

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10190-ML-72C (02/07)

Short Title: Revisions to Outdoor Advertising Laws. (Public)

Sponsors: Representatives Lewis, Saine, Goodman, and Hanes (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW FOR THE RELOCATION AND RECONSTRUCTION OF
3 OFF-PREMISES OUTDOOR ADVERTISING.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 136-128 reads as rewritten:

6 "§ 136-128. Definitions.

7 As used in this Article:

- 8 (1) Area zoned commercial or industrial. – An area which is zoned for business,
9 industry, commerce, or trade pursuant to a State law or local zoning
10 ordinance or regulation, regardless of how labeled. This term does not
11 include "zoning designed primarily for the purpose of permitting outdoor
12 advertising signs," as that term is defined in G.S. 136-133.5(e).
- 13 (2) Customary use. – Compliance with the specific outdoor advertising
14 standards for size, lighting, and spacing in areas zoned commercial or
15 industrial under authority of State law or in unzoned commercial or
16 industrial areas, as the standards and areas are described and defined in the
17 agreement dated January 7, 1972, as amended, and entered into between the
18 State and the United States Department of Transportation under
19 G.S. 136-138 to implement the provisions of the federal Highway
20 Beautification Act of 1965.
- 21 (3) ~~"Erect"~~ means to Erect. – To construct, build, raise, assemble, place, affix,
22 attach, create, paint, draw, or in any other way bring into being or establish.
23 This term does not include the repair or reconstruction of any off-premises
24 outdoor advertising, as authorized under G.S. 136-131.2, or the relocation of
25 an off-premises outdoor advertising sign as authorized by State law.
- 26 (1a)(4) ~~"Illegal sign"~~ means one Illegal sign. – One which was erected and/or
27 maintained in violation of State law.
- 28 (1b)(5) ~~"Information center"~~ means an Information center. – An area or site
29 established and maintained at safety rest areas for the purpose of informing
30 the public of places of interest within the State and providing such other
31 information as the Department of Transportation may consider desirable.
- 32 (2)(6) ~~"Interstate system"~~ means that Interstate system. – That portion of the
33 National System of Interstate and Defense Highways located within the
34 State, as officially designated, or as may hereafter be so designated, by the
35 Department of Transportation, or other appropriate authorities and are also
36 so designated by interstate numbers. As to highways under construction so



1 designated as interstate highways pursuant to the above procedures, the
2 highway shall be a part of the interstate system for the purposes of this
3 Article on the date the location of the highway has been approved finally by
4 the appropriate federal authorities.

5 (7) Main-traveled way or main travel way. – The through-traffic lanes of a
6 highway, but not including frontage roads, auxiliary lanes, and ramps.

7 ~~(2a)(8) "Nonconforming sign" shall mean a~~Nonconforming sign. – A sign which
8 was lawfully erected but which does not comply with the provisions of State
9 law or ~~State~~Department of Transportation rules and regulations passed at a
10 later date as authorized in this Article or which later fails to comply with
11 State law or ~~State~~Department of Transportation rules or regulations
12 authorized in this Article due to changed conditions. Illegally erected or
13 maintained signs are not nonconforming signs.

14 ~~(3)(9) "Outdoor advertising" means any~~Outdoor advertising. – Any outdoor sign,
15 display, light, device, figure, painting, drawing, message, plaque, poster,
16 billboard, or any other thing which is designed, intended or used to advertise
17 or inform, any part of the advertising or information contents of which is
18 visible from any place on the main-traveled way of the interstate or primary
19 system, whether the same be permanent or portable installation.

20 (10) Off-premises outdoor advertising. – The use of land consisting of a sign
21 erected and maintained for the purpose of (i) displaying, advertising,
22 identifying, or directing attention to business products, operations, or
23 services sold or offered at a site other than the site where the sign is erected
24 or (ii) promoting an attraction, activity, idea, opinion, or other
25 noncommercial messaging that is unrelated to the site where the sign is
26 erected. A sign meeting this definition is commonly known as a billboard,
27 where space is commonly made available or rented to advertisers to display
28 their messages to the traveling public.

29 ~~(4)(11) "Primary systems" means the~~Primary systems. – The federal-aid primary
30 system in existence on June 1, 1991, and any highway which is not on that
31 system but which is on the National Highway System. As to highways under
32 construction so designated as primary highways pursuant to the above
33 procedures, the highway shall be a part of the primary system for purposes
34 of this Article on the date the location of the highway has been approved
35 finally by the appropriate federal or State authorities.

36 ~~(5)(12) "Safety rest area" means an~~Safety rest area. – An area or site established and
37 maintained within or adjacent to the highway right-of-way by or under
38 public supervision or control, for the convenience of the traveling public.

39 ~~(6)(13) "State law" means a~~State law. – A State constitutional provision or statute,
40 or ~~an ordinance,~~ a rule or regulation enacted or adopted by a State agency or
41 ~~political subdivision of a State~~ pursuant to athe State Constitution or a
42 statute.

43 ~~(7)(14) "Unzoned area" shall mean an~~Unzoned commercial or industrial area. – An
44 area where there is no zoning in ~~effect.~~effect that is within 660 feet of the
45 nearest edge of the right-of-way of the interstate or primary system, in which
46 there is at least one commercial or industrial activity that meets the criteria
47 set forth in G.S. 136-130.1.

48 ~~(8)(15) "Urban area" shall mean an~~Urban area. – An area within the boundaries or
49 limits of any incorporated municipality having a population of five thousand
50 or more as determined by the latest available federal census.

1 ~~(9)(16) "Visible" means capable~~ Visible. – Capable of being seen (whether or not
2 legible) without visual aid by a person of normal visual acuity."

3 **SECTION 2.** G.S. 136-129(4) reads as rewritten:

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

8 **SECTION 3.** Article 11 of Chapter 136 of the General Statutes is amended by
9 adding a new section to read:

10 "**§ 136-130.1. Unzoned commercial or industrial area criteria for outdoor advertising**
11 **signs.**

12 (a) Criteria. – To qualify an area unzoned commercial or industrial for purposes of this
13 Article, one or more commercial or industrial activities shall meet all of the following criteria
14 prior to submitting an outdoor advertising permit application:

15 (1) The activity shall maintain all necessary business licenses as may be
16 required by applicable State law.

17 (2) The property used for the activity shall be listed for ad valorem taxes with
18 the county and municipal taxing authorities as required by law.

19 (3) The activity shall have all basic utilities, including electricity, telephone,
20 water, and sewer or septic service.

21 (4) The activity shall have direct or indirect vehicular access and be a generator
22 of vehicular traffic.

23 (5) The activity shall have a building designed with a permanent foundation,
24 built or modified for its current commercial or industrial use, and the
25 building must be located within 660 feet from the nearest edge of the
26 right-of-way of the controlled route. Where a mobile home unit or
27 recreational vehicle is used as a business or office, the following conditions
28 and requirements also apply:

29 a. The mobile home unit or recreational vehicle shall meet the State
30 Building Code criteria for commercial or business use.

31 b. A self-propelled vehicle shall not qualify for use as a business or
32 office for the purpose of these rules.

33 c. All wheels, axles, and springs shall be removed.

34 d. The unit or vehicle shall be permanently secured on piers, pad, or
35 foundation.

36 e. The unit or vehicle shall be tied down in accordance with State or
37 local requirements.

38 (6) The activity must be in active operation a minimum of six months prior to
39 the date of submitting an application for an outdoor advertising permit.

40 (7) The activity shall be open to the public during hours that are normal and
41 customary for that type of activity in the same or similar communities, but
42 not less than 20 hours per week.

43 (8) One or more employees shall be available to serve customers whenever the
44 activity is open to the public.

45 (9) The activity shall be visible and recognizable as commercial or industrial
46 from the main-traveled way of the controlled route. An activity is visible
47 when that portion on which the permanent building designed, built, or
48 modified for its current commercial use can be clearly seen 12 months a year
49 by a person of normal visual acuity while traveling at the posted speed on
50 the main-traveled way of the controlled route adjacent to the activity. An
51 activity is recognizable as commercial or industrial when its visibility from

1 the main-traveled way of the controlled route is sufficient for the activity to
2 be identified as commercial or industrial.

3 (b) Guidelines. – When making a determination as to whether an activity meets the
4 criteria set forth in subsection (a) of this section, both of the following guidelines shall apply:

5 (1) Each side of the controlled route shall be considered separately.

6 (2) All measurements shall begin from the outer edges of regularly used
7 buildings, parking lots, storage, or processing areas of the commercial or
8 industrial activity, not from the property line of the activity, and shall be
9 along the nearest edge of the main-traveled way of the controlled route.

10 (c) Non-Qualifying Activities. – For purposes of qualifying an area as unzoned
11 commercial or industrial in accordance with subsection (a) of this section, none of the
12 following activities shall be considered:

13 (1) Outdoor advertising structures.

14 (2) On-premise or on-property outdoor advertising signs if the on-premise or
15 on-property sign is the only part of the commercial or industrial activity that
16 is visible from the main-traveled way.

17 (3) Agricultural, forestry, ranching, grazing, farming, and related activities,
18 including temporary wayside fresh produce stands.

19 (4) Transient or temporary activities.

20 (5) Activities not visible and recognizable as commercial or industrial from the
21 traffic lanes of the main-traveled way.

22 (6) Activities more than 660 feet from the nearest edge of the right-of-way.

23 (7) Activities conducted in a building principally used as a residence.

24 (8) Railroad tracks and minor sidings.

25 (9) Any outdoor advertising activity or any other business or commercial
26 activity carried on in connection with an outdoor advertising activity.

27 (10) Illegal junkyards, as defined in G.S. 136-146, and nonconforming junkyards,
28 as described in G.S. 136-147."

29 **SECTION 4.** Article 11 of Chapter 136 of the General Statutes is amended by
30 adding a new section to read:

31 **"§ 136-131.3. Relocation of permitted off-premises outdoor advertising sign.**

32 (a) Requirements. – Any off-premises outdoor advertising sign adjacent to a highway
33 on the National System of Interstate and Defense Highways or a highway on the federal-aid
34 primary highway system for which there is in effect a valid permit issued by the Department of
35 Transportation pursuant to this Article shall be permitted to be relocated and reconstructed
36 subject to all of the requirements listed in subdivisions (1) through (3) of this subsection. The
37 right provided under this subsection to relocate off-premises outdoor advertising may be
38 assigned or conveyed by the permittee.

39 (1) The new site for relocation shall be any area (i) within the same zoning
40 jurisdiction adjacent to a highway on the National System of Interstate and
41 Defense Highways or the federal-aid primary highway system or (ii) within
42 the same city or county limits if the off-premises outdoor advertising sign
43 was located in an unzoned area.

44 (2) The off-premises outdoor advertising sign at the relocated site shall conform
45 with customary use in (i) areas zoned commercial or industrial under
46 authority of State law or (ii) if the relocated site is unzoned, unzoned
47 commercial or industrial areas.

48 (3) The construction work related to the relocation of the off-premises outdoor
49 advertising sign at the new location shall commence within one year after
50 the later of the date of removal or the effective date of this Article.

1 (b) Vegetation Removal. – A new site for relocation shall not be denied by the
2 Department of Transportation due to the presence of vegetation obstructing the visibility of the
3 outdoor advertising sign from the viewing zone. Notwithstanding any law to the contrary, the
4 owner or operator of the off-premises outdoor advertising sign shall be permitted to improve
5 the visibility of the sign by removing any vegetation (i) on private property upon receiving
6 written consent of the landowner and (ii) on the right-of-way of the interstate and primary
7 systems of the State pursuant to a selective vegetation removal permit issued under this
8 Article."

9 **SECTION 5.** G.S. 136-133.5 reads as rewritten:

10 **"§ 136-133.5. Denial of a permit for proposed outdoor advertising.**

11 ...

12 (d) ~~The~~Except for relocations authorized under G.S. 136-131.3, the Department shall
13 not issue permits for new outdoor advertising signs at a sign location where existing trees, if
14 they were to reach the average mature size for that species, would make the proposed sign
15 faces, when erected, not completely visible from the viewing zone. "Existing trees" are those
16 trees that at the time of the permit application are four inches or greater in diameter as
17 measured six inches from the ground. "Viewing zone" means the area which is 500 feet as
18 measured along the edge of the main travel way of the controlled route on each side of the
19 proposed sign structure which will have a sign face.

20 (e) An outdoor advertising permit requested pursuant to
21 ~~G.S. 136-129(a)(4)~~G.S. 136-129(4) shall not be issued to a location if the zoning to commercial
22 or industrial zones was adopted within one year prior to the filing of the permit application and
23 is not part of comprehensive zoning or constitutes spot zoning, which, for purposes of this
24 subsection, shall be defined as zoning designed primarily for the purpose of permitting outdoor
25 advertising signs and in an area which would not normally permit outdoor advertising. Zoning
26 shall not be considered "primarily for the purpose of permitting outdoor advertising signs" if
27 the zoning would permit more than one principal commercial or industrial use, other than
28 outdoor advertising, and the size of the land being zoned can practically support any one of the
29 commercial or industrial uses.

30 "

31 **SECTION 6.** G.S. 153A-143 is amended by adding a new subsection to read:

32 "(d1) Notwithstanding any provision of this section to the contrary, no county may enact,
33 amend, or enforce an ordinance to prohibit the relocation and reconstruction of any
34 off-premises outdoor advertising sign (i) pursuant to G.S. 136-131.3 or (ii) that meets the
35 requirements set forth in subdivisions (1) through (3) of this subsection and the relocation was
36 caused by a project authorized by law and undertaken by the State, a local government, or any
37 other entity possessing the power of eminent domain. Building materials different from the
38 materials used to initially construct an off-premises outdoor advertising sign may be used to
39 reconstruct the off-premises outdoor advertising sign at the site of relocation. The right
40 provided under this subsection to relocate off-premises outdoor advertising may be assigned or
41 conveyed by the permittee.

42 (1) The new site for relocation shall be within the same county in an area zoned
43 commercial or industrial or, if unzoned, in an unzoned commercial or
44 industrial area.

45 (2) The cumulative advertising surface area for the off-premises outdoor
46 advertising sign at the relocated site shall not be increased and no sign face
47 shall exceed 672 square feet; provided, however, the size of a sign face or
48 faces of another off-premises outdoor advertising sign that is permanently
49 taken down in the same jurisdiction within 120 days of a sign being
50 reconstructed may be combined to increase the cumulative advertising

1 surface area of the reconstructed sign, not to exceed 672 square feet for any
2 sign face.

- 3 (3) The height of the reconstructed off-premises outdoor advertising sign shall
4 not exceed 50 feet, as measured from the adjoining road grade or base of the
5 sign, whichever allows for the greatest visibility of the sign."

6 **SECTION 7.** G.S. 160A-199 is amended by adding a new subsection to read:

7 "(d1) Notwithstanding any provision of this section to the contrary, no city may enact,
8 amend, or enforce an ordinance to prohibit the relocation of any off-premises outdoor
9 advertising sign (i) pursuant to G.S. 136-131.3 or (ii) that meets the requirements set forth in
10 subdivisions (1) through (3) of this subsection and the relocation was caused by a project
11 authorized by law and undertaken by the State, a local government, or any other entity
12 possessing the power of eminent domain. Building materials different from the materials used
13 to initially construct an off-premises outdoor advertising sign may be used to reconstruct the
14 off-premises outdoor advertising sign at the site of relocation. The right provided under this
15 subsection to relocate off-premises outdoor advertising may be assigned or conveyed by the
16 permittee.

- 17 (1) The new site for relocation shall be within the same county in an area zoned
18 commercial or industrial or, if unzoned, in an unzoned commercial or
19 industrial area.

- 20 (2) The cumulative advertising surface area for the off-premises outdoor
21 advertising sign at the relocated site shall not be increased and no sign face
22 shall exceed 672 square feet; provided, however, the size of a sign face or
23 faces of another off-premises outdoor advertising sign that is permanently
24 taken down in the same jurisdiction within 120 days of a sign being
25 reconstructed may be combined to increase the cumulative advertising
26 surface area of the reconstructed sign, not to exceed 672 square feet for any
27 sign face.

- 28 (3) The height of the reconstructed off-premises outdoor advertising sign shall
29 not exceed 50 feet, as measured from the adjoining road grade or base of the
30 sign, whichever allows for the greatest visibility of the sign."

31 **SECTION 8.** Notwithstanding any provision of Article 2A of Chapter 150B of the
32 General Statutes, no later than six months after the effective date of this act, the Department of
33 Transportation shall adopt rules to implement the provisions of this act. The Department of
34 Transportation shall use the following procedure to adopt rules to implement the provisions of
35 this act:

- 36 (1) At least 15 business days prior to adopting a rule, submit the rule and a
37 notice of public hearing to the Codifier of Rules. The Codifier of Rules shall
38 publish the proposed rule and the notice of public hearing on the Internet
39 within five business days.
40 (2) At least 15 business days prior to adopting a rule, notify persons on the
41 mailing list maintained pursuant to G.S. 150B-21.2(d) and any other
42 interested parties of the Department of Transportation's intent to adopt a rule
43 and of the public hearing.
44 (3) Accept written comments on the proposed rule for at least 15 business days
45 prior to adoption of the rule.
46 (4) Hold at least one public hearing on the proposed rule no less than five days
47 after the rule and notice have been published.

48 A rule adopted in accordance with this section becomes effective on the first day of
49 the month following the month the Department of Transportation adopts the rule and submits
50 the rule to the Codifier of Rules for entry into the North Carolina Administrative Code. Any

1 rule adopted more than six months after the effective date of this act shall comply with the
2 requirement of Article 2A of Chapter 150B of the General Statutes.

3 **SECTION 9.** Any rule or policy adopted by the Department of Transportation that
4 does not comply with the provisions of this act shall be null, void, and without effect.

5 **SECTION 10.** If any provision of this act or its application is held invalid, the
6 invalidity does not affect other provisions or applications of this act that can be given effect
7 without the invalid provisions or applications, and to this end, the provisions of this act are
8 severable.

9 **SECTION 11.** Sections 4 through 7 of this act are effective when it becomes law
10 and apply to off-premises outdoor advertising signs removed on or after January 1, 2014. The
11 remainder of this act is effective when it becomes law.