

HB0361S01 compared with HB0361

~~deleted text~~ shows text that was in HB0361 but was deleted in HB0361S01.

Inserted text shows text that was not in HB0361 but was inserted into HB0361S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Francis D. Gibson proposes the following substitute bill:

BILLBOARD AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Francis D. Gibson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to billboards in municipalities and counties.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to a municipality or a county's acquisition of a billboard and associated rights through eminent domain;
- ▶ permits a municipality or county to require a billboard owner to remove a billboard under certain conditions; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

HB0361S01 compared with HB0361

None

Utah Code Sections Affected:

AMENDS:

10-9a-511, as last amended by Laws of Utah 2015, Chapter 205

10-9a-512, as renumbered and amended by Laws of Utah 2005, Chapter 254

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-511, as renumbered and amended by Laws of Utah 2005, Chapter 254

17-27a-512, as last amended by Laws of Utah 2014, Chapter 189

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.

HB0361S01 compared with HB0361

(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 the day on which written notice is served 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] the municipality's 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 day on which the owner submits a written request to relocate the billboard, [~~the provisions of Subsection 10-9a-513(2)(a)(iv) apply~~] the billboard owner may relocate the billboard in accordance with Subsection 10-9a-513(2).

(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~~] has the burden of establishing that any claimed abandonment under

HB0361S01 compared with HB0361

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.

Section 2. Section **10-9a-512** is amended to read:

10-9a-512. Termination of a billboard and associated rights.

(1) A municipality may only require termination of a billboard and associated [property] rights through:

- (a) gift;
- (b) purchase;
- (c) agreement;
- (d) exchange; or
- (e) eminent domain.

(2) A termination under Subsection (1)(a), (b), (c), or (d) requires the voluntary consent of the billboard owner.

(3) A termination under Subsection (1)(e) requires the municipality to:

(a) acquire the billboard and associated rights through eminent domain, in accordance with Title 78B, Chapter 6, Part 5, Eminent Domain, [except as provided in Subsections 10-9a-513\(2\)\(f\) and \(h\)](#); and

(b) after acquiring the rights under Subsection (3)(a), terminate the billboard and associated rights.

Section 3. 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.

(1) As used in this section:

(a) "Clearly visible" means capable of being read 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

HB0361S01 compared with HB0361

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:]~~

(2) (a) If a billboard owner makes a written request to the municipality with

HB0361S01 compared with HB0361

jurisdiction over the billboard to take an action described in Subsection (2)(b), the billboard owner may take the requested action, without further municipal ~~land use~~ approval, 90 days after the day on which the billboard owner makes the written request, unless within the 90-day period the municipality:

(i) in an attempt to acquire the billboard and associated rights through eminent domain under Section 10-9a-512 for the purpose of terminating the billboard and associated rights:

(A) completes the procedural steps required under Title 78B, Chapter 6, Part 5, Eminent Domain, before the filing of an eminent domain action; and

(B) files an eminent domain action in accordance with Title 78B, Chapter 6, Part 5, Eminent Domain;

(ii) denies the request in accordance with Subsection (2)(d); or

(iii) requires the billboard owner to remove the billboard in accordance with Subsection (3).

(b) Subject to Subsection (2)(a), a billboard owner may:

(i) ~~[rebuilding, maintaining, repairing, or restoring]~~ rebuild, maintain, repair, or restore 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]~~ relocate or rebuild a billboard structure, or ~~[taking other measures]~~ take another measure, 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]~~ modify or upgrade a billboard;

(iv) ~~[relocating]~~ relocate a billboard into any commercial, industrial, or manufacturing zone within the municipality's boundaries, if ~~[(A)]~~ the relocated billboard is:

~~[(A)]~~ (A) within 5,280 feet of ~~[its]~~ the billboard's previous location; and

~~[(B)]~~ (B) 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]~~ or

~~[(B)(i)]~~ (B)(i) the billboard owner has submitted a written request under Subsection

HB0361S01 compared with HB0361

~~10-9a-511(3)(c); and]~~

~~[(H) 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] make one or more of~~ 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)]~~ altered by modification or upgrade under Subsection (2)(b)(iii), by relocation under Subsection (2)(b)(iv), by relocation under Subsection 72-7-510.5(1)(b), by adjustment under Subsection 72-7-510.5(1)(a), or by any combination of these alterations:

(A) ~~[erecting] erect~~ 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] or~~

(B) ~~[installing] install~~ 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] the billboard's relocation {}.~~ ~~{}; or~~ ~~{~~ (vi) exercise a billboard owner's right under Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act.

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

~~[(c)] (d)~~ 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 eminent domain under Subsection (2)(a)]~~ without acquiring the billboard and associated rights through eminent domain under Section 10-9a-512, if the mistake in placement or erection of the billboard is determined by clear and convincing evidence, in a proceeding that protects the billboard owner's due process rights, 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 a billboard structure by eminent domain under Subsection (2)(a) or any other provision of applicable law;~~

HB0361S01 compared with HB0361

~~the municipality]~~

(e) A municipality that acquires a billboard and associated rights through eminent domain under Section 10-9a-512 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.

(f) If a municipality commences an eminent domain action under Subsection (2)(a)(i):

(i) the provisions of Section 78B-6-510 do not apply; and

(ii) the municipality may not take possession of the billboard or the billboard's associated rights until:

(A) completion of all appeals of a judgment allowing the municipality to acquire the billboard and associated rights; and

(B) the billboard owner receives payment of just compensation, described in Subsection (2)(e).

(g) Unless the eminent domain action is dismissed under Subsection (2)(h)(ii), a billboard owner may proceed, without further municipal land use approval, to take an action requested under Subsection (2)(a), if the municipality's eminent domain action commenced under Subsection (2)(a)(i) is dismissed without an order allowing the municipality to acquire the billboard and associated rights.

(h) (i) A billboard owner may withdraw a request made under Subsection (2)(a) at any time before the municipality takes possession of the billboard or the billboard's associated rights in accordance with Subsection (2)(f)(ii).

(ii) If a billboard owner withdraws a request in accordance with Subsection (2)(h)(i), the court shall dismiss the municipality's eminent domain action to acquire the billboard or associated rights.

(3) Notwithstanding [~~Subsection (2) and~~] Section 10-9a-512, a municipality may

HB0361S01 compared with HB0361

~~[remove a billboard without providing compensation if]~~ require the owner of a billboard to remove the billboard without acquiring the billboard and associated rights through eminent domain 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 billboard owner in writing that the billboard owner's billboard meets one or more of the conditions listed in Subsections (3)(a)(i) and (ii);

(c) the billboard 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]~~ 90 days after the day on which the billboard owner receives 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]~~ after the day on which the billboard [owner's receipt of] owner receives written notice under Subsection (3)(b); and

(d) following the expiration of the applicable period under Subsection (3)(c) and after providing the billboard 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;

(a) by anyone other than ~~[its]~~ the billboard's owner or the billboard's owner acting

HB0361S01 compared with HB0361

through ~~[its contractors.]~~ a contractor; or

(b) within 500 feet of the nonconforming location.

(5) A permit ~~[issued, extended, or renewed by a municipality]~~ that a municipality issues, extends, or renews for a billboard remains valid ~~[from the time]~~ beginning on the day on which the municipality issues, extends, or renews the permit ~~[until]~~ and ending 180 days after the day on which 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 day on which the municipality issues, extends, or renews a permit for the billboard.

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

HB0361S01 compared with HB0361

uninhabitable and is not repaired or restored within six months after the day on which written notice is served 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~~] the county's 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 day on which the owner submits a written request to relocate the billboard, [~~the provisions of Subsection 17-27a-512(2)(a)(iv) apply~~] the billboard owner may relocate the billboard in accordance with Subsection 17-27a-512(2).

(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~~] has 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

HB0361S01 compared with HB0361

established by ordinance.

Section 5. Section **17-27a-511** is amended to read:

17-27a-511. Termination of a billboard and associated rights.

(1) A county may only require termination of a billboard and associated [property] rights through:

- (a) gift;
- (b) purchase;
- (c) agreement;
- (d) exchange; or
- (e) eminent domain.

(2) A termination under Subsection (1)(a), (b), (c), or (d) requires the voluntary consent of the billboard owner.

(3) A termination under Subsection (1)(e) requires the county to:

(a) acquire the billboard and associated rights through eminent domain, in accordance with Title 78B, Chapter 6, Part 5, Eminent Domain, [except as provided in Subsections 17-27a-512\(2\)\(f\) and \(h\)](#); and

(b) after acquiring the rights under Subsection (3)(a), terminate the billboard and associated rights.

Section 6. 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.

(1) As used in this section:

(a) "Clearly visible" means capable of being read 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

HB0361S01 compared with HB0361

(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:]~~

(2) (a) If a billboard owner makes a written request to the county with jurisdiction over the billboard to take an action described in Subsection (2)(b), the billboard owner may take the requested action, without further county **land use** approval, 90 days after the day on which the billboard owner makes the written request, unless within the 90-day period the county:

(i) in an attempt to acquire the billboard and associated rights through eminent domain

HB0361S01 compared with HB0361

under Section 17-27a-511 for the purpose of terminating the billboard and associated rights:

(A) completes the procedural steps required under Title 78B, Chapter 6, Part 5,

Eminent Domain, before the filing of an eminent domain action; and

(B) files an eminent domain action in accordance with Title 78B, Chapter 6, Part 5,

Eminent Domain;

(ii) denies the request in accordance with Subsection (2)(d); or

(iii) requires the billboard owner to remove the billboard in accordance with

Subsection (3).

(b) Subject to Subsection (2)(a), a billboard owner may:

(i) ~~[rebuilding, maintaining, repairing, or restoring]~~ rebuild, maintain, repair, or restore 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]~~ relocate or rebuild a billboard structure, or ~~[taking other measures]~~ take another measure, 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]~~ modify or upgrade a billboard;

(iv) ~~[relocating]~~ relocate a billboard into any commercial, industrial, or manufacturing zone within the unincorporated area of the county, if~~[-(A)]~~ the relocated billboard is:

~~{}~~ (A) within 5,280 feet of ~~[its]~~ the billboard's previous location; and

~~{}~~ (B) no closer than~~[-(Aa)]~~ 300 feet from an off-premise sign existing on the same side of the street or highway~~[-];~~, or ~~{}~~ 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]~~ or

~~{}~~ (B) ~~(f) the billboard owner has submitted a written request under Subsection 17-27a-510(3)(c), and]~~

~~{}~~ (H) ~~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] make one or more of the following modifications, as the billboard owner determines, to a billboard that is ~~{}~~structurally ~~[modified or upgraded under Subsection~~

HB0361S01 compared with HB0361

~~(2)(a)(iii) or relocated under Subsection (2)(a)(iv)]~~ altered by modification or upgrade under Subsection (2)(b)(iii), by relocation under Subsection (2)(b)(iv) ~~}, by relocation under Subsection 72-7-510.5(1)(b), by adjustment under Subsection 72-7-510.5(1)(a)~~, or by any combination of these alterations:

(A) ~~[erecting]~~ erect 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]~~ or

(B) ~~[installing]~~ install 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]~~ the billboard's relocation ~~{}~~. ~~{}, or~~ ~~{~~ ~~—— (vi) exercise a billboard owner's right under Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act.~~

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

~~[(c)]~~ (d) 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 eminent domain under Subsection (2)(a)]~~ without acquiring the billboard and associated rights through eminent domain under Section 17-27a-511, if the mistake in placement or erection of the billboard is determined by clear and convincing evidence, in a proceeding that protects the billboard owner's due process rights, 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 a billboard structure by eminent domain under Subsection (1)(a) or any other provision of applicable law, the county]~~

(e) A county that acquires a billboard and associated rights through eminent domain under Section 17-27a-511 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;

HB0361S01 compared with HB0361

- (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.

(f) If a county commences an eminent domain action under Subsection (2)(a)(i):

(i) the provisions of Section 78B-6-510 do not apply; and

(ii) the county may not take possession of the billboard or the billboard's associated rights until:

(A) completion of all appeals of a judgment allowing the county to acquire the billboard and associated rights; and

(B) the billboard owner receives payment of just compensation, described in Subsection (2)(e).

(g) Unless the eminent domain action is dismissed under Subsection (2)(h)(ii), a billboard owner may proceed, without further county land use approval, to take an action requested under Subsection (2)(a), if the county's eminent domain action commenced under Subsection (2)(a)(i) is dismissed without an order allowing the county to acquire the billboard and associated rights.

(h) (i) A billboard owner may withdraw a request made under Subsection (2)(a) at any time before the county takes possession of the billboard or the billboard's associated rights in accordance with Subsection (2)(f)(ii).

(ii) If a billboard owner withdraws a request in accordance with Subsection (2)(h)(i), the court shall dismiss the county's eminent domain action to acquire the billboard or associated rights.

(3) Notwithstanding [~~Subsection (2) and~~] Section 17-27a-511, a county may [~~remove a billboard without providing compensation if~~] require an owner of a billboard to remove the billboard without acquiring a billboard and associated rights through eminent domain 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

HB0361S01 compared with HB0361

- (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 billboard owner in writing that the billboard owner's billboard meets one or more of the conditions listed in Subsections (3)(a)(i) and (ii);
- (c) the billboard 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~~] 90 days after the day on which the billboard owner receives 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~~] after the day on which the billboard [owner's receipt of] owner receives written notice under Subsection (3)(b); and
 - (d) following the expiration of the applicable period under Subsection (3)(c) and after providing the billboard 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:
 - (a) by anyone other than [~~its~~] the billboard's owner or the billboard's owner acting through [~~its contractors.~~] a contractor; or
 - (b) within 500 feet of the nonconforming location.
- (5) A permit [~~issued, extended, or renewed by a county~~] that a county issues, extends, or renews for a billboard remains valid [~~from the time~~] beginning on the day on which the county issues, extends, or renews the permit [until] and ending 180 days after the day on which a required state permit is issued for the billboard if:
 - (a) the billboard requires a state permit; and

HB0361S01 compared with HB0361

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

†

Legislative Review Note

Office of Legislative Research and General Counsel†