

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/HB 7049

INTRODUCER: State Affairs Committee; Judiciary Committee; and Representatives Grall, Fine, and Fischer

SUBJECT: Legal Notices

DATE: March 7, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Bond</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

I. Summary:

CS/HB 7049 allows a governmental agency the option to publish legal notices on a publicly accessible website owned by the county instead of in a print newspaper under specified conditions. The bill reverts the criteria a newspaper must satisfy to be qualified to publish legal notices back to the criteria in place before the passage of chapter 2021-17, Laws of Fla., with the exception of the requirement that a newspaper be for sale. It requires a governmental agency located in a county that has a population of fewer than 160,000 to first hold a public hearing and determine that its residents have sufficient access to the Internet before publishing legally required advertisements and public notices on a publicly accessible website. Finally, the bill eliminates the obligations of the Florida Press Association relating to equitable legal notice access by minority populations.

The bill does not appear to have a fiscal impact on state government but may have an indeterminate fiscal impact on local governments.

The bill is effective January 1, 2023.

II. Present Situation:

The Florida Constitution requires 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 be open to the public and notice be given of such meetings.¹ While this constitutional requirement is self-executing, the Legislature may enact general laws enforcing the provision. Further, certain statutory provisions require that public notices and advertisements be given for certain other local government and judicial actions.² Collectively, these notices and advertisements are referred to as “legal notices.”

¹ Art. I, s. 24(b), FLA. CONST.

² See, e.g., s. 45.031, F.S. (requiring publication of notice of judicial sales) and s. 125.66, F.S. (requiring publication of the tax impact of a value adjustment board’s decisions regarding petitions to adjust property taxes).

Legal Notice Publication Requirements Before January 1, 2022

Before January 1, 2022, Florida law required a legal notice to be published in a newspaper that:

- Was published at least once a week;
- Had at least 25 percent of its words in English;
- Was considered a periodical by a post office in its county of publication;
- Was available to the public generally for the publication of legal and other notices;
- Was for sale to the general public; and
- Contained information of interest or value to the general public in the affected area.³

If no newspaper was published in the county, at least three copies of the legal notice had to be posted in the county, with one posted on the front door of the county courthouse and two at other locations in the county. In addition, the notice had to be published in a newspaper in the nearest county in which a newspaper was published.⁴

A legal notice published in a newspaper had to appear on the newspaper's website the same day it appeared in the print edition at no additional charge, on a separate web page with a specific title.⁵ The website had to have a search function, and the newspaper publisher could not charge a fee or require registration to view or search legal notices.⁶ The newspaper also had to place a copy of the notice on the Florida Press Association's ("FPA") free repository website, where it had to be maintained in a searchable archive for 18 months after the first day of posting.⁷ The public also had to be permitted to sign up to receive e-mailed notifications of notice publication.⁸

Legal notice publication was not considered effective unless:

- The notice was published for the period prescribed for such a notice;
- The newspaper had existed for at least 1 year at the time of notice publication; and
- A post office in the county of notice publication entered the newspaper as a periodical.⁹

A uniform affidavit established proof of legal notice publication,¹⁰ the form of which was required to:

- Be notarized on paper formatted in a specific manner or in an electronic format that complied with the electronic notarization requirements of s. 117.021, F.S.;
- Contain specified information, including the newspaper's name, publication frequency, and city and county of publication; and
- Include a copy of the legal notice.¹¹

³ Section 50.011, F.S. (2020).

⁴ Section 50.021, F.S. (2020).

⁵ Section 50.0211(2), F.S. (2020).

⁶ *Id.*

⁷ Sections 50.0211(3)(a)-(c), F.S. (2020); The Florida Press Association's repository is available at www.floridapublicnotices.com.

⁸ Section 50.0211(4), F.S. (2020).

⁹ Legal notices could also be published in a newspaper which was a direct successor of a newspaper so published. Section 50.031, F.S. (2020).

¹⁰ Section 50.041(1), F.S. (2020).

¹¹ Sections 50.041(2) and 50.051, F.S. (2020).

Legal notice publication fees were set by statute and could not be rebated, commissioned, or refunded.¹² The legal notice publication fee was 70 cents per square inch of newspaper for the first insertion and 40 cents per square inch of newspaper for each subsequent insertion.¹³ However, if the regular established minimum commercial rate per square inch of newspaper was greater than the rate stipulated in statute, the publisher could charge the minimum commercial rate for each insertion, except that second and successive insertions of legal notices required to be published more than once and paid for by a governmental agency could not cost more than 85 percent of the original rate.¹⁴ All legal notice charges were based on 6-point type on 6-point body, unless otherwise specified by statute.¹⁵

2021 Legislative Changes

In 2021, the Legislature passed chapter 2021-17, Laws of Fla., which became effective January 1, 2022.¹⁶ The act modified the criteria a newspaper must satisfy to publish legal notices, requiring that a newspaper publishing legal notices in print:

- Be printed and published periodically at least once a week.
- Contain at least 25 percent of its words in English.
- Satisfy one of the following criteria:
 - Be sold, or otherwise be available to the public, at no less than 10 publicly accessible outlets and have an audience consisting of at least 10 percent of the households in the county or municipality, as determined by the most recent decennial census, where the legal notice is being published or posted, by calculating the:
 - Combination of the total number of print copies reflecting the day of highest print circulation, of which at least 25 percent of such print copies must be delivered to home and business addresses; and
 - Total number of online unique monthly visitors to the newspaper's website from within the state.
 - Hold a periodicals permit as of March 1, 2021, and accept legal notices for publication as of that date; however, any such newspaper could only publish legal notices through December 31, 2023, if the newspaper continued to meet the requirements in s. 21, ch. 99-2, Laws of Fla., and continued to hold a periodicals permit.
 - For newspapers publishing legal notices in a fiscally constrained county, hold a periodicals permit and meet all other requirements of the legal notices chapter.
- Be available to the public generally for legal notice publication with no more than 75 percent of its content dedicated to advertising, as measured in half of the newspaper's issues published during any 12-month period, and customarily containing information of interest or value to the general public in the affected area.
- Continually publish in a prominent manner within the first five pages of the print addition and at the bottom portion of the homepage of the newspaper's website:
 - The name, street address, phone number, and website URL of the newspaper's approved print auditor;
 - The newspaper's most recent statement of ownership; and

¹² Section 50.061(1), F.S. (2020).

¹³ Section 50.061(2), F.S. (2020).

¹⁴ Section 50.061(3), F.S. (2020).

¹⁵ Section 50.061(6), F.S. (2020).

¹⁶ Chapter 2021-17, Laws of Fla.

- A statement of the auditor certifying the veracity of the newspaper's print distribution and the number of the newspaper website's monthly unique visitors, or the newspaper's periodicals permit, if applicable.¹⁷

Chapter 2021-17, Laws of Fla., also authorized a governmental agency¹⁸ to publish legal notices on the website of any newspaper in the county to which the legal notice pertained¹⁹ and on the FPA's repository website in lieu of publishing the notice in the print edition of a newspaper if the governmental agency, after holding a public hearing noticed in a print edition of a newspaper of general circulation in the affected governmental agency's jurisdiction,²⁰ makes a determination by a majority of its governing board members that:

- Internet publication of legal notices is in the public interest; and
- Residents within the governmental agency's jurisdiction have sufficient internet access such that Internet-only legal notices publication would not unreasonably restrict public access.²¹

All requirements regarding format and accessibility for legal notices published in a printed newspaper also apply to legal notices published only online.²²

Chapter 2021-17, Laws of Fla., also requires:

- The legal notices section of a printed newspaper include a disclaimer stating that additional legal notices may be accessed on the newspaper's website and the FPA's repository website; and that legal notices published in print are also published on the FPA's repository website.²³
- A newspaper may charge for Internet-only legal notice publication up to the amount authorized for publication of legal notices in print, without rebate, commission, or refund.²⁴
- A governmental agency publishing legal notices only online has to:
 - Give notice, at least once a week in a printed newspaper of general circulation within the region in which the governmental agency is located, that:
 - Legal notices pertaining to the agency do not all appear in a printed newspaper;
 - Additional legal notices may be accessed on the newspaper's website; and
 - A full listing of legal notices may be accessed on the FPA's repository website.
 - Post a link on its website homepage to a webpage listing all the newspapers in which it published legal notices.²⁵

Further, Chapter 2021-17, Laws of Fla., required the FPA to seek to ensure that minority populations in the state have equitable access to legal notices posted on the FPA's repository website and required it to publish a report:

¹⁷ Chapter 2021-17, s. 1, Laws of Fla.

¹⁸ "Governmental agency" means a county, a municipality, a district school board, or any other unit of local government or political subdivision in this state. Chapter 2021-17, s. 3(1)(a), Laws of Fla.

¹⁹ A newspaper was deemed to be a newspaper in the county to which the legal notice pertains if it satisfied the criteria to publish legal notices in print. Chapter 2021-17, s. 1(2), Laws of Fla.

²⁰ A newspaper deemed to be a newspaper of general circulation within the jurisdiction of the affected governmental agency if it satisfied the criteria to public legal notices in print.

²¹ Chapter 2021-17, s. 5(a), Laws of Fla.

²² The bill did not change format and accessibility requirements for legal notices published in a printed newspaper.

²³ Chapter 2021-17, s. 5(b), Laws of Fla.

²⁴ Chapter 2021-17, s. 5(c), Laws of Fla. The bill did not modify the charges authorized or the size and placement requirements for publication in a printed newspaper.

²⁵ Chapter 2021-17, s. 3(5)(d), Laws of Fla.

- Listing all newspapers that have placed notices on the repository website in the preceding calendar quarter.
- Identifying which criteria each newspaper satisfied to become qualified to publish legal notices.
- Including the number of unique visitors to the repository website during the quarter and the number of legal notices that were published during that quarter by Internet-only publication or by publication in a printed newspaper and on the repository website.²⁶

Additionally, a newspaper or newspaper's website must have been in existence for 2 years prior to publication in order for publication to be completed in accordance with the statutes.²⁷

III. Effect of Proposed Changes:

The bill gives a governmental agency the option to publish its legal notices on the publicly accessible website²⁸ of the county in which it lies instead of in a printed newspaper if doing so would cost less than publishing legal notices in a newspaper. A governmental agency that has at least 75 percent of its population located in a county with a population of fewer than 160,000 must first hold a public hearing and determine the residents of the governmental agency have sufficient access to the Internet before it may publish legally required advertisements and public notices on a publicly accessible website. The bill also requires a special district²⁹ spanning the geographic boundaries of more than one county and opting to publish legal notices on a publicly accessible website to publish its legal notices on the publicly accessible website of each county it spans. Each legal notice so published must be in searchable form and indicate the date of first publication, and a public bid advertisement made by a governmental agency on a publicly accessible website must include a method for accepting electronic bids.

The bill requires that a link to legal notices published on a publicly accessible website be conspicuously placed on or accessible through a direct link from the:

- Publicly accessible website's homepage; and
- Homepage of the website of each governmental agency publishing legal notices online.

Further, a governmental agency:

- With an authorized governmental access channel³⁰ may include on such channel a summary of all legal notices posted on its publicly accessible website.
- Publishing legal notices on a publicly accessible website must give notice, at least annually, that property owners and residents may receive legal notices from the governmental agency by first-class mail or e-mail upon registering with the agency.³¹

²⁶ Chapter 2021-17, s. 3(4)(d), Laws of Fla.

²⁷ Chapter 2021-17, s. 4, Laws of Fla.

²⁸ "Publicly accessible website" means a county's official website or other private website designated by the county for the posting of legal notices and advertisements that is accessible via the Internet.

²⁹ "Special district" means a unit of local government created for a particular purpose with jurisdiction to operate within a limited geographic boundary. A special district is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. *See Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019); *see also* ss. 189.02(1), 189.031(3), and 190.005(1), F.S.; *see generally* s. 189.012(6), F.S.

³⁰ A government access channel is authorized under s. 610.109, F.S.

³¹ Such notice must be made in a newspaper of general circulation or another publication that is mailed or delivered to all residents and property owners in the government's jurisdiction.

- Must maintain a registry of property owners and residents who request in writing to receive legal notices from the governmental agency by mail or e-mail.

The bill also reverts the criteria a newspaper must satisfy to publish legal notices back to the criteria in place before January 1, 2022, with the exception of the requirement that a newspaper be for sale. Thus, under the bill, publication may be made in a free newspaper that:

- Is published at least once a week;
- Has at least 25 percent of its words in English;
- Is considered a periodical by a post office in its county of publication;
- Is available to the public generally for the publication of legal and other notices; and
- Contains information of interest or value to the general public in the affected area.

Each legal notice published in a newspaper must be posted on the newspaper's website on the same day that the printed notice appears in the newspaper, at no additional charge,³² on a separate webpage with a specific title. A link to the legal notices webpage must be on the front page of the newspaper's website, and if there is a specified size and placement required for a printed legal notice,³³ the size and placement of the online notice must optimize its online visibility in keeping with the print requirements. The newspaper's website must have a search function and a fee may not be charged, and registration may not be required, for viewing and searching legal notices on the website. The newspaper must also place the notice on the FPA's free repository website, where it must be maintained in a searchable archive for 18 months after the first day of posting. However, the bill eliminates the FPA's reporting obligations relating to minority populations established in chapter 2021-17, Laws of Fla.

The bill is effective January 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³² The bill does not modify the charges authorized in statute for publication in printed newspaper.

³³ The bill does not modify size and placement requirements for legal notices published in a printed newspaper.

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.³⁴ For example, notice is required for termination of parent rights proceedings,³⁵ certain local county initiatives,³⁶ and civil judgements based on litigation.³⁷ 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.

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

None.

B. Private Sector Impact:

This bill will likely 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 bill authorizes a governmental agency to publish legal notices on a county’s publicly accessible website under specified conditions, which may reduce a governmental agency’s costs related to legal notice publication. However, a governmental agency publishing legal notices online must also provide annual notice in a newspaper or another publication mailed or delivered in a specified manner that residents and property owners

³⁴ *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

³⁵ *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).

³⁶ *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.”).

³⁷ “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).

may receive legal notices from the governmental agency by first-class mail or e-mail. The cost of such requirement is indeterminate.

Further, the bill requires a county to publish on its publicly accessible website those legal notices of a governmental agency within its jurisdiction that opts to publish legal notices online; however, a county may be able to absorb the costs associated with this requirement within existing resources.

VI. Technical Deficiencies:

None.

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, 50.051, 50.061, 50.0711, 11.02, 45.031, 90.902, 120.81, 121.055, 162.12, 189.015, 190.005, 200.065, 348.0308, 348.635, 348.7605, 849.38, and 932.704.

This bill creates section 50.0311 of the Florida Statutes.

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.