

Representative John Dougall proposes the following substitute bill:

TRANSPARENCY IN GOVERNMENT

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: John Dougall

LONG TITLE

General Description:

This bill modifies the Utah Administrative Services Code by providing that certain public financial information be made available on the Internet and modifies certain notice requirements of the Open and Public Meetings Act.

Highlighted Provisions:

This bill:

- ▶ extends the date that notice of open and public meetings must be placed on the Utah Public Notice Website from April 1, 2008 to October 1, 2008;
- ▶ prohibits a court from voiding a final action taken by a public body for failure to comply with the posting written notice requirements on the Utah Public Notice Website if the posting is made for a meeting that is held prior to April 1, 2009;
- ▶ provides for definitions;
- ▶ creates the Utah Public Finance Website for the purpose of providing public financial information, and provides that it be administered by the Division of Finance;
- ▶ requires state entities to provide public financial information that will be accessed through the Utah Public Finance Website;
- ▶ requires certain local entities to provide public financial information on their own



26 websites and provide a link to their website on the Utah Public Finance Website;

27 ▶ provides the required capabilities of the website, and provides for website
28 accessibility;

29 ▶ creates the Utah Transparency Advisory Board to:

30 • advise the Division of Finance on website implementation and administration
31 and on what public financial information must be made available on the
32 Internet; and

33 • to develop plans, make recommendations, and evaluate the cost effectiveness of
34 implementing certain information resources on the website;

35 ▶ provides that the Division of Finance, in connection with the board, may make rules
36 to:

37 • determine size or budget thresholds to exempt certain local entities from the
38 requirements of the part;

39 • determine what public financial information must be made available on the
40 Internet;

41 • require specific reporting obligations that are required of participating entities,
42 including the frequency and form of submission of the information; and

43 • establish minimum website capability requirements; and

44 ▶ provides for board membership and other duties.

45 **Monies Appropriated in this Bill:**

46 None

47 **Other Special Clauses:**

48 This bill provides an immediate effective date.

49 **Utah Code Sections Affected:**

50 AMENDS:

51 **52-4-202**, as last amended by Laws of Utah 2007, Chapters 45 and 249

52 **52-4-302**, as last amended by Laws of Utah 2007, Chapter 249

53 ENACTS:

54 **63A-3-401**, Utah Code Annotated 1953

55 **63A-3-402**, Utah Code Annotated 1953

56 **63A-3-403**, Utah Code Annotated 1953

57 **63A-3-404**, Utah Code Annotated 1953

58 **63A-3-405**, Utah Code Annotated 1953

59

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

61 Section 1. Section **52-4-202** is amended to read:

62 **52-4-202. Public notice of meetings -- Emergency meetings.**

63 (1) A public body shall give not less than 24 hours public notice of each meeting
64 including the meeting:

- 65 (a) agenda;
- 66 (b) date;
- 67 (c) time; and
- 68 (d) place.

69 (2) (a) In addition to the requirements under Subsection (1), a public body which holds
70 regular meetings that are scheduled in advance over the course of a year shall give public
71 notice at least once each year of its annual meeting schedule as provided in this section.

72 (b) The public notice under Subsection (2)(a) shall specify the date, time, and place of
73 the scheduled meetings.

74 (3) (a) Public notice shall be satisfied by:

75 (i) posting written notice:

76 (A) at the principal office of the public body, or if no principal office exists, at the
77 building where the meeting is to be held; and

78 (B) beginning [~~April 1, 2008~~] October 1, 2008 and except as provided in Subsection
79 (3)(b), on the Utah Public Notice Website created under Section 63F-1-701; and

80 (ii) providing notice to:

81 (A) at least one newspaper of general circulation within the geographic jurisdiction of
82 the public body; or

83 (B) a local media correspondent.

84 (b) A public body of a municipality under Title 10, Utah Municipal Code, a local
85 district under Title 17B, Limited Purpose Local Government Entities - Local Districts, a special
86 service district under Title 17A, Chapter 2, Part 13, Utah Special Service District Act, or a
87 dependent district under Title 17A, Chapter 3, Dependent Districts, is encouraged, but not

88 required, to post written notice on the Utah Public Notice Website, if the municipality or
89 district has a current annual budget of less than \$1 million.

90 (c) A public body is in compliance with the provisions of Subsection (3)(a)(ii) by
91 providing notice to a newspaper or local media correspondent under the provisions of
92 Subsection 63F-1-701(4)(d).

93 (4) A public body is encouraged to develop and use additional electronic means to
94 provide notice of its meetings under Subsection (3).

95 (5) (a) The notice requirement of Subsection (1) may be disregarded if:

96 (i) because of unforeseen circumstances it is necessary for a public body to hold an
97 emergency meeting to consider matters of an emergency or urgent nature; and

98 (ii) the public body gives the best notice practicable of:

99 (A) the time and place of the emergency meeting; and

100 (B) the topics to be considered at the emergency meeting.

101 (b) An emergency meeting of a public body may not be held unless:

102 (i) an attempt has been made to notify all the members of the public body; and

103 (ii) a majority of the members of the public body approve the meeting.

104 (6) (a) A public notice that is required to include an agenda under Subsection (1) shall
105 provide reasonable specificity to notify the public as to the topics to be considered at the
106 meeting. Each topic shall be listed under an agenda item on the meeting agenda.

107 (b) Subject to the provisions of Subsection (6)(c), and at the discretion of the presiding
108 member of the public body, a topic raised by the public may be discussed during an open
109 meeting, even if the topic raised by the public was not included in the agenda or advance public
110 notice for the meeting.

111 (c) Except as provided in Subsection (5), relating to emergency meetings, a public
112 body may not take final action on a topic in an open meeting unless the topic is:

113 (i) listed under an agenda item as required by Subsection (6)(a); and

114 (ii) included with the advance public notice required by this section.

115 Section 2. Section **52-4-302** is amended to read:

116 **52-4-302. Suit to void final action -- Limitation -- Exceptions.**

117 (1) (a) Any final action taken in violation of Section 52-4-201, 52-4-202, or 52-4-207
118 is voidable by a court of competent jurisdiction.

119 (b) A court may not void a final action taken by a public body for failure to comply
120 with the posting written notice requirements under Subsection 52-4-202(3)(a)(i)(B) if:

121 (i) the posting is made for a meeting that is held before April 1, 2009; or
122 ~~[(i)]~~ (ii) (A) the public body otherwise complies with the provisions of Section
123 52-4-202; and

124 ~~[(ii)]~~ (B) the failure was a result of unforeseen Internet hosting or communication
125 technology failure.

126 (2) Except as provided under Subsection (3), a suit to void final action shall be
127 commenced within 90 days after the date of the action.

128 (3) A suit to void final action concerning the issuance of bonds, notes, or other
129 evidences of indebtedness shall be commenced within 30 days after the date of the action.

130 Section 3. Section **63A-3-401** is enacted to read:

131 **Part 4. Utah Transparency Advisory Board**

132 **63A-3-401. Definitions.**

133 As used in this part:

134 (1) "Board" means the Utah Transparency Advisory Board created under Section
135 63A-3-402.

136 (2) "Division" means the Division of Finance of the Department of Administrative
137 Services;

138 (3) "Participating local entity" means each of the following local entities, provided that
139 the entity meets the size or budget thresholds established by the rules authorized under
140 Subsection 63A-3-405(2)(a):

141 (a) a county;

142 (b) a municipality;

143 (c) a local district under Title 17B, Limited Purpose Local Government Entities - Local
144 Districts;

145 (d) a special service district under Title 17A, Chapter 2, Part 13, Utah Special Service
146 District Act;

147 (e) a state institution of higher education as defined under Section 53B-3-102;

148 (f) a school district; and

149 (g) a charter school.

150 (4) "Participating state entity" means the state of Utah, including its executive,
151 legislative, and judicial branches, its departments, divisions, agencies, boards, commissions,
152 councils, committees, and institutions.

153 (5) "Public financial information" means records that are required to be made available
154 on the Utah Public Finance Website or a participating local entity's website as required by this
155 part and as the term is defined by rule under Section 63A-3-405.

156 Section 4. Section **63A-3-402** is enacted to read:

157 **63A-3-402. Utah Public Finance Website -- Establishment and administration.**

158 (1) There is created the Utah Public Finance Website to be administered by the
159 Division of Finance with the technical assistance of the Department of Technology Services.

160 (2) The Utah Public Finance Website shall:

161 (a) permit Utah taxpayers to:

162 (i) view, understand, and track the use of taxpayer dollars by making participating state
163 entities' public financial information available on the Internet;

164 (ii) provide links to websites administered by participating local entities for the
165 purpose of providing participating local entities' public financial information as required by this
166 part and by rule under Section 63A-3-405;

167 (b) allow a person who has Internet access to use the website without paying a fee;

168 (c) allow the public to search public financial information on the Utah Public Finance
169 Website using those criteria established by the board;

170 (d) provide access to financial reports, financial audits, budgets, or other financial
171 documents that are used to allocate, appropriate, spend, and account for the government funds,
172 as may be established by rule under Section 63A-3-405;

173 (e) have a unique and simplified website address;

174 (f) be directly accessible via a link from the main page of the official state website; and

175 (g) include other links, features, or functionality that will assist the public in obtaining
176 and reviewing public financial information, as may be established by rule under Section
177 63A-3-405.

178 (3) The division shall be responsible for:

179 (a) establishing and maintaining the website, including the provision of equipment,
180 resources, and personnel as is necessary;

- 181 (b) maintaining an archive of all information posted to the website;
- 182 (c) coordinating and processing the receipt and posting of public financial information
- 183 from participating state entities;
- 184 (d) coordinating and regulating the posting of public financial information by
- 185 participating local entities; and
- 186 (e) providing staff support for the advisory committee.

187 (4) (a) A participating state entity shall permit the public to view the participating state
188 entity's public financial information via the website, beginning with information that is
189 generated not later than the fiscal year that begins July 1, 2008.

190 (b) Not later than May 15, 2009, the website shall:

- 191 (i) be operational; and
- 192 (ii) permit public access to participating state entities' public financial information.

193 Section 5. Section **63A-3-403** is enacted to read:

194 **63A-3-403. Participation by local entities.**

195 (1) (a) Not later than May 15, 2010, the following participating local entities, in
196 conformity with the rules established under Section 63A-3-405, shall be required to provide
197 public financial information via their own website and provide a link to their website via the
198 Utah Public Finance Website:

- 199 (i) state institutions of higher education;
- 200 (ii) school districts;
- 201 (iii) charter schools; and
- 202 (iv) public transit districts created under Title 17B, Chapter 2a, Part 8, Public Transit
- 203 District Act.

204 (b) Participating local entities subject to this Subsection (1) shall permit information
205 that is generated not later than the fiscal year that begins July 1, 2009 to be assessable via the
206 website.

207 (2) (a) Not later than May 15, 2011, the following participating local entities, in
208 conformity with the rules established under Section 63A-3-405, shall be required to provide
209 public financial information via their own website and provide a link to their website via the
210 Utah Public Finance Website:

- 211 (i) counties;

- 212 (ii) municipalities;
- 213 (iii) local districts under Title 17B, Limited Purpose Local Government Entities - Local
- 214 Districts, that are not already required to report; and
- 215 (iv) special service districts under Title 17A, Chapter 2, Part 13, Utah Special Service
- 216 District Act.
- 217 (b) Participating local entities subject to this Subsection (2) shall permit information
- 218 that is generated not later than the fiscal year that begins July 1, 2010 to be assessable via the
- 219 website.

220 Section 6. Section **63A-3-404** is enacted to read:

221 **63A-3-404. Utah Transparency Advisory Board -- Creation -- Membership --**
 222 **Duties.**

- 223 (1) There is created within the division the Utah Transparency Advisory Board
- 224 comprised of nine members knowledgeable about public finance or providing public access to
- 225 public financial information as follows:
- 226 (a) one member designated by the director of the Division of Finance;
- 227 (b) one member designated by the director of the Governor's Office of Planning and
- 228 Budget;
- 229 (c) one member designated by the Judicial Council;
- 230 (d) one member designated by the Legislative Fiscal Analyst;
- 231 (e) one member of the Senate, appointed by the president of the Senate;
- 232 (f) one member of the House of Representatives, appointed by the speaker of the House
- 233 of Representatives; and
- 234 (g) three additional members who shall each:
- 235 (i) serve one-year terms, except that the individuals appointed to the initial term of
- 236 these positions shall serve until June 30, 2009;
- 237 (ii) be designated by a majority of the board members appointed under Subsections
- 238 (1)(a) through (f);
- 239 (iii) be a representative of a participating state entity or a participating local entity; and
- 240 (iv) (A) for the initial term ending on June 30, 2009, represent a participating state
- 241 entity;
- 242 (B) for the term beginning on July 1, 2009 and ending on June 30, 2010, represent one

243 of the following entities:

244 (I) a state institution of higher education;

245 (II) a school district or charter school; or

246 (III) a public transit district created under Title 17B, Chapter 2a, Part 8, Public Transit

247 District Act; and

248 (C) for the term beginning on July 1, 2010 and ending on June 30, 2011, represent one

249 of the following entities:

250 (I) a county;

251 (II) a municipality; or

252 (III) (Aa) a local district under Title 17B, Limited Purpose Local Government Entities -

253 Local Districts, that is not a public transit district created under Title 17B, Chapter 2a, Part 8,

254 Public Transit District Act ; or

255 (Bb) a special service district under Title 17A, Chapter 2, Part 13, Utah Special Service

256 District Act.

257 (2) The board shall:

258 (a) advise the division on matters related to the implementation and administration of

259 this part;

260 (b) develop plans, make recommendations, and assist in implementing the provisions

261 of this part;

262 (c) determine what public financial information shall be provided by participating state

263 entities and participating local entities, provided that the public financial information:

264 (i) only includes records that:

265 (A) are classified as public under Title 63, Chapter 2, Government Records Access and

266 Management Act;

267 (B) are an accounting of monies, funds, accounts, bonds, loans, expenditures, or

268 revenues, regardless of the source; and

269 (C) are owned, held, or administered by the participating state entity or participating

270 local entity required that is to provide the record; and

271 (ii) is of the type or nature that should be accessible to the public via a website based

272 on considerations of:

273 (A) the cost effectiveness of providing the information;

274 (B) the value of providing the information to the public; and
275 (C) privacy and security considerations; and
276 (d) evaluate the cost effectiveness of implementing specific information resources and
277 features on the website.

278 (3) The board shall annually elect a chair and a vice chair from its members.

279 (4) (a) Except for those members appointed under Subsection (1)(g), each member
280 shall serve a two year term.

281 (b) When a vacancy occurs in the membership for any reason, the replacement shall be
282 appointed for the remainder of the unexpired term.

283 (5) The board shall meet as it determines necessary to accomplish its duties.

284 (6) Reasonable notice shall be given to each member of the board prior to any meeting.

285 (7) A majority of the board constitutes a quorum for the transaction of business.

286 (8) (a) (i) Members who are not government employees shall receive no compensation
287 or benefits for their services, but may receive per diem and expenses incurred in the
288 performance of the member's official duties at the rates established by the Division of Finance
289 under Sections 63A-3-106 and 63A-3-107.

290 (ii) Members may decline to receive per diem and expenses for their service.

291 (b) (i) State government officer and employee members who do not receive salary, per
292 diem, or expenses from their agency for their service may receive per diem and expenses
293 incurred in the performance of their official duties from the board at the rates established by the
294 Division of Finance under Sections 63A-3-106 and 63A-3-107.

295 (ii) State government officer and employee members may decline to receive per diem
296 and expenses for their service.

297 (c) (i) Local government members who do not receive salary, per diem, or expenses
298 from the entity that they represent for their service may receive per diem and expenses incurred
299 in the performance of their official duties at the rates established by the Division of Finance
300 under Sections 63A-3-106 and 63A-3-107.

301 (ii) Local government members, if any, may decline to receive per diem and expenses
302 for their service.

303 Section 7. Section **63A-3-405** is enacted to read:

304 **63A-3-405. Rulemaking authority.**

305 (1) (a) After consultation with the board, and in accordance with Title 63, Chapter 46a,
306 Utah Administrative Rulemaking Act, the Division of Finance shall make rules to:

307 (i) require participating state entities to provide public financial information for
308 inclusion on the Utah Public Finance Website;

309 (ii) (A) establish size or budget thresholds to identify those local entities that qualify as
310 participating local entities as defined in this part;

311 (B) require participating local entities to provide public financial information in
312 accordance with the requirements of this part, with a specified content, reporting frequency and
313 form; and

314 (C) require the participating local entity's website to be accessible by link or other
315 direct route from the Utah Public Finance Website;

316 (iii) define, either uniformly for all participating state entities or participating local
317 entities, or on an entity by entity basis, the term "public financial information" using the
318 standards provided in Subsection 63A-3-404(2)(c).

319 (iv) establish procedures for obtaining, submitting, reporting, storing, and providing
320 public financial information on the Utah Public Finance Website and on local entities'
321 websites, which may include a specified reporting frequency and form; and

322 (v) determine the search methods and the search criteria that shall be made available to
323 the public as part of a website used by a participating local entity under the requirements of this
324 part, which criteria may include:

325 (A) fiscal year;

326 (B) expenditure type;

327 (C) name of the agency;

328 (D) payee;

329 (E) date;

330 (F) amount; and

331 (G) any other criteria designated by the rule.

332 (b) Rules that establish the obligations of participating entities under the authority of
333 Subsection (1)(a) shall give special consideration to the budget and resource limitations of a
334 participating entity that has a current annual budget of less than \$10 million.

335 (2) After consultation with the board, and in accordance with Title 63, Chapter 46a,

336 Utah Administrative Rulemaking Act, the Division of Finance may make rules to:

337 (a) require a participating state entity or a participating local entity to list certain
338 expenditures made by a person under a contract with the entity; and

339 (b) if a list is required under Subsection (2)(a), require the following information to be
340 included:

341 (i) the name of the participating state entity or a participating local entity making the
342 expenditure;

343 (ii) the name of the person receiving the expenditure;

344 (iii) the date of the expenditure;

345 (iv) the amount of the expenditure;

346 (v) the purpose of the expenditure;

347 (vi) the name of each party to the contract;

348 (vii) an electronic copy of the contract; or

349 (viii) any other criteria designated by rule.

350 **Section 8. Effective date.**

351 If approved by two-thirds of all the members elected to each house, this bill takes effect
352 upon approval by the governor, or the day following the constitutional time limit of Utah
353 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
354 the date of veto override.