

**ACQUISITION OF A BILLBOARD BY  
EMINENT DOMAIN  
2009 GENERAL SESSION  
STATE OF UTAH**

**Chief Sponsor: Wayne L. Niederhauser**

House Sponsor: Craig A. Frank

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to county and municipal acquisition of a billboard by eminent domain.

**Highlighted Provisions:**

This bill:

- ▶ modifies a provision relating to the authority of a billboard owner who is structurally modifying, upgrading, or relocating a billboard;
- ▶ provides that a county or municipality is considered to have initiated the acquisition of a billboard structure if the county or municipality prevents a billboard owner from making modifications, as the billboard owner determines, to a billboard that is modified, upgraded, or relocated;
- ▶ requires counties and municipalities considered to have initiated the acquisition of a billboard by eminent domain to pay just compensation; and
- ▶ defines the just compensation that counties and municipalities are required to pay.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



28 AMENDS:

29 **10-9a-513**, as last amended by Laws of Utah 2007, Chapter 171

30 **17-27a-512**, as last amended by Laws of Utah 2007, Chapter 171

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32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **10-9a-513** is amended to read:

34 **10-9a-513. Municipality's acquisition of billboard by eminent domain -- Removal**  
35 **without providing compensation -- Limit on allowing nonconforming billboards to be**  
36 **rebuilt.**

37 (1) (a) A municipality is considered to have initiated the acquisition of a billboard  
38 structure by eminent domain if the municipality prevents a billboard owner from:

39 (i) rebuilding, maintaining, repairing, or restoring a billboard structure that is damaged  
40 by casualty, an act of God, or vandalism;

41 (ii) except as provided in Subsection (1)(c), relocating or rebuilding a billboard  
42 structure, or taking other measures, to correct a mistake in the placement or erection of a  
43 billboard for which the municipality has issued a permit, if the proposed relocation, rebuilding,  
44 or other measure is consistent with the intent of that permit;

45 (iii) structurally modifying or upgrading a billboard; ~~[or]~~

46 (iv) relocating a billboard into any commercial, industrial, or manufacturing zone  
47 within the municipality's boundaries, if:

48 (A) the relocated billboard is:

49 ~~[(A)]~~ (I) within 2,640 feet of its previous location; and

50 ~~[(B)]~~ (II) no closer than 500 feet from an off-premise sign existing on the same side of  
51 the street or highway; and

52 ~~[(C)]~~ (B) (I) the billboard owner has submitted a written request under Subsection  
53 10-9a-511(3)(c); and

54 (II) the municipality and billboard owner are unable to agree, within the time provided  
55 in Subsection 10-9a-511(3)(c), to a mutually acceptable location~~[-];~~ or

56 ~~[(b) A]~~ (v) making the following modifications, as the billboard owner determines, to  
57 a billboard that is structurally [modifying or upgrading a billboard] modified or upgraded under  
58 Subsection (1)(a)(iii) or ~~[relocating the billboard]~~ relocated under Subsection (1)(a)(iv):

59 ~~[(i) may, as the owner determines:]~~

60 (A) ~~[erect]~~ erecting the billboard:

61 (I) to a height that is at least the same as, but no higher than, the previous use or  
62 structure, unless the municipality's ordinances allow or the municipality consents to a higher  
63 structure; and

64 (II) to a height and angle to make it clearly visible to traffic on the main traveled way  
65 of the street or highway on which the billboard is located; and

66 (B) ~~[install]~~ installing a sign face on the billboard that is at least the same size as, but  
67 no larger than, the sign face on the billboard before its relocation~~[; and]~~.

68 ~~[(ii)]~~ (b) A modification under Subsection (1)(a)(v) shall comply with Title 72, Chapter  
69 7, Part 5, Utah Outdoor Advertising Act, to the extent applicable.

70 (c) A municipality's denial of a billboard owner's request to relocate or rebuild a  
71 billboard structure, or to take other measures, in order to correct a mistake in the placement or  
72 erection of a billboard does not constitute the initiation of acquisition by eminent domain under  
73 Subsection (1)(a) if the mistake in placement or erection of the billboard is determined by clear  
74 and convincing evidence to have resulted from an intentionally false or misleading statement:

75 (i) by the billboard applicant in the application; and

76 (ii) regarding the placement or erection of the billboard.

77 (d) ~~H→~~ ~~[(i)]~~ ~~←H~~ If a municipality is considered to have initiated the acquisition of a  
77a billboard  
78 structure by eminent domain under Subsection (1)(a) or any other provision of applicable law,  
79 the municipality shall pay just compensation ~~S→~~ ~~[for outdoor advertising and all associated property~~  
80 ~~rights pertaining to the outdoor advertising]~~ to the billboard owner ~~←S~~ in an amount that is  
80a ~~H→~~ ~~[-the~~  
80a ~~greater-of]~~ ~~←H~~ :

81 ~~H→~~ ~~[(A)]~~ (i) ~~←H~~ the value of the ~~H→~~ existing ~~←H~~ billboard ~~H→~~ [in its present location;  
81a and

82 ~~——~~ ~~(B) the value that the billboard owner projects the billboard to have in the proposed~~  
83 ~~location for which the owner made application.~~

84 ~~——~~ (ii) ~~The just compensation that a municipality is required to pay under Subsection~~  
85 ~~(1)(d)(i) includes:~~

86 ~~——~~ (A) ~~the~~ ~~S→~~ ~~[consideration of the]~~ present value; ~~←H~~ at a fair market capitalization  
86a rate, ~~H→~~ [of  
86a the ~~←S~~ greater of:

87 ~~——~~ ~~(1)~~ based on ~~←H~~ S→ [past] actual annual ~~←S~~ revenue, less ~~H→~~ any ~~←H~~ S→ annual  
87a ←S rent expense; ~~H→~~ [and

88 ~~——~~ ~~(H)~~ projected future ~~S→~~ annual ~~←S~~ revenue, less ~~S→~~ annual ~~←S~~ rent expense;

89 ~~——~~ (B) (ii) the value of ~~←H~~ any ~~S→~~ [property] other ~~←S~~ right associated with the billboard  
89a1 structure that is  
89a acquired;

90           ~~Ĥ→~~ [(~~€~~)] (iii) ~~←Ĥ~~ the cost of the sign structure; and  
 91           ~~Ĥ→~~ [(~~Đ~~)] (iv) ~~←Ĥ~~ damage to the economic unit ~~Š→~~ [consisting of:  
 92           ~~(I) the billboard structure actually taken; and~~  
 93           ~~(H) remaining property, contiguous and not contiguous, to the outdoor advertising sign~~  
 94           ~~company's interest.] described in Subsection 72-7-510(3)(b), of which the billboard owner's~~  
 94a           interest is a part ~~←Š~~

95           (2) Notwithstanding Subsection (1) and Section 10-9a-512, a municipality may remove  
 96           a billboard without providing compensation if:

97           (a) the municipality determines:

98           (i) by clear and convincing evidence that the applicant for a permit intentionally made a  
 99           false or misleading statement in the applicant's application regarding the placement or erection  
 100           of the billboard; or

101           (ii) by substantial evidence that the billboard:

102           (A) is structurally unsafe;

103           (B) is in an unreasonable state of repair; or

104           (C) has been abandoned for at least 12 months;

105           (b) the municipality notifies the owner in writing that the owner's billboard meets one  
 106           or more of the conditions listed in Subsections (2)(a)(i) and (ii);

107           (c) the owner fails to remedy the condition or conditions within:

108           (i) except as provided in Subsection (2)(c)(ii), 90 days following the billboard owner's  
 109           receipt of written notice under Subsection (2)(b); or

110           (ii) if the condition forming the basis of the municipality's intention to remove the  
 111           billboard is that it is structurally unsafe, ten business days, or a longer period if necessary  
 112           because of a natural disaster, following the billboard owner's receipt of written notice under  
 113           Subsection (2)(b); and

114           (d) following the expiration of the applicable period under Subsection (2)(c) and after  
 115           providing the owner with reasonable notice of proceedings and an opportunity for a hearing,  
 116           the municipality finds:

117           (i) by clear and convincing evidence, that the applicant for a permit intentionally made  
 118           a false or misleading statement in the application regarding the placement or erection of the  
 119           billboard; or

120           (ii) by substantial evidence that the billboard is structurally unsafe, is in an

121 unreasonable state of repair, or has been abandoned for at least 12 months.

122 (3) A municipality may not allow a nonconforming billboard to be rebuilt or replaced  
123 by anyone other than its owner or the owner acting through its contractors.

124 (4) A permit issued, extended, or renewed by a municipality for a billboard remains  
125 valid from the time the municipality issues, extends, or renews the permit until 180 days after a  
126 required state permit is issued for the billboard if:

127 (a) the billboard requires a state permit; and

128 (b) an application for the state permit is filed within 30 days after the municipality  
129 issues, extends, or renews a permit for the billboard.

130 Section 2. Section 17-27a-512 is amended to read:

131 **17-27a-512. County's acquisition of billboard by eminent domain -- Removal**  
132 **without providing compensation -- Limit on allowing nonconforming billboard to be**  
133 **rebuilt.**

134 (1) (a) A county is considered to have initiated the acquisition of a billboard structure  
135 by eminent domain if the county prevents a billboard owner from:

136 (i) rebuilding, maintaining, repairing, or restoring a billboard structure that is damaged  
137 by casualty, an act of God, or vandalism;

138 (ii) except as provided in Subsection (1)(c), relocating or rebuilding a billboard  
139 structure, or taking other measures, to correct a mistake in the placement or erection of a  
140 billboard for which the county has issued a permit, if the proposed relocation, rebuilding, or  
141 other measure is consistent with the intent of that permit;

142 (iii) structurally modifying or upgrading a billboard; ~~[or]~~

143 (iv) relocating a billboard into any commercial, industrial, or manufacturing zone  
144 within the unincorporated area of the county, if:

145 (A) the relocated billboard is:

146 ~~[(A)]~~ (I) within 2,640 feet of its previous location; and

147 ~~[(B)]~~ (II) no closer than 500 feet from an off-premise sign existing on the same side of  
148 the street or highway; and

149 ~~[(C)]~~ (B) (I) the billboard owner has submitted a written request under Subsection  
150 17-27a-510(3)(c); and

151 (II) the county and billboard owner are unable to agree, within the time provided in

152 Subsection 17-27a-510(3)(c), to a mutually acceptable location[-]; or

153 ~~[(b) A]~~ making the following modifications, as the billboard owner determines, to  
154 a billboard that is structurally [modifying or upgrading a billboard] modified or upgraded under  
155 Subsection (1)(a)(iii) or ~~[relocating the billboard]~~ relocated under Subsection (1)(a)(iv):

156 ~~[(i) may, as the owner determines:]~~

157 (A) ~~[erect]~~ erecting the billboard:

158 (I) to a height that is at least the same as, but no higher than, the previous use or  
159 structure, unless the county's ordinances allow or the county consents to a higher structure; and

160 (II) to a height and angle to make it clearly visible to traffic on the main traveled way  
161 of the street or highway on which the billboard is located; and

162 (B) ~~[install]~~ installing a sign face on the billboard that is at least the same size as, but  
163 no larger than, the sign face on the billboard before its relocation[-; and].

164 ~~[(ii)]~~ (b) A modification under Subsection (1)(a)(v) shall comply with Title 72, Chapter  
165 7, Part 5, Utah Outdoor Advertising Act, to the extent applicable.

166 (c) A county's denial of a billboard owner's request to relocate or rebuild a billboard  
167 structure, or to take other measures, in order to correct a mistake in the placement or erection of  
168 a billboard does not constitute the initiation of acquisition by eminent domain under Subsection  
169 (1)(a) if the mistake in placement or erection of the billboard is determined by clear and  
170 convincing evidence to have resulted from an intentionally false or misleading statement:

171 (i) by the billboard applicant in the application; and

172 (ii) regarding the placement or erection of the billboard.

173 ~~(d)  $\hat{H} \rightarrow$  [(ii)]  $\leftarrow \hat{H}$~~  If a county is considered to have initiated the acquisition of a billboard  
173a structure

174 by eminent domain under Subsection (1)(a) or any other provision of applicable law, the county  
175 shall pay just compensation  $\hat{S} \rightarrow$  [for outdoor advertising and all associated property rights pertaining  
176 to the outdoor advertising] to the billboard owner  $\leftarrow \hat{S}$  in an amount that is  $\hat{H} \rightarrow$  [the greater  
176a of]  $\leftarrow \hat{H}$  :

177  $\hat{H} \rightarrow$  ~~[(A)]~~ (i)  $\leftarrow \hat{H}$  the value of the  $\hat{H} \rightarrow$  existing  $\leftarrow \hat{H}$  billboard  $\hat{H} \rightarrow$  [in its present location;  
177a and

178 ———— (B) the value that the billboard owner projects the billboard to have in the proposed  
179 location for which the owner made application.

180 ———— (ii) The just compensation that a county is required to pay under Subsection (1)(d)(i)  
181 includes:

182 ———— (A) the  $\hat{S} \rightarrow$  [consideration of the] present value;]  $\leftarrow \hat{H}$  at a fair market capitalization rate,

182a1  $\hat{H} \rightarrow$  [of

182a the  $\leftarrow \hat{S}$  greater of:

- 183 ~~\_\_\_\_\_ (F) based on~~ ~~←H~~ ~~→~~ ~~past~~ ~~actual annual~~ ~~←S~~ ~~revenue, less~~ ~~H→~~ ~~any~~ ~~←H~~  
183a1 ~~→~~ ~~annual~~ ~~←S~~ ~~rent~~  
183a ~~expense; H→~~ ~~[and]~~  
184 ~~\_\_\_\_\_ (H) projected future~~ ~~→~~ ~~annual~~ ~~←S~~ ~~revenue, less~~ ~~H→~~ ~~any~~ ~~←H~~ ~~→~~ ~~annual~~ ~~←S~~ ~~rent expense;~~  
185 ~~\_\_\_\_\_ (B) (ii) the value of~~ ~~←H~~ ~~any~~ ~~→~~ ~~property~~ ~~other~~ ~~←S~~ ~~right associated with the billboard~~  
185a ~~structure that is~~  
185a ~~acquired;~~  
186 ~~H→~~ ~~(C)~~ ~~(iii)~~ ~~←H~~ ~~the cost of the sign structure; and~~  
187 ~~H→~~ ~~(D)~~ ~~(iv)~~ ~~←H~~ ~~damage to the economic unit~~ ~~→~~ ~~[consisting of:~~  
188 ~~\_\_\_\_\_ (F) the billboard structure actually taken; and~~  
189 ~~\_\_\_\_\_ (H) remaining property, contiguous and not contiguous, to the outdoor advertising sign~~  
190 ~~company's interest] described in Subsection 72-7-510(3)(b), of which the billboard owner's~~  
190a ~~interest is a part~~ ~~←S~~ .  
191 (2) Notwithstanding Subsection (1) and Section 17-27a-511, a county may remove a  
192 billboard without providing compensation if:  
193 (a) the county determines:  
194 (i) by clear and convincing evidence that the applicant for a permit intentionally made a  
195 false or misleading statement in the applicant's application regarding the placement or erection  
196 of the billboard; or  
197 (ii) by substantial evidence that the billboard:  
198 (A) is structurally unsafe;  
199 (B) is in an unreasonable state of repair; or  
200 (C) has been abandoned for at least 12 months;  
201 (b) the county notifies the owner in writing that the owner's billboard meets one or  
202 more of the conditions listed in Subsections (2)(a)(i) and (ii);  
203 (c) the owner fails to remedy the condition or conditions within:  
204 (i) except as provided in Subsection (2)(c)(ii), 90 days following the billboard owner's  
205 receipt of written notice under Subsection (2)(b); or  
206 (ii) if the condition forming the basis of the county's intention to remove the billboard  
207 is that it is structurally unsafe, ten business days, or a longer period if necessary because of a  
208 natural disaster, following the billboard owner's receipt of written notice under Subsection  
209 (2)(b); and  
210 (d) following the expiration of the applicable period under Subsection (2)(c) and after  
211 providing the owner with reasonable notice of proceedings and an opportunity for a hearing,  
212 the county finds:  
213 (i) by clear and convincing evidence, that the applicant for a permit intentionally made

214 a false or misleading statement in the application regarding the placement or erection of the  
215 billboard; or

216 (ii) by substantial evidence that the billboard is structurally unsafe, is in an  
217 unreasonable state of repair, or has been abandoned for at least 12 months.

218 (3) A county may not allow a nonconforming billboard to be rebuilt or replaced by  
219 anyone other than its owner or the owner acting through its contractors.

220 (4) A permit issued, extended, or renewed by a county for a billboard remains valid  
221 from the time the county issues, extends, or renews the permit until 180 days after a required  
222 state permit is issued for the billboard if:

223 (a) the billboard requires a state permit; and

224 (b) an application for the state permit is filed within 30 days after the county issues,  
225 extends, or renews a permit for the billboard.

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**Legislative Review Note**  
**as of 2-13-09 3:16 PM**

**Office of Legislative Research and General Counsel**

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**S.B. 190 - Acquisition of a Billboard by Eminent Domain**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

If a local entity acquires a billboard through eminent domain, there may be increased costs in order to compensate a business for foregone operating revenue. Individuals are likely unaffected.

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