

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 897 Public Notices by Local Governmental Entities
SPONSOR(S): Stark
TIED BILLS: **IDEN./SIM. BILLS:** SB 1444

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee		Darden	Miller
2) Government Accountability 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 authorizes counties and municipalities to publish legally required notices and advertisements on their official websites if the county or municipality:

- Expressly authorizes publication via its publicly accessible website by ordinance;
- Includes a public library or other governmental facility providing free internet access during regular business hours;
- Publishes notice at least once a year in a newspaper of general circulation, a county or municipality newsletter or periodical, or other publication mailed and delivered to all residents and property owners in the county 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; and
- Maintains 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 county or municipality by first-class mail or email.

The bill requires any legally required notice or advertisement published on the local government's official website to be placed conspicuously on the website or made accessible through a direct link on the homepage. The website must contain a searchable index of current legal notices with full text. The bill requires the local government to maintain an affidavit of posting the notice containing the date of initial publication and a statement that notice was posted until the latter of the applicable period required by law or the date of the noticed event.

The bill makes conforming changes to statutes which require local governments to give notice.

The bill has no fiscal impact on state government. The bill will have an indeterminate fiscal impact on local governments, decreasing expenditures to the extent these governments 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.

The effective date of the bill is October 1, 2017.

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 which meets the following qualifications:

- 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.³

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:

- The notice is published for the time period prescribed for such an 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.⁷

¹ Art. I, s. 24(b), Fla. Const.

² Art. I, s. 24(c), Fla. Const.

³ Section 50.011, F.S.

⁴ Section 50.021, F.S.

⁵ Section 50.0211, F.S.

⁶ <http://www.floridapublicnotices.com>. See s. 50.0211(3)(a), F.S.

⁷ Section 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:

- The name of the newspaper;
- The frequency of publication;
- The city and county of publication; and
- The signature of a notary public.⁹

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, 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. 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

Local Government Statutory Notice Requirements

A county or municipality is required to provide notice in a newspaper of general circulation when:

- Conducting any special election or referendum not otherwise provided for in law;¹¹
- Enacting an ordinance or emergency ordinance;¹²
- Publishing a summary statement of an adopted tentative budget;¹³
- Holding a public hearing to adopt an amendment to the adopted budget;¹⁴
- Soliciting bids for construction projects;¹⁵
- Providing notice of a code enforcement violation;¹⁶
- Calling of a public hearing before executing a compliance agreement between a local government and the Department of Economic Opportunity;¹⁷
- Calling for a special assessment for constructing municipal improvements and giving notice of the public hearing on the resolution;¹⁸
- Collecting a non-ad valorem special assessment;¹⁹
- Holding a public hearing to adopt a millage rate and budget;²⁰
- Holding a public hearing to review an areawide development of regional impact;²¹

⁸ Section 50.041, F.S.

⁹ Section 50.051, F.S.

¹⁰ Section 50.061, F.S.

¹¹ Section 100.342, F.S.

¹² Sections 125.66, 166.041, F.S.

¹³ Section 129.03(3)(b),

¹⁴ Section 129.06(2)(f)1.

¹⁵ See ss. 153.79, F.S. (county water and sewer systems), 159.32, F.S. (construction contracts under the Florida Industrial Development Financing Act), 180.24, F.S. (municipal public works), 255.0525(2), F.S (construction projects).

¹⁶ Section 162.12(2), F.S. The code enforcement board or local government must also provide notice by certified mail, personal service, leaving a copy of the notice at the violator's usual place of residence, or leaving a notice with the manager of a commercial building. S. 162.12(1), F.S.

¹⁷ Section 163.3184(6), F.S.

¹⁸ Sections 170.05, 170.07, F.S.

¹⁹ Section 197.3632(3)(a), F.S.

²⁰ Section 200.065(2)(d), F.S.

²¹ Section 380.06(25)(e), F.S.

- Giving notice of a public workshop and hearing to provide an expedited permit or a comprehensive plan amendment to facilitate an economic development project,²² and
- Advertising the availability of local housing assistance funding, if there is no waiting list for funding.²³

Effect of Proposed Changes

The bill authorizes counties and municipalities to publish legally required notices and advertisements on a publicly accessible website²⁴ if the county or municipality:

- Expressly authorizes publication via its publicly accessible website by ordinance;
- Contains a public library or other governmental facility providing free internet access during regular business hours;
- Publishes notice at least one a year in a newspaper of general circulation, a county or municipality newsletter or periodical, or other publication mailed and delivered to all residents and property owners in the county by which 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; and
- Maintains 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 county or municipality 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 include an index of all current legal notices, with links to the full text of the notices and the date of initial publication. The index of notices must also be searchable.

The bill requires the county or municipality to maintain an electric or physical affidavit of posting for each notice, containing the date of initial publication and a statement that notice was posted until the latter of the applicable period required by law or the date of the noticed event.

The bill makes conforming changes to other provisions requiring a local government entity 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.²⁵

The bill also makes several changes to conform other notice provisions. For example, the bill amends s. 50.0211, F.S., to only require a newspaper to publish a copy of the notice on its website were the newspaper was also the original source of publication for the notice.

B. SECTION DIRECTORY:

Section 1: Amends s. 50.011, F.S., authorizing a county or municipality to meet notice requirements by publication on a publicly accessible website maintained by the county or municipality.

²² Section 403.973(2)(a), F.S.

²³ Section 420.9075(4)(b), F.S. Notice provided under this section must appear in a newspaper and periodicals serving "ethnic and diverse neighborhoods."

²⁴ A "publicly accessible website" is defined as "the official website of a county or municipality that is accessible via the internet."

²⁵ *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 2: Amends s. 50.021, F.S., authorizing a county, municipality, or dependent special district to meet notice requirements by publication on a publicly accessible website maintained by the county or municipality when no newspaper is published in the county.
- Section 3: Amends s. 50.0211, F.S., requiring a newspaper to publish a legal notice on its website when the legal notice also appeared in the printed newspaper.
- Section 4: Amends s. 50.031, F.S., stating the publication of a notice or advertisement on a publicly accessible website maintained by a county or municipality serves as legal notice for the purposes of determining whether a newspaper meets notice requirements.
- Section 5: Creates s. 50.0311, F.S., authorizing the publication of a notice or advertisement on a publicly accessible website maintained by a county or municipality.
- Section 6: Amends s. 50.051, F.S., to reference that proof of publication is required for legal notices published in a newspaper.
- Section 7: Amends s. 50.061, F.S., to reference that newspaper printing rates set by statute for publishing a legal notice apply to a legal notice published in a newspaper.
- Section 8: Amends s. 100.342, F.S., allowing publication of notice of special election or referendum on a publicly accessible website maintained by a county or municipality.
- Section 9: Amends s. 125.66, F.S., authorizing a county to publish notice of an ordinance on a publicly accessible website maintained by the county and clarifying that formatting requirements for notices apply to notices printed in newspapers.
- Section 10: Amends s. 129.03, F.S., requiring a county to publish a summary statement of its proposed budget on a publicly accessible website maintained by the county.
- Section 11: Amends s. 129.06, F.S., authorizing a county to publish notice of its budget hearing on a publicly accessible website maintained by the county.
- Section 12: Amends s. 153.79, F.S. authorizing counties to advertise bids for construction contracts for county water and sewer systems on a publicly accessible website maintained by the county.
- Section 13: Amends s. 159.32, F.S., authorizing counties and municipalities to advertise bids for construction contracts under the Florida Industrial Development Financing Act on a publicly accessible website maintained by the county or municipality.
- Section 14: Amends s. 162.12, F.S., authorizing county or municipality code enforcement boards to publish notice using a publicly accessible website maintained by the county or municipality.
- Section 15: Amends s. 163.3184, F.S, authorizing a county or municipality to give notice of a public hearing concerning a compliance agreement, adoption of the comprehensive plan, or amendments to the comprehensive plan by a publicly accessible website maintained by the county or municipality.
- Section 16: Amends s. 166.041, F.S., authorizing a municipality to publish notice of an ordinance on a publicly accessible website maintained by the municipality and clarifying that formatting requirements for notices apply to notices printed in newspapers.

- Section 17: Amends s. 170.05, F.S., authorizing a municipality to give notice of a public hearing concerning a resolution to adopt a special assessment for municipal improvements using a publicly accessible website maintained by the municipality.
- Section 18: Amends s. 170.07, F.S., authorizing a municipality to give notice of a public hearing concerning the publication of a preliminary assessment roll for a special assessment for municipal improvements using a publicly accessible website maintained by the municipality.
- Section 19: Amends s. 180.24, F.S., authorizing municipalities to advertise bids for construction contracts for municipal public works on a publicly accessible website maintained by the municipality.
- Section 20: Amends s. 197.3632, F.S., authorizing a county or municipality to publish its intent to levy a non-ad valorem special assessment on a publicly accessible website maintained by the county or municipality.
- Section 21: Amends s. 200.065, F.S., authorizing a county or municipality to publish notice of a public meeting to adopt a millage rate and budget on a publicly accessible website maintained by the county or municipality.
- Section 22: Amends s. 255.0525, F.S., authorizing a county, municipality, or other political subdivision of the state to advertise solicitations of competitive bids or proposals on a publicly accessible website maintained by the county or municipality responsible for publication.
- Section 23: Amends s. 380.06, F.S., authorizing a county or municipality to publish notice of a public hearing concerning a development of regional impact on a publicly accessible website maintained by the county or municipality and clarifying that formatting requirements for notices apply to notices printed in newspapers.
- Section 24: Amends s. 403.973, F.S., authorizing a county or municipality to publish notice of a public hearing concerning expedited permitting for economic development projects on a publicly accessible website maintained by the county or municipality and clarifying that formatting requirements for notices apply to notices printed in newspapers.
- Section 25: Amends s. 420.9075, F.S., authorizing a county or municipality to publish a notice of funding availability for local housing assistance plans on a publicly accessible website maintained by the county or municipality
- Section 26: Provides an effective date of October 1, 2017.

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:

Indeterminate. 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 who 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 154-158 provide for the publication of notice on a county or municipal website as constituting legal notice for the purpose of s. 50.0211, F.S, however, this section states web accessibility requirements for public notices published on a newspaper website. The statute section does not state a notice requirement.

Lines 191-194 states that publication on a publicly accessible website maintained by the county or municipality shall constitute legal notice for the purposes of s. 50.031, F.S. This statute section concerns which newspapers may serve as venues for notice.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES