

O.C.G.A. § 32-6-75.3

GEORGIA CODE
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*** Current Through the 2011 Extraordinary Session ***
*** Annotations Current Through January 20, 2012 ***

TITLE 32. HIGHWAYS, BRIDGES, AND FERRIES
CHAPTER 6. REGULATION OF MAINTENANCE AND USE OF PUBLIC ROADS GENERALLY
ARTICLE 3. CONTROL OF SIGNS AND SIGNALS
PART 2. STATE HIGHWAY SYSTEM

O.C.G.A. § 32-6-75.3 (2011)

§ 32-6-75.3. Application for tree trimming permit and annual renewal; forms; application fees; evaluation; criteria for trimming trees or vegetation

(a) (1) For purposes of this Code section, the term:

(A) "Removal" or "removed" means the elimination of trees or other vegetation from a viewing zone.

(B) "Target view zone" means an area of the viewing zone extending from the sign to the roadway to which the sign is permitted which shall be angled as requested by the applicant to maximize the visibility of the sign to passing motorists but not to exceed:

(i) Two-hundred and fifty feet along the right of way fence or boundary; and

(ii) Three-hundred and fifty feet along the pavement edge, to include any emergency lane or paved shoulder.

(C) "Trimming" or "trimmed" means the pruning of excess limbs or branches from trees or other vegetation which are not removed from a viewing zone.

(D) "Viewing zone" means a continuous 500 foot horizontal distance parallel to a state right of way and adjacent to or otherwise within the line of sight of an outdoor advertising sign.

(2) The General Assembly finds and declares that outdoor advertising provides a substantial service and benefit to Georgia and Georgia's citizens as well as the traveling public. Therefore, the General Assembly declares it to be in the public interest that provisions be made for the visibility of outdoor advertising signs legally erected and maintained along the highways in this state to provide information regarding places offering lodging, food, motor vehicle fuels and lubricants, motor service and repairs, or any other services or products available to the general public. Recognizing, however, that the

beautification of this state and the health of its environment are absolutely essential and equally as important to the traveling public, the General Assembly finds and declares that these needs must be balanced.

(b) (1) So as to promote these objectives and in accordance with the provisions of this Code section, the commissioner shall provide by rule or regulation for the issuance and annual renewal of permits for the trimming and removal of trees and other vegetation on the state rights of way within viewing zones with respect to outdoor advertising signs legally erected and legally maintained adjacent to said rights of way. Such rules and regulations shall include, without limitation, standards for survival of vegetation trimmed or planted.

(2) So as to ensure that no vegetation maintenance permits are issued for the purpose of creating new outdoor advertising signs, no owner of outdoor advertising signs permitted or assigned a working number by the department after December 31, 2010, or such owner's agent, shall be eligible to make application for vegetation maintenance for a period of five years from the date a new sign is permitted.

(c) Application for a tree or vegetation trimming or removal permit and the annual renewal thereof shall be made upon the forms prescribed and provided by the department and shall contain the signature of the applicant and such other information as may be required by the department's rules and regulations.

(d) An application fee shall accompany the application for each vegetation maintenance permit, and both the application and fee shall be submitted to the department. There shall be an annual renewal of the permit for activities in the original scope of the permit. The department shall promulgate rules and regulations setting forth the application fees and renewal fees. Such application and renewal fees shall be established by the department in reasonable amounts in order to fully recover the costs of administering the vegetation maintenance program.

(e) (1) The department shall evaluate each application for a permit under this Code section and require as a condition of granting any permit under this Code section that the value of the landscaping to be either provided or paid for by the applicant is not less than the department's appraised value of the benefit to be conferred by the state upon the applicant by allowing the trimming or removing of trees or other vegetation as requested, which shall be the value of the trees or vegetation to be trimmed or removed; provided, however, that a permit may be granted to an otherwise qualified applicant in a case where the value of the landscaping to be either provided or paid for by the applicant is less than the department's appraised value of the trees or other vegetation to be trimmed or removed if, in addition, the applicant pays to the department an amount equal to the amount of the difference between the value of the landscaping to be either provided or paid for by the applicant and the department's appraised value of the trees or other vegetation to be trimmed or removed.

(2) Any measurement of vegetation to be removed for valuation purposes shall be made at diameter breast height as shown in the section entitled "Height of Measurement" in the

Guide for Plant Appraisal (9th Edition) as published by the International Society of Arboriculture. Based on the substantial benefit to the state where dead or diseased trees are removed from the right of way, and the negligible value of dead or diseased trees, such vegetation shall not be measured or valued in determining the appraised value. Trees shall be only deemed dead or diseased if listed as such in the report of a certified forester or arborist, subject to review and approval by the department. Upon receipt of a properly completed application, the department shall, within 60 days, issue the permit for vegetation maintenance.

(3) The applicant shall be allowed to remove all trees and vegetation from the target view zone so long as the sign was permitted or assigned a working number by the department on or before December 31, 2010. Vegetation removal shall be prohibited in all areas of the viewing zone outside of the target view zone except that portions of vegetation, such as tree limbs, which extend into the target view zone from outside the target view zone may be trimmed as necessary to preserve the clear target view zone. The only vegetation which cannot be removed from the target view zone pursuant to this paragraph shall be landmark trees, historic trees, and specimen trees, as defined in subparagraphs (A) through (C) of this paragraph, and any tree planted as part of a permitted local, state, or federal government beautification project. After July 1, 2011, however, no beautification project in this state shall include the planting of trees in the right of way within 500 feet of an outdoor advertising sign such that the visibility of a permitted outdoor advertising sign is obscured or could later be obscured by the growth of such vegetation.

(A) For purposes of this paragraph, the term "historic tree" means a tree or group of trees that are reasonably determined by the department to be:

- (i) Identified by a unit of government to recognize an individual or group;
- (ii) Located at the site of a historic event and significantly impact an individual's perception of the event;
- (iii) Dated to the time of a historic event at the location of the tree, as identified by a unit of government; or
- (iv) Confirmed as the progeny of a tree that meets any of the criteria contained in this division.

(B) For purposes of this paragraph, the term "landmark tree" means a tree or group of trees that:

- (i) Have been planted and maintained for educational purposes for more than 75 years;
- (ii) Were planted as a memorial to an individual, group, event, or cause and are more than 75 years old; or

(iii) Symbolize a historically significant individual, place, event, or contribution, as recognized by a unit of government prior to July 1, 2010.

(C) For purposes of this paragraph, the term "specimen tree" means a hardwood tree or group of hardwood trees that is determined to be in excess of 75 years of age as determined by a registered forester or arborist.

(D) Pruning or trimming of trees under a permit shall conform to industry standards as defined by the National Arborist Association, International Society of Arboriculture or ANSI A300 pruning standards as of January 1, 2011, or such later edition as may be adopted by rule or regulation of the department.

(4) An applicant's record of conduct regarding disturbance of trees or other vegetation on state rights of way shall be considered by the department as part of the evaluation process for any permit or permit renewal application.

(5) Prior to approving any permit application to remove allegedly diseased trees, the department shall verify that such trees are in fact diseased. Such determination shall be made by the department's landscape architect.

(6) A performance bond in an amount adequate for the requirements of the permit as determined by the department shall be required of each permittee.

(f) (1) No trees or other vegetation on state rights of way shall be trimmed, killed, or removed by any person other than in accordance with a permit issued under this Code section by any person other than the department or an authorized agent or contractor thereof.

(2) No outdoor advertising sign to which a permit under this Code section is applicable shall be unused for advertising for a period of six consecutive months or more.

(3) On and after July 1, 1999, no outdoor advertising sign to which a permit under this Code section is applicable shall be maintained in such a condition of disrepair as to be unusable for advertising.

(4) (A) In cases where the department has reasonable cause to believe that a violation of this subsection has been committed by any person, the procedures provided under Code Section 32-6-95 shall apply the same as in cases wherein the department believes that a sign is being maintained in violation of this part.

(B) Following notice, hearing, and a finding that a person has committed a violation of paragraph (1) of this subsection, a civil fine of not less than \$10,000.00 nor more than \$20,000.00, and restitution in an amount equal to the appraised value of the trees or vegetation, or both, which were unlawfully trimmed or removed, shall be imposed on such person.

(C) Following notice, hearing, and a finding that a permittee under this Code section has committed a violation of paragraph (2) of this subsection, an order directing the removal of such unused sign, at the expense of the permittee, shall be issued.

(D) Following notice, hearing, and a finding that a permittee under this Code section has committed a violation of paragraph (3) of this subsection, an order directing the removal of such unusable sign shall be issued.

(E) The department or its authorized agents shall be authorized to enter upon private lands and disassemble and remove signs without civil or criminal liability therefor pursuant to an order issued in accordance with this paragraph and as provided by Code Section 32-6-96 for disassembly and removal of illegal outdoor advertising signs.

(g) In order to obtain a vegetation maintenance permit for signs which exceed 75 feet in height, as measured from the base of the sign or crown of the adjacent roadway to which the sign is permitted, whichever is higher, the owner of the sign shall agree to reduce the sign to 75 feet in height or less, as measured from the base of the sign or crown of the adjacent roadway to which the sign is permitted, whichever is higher, unless lowering is precluded by local government code or regulation. Work to lower the sign shall be concluded within 60 days of completion of the vegetation removal. If the terms of the work plan are not complied with and all work satisfactorily completed within the allowed time, the performance bond shall be forfeited, and the department shall be authorized to collect the bond and lower the sign. Upon completion of any project which reduces sign height by use of a new support mechanism, such as a new pole, the sign owner shall provide the department with a written footer inspection from the applicable local government or a professional engineer prior to the release of the bond.

(h) The department shall have the right to refuse to issue any vegetation permits to any person, firm, or entity which the department determines is maintaining or is allowing to be maintained any abandoned sign or signs, until all such abandoned signs are removed or brought into compliance with the provisions of this Code section. For purposes of this subsection, the term "abandoned sign" means any sign adjacent to a state-controlled route that has not contained a message for six consecutive months and which has not had a message displayed within 30 days after receipt of notice by certified mail from the department. The addition of a "for rent" panel or a phone number shall not qualify as a message for purposes of this subsection, but self promotional copy covering at least one entire sign face or advertising copy benefitting charitable, nonprofit, religious, or other noncommercial groups shall qualify as a message.

(i) The department shall have the right to refuse to issue any vegetation permits to any person, firm, or entity which the department determines is maintaining or is allowing to be maintained in their inventory of signs in this state any sign which depicts any material which is obscene as such term is defined in Code Section 16-12-80, or material that is in conflict with the applicable local government's obscenity ordinance. Upon conviction of depiction of any material as obscene the person, firm, or entity shall be punishable by a fine of not less than \$5000.00 for the first conviction and \$10,000.00 for any subsequent conviction and

shall also be guilty of a misdemeanor of a high and aggravated nature.

(j) The removal of signs with lapsed outdoor advertising permits is of benefit to this state but is often too costly for the department to undertake. In order to encourage the removal of such signs and permitted signs that do not conform to the state's current requirements for outdoor advertising signs without the expenditure of state funds, a credit which may be used as an offset toward the total appraised value of the vegetation to be removed in accordance with a vegetation maintenance permit shall be awarded for each qualifying sign removal as follows:

(1) On or before March 1, 2012, the department shall prepare a list of signs which once held a valid outdoor advertising permit but for which the permit has been allowed to lapse. Notification of a sign's inclusion on such list shall be sent to the last known address for the sign's owner as listed on department records and to any other person or entity which the department reasonably finds to have an interest in such sign. Within 30 days of receipt of such notice or 60 days of publication of the list, whichever comes later, any person or entity claiming to be the owner of a sign that they do not believe has been properly included on the list shall be allowed to submit written notice to the department of their objection. Such objection may include a statement of the relevant facts and any supporting documents. On or before July 1, 2012, the department shall publish the final list. Signs which are the subject of any current objections, administrative appeals, or legal disputes shall not be included on such list. This list shall be updated annually and provided to the chairpersons of the House and Senate Transportation Committees on or before the first day of March;

(2) The department shall, on or before January 1, 2012, prepare a schedule or formula to determine the credit to be received for the removal of lapsed-permit signs and permitted nonconforming outdoor advertising signs. Such schedule shall provide a valuation of the credit based on four factors: material used in sign structure, height of sign, size of sign, and terrain and topography. The department shall also prepare a form to be submitted by any person or entity seeking a credit under this subsection. Such form shall require a description of the material used in the sign structure, the height of the sign, the size of the sign, and the terrain and topography where the sign is situated and a calculation of the anticipated credit in accordance with the department's schedule or formula;

(3) At such time as any lapsed-permit sign from the department's updated list or a nonconforming outdoor advertising sign is removed, the person or entity responsible for such removal shall submit to the department the completed removal form and photographic evidence of the removal. For purposes of this subsection, the term "removal" means removal of all structural elements above ground level; removal of footers or foundation elements shall not be required. Within 60 days of such submission, the department shall certify and return the form. No credit shall be allowed for the removal of a lapsed-permit sign by the owner of such sign. The certified form shall serve as a credit voucher. Credit vouchers may be transferred to another party via notarized statement signed by both parties;

(4) Where a lapsed-permit sign from the department's updated list or a nonconforming

sign is to be removed in conjunction with a specific application for a vegetation maintenance permit, the sign to be removed shall be designated by department permit number. If the vegetation permit is approved, then the sign designated for removal shall be removed at least 15 days prior to initiation of work pursuant to the vegetation permit. Removal shall be deemed complete when the removal form and photographic evidence of the removal are submitted to the department. The sign designated for removal need not be owned by the vegetation permit applicant. As such, nothing herein shall be interpreted to require that the removed sign be owned or controlled by the vegetation permit applicant. All work hereunder shall be performed by licensed and bonded entities or individuals, where required by law, and the department shall not be liable for the actions of any nondepartment personnel; and

(5) A credit voucher may be used by an applicant for a vegetation maintenance permit as an offset against the total appraised value of the vegetation to be removed on a dollar-for-dollar basis, except that the total payment shall not be reduced below \$4,000.00. Any unused portion of a credit voucher may be used in conjunction with a subsequent vegetation maintenance application.

(k) Nothing contained in this Code section shall render any sign existing on July 1, 2011, nonconforming. Nothing in this Code section shall supersede any applicable local rules or ordinances. The department shall not deny an applicant a vegetation maintenance permit for complying with applicable local rules or ordinances.

HISTORY: Code 1933, § 95A-934.3, enacted by Ga. L. 1981, p. 955, § 2; Ga. L. 1998, p. 1313, § 3; Ga. L. 2011, p. 601, § 2/HB 179.