

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1235 Legal Notices

**SPONSOR(S):** Judiciary Committee, 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	11 Y, 7 N, As CS	Padgett	Poche
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 government notice requirements.

CS/CS/HB 1235 allows a governmental agency the option to publish legally required advertisements and notices on a publicly accessible website if certain conditions are met. The bill allows a governmental agency:

- In a county that has not been designated a fiscally constrained county to publish legally required advertisements and notices on a publicly accessible website if online publication would result in a cost savings for the government.
- In a fiscally constrained county to publish advertisements and notices on a publicly accessible website after making a determination at a publicly noticed meeting that online publication:
  - Is in the public interest;
  - Will be less expensive than newspaper publication; and
  - Will not, after taking into account the level of internet access in the county, unreasonably restrict access to advertisements and legal notices.

The bill requires a governmental agency to publish a notice at least once a year in a newspaper of general circulation 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 local governmental agency.

The bill revises criteria which a newspaper must meet to be eligible to publish advertisements and legal notices, allowing a governmental agency to publish advertisements and notices in a free newspaper and in a newspaper published once per week.

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 will reduce a government agency's expenditures for publishing legal notices and advertisements in a newspaper, but could also increase expenditures if any additional staff, hardware, or software are required for maintaining the government agency's website.

The bill provides an effective date of July 1, 2020.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### 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.<sup>1</sup> While this requirement is self-executing, the Legislature may enact general laws enforcing the provision and may provide exemptions by a two-thirds vote.<sup>2</sup> 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:<sup>3</sup>

- 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.<sup>4</sup>

If the newspaper publishing the legal notice maintains a website, the legal notice must appear on the newspaper's website the same day it appears in the printed publication.<sup>5</sup> 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.<sup>6</sup> 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:<sup>7</sup>

- 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.

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<sup>1</sup> Art. I, s. 24(b), Fla. Const.

<sup>2</sup> Art. I, s. 24(c), Fla. Const.

<sup>3</sup> S. 50.011, F.S.

<sup>4</sup> S. 50.021, F.S.

<sup>5</sup> S. 50.0211, F.S.

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

<sup>7</sup> S. 50.031, F.S.

Proof of publication is established by the use of a uniform notice.<sup>8</sup> 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:<sup>9</sup>

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<sup>8</sup> S. 50.041, F.S.

<sup>9</sup> S. 50.051, F.S.

- 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.<sup>10</sup>

### 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.<sup>11</sup> 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.<sup>12</sup> 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:<sup>13</sup>

- 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.<sup>14</sup> 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.<sup>15</sup> The advertisement must include:<sup>16</sup>

- 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
- The time, place, and manner of the sale or other disposition.<sup>17</sup>

### **Effect of Proposed Changes**

<sup>10</sup> S. 50.061, F.S.

<sup>11</sup> S. 83.805, F.S.

<sup>12</sup> S. 83.806(1), F.S.

<sup>13</sup> S. 83.806(2), F.S.

<sup>14</sup> S. 83.806(4), F.S.

<sup>15</sup> S. 83.806(4)(c), F.S.

<sup>16</sup> S. 83.806(4)(b), F.S.

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

CS/CS/HB 1235 allows a governmental agency<sup>18</sup> the option to publish legally required advertisements and notices on a publicly accessible website<sup>19</sup> if certain conditions are met. The bill allows a governmental agency:

- In a county that has not been designated a fiscally constrained county<sup>20</sup> to publish legally required advertisements and notices on a publicly accessible website if online publication would result in a cost savings for the government.<sup>21</sup>
- In a fiscally constrained county to publish advertisements and notices on a publicly accessible website after making a determination at a publicly noticed meeting that online publication:
  - Is in the public interest;
  - Will be less expensive than newspaper publication; and
  - Will not, after taking into account the level of internet access in the county, unreasonably restrict access to advertisements and legal notices.

All advertisements and legal notices posted on a governmental agency's website must be in a searchable format.

The bill requires each governmental agency to 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 governmental 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 advertisements and notices from the governmental agency by first-class mail or email.

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

The bill revises criteria which a newspaper must meet to be eligible to publish advertisements and legal notices, allowing a governmental agency to publish advertisements and notices in a free newspaper and in a newspaper published once per week.

The bill makes conforming changes to other provisions requiring a government agency to publish a notice. A notice published on a local government website must be published for the same period a printed notice would have been available to the public.<sup>22</sup>

The bill allows the operator of a self-service storage facility or a self-contained storage unit 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 provides an effective date of July 1, 2020.

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<sup>18</sup> A "governmental agency" means a county, municipality, school board, or other unit of local government or political subdivision of this state.

<sup>19</sup> A "publicly accessible website" means a governmental agency's official website or other private website designated by the governmental agency for the posting of legal notices and advertisements that is accessible via the internet.

<sup>20</sup> A "fiscally constrained county" means a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1.

<sup>21</sup> There are currently 29 fiscally constrained counties. Florida Department of Revenue, *Fiscally Constrained Counties*, <http://floridarevenue.com/property/Documents/fcco081210.pdf> (last visited Apr. 3, 2019).

<sup>22</sup> *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.

**B. SECTION DIRECTORY:**

- Section 1:** Amends s. 50.011, F.S., relating to where and in what language legal notices to be published.
- Section 2:** Amends s. 50.021, F.S., concerning publication when no newspaper in county.
- Section 3:** Amends s. 50.0211, F.S., concerning Internet website publication.
- Section 4:** Amends s. 50.031, F.S., relating to 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.
- Section 6:** Amends s. 50.041, F.S., relating to proof of publication; uniform affidavits required.
- Section 7:** Amends s. 50.051, F.S., relating to proof of publication; form of uniform affidavit.
- Section 8:** Amends s. 50.0711, F.S., relating to court docket fund; service charges; publications.
- Section 9:** Amends s. 83.806, F.S., relating to enforcement of lien.
- Section 10:** Amends s. 11.02, F.S., relating to notice of special or local legislation or certain relief acts.
- Section 11:** Amends s. 45.031, F.S., relating to judicial sales procedure.
- Section 12:** Amends s. 121.0511, F.S., relating to revocation of election and alternative plan.
- Section 13:** Amends s. 121.055, F.S., relating to senior management service class.
- Section 14:** Amends s. 125.66, F.S., relating to ordinances; enactment procedure; emergency ordinances; rezoning or change of land use ordinances or resolutions.
- Section 15:** Amends s. 162.12, F.S., relating to notices.
- Section 16:** Amends s. 166.041, F.S., relating to procedures for adoption of ordinances and resolutions.
- Section 17:** Amends s. 189.015, F.S., relating to meetings; notice; required reports.
- Section 18:** Amends s. 190.005, F.S., relating to establishment of district.
- Section 19:** Amends s. 194.037, F.S., relating to disclosure of tax impact.
- Section 20:** Amends s. 197.402, F.S., relating to advertisement of real or personal property with delinquent taxes.
- Section 21:** Amends s. 200.065, F.S., relating to method of fixing millage.
- Section 22:** Amends s. 338.223, F.S., relating to proposed turnpike projects.
- Section 23:** Amends s. 373.0397, F.S., relating to Floridan and Biscayne aquifers; designation of prime groundwater recharge areas.
- Section 24:** Amends s. 373.146, F.S., relating to publication of notices, process, and papers.
- Section 25:** Amends s. 403.722, F.S., relating to permits; hazardous waste disposal, storage, and treatment facilities.
- Section 26:** Amends s. 712.06, F.S., relating to contents of notice; recording and indexing.
- Section 27:** Amends s. 849.38, F.S., relating to proceedings for forfeiture; notice of seizure and order to show cause.
- Section 28:** Amends s. 865.09, F.S., relating to fictitious name registration.
- Section 29:** Amends s. 932.704, F.S., relating to forfeiture proceedings.
- Section 30:** 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 will reduce a government agency's expenditures for publishing legal notices and advertisements in a newspaper, but could also increase expenditures if any additional staff, hardware, or software are required for maintaining the government agency's website.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Newspapers will lose revenue as a result of the elimination of the print publishing requirements for legal notices and advertisements.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

Not applicable.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **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 allowed 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.

On April 3, 2019, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Allowed a governmental agency in a county that has not been designated a fiscally constrained county to publish advertisements and legal notices on a publicly accessible website if online publication would result in a cost savings for the government.
- Allowed a governmental agency in a fiscally constrained county to publish advertisements and notices on a publicly accessible website after making a determination at a publicly noticed meeting that online publication:
  - Is in the public interest;
  - Will be less expensive than newspaper publication; and
  - Will not, after taking into account the level of internet access in the county, unreasonably restrict access to advertisements and legal notices.
- Removed the requirement that a newspaper must be in general paid circulation to be eligible to publish government advertisements and notices.
- Reduced the minimum number of days a newspaper must be published to be eligible to publish government advertisements and notices from five days per week to once per week.

The analysis is drafted to the committee substitute as passed by the Judiciary Committee.