

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 Committee on Appropriations

BILL: CS/CS/SB 402

INTRODUCER: Appropriations Committee; Judiciary Committee; and Senator Rodrigues

SUBJECT: Legal Notices

DATE: April 21, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Forbes</u>	<u>Harkness</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	<u>Ravelo</u>	<u>Sadberry</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 402 gives a governmental agency the option to publish government agency notices on newspaper website instead of only in a print-based newspaper. An agency wishing to exercise this option may only do so upon the agency finding, pursuant to a publicly noticed hearing, that such an Internet-based publication is in the public interest and that residents have sufficient access to the Internet in order to review any legal notices published in this format. Any legal notice published in print or through a website must also be published on the statewide legal notice website: www.FloridaPublicNotices.com.

Additionally, the bill expands the types of publications that qualify for the posting of legal notices. Currently, a newspaper must, among other requirements, be “for sale to the general public” and be qualified to be admitted and entered as a periodical matter the local post office. By removing these two requirements, the bill will allow for legal notices to be published in some smaller publications that are free to the public.

The bill amends several sections of the Florida Statutes to conform the authority of a government agency to post legal advertisements and notices on the Internet.

The bill is effective January 1, 2022.

II. Present Situation:

The Florida Constitution requires that certain meetings between public officials be “open and noticed to the public.”¹ Generally, this requirement applies to meetings where official acts will be taken, or where public business will be transacted or discussed.

Similarly, procedural due process requires that a citizen receive proper notice of any government action that may affect his or her life, liberty, or property. The purpose of this notice is “to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”² and “must be of such nature as reasonably to convey the required information.”³

Historically, notice can be established by service of process by personally and directly delivering the notice to the interested party.⁴ Issues may arise, for example, when an interested party is difficult to locate or when someone is purposefully avoiding service.⁵ Likewise, some government actions such as public meetings affect so many interested individuals that it becomes implausible to individually notice each interested individual. To balance these interests, the Legislature has provided options to satisfy notice requirements for both litigation purposes as well as notices of public meetings and actions.

Statutory Notice Requirements

Florida law requires that all legal notices and publications, including those made in lieu of service of process, be made in a newspaper that:

- Is printed and published at least once a week;
- Contains at least 25 percent of its words in the English language;
- Is considered a periodical by the post office in the county where it is published;
- Is for sale to the public generally;
- Customarily contains information of public interest to the residents or property owners in the county where it is published or is of interest or of value to the general public;⁶ and
- Has been in existence for at least 1 year at the time the notice is published.⁷

If no newspaper is published in the county, three copies of the notice or advertisement must be posted in the county, with one being posted at the front door of the courthouse, two others posted

¹ Art. I, s. 24(b), Fla. Const.

² *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

³ *Id.*

⁴ “Personal service guarantees actual notice of the pendency of a legal action; it thus presents the ideal circumstance under which to commence legal proceedings against a person, and has traditionally been deemed necessary in actions styled.” *Greene v. Lindsey*, 456 U.S. 444, 449 (1982).

⁵ “Where person to be served with process flees from presence of process server in a deliberate attempt to avoid service of process, the delivery requirement may be satisfied if the process server leaves the papers at a place in which such person can easily retrieve them and takes reasonable steps to call such delivery to the attention of the person to be served.” *Olin Corp. v. Haney*, 245 So. 2d 669 (Fla. 4th DCA 1971). This only applies, however, to a service of process made at the individual’s “usual place of abode.” Section 48.031, F.S.

⁶ Section 50.011, F.S.

⁷ Section 50.031, F.S.

at other locations in the county, and by publication of the notice in the nearest county where a newspaper is published.⁸

A newspaper publishing any notice is also tasked with placing the notice on a statewide website established and maintained by the Florida Press Association.⁹ This website must be accessible and searchable by party name and case number, and each notice must be posted for at least 90 days.¹⁰ This provision of Florida law is similar to statewide legal notice websites established in Alabama,¹¹ Colorado,¹² Illinois,¹³ Louisiana,¹⁴ Maine,¹⁵ Massachusetts,¹⁶ North Dakota,¹⁷ Ohio,¹⁸ Tennessee,¹⁹ Utah,²⁰ Virginia,²¹ and Wisconsin.²² The above states require that any notice published in a newspaper as set forth by law also be published in a statewide website maintained and operated by a private entity on behalf of the newspapers of that state, such as a union or trade group.

Newspaper Website

Florida law further provides that if the newspaper publishing the notice maintains a website, the legal notice must be published on the website the same day that it appears in the newspaper at no additional charge.²³ The newspaper's website must contain a search function to facilitate searching for legal notices.²⁴ Registration cannot be a requirement, nor can a fee be charged, for searching or viewing legal notices on a newspaper's website if the legal notices are published in a newspaper.²⁵

Fees

The fees for a legal notice published in a newspaper are set by statute and may not be rebated, commissioned, or refunded. The charge for publishing a legal notice is set by statute at 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

⁸ Section 50.021, F.S.

⁹ Section 50.021, F.S. The website established by the Florida Press Association, Florida Public Notices, is available at <https://www.floridapublicnotices.com/>.

¹⁰ *Id.*

¹¹ Ala. Code § 6-8-62.

¹² Colo. Rev. Stat. Ann. § 24-70-103.

¹³ 715 Ill. Comp. Stat. Ann. 5/2.1.

¹⁴ La. Stat. Ann. § 43:111E.

¹⁵ Me. Rev. Stat. tit. 1, § 603(2).

¹⁶ Mass. Gen. Laws Ann. ch. 4, § 13.

¹⁷ N.D. Cent. Code Ann. § 46-05-09.

¹⁸ Ohio Rev. Code Ann. § 125.182(a).

¹⁹ Tenn. Code Ann. § 1-3-120(a)(2).

²⁰ Utah Code Ann. § 45-1-101(2)(b).

²¹ Va. Code Ann. § 8.01-324(g).

²² Wis. Stat. Ann. § 985.01(7).

²³ Section 50.021(2), F.S.

²⁴ *Id.*

²⁵ *Id.*

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.²⁶

Actual fees vary depending on the type of notice requested, the size of the notice, any subsequent insertions or publications, as well as which newspaper publicizes the notice. The Tampa Bay Times, for example, charges \$200 for a “full run” of a notice of a foreclosure action.²⁷ If the notice needs to be up for more than 2 days, the charge increases to \$400. Additionally, the per-line cost above the included 165 line limit is \$6.45.

Proof of Publication

If an affidavit of proof of publication is required for a legal notice, the affidavit must comply with certain standards. Specifically, the affidavit must:

- Be printed upon white paper;
- Be 8.5 inches in width and at least 5.5 inches in length; and
- Contain a margin of at least 2.5 inches at the right side of the affidavit form with a clipping of a true copy of the public notice or legal advertisement that was executed.²⁸

The affidavit may be provided electronically so long as it complies with the electronic notarization requirements.²⁹

If the proof of publication is in a county having a population in excess of 450,000 according to the latest decennial census, the publication may charge a maximum fee of \$2 for the preparation and execution of each of proof of publication.³⁰

III. Effect of Proposed Changes:

Newspapers Authorized to Publish Legal Notices

The bill provides an option for governmental agencies required by law to publish certain legal notices to publish those notices on a newspaper’s website in lieu of a paper-based publication. A governmental agency may publish certain legal notices in an Internet-only publication with a newspaper of general circulation within the jurisdiction of the affected governmental agency. The bill requires governmental agencies to provide notice to the general public before using an Internet-only publication. Specifically, the governmental agency must give notice of its intent in a print edition of a newspaper and conduct a public hearing. The public hearing is meant to determine that an Internet-only publication is in the public interest and that the residents within

²⁶ Section 50.061, F.S.

²⁷ For the Tampa Bay Times, a “full run” includes all of Pinellas, Pasco, Hernando, Citrus, and Hillsborough counties. Opting for an individual run of a specific county costs \$135 for Pasco County and \$155 for Hillsborough or Pinellas Counties. TAMPA BAY TIMES, *Certified Legal Rates*, <https://www.tampabay.com/resources/images/marketing/mediakit/pdf/Legal-Rate-Card.pdf> (last visited January 21, 2021)

²⁸ Section 50.041(2), F.S.

²⁹ Section 117.021, F.S., contains additional requirements for documents notarized electronically.

³⁰ Section 50.041(3), F.S.

the jurisdiction of the governmental agency have sufficient access to the Internet. This determination must be made by a majority vote of the governing body.

To qualify as a newspaper of general circulation for the purpose of publishing legal notices in print or online only formats, the bill generally requires the newspaper to:

- Be printed and published at least once a week;
- Contain at least 25 percent of its words in the English language;
- Have an audience consisting of at least 10 percent of the households in the county, and if the notice is issued by a nongovernmental entity, the newspaper must have an audience of at least 10 percent of the households of the county or municipality in which the project, property or other subject of the notice is located;
- Be sold or otherwise available to the public at no less than 10 publicly accessible outlets;
- Be available to the public generally for the publication of official or other notices with no more than 75 percent of its content dedicated toward advertising; and
- Continually publish in a prominent manner the name, street address, phone number, website URL of the newspaper's approved print auditor, the newspaper's most recent statement of ownership, and 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, within the first five pages of the print edition and the bottom portion of the homepage of the newspaper's website.

A newspaper that holds a periodicals permit as of March 1, 2021 and accepts legal notices for publication may continue to publish legal notices through December 31, 2023 so long as the newspaper meets the requirements under current law, which were enacted through section 21 of chapter 99-2, Laws of Florida. Beginning January 1, 2024, such newspapers must meet the criteria listed above. Additionally, a newspaper that holds a periodicals permit and that publishes legal notices in a fiscally constrained county is not subjected to items 3 and 4 of the above requirements. The bill defines a fiscally constrained county as a county within a rural area of opportunity designated by the Governor or a county for which the value of a mill will raise no more than \$5 million in revenue based on the certified taxable value of the previous July 1.

Under current law, a newspaper must additionally be "for sale to the general public" and entered as a periodical matter at the local post office in the county where the newspaper is published. By removing these two requirements, the bill allows for legal notices to be published using non-subscription based publications and publications that may not be recognized as periodical matter by the local post office.

The bill requires the Florida Press Association to ensure that minority populations throughout the state have equitable access to legal notices that are posted on the statewide website. The Florida Press Association must publish a report listing all newspapers that have placed notices on the statewide legal notice website in the preceding calendar quarter. The reports for the four preceding calendar quarters must be available on the website.

Government Agency Legal Notices

The bill defines a governmental agency as a county, municipality, district school board, or other unit of a local government or political subdivision in this state. The bill provides that governmental agency notices that may be published in newspaper under the bill include:

- Notices related to special or legal legislation pursuant to s. 11.02, F.S.;
- Educational unit notices pursuant to s. 120.81, F.S.;
- Retirement system notices pursuant to s. 121.0511., F.S.;
- Notices related to inclusion of positions in the Senior Management Service Class of the Florida Retirement System pursuant to s. 121.055, F.S.;
- Notices proposing the enactment of county ordinances pursuant to s. 125.66, F.S.;
- Code enforcement notices published pursuant to s. 162.12, F.S.;
- Notices proposing the enactment of municipal ordinances pursuant to s. 166.041, F.S.;
- Special district meeting notices pursuant to s. 189.015, F.S.;
- Establishment and termination notices for community development districts pursuant to ss. 190.005 and 190.046, F.S., respectively;
- Disclosures of tax impact by value adjustment boards pursuant to s. 194.037, F.S.;
- Advertisements of real or personal property with delinquent taxes pursuant to s. 197.402, F.S.;
- Advertisements of hearing notices, millage rates, and budgets pursuant to s. 200.065, F.S.;
- Turnpike project notices pursuant to s. 338.223, F.S.;
- Public-private partnership notices pursuant to ss. 348.0308 and 348.7605, F.S.;
- Notices of prime recharge area designations for the Floridan and Biscayne aquifers pursuant to s. 373.0397, F.S.;
- Water management district notices pursuant to s. 373.146, F.S.;
- Hazardous waste disposal notices pursuant to s. 403.722, F.S.; and
- Forfeiture notices pursuant to ss. 849.38 and 932.704, F.S.

If a government agency exercises the option to publish legal notices on a newspaper website, the agency must provide an additional notice at least once per week in a print edition newspaper of general circulation. This notice must contain a statement that legal notices pertaining to the agency do not all appear in the print edition of the local newspaper and that a full listing may be accessed on the statewide legal notice website located at the website managed by the Florida Press Association.

Publication Requirements and Fees

The bill allows for a newspaper to charge for the publication of a legal notice on the newspaper's website without rebate, commission, or refund. However, the newspaper may not charge a higher rate for publication than the amount that would be authorized if the legal notice were publicized in print.³¹ The bill prescribes penalties for accepting rebates, commissions, or refunds in connection to the amounts charged for publication that are published on the Internet.

³¹ See "Fees" subsection under "Present Situation" of this analysis for further discussion of print-based fees.

Internet-only publications must be placed in the legal notices section of the newspaper's website and the statewide legal notice website.³² 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 statewide legal notice website. The newspaper's website legal notice section must include a similar disclaimer related to the print edition.

Currently, a \$2 charge may be levied for a proof of publication executed in a county with a population in excess of 450,000. The bill allows the maximum \$2 charge to be levied for any proof of publication regardless of the population of the county.

Conforming language

The bill revises several sections of the Florida Statutes to conform to the option to publish certain notices in a newspaper website. Specifically, the bill revises the following sections of the Florida Statutes to provide an option to publish a notice in a newspaper website:

- Section 11.02, F.S., providing notice of special or local legislation or any relief act pursuant to s. 50.0211(5), F.S.
- Section 120.81, F.S., to provide that a notice relating to the rules regarding an educational unit, such as a district school board, may be issued by newspaper qualified under s. 50.0211(5).
- Section 121.055, F.S., to provide that a Notice of Intent to designate certain positions as "Senior Management Services Class" under the Florida Retirement System may be published through an Internet publication pursuant to s. 50.0211(5), F.S. The notice must be published for at least 2 consecutive weeks.
- Section 125.66, F.S., to provide that the board of county commissioners may issue a notice of intent to consider an ordinance by publication as specified in ch. 50, F.S., as amended by the bill.
- Section 162.12, F.S., to provide that a code enforcement board, or local government, may issue a notice by Internet publication by publishing the notice for 4 consecutive weeks on the newspaper's website and the statewide legal notice website as provided in s. 50.0211(5), F.S., as amended by the bill.
- Section 189.015, F.S., to provide that the governing body of each special district must advertise the day, time, place, and purpose of any meeting other than a regular meeting or any recessed and reconvened meeting of the governing body, at least 7 days before such meeting as provided in ch. 50, F.S., as revised by the bill.
- Section 190.005, F.S., to provide that a notice of a hearing for the establishment of a community development district having a size of 2,500 acres or more must published for 4 consecutive weeks on a newspaper's website and the statewide legal notice website if not published in print.
- Section 190.046, F.S., to provide that a notice of intent to amend an ordinance establishing a community development district must be published as provided in ch. 50, F.S., as revised by the bill.

³² See www.FloridaPublicNotices.com

- Section 194.037, F.S., to provide that the findings of the Tax Impact of Value Adjustment Board be published as provided in ch. 50, F.S., as revised by the bill.
- Section 197.402, F.S., provides that advertisements of real or personal property with delinquent taxes are to be advertised as provided in ch. 50, F.S., as revised by the bill.
- Section 200.065, F.S., to provide that the assessment conducted by the property appraiser must be published as provided in ch. 50, F.S. Additionally, the bill revises this section to allow notices for certain millage increases that may lead to tax increases, such as ad-valorem taxes, to be advertised pursuant to ch. 50, F.S., as revised by the bill.
- Section 849.38, F.S., to provide that when certain property seized by the sheriff's office has an appraisal value of \$1,000 or less, the notice must be published by print or posted for at least 2 consecutive weeks on a newspaper's website and the statewide legal notice website in accordance with s. 50.0211(5), F.S. If published in print, the citation shall appear at least once each week for 2 consecutive weeks.
- Section 932.704, F.S., to provide that the notice required for a forfeiture complaint must be published for 2 consecutive weeks on a newspaper's website and the statewide legal notice website in accordance with s. 50.0211(5), F.S.

The bill takes effect January 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, section 19(a) of the State Constitution prohibits the Legislature from imposing a new fee except through legislation approved by supermajority vote of each house of the Legislature. Because the bill preserves the option of publishing legal notices in a newspaper, the supermajority vote requirements do not appear to apply.

E. Other Constitutional Issues:

The bill may raise procedural due process concerns to the extent that it hinders actual notice of legal proceedings. Procedural due process requires fair notice "to apprise interested parties of the pendency of" an action that may affect life, liberty, or property.³³

³³ 339 U.S. 306, 314 (1950).

For example, notice is required for termination of parent rights proceedings,³⁴ certain local county initiatives,³⁵ and civil judgements based on litigation.³⁶ On the other hand, the publication of a notice on a website instead of a newspaper may, in some cases, be more effective than publishing a notice solely in a newspaper. Courts have accepted various alternatives to actual service of process over the years.³⁷

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill could reduce revenue for certain newspapers to the extent that the bill allows for more publications to qualify as publications for the purpose of publishing a legal notice. Consumers may benefit from the market participation of smaller newspaper publications, especially those in fiscally constrained counties, who may not have otherwise met the requirements to publish legal notices prior to the authorization under the bill.

C. Government Sector Impact:

The impact of this bill is indeterminate since it is unknown how governmental entities will be impacted based on the volume of legal notices to be published. This is especially true in counties where there are no newspapers available for general circulation and the only option may be Internet publication.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that the fee for an online publication of a legal notice cannot exceed the fee charged for a print edition of that notice. The current fee structure is based on the size of the notice and can be more costly depending on how many copies of the newspaper are printed and

³⁴ *J.B. v. Florida Dept. of Children & Family Services*, 768 So. 2d 1060, 1066 (Fla. 2000) (Finding that 24-hour notice of a hearing regarding termination of parent rights was insufficient notice).

³⁵ *Baycol, Inc. v. Downtown Dev. Auth. of City of Fort Lauderdale*, 315 So. 2d 451, 455 (Fla. 1975) (Finding that the city failed to place express or de facto notice in an eminent domain proceeding) and *Keys Citizens For Responsible Gov't, Inc. v. Florida Keys Aqueduct Auth.*, 795 So. 2d 940, 949 (Fla. 2001) (The Court found in dictum that “constructive notice by publication is appropriate in bond validation proceedings”).

³⁶ “To give such proceedings any validity, there must be a competent tribunal to pass on their subject-matter; and, if that involves merely a determination of the personal liability of defendant, he must be brought within its jurisdiction by service of process within the state, or by his voluntary appearance.” *Pennoyer v. Neff*, 95 U.S. 714, 719 (1877), overruled in part by *Shaffer v. Heitner*, 433 U.S. 186 (1977).

³⁷ For example, the courts have routinely upheld certified mail as a valid method of constructive notice. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (The Court found in dictum that mail “provide[s] an ‘efficient and inexpensive means of communication’ upon which prudent men will ordinarily rely in the conduct of important affairs”).

distributed. This is meant to encourage pricing based on how much space is taken up in the print edition newspaper as well as how large that newspapers audience is. A website publication does not have these same logistical structures to base a fee on the statutory mechanism.

Several sections of the bill permit publication pursuant to s. 50.0211(5), F.S., or as otherwise provided under ch. 50, F.S. Other sections of the bill, such as section 13, include language such as “on a newspaper’s website and the statewide legal notice website as provided in s. 50.0211(5).” The Legislature may wish to consider using consistent terminology.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 50.011, 50.021, 50.0211, 50.031, 50.041, 50.051, 90.902, 11.02, 120.81, 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, 849.38, , and 932.704.

IX. Additional Information:

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

CS/CS by Appropriations on April 19, 2021:

The committee substitute:

- Requires newspapers in non-fiscally constrained counties that publish legal notices to be available or sold in at least 10 public outlets.
- Requires newspapers published in non-fiscally constrained counties to have an audience consisting of at least 10 percent of the households in the county or municipality. If the newspaper does not meet the 10 percent requirement, the newspaper may continue to operate under the standards of s. 50.011, F.S., as currently permitted until January 1, 2024.
- Allows newspapers in fiscally constrained counties to publish legal notices so long as they have a periodicals permit.
- Removes the bill’s application to the sale of the contents of a storage facility.
- Provides that legal notices as administered under the provisions of the bill are self-authenticating for the purpose of the Florida Evidence Code.

CS by Judiciary on March 22, 2021:

The committee substitute:

- Allows a government agency to publish legal notices on a newspaper website in lieu of a print based publication.
- Allows legal notices to be published using a non-subscription based publisher.
- Removes the requirement that the Supreme Court establish a legal notice website and a restitution, fines, and fees website.
- Provides an option for storage facilities to post an advertisement for sale of the content of a storage unit on a website.

B. Amendments:

None.

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