowing the maintenance of an illegal sign as provided for~~
28 ~~in subsection (f) of Code Section 32-6-79. Application for the renewal of a permit shall~~
29 ~~be made to the department not more than 90 nor less than 60 days before the expiration~~
30 ~~date of the permit for which renewal is sought. If the department fails to receive the~~
31 ~~renewal application before the expiration date of the permit, the department will notify the~~
32 ~~applicant that the renewal application is overdue when the applicant's address is known or~~
33 ~~reasonably available to the department and shall give the applicant 30 days after the~~
34 ~~expiration date to send the department the renewal application. If the applicant does not~~
35 ~~send the properly executed application and the appropriate fee within the specified 30 day~~
36 ~~period, the sign shall then become an illegal sign. No permit shall be renewed if the~~
37 ~~application for the renewal thereof has not been made in accordance with this Code section.~~
38 Applications for permits authorized by subsections (a) through (d) of Code Section 32-6-79
39 shall be made to the department upon forms prescribed by the department. The
40 applications shall contain the signature of the applicant and such other information as may
41 be required by the department and shall be verified under oath by the person, firm, or
42 corporation making the application. Permits and renewals thereof shall be issued for and
43 shall be valid only if the sign is erected and maintained in accordance with this part during
44 the 12 month period next following the date of issuance. As to permits for the initial
45 erection of an outdoor advertising sign, one 12 month extension may be granted so long as
46 a written request is submitted to the department at least 30 days prior to expiration along
47 with a fee of \$35.00. Any denial of an extension request shall be sent to the applicant
48 before the expiration date and shall state the basis for denial. Multiple extensions shall not
49 be granted as to the same permit, and the applicant shall not be allowed to reapply for the
50 same site until the extension has expired; however, modifications to the application which
51 do not extend the term of the permit shall be allowed. There shall be an initial outdoor
52 advertising permit fee and an annual renewal fee. For the calendar year 2012 and
53 thereafter, the outdoor advertising permit fee shall be \$100.00. For the calendar year 2012
54 and thereafter, the renewal fee for each permitted sign shall be \$35.00. Upon receipt of a
55 properly executed application and the appropriate fee for the erection or maintenance of
56 a sign which may be lawfully erected or maintained pursuant to this part, the department
57 shall, within 60 days, issue a permit authorizing the erection or maintenance, or both, of
58 the sign for which application was made except when a person, firm, or corporation is
59 maintaining or allowing the maintenance of an illegal sign as provided for in subsection (f)
60 of Code Section 32-6-79. All outdoor advertising permits and renewals shall expire on the
61 first day of April in the year following issuance. Renewal of such permits shall be made
62 to the department between January 1 and April 1 of each calendar year. Notice of such
63 renewal period shall be mailed to each outdoor advertising permit holder along with an

64 itemized list of all permits maintained by such person or entity in the month of December.
 65 In response, each permit holder should clearly indicate any permits not being renewed and
 66 return a copy to the department along with payment for all permits being renewed. If a
 67 permit holder believes the itemized list is incomplete or inaccurate, such permit holder
 68 shall clearly note such discrepancies on the list and return a copy to the department with
 69 supporting documentation. If the department fails to receive the renewal before the
 70 expiration date, the department will notify the permit holder by certified mail that the
 71 renewal is overdue and shall give the permit holder 30 days from receipt of such notice to
 72 send the department the renewal. If the applicant does not send the permit renewal and fee
 73 within 30 days after receipt of such notice, the permit shall expire and the sign shall then
 74 become an illegal sign. Signs shall become illegal by operation of law after the expiration
 75 of the permit followed by notice to the permit holder and a failure to submit for the renewal
 76 within 30 days. Any illegal sign may be removed without any administrative proceeding
 77 before the department. Vegetation permits or renewals issued pursuant to Code Section
 78 32-6-75.3 shall expire on the first day of September in the year following issuance. If a
 79 vegetation permit renewal application and fee is not timely submitted and such deficiency
 80 is not cured within 30 days of receipt of notice via certified mail from the department, the
 81 vegetation permit shall be canceled, but the sign shall not be deemed illegal. No permit
 82 shall be renewed if the renewal thereof has not been made in accordance with this Code
 83 section."

84 **SECTION 2.**

85 Said part is further amended by revising Code Section 32-6-75.3, relating to applications for
 86 tree trimming permits, as follows:

87 "32-6-75.3.

88 (a)(1) For purposes of this Code section, the term:

89 (A) 'Removal' or 'removed' means the elimination of trees or other vegetation from a
 90 viewing zone.

91 (B) 'Target view zone' means an area of the viewing zone extending from the sign to
 92 the roadway to which the sign is permitted which shall be angled as requested by the
 93 applicant to maximize the visibility of the sign to passing motorists but not to exceed:

94 (i) Two-hundred and fifty feet along the right of way fence or boundary; and

95 (ii) Three-hundred and fifty feet along the pavement edge, to include any emergency
 96 lane or paved shoulder.

97 (C) 'Trimming' or 'trimmed' means the pruning of excess limbs or branches from trees
 98 or other vegetation which are not removed from a viewing zone.

99 ~~(C)~~(D) 'Viewing zone' means a continuous 500 foot horizontal distance parallel to a
100 state right of way and adjacent to or otherwise within the line of sight of an outdoor
101 advertising sign.

102 (2) The General Assembly finds and declares that outdoor advertising provides a
103 substantial service and benefit to Georgia and Georgia's citizens as well as the traveling
104 public. Therefore, the General Assembly declares it to be in the public interest that
105 provisions be made for the visibility of outdoor advertising signs legally erected and
106 maintained along the highways in this state to provide information regarding places
107 offering lodging, food, motor vehicle fuels and lubricants, motor service and repairs, or
108 any other services or products available to the general public. Recognizing, however, that
109 the beautification of this state and the health of its environment are absolutely essential
110 and equally as important to the traveling public, the General Assembly finds and declares
111 that these needs must be balanced.

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

119 (2) So as to ensure that no vegetation maintenance permits are issued for the purpose of
120 creating new outdoor advertising signs, no owner of outdoor advertising signs erected
121 after January 1, ~~1999~~ 2011, or such owner's agent, ~~will~~ shall be eligible to make
122 application for vegetation maintenance for a period of five years from the date a new sign
123 is permitted.

124 (c) Application for a tree or vegetation trimming or removal permit and the annual renewal
125 thereof shall be made upon the forms prescribed and provided by the department and shall
126 contain the signature of the applicant and such other information as may be required by the
127 department's rules and regulations.

128 (d) An application fee shall accompany the application for each vegetation maintenance
129 permit, and both the application and fee shall be submitted to the department. There shall
130 be an annual renewal of the permit for activities in the original scope of the permit. The
131 department shall promulgate rules and regulations setting forth the application fees and
132 renewal fees. Such application and renewal fees shall be established by the department in
133 reasonable amounts in order to fully recover the costs of administering the vegetation
134 maintenance program.

135 (e)(1) The department shall evaluate each application for a permit under this Code
 136 section and require as a condition of granting any permit under this Code section that the
 137 value of the landscaping to be either provided or paid for by the applicant is not less than
 138 the department's appraised value of the benefit to be conferred by the state upon the
 139 applicant by allowing the trimming or removing of trees or other vegetation as requested,
 140 which shall be the value of the trees or vegetation to be trimmed or removed; provided,
 141 however, that a permit may be granted to an otherwise qualified applicant in a case where
 142 the value of the landscaping to be either provided or paid for by the applicant is less than
 143 the department's appraised value of the trees or other vegetation to be trimmed or
 144 removed if, in addition, the applicant pays to the department an amount equal to the
 145 amount of the difference between the value of the landscaping to be either provided or
 146 paid for by the applicant and the department's appraised value of the trees or other
 147 vegetation to be trimmed or removed.

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

150 ~~(ii) No removal of any hardwood tree having a diameter outside bark of more than
 151 8 inches at a height of 6 inches above ground level or any historic or endangered
 152 species tree or any tree planted as part of any local, state, or federal government
 153 project shall be permitted under this Code section.~~

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

156 ~~(iv) All nonhardwood trees may be removed from within a viewing zone for a
 157 combined total of 250 feet horizontal distance parallel to the right of way.~~

158 ~~(v) All nonhardwood trees having a diameter outside bark of less than 12 inches at
 159 a height of 6 inches above ground level may be removed from within a viewing zone.~~

160 ~~(vi) Pine trees having a diameter outside bark of 12 inches or more at a height of 6
 161 inches above ground level shall not be removed from a viewing zone in such numbers
 162 as to reduce stocking to less than the minimum standard for full stocking for such
 163 trees, as determined by the Georgia Forestry Commission, over an area having a
 164 combined total of not less than 250 feet horizontal distance parallel to the right of
 165 way.~~

166 ~~(vii) The provisions of divisions (iv) and (vi) of this subparagraph notwithstanding,
 167 in the case of any outdoor advertising sign erected on or before April 20, 1998, and
 168 which is less than 35 feet in height as measured from the top of the sign to the ground
 169 directly beneath or to the road level, whichever distance results in the best view or the
 170 greatest elevation, or which is subsequently lowered to such a height, the horizontal
 171 distance of the area within the viewing zone from which all trees, other than~~

172 ~~hardwoods having a diameter outside the bark of more than 8 inches at a height of 6~~
 173 ~~inches above ground level, may be removed shall be increased to 350 feet.~~

174 (2) Any measurement of vegetation to be removed for valuation purposes shall be made
 175 at diameter breast height as shown in the section entitled 'Height of Measurement' in the
 176 Guide for Plant Appraisal (9th Edition) as published by the International Society of
 177 Arboriculture. Based on the lack of substantial benefit to the state, where dead, diseased,
 178 or hazardous trees are removed from the right of way, such vegetation shall not be
 179 measured or valued in determining the appraised value. Upon receipt of a properly
 180 completed application, the department shall, within 60 days, issue the permit for
 181 vegetation maintenance.

182 (3) The applicant shall be allowed to remove all trees and vegetation from the target view
 183 zone so long as the sign was permitted by the department on or before January 1, 2011.
 184 Vegetation removal shall be prohibited in all areas of the viewing zone outside of the
 185 target view zone except that portions of vegetation, such as tree limbs, which extend into
 186 the target view zone from outside the target view zone may be trimmed as necessary to
 187 preserve the clear target view zone. The only vegetation which cannot be removed from
 188 the target view zone pursuant to this paragraph shall be landmark trees, historic trees, and
 189 specimen trees, as defined in subparagraphs (A) through (C) of this paragraph, and any
 190 tree planted as part of a permitted local, state, or federal government beautification
 191 project. After July 1, 2011, however, no beautification project in this state shall include
 192 the planting of trees in the right of way such that the visibility of a permitted outdoor
 193 advertising sign is obscured or could later be obscured by the growth of such vegetation.

194 (A) For purposes of this paragraph, the term 'historic tree' means a tree or group of
 195 trees that are reasonably determined by the department to be:

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

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

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

201 (iv) Confirmed as the progeny of a tree that meets any of the criteria contained in this
 202 division.

203 (B) For purposes of this paragraph, the term 'landmark tree' means a tree or group of
 204 trees that:

205 (i) Have been planted and maintained for educational purposes for more than 75
 206 years;

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

209 (iii) Symbolize a historically significant individual, place, event, or contribution, as
 210 recognized by a unit of government prior to July 1, 2010.

211 (C) For purposes of this paragraph, the term 'specimen tree' means a hardwood tree or
 212 group of hardwood trees that is determined to be in excess of 75 years of age as
 213 determined by a registered forester or arborist.

214 ~~(B)~~(D) Pruning or trimming of trees under a permit shall conform to industry standards
 215 as defined by the National Arborist Association, International Society of Arboriculture
 216 or ANSI A300 pruning standards as of January 1, ~~1999~~ 2011, or such later edition as
 217 may be adopted by rule or regulation of the department.

218 ~~(3)~~(4) An applicant's record of conduct regarding disturbance of trees or other vegetation
 219 on state rights of way shall be considered by the department as part of the evaluation
 220 process for any permit or permit renewal application.

221 ~~(4)~~(5) Prior to approving any permit application to remove allegedly diseased trees, the
 222 department shall verify that such trees are in fact diseased. Such determination shall be
 223 made by the department's landscape architect.

224 ~~(5)~~(6) A performance bond in an amount adequate for the requirements of the permit as
 225 determined by the department shall be required of each permittee.

226 (f)(1) No trees or other vegetation on state rights of way shall be trimmed, killed, or
 227 removed by any person other than in accordance with a permit issued under this Code
 228 section by any person other than the department or an authorized agent or contractor
 229 thereof.

230 (2) No outdoor advertising sign to which a permit under this Code section is applicable
 231 shall be unused for advertising for a period of six consecutive months or more.

232 (3) On and after July 1, 1999, no outdoor advertising sign to which a permit under this
 233 Code section is applicable shall be maintained in such a condition of disrepair as to be
 234 unusable for advertising.

235 (4)(A) In cases where the department has reasonable cause to believe that a violation
 236 of this subsection has been committed by any person, the procedures provided under
 237 Code Section 32-6-95 shall apply the same as in cases wherein the department believes
 238 that a sign is being maintained in violation of this part.

239 (B) Following notice, hearing, and a finding that a person has committed a violation
 240 of paragraph (1) of this subsection, a civil fine of not less than \$10,000.00 nor more
 241 than \$20,000.00, and restitution in an amount equal to the appraised value of the trees
 242 or vegetation, or both, which were unlawfully trimmed or removed, shall be imposed
 243 on such person.

244 (C) Following notice, hearing, and a finding that a permittee under this Code section
245 has committed a violation of paragraph (2) of this subsection, an order directing the
246 removal of such unused sign, at the expense of the permittee, shall be issued.

247 (D) Following notice, hearing, and a finding that a permittee under this Code section
248 has committed a violation of paragraph (3) of this subsection, an order directing the
249 removal of such unusable sign shall be issued.

250 (E) The department or its authorized agents shall be authorized to enter upon private
251 lands and disassemble and remove signs without civil or criminal liability therefor
252 pursuant to an order issued in accordance with this paragraph and as provided by Code
253 Section 32-6-96 for disassembly and removal of illegal outdoor advertising signs.

254 (g) In order to obtain a vegetation maintenance permit for signs which exceed 75 feet in
255 height, as measured from the base of the sign or crown of the adjacent roadway to which
256 the sign is permitted, whichever is higher, the owner of the sign shall agree to reduce the
257 sign to 75 feet in height or less, as measured from the base of the sign or crown of the
258 adjacent roadway to which the sign is permitted, whichever is higher, unless lowering is
259 precluded by local government code or regulation. Work to lower the sign shall be
260 concluded within 60 days of completion of the vegetation removal. If the terms of the
261 work plan are not complied with and all work satisfactorily completed within the allowed
262 time, the performance bond shall be forfeited, and the department shall be authorized to
263 collect the bond and lower the sign. Upon completion of any project which reduces sign
264 height by use of a new support mechanism, such as a new pole, the sign owner shall
265 provide the department with a written footer inspection from the applicable local
266 government or a professional engineer prior to the release of the bond.

267 (h) The department shall have the right to refuse to issue any vegetation permits to any
268 person, firm, or entity which the department determines is maintaining or is allowing to be
269 maintained any abandoned sign or signs, until all such abandoned signs are removed or
270 brought into compliance with the provisions of this Code section. For purposes of this
271 subsection, the term 'abandoned sign' means any sign adjacent to a state-controlled route
272 that has not contained a message for six consecutive months and which has not had a
273 message displayed within 30 days after receipt of notice by certified mail from the
274 department. The addition of a 'for rent' panel or a phone number shall not qualify as a
275 message for purposes of this subsection, but self promotional copy covering at least one
276 entire sign face or advertising copy benefitting charitable, nonprofit, religious, or other
277 noncommercial groups shall qualify as a message.

278 (i) The department shall have the right to refuse to issue any vegetation permits to any
279 person, firm, or entity which the department determines is maintaining or is allowing to be
280 maintained in their inventory of signs in this state any sign which depicts any material

281 which is obscene as such term is defined in Code Section 16-12-80, or material that is in
282 conflict with the applicable local government's obscenity ordinance.

283 (j) The removal of signs with lapsed outdoor advertising permits is of benefit to this state
284 but is often too costly for the department to undertake. In order to encourage the removal
285 of such signs and permitted signs that do not conform to the state's current requirements
286 for outdoor advertising signs without the expenditure of state funds, a credit which may be
287 used as an offset toward the total appraised value of the vegetation to be removed in
288 accordance with a vegetation maintenance permit shall be awarded for each qualifying sign
289 removal as follows:

290 (1) On or before March 1, 2012, the department shall prepare a list of signs which once
291 held a valid outdoor advertising permit but for which the permit has been allowed to
292 lapse. Notification of a sign's inclusion on such list shall be sent to the last known
293 address for the sign's owner as listed on department records and to any other person or
294 entity which the department reasonably finds to have an interest in such sign. Within 30
295 days of receipt of such notice or 60 days of publication of the list, whichever comes later,
296 any person or entity claiming to be the owner of a sign that they do not believe has been
297 properly included on the list shall be allowed to submit written notice to the department
298 of their objection. Such objection may include a statement of the relevant facts and any
299 supporting documents. On or before July 1, 2012, the department shall publish the final
300 list. Signs which are the subject of any current objections, administrative appeals, or
301 legal disputes shall not be included on such list. This list shall be updated annually and
302 provided to the chairpersons of the House and Senate Transportation Committees on or
303 before the first day of March;

304 (2) The department shall, on or before January 1, 2012, prepare a schedule or formula
305 to determine the credit to be received for the removal of lapsed-permit signs and
306 permitted nonconforming outdoor advertising signs. Such schedule shall provide a
307 valuation of the credit based on four factors: material used in sign structure, height of
308 sign, size of sign, and terrain and topography. The department shall also prepare a form
309 to be submitted by any person or entity seeking a credit under this subsection. Such form
310 shall require a description of the material used in the sign structure, the height of the sign,
311 the size of the sign, and the terrain and topography where the sign is situated and a
312 calculation of the anticipated credit in accordance with the department's schedule or
313 formula;

314 (3) At such time as any lapsed-permit sign from the department's updated list or a
315 nonconforming outdoor advertising sign is removed, the person or entity responsible for
316 such removal shall submit to the department the completed removal form and
317 photographic evidence of the removal. For purposes of this subsection, the term 'removal'

318 means removal of all structural elements above ground level; removal of footers or
 319 foundation elements shall not be required. Within 60 days of such submission, the
 320 department shall certify and return the form. No credit shall be allowed for the removal
 321 of a lapsed-permit sign by the owner of such sign. The certified form shall serve as a
 322 credit voucher. Credit vouchers may be transferred to another party via notarized
 323 statement signed by both parties;

324 (4) Where a lapsed-permit sign from the department's updated list or a nonconforming
 325 sign is to be removed in conjunction with a specific application for a vegetation
 326 maintenance permit, the sign to be removed shall be designated by department permit
 327 number. If the vegetation permit is approved, then the sign designated for removal shall
 328 be removed at least 15 days prior to initiation of work pursuant to the vegetation permit.
 329 Removal shall be deemed complete when the removal form and photographic evidence
 330 of the removal are submitted to the department. The sign designated for removal need
 331 not be owned by the vegetation permit applicant. As such, nothing herein shall be
 332 interpreted to require that the removed sign be owned or controlled by the vegetation
 333 permit applicant; and

334 (5) A credit voucher may be used by an applicant for a vegetation maintenance permit
 335 as an offset against the total appraised value of the vegetation to be removed on a
 336 dollar-for-dollar basis, except that the total payment shall not be reduced below
 337 \$4,000.00. Any unused portion of a credit voucher may be used in conjunction with a
 338 subsequent vegetation maintenance application.

339 (k) Nothing contained in this Code section shall render any sign existing on July 1, 2011,
 340 nonconforming. Nothing in this Code section shall supersede any applicable local rules or
 341 ordinances. The department shall not deny an applicant a vegetation maintenance permit
 342 for complying with applicable local rules or ordinances."

343 **SECTION 3.**

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

354 **SECTION 4.**

355 The Department of Transportation shall have 120 days from the effective date to promulgate
356 any forms or policies necessary to implement this Act. Those applications submitted before
357 any necessary forms and policies are in place shall be processed in accordance with the
358 regulations in place prior to the effective date. Those holding vegetation maintenance
359 permits or renewals issued at any time prior to the promulgation of the necessary forms and
360 policies shall, upon written request to the department, be able to trim or remove vegetation
361 in accordance with the terms of this Act.

362 **SECTION 5.**

363 This Act shall become effective on July 1, 2011.

364 **SECTION 6.**

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