

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 Rules

BILL: CS/SB 834

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Latvala

SUBJECT: Legal Notices

DATE: April 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	<u>Carey</u>	<u>Kynoch</u>	<u>AP</u>	<u>Favorable</u>
4.	<u>Kim</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 834 ensures that access to legal notices is free and more user friendly. A newspaper's legal notice webpage must be clearly titled, accessible for free, and may not require registration. The statewide website for legal notices, which is maintained by the Florida Press Association, must also be accessible for free, searchable by case name and number, and keep legal notices online for at least 90 consecutive days. This bill repeals a provision which states that an error in a legal notice appearing on a newspaper's website or on the statewide website is harmless if the legal notice was correctly published in the print version of the newspaper.

II. Present Situation:

Publication of Legal Notices

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 proposing

to take an action¹ or when a plaintiff is not able to personally serve a defendant.² In most civil cases in which service may be accomplished by publication, notice must be published in a newspaper in the county where the lawsuit is filed once a week for 4 consecutive weeks.³ Foreclosure proceedings are published once a week for 2 weeks.⁴

Publication Requirements

The requirements for legal publication are located in ch. 50, F.S. The law requires that publication 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.⁵ 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.⁶ 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.⁷

¹ 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 ch. 45, F.S. Another example in s. 125.66, F.S., requires the board of county commissioners to publish in a newspaper a notice of intent to enact or amend ordinances at least 10 days before the meeting in which the ordinance may be enacted or amended.

² In general, laws addressing constructive service of process by publication are located in ch. 49, F.S. 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.
- (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 ch. 39 or ch. 63.
- (14) For temporary custody of a minor child, under ch. 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.

³ Section 49.10(1)(b), F.S.

⁴ Section 49.10(1)(c), F.S.

⁵ Section 50.011, F.S.

⁶ Section 50.011, F.S.

⁷ Section 50.061(6), F.S.

Publication Costs

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

Newspaper's Website

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

Legal notices must be placed on a newspaper's website on the same day the notices appear in print, and the front page of a newspaper's website must have a link to the legal notices webpage.¹³ The legal notices webpage must be searchable and accessible for free to the public.¹⁴ 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.¹⁵ Effective July 1, 2013, newspapers are required to provide free e-mail notification of publication of new legal notices.¹⁶

Statewide Website

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

⁸ Section 50.061(2), F.S.

⁹ Section 50.061(3), F.S.

¹⁰ Section 50.061(2), F.S.

¹¹ Section 50.061(4), F.S.

¹² Section 50.031, F.S.

¹³ Section 50.0211(2), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Section 50.0211(4), F.S.

¹⁷ Section 50.0211(3), F.S. See www.floridapublicnotices.com.

¹⁸ Section 50.0211(5), F.S.

III. Effect of Proposed Changes:

Newspaper Websites

Legal notices webpages for newspapers must 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, the newspaper is 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 must be accessible and searchable by name and case number and legal notices must be posted for at least 90 consecutive days. Effective October 1, 2014, the statewide website must keep a legal notice posted for 18 months, be searchable, and free to the public.

Conflicting Notices

The bill deletes s. 50.0211(5), F.S., which provides that an error in the internet version of a legal notice is harmless if the printed version is correct.¹⁹

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.

Effective Date

The bill takes effect October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁹ Section 50.0211(5), F.S. provides that “[a]n error in the notice placed on the newspaper or statewide website shall be considered a harmless error and proper legal notice requirements shall be considered met if the notice published in the newspaper is correct.”

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 834 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 reduce existing or potential revenue streams.

The Florida Press Association estimates that the initial 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.²⁰

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 50.0211(5), F.S. provides that an error placed on the newspaper website or statewide website is considered a harmless error and proper legal notice requirements are considered to be met if the notice published in the newspaper is correct. This subsection is repealed by this bill. If an error occurs on either of those websites once this bill becomes law, it is not clear which published version will control, the printed newspaper version or the websites. It is also unclear if an ambiguity results from the error what redress is available for someone who relied upon the erroneous publication.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 50.0211 and 50.061.

²⁰ E-mail from Sam Morley, General Counsel for the Florida Press Association (March 26, 2014) (on file with the Senate Committee on Judiciary).

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 13, 2014:

The CS removes clauses which permit, but do not require, a clerk of court to link his or her website to a newspaper's legal notices website.

The CS also removes a provision stating that if there is a conflict between the electronic and the printed versions of a legal notice, the printed version controls. The CS also deletes a provision stating that a person adversely affected by a mistake in a judicial sale notice is permitted to seek relief if the error is in the printed legal notice or appears on the statewide website.

- B. **Amendments:**

None.