

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/CS/SB 292

INTRODUCER: Judiciary Committee, Community Affairs Committee, and Senator Bennett

SUBJECT: Effective Public Notices by Governmental Entities

DATE: February 20, 2012 **REVISED:** _____

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

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill requires newspapers that publish legal notices in print to also:

- Publish those notices on the newspapers' websites at no additional charge;
- Place those notices on www.floridapublicnotices.com, which is a website maintained by the Florida Press Association as a repository for legal notices; and
- Provide e-mail notification of new legal notices when they are printed and added to the newspaper's website. The notification service must be provided free of charge to persons upon request.

The bill also revises the rates that newspapers may charge for legal notices. The bill eliminates existing rates that are based on the population of the county served by a newspaper. As a result, the rates for publishing a legal notice are 70 cents per square inch for the first insertion and 40 cents per square inch for the second insertion or the minimum commercial rate, whichever is greater. Additionally, the bill prohibits a newspaper from charging a government entity more than 85 percent of the rate for subsequent advertisements of the same legal notice if the publication costs cannot be imposed on a private party.

Lastly, the bill deletes requirements for several types of notices to be published in a newspaper and provides for certain notices to be provided on a state agency's website or by email in lieu of publication in a newspaper.

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, 215.68, 253.52, 255.518, 380.0668, 455.275, 473.3141, 527.23, 573.109, 573.111, and 631.59.

This bill creates section 50.0211, Florida Statutes.

II. Present Situation:

Purpose of Legal Notices and Legal Advertisements

Public notices and legal advertisements 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 advertisements be published in newspapers to effectively disseminate this important information throughout the relevant communities.

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 placed by local governments 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

Technical Requirements for Legal Notices and Advertisements

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.

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).

The charge for publishing each official public notice or legal advertisement is 70 cents per square inch for the first insertion and 40 cents per square inch for each subsequent insertion, with some exceptions.³

Uniform affidavits are required by statute to serve as proof of publication. Each affidavit is required to be printed on white bond paper containing at least 25 percent rag material and must be 8 1/2 inches in width and of convenient length, at least 5 1/2 inches. A white margin of at least 2 1/2 inches must be left at the right side of each affidavit form and a clipping is required to be substantially pasted on or in this space, which must be a true copy of the public notice or legal advertisement for which proof is executed.⁴

Common Types of Legal Notices

The Florida Statutes contain requirements for the placement of legal notices and advertisements. Such notices and advertisements include:

- Notices of proceedings to validate bonds which must be published in a newspaper in Leon County and in a newspaper in the area that may potentially be affected by the bonds.⁵
- Notice that the Department of Business and Professional Regulation has issued an administrative complaint against a licensee who the department is unable to serve by certified mail. The notice must be published once a week for 4 weeks in the county of the licensee's last known address.⁶
- Notices of the adoption of municipal ordinances and resolutions which must be published one time at least 10 days prior to adoption in a newspaper of general circulation in the municipality.⁷
- Advertisements of millage rates which must be published in a newspaper of general paid circulation in the county or in a geographically limited insert of such newspaper.⁸

III. Effect of Proposed Changes:

Publication Requirements for Legal Notices (Section 1)

The bill amends s. 50.021, F.S., to require newspapers that publish legal notices in print to also:

- Publish those notices on the newspapers' websites at no additional charge;
- Place those notices on www.floridapublicnotices.com, which is a website maintained by the Florida Press Association as a repository for legal notices; and
- Provide e-mail notification of new legal notices when they are printed and added to the newspaper's website. The notification service must be provided free of charge upon request.

³ Section 50.061(2), F.S.

⁴ Section 50.041, F.S.

⁵ Section 75.06, F.S.

⁶ Section 455.275, F.S.

⁷ Section 166.041, F.S.

⁸ Section 200.065, F.S.

Specifications of Proof of Publication Affidavits (Section 2)

The bill amends s. 50.041, F.S., to delete requirements that a proof of publication affidavit printed on paper be printed on “bond” paper “containing at least 25 percent rag material.” The bill also authorizes proof of publication affidavits to be in an electronic form. An electronic affidavit must contain an electronic signature.

Publication Rates for Legal Notices (Section 3)

The bill amends s. 50.061, F.S., to eliminate existing rates a newspaper may charge for legal notices which are based on the population of the county served by a newspaper. As a result, the rates for publishing a legal notice are 70 cents per square inch for the first insertion and 40 cents per square inch for the second insertion or the minimum commercial rate, whichever is greater. Additionally, the bill prohibits a newspaper from charging a government entity more than 85 percent of the rate for subsequent advertisements of the same legal notice if the publication costs cannot be imposed on a private party.

Publication of Legal Notices Containing Maps (Sections 4 - 7)

The bill amends ss. 125.66, 166.041, 190.005, and 200.065, F.S., requiring that website publication of certain legal notices include maps that appear in the newspaper advertisements.

Deletion of Requirements for Publication in Leon County (Sections 10, 11, 13, & 14)

The bill deletes requirements for the following legal notices to be published in a newspaper in Leon County, Florida:

- Notices of intent by a state agency to take action against a licensee who does not reside in this state.
- Notices of proceedings to validate state or local government bonds or bonds to be issued by the Florida Hurricane Catastrophe Fund Finance Corporation. However, the bill retains existing requirements to publish these notices in the areas of the state which potentially may be affected by the issuance of the bonds.

Deletion of Requirements to Publish a Notice in a Newspaper (Sections 8, 9, & 12)

The bill deletes requirements for the following notices to be published in a newspaper:

- Notices by the State Board of Administration for the sale of bonds issued on behalf of a state agency.
- Notices by the Board of Trustees of the Internal Improvement Trust Fund to sell oil and gas leases on state land.
- Advertisements by the Chief Financial Officer to promote the governmental efficiency hotline which must contain the slogan “Tell us where we can ‘Get Lean.’” However, the bill allows the Chief Financial Officer to advertise the hotline in a newspaper if he or she wishes.

Constructive Notice of Intended Actions by Department of Business and Professional Regulation (Sections 15 & 16)

The bill amends s. 455.275, F.S., to revise the procedures for the Department of Business and Professional Regulation to provide constructive notice of an administrative complaint to a person who is licensed by the department. Under existing law, constructive notice of the complaint must be accomplished by publishing notice of the complaint in a newspaper. Under the bill, the department may provide notice of the administrative complaint by posting notice of the complaint on the department's website and by sending notices of the complaint via e-mail to newspapers and news departments of broadcast networks in this state.

The bill amends s. 473.3141, F.S., to delete requirements for the Department of Business and Professional Regulation to provide constructive notice of an administrative complaint against a certified public accountant who is licensed by the department. Under existing law, the department must notice of the complaint in a newspaper to provide constructive notice. As a result, the certified public accountant will receive constructive notice of the complaint as provided in s. 455.275, F.S., as described above.

Notice of Marketing Orders by the Department of Agriculture and Consumer Services (Sections 17-19)

The bill deletes requirements for the Department of Agriculture and Professional Regulation to publish in a newspaper the results of a referendum on a marketing order to govern the distribution and handling of propane gas. Under the bill, such referendum results must be published on the department's website and by sending notices of the referendum results via e-mail to newspapers and news departments of broadcast networks in this state.

The bill also deletes requirements for the Department of Agriculture and Professional Regulation to publish in a newspaper the results of a referendum on a marketing order to govern the distribution and handling of agricultural commodities. Under the bill, such referendum results must be published on the department's website and by sending notices of the referendum results via e-mail to newspapers and news departments of broadcast networks in this state.

Notice of Insolvency of an Insurer (Section 20)

Under existing law, the Department of Financial Services may require that the Florida Insurance Guarantee Association, Inc., notify insureds of the insolvency of their insurer by publishing a notice in a newspaper if the association does not have sufficient information to send a notice by mail. The bill authorizes the notice of insolvency to be provided via email or telephone and deletes the authority of the department to require the association to publish notice of the insolvency in a newspaper.

Effective Date (Section 21)

The bill provides an effective date of July 1, 2012, except as otherwise provided in the bill.

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 \$173,219.⁹

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.

This bill reduces the rates that newspapers may charge for legal notices in some cases. 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.

⁹ Committee on Community Affairs, *supra* note 2.

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.¹⁰

The DOR 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:

This bill deletes requirements for the Department of Business and Professional Regulation to provide constructive notice of an administrative complaint against a licensee of the department by publishing notice of the complaint in a newspaper. In lieu of notice by publication, the bill authorizes the department to provide notice of the administrative complaint by posting notice of the complaint on the department's website and by sending notices of the complaint via e-mail to newspapers and to news departments of broadcast networks in this state.

The Legislature may wish to revise s. 120.60, F.S., the general licensing statute applicable to state agencies, to allow all state agencies to provide constructive notice of administrative complaints in the same manner that the bill authorizes the Department of Business and Professional Regulation to provide constructive notice of administrative complaints.

VIII. Additional Information:

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

CS/CS by Judiciary on February 16, 2012:

The committee substitute:

- Provides that a newspaper may not impose a charge for publishing a legal notice on its website that the newspaper publishes in print;
- Deletes a requirement to publish a notice of the sale of bonds issued for a state agency;

¹⁰ Department of Revenue, Staff Analysis SB 292 (2011) (on file with the Senate Committee on Community Affairs.)

- Provides for publication of notices relating to marketing orders for propane gas on the Internet rather than requiring such publication in a newspaper; and
- Provides for publication of notices relating agricultural marketing orders on the Internet rather than requiring such publication in a newspaper.

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.