

**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 Appropriations Subcommittee on Criminal and Civil Justice

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BILL: PCS/CS/SB 402 (304210)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Judiciary Committee; and Senator Rodrigues

SUBJECT: Legal Notices

DATE: April 20, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Forbes</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 402 gives a government agency the option to publish legal notices on a newspaper website instead of only in a print based newspaper. An agency exercising this option must provide an *additional* notice in a print edition of a local newspaper to inform the general public that additional legal notices may be found on the statewide legal notice website maintained by the Florida Press Association. Any legal notice published in print or through a website must also be published on the statewide legal notice website: [www.FloridaPublicNotices.com](http://www.FloridaPublicNotices.com).

Additionally, the bill expands the types of publications that qualify for the posting of legal notices. Currently, a newspaper must, among other requirements, be “for sale to the general public” and be qualified to be admitted and entered as a periodical matter the local post office. By removing these two requirements, the bill will allow for legal notices to be published in smaller publications that are free to the public.

The bill amends several sections of the Florida Statutes to conform the ability of a government agency to post legal advertisements and notices on the Internet.

The bill is effective July 1, 2021.

## II. Present Situation:

The Florida Constitution requires that certain meetings between public officials be “open and noticed to the public.”<sup>1</sup> Generally, this requirement applies to meetings where official acts will be taken, or where public business will be transacted or discussed.

Similarly, procedural due process requires that a citizen receive proper notice of any government action that may affect his or her life, liberty, or property. The purpose of this notice is “to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”<sup>2</sup> and “must be of such nature as reasonably to convey the required information.”<sup>3</sup>

Historically, notice can be established by service of process by personally and directly delivering the notice to the interested party.<sup>4</sup> Issues may arise, for example, when an interested party is difficult to locate or when someone is purposefully avoiding service.<sup>5</sup> Likewise, some government actions such as public meetings affect so many interested individuals that it becomes implausible to individually notice each interested individual. To balance these interests, the Legislature has provided options to satisfy notice requirements for both litigation purposes as well as notices of public meetings and actions.

### Statutory Notice Requirements

Florida law requires that all legal notices and publications, including those made in lieu of service of process, 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;
- 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>6</sup> and
- Has been in existence for at least 1 year at the time the notice is published.<sup>7</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

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

<sup>2</sup> *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

<sup>3</sup> *Id.*

<sup>4</sup> “Personal service guarantees actual notice of the pendency of a legal action; it thus presents the ideal circumstance under which to commence legal proceedings against a person, and has traditionally been deemed necessary in actions styled.” *Greene v. Lindsey*, 456 U.S. 444, 449 (1982).

<sup>5</sup> “Where person to be served with process flees from presence of process server in a deliberate attempt to avoid service of process, the delivery requirement may be satisfied if the process server leaves the papers at a place in which such person can easily retrieve them and takes reasonable steps to call such delivery to the attention of the person to be served.” *Olin Corp. v. Haney*, 245 So. 2d 669 (Fla. 4th DCA 1971). This only applies, however, to a service of process made at the individual’s “usual place of abode.” Section 48.031, F.S.

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

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

at other locations in the county, and by publication of the notice in the nearest county where a newspaper is published.<sup>8</sup>

A newspaper publishing any notice is also tasked with placing the notice on a statewide website established and maintained by the Florida Press Association.<sup>9</sup> This website must be accessible and searchable by party name and case number, and each notice must be posted for at least 90 days.<sup>10</sup> This provision of Florida law is similar to statewide legal notice websites established in Alabama,<sup>11</sup> Colorado,<sup>12</sup> Illinois,<sup>13</sup> Louisiana,<sup>14</sup> Maine,<sup>15</sup> Massachusetts,<sup>16</sup> North Dakota,<sup>17</sup> Ohio,<sup>18</sup> Tennessee,<sup>19</sup> Utah,<sup>20</sup> Virginia,<sup>21</sup> and Wisconsin.<sup>22</sup> The above states require that any notice published in a newspaper as set forth by law also be published in a statewide website maintained and operated by a private entity on behalf of the newspapers of that state, such as a union or trade group.

### ***Newspaper Website***

Florida law further provides that if the newspaper publishing the notice maintains a website, the legal notice must be published on the website the same day that it appears in the newspaper at no additional charge.<sup>23</sup> The newspaper's website must contain a search function to facilitate searching for legal notices.<sup>24</sup> Registration cannot be a requirement, nor can a fee be charged, for searching or viewing legal notices on a newspaper's website if the legal notices are published in a newspaper.<sup>25</sup>

### ***Fees***

The fees for a legal notice published in a newspaper are set by statute and may not be rebated, commissioned, or refunded. The charge for publishing a legal notice is set by statute at 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

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<sup>8</sup> Section 50.021, F.S.

<sup>9</sup> Section 50.021, F.S. The website established by the Florida Press Association, Florida Public Notices, is available at <https://www.floridapublicnotices.com/>.

<sup>10</sup> *Id.*

<sup>11</sup> Ala. Code § 6-8-62.

<sup>12</sup> Colo. Rev. Stat. Ann. § 24-70-103.

<sup>13</sup> 715 Ill. Comp. Stat. Ann. 5/2.1.

<sup>14</sup> La. Stat. Ann. § 43:111E.

<sup>15</sup> Me. Rev. Stat. tit. 1, § 603(2).

<sup>16</sup> Mass. Gen. Laws Ann. ch. 4, § 13.

<sup>17</sup> N.D. Cent. Code Ann. § 46-05-09.

<sup>18</sup> Ohio Rev. Code Ann. § 125.182(a).

<sup>19</sup> Tenn. Code Ann. § 1-3-120(a)(2).

<sup>20</sup> Utah Code Ann. § 45-1-101(2)(b).

<sup>21</sup> Va. Code Ann. § 8.01-324(g).

<sup>22</sup> Wis. Stat. Ann. § 985.01(7).

<sup>23</sup> Section 50.0211(2), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

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>26</sup>

Actual fees vary depending on the type of notice requested, the size of the notice, any subsequent insertions or publications, as well as which newspaper publicizes the notice. The Tampa Bay Times, for example, charges \$200 for a “full run” of a notice of a foreclosure action.<sup>27</sup> If the notice needs to be up for more than 2 days, the charge increases to \$400. Additionally, the per-line cost above the included 165 line limit is \$6.45.

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

If an affidavit of proof of publication is required for a legal notice, the affidavit must comply with certain standards. Specifically, the affidavit must:

- Be printed upon white paper;
- Be 8.5 inches in width and at least 5.5 inches in length; and
- Contain a margin of at least 2.5 inches at the right side of the affidavit form with a clipping of a true copy of the public notice or legal advertisement which was executed.<sup>28</sup>

The affidavit may be provided electronically so long as it complies with the electronic notarization requirements.<sup>29</sup>

If the proof of publication is in a county having a population in excess of 450,000 according to the latest decennial census, the publication may charge a maximum fee of \$2 for the preparation and execution of each of proof of publication.<sup>30</sup>

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

### **Legal Notice Website**

The bill provides an option for government agencies required by law to publish legal notices to publish those notices on a newspaper’s website in lieu of a paper based publication. Legal notice may be satisfied upon the publication of the legal notice in a newspaper of general circulation. To qualify as a newspaper of general circulation, the bill requires the newspaper to be:

- Printed and published at least once a week;
- Contain at least 25 percent of its words in the English language;
- Have a net distribution of at least 1,000 net print copies per week;
- Have a website averaging at least 1,000 unique users per week;

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<sup>26</sup> Section 50.061, F.S.

<sup>27</sup> For the Tampa Bay Times, a “full run” includes all of Pinellas, Pasco, Hernando, Citrus, and Hillsborough counties. Opting for an individual run of a specific county costs \$135 for Pasco County, and \$155 for Hillsborough or Pinellas Counties. TAMPA BAY TIMES, *Certified Legal Rates*, <https://www.tampabay.com/resources/images/marketing/mediakit/pdf/Legal-Rate-Card.pdf> (Last visited January 21, 2021)

<sup>28</sup> Section 50.041(2), F.S.

<sup>29</sup> Section 117.021, F.S., contains additional requirements for documents notarized electronically.

<sup>30</sup> Section 50.041(3), F.S.

Have its distribution and website readership audited and certified biannually by an independent, accredited third-party auditor; and Be available to the public generally in the counties where the legal notice pertains and that publishes official notices and customarily dedicates at least 25 percent of its content to local and regional news and information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public.

Under current law, a newspaper must additionally be “for sale to the general public” and entered as a periodical matter at the local post office in the county where the newspaper is published. By removing these two requirements, the bill allows for legal notices to be published using non-subscription based publications and publications that may not be recognized as periodical matter by the local post office.

The bill also allows legal notices to be published by internet publication on the website of any newspaper of general circulation in the county or nearby counties where the legal notice pertains that meets the criteria specified above and on the statewide legal notice website. For counties with a published newspaper, the advertisement may be posted on the website of any newspaper of general circulation in an adjoining county.

For legal notices posted on the internet, The Florida Press Association is required to consult with the Black Press Association of Florida to ensure that minority populations throughout the state have equitable access.

A governmental agency may opt for Internet-only publications with newspapers of general circulation within the jurisdiction of the affected governmental agency, as long as it is determined not to unreasonably restrict public access. Internet only publications must be placed in the legal notices section of the newspaper’s website and the statewide legal notice website.

The legal notices section of the print edition of a newspaper must include a disclaimer stating that additional legal notices may be accessed on the newspaper’s website and the statewide legal notice website. The newspaper’s website legal notice section must include a similar disclaimer related to the print edition.

The bill allows for a newspaper to charge for publication of a legal notice on the newspaper’s website without rebate, commission, or refund. However, the newspaper may not charge a higher rate for publication than the amount that would be authorized if the legal notice were publicized in print.<sup>31</sup> Prescribes penalties for accepting rebates, commissions, or refunds in connection to the amounts charged for publication that are published on the internet.

If a government agency exercises the option to publish legal notices on a newspaper website, the agency must provide an *additional* notice at least once per week in a print edition newspaper of general circulation. This notice must contain a statement that legal notices pertaining to the agency do not all appear in the print edition of the local newspaper and that a full listing may be accessed on the statewide legal notice website located at the website managed by the Florida Press Association.<sup>32</sup> . Currently, a \$2 charge may be levied for a proof of publication executed in

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<sup>31</sup> See “Fees” subsection under “Present Situation” of this analysis for further discussion of print based fees.

a county with a population in excess of 450,000. The bill allows the maximum \$2 charge to be levied for any proof of publication regardless of the population of the county.

The bill revises several sections of the Florida Statutes to conform to the option to publish certain notices in a newspaper website. Specifically, the bill revises the following sections of the Florida Statutes to provide an option to publish a notice in a newspaper website:

- Section 11.02, F.S., providing notice of special or location legislation or any relief acts pursuant to s. 50.0211(5), F.S.
- Section 45.031, F.S., to provide that a publication of a sale in a judicial sales procedure may be published by Internet publication pursuant to s. 50.0211(5), F.S., if it is published for at least 2 consecutive weeks.
- Section 120.81, F.S., to provide that a notice relating to the rules regarding an educational unit, such as a district school board, may be issued by Internet publication pursuant to s. 50.0211(5).
- Section 121.055, F.S., to provide that a Notice of Intent to designate certain positions as “Senior Management Services Class” under the Florida Retirement System may be publicized through an Internet publication pursuant to s. 50.0211(5), F.S. The notice must be published for at least 2 consecutive weeks.
- Section 125.66, F.S., to provide that the board of county commissioners may issue a notice of intent to consider an ordinance by publication as specified in ch. 50, F.S., as amended by the bill.
- Section 162.12, F.S., to provide that a code enforcement board, or local government, may issue a notice by Internet publication by publishing the notice for 4 consecutive weeks on the newspaper’s website and the statewide legal notice website as provided in s. 50.0211(5), F.S., as amended by the bill.
- Section 166.041, F.S., to require the governing body to provide public notice and hearings by publishing weekly in the print edition of a newspaper any proposed ordinance changes, or changes to the actual zoning map designation of a parcel of land involving 10 contiguous acres or more.
- Section 189.015, F.S., to provide that the governing body of each special district shall advertise the day, time, place, and purpose of any meeting other than a regular meeting or any recessed and reconvened meeting of the governing body, at least 7 days before such meeting as provided in ch. 50, F.S., as revised by the bill.
- Section 190.005, F.S., to provide that a notice of a hearing for the establishment of a community development district with the size of 2,500 acres or more shall published for 4 consecutive weeks on a newspaper’s website and the statewide legal notice website if published in print.
- Section 190.046, F.S., to provide that a notice of intent to amend an ordinance establishing a community development district must be published as provided in ch. 50, F.S., as revised by the bill.
- Section 194.037, F.S., to provide that the findings of the Tax Impact of Value Adjustment Board be published as provided in ch. 50, F.S., as revised by the bill.
- Section 197.402, F.S., provides that advertisements of real or personal property with delinquent taxes are to be advertised as provided in ch. 50, F.S., as revised by the bill.
- Section 200.065, F.S., to provide that the assessment conducted by the property appraiser shall be published as provided in ch. 50, F.S. Additionally, the bill revises this section to

allow notices for certain millage increases that may lead to tax increases, such as ad-valorem taxes, to be advertised pursuant to ch. 50, F.S., as revised by the bill.

- Section 338.223, F.S., to require the Department of Transportation to publish public notices related to proposed turnpike projects on a weekly basis in accordance with chapter 50.
- Section 348.038, F.S., to provide that public private transportation projects may publish request for proposals in the Florida Administrative Register, as specified in ch. 50, F.S., as amended by the bill. Sections 348.0308, F.S., 348.635, F.S., and 348.7605, F.S., authorizes these projects be publicized through an Internet publication pursuant to chapter 50, F.S.
- Sections 373.0397, F.S. and 373.146, F.S., to require the water management district to publish a legal notice, public hearing or publication of notices on the designated areas for the Florida and Biscayne aquifers, pursuant to chapter 50, F.S.
- Section 403.722, F.S., to provide that applications for construction permits, shall be noticed and publish pursuant to ch. 50, F.S.
- Section 712.06, F.S., to require the publishing of a notice for claims of interest in land or other rights may provide notice by internet publication in accordance with s. 50.0211 (5) or printed once a week for 2 consecutive weeks pursuant to ch. 50, F.S.
- Section 849.38, F.S., to provide that when certain property seized by the sheriff's office has an appraisal value of \$1,000 or less, the notice must be posted for at least 2 consecutive weeks on a newspaper's website and the statewide legal notice website in accordance with s. 50.0211(5), F.S.
- Section 865.08, F.S., provides that if a registrant is a business entity that is required to file incorporation or similar documents when it was organized, the business must be registered and in active status and provide its Florida document registration number and federal employer identification number. Certification by at least one registrant that the intention to register a fictitious name has been advertised as provided in chapter 50 in the county in which the principal place of business of the registrant is or will be located.
- Section 932.704, F.S., to provide that the notice required for a forfeiture complaint must be published for 2 consecutive weeks on a newspaper's website and the statewide legal notice website in accordance with s. 50.0211(5), F.S., or if published in print, once each week for 2 consecutive weeks.

The bill takes effect July 1, 2021.

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

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

None.

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

None.

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

None.

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

Article VII, s. 19(a) of the State Constitution prohibits the Legislature from imposing a new fee except through legislation approved by supermajority vote of each house of the Legislature. Because the bill preserves the option of publishing legal notices in a newspaper, the supermajority vote requirements do not appear to apply.

**E. Other Constitutional Issues:**

The bill may raise procedural due process concerns to the extent that it hinders actual notice of legal proceedings. Procedural due process requires fair notice “to apprise interested parties of the pendency of” an action that may affect life, liberty, or property.<sup>33</sup> For example, notice is required for termination of parent rights proceedings,<sup>34</sup> certain local county initiatives,<sup>35</sup> and civil judgements based on litigation.<sup>36</sup> On the other hand, the publication of a notice on a website instead of a newspaper may, in some cases, be more effective than publishing a notice solely in a newspaper. Courts have accepted various alternatives to actual service of process over the years.<sup>37</sup>

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

None.

**B. Private Sector Impact:**

This bill could reduce revenue for certain newspapers to the extent that the bill allows for more publications to qualify as publications for the purpose of publishing a legal notice.

**C. Government Sector Impact:**

The impact of this bill is indeterminate since it is unknown how governmental entities will be impacted based on the volume of legal notices to be published. This is especially true in counties where there are no newspapers available for general circulation and the only option will now be internet publication.

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<sup>33</sup> 339 U.S. 306, 314 (1950).

<sup>34</sup> *J.B. v. Florida Dept. of Children & Family Services*, 768 So. 2d 1060, 1066 (Fla. 2000) (Finding that 24-hour notice of a hearing regarding termination of parent rights was insufficient notice) .

<sup>35</sup> *Baycol, Inc. v. Downtown Dev. Auth. of City of Fort Lauderdale*, 315 So. 2d 451, 455 (Fla. 1975) (Finding that the city failed to place express or de facto notice in an eminent domain proceeding) and *Keys Citizens For Responsible Gov't, Inc. v. Florida Keys Aqueduct Auth.*, 795 So. 2d 940, 949 (Fla. 2001) (The Court found in dictum that “constructive notice by publication is appropriate in bond validation proceedings”).

<sup>36</sup> “To give such proceedings any validity, there must be a competent tribunal to pass on their subject-matter; and, if that involves merely a determination of the personal liability of defendant, he must be brought within its jurisdiction by service of process within the state, or by his voluntary appearance.” *Pennoyer v. Neff*, 95 U.S. 714, 719 (1877), overruled in part by *Shaffer v. Heitner*, 433 U.S. 186 (1977).

<sup>37</sup> For example, the courts have routinely upheld certified mail as a valid method of constructive notice. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (The Court found in dictum that mail “provide[s] an ‘efficient and inexpensive means of communication’ upon which prudent men will ordinarily rely in the conduct of important affairs”).



**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides that the fee for an online publication of a legal notice cannot exceed the fee charged for a print edition of that notice. The current fee structure is based on the size of the notice and can be more costly depending on how many copies of the newspaper are printed and distributed. This is meant to encourage pricing based on how much space is taken up in the print edition newspaper as well as how large that newspapers audience is. A website publication does not have these same logistical structures to base a fee on the statutory mechanism.

Several sections of the bill permit publication pursuant to s. 50.0211(5), F.S., or as otherwise provided under ch. 50, F.S. Other sections of the bill, such as section 14, include language such as “on a newspaper’s website and the statewide legal notice website as provided in s. 50.0211(5).”

**VIII. Statutes Affected:**

The bill substantially amends the following sections of the Florida Statutes: 50.011, 50.021, 50.0211, 50.031, 50.041, 50.051, 83.806, 11.02, 45.031, 120.81, 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.)

**Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on April 16, 2021:**

The committee substitute:

Requires that the publishing of legal notice in a newspaper, the newspaper must:

- Have a net distribution of at least 1,000 net print copies per week;
- Have a website averaging at least 1,000 unique users per week;
- Have its distribution and website readership audited and certified biannually by an independent, accredited third-party auditor; and
- Be available to the public generally in the counties where the legal notice pertains and which publishes official notices and customarily dedicates at least 25 percent of its content to local and regional news and information.
- The bill revises the additional fee that may be charged by a newspaper if a proof of publication is required for public notices or legal advertisements.

Removes the option for storage facilities to post an advertisement for sale of the content of a storage unit on a website.

**CS by Judiciary on March 22, 2021:**

The committee substitute:

- Allows a government agency to publish legal notices on a newspaper website in lieu of a print based publication.
- Allows legal notices to be published using a non-subscription based publisher.
- Removes the requirement that the Supreme Court establish a legal notice website and a restitution, fines, and fees website.
- Provides an option for storage facilities to post an advertisement for sale of the content of a storage unit on a website.

B. Amendments:

None.