

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 7049 PCB JDC 22-02 Legal Notices
SPONSOR(S): State Affairs Committee, Judiciary Committee, Grall and Fine
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	14 Y, 5 N, As CS	Mawn	Kramer
1) State Affairs Committee	13 Y, 7 N, As CS	Leshko	Williamson

SUMMARY ANALYSIS

The Florida Constitution requires all meetings of a county, municipality, school board, or special district at which official acts are to be taken or at which public business is to be discussed or transacted be open to the public and notice be given of such meetings. While this requirement is self-executing, the Legislature may enact general laws enforcing this constitutional provision and may provide exemptions by a two-thirds vote. All exemptions require a specific statement of public necessity justifying the exemption. Further, certain statutory provisions require that public notices and advertisements be given for certain other local government and judicial actions. Collectively, these notices and advertisements are referred to as “legal notices.”

Before January 1, 2022, legal notices had to be published in a newspaper that met specified requirements, including that such newspaper be for sale to the public, unless no newspaper is published in the county; in which case copies of the notice had to be posted in the county and published in a newspaper in the nearest available county. The newspaper also had to place a copy of the notice on the Florida Press Association’s (“FPA”) free repository website and, if the newspaper maintained a website, legal notices had to appear on such website in a searchable format on the same day they appeared in the print edition at no additional charge.

In 2021, the legislature passed CS/HB 35, which modified the requirements for newspaper publication to expand the number of newspapers that could qualify for legal notice publication, including free newspapers, and to authorize a governmental entity to publish legal notices on a newspaper’s website and the FPA’s repository website in lieu of publishing in the newspaper’s print edition under specified conditions. CS/HB 35 (2021) also required the FPA to seek to ensure that minority populations in the state have equitable access to legal notices posted on the FPA’s repository website and to publish a report containing specified information.

This bill:

- Gives a governmental agency the option to publish legal notices on a publicly accessible website of a county instead of in a print newspaper under specified conditions.
- Reverts the criteria a newspaper must satisfy to publish legal notices back to the criteria in place before the passage of CS/HB 35 (2021), with the exception of the requirement that a newspaper must be for sale.
- Requires a governmental agency located in a county with a population of fewer than 160,000 to first hold a public hearing and determine that its residents have sufficient access to the Internet before publishing legally required advertisements and public notices on a publicly accessible website.
- Eliminates the FPA’s obligations relating to equitable legal notice access by minority populations.
- Makes technical and conforming changes.

The bill does not appear to have a fiscal impact on state government but may have an indeterminate fiscal impact on local governments.

The bill provides an effective date of January 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Constitution requires all meetings of a county, municipality, school board, or special district at which official acts are to be taken or at which public business is to be discussed or transacted be open to the public and notice be given of such meetings.¹ While this constitutional requirement is self-executing, the Legislature may enact general laws enforcing the provision and may provide exemptions by a two-thirds vote.² All exemptions require a specific statement of public necessity justifying the exemption.³ Further, certain statutory provisions require that public notices and advertisements must be given for certain other local government and judicial actions.⁴ Collectively, these notices and advertisements are referred to as “legal notices.”

Legal Notice Publication Requirements Before January 1, 2022

Before January 1, 2022, Florida law required a legal notice to be published in a newspaper that:

- Was published at least once a week;
- Had at least 25 percent of its words in English;
- Was considered a periodical by a post office in its county of publication;
- Was available to the public generally for the publication of legal and other notices;
- Was for sale to the general public; and
- Contained information of interest or value to the general public in the affected area.⁵

If no newspaper was published in the county, at least three copies of the legal notice had to be posted in the county, with one posted on the front door of the county courthouse and two at other locations in the county. In addition, the notice had to be published in a newspaper in the nearest county in which a newspaper was published.⁶

A legal notice published in a newspaper had to appear on the newspaper’s website the same day it appeared in the print edition at no additional charge, on a separate web page with a specific title.⁷ The website had to have a search function, and the newspaper publisher could not charge a fee or require registration to view or search legal notices.⁸ The newspaper also had to place a copy of the notice on the Florida Press Association’s (“FPA”) free repository website, where it had to be maintained in a searchable archive for 18 months after the first day of posting.⁹ The public also had to be permitted to sign up to receive e-mailed notifications of notice publication.¹⁰

Legal notice publication was not considered effective unless:

- The notice was published for the period prescribed for such a notice;
- The newspaper had existed for at least one year at the time of notice publication; and
- A post office in the county of notice publication entered the newspaper as a periodical.¹¹

¹ Art. I, s. 24(b), Fla. Const.

² Art. I, s. 24(c), Fla. Const.

³ *Id.*

⁴ See, e.g., s. 45.031, F.S. (requiring publication of notice of judicial sales) and s. 125.66, F.S. (requiring publication of the tax impact of a value adjustment board’s decisions regarding petitions to adjust property taxes).

⁵ S. 50.011, F.S. (2020).

⁶ S. 50.021, F.S. (2020).

⁷ S. 50.0211(2), F.S. (2020).

⁸ *Id.*

⁹ S. 50.0211(3)(a)-(c), F.S. (2020).; The Florida Press Association’s repository is available at www.floridapublicnotices.com.

¹⁰ S. 50.0211(4), F.S. (2020).

¹¹ Legal notices could also be published in a newspaper which was a direct successor of a newspaper so published. S. 50.031, F.S. (2020).

A uniform affidavit established proof of legal notice publication,¹² which was required to:

- Be notarized on paper formatted in a specific manner or in an electronic format that complied with the electronic notarization requirements of s. 117.021, F.S.;
- Contain specified information, including the newspaper's name, publication frequency, and city and county of publication; and
- Include a copy of the legal notice.¹³

Legal notice publication fees were set by statute and could not be rebated, commissioned, or refunded.¹⁴ The legal notice publication fee was 70 cents per square inch of newspaper for the first insertion and 40 cents per square inch of newspaper for each subsequent insertion.¹⁵ However, if the regular established minimum commercial rate per square inch of newspaper was greater than the rate stipulated in statute, the publisher could charge the minimum commercial rate for each insertion, except that second and successive insertions of legal notices required to be published more than once and paid for by a governmental agency could not cost more than 85 percent of the original rate.¹⁶ All legal notice charges were based on 6-point type on 6-point body, unless otherwise specified by statute.¹⁷

2021 Legislative Changes

In 2021, the Legislature passed CS/HB 35, which became effective January 1, 2022.¹⁸ The bill modified the criteria a newspaper must satisfy to publish legal notices, requiring that a newspaper publishing legal notices in print must:

- Be printed and published periodically at least once a week.
- Contain at least 25 percent of its words in English.
- Satisfy one of the following criteria:
 - Be sold, or otherwise be available to the public, at no less than 10 publicly accessible outlets and have an audience consisting of at least 10 percent of the households in the county or municipality, as determined by the most recent decennial census, where the legal notice is being published or posted, by calculating the:
 - Combination of the total number of print copies reflecting the day of highest print circulation, of which at least 25 percent of such print copies must be delivered to home and business addresses; and
 - Total number of online unique monthly visitors to the newspaper's website from within the state.
 - Hold a periodicals permit as of March 1, 2021, and accept legal notices for publication as of that date; however, any such newspaper could only publish legal notices through December 31, 2023, if the newspaper continued to meet the requirements in s. 21, ch. 99-2, Laws of Florida, and continued to hold a periodicals permit.
 - For newspapers publishing legal notices in a fiscally constrained county, hold a periodicals permit and meet all other requirements of the legal notices chapter.
- Be available to the public generally for legal notice publication with no more than 75 percent of its content dedicated to advertising, as measured in half of the newspaper's issues published during any 12-month period, and customarily containing information of interest or value to the general public in the affected area.
- Continually publish in a prominent manner within the first five pages of the print addition and at the bottom portion of the homepage of the newspaper's website:
 - The name, street address, phone number, and website URL of the newspaper's approved print auditor;
 - The newspaper's most recent statement of ownership; and

¹² S. 50.041(1), F.S. (2020).

¹³ Ss. 50.041(2) and 50.051, F.S. (2020).

¹⁴ S. 50.061(1), F.S. (2020).

¹⁵ S. 50.061(2), F.S. (2020).

¹⁶ S. 50.061(3), F.S. (2020).

¹⁷ S. 50.061(6), F.S. (2020).

¹⁸ Ch. 2021-17, Laws of Fla.

- A statement of the auditor certifying the veracity of the newspaper's print distribution and the number of the newspaper website's monthly unique visitors, or the newspaper's periodicals permit, if applicable.¹⁹

CS/HB 35 (2021) also authorized a governmental agency²⁰ to publish legal notices on the website of any newspaper in the county to which the legal notice pertained²¹ and on the FPA's repository website in lieu of publishing the notice in the print edition of a newspaper if the governmental agency, after holding a public hearing noticed in a print edition of a newspaper of general circulation in the affected governmental agency's jurisdiction,²² makes a determination by a majority of its governing board members that:

- Internet publication of legal notices is in the public interest; and
- Residents within the governmental agency's jurisdiction have sufficient internet access such that internet-only legal notices publication would not unreasonably restrict public access.²³

All requirements regarding format and accessibility for legal notices published in a printed newspaper also apply to legal notices published only online.²⁴

Under the provisions of CS/HB 35 (2021):

- The legal notices section of a printed newspaper must include a disclaimer stating:
 - Additional legal notices may be accessed on the newspaper's website and the FPA's repository website.
 - Legal notices published in print are also published on the FPA's repository website.²⁵
- A newspaper may charge for internet-only legal notice publication up to the amount authorized for publication of legal notices in print, without rebate, commission, or refund.²⁶
- A governmental agency publishing legal notices only online has to:
 - Give notice, at least once a week in a printed newspaper of general circulation within the region in which the governmental agency is located, that:
 - Legal notices pertaining to the agency do not all appear in a printed newspaper;
 - Additional legal notices may be accessed on the newspaper's website; and
 - A full listing of legal notices may be accessed on the FPA's repository website.
 - Post a link on its website homepage to a webpage listing all the newspapers in which it published legal notices.²⁷

Further, CS/HB 35 (2021) required the FPA to seek to ensure that minority populations in the state have equitable access to legal notices posted on the FPA's repository website and publish a report:

- Listing all newspapers that have placed notices on the repository website in the preceding calendar quarter.
- Identifying which criteria each newspaper satisfied to become qualified to publish legal notices.
- Including the number of unique visitors to the repository website during the quarter and the number of legal notices that were published during that quarter by Internet-only publication or by publication in a printed newspaper and on the repository website.²⁸

¹⁹ Ch. 2021-17, s. 1, Laws of Fla.

²⁰ "Governmental agency" means a county, a municipality, a district school board, or any other unit of local government or political subdivision in this state. Ch. 2021-17, s. 3(1)(a), Laws of Fla.

²¹ A newspaper was deemed to be a newspaper in the county to which the legal notice pertains if it satisfied the criteria to publish legal notices in print. Ch. 2021-17, s. 1(2), Laws of Fla.

²² A newspaper deemed to be a newspaper of general circulation within the jurisdiction of the affected governmental agency if it satisfied the criteria to public legal notices in print.

²³ Ch. 2021-17, s. 5(a), Laws of Fla.

²⁴ The bill did not change format and accessibility requirements for legal notices published in a printed newspaper.

²⁵ Ch. 2021-17, s. 5(b), Laws of Fla.

²⁶ Ch. 2021-17, s. 5(c), Laws of Fla. The bill did not modify the charges authorized or the size and placement requirements for publication in a printed newspaper.

²⁷ Ch. 2021-17, s. 3(5)(d), Laws of Fla.

²⁸ Ch. 2021-17, s. 3(4)(d), Laws of Fla.

Additionally, a newspaper or newspaper's website must have been in existence for two years prior to publication in order for publication to be completed in accordance with the statutes.²⁹

Effect of Proposed Changes

The bill gives a governmental agency the option to publish its legal notices on the publicly accessible website³⁰ of the county in which it lies instead of in a printed newspaper if doing so would cost less than publishing legal notices in a newspaper. A governmental agency with at least 75 percent of its population located in a county with a population of fewer than 160,000 must first hold a public hearing and determine the residents of the governmental agency have sufficient access to the Internet before it may publish legally required advertisements and public notices on a publicly accessible website. The bill also requires a special district³¹ spanning the geographic boundaries of more than one county and opting to publish legal notices on a publicly accessible website to publish its legal notices on the publicly accessible website of each county it spans. Each legal notice so published must be in searchable form and indicate the date of first publication, and a public bid advertisement made by a governmental agency on a publicly accessible website must include a method for accepting electronic bids.

The bill requires that a link to legal notices published on a publicly accessible website be conspicuously placed on or accessible through a direct link from the:

- Publicly accessible website's homepage; and
- Homepage of the website of each governmental agency publishing legal notices online.

Further, a governmental agency:

- With an authorized governmental access channel³² may include on such channel a summary of all legal notices posted on its publicly accessible website.
- Publishing legal notices on a publicly accessible website must give notice, at least annually, that property owners and residents may receive legal notices from the governmental agency by first-class mail or e-mail upon registering with the agency.³³
- Must maintain a registry of property owners and residents who request in writing to receive legal notices from the governmental agency by mail or e-mail.

The bill also reverts the criteria a newspaper must satisfy to publish legal notices back to the criteria in place before January 1, 2022, with the exception of the requirement that a newspaper must be for sale. Thus, under the bill, publication may be made in a free newspaper that:

- Is published at least once a week;
- Has at least 25 percent of its words in English;
- Is considered a periodical by a post office in its county of publication;
- Is available to the public generally for the publication of legal and other notices; and
- Contains information of interest or value to the general public in the affected area.

Each legal notice published in a newspaper must be posted on the newspaper's website on the same day that the printed notice appears in the newspaper, at no additional charge,³⁴ on a separate webpage with a specific title. A link to the legal notices webpage must be on the front page of the newspaper's website, and if there is a specified size and placement required for a printed legal notice,³⁵ the size and placement of the online notice must optimize its online visibility in keeping with the print requirements.

²⁹ Ch. 2021-17, s. 4, Laws of Fla.

³⁰ "Publicly accessible website" means a county's official website or other private website designated by the county for the posting of legal notices and advertisements that is accessible via the Internet.

³¹ "Special district" means a unit of local government created for a particular purpose with jurisdiction to operate within a limited geographic boundary. A special district is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. See *Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).; See also ss. 189.02(1), 189.031(3), and 190.005(1), F.S.; See generally ss. 189.012(6), F.S.

³² A government access channel is authorized under s. 610.109, F.S.

³³ Such notice must be made in a newspaper of general circulation or another publication that is mailed or delivered to all residents and property owners in the government's jurisdiction.

³⁴ The bill does not modify the charges authorized in statute for publication in printed newspaper.

³⁵ The bill does not modify size and placement requirements for legal notices published in a printed newspaper.

The newspaper's website must have a search function and a fee may not be charged, and registration may not be required, for viewing and searching legal notices on the website. The newspaper must also place the notice on the FPA's free repository website, where it must be maintained in a searchable archive for 18 months after the first day of posting. However, the bill eliminates the FPA's reporting obligations relating to minority populations established in 2021 CS/HB 35.

The bill makes conforming and technical changes.

The bill provides an effective date of January 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 50.011, F.S., relating to publication of legal notices.

Section 2: Amends s. 50.021, F.S., relating to publication when no newspaper in county.

Section 3: Amends s. 50.0211, F.S., relating to internet website publication.

Section 4: Amends s. 50.031, F.S., relating to newspapers in which legal notices and process may be published.

Section 5: Creates s. 50.0311, F.S., relating to publication of advertisements and public notices on a publicly accessible website and governmental access channels.

Section 6: Amends s. 50.051, F.S., relating to proof of publication; form of uniform affidavit.

Section 7: Amends s. 50.061, F.S., relating to amounts chargeable.

Section 8: Amends s. 50.0711, F.S., relating to court docket fund; service charges; publications.

Section 9: Amends s. 11.02, F.S., relating to notice of special or local legislation or certain relief acts.

Section 10: Amends s. 45.031, F.S., relating to judicial sales procedure.

Section 11: Amends s. 90.902, F.S., relating to self-authentication.

Section 12: Amends s. 120.81, F.S., relating to exceptions and special requirements; general areas.

Section 13: Amends s. 121.055, F.S., relating to senior management service class.

Section 14: Amends s. 162.12, F.S., relating to notices.

Section 15: Amends s. 189.015, F.S., relating to meetings; notice; required reports.

Section 16: Amends s. 190.005, F.S., relating to establishment of district.

Section 17: Amends s. 200.065, F.S., relating to method of fixing millage.

Section 18: Amends s. 348.0308, F.S., relating to public-private partnership.

Section 19: Amends s. 348.635, F.S., relating to public-private partnership.

Section 20: Amends s. 348.7605, F.S., relating to public-private partnership.

Section 21: Amends s. 849.38, F.S., relating to proceedings for forfeiture; notice of seizure and order to show cause.

Section 22: Amends s. 932.704, F.S., relating to forfeiture proceedings.

Section 23: Provides an effective date of January 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill authorizes a governmental agency to publish legal notices on a county's publicly accessible website under specified conditions, which may reduce a governmental agency's costs related to legal notice publication. However, a governmental agency publishing legal notices online must also provide annual notice in a newspaper or another publication mailed or delivered in a specified manner that residents and property owners may receive legal notices from the governmental agency by first-class mail or e-mail. The cost of such requirement is indeterminate.

Further, the bill requires a county to publish on its publicly accessible website those legal notices of a governmental agency within its jurisdiction that opts to publish legal notices online; however, a county may be able to absorb the costs associated with this requirement within existing resources.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce revenue for newspapers to the extent the elimination of the requirement that legal notices be published in a printed newspaper or on a newspaper's website results in local governments opting out of publishing legal notices through newspapers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill requires a county to publish on its publicly accessible website those legal notices of a governmental agency within its jurisdiction that opts to publish legal notices online; however, an exemption may apply as the county may be able to absorb any costs associated with this requirement within its existing resources and thus the requirement may have an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2022, the Judiciary Committee adopted one amendment and reported the PCB favorably as amended. The amendment:

- Modified the definition of "publicly accessible website" to mean a county's official website or a private website designated by the county for legal notice publication.
- Authorized a governmental agency to publish legal notices on the publicly accessible website of the county in which it lies if it determines that doing so would cost less than newspaper publication.
- Deleted the distinction between fiscally constrained and non-fiscally constrained counties for purposes of the legal notice publication requirements.
- Required a governmental agency publishing legal notices on a publicly accessible website to include a link to the legal notices on its website's homepage.

On February 21, 2022, the State Affairs Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment requires a governmental agency with a population of fewer

than 160,000 to first hold a public hearing and determine that the residents of the governmental agency have sufficient access to the Internet before it may publish legally required advertisements and public notices on a publicly accessible website.

This analysis is drafted to the committee substitute as adopted by the State Affairs Committee.