

**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 Judiciary

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BILL: SB 1340

INTRODUCER: Senator Gruters

SUBJECT: Legal Notices

DATE: February 10, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	<b>Pre-meeting</b>
2.			CA	
3.			RC	

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**I. Summary:**

SB 1340 allows a governmental agency the option of publishing legally required advertisements and public notices on a publicly accessible website if certain conditions are met. Specifically, the bill permits a governmental agency:

- In a county that has not been designated a fiscally constrained county, to publish the advertisements and notices on a publicly accessible website if the cost of publishing advertisements and notices online is less than the cost of publishing those items in a newspaper.
- In a fiscally constrained county, to publish the 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;
  - The cost of publishing is less expensive than newspaper publication; and
  - Will not, after taking into account the level of Internet access in the county, unreasonably restrict public access to advertisements and legal notices.

If a local government publishes legally required advertisements and public notices on a publicly accessible website, the bill requires the 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 stating that the residents or property owners may receive legally required notices or advertisements by first-class mail or e-mail by registering their name, address, and e-mail address with the governmental agency.

## II. Present Situation:

### Constitutional Notice Requirements for State and Local Governments

The State Constitution requires that meetings of “any collegial public body” of the executive branch, or of a county, municipality, school district, or special district where official acts will be taken or where public business will be transacted or discussed, “shall be open and noticed to the public.”<sup>1</sup> Accordingly, the statutes contain several provisions that specify when notice must be given before local governments may take certain actions.

### Statutory Notice Requirements

Chapter 50, F.S., contains the requirements for the publication of legal notices and official advertisements. All legal notices and publications must be made in a newspaper that:

- Is printed and published at least once a week;
- Contains at least 25 percent of its words in the English language;
- Is considered a periodical by the post office in the county where it is published;
- Is for sale to the public generally; and
- Customarily contains information of public interest to the residents or property owners in the county where it is published or is of interest or of value to the general public.<sup>2</sup>

If no newspaper is published in the county, three copies of the notice or advertisement must be posted in the county, with one being posted at the front door of the courthouse, two others posted at other locations in the county, and by publication of the notice in the nearest county where a newspaper is published.<sup>3</sup>

### *Newspaper Website*

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 newspaper. The notice must be published at no additional charge on a separate web page titled “Legal Notices,” “Legal Advertising,” or with comparable identifying language. The newspaper’s website must contain a search function to aid in searching the legal notices and the newspaper publisher may not charge a fee or require registration to view or search the legal notices. The newspaper must also place a copy of the notice on a repository website maintained by the Florida Press Association and provide the ability for members of the public to sign up for an e-mail notification to be received when new legal notices are published.<sup>4</sup>

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<sup>1</sup> Article I, section 24(b) provides:

(b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

<sup>2</sup> Section 50.011, F.S.

<sup>3</sup> Section 50.021, F.S.

<sup>4</sup> Section 50.0211(2), F.S. The repository maintained by the Florida Press Association is available at: <http://www.floridapublicnotices.com>. See s. 50.0211(3)(a), F.S.

The publication of a legal notice may not be considered effective unless:<sup>5</sup>

- The notice is published for the period prescribed for such a notice;
- The newspaper has been in existence for at least 1 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.

### ***Proof of Publication***

Proof of publication is established by the use of a uniform notice.<sup>6</sup> The proof of publication affidavit must be on paper formatted in a specific manner or an electronic version that 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.<sup>7</sup>

### ***Fees***

The fees for a legal notice are set by statute and may not be rebated, commissioned, or refunded. The charge 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>8</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>9</sup> The owner must provide written notice in person, by e-mail, or by registered mail to the tenant's last known address and post notice on the storage unit before satisfying the lien.<sup>10</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>11</sup>

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<sup>5</sup> Section 50.031, F.S.

<sup>6</sup> Section 50.041, F.S.

<sup>7</sup> Section 50.051, F.S.

<sup>8</sup> Section 50.061, F.S.

<sup>9</sup> Section 83.805, F.S.

<sup>10</sup> Section 83.806(1), F.S.

<sup>11</sup> Section 83.806(2), F.S.

- 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, street 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>12</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>13</sup> The advertisement must include:<sup>14</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>15</sup>

### III. Effect of Proposed Changes:

The bill allows a governmental agency<sup>16</sup> the option to publish legally required advertisements and notices on a publicly accessible website<sup>17</sup> if certain conditions are met. Specifically, the bill allows a governmental agency:

- In a county that has not been designated a fiscally constrained county,<sup>18</sup> to publish the advertisements and notices on a publicly accessible website if the cost of publishing advertisements and notices online is less than the cost of publishing those items in a newspaper.
- In a fiscally constrained county, to publish the advertisements and notices on a publicly accessible website after making a determination at a public hearing that has been noticed in a newspaper, as provided by law, that online publication:
  - Is in the public interest;
  - The cost of publishing is less expensive than newspaper publication; and
  - Will not, after taking into account the level of Internet access in the county, unreasonably restrict public access to advertisements and legal notices.

<sup>12</sup> Section 83.806(4), F.S.

<sup>13</sup> Section 83.806(4)(c), F.S.

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

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

<sup>16</sup> “Governmental agency” means a county, municipality, school board, or other unit of local government or political subdivision of this state.

<sup>17</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>18</sup> A “fiscally constrained county” means a county within a rural area of opportunity as designated by the Governor or a 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., F.S., from the previous July 1. According to the Department of Revenue, there are 29 fiscally constrained counties in the state. <https://floridarevenue.com/property/Documents/fcco081210.pdf>.

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

The bill requires each governmental agency that uses a publicly accessible website to publish legally required advertisements and public notices to publish notice at least once 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 the resident and property owner may receive legally required notices or advertisements via first-class mail or e-mail by registration of their name, address, and e-mail address with the governmental agency. The governmental agency must maintain a registry of names, addresses, and e-mail addresses of residents and property owners who request in writing to receive legally required advertisements and notices from the governmental agency by first-class mail or e-mail.

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's homepage 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 the criteria 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.

The bill makes conforming changes to other provisions requiring a governmental agency to publish a notice to allow for the publication of the notices and advertisements on a publicly accessible website. 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>19</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 takes effect July 1, 2021.

#### **IV. Constitutional Issues:**

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

None.

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<sup>19</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. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

The bill will likely reduce revenue for newspapers due to the elimination of the print publishing requirements for legal notices and advertisements. The bill may also reduce publication costs that may be borne by members of the public to the extent that those costs would otherwise be passed on by a government agency to the member of the public.

**C. Government Sector Impact:**

Indeterminate. The bill may significantly reduce a governmental agency's cost to publish legal notices and advertisements in a newspaper. However, if those governmental agencies ultimately recover the costs of publishing the legal notices, for example, by passing the cost on to the person benefitting from the publication, then the governmental agency's expenses might not likely be as substantially different. For example, a governmental entity pays the initial cost of publishing a delinquent tax notice. However, when the delinquent tax is paid, the person paying those taxes is assessed the costs of advertising as well as other fees related to the taxes due on the property.

**VI. Technical Deficiencies:**

There is an incorrect cross-reference on line 157 of the bill. The cross-reference is currently drafted to "s. 50.11" but should be drafted to "s. 50.011".

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 50.011, 50.021, 50.0211, 50.031, 50.0311, 50.041, 50.051, 50.0711, 83.806, 11.02, 45.031, 121.0511, 121.055, 125.66, 162.12, 166.041, 189.015, 190.005, 190.046, 194.037, 197.402, 200.065, 338.223, 348.0308, 348.635, 348.7605, 373.0397, 373.146, 403.722, 712.06, 849.38, 865.09, and 932.704

**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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