

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 89 Effective Public Notices by Governmental Entities

SPONSOR(S): Workman and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 914

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Thompson	Williamson
2) Economic Affairs Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law provides requirements for publishing legal notices and official advertisements. Publications must be in a newspaper that is printed and published at least once a week and that contains at least 25 percent of its words in the English language. In addition, the newspaper must qualify or be entered to qualify as periodicals matter at the post office in the county where published, and be generally available to the public for the purpose of publication of official or other notices.

The bill authorizes a local government to use its publicly accessible website for legally required advertisements and public notices. The use of such website constitutes legal notice.

The bill defines “publicly accessible website” to mean a local government’s official website that is accessible on the Internet. If specifically authorized by ordinance, a local government may use its website for legally required advertisements and public notices if:

- A public library or other governmental facility providing free access to the Internet during regular business hours exists within the jurisdictional boundaries of the local government;
- The local government provides notice to its residents at least once per year in a newspaper of general circulation, or the local government’s newsletter or periodical, or another publication mailed or delivered to all residents or property owners within its jurisdictional boundaries, indicating that residents can register with the local government to receive all advertisements and public notices by first-class mail or by e-mail; and
- The local government maintains a registry of names, addresses and e-mail addresses of residents who request in writing that they receive advertisements and notices by first-class mail or by e-mail.

Advertisements and public notices published on a publicly accessible website must be conspicuously placed on the homepage of that website or must be accessible through a direct link from the homepage. The advertisement must indicate the date on which it was first published on the website.

The bill also authorizes a local government with an authorized government access channel to include on such channel a summary of all advertisements and public notices published on its website.

Finally, the bill provides specific authorizations for a local government to advertise or notice on its publicly accessible website provided certain requirements are met.

The bill may reduce local government expenditures associated with publishing required notices and advertisements in the newspaper; however, local governments might have to expend funds to create, maintain, and issue correspondence from a registry of persons requesting notifications by first-class mail or e-mail. In addition, the bill also may cause a loss of revenue to the private sector and a loss of revenue to the state associated with corporate income tax revenue.

This bill has an effective date of October 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The publication of legal notices in newspapers is a long established practice in Florida and throughout the United States. According to newspaper trade associations and independent analysts, "it's unclear how much newspapers collect in total from such publicly financed advertising."¹ At one newspaper company, Trib Total Media, which runs the Pittsburgh Tribune-Review and other newspapers in western Pennsylvania, about 7 percent of revenues come from government-funded legal notices.² Newspaper advertising revenues declined drastically in 2009, to 28.6 percent. In 2010, the decline improved to 8.2 percent. Similarly, classified ads experienced a drastic decline in 2009 of 38.1 percent, improving to 8.6 percent in 2010. In spite of these trends, the ad grouping that includes legal and public notices remained moderately stable, declining 10.9 percent in 2009, and only 4.3 percent in 2010.³

Current law requires reasonable notice of all public meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the State Constitution, at which official acts are to be taken, but does not provide a specific definition for reasonable notice.⁴ Similarly, the State Constitution provides only that public business "shall be open and noticed," but does not specify the medium by which notice shall be given.⁵ As a result, the Legislature may define what constitutes reasonable notice for a public action.

The requirements for legal and official advertisements are provided in chapter 50, F.S. Current law requires that publication must be in a newspaper that is printed and published at least once a week and that contains at least 25 percent of its words in the English language. The newspaper must qualify or be entered to qualify as periodicals matter at the post office in the county where published, and be generally available to the public for the purpose of publication of official or other notices.⁶

When there is no weekly newspaper published in the county the advertisement may be made by posting three copies in three different places in the county, one of which must be at the front door of the courthouse, and by publication in the nearest county in which a newspaper is published.⁷

Current law also provides requirements for newspapers. A newspaper is required to have been in existence for at least one year. Also, it must meet the requirements for periodicals matter at the post office in the county where published.⁸ An exception is provided for counties in which no newspaper in existence has been published for a year. Proof of publication also is required in the form of a uniform affidavit.⁹

¹ *Move to Online Public Notices Looms Over Papers*, USA Today, May 22, 2009, http://www.usatoday.com/tech/news/2009-05-22-online-notices_N.htm (last visited January 19, 2011).

² *Move to Online Public Notices Looms Over Papers*, USA Today, May 22, 2009, citing the Newspaper Association of America.

³ Business Analysis and Research, Research Dept., Newspaper Association of America, Last Update: March 2011, <http://www.naa.org/TrendsandNumbers/Advertising-Expenditures.aspx> (last visited Mar. 31, 2011).

⁴ Section 286.011, F.S.

⁵ Section 24(b), Art. I of the State Constitution.

⁶ Section 50.011, F.S.

⁷ Section 50.021, F.S.

⁸ Section 50.031, F.S.

⁹ Section 50.041, F.S.

The amount a newspaper can charge for publication is standardized at 70 cents per square inch for the first insertion, and 40 cents per square inch for each subsequent insertion.¹⁰ Where the regular established minimum commercial rate per square inch of the newspaper publishing the official notice or legal advertisement is greater than the per square inch rate established in statute, the minimum commercial rate may be charged or the government agency may procure publication through bids. All official notices and legal advertisements must be charged and paid for on the basis of 6-point type on 6-point body, unless otherwise specified in statute. There are criminal penalties for non-compliance with these rates and charges.¹¹

Effect of Proposed Changes

The bill creates a new section of law authorizing local governments to use its publicly accessible website for legally required advertisements and public notices. The use of such website constitutes legal notice.

The bill defines “publicly accessible website” to mean a local government’s official website that is accessible on the Internet. If specifically authorized by ordinance, a local government may use its website for legally required advertisements and public notices if:

- A public library or other governmental facility providing free access to the Internet during regular business hours exists within the jurisdictional boundaries of the local government;
- The local government provides notice to its residents at least once per year in a newspaper of general circulation, or the local government’s newsletter or periodical, or another publication mailed or delivered to all residents or property owners within its jurisdictional boundaries, indicating that residents can register with the local government to receive all advertisements and public notices by first-class mail or by e-mail; and
- The local government maintains a registry of names, addresses, and e-mail addresses of residents who request in writing that they receive advertisements and notices by first-class mail or by e-mail.

Any registry of names, addresses, and e-mail addresses of residents requesting receipt of legal advertisements and public notices by first-class mail or by e-mail is a public record unless a specific public record exemption exists. For example, information relating to the identification or location of a police officer or firefighter could remain protected in the database if the police officer or firefighter requests in writing the protection of such information.¹²

Advertisements and public notices published on a publicly accessible website must be conspicuously placed on the homepage of that website or must be accessible through a direct link from the homepage. The advertisement must indicate the date on which it was first published on the website.

The bill also authorizes a local government with a government access channel authorized under s. 610.109, F.S., to include on such channel a summary of all advertisements and public notices published on its website.

The bill specifically authorizes the following advertisements or public notices on a local government’s publicly accessible website provided the previously discussed requirements are met:

- Advertisement directed by law or order or decree of court.
- Notice regarding special election or referendums. The local government responsible for publication must publish the notice daily during the five weeks immediately preceding the election or referendum.

¹⁰ Section 50.061(2)(a) and (b), F.S., provides that counties with a population in excess of 304,000 may charge 80 cents per square inch for the first insertion and 60 cents per square inch for each subsequent insertion. Counties with a population in excess of 450,000 may charge 95 cents per square inch for the first insertion and 75 cents per square inch for each subsequent insertion.

¹¹ Section 50.061, F.S.

¹² See s. 119.071(4)(d), F.S.

- Notice regarding the consideration of a county ordinance by the board of county commissioners. The notice must be provided at least 10 days before the meeting and must be published daily during the 10 days preceding the meeting.
- Summary statements of adopted tentative county budgets.
- Advertisement of a public hearing relating to the amendment of a county budget. The advertisement must be published daily during the five days immediately preceding the hearing.
- Advertisement by a county water and sewer system district regarding a project to construct, reconstruct, acquire or improve a water system or a sewer system, and of a call for sealed bids for such projects. The advertisement must be published daily during the three weeks immediately preceding the date set for receipt of the bids.
- Advertisement for competitive bids to contract construction projects under the Florida Industrial Development Financing Act.
- Notice by code enforcement boards regarding violations of a county or municipal code. The notice must be provided daily during the four weeks immediately preceding the hearing on the local government's website.
- Notice of public hearings regarding the adoption of a local government comprehensive plan or plan amendment or the approval of a compliance agreement under the Local Government Comprehensive Planning and Land Development Regulation Act. The bill provides multiple requirements for the notice.
- Notice regarding the adoption of a municipal ordinance. The notice must be provided daily during the 10 days immediately preceding the adoption on the municipality's website.
- Publication of resolutions relating to municipal public improvements financed by special assessments.
- Notice regarding hearings on municipal public improvements financed by special assessments. The notice must be provided daily for two weeks on the municipality's website.
- Advertisement of specified construction contracts for utilities or extensions to a previously constructed utility. The advertisement must be made daily for two weeks on the municipality's website.
- Notice of intent to use the uniform method of collecting non-ad valorem assessments. The notice must be made daily for the four weeks immediately preceding the hearing.
- Notice by a taxing authority of its intent to adopt a millage rate and budget. The notice must be maintained on the local government website until completion of the hearing.
- Notice by a multicounty taxing authority of its intent to adopt a tentative budget and millage rate. The hearing may not be held less than two days after initial publication of the advertisement on the local government website and not later than September 18. The notice must remain on the website until the date of the hearing.
- Notice of a specified error contained in a notice of proposed property taxes mailed to taxpayers.
- Advertisement of a solicitation of specified competitive bids or proposals for construction projects by a county, municipality or other political subdivision. The bill provides the following disclosure requirements:
 - If the project is projected to cost more than \$200,000, the notice must be advertised daily during the 21 days immediately preceding the established bid opening date, and daily during the 5 days immediately preceding any scheduled prebid conference.
 - If the project is projected to cost more than \$500,000, the notice must be advertised daily during the 30 days immediately preceding the established bid opening date, and daily during the 5 days immediately preceding any scheduled prebid conference.
- Advertisement of a public hearing by a local government on an area-wide development of regional impact under the Florida Environmental Land and Water Management Act of 1972.
- Notice of an expedited permitting meeting to discuss a memorandum of agreement regarding amendments to comprehensive plans. The notice must appear daily during the 7 days immediately preceding the meeting.
- Advertisement of funding availability through a local housing assistance plan under the State Housing Initiatives Partnership Act. The notice must be advertised daily during the 30 days immediately preceding the application period.

Finally, the bill provides the following requirements for meeting the public disclosure system requirements for s. 403.7049, F.S., relating to local solid waste management fees:

- Mailing a copy of the full cost information to each residential and nonresidential user of solid waste management service within the solid waste management service area of the county or municipality;
- Enclosing a copy of the full cost information in or with a bill sent to each residential and nonresidential user of solid waste management services within the service area of the county or municipality;
- Publishing a copy of the full cost information in a newspaper of general circulation, within the county, that must be a display advertisement not less than one-quarter page in size; or
- Advertising a copy of the full cost information daily for at least two consecutive weeks on a publicly accessible website maintained by the municipality.

B. SECTION DIRECTORY:

Section 1: Creates s. 50.0311, F.S., providing a definition, authorizing a local government to use its publicly accessible website for legally required advertisements and public notices, and providing an optional receipt of legally required advertisements and public notices by first-class mail or e-mail.

Section 2: Amends s. 50.011, F.S., providing that a notice, advertisement, or publication on a publicly accessible website of a local government constitutes legal notice.

Section 3: Amends s. 50.021, F.S., providing that advertisements directed by law or order or decree of court to be made in a county without a published newspaper may be made by publication on a publicly accessible website.

Section 4: Amends s. 50.051, F.S., clarifying provisions.

Section 5: Amends s. 50.061, F.S., clarifying provisions.

Section 6: Amends s. 100.342, F.S., providing that special election or referendum notices may be published on a publicly accessible website.

Section 7: Amends s. 125.66, F.S., providing that notices of consideration of a county ordinance by the board of county commissioners may be published on a publicly accessible website.

Section 8: Amends s. 129.03, F.S., providing that a summary statement of adopted tentative county budgets may be published on a publicly accessible website.

Section 9: Amends s. 129.06, F.S., providing that advertisement of a public hearing relating to the amendment of a county budget may be published on a publicly accessible website.

Section 10: Amends s. 153.79, F.S., providing that advertisement by a county water and sewer system district regarding a project to construct, reconstruct, acquire, or improve a water system or a sewer system, and of a call for sealed bids for such projects, may be published on a publicly accessible website.

Section 11: Amends s. 159.32, F.S., providing that the advertisement for competitive bids to contract construction projects under the Florida Industrial Development Financing Act may be published on a publicly accessible website.

Section 12: Amends s. 162.12, F.S., providing that code enforcement boards may notice violation of a county or municipal code on a publicly accessible website.

Section 13: Amends s. 163.3184, F.S., providing that notice of public hearings on the adoption of a local government comprehensive plan or plan amendment or the approval of a compliance agreement

under the Local Government Comprehensive Planning and Land Development Regulation Act may be published on a publicly accessible website.

Section 14: Amends s. 166.041, F.S., providing that notice of adoption of a municipal ordinance may be published on a publicly accessible website.

Section 15: Amends s. 170.05, F.S., providing that resolutions relating to municipal public improvements financed by special assessments may be published on a publicly accessible website.

Section 16: Amends s. 170.07, F.S., providing that notice relating to hearings on municipal public improvements financed by special assessments may be noticed on a publicly accessible website.

Section 17: Amends s. 180.24, F.S., providing that specified construction contracts for utilities or extensions to a previously constructed utility may be advertised on a publicly accessible website.

Section 18: Amends s. 197.3632, F.S., providing that notices of intent to use the uniform method of collecting non-ad valorem assessments may be published on a publicly accessible website.

Section 19: Amends s. 200.065, F.S., providing that a taxing authority's notice of intent to adopt a millage rate and budget, a specified multicounty taxing authority's notice of intent to adopt a tentative budget and millage rate, and correction of a specified error contained in a notice of proposed property taxes mailed to taxpayers may be advertised on a publicly accessible website.

Section 20: Amends s. 255.0525, F.S., providing that the solicitation of specified competitive bids or proposals for construction projects by a county, municipality, or other political subdivision may be advertised on a publicly accessible website.

Section 21: Amends s. 380.06, F.S., providing that a public hearing by a local government on an area wide development of regional impact, under the Florida Environmental Land and Water Management Act of 1972, may be advertised on a publicly accessible website.

Section 22: Amends s. 403.7049, F.S., providing fulfillment requirements of the public disclosure system.

Section 23: Amends s. 403.973, F.S., redefining the term "duly noticed."

Section 24: Amends s. 420.9075, F.S., providing that funding availability through a local housing assistance plan under the State Housing Initiatives Partnership Act may be advertised on a publicly accessible website.

Section 25: Providing an effective date of October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

State corporate income tax receipts may decrease as a result of corporate profit reductions associated with local governments moving required advertising and noticing from newspapers to publicly accessible websites.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may reduce local government expenditures associated with publishing required notices and advertisements in the newspaper. Local governments might have to expend funds to create, maintain, and issue correspondence from a registry of persons requesting notifications by first-class mail or e-mail.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Corporations or other entities or individuals that publish required local government public notices and advertisements will have a loss of revenue associated with local governments moving such required advertising and noticing from newspapers to publicly accessible websites.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not 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 authorize any new grants of rulemaking authority, nor are any additional grants necessary. However, the Department of Revenue has indicated that, due to changes proposed by the bill, there are several rules that will need to be amended.¹³

C. DRAFTING ISSUES OR OTHER COMMENTS:

Proponents claim that publishing legal and public notices electronically will reduce newspaper related expenditures for local governments and provide increased awareness to the citizens. Conversely, opponents claim the trend will reduce public awareness because poor and rural communities have limited access to the Internet, and would eliminate the legal and public notices portion of the ad business from newspapers, thereby negatively impacting business, and the newspaper industry as a whole.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

¹³ Department of Revenue HB 89 Analysis (Jan. 20, 2011), at 4; on file with the Government Operations Subcommittee.