

February 2012

Highways and Bridges HB 179

Georgia State University Law Review

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Recommended Citation

Georgia State University Law Review, *Highways and Bridges HB 179*, 28 GA. ST. U. L. REV. (2012).
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HIGHWAYS, BRIDGES, AND FERRIES

Regulation of Maintenance and Use of Public Roads Generally: Amend Part 2 of Article 3 of Chapter 6 of Title 32 of the Official Code of Georgia Annotated, Relating to the State Highway System, so as to Modify the Procedures Whereby Owners of Legally Erected and Maintained Signs Obtain and Renew Permits for the Installation of Signs; Change Certain Conditions Relating to Permits to Remove Vegetation from the Viewing Zones of Outdoor Signs; Provide for Related Matters; Provide for Severability; Provide for the Department of Transportation to Promulgate Forms and Policies; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes.

CODE SECTIONS:	O.C.G.A. §§ 32-6-74, -75.3 (amended)
BILL NUMBER:	HB 179
ACT NUMBER:	197
GEORGIA LAWS:	2011 Ga. Laws 601
SUMMARY:	The Act allows billboard companies to clear-cut all state-owned roadside trees that grow in front of their signs, except for trees the government has designated historic or part of a beautification program that will not grow to obstruct the signs. It also requires billboard owners to pay enough in application and renewal fees to make the program revenue neutral. The Act requires billboard owners to lower “skyscraper” billboards in order to acquire vegetation-trimming permits, denies vegetation permits to any company that fails to remove abandoned signs, and fines any company whose billboards depict obscene material. The Act further makes the posting of obscene

billboard material a misdemeanor of a high and aggravated nature that is punishable by up to \$10,000 in fines. Finally, in return for billboard owners removing signs with lapsed permits, the Act provides a system of credit vouchers to offset the appraised value of the removed vegetation.

EFFECTIVE DATE: July 1, 2011

History

Defined by often-passionate environmental and economic arguments, the tussle between billboard owners and citizen-led conservation groups has been a decade-long affair in Georgia.¹ While one side seeks to maximize exposure of their customers' roadside signage,² the other side balks at commercial entities freely removing any state-owned trees that could obstruct that exposure.³ The battle has pitted business owners and billboard associations⁴ against an informal coalition of garden clubs and beautification groups.⁵ For more than ten years, this tension had come to a head in the General Assembly, with the billboard industry failing to expand its existing tree-cutting privileges.⁶

Billboard owners' ability to remove state-owned trees dates back to 1981, when the General Assembly authorized the Department of

1. April Hunt, *Billboards Top Trees in House*, ATLANTA J.-CONST., Feb. 25, 2011, at A1, available at 2011 WLNR 3721867 (noting that the Outdoor Advertising Association of Georgia has been trying since the 1990s to change the current law so that billboard owners could cut older trees obstructing their signs).

2. Ariel Hart, *Battle Pitches Billboards Against Trees*, ATLANTA J.-CONST., Feb. 24, 2011, at B10, available at 2011 WLNR 3618614 (noting the billboard industry's argument that obstructing vegetation "undercuts the billboard owner's investment in building the sign and can cost jobs").

3. *Id.* (referring to the Garden Club of Georgia's argument that allowing billboard owners to freely cut vegetation will leave portions of the highway devoid of trees). See also Telephone Interview with Marcia Bansley, Executive Director of Trees Atlanta (Apr. 7, 2011) [hereinafter Bansley Interview] (on file with the Georgia State University Law Review) (recounting her organization's efforts to fight bills granting billboard owners more freedom to cut vegetation around signs).

4. Ariel Hart & April Hunt, *Billboard Owners Close in on Victory*, ATLANTA J.-CONST., Mar. 8, 2011, at A1, available at 2011 WLNR 4493449 (naming the Outdoor Advertising Association of Georgia).

5. *Id.* (naming the Garden Club of Georgia, Scenic Georgia, and Trees Columbus).

6. *Id.*

Transportation (DOT) to issue permits allowing billboard companies to trim vegetation that obstructs signage on the state's rights-of-way.⁷ In return for this permit, the companies would pay a fee that would defray the cost of administering the permits.⁸ Although the General Assembly did not detail any trimming limits or how such limits would be enforced, it did empower the DOT Commissioner to appoint an Outdoor Advertising Citizens Advisory Council to provide advice on such matters.⁹

That same year, then-Attorney General Michael Bowers issued an opinion addressing gratuity issues raised by the trimming permits.¹⁰ Because these permits allowed owners of legal billboards to cut down trees on the state's right-of-way, a question arose as to whether the billboard owners were deriving an economic benefit from the state's property without appropriately compensating the state for the trees' value.¹¹ The Georgia Constitution of 1976 barred the General Assembly from granting such economic benefits "in favor of any person, corporation or association."¹² The Attorney General's opinion concluded that, because the billboard owners paid fees to obtain the permits and there was no cost or expense to the taxpayers, allowing these types of permits did not amount to "the donation of a constitutionally forbidden gratuity."¹³

The matter of gratuities, however, resurfaced in 1995 when the Garden Club of Georgia sued then-DOT Commissioner Wayne Shackelford.¹⁴ In the previous year, the DOT had implemented new rules that permitted the trimming of vegetation and the removal of tree limbs obstructing the view of billboards as seen from the center line of highways.¹⁵ The Garden Club argued that this privilege to

7. 1981 Ga. Laws 955, at § 1, at 956.

8. *Id.* at § 2, at 958.

9. *Id.* at § 2, at 957. The Committee consisted of the Chairman of the Senate Transportation Committee, the Chairman of the House Highway Committee, a member of the Georgia Conservancy, a member of the Garden Club of Georgia, two representatives from the outdoor advertising industry, and the Director of the Department of Transportation's Operations Division. *Id.*

10. 1981 Ga. Op. Att'y Gen. 81-75.

11. *Id.*

12. GA. CONST. of 1976, art. III, § 8, para. 12(1). The full text is as follows: "Except as provided in this Constitution, the General Assembly shall not by vote, resolution, or other, grant any donation or gratuity in favor of any person, corporation or association." *Id.*

13. 1981 Ga. Op. Att'y Gen. 81-75.

14. *Garden Club of Georgia, Inc. v. Shackelford*, 266 Ga. 24, 463 S.E.2d 470 (1995).

15. *Garden Club of Georgia, Inc. v. Shackelford*, 266 Ga. 24, 463 S.E.2d 470, 471 (1995). These

remove state-owned vegetation was a gratuity.¹⁶ The Georgia Supreme Court agreed.¹⁷ Writing for the majority, Justice Norman Fletcher noted that the Georgia Supreme Court “has adopted the ordinary definition of ‘gratuity’ as ‘[s]omething given freely or without recompense; a gift.’”¹⁸ He then stated that the trimming permit qualified as a gift: it favored private individuals (i.e., the billboard owners) while failing to provide the state with a substantial benefit in return.¹⁹

With the DOT prohibited from issuing cutting permits, the General Assembly moved in 1997 to refashion Georgia’s tree-trimming policies.²⁰ Legislation proposed that year, Senate Bill (SB) 337,²¹ was eventually shelved in the face of bitter opposition from the Garden Club of Georgia, the Sierra Club, the Georgia Wildlife Federation, and the Georgia Conservancy.²² Billboard proponents, meanwhile, continued to argue that tree-cutting permits were needed to protect a form of advertisement that was crucial to attracting tourist business.²³

Legislators returned the following year with a proposal that sought a compromise between advertising and environmental groups.²⁴ This time, SB 337 passed and was signed into law on April 20, 1998.²⁵ Among other changes,²⁶ the legislation allowed billboard owners to remove or trim trees only within a billboard’s “viewing zone,” which was defined as “a continuous 500 foot horizontal distance . . . within

new rules had been recommended to Shackelford by the Outdoor Advertising Advisory Council. *Id.*

16. *Id.* at 24, 463 S.E.2d at 471.

17. *Id.*

18. *Id.* (quoting *McCook v. Long*, 193 Ga. 299, 303, 18 S.E.2d 488, 490 (1942)).

19. *Id.* (“The information that the traveling public derives from the outdoor advertising signs located on private property is insufficient to qualify as a substantial benefit. Travelers can gain the same information about available goods and services from other sources without the loss of the state’s natural resources.”).

20. David C. Moulds, *Highways, Bridges, and Ferries: Regulations of Maintenance and Use*, 15 GA. ST. U. L. REV. 136, 138 (1998).

21. *Here’s What Happened Under the Gold Dome*, ATLANTA J.-CONST., Mar. 30, 1997, at C, available at 1997 WLNR 3151594.

22. Moulds, *supra* note 20.

23. *Id.*

24. *Id.*

25. *Id.* (noting that SB 337 passed by a unanimous 50–0 vote in the Senate and a 121–47 vote in the House of Representatives).

26. With the new legislation, the seven-member Outdoor Advertising Citizens Advisory Council became the twelve-member Roadside Enhancement and Beautification Council while also retaining its advisory role with the DOT. 1998 Ga. Laws 1313, § 1, at 1314–15 (codified at O.C.G.A. § 32-6-75.1 (2009)).

the line of site of an outdoor advertising sign.”²⁷ Within that viewing zone, billboard owners were barred from cutting hardwood trees more than eight inches in diameter, pine trees more than twelve inches in diameter, and nonhardwood trees more than twelve inches in diameter as long as those trees stood six inches above the ground.²⁸ Further, any nonhardwood tree, regardless of size, could also be removed so long as it was within 250 feet of the billboard.²⁹ Finally, any trees deemed historic, endangered, or part of a government planting project could not be removed by outdoor advertisers.³⁰

The 1998 legislation also included preemptive language to avoid a gratuity challenge like the one posed by the Garden Club’s lawsuit three years earlier.³¹ First, billboard owners were required to agree to landscape the cleared areas, with the DOT determining the value of that landscaping.³² Second, legislators added specific language asserting that outdoor advertising provided “a substantial service and benefit” to the state and traveling public.³³ More specifically, having billboards provide information on food, lodging, and other services was declared to be in the public interest.³⁴ With these additions, legislators hoped to firmly establish that the state did receive a benefit in exchange for allowing billboard owners to clear away state-owned vegetation in front of their signs.³⁵

Despite the General Assembly’s efforts, the Garden Club of Georgia once again took the DOT to court, this time seeking a declaratory judgment and equitable relief.³⁶ The Georgia Supreme Court in 2000 affirmed the trial court’s decision to enjoin the DOT

27. 1998 Ga. Laws 1313, § 3, at 1317 (codified at O.C.G.A. § 32-6-75.3 (2009)).

28. 1998 Ga. Laws 1313, § 3, at 1319 (codified at O.C.G.A. § 32-6-75.3 (2009)). Pine trees also could not be removed “in such numbers as to reduce stocking to less than the minimum standard for full stocking of such trees, as determined by the Georgia Forestry Commission . . .” *Id.*

29. 1998 Ga. Laws 1313, § 3, at 1319 (codified at O.C.G.A. § 32-6-75.3 (2009)).

30. *Id.*

31. Moulds, *supra* note 20, at 141–42.

32. 1998 Ga. Laws 1313, § 3, at 1318 (codified at O.C.G.A. § 32-6-75.3 (2009)).

33. 1998 Ga. Laws 1313, § 3, at 1317 (codified at O.C.G.A. § 32-6-75.3 (2009)).

34. *Id.* The legislation did qualify the scope of this public interest, noting that any advertising needs must be balanced with beautification and environmental concerns. *Id.*

35. Moulds, *supra* note 20, at 141.

36. Outdoor Advertising Ass’n of Georgia, Inc. v. Garden Club of Georgia, Inc., 272 Ga. 146, 146, 527 S.E.2d 856, 859 (2000).

from issuing tree-cutting permits until a final hearing.³⁷ Following a bench trial, the case wound its way back to the Georgia Supreme Court in 2002, where the majority ruled that there was no improper gratuity.³⁸ In the majority opinion, then-Chief Justice Fletcher noted that the 1998 legislation's language about the benefit of billboards³⁹ served as evidence of legislative intent regarding outdoor advertising's importance to the state.⁴⁰ Further, billboard owners were required to pay the state for the value of the cut trees, and such payment meant the billboard owners were not receiving an illegal gift from the state.⁴¹

With the gratuity question seemingly settled, billboard companies and environmental groups turned their attention to the provisions of the 1998 legislation that dictated *how much* vegetation could be removed within the "viewing zone."⁴² In 2007, both the Senate and the House proposed bills⁴³ that allowed billboard owners to cut all types of trees within 500 feet of a billboard—twice as far as the existing 250-foot limit that applied only to nonhardwood trees.⁴⁴ The proposed legislation also sought to cap the height of new billboards at seventy-five feet.⁴⁵ For those existing billboards taller than seventy-five feet,⁴⁶ clear-cutting would be restricted.⁴⁷ However, if owners agreed to lower their signs to seventy-five feet or below, they

37. *Id.* at 147, S.E.2d at 859.

38. *Garden Club of Georgia v. Shackelford*, 274 Ga. 653, 655, 560 S.E.2d 522, 524 (2002).

39. *See supra* notes 31–35 and accompanying text.

40. *Shackelford*, 274 Ga. at 654, 560 S.E.2d at 523. Chief Justice Fletcher pointedly noted that "unlike many states, [Georgia] has chosen to allow the cutting of trees on public property so that the public can see signs located on private property." *Id.*

41. *Id.* at 655, 560 S.E.2d at 524. The Court pointed to two specific sections in the law: O.C.G.A. § 32-6-75.3(e)(1), which requires the applicant of a trimming permit to pay for the value of the trees removed from public property; and O.C.G.A. § 32-6-75.3(d), which requires permit seekers to pay application and renewal fees. *Id.* at 654–55, 560 S.E.2d at 524.

42. *See infra* notes 43–64 and accompanying text.

43. HB 610, as introduced, 2007 Ga. Gen. Assem.; SB 256 (SCS), 2007 Ga. Gen. Assem.

44. Andy Peters, *Critics Blast Bills Sacrificing Trees for Lower Billboards*, FULTON COUNTY DAILY REP., Mar. 27, 2007, at 1, available at 2007 WLNR 28038756. The 1998 legislation is as follows: "All nonhardwood trees may be removed from within a viewing zone for a combined total of 250 feet horizontal distance parallel to the right of way." 1998 Ga. Laws 1313, § 3, at 1319 (codified at O.C.G.A. § 32-6-75.3 (2009)).

45. Stacy Shelton, *Billboard Proposal to Cut Trees*, ATLANTA J.-CONST., Mar. 25, 2007, at E1, available at 2007 WLNR 5614511.

46. According to the DOT, the majority of the 10,000 billboards it permitted in Georgia as of 2007 were between fifty feet and 100 feet tall. *Id.*

47. *Id.*

would be allowed to take down state-owned trees without paying compensation.⁴⁸ Advocates for the bills introduced in 2007 argued that the 1998 legislation forced billboard companies to build increasingly taller signs because they were not allowed to clear the trees from the view.⁴⁹ Opponents, citing environmental and beautification concerns, decried putting a price on trees that clean the air and stop erosion.⁵⁰

Though neither bill passed in the 2007–08 legislative session,⁵¹ the contentious debate presaged the heavy lobbying efforts that would continue in the coming years. On the side of billboard owners were groups like Clear Channel Outdoor⁵² and the Outdoor Advertising Association, the latter hiring three lobbyists to promote the 2007 bills.⁵³ Opposing this group were the likes of the Garden Club of Georgia and the Sierra Club, which employed their own lobbyists and lawyers.⁵⁴

The battle resurfaced in 2009 with the introduction of SB 164.⁵⁵ The bill kept the 2007 proposal to end the clear-cut prohibition in exchange for lowering the height of billboards to seventy-five feet.⁵⁶ In exchange for clear-cutting obstructive vegetation, billboard owners would pay a flat vegetation fee of \$4,000 to the State⁵⁷ rather than the appraised value of the removed trees.⁵⁸ The bill also redefined the parameters of the viewing zone to be 275 feet along the right-of-way

48. Shelton, *supra* note 45. The bills also would have reduced the fees for each tree removed to three times the trees' pulpwood or lumber value. Thus, instead of set amounts ranging from \$7 to \$807, the fees would have been tied to a number that fluctuates with the market. *Id.*

49. *Id.* (quoting Joe Garner, an executive with outdoor advertiser Clear Channel Outdoor, as saying billboard owners "have a right for visibility").

50. *Id.*

51. HB 610 was recommitted, but never made it to the House floor for a full vote. State of Georgia Final Composite Status Sheet, HB 610, May 21, 2008. SB 256 likewise was recommitted but never reached the floor. State of Georgia Final Composite Status Sheet, SB 256, May 21, 2008.

52. Clear Channel Outdoor is one of the top-selling outdoor advertisers in the country. Shelton, *supra* note 45.

53. Peters, *supra* note 44.

54. See Peters, *supra* note 44; Shelton, *supra* note 45.

55. Stacy Shelton, *Clear-cutting Trees for Roadside Signs Wins Senate OK*, ATLANTA J.-CONST., Feb. 27, 2009, at C3, available at 2009 WLNR 3817637.

56. *Id.*

57. SB 164 (HCS), § 2, p. 2, ln. 43–47, 2009 Ga. Gen. Assem. This money would be deposited in the Roadside Enhancement and Beautification Fund, which provides grants for beautification programs. *Id.*

58. O.C.G.A. § 32-6-75.3(e)(1) (2009) (requiring any billboard owner seeking a trimming permit to pay the state the value of the removed vegetation, as determined by the DOT).

boundary and 500 feet along the edge of the roadway.⁵⁹ No vegetation removal would be allowed outside that zone; within it, however, any vegetation would be vulnerable to removal unless it qualified as a “landmark, historic, or specimen tree species.”⁶⁰

The Senate overwhelmingly approved SB 164 by a 41–7 vote.⁶¹ Nonetheless, the bill suffered in the House, where it was initially stalled by a split subcommittee vote.⁶² When the bill eventually made it to the House floor, it was defeated by a bipartisan vote of 74–89.⁶³ House members later voted to reconsider, but the vote on the bill itself was postponed that same day.⁶⁴

With billboard legislation stymied again, Speaker of the House David Ralston (R-7th) tasked Representative Jon Burns (R-157th)—the House sponsor of SB 164—with bringing both sides together to achieve a consensus on the removal of vegetation in front of billboards.⁶⁵ Although advertising and environmental advocates met throughout the 2010 session, Representative Burns reported that a consensus could not be reached and no bill was submitted.⁶⁶

In 2011, Representative Burns introduced House Bill (HB) 179, which he characterized as an improvement over existing legislation⁶⁷ as well as the 2009 bill.⁶⁸ However, he noted that HB 179 was “not a consensus of opinion from all the parties involved,” but rather “a compromise solution.”⁶⁹ The bill thus generated intense and extensive lobbying in an effort to persuade the large freshman class

59. SB 164 (HCS), § 3, p. 3, ln. 72–76, 2009 Ga. Gen. Assem.

60. *Id.* at § 3, p. 4–5, ln. 120–39.

61. Shelton, *supra* note 55.

62. Stacy Shelton, *Billboard Tree Cutting in Stalemate*, ATLANTA J.-CONST., Mar. 21, 2009, available at 2009 WLNR 5366675.

63. Stacy Shelton, *Billboard Proposal Not Quite Dead Yet*, ATLANTA J.-CONST., Apr. 2, 2009, available at 2009 WLNR 6146496.

64. State of Georgia Final Composite Status Sheet, SB 164, June 22, 2010.

65. Video Recording of House Proceedings, Feb. 24, 2011 at 1 hr., 25 min., 8 sec. (remarks by Rep. Jon Burns (R-157th)), http://mediam1.gpb.org/ga/leg/2011/ga-leg-house_022411_AM.wmv [hereinafter House Video].

66. Video Recording of House Transportation Committee Hearing, Feb. 15, 2011 at 2 min., 32 sec. (remarks by Rep. Jon Burns (R-157th)), http://media.legis.ga.gov/hav/11_12/2011/committee/trans/trans021511EDITED.wmv [hereinafter House Transportation Committee Video].

67. House Video, *supra* note 65 (noting that under current regulations, advertisers are paying for a “visual easement” that is being impaired by overgrown trees and vegetation).

68. *Id.*

69. House Transportation Committee Video, *supra* note 66.

of thirty-seven legislators before any committee or floor debates began.⁷⁰ While the outdoor advertisers worked with lobbying firm GeorgiaLink,⁷¹ Garden Club members attended committee hearings decked out in green scarves and jackets.⁷² At one point sports legends Herschel Walker and Vince Dooley got involved; Walker sided with the billboard industry, while Dooley opposed the proposed legislation.⁷³

Bill Tracking of HB 179

Consideration and Passage by the House

Representatives Jon Burns (R-157th), Jay Roberts (R-154th), Terry England (R-108th), Bob Bryant (D-160th), Mark Hamilton (R-23rd), and Tommy Benton (R-31st) sponsored HB 179.⁷⁴

The bill, as introduced, sought to modify the restrictions on what types of trees could be removed by billboard owners having a permit to trim or cut state-owned vegetation.⁷⁵ More specifically, the bill established a narrower “target view zone” for billboards but struck out any restrictions on cutting trees of certain heights or diameters within that zone.⁷⁶ Instead, permit holders could cut all trees and vegetation within this target view zone, with exceptions for historic trees and trees planted in accordance with beautification programs.⁷⁷ The bill also changed the application process and renewal fees for billboard permits by allowing a twelve-month extension to erect a

70. Hart & Hunt, *supra* note 4. *See also* Telephone Interview with Sen. Renee Unterman (R-45th) (May 23, 2011) [hereinafter Unterman Interview] (on file with the Georgia State University Law Review) (noting the heavy contributions made to legislators by advertising interests).

71. *See* Telephone Interview with Mary Lovings, Chair of Legislative and Governmental Affairs, Garden Club of Georgia (Apr. 8, 2011) [hereinafter Lovings Interview] (on file with the Georgia State University Law Review).

72. Hart, *supra* note 2.

73. *Id.* Dooley is a former University of Georgia head football coach. Walker is one of his former players and a Heisman Trophy winner.

74. HB 179, as introduced, 2011 Ga. Gen. Assem. *See also* Georgia General Assembly, HB 179, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/display.aspx?BillType=HB&Legislation=179>.

75. HB 179, as introduced, preamble, p. 1, ln. 4–5, 2011 Ga. Gen. Assem.

76. *Id.* at § 3, p. 6, ln. 182–87.

77. *Id.* at § 3, p. 5, ln. 187–93. However, any tree planted in the right-of-way as part of a beautification program after July 1, 2011, must not threaten to later obscure a permitted outdoor advertisement. *Id.* *See also infra* note 140 and accompanying text.

newly permitted billboard. Finally, the bill increased the permit fee from \$50 to \$100 and renewal fee from \$25 to \$35.⁷⁸

The bill further required billboard owners to lower signs that exceed seventy-five feet in height to below seventy-five feet in order to obtain a vegetation trimming permit.⁷⁹ It also gave the DOT the power to deny vegetation permits to owners of billboards that have been abandoned or that depict material that is deemed obscene by state or local standards.⁸⁰ Finally, the bill established a credit system as a way to encourage billboard owners to remove abandoned signs along Georgia's roadways: by removing a sign with a lapsed permit or a sign that does not conform to current state requirements, billboard owners can earn a voucher to offset the total appraised value of any vegetation they remove.⁸¹ However, billboard owners cannot receive this credit for taking down their own abandoned signs; the credit only can be received for removing signs that were abandoned by other owners.⁸²

The House read the bill for the first time on February 7, 2011.⁸³ Speaker of the House David Ralston (R-7th) assigned it to the House Transportation Committee.⁸⁴ The bill was then read for the second time on February 9, 2011.⁸⁵

The House Transportation Committee offered a substitute to HB 179. The bill, as introduced, did not address the adjustment of application and renewal fees in the future.⁸⁶ In contrast, the substitute required application and renewal fees to be adjusted every three years, though no fee should increase by more than twenty percent.⁸⁷ The permit and renewal fees should also be sufficient to cover the "average administrative costs" of the permit program, but not so high that the DOT brings in extra revenue.⁸⁸ The DOT would be required

78. HB 179, as introduced, § 1, p. 2, ln. 44–54, 2011 Ga. Gen. Assem.

79. HB 179, as introduced, § 2, p. 8, ln. 254–59.

80. *Id.* at § 2, p. 8–9, ln. 267–82.

81. *Id.* at § 2, p. 9–10, ln. 283–338.

82. *Id.* at § 2, p. 9–10, ln. 334–35.

83. State of Georgia Final Composite Status Sheet, HB 179, May 24, 2011.

84. *Id.*

85. *Id.*

86. *See generally* HB 179, as introduced, § 1, 2011 Ga. Gen. Assem.

87. HB 179 (HCS), § 1, p. 2, ln. 54–56, 2011 Ga. Gen. Assem.

88. *Id.* at § 1, p. 2, ln. 56–60.

to make these fees available online no later than 2015, with annual updates thereafter.⁸⁹

In addition, the substitute also made minor revisions to the permit renewal process by allowing a permit holder to submit a renewal within sixty days of being notified of the renewal period, or by April 1, whichever occurs later.⁹⁰ A permit holder who received an overdue notice was now granted forty-five days to respond, rather than thirty days.⁹¹

Finally, the substitute made several minor revisions to the bill's language. The bill, as introduced, required owners of billboards erected after January 1, 2011 to wait five years from the date a new sign is permitted before applying for a vegetation-trimming permit. The substitute made this five-year requirement apply to billboard owners with signs permitted or assigned a working number by the DOT after December 31, 2010.⁹² The substitute also allowed vegetation to be removed from the target zone for those billboards permitted or assigned a working number on or before December 31, 2010, versus the original bill's January 1, 2011 permit date.⁹³ Regarding the omission of dead or diseased trees from the appraised value of removed vegetation, the substitute added a definition of "dead or diseased."⁹⁴ Finally, the substitute required all sign-removal work to be performed by licensed and bonded entities.⁹⁵

Following a hearing, the House Transportation Committee favorably reported the substitute bill on February 16, 2011.⁹⁶

The House debated and voted on the bill on February 24, 2011.⁹⁷ Representative Burns, the sponsor, offered an amendment that further

89. *Id.* at § 1, p. 2, ln. 60–62.

90. *Id.* at § 1, p. 3, ln. 79–80.

91. *Compare* HB 179 (HCS), § 1, p. 3, ln. 83–92, 2011 Ga. Gen. Assem., *with* HB 179, as introduced, § 1, p. 3, ln. 71–80, 2011 Ga. Gen. Assem.

92. *Compare* HB 179 (HCS), § 2, p. 4, ln. 131–35, 2011 Ga. Gen. Assem., *with* HB 179, as introduced, § 2, p. 4, ln. 119–23, 2011 Ga. Gen. Assem.

93. *Compare* HB 179 (HCS), § 2, p. 6, ln. 196–98, 2011 Ga. Gen. Assem., *with* HB 179, as introduced, § 2, p. 6, ln. 182–83, 2011 Ga. Gen. Assem.

94. HB 179 (HCS), § 2, p. 6, ln. 192–93, 2011 Ga. Gen. Assem. (“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.”).

95. *Id.* at § 2, p. 10, ln. 348–50, 2011 Ga. Gen. Assem.

96. State of Georgia Final Composite Status Sheet, HB 179, May 24, 2011.

97. *Id.*

increased the fees for outdoor advertising.⁹⁸ The amendment also altered some of the language added in the Transportation Committee's substitute bill. Rather than have fees cover "the average administrative costs" of permit issues and renewals, fees were instead limited to "amounts sufficient to offset the administrative costs to the department."⁹⁹ Finally, the requirement for the DOT to adjust permit fees every three years and post them online was struck and replaced with a permissive directive for the DOT to adjust fees "through the formal rule making process."¹⁰⁰ These changes addressed several concerns voiced during the House Transportation Committee hearing regarding the permit program's costs to the state.¹⁰¹

During the House's floor debate, proponents of the bill touted the measure's economic value by arguing that billboards promote small businesses.¹⁰² Other proponents argued that HB 179 would increase jobs in Georgia,¹⁰³ with 10,000 jobs being described as directly or indirectly tied to the billboard industry.¹⁰⁴ Billboard proponents also

98. Compare HB 179 (HCS), § 1, p. 2, ln. 52–54, 2011 Ga. Gen. Assem. (setting the initial application fee at \$100 and the annual renewal fee at \$35), with HB 179 (HCSFA), § 1, p. 2, ln. 52–54, 2011 Ga. Gen. Assem. (setting the initial application fee at \$300 and the annual renewal fee at \$85).

99. Compare HB 179 (HCS), § 1, p. 2, ln. 56–58, 2011 Ga. Gen. Assem., with HB 179 (HCSFA), § 1, p. 2, ln. 57–58, 2011 Ga. Gen. Assem. The amendment also removed the substitute bill's requirement that "under no circumstances" shall fees be set at a level that would exceed the permit program's costs. HB 179 (HCS), § 1, p. 2, ln. 58–60, 2011 Ga. Gen. Assem. See also *supra* note 88 and accompanying text.

100. Compare HB 179 (HCS), § 1, p. 2, ln. 54–62, 2011 Ga. Gen. Assem., with HB 179 (HCSFA), § 1, p. 2, ln. 54–55, 2011 Ga. Gen. Assem. The amendment required the DOT to send notice of fee increases to the House and Senate Transportation Committees as least 30 days prior their final adoption, and it also required the DOT to send these committees an annual report of expenditures and revenues related to billboard permits. HB 179 (HCSFA), § 1, p. 2, ln. 55–60, 2011 Ga. Gen. Assem.

101. See House Transportation Committee Video, *supra* note 66, at 59 min., 8 sec. (remarks by Ken Henson, of Trees Columbus) (voicing concern that HB 179 adds multiple new mandates for the DOT but fails to suggest how those mandates will be funded). *But see id.* at 1 hr., 18 min., 26 sec. (remarks by Rep. Pat Gardner (D-57th)) (noting there was uncertainty as to whether the permit program carried any cost for the state).

102. See House Video, *supra* note 65, at 1 hr., 52 min., 15 sec. (remarks by Rep. Ann Purcell (R-159th)) ("I think that in . . . [Savannah], it is truly an economic adjustment in returns of jobs, whether it be through restaurants, whether it be with the tourism that is developed there, and the visibility of what we have present.").

103. See *id.* at 2 hr., 57 sec. (remarks by Rep. Sean Jerguson (R-22nd)) (noting that outdoor advertising is "one of the most effective ways" that small business owners can advertise).

104. See *id.* at 1 hr., 25 min., 8 sec. (remarks by Rep. Jon Burns (R-157th)) ("We believe there are about ten thousand jobs that are affected by the outdoor advertising industry and their ability to advertise. Some three hundred thousand Georgians are indirectly and directly affected. They get their paychecks. They put bread on the table. They also contribute to the revenue that makes our state work.").

argued that improved views of billboard advertisements would better entice tourists to the state.¹⁰⁵

The economic argument drew strong opposition on the House floor, as several representatives repeatedly decried the assertion that HB 179 would increase jobs and promote tourism.¹⁰⁶ Further, opponents cited tourism in their favor, claiming that visitors wish to see unobstructed views and that states with the most tourism actually ban billboards.¹⁰⁷

Following the two-hour debate,¹⁰⁸ the House voted to pass the amendment 160–8.¹⁰⁹ Immediately after, the House voted to pass the bill as amended 98–69.¹¹⁰ Representative Brian Thomas (D-100th) then moved for reconsideration.¹¹¹ The reconsideration vote failed on February 28, 2011, by a vote of 56–104, and the bill moved to the Senate.¹¹²

Consideration and Passage by the Senate

The bill was first read in the Senate on March 1, 2011.¹¹³ Lieutenant Governor Casey Cagle (R) assigned the bill to the Senate Transportation Committee, which favorably reported the bill on March 4, 2011, and it was read a second time in the Senate on March 7, 2011.¹¹⁴

105. *See id.* at 1 hr., 51 min., 24 sec. (remarks by Rep. Jay Neal (R-1st)) (commenting that he believes there are many tourists who are attracted to two of his district’s attractions, Rock City and Ruby Falls, because they see billboards advertising them).

106. *See* House Video, *supra* note 65, at 2 hr., 13 min., 21 sec. (remarks by Rep. Karla Drenner (D-86th)) (commenting that “in fact the truth is, simply, there is no relationship between House Bill 179 and jobs and businesses in our communities”); *Id.* at 2 hr., 22 min., 14 sec. (remarks by Rep. Tommy Smith (R-168th)) (“This bill is not about jobs. It’s simply about giving these large companies preferential treatment.”).

107. *See id.* at 2 hr., 51 min., 41 sec. (remarks by Rep. Elly Dobbs (D-53rd)) (citing Hawaii, Alaska, and Maine as three states that ban billboards yet have significant tourism).

108. *See generally* House Video, *supra* note 65.

109. *Id.* at 3 hr., 16 min., 37 sec.

110. *Id.*

111. *Id.* at 3 hr., 19 min., 3 sec.

112. *See* Georgia House of Representatives Voting Record, HB 179 (Reconsideration), available at <http://www.legis.ga.gov/legislation/en-US/vote.aspx?VoteID=7774>.

113. State of Georgia Final Composite Status Sheet, HB 179, May 24, 2011.

114. *Id.*

HB 179 was read a third time and debated on the Senate floor on March 8, 2011.¹¹⁵ Senators Renee Unterman (R-45th) and Tommie Williams proposed an amendment that added the punishment of a fine and criminal conviction for displaying obscene material on a billboard.¹¹⁶ Senator Unterman, who showed the Senate a slideshow of existing Georgia billboards that she deemed offensive, explained that the amendment was an effort to protect children, rather than a call for censorship.¹¹⁷ The amendment passed by a vote of 28–26.¹¹⁸

Nine other amendments, however, failed to pass.¹¹⁹ Among these failed amendments was a proposal to strike the controversial language that bars beautification projects from planting new trees near the billboards.¹²⁰ Another failed amendment sought to qualify beautification projects' trees as "landmark" trees that billboard companies would not be allowed to cut.¹²¹ Senator Joshua McKoon (R-29th), a supporter of both amendments, predicted during the floor debate that HB 179 would ultimately harm Georgia's natural beauty, which is one of its vital resources.¹²²

The failed amendments also featured a proposal to add a "sunset provision" to the legislation.¹²³ The amendment held that changes enacted by HB 179 should be reviewed within two years in order to

115. *Id.*

116. Senate Floor Amendment 2 to HB 179 (SFA 2) (requiring a fine of not less than \$5,000 for a first conviction and \$10,000 for subsequent convictions of depicting obscene material, and classifying the conviction as a misdemeanor of a high and aggravated nature).

117. *Lawmakers 2011* (GPTV broadcast, Mar. 8, 2011) (floor debate remarks by Sen. Renee Unterman (R-45th)) (on file with the Georgia State University Law Review) ("I am not trying to be out there and censor things. I'm just trying to protect children. How can you argue with that?").

118. Gold Dome Report for Mar. 8, 2011, <http://www.nelsonmullins.com/newsletters/gold-dome-report-for-march-8-2011> (last visited May 22, 2011).

119. Dave Williams, *Georgia Senate Passes Billboards Measure*, ATLANTA BUS. CHRON., Mar. 8, 2011, available at 2011 WLNR 4531183.

120. Failed Senate Floor Amendment to HB 179 (SFA 8), introduced by Sen. Nan Orrock (D-36th), Sen. Vincent Fort (D-39th), Sen. Horacena Tate (D-38th), and Sen. Joshua McKoon (R-29th), Mar. 8, 2011 (striking language in the bill that bars beautification projects, after July 1, 2011, from planting trees within 500 feet of billboards if those trees would potentially obscure the billboards' visibility).

121. Failed Senate Floor Amendment to HB 179 (SFA 9), introduced by Sen. Nan Orrock (D-36th), Sen. Vincent Fort (D-39th), Sen. Horacena Tate (D-38th), and Sen. Joshua McKoon (R-29th), Mar. 8, 2011 (qualifying as a "landmark" any tree "planted under a beautification project of a municipality regardless of the age or type of tree").

122. Williams, *supra* note 119.

123. Failed Senate Floor Amendment to HB 179 (SFA 1 AM 34 0489), introduced by Sen. Joshua McKoon (R-29th), Mar. 8, 2011.

judge their effectiveness.¹²⁴ Such further review is warranted, noted amendment sponsor Senator Joshua McKoon, since HB 179 restricts communities' ability to manage their own local outdoor advertising.¹²⁵

The remaining failed amendments proposed the following: limiting the trimming-permit rules to those billboards “legally erected, legally permitted, and legally maintained prior to January 1, 2011;”¹²⁶ requiring billboard owners to have permits for five years before being allowed to remove vegetation from signs erected after January 1, 1999;¹²⁷ requiring the DOT to inspect a lowered sign before allowing the billboard owner to begin trimming vegetation;¹²⁸ requiring billboard owners who lower their signs to complete the removal of vegetation within thirty days after such removal begins;¹²⁹ and pushing back by one year the deadline by which beautification projects must cease planting trees that could potentially block billboards.¹³⁰

The Senate voted to pass the bill with Senator Unterman's amendment on March 8, 2011, by a vote of 37–19,¹³¹ and the House

124. Failed Senate Floor Amendment to HB 179 (SFA 1 AM 34 0489), introduced by Sen. Joshua McKoon (R-29th), Mar. 8, 2011 (“This Code section shall be repealed in its entirety on July 1, 2013, unless the General Assembly, after a review of the effectiveness of the program established herein, acts to extend these provisions.”).

125. *Lawmakers, supra* note 117 (remarks by Sen. Joshua McKoon (R-29th)) (on file with the Georgia State University Law Review).

126. *Compare* Failed Senate Floor Amendment to HB 179 (SFA 3 AM 34 0482), introduced by Sen. John Albers (R-56th), Sen. David Shafer (R-48th), Greg Goggans (R-7th), Sen. Renee Unterman (R-45th), Sen. Jason Carter (D-42nd), and others, Mar. 8, 2011, *with* HB 179 (HCSFA), § 2, p. 4, ln. 120–24, 2011 Ga. Gen. Assem.

127. *Compare* Failed Senate Floor Amendment to HB 179 (SFA 4 AM 34 0484), introduced by Sen. Steven Henson (D-41st), Mar. 8, 2011; Failed Senate Floor Amendment to HB 179 (AM 34 0483), introduced by Sen. Steven Henson (D-41st), Mar. 8, 2011, *with* HB 179 (HCSFA), § 2, p. 4, ln. 127–31, 2011 Ga. Gen. Assem. (applying the five-year waiting period to those billboards permitted or assigned a working number after December 31, 2010).

128. Failed Senate Floor Amendment to HB 179 (SFA 5 AM 34 0487), introduced by Sen. Ed Harbison (D-15th), Mar. 8, 2011.

129. Failed Senate Floor Amendment to HB 179 (SFA 5a), introduced by Sen. Ed Harbison (D-15th), Mar. 8, 2011.

130. *Compare* Failed Senate Floor Amendment to HB 179 (SFA 7 AM 34 0488), introduced by Sen. Nan Orrock (D-36th), Sen. Vincent Fort (D-39th), and Sen. Horacena Tate (D-38th), Mar. 8, 2011 (prescribing the deadline date at July 1, 2012), *with* HB 179 (HCSFA), § 2, p. 6, ln. 201–04, 2011 Ga. Gen. Assem. (prescribing the deadline date at July 1, 2011).

131. State of Georgia Final Composite Status Sheet, HB 179, May 24, 2011; Georgia Senate Voting Record, HB 179 (Mar. 8, 2011).

voted to pass that same version on March 10, 2011, by a vote of 94–64.¹³²

The Act

The Act amends Part 2 of Article 3 of Chapter 6 of Title 32 of the Official Code of Georgia Annotated with the purpose of balancing environmental and economic interests in billboard placement and viewing.¹³³

Section 1 of the Act sets the new fees for outdoor advertisement applications and renewals, increasing the costs for an initial application to \$300 and for renewals to \$85.¹³⁴ It also allows the DOT to adjust application fees only to the extent the fees are “sufficient to offset the administrative costs to the department.”¹³⁵ If an advertising permit is not renewed within the given period and after a mailed warning, the sign becomes illegal and the DOT can remove it without any further administrative proceedings.¹³⁶ If a vegetation permit is not renewed within the given period and after a mailed warning, the vegetation permit is cancelled, but the sign is not deemed illegal.¹³⁷

Section 2 amends Code section 32-6-75.3 relating to the application of vegetation-trimming permits. It defines the “target view zone” of a billboard as within 350 feet along the pavement edge and 250 feet along the right-of-way fence or boundary.¹³⁸ It allows the removal of any tree within the target view zone that is not historic or part of a beautification project, and eliminates all use of a tree’s diameter in determining whether it can be removed.¹³⁹ The section forbids any new planting of vegetation pursuant to a beautification

132. State of Georgia Final Composite Status Sheet, HB 179, May 24, 2011; Georgia House of Representatives Voting Record, HB 179 (Mar. 10, 2011).

133. House Transportation Committee Video, *supra* note 66, at 2 min., 32 sec. (remarks by Rep. Jon Burns (R- 157th)).

134. O.C.G.A. § 32-6-74(a) (Supp. 2011).

135. *Id.*

136. *Id.*

137. *Id.*

138. O.C.G.A. § 32-6-75.3(a)(1)(B) (Supp. 2011).

139. O.C.G.A. § 32-6-75.3(e)(3) (Supp. 2011).

project within 500 feet of the right-of-way of a sign if that vegetation would obscure or grow to obscure a permitted sign.¹⁴⁰

Further, Section 2 allows the DOT to grant a vegetation permit for a sign exceeding seventy-five feet in height only if the sign will be reduced to less than seventy-five feet within sixty days of granting the permit.¹⁴¹ It also grants the DOT the power to refuse vegetation permits to any entity that maintains an abandoned sign¹⁴² or maintains a sign that depicts “obscene” material.¹⁴³ Section 2 also requires a fine of not less than \$5,000 for a first offense, and not less than \$10,000 for subsequent offenses, in addition to a criminal conviction of a misdemeanor of a high and aggravated nature for displaying obscene material.¹⁴⁴

Additionally, section 2 provides a system for the DOT to offer credit vouchers to offset the appraised value of the removed vegetation in return for billboard owners removing signs with lapsed permits.¹⁴⁵ These credits are transferable, but cannot be given to the owners of a lapsed-permit sign.¹⁴⁶ This prevents billboard owners from benefiting from these credits simply for removing their own lapsed signs.

Finally, section 2 specifies that nothing in the Code section supersedes applicable local rules or ordinances, and establishes that the DOT will not deny a vegetation permit application due to compliance with a local rule or ordinance.¹⁴⁷

Analysis

Gratuities and Visual Easements

A significant portion of the House floor debate focused on the matter of gratuities.¹⁴⁸ Representative Jon Burns (R-157th), the bill’s

140. O.C.G.A. § 32-6-75.3(e)(3) (Supp. 2011).

141. O.C.G.A. § 32-6-75.3(g) (Supp. 2011).

142. O.C.G.A. § 32-6-75.3(h) (Supp. 2011).

143. O.C.G.A. § 32-6-75.3(i) (Supp. 2011).

144. *Id.*

145. O.C.G.A. § 32-6-75.3(j) (Supp. 2011).

146. O.C.G.A. § 32-6-75.3(j)(3) (Supp. 2011).

147. O.C.G.A. § 32-6-75.3(k) (Supp. 2011).

148. *See generally* House Video, *supra* note 65. The current Georgia Constitution, like the 1976 version, also bans gratuities: “Except as otherwise provided in this Constitution, . . . the General

sponsor, told the House during debate that former Chief Justice Norman Fletcher had reviewed the bill's language and agreed there was no gratuity problem.¹⁴⁹ That reference was significant, as it was Chief Justice Fletcher who authored the majority opinion in *Garden Club of Georgia v. Shackelford*, which held that the removal of state-owned trees by outdoor advertisers did not constitute a gratuity.¹⁵⁰ The Chief Justice based his 2002 opinion on the statutory language that had been added in 1998, which stated that outdoor advertising provided a "substantial benefit" to the state.¹⁵¹ Chief Justice Fletcher also noted that billboard advertisers would compensate the state by landscaping the area they clear-cut, according to the value determined by the DOT.¹⁵²

Representative Burns emphasized that under HB 179, all removed trees would again be fully funded by the mitigation fee and would be replanted elsewhere at DOT's discretion.¹⁵³ Several House members disagreed, however, arguing that this arrangement dodged the gratuity issue.¹⁵⁴ House Majority Whip Edward Lindsey (R-54th), for instance, referred to the tree-cutting permissions as a "visual easement" for which the State does not receive any compensation.¹⁵⁵ To these legislators, replacing the cut trees and covering administrative costs is not enough: The State should also receive additional value specifically for giving billboard owners the right to use state-owned land and air space.¹⁵⁶

Given that the Garden Club has historically challenged billboard legislation via the gratuity issue,¹⁵⁷ another lawsuit regarding this Act

Assembly shall not have the power to grant any donation or gratuity or to forgive any debt or obligation owing to the public . . ." GA. CONST., art. III, § 6, para. 6(a). *Cf. supra* note 12.

149. House Video, *supra* note 65.

150. *See supra* notes 38–41 and accompanying text.

151. *See supra* note 33 and accompanying text.

152. *See supra* note 32.

153. House Video, *supra* note 65.

154. *See, e.g.*, House Video, *supra* note 65, at 2 hr., 2 min., 52 sec. (remarks by Rep. Edward Lindsey (R-54th)); *id.* at 2 hr., 45 min., 44 sec. (remarks by Rep. Calvin Smyre, (D-132nd)).

155. House Video, *supra* note 65, at 2 hr., 2 min., 52 sec. (remarks by Rep. Edward Lindsey, (R-54th)); ("We bought the land, we built the highway, we built and constructed the landscape. Now we are being asked to give away an easement, a visual easement that has value to the billboard company, for nothing in return for what is enhancing their property.")

156. *See id.*, at 2 hr., 45 min., 44 sec. (remarks by Rep. Calvin Smyre, (D-132nd)) ("[T]here is residual value on your property and how someone else uses it. To me, that's a fundamental right that I, as a landowner, ought to fully enjoy to the maximum.")

157. *See supra* notes 14–19 and 36–41 and accompanying text.

may be a possibility.¹⁵⁸ However, the Act preserves language that outdoor advertising's visibility is in the public interest.¹⁵⁹ Based on the precedent set in *Garden Club of Georgia v. Shackelford*,¹⁶⁰ such language could again be determined as legislative intent that billboards are providing a value to the state in consideration for their occupation of state-owned air space.

Balancing Economic and Environmental Concerns

Significant House Transportation Committee debate was devoted to balancing the benefits of viewable billboards as business advertising against the environmental benefits of keeping the trees that would be removed through this bill.¹⁶¹

Representative Burns and John Bozeman¹⁶² advocated the “common sense” approach the legislators should take toward this bill, emphasizing the necessary increase in jobs from outdoor advertising through the promotion of local economies.¹⁶³ They also emphasized that the loss of trees would be minimal because of the costs to the sign owners: not only would billboard companies bear the price of removing the trees,¹⁶⁴ but they would also have to compensate the State of Georgia for its loss of the removed trees' value.¹⁶⁵ Further, it was asserted that the tree removal produces little advantage for the billboard companies themselves, as the benefit is actually to the advertiser on the billboard. As a result, tree removal would be minimal and would be done only when it provides a true economic benefit.

However, Wilton Rooks, Executive Director and Board Member of Scenic Georgia, raised concerns about billboards being an

158. *But see* Lovings Interview, *supra* note 71 (noting that the Garden Club of Georgia had no plans for instigating a lawsuit against the DOT as of April 8, 2011); Unterman Interview, *supra* note 70 (commenting that lawsuits arising from this Act likely will not focus on the gratuities issue).

159. O.C.G.A. § 32-6-75.3(a)(2) (Supp. 2011).

160. *See supra* notes 36–41 and accompanying text.

161. *See generally* House Transportation Committee Video, *supra* note 66.

162. John Bozeman is a managing partner with GeorgiaLink, a lobbying firm representing outdoor advertising. *John Bozeman*, GEORGIALINK, <http://www.georgialink.com/bozeman.php> (last visited Sept. 18, 2011).

163. House Transportation Committee Video, *supra* note 66, at 16 min., 3 sec. (remarks by Rep. Jon Burns (R-157th)); *id.* at 18 min., 42 sec. (remarks by John Bozeman).

164. *Id.* at 6 min., 28 sec. (remarks by Rep. Jon Burns (R-157th)).

165. *Id.* at 19 min., 58 sec. (remarks by Rep. Jon Burns (R-157th)).

“unproductive expense” for businesses in tough economic times.¹⁶⁶ He cited unemployment rates from states with fewer billboards than Georgia and noted that their rates are actually much lower.¹⁶⁷ He claimed that the Act’s new mandates for the DOT would require more manpower and money, which would not be offset by the increase in fees since the DOT was already operating significantly over budget.¹⁶⁸

There were environmental concerns with the bill as well—namely those stemming from the loss of trees. Many opponents of the bill believed that there would be an increase in soil erosion from the lack of root systems provided by the trees.¹⁶⁹ Regarding air quality, the fact that the Act would promote the removal of trees in close proximity to the interstate system created specific concerns. The fear was that removal will prevent the trees from cleaning the air in an area where substantial pollution emanated from exhaust and tires.¹⁷⁰ During the House floor debate, Representative Karla Drenner (D-86th) argued against HB 179 by citing specific statistics to emphasize the impact trees have on cleansing the air of pollution.¹⁷¹ In particular, Representative Drenner cited a study across the Chicago region that found trees remove approximately seventeen tons of carbon dioxide, 93 tons of sulfur dioxide, 98 tons of nitrogen dioxide, and 210 tons of ozone from the atmosphere.¹⁷²

Garden clubs and beautification groups, which aim to maintain and improve the aesthetics of Georgia, were also vocal about their opposition to the Act. Joan Brown, representing the Garden Club at the House Transportation Committee hearing, discussed fears of soil erosion from losing the trees, specifically the dirt and runoff that could interfere with streams.¹⁷³ Columbus City Councilman Glenn

166. *Id.* at 34 min., 45 sec. (remarks by Wilton Rooks, of Scenic Georgia).

167. *Id.*

168. *Id.*

169. House Transportation Committee Video, *supra* note 66, at 34 min., 45 sec. (remarks by Wilton Rooks, of Scenic Georgia); *id.* at 42 min., 4 sec. (remarks by Gloria Weston-Smart, of Keep Columbus Beautiful Commission, Inc.); *id.* at 51 min., 9 sec. (remarks by Glenn Davis, of the Columbus City Council).

170. Bansley Interview, *supra* note 3 (noting the importance of trees in cleaning the air and that trees “make a big difference in the quality of air,” especially along the expressway where there is such heavy pollution).

171. House Video, *supra* note 65, at 2 hr., 13 min., 21 sec. (remarks by Rep. Karla Drenner (D-86th)).

172. *Id.*

173. House Transportation Committee Video, *supra* note 66, at 46 min., 33 sec. (remarks by Joan

Davis joined in with Brown and others during the hearing, citing his city's status as "Tree City, USA" and describing a desire of the community to protect its natural resources and the "scenic byway" through it.¹⁷⁴

Following the 2008 recession, it appeared economic concerns may have finally outweighed environmental concerns in the passage of HB 179. Although environmental concerns may have been enough to prevent similar legislation from passing during the 2007–08 legislative session, the economic toll exacted from Georgia businesses and citizens during the recession seemed to have tilted the scale, thereby allowing the tree-cutting legislation that had fought its way through the legislature over the past ten years to finally be passed. With the failure of the "sunset provision" amendment,¹⁷⁵ however, it remained uncertain whether and how legislators would track the economic impact of these new billboard provisions. Most likely such tracking would be instigated by the Act's opponents, who would once again rely on grassroots efforts to document the Act's effects on the economy, the environment, and beyond.

Public Reaction to the Act

Immediately following the passage of HB 179 on March 10, 2011, citizens motivated by environmental and beautification concerns launched efforts to persuade Governor Nathan Deal to veto the bill. Groups including the Garden Club of Georgia, the Sierra Club, the Georgia Wildlife Federation, and the Georgia Conservancy sent emails and letters that argued for the Governor to reconsider the legislation's impact on local communities.¹⁷⁶ At the forefront of this movement was the City of Columbus, which had maintained a steady stream of opposition to the bill as HB 179 made its way through the legislative process.¹⁷⁷ Columbus Mayor Teresa Tomlinson also

Brown, of the Garden Club of Georgia).

174. *Id.* at 51 min., 9 sec. (remarks by Columbus City Councilman Glenn Davis).

175. *See supra* notes 123–25 and accompanying text.

176. Lovings Interview, *supra* note 71.

177. For example, representatives from Keep Columbus Beautiful Commission, Inc., Trees Columbus, and the Columbus City Council all appeared before the House Transportation Committee to speak against HB 179. House Transportation Committee Video, *supra* note 66. Also, two Columbus-area House members—Representatives Carolyn Hugley (D-133rd) and Calvin Smyre (D-132nd)—

personally delivered to Governor Deal a letter addressing these concerns.¹⁷⁸ Since the City has spent significant resources on beautification efforts, including work on GATEway projects,¹⁷⁹ it harbored substantial concerns about billboard owners' ability to remove trees more easily.¹⁸⁰

The Columbus City Council later became one of the first local governments to pass a resolution urging a veto.¹⁸¹ Joining Columbus with similar resolutions were the cities of Alpharetta,¹⁸² Roswell, and Sandy Springs, along with the Athens-Clarke Commission.¹⁸³ While the prominent concern among these local entities centered on maintaining their regions' attractiveness, Alpharetta also cited its concern that the Act infringes on its authority to regulate billboards within its jurisdiction.¹⁸⁴

Despite these resolutions, Governor Deal signed HB 179 into law on May 12, 2011.¹⁸⁵ As expected, the Act immediately surfaced in the courtroom: in July 2011, parties from Columbus initiated a challenge against the law's constitutionality, arguing that the statute's exemption for beautification projects was too vague.¹⁸⁶ Besides this and other legal challenges, local governments also may need to

denounced the bill during the House floor debate. House Video, *supra* note 65. Senator Joshua McKoon (R-29th), another Columbus-area legislator, also was a vocal opponent to the bill. *See supra* notes 119–25 and accompanying text.

178. Mike Owen, *Columbus Mayor Tomlinson Meets with Georgia Gov. Deal*, COLUMBUS LEDGER-ENQUIRER, Apr. 1, 2011, available at 2011 WLNR 628 9364.

179. House Video, *supra* note 65. The GATEway Grant Program provides funding to communities that wish to beautify the roadsides beside state routes. GDOT GATEway Grant Program, <http://www.dot.state.ga.us/localgovernment/fundingprograms/gateway> (last visited May 22, 2011).

180. *See, e.g.*, House Transportation Committee Video, *supra* note 66, at 51 min., 9 sec. (remarks by Glenn Davis of the Columbus City Council) (“This bill will severely affect the progress that we have made in our community and will effectively hinder our initiatives in growing our economic development and revitalization of our many neighborhoods.”).

181. Blake Aued, *Athens Joins Other Cities in Opposing Billboard Bill*, ATHENS BANNER-HERALD, Apr. 9, 2011, available at WLNR 6993667.

182. Patrick Fox, *Government Scorecard: Alpharetta City Council*, ATLANTA J.-CONST., Apr. 24, 2011, at B4, available at 2011 WLNR 7966567.

183. *Id.*

184. Fox, *supra* note 182. *See also* Unterman Interview, *supra* note 70 (commenting that cities like Columbus and Alpharetta may challenge the new law on the grounds that it violates cities' rights to self-govern).

185. Dave Williams, *Gov. Deal OKs New Billboard Rules*, ATLANTA BUS. CHRON., May 12, 2011, available at WLNR 9506949.

186. Raquel Rodriguez, *Trees Columbus Challenging Constitutionality of New Law*, WRBL NEWS 3, July 24, 2011, <http://www2.wrbl.com/news/2011/jul/24/trees-columbus-challenging-constitutionality-new-l-ar-2181770/>.

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review any beautification projects to ensure future plantings will not conflict with the Act by being too close to a billboard. This may significantly lessen the number of plantings occurring along roadways. If a stretch of highway has multiple billboards, planners may find it difficult to locate an area for planting that would be the requisite distance from a billboard's view. One possible solution would be for beautification projects to abandon tree-planting in favor of low-growing shrubbery. While any visibility challenges would be avoided, however, environmentalists would likely not be appeased, as these shrubs cannot compensate for the effect on air quality that trees ultimately provide.

Lisa Boggs & Rebecca Lunceford

