

## SB0099S02 compared with SB0099S01

~~text~~ shows text that was in SB0099S01 but was deleted in SB0099S02.

text shows text that was not in SB0099S01 but was inserted into SB0099S02.

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Senator Deidre M. Henderson proposes the following substitute bill:

### TRANSPARENCY FOR POLITICAL SUBDIVISIONS

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Deidre M. Henderson**

House Sponsor: Craig Hall

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#### LONG TITLE

##### General Description:

This bill modifies provisions relating to local government disclosures.

##### Highlighted Provisions:

This bill:

- ▶ requires a local district or a special service district to post on the Utah Public Notice Website the contact information of each member of the district's governing body;
- ▶ removes a size and budget threshold for local government participation in the Utah Public Finance Website; and
- ▶ makes technical and conforming changes.

##### Money Appropriated in this Bill:

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None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**17B-1-303**, as last amended by Laws of Utah 2014, Chapters 362 and 377

~~{17B-1-301}~~17D-1-106, as last amended by Laws of Utah ~~{2015}~~2014, Chapter ~~{437}~~362

**63A-3-401**, as last amended by Laws of Utah 2015, Chapter 38

**63A-3-403**, as last amended by Laws of Utah 2014, Chapters 75, 185, and 387

**63A-3-405**, as last amended by Laws of Utah 2012, Chapter 94

**63F-1-701**, as last amended by Laws of Utah 2013, Chapter 63

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

Section 1. Section **17B-1-303** is amended to read:

**17B-1-303. Term of board of trustees members -- Oath of office -- Bond -- Notice of board member contact information.**

(1) (a) Except as provided in Subsections (1)(b) and (c), the term of each member of a board of trustees shall begin at noon on the January 1 following the member's election or appointment.

(b) The term of each member of the initial board of trustees of a newly created local district shall begin:

(i) upon appointment, for an appointed member; and

(ii) upon the member taking the oath of office after the canvass of the election at which the member is elected, for an elected member.

(c) The term of each water conservancy district board member appointed by the governor as provided in Subsection 17B-2a-1005(2)(c) shall:

(i) begin on the later of the following:

(A) the date on which the Senate consents to the appointment; or

(B) the expiration date of the prior term; and

(ii) end on the February 1 that is approximately four years after the date described in

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Subsection (1)(c)(i)(A) or (B).

(2) (a) (i) Except as provided in Subsection (8), and subject to Subsection (2)(a)(ii), the term of each member of a board of trustees shall be four years, except that approximately half the members of the initial board of trustees, chosen by lot, shall serve a two-year term so that the term of approximately half the board members expires every two years.

(ii) (A) If the terms of members of the initial board of trustees of a newly created local district do not begin on January 1 because of application of Subsection (1)(b), the terms of those members shall be adjusted as necessary, subject to Subsection (2)(a)(ii)(B), to result in the terms of their successors complying with:

(I) the requirement under Subsection (1)(a) for a term to begin on January 1 following a member's election or appointment; and

(II) the requirement under Subsection (2)(a)(i) that terms be four years.

(B) An adjustment under Subsection (2)(a)(ii)(A) may not add more than a year to or subtract more than a year from a member's term.

(b) Each board of trustees member shall serve until a successor is duly elected or appointed and qualified, unless the member earlier is removed from office or resigns or otherwise leaves office.

(c) If a member of a board of trustees no longer meets the qualifications of Subsection 17B-1-302(1), or if the member's term expires without a duly elected or appointed successor:

(i) the member's position is considered vacant, subject to Subsection (2)(c)(ii); and

(ii) the member may continue to serve until a successor is duly elected or appointed and qualified.

(3) (a) (i) Before entering upon the duties of office, each member of a board of trustees shall take the oath of office specified in Utah Constitution Article IV, Section 10.

(ii) An oath of office may be administered by a judge, county clerk, notary public, or the local district clerk.

(b) Each oath of office shall be filed with the clerk of the local district.

(c) The failure of a board of trustees member to take the oath required by Subsection (3)(a) does not invalidate any official act of that member.

(4) A board of trustees member is not limited in the number of terms the member may serve.

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(5) Except as provided in Subsection (6), each midterm vacancy in a board of trustees position shall be filled as provided in Section 20A-1-512.

(6) (a) For purposes of this Subsection (6):

(i) "Appointed official" means a person who:

(A) is appointed as a member of a local district board of trustees by a county or municipality entitled to appoint a member to the board; and

(B) holds an elected position with the appointing county or municipality.

(ii) "Appointing entity" means the county or municipality that appointed the appointed official to the board of trustees.

(b) The board of trustees shall declare a midterm vacancy for the board position held by an appointed official if:

(i) during the appointed official's term on the board of trustees, the appointed official ceases to hold the elected position with the appointing entity; and

(ii) the appointing entity submits a written request to the board to declare the vacancy.

(c) Upon the board's declaring a midterm vacancy under Subsection (6)(b), the appointing entity shall appoint another person to fill the remaining unexpired term on the board of trustees.

(7) (a) Each member of a board of trustees shall give a bond for the faithful performance of the member's duties, in the amount and with the sureties prescribed by the board of trustees.

(b) The local district shall pay the cost of each bond required under Subsection (7)(a).

(8) The lieutenant governor may extend the term of an elected district board member by one year in order to compensate for a change in the election year under Subsection 17B-1-306(13).

(9) (a) A local district shall:

(i) post on the Utah Public Notice Website created in Section 63F-1-701 the name, phone number, and email address of each member of the local district's board of trustees;

(ii) update the information described in Subsection (9)(a)(i) when:

(A) the membership of the board of trustees changes; or

(B) a member of the board of trustees' phone number or email address changes; and

(iii) post any update required under Subsection (9)(a)(ii) within 30 days after the day

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on which the change requiring the update occurs.

(b) This Subsection (9) applies regardless of whether the county or municipal legislative body also serves as the board of trustees of the local district.

Section 2. Section 17D-1-106 is amended to read:

### **17D-1-106. Special service districts subject to other provisions.**

(1) A special service district is, to the same extent as if it were a local district, subject to and governed by:

(a) (i) Sections 17B-1-105, 17B-1-107, 17B-1-108, 17B-1-110, 17B-1-111, 17B-1-112, 17B-1-113, 17B-1-116, 17B-1-118, 17B-1-119, 17B-1-120, 17B-1-121, 17B-1-304, 17B-1-307, 17B-1-310, 17B-1-311, 17B-1-312, 17B-1-313, and 17B-1-314; and

(ii) Sections 17B-1-305 and 17B-1-306, to the extent that a county legislative body or a municipal legislative body, as applicable, has delegated authority to an administrative control board with elected members, under Section 17D-1-301.

(b) Subsections:

(i) 17B-1-301(3) and (4); and

(ii) 17B-1-303(1), (2)(a) and (b), (3), (4), (5), (6), and (7), and (7)9;

(c) Section 20A-1-512;

(d) Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts;

(e) Title 17B, Chapter 1, Part 7, Local District Budgets and Audit Reports;

(f) Title 17B, Chapter 1, Part 8, Local District Personnel Management; and

(g) Title 17B, Chapter 1, Part 9, Collection of Service Fees and Charges.

(2) For purposes of applying the provisions listed in Subsection (1) to a special service district, each reference in those provisions to the local district board of trustees means the governing body.

~~{ Section 2. Section 17D-1-301 is amended to read:~~

~~17D-1-301. Governance of a special service district -- Authority to create and delegate authority to an administrative control board -- Limitations on authority to delegate -- Notice of governing body contact information.~~

~~(1) Each special service district shall be governed by the legislative body of the county or municipality that creates the special service district, subject to any delegation under this section of a right, power, or authority to an administrative control board.~~

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~~—— (2) At the time a special service district is created or at any time thereafter, the legislative body of a county or municipality that creates a special service district may, by resolution or ordinance:~~

~~—— (a) create an administrative control board for the special service district;~~

~~—— (b) subject to Subsection (3), delegate to the administrative control board the exercise of any right, power, or authority that the legislative body possesses with respect to the governance of the special service district; and~~

~~—— (c) specify the members of the initial administrative control board by name or other designation that clearly identifies each member of the initial administrative control board.~~

~~—— (3) A county or municipal legislative body may not delegate to an administrative control board of a special service district the power to:~~

~~—— (a) annex an area to an existing special service district or add a service within the area of an existing special service district under Part 4, Annexing a New Area and Adding a New Service;~~

~~—— (b) designate, under Section 17D-1-107, the classes of special service district contracts that are subject to Title 11, Chapter 39, Building Improvements and Public Works Projects;~~

~~—— (c) levy a tax on the taxable property within the special service district;~~

~~—— (d) issue special service district bonds payable from taxes;~~

~~—— (e) call or hold an election for the authorization of a property tax or the issuance of bonds;~~

~~—— (f) levy an assessment;~~

~~—— (g) issue interim warrants or bonds payable from an assessment; or~~

~~—— (h) appoint a board of equalization under Section 11-42-403.~~

~~—— (4) (a) A county or municipal legislative body that has delegated a right, power, or authority under this section to an administrative control board may at any time modify, limit, or revoke any right, power, or authority delegated to the administrative control board.~~

~~—— (b) A modification, limitation, or revocation under Subsection (4)(a) does not affect the validity of an action taken by an administrative control board before the modification, limitation, or revocation.~~

~~—— (5) A special service district shall:~~

~~—— (a) post on the Utah Public Notice Website created in Section 63F-1-701 the name;~~

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~~phone number, and email address of each member of the special service district's governing body;~~

- ~~— (b) update the information described in Subsection (5)(a) when:~~
- ~~— (i) the membership of the governing body changes; or~~
- ~~— (ii) a member of the governing body's phone number or email address changes; and~~
- ~~— (c) post any update required under Subsection (5)(b) within 30 days after the day on which the change requiring the update occurs.~~

‡ Section 3. Section **63A-3-401** is amended to read:

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

As used in this part:

(1) "Board" means the Utah Transparency Advisory Board created under Section 63A-3-403.

(2) "Division" means the Division of Finance of the Department of Administrative Services.

(3) (a) "Independent entity," except as provided in Subsection (3)(c), means the same as that term is defined in Section 63E-1-102.

(b) "Independent entity" includes an entity that is part of an independent entity described in this Subsection (3), if the entity is considered a component unit of the independent entity under the governmental accounting standards issued by the Governmental Accounting Standards Board.

(c) "Independent entity" does not include:

(i) the Workers' Compensation Fund created in Section 31A-33-102; or

(ii) the Utah State Retirement Office created in Section 49-11-201.

(4) "Participating local entity" means each of the following local entities~~], if the entity meets the size or budget thresholds established by the board under Subsection 63A-3-403(3)(c)]~~:

(a) a county;

(b) a municipality;

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

(d) a special service district under Title 17D, Chapter 1, Special Service District Act;

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(e) a school district;

(f) a charter school;

(g) except for a taxed interlocal entity described in Section 11-13-315, an interlocal entity as defined in Section 11-13-103; and

(h) except for a taxed interlocal entity described in Section 11-13-315, an entity that is part of an entity described in Subsections (4)(a) through (g), if the entity is considered a component unit of the entity described in Subsections (4)(a) through (g) under the governmental accounting standards issued by the Governmental Accounting Standards Board.

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

(b) "Participating state entity" includes an entity that is part of an entity described in Subsection (5)(a), if the entity is considered a component unit of the entity described in Subsection (5)(a) under the governmental accounting standards issued by the Governmental Accounting Standards Board.

(6) "Public financial information" means records that are required to be made available on the Utah Public Finance Website, a participating local entity's website, or an independent entity's website as required by this part, and as the term "public financial information" is defined by rule under Section 63A-3-404.

Section 4. Section **63A-3-403** is amended to read:

**63A-3-403. Utah Transparency Advisory Board -- Creation -- Membership -- Duties.**

(1) There is created within the department the Utah Transparency Advisory Board comprised of members knowledgeable about public finance or providing public access to public information.

(2) The board consists of:

(a) an individual appointed by the director of the Division of Finance;

(b) an individual appointed by the executive director of the Governor's Office of Management and Budget;

(c) an individual appointed by the governor on advice from the Legislative Fiscal Analyst;



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(d) one member of the Senate, appointed by the governor on advice from the president of the Senate;

(e) one member of the House of Representatives, appointed by the governor on advice from the speaker of the House of Representatives;

(f) an individual appointed by the director of the Department of Technology Services;

(g) the director of the Division of Archives and Records Service created in Section 63A-12-101 or the director's designee;

(h) an individual who is a member of the State Records Committee created in Section 63G-2-501, appointed by the governor;

(i) an individual representing counties, appointed by the governor;

(j) an individual representing municipalities, appointed by the governor;

(k) an individual representing special districts, appointed by the governor; and

(l) two individuals who are members of the public and who have knowledge, expertise, or experience in matters relating to the board's duties under Subsection (10), appointed by the board members identified in Subsections (2)(a) through (k).

(3) The board shall:

(a) advise the division on matters related to the implementation and administration of this part;

(b) develop plans, make recommendations, and assist in implementing the provisions of this part;

(c) determine what public financial information shall be provided by a participating state entity, independent entity, and participating local entity, if the public financial information:

(i) only includes records that:

(A) are classified as public under Title 63G, Chapter 2, Government Records Access and Management Act, or, subject to any specific limitations and requirements regarding the provision of financial information from the entity described in Section 63A-3-402, if an entity is exempt from Title 63G, Chapter 2, Government Records Access and Management Act, records that would normally be classified as public if the entity were not exempt from Title 63G, Chapter 2, Government Records Access and Management Act;

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

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revenues, regardless of the source; and

(C) are owned, held, or administered by the participating state entity, independent entity, or participating local entity that is required to provide the record; and

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

(A) the cost effectiveness of providing the information;

(B) the value of providing the information to the public; and

(C) privacy and security considerations;

(d) evaluate the cost effectiveness of implementing specific information resources and features on the website;

~~[(e) establish size or budget thresholds to identify those local entities that qualify as participating local entities as defined in this part, giving special consideration to the budget and resource limitations of an entity with a current annual budget of less than \$10,000,000;]~~

~~[(f)]~~ (e) require participating local entities to provide public financial information in accordance with the requirements of this part, with a specified content, reporting frequency, and form;

~~[(g)]~~ (f) require an independent entity's website or a participating local entity's website to be accessible by link or other direct route from the Utah Public Finance Website if the independent entity or participating local entity does not use the Utah Public Finance Website;

~~[(h)]~~ (g) determine the search methods and the search criteria that shall be made available to the public as part of a website used by an independent entity or a participating local entity under the requirements of this part, which criteria may include:

(i) fiscal year;

(ii) expenditure type;

(iii) name of the agency;

(iv) payee;

(v) date; and

(vi) amount; and

~~[(+)]~~ (h) analyze ways to improve the information on the Utah Public Finance Website so the information is more relevant to citizens, including through the use of:

(i) infographics that provide more context to the data; and

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(ii) geolocation services, if possible.

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

(5) (a) Each member shall serve a two-year term.

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

(6) To accomplish its duties, the board shall meet as it determines necessary.

(7) Reasonable notice shall be given to each member of the board before any meeting.

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

(9) (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(10) (a) As used in Subsections (10) and (11):

(i) "Information website" means a single Internet website containing public information or links to public information.

(ii) "Public information" means records of state government, local government, or an independent entity that are classified as public under Title 63G, Chapter 2, Government Records Access and Management Act, or, subject to any specific limitations and requirements regarding the provision of financial information from the entity described in Section 63A-3-402, if an entity is exempt from Title 63G, Chapter 2, Government Records Access and Management Act, records that would normally be classified as public if the entity were not exempt from Title 63G, Chapter 2, Government Records Access and Management Act.

(b) The board shall:

(i) study the establishment of an information website and develop recommendations for its establishment;

(ii) develop recommendations about how to make public information more readily available to the public through the information website;

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(iii) develop standards to make uniform the format and accessibility of public information posted to the information website; and

(iv) identify and prioritize public information in the possession of a state agency or political subdivision that may be appropriate for publication on the information website.

(c) In fulfilling its duties under Subsection (10)(b), the board shall be guided by principles that encourage:

(i) (A) the establishment of a standardized format of public information that makes the information more easily accessible by the public;

(B) the removal of restrictions on the reuse of public information;

(C) minimizing limitations on the disclosure of public information while appropriately safeguarding sensitive information; and

(D) balancing factors in favor of excluding public information from an information website against the public interest in having the information accessible on an information website;

(ii) (A) permanent, lasting, open access to public information; and

(B) the publication of bulk public information;

(iii) the implementation of well-designed public information systems that ensure data quality, create a public, comprehensive list or index of public information, and define a process for continuous publication of and updates to public information;

(iv) the identification of public information not currently made available online and the implementation of a process, including a timeline and benchmarks, for making that public information available online; and

(v) accountability on the part of those who create, maintain, manage, or store public information or post it to an information website.

(d) The department shall implement the board's recommendations, including the establishment of an information website, to the extent that implementation:

(i) is approved by the Legislative Management Committee;

(ii) does not require further legislative appropriation; and

(iii) is within the department's existing statutory authority.

(11) The department shall, in consultation with the board and as funding allows, modify the information website described in Subsection (10) to:

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(a) by January 1, 2015, serve as a point of access for Government Records Access and Management requests for executive agencies;

(b) by January 1, 2016, serve as a point of access for Government Records Access and Management requests for:

(i) school districts;

(ii) charter schools;

(iii) public transit districts created under Title 17B, Chapter 2a, Part 8, Public Transit District Act;

(iv) counties; and

(v) municipalities;

(c) by January 1, 2017, serve as a point of access for Government Records Access and Management requests for:

(i) local districts under Title 17B, Limited Purpose Local Government Entities - Local Districts; and

(ii) special service districts under Title 17D, Chapter 1, Special Service District Act;

(d) except as provided in Subsection (12)(a), provide link capabilities to other existing repositories of public information, including maps, photograph collections, legislatively required reports, election data, statute, rules, regulations, and local ordinances that exist on other agency and political subdivision websites;

(e) provide multiple download options in different formats, including nonproprietary, open formats where possible;

(f) provide any other public information that the board, under Subsection (10), identifies as appropriate for publication on the information website; and

(g) incorporate technical elements the board identifies as useful to a citizen using the information website.

(12) (a) The department, in consultation with the board, shall establish by rule any restrictions on the inclusion of maps and photographs, as described in Subsection (11)(d), on the website described in Subsection (10) if the inclusion would pose a potential security concern.

(b) The website described in Subsection (10) may not publish any record that is classified as private, protected, or controlled under Title 63G, Chapter 2, Government Records

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Access and Management Act.

Section 5. Section **63A-3-405** is amended to read:

### **63A-3-405. Participation by local entities.**

(1) (a) Not later than May 15, 2010, the following participating local entities, in conformity with the rules established under Section 63A-3-404, shall provide public financial information through the Utah Public Finance Website or their own website and provide a link to their website through the Utah Public Finance Website:

- (i) school districts;
- (ii) charter schools; and
- (iii) public transit districts created under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

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

(2) (a) Not later than May 15, 2011, the following participating local entities, in conformity with the rules established under Section 63A-3-404, shall be required to provide public financial information through the Utah Public Finance Website or their own website and provide a link to their website through the Utah Public Finance Website:

- (i) counties;
- (ii) municipalities;
- (iii) local districts under Title 17B, Limited Purpose Local Government Entities - Local Districts, that are not already required to report; and
- (iv) special service districts under Title 17D, Chapter 1, Special Service District Act.

(b) Participating local entities subject to this Subsection (2) shall permit information that is generated not later than the fiscal year that begins July 1, 2010, to be accessible via the website.

(3) (a) On or before May 15, 2013, an interlocal entity that is a participating local entity in conformity with the rules established under Section 63A-3-404, shall, subject to Subsection (3)(b), provide public financial information through the Utah Public Finance Website or the interlocal entity's own website and provide a link to their website through the Utah Public Finance Website.

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(b) A participating local entity subject to this Subsection (3) shall provide public financial information that is generated on or after the fiscal year that begins July 1, 2012, to be accessible via the website.

(4) A participating local entity that makes public financial information accessible via the Utah Public Finance Website in 2016 and that was not previously required to make financial information accessible via the website shall permit information that is generated on or after the first day of the participating local entity's fiscal year that includes May 10, 2016, to be accessible via the website.

Section 6. Section **63F-1-701** is amended to read:

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

(1) As used in this part:

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

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

(c) "Public information" means a public body's public notices, minutes, audio recordings, and other materials that are required to be posted to the website under Title 52, Chapter 4, Open and Public Meetings Act, or other statute or state agency rule.

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

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

(3) The website shall consist of an Internet website provided to assist the public to find posted public information.

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

(a) allow a public body, or other certified entity, to easily post any public information, including the contact information required under Subsections 17B-1-303(9) and ~~17D-1-301~~17D-1-106(1)(~~5~~b)(ii);

(b) allow the public to search the public information by:

(i) public body name;

(ii) date of posting of the notice;

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

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- (iv) any other criteria approved by the division;
  - (c) allow the public to search and view past, archived public information;
  - (d) allow a person to subscribe to receive updates and notices associated with a public body or a particular type of public information;
  - (e) be easily accessible by the public from the State of Utah home page;
  - (f) have a unique and simplified website address;
  - (g) be directly accessible via a link from the main page of the official state website; and
  - (h) include other links, features, or functionality that will assist the public in obtaining and reviewing public information posted on the website, as may be approved by the division.
- (5) The division shall be responsible for:
- (a) establishing and maintaining the website, including the provision of equipment, resources, and personnel as is necessary;
  - (b) providing a mechanism for public bodies or other certified entities to have access to the website for the purpose of posting and modifying public information; and
  - (c) maintaining an archive of all public information posted to the website.
- (6) The timing for posting and the content of the public information posted to the website shall be the responsibility of the public body or other entity posting the public information.