

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 1213
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Senate Commerce Committee Substitute Adopted 6/18/03
Senate Finance Committee Substitute Adopted 7/16/04

Short Title: Monetary Comp/Outdoor Advertising.

(Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE LOCAL GOVERNMENTS TO PAY MONETARY
COMPENSATION FOR REMOVAL OF LAWFULLY ERECTED
OFF-PREMISES OUTDOOR ADVERTISING SIGNS AND TO AUTHORIZE
LOCAL GOVERNMENTS TO ENTER INTO RELOCATION AND
RECONSTRUCTION AGREEMENTS WITH OWNERS OF NONCONFORMING
OFF-PREMISES OUTDOOR ADVERTISING SIGNS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 153A of the General Statutes is amended by adding a
new section to read:

"§ 153A-143. Regulation of outdoor advertising.

(a) As used in this section, the term 'off-premises outdoor advertising' includes off-premises outdoor advertising visible from the main-traveled way of any road.

(b) A county may require the removal of an off-premises outdoor advertising sign that is nonconforming under a local ordinance and may regulate the use of off-premises outdoor advertising within the jurisdiction of the county in accordance with the applicable provisions of this Chapter.

(c) A county shall give written notice of its intent to require removal of off-premises outdoor advertising by sending a letter by certified mail to the last known address of the owner of the outdoor advertising and the owner of the property on which the outdoor advertising is located.

(d) No county may enact or amend an ordinance of general applicability to require the removal of any nonconforming, lawfully erected off-premises outdoor advertising sign without the payment of monetary compensation to the owners of the off-premises outdoor advertising, except as provided below. The payment of monetary compensation is not required if:

- 1 (1) The county and the owner of the nonconforming off-premises outdoor
2 advertising enter into a relocation agreement pursuant to subsection (g)
3 of this section.
- 4 (2) The county and the owner of the nonconforming off-premises outdoor
5 advertising enter into an agreement pursuant to subsection (k) of this
6 section.
- 7 (3) The off-premises outdoor advertising is determined to be a public
8 nuisance or detrimental to the health or safety of the populace.
- 9 (4) The removal is required for establishing, extending, enlarging, or
10 improving any of the public enterprises listed in G.S. 153A-274, and
11 the county allows the off-premises outdoor advertising to be relocated
12 to a comparable location.
- 13 (5) The off-premises outdoor advertising is subject to removal pursuant to
14 statutes, ordinances or regulations generally applicable to the
15 demolition or removal of damaged structures.
- 16 (e) Monetary compensation is the fair market value of the off-premises outdoor
17 advertising in place immediately prior to its removal and without consideration of the
18 effect of the ordinance or any diminution in value caused by the ordinance requiring its
19 removal. Monetary compensation shall be determined based on:
- 20 (1) The factors listed in G.S. 105-317.1(a); and
- 21 (2) The listed property tax value of the property and any documents
22 regarding value submitted to the taxing authority.
- 23 (f) If the parties are unable to reach an agreement on monetary compensation to
24 be paid by the county to the owner of the nonconforming off-premises outdoor
25 advertising sign for its removal, and the county elects to proceed with the removal, the
26 county may bring an action in superior court for a determination of the monetary
27 compensation to be paid. In determining monetary compensation, the court shall
28 consider the factors set forth in subsection (e) of this section. Upon payment of
29 monetary compensation for the sign, the county shall own the sign.
- 30 (g) In lieu of paying monetary compensation, a county may enter into an
31 agreement with the owner of a nonconforming off-premises outdoor advertising sign to
32 relocate and reconstruct the sign. The agreement shall include the following:
- 33 (1) Provision for relocation of the sign to a site reasonably comparable to
34 or better than the existing location. In determining whether a location
35 is comparable or better, the following factors shall be taken into
36 consideration:
- 37 a. The size and format of the sign.
- 38 b. The characteristics of the proposed relocation site, including
39 visibility, traffic count, area demographics, zoning, and any
40 uncompensated differential in the sign owner's cost to lease the
41 replacement site.
- 42 c. The timing of the relocation.
- 43 (2) Provision for payment by the county of the reasonable costs of
44 relocating and reconstructing the sign including:

- 1 a. The actual cost of removing the sign.
2 b. The actual cost of any necessary repairs to the real property for
3 damages caused in the removal of the sign.
4 c. The actual cost of installing the sign at the new location.
5 d. An amount of money equivalent to the income received from
6 the lease of the sign for a period of up to 30 days if income is
7 lost during the relocation of the sign.

8 (h) For the purposes of relocating and reconstructing a nonconforming
9 off-premises outdoor advertising sign pursuant to subsection (g) of this section, a
10 county, consistent with the welfare and safety of the community as a whole, may adopt
11 a resolution or adopt or modify its ordinances to provide for the issuance of a permit or
12 other approval, including conditions as appropriate, or to provide for dimensional,
13 spacing, setback, or use variances as it deems appropriate.

14 (i) If a county has offered to enter into an agreement to relocate a
15 nonconforming off-premises outdoor advertising sign pursuant to subsection (g) of this
16 section, and within 120 days after the initial notice by the county the parties have not
17 been able to agree that the site or sites offered by the county for relocation of the sign
18 are reasonably comparable or better than the existing site, the parties shall enter into
19 binding arbitration to resolve their disagreements. Unless a different method of
20 arbitration is agreed upon by the parties, the arbitration shall be conducted by a panel of
21 three arbitrators. Each party shall select one arbitrator and the two arbitrators chosen by
22 the parties shall select the third member of the panel. The American Arbitration
23 Association rules shall apply to the arbitration unless the parties agree otherwise.

24 (j) If the arbitration results in a determination that the site or sites offered by the
25 county for relocation of the nonconforming sign are not reasonably comparable to or
26 better than the existing site, and the county elects to proceed with the removal of the
27 sign, the parties shall determine the monetary compensation under subsection (e) of this
28 section to be paid to the owner of the sign. If the parties are unable to reach an
29 agreement regarding monetary compensation within 30 days of the receipt of the
30 arbitrators' determination, and the county elects to proceed with the removal of the sign,
31 then the county may bring an action in superior court for a determination of the
32 monetary compensation to be paid by the county to the owner for the removal of the
33 sign. In determining monetary compensation, the court shall consider the factors set
34 forth in subsection (e) of this section. Upon payment of monetary compensation for the
35 sign, the county shall own the sign.

36 (k) Notwithstanding the provisions of this section, a county and an off-premises
37 outdoor advertising sign owner may enter into a voluntary agreement allowing for the
38 removal of the sign after a set period of time in lieu of monetary compensation. A
39 county may adopt an ordinance or resolution providing for a relocation, reconstruction,
40 or removal agreement.

41 (l) A county has up to three years from the effective date of an ordinance enacted
42 under this section to pay monetary compensation to the owner of the off-premises
43 outdoor advertising provided the affected property remains in place until the
44 compensation is paid.

1 (m) This section does not apply to any ordinance in effect on the effective date of
2 this section. A county may repeal or amend an ordinance in effect on the effective date
3 of this section so long as an amendment to the existing ordinance does not reduce the
4 period of amortization in effect on the effective date of this section.

5 (n) The provisions of this section shall not be used to interpret, construe, alter, or
6 otherwise modify the exercise of the power of eminent domain by an entity pursuant to
7 Chapter 40A or Chapter 136 of the General Statutes.

8 (o) Nothing in this section shall limit a county's authority to use amortization as a
9 means of phasing out nonconforming uses other than off-premises outdoor advertising."

10 **SECTION 2.** Chapter 160A of the General Statutes is amended by adding a
11 new section to read:

12 **"§ 160A-199. Regulation of outdoor advertising.**

13 (a) As used in this section, the term 'off-premises outdoor advertising' includes
14 off-premises outdoor advertising visible from the main-traveled way of any road.

15 (b) A city may require the removal of an off-premises outdoor advertising sign
16 that is nonconforming under a local ordinance and may regulate the use of off-premises
17 outdoor advertising within the jurisdiction of the city in accordance with the applicable
18 provisions of this Chapter.

19 (c) A city shall give written notice of its intent to require removal of off-premises
20 outdoor advertising by sending a letter by certified mail to the last known address of the
21 owner of the outdoor advertising and the owner of the property on which the outdoor
22 advertising is located.

23 (d) No city may enact or amend an ordinance of general applicability to require
24 the removal of any nonconforming, lawfully erected off-premises outdoor advertising
25 sign without the payment of monetary compensation to the owners of the off-premises
26 outdoor advertising, except as provided below. The payment of monetary compensation
27 is not required if:

28 (1) The city and the owner of the nonconforming off-premises outdoor
29 advertising enter into a relocation agreement pursuant to subsection (g)
30 of this section.

31 (2) The city and the owner of the nonconforming off-premises outdoor
32 advertising enter into an agreement pursuant to subsection (k) of this
33 section.

34 (3) The off-premises outdoor advertising is determined to be a public
35 nuisance or detrimental to the health or safety of the populace.

36 (4) The removal is required for opening, widening, extending or
37 improving streets or sidewalks, or for establishing, extending,
38 enlarging, or improving any of the public enterprises listed in
39 G.S. 160A-311, and the city allows the off-premises outdoor
40 advertising to be relocated to a comparable location.

41 (5) The off-premises outdoor advertising is subject to removal pursuant to
42 other statutes, ordinances or regulations of general applicability to all
43 categories of uses.

1 (e) Monetary compensation is the fair market value of the off-premises outdoor
2 advertising in place immediately prior to its removal and without consideration of the
3 effect of the ordinance or any diminution in value caused by the ordinance requiring its
4 removal. Monetary compensation shall be determined based on:

5 (1) The factors listed in G.S. 105-317.1(a); and

6 (2) The listed property tax value of the property and any documents
7 regarding value submitted to the taxing authority.

8 (f) If the parties are unable to reach an agreement under subsection (e) of this
9 section on monetary compensation to be paid by the city to the owner of the
10 nonconforming off-premises outdoor advertising sign for its removal, and the city elects
11 to proceed with the removal of the sign, the city may bring an action in superior court
12 for a determination of the monetary compensation to be paid. In determining monetary
13 compensation, the court shall consider the factors set forth in subsection (e) of this
14 section. Upon payment of monetary compensation for the sign, the city shall own the
15 sign.

16 (g) In lieu of paying monetary compensation, a city may enter into an agreement
17 with the owner of a nonconforming off-premises outdoor advertising sign to relocate
18 and reconstruct the sign. The agreement shall include the following:

19 (1) Provision for relocation of the sign to a site reasonably comparable to
20 or better than the existing location. In determining whether a location
21 is comparable or better, the following factors shall be taken into
22 consideration:

23 a. The size and format of the sign.

24 b. The characteristics of the proposed relocation site, including
25 visibility, traffic count, area demographics, zoning, and any
26 uncompensated differential in the sign owner's cost to lease the
27 replacement site.

28 c. The timing of the relocation.

29 (2) Provision for payment by the city of the reasonable costs of relocating
30 and reconstructing the sign including:

31 a. The actual cost of removing the sign.

32 b. The actual cost of any necessary repairs to the real property for
33 damages caused in the removal of the sign.

34 c. The actual cost of installing the sign at the new location.

35 d. An amount of money equivalent to the income received from
36 the lease of the sign for a period of up to 30 days if income is
37 lost during the relocation of the sign.

38 (h) For the purposes of relocating and reconstructing a nonconforming
39 off-premises outdoor advertising sign pursuant to subsection (g) of this section, a city,
40 consistent with the welfare and safety of the community as a whole, may adopt a
41 resolution or adopt or modify its ordinances to provide for the issuance of a permit or
42 other approval, including conditions as appropriate, or to provide for dimensional,
43 spacing, setback, or use variances as it deems appropriate.

1 (i) If a city has offered to enter into an agreement to relocate a nonconforming
2 off-premises outdoor advertising sign pursuant to subsection (g) of this section, and
3 within 120 days after the initial notice by the city the parties have not been able to agree
4 that the site or sites offered by the city for relocation of the sign are reasonably
5 comparable to or better than the existing site, the parties shall enter into binding
6 arbitration to resolve their disagreements. Unless a different method of arbitration is
7 agreed upon by the parties, the arbitration shall be conducted by a panel of three
8 arbitrators. Each party shall select one arbitrator and the two arbitrators chosen by the
9 parties shall select the third member of the panel. The American Arbitration Association
10 rules shall apply to the arbitration unless the parties agree otherwise.

11 (j) If the arbitration results in a determination that the site or sites offered by the
12 city for relocation of the nonconforming sign are not comparable to or better than the
13 existing site, and the city elects to proceed with the removal of the sign, the parties shall
14 determine the monetary compensation under subsection (e) of this section to be paid to
15 the owner of the sign. If the the parties are unable to reach an agreement regarding
16 monetary compensation within 30 days of the receipt of the arbitrators' determination,
17 and the city elects to proceed with the removal of the sign, then the city may bring an
18 action in superior court for a determination of the monetary compensation to be paid by
19 the city to the owner for the removal of the sign. In determining monetary
20 compensation, the court shall consider the factors set forth in subsection (e) of this
21 section. Upon payment of monetary compensation for the sign, the city shall own the
22 sign.

23 (k) Notwithstanding the provisions of this section, a city and an off-premises
24 outdoor advertising sign owner may enter into a voluntary agreement allowing for the
25 removal of the sign after a set period of time in lieu of monetary compensation. A city
26 may adopt an ordinance or resolution providing for a relocation, reconstruction, or
27 removal agreement.

28 (l) A city has up to three years from the effective date of an ordinance enacted
29 under this section to pay monetary compensation to the owner of the off-premises
30 outdoor advertising provided the affected property remains in place until the
31 compensation is paid.

32 (m) This section does not apply to any ordinance in effect on the effective date of
33 this section. A city may amend an ordinance in effect on the effective date of this
34 section to extend application of the ordinance to off-premises outdoor advertising
35 located in territory acquired by annexation or located in the extraterritorial jurisdiction
36 of the city. A city may repeal or amend an ordinance in effect on the effective date of
37 this section so long as the amendment to the existing ordinance does not reduce the
38 period of amortization in effect on the effective date of this section.

39 (n) The provisions of this section shall not be used to interpret, construe, alter or
40 otherwise modify the exercise of the power of eminent domain by an entity pursuant to
41 Chapter 40A or Chapter 136 of the General Statutes.

42 (o) Nothing in this section shall limit a city's authority to use amortization as a
43 means of phasing out nonconforming uses other than off-premises outdoor advertising."

44 **SECTION 3.** Section 1 of S.L. 2003-432 is repealed.

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SECTION 4. This act is effective when it becomes law.