

LEGAL NOTICE AMENDMENTS

2009 FIRST SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: John Dougall

LONG TITLE

General Description:

This bill amends legal notice provisions of the Utah Code.

Highlighted Provisions:

This bill:

- ▶ amends legal notice provisions of the Utah Code; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

- 9-3-409**, as last amended by Laws of Utah 2009, Chapter 388
- 10-2-607**, as last amended by Laws of Utah 2009, Chapter 388
- 11-14-318**, as last amended by Laws of Utah 2009, Chapter 388
- 11-39-103**, as last amended by Laws of Utah 2009, Chapter 388
- 17B-1-643**, as last amended by Laws of Utah 2009, Chapter 388
- 40-6-10**, as last amended by Laws of Utah 2009, Chapter 388
- 45-1-101**, as enacted by Laws of Utah 2009, Chapter 388
- 52-4-202**, as last amended by Laws of Utah 2009, Chapter 388



28 53A-19-102, as last amended by Laws of Utah 2009, Chapters 204 and 388

29 RENUMBERS AND AMENDS:

30 45-1-305, (Renumbered from 45-1-3, as enacted by Laws of Utah 1971, Chapter 108)

31 45-1-306, (Renumbered from 45-1-301, as renumbered and amended by Laws of Utah
32 2009, Chapter 388)

33 45-1-307, (Renumbered from 45-1-302, as renumbered and amended by Laws of Utah
34 2009, Chapter 388)

35 45-1-308, (Renumbered from 45-1-303, as renumbered and amended by Laws of Utah
36 2009, Chapter 388)

37 45-1-309, (Renumbered from 45-1-304, as renumbered and amended by Laws of Utah
38 2009, Chapter 388)

39

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

41 Section 1. Section 9-3-409 is amended to read:

42 9-3-409. **Actions on validity or enforceability of bonds -- Time for bringing**
43 **action.**

44 (1) In any suit, action, or proceeding involving the validity or enforceability of any
45 bond issued under this chapter or the security for them, any such bond reciting in substance that
46 it has been issued by the authority in connection with the Utah Science Center shall be
47 conclusively considered to have been issued for that purpose.

48 (2) (a) After receiving notice described in Subsection (2)(a)(ii), a person may contest:

49 (i) (A) the legality of a resolution;

50 (B) notice of bonds to be issued; or

51 (C) a provision made for the security and payment of the bonds; and

52 (ii) for a period of 30 days after the publication of the resolution authorizing the bonds,
53 or a notice of bonds to be issued by the authority containing those items described in Section
54 11-14-316:

55 (A) in a newspaper having general circulation in the area of operation; ~~[or]~~ and

56 (B) as required in Section 45-1-101.

57 (b) After the 30-day period no one has any cause of action to contest the regularity,
58 formality, or legality of the notice of bonds to be issued or the bonds for any cause whatsoever.

59 Section 2. Section **10-2-607** is amended to read:

60 **10-2-607. Notice of election.**

61 If the county legislative bodies find that the resolution or petition for consolidation and
62 their attachments substantially conform with the requirements of this part, they shall give
63 notice of the election for consolidation to the electors of each municipality which would
64 become part of the consolidated municipality by publication:

65 (1) in a newspaper having a general circulation within the boundaries of each
66 municipality to be consolidated at least once a week for four consecutive weeks prior to the
67 election on the question of consolidation; and

68 (2) in accordance with Section 45-1-101 for four [~~consecutive~~] weeks.

69 Section 3. Section **11-14-318** is amended to read:

70 **11-14-318. Public hearing required.**

71 (1) Before issuing bonds authorized under this chapter, a local political subdivision
72 shall:

73 (a) in accordance with Subsection (2), provide public notice of the local political
74 subdivision's intent to issue bonds; and

75 (b) hold a public hearing:

76 (i) if an election is required under this chapter:

77 (A) no sooner than 30 days before the day on which the notice of election is published
78 under Section 11-14-202; and

79 (B) no later than five business days before the day on which the notice of election is
80 published under Section 11-14-202; and

81 (ii) to receive input from the public with respect to:

82 (A) the issuance of the bonds; and

83 (B) the potential economic impact that the improvement, facility, or property for which
84 the bonds pay all or part of the cost will have on the private sector.

85 (2) A local political subdivision shall:

86 (a) publish the notice required by Subsection (1)(a):

87 (i) [~~(A)~~] once each week for two consecutive weeks in the official newspaper
88 described in Section 11-14-316[~~; and (B)~~] with the first publication being not less than 14 days
89 before the public hearing required by Subsection (1)(b); and

90 [~~(ii) in accordance with Section 45-1-101,~~
91 (ii) on the Utah Public Notice Website, created under Section 63F-1-701, no less than
92 14 days before the public hearing required by Subsection (1)(b); and

93 (b) ensure that the notice:

94 (i) identifies:

95 (A) the purpose for the issuance of the bonds;

96 (B) the maximum principal amount of the bonds to be issued;

97 (C) the taxes, if any, proposed to be pledged for repayment of the bonds; and

98 (D) the time, place, and location of the public hearing; and

99 (ii) informs the public that the public hearing will be held for the purposes described in
100 Subsection (1)(b)(ii).

101 Section 4. Section **11-39-103** is amended to read:

102 **11-39-103. Requirements for undertaking a building improvement or public**
103 **works project -- Request for bids -- Authority to reject bids.**

104 (1) If the estimated cost of the building improvement or public works project exceeds
105 the bid limit, the local entity shall, if it determines to proceed with the building improvement or
106 public works project:

107 (a) [~~(i)~~] request bids for completion of the building improvement or public works
108 project by:

109 (i) (A) publishing notice at least twice in a newspaper published or of general
110 circulation in the local entity at least five days before opening the bids; or

111 (B) if there is no newspaper published or of general circulation in the local entity as
112 described in Subsection (1)(a)(i)(A), posting notice at least five days before opening the bids in
113 at least five public places in the local entity and leaving the notice posted for at least three days;
114 and

115 (ii) publishing notice in accordance with Section 45-1-101, at least five days before
116 opening the bids; and

117 (b) except as provided in Subsection (3), enter into a contract for the completion of the
118 building improvement or public works project with:

119 (i) the lowest responsive responsible bidder; or

120 (ii) for a design-build project that the local entity began formulating before March 1,

121 2004 and with respect to which a contract is entered into before September 1, 2004, a
122 responsible bidder that:

123 (A) offers design-build services; and

124 (B) satisfies the local entity's criteria relating to financial strength, past performance,
125 integrity, reliability, and other factors that the local entity uses to assess the ability of a bidder
126 to perform fully and in good faith the contract requirements for a design-build project.

127 (2) (a) Each notice under Subsection (1)(a) shall indicate that the local entity may reject
128 any or all bids submitted.

129 (b) (i) The cost of a building improvement or public works project may not be divided
130 to avoid:

131 (A) exceeding the bid limit; and

132 (B) subjecting the local entity to the requirements of this section.

133 (ii) Notwithstanding Subsection (2)(b)(i), a local entity may divide the cost of a
134 building improvement or public works project that would, without dividing, exceed the bid
135 limit if the local entity complies with the requirements of this section with respect to each part
136 of the building improvement or public works project that results from dividing the cost.

137 (3) (a) The local entity may reject any or all bids submitted.

138 (b) If the local entity rejects all bids submitted but still intends to undertake the
139 building improvement or public works project, the local entity shall again request bids by
140 following the procedure provided in Subsection (1)(a).

141 (c) If, after twice requesting bids by following the procedure provided in Subsection
142 (1)(a), the local entity determines that no satisfactory bid has been submitted, the governing
143 body may undertake the building improvement or public works project as it considers
144 appropriate.

145 Section 5. Section **17B-1-643** is amended to read:

146 **17B-1-643. Imposing or increasing a fee for service provided by local district.**

147 (1) (a) Before imposing a new fee or increasing an existing fee for a service provided
148 by a local district, each local district board of trustees shall first hold a public hearing at which
149 any interested person may speak for or against the proposal to impose a fee or to increase an
150 existing fee.

151 (b) Each public hearing under Subsection (1)(a) shall be held in the evening beginning

152 no earlier than 6 p.m.

153 (c) A public hearing required under this Subsection (1) may be combined with a public
154 hearing on a tentative budget required under Section 17B-1-610.

155 (d) Except to the extent that this section imposes more stringent notice requirements,
156 the local district board shall comply with Title 52, Chapter 4, Open and Public Meetings Act,
157 in holding the public hearing under Subsection (1)(a).

158 (2) (a) Each local district board shall give notice of a hearing under Subsection (1) as
159 provided in Subsection (2)(b)(i) or (ii).

160 (b) (i) (A) The notice required under Subsection (2)(a) shall be published:

161 (I) [~~(Aa)~~] in a newspaper or combination of newspapers of general circulation in the
162 local district, if there is a newspaper or combination of newspapers of general circulation in the
163 local district; or

164 [~~(Bb)~~] (II) if there is no newspaper or combination of newspapers of general circulation
165 in the local district, the local district board shall post at least one notice per 1,000 population
166 within the local district, at places within the local district that are most likely to provide actual
167 notice to residents within the local district[~~;~~and].

168 [~~(H)~~ as required in Section 45-1-101.]

169 (B) The notice described in Subsection (2)(b)(i)(A)(I)[~~(Aa)~~]:

170 (I) shall be no less than 1/4 page in size and the type used shall be no smaller than 18
171 point, and surrounded by a 1/4-inch border;

172 (II) may not be placed in that portion of the newspaper where legal notices and
173 classified advertisements appear;

174 (III) whenever possible, shall appear in a newspaper that is published at least one day
175 per week;

176 (IV) shall be in a newspaper or combination of newspapers of general interest and
177 readership in the local district, and not of limited subject matter; and

178 (V) shall be run once each week for the two weeks preceding the hearing.

179 (ii) The notice described in Subsection (2)(b)(i)(A) shall state that the local district
180 board intends to impose or increase a fee for a service provided by the local district and will
181 hold a public hearing on a certain day, time, and place fixed in the notice, which shall be not
182 less than seven days after the day the first notice is published, for the purpose of hearing

183 comments regarding the proposed imposition or increase of a fee and to explain the reasons for
184 the proposed imposition or increase.

185 (c) (i) In lieu of providing notice under Subsection (2)(b), the local district board of
186 trustees may give the notice required under Subsection (2)(a) by mailing the notice to those
187 within the district who:

188 (A) will be charged the fee for a district service, if the fee is being imposed for the first
189 time; or

190 (B) are being charged a fee, if the fee is proposed to be increased.

191 (ii) Each notice under Subsection (2)(c)(i) shall comply with Subsection (2)(b)(ii).

192 (iii) A notice under Subsection (2)(c)(i) may accompany a district bill for an existing
193 fee.

194 (d) If the hearing required under this section is combined with the public hearing
195 required under Section 17B-1-610, the notice requirement under this Subsection (2) is satisfied
196 if a notice that meets the requirements of Subsection (2)(b)(ii) is combined with the notice
197 required under Section 17B-1-609.

198 (e) Proof that notice was given as provided in Subsection (2)(b) or (c) is prima facie
199 evidence that notice was properly given.

200 (f) If no challenge is made to the notice given of a hearing required by Subsection (1)
201 within 30 days after the date of the hearing, the notice is considered adequate and proper.

202 (3) After holding a public hearing under Subsection (1), a local district board may:

203 (a) impose the new fee or increase the existing fee as proposed;

204 (b) adjust the amount of the proposed new fee or the increase of the existing fee and
205 then impose the new fee or increase the existing fee as adjusted; or

206 (c) decline to impose the new fee or increase the existing fee.

207 (4) This section applies to each new fee imposed and each increase of an existing fee
208 that occurs on or after July 1, 1998.

209 (5) (a) This section does not apply to an impact fee.

210 (b) The imposition or increase of an impact fee is governed by Title 11, Chapter 36,
211 Impact Fees Act.

212 Section 6. Section **40-6-10** is amended to read:

213 **40-6-10. Procedures -- Adjudicative proceedings -- Emergency orders -- Hearing**

214 **examiners.**

215 (1) (a) The Board of Oil, Gas, and Mining and the Division of Oil, Gas, and Mining
216 shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative
217 Procedures Act, in their adjudicative proceedings.

218 (b) The board shall enact rules governing its practice and procedure that are not
219 inconsistent with Title 63G, Chapter 4, Administrative Procedures Act.

220 (2) When an emergency requiring immediate action is found by the division director or
221 any board member to exist, the division director or board member may issue an emergency
222 order according to the requirements and procedures of Title 63G, Chapter 4, Administrative
223 Procedures Act.

224 (3) A notice required by this chapter, except as otherwise provided, shall be given at
225 the election of the board [~~either~~] by:

226 (a) personal service[?]; or

227 [~~(a) by~~] (b) (i) one publication in:

228 (A) a daily newspaper of general circulation in the city of Salt Lake and county of Salt
229 Lake, Utah; and

230 [~~(b) in~~] (B) all newspapers of general circulation published in the county where the
231 land is affected, or some part of the land is situated; and

232 [~~(c) by~~] (ii) electronic publication in accordance with Section 45-1-101.

233 (4) (a) Any order made by the board is effective on issuance.

234 (b) All rules and orders issued by the board shall be:

235 (i) in writing;

236 (ii) entered in full in books to be kept by the board for that purpose;

237 (iii) indexed; and

238 (iv) public records open for inspection at all times during reasonable office hours.

239 (c) A copy of any rule, finding of fact, or order, certified by the board or by the division
240 director, shall be received in evidence in all courts of this state with the same effect as the
241 original.

242 (5) The board may act upon its own motion or upon the petition of any interested
243 person.

244 (6) (a) The board may appoint a hearing examiner to take evidence and to recommend

245 findings of fact and conclusions of law to the board.

246 (b) Any member of the board, division staff, or any other person designated by the
247 board may serve as a hearing examiner.

248 (c) The board may enter an order based on the recommendations of the examiner.

249 Section 7. Section **45-1-101** is amended to read:

250 **45-1-101. Legal notice publication requirements.**

251 (1) As used in this section:

252 (a) (i) "Legal notice" means:

253 (A) a communication required to be made public by a state statute or state agency rule;

254 or

255 (B) a notice required for judicial proceedings or by judicial decision.

256 (ii) "Legal notice" does not include a public notice published by a public body in

257 accordance with the provisions of Sections 52-4-202 and 63F-1-701.

258 (b) "Person" is as defined in Section 68-3-12.

259 ~~[(+)]~~ (2) Notwithstanding any other legal notice provision established in this Utah
260 Code, a person required to publish legal notice:

261 (a) until January 1, 2010, shall publish as required by the state statute establishing the
262 legal notice requirement; and

263 (b) beginning on January 1, 2010, shall publish legal notice:

264 (i) ~~[in a newspaper]~~ as required by the statute establishing the notice requirement; and

265 (ii) on a website established by the collective efforts of Utah's newspapers.

266 ~~[(2) Notwithstanding Subsection (1)(b), for counties of the first and second class,
267 beginning on January 1, 2012, a person required to publish a legal notice:]~~

268 ~~[(a) shall publish notice on the website described in Subsection (1)(b)(ii); and]~~

269 ~~[(b) may publish notice in a newspaper as required by the statute establishing the notice
270 requirement.]~~

271 ~~[(3) This section does not apply to a public notice published by a public body in
272 accordance with the provisions of Section 63F-1-701.]~~

273 ~~[(4) A notice described in Subsections (1) and (2) includes:]~~

274 ~~[(a) legal notices required for judicial proceedings or by judicial decision; and]~~

275 ~~[(b) notices required to be made available to the public by a state statute or a state~~

276 agency rule.]

277 (3) Beginning on January 1, 2012, notwithstanding any provision of law requiring
278 publication of legal notice in a newspaper, a person who publishes legal notice that is required
279 to be given in a county of the first or second class:

280 (a) is not required to comply with the requirement to publish legal notice in a
281 newspaper;

282 (b) is required to publish legal notice on the website described in Subsection (2)(b)(ii);
283 and

284 (c) may, in addition to complying with Subsection (3)(b), publish legal notice in a
285 newspaper.

286 [~~5~~] (4) The website described in Subsection [~~+~~] (2)(b)(ii) may not:

287 (a) charge a fee to [~~post~~] publish a legal notice on the website before January 1, 2012;
288 and

289 (b) charge more than \$10 to [~~post~~] publish a legal notice on the website on or after
290 January 1, 2012.

291 Section 8. Section **45-1-305**, which is renumbered from Section 45-1-3 is renumbered
292 and amended to read:

293 [~~45-1-3~~]. **45-1-305. Supplementary publication by broadcast -- Definitions.**

294 As used in this act:

295 (1) The word "broadcast" means the transmission of information by means of radio or
296 television facilities.

297 (2) The word "notice" means any notice that is required by law to be published.

298 (3) The word "station" means any radio or television station licensed for commercial
299 operation by the Federal Communications Commission.

300 Section 9. Section **45-1-306**, which is renumbered from Section 45-1-301 is
301 renumbered and amended to read:

302 [~~45-1-301~~]. **45-1-306. Notice given in broadcast -- Restrictions.**

303 (1) Any state or other public officer who is required by law to publish any notice may
304 supplement publication of the notice by causing the time, place and nature of the notice to be
305 broadcast at such times and intervals as determined suitable when in his judgment, the public
306 interest is or will be served.

307 (2) The material broadcast shall include only the time, place, and nature of the notice.

308 (3) In the broadcast of any notice or material authorized under this act, no reference by
309 name or the use of the voice or likeness of any person who is a candidate for elective public
310 office at the time of the broadcast shall be allowed.

311 (4) Notices by political subdivisions of this state shall be made only by stations whose
312 basic broadcast coverage encompasses the county or counties in which the notice is required to
313 be given.

314 Section 10. Section **45-1-307**, which is renumbered from Section 45-1-302 is
315 renumbered and amended to read:

316 **[45-1-302]. 45-1-307. Copy of notice broadcast retained by station.**

317 Each station which broadcasts any notice or material under this act shall retain a copy
318 or transcript of the text or material broadcast for a period of six months after the broadcast.

319 The copy shall be available for public review at reasonable times and places.

320 Section 11. Section **45-1-308**, which is renumbered from Section 45-1-303 is
321 renumbered and amended to read:

322 **[45-1-303]. 45-1-308. Proof of broadcast.**

323 Proof of publication or broadcast of the notice or other material under this act shall be
324 by affidavit of a duly authorized representative or agent of the broadcasting station.

325 Section 12. Section **45-1-309**, which is renumbered from Section 45-1-304 is
326 renumbered and amended to read:

327 **[45-1-304]. 45-1-309. Rates of broadcasters.**

328 Rates charged by broadcasters will be no greater than the lowest net rate charged for a
329 like number of announcements by any other advertiser.

330 Section 13. Section **52-4-202** is amended to read:

331 **52-4-202. Public notice of meetings -- Emergency meetings.**

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

334 (a) agenda;

335 (b) date;

336 (c) time; and

337 (d) place.

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

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

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

344 (i) posting written notice:

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

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

349 (ii) providing notice to:

350 (A) ~~[(F)]~~ at least one newspaper of general circulation within the geographic
351 jurisdiction of the public body; ~~[and]~~ or

352 ~~[(H) as required in Section 45-1-101; or]~~

353 (B) a local media correspondent.

354 (b) A public body of a municipality under Title 10, Utah Municipal Code, a local
355 district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a
356 special service district under Title 17D, Chapter 1, Special Service District Act, is encouraged,
357 but not required, to post written notice on the Utah Public Notice Website, if the municipality
358 or district has a current annual budget of less than \$1 million.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

384 Section 14. Section **53A-19-102** is amended to read:

385 **53A-19-102. Local school boards budget procedures.**

386 (1) (a) Prior to June 22 of each year, each local school board shall adopt a budget and
387 make appropriations for the next fiscal year.

388 (b) If the tax rate in the proposed budget exceeds the certified tax rate defined in
389 Section 59-2-924, the board shall comply with Section 59-2-919 in adopting the budget, except
390 as provided by Section 53A-17a-133.

391 (2) (a) Prior to the adoption of a budget containing a tax rate which does not exceed the
392 certified tax rate, the board shall hold a public hearing, as defined in Section 10-9a-103, on the
393 proposed budget.

394 (b) In addition to complying with Title 52, Chapter 4, Open and Public Meetings Act,
395 in regards to the public hearing described in Subsection (2)(a), the board shall:

396 (i) publish[~~:(A)~~] the required newspaper notice at least ten days before the day on
397 which the hearing is held; and

398 [~~(B) the required notice, in accordance with Section 45-1-101, at least ten days before~~
399 ~~the hearing; and]~~

400 (ii) file a copy of the proposed budget with the board's business administrator for
401 public inspection at least ten days prior to the hearing.

402 (3) The board shall file a copy of the adopted budget with the state auditor and the
403 State Board of Education.

404 Section 15. **Effective date.**

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

Legislative Review Note
as of 5-15-09 7:58 AM

Office of Legislative Research and General Counsel

S.B. 1002 - Legal Notice Amendments

Fiscal Note

2009 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
