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and Regulations by the Department of Transportation

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HIGHWAYS, BRIDGES, AND FERRIES

Regulations of Maintenance and Use: Change Provisions Relating to the Outdoor Advertising Citizens Advisory Council; Provide for a Roadside Enhancement and Beautification Council; Change Authority for the Issuance of Permits for Trimming and Removing Trees and Vegetation Along State Rights-of-Way; Provide for a Roadside Enhancement and Beautification Fund; Change Provisions for the Application of Tree Trimming and Removal Permits and Renewals; Provide Penalties and Remedies for Violations; Change Provisions Relating to the Promulgation of Rules and Regulations by the Department of Transportation

CODE SECTIONS:	O.C.G.A. §§ 32-6-75.1 to -75.3, -90 (amended)
BILL NUMBER:	SB 337
ACT NUMBER:	953
GEORGIA LAWS:	1998 Ga. Laws 1313
SUMMARY:	The Act establishes a twelve-person Roadside Enhancement and Beautification Council to assist the Commissioner of the Georgia Department of Transportation (DOT) in formulating policies, evaluating problems, and administering an effective roadside management program for the State of Georgia. Additionally, the Act defines the authority of the DOT Commissioner to issue trimming permits for the removal of trees and vegetation along state rights-of-way. The Act also establishes a Roadside Enhancement and Beautification Fund to promote improvement projects along Georgia's public roads. Finally, the Act establishes the requirements and procedures for application and renewal of trimming permits, the regulation of use fees, the development of landscape plans, and the imposition of remedies and penalties for violations of the Act.

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EFFECTIVE DATE: O.C.G.A. §§ 32-6-75.1, -75.3, -90, July 1, 1998; § 32-6-75.2, Jan. 1, 1999[1]

History

The use of outdoor billboards for advertising is both a national environmental issue and a controversial issue among Georgians.[2] More than half of the states in the Union now prohibit the cutting of trees on public property to make signs visible.[3] Four states ban advertising billboards altogether.[4]

Billboards have long been legal in Georgia.[5] Under prior law, the Georgia Department of Transportation (DOT) Commissioner could issue permits to billboard owners allowing them to cut trees and vegetation on public property in order to make their signs visible to the traveling public.[6] However, in 1995, the Georgia Supreme Court held, in *Garden Club of Georgia, Inc. v. Shackelford*,[7] that the DOT's issuance of tree-trimming permits was unconstitutional.[8]

The Garden Club brought suit against the State arguing that the issuance of cutting permits by the DOT amounted to an unconstitutional "gratuity."[9] The court agreed, holding that "[b]ecause an unobstructed view of outdoor advertising signs on private property supports the sign owners without providing a substantial benefit to the state or its citizens, [the] DOT's regulations violate the Georgia Constitution's prohibition against the granting of gratuities."[10] Furthermore, the court explicitly rejected the argument that as a matter of public policy, "outdoor advertising provides substantial

1. This portion of the Act became effective on January 1, 1999, upon the ratification of a resolution at the November 1998 state-wide election which amends the State Constitution.

2. *See* Editorial, *Save Trees, Ax Legislation*, ATLANTA J. & CONST., Mar. 16, 1998, at A8.

3. *See id.*

4. *See id.*

5. *See* Telephone Interview with Rep. Jimmy Benefield, House District No. 96 (July 14, 1998) [hereinafter Benefield Interview].

6. *See* Editorial, *Let's Hear It for the Trees, The Garden Club, The Court*, ATLANTA J. & CONST., Nov. 8, 1995, at A12.

7. 266 Ga. 24, 463 S.E.2d 470 (1995).

8. *See id.*

9. *Id.* at 24, 463 S.E.2d at 471. The court defined gratuity as "[s]omething given freely without recompense; a gift." *Id.* (quoting McCook v. Long, 193 Ga. 299, 303, 18 S.E.2d 488 (1942)).

10. *Id.* at 25, 463 S.E.2d at 471.

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benefits to the traveling public."[11] In its opinion, the Georgia Supreme Court reversed the lower court's denial of an injunction on the issuance of cutting permits.[12] As a result, the DOT was prohibited from issuing cutting permits in 1995.[13]

In 1997, lawmakers set aside a bill reconsidering Georgia's tree-trimming policies after it was bitterly opposed by the Garden Club of Georgia, the Sierra Club, the Georgia Wildlife Federation, and the Georgia Conservancy.[14] Environmental groups continued to voice strong opposition to billboards as a source of advertising.[15] These groups are especially critical of the state's issuance of cutting permits which allow owners to "clear" the public's view of their signs.[16]

On the other hand, proponents of billboards, such as the Outdoor Advertising Association of Georgia, defend outdoor advertising as being "crucial to many businesses which depend on tourists and travelers for income."[17] Proponents also argue that billboards provide a substantial benefit to Georgia's traveling public.[18]

In 1998, Senator Steve Thompson introduced SB 337 in an effort to gain a compromise between sign owners and environmental groups.[19] The Act also seeks to resolve the constitutional issue of gratuity by giving something back to the Georgia public: roadside landscaping in exchange for permission to cut.[20]

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11. *Id.*
12. *See id.*
13. *See* Charles Walston, *Billboard Compromise May Clear Committee Today*, ATLANTA J. & CONST., Feb. 5, 1998, at C4.
14. *See* Charles Seabrook, *Report: Trees Cut Illegally Along I-75 DOT Probe: 81 Pines and Hardwoods Were Chopped or Trimmed Apparently to Enhance Billboards' View*, ATLANTA J. & CONST., Jan. 30, 1998, at C1.
15. *See* Martha Ezzard, *"Treedom" March is on, No Shrinking Violets in 500-Woman March*, ATLANTA J. & CONST., Feb. 12, 1996, at A8.
16. *Id.*
17. *See* Seabrook, *supra* note 14.
18. *See* Tony Heffernan, *Garden Club Loses Round in Billboard Battle*, MACON TELEGRAPH, Mar. 13, 1998, at D1.
19. *See* Seabrook, *supra* note 14.
20. *See* Telephone Interview with Sen. Joseph B. Brush, Jr., Senate District No. 24 (July 27, 1998) [hereinafter Brush Interview].

HeinOnline -- 15 Ga. St. U. L. Rev. 138 1998-1999

SB 337

Introduction

SB 337 underwent seven full-text revisions before it was passed into law by a vote of 50-0 in the Senate and 121-47 in the House. [21] On April 20, 1998, Governor Zell Miller signed the Act into law. [22]

Changes and revisions to SB 337 focused primarily on five areas: (1) the size and makeup of the Roadside Enhancement and Beautification Council and its working relationship with the DOT Commissioner; (2) the type and size of vegetation that can be cut on public property; (3) the size of the area in front of billboards in which cutting and trimming can take place; (4) the requirement to landscape the area after cutting and trimming takes place; and (5) the wording in the Act that declares outdoor advertising a substantial benefit to the citizens of Georgia.[23]

Role of the DOT Commissioner and the Council

Prior to the Supreme Court ruling in *Garden Club*,[24] the DOT Commissioner issued cutting permits and administered the state's cutting and trimming program with the advice and recommendations of a seven-member Outdoor Advisory Citizens Council. [25] Under the Act, the Commissioner retains authority to administer the program and issue permits and the Council maintains its advisory capacity;[26] however, legislators expanded the Council membership to twelve and renamed it the Roadside Enhancement and Beautification Council.[27] The Council continues to advise the Commissioner in formulating policy and in directing procedures relating to the administration of the

21. *See* Georgia House of Representatives Voting Record, SB 337 (Mar. 12, 1998); Georgia Senate Voting Record, SB 337 (Feb 6, 1998).

22. *See* 1998 Ga. Laws 1313, at 1321; *see also SB 337 Summary Sheet* (visited Aug. 2, 1998) <http://www.ganet.org/cgi-bin/pub/leg>.

23. *Compare* SB 337, as enrolled, 1998 Ga. Gen. Assem., *with* SB 337, as introduced, 1998 Ga. Gen. Assem.; *see also* Telephone Interview with Rep. Bill Sanders, House District No. 107 (July 16, 1998).

24. 266 Ga. 24, 463 S.E.2d 470 (1995).

25. *See* 1981 Ga. Laws 955, § 2, at 957 (formerly found at O.C.G.A. § 32-6-75.1 (1996)).

26. *See* O.C.G.A. § 32-6-75.1 (Supp. 1998).

27. *See id.*

HeinOnline -- 15 Ga. St. U. L. Rev. 139 1998-1999

Act.[28] The Act also establishes a special Roadside Enhancement and Beautification Fund to improve Georgia's roadways.[29]

The Beautification Fund and the Council were included in the introduced version of SB 337.[30] Although excluded by a subsequent House Committee substitute, legislators reintroduced both the Fund and the Council as part of a House floor substitute.[31] Little opposition or controversy surrounded the increased membership of the Council or the establishment of the new Beautification Fund.[32] The only disagreement among lawmakers concerned the Council's full access to all DOT records, a provision which was added to the final version of SB 337 and ultimately passed into law.[33]

The Size and Type of Trees That Can Be Cut on Public Property

Perhaps the most contentious issue surrounding SB 337 was the debate over the size and type of vegetation that can be cut on public property.[34] The Act bans the cutting of any hardwood trees with trunks over eight inches in diameter or nonhardwoods with a trunk diameter of over twelve inches, at a measurement six inches above the ground.[35] The Act also bans the cutting of any historic or endangered tree species.[36] These controversial restrictions were included as a compromise between environmentalists, who advocated no cutting, and billboard owners, who wanted the freedom to remove vegetation as necessary to view their signs.[37] The restrictions were included in SB 337, as introduced; however, they were removed in a House Committee substitute, then reintroduced as a twelve-inch diameter restriction in a House floor amendment, and finally amended in Conference Committee prior to passage of the Act.[38]

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28. *See id.*
29. *See id.* § 32-6-75.2.
30. *See* SB 337, as introduced, 1998 Ga. Gen Assem.
31. *Compare* SB 337 (HCS), 1998 Ga. Gen. Assem., *with* SB 337 (HFS), 1998 Ga. Gen. Assem.
32. *See* Benefield Interview, *supra* note 5.
33. *See* Telephone Interview with Joan Brown, Legislative Chairperson, Garden Club of Georgia, Inc. (July, 16, 1998) [hereinafter Brown Interview]. *Compare* SB 337, as introduced, 1998 Ga. Gen. Assem., *with* SB 337 (CCS), 1998 Ga. Gen Assem., *and* 1998 Ga. Laws 1313, § 1, at 1315.
34. *See* Brown Interview, *supra* note 33.
35. *See* O.C.G.A. § 32-6-75.3(2) (Supp. 1998).
36. *See id.* § 32-6-75.3(2)(ii).
37. *See* Brush Interview, *supra* note 20.
38. *See* SB 337, as introduced, 1998 Ga. Gen. Assem.; SB 337 (HCS), 1998 Ga. Gen.

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Landscape Requirements: Giving Something Back

In order to obtain a permit to cut or trim existing trees and vegetation, the Act requires billboard owners to agree to landscape the areas they clear.[39] This provision was designed to promote environmental concerns and to return something of value to the Georgia public in an effort to avoid the gratuity issue raised in *Garden Club*.[40] As introduced, SB 337 required cutting-permit applicants to provide or pay for landscaping "not less than the [DOT's] appraised value of the benefit to be conferred by the state . . . including . . . the value of the trees or vegetation to be trimmed or removed."[41] In other words, the DOT determines the value of the replacement landscaping. Although this wording was changed in a House Committee substitute, which required four trees for every tree removed and wild flower seeding along a one-half mile section of the right-of-way where trees were removed, the language was deleted in a House floor amendment.[42] Finally, a Conference Committee amendment reintroduced exactly the same language that was introduced originally in SB 337, leaving the value of replacement landscaping to the determination of the DOT.[43] Environmental groups will pay close attention to the value assigned by the DOT to ensure that Georgians do, in fact, receive adequate compensation for the trees lost.[44]

Where Trees and Vegetation May be Removed

The Act provides that "[n]o trees or vegetation shall be trimmed or removed under this Code section other than within a viewing zone."[45] A viewing zone is a designated area within the line of sight of an advertising sign.[46] Although the code does attempt to describe a viewing zone, environmentalists express concern that the description is too vague.[47] The fear is that billboard owners may attempt to clear

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Assem.; SB 337 (HFA), 1998 Ga. Gen. Assem.; SB 337 (CCS), 1998 Ga. Gen. Assem.

39. *See* O.C.G.A. § 32-6-75.3(e)(1) (Supp. 1998).

40. *See* Brush Interview, *supra* note 20.

41. SB 337, as introduced, 1998 Ga. Gen. Assem.

42. *Compare* SB 337 (HCS), 1998 Ga. Gen. Assem., *with* SB 337 (HFA), 1998 Ga. Gen. Assem.

43. *Compare* SB 337, as introduced, 1998 Ga. Gen. Assem., *with* SB 337 (CCS) 1998 Ga. Gen. Assem.

44. *See* Brown Interview, *supra* note 33.

45. O.C.G.A. 32-6-75.3(e)(2)(A)(I) (Supp. 1998).

46. *See id.*

47. *See* Brown Interview, *supra* note 33.

HeinOnline -- 15 Ga. St. U. L. Rev. 141 1998-1999

too much public land in an effort to make signs visible and environmentalists are counting on the DOT to interpret legislative guidance fairly.[48] Lawmakers introduced the concept of a viewing zone late in the legislative process. The language concerning the viewing zone was introduced by a Conference Committee substitute as a means of limiting vegetation removal in an effort to satisfy environmental concerns and promote highway beautification.[49]

Outdoor Advertising as a Substantial State Benefit

Finally, legislators included specific language in the Act asserting that outdoor advertising provides a "substantial benefit to the state and the traveling public."[50] This phrasing, while opposed by environmental groups,[51] was included in the introduced version of the bill, retained in all revisions, and is designed to help the Act survive any future constitutional challenges.[52]

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48. *See id.*
49. *See* SB 337 (CCS), 1998 Ga. Gen. Assem.; Benefield Interview, *supra* note 5.
50. *See* O.C.G.A. § 32-6-75.3(a)(2) (Supp. 1998).
51. *See* Letter from Joan Brown, Legislative Chairperson, Garden Club of Georgia, Inc. (Jan. 25, 1999).
52. *See* Brush Interview, *supra* note 20. *Compare* SB 337, as introduced, 1998 Ga. Gen. Assem., *with* SB 337 (CCS), 1998 Ga. Gen. Assem.

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