

## MEMORANDUM

To: Managers, Administrators, Clerks, Attorneys, and Planners

From: Paul A. Meyer, Chief Legislative Counsel

Date: August 4, 2011

Re: Changes to Billboard Regulation

During the 2011 session, the General Assembly passed legislation impacting the regulation of outdoor advertising. *SB 183 - Selective Vegetation Removal/State Highways (S.L. 2011-397)* affects the ability of billboard owners to obtain vegetation removal permits from the NC Department of Transportation and amends other portions of state law on outdoor advertising. This memorandum provides details of the changes below.

### Background

The legal framework for Outdoor Advertising regulation is a complicated balance of state statutes, administrative rules, local ordinances and case law. The Outdoor Advertising Act (G.S. Chapter 136, Article 11) establishes the basic framework for billboard controls in North Carolina. In a nutshell, the NCDOT issues permits for the erection of new billboards and removal of vegetation within 660 feet of the edge of the right of way of interstate or primary highways in the state, subject to the zoning and tree cutting controls of local governments. G.S. 136-129(4) limits billboard locations to areas zoned industrial and commercial, in conformity with rules and regulations promulgated by NCDOT. While local governments control zoning decisions in local communities, there is a long-standing legal battle between the billboard industry and local governments as to which portion of law controls their industry--local ordinances, or NCDOT rules. Furthermore, existing administrative code provisions enable local governments to impact vegetation removal around billboards through local tree preservation ordinances.

The North Carolina Administrative Code Section .0600 titled "Selective Vegetation Removal Policy" states in part:

.0601 Permit to Remove Vegetation

(f) If the application for vegetation cutting is for a site located within the corporate limits of a City or Town, local officials will be given the

opportunity to review the application if the City or Town has previously advised the Division Engineer of their desire to review such applications.

.0603 Issuance or Denial Of Permit

(b) The application will be denied by the Division Engineer if:

(10) The application is contrary to ordinances or rules and regulations enacted by the local government, within whose jurisdiction the work has been requested to be performed.

For almost a decade, the NC Outdoor Advertising Association has pursued legislative changes that would have allowed billboard operators to expand the number and type of billboards in the state, and expand the tree cutting zones around existing billboards in order to enhance their advertising potential--by limiting or eliminating state and local regulations, or by bolstering state rules to preempt local ordinances. This year was no exception. SB 183 in its original form would have allowed the conversion of nonconforming billboards to digital format by right (state preemption of local ordinances), increased existing cut zones to 400 feet on all state highways (overriding state rules calling for a 250 foot cut zone), trumped all local tree preservation ordinances, and provided for clear cutting within the vegetation removal zones (overriding NCDOT rules which provide for "picture framing" of billboards, but not clear cutting). The enacted version is somewhat scaled back but still makes some significant changes.

### **Application to Municipalities**

After a long struggle to improve the bill from the perspective of local communities, the legislation as enacted impacts cities in the following ways:

1. **Local tree cutting ordinances and authority.** Local tree cutting ordinances remain in effect, as preemptive language was removed late in the legislative session. [Efforts to insert language bolstering the strength and controlling authority of local ordinances were quashed in the Conference Committee report.]
2. **Enforcement Actions.** Cities may no longer deny the issuance of electrical permits for billboards, if NCDOT has issued a permit (that has not been revoked) for the billboard.
3. **Digital Billboards.** Local ordinances controlling sign characteristics remain in effect, as preemptive language allowing conversion to digital format by right was removed.
4. **Vegetation Removal Cut Zones.** Cut zone control over city-system streets remains under the purview of municipalities. The existing 250 foot

cut zone on primary and interstate highways (in NCDOT rules) changes as follows:

- a. Within cities/ETJ:
  - highways other than interstates and fully controlled access roads remain at 250 feet
  - interstate highways and fully controlled access roads expand to 340 feet
- b. Outside cities/ETJ:
  - cut zone expands to 380 feet

5. **Vegetation Removal and Replanting Requirements.** Billboard owners obtained the ability to remove trees and vegetation of any age, including clear cutting vegetation in Section 4 of the bill [G.S. §136-133.1(e)]. However, they are now required to submit a beautification and replanting plan for the billboard site to NCDOT, and plant and maintain the compensatory plantings upon approval of the plan by NCDOT. NCDOT is charged with the development of replanting rules which would apply statewide, working with municipalities to determine what types of billboard vegetation removal would trigger replanting, what types of planting would be appropriate, and under what scheme. While this portion of the bill is effective September 1, 2011, NCDOT is required to adopt temporary rules to implement the new law while permanent rules are being developed. Additionally, municipalities may request that they be given 30 days to review and provide comments on vegetation removal applications submitted to NCDOT that are for sites located inside their city limits.

6. **Miscellaneous.** The new law is chock full of additional restrictions on illegal tree cutting, the ability of the NCDOT to deny permits, details regarding previously existing trees, and appeal rights of permit applicants. While all of these will impact vegetation removal efforts, they do not directly affect municipal functions or regulatory authority.

In summary, new elements were added to state statute regarding billboard regulation--some of which aided local communities and some of which damaged local control over outdoor advertising. The impending rulemaking by NCDOT concerning replanting is an important next step in maintaining local control over aesthetics in local communities.