

Senator Curtis S. Bramble proposes the following substitute bill:

OPEN AND PUBLIC MEETINGS -

ELECTRONIC NOTICE

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Dougall

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Open and Public Meetings Act to amend provisions related to electronic notice of public meetings and to establish a Utah Public Notice Website.

Highlighted Provisions:

This bill:

- ▶ modifies notice requirements in the Interlocal Cooperation Act to ensure compliance with notice provisions of the Open and Public Meetings Act;
- ▶ requires a public body to provide public notice of its meetings on the Utah Public Notice Website;
- ▶ provides exceptions for posting notice on the Utah Public Notice Website by a municipality or a district that has a budget of less than \$1 million;
- ▶ prohibits a court from voiding a final action of a public body due to a technology failure affecting posting public notice on the Internet under certain circumstances;
- ▶ amends the duties of the Division of Archives and Records Service;
- ▶ authorizes the Division of Archives and Records Service, with the technical assistance of the Department of Technology Services, to establish and maintain the Utah Public Notice Website;



- 26 ▶ provides requirements for the website;
- 27 ▶ provides that responsibility for the content of notices posted and the timing of
- 28 notices posted is the responsibility of the public body posting the notice; and
- 29 ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill coordinates with H.B. 65, Special and Local Districts Amendments, by
34 providing for changing terminology.

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **11-13-223**, as last amended by Chapter 14, Laws of Utah 2006

38 **52-4-202**, as renumbered and amended by Chapter 14 and last amended by Chapter
39 265, Laws of Utah 2006

40 **52-4-302**, as renumbered and amended by Chapter 14, Laws of Utah 2006

41 **63-2-901**, as last amended by Chapter 280, Laws of Utah 1992

42 ENACTS:

43 **63F-1-701**, Utah Code Annotated 1953

44 **63F-1-702**, Utah Code Annotated 1953



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

47 Section 1. Section **11-13-223** is amended to read:

48 **11-13-223. Open and public meetings.**

49 (1) To the extent that an interlocal entity is subject to or elects, by formal resolution of
50 its governing body to comply with the provisions of Title 52, Chapter 4, Open and Public
51 Meetings Act, it may for purposes of complying with those provisions:

52 (a) convene and conduct any public meeting by means of a telephonic or
53 telecommunications conference; and

54 (b) give public notice of its meeting pursuant to Section 52-4-202 [by:];

55 [~~(i) posting written notice at the principal office of the governing body of the interlocal~~
56 ~~entity, or if no such office exists, at the building where the meeting is to be held; and]~~

57 ~~[(ii) providing notice to at least one newspaper of general circulation within the~~
58 ~~boundaries of the municipality in which that principal office is located, or to a local media~~
59 ~~correspondent.]~~

60 (2) In order to convene and conduct a public meeting by means of a telephonic or
61 telecommunications conference, each interlocal entity shall if it is subject to or elects by formal
62 resolution of its governing body to comply with Title 52, Chapter 4, Open and Public Meetings
63 Act:

64 (a) in addition to giving public notice required by Subsection (1) provide:

65 (i) notice of the telephonic or telecommunications conference to the members of the
66 governing body at least 24 hours before the meeting so that they may participate in and be
67 counted as present for all purposes, including the determination that a quorum is present; and

68 (ii) a description of how the members will be connected to the telephonic or
69 telecommunications conference;

70 (b) establish written procedures governing the conduct of any meeting at which one or
71 more members of the governing body are participating by means of a telephonic or
72 telecommunications conference;

73 (c) provide for an anchor location for the public meeting at the principal office of the
74 governing body; and

75 (d) provide space and facilities for the physical attendance and participation of
76 interested persons and the public at the anchor location, including providing for interested
77 persons and the public to hear by speaker or other equipment all discussions and deliberations
78 of those members of the governing body participating in the meeting by means of telephonic or
79 telecommunications conference.

80 (3) Compliance with the provisions of this section by a governing body constitutes full
81 and complete compliance by the governing body with the corresponding provisions of Sections
82 52-4-201 and 52-4-202, to the extent that those sections are applicable to the governing body.

83 Section 2. Section **52-4-202** is amended to read:

84 **52-4-202. Public notice of meetings -- Emergency meetings.**

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

87 (a) agenda;

- 88 (b) date;
- 89 (c) time; and
- 90 (d) place.

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

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

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

97 ~~[(a)]~~ (i) posting written notice;

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

100 (B) beginning April 1, 2008 and except as provided in Subsection (3)(b), on the Utah
101 Public Notice Website created under Section 63F-1-701; and

102 ~~[(b)]~~ (ii) providing notice to:

103 ~~[(i)]~~ (A) at least one newspaper of general circulation within the geographic
104 jurisdiction of the public body; or

105 ~~[(ii)]~~ (B) a local media correspondent.

106 (b) A public body of a municipality under Title 10, Utah Municipal Code, a special
107 district under Title 17A, Special Districts, or a local district under Title 17B, Chapter 2, Local
108 Districts, is encouraged, but not required, to post written notice on the Utah Public Notice
109 Website, if the municipality or district has a current annual budget of less than \$1 million.

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

113 (4) A public body is encouraged to~~[-(a)]~~ develop and use additional electronic means
114 to provide notice of its meetings under Subsection (3)~~[(b)]~~].

115 ~~[(b) provide public notice to all other media agencies that make a periodic written~~
116 ~~request to receive them; and]~~

117 ~~[(c) post public notice of its meetings on the Internet.]~~

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

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

121 (ii) the best notice practicable is given.

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

123 (i) an attempt has been made to notify all of its members; and

124 (ii) a majority of its members approves holding the meeting.

125 (6) (a) A public notice that is required to include an agenda under Subsection (2) shall
126 provide reasonable specificity to notify the public as to the topics to be considered at the
127 meeting. Each topic shall be listed under an agenda item on the meeting agenda.

128 (b) Except as provided in Subsection (5) and Subsection (6)(c), a public body may not
129 consider a topic in an open meeting that is not:

130 (i) listed under an agenda item under Subsection (6)(a); and

131 (ii) included with the advanced public notice in accordance with this section.

132 (c) A topic not listed on the open meeting agenda that is raised during an open meeting
133 may be discussed but no final action may be taken by the public body during that meeting.

134 Section 3. Section **52-4-302** is amended to read:

135 **52-4-302. Suit to void final action -- Limitation -- Exceptions.**

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

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

140 (i) the public body otherwise complies with the provisions of Section 52-4-202; and

141 (ii) the failure was a result of unforeseen Internet hosting or communication technology
142 failure.

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

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

147 Section 4. Section **63-2-901** is amended to read:

148 **63-2-901. Division of Archives and Records Service created -- Duties.**

149 (1) There is created the Division of Archives and Records Service within the

150 Department of Administrative Services.

151 (2) The state archives shall:

152 (a) administer the state's archives and records management programs, including storage
153 of records, central microphotography programs, and quality control;

154 (b) apply fair, efficient, and economical management methods to the collection,
155 creation, use, maintenance, retention, preservation, disclosure, and disposal of records and
156 documents;

157 (c) establish standards, procedures, and techniques for the effective management and
158 physical care of records;

159 (d) conduct surveys of office operations and recommend improvements in current
160 records management practices, including the use of space, equipment, automation, and supplies
161 used in creating, maintaining, storing, and servicing records;

162 (e) establish standards for the preparation of schedules providing for the retention of
163 records of continuing value and for the prompt and orderly disposal of state records no longer
164 possessing sufficient administrative, historical, legal, or fiscal value to warrant further
165 retention;

166 (f) establish, maintain, and operate centralized microphotography lab facilities and
167 quality control for the state;

168 (g) provide staff and support services to the records committee;

169 (h) develop training programs to assist records officers and other interested officers and
170 employees of governmental entities to administer this chapter;

171 (i) provide access to public records deposited in the archives;

172 (j) administer and maintain the Utah Public Notice Website established under Section
173 63F-1-701;

174 [~~(j)~~] (k) provide assistance to any governmental entity in administering this chapter;
175 and

176 [~~(k)~~] (l) prepare forms for use by all governmental entities for a person requesting
177 access to a record.

178 (3) The state archives may:

179 (a) establish a report and directives management program; and

180 (b) establish a forms management program.

181 (4) The executive director of the Department of Administrative Services may direct the
182 state archives to administer other functions or services consistent with this chapter.

183 Section 5. Section **63F-1-701** is enacted to read:

184 **Part 7. Utah Public Notice Website**

185 **63F-1-701. Utah Public Notice Website -- Establishment and administration.**

186 (1) As used in this part:

187 (a) "Division" means the Division of Archives and Records Service of the Department
188 of Administrative Services.

189 (b) "Public body" has the same meaning as provided under Section 52-4-103.

190 (c) "Website" means the Utah Public Notice Website created under this section.

191 (2) There is created the Utah Public Notice Website to be administered by the Division
192 of Archives and Records Service.

193 (3) The website shall consist of an Internet website provided to assist the public to find
194 posted public notices of a public body of the state and its political subdivisions as required
195 under Title 52, Chapter 4, Open and Public Meetings Act, and under other state statutes or state
196 agency rules.

197 (4) The division, with the technical assistance of the Department of Technology
198 Services, shall create the website which shall:

199 (a) allow a public body, or other certified entity, to easily post any public notice
200 information that the public body or other entity is required to post under statute;

201 (b) allow the public to search the public notices by:

202 (i) public body name;

203 (ii) date of posting of the notice;

204 (iii) date of any meeting or deadline included as part of the public notice; and

205 (iv) any other criteria approved by the division;

206 (c) allow the public to search and view past, archived public notices;

207 (d) allow a person to subscribe to receive updates and notices associated with a public
208 body or a particular type of notice;

209 (e) be easily accessible by the public from the State of Utah home page;

210 (f) have a unique and simplified website address;

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

212 (h) include other links, features, or functionality that will assist the public in obtaining
213 and reviewing information in relation to public notices posted on the website, as may be
214 approved by the division.

215 (5) The division shall be responsible for:

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

218 (b) providing a mechanism for public bodies or other certified entities to have access to
219 the website for the purpose of posting and modifying notices; and

220 (c) maintaining an archive of all notices posted to the website.

221 (6) The timing for posting and the content of the public notices posted to the website
222 shall be the responsibility of the public body or other entity posting the notice.

223 Section 6. Section **63F-1-702** is enacted to read:

224 **63F-1-702. Notice and training by the Division of Archives and Records Service.**

225 (1) The division shall provide notice of the provisions and requirements of this chapter
226 to all public bodies that are subject to the provision of Subsection 52-4-202(3)(a)(ii).

227 (2) The division shall, as necessary, provide periodic training on the use of the Utah
228 Public Notice Website to public bodies that are authorized to post notice on the website.

229 Section 7. **Coordinating H.B. 222 with H.B. 65 -- Changing terminology.**

230 (1) If this H.B. 222 and H.B. 65, Special and Local Districts Amendments, both pass, it
231 is the intent of the Legislature that the Office of Legislative Research and General Counsel, in
232 preparing the Utah Code database for publication, modify Subsection 52-4-202(3)(b) to read:

233 "(b) A public body of a municipality under Title 10, Utah Municipal Code, a local
234 district under Title 17B, Limited Purpose Local Government Entities - Local Districts, a special
235 service district under Title 17A, Chapter 2, Part 13, Utah Special Service District Act, or a
236 dependent district under Title 17A, Chapter 3, Dependent Districts, is encouraged, but not
237 required, to post written notice on the Utah Public Notice Website, if the municipality or
238 district has a current annual budget of less than \$1 million."

239 (2) The coordinating clause in this H.B. 222 supersedes the coordinating clause for this
240 section provided in H.B. 65, Special and Local Districts.

H.B. 222 4th Sub. (Green) - Open and Public Meetings - Electronic Notice

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will require a General Fund appropriation of \$112,000 in FY 2008 to the Division of Archives and Records Services. Of that amount, \$57,000 is for one-time start-up costs to create and populate the Utah Public Notice Web Site. There is also a one-time General Fund reduction in FY 2008 due to the implementation date in the bill which reduces the on-going costs in the first year. The ongoing costs of maintaining the web site and related staff costs are estimated at \$71,700 and will be required in FY 2009.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund	\$0	\$71,700	\$71,700	\$0	\$0	\$0
General Fund, One-Time	\$0	\$57,000	\$0	\$0	\$0	\$0
General Fund, One-Time	\$0	(\$16,700)	\$0	\$0	\$0	\$0
Total	\$0	\$112,000	\$71,700	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
