

LEGAL NOTICE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: Bradley M. Daw

LONG TITLE

General Description:

This bill addresses the publication of statutorily required legal notices.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a newspaper that publishes a legal notice in the newspaper to charge no more than its average advertisement rate;
- ▶ requires a newspaper that publishes a legal notice in the newspaper to publish the legal notice on a public ~~§~~ legal ~~§~~ notice website at no additional cost ~~§~~ [;] ; ~~§~~
- ▶ eliminates an exception from publication requirements for a county of the first or second class; ~~§~~ and

~~[—→—requires that certain bids for construction or improvement projects be published in a newspaper in the county in which the work is to be performed; and] ~~§~~~~

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

S.B. 85



28 45-1-101, as last amended by Laws of Utah 2010, Chapters 90 and 254

29 ~~§~~ → [~~72-6-107, as last amended by Laws of Utah 2010, Chapter 90~~] ← ~~§~~

30 REPEALS:

31 45-1-202, as last amended by Laws of Utah 2009, Chapter 144 and renumbered and
32 amended by Laws of Utah 2009, Chapter 388



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

35 Section 1. Section 45-1-101 is amended to read:

36 **45-1-101. Legal notice publication requirements.**

37 (1) As used in this section:

38 (a) "Average advertisement rate" means a newspaper's gross advertising revenue for the
39 preceding calendar quarter divided by the gross column-inch space used in the newspaper for
40 advertising for the previous calendar quarter.

41 (b) "Column-inch space" means a unit of space that is one standard column wide by
42 one inch high.

43 (c) "Gross advertising revenue" means the total revenue obtained by a newspaper from
44 all of its qualifying advertising segments.

45 ~~(a)~~ (d) (i) "Legal notice" means:

46 ~~(i)~~ (A) a communication required to be made public by a state statute or state agency
47 rule; or

48 ~~(ii)~~ (B) a notice required for judicial proceedings or by judicial decision.

49 ~~(b)~~ (ii) "Legal notice" does not include a public notice published by a public body in
50 accordance with the provisions of Sections 52-4-202 and 63F-1-701.

51 (e) "Public ~~§~~ → legal ← ~~§~~ notice website" means the website described in Subsection (2)(b)
51a for the
52 purpose of publishing a legal notice online.

53 (f) (i) "Qualifying advertising segment" means, except as provided in Subsection
54 (1)(f)(ii), a category of print advertising sold by a newspaper, including classified advertising,
55 line advertising, and display advertising.

56 (ii) "Qualifying advertising segment" does not include legal notice advertising.

57 (2) ~~(a)~~ Notwithstanding any other legal notice provision established [~~in this Utah~~
58 ~~Code~~] by law, a person required by law to publish legal notice shall publish the notice:

59 ~~[(i) until January 1, 2010, shall publish as required by the statute establishing the legal~~
60 ~~notice requirement; and]~~

61 ~~[(ii) beginning on January 1, 2010, shall publish legal notice:]~~

62 ~~[(A)] (a) as required by the statute establishing the legal notice requirement; and~~

63 ~~[(B)] (b) on a public ~~§~~ → legal ← ~~§~~ notice website established by the [collective] combined~~
63a ~~efforts of~~
64 ~~Utah's newspapers[:] that collectively distribute newspapers to the majority of newspaper~~
65 ~~subscribers in the state.~~

66 (3) The public ~~§~~ → legal ← ~~§~~ notice website shall:

67 (a) be available for viewing and searching by the general public, free of charge; and

68 (b) accept legal notice posting from any newspaper in the state.

69 ~~[(b)] (4) A [person's publishing] person that publishes legal notice as required under~~
70 ~~Subsection (2)[(a)] is not [relieve the person] relieved from complying with an~~
71 ~~otherwise applicable requirement under Title 52, Chapter 4, Open and Public Meetings Act.~~

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

75 ~~[(a) is not required to comply with the requirement to publish legal notice in a~~
76 ~~newspaper;]~~

77 ~~[(b) is required to publish legal notice on the website described in Subsection~~
78 ~~(2)(a)(ii)(B); and]~~

79 ~~[(c) may, in addition to complying with Subsection (3)(b), publish legal notice in a~~
80 ~~newspaper.]~~

81 ~~[(4) The website described in Subsection (2)(a)(ii)(B) may not:]~~

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

83 ~~[(b) charge more than \$10 to publish a legal notice on the website on or after January 1,~~
84 ~~2012.]~~

85 (5) If legal notice is required by law to be published in a newspaper, the newspaper:

86 (a) may not charge more for publication than the newspaper's average advertisement
87 rate; and

88 (b) shall publish the legal notice on the public ~~§~~ → legal ← ~~§~~ notice website at no additional
88a cost.

89 (6) If legal notice is not required by law to be published in a newspaper, a newspaper

90 may not:

91 (a) charge more than 50% of the newspaper's average advertisement rate to publish

92 legal notice on the public ~~§~~ → **legal** ← ~~§~~ notice website; or

93 (b) require the legal notice to be published in the newspaper.

94 (7) If a newspaper offers to publish a type of legal notice described in Subsection (5), it

95 may not refuse to publish a type of legal notice described in Subsection (6).

96 ~~§~~ → [Section 2. Section 72-6-107 is amended to read:

97 ~~72-6-107. Construction or improvement of highway -- Contracts -- Retainage --~~

98 ~~Certain indemnification provisions forbidden.~~

99 ~~—— (1) As used in this section, "design professional" means:~~

100 ~~—— (a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;~~

101 ~~—— (b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects~~

102 ~~Licensing Act; and~~

103 ~~—— (c) a professional engineer or professional land surveyor, licensed under Title 58,~~

104 ~~Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.~~

105 ~~—— (2) (a) The department shall make plans, specifications, and estimates prior to the~~

106 ~~construction or improvement of any state highway.~~

107 ~~—— (b) Except as provided in Section 63G-6-502 and except for construction or~~

108 ~~improvements performed with state prison labor, a construction or improvement project with~~

109 ~~an estimated cost exceeding the bid limit as defined in Section 72-6-109 for labor and materials~~

110 ~~shall be performed under contract awarded to the lowest responsible bidder.~~

111 ~~—— (c) (i) The department:~~

112 ~~—— (A) shall publish an advertisement for bids in accordance with Section 45-1-101, for a~~

113 ~~period of two weeks ending no more than 10 days before bids are opened; and~~

114 ~~—— (B) [may] shall publish an advertisement for bids in a newspaper of general circulation~~

115 ~~in the county in which the work is to be performed.~~

116 ~~—— (ii) If the department publishes an advertisement for bids in a newspaper under~~

117 ~~Subsection (2)(c)(i)(B), the department shall publish the advertisement at least once a week for~~

118 ~~two consecutive weeks, with the last publication at least 10 days before bids are opened.~~

119 ~~—— (d) The department shall receive sealed bids and open the bids at the time and place~~

120 ~~designated in the advertisement. The department may then award the contract but may reject] ← §~~

121 ~~§→ [any and all bids:~~
 122 ~~———(e) If the department's estimates are substantially lower than any responsible bid~~
 123 ~~received, the department may perform any work by force account.~~
 124 ~~———(3) If any payment on a contract with a private contractor for construction or~~
 125 ~~improvement of a state highway is retained or withheld, the payment shall be retained or~~
 126 ~~withheld and released as provided in Section 13-8-5.~~
 127 ~~———(4) If the department performs a construction or improvement project by force account,~~
 128 ~~the department shall:~~
 129 ~~———(a) provide an accounting of the costs and expenditures of the improvement including~~
 130 ~~material and labor;~~
 131 ~~———(b) disclose the costs and expenditures to any person upon request and allow the person~~
 132 ~~to make a copy and pay for the actual cost of the copy; and~~
 133 ~~———(c) perform the work using the same specifications and standards that would apply to a~~
 134 ~~private contractor.~~
 135 ~~———(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the~~
 136 ~~department shall establish procedures for:~~
 137 ~~———(a) hearing evidence that a region within the department violated this section; and~~
 138 ~~———(b) administering sanctions against the region if the region is found in violation.~~
 139 ~~———(6) (a) Beginning May 12, 2009, a contract, including an amendment to an existing~~
 140 ~~contract, entered into under authority of this chapter may not require that a design professional~~
 141 ~~indemnify another from liability claims that arise out of the design professional's services,~~
 142 ~~unless the liability claim arises from the design professional's negligent act, wrongful act, error~~
 143 ~~or omission, or other liability imposed by law.~~
 144 ~~———(b) Subsection (6)(a) may not be waived by contract.~~
 145 ~~———(c) Notwithstanding Subsections (6)(a) and (b), a design professional may be required~~
 146 ~~to indemnify a person for whom the design professional has direct or indirect control or~~
 147 ~~responsibility.] ←§~~

148 Section ~~§→~~ [3] 2 ←§ . Repealer.

149 This bill repeals:

150 Section 45-1-202, Maximum charge.