

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Fiscal Note

REVISED

**BILL NUMBER:** Senate Bill 150 (Second Edition)

**SHORT TITLE:** Outdoor Adv. Vegetation Removal Changes.

**SPONSOR(S):** Senator Jenkins

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<u><b>FY 2007-08</b></u>	<u><b>FY 2008-09</b></u>	<u><b>FY 2009-10</b></u>	<u><b>FY 2010-11</b></u>	<u><b>FY 2011-12</b></u>
<b>REVENUES:</b>					
<b>Department of Transportation</b>	\$23,333	\$40,000	\$40,000	\$40,000	\$40,000
<b>EXPENDITURES:</b>					
<b>Correction:</b>	No significant impact is anticipated. Exact amount cannot be determined. See Assumptions and Methodology, p. 2-3				
<b>Judicial:</b>					
<b>ADDITIONAL PRISON BEDS:</b> None anticipated; impact on local jails cannot be quantified.					
<b>POSITIONS (cumulative):</b> None anticipated.					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Correction; Judicial Branch; Local Government					
<b>EFFECTIVE DATE:</b> December 1, 2007					

**BILL SUMMARY:** Changes the Department of Transportation outdoor advertising selective vegetation removal policy to authorize a five hundred foot removal zone, as recommended by the Joint Legislative Transportation Oversight Committee. (Identical to H 49)

The proposed committee substitute makes the following changes to the 1st edition of the bill:

- Amends GS 136-18.7 to increase the fee for a selective vegetation removal permit issued pursuant to GS 136-18(5), (7), and (9) from \$200 to \$300. Makes the fee nonrefundable.
- Amends GS 136-93 by adding new subsection (b) to provide for fines in addition to any penalty imposed by the court ranging from \$2,000 to a maximum of \$30,000 for trimming or removing a tree in violation of the statute.
- Amends GS 136-129 (limitations of outdoor advertising devices) to provide guidelines regarding spacing of legally erected advertising structures, fees for those structures, designation by the Department of Transportation (DOT) of a portion of the fees for restoration funds, and limitations on fees or charges for restoration or compensatory replacement of vegetation.
- Modifies proposed new GS 136-133.1 (outdoor advertising selective vegetation removal) to provide guidelines as to vegetation permitted to be removed from the maximum removal area determined by applying metes and bounds described in GS 136-133.1. Also modifies the distances used to determine the maximum removal area. Additionally provides guidelines governing the removal of vegetation and violations that may result in the temporary or permanent revocation of an advertising permit. Directs that the issuance of permits to remove vegetation are available at the sole discretion of DOT only for locations that have been permitted for at least two years and provides that a party who loses an appeal of an outdoor advertising permit revocation has to forfeit all revenue generated by the outdoor advertising from the date of the revocation to the date of the court decision or settlement to DOT.
- Changes the title of the bill.

*Source: Bill Digest S.B. 150v2*

## **ASSUMPTIONS AND METHODOLOGY:**

### **REVENUES**

The new revenues are generated from the increased fee for the vegetation removal permit by \$100. There are approximately 400 permits issued annually for FY2007-2008, there will be approximately 233 permits issued generating an approximately \$23,333 for the partial year.

### **CRIMINAL OFFENSE**

In effect, the addition of proposed G.S. 136-133.1, which delineates the maximum area and parameters for vegetation removal with regard to outdoor advertising, creates a new offense for violation of Article 11, Chapter 136. Current G.S. 136-135 provides that it is unlawful for anyone to place, erect, or “maintain” outdoor advertising along the interstate system or primary system in violation of Article 11 or rules adopted by the Department of Transportation. Therefore, *the removal of vegetation outside the boundaries prescribed by S.B. 150 would constitute “maintenance” of advertising in violation of Article 11, a Class 1 misdemeanor offense under G.S. 136-135.*

Because this proposed offense is new, there is no historical data from which to estimate the potential frequency of violation, or resultant charges and convictions. Thus, Fiscal Research cannot quantify the impact of this proposal. In addition, the Administrative Office of the Courts presently does not maintain an offense code for G.S. 136-135, indicating that offenses under this

statute are infrequently charged and/or infrequently result in conviction. *Accordingly, given the nature of this offense and existing penalty level, Fiscal Research does not anticipate a significant impact due to this proposed legislation.*

### **Department of Correction: Division of Prisons**

Based on the most recent prison population projections and estimated available bed capacity, *there are no surplus prison beds available over the immediate five-year horizon or beyond.* Therefore, any new felony conviction that results in an active sentence will require an additional prison bed.

Because Class 1 misdemeanants serve their designated terms of incarceration within local jails, any resultant active sentence due to this proposal should not impact the state's prison population.<sup>1</sup> The potential impact on local jail populations is unknown.

In FY 2005-06, 20% of Class 1 misdemeanor convictions resulted in active sentences, with an average estimated time served of 31 days. Accordingly, to the extent that future convictions for the proposed offense were to result in active sentences longer than 30 days, the Department of Correction could incur some additional costs for county reimbursement. However, given the typical length for Class 1 active sentences, Fiscal Research does not anticipate a significant increase in reimbursements due to this proposal.

### **Department of Correction: Division of Community Corrections**

In FY 2005-06, 80% of Class 1 misdemeanor convictions resulted in either intermediate or community punishments, predominantly special, intensive, or general supervision probation. *Thus, if future convictions for the proposed offense were to occur, the Division of Community Corrections (DCC) would likely assume some additional costs for offenders placed under its supervision.* However, it is not known how many offenders would be sentenced to intermediate or community punishments, to which type, or for how long.

Presently, general supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. DCC also incurs a daily cost of \$0.69 per offender sentenced to the Community Service Work Program. However, the daily cost per offender on intermediate sanction is much higher, ranging from \$7.71 to \$14.97 depending on the type of sanction. Intensive supervision probation is the most frequently used intermediate sanction, and costs an estimated \$14.97 per offender, per day. On average, intensive supervision lasts six-months, with general supervision assumed for a designated period thereafter.

### **Judicial Branch**

There is no readily available data from which to determine the number charges that might occur for violation of G.S. 136-133.1. However, the Administrative Office of the Courts expects that any additional cases resulting from this proposal would increase court-time requirements and

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<sup>1</sup> Active sentences between 1-90 days are served in local jails. The Department of Correction reimburses counties \$18 per day for offenders housed longer than 30 days (between 30 and 90). Sentences longer than 90 days are to be served in state prison; however, when bed shortages demand it, the State may lease needed beds from counties.

workloads for district attorneys, district court judges, clerks, court reporters, and indigent defense counsel. Presently, the estimated cost per Class 1 misdemeanor trial is \$3,702; the estimated cost per plea is \$243. Actual costs may vary from this general estimate, which includes indigent defense costs.

**SOURCES OF DATA:** Department of Transportation, Division of Motor Vehicles; Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** July 18, 2007



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