

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1235 Legal Notices

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

TIED BILLS: **IDEN./SIM. BILLS:** SB 1676

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	10 Y, 5 N, As CS	Darden	Miller
2) Judiciary Committee			
3) State Affairs Committee			

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 the requirements for government entities to give valid notice.

The bill requires each state or local government agency to publish legally required notices and advertisements on their official website. Each government agency must 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 that the resident or property owner may receive legally required notices or advertisements via first-class mail or email by registration of their name, address, and email address with the county or municipality. The government agency is required to maintain a registry of names, addresses, and email addresses of residents and property owners who have requested in writing that they receive legally required notices and advertisements from the agency by first-class mail or email.

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 makes conforming changes to statutes that require state and local governments to give notice.

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 website of the newspaper the same day it appears in the printed publication.⁵ The notice shall 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.⁶ The newspaper must also provide the ability for members of the public to sign up for an email notification to be received when new legal notices are published.

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

- The notice is published for the time period prescribed for such a notice;
- The newspaper shall have 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.

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 <http://www.floridapublicnotices.com>. See s. 50.0211(3)(a), F.S.

⁷ S. 50.031, F.S.

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 with complies with the electronic notarization requirements of s. 117.021, F.S.. The proof of publication affidavit must contain:⁹

- The name of the newspaper;
- The frequency of publication;
- The city and county of publication; and
- The signature of a notary public.

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

⁸ S. 50.041, F.S.

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.

- The time, place, and manner of the sale or other disposition.¹⁷

Effect of Proposed Changes

The bill requires all legally required advertisements and public notices to be posted on a state or local government agency's official website in a searchable form.

Each government agency must publish notice at least one 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 that the resident or property owner may receive legally required notices or advertisements via first-class mail or email by registration of their name, address, and email address with the government agency. The government agency must maintain a registry of names, addresses, and email addresses of residents and property owners who have requested in writing that they receive legally required notices and advertisements from the agency by first-class mail or email.

The bill requires any legally required notices and advertisements published on the county or municipality'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 county government operating a government access channel to include a summary of all advertisements and public notices published on its website on the channel.

The bill repeals provisions concerning:

- Newspapers in which legal notices and process may be published;
- Publication methods when a county has no newspaper;
- Requirements for newspaper publishers to maintain a legal notice website; and
- The amount a newspaper publisher may charge for a legal notice or advertisement.

The bill makes conforming changes to other provisions requiring a government agency to publish notice. Notices published on a local government website must be published for the same period a printed notice would have been available to the public.¹⁸ The bill also revises the statutory uniform affidavit for proof of publication and use of the court docket fund to remove references to newspapers.

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.

B. SECTION DIRECTORY:

Section 1: Amends s. 50.011, F.S., concerning publication of legal notices.

Section 2: Repeals s. 50.021, F.S., concerning publication of notices in a county with no newspaper.

Section 3: Repeals s. 50.0211, F.S., concerning Internet website publication.

Section 4: Repeals s. 50.031, F.S., concerning newspapers in which legal notices and process may be published.

Section 5: Creates s. 50.0311, F.S., concerning publication of advertisements and public notices on a publicly accessible website and governmental access channels.

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

¹⁸ *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.

- Section 6: Amends s. 50.041, F.S., concerning affidavits for proof of publication.
- Section 7: Amends s, 50.051, F.S. concerning formatting for affidavits for proof of publication.
- Section 8: Repeals s. 50.061, F.S.
- Section 9: Amends s. 50.0711, F.S., making conforming changes.
- Section 10: Amends s. 11.02, F.S., making conforming changes.
- Section 11: Amends s. 45.031, F.S., making conforming changes.
- Section 12: Amends s. 69.081, F.S., making conforming changes.
- Section 13: Amends s. 121.0511, F.S., making conforming changes.
- Section 14: Amends s. 121.055, F.S., making conforming changes
- Section 15: Amends s. 125.66, F.S. making conforming changes.
- Section 16: Amends s. 162.12, F.S., making conforming changes.
- Section 17: Amends s. 166.041, F.S., making conforming changes.
- Section 18: Amends s. 189.015, F.S., making conforming changes.
- Section 19: Amends s. 190.005, F.S., making conforming changes.
- Section 20: Amends s. 194.037, F.S., making conforming changes.
- Section 21: Amends s. 197.402, F.S., making conforming changes.
- Section 22: Amends s. 200.065, F.S., making conforming changes.
- Section 23: Amends s. 316.066, F.S., making conforming changes.
- Section 24: Amends s. 338.223, F.S., making conforming changes.
- Section 25: Amends s. 373.0397, F.S., making conforming changes.
- Section 26: Amends s. 373.146, F.S., making conforming changes.
- Section 27: Amends s. 403.722, F.S., making conforming changes.
- Section 28: Amends s. 501.059, F.S., making conforming changes.
- Section 29: Amends s. 712.06, F.S., making conforming changes.
- Section 30: Amends s. 849.38, F.S., making conforming changes.
- Section 31: Amends s. 865.09, F.S., making conforming changes.
- Section 32: Amends s. 932.704, F.S., making conforming changes.
- Section 33: Provides an effective date of July 1, 2020.

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 reduces local government expenditures to the extent a county or municipality would otherwise pay for legal notices and advertisements in newspapers, but increases expenditures to the extent any additional staff or materials are required for maintaining the county or municipal website.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce revenues for newspapers that publish legal notices and advertisements.

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 70-71 of the bill define a “publicly accessible website” as including a “private website.” The meaning of this term is unclear.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 26, 2019, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment 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.

This analysis is drafted to the committee substitute as approved by the Local, Federal & Veterans Affairs Subcommittee.