

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.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

- 32 **10-9a-511**, as last amended by Laws of Utah 2011, Chapter 210
- 33 **10-9a-513**, as last amended by Laws of Utah 2009, Chapters 170 and 233
- 34 **17-27a-510**, as last amended by Laws of Utah 2009, Chapter 170
- 35 **17-27a-512**, as last amended by Laws of Utah 2009, Chapters 170 and 233
- 36 **72-7-502**, as last amended by Laws of Utah 2011, Chapter 346
- 37 **72-7-505**, as last amended by Laws of Utah 2011, Chapter 346
- 38 **72-7-508**, as last amended by Laws of Utah 2011, Chapter 346
- 39 **72-7-510**, as last amended by Laws of Utah 2008, Chapter 3
- 40 **72-7-510.5**, as last amended by Laws of Utah 2009, Chapter 170

41 ENACTS:

- 42 **10-9a-513.5**, Utah Code Annotated 1953
- 43 **17-27a-512.5**, Utah Code Annotated 1953



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

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

47 **10-9a-511. Nonconforming uses and noncomplying structures.**

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

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

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

54 (2) The legislative body may provide for:

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

57 ordinance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

99 (B) is located on and oriented to be viewed primarily from a street where, as of May 8,
100 2012, the posted speed limit is 25 miles or less per hour; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

131 (i) the reasonable installation of:

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

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

134 (C) street addressing;

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

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

140 (F) hand or guard rails; or

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

142 (ii) the abatement of a structure; or

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

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

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

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

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

150 10-1-203.

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

152 **10-9a-513. Municipality's acquisition of billboard by eminent domain -- Removal**
153 **without providing compensation -- Limit on allowing nonconforming billboards to be**
154 **rebuilt or replaced -- Validity of municipal permit after issuance of state permit -- Just**
155 **compensation in eminent domain proceeding -- Municipal conditions on billboard**
156 **prohibited.**

157 (1) As used in this section:

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

160 (b) "Highest allowable height" means:

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

163 (ii) (A) for a noninterstate billboard:

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

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

169 (B) for an interstate billboard:

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

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

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

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

178 (i) 65 feet above the ground; and

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

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

181 street or highway that is not an interstate.

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

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

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

187 (A) perpendicular to the street or highway; and

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

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

190 (2) (a) A municipality [~~is considered to have initiated the acquisition of a billboard~~
191 ~~structure by eminent domain if the municipality prevents a billboard owner from~~] may not
192 prevent a billboard owner from taking one or any of the following actions unless the

193 municipality has first commenced, subject to Subsection (2)(b), eminent domain proceedings:

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

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

200 (iii) structurally modifying or upgrading a billboard;

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

203 (A) the relocated billboard is:

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

205 (II) no closer than:

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

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

212 (B) (I) the billboard owner has submitted a written request under Subsection
213 10-9a-511(3)(c); and

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

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

219 (A) erecting the billboard:

220 (I) to the highest allowable height; and

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

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

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

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

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

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

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

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

243 resulted from an intentionally false or misleading statement:

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

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

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

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

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

253 (iii) the cost of the sign structure; and

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

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

258 (a) the municipality determines:

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

262 (ii) by substantial evidence that the billboard:

263 (A) is structurally unsafe;

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

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

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

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

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

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

274 Subsection (3)(b); and

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

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

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

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

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

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

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

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

295 (a) a permit;

296 (b) a license;

297 (c) a zone change;

298 (d) a variance;

299 (e) any land use entitlement; or

300 (f) any other land use approval or ordinance.

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

302 **10-9a-513.5. Billboard arbitration.**

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

305 notice of arbitration upon the municipality:

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

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

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

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

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

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

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

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

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

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

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

327 (i) The municipality's response shall:

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

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

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

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

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

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

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

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

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

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

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

348 (b) Unless otherwise agreed to in writing:

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

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

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

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

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

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

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

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

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

367 (iii) The arbitrator's decision on completeness is final and binding.
368 (e) Once the application is completed:
369 (i) the arbitrator shall set a deadline that is reasonable under the circumstances for the
370 municipality to make a determination on the application; or
371 (ii) the billboard owner may request that the arbitrator issue an advisory opinion on:
372 (A) whether the application should be granted or denied; and
373 (B) if the application is to be denied and compensation is due, a supplementary
374 advisory opinion on the total amount of compensation due to the billboard owner, if any.
375 (4) (a) The arbitrator shall issue an initial advisory opinion under this section within 60
376 days of the commencement of the arbitration.
377 (b) The arbitrator shall issue a supplemental advisory opinion regarding the total
378 amount of compensation within 60 days after the initial advisory opinion that the application is
379 to be denied.
380 (5) (a) The municipality shall grant or deny the application within 30 days:
381 (i) after the arbitrator's advisory opinion is issued, if no supplemental opinion on
382 compensation is requested; or
383 (ii) after the supplemental opinion is issued.
384 (b) If the municipality denies the application, the municipality:
385 (i) (A) shall set forth in a written decision all of the facts and law upon which the
386 municipality relies; and
387 (B) may not make reference to the arbitrator's advisory opinion; and
388 (ii) shall concurrently file a condemnation action in district court if the reason for
389 denial is that:
390 (A) the municipality has determined to condemn the billboard; and
391 (B) the time for filing a condemnation action has not already expired.
392 (c) (i) If the municipality fails to meet a deadline established by this part, or if the
393 municipality denies an application, the billboard owner may, within 30 days after the expiration
394 of the deadline or the owner's receipt of the written denial of the application, file a complaint in
395 the district court requesting a trial de novo.
396 (ii) The complaint described in Subsection (5)(c)(i) may include a request for other
397 appropriate relief.

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

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

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

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

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

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

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

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

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

419 **17-27a-510. Nonconforming uses and noncomplying structures.**

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

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

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

426 (2) The legislative body may provide for:

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

429 ordinance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

469 (B) is located on and oriented to be viewed primarily from a street where, as of May 8,
470 2012, the posted speed limit is 25 miles or less per hour; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

499 **17-27a-512. County's acquisition of billboard by eminent domain -- Removal**
500 **without providing compensation -- Limit on allowing nonconforming billboard to be**
501 **rebuilt or replaced -- Validity of county permit after issuance of state permit -- Just**
502 **compensation in eminent domain proceeding -- County conditions on billboard**
503 **prohibited.**

504 (1) As used in this section:

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

507 (b) "Highest allowable height" means:

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

510 (ii) (A) for a noninterstate billboard:

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

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

516 (B) for an interstate billboard:

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

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

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

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

525 (i) 65 feet above the ground; and

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

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

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

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

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

534 (A) perpendicular to the street or highway; and

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

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

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

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

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

547 (iii) structurally modifying or upgrading a billboard;

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

550 (A) the relocated billboard is:

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

552 (II) no closer than:

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

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

559 (B) (I) the billboard owner has submitted a written request under Subsection
560 17-27a-510(3)(c); and

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

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

566 (A) erecting the billboard:

567 (I) to the highest allowable height; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

599 (iii) the cost of the sign structure; and

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

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

604 (a) the county determines:

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

608 (ii) by substantial evidence that the billboard:

609 (A) is structurally unsafe;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

641 (a) a permit;

642 (b) a license;

643 (c) a zone change;

644 (d) a variance;

645 (e) any land use entitlement; or

646 (f) any other land use approval or ordinance.

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

648 **17-27a-512.5. Billboard arbitration.**

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

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

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

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

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

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

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

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

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

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

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

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

673 (i) The county's response shall:

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

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

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

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

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

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

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

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

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

688 (ii) if the arbitration is conducted by an arbitrator described in Subsection (2)(b)(iii),

689 within 45 days of a timely service of a county's response to the notice of arbitration.

690 (b) Unless otherwise agreed to in writing:

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

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

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

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

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

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

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

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

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

708 complete the application.
709 (iii) The arbitrator's decision on completeness is final and binding.
710 (e) Once the application is completed:
711 (i) the arbitrator shall set a deadline that is reasonable under the circumstances for the
712 county to make a determination on the application; or
713 (ii) the billboard owner may request that the arbitrator issue an advisory opinion on:
714 (A) whether the application should be granted or denied; and
715 (B) if the application is to be denied and compensation is due, a supplementary
716 advisory opinion on the total amount of compensation due to the billboard owner, if any.
717 (4) (a) The arbitrator shall issue an initial advisory opinion under this section within 60
718 days of the commencement of the arbitration.
719 (b) The arbitrator shall issue a supplemental advisory opinion regarding the total
720 amount of compensation within 60 days after the initial advisory opinion that the application is
721 to be denied.
722 (5) (a) The county shall grant or deny the application within 30 days:
723 (i) after the arbitrator's advisory opinion is issued, if no supplemental opinion on
724 compensation is requested; or
725 (ii) after the supplemental opinion is issued.
726 (b) If the county denies the application, the county:
727 (i) (A) shall set forth in a written decision all of the facts and law upon which the
728 county relies; and
729 (B) may not make reference to the arbitrator's advisory opinion; and
730 (ii) shall concurrently file a condemnation action in district court if the reason for
731 denial is that:
732 (A) the county has determined to condemn the billboard; and
733 (B) the time for filing a condemnation action has not already expired.
734 (c) (i) If the county fails to meet a deadline established by this part, or if the county
735 denies an application, the billboard owner may, within 30 days after the expiration of the
736 deadline or the owner's receipt of the written denial of the application, file a complaint in the
737 district court requesting a trial de novo.
738 (ii) The complaint described in Subsection (5)(c)(i) may include a request for other

739 appropriate relief.

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

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

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

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

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

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

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

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

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

761 **72-7-502. Definitions.**

762 As used in this part:

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

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

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

770 fresh produce stands;

771 (b) transient or temporary activities;

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

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

774 (e) railroad tracks and minor sidings.

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

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

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

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

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

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

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

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

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

801 17-27a-501. Property that is rezoned by comprehensive local zoning ordinances or regulations
802 is rebuttably presumed to have not been zoned for the sole purpose of allowing outdoor
803 advertising.

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

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

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

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

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

819 (a) places of interest within the state; or

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

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

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

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

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

832 direction.

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

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

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

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

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

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

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

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

859 (21) "Public assembly facility" means a convention facility as defined under Section
860 59-12-602 and that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

914 (i) perpendicular to the street or highway; and

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

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

917 **72-7-505. Sign size -- Sign spacing -- Location in outdoor advertising corridor --**

918 **Limit on implementation.**

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

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

922 (ii) maximum length - 60 feet; and

923 (iii) maximum height - 25 feet.

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

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

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

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

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

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

939 (e) The illumination of an electronic changeable message sign may not be limited,
940 except to prevent an electronic sign face from increasing ambient lighting levels by more than
941 0.3 footcandles when measured:

942 (i) after sunset and before sunrise;

943 (ii) perpendicular to the sign face; and

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

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

947 and

948 (B) 100.

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

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

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

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

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

965 (a) Any sign allowed to be erected by reason of the exceptions set forth in Subsection
966 72-7-504(1) or in H-1 zones may not be closer than 500 feet to an existing off-premise sign
967 adjacent to an interstate highway or limited access primary highway, except that signs may be
968 erected closer than 500 feet if the signs on the same side of the interstate highway or limited
969 access primary highway are not simultaneously visible.

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

972 (i) public parks;

973 (ii) public forests;

974 (iii) public playgrounds;

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

977 (v) cemeteries.

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

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

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

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

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

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

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

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

1000 (ii) Where the distance between centerlines of intersecting streets, roads, or highways
1001 is 1,000 feet or more, minimum spacing between sign structures shall be 300 feet.

1002 (e) All outdoor advertising shall be erected and maintained within the outdoor
1003 advertising corridor.

1004 (4) Subsection (3)(c)(ii) may not be implemented until:

1005 (a) the Utah-Federal Agreement for carrying out national policy relative to control of
1006 outdoor advertising in areas adjacent to the national system of interstate and defense highways
1007 and the federal-aid primary system is modified to allow the sign placement specified in
1008 Subsection (3)(c)(ii); and

1009 (b) the modified agreement under Subsection (4)(a) is signed on behalf of both the state
1010 and the United States Secretary of Transportation.

1011 Section 9. Section **72-7-508** is amended to read:

1012 **72-7-508. Unlawful outdoor advertising -- Adjudicative proceedings -- Judicial**
1013 **review -- Costs of removal -- Civil and criminal liability for damaging regulated signs --**
1014 **Immunity for Department of Transportation.**

1015 (1) Outdoor advertising is unlawful when:

1016 (a) erected after May 9, 1967, contrary to the provisions of this chapter;

1017 (b) a permit is not obtained as required by this part;

1018 (c) a false or misleading statement has been made in the application for a permit that
1019 was material to obtaining the permit; or

1020 (d) the sign for which a permit was issued is not in a reasonable state of repair, is
1021 unsafe, or is otherwise in violation of this part.

1022 (2) The establishment, operation, repair, maintenance, or alteration of any sign contrary
1023 to this chapter is also a public nuisance.

1024 (3) Except as provided in Subsection (4), in its enforcement of this section, the
1025 department shall comply with the procedures and requirements of Title 63G, Chapter 4,
1026 Administrative Procedures Act.

1027 (4) (a) The district courts shall have jurisdiction to review by trial de novo all final
1028 orders of the department under this part resulting from formal and informal adjudicative
1029 proceedings.

1030 (b) Venue for judicial review of final orders of the department shall be in the county in
1031 which the sign is located.

1032 (5) If the department is granted a judgment, the department is entitled to have any
1033 nuisance abated and recover from the responsible person, firm, or corporation, jointly and
1034 severally:

1035 (a) the costs and expenses incurred in removing the sign; and

1036 (b) (i) \$500 for each day the sign was maintained following the expiration of 10 days
1037 after notice of agency action was filed and served under Section 63G-4-201;

1038 (ii) \$750 for each day the sign was maintained following the expiration of 40 days after
1039 notice of agency action was filed and served under Section 63G-4-201;

1040 (iii) \$1,000 for each day the sign was maintained following the expiration of 70 days
1041 after notice of agency action was filed and served under Section 63G-4-201; and

1042 (iv) \$1,500 for each day the sign was maintained following the expiration of 100 days
1043 after notice of agency action was filed and served under Section 63G-4-201.

1044 (6) (a) Any person, partnership, firm, or corporation who vandalizes, damages, defaces,
1045 destroys, or uses any sign controlled under this chapter without the owner's permission is liable
1046 to the owner of the sign for treble the amount of damage sustained and all costs of court,
1047 including a reasonable ~~attorney's~~ attorney fee, and is guilty of a class C misdemeanor.

1048 (b) This Subsection (6) does not apply to the department, its agents, or employees if

1049 acting to enforce this part.

1050 (7) The following criteria shall be used for determining whether an existing sign within
1051 an [interstate] outdoor advertising corridor has as its purpose unlawful off-premise outdoor
1052 advertising:

1053 (a) whether the sign complies with this part;

1054 (b) whether the premise includes an area:

1055 (i) from which the general public is serviced according to normal industry practices for
1056 organizations of that type; or

1057 (ii) that is directly connected to or is involved in carrying out the activities and normal
1058 industry practices of the advertised activities, services, events, persons, or products;

1059 (c) whether the sign generates revenue:

1060 (i) arising from the advertisement of activities, services, events, or products not
1061 available on the premise according to normal industry practices for organizations of that type;

1062 (ii) arising from the advertisement of activities, services, events, persons, or products
1063 that are incidental to the principal activities, services, events, or products available on the
1064 premise; and

1065 (iii) including the following:

1066 (A) money;

1067 (B) securities;

1068 (C) real property interest;

1069 (D) personal property interest;

1070 (E) barter of goods or services;

1071 (F) promise of future payment or compensation; or

1072 (G) forbearance of debt;

1073 (d) whether the purveyor of the activities, services, events, persons, or products being
1074 advertised:

1075 (i) carries on hours of operation on the premise comparable to the normal industry
1076 practice for a business, service, or operation of that type, or posts the hours of operation on the
1077 premise in public view;

1078 (ii) has available utilities comparable to the normal industry practice for an entity of
1079 that type; and

1080 (iii) has a current valid business license or permit under applicable local ordinances,
1081 state law, and federal law to conduct business on the premise upon which the sign is located;

1082 (e) whether the advertisement is located on the site of any auxiliary facility that is not
1083 essential to, or customarily used in, the ordinary course of business for the activities, services,
1084 events, persons, or products being advertised; or

1085 (f) whether the sign or advertisement is located on property that is not contiguous to a
1086 property that is essential and customarily used for conducting the business of the activities,
1087 services, events, persons, or products being advertised.

1088 (8) The following do not qualify as a business under Subsection (7):

1089 (a) public or private utility corridors or easements;

1090 (b) railroad tracks;

1091 (c) outdoor advertising signs or structures;

1092 (d) vacant lots;

1093 (e) transient or temporary activities; or

1094 (f) storage of accessory products.

1095 (9) The sign owner has the burden of proving, by a preponderance of the evidence, that
1096 the advertised activity is conducted on the premise.

1097 Section 10. Section **72-7-510** is amended to read:

1098 **72-7-510. Existing outdoor advertising not in conformity with part -- Procedure**
1099 **-- Eminent domain -- Compensation -- Relocation.**

1100 (1) As used in this section, "nonconforming sign" means a sign that has been erected in
1101 a zone or area other than commercial or industrial or where outdoor advertising is not
1102 permitted under this part.

1103 (2) (a) The department may acquire by gift, purchase, agreement, exchange, or eminent
1104 domain, any existing outdoor advertising and all property rights pertaining to the outdoor
1105 advertising which were lawfully in existence on May 9, 1967, and which by reason of this part
1106 become nonconforming.

1107 (b) [~~If the~~] The department, or any town, city, county, governmental entity, public
1108 utility, or any agency or the United States Department of Transportation under this part[;
1109 ~~prevents~~] may not prevent the maintenance as defined in Section 72-7-502, or [~~requires~~]
1110 require that maintenance of an existing sign be discontinued[;] unless the department, town,

1111 city, county, governmental entity, public utility, or agency acquires the sign in question [~~shall~~
 1112 ~~be considered acquired by the entity and just compensation will become immediately due and~~
 1113 ~~payable~~] by eminent domain.

1114 (c) Eminent domain shall be exercised in accordance with the [~~provision~~] provisions of
 1115 Title 78B, Chapter 6, Part 5, Eminent Domain.

1116 (3) (a) Just compensation shall be paid for outdoor advertising and all property rights
 1117 pertaining to the same, including the right of the landowner upon whose land a sign is located,
 1118 acquired through the processes of eminent domain.

1119 (b) For the purposes of this part, just compensation shall include the consideration of
 1120 damages to remaining properties, contiguous and noncontiguous, of an outdoor advertising sign
 1121 company's interest, which remaining properties, together with the properties actually
 1122 condemned, constituted an economic unit.

1123 (c) The department is empowered to remove signs found in violation of Section
 1124 72-7-508 without payment of any compensation.

1125 (4) (a) Except as specifically provided in this [~~section or Section 72-7-513~~] part, Title
 1126 10, Chapter 9a, Part 5, Land Use Ordinances, or Title 17, Chapter 27a, Part 5, Land Use
 1127 Ordinances, this part may not be construed to permit a person to place or maintain any outdoor
 1128 advertising adjacent to any interstate or primary highway system which is prohibited [~~by law~~
 1129 ~~or~~] by any town, city, or county ordinance.

1130 (b) Any town, city, county, governmental entity, or public utility which requires the
 1131 removal, relocation, alteration, change, or termination of outdoor advertising shall ~~H~~→ [commence
 1132 eminent domain proceedings and] ~~←H~~ pay just compensation as defined in this part and in Title
 1133 78B, Chapter 6, Part 5, Eminent Domain.

1134 (5) Except as provided in Section 72-7-508, no sign shall be required to be removed by
 1135 the department nor sign maintenance as described in this section be discontinued unless at the
 1136 time of removal or discontinuance there are sufficient funds, from whatever source,
 1137 appropriated and immediately available to pay the just compensation required under this
 1138 section and unless at that time the federal funds required to be contributed under 23 U.S.C.,
 1139 Sec. 131, if any, with respect to the outdoor advertising being removed, have been appropriated
 1140 and are immediately available to this state.

1141 (6) (a) If any outdoor advertising use, structure, or permit may not be continued

1142 because of the widening, construction, or reconstruction along an interstate, federal aid primary
1143 highway existing as of June 1, 1991, or national highway systems highway, the owner shall
1144 have the option to relocate and remodel the use, structure, or permit to another location:

1145 (i) on the same property;

1146 (ii) on adjacent property;

1147 (iii) on the same highway within 5280 feet of the previous location, which may be
1148 extended 5280 feet outside the areas described in Subsection 72-7-505(3)(c)(i)(A), on either
1149 side of the same highway; or

1150 (iv) mutually agreed upon by the owner and the county or municipality in which the
1151 use, structure, or permit is located.

1152 (b) The relocation under Subsection (6)(a) shall be in a commercial or industrial zoned
1153 area or where outdoor advertising is permitted under this part.

1154 (c) The county or municipality in which the use or structure is located shall, if
1155 necessary, provide for the relocation and remodeling by ordinance for a special exception to its
1156 zoning ordinance.

1157 (d) The relocated and remodeled use or structure may be:

1158 (i) erected to a height and angle to make it clearly visible to traffic on the main-traveled
1159 way of the highway to which it is relocated or remodeled;

1160 (ii) the same size and at least the same height as the previous use or structure, but the
1161 relocated use or structure may not exceed the size and height permitted under this part; or

1162 (iii) relocated to a comparable vehicular traffic count.

1163 (7) (a) The governmental entity, quasi-governmental entity, or public utility that causes
1164 the need for the outdoor advertising relocation or remodeling as provided in Subsection (6)(a)
1165 shall pay the costs related to the relocation, remodeling, or acquisition.

1166 (b) If a governmental entity prohibits the relocation and remodeling as provided in
1167 Subsection (6)(a), it shall pay just compensation as provided in Subsection (3).

1168 Section 11. Section **72-7-510.5** is amended to read:

1169 **72-7-510.5. Height adjustments for outdoor advertising signs -- Sign obstruction.**

1170 (1) If the view [~~and readability~~] of an outdoor advertising sign, including a sign that is
1171 a nonconforming sign as defined in Section 72-7-510, a noncomplying structure as defined in
1172 Sections 10-9a-103 and 17-27a-103, or a nonconforming use as defined in Sections 10-9a-103

1173 and 17-27a-103 is obstructed due to a noise abatement or safety measure, grade change,
1174 construction, directional sign, highway widening, or aesthetic improvement made by an agency
1175 or political subdivision of this state, along an interstate, federal aid primary highway existing as
1176 of June 1, 1991, national highway systems highway, or state highway or by an improvement
1177 created on real property subsequent to the department's disposal of the property under Section
1178 72-5-111, the owner of the sign may:

1179 (a) adjust the height of the sign; or

1180 (b) relocate the sign to a point within 500 feet of its prior location, if the sign complies
1181 with the spacing requirements under Section 72-7-505 and is in a commercial or industrial
1182 zone.

1183 (2) A height adjusted sign under this section does not constitute a substantial change to
1184 the sign.

1185 (3) The county or municipality in which the outdoor advertising sign is located shall, if
1186 necessary, provide for the height adjustment or relocation by ordinance for a special exception
1187 to its zoning ordinance.

1188 (4) (a) The height adjusted sign:

1189 (i) may be erected:

1190 (A) to a height to make the entire advertising content of the sign clearly visible; and

1191 (B) to an angle to make the entire advertising content of the sign clearly visible; and

1192 (ii) shall be the same size as the previous sign.

1193 (b) The provisions of Subsection (4)(a) are an exception to the height requirements
1194 under Section 72-7-505.

1195 (5) (a) A billboard owner may, at the owner's own expense and in accordance with
1196 Subsection (5)(b), trim trees or other foliage without a permit, except as provided in Subsection
1197 (5)(c), if the trees or foliage:

1198 (i) obstruct, however slight, the view of any part of the face of the outdoor advertising
1199 sign; and

1200 (ii) are growing on or encroaching over property owned by the state or a political
1201 subdivision of the state.

1202 (b) A billboard owner shall perform the work described in Subsection (5)(a):

1203 (i) under the supervision of a certified arborist; and

1204 (ii) by employing a company licensed and insured in the state.

1205 (c) A billboard owner shall obtain an encroachment permit from the department if the

1206 work described in Subsection (5)(a) will occur on or require access to the right-of-way of a

1207 state highway designated in Title 72, Chapter 4, Designation of State Highways Act.