

086196435

HOUSE BILL NO. 1105

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact §§ 33.1-370.1, 33.1-370.2, and 33.1-371.1 of the Code of Virginia, relating to outdoor advertising.

Patron—Bouchard

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-370.1, 33.1-370.2, and 33.1-371.1 of the Code of Virginia are amended and reenacted as follows:

§ 33.1-370.1. Removal of billboard signs under this chapter prohibited without just compensation.

Notwithstanding any other provision of law, no billboard sign subject to this chapter may be removed by action of a county, city, or town under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 without the payment of just compensation by the county, city, or town unless the billboard sign cannot remain on the property due to the site constraints of the property and removal of the billboard sign is therefore necessary for development on the property. The property owner may terminate the leasehold or other right of the billboard sign to remain on the property in accordance with the terms and conditions of the contract between the property owner and the billboard sign owner, but may not be required to do so by the county, city, or town as a condition of obtaining development approval for the property, unless removal of the billboard sign is necessary for development of the property or the billboard sign is nonconforming and is the principal use on the property and the zoning ordinance permits only one principal use on the property.

§ 33.1-370.2. Maintenance and repair of nonconforming billboard signs.

Notwithstanding any other provision of law, maintenance of and repairs to nonconforming billboard signs shall be governed by this section and any applicable regulations promulgated by the Commonwealth Transportation Commissioner, known as the "Control and Continuance of Nonconforming Signs, Advertisements and Advertising Structure." Nonconforming billboard signs shall be maintained in a good state of repair and shall be subject to removal for failure to do so, in accordance with § 33.1-375. In order to make repairs to a nonconforming billboard sign, the owner shall make a written request to the Commissioner and submit the documentation required by 24 VAC 30-120-170. The Commissioner shall review the written request and if the Commissioner determines that the cost of requested repairs does not exceed a dollar amount greater than 50 percent of the ~~current~~ original replacement cost of the entire billboard sign or structure, the Commissioner shall provide the owner of the billboard sign with a letter approving the billboard sign repairs. However, in no case shall a nonconforming billboard sign be replaced or rebuilt if the cost of the replacement or rebuilding exceeds 50 percent of the ~~current~~ original replacement cost. The owner of the billboard sign shall apply for a building permit from the locality in which the billboard sign is located and provide a copy of the approval letter from the Commissioner as part of the application for the building permit. The Commissioner's determination as to whether the owner of the billboard sign has complied with this section shall be binding upon the locality, unless the building official, for good cause shown, submits to the Commissioner documentation objecting to the Commissioner's determination, within 30 days of the building permit application, with a copy of such documentation being provided to the billboard sign owner. The Commissioner shall consider any documentation submitted by the building official and shall reissue a determination in accordance with this section, which determination shall be binding upon the locality.

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

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

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,~~ within the jurisdiction of the Commissioner pursuant to § 33.1-353, 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. Permits authorizing such pruning shall be issued in accordance with this section.

(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 Commissioner or his designee, and (iv) performed solely at the

INTRODUCED

HB1105

59 expense of the permittee.

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

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

72 2. The requirements of this section shall not apply to the owner or authorized agent of the owner of
73 any sign, advertisement, or advertising structure exempted from the provisions of this article by
74 § 33.1-355.

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

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

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

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

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

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

94 5. If there are plant materials in the public right-of-way that are part of a local beautification project,
95 the Commissioner or the locality, as the case may be, may include a requirement, in accordance with the
96 provisions of subdivisions 4 through 7, that, as a condition of the issuance of a vegetation control permit
97 for selective pruning, the applicant submit a landscaping plan, showing how the applicant will relocate
98 or replant the vegetation obstructing the motorists' view from the main traveled way of the highway or
99 street of signs displayed on outdoor advertising structures, in lieu of the selective pruning of such plant
100 materials. For purposes of this section, "local beautification project" means any project in a locality that
101 includes installation of plant materials, using public or other funds, in any public right-of-way within a
102 city or town or on a highway or street in a county with the county manager form of government. In the
103 absence of the existence of a local beautification project in the area within the scope of the selective
104 pruning application, no landscaping plan requirement shall be imposed on the applicant.

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

110 7. The provisions of subdivisions 4 through 7 shall apply to any local beautification project installed
111 prior to July 1, 2006. On and after July 1, 2006, the locality shall not plant materials that obstruct
112 motorists' view from the main traveled way of the ~~highway or street~~ *highways within the jurisdiction of*
113 *the Commissioner pursuant to § 33.1-353* of signs displayed on outdoor advertising structures.

114 8. Any application for vegetation control in compliance with this section submitted to the
115 Commissioner shall be approved within 60 days of submission or shall be deemed approved. Any
116 application for vegetation control in compliance with this section submitted to any city or town or on a
117 highway or street in a county with the county manager form of government shall be approved within 60
118 days of submission or shall be deemed approved. The locality may impose conditions in approval of the
119 landscaping plan consistent with this section and the regulations promulgated thereto. If the locality is
120 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 within 10 days after the final action by the Commissioner.~~ 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 and, if the applicant is the appealing party,~~ 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.