

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 183 (Second Edition)

SHORT TITLE: Selective Vegetation Removal/State Highways.

SPONSOR(S): Senator Brown

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES:					
Highway Fund	Ranges from \$300,600 - \$808,800	Ranges from \$400,800 - \$1,078,400	Ranges from \$400,800 - \$1,078,400	Ranges from \$400,800 - \$1,078,400	Ranges from \$400,800 - \$1,078,400
EXPENDITURES					
Highway Fund	Ranges from \$146,212 - \$417,216	Ranges from \$190,051 - \$551,388	Ranges from \$190,051 - \$551,388	Ranges from \$190,051 - \$551,388	Ranges from \$190,051 - \$551,388
Judicial Branch	<i>*See Assumptions and Methodology*</i>				
POSITIONS (cumulative):	0	0	0	0	0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation, Judicial Branch					
EFFECTIVE DATE: October 1, 2011					

BILL SUMMARY:

This bill raises the fee for a vegetation removal permit from \$200 to \$400 per site and specifies that the fee is nonrefundable. It prohibits, except as specified in new G.S. 136-133.1(f), planting, cutting, trimming, removing, or pruning any tree, shrub, or underbrush in or on any right-of-way of a state road or highway without a written selective vegetation removal permit issued under proposed G.S. 136-133.2 and in accordance with the rules of the Department of Transportation (DOT). It requires that the owner of an outdoor advertising sign or of a business facility make the request for a permit for selective vegetation removal to the appropriate roadside environmental engineer in the Division of Highways office on a form required by the DOT. It provides that a

permit may not be issued to provide visibility to on-premise signs and provides that if the site is inside city limits, the municipality has 30 days to review and provide nonbinding comments on the application if the municipality has met certain requirements. The bill prohibits local governments from regulating removal of vegetation within the limits of interstate or primary highway rights-of-way by any permit holder or anyone otherwise authorized by the DOT.

This bill raises the fees for outdoor advertising structures to \$150 for the initial fee and \$90 for the annual renewal, with \$30 of each fee to be used for highway beautification. It prohibits denial of electrical utility permits to an outdoor advertising sign for which a valid permit has been issued.

This bill enacts new G.S. 136-133.1 to specify the zone around billboards in which clearing is allowed. Defines an existing tree as one that is four inches or greater in diameter as measured six inches from the ground at the time that the outdoor advertising structure was erected. It provides limitations as to when existing trees may be removed; an exception to permit the owner of an outdoor advertising sign or the owner's designee to clear vegetation without a permit providing that the owner or owner's designee is working only from the private property side of a controlled access fence with the landowner's consent; and requires that native dogwoods and native rosebuds be preserved. The bill requires the applicant for a selective vegetation removal permit to submit a site plan showing any existing trees that the applicant is requesting to cut, thin, prune, or remove. It includes additional requirements that the applicant provide data identifying the species and size of the trees in the site plan and provides circumstances under which the DOT may revoke an advertising permit for the removal or modification of vegetation.

This bill enacts new G.S. 136-133.2 to provide that permits to remove vegetation may only be granted for outdoor advertising locations that have been permitted for at least two years and at the discretion of the DOT. It requires the application for a permit to be decided within 30 days, with the DOT to specify in writing the reasons for denial and sets out permissible bases for denial. It enacts new G.S. 136-133.3 to provide the procedure for appeal of the DOT's denial of a permit for selective vegetation removal to the Secretary of Transportation, and provides for judicial review of a final agency decision.

It enacts new G.S. 136-133.4 and G.S. 136-133.5 to specify standards for clearing around billboards, methods of clearing and responsibility for damage. It provides that a willful failure to substantially comply with all the requirements specified in the selective vegetation removal permit results in (1) a five-year moratorium on clearing, (2) revocation of a billboard permit for violation of standards, (3) payment of investigative costs, and (4) forfeiture of applicable performance bond. G.S. 136-133.5 provides additional criteria for denial of a permit for proposed outdoor advertising.

The act is effective October 1, 2011, and applies to permits, applications, or renewals submitted on or after that date and to offenses occurring on or after that date.

ASSUMPTIONS AND METHODOLOGY:

Outdoor Advertising Structure Fees:

Fiscal Research estimates the additional \$30 for the new outdoor advertising structure fee and the renewal permit will increase revenues to the Highway Fund between \$181,800 - \$363,600 in FY 2012 and between \$242,400 - \$484,800 in each year of the next four fiscal years. The FY 2012 figures are annualized to take into account the bill's effective date. As shown in Figures 1 and 2, the total number of billboards and associated revenues has declined in each of past five fiscal years. It is assumed the number of structures will increase if the cutting distance is increased. It is not known but possible that the economic downturn has led to less advertising. It is possible that the number of permits will increase by more than 100 percent if the number of billboards is strongly correlated with an economic recovery. No inflation factor has been built in to this analysis. All increased revenues must be used for highway beautification projects. Therefore, these funds do not offset the costs incurred by DOT.

Figure 1: Number of Outdoor Advertising Structures					
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
New Structures	1	112	181	149	89
Renewals	8,883	8,497	8,133	8,062	7,991
Total	8,884	8,609	8,314	8,211	8,080

Figure 2: Outdoor Advertising Structure Revenues					
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Revenue from New Structures	\$ 120	\$ 13,440	\$ 21,720	\$ 17,880	\$ 10,680
Revenue from Renewals	\$ 532,980	\$ 509,820	\$ 487,980	\$ 483,720	\$ 479,460
Total	\$ 533,100	\$ 523,260	\$ 509,700	\$ 501,600	\$ 490,140

Selective Vegetation Removal Permit (SVR) Fees:

Fiscal Research estimates the additional \$200 fee for the SVR permit will increase revenues to the Highway Fund between \$118,800 - \$445,200 in FY 2012 and between \$158,400- \$593,600 in each year of the next four fiscal years. The FY 2012 figures are annualized to take into account the bill's effective date. As shown in Figure 3, the total number of SVR permits and associated revenues has grown in three of the last four years, growing by an average of three percent over the five-year period. It is assumed the number of permits may increase significantly if the cutting distance is increased.

Figure 3: Selective Vegetation Removal (SVR) Permits and Revenues					
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
SVR Permits Issued	235	241	268	317	305
Revenues	\$47,000	\$48,200	\$53,600	\$63,400	\$61,000

DOT estimates the number of permit requests may increase to 2000, or 25% of the total number of billboards. Fiscal Research uses a range to determine the impact. The lower range is based on a 100 percent increase in the number of permits per billboard issued in 2010. This figure is based on the change in the number of permits issued in 2001, after cutting distances were last shifted. DOT issued 305 permits in 2001 compared to 126 permits issued in the prior year. Currently, 20 percent of permit holders, or 61 permits issued in FY 2010, were for multiple cuttings. This bill changes the permit to an annual permit, not a per cut permit. As shown in Figure 4, the base figure used in this analysis for the lower range is 264 permits issued. The lower range of the estimate uses an additional 264 permits as the number that may be requested. Fiscal Research sets the upper range at 20 percent of all billboards in the State, or 1616 total requests. The costs associated with this increase may be used to offset the costs incurred by DOT.

Figure 4: Fiscal Impact from SVR Permits				
	Base Number of Permits	Number of New Permits	Total Number of Permits	Revenues
Low Estimate	264	264	528	\$158,400
High Estimate	264	1352	1616	\$593,600

DOT Costs:

DOT is expected to incur direct costs associated with implementing Section 2(d) and Section 5 of this bill. Section 2(d) includes the process of reviewing municipal comments for SVR permits. This process is expected to take 24 hours of an engineer’s time in each division each year. At an average rate of \$43.74 per hour, the cost absorbed by DOT totals \$14,696. Section 5 includes the process to verify, monitor, and enforce the SVR permits. DOT estimates it will take three hours of an engineer’s time and six hours of an engineer technician’s time for each permit. Using the range developed to estimate the total number of expected SVR permits, costs to DOT will range from \$175,355 - \$536,692, annualized. The cost in the first year will be \$131,516 - \$402,520. This analysis assumes an engineer’s time equals \$43.74 per hour and an engineering technician’s time equals \$28.45 per hour. Additional costs for equipment and materials are included.

DOT currently produces a report to determine the monetary value of trees, required in Section 3 of this bill. Therefore, no additional costs are included.

DOT may incur additional costs to implement Section 4 of this bill. However, as there is no requirement to replant these areas, no fiscal impact is included. Costs to mitigate the site cannot be estimated.

Annual Asset Loss:

DOT estimates the annual roadside buffer tree loss will be \$2,880,000 annually.

Judicial Branch:

According to the Administrative Office of the Courts (AOC), data received from Fiscal Research and the Department of Transportation (DOT) staff show that, in the last five years, there has been an average of 252 new permits issued per year and an average of two appeals per year (appealed to Superior Court). It is possible that the number of new permits issued will increase under this bill, perhaps as high as 1,500 per year, which, using the same ratio as the previous five years’ data,

would result in up to a yearly average of 12 appeals. The exact number of appeals potentially arising from this bill cannot be determined.

AOC estimates that each appeal may take two full days of a Superior Court bench trial to resolve. Because the bill states that all requests for judicial review shall be filed with the Wake County Clerk of Superior Court, all workload impact arising from this bill would occur in Superior Court District 10 (Wake County). These cases would require court time and resources, impacting Superior Court Judges and Deputy Clerks, and Court Reporters. The monetary value of two days of these in-court resources is \$3,010. Therefore, the estimated range of two to 12 cases per year would result in a fiscal impact of \$6,020 to \$36,120.

Overall, in FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: Department of Transportation, Administrative Office of the Courts

TECHNICAL CONSIDERATIONS:

1. G.S. 136-133.5(f) may need to reference subsection (e) rather than subsection (d).
2. Statutes do not indicate whether to place the proceeds from these two fees in the Highway Fund or Highway Trust Fund. DOT allocates the fees to the Highway Fund.
3. The costs associated with replanting come from the Highway Fund. G.S. 136-133(a) states that no Highway Trust Fund monies can be spent for replanting, however, only Highway Fund monies are currently used for this purpose.

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