

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 834

INTRODUCER: Senator Latvala

SUBJECT: Legal Notices

DATE: March 11, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kim	McVaney	GO	<b>Pre-meeting</b>
2.			JU	
3.			AP	
4.			RC	

**I. Summary:**

SB 834 makes internet access to legal notices free and more user friendly. A newspaper's legal notice webpage must be clearly titled, free, and may not require registration. The statewide website for legal notices will be free, searchable by case name and number, and keep legal notices on-line for certain amounts of time. Clerks of court will be permitted to link their website to legal notice websites. Parties injured because of an error in a legal notice for a judicial sale printed in a newspaper or posted on the statewide website will be entitled to relief.

**II. Present Situation:**

The publication of legal notices in newspapers is a long established practice. Legal notices and publication in newspapers occur for a variety of cases, such as when the government is taking an action<sup>1</sup> or when a plaintiff has not been able to serve a defendant.<sup>2</sup> In most civil cases, notice

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<sup>1</sup> There are many types of situations where legal notices are required, and the publication requirements for those situations are particular to each law. An example would be a judicial sale, when there is a court order or judgment for the sale of real or personal property, pursuant to Chapter 45, F.S.

<sup>2</sup> In general, laws addressing constructive service of process by publication are located in chapter 49, Florida Statutes. Section 49.011, F.S., provides that service of process by publication is permitted in the following types of cases:

- (1) To enforce any legal or equitable lien or claim to any title or interest in real or personal property within the jurisdiction of the court or any fund held or debt owing by any party on whom process can be served within this state.
- (2) To quiet title or remove any encumbrance, lien, or cloud on the title to any real or personal property within the jurisdiction of the court or any fund held or debt owing by any party on whom process can be served within this state.
- (3) To partition real or personal property within the jurisdiction of the court.
- (4) For dissolution or annulment of marriage.
- (5) For the construction of any will, deed, contract, or other written instrument and for a judicial declaration or enforcement of any legal or equitable right, title, claim, lien, or interest thereunder.
- (6) To reestablish a lost instrument or record which has or should have its situs within the jurisdiction of the court.
- (7) In which a writ of replevin, garnishment, or attachment has been issued and executed.

must be published in a newspaper in the county where the lawsuit is filed once a week for four consecutive weeks.<sup>3</sup> Foreclosure proceedings are published once a week for two weeks.<sup>4</sup>

The requirements for legal publication are located in Chapter 50, F.S. The 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.<sup>5</sup> The newspaper must qualify or be entered to qualify as a periodical at the post office in the county where it is published, and be generally available to the public for the purpose of publication of notices.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> If the government is required to publish a notice multiple times, a newspaper can only charge 85 percent of the allowable rate for the subsequent publications.<sup>10</sup> The government can also procure publication through bids.<sup>11</sup>

The law requires that the following legal actions must be published on a newspaper's website at the same time that they appear in print:

constructive service, or the initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, by any court in this state, or any notice of sale of property, real or personal, for taxes, state, county or municipal, or sheriff's, guardian's or administrator's or any sale made pursuant to any judicial order, decree or statute or any other publication or notice

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(8) In which any other writ or process has been issued and executed which places any property, fund, or debt in the custody of a court.

(9) To revive a judgment by motion or scire facias.

(10) For adoption.

(11) In which personal service of process or notice is not required by the statutes or constitution of this state or by the Constitution of the United States.

(12) In probate or guardianship proceedings in which personal service of process or notice is not required by the statutes or constitution of this state or by the Constitution of the United States.

(13) For termination of parental rights pursuant to part VIII of chapter 39 or chapter 63.

(14) For temporary custody of a minor child, under chapter 751.

(15) To determine paternity, but only as to the legal father in a paternity action in which another man is alleged to be the biological father, in which case it is necessary to serve process on the legal father in order to establish paternity with regard to the alleged biological father.

<sup>3</sup> Section 49.10(1)(b), F.S.

<sup>4</sup> Section 49.10(1)(b), F.S.

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

<sup>6</sup> Section 50.011, F.S.

<sup>7</sup> Section 50.061(4), F.S.

<sup>8</sup> Section 50.061(2), F.S.

<sup>9</sup> Section 50.061(3), F.S.

<sup>10</sup> Section 50.061(1) and (2), F.S.

<sup>11</sup> Section 50.061(4), F.S.

pertaining to any affairs of the state, or any county, municipality or other political subdivision thereof.<sup>12</sup>

Legal notices must be placed on a newspaper's website on the same day the notice appears in print and the front page of a newspaper's website must have a link to the legal notices webpage.<sup>13</sup> The legal notices webpage must be searchable and free to the public.<sup>14</sup> If there are size requirements for a printed legal notice, then the newspaper's website is required to optimize online visibility of the legal notice; in addition, the legal notices must be the dominant feature of the webpage.<sup>15</sup> Effective July 1, 2013, a newspaper was required to provide free e-mail notification of publication of new legal notices.<sup>16</sup>

A newspaper is also required to place a legal notice on a statewide website maintained by the Florida Press Association.<sup>17</sup> Finally, any error in the legal notice published on a newspaper's webpage or the statewide website is considered harmless if the printed legal notice was correct.<sup>18</sup>

### **III. Effect of Proposed Changes:**

#### **Newspaper Websites**

Legal notices webpages will be titled "Legal Notices," "Legal Advertising" or use similar language. The legal notices webpages must also be the "leading" as well as dominant subject of the page.

If the legal notice is published in a newspaper, newspapers will be prohibited from charging a fee or requiring a person to register with the newspaper in order to view or search a legal notice webpage.

#### **Statewide Website**

The statewide legal notice website will be searchable by name and case number and legal notices will be posted for at least 90 days. Effective October 1, 2014, the statewide website will keep a legal notice posted for 18 months, be searchable, and free to the public.

#### **Clerk of Court Website Links**

A clerk of court will be permitted to place a hyperlink from the clerk of court's website to a newspaper's legal notices webpage. The clerk will not be required to provide a hyperlink to a newspaper's legal notices webpage if the clerk's webpage states that it does not contain an exhaustive list of hyperlinks to all legal notices webpages.

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<sup>12</sup> Section 50.031, F.S.

<sup>13</sup> Section 50.0211(2), F.S.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Section 50.0211(4), F.S.

<sup>17</sup> Section 50.0211(3), F.S. See [www.floridapublicnotices.com](http://www.floridapublicnotices.com).

<sup>18</sup> Section 50.0211(5), F.S.

### **Conflicting Notices and Redress**

If there is a difference between a newspaper's printed legal notice and the electronic version posted on the statewide website, the printed version will be considered the legally valid version.

Anyone harmed as a result of an error or omission in a legal notice for a judicial sale<sup>19</sup> will be permitted to seek relief, if the error or omission appeared in the printed legal notice or on the statewide website.

The bill deletes a current law provision that deems an error in the notice placed on the newspaper or statewide websites to be harmless error if the notice published in the newspaper is correct.

The act is effective October 1, 2014.

### **Technical changes**

Obsolete effective date clauses are removed from s. 50.0211, F.S., and editorial changes are made to ss. 50.0211 and 50.061, F.S.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

### **D. Other Constitutional Issues:**

This bill provides that people harmed by an error or omission in a legal notice for judicial sale may seek relief but does not provide that any other class of people harmed by an error or omission are entitled to relief. This distinction may violate the due process and equal protection clauses of the 14<sup>th</sup> Amendment of the United States Constitution and Article 1, Sections 2 and 9 of the Florida Constitution.

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<sup>19</sup> Section 45.031(2), F.S., provides that a judicial sale must be published once a week for two consecutive weeks, describe the property to be sold, state the time and place of the sale, include the name of the clerk of court making the sale, and specify the caption of the legal action and that the sale is being made pursuant to a court order or final judgment. The notice must also state that a person claiming an interest in the surplus from the sale must file a claim within 60 days of the sale.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This bill prohibits newspapers and the Florida Press Association from charging fees for viewing legal notices on their websites. It is unknown if newspapers and the Florida Press Association are currently charging the public for viewing their legal notices websites and if this bill will stanch existing or potential revenue streams.

The Florida Press Association estimates that the cost associated with making changes to their website to conform to this bill is \$3,600.00, but may increase. The Florida Press Association did not have an estimate for the financial impact this bill will have on newspapers, but did state that only a few newspapers would be affected.<sup>20</sup>

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

The bill permits the clerk of court to link the clerk's website to a legal notice webpage and also provides that a clerk will not be required to add a link if the clerk's webpage specifies that it does not contain an exhaustive list of legal notices webpages. This provision does not require the clerk to perform an action, or prohibit him or her from engaging in one, therefore, this language appears superfluous.

This bill does not describe who a plaintiff harmed by a judicial sale notice error would sue in order to seek relief, nor does this bill describe the type of relief which may be sought.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends s. 50.0211, F.S.

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<sup>20</sup> An e-mail dated March 7, 2014, from Sam Morley, General Counsel for the Florida Press Association, is on file with the Senate Government Operations and Accountability Committee.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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