

**LEGAL NOTICE AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen H. Urquhart**

House Sponsor: \_\_\_\_\_

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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 notice website at no additional cost.
- ▶ eliminates an exception from publication requirements for a county of the first or second class;
- ▶ 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:



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 notice website" means the website described in Subsection (2)(b) 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 notice website established by the ~~[collective]~~ combined efforts of~~  
64 ~~Utah's newspapers[:] that collectively distribute newspapers to the majority of newspaper~~  
65 ~~subscribers in the state.~~

66 (3) The public 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)] ~~[does]~~ 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 notice website at no additional 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 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. **Repealer.**

149 This bill repeals:

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

**Legislative Review Note**  
**as of 2-11-11 12:07 PM**

**Office of Legislative Research and General Counsel**