

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 7 Legal Notices

SPONSOR(S): Judiciary Committee, Local, Federal & Veterans Affairs Subcommittee, Fine and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1340

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	7 Y, 5 N, As CS	Darden	Miller
2) Judiciary Committee	11 Y, 7 N, As CS	Padgett	Luczynski
3) State Affairs Committee	14 Y, 9 N	Darden	Williamson

SUMMARY ANALYSIS

The Florida Constitution requires public notice be given for meetings at which official acts are to be taken or where public business is to be conducted. Several statutory provisions require notice to be given for certain actions undertaken by local governments. Chapter 50, F.S., prescribes government notice requirements.

The bill allows a governmental agency the option to publish legally required advertisements and notices on a publicly accessible website if certain conditions are met. Specifically, the bill allows a governmental agency:

- In a county that has not been designated a fiscally constrained county, to publish legally required advertisements and notices on a publicly accessible website if online publication would result in a cost savings for the government.
- In a fiscally constrained county, to publish advertisements and notices on a publicly accessible website after making a determination at a publicly noticed meeting that online publication:
 - Is in the public interest;
 - Will be less expensive than newspaper publication; and
 - Will not, after taking into account the level of internet access in the county, unreasonably restrict access to advertisements and legal notices.

If a local government publishes advertisements and notices on a publicly accessible website, the bill requires the governmental agency to publish a notice at least once a year in a newspaper of general circulation or other publication mailed and delivered to all residents and property owners in the government's jurisdiction stating the resident or property owner may receive legally required notices or advertisements via first-class mail or e-mail by registration of their name, address, and e-mail address with the governmental agency.

The bill revises the criteria a newspaper must meet to be eligible to publish advertisements and legal notices, allowing a governmental agency to publish advertisements and notices in a free newspaper.

The bill allows the operators of self-service storage facilities and self-contained storage units to publish notice for 14 consecutive days on a public website customarily used for conducting personal property auctions in lieu of publication in a newspaper of general circulation.

The bill may have an indeterminate fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Constitutional Notice Requirements for Local Governments

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 must be open to the public and notice must be given.¹ While this 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.

Notice Requirements

All legal notices and publications must be made in a newspaper that meets the following qualifications:³

- Published at least once a week;
- At least 25 percent of its words are in English;
- Considered a periodical by the post office;
- For sale to the general public; and
- Contains information of interest or value to the general public in the affected area.

If no newspaper is published in the county, at least three copies of the notice or advertisement must be posted on the front door of the county courthouse and two other locations in the county, as well as published in a newspaper in the nearest county in which a newspaper is published.⁴

If the newspaper publishing the legal notice maintains a website, the legal notice must appear on the newspaper's website the same day it appears in the printed publication.⁵ The notice must be published at no additional charge on a separate web page titled "Legal Notices," "Legal Advertising," or with comparable identifying language. The site must contain a search function and the newspaper publisher may not charge a fee or require registration to view or search legal notices. The newspaper must also place a copy of the notice on a repository website maintained by the Florida Press Association and provide the ability for members of the public to sign up for an e-mail notification to be received when new legal notices are published.⁶

The publication of legal notice may not be considered effective unless:⁷

- The notice is published for the period prescribed for such a notice;
- The newspaper has been in existence for at least a year at the time the notice is published; and
- The newspaper has been entered as a periodical at a post office in the county where the notice is published.

Proof of publication is established by the use of a uniform notice.⁸ The proof of publication affidavit must be on paper formatted in a specific manner or an electronic version that complies with the electronic notarization requirements of s. 117.021, F.S. The proof of publication affidavit must contain

¹ Art. I, s. 24(b), Fla. Const.

² Art. I, s. 24(c), Fla. Const.

³ S. 50.011, F.S.

⁴ S. 50.021, F.S.

⁵ S. 50.0211, F.S.

⁶ The repository maintained by the Florida Press Association is available at: <http://www.floridapublicnotices.com>. See s. 50.0211(3)(a), F.S.

⁷ S. 50.031, F.S.

⁸ S. 50.041, F.S.

the name of the newspaper, the frequency of publication, the city and county of publication, and the signature of a notary public.⁹

The fees for a legal notice are set by statute and may not be rebated, commissioned, or refunded. The fee for publishing a legal notice is 70 cents per square inch for the first insertion and 40 cents per square inch for each subsequent insertion. Notices required to be published more than once and paid for by the government entity may not be charged greater than 85 percent of the original rate for second and successive insertions. If the regular established minimum commercial rate per square inch is greater than the rate stipulated in statute, the publisher may charge the minimum commercial rate for each insertion, except that notices required to be published more than once and paid for by the government entity may not be charged greater than 85 percent of the original rate for second and successive insertions. All notices and legal advertisements are charged on the basis of 6-point type on 6-point body, unless otherwise specified by statute.¹⁰

Enforcement of Self-Storage Facility Liens

The owner of a self-service storage facility or self-contained storage unit has a lien for rent, labor charges, or other charges on all personal property located in the facility for expenses related to the preservation of the property and reasonably related to its sale or other disposition for nonpayment.¹¹ The owner must provide written notice in person, e-mail, or registered mail to the tenant's last known address and post notice on the storage unit before satisfying the lien.¹² If the owner does not receive a response, return receipt, or delivery confirmation of a notice sent via e-mail, the owner must provide notice by certified mail.

The notice provided to the tenant must include:¹³

- An itemized statement of the owner's claim, showing the amount due at the time of the notice and when the amount became due;
- A description of the personal property provided in the rental agreement;
- A demand for payment within a specified time no less than 14 days after delivery of the notice;
- A conspicuous statement that the personal property will be advertised for sale or other disposition and sold or otherwise disposed of at a specified time and place if the amount due is not paid in the time stated in the notice; and
- The name, address, and telephone number of the owner.

After the expiration of the time given in the notice, the owner must place an advertisement of the sale or other disposition at least once a week for two consecutive weeks in a newspaper of general circulation in the area where the facility is located.¹⁴ If there is no newspaper of general circulation in the area where the facility is located, the owner must post the advertisement in at least three conspicuous places in the neighborhood where the facility is located.¹⁵ The advertisement must include:¹⁶

- A brief and general description of the personal property contained in the storage unit;
- The address of the facility and the name of the tenant; and
- The time, place, and manner of the sale or other disposition.¹⁷

⁹ S. 50.051, F.S.

¹⁰ S. 50.061, F.S.

¹¹ S. 83.805, F.S.

¹² S. 83.806(1), F.S.

¹³ S. 83.806(2), F.S.

¹⁴ S. 83.806(4), F.S.

¹⁵ S. 83.806(4)(c), F.S.

¹⁶ S. 83.806(4)(b), F.S.

¹⁷ The sale or disposition may not occur until at least 15 days after first publication.

Effect of Proposed Changes

The bill allows a governmental agency¹⁸ the option to publish legally required advertisements and notices on a publicly accessible website¹⁹ if certain conditions are met. Specifically, the bill allows a governmental agency:

- In a county that has not been designated a fiscally constrained county,²⁰ to publish legally required advertisements and notices on a publicly accessible website if online publication would result in a cost savings for the government.²¹
- In a fiscally constrained county, to publish advertisements and notices on a publicly accessible website after making a determination at a publicly noticed meeting that online publication:
 - Is in the public interest;
 - Will be less expensive than newspaper publication; and
 - Will not, after taking into account the level of internet access in the county, unreasonably restrict access to advertisements and legal notices.

All advertisements and legal notices posted on a governmental agency's website must be in a searchable format.

The bill requires each governmental agency that uses a publicly accessible website to publish legally required advertisements and public notices to publish notice at least once a year in a newspaper of general circulation, a newsletter or periodical, or other publication mailed and delivered to all residents and property owners in the government's jurisdiction, stating the resident or property owner may receive legally required notices or advertisements via first-class mail or e-mail by registration of their name, address, and e-mail address with the governmental agency. The governmental agency must maintain a registry of names, addresses, and e-mail addresses of residents and property owners who request in writing to receive legally required advertisements and notices from the governmental agency by first-class mail or e-mail.

The bill requires any legally required notices and advertisements published on the governmental agency's publicly accessible website to be placed conspicuously on the website or made accessible through a direct link on the homepage. The homepage or linked page must indicate the date on which the advertisement was first published.

The bill authorizes a governmental agency operating a governmental access channel to include a summary of all advertisements and public notices published on its website on the channel.

The bill revises the criteria a newspaper must meet to be eligible to publish advertisements and legal notices, allowing a governmental agency to publish advertisements and notices in a free newspaper.

The bill makes conforming changes to other provisions requiring a governmental agency to publish a notice to allow for the publication of such notices and advertisements on a publicly accessible website. A notice published on a local government website must be published for the same period a printed notice would have been available to the public.²²

¹⁸ "Governmental agency" means a county, municipality, school board, or other unit of local government or political subdivision of this state.

¹⁹ A "publicly accessible website" means a governmental agency's official website or other private website designated by the governmental agency for the posting of legal notices and advertisements that is accessible via the internet.

²⁰ A "fiscally constrained county" means a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1.

²¹ There are currently 29 fiscally constrained counties. Florida Department of Revenue, *Fiscally Constrained Counties*, <http://floridarevenue.com/property/Documents/fcco081210.pdf> (last visited Jan. 31, 2020).

²² *E.g.*, if a printed notice must be published at least 30 days before a meeting is held, a notice available on the local government website must be posted and retained on the website for at least 30 days before the meeting is held.

The bill allows the operator of a self-service storage facility or a self-contained storage unit to publish notice for 14 consecutive days on a public website customarily used for conducting personal property auctions in lieu of publication in a newspaper of general circulation.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1 amends s. 50.011, F.S., relating to where and in what language legal notices are to be published.

Section 2 amends s. 50.021, F.S., relating to publication when no newspaper is published in the 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. 50.041, F.S., relating to proof of publication; uniform affidavits required.

Section 7 amends s. 50.051, F.S., relating to proof of publication; form of uniform affidavit.

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

Section 9 amends s. 83.806, F.S., relating to enforcement of lien.

Sections 10 through 33 amends ss. 11.02, 45.031, 121.0511, 121.055, 125.66, 162.12, 166.041, 189.015, 190.005, 190.046, 194.037, 197.402, 200.065, 338.223, 348.0308, 348.635, 348.7605, 373.0397, 373.146, 403.722, 712.06, 849.38, 865.09, and 932.704, F.S., conforming provisions to changes made by the act.

Section 34 provides an effective date of July 1, 2021.

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:

Indeterminate. The bill provides an option to publish legal notices on a publicly available website; as such, the bill may reduce a governmental agency's expenditures related to publishing legal notices and advertisements in a newspaper. If a governmental agency exercises this option, the agency is also required to provide notice, at least annually, in a newspaper or another publication that is

mailed or delivered to all residents and property owners throughout the government's jurisdiction indicating that the property owner and resident may receive legally required advertisements and public notices from the governmental agency by first-class mail or e-mail. The costs associated with this requirement will vary depending on the number of residents and property owners that register and request personal notification.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce revenue for newspapers to the extent the elimination of the print publishing requirements for legal notices and advertisements results in local governments not publishing legal notices and advertisements in newspapers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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 provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 158 – 164 of the bill define the term “publicly accessible website” for purposes of s. 50.11, F.S.; however, no such section exists. It appears the bill should be referencing s. 50.011, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 15, 2020, the Local, Federal & Veterans Affairs Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Clarified a governmental agency must provide annual notice in a newspaper or other publication of the ability to receive notices by email or first-class mail only if the governmental agency uses a publically accessible website to publish notice; and
- Provided that notices for public-private partnership projects must be published in the Florida Administrative Register and in each county where the project is located.

On January 30, 2020, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment republished existing statutory provisions to correct a technical drafting error.

The analysis is drafted to the committee substitute as approved by the Judiciary Committee.