

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 543

An Act to amend and reenact § 33.1-371.1 of the Code of Virginia, relating to permits for selective pruning of certain vegetation; fees.

[H 665]

Approved April 4, 2006

Be it enacted by the General Assembly of Virginia:

1. That § 33.1-371.1 of the Code of Virginia is amended and reenacted as follows:

§ 33.1-371.1. Selective pruning permits; fees; penalty.

Notwithstanding the provisions of § 33.1-353 or any other provision of law:

~~A.~~ 1. The Commonwealth Transportation Commissioner shall by permit authorize the selective pruning, within highway rights-of-way, as highways are defined in § 33.1-351, including within corporate limits of municipalities, of vegetation that obstructs motorists' view of signs displayed on outdoor advertising structures legally erected and properly maintained along the highways. ~~Such permits~~ *Permits authorizing such pruning shall be subject to such conditions as the Commissioner deems appropriate for the enhancement of highway safety and beautification, including but not limited to the following: issued in accordance with this section.*

~~1-~~ (a) All work performed under the permit shall be (i) subject to the direction of the Commissioner or his designee, (ii) supervised on-site by a certified arborist approved by the Commissioner, (iii) completed to the satisfaction of the ~~Department's Environmental Manager~~ Commissioner or his designee, and (iv) performed solely at the expense of the permittee.

~~2-~~ (b) All pruning shall be performed in a manner that (i) creates a picture frame effect around the sign and (ii) beautifies the area surrounding the advertising structure. All cutting shall be limited to vegetation with trunk base diameters of less than six inches. Pruning cuts of *limbs or branches or other* vegetation with diameters greater than four inches and clear cutting shall not be authorized and shall be strictly prohibited. *Pruning of vegetation in a highway median shall not be permitted where the locality within which the pruning is to be done has a local beautification project, as defined in this section, in the area within the scope of the selective pruning application; however, relocation or replanting of such vegetation shall be permitted in accordance with a landscaping plan as provided in this section.*

~~3-~~ (c) Any diseased or unsightly vegetation or any vegetation that endangers the health or retards the growth of desirable vegetation may be removed at the discretion of the certified arborist supervising the work. Any such removed vegetation shall be replaced at the permittee's expense with desirable vegetation.

~~B.~~ 2. The requirements of this section shall not apply to the owner or authorized agent of the owner of any sign, advertisement, or advertising structure exempted from the provisions of this article by § 33.1-355.

~~C.~~ 3. The Commissioner shall promulgate such regulations as he deems necessary or desirable to carry out the provisions of this section. Such regulations shall include but not necessarily be limited to the following requirements:

~~1-~~ (a) Every application for a permit submitted under this section shall be accompanied by photographs of the affected site and a detailed description of work proposed to be performed.

~~2-~~ (b) A fee of \$400 shall accompany every application *made to the Commissioner, or if applicable, to the locality within which the pruning is to be performed.* All such fees collected by the Commissioner shall be paid by the Commissioner into the state treasury, allocated to the Commonwealth Transportation Board.

~~3-~~ (c) Every applicant shall post a bond payable to the Commonwealth, with surety approved by the Commissioner and in a form approved by the Attorney General, in the sum of \$2,500, conditioned on the permittee's fulfillment of all requirements of the permit.

~~4-~~ (d) No permit shall be issued under this section in order to create a new site for an outdoor advertising structure.

~~D.~~ 4. *Where the applicant is seeking a vegetation control permit in a locality where the public right-of-way is within the jurisdictional limits of a city or town on a highway or street not within the jurisdiction of the Commissioner under § 33.1-353 or on a highway or street in a county having the county manager form of government, the Commissioner shall delegate the administration of this section to that locality and, if so delegated, the locality shall apply the provisions of this section.*

5. *If there are plant materials in the public right-of-way that are part of a local beautification project, the Commissioner or the locality, as the case may be, may include a requirement, in accordance with the provisions of subdivisions 4 through 7, that, as a condition of the issuance of a vegetation control permit for selective pruning, the applicant submit a landscaping plan, showing how the*

applicant will relocate or replant the vegetation obstructing the motorists' view from the main traveled way of the highway or street of signs displayed on outdoor advertising structures, in lieu of the selective pruning of such plant materials. For purposes of this section, "local beautification project" means any project in a locality that includes installation of plant materials, using public or other funds, in any public right-of-way within a city or town or on a highway or street in a county with the county manager form of government. In the absence of the existence of a local beautification project in the area within the scope of the selective pruning application, no landscaping plan requirement shall be imposed on the applicant.

6. If subdivision 5 is applicable, the applicant shall pay the reasonable costs of implementing the landscaping plan, which may include but not be limited to, relocating existing plant materials, purchasing new replacement plant materials, and planting vegetation that will not grow to a height or position in the future so as to obstruct motorists' view from the main traveled way of the highway or street of signs displayed on outdoor advertising structures, as otherwise set out in the landscaping plan.

7. The provisions of subdivisions 4 through 7 shall apply to any local beautification project installed prior to July 1, 2006. On and after July 1, 2006, the locality shall not plant materials that obstruct motorists' view from the main traveled way of the highway or street of signs displayed on outdoor advertising structures.

8. Any application for vegetation control in compliance with this section submitted to the Commissioner shall be approved within 60 days of submission or shall be deemed approved. Any application for vegetation control in compliance with this section submitted to any city or town or on a highway or street in a county with the county manager form of government shall be approved within 60 days of submission or shall be deemed approved. The locality may impose conditions in approval of the landscaping plan consistent with this section and the regulations promulgated thereto. If the locality is not satisfied that the landscaping plan submitted by the applicant complies with this section, the locality may appeal to the Commissioner prior to the expiration of the 60-day period from the date of submission. If the applicant objects to the conditions imposed by the locality as part of the approval of the landscaping plan, the applicant may appeal to the Commissioner within 10 days after the final action by the locality. The appealing party shall submit a written appeal to the Commissioner, stating the reasons for such appeal, along with a fee of \$400. The Commissioner shall review the landscaping plan and the reasons for the appeal and shall issue a determination in accordance with this section within 30 days after filing of the appeal, which determination shall be binding upon the applicant and the locality.

9. Upon issuance of a vegetation control permit in accordance with this section, the applicant shall give written notice, at least seven days in advance of any site work, as authorized by the permit, of the date and time of the commencement of the site work as approved by the permit. Such written notice shall be given to the Commissioner unless the public right-of-way is within the jurisdictional limits of a city or town on a highway or street not within the jurisdiction of the Commissioner under § 33.1-353, in which case, the written notice shall be given to the local government official who approved the permit.

10. Any person found by a court of competent jurisdiction to have violated any provision of this section, any regulation adopted pursuant to this section, or any permit issued under this section, shall, in addition to the penalties provided in § 33.1-377, be prohibited by the court from applying for any other permit under this section for a period of not more than five years.