

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 35 Legal Notices  
**SPONSOR(S):** Judiciary Committee, Fine, Fischer and others  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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**FINAL HOUSE FLOOR ACTION:** 105 Y's 9 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/HB 35 passed the House on March 18, 2021. The bill was amended in the Senate on April 29, 2021, and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on April 29, 2021.

The Florida Constitution requires that 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 that public notices and advertisements also be given for certain other local government and judicial actions. Such notices and advertisements ("legal notices") must be published in a newspaper meeting specified requirements, including that the newspaper be for sale to the public, unless no newspaper is published in the county, in which case three copies of such notice must be posted in the county and published in a newspaper in the nearest available county. If the newspaper maintains a website, legal notices must appear in a searchable format on such website the same day they appear in the printed publication at no additional charge. The newspaper must also place a copy of the notice on the Florida Press Association's ("FPA") repository website and allow the public to sign up to receive e-mailed notifications of notice publications.

The bill:

- Modifies the criteria that a newspaper must satisfy to publish legal notices.
- Gives governmental agencies the option to publish legal notices on the website of a qualified newspaper and on the FPA's repository website under specified conditions.
- Authorizes a newspaper publishing legal notices online to charge for such publication up to the amount it would charge to publish the notices in its print edition.
- Requires the FPA to seek to ensure that minority populations throughout the state have equitable access to legal notices posted on the FPA's repository website and requires the FPA to publish a report containing specified information.

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

The bill was approved by the Governor on May 7, 2021, ch. 2021-17, L.O.F., and will become effective on January 1, 2022.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Background**

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.<sup>1</sup> While this requirement is self-executing, the Legislature may enact general laws enforcing the provision and may provide exemptions by a two-thirds vote.<sup>2</sup> All exemptions require a specific statement of public necessity justifying the exemption.<sup>3</sup> Further, certain statutory provisions require that public notices and advertisements be given for certain other local government and judicial actions.<sup>4</sup> Such notices and advertisements (“legal notices”) must be published in a 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 for sale to the general public; and
- Contains information of interest or value to the general public in the affected area.<sup>5</sup>

If no newspaper is published in the county, at least three copies of the legal notice must be posted on the front door of the county courthouse and at two other locations in the county, and the notice must also be published in a newspaper in the nearest county in which a newspaper is published.<sup>6</sup>

A legal notice published in a newspaper must appear on the newspaper’s website the same day it appears in the printed publication at no additional charge on a separate web page titled “Legal Notices,” “Legal Advertising,” or comparable identifying language.<sup>7</sup> The website must have a search function, and the newspaper publisher may not charge a fee or require registration to view or search legal notices.<sup>8</sup> The newspaper must also place a copy of the notice on the Florida Press Association’s (“FPA”) repository website and allow the public to sign up to receive e-mailed notifications of notice publications.<sup>9</sup>

Legal notice publication is not considered effective unless:

- The notice is published for the period prescribed for such a notice;
- The newspaper has existed for at least a year at the time of notice publication; and
- A post office in the county of notice publication entered the newspaper as a periodical.<sup>10</sup>

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<sup>1</sup> Art. I, s. 24(b), Fla. Const.

<sup>2</sup> Art. I, s. 24(c), Fla. Const.

<sup>3</sup> *Id.*

<sup>4</sup> *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).

<sup>5</sup> S. 50.011, F.S.

<sup>6</sup> S. 50.021, F.S.

<sup>7</sup> S. 50.0211(2), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> The Florida Press Association’s repository is available at: [www.floridapublicnotices.com](http://www.floridapublicnotices.com) (last visited May 5, 2021). S. 50.0211(3)(a) and (4), F.S.

<sup>10</sup> Legal notices may also be published in a newspaper which is a direct successor of a newspaper so published. S. 50.031, F.S.

A uniform affidavit establishes proof of legal notice publication.<sup>11</sup> The affidavit must:

- Be notarized on paper formatted in a specific manner or in an electronic format that complies 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.<sup>12</sup>

Legal notice publication fees are set by statute and may not be rebated, commissioned, or refunded.<sup>13</sup> Currently, the legal notice publication fee is 70 cents per square inch of newspaper for the first insertion and 40 cents per square inch of newspaper for each subsequent insertion.<sup>14</sup> However, if the regular established minimum commercial rate per square inch of newspaper is greater than the rate stipulated in statute, the publisher may 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 may not cost more than 85 percent of the original rate.<sup>15</sup> All legal notice charges are based on 6-point type on 6-point body, unless otherwise specified by statute.<sup>16</sup>

### **Effect of the Bill**

The bill modifies the criteria a newspaper must meet in order to be qualified for legal notice publication. Specifically, the bill requires that legal notices published in the print edition of a newspaper must:

- Be printed and published periodically at least once a week.
- Contain at least 25 percent of its words in the English language.
- Satisfy one of the following criteria:
  - Is sold, or otherwise available to the public, at no less than ten publicly accessible outlets and has 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.
  - Holds a periodicals permit as of March 1, 2021, and accepts legal notices for publication as of that date; however, any such newspaper may only publish legal notices through December 31, 2023, so long as the newspaper continues to meet the requirements in section 21 of chapter 99-2, Laws of Florida, and continues to hold a periodicals permit.
  - For newspapers publishing legal notices in a fiscally constrained county, holds a periodicals permit and meets all other requirements of the legal notices chapter.
- Be available to the public generally for the publication of legal notices with no more than 75 percent of its content dedicated toward advertising, as measured in half of the newspaper's issues that are published during any 12-month period, and customarily containing 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.
- 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

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<sup>11</sup> S. 50.041(1), F.S.

<sup>12</sup> Ss. 50.041(2) and 50.051, F.S.

<sup>13</sup> S. 50.061(1), F.S.

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

<sup>15</sup> S. 50.061(3), F.S.

<sup>16</sup> S. 50.061(6), F.S.

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

The bill also authorizes a governmental agency<sup>17</sup> to publish legal notices on the website of any newspaper in the county to which the legal notice pertains<sup>18</sup> 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 a public hearing noticed in a print edition of a newspaper of general circulation in the affected governmental agency's jurisdiction,<sup>19</sup> determines that:

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

Under the bill:

- The legal notices section of the print edition of a newspaper must include a disclaimer stating that additional legal notices may be accessed on the newspaper's website and the FPA's repository website.
- The legal notices section of the newspaper's website must also include a disclaimer stating that legal notices are also published in the print edition of the newspaper and on the FPA's repository website.
- A newspaper may charge for internet-only legal notice publication up to the amount authorized for publication of legal notices in a newspaper's print edition, without rebate, commission, or refund.
- A governmental agency publishing legal notices only online must:
  - Give notice at least once a week in the print edition of a newspaper of general circulation within the region in which the governmental agency is located<sup>20</sup> which states that:
    - Legal notices pertaining to the agency do not all appear in the print edition of the local newspaper;
    - Additional legal notices may be accessed on the newspaper's website; and
    - A full listing of any legal notices may be accessed on the FPA's repository website.
  - Post a link on its website homepage to a webpage that lists all the newspapers in which it publishes legal notices.
- All requirements regarding format and accessibility for legal notices published in the print edition of a newspaper also apply to legal notices published only online.

Further, the bill requires the FPA to seek to ensure that minority populations throughout the state have equitable access to legal notices posted on the FPA's repository website and requires the FPA to publish a report:

- Listing all newspapers that have placed notices on the repository website in the preceding calendar quarter.
- Identifying which criteria that 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 print newspaper and on the repository website.

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<sup>17</sup> Under the bill, "governmental agency" means a county, a municipality, a district school board, or any other unit of local government or political subdivision in this state.

<sup>18</sup> Under the bill, a newspaper is deemed to be a newspaper in the county to which the legal notice pertains if it satisfies the criteria for a newspaper to publish legal notices in print.

<sup>19</sup> Under the bill, a newspaper is deemed to be a newspaper of general circulation within the jurisdiction of the affected governmental agency if it satisfies the criteria for a newspaper to publish legal notices in print.

<sup>20</sup> Under the bill, a newspaper is deemed to be a newspaper of general circulation within the region in which the governmental agency is located if it satisfies the criteria for a newspaper to publish legal notices in print.

The bill provides an effective date of January 1, 2022.

## 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 may have an indeterminate impact on local government expenditures. The bill gives governmental agencies the option to publish legal notices on a qualified newspaper's website under specified conditions but authorizes a newspaper to charge for the publication up to what it could have charged to publish the notice in print. Further, the bill requires a governmental agency publishing legal notices online to publish a specified notice at least weekly in the print edition of a newspaper. The cost associated with this requirement may offset to an unknown amount the savings, if any, realized from online notice publication.

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

The bill may reduce newspaper revenue if governmental agencies transition to publishing legal notices online and competition among newspapers causes online notice publication prices to decrease.

### D. FISCAL COMMENTS:

None.