GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2017
Legislative Fiscal Note

BILL NUMBER: House Bill 581 (Second Edition)
SHORT TITLE: Revisions to Outdoor Advertising Laws.
SPONSOR(S): Representatives Lewis, Saine, Goodman, and Hanes

FISCAL IMPACT
($ in millions)

☑ Yes ☐ No ☐ No Estimate Available

State Impact	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Highway Fund Revenues:	$0.0	($0.1)	($0.1)	($0.1)	($0.1)
Highway Fund Expenditures:	$8.1	$1.8	$1.7	$1.7	$1.7
NET STATE IMPACT	**($8.1)**	**($1.9)**	**($1.8)**	**($1.8)**	**($1.8)**

Local Impact					
Revenues:					
Expenditures:					
NET LOCAL IMPACT	**No estimate available. See Assumptions and Methodology.**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation

EFFECTIVE DATE: Varies

TECHNICAL CONSIDERATIONS:
Yes - See Technical Considerations Section

BILL SUMMARY:

Section 1 eliminates the formula to calculate the monetary value of trees and sets a flat fee of $45 per caliper inch.

Section 8 amends the process by which DOT is directed to provide just compensation for the acquisition, purchase, condemnation, or taking of an off-premises outdoor advertising sign to the owner. This section would clarify that the unit rule for valuing property does not apply to the just compensation determination. This section would establish factors to determine just compensation for off-premises outdoor advertising, direct DOT to minimize adverse impacts to the displaced off-premises outdoor advertiser and reduce the costs of acquiring the off-premises outdoor advertising and property rights. The owner of off-premises outdoor advertising would also be entitled to recover reasonable costs of relocating and reconstructing the off-premises outdoor advertising, including certain lost income, from the party causing the removal.

Section 10 retroactively requires DOT to pay for the relocation costs authorized under G.S. 136-131.3.

Section 11 amends the outdoor advertising fees in G.S. 136-129(4) and (5). The initial fee is increased from $120 to $240; the annual renewal fee is increased from $60 to $75; and a new $240 fee for an addendum to the current permit is added.

Section 12 requires DOT to approve vegetation changes along medians at the request of an owner of an off-premises outdoor advertising sign.

Section 21 amends the process by which counties are directed to provide monetary compensation for the removal of off-premises outdoor advertising.

Section 22 amends the process by which cities are directed to provide monetary compensation for the removal of off-premises outdoor advertising.

ASSUMPTIONS AND METHODOLOGY:

As shown in Figure 1, this bill affects Highway Fund expenditures and revenues. Sections 21 and 22 of this bill affect cities and counties, but the amount of increased expenditures is not known.

Figure 1: Fiscal Impact to DOT Highway Fund					
Type	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Expenditures					
Sec. 8(a)(a)	$1,500,000	$1,500,000	$1,500,000	$1,500,000	$1,500,000
Sec. 8(a)(b)	No Estimate Available				
Sec. 8(a)(c)	$9,000	$9,000	$9,000	$9,000	$9,000
Sec. 10	$6,457,500				
Sec. 11	$145,710	$146,130	$133,470	$133,890	$134,310
Total Expenditures	$8,112,210	$1,655,130	$1,642,470	$1,642,890	$1,643,310
Revenues					
Sec. 1	($123,000)	($123,000)	($123,000)	($123,000)	($123,000)
Sec. 12	$146,250	$22,500	$22,500	$22,500	$22,500
Total Revenues	$23,250	($100,500)	($100,500)	($100,500)	($100,500)
TOTAL	**$8,088,960**	**$1,755,630**	**$1,742,970**	**$1,743,390**	**$1,743,810**

SECTION 1: MONETARY VALUE OF TREES

Sec. 1 establishes a $45 per caliper inch value for tree removal.

According to DOT, 1,540 caliper inches of trees were removed in 2016 at a compensation rate of $125 per caliper inch. Assuming the same number of caliper inches of trees are removal after the fee is reduced to the rate of $45 per caliper inch, DOT will lose $123,200 in revenues in each year of this fiscal analysis.

SECTION 8: REMOVAL OF EXISTING OFF-PREMISES OUTDOOR ADVERTISING

Sec. 8(a), Subsection (a) amends the process by which DOT is directed to provide just compensation for the acquisition, purchase, condemnation, or taking of an off-premises outdoor advertising sign to the owner.

The fiscal analysis for Sec. 8(a), Subsection (a) includes the following considerations:

1. DOT estimates the annual cost of Sec. 8(a), Subsection (a) to be $7.2 million but this fiscal analysis assumes a lower just compensation average than used by DOT.
2. Based on DOT data, construction projects require the relocation of approximately 15 billboards annually.
3. DOT estimates the average relocation cost paid by DOT and the federal DOT is $21,171. This estimate is based on actual relocations owned by the 3 largest billboard companies over a 5 year period. Since this section does not require additional relocations, relocation costs will be paid on future highway projects regardless of this proposed bill. Therefore, relocation costs are not included in Sec. 8. Relocation costs are included in Sec. 10 since this section is retroactive.
4. Under current law, the amount DOT reimburses for relocation cost is split. DOT pays 20% and the FHWA pays 80%.
5. DOT estimates the proposed just compensation factors will increase the combined cost of relocation and just compensation from $21,171 to $500,000. Currently, DOT pays for the relocation costs but it does not pay for the proposed nine just compensation factors listed in Sec. 8. DOT provides no information to justify or explain its $500,000 estimate, but stated the estimate was based on anecdotal costs incurred by the Florida Department of Transportation, which DOT states has a similar law.
6. This analysis is based on the rationale that DOT's $500,000 estimate for just compensation and relocation may be achieved when the billboard cannot be relocated. A 2014 Minnesota lawsuit awarded $750,000 for three conventional two-sided signs and $4.3 million for one digital billboard that were removed and not replaced due to a highway project. If the billboard is timely relocated, just compensation is expected to be less, but the measures are subjective.
7. Based on the sections of this bill that expand the ability to relocate signs and remove vegetation, this analysis assumes all signs required to be moved will be relocated to either a comparable or a non-comparable location.
8. The North Carolina Outdoor Advertising Association (NCOAA) does not agree with DOT's estimate. NCOAA data from the three largest companies, controlling 52% of signs

in the State, show that signs have an annual valuation of $40,000 to $60,000 per year. Just compensation is based on several additional factors.

9. NCOAA believes a fair just compensation amount will average $35,000 per billboard assuming the billboard is moved to a comparable location.
10. In the case of Department of Transportation v. Adams Outdoor Advertising of Charlotte, heard at the North Carolina Supreme Court on March 21, 2017, Adams sued for just compensation for a billboard as the result of a highway improvement project at the corner of Sharon Amity Road and Independence Boulevard. The billboard could neither be relocated near the original location nor in the City of Charlotte. According to DOT, Adams submitted an appraisal "for the unique structure at the unique location that were both at issue in the case." This appraisal valued just compensation at $350,000, and included the value of the permits, the value of the land, and income loss.
11. DOT's estimate includes a $2,500 appraisal fee.
12. According to DOT, loss of business is not compensable under Federal Highway Administration rules. Therefore, this analysis assumes no federal funds will be used to pay just compensation.
13. This analysis does not include additional legal costs if the court system is used to decide the settlement amount.

This Sec. 8(a), Subsection (a) analysis estimates just compensation and appraisal costs to be approximately $35,000 to $500,000 per sign. Factors impacting just compensation include location, digital vs traditional signs, size, and relocation to comparable vs non-comparable sites. Using the average of $100,000 per sign with 15 sign relocations annually, it is estimated that DOT will incur costs of $1,500,000 in each year of this analysis.

Sec. 8(a), Subsection (b) requires DOT to maintain the outdoor advertising structure until actual construction begins. Utility realignments are often conducted prior to active construction. Structures that impede utility realignments may cause project delays, which will increase a project's cost. The Sec. 8(a)(b) fiscal impact cannot be estimated.

Sec. 8(a), Subsection (c) requires DOT to compensate the property owner for up to 30 days of lost income during the sign relocation. A representative of the North Carolina Outdoor Advertising Association estimates monthly average rental costs range from $400 to $800. DOT estimates that sign rentals in larger cities average $5,000 per month. This analysis assumes an average of $600. Based on DOT's estimate of 15 relocations per year, Sec. 7(c) is estimated to cost $9,000 each year.

SECTION 10: RELOCATION OF PERMITTED OFF-PREMISES OUTDOOR ADVERTISING SIGN

Sec. 10 requires DOT to pay just compensation for the cost of relocations authorized under G.S. 136-131.3 for signs removed on or after January 1, 2014. DOT and industry representatives disagree about the impact of this section. The industry believes this section authorizes the replacement of billboards removed during the retroactive period of time. DOT argues that this section "means that affected sign owners would be entitled to "just compensation" as set forth in Section 8 of the bill if the removed sign could not be physically relocated to a new sign site." DOT believes "this legislation leaves the door open to pursue just compensation even if the relocation monies have been paid to the sign owner." Due to the possibility of interpreting this section in different ways, this analysis supports DOT's contention that just compensation may be awarded. Clarifying the industry's position that just compensation is not included will remove the potential for a fiscal impact.

The analysis for Sec. 10 includes the following considerations:

1. Except for the first two considerations, all Sec. 8(a) considerations used to determine the fiscal impact apply.
2. DOT's database does not include information on the number of signs that were removed but not relocated between January 1, 2014 and the present. DOT conducted a division survey to estimate that 41 of the 59 signs removed during this time period were not relocated. This analysis supports DOT's estimate.
3. The costs incurred from Sec. 8(a), Subsection (c) are included.
4. This analysis assumes DOT will pay 20% of the cost to replace the billboards. The remaining 80% is paid by FHWA.

Figure 2: Estimated Retroactive Costs to Relocate Outdoor Advertising (Sec. 10)	
# Relocations in 2014 to present	59
Just compensation for 41 relocations	$6,150,000
Appraisal fee for 41 signs	$102,500
Sec. 8(a)(c) costs for 41 signs	$24,600
Replacement costs for 41 non-conforming signs- State Share	$180,400
Total	**$6,457,500**

As shown in Figure 2, this analysis estimates Sec. 10 will cost DOT $6,457,500 in FY 2017-18.

SECTION 11: PERMITS REQUIRED

Sec. 11(a) increases the initial permit fee and renewal fee and adds a new fee for permit amendments. In 2016, DOT issued 218 new permits, 7,962 renewals, and 60 cancellations. This analysis accepts DOT's estimates for the number of permits in the next 5 years, which is based on 5 years of past data. Figure 3 estimates the number of new and renewed permits.

The estimated decline in the number of new permits is due to a change in federal law. The federal MAP-21 legislation increased the number of routes requiring a permit but these routes are expected to be substantially permitted by FY 2018-19.

Figure 3: Estimated Number of Permits Issued (Sec. 11)					
Type	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
New	159	159	50	50	50
Renewal	7,962	7,990	8,018	8,046	8,074
Amended	30	30	30	30	30

Figure 4 estimates that revenue from outdoor advertising permits will increase in each of the five fiscal years.

Figure 4: Estimated Increase in Revenues from Permitting Fees (Sec. 11)						
Type	Fee Change	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
New	$120	$19,080	$19,080	$6,000	$6,000	$6,000
Renewal	$15	$119,430	$119,850	$120,270	$120,690	$121,110
Amended	$240	$7,200	$7,200	$7,200	$7,200	$7,200
TOTAL		**$145,710**	**$146,130**	**$133,470**	**$133,890**	**$134,310**

SECTION 12: OUTDOOR ADVERTISING VEGETATION CUTTING OR REMOVAL

Sec. 12 requires DOT to approve vegetation changes along medians at the request of an owner of an off-premises outdoor advertising sign. This analysis assumes that the number of new cuts increase in the first year under the proposed law but will decrease in future years. DOT estimates this will increase the amount of caliber inches cut by 3,250 in the first year. This analysis assumes 500 caliber inches are cut or removed in years 2-5. Revenues are projected to increase by $146,250 in FY 2017-18 and $22,500 in future years.

SECTION 21 and SECTION 22: REGULATION OF OUTDOOR ADVERTISING

Sections 21 and 22 revises the proposed factors used to determine just compensation for off-premises outdoor advertising structures. It is estimated that these proposed changes will increase county costs (Sec. 21) and city costs (Sec. 22) but it is not known by how much costs will increase.

SOURCES OF DATA:

Department of Transportation, Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, NC Outdoor Advertising Association, NC Association of County Commissioners, NC League of Municipalities

TECHNICAL CONSIDERATIONS:

1. A consideration could be given in Sec. 8(b) to establish a lease agreement during the time the property is transferred to DOT and when active construction begins and the billboard is

removed. This will clarify whether the prior owner's lease transfers to DOT.

2. Sec. 10(a), Subsection (a)(3) and Sec. 8(a), Subsection (b) appear to conflict. Sec. 8(a), Subsection (b) states that relocation cannot occur until the highway project is under active construction. Sec. 10(a), Subsection (a)(3) states that construction work start within one year of the date of removal or the bill's effective date, whichever comes later.

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