

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 292

INTRODUCER: Committee on Community Affairs and Senator Bennett

SUBJECT: Effective Public Notices by Governmental Entities

DATE: February 15, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	Fav/CS
2.	O'Connor	Cibula	JU	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill requires that after a specified date if a legal notice is published in a newspaper, the newspaper publishing the notice also place the notice on a website maintained by the newspaper. The bill provides that after a specified date newspapers that publish legal notice must provide e-mail notification of new legal notices at no cost to the public. The bill sets out the requirements for advertisements and public notices published on the Internet. The bill deletes requirements that certain notices be published in Leon County. The bill also deletes requirements relating to newspaper publication of certain notices relating to marketing orders, provides for Internet publication of legal notices, and for the distribution of information to certain news outlets.

This bill substantially amends the following sections of the Florida Statutes: 50.041, 50.061, 125.66, 166.041, 190.005, 200.065, 17.325, 120.60, 215.555, 253.52, 255.518, 380.0668, 455.275, 473.3141, 527.23, 573.109, 573.111, and 631.59.

This CS creates section 50.0211, Florida Statutes.

II. Present Situation:

Legal and Official Advertisements

Public notices and legal ads provide notice of activities and events that impact citizens' lives because of governmental actions or requirements. They include actions such as government hearings and meetings, zoning, annexation and land use changes, election notices, municipal budgets, tax and special assessment information. Also, public notices cover requests for bids on government construction and service contracts; permit and licensing applications; land and water use regulations; judicial and executive sales; disposal of foreclosed and abandoned property; and many others.

The Florida Legislature has recognized the need and right of the public to be informed about these activities and events. As a result, statutes require that public notices and legal ads be published in newspapers to effectively disseminate this important information throughout the relevant communities.

Chapter 50, F.S., contains the requirements for legal and official advertisements. Section 50.011, F.S., provides requirements governing the publication of legal advertisements and notices in a newspaper, including all legal notices and advertisements of sheriffs and tax collectors. Publication must be in a newspaper that is printed and published at least once a week, and must contain 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.

Further, s. 50.031, F.S., requires, in part, that such newspapers have been in existence for 1 year and have been entered as periodicals matter at a post office in the county where published, or in a newspaper which is a direct successor of a newspaper which together have been so published.

Local Government Public Notices

Local governments are the governments closest to the people. They are viewed as the government where individuals can have the greatest impact on the policies of their community. A critical part of participatory democracy is that citizens know of and even participate in government. It is for this reason that Florida has such strong Sunshine Laws granting citizens access to public records and meetings of government officials. 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."¹ A report published by The Florida Senate in 2010 stated that publication costs for public notices and legal advertisements ranged considerably with the City of Center Hill reporting an annual cost of \$150 and the Miami City Clerk's Office reporting the annual cost was \$130,000.²

¹ Dalesio, Emery P., *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 (last visited Feb. 14, 2012).

² Committee on Community Affairs, Internet Notice, Interim Report 2010-106 (October 2009) (on file with the Community Affairs Staff).

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. Also, the newspaper must customarily contain information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public.³

A range of other statutes require local governments to publish in local newspapers notice of a range of topics that may be of interest to local residents and businesses. The types of notices and the publication requirements for such notices are described below.

Proof of publication; uniform affidavits required - §50.041, F.S.

This section provides, in part, each affidavit shall be printed upon white bond paper containing at least 25 percent rag material and shall be 8 1/2 inches in width and of convenient length, not less than 5 1/2 inches. A white margin of not less than 2 1/2 inches shall be left at the right side of each affidavit form and upon or in this space shall be substantially pasted a clipping which shall be a true copy of the public notice or legal advertisement for which proof is executed.

Amounts chargeable for official notices and advertisements published in a newspaper - §50.061, F.S.

Subsection (2) of this section provides the charge for publishing each official public notice or legal advertisement shall be 70 cents per square inch for the first insertion and 40 cents per square inch for each subsequent insertion, with exceptions.

County Ordinances; enactment procedure – notice - §125.66, F.S.

This section provides, in part, that the board of county commissioners at any regular or special meeting may enact or amend any ordinance if notice of intent to consider such ordinance is given at least 10 days prior to said meeting by publication in a newspaper of general circulation in the county. In cases in which the proposed ordinance or resolution changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the required advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper of general paid circulation in the county and of general interest and readership in the community pursuant to ch. 50, F.S., not one of limited subject matter.

³ Section 50.011, F.S.

Municipal ordinance adoption notices - §166.041, F.S.

This section provides procedures for adoption of municipal ordinances and resolutions. A proposed ordinance, at least 10 days prior to adoption, must be noticed once in a newspaper of general circulation in the municipality. The notice of proposed enactment must include specified information.

In cases in which the proposed ordinance changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the governing body shall hold two advertised public hearings on the proposed ordinance. The first public hearing shall be held at least 7 days after the day that the first advertisement is published. The second hearing shall be held at least 10 days after the first hearing and shall be advertised at least 5 days prior to the public hearing. The size and content of the required newspaper advertisements is specified. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper of general paid circulation in the municipality and of general interest and readership in the municipality, not one of limited subject matter, pursuant to ch. 50, F.S. In lieu of publishing the advertisement set out in this paragraph, the municipality may mail a notice to each person owning real property within the area covered by the ordinance.

Establishment of district - §190.005, F.S.

This section provides, in part, that a local public hearing on the petition shall be conducted by a hearing officer in conformity with the applicable requirements and procedures of the Administrative Procedure Act. The hearing shall include oral and written comments on the petition pertinent to the factors specified. The hearing shall be held at an accessible location in the county in which the community development district is to be located. The petitioner shall cause a notice of the hearing to be published in a newspaper at least once a week for the 4 successive weeks immediately prior to the hearing. Such notice shall give the time and place for the hearing, a description of the area to be included in the district, which description shall include a map showing clearly the area to be covered by the district, and any other relevant information which the establishing governing bodies may require. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county and of general interest and readership in the community, not one of limited subject matter, pursuant to chapter 50, F.S. Whenever possible, the advertisement shall appear in a newspaper that is published at least 5 days a week, unless the only newspaper in the community is published fewer than 5 days a week. All affected units of general-purpose local government and the general public shall be given an opportunity to appear at the hearing and present oral or written comments on the petition.

Method of fixing millage - §200.065, F.S.

Subsection (3) of this section provides that the advertisement of millage rates shall be no less than one-quarter page in size of a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be

placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county or in a geographically limited insert of such newspaper.

Governmental efficiency hotline; duties of Chief Financial Officer - §17.325, F.S.

This section provides, in part, the Chief Financial Officer shall operate the hotline 24 hours a day. The Chief Financial Officer shall advertise the availability of the hotline in newspapers of general circulation in this state and shall provide for the posting of notices in conspicuous places in state agency offices, city halls, county courthouses, and places in which there is exposure to significant numbers of the general public, including, but not limited to, local convenience stores, shopping malls, shopping centers, gasoline stations, or restaurants. The Chief Financial Officer shall use the slogan "Tell us where we can 'Get Lean'" for the hotline and in advertisements for the hotline.

Licensing - §120.60, F.S.

Subsection (5) of this section provides that no revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the entry of a final order, the agency has served, by personal service or certified mail, an administrative complaint which affords reasonable notice to the licensee of facts or conduct which warrant the intended action and unless the licensee has been given an adequate opportunity to request a proceeding pursuant to ss. 120.569 and 120.57, F.S. When personal service cannot be made and the certified mail notice is returned undelivered, the agency shall cause a short, plain notice to the licensee to be published once each week for 4 consecutive weeks in a newspaper published in the county of the licensee's last known address as it appears on the records of the agency. If no newspaper is published in that county, the notice may be published in a newspaper of general circulation in that county. If the address is in some state other than this state or in a foreign territory or country, the notice may be published in Leon County.

Florida Hurricane Catastrophe Fund - §215.555, F.S.

Subsection (6) of this section covers revenue bonds and the Florida Hurricane Catastrophe Fund Finance Corporation. In actions under ch. 75, F.S., to validate any bonds issued by the corporation, the notice required by s 75.06, F.S., shall be published only in Leon County and in two newspapers of general circulation in the state, and the complaint and order of the court shall be served only on the State Attorney of the Second Judicial Circuit.

Placing oil and gas leases on market by board - §253.52, F.S.

This section provides, in part, that whenever in the opinion of the Board of Trustees of the Internal Improvement Trust Fund, there shall be a demand for the purchase of oil and gas leases on any area, tract, or parcel of the land so owned, controlled, or managed, by any state board, department, or agency, then the board shall place such oil and gas lease or leases on the market in such blocks, tracts, or parcels as it may designate. The lease or leases shall only be made after notice by publication has been made not less than once a week for 4 consecutive weeks in a newspaper of general circulation published in Leon County, and in a similar newspaper for a

similar period of time published in the vicinity of the lands offered to be leased. The last publication in both newspapers must be at least 5 days in advance of the sale date.

Obligations; purpose, terms, approval, limitations - §255.518, F.S.

This section provides, in part, that in actions to validate obligations pursuant to ch. 75, F.S., the complaint shall be filed in the Circuit Court of Leon County, the notice required by s. 75.06, F.S., shall be published only in Leon County and in two newspapers of general circulation in the state, and the complaint and order of the court shall be served only on the state attorney of the Second Judicial Circuit.

Bonds; purpose, terms, approval, limitation - §380.0668, F.S.

This section provides, in part, that in actions to validate bonds pursuant to ch. 75, F.S., the complaint shall be filed in the Circuit Court of Leon County. The notice required by s. 75.06, F.S., shall be published in newspapers of general circulation in Leon County and the county in which the area or areas of critical state concern involved are located, and the complaint and order of the court shall be served on the state attorney of the Second Judicial Circuit and the circuit in which the area or areas of critical state concern involved are located.

Address of record - §455.275, F.S.

This section provides, in part, that if service, as previously defined does not provide the department with proof of service, the department shall call the last known telephone number of record and cause a short, plain notice to the licensee to be published once each week for 4 consecutive weeks in a newspaper published in the county of the licensee's last known address of record. If a newspaper is not published in the county, the administrative complaint may be published in a newspaper of general circulation in the county. If the licensee's last known address is located in another state or in a foreign jurisdiction, the administrative complaint may be published in Leon County pursuant to s. 120.60(5), F.S.

Certified public accountants licensed in other states - §473.3141, F.S.

Subsection (5) of this section provides that disciplinary action against an individual or firm that practices pursuant to this section is not valid unless, prior to the entry of a final order, the agency has served, by personal service pursuant to this chapter or ch. 48, F.S., or by certified mail, an administrative complaint that provides reasonable notice to the individual or firm of facts or conduct that warrants the intended action and unless the individual or firm has been given an adequate opportunity to request a proceeding pursuant to ss. 120.569 and 120.57, F.S. When personal service cannot be made and the certified mail notice is returned undelivered, the agency shall have a short, plain notice to the individual or firm with practice privileges published once a week for 4 consecutive weeks in a newspaper published in Leon County, Florida. The newspaper shall meet the requirements prescribed by law for such purposes.

Marketing orders; referendum requirements; assessments - §527.23, F.S.

This section provides, in part, that it is the duty of the producers or dealers of propane gas who vote in each referendum to send their marked ballots to the department, which shall have the

ballots counted by qualified and impartial personnel in its office, and the department shall, within 10 days after the closing date for submitting ballots in any referendum, certify in writing and publish the results of such referendum in a newspaper of general circulation in the state and in such other newspapers as the department prescribes.

Notice of effective date of marketing order - §573.111, F.S.

This section provides that before the issuance of any marketing order, or any suspension, amendment, or termination thereof, a notice shall be posted on a public bulletin board to be maintained by the department in the Division of Marketing and Development of the department in the Nathan Mayo Building, Tallahassee, Leon County, and a copy of the notice shall be published in a newspaper of general circulation in the state and in such other newspaper or newspapers as the department may prescribe. The notices published in the newspaper or newspapers shall be sent by first-class mail, by the department to those newspapers designated by it, the same date that the notice is posted on the bulletin board with instructions to publish the same as a legal advertisement the first date after receipt of the notice as such newspaper's policy for publishing legal advertisements provides. No marketing order, or any suspension, amendment, or termination thereof, shall become effective until the termination of a period of 5 days from the date of posting and publication.

Duties and powers of department and office - §631.59, F.S.

This section provides that the department may require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this part. Such notification shall be by mail at their last known addresses, when available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

III. Effect of Proposed Changes:

Section 1 creates s. 50.0211, F.S., requiring that, after a specified date, if a legal notice is published in a newspaper, the newspaper publishing the notice shall also place the notice on a website maintained by the newspaper; provides requirements for size and placement of such website publication and requires free access to such online publications and requires that legal notices published in newspapers also be published on another specified website; requires that, after a specified date, newspapers that publish legal notice provide e-mail notification of new legal notices and provides requirements for such notice; and provides that an error on a newspaper or statewide website is considered a harmless error and legal notice requirements are considered met if the notice published in the newspaper is correct.

Section 2 amends s. 50.041, F.S., revising physical requirements for proof of publication affidavits; authorizing electronic affidavits that meet specified requirements.

Section 3 amends s. 50.061, F.S., limiting the rate that may be charged for government notices required to be published more than once in certain circumstances; deleting provisions specifying rates for legal notices based on county population.

Section 4 amends s. 125.66, F.S., requiring that website publication of certain legal notices include maps that appear in the newspaper advertisements.

Section 5 amends s. 166.041, F.S., requiring that website publication of certain legal notices include maps that appear in the newspaper advertisements.

Section 6 amends s. 190.005, F.S., requiring that website publication of certain legal notices include maps that appear in the newspaper advertisements.

Section 7 amends s. 200.065, F.S., requiring that website publication of certain legal notices include maps that appear in the newspaper advertisements.

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. 120.60, F.S., deleting requirements that certain legal notices be published in Leon County.

Section 10 amends s. 215.555, F.S., deleting requirements that certain legal notices be published in Leon County.

Section 11 amends s. 253.52, F.S., deleting requirements that certain legal notices be published in Leon County.

Section 12 amends s. 255.518, F.S., deleting requirements that certain legal notices be published in Leon County.

Section 13 amends s. 380.0668, F.S., deleting requirements that certain legal notices be published in Leon County.

Section 14 amends s. 455.275, F.S., deleting a requirement that certain notices concerning professional licensees who cannot be personally served be published in Leon County; requiring that plain notice to the licensee be posted on the front page of the Department of Business and Professional Regulation's website and be provided to certain news outlets.

Section 15 amends s. 473.3141, F.S., deleting a requirement that notices concerning the discipline of certain certified public accountants be published in Leon County.

Section 16 amends s. 527.23, F.S., deleting requirements relating to the newspaper publication of certain notices relating to marketing orders for propane gas; requiring that such orders be published on the Internet and that information be provided to certain news outlets.

Section 17 amends s. 573.109, F.S., deleting requirements relating to the newspaper publication of certain notices relating to agricultural marketing orders; requiring that such orders be published on the Internet and that information be provided to certain news outlets.

Section 18 amends s. 573.111, F.S., deleting requirements relating to the newspaper publication of certain notices relating to agricultural marketing orders; requiring that such orders be published on the Internet and that information be provided to certain news outlets.

Section 19 amends s. 631.59, F.S., deleting requirements for the newspaper publication of certain notices concerning insolvent insurers; providing for notice by e-mail or telephone.

Section 20 provides that unless otherwise expressly provided, the effective date is July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Floridians will have enhanced public notice since information will now be available in print, on the newspaper's website, at www.floridapublicnotices.com, or in an email. Newspapers might have to expend funds to create, maintain and issue correspondence from a registry of persons requesting notifications by e-mail.

According to a report published by the Florida Senate in 2010, the median income reported from newspapers for public notices and legal advertisements was \$108,704 with an average cost of \$173,219.⁴

C. Government Sector Impact:

The Office of Economic and Demographic Research (EDR) Revenue Estimating Impact Conference has not yet addressed this bill. The Florida League of Cities along with the Florida Association of Counties have stated that based on a survey of their constituents they estimate that local governments spend more than \$16 million a year to print legal notices in local newspapers.

⁴ Committee on Community Affairs, *supra* note 2.

According to a report published by the Florida Senate in 2010, the costs for the publication of public notices and legal advertisements ranges substantially, for example Wakulla County reported an annual cost of \$3,000, while Orange County reported costs of more than \$323,681. The County of Miami-Dade spent \$1,124,664 on newspaper notices. The median cost of newspaper publications reported by municipalities was \$9,550 and the average cost was \$20,222. Costs reported by the counties had a median of \$32,900 and an average of \$133,096.⁵

This bill amends the current language for the charges assessed for publishing official public notices and legal advertisements. The bill removes language specifying rates based on population size and in its place sets out to standardize the rates on which government notices are based. If the government notice is not paid in advance or reimbursed by private parties the rate is initially 70 cents per square inch and successive insertions would be charged at a rate no more than 85 percent of “the original rate,” which is 59.50 cents. However, if the government is reimbursed by private parties the rate will be 70 cents per square inch for the initial posting and 40 cents thereafter.

This will likely have an unknown fiscal impact on those governmental entities that publish these notices.

VI. Technical Deficiencies:

The Department of Revenue (DOR) performed a staff analysis of SB 292 prior to the bill becoming a committee substitute. Some of their areas of concern are applicable to the committee substitute as it is now written. There are some areas of concern regarding the public notices being placed on publicly available websites.⁶

The DOR has made some recommendations regarding additional sections of Florida Statutes that may need to be added to SB 292 (and now the CS) to conform to the changes proposed in the bill. Their report states that if the intent of the legislation is that a notice on www.floridapublicnotices.com constitutes legal notice, the following statutes will need to be amended: ss. 194.037, 196.194, 197.122, 197.2301, 197.322, 197.402, 197.403, 197.512, 197.522, F.S. These sections describe newspaper advertisement requirements, and the sponsor may want to have them remain consistent if any changes are made to the underlying requirements.

VII. Related Issues:

In 2009, the Florida Legislature passed CS/SB 2188, requiring state agencies to provide Internet notice for purposes of ch. 120, F.S.⁷

⁵ *Id.*

⁶ Department of Revenue, Staff Analysis SB 292 (2011) (on file with the Senate Committee on Community Affairs.)

⁷ Chapter 2009-87, Laws of Fla.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on January 12, 2012

The CS created a new framework for which legal notices are required to be published. The CS also removes several references to Leon County in statutes as they pertain to legal notices being published there. The CS requires that websites that publish legal notices include maps that appear in the newspaper advertisements.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
