

## **SB0085S03 compared with SB0085**

{deleted text} shows text that was in SB0085 but was deleted in SB0085S03.

inserted text shows text that was not in SB0085 but was inserted into SB0085S03.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

**Representative Bradley M. Daw proposes the following substitute bill:**

### **LEGAL NOTICE AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen H. Urquhart**

House Sponsor: {\_\_\_\_\_} **Bradley M. Daw**

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### **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{.3};
- ▶ **establishes legal notice requirements for special service districts;**
- ▶ eliminates an exception from publication requirements for a county of the first or second class;

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- ▶ {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; exempts a notice of delinquency in the payment of property taxes from certain publication requirements; and}
- ▶ makes technical changes.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

None

### **Utah Code Sections Affected:**

AMENDS:

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

~~{72-6-107}~~**59-2-1332.5**, as last amended by Laws of Utah ~~{2010}~~**2009**, Chapter  
~~{90}~~**388**

REPEALS:

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

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

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

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

(1) As used in this section:

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

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

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

[~~(a)~~] (d) (i) "Legal notice" means:

[~~(f)~~] (A) a communication required to be made public by a state statute or state agency

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rule; or

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

[~~(b)~~] (ii) "Legal notice" does not include:

(A) a public notice published by a public body in accordance with the provisions of Sections 52-4-202 and 63F-1-701~~t~~

~~(e) "Public"~~[-]; or

(B) a notice of delinquency in the payment of property taxes described in Section 59-2-1332.5.

(e) "Public legal" notice website" means the website described in Subsection (2)(b) for the purpose of publishing a legal notice online.

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

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

(g) "Special service district" is as defined in Section 17D-1-102.

(2) [~~(a)~~~~Notwithstanding~~] Except as provided in Subsections (8) and (9), notwithstanding any other legal notice provision established [~~in this Utah Code~~] by law, a person required by law to publish legal notice shall publish the notice:

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

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

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

[~~(B)~~ (b) on a public legal notice website established by the [co]llective] combined efforts of Utah's newspapers[-] that collectively distribute newspapers to the majority of newspaper subscribers in the state.

(3) The public legal notice website shall:

(a) be available for viewing and searching by the general public, free of charge; and  
(b) accept legal notice posting from any newspaper in the state.

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

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

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

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

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

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

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

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

(5) If legal notice is required by law to be published in a newspaper, or if a special service district publishes legal notice in a newspaper, the newspaper:

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

(b) shall publish the legal notice on the public ~~legal~~ notice website at no additional cost.

(6) If legal notice is not required by law to be published in a newspaper, or if a special service district with an annual operating budget of less than \$250,000 chooses to publish a legal notice on the public notice website without publishing the complete notice in the newspaper, a newspaper {may not}:

(a) may not charge more than {50%} an amount equal to 15% of the newspaper's average advertisement rate for publishing five column lines in the newspaper to publish legal notice on the public ~~legal~~ notice website; {or}

(b) may not require that the legal notice {to} be published in the newspaper{.}  
{and}

(c) at the request of the person publishing on the legal notice website, shall publish in the newspaper up to five column lines, at no additional charge, that briefly describe the legal notice and provide the web address where the full public legal notice can be found.

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(7) If a newspaper offers to publish ~~or~~the type of legal notice described in Subsection (5), it may not refuse to publish ~~or~~the type of legal notice described in Subsection (6).

(8) Notwithstanding the requirements of a statute that requires the publication of legal notice, if legal notice is required by law to be published by a special service district with an annual operating budget of \$250,000 or more, the special service district shall satisfy its legal notice publishing requirements by:

(a) mailing a written notice, postage prepaid:

(i) to each voter in the special service district; and

(ii) that contains the information required by the statute that requires the publication of legal notice; or

(b) publishing the legal notice in a newspaper and on the legal public notice website as described in Subsection (5).

(9) Notwithstanding the requirements of a statute that requires the publication of legal notice, if legal notice is required by law to be published by a special service district with an annual operating budget of less than \$250,000, the special service district shall satisfy its legal notice publishing requirements by:

(a) mailing a written notice, postage prepaid:

(i) to each voter in the special service district; and

(ii) that contains the information required by the statute that requires the publication of legal notice; or

(b) publishing the legal notice in a newspaper and on the public legal notice website as described in Subsection (5); or

(c) publishing the legal notice on the public legal notice website as described in Subsection (6).

Section 2. Section 59-2-1332.5 is amended to read:

**59-2-1332.5. Mailing notice of delinquency or publication of delinquent list --**

### **Contents -- Notice -- Definitions.**

(1) The county treasurer shall provide notice of delinquency in the payment of property taxes:

(a) except as provided in Subsection (4), on or before December 31 of each calendar year; and

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- (b) in a manner described in Subsection (2).
- (2) A notice of delinquency in the payment of property taxes shall be provided by:
  - (a) (i) mailing a written notice, postage prepaid:
    - (A) to each delinquent taxpayer; and
    - (B) that includes the information required by Subsection (3)(a); and
  - (ii) making available to the public a list of delinquencies in the payment of property taxes:
    - (A) ~~[(H)]~~ by electronic means; and
    - ~~[(H)] in accordance with Section 45-1-101; and]~~
    - (B) that includes the information required by Subsection (3)(b); or
  - (b) publishing a list of delinquencies in the payment of property taxes:
    - (i) in one issue of a newspaper having general circulation in the county;
    - (ii) that lists each delinquency in alphabetical order by:
      - (A) the last name of the delinquent taxpayer; or
      - (B) if the delinquent taxpayer is a business entity, the name of the business entity; and
    - (iii) that includes the information required by Subsection (3)(b).
- (3) (a) A written notice of delinquency in the payment of property taxes described in Subsection (2)(a)(i) shall include:
  - (i) a statement that delinquent taxes are due;
  - (ii) the amount of delinquent taxes due, not including any penalties imposed in accordance with this chapter;
  - (iii) (A) the name of the delinquent taxpayer; or
  - (B) if the delinquent taxpayer is a business entity, the name of the business entity;
  - (iv) (A) a description of the delinquent property; or
  - (B) the property identification number of the delinquent property;
  - (v) a statement that a penalty shall be imposed in accordance with this chapter; and
  - (vi) a statement that interest accrues as of January 1 following the date of the delinquency unless before January 16 the following are paid:
    - (A) the delinquent taxes; and
    - (B) the penalty.
- (b) The list of delinquencies described in Subsection (2)(a)(ii) or (2)(b) shall include:

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- (i) the amount of delinquent taxes due, not including any penalties imposed in accordance with this chapter;
  - (ii) (A) the name of the delinquent taxpayer; or
    - (B) if the delinquent taxpayer is a business entity, the name of the business entity;
  - (iii) (A) a description of the delinquent property; or
    - (B) the property identification number of the delinquent property;
  - (iv) a statement that a penalty shall be imposed in accordance with this chapter; and
  - (v) a statement that interest accrues as of January 1 following the date of the delinquency unless before January 16 the following are paid:
    - (A) the delinquent taxes; and
    - (B) the penalty.
- (4) Notwithstanding Subsection (1)(a), if the county legislative body extends the date when taxes become delinquent under Subsection 59-2-1332(1), the notice of delinquency in the payment of property taxes shall be provided on or before January 10.
- (5) (a) In addition to the notice of delinquency in the payment of property taxes required by Subsection (1), a county treasurer may in accordance with this Subsection (5) mail a notice that property taxes are delinquent:
- (i) to:
    - (A) a delinquent taxpayer;
    - (B) an owner of record of the delinquent property;
    - (C) any other interested party that requests notice; or
    - (D) a combination of Subsections (5)(a)(i)(A) through (C); and
  - (ii) at any time that the county treasurer considers appropriate.
- (b) A notice mailed in accordance with this Subsection (5):
- (i) shall include the information required by Subsection (3)(a); and
  - (ii) may include any information that the county treasurer finds is useful to the owner of record of the delinquent property in determining:
    - (A) the status of taxes owed on the delinquent property;
    - (B) any penalty that is owed on the delinquent property;
    - (C) any interest charged under Section 59-2-1331 on the delinquent property; or
    - (D) any related matters concerning the delinquent property.

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- (6) As used in this section, "business entity" means:
  - (a) an association;
  - (b) a corporation;
  - (c) a limited liability company;
  - (d) a partnership;
  - (e) a trust; or
  - (f) a business entity similar to Subsections (6)(a) through (e).

{ Section 2. Section 72-6-107 is amended to read:

**72-6-107. Construction or improvement of highway -- Contracts -- Retainage -- Certain indemnification provisions forbidden.**

- (1) As used in this section, "design professional" means:
  - (a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;
  - (b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects Licensing Act; and
  - (c) a professional engineer or professional land surveyor, licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.
- (2) (a) The department shall make plans, specifications, and estimates prior to the construction or improvement of any state highway.
- (b) Except as provided in Section 63G-6-502 and except for construction or improvements performed with state prison labor, a construction or improvement project with an estimated cost exceeding the bid limit as defined in Section 72-6-109 for labor and materials shall be performed under contract awarded to the lowest responsible bidder.
- (c) (i) The department:
  - (A) shall publish an advertisement for bids in accordance with Section 45-1-101, for a period of two weeks ending no more than 10 days before bids are opened; and
  - (B) [may] shall publish an advertisement for bids in a newspaper of general circulation in the county in which the work is to be performed.
- (ii) If the department publishes an advertisement for bids in a newspaper under Subsection (2)(c)(i)(B), the department shall publish the advertisement at least once a week for two consecutive weeks, with the last publication at least 10 days before bids are opened.
- (d) The department shall receive sealed bids and open the bids at the time and place

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designated in the advertisement. The department may then award the contract but may reject any and all bids.

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

### **‡ Section 3. Repealer.**

This bill repeals:

**Section 45-1-202, Maximum charge.**

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**Legislative Review Note**

— as of 2-11-11 12:07 PM

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**Office of Legislative Research and General Counsel**