

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 7049      PCB JDC 22-02      Legal Notices  
**SPONSOR(S):** State Affairs Committee and Judiciary Committee, Grall and others  
**TIED BILLS:**                    **IDEN./SIM. BILLS:**

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**FINAL HOUSE FLOOR ACTION:** 79 Y's                    40 N's                    **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/HB 7049 passed the House on March 2, 2022. The bill was amended in the Senate on March 9, 2022, and was returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on March 10, 2022.

The Florida Constitution requires 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 to be open to the public and properly noticed. While this requirement is self-executing, the Legislature may enact general laws enforcing this constitutional provision and may provide exemptions by a two-thirds vote. All exemptions require a specific statement of public necessity justifying the exemption. Further, certain statutory provisions require that public notices and advertisements be given for certain other local government and judicial actions. Collectively, these notices and advertisements are known as "legal notices."

Before January 1, 2022, legal notices had to be published in a newspaper meeting specified requirements, including that the newspaper had to be for sale to the public, unless no newspaper was published in the county; in which case copies of the notice had to be posted in the county and published in a newspaper in the nearest available county. The newspaper also had to place a copy of the notice on the Florida Press Association's ("FPA") free repository website and, if the newspaper maintained a website, legal notices had to appear on such website in a searchable format on the same day they appeared in the print edition at no additional charge. However, in 2021, the Legislature passed CS/HB 35, which modified the requirements for newspaper publication to expand the number of newspapers that could qualify for legal notice publication, including free newspapers, and to authorize a governmental agency to publish legal notices on a newspaper's website and the FPA's repository website in lieu of publishing in the newspaper's print edition under specified conditions. 2021 CS/HB 35 also required the FPA to seek to ensure that minority populations in the state have equitable access to legal notices posted on the FPA's repository website and to publish a report containing specified information.

The bill:

- Gives a governmental agency the option to publish legal notices on the publicly accessible website of a county instead of in a print newspaper or on a newspaper's website under specified conditions.
- Requires a governmental agency located in a county with a population of fewer than 160,000 to first hold a public hearing and determine that its residents have sufficient access to the Internet before publishing legal notices on a publicly accessible website.
- Eliminates the FPA's obligations relating to equitable legal notice access by minority populations.
- Reverts the criteria a newspaper must satisfy to publish legal notices back to the criteria in place before the passage of 2021 CS/HB 35, with the exception of the requirement that a newspaper must be for sale, and gives an alternative to the periodicals requirement.

The bill does not appear to have a fiscal impact on state government but may have an indeterminate fiscal impact on local governments.

The bill was approved by the Governor on May 11, 2022, ch. 2022-103, L.O.F., and becomes effective on January 1, 2023.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

**STORAGE NAME:** h7049z1.DOCX

**DATE:** 5/23/2022

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

The Florida Constitution requires 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 to be open to the public and properly noticed.<sup>1</sup> While this constitutional 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 must be given for certain other local government and judicial actions.<sup>4</sup> Collectively, these notices and advertisements are referred to as “legal notices.”

#### Legal Notice Publication Requirements Before January 1, 2022

Before January 1, 2022, Florida law required a legal notice to be published in a newspaper that:

- Was published at least once a week;
- Had at least 25 percent of its words in English;
- Was considered a periodical by a post office in its county of publication;
- Was available to the public generally for the publication of legal and other notices;
- Was for sale to the general public; and
- Contained information of interest or value to the general public in the affected area.<sup>5</sup>

If no newspaper was published in the county, at least three copies of the legal notice had to be posted in the county, with one posted on the front door of the county courthouse and two at other locations in the county. In addition, the notice had to be published in a newspaper in the nearest county in which a newspaper was published.<sup>6</sup>

A legal notice published in a newspaper had to appear on the newspaper’s website the same day it appeared in the print edition at no additional charge, on a separate web page with a specific title.<sup>7</sup> The website had to have a search function, and the newspaper publisher could not charge a fee or require registration to view or search legal notices.<sup>8</sup> The newspaper also had to place a copy of the notice on the Florida Press Association’s (“FPA”) free repository website, where it had to be maintained in a searchable archive for 18 months after the first day of posting.<sup>9</sup> The public also had to be permitted to sign up to receive e-mailed notifications of notice publication.<sup>10</sup>

Legal notice publication was not considered effective unless:

- The notice was published for the period prescribed for such a notice;
- The newspaper had existed for at least one year at the time of notice publication; and
- A post office in the county of notice publication entered the newspaper as a periodical.<sup>11</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. (2020).

<sup>6</sup> S. 50.021, F.S. (2020).

<sup>7</sup> S. 50.021(2), F.S. (2020).

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

<sup>9</sup> S. 50.021(3)(a)-(c), F.S. (2020).; The Florida Press Association’s repository is available at [www.floridapublicnotices.com](http://www.floridapublicnotices.com).

<sup>10</sup> S. 50.021(4), F.S. (2020).

<sup>11</sup> Legal notices could also be published in a newspaper which was a direct successor of a newspaper so published. S. 50.031, F.S. (2020).

A uniform affidavit established proof of legal notice publication,<sup>12</sup> which was required to:

- Be notarized on paper formatted in a specific manner or in an electronic format that complied 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>13</sup>

Legal notice publication fees were set by statute and could not be rebated, commissioned, or refunded.<sup>14</sup> The legal notice publication fee was 70 cents per square inch of newspaper for the first insertion and 40 cents per square inch of newspaper for each subsequent insertion.<sup>15</sup> However, if the regular established minimum commercial rate per square inch of newspaper was greater than the rate stipulated in statute, the publisher could 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 could not cost more than 85 percent of the original rate.<sup>16</sup> All legal notice charges were based on 6-point type on 6-point body, unless otherwise specified by statute.<sup>17</sup>

### 2021 Legislative Changes

In 2021, the Legislature passed CS/HB 35, which became effective January 1, 2022.<sup>18</sup> The bill modified the criteria a newspaper must satisfy to publish legal notices, requiring that a newspaper publishing legal notices in print must:

- Be printed and published periodically at least once a week.
- Contain at least 25 percent of its words in English.
- Satisfy one of the following criteria:
  - Be sold, or otherwise be available to the public, at no less than 10 publicly accessible outlets and have 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.
  - Hold a periodicals permit as of March 1, 2021, and accept legal notices for publication as of that date; however, any such newspaper could only publish legal notices through December 31, 2023, if the newspaper continued to meet the requirements in s. 21, ch. 99-2, Laws of Florida, and continued to hold a periodicals permit.
  - For newspapers publishing legal notices in a fiscally constrained county, hold a periodicals permit and meet all other requirements of the legal notices chapter.
- Be available to the public generally for legal notice publication with no more than 75 percent of its content dedicated to advertising, as measured in half of the newspaper's issues published during any 12-month period, and customarily containing information of interest or value to the general public in the affected area.
- 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>12</sup> S. 50.041(1), F.S. (2020).

<sup>13</sup> Ss. 50.041(2) and 50.051, F.S. (2020).

<sup>14</sup> S. 50.061(1), F.S. (2020).

<sup>15</sup> S. 50.061(2), F.S. (2020).

<sup>16</sup> S. 50.061(3), F.S. (2020).

<sup>17</sup> S. 50.061(6), F.S. (2020).

<sup>18</sup> Ch. 2021-17, Laws of Fla.

- A statement of the auditor certifying the veracity of the newspaper's print distribution and the number of the newspaper website's monthly unique visitors, or the newspaper's periodicals permit, if applicable.<sup>19</sup>

2021 CS/HB 35 also authorized a governmental agency<sup>20</sup> to publish legal notices on the website of any newspaper in the county to which the legal notice pertained<sup>21</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 holding a public hearing noticed in a print edition of a newspaper of general circulation in the affected governmental agency's jurisdiction,<sup>22</sup> makes a determination by a majority of its governing board members that:

- Internet publication of legal notices is in the public interest; and
- Residents within the governmental agency's jurisdiction have sufficient internet access such that internet-only legal notices publication would not unreasonably restrict public access.<sup>23</sup>

All requirements regarding format and accessibility for legal notices published in a printed newspaper also apply to legal notices published only online.<sup>24</sup>

Under the provisions of 2021 CS/HB 35:

- The legal notices section of a printed newspaper must include a disclaimer stating:
  - Additional legal notices may be accessed on the newspaper's website and the FPA's repository website.
  - Legal notices published in print are also published on the FPA's repository website.<sup>25</sup>
- A newspaper may charge for internet-only legal notice publication up to the amount authorized for publication of legal notices in print, without rebate, commission, or refund.<sup>26</sup>
- A governmental agency publishing legal notices only online must:
  - Give notice, at least once a week in a printed newspaper of general circulation within the region in which the governmental agency is located, that:
    - Legal notices pertaining to the agency do not all appear in a printed newspaper;
    - Additional legal notices may be accessed on the newspaper's website; and
    - A full listing of legal notices may be accessed on the FPA's repository website.
  - Post a link on its website homepage to a webpage listing all the newspapers in which it published legal notices.<sup>27</sup>

Further, 2021 CS/HB 35 required the FPA to seek to ensure that minority populations in the state have equitable access to legal notices posted on the FPA's repository website and publish a report:

- Listing all newspapers that have placed notices on the repository website in the preceding calendar quarter.
- Identifying which criteria 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 printed newspaper and on the repository website.<sup>28</sup>

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<sup>19</sup> Ch. 2021-17, s. 1, Laws of Fla.

<sup>20</sup> "Governmental agency" means a county, a municipality, a district school board, or any other unit of local government or political subdivision in this state. Ch. 2021-17, s. 3(1)(a), Laws of Fla.

<sup>21</sup> A newspaper is deemed to be a newspaper in the county to which the legal notice pertains if it satisfies the criteria to publish legal notices in print. Ch. 2021-17, s. 1(2), Laws of Fla.

<sup>22</sup> A newspaper is deemed to be a newspaper of general circulation within the jurisdiction of the affected governmental agency if it satisfies the criteria to public legal notices in print.

<sup>23</sup> Ch. 2021-17, s. 5(a), Laws of Fla.

<sup>24</sup> The bill did not change format and accessibility requirements for legal notices published in a printed newspaper.

<sup>25</sup> Ch. 2021-17, s. 5(b), Laws of Fla.

<sup>26</sup> Ch. 2021-17, s. 5(c), Laws of Fla. The bill did not modify the charges authorized or the size and placement requirements for publication in a printed newspaper.

<sup>27</sup> Ch. 2021-17, s. 3(5)(d), Laws of Fla.

<sup>28</sup> Ch. 2021-17, s. 3(4)(d), Laws of Fla.

Additionally, a newspaper or newspaper's website must have been in existence for two years prior to publication in order for publication to be completed in accordance with the statutes.<sup>29</sup>

## Effect of The Bill

The bill gives a governmental agency the option to publish its legal notices on the publicly accessible website<sup>30</sup> of the county in which it lies instead of in a printed newspaper or on a newspaper's website if doing so would cost less than publishing legal notices in a newspaper. However, a governmental agency with at least 75 percent of its population located in a county with a population of fewer than 160,000 people must first hold a public hearing and determine that the residents of the governmental agency have sufficient Internet access before it may publish legal notices on a publicly accessible website. The bill also requires a special district<sup>31</sup> spanning the geographic boundaries of more than one county and opting to publish legal notices on a publicly accessible website to publish its legal notices on the publicly accessible website of each county it spans.<sup>32</sup>

Each legal notice published on a publicly accessible website must be in searchable form and indicate the date of first publication, and a public bid advertisement made by a governmental agency on a publicly accessible website must include a method for accepting electronic bids. Additionally, a link to legal notices published on a publicly accessible website must be conspicuously placed on or accessible through a direct link from the:

- Publicly accessible website's homepage; and
- Homepage of the website of each governmental agency publishing legal notices online.

Further, a governmental agency:

- With an authorized governmental access channel<sup>33</sup> may include on such channel a summary of all legal notices posted on its publicly accessible website.
- Publishing legal notices on a publicly accessible website must give notice in a newspaper or in a mailed or delivered publication, at least annually, that property owners and residents may receive legal notices from the governmental agency by first-class mail or e-mail upon registering with the agency.<sup>34</sup>
- Must maintain a registry of property owners and residents who request in writing to receive legal notices from the governmental agency by mail or e-mail.

The bill also generally reverts the criteria a newspaper must satisfy to be eligible to publish legal notices back to the criteria in place before January 1, 2022, with the exception of the requirement that a newspaper must be for sale, and creates an alternative to the periodicals requirement. Thus, under the bill, publication may be made in a newspaper, free or otherwise, that:

- Is published at least once a week;
- Has at least 25 percent of its words in English;
- Is available to the public generally for the publication of legal and other notices; and
- Contains information of interest or value to the general public in the affected area, which
  - Is sold, or otherwise be available to the public, at no less than 10 publicly accessible outlets and has an audience consisting of at least 10 percent of the households in the

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<sup>29</sup> Ch. 2021-17, s. 4, Laws of Fla.

<sup>30</sup> "Publicly accessible website" means a county's official website or other private website designated by the county for the posting of legal notices and advertisements that is accessible via the Internet.

<sup>31</sup> "Special district" means a unit of local government created for a particular purpose with jurisdiction to operate within a limited geographic boundary. A special district is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. See *Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).; see also ss. 189.02(1), 189.031(3), and 190.005(1), F.S.; see generally s. 189.012(6), F.S.

<sup>32</sup> A list of multi-county special districts is available at <http://specialdistrictreports.floridajobs.org/webreports/multicolist.aspx> (last visited May 23, 2022).

<sup>33</sup> A government access channel is authorized under s. 610.109, F.S.

<sup>34</sup> Such notice must be made in a newspaper of general circulation or another publication that is mailed or delivered to all residents and property owners in the government's jurisdiction.

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; or
- Is entered or qualified to be admitted and entered as periodical class mail at a post office in the county where published.

Each legal notice that a governmental agency chooses to publish in a newspaper must be posted on the newspaper's website on the same day that the printed notice appears in the newspaper, at no additional charge,<sup>35</sup> on a separate webpage with a specific title. A link to the legal notices webpage must be on the front page of the newspaper's website, and if there is a specified size and placement required for a printed legal notice,<sup>36</sup> the size and placement of the online notice must optimize its online visibility in keeping with the print requirements. The newspaper's website must have a search function and a fee may not be charged, and registration may not be required, for viewing and searching legal notices on the website. The newspaper must also place the notice on the FPA's free repository website, where it must be maintained in a searchable archive for 18 months after the first day of posting. The bill eliminates the FPA's reporting obligations relating to minority populations established in 2021 CS/HB 35.

The bill makes conforming and technical changes and provides an effective date of January 1, 2023.

## 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 authorizes a governmental agency to publish legal notices on a county's publicly accessible website under specified conditions, which may reduce a governmental agency's costs related to legal notice publication. However, a governmental agency publishing legal notices online must also provide annual notice in a newspaper or another publication mailed or delivered in a specified manner that residents and property owners may receive legal notices from the governmental agency by first-class mail or e-mail. The cost of such requirement is indeterminate.

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<sup>35</sup> The bill does not modify the charges authorized in statute for publication in printed newspaper.

<sup>36</sup> The bill does not modify size and placement requirements for legal notices published in a printed newspaper.

Further, the bill requires a county to publish on its publicly accessible website those legal notices of a governmental agency within its jurisdiction that opts to publish legal notices online; however, a county may be able to absorb the costs associated with this requirement within existing resources.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce revenue for newspapers to the extent the elimination of the requirement that legal notices be published in a printed newspaper or on a newspaper's website results in local governments choosing not to publish legal notices through newspapers.

D. FISCAL COMMENTS:

None.