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H.B. 87
2nd Sub. (Gray)

Representative Melvin R. Brown proposes the following substitute bill:

BILLBOARD REVISIONS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Melvin R. Brown

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill amends provisions related to a billboard and electronic or mechanical changeable message sign.

Highlighted Provisions:

This bill:

- prohibits a municipality or county from enacting or enforcing certain billboard ordinances;
- prohibits a municipality or county from preventing a billboard owner from taking certain actions unless the municipality or county commences eminent domain proceedings;
- prohibits a municipality or county from making certain requirements of a billboard owner or a person who has a lease with a billboard owner;
- enacts language related to an arbitration between a municipality or a county and a billboard owner;
- defines terms;
- amends provisions related to an electronic or mechanical changeable message sign;
- enacts language related to the obstruction of an outdoor advertising sign; and
- makes technical corrections.

2nd Sub. H.B. 87

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9a-511, as last amended by Laws of Utah 2011, Chapter 210

10-9a-513, as last amended by Laws of Utah 2009, Chapters 170 and 233

17-27a-510, as last amended by Laws of Utah 2009, Chapter 170

17-27a-512, as last amended by Laws of Utah 2009, Chapters 170 and 233

72-7-502, as last amended by Laws of Utah 2011, Chapter 346

72-7-505, as last amended by Laws of Utah 2011, Chapter 346

72-7-508, as last amended by Laws of Utah 2011, Chapter 346

72-7-510, as last amended by Laws of Utah 2008, Chapter 3

72-7-510.5, as last amended by Laws of Utah 2009, Chapter 170

ENACTS:

10-9a-513.5, Utah Code Annotated 1953

17-27a-512.5, Utah Code Annotated 1953

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

Section 1. Section **10-9a-511** is amended to read:

10-9a-511. Nonconforming uses and noncomplying structures.

(1) (a) Except as provided in this section, a nonconforming use or noncomplying structure may be continued by the present or a future property owner.

(b) A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.

(c) For purposes of this Subsection (1), the addition of a solar energy device to a building is not a structural alteration.

(2) The legislative body may provide for:

(a) the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of nonconforming uses upon the terms and conditions set forth in the land use

ordinance;

(b) the termination of all nonconforming uses, except billboards, by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any; and

(c) the termination of a nonconforming use due to its abandonment.

(3) (a) A municipality may not prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the structure or use has been abandoned.

(b) A municipality may prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure if:

(i) the structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six months after written notice to the property owner that the structure is uninhabitable and that the noncomplying structure or nonconforming use will be lost if the structure is not repaired or restored within six months; or

(ii) the property owner has voluntarily demolished a majority of the noncomplying structure or the building that houses the nonconforming use.

(c) (i) Notwithstanding a prohibition in its zoning ordinance, a municipality may permit a billboard owner to relocate the billboard within the municipality's boundaries to a location that is mutually acceptable to the municipality and the billboard owner.

(ii) If the municipality and billboard owner cannot agree to a mutually acceptable location within 90 days after the owner submits a written request to relocate the billboard, the [~~provisions of~~] municipality may not prevent the billboard owner from taking an action specified in Subsection 10-9a-513(2)(a)(iv) [~~apply~~] unless the municipality has commenced eminent domain proceedings in accordance with the provisions of Section 10-9a-512 within 90 days after the day that the billboard owner submits a written request to relocate the billboard.

(d) (i) Except as provided in Subsection (3)(e), a municipality may not enact or enforce an ordinance that prevents an owner of an existing nonconforming or conforming billboard from upgrading that billboard to an electronic or mechanical changeable message sign that operates in conformance with Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act.

(ii) A municipality may not enact or enforce an ordinance that forces an owner of an

existing nonconforming or conforming billboard to forfeit any other billboard owned by the same owner in order to upgrade the existing nonconforming or conforming billboard to an electronic or mechanical changeable message sign that operates in conformance with Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act.

(e) A municipality may, subject to Subsections (3)(f) and (g), impose a requirement that for a period commencing 60 minutes after sunset until 6 a.m., the message on an electronic changeable sign be turned off or not change.

(f) A municipality may not impose the requirement described in Subsection (3)(e) unless:

(i) the face of the electronic changeable message sign:

(A) cannot be viewed from the interstate system; and

(B) is located on and oriented to be viewed primarily from a street where, as of May 8, 2012, the posted speed limit is 25 miles or less per hour; or

(ii) the face of the electronic changeable message sign:

(A) cannot be viewed from the interstate system;

(B) is within 150 feet of the outer edge of an existing residential dwelling structure that is legally occupied and located on property zoned exclusively for residential purposes; and

(C) is oriented toward the structure described in Subsection (3)(f)(ii)(B).

(g) A municipality may not enforce a requirement imposed by the municipality in accordance with Subsection (3)(e) if the message is a public safety or emergency announcement, warning, or alert.

(4) (a) Unless the municipality establishes, by ordinance, a uniform presumption of legal existence for nonconforming uses, the property owner shall have the burden of establishing the legal existence of a noncomplying structure or nonconforming use.

(b) Any party claiming that a nonconforming use has been abandoned shall have the burden of establishing the abandonment.

(c) Abandonment may be presumed to have occurred if:

(i) a majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the municipality regarding an extension of the nonconforming use;

(ii) the use has been discontinued for a minimum of one year; or

(iii) the primary structure associated with the nonconforming use remains vacant for a period of one year.

(d) The property owner may rebut the presumption of abandonment under Subsection (4)(c), and shall have the burden of establishing that any claimed abandonment under Subsection (4)(b) has not in fact occurred.

(5) A municipality may terminate the nonconforming status of a school district or charter school use or structure when the property associated with the school district or charter school use or structure ceases to be used for school district or charter school purposes for a period established by ordinance.

(6) A municipal ordinance adopted under Section 10-1-203 may not:

(a) require physical changes in a structure with a legal nonconforming rental housing use unless the change is for:

(i) the reasonable installation of:

(A) a smoke detector that is plugged in or battery operated;

(B) a ground fault circuit interrupter protected outlet on existing wiring;

(C) street addressing;

(D) except as provided in Subsection (7), an egress bedroom window if the existing bedroom window is smaller than that required by current state building code;

(E) an electrical system or a plumbing system, if the existing system is not functioning or is unsafe as determined by an independent electrical or plumbing professional who is licensed in accordance with Title 58, Occupations and Professions;

(F) hand or guard rails; or

(G) occupancy separation doors as required by the International Residential Code; or

(ii) the abatement of a structure; or

(b) be enforced to terminate a legal nonconforming rental housing use.

(7) A municipality may not require a change described in Subsection (6)(a)(i)(D) if the change:

(a) would compromise the structural integrity of a building; or

(b) could not be completed in accordance with current building codes, including set-back and window well requirements.

(8) A legal nonconforming rental housing use may not be terminated under Section

10-1-203.

Section 2. Section **10-9a-513** is amended to read:

10-9a-513. Municipality's acquisition of billboard by eminent domain -- Removal without providing compensation -- Limit on allowing nonconforming billboards to be rebuilt or replaced -- Validity of municipal permit after issuance of state permit -- Just compensation in eminent domain proceeding -- Municipal conditions on billboard prohibited.

(1) As used in this section:

(a) "Clearly visible" means capable of being [~~read~~] viewed without obstruction by an occupant of a vehicle traveling on a street or highway within the visibility area.

(b) "Highest allowable height" means:

(i) if the height allowed by the municipality, by ordinance or consent, is higher than the height under Subsection (1)(b)(ii), the height allowed by the municipality; or

(ii) (A) for a noninterstate billboard:

(I) if the height of the previous use or structure is 45 feet or higher, the height of the previous use or structure; or

(II) if the height of the previous use or structure is less than 45 feet, the height of the previous use or structure or the height to make the entire advertising content of the billboard clearly visible, whichever is higher, but no higher than 45 feet; and

(B) for an interstate billboard:

(I) if the height of the previous use or structure is at or above the interstate height, the height of the previous use or structure; or

(II) if the height of the previous use or structure is less than the interstate height, the height of the previous use or structure or the height to make the entire advertising content of the billboard clearly visible, whichever is higher, but no higher than the interstate height.

(c) "Interstate billboard" means a billboard that is intended to be viewed from a highway that is an interstate.

(d) "Interstate height" means a height that is the higher of:

(i) 65 feet above the ground; and

(ii) 25 feet above the grade of the interstate.

(e) "Noninterstate billboard" means a billboard that is intended to be viewed from a

street or highway that is not an interstate.

(f) "Visibility area" means the area on a street or highway that is:

(i) defined at one end by a line extending from the base of the billboard across all lanes of traffic of the street or highway in a plane that is perpendicular to the street or highway; and

(ii) defined on the other end by a line extending across all lanes of traffic of the street or highway in a plane that is:

(A) perpendicular to the street or highway; and

(B) (I) for an interstate billboard, 500 feet from the base of the billboard; or

(II) for a noninterstate billboard, 300 feet from the base of the billboard.

(2) (a) A municipality [~~is considered to have initiated the acquisition of a billboard structure by eminent domain if the municipality prevents a billboard owner from~~] may not prevent a billboard owner from taking one or any of the following actions unless the municipality has first commenced, subject to Subsection (2)(b), eminent domain proceedings:

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

(ii) except as provided in Subsection (2)(c), relocating or rebuilding a billboard structure, or taking other measures, to correct a mistake in the placement or erection of a billboard for which the municipality has issued a permit, if the proposed relocation, rebuilding, or other measure is consistent with the intent of that permit;

(iii) structurally modifying or upgrading a billboard;

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

(A) the relocated billboard is:

(I) within 5,280 feet of its previous location; and

(II) no closer than:

(Aa) 300 feet from an off-premise sign existing on the same side of the street or highway; or

(Bb) if the street or highway is an interstate or limited access highway that is subject to Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act, the distance allowed under that act between the relocated billboard and an off-premise sign existing on the same side of the interstate or limited access highway; and

(B) (I) the billboard owner has submitted a written request under Subsection 10-9a-511(3)(c); and

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

(v) making the following modifications, as the billboard owner determines, to a billboard that is structurally modified or upgraded under Subsection (2)(a)(iii) or relocated under Subsection (2)(a)(iv):

(A) erecting the billboard:

(I) to the highest allowable height; and

(II) as the owner determines, to an angle that makes the entire advertising content of the billboard clearly visible; and

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

(vi) exercising a right granted to a billboard owner under the provisions of Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act.

(b) (i) If a municipality commences an eminent domain lawsuit to prevent one or more of the actions described in Subsection (2)(a), the municipality shall complete the lawsuit within one year of filing the lawsuit.

(ii) If the municipality does not complete the eminent domain lawsuit within one year, the municipality may not prevent the billboard owner from taking the action that precipitated the eminent domain lawsuit.

(iii) Notwithstanding Subsection (2)(a), a municipality may not commence eminent domain proceedings to prevent a billboard owner from upgrading a billboard to an electronic or mechanical changeable message sign.

[~~(b)~~] (iv) A modification under Subsection (2)(a)(v) shall comply with Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act, to the extent applicable.

(c) A [~~municipality's denial of~~] municipality may deny a billboard owner's request to relocate or rebuild a billboard structure, or to take other measures, in order to correct a mistake in the placement or erection of a billboard [~~does not constitute the initiation of acquisition by~~] without commencing eminent domain [~~under Subsection (2)(a)~~] proceedings if the mistake in placement or erection of the billboard is determined by clear and convincing evidence to have

resulted from an intentionally false or misleading statement:

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

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

(d) If a municipality [~~is considered to have initiated the acquisition of~~] acquires a billboard structure by eminent domain under Subsection (2)(a) or any other provision of applicable law, the municipality shall pay just compensation to the billboard owner in an amount that is:

(i) the value of the existing billboard at a fair market capitalization rate, based on actual annual revenue, less any annual rent expense;

(ii) the value of any other right associated with the billboard structure that is acquired;

(iii) the cost of the sign structure; and

(iv) damage to the economic unit described in Subsection 72-7-510(3)(b), of which the billboard owner's interest is a part.

(3) Notwithstanding Subsection (2) and Section 10-9a-512, a municipality may [~~remove~~] require that a billboard owner remove a billboard without providing compensation if:

(a) the municipality determines:

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

(ii) by substantial evidence that the billboard:

(A) is structurally unsafe;

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

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

(b) the municipality notifies the owner in writing that the owner's billboard meets one or more of the conditions listed in Subsections (3)(a)(i) and (ii);

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

(i) except as provided in Subsection (3)(c)(ii), 90 days following the billboard owner's receipt of written notice under Subsection (3)(b); or

(ii) if the condition forming the basis of the municipality's intention to remove the billboard is that it is structurally unsafe, 10 business days, or a longer period if necessary because of a natural disaster, following the billboard owner's receipt of written notice under

Subsection (3)(b); and

(d) following the expiration of the applicable period under Subsection (3)(c) and after providing the owner with reasonable notice of proceedings and an opportunity for a hearing, the municipality finds:

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

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

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

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

(a) the billboard requires a state permit; and

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

(6) A municipality may not require a billboard owner to remove or alter a billboard, or require that a person who has a lease, easement, or other agreement with a billboard owner to terminate or fail to renew that lease, easement, or other agreement as a condition of issuing or approving:

(a) a permit;

(b) a license;

(c) a zone change;

(d) a variance;

(e) any land use entitlement; or

(f) any other land use approval or ordinance.

Section 3. Section **10-9a-513.5** is enacted to read:

10-9a-513.5. Billboard arbitration.

(1) (a) A billboard owner may challenge or dispute a decision, action, or failure to timely act made by a municipality or land use authority concerning a billboard by serving a

notice of arbitration upon the municipality:

(i) within 30 days of the decision, action, or inaction; or

(ii) at any time after the expiration of 90 days after the billboard owner submits the owner's land use application if the action is the municipality's or land use authority's failure to act upon the application; or

(iii) within 180 days after receiving actual knowledge of a decision or action that may affect the billboard if the billboard owner was not a participant in the process in which the decision was reached or action taken.

(b) A billboard owner need not exhaust administrative remedies available to the billboard owner in order to pursue a remedy under this section.

(c) A district court shall stay until completion of the arbitration a court action pending at the time of service of the notice of arbitration that concerns some or all of the same issues that are the subject of the arbitration.

(d) A municipality shall stay until completion of the arbitration any further proceedings by the municipality on the billboard owner's application.

(e) Nothing in this section shall prevent the billboard owner, at the owner's election, from pursuing the owner's rights under Section 13-43-206.

(2) (a) A notice of arbitration shall set forth:

(i) the decision, action, or failure to act that is the subject of the arbitration; and

(ii) the name of and contact information for a proposed arbitrator.

(b) The municipality shall have 30 days after the day on which the municipality receives a notice of arbitration to respond to the notice.

(i) The municipality's response shall:

(A) set forth the reasons, if any, for the municipality's decision, action, or failure to act; and

(B) include a statement of agreement or disagreement with the billboard owner's choice of arbitrator.

(ii) If the municipality does not agree to the billboard owner's selected arbitrator, the municipality shall submit its own choice of arbitrator in the municipality's response to the notice of arbitration.

(iii) If the billboard owner and municipality cannot agree on an arbitrator, the

arbitrators the owner and municipality have proposed shall select a different arbitrator, who shall conduct the arbitration.

(iv) If the municipality fails to timely serve a complete response to a notice of arbitration under Subsection (2)(b):

(A) the billboard owner's land use application is considered approved; and

(B) the municipality shall issue all associated permits shall be issued upon payment of the required fees.

(3) (a) An arbitration under this section shall commence:

(i) within 30 days of a municipality timely serving its response to the notice of arbitration; or

(ii) if the arbitration is conducted by an arbitrator described in Subsection (2)(b)(iii), within 45 days of a timely service of a municipality's response to the notice of arbitration.

(b) Unless otherwise agreed to in writing:

(i) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (2)(a)(ii) or (b)(ii); or

(ii) if an arbitrator is selected under Subsection (2)(b)(iii):

(A) each party shall pay the fees and costs of the arbitrator selected by a party in accordance with Subsection (2)(a)(ii) or (b)(ii), respectively; and

(B) each party shall pay an equal share of the fees and costs of the third arbitrator selected in accordance with Subsection (2)(b)(iii).

(c) Except as otherwise provided in this section or unless otherwise agreed to in writing by the parties, an arbitration proceeding conducted under this section is governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(d) (i) In an arbitration that commences as the result of a municipality's failure to accept a billboard owner's application for a permit as complete, the arbitrator shall determine whether the application is complete based on specified, objective, ordinance-based criterion.

(ii) If the application is not complete, the arbitrator shall:

(A) identify the specific additional information that the applicant needs to supply to complete the application; and

(B) set a deadline that is reasonable under the circumstances for the applicant to complete the application.

(iii) The arbitrator's decision on completeness is final and binding.

(e) Once the application is completed:

(i) the arbitrator shall set a deadline that is reasonable under the circumstances for the municipality to make a determination on the application; or

(ii) the billboard owner may request that the arbitrator issue an advisory opinion on:

(A) whether the application should be granted or denied; and

(B) if the application is to be denied and compensation is due, a supplementary advisory opinion on the total amount of compensation due to the billboard owner, if any.

(4) (a) The arbitrator shall issue an initial advisory opinion under this section within 60 days of the commencement of the arbitration.

(b) The arbitrator shall issue a supplemental advisory opinion regarding the total amount of compensation within 60 days after the initial advisory opinion that the application is to be denied.

(5) (a) The municipality shall grant or deny the application within 30 days:

(i) after the arbitrator's advisory opinion is issued, if no supplemental opinion on compensation is requested; or

(ii) after the supplemental opinion is issued.

(b) If the municipality denies the application, the municipality:

(i) (A) shall set forth in a written decision all of the facts and law upon which the municipality relies; and

(B) may not make reference to the arbitrator's advisory opinion; and

(ii) shall concurrently file a condemnation action in district court if the reason for denial is that:

(A) the municipality has determined to condemn the billboard; and

(B) the time for filing a condemnation action has not already expired.

(c) (i) If the municipality fails to meet a deadline established by this part, or if the municipality denies an application, the billboard owner may, within 30 days after the expiration of the deadline or the owner's receipt of the written denial of the application, file a complaint in the district court requesting a trial de novo.

(ii) The complaint described in Subsection (5)(c)(i) may include a request for other appropriate relief.

(d) The billboard owner may file a cross-claim for a trial de novo and for other appropriate relief in any condemnation action brought by the municipality.

(e) The municipality may not file a cross-claim for condemnation if it has not timely commenced a condemnation action in accordance with the provisions of this part.

(6) (a) Upon the filing of a complaint or cross-claim for a trial de novo under this part, a claim shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules of Evidence in the district court.

(b) A party may not offer the arbitrator's opinion as evidence except as provided in Subsection (7).

(c) In reviewing a decision to deny a billboard owner's land use application, the municipality may not argue any reasons why the application should be denied other those set forth in a written decision.

(7) If the decision of the court is substantially similar to an arbitrator's advisory opinion, the prevailing party is entitled to attorney fees, costs, and expenses incurred in the trial de novo.

(a) A party may not offer an arbitration decision issued in accordance with Subsection (4) as evidence to the district court unless the decision is offered as evidence in a motion for attorney fees, costs, and expenses as described in this Subsection (7).

(b) An order resulting from a motion for attorney fees, costs, and expenses under Subsection (7)(a) is a final judgment under Rule 54 of the Utah Rules of Civil Procedure.

Section 4. Section **17-27a-510** is amended to read:

17-27a-510. Nonconforming uses and noncomplying structures.

(1) (a) Except as provided in this section, a nonconforming use or a noncomplying structure may be continued by the present or a future property owner.

(b) A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.

(c) For purposes of this Subsection (1), the addition of a solar energy device to a building is not a structural alteration.

(2) The legislative body may provide for:

(a) the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of nonconforming uses upon the terms and conditions set forth in the land use

ordinance;

(b) the termination of all nonconforming uses, except billboards, by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any; and

(c) the termination of a nonconforming use due to its abandonment.

(3) (a) A county may not prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the structure or use has been abandoned.

(b) A county may prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure if:

(i) the structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six months after written notice to the property owner that the structure is uninhabitable and that the noncomplying structure or nonconforming use will be lost if the structure is not repaired or restored within six months; or

(ii) the property owner has voluntarily demolished a majority of the noncomplying structure or the building that houses the nonconforming use.

(c) (i) Notwithstanding a prohibition in its zoning ordinance, a county may permit a billboard owner to relocate the billboard within the county's unincorporated area to a location that is mutually acceptable to the county and the billboard owner.

(ii) If the county and billboard owner cannot agree to a mutually acceptable location within 90 days after the owner submits a written request to relocate the billboard, the [~~provisions of~~] county may not prevent the billboard owner from taking an action specified in Subsection 17-27a-512(2)(a)(iv) [~~apply~~] unless the county has commenced eminent domain proceedings in accordance with the provisions of Section 17-27a-511 within 90 days after the day that the billboard owner submits a written request to relocate the billboard.

(d) (i) Except as provided in Subsection (3)(e), a county may not enact or enforce an ordinance that prevents an owner of an existing nonconforming or conforming billboard from upgrading that billboard to an electronic or mechanical changeable message sign that operates in conformance with Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act.

(ii) A county may not enact or enforce an ordinance that forces an owner of an existing nonconforming or conforming billboard to forfeit any other billboard owned by the same owner

in order to upgrade the existing nonconforming or conforming billboard to an electronic or mechanical changeable message sign that operates in conformance with Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act.

(e) A county may, subject to Subsections (3)(f) and (g), impose a requirement that for a period commencing 60 minutes after sunset until 6 a.m., the message on an electronic changeable sign be turned off or not change.

(f) A county may not impose the requirement described in Subsection (3)(e) unless:

(i) the face of the electronic changeable message sign:

(A) cannot be viewed from the interstate system; and

(B) is located on and oriented to be viewed primarily from a street where, as of May 8, 2012, the posted speed limit is 25 miles or less per hour; or

(ii) the face of the electronic changeable message sign:

(A) cannot be viewed from the interstate system;

(B) is within 150 feet of the outer edge of an existing residential dwelling structure that is legally occupied and located on property zoned exclusively for residential purposes; and

(C) is oriented toward the structure described in Subsection (3)(f)(ii)(B).

(g) A county may not enforce a requirement imposed by the county in accordance with Subsection (3)(e) if the message is a public safety or emergency announcement, warning, or alert.

(4) (a) Unless the county establishes, by ordinance, a uniform presumption of legal existence for nonconforming uses, the property owner shall have the burden of establishing the legal existence of a noncomplying structure or nonconforming use.

(b) Any party claiming that a nonconforming use has been abandoned shall have the burden of establishing the abandonment.

(c) Abandonment may be presumed to have occurred if:

(i) a majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the county regarding an extension of the nonconforming use;

(ii) the use has been discontinued for a minimum of one year; or

(iii) the primary structure associated with the nonconforming use remains vacant for a period of one year.

(d) The property owner may rebut the presumption of abandonment under Subsection (4)(c), and shall have the burden of establishing that any claimed abandonment under Subsection (4)(c) has not in fact occurred.

(5) A county may terminate the nonconforming status of a school district or charter school use or structure when the property associated with the school district or charter school use or structure ceases to be used for school district or charter school purposes for a period established by ordinance.

Section 5. Section **17-27a-512** is amended to read:

17-27a-512. County's acquisition of billboard by eminent domain -- Removal without providing compensation -- Limit on allowing nonconforming billboard to be rebuilt or replaced -- Validity of county permit after issuance of state permit -- Just compensation in eminent domain proceeding -- County conditions on billboard prohibited.

(1) As used in this section:

(a) "Clearly visible" means capable of being [~~read~~] viewed without obstruction by an occupant of a vehicle traveling on a street or highway within the visibility area.

(b) "Highest allowable height" means:

(i) if the height allowed by the county, by ordinance or consent, is higher than the height under Subsection (1)(b)(ii), the height allowed by the county; or

(ii) (A) for a noninterstate billboard:

(I) if the height of the previous use or structure is 45 feet or higher, the height of the previous use or structure; or

(II) if the height of the previous use or structure is less than 45 feet, the height of the previous use or structure or the height to make the entire advertising content of the billboard clearly visible, whichever is higher, but no higher than 45 feet; and

(B) for an interstate billboard:

(I) if the height of the previous use or structure is at or above the interstate height, the height of the previous use or structure; or

(II) if the height of the previous use or structure is less than the interstate height, the height of the previous use or structure or the height to make the entire advertising content of the billboard clearly visible, whichever is higher, but no higher than the interstate height.

(c) "Interstate billboard" means a billboard that is intended to be viewed from a highway that is an interstate.

(d) "Interstate height" means a height that is the higher of:

(i) 65 feet above the ground; and

(ii) 25 feet above the grade of the interstate.

(e) "Noninterstate billboard" means a billboard that is intended to be viewed from a street or highway that is not an interstate.

(f) "Visibility area" means the area on a street or highway that is:

(i) defined at one end by a line extending from the base of the billboard across all lanes of traffic of the street or highway in a plane that is perpendicular to the street or highway; and

(ii) defined on the other end by a line extending across all lanes of traffic of the street or highway in a plane that is:

(A) perpendicular to the street or highway; and

(B) (I) for an interstate billboard, 500 feet from the base of the billboard; or

(II) for a noninterstate billboard, 300 feet from the base of the billboard.

(2) (a) A county [~~is considered to have initiated the acquisition of a billboard structure by eminent domain if the county prevents a billboard owner from~~] may not prevent a billboard owner from taking one or any of the following actions unless the county has first commenced, subject to Subsection (2)(b), eminent domain proceedings:

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

(ii) except as provided in Subsection (2)(c), relocating or rebuilding a billboard structure, or taking other measures, to correct a mistake in the placement or erection of a billboard for which the county has issued a permit, if the proposed relocation, rebuilding, or other measure is consistent with the intent of that permit;

(iii) structurally modifying or upgrading a billboard;

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

(A) the relocated billboard is:

(I) within 5,280 feet of its previous location; and

(II) no closer than:

(Aa) 300 feet from an off-premise sign existing on the same side of the street or highway; or

(Bb) if the street or highway is an interstate or limited access highway that is subject to Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act, the distance allowed under that act between the relocated billboard and an off-premise sign existing on the same side of the interstate or limited access highway; and

(B) (I) the billboard owner has submitted a written request under Subsection 17-27a-510(3)(c); and

(II) the county and billboard owner are unable to agree, within the time provided in Subsection 17-27a-510(3)(c), to a mutually acceptable location; [~~or~~]

(v) making the following modifications, as the billboard owner determines, to a billboard that is structurally modified or upgraded under Subsection (2)(a)(iii) or relocated under Subsection (2)(a)(iv):

(A) erecting the billboard:

(I) to the highest allowable height; and

(II) as the owner determines, to an angle that makes the entire advertising content of the billboard clearly visible; and

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

(vi) exercising a right granted to a billboard owner under the provisions of Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act.

(b) (i) If a county commences an eminent domain lawsuit to prevent one or more of the actions described in Subsection (2)(a), the county shall complete the lawsuit within one year of filing the lawsuit.

(ii) If the county does not complete the eminent domain lawsuit within one year, the county may not prevent the billboard owner from taking the action that precipitated the eminent domain lawsuit.

(iii) Notwithstanding Subsection (2)(a), a county may not commence eminent domain proceedings to prevent a billboard owner from upgrading a billboard to an electronic or mechanical changeable message sign.

[~~(b)~~] (iv) A modification under Subsection [~~(1)~~] (2)(a)(v) shall comply with Title 72,

Chapter 7, Part 5, Utah Outdoor Advertising Act, to the extent applicable.

(c) A [~~county's denial of~~] county may deny a billboard owner's request to relocate or rebuild a billboard structure, or to take other measures, in order to correct a mistake in the placement or erection of a billboard [~~does not constitute the initiation of acquisition by~~] without commencing eminent domain [~~under Subsection (2)(a)~~] proceedings if the mistake in placement or erection of the billboard is determined by clear and convincing evidence to have resulted from an intentionally false or misleading statement:

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

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

(d) If a county [~~is considered to have initiated the acquisition of~~] acquires a billboard structure by eminent domain under Subsection [~~(1)~~] (2)(a) or any other provision of applicable law, the county shall pay just compensation to the billboard owner in an amount that is:

(i) the value of the existing billboard at a fair market capitalization rate, based on actual annual revenue, less any annual rent expense;

(ii) the value of any other right associated with the billboard structure that is acquired;

(iii) the cost of the sign structure; and

(iv) damage to the economic unit described in Subsection 72-7-510(3)(b), of which the billboard owner's interest is a part.

(3) Notwithstanding Subsection (2) and Section 17-27a-511, a county may [~~remove~~] require that a billboard owner remove a billboard without providing compensation if:

(a) the county determines:

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

(ii) by substantial evidence that the billboard:

(A) is structurally unsafe;

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

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

(b) the county notifies the owner in writing that the owner's billboard meets one or more of the conditions listed in Subsections (3)(a)(i) and (ii);

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

(i) except as provided in Subsection (3)(c)(ii), 90 days following the billboard owner's receipt of written notice under Subsection (3)(b); or

(ii) if the condition forming the basis of the county's intention to remove the billboard is that it is structurally unsafe, 10 business days, or a longer period if necessary because of a natural disaster, following the billboard owner's receipt of written notice under Subsection (3)(b); and

(d) following the expiration of the applicable period under Subsection (3)(c) and after providing the owner with reasonable notice of proceedings and an opportunity for a hearing, the county finds:

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

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

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

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

(a) the billboard requires a state permit; and

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

(6) A county may not require that a billboard owner remove or alter a billboard, or require that a person who has a lease, easement, or other agreement with a billboard owner terminate or fail to renew that lease, easement, or other agreement as a condition of issuing or approving:

(a) a permit;

(b) a license;

(c) a zone change;

(d) a variance;

(e) any land use entitlement; or

(f) any other land use approval or ordinance.

Section 6. Section **17-27a-512.5** is enacted to read:

17-27a-512.5. Billboard arbitration.

(1) (a) A billboard owner may challenge or dispute a decision, action, or failure to timely act made by a county or land use authority concerning a billboard by serving a notice of arbitration upon the county:

(i) within 30 days of the decision, action, or inaction; or

(ii) at any time after the expiration of 90 days after the billboard owner submits the owner's land use application if the action is the county's or land use authority's failure to act upon the application; or

(iii) within 180 days after receiving actual knowledge of a decision or action that may affect the billboard if the billboard owner was not a participant in the process in which the decision was reached or action taken.

(b) A billboard owner need not exhaust administrative remedies available to the billboard owner in order to pursue a remedy under this section.

(c) A district court shall stay until completion of the arbitration a court action pending at the time of service of the notice of arbitration that concerns some or all of the same issues that are the subject of the arbitration.

(d) A county shall stay until completion of the arbitration any further proceedings by the county on the billboard owner's application.

(e) Nothing in this section shall prevent the billboard owner, at the owner's election, from pursuing the owner's rights under Section 13-43-206.

(2) (a) A notice of arbitration shall set forth:

(i) the decision, action, or failure to act that is the subject of the arbitration; and

(ii) the name of and contact information for a proposed arbitrator.

(b) The county shall have 30 days after the day on which the county receives a notice of arbitration to respond to the notice.

(i) The county's response shall:

(A) set forth the reasons, if any, for the county's decision, action, or failure to act; and

(B) include a statement of agreement or disagreement with the billboard owner's choice of arbitrator.

(ii) If the county does not agree to the billboard owner's selected arbitrator, the county shall submit its own choice of arbitrator in the county's response to the notice of arbitration.

(iii) If the billboard owner and county cannot agree on an arbitrator, the arbitrators the owner and county have proposed shall select a different arbitrator, who shall conduct the arbitration.

(iv) If the county fails to timely serve a complete response to a notice of arbitration under this Subsection (2)(b):

(A) the billboard owner's land use application is considered approved; and

(B) the county shall issue all associated permits upon payment of the required fees.

(3) (a) An arbitration under this section shall commence:

(i) within 30 days of a county timely serving its response to the notice of arbitration; or

(ii) if the arbitration is conducted by an arbitrator described in Subsection (2)(b)(iii), within 45 days of a timely service of a county's response to the notice of arbitration.

(b) Unless otherwise agreed to in writing:

(i) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (2)(a)(ii) or (b)(ii); or

(ii) if an arbitrator is selected under Subsection (2)(b)(iii):

(A) each party shall pay the fees and costs of the arbitrator selected by a party in accordance with Subsection (2)(a)(ii) or (b)(ii), respectively; and

(B) each party shall pay an equal share of the fees and costs of the third arbitrator selected in accordance with Subsection (2)(b)(iii).

(c) Except as otherwise provided in this section or unless otherwise agreed to in writing by the parties, an arbitration proceeding conducted under this section is governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(d) (i) In an arbitration that commences as the result of a county's failure to accept a billboard owner's application for a permit as complete, the arbitrator shall determine whether the application is complete based on specified, objective, ordinance-based criterion.

(ii) If the application is not complete, the arbitrator shall:

(A) identify the specific additional information that the applicant needs to supply to complete the application; and

(B) set a deadline that is reasonable under the circumstances for the applicant to

complete the application.

(iii) The arbitrator's decision on completeness is final and binding.

(e) Once the application is completed:

(i) the arbitrator shall set a deadline that is reasonable under the circumstances for the county to make a determination on the application; or

(ii) the billboard owner may request that the arbitrator issue an advisory opinion on:

(A) whether the application should be granted or denied; and

(B) if the application is to be denied and compensation is due, a supplementary advisory opinion on the total amount of compensation due to the billboard owner, if any.

(4) (a) The arbitrator shall issue an initial advisory opinion under this section within 60 days of the commencement of the arbitration.

(b) The arbitrator shall issue a supplemental advisory opinion regarding the total amount of compensation within 60 days after the initial advisory opinion that the application is to be denied.

(5) (a) The county shall grant or deny the application within 30 days:

(i) after the arbitrator's advisory opinion is issued, if no supplemental opinion on compensation is requested; or

(ii) after the supplemental opinion is issued.

(b) If the county denies the application, the county:

(i) (A) shall set forth in a written decision all of the facts and law upon which the county relies; and

(B) may not make reference to the arbitrator's advisory opinion; and

(ii) shall concurrently file a condemnation action in district court if the reason for denial is that:

(A) the county has determined to condemn the billboard; and

(B) the time for filing a condemnation action has not already expired.

(c) (i) If the county fails to meet a deadline established by this part, or if the county denies an application, the billboard owner may, within 30 days after the expiration of the deadline or the owner's receipt of the written denial of the application, file a complaint in the district court requesting a trial de novo.

(ii) The complaint described in Subsection (5)(c)(i) may include a request for other

appropriate relief.

(d) The billboard owner may file a cross-claim for a trial de novo and for other appropriate relief in any condemnation action brought by the county.

(e) The county may not file a cross-claim for condemnation if it has not timely commenced a condemnation action in accordance with the provisions of this part.

(6) (a) Upon the filing of a complaint or cross-claim for a trial de novo under this part, a claim shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules of Evidence in the district court.

(b) A party may not offer the arbitrator's opinion as evidence except as provided in Subsection (7).

(c) In reviewing a decision to deny a billboard owner's land use application, the county may not argue any reasons why the application should be denied other those set forth in a written decision.

(7) If the decision of the court is substantially similar to an arbitrator's advisory opinion, the prevailing party is entitled to attorney fees, costs, and expenses incurred in the trial de novo.

(a) A party may not offer an arbitration decision issued in accordance with Subsection (4) as evidence to the district court unless the decision is offered as evidence in a motion for attorney fees, costs, and expenses as described in this Subsection (7).

(b) An order resulting from a motion for attorney fees, costs, and expenses under Subsection (7)(a) is a final judgment under Rule 54 of the Utah Rules of Civil Procedure.

Section 7. Section **72-7-502** is amended to read:

72-7-502. Definitions.

As used in this part:

(1) "Clearly visible" means capable of being [~~read~~] viewed without obstruction by an occupant of a vehicle traveling on the main traveled way of a street or highway within the visibility area.

(2) "Commercial or industrial activities" means those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following are commercial or industrial activities:

(a) agricultural, forestry, grazing, farming, and related activities, including wayside

fresh produce stands;

(b) transient or temporary activities;

(c) activities not visible from the main-traveled way;

(d) activities conducted in a building principally used as a residence; and

(e) railroad tracks and minor sidings.

(3) (a) "Commercial or industrial zone" means only:

(i) those areas within the boundaries of cities or towns that are used or reserved for business, commerce, or trade, or zoned as a highway service zone, under enabling state legislation or comprehensive local zoning ordinances or regulations;

(ii) those areas within the boundaries of urbanized counties that are used or reserved for business, commerce, or trade, or zoned as a highway service zone, under enabling state legislation or comprehensive local zoning ordinances or regulations;

(iii) those areas outside the boundaries of urbanized counties and outside the boundaries of cities and towns that:

(A) are used or reserved for business, commerce, or trade, or zoned as a highway service zone, under comprehensive local zoning ordinances or regulations or enabling state legislation; and

(B) are within 8420 feet of an interstate highway exit, off-ramp, or turnoff as measured from the nearest point of the beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way; or

(iv) those areas outside the boundaries of urbanized counties and outside the boundaries of cities and towns and not within 8420 feet of an interstate highway exit, off-ramp, or turnoff as measured from the nearest point of the beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way that are reserved for business, commerce, or trade under enabling state legislation or comprehensive local zoning ordinances or regulations, and are actually used for commercial or industrial purposes.

(b) "Commercial or industrial zone" does not mean areas zoned for the sole purpose of allowing outdoor advertising.

(4) "Comprehensive local zoning ordinances or regulations" means a municipality's comprehensive plan required by Section 10-9a-401, the municipal zoning plan authorized by Section 10-9a-501, and the county master plan authorized by Sections 17-27a-401 and

17-27a-501. Property that is rezoned by comprehensive local zoning ordinances or regulations is rebuttably presumed to have not been zoned for the sole purpose of allowing outdoor advertising.

(5) "Directional signs" means signs containing information about public places owned or operated by federal, state, or local governments or their agencies, publicly or privately owned natural phenomena, historic, cultural, scientific, educational, or religious sites, and areas of natural scenic beauty or naturally suited for outdoor recreation, that the department considers to be in the interest of the traveling public.

(6) (a) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being.

(b) "Erect" does not include any activities defined in Subsection (6)(a) if they are performed incident to the change of an advertising message or customary maintenance of a sign.

(7) "Highway service zone" means a highway service area where the primary use of the land is used or reserved for commercial and roadside services other than outdoor advertising to serve the traveling public.

(8) "Information center" means an area or site established and maintained at rest areas for the purpose of informing the public of:

(a) places of interest within the state; or

(b) any other information that the department considers desirable.

(9) "Interchange or intersection" means those areas and their approaches where traffic is channeled off or onto an interstate route, excluding the deceleration lanes, acceleration lanes, or feeder systems, from or to another federal, state, county, city, or other route.

(10) "Maintain" means to allow to exist, subject to the provisions of this chapter.

(11) "Maintenance" means to repair, refurbish, repaint, upgrade, or otherwise [~~keep~~] operate an existing or upgraded sign structure in a safe manner and in a state suitable for use in any manner not otherwise prohibited by this part, including signs destroyed by vandalism or an act of God.

(12) "Main-traveled way" means the through traffic lanes, including auxiliary lanes, acceleration lanes, deceleration lanes, and feeder systems, exclusive of frontage roads and ramps. For a divided highway, there is a separate main-traveled way for the traffic in each

direction.

(13) "Major sponsor" means a sponsor of a public assembly facility or of a team or event held at the facility where the amount paid by the sponsor to the owner of the facility, to the team, or for the event is at least $100,000 per year.

(14) "Official signs and notices" means signs and notices erected and maintained by public agencies within their territorial or zoning jurisdictions for the purpose of carrying out official duties or responsibilities in accordance with direction or authorization contained in federal, state, or local law.

(15) "Off-premise signs" means signs located in areas zoned industrial, commercial, or H-1 and in areas determined by the department to be unzoned industrial or commercial that advertise an activity, service, event, person, or product located on premises other than the premises at which the advertising occurs.

(16) "On-premise signs" means signs used to advertise the major activities conducted on the property where the sign is located.

(17) "Outdoor advertising" means any outdoor advertising structure or outdoor structure used in combination with an outdoor advertising sign or outdoor sign within the outdoor advertising corridor which is visible from a place on the main-traveled way of a controlled route.

(18) "Outdoor advertising corridor" means a strip of land 350 feet wide, measured perpendicular from the edge of a controlled highway right-of-way.

(19) "Outdoor advertising structure" or "outdoor structure" means any sign structure, including any necessary devices, supports, appurtenances, and lighting that is part of or supports an outdoor sign.

(20) "Point of widening" means the point of the gore or the point where the intersecting lane begins to parallel the other lanes of traffic, but the point of widening may never be greater than 2,640 feet from the center line of the intersecting highway of the interchange or intersection at grade.

(21) "Public assembly facility" means a convention facility as defined under Section 59-12-602 and that:

(a) includes all contiguous interests in land, improvements, and utilities acquired, constructed, and used in connection with the operation of the public assembly facility, whether

the interests are owned or held in fee title or a lease or easement for a term of at least 40 years, and regardless of whether the interests are owned or operated by separate governmental authorities or districts;

(b) is wholly or partially funded by public money;

(c) requires a person attending an event at the public assembly facility to purchase a ticket or that otherwise charges for the use of the public assembly facility as part of its regular operation; and

(d) has a minimum and permanent seating capacity of at least 10,000 people.

(22) "Public assembly facility sign" means a sign located on a public assembly facility that only advertises the public assembly facility, major sponsors, events, the sponsors of events held or teams playing at the facility, and products sold or services conducted at the facility.

(23) "Relocation" includes the removal of a sign from one situs together with the erection of a new sign upon another situs in a commercial or industrial zoned area as a substitute.

(24) "Relocation and replacement" means allowing all outdoor advertising signs or permits the right to maintain outdoor advertising along the interstate, federal aid primary highway existing as of June 1, 1991, and national highway system highways to be maintained in a commercial or industrial zoned area to accommodate the displacement, remodeling, or widening of the highway systems.

(25) "Remodel" means the upgrading, changing, alteration, refurbishment, modification, or complete substitution of a new outdoor advertising structure for one permitted pursuant to this part and that is located in a commercial or industrial area.

(26) "Rest area" means an area or site established and maintained within or adjacent to the right-of-way by or under public supervision or control for the convenience of the traveling public.

(27) "Scenic or natural area" means an area determined by the department to have aesthetic value.

(28) "Traveled way" means that portion of the roadway used for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

(29) (a) "Unzoned commercial or industrial area" means:

(i) those areas not zoned by state law or local law, regulation, or ordinance that are

occupied by one or more industrial or commercial activities other than outdoor advertising signs;

(ii) the lands along the highway for a distance of 600 feet immediately adjacent to those activities; and

(iii) lands covering the same dimensions that are directly opposite those activities on the other side of the highway, if the department determines that those lands on the opposite side of the highway do not have scenic or aesthetic value.

(b) In measuring the scope of the unzoned commercial or industrial area, all measurements shall be made from the outer edge of the regularly used buildings, parking lots, storage, or processing areas of the activities and shall be along or parallel to the edge of pavement of the highway.

(c) All signs located within an unzoned commercial or industrial area become nonconforming if the commercial or industrial activity used in defining the area ceases for a continuous period of 12 months.

(30) "Urbanized county" means a county with a population of at least 125,000 persons.

(31) "Visibility area" means the area on a street or highway that is:

(a) defined at one end by a line extending from the base of the billboard across all lanes of traffic of the street or highway in a plane that is perpendicular to the street or highway; and

(b) defined on the other end by a line extending across all lanes of traffic of the street or highway in a plane that is:

(i) perpendicular to the street or highway; and

(ii) 500 feet from the base of the billboard.

Section 8. Section **72-7-505** is amended to read:

72-7-505. Sign size -- Sign spacing -- Location in outdoor advertising corridor -- Limit on implementation.

(1) (a) Except as provided in Subsection (2), a sign face within the state may not exceed the following limits:

(i) maximum area - 1,000 square feet;

(ii) maximum length - 60 feet; and

(iii) maximum height - 25 feet.

(b) No more than two facings visible and readable from the same direction on the

main-traveled way may be erected on any one sign structure. Whenever two facings are so positioned, neither shall exceed the maximum allowed square footage.

(c) Two or more advertising messages on a sign face and double-faced, back-to-back, stacked, side-by-side, and V-type signs are permitted as a single sign or structure if both faces enjoy common ownership.

[~~(d) A changeable message sign is permitted if the interval between message changes is not more frequent than at least eight seconds and the actual message rotation process is accomplished in three seconds or less.~~]

[~~(e) An illumination standard adopted by any jurisdiction shall be uniformly applied to all signs, public or private, on or off premise.~~]

(d) An existing conforming or nonconforming sign, a newly constructed conforming sign, or a relocated sign may be upgraded or constructed as an electronic changeable message sign so long as the interval between message changes is not more frequent than at least eight seconds and the actual message rotation process is accomplished in three seconds or less.

(e) The illumination of an electronic changeable message sign may not be limited, except to prevent an electronic sign face from increasing ambient lighting levels by more than 0.3 footcandles when measured:

(i) after sunset and before sunrise;

(ii) perpendicular to the sign face; and

(iii) at a distance in feet calculated by taking the square root of the product of the following:

(A) the area of the electronic changeable message sign face measured in square feet; and

(B) 100.

(f) If a political subdivision adopts an electronic changeable message sign illumination standard within the limitations described in Subsection (1)(e), and adopts a separate illumination standard for any other sign, public or private, on or off premise, the political subdivision shall allow an owner of an electronic changeable message sign to illuminate the owner's sign at the brighter of the two standards.

(2) (a) An outdoor sign structure located inside the unincorporated area of a nonurbanized county may have the maximum height allowed by the county for outdoor

advertising structures in the commercial or industrial zone in which the sign is located. If no maximum height is provided for the location, the maximum sign height may be 65 feet above the ground or 25 feet above the grade of the main traveled way, whichever is greater.

(b) An outdoor sign structure located inside an incorporated municipality or urbanized county may have the maximum height allowed by the municipality or urbanized county for outdoor advertising structures in the commercial or industrial zone in which the sign is located. If no maximum height is provided for the location, the maximum sign height may be 65 feet above the ground or 25 feet above the grade of the main traveled way, whichever is greater.

(3) Except as provided in Section 72-7-509:

(a) Any sign allowed to be erected by reason of the exceptions set forth in Subsection 72-7-504(1) or in H-1 zones may not be closer than 500 feet to an existing off-premise sign adjacent to an interstate highway or limited access primary highway, except that signs may be erected closer than 500 feet if the signs on the same side of the interstate highway or limited access primary highway are not simultaneously visible.

(b) Signs may not be located within 500 feet of any of the following which are adjacent to the highway, unless the signs are in an incorporated area:

(i) public parks;

(ii) public forests;

(iii) public playgrounds;

(iv) areas designated as scenic areas by the department or other state agency having and exercising this authority; or

(v) cemeteries.

(c) (i) (A) Except under Subsection (3)(c)(ii), signs may not be located on an interstate highway or limited access highway on the primary system within 500 feet of an interchange, or intersection at grade, or rest area measured along the interstate highway or freeway from the sign to the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

(B) Interchange and intersection distance limitations shall be measured separately for each direction of travel. A measurement for each direction of travel may not control or affect any other direction of travel.

(ii) A sign may be placed closer than 500 feet from the nearest point of the beginning

or ending of pavement widening at the exit from or entrance to the main-traveled way, if:

(A) the sign is replacing an existing outdoor advertising use or structure which is being removed or displaced to accommodate the widening, construction, or reconstruction of an interstate, federal aid primary highway existing as of June 1, 1991, or national highway system highway; and

(B) it is located in a commercial or industrial zoned area inside an urbanized county or an incorporated municipality.

(d) The location of signs situated on nonlimited access primary highways in commercial, industrial, or H-1 zoned areas between streets, roads, or highways entering the primary highway shall not exceed the following minimum spacing criteria:

(i) Where the distance between centerlines of intersecting streets, roads, or highways is less than 1,000 feet, a minimum spacing between structures of 150 feet may be permitted between the intersecting streets or highways.

(ii) Where the distance between centerlines of intersecting streets, roads, or highways is 1,000 feet or more, minimum spacing between sign structures shall be 300 feet.

(e) All outdoor advertising shall be erected and maintained within the outdoor advertising corridor.

(4) Subsection (3)(c)(ii) may not be implemented until:

(a) the Utah-Federal Agreement for carrying out national policy relative to control of outdoor advertising in areas adjacent to the national system of interstate and defense highways and the federal-aid primary system is modified to allow the sign placement specified in Subsection (3)(c)(ii); and

(b) the modified agreement under Subsection (4)(a) is signed on behalf of both the state and the United States Secretary of Transportation.

Section 9. Section **72-7-508** is amended to read:

72-7-508. Unlawful outdoor advertising -- Adjudicative proceedings -- Judicial review -- Costs of removal -- Civil and criminal liability for damaging regulated signs -- Immunity for Department of Transportation.

(1) Outdoor advertising is unlawful when:

(a) erected after May 9, 1967, contrary to the provisions of this chapter;

(b) a permit is not obtained as required by this part;

(c) a false or misleading statement has been made in the application for a permit that was material to obtaining the permit; or

(d) the sign for which a permit was issued is not in a reasonable state of repair, is unsafe, or is otherwise in violation of this part.

(2) The establishment, operation, repair, maintenance, or alteration of any sign contrary to this chapter is also a public nuisance.

(3) Except as provided in Subsection (4), in its enforcement of this section, the department shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(4) (a) The district courts shall have jurisdiction to review by trial de novo all final orders of the department under this part resulting from formal and informal adjudicative proceedings.

(b) Venue for judicial review of final orders of the department shall be in the county in which the sign is located.

(5) If the department is granted a judgment, the department is entitled to have any nuisance abated and recover from the responsible person, firm, or corporation, jointly and severally:

(a) the costs and expenses incurred in removing the sign; and

(b) (i) $500 for each day the sign was maintained following the expiration of 10 days after notice of agency action was filed and served under Section 63G-4-201;

(ii) $750 for each day the sign was maintained following the expiration of 40 days after notice of agency action was filed and served under Section 63G-4-201;

(iii) $1,000 for each day the sign was maintained following the expiration of 70 days after notice of agency action was filed and served under Section 63G-4-201; and

(iv) $1,500 for each day the sign was maintained following the expiration of 100 days after notice of agency action was filed and served under Section 63G-4-201.

(6) (a) Any person, partnership, firm, or corporation who vandalizes, damages, defaces, destroys, or uses any sign controlled under this chapter without the owner's permission is liable to the owner of the sign for treble the amount of damage sustained and all costs of court, including a reasonable [~~attorney's~~] attorney fee, and is guilty of a class C misdemeanor.

(b) This Subsection (6) does not apply to the department, its agents, or employees if

acting to enforce this part.

(7) The following criteria shall be used for determining whether an existing sign within an [~~interstate~~] outdoor advertising corridor has as its purpose unlawful off-premise outdoor advertising:

(a) whether the sign complies with this part;

(b) whether the premise includes an area:

(i) from which the general public is serviced according to normal industry practices for organizations of that type; or

(ii) that is directly connected to or is involved in carrying out the activities and normal industry practices of the advertised activities, services, events, persons, or products;

(c) whether the sign generates revenue:

(i) arising from the advertisement of activities, services, events, or products not available on the premise according to normal industry practices for organizations of that type;

(ii) arising from the advertisement of activities, services, events, persons, or products that are incidental to the principal activities, services, events, or products available on the premise; and

(iii) including the following:

(A) money;

(B) securities;

(C) real property interest;

(D) personal property interest;

(E) barter of goods or services;

(F) promise of future payment or compensation; or

(G) forbearance of debt;

(d) whether the purveyor of the activities, services, events, persons, or products being advertised:

(i) carries on hours of operation on the premise comparable to the normal industry practice for a business, service, or operation of that type, or posts the hours of operation on the premise in public view;

(ii) has available utilities comparable to the normal industry practice for an entity of that type; and

(iii) has a current valid business license or permit under applicable local ordinances, state law, and federal law to conduct business on the premise upon which the sign is located;

(e) whether the advertisement is located on the site of any auxiliary facility that is not essential to, or customarily used in, the ordinary course of business for the activities, services, events, persons, or products being advertised; or

(f) whether the sign or advertisement is located on property that is not contiguous to a property that is essential and customarily used for conducting the business of the activities, services, events, persons, or products being advertised.

(8) The following do not qualify as a business under Subsection (7):

(a) public or private utility corridors or easements;

(b) railroad tracks;

(c) outdoor advertising signs or structures;

(d) vacant lots;

(e) transient or temporary activities; or

(f) storage of accessory products.

(9) The sign owner has the burden of proving, by a preponderance of the evidence, that the advertised activity is conducted on the premise.

Section 10. Section **72-7-510** is amended to read:

72-7-510. Existing outdoor advertising not in conformity with part -- Procedure -- Eminent domain -- Compensation -- Relocation.

(1) As used in this section, "nonconforming sign" means a sign that has been erected in a zone or area other than commercial or industrial or where outdoor advertising is not permitted under this part.

(2) (a) The department may acquire by gift, purchase, agreement, exchange, or eminent domain, any existing outdoor advertising and all property rights pertaining to the outdoor advertising which were lawfully in existence on May 9, 1967, and which by reason of this part become nonconforming.

(b) [~~If the~~] The department, or any town, city, county, governmental entity, public utility, or any agency or the United States Department of Transportation under this part[~~,~~ ~~prevents~~] may not prevent the maintenance as defined in Section 72-7-502, or [~~requires~~] require that maintenance of an existing sign be discontinued[~~,~~] unless the department, town,

city, county, governmental entity, public utility, or agency acquires the sign in question [~~shall be considered acquired by the entity and just compensation will become immediately due and payable~~] by eminent domain.

(c) Eminent domain shall be exercised in accordance with the [~~provision~~] provisions of Title 78B, Chapter 6, Part 5, Eminent Domain.

(3) (a) Just compensation shall be paid for outdoor advertising and all property rights pertaining to the same, including the right of the landowner upon whose land a sign is located, acquired through the processes of eminent domain.

(b) For the purposes of this part, just compensation shall include the consideration of damages to remaining properties, contiguous and noncontiguous, of an outdoor advertising sign company's interest, which remaining properties, together with the properties actually condemned, constituted an economic unit.

(c) The department is empowered to remove signs found in violation of Section 72-7-508 without payment of any compensation.

(4) (a) Except as specifically provided in this [~~section or Section 72-7-513~~] part, Title 10, Chapter 9a, Part 5, Land Use Ordinances, or Title 17, Chapter 27a, Part 5, Land Use Ordinances, this part may not be construed to permit a person to place or maintain any outdoor advertising adjacent to any interstate or primary highway system which is prohibited [~~by law or~~] by any town, city, or county ordinance.

(b) Any town, city, county, governmental entity, or public utility which requires the removal, relocation, alteration, change, or termination of outdoor advertising shall Ĥ→ **[~~commence eminent domain proceedings and~~]** ←Ĥ pay just compensation as defined in this part and in Title 78B, Chapter 6, Part 5, Eminent Domain.

(5) Except as provided in Section 72-7-508, no sign shall be required to be removed by the department nor sign maintenance as described in this section be discontinued unless at the time of removal or discontinuance there are sufficient funds, from whatever source, appropriated and immediately available to pay the just compensation required under this section and unless at that time the federal funds required to be contributed under 23 U.S.C., Sec. 131, if any, with respect to the outdoor advertising being removed, have been appropriated and are immediately available to this state.

(6) (a) If any outdoor advertising use, structure, or permit may not be continued

because of the widening, construction, or reconstruction along an interstate, federal aid primary highway existing as of June 1, 1991, or national highway systems highway, the owner shall have the option to relocate and remodel the use, structure, or permit to another location:

(i) on the same property;

(ii) on adjacent property;

(iii) on the same highway within 5280 feet of the previous location, which may be extended 5280 feet outside the areas described in Subsection 72-7-505(3)(c)(i)(A), on either side of the same highway; or

(iv) mutually agreed upon by the owner and the county or municipality in which the use, structure, or permit is located.

(b) The relocation under Subsection (6)(a) shall be in a commercial or industrial zoned area or where outdoor advertising is permitted under this part.

(c) The county or municipality in which the use or structure is located shall, if necessary, provide for the relocation and remodeling by ordinance for a special exception to its zoning ordinance.

(d) The relocated and remodeled use or structure may be:

(i) erected to a height and angle to make it clearly visible to traffic on the main-traveled way of the highway to which it is relocated or remodeled;

(ii) the same size and at least the same height as the previous use or structure, but the relocated use or structure may not exceed the size and height permitted under this part; or

(iii) relocated to a comparable vehicular traffic count.

(7) (a) The governmental entity, quasi-governmental entity, or public utility that causes the need for the outdoor advertising relocation or remodeling as provided in Subsection (6)(a) shall pay the costs related to the relocation, remodeling, or acquisition.

(b) If a governmental entity prohibits the relocation and remodeling as provided in Subsection (6)(a), it shall pay just compensation as provided in Subsection (3).

Section 11. Section **72-7-510.5** is amended to read:

72-7-510.5. Height adjustments for outdoor advertising signs -- Sign obstruction.

(1) If the view [~~and readability~~] of an outdoor advertising sign, including a sign that is a nonconforming sign as defined in Section 72-7-510, a noncomplying structure as defined in Sections 10-9a-103 and 17-27a-103, or a nonconforming use as defined in Sections 10-9a-103

and 17-27a-103 is obstructed due to a noise abatement or safety measure, grade change, construction, directional sign, highway widening, or aesthetic improvement made by an agency or political subdivision of this state, along an interstate, federal aid primary highway existing as of June 1, 1991, national highway systems highway, or state highway or by an improvement created on real property subsequent to the department's disposal of the property under Section 72-5-111, the owner of the sign may:

(a) adjust the height of the sign; or

(b) relocate the sign to a point within 500 feet of its prior location, if the sign complies with the spacing requirements under Section 72-7-505 and is in a commercial or industrial zone.

(2) A height adjusted sign under this section does not constitute a substantial change to the sign.

(3) The county or municipality in which the outdoor advertising sign is located shall, if necessary, provide for the height adjustment or relocation by ordinance for a special exception to its zoning ordinance.

(4) (a) The height adjusted sign:

(i) may be erected:

(A) to a height to make the entire advertising content of the sign clearly visible; and

(B) to an angle to make the entire advertising content of the sign clearly visible; and

(ii) shall be the same size as the previous sign.

(b) The provisions of Subsection (4)(a) are an exception to the height requirements under Section 72-7-505.

(5) (a) A billboard owner may, at the owner's own expense and in accordance with Subsection (5)(b), trim trees or other foliage without a permit, except as provided in Subsection (5)(c), if the trees or foliage:

(i) obstruct, however slight, the view of any part of the face of the outdoor advertising sign; and

(ii) are growing on or encroaching over property owned by the state or a political subdivision of the state.

(b) A billboard owner shall perform the work described in Subsection (5)(a):

(i) under the supervision of a certified arborist; and

(ii) by employing a company licensed and insured in the state.

(c) A billboard owner shall obtain an encroachment permit from the department if the work described in Subsection (5)(a) will occur on or require access to the right-of-way of a state highway designated in Title 72, Chapter 4, Designation of State Highways Act.