

ASSEMBLY BILL NO. 438—ASSEMBLYMAN ATKINSON

MARCH 19, 2007

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to outdoor advertising structures. (BDR 22-906)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to outdoor advertising structures; prohibiting the Department of Transportation or a city or county from requiring the review of an outdoor advertising structure as a condition for obtaining approval for the use of land to construct or erect the outdoor advertising structure; making various changes to provisions relating to nonconforming outdoor advertising structures and the adjustment of outdoor advertising structures that are obstructed; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill prohibits a city or county from conditioning the issuance of a special use permit, conditional use permit, variance, waiver, condition of zoning or any other approval for the use of land that is necessary to construct or erect an outdoor advertising structure on allowing or requiring the city or county to conduct a review of the outdoor advertising structure.

Existing law requires the Department of Transportation and the governing bodies of cities and counties to take certain action if an outdoor advertising structure is obstructed by certain improvement projects. Such action includes authorizing the owner of the outdoor advertising structure to adjust the height or angle of the structure to the height or angle that restores the visibility of the structure to the same or comparable visibility as before the construction of the improvement project. (NRS 278.0213) **Sections 2 and 4** of this bill provide that the Department of Transportation and the governing body of a city or county may authorize the owner of the outdoor advertising structure to adjust the height or angle of the outdoor advertising structure to: (1) the height or angle that restores the visibility of the structure to the same or comparable visibility as before the construction of the improvement project; or (2) a height or angle that is not more than 30 feet above the improvement project. **Sections 2 and 4** also prohibit the



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Department of Transportation or a county or city from requiring a special use permit, conditional use permit, variance, waiver, condition of zoning or other approval for the use of land for a person to adjust the height or angle of, or to relocate, an obstructed outdoor advertising structure.

Before requiring the removal of a nonconforming outdoor advertising structure, existing law requires a city or county to hold a public hearing at which the owner of a nonconforming outdoor advertising structure has an opportunity to be heard. (NRS 278.0215) **Section 3** of this bill requires that the city or county make affirmative findings at such a public hearing that the nonconforming outdoor advertising structure is no longer harmonious or compatible with the surrounding area before the city or county may require the removal of the outdoor advertising structure.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 278 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a city or county requires a land use permit before it will allow a person to construct or erect an outdoor advertising structure, the land use permit must not be limited by a specific condition which allows or requires the governing body to conduct a review of the outdoor advertising structure or its placement.

2. As used in this section:

(a) "Governing body" includes a board of county commissioners, a city council, the planning commission or the director of planning or other authorized person or agency if authorized to take action by the governing body.

(b) "Land use permit" includes a special use permit, conditional use permit, variance, waiver, condition of zoning or other approval for the use of land.

(c) "Outdoor advertising structure" means a billboard, subject to a permit issued by the Department of Transportation, if such permit is required pursuant to state or federal law, that is designed, intended or used to disseminate commercial and noncommercial messages that do not concern the premises upon which the billboard is located.

Sec. 2. NRS 278.0213 is hereby amended to read as follows:

278.0213 1. If any improvement project is caused to be constructed for purposes of noise abatement by the governing body of a city or county within the right-of-way of a controlled-access freeway, which obstructs the visibility from the main-traveled way of the controlled-access freeway of an outdoor advertising structure that adjoins the controlled-access freeway, the governing body of the city or county shall:



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(a) Authorize, with the consent of the Department of Transportation pursuant to chapter 410 of NRS and at no cost to the State or any local government, the owner of the outdoor advertising structure to adjust the height or angle of the *outdoor advertising* structure to a height or angle that ~~restores~~:

(1) *Restores* the visibility of the *outdoor advertising* structure to the same or comparable visibility as before the construction of the improvement project; or

(2) *Is not more than 30 feet above the improvement project, measured from the tallest point of the improvement project to the bottom of the outdoor advertising structure;*

(b) Authorize, with the consent of the Department of Transportation pursuant to chapter 410 of NRS and at no cost to the State or any local government, the owner of the outdoor advertising structure to relocate the *outdoor advertising* structure to another location on the same parcel of land or on another parcel of land where the owner of the *outdoor advertising* structure has secured the right to construct ~~an~~ *an outdoor advertising* structure pursuant to the applicable local ordinances in existence at that time and the relocation restores the visibility of the *outdoor advertising* structure to the same or comparable visibility as before the construction of the improvement project;

(c) Evaluate the impact of the improvement project on the visibility of the outdoor advertising structure and may, in its discretion, implement design modifications to the project which maintain the integrity of the project and which eliminate the effect of the project on the visibility of the *outdoor advertising* structure so that adjustments to or relocation of the *outdoor advertising* structure are not required to maintain its visibility;

(d) Authorize, with the consent of the Department of Transportation pursuant to chapter 410 of NRS and at no cost to the State or any local government, any other relief which is consistent with the public health, safety and welfare and which is mutually agreed upon by the governing body of the city or county, the Department of Transportation and the owner of the outdoor advertising structure; or

(e) If the actions described in paragraphs (a) to (d), inclusive, would not result in the same or comparable visibility of the *outdoor advertising* structure, let the visibility of the *outdoor advertising* structure remain obstructed.

2. Any action authorized pursuant to subsection 1 must comply with applicable federal and state statutes and regulations, agreements with the Federal Government or the State and, to the extent that their provisions do not conflict with this section, local



ordinances governing the regulation of outdoor advertising structures.

3. The provisions of subsection 1 do not authorize the owner of an outdoor advertising structure to increase the size of the area of display of the *outdoor advertising* structure.

4. A city or county :

(a) *Except as otherwise provided in paragraph (a) of subsection 1*, may implement the provisions of this section by ordinance or by variance or waiver from *an* applicable ordinance, rule or regulation.

(b) *Shall not require a special use permit, conditional use permit, variance, waiver, condition of zoning or other approval for the use of land other than any necessary construction permit for a person to adjust the height or angle of an outdoor advertising structure or to relocate the outdoor advertising structure to another location pursuant to subsection 1.*

5. The provisions of this section:

(a) Apply to lawfully erected conforming and nonconforming outdoor advertising structures;

(b) Are not intended to grant an express or implied right of light, air or view over a controlled-access freeway if such a right is not otherwise provided by law;

(c) Do not apply to an outdoor advertising structure whose visibility was obstructed on or before ~~[the effective date of this act]~~ *June 6, 2005*, by an improvement project for noise abatement;

(d) Do not change the designation of an existing nonconforming outdoor advertising structure from nonconforming to conforming; and

(e) Do not authorize an increase in the number of nonconforming outdoor advertising structures.

6. As used in this section:

(a) "Controlled-access freeway" means every highway to or from which owners or occupants of abutting lands and other persons are prohibited from having direct private access, and where access is allowed only at interchanges. ~~[; and]~~

(b) "Outdoor advertising structure" means a billboard, subject to a permit issued by the Department of Transportation, *if such permit is required pursuant to state or federal law*, that is designed, intended or used to disseminate commercial and noncommercial messages that do not concern the premises upon which the billboard is located.

Sec. 3. NRS 278.0215 is hereby amended to read as follows:

278.0215 1. ~~[H] Except as otherwise provided in subsection 4, if~~ a city or county ~~[; through the adoption, operation or enforcement of any ordinance or code,]~~ requires the removal of a



1 nonconforming outdoor advertising structure, the city or county
2 shall:

3 (a) Pay just compensation for the loss of the nonconforming
4 outdoor advertising structure to the owner of the nonconforming
5 outdoor advertising structure and to the owner of the real property
6 upon which the nonconforming outdoor advertising structure is
7 located; or

8 (b) Authorize the owner of the nonconforming outdoor
9 advertising structure to relocate that structure to a site which is
10 determined to be a comparable site by the owner of the
11 nonconforming outdoor advertising structure and which is approved
12 by the city or county as an appropriate site for the structure.

13 2. If a city or county prohibits the owner of a nonconforming
14 outdoor advertising structure from engaging in routine maintenance
15 of the nonconforming outdoor advertising structure, the city or
16 county shall provide just compensation or authorize a comparable
17 alternative location for the nonconforming outdoor advertising
18 structure in the same manner as if the city or county had required the
19 removal of the nonconforming outdoor advertising structure
20 pursuant to subsection 1.

21 3. A city or county shall not require the removal of a
22 nonconforming outdoor advertising structure to occur pursuant to an
23 amortization schedule, regardless of the length of the period set
24 forth in the amortization schedule.

25 4. The requirements of subsection 1 do not apply to a
26 nonconforming outdoor advertising structure that is:

27 (a) Required to be removed as a result of the owner of the real
28 property upon which the nonconforming outdoor advertising
29 structure is located terminating the lease that governs the placement
30 of the nonconforming outdoor advertising structure on that property
31 pursuant to the terms of that lease; or

32 (b) Destroyed or damaged in excess of 50 percent of its material
33 structural value as a result of a natural disaster, including, without
34 limitation, a fire, flood, earthquake, windstorm, rainstorm and
35 snowstorm.

36 5. A city or county shall not require the removal of a
37 nonconforming outdoor advertising structure ~~[as a condition to the~~
38 ~~development or redevelopment of the property upon which the~~
39 ~~nonconforming outdoor advertising structure is located without] :~~

40 (a) **Without** first holding a public hearing at which the owner of
41 the nonconforming outdoor advertising structure has an opportunity
42 to be heard. ~~[The requirements of subsection 1 do not apply if, after~~
43 ~~the public hearing required by this subsection, a city or county~~
44 ~~requires the removal of the nonconforming outdoor advertising~~
45 ~~structure.]~~



(b) Unless at the public hearing required pursuant to paragraph (a), the city or county affirmatively finds that the conditions have changed such that the nonconforming outdoor advertising structure is no longer harmonious or compatible with the surrounding area.

6. If the owner of a nonconforming outdoor advertising structure or the owner of the real property upon which the nonconforming outdoor advertising structure is located disagrees with the amount of just compensation the city or county determines should be paid to him, the owner may appeal the determination to a court of competent jurisdiction. In determining the amount of just compensation that should be paid to an owner pursuant to subsection 1, the court shall consider:

(a) The uniqueness of the location of the property upon which the nonconforming outdoor advertising structure is erected;

(b) Whether the nonconforming outdoor advertising structure can be relocated to a comparable site;

(c) The amount of income generated by the nonconforming outdoor advertising structure; and

(d) The length of time remaining on any applicable term of a lease governing the nonconforming outdoor advertising structure.

7. As used in this section:

(a) "Amortization schedule" means an extended period over which a person is required to remove a nonconforming outdoor advertising structure.

(b) "Just compensation" means the most probable price that a nonconforming outdoor advertising structure would bring in a competitive and open market under the conditions of a fair sale, without the price being affected by undue stimulus.

(c) "Material structural value" means the cost of labor and materials necessary to erect an outdoor advertising structure. The term does not include any revenue or expenses related to the lease of real property upon which the outdoor advertising structure is located.

(d) "Nonconforming outdoor advertising structure" means an outdoor advertising structure which is constructed or erected in conformance with all applicable local ordinances and codes in effect on the date a building permit is issued for the outdoor advertising structure and which does not conform subsequently because of a change to the local ordinances or codes. ~~[The term does not include an outdoor advertising structure that is authorized by a special use permit, conditional use permit, variance, waiver, condition of zoning or other approval for the use of land if, when the special use permit, conditional use permit, variance, waiver, condition of zoning or other approval for the use of land was first approved, the special use~~



~~permit, conditional use permit, variance, waiver, condition of zoning or other approval for the use of land was limited by a specific condition which allowed or required the governing body of the city or county to conduct a review of the structure.]~~

(e) "Outdoor advertising structure" means any sign, display, billboard or other device that is designed, intended or used to advertise or inform readers about services rendered or goods produced or sold on property other than the property upon which the sign, display, billboard or other device is erected.

(f) "Routine maintenance" means normal repair and upkeep of the structural integrity and appearance of a nonconforming outdoor advertising structure. The term does not include any increase in the size or height of the structure or any addition or enhancement to the structure that increases the visual effect of the structure or increases the impact on the use of the land in the area around the structure.

Sec. 4. NRS 410.365 is hereby amended to read as follows:

410.365 1. If any improvement project is caused to be constructed for purposes of noise abatement by the Department within the right-of-way of a controlled access freeway, which obstructs the visibility from the main traveled way of the controlled access freeway of an outdoor advertising structure that adjoins the controlled access freeway, the Department shall:

(a) Authorize, with the consent of the affected city or county pursuant to chapter 278 of NRS and at no cost to the State or any local government, the owner of the outdoor advertising structure to adjust the height or angle of the *outdoor advertising* structure to a height or angle that ~~restores~~:

(1) *Restores* the visibility of the *outdoor advertising* structure to the same or comparable visibility as before the construction of the improvement project; *or*

(2) *Is not more than 30 feet above the improvement project, measured from the tallest point of the improvement project to the bottom of the outdoor advertising structure;*

(b) Authorize, with the consent of the affected city or county pursuant to chapter 278 of NRS and at no cost to the State or any local government, the owner of the outdoor advertising structure to relocate the *outdoor advertising* structure to another location on the same parcel of land or on another parcel of land where the owner of the *outdoor advertising* structure has secured the right to construct ~~fa~~ *an outdoor advertising* structure pursuant to the applicable local ordinances in existence at that time and the relocation restores the visibility of the *outdoor advertising* structure to the same or comparable visibility as before the construction of the improvement project;



(c) Evaluate the impact of the improvement project on the visibility of the outdoor advertising structure and may, in its discretion, implement design modifications to the project which maintain the integrity of the project and which eliminate the effect of the project on the visibility of the *outdoor advertising* structure so that adjustments to or relocation of the *outdoor advertising* structure are not required to maintain its visibility;

(d) Authorize, with the consent of the affected city or county pursuant to chapter 278 of NRS and at no cost to the State or any local government, any other relief which is consistent with the public health, safety and welfare and which is mutually agreed upon by the governing body of the affected city or county, the Department and the owner of the outdoor advertising structure; or

(e) If the actions described in paragraphs (a) to (d), inclusive, would not result in the same or comparable visibility of the *outdoor advertising* structure, let the visibility of the *outdoor advertising* structure remain obstructed.

2. Any action authorized pursuant to subsection 1 must comply with applicable federal and state statutes and regulations, agreements with the Federal Government or the State and, to the extent that their provisions do not conflict with this section, local ordinances governing the regulation of outdoor advertising structures.

3. The provisions of subsection 1 do not authorize the owner of an outdoor advertising structure to increase the size of the area of display of the *outdoor advertising* structure.

4. *The Department shall not require a special use permit, conditional use permit, variance, waiver, condition of zoning or other approval for the use of land other than any necessary construction permit for a person to adjust the height or angle of an outdoor advertising structure or to relocate the outdoor advertising structure to another location pursuant to subsection 1.*

5. The provisions of this section:

(a) Apply to lawfully erected conforming and nonconforming outdoor advertising structures;

(b) Are not intended to grant an express or implied right of light, air or view over a controlled access freeway if such a right is not otherwise provided by law;

(c) Do not apply to an outdoor advertising structure whose visibility was obstructed on or before ~~[the effective date of this act]~~ *June 6, 2005*, by an improvement project for noise abatement;

(d) Do not change the designation of an existing nonconforming outdoor advertising structure from nonconforming to conforming; and



1 (e) Do not authorize an increase in the number of
2 nonconforming outdoor advertising structures.

3 5. As used in this section:

4 (a) “Controlled access freeway” means every highway to or
5 from which owners or occupants of abutting lands and other persons
6 are prohibited from having direct private access, and where access is
7 allowed only at interchanges. ~~[-; and]~~

8 (b) “Outdoor advertising structure” means a billboard, subject to
9 a permit issued by the Department, *if such permit is required*
10 *pursuant to state or federal law*, that is designed, intended or used
11 to disseminate commercial and noncommercial messages that do not
12 concern the premises upon which the billboard is located.

