

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 937 Legal Notices

**SPONSOR(S):** Economic Affairs Committee; State Affairs Committee; Workman

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 292

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) State Affairs Committee	13 Y, 0 N, As CS	Thompson	Hamby
2) Economic Affairs Committee	16 Y, 0 N, As CS	Tait	Tinker
3) Judiciary Committee			

### SUMMARY ANALYSIS

Current law provides requirements for publishing legal notices and official advertisements. Publications must be in a newspaper that is printed and published at least once a week and that contains at least 25 percent of its words in the English language. In addition, the newspaper must qualify or be entered to qualify as periodicals matter at the post office in the county where published, and be generally available to the public for the purpose of publication of official or other notices.

The bill creates a new section of law requiring a legal notice to be placed on a newspaper's website on the same day the notice appears in the newspaper, at no additional charge. Effective July 1, 2013, a newspaper that publishes legal notices must provide a free link to access legal notices on its website; optimize online visibility; dominantly present the notices on the website; provide a search function for the notices; upon request, provide free e-mail notification of the notices; and place the notice on the Florida Press Association website established for such notices.

The bill also:

- Authorizes electronic proof of publication affidavits;
- Limits the rate that may be charged for certain government notices required to be published more than once;
- Requires certain local governmental maps that appear in newspaper advertisements to be noticed online;
- Deletes the requirement that a legal notice be published in Leon County for agency licensee actions, bond validation actions, market offerings for state owned oil or gas leases, and certain administrative complaints;
- Requires that notice to certain professional licensees be posted on a newspaper website and provided to certain broadcast network affiliates;
- Amending requirements relating to the publication of certain notices relating to the sale of bonds by the Division of Bond Finance within the State Board of Administration;
- Deletes requirements relating to newspaper publication of certain notices relating to Department of Agriculture and Consumer Services marketing orders and provides for Internet publication and for information to certain broadcast network affiliates; and
- Allows the Department of Financial Services to require notification of insolvency by e-mail or telephone, instead of by newspaper.

The bill may reduce state and local government expenditures associated with publishing required notices and advertisements in the newspaper by limiting the rate that may be charged for government notices required to be published more than once. In addition, the bill may reduce expenditures for the agencies that would no longer be required to publish a legal notice in Leon County. The bill may increase newspaper expenditures associated with the requirements for newspapers to provide notices on their websites; however, many newspapers are currently doing this.

The bill has an effective date of July 1, 2012, except as otherwise expressly provided. The act applies to legal notices published on or after that date.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0937d.EAC

DATE: 2/10/2012

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

The publication of legal notices in newspapers is a long established practice in Florida and throughout the United States. According to newspaper trade associations and independent analysts, "it's unclear how much newspapers collect in total from such publicly financed advertising."<sup>1</sup>

Current law requires reasonable notice of all public meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the State Constitution, at which official acts are to be taken, but does not provide a specific definition for reasonable notice.<sup>2</sup> Similarly, the State Constitution provides only that public business "shall be open and noticed," but does not specify the medium by which notice shall be given.<sup>3</sup> As a result, the Legislature may define what constitutes reasonable notice for a public action.

The requirements for legal and official advertisements are provided for in ch. 50, F.S. Current law requires that publication must be in a newspaper that is printed and published at least once a week and that contains at least 25 percent of its words in the English language. The newspaper must qualify or be entered to qualify as periodicals matter at the post office in the county where published, and be generally available to the public for the purpose of publication of official or other notices.<sup>4</sup>

When there is no weekly newspaper published in the county the advertisement may be made by posting three copies in three different places in the county, one of which must be at the front door of the courthouse, and by publication in the nearest county in which a newspaper is published.<sup>5</sup>

Current law also provides requirements for newspapers. A newspaper must have been in existence for at least one year. Also, it must meet the requirements for periodicals matter at the post office in the county where published. An exception is provided for counties in which no newspaper in existence has been published for a year.<sup>6</sup> Proof of publication also is required in the form of a uniform affidavit.<sup>7</sup>

The amount a newspaper can charge for publication is standardized at 70 cents per square inch for the first insertion, and 40 cents per square inch for each subsequent insertion.<sup>8</sup> Where the regular established minimum commercial rate per square inch of the newspaper publishing the official notice or legal advertisement is greater than the per square inch rate established in statute, the minimum commercial rate may be charged or the government agency may procure publication through bids.<sup>9</sup> All official notices and legal advertisements must be charged and paid for on the basis of 6-point type on 6-point body, unless otherwise specified in statute.<sup>10</sup> There are criminal penalties for non-compliance with these rates and charges.<sup>11</sup>

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<sup>1</sup> *Move to Online Public Notices Looms Over Papers*, USA Today, May 22, 2009, [http://www.usatoday.com/tech/news/2009-05-22-online-notices\\_N.htm](http://www.usatoday.com/tech/news/2009-05-22-online-notices_N.htm) (last visited January 19, 2011).

<sup>2</sup> Section 286.011 F.S.

<sup>3</sup> Section 24(b), Art. I of the State Constitution.

<sup>4</sup> Section 50.011, F.S.

<sup>5</sup> Section 50.021, F.S.

<sup>6</sup> Section 50.031, F.S.

<sup>7</sup> Section 50.041, F.S.

<sup>8</sup> Section 50.061(2)(a) and (b), F.S., provides that counties with a population in excess of 304,000 may charge 80 cents per square inch for the first insertion and 60 cents per square inch for each subsequent insertion. Counties with a population in excess of 450,000 may charge 95 cents per square inch for the first insertion and 75 cents per square inch for each subsequent insertion.

<sup>9</sup> Section 50.061(3), F.S.

<sup>10</sup> Section 50.061(4), F.S.

<sup>11</sup> Section 50.061(5) and (6), F.S.

## Effect of Proposed Changes

The bill creates a new section of law that applies to legal notices published in accordance with the requirements for legal and official advertisements provided in chapter 50, F.S. A legal notice is required to be placed on a newspaper's website on the same day the notice appears in the newspaper, at no additional charge. Effective July 1, 2013, a newspaper that publishes legal notices:

- Must provide a link to access the legal notices on the front page of the newspaper's website without charge;
- Should optimize its online visibility in keeping with print requirements, if there is a specified size and placement required for a printed legal notice;
- Must present the legal notices as the dominant subject matter of the newspaper's web pages that contain legal notices;
- Must contain a search function on the newspaper's website to facilitate searching the legal notices; and
- Must, upon request, provide e-mail notification of new legal notices when they are printed in the newspaper and added to the newspaper's website. Such e-mail notification must be provided without charge and notification for the registry must be available on the front page of the legal notices section of the newspaper's website.

A newspaper publishing a notice is required to place the notice on the website established and maintained as an initiative of the Florida Press Association as a repository for such notices.<sup>12</sup>

An error in a notice placed on a newspaper or statewide website must be considered harmless and proper legal notice requirements must be considered met if the notice published in the newspaper is correct.

The bill deletes the requirement for a newspaper proof of publication affidavit to be printed only on bond paper containing at least 25 percent rag material. In addition, the bill allows a newspaper to provide such affidavits in electronic rather than paper form, if the notarization of the affidavit complies with statutory electronic notarization requirements.<sup>13</sup>

The bill limits the statutory rates that newspapers are authorized to charge for government notices required to be published more than once in which the cost is paid for by the government and not paid in advance by or allowed to be recouped from private parties. Such charges, for the second and successive insertions may not be greater than 85 percent of the original rate. The original rate is 70 cents per square inch for the first insertion and 40 cents per square inch for each subsequent insertion.<sup>14</sup> This would be equal to a 15 percent cost reduction for such charges.

The bill requires maps that appear in newspaper advertisements for the following purposes to also be part of the online notice requirements provided in the bill:

- A county<sup>15</sup> or a municipal<sup>16</sup> rezoning or change of land use ordinance or resolution;
- A public hearing on a petition for the establishment of a community development district;<sup>17</sup> and
- A determination of millage by a taxing authority, if an increase in ad valorem tax rates will affect only a portion of the jurisdiction of the taxing authority.<sup>18</sup>

The bill authorizes, rather than requires as under current law, the Chief Financial Officer (CFO) to advertise the availability of the governmental efficiency hotline in newspapers of general circulation in this state and to post notices in conspicuous places in state agency offices, city halls, county courthouses, and places where there is exposure to significant numbers of the general public,

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<sup>12</sup> [www.floridapublicnotices.com](http://www.floridapublicnotices.com)

<sup>13</sup> See s. 117.021, F.S.

<sup>14</sup> Section 50.061(2), F.S.

<sup>15</sup> Section 125.66(4)(b), F.S.

<sup>16</sup> Section 166.041(3)(c), F.S.

<sup>17</sup> Section 190.005(1)(d), F.S.

<sup>18</sup> Section 200.065(3)(h), F.S.

including, but not limited to, local convenience stores, shopping malls, shopping centers, gasoline stations, or restaurants.

The bill amends requirements relating to notices of the sale of public bonds by the Division of Bond Finance within the State Board of Administration. It removes the requirement that the notice must be published at least at least 10 days prior to the date of sale in one or more newspapers or financial journals published within or without the state and instead requires a notice of the sale of public bonds be provided at such time and shall contain such terms as the Board of the Division of Bond Finance deems advisable and proper under the circumstances.

The bill deletes the requirement that a legal notice be published in Leon County for the revocation, suspension, annulment, or withdrawal of an agency licensee pursuant to the Administrative Procedure Act, for an applicant who cannot be contacted by personal service or certified mail and whose address is in another state or foreign territory or country.

The bill deletes the requirement that a public notice be published in Leon County for actions to validate bonds issued by the Florida Hurricane Catastrophe Fund Finance Corporation. Such notice would still be required to be published in two newspapers of general circulation in the state.

The bill deletes the requirement that the Board of Trustees of the Internal Improvement Trust Fund<sup>19</sup> provide notice of publication in Leon County and in a similar newspaper for a similar period of time and for the last publication to be in both newspapers, for the placement on the market of an oil or gas lease located on any area, tract, or parcel of land owned, controlled, or managed, by any state board, department, or agency. Such notice would still be required to be made not less than once a week for 4 consecutive weeks in a newspaper of general circulation in the vicinity of the lands offered to be leased.

The bill deletes the requirement that a legal notice be published in Leon County for an administrative complaint regarding actions to validate bonding obligations<sup>20</sup> used to fund the Florida Building and Facilities Act (FBFA),<sup>21</sup> and The Florida Environmental Land and Water Management Act of 1972 (FELWMA).<sup>22</sup> The FBFA notice would still be required to be published in two newspapers of general circulation in the state, and the FELWMA notice would still be required to be published in newspapers of general circulation in the county where the critical state concern is located.

The bill deletes the requirement for the Department of Business and Professional Regulation (DBPR) to publish a short plain notice once a week for 4 consecutive weeks in a newspaper published in Leon County, Florida, when contact cannot be made by personal service or certified mail for an administrative complaint regarding the validation of disciplinary actions against certified public accountants licensed in other states and authorized to provide accounting services in Florida. The bill also deletes the requirement that the newspaper meet the requirements prescribed by law for such purposes.

The bill makes the following changes to DBPR notice provisions that are initiated when contact cannot be made by DBPR regarding an administrative complaint for failure of a DBPR licensee to notify DBPR of a change of address:

- Deletes the requirement to publish such notice once each week for 4 consecutive weeks in a newspaper published in the county of the licensee's last known address of record;
- Deletes the authorization to publish the administrative complaint in a newspaper of general circulation in the county, if a newspaper is not published in the county;
- Deletes the authorization to publish the administrative complaint in Leon County pursuant to licensing revocation notice procedures in the Administrative Procedure Act,<sup>23</sup> if the licensee's last known address is located in another state or in a foreign jurisdiction;

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<sup>19</sup> Section 253.001, F.S.

<sup>20</sup> Section 255.502(9), F.S., defines "obligations" to mean collectively, revenue bonds and revenue notes.

<sup>21</sup> Section 255.501, F.S.

<sup>22</sup> Sections 380.012, 380.021, 380.031, 380.04, 380.05, 380.06, 380.07, and 380.08, F.S.

<sup>23</sup> Section 120.60(5), F.S.

- Requires the notice to be posted on the front page of DBPR's website; and
- Requires DBPR to send notice via e-mail to all newspapers of general circulation and all news departments of broadcast network affiliates in the county of the licensee's last known address of record.

The bill deletes the requirement for the Department of Agriculture and Consumer Services (DACS) to publish referendum results of a Florida Propane Gas Education, Safety, and Research Act<sup>24</sup> marketing order and any referendum conducted under the Florida Agricultural Commodities Marketing Law,<sup>25</sup> in a newspaper of general circulation in the state and in such other newspapers as DACS prescribes. The bill requires DACS to publish such referendum results on the front page of its website and to send notice via e-mail to all publications of general circulation and all news departments of broadcast network affiliates located within the state.

The bill deletes the requirement for DACS to publish a notice of the issuance, suspension, amendment, or termination of a marketing order in a newspaper of general circulation in the state and in such other newspaper or newspapers prescribed by DACS. The bill deletes the requirement for such notices to be sent by DACS to the newspaper or newspapers by first-class mail and also deletes the requirement that DACS include instructions for the newspaper to publish the notice as a legal advertisement the first date after receipt of the notice as such newspaper's policy for publishing legal advertisements provides. As such, DACS would still be required to post such notice on the public bulletin board maintained by DACS in the Division of Marketing and Development in the Nathan Mayo Building, Tallahassee, Leon County, however, a copy of the notice will be required to be posted on DACS's website the same day the notice is posted on the bulletin board.

The bill provides that the Department of Financial Services may require the Florida Insurance Guarantee Association to notify insureds of an insolvent insurer and any other interested parties of a determination of insolvency and of their rights, by e-mail or telephone, instead of by publication in a newspaper of general circulation, if sufficient notification by mail is not available.

#### B. SECTION DIRECTORY:

Section 1 creates s. 50.0211, F.S., requiring each legal notice that appears in the newspaper to be placed on the newspaper's website on the same day, free of charge; requiring a link; providing requirements for size and placement of such website publication; requiring free access to such online publications; requiring that legal notices published in newspapers to also be published on the Florida Press Association website established for such notices; requiring newspapers that publish legal notice to provide e-mail notification of new legal notices; requiring an error on a newspaper or statewide website to be considered a harmless error and legal notice requirements shall be considered met if the notice published in the newspaper is correct.

Section 2 amends s. 50.041, F.S. authorizing electronic proof of publication affidavits and revising the physical requirements for such affidavits.

Section 3 amends s. 50.061, F.S., limiting the rates that may be charged for government notices required to be published more than once.

Section 4 amends s. 125.66, F.S., requiring maps that appear in newspaper advertisements that are part of a county rezoning or change of land use ordinance or resolution to be part of the online notice required in s. 50.021, F.S.

Section 5 amends s. 166.041, F.S., requiring maps that appear in newspaper advertisements that are part of a municipal rezoning or change of land use ordinance or resolution to be part of the online notice required in s. 50.021, F.S.

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<sup>24</sup> Sections 527.20 through 527.23, F.S.

<sup>25</sup> Sections 573.101 through 573.124, F.S.

Section 6 amends s. 190.005, F.S., requiring maps that appear in newspaper advertisements that are part of a public hearing on a petition for the establishment of a community development district to be part of the online notice required in s. 50.021, F.S.

Section 7 amends s. 200.065, F.S., requiring maps that appear in newspaper advertisements that are part of a determination of millage by a taxing authority, if an increase in ad valorem tax rates will affect only a portion of the jurisdiction of the taxing authority, to be part of the online notice required in s. 50.021, F.S.

Section 8 amends s. 17.325, F.S., making it optional for the Chief Financial Officer to advertise the availability of the governmental efficiency hotline.

Section 9 amends s. 215.68, F.S., revising requirements for the notice relating to the sale of bonds by the Division of Bond Finance.

Section 10 amends s. 120.60, F.S., deleting the requirement that a legal notice be published in Leon County for the revocation, suspension, annulment, or withdrawal of an agency licensee who cannot be contacted.

Section 11 amends s. 215.555, F.S., deleting the requirement that a legal notice be published in Leon County for Florida Hurricane Catastrophe Fund Finance Corporation bond validation.

Section 12 amends s. 253.52, F.S., deleting the requirement that a legal notice be published in Leon County for the placement of state oil and gas leases on the market by the Board of Trustees of the Internal Improvement Trust Fund.

Section 13 amends s. 255.518, F.S., deleting the requirement that a legal notice be published in Leon County to validate bonding obligations used to fund the Florida Building and Facilities Act.

Section 14 amends s. 380.0668, F.S., deleting the requirement that a legal notice be published in Leon County to validate bonding obligations used to fund The Florida Environmental Land and Water Management Act of 1972.

Section 15 amends s. 455.275, F.S., providing changes regarding the Department of Business and Professional Regulation (DBPR) notice provisions that are initiated when contact cannot be made by DBPR regarding an administrative complaint for failure of a DBPR licensee to notify DBPR of a change of address.

Section 16 amends s. 473.3141, F.S. deleting the requirement for DBPR to publish a notice in Leon County, Florida when contact cannot be made regarding disciplinary actions against certified public accountants.

Section 17 amends s. 527.23, F.S., deleting the requirements for the Department of Agriculture and Consumer Services (DACS) to publish Florida Propane Gas Education, Safety, and Research Act<sup>26</sup> marketing order referendum results in a newspaper; requiring DACS website publication of such orders and for e-mailing the information to broadcast network affiliates.

Section 18 amends s. 573.109, F.S., deleting the requirements for DACS to publish the results of any referendum conducted under the Florida Agricultural Commodities Marketing Law in a newspaper; requiring DACS website publication of such orders and for e-mailing the information to broadcast network affiliates.

Section 19 amends s. 573.111, F.S., deleting the requirement for DACS to publish a notice of the issuance, suspension, amendment, or termination of a marketing order in a newspaper; requiring DACS to post such notice on its website.

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<sup>26</sup> Sections 527.20 through 527.23, F.S.

Section 20 amends s. 631.59, F.S., changing the provision allowing notices concerning insolvent insurers to be in noticed by e-mail or telephone rather than in a newspaper.

Section 21 provides an effective date of July 1, 2012, except as otherwise expressly provided. The act applies to legal notices published on or after that date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may reduce state government expenditures associated with publishing required notices and advertisements in the newspaper by limiting the rate that may be charged for government notices.

The bill may reduce expenditures for the agencies that would no longer be required to publish a legal notice in Leon County.

The bill may reduce expenditures of the Department of Financial Services by allowing the Chief Financial Officer to advertise the availability of the governmental efficiency hotline at her or his discretion.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may reduce local government expenditures associated with publishing required notices and advertisements in the newspaper by limiting the rate that may be charged for government notices.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase newspaper expenditures associated with the requirements for newspapers to upload and provide free access for notices to their own websites; provide free email notification to readers, when requested; post all notices to the Florida Press Association (FPA) website; and incorporate the changes the bill makes to the affidavit process. However, according to the FPA, many newspapers are currently publishing and providing free access to legal notices on their websites.<sup>27</sup>

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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<sup>27</sup> Information received via e-mail from Sam Morley, the Florida Press Association, on January 13, 2012. (On file with the House Government Operations Subcommittee).

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 19, 2012, the State Affairs Committee amended and passed House Bill 937 as a committee substitute. The committee substitute differs from the original filed version in that it prohibits an additional charge for each legal notice that must be placed on the newspaper's website, un-deletes the authorization for newspapers to charge in excess of the statutory minimum commercial rate, and limits such rates for government notices that must be published more than once in which the cost is paid for by the government and not paid in advance by or allowed to be recouped from private parties.

On February 8, 2012, the Economic Affairs Committee adopted two amendments. The first amendment changed provisions relating to amounts chargeable for official public notices or legal advertisements to require that if a public notice is published in a newspaper, the posting of the notice on the newspaper's website pursuant to s. 50.0211(2), F.S., must be done at no additional charge. The second amendment changed the requirements for notices related to the sale of public bonds by the Division of Bond Finance within the State Board of Administration.

This analysis has been updated to reflect those changes.