

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 35 Legal Notices
SPONSOR(S): Judiciary Committee, Fine and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 402

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	11 Y, 6 N	Mawn	Jones
2) Judiciary Committee	17 Y, 4 N, As CS	Mawn	Kramer

SUMMARY ANALYSIS

The Florida Constitution requires that 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 that public notices and advertisements also be given for certain other local government and judicial actions. Such notices and advertisements (“legal notices”) must be published in a newspaper meeting specified requirements, including that the newspaper be for sale to the public, unless no newspaper is published in the county, in which case three copies of such notice must be posted in the county and published in a newspaper in the nearest available county. If the newspaper maintains a website, legal notices must appear in a searchable format on such website the same day they appear in the printed publication at no additional charge. The newspaper must also place a copy of the notice on the Florida Press Association’s repository website and allow the public to sign up to receive e-mailed notifications of notice publications.

CS/HB 35 gives governmental agencies the option to publish legal notices on a publicly accessible website in lieu of newspaper publication if certain conditions are met. Specifically, the bill allows a governmental agency:

- In a non-fiscally constrained county to publish legal notices on a publicly accessible website if online publication costs less than newspaper publication.
- In a fiscally constrained county to publish legal notices on a publicly accessible website after determining, at a publicly noticed meeting, that online publication:
 - Is in the public interest;
 - Will cost less than newspaper publication; and
 - Will not, after accounting for the county’s level of internet access, unreasonably restrict legal notice access.

The bill also:

- Requires a governmental agency publishing legal notices on a publicly accessible website 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 such persons may receive legal notices by first-class mail or e-mail after registering with the governmental agency.
- Allows a governmental agency to publish legal notices in a free newspaper.
- Allows self-service storage facility and self-contained storage unit owners to publish notices of intent to enforce specified liens on a public website customarily used for conducting personal property auctions in lieu of publishing such notices in a newspaper.
- Allows persons registering a fictitious name with the Division of Corporations to publish notice of their intention to register the name on a publicly accessible website in lieu of publishing such notice in a newspaper.

The bill may have an indeterminate fiscal impact on local governments.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Legal Notice Requirements for Governmental Agencies

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.³ Further, certain statutory provisions require that public notices and advertisements be given for certain other local government and judicial actions.⁴ Such notices and advertisements (“legal notices”) must be published in a 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 for sale to the general public; and
- Contains information of interest or value to the general public in the affected area.⁵

If no newspaper is published in the county, at least three copies of the legal notice must be posted on the front door of the county courthouse and at two other locations in the county, and the notice must also be published in a newspaper in the nearest county in which a newspaper is published.⁶

A legal notice published in a newspaper must appear on the newspaper’s website the same day it appears in the printed publication at no additional charge on a separate web page titled “Legal Notices,” “Legal Advertising,” or comparable identifying language.⁷ The website must have a search function, and the newspaper publisher may not charge a fee or require registration to view or search legal notices.⁸ The newspaper must also place a copy of the notice on the Florida Press Association’s repository website and allow the public to sign up to receive e-mailed notifications of notice publications.⁹

Legal notice publication is not considered effective unless:

- The notice is published for the period prescribed for such a notice;
- The newspaper has existed for at least a year at the time of notice publication; and
- A post office in the county of notice publication entered the newspaper as a periodical.¹⁰

¹ Art. I, s. 24(b), Fla. Const.

² Art. I, s. 24(c), Fla. Const.

³ *Id.*

⁴ *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).

⁵ S. 50.011, F.S.

⁶ S. 50.021, F.S.

⁷ S. 50.0211(2), F.S.

⁸ *Id.*

⁹ The Florida Press Association’s repository is available at: www.floridapublicnotices.com (last visited Mar. 10, 2021). S. 50.0211(3)(a) and (4), F.S.

¹⁰ Legal notices may also be published in a newspaper which is a direct successor of a newspaper so published. S. 50.031, F.S.

A uniform affidavit establishes proof of legal notice publication.¹¹ The affidavit must:

- Be notarized on paper formatted in a specific manner or in an electronic format that complies 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.¹²

Legal notice publication fees are set by statute and may not be rebated, commissioned, or refunded.¹³ Currently, the legal notice publication fee is 70 cents per square inch of newspaper for the first insertion and 40 cents per square inch of newspaper for each subsequent insertion.¹⁴ However, if the regular established minimum commercial rate per square inch of newspaper is greater than the rate stipulated in statute, the publisher may 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 may not cost more than 85 percent of the original rate.¹⁵ All legal notice charges are based on 6-point type on 6-point body, unless otherwise specified by statute.¹⁶

Notice of Self-Storage Facility Lien Enforcement

A self-service storage facility or self-contained storage unit owner has a lien for unpaid rent, labor charges, or other charges on all personal property located in the facility or unit and for expenses related to property preservation or sale for nonpayment of storage charges ("storage lien").¹⁷ The owner must give written notice of intent to enforce a storage lien in person, by e-mail, or by certified mail to the tenant's last known address and post notice on the unit before satisfying the lien.¹⁸ If the owner sends notice by e-mail and does not receive a response, return receipt, or delivery confirmation from the same e-mail address, the owner must send notice by certified mail to the tenant's last known address.¹⁹

The notice provided to the tenant must include:²⁰

- An itemized statement of the owner's claim showing the amount currently due 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 of no less than 14 days after notice delivery;
- A conspicuous statement that the personal property will be advertised for sale and sold at a specified time and place if the amount due is not paid in the time stated in the notice; and
- The owner's name, address, and telephone number.

After the payment period given in the notice expires, the owner must advertise the sale at least once a week for two consecutive weeks in a newspaper of general circulation in the area where the facility is located.²¹ If there is no such newspaper, the owner must post the advertisement in at least three conspicuous places in the facility's neighborhood.²² The advertisement must include:²³

- A brief and general description of the personal property contained in the storage unit;
- The facility's address and the tenant's name; and
- The time, place, and manner of the sale.²⁴

Fictitious Name Registration

¹¹ S. 50.041(1), F.S.

¹² Ss. 50.041(2) and 50.051, F.S.

¹³ S. 50.061(1), F.S.

¹⁴ S. 50.061(2), F.S.

¹⁵ S. 50.061(3), F.S.

¹⁶ S. 50.061(6), F.S.

¹⁷ S. 83.805, F.S.

¹⁸ S. 83.806(1), F.S.

¹⁹ *Id.*

²⁰ S. 83.806(2), F.S.

²¹ S. 83.806(4), F.S.

²² S. 83.806(4)(c), F.S.

²³ S. 83.806(4)(b), F.S.

²⁴ The sale may not occur until at least 15 days after the first notice publication. S. 83.806(4)(b)3.

A “fictitious name” is any name under which a person conducts business in the state, other than the person’s legal name.²⁵ Before utilizing a fictitious name, a person must first register the name with the Department of State’s Division of Corporations (“division”).²⁶ The registration must include:

- The fictitious name to be registered;
- The mailing address of the business;
- Each registrant’s name and address;
- If the registrant is a business entity required to file incorporation documents with its state of organization, the registrant’s Florida document registration number and federal employer identification number, if any;
- Certification by at least one registrant that the registrants advertised their intention to register the fictitious name at least once in a newspaper of general circulation in the county in which the registrant’s principal place of business is or will be located; and
- Any other information the division reasonably deems necessary to adequately inform other governmental agencies and the public as to the registrant.²⁷

Effect of Proposed Changes

Legal Notice Requirements for Governmental Agencies

CS/HB 35 gives a governmental agency²⁸ the option to publish legal notices on a publicly accessible website²⁹ if certain conditions are met. Specifically, the bill allows a governmental agency:

- In a non-fiscally constrained county³⁰ to publish legal notices on a publicly accessible website if online publication would cost less than newspaper publication.³¹
- In a fiscally constrained county to publish legal notices on a publicly accessible website after determining, at a publicly noticed meeting, that online publication:
 - Is in the public interest;
 - Will cost less than newspaper publication; and
 - Will not, after taking into account the level of internet access in the county, unreasonably restrict legal notice access.

The bill also:

- Requires each governmental agency publishing legal notices online to:
 - Publish notice at least annually in a newspaper of general circulation or another publication mailed and delivered to all residents and property owners in the government’s jurisdiction stating that such persons may receive legal notices by first-class mail or e-mail by registering with the governmental agency.
 - Maintain a registry of those persons who request in writing to receive legal notices from the governmental agency by first-class mail or e-mail.
- Requires that:
 - All legal notices published online be in a free, searchable format.
 - A link to legal notices published online be placed conspicuously or made accessible through a direct link on the website’s homepage.
 - Each legal notice indicate the date on which it was first published.
 - A legal notice published online be published for the same period as a printed notice would have been available to the public unless otherwise provided in law.³²

²⁵ S. 865.09(2)(c), F.S.

²⁶ S. 865.09(3)(a), F.S.

²⁷ *Id.*

²⁸ “Governmental agency” means a county, municipality, school board, or other local government unit or political subdivision.

²⁹ A “publicly accessible website” means a governmental agency’s official website or other private website designated by a governmental agency for legal notice publication that is accessible via the internet.

³⁰ A “fiscally constrained county” means a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the school taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1.

³¹ There are currently 29 fiscally constrained counties. See Florida Department of Revenue, *Fiscally Constrained Counties*, <http://floridarevenue.com/property/Documents/fcco081210.pdf> (last visited Mar. 10, 2021).

³² For example, if a printed notice must be published at least 30 days before a meeting is held, a notice published online must be posted and retained on the website for at least 30 days before the meeting is held unless otherwise provided by law.

- Allows a governmental agency operating an authorized governmental access channel³³ to include on the channel a summary of all legal notices published online.
- Allows a governmental agency to publish legal notices in a free newspaper.
- Makes conforming changes to statutory provisions requiring governmental agencies to publish legal notices to allow for online publication of such notices as provided by the bill.

Notice of Self-Storage Facility Lien Enforcement

The bill allows a self-service storage facility or self-contained storage unit owner to publish notice of intent to enforce a storage lien on a public website customarily used for conducting personal property auctions in lieu of publishing the notice in a newspaper. The bill requires that such notice, if published online, be posted for 14 consecutive days.

Fictitious Name Registration

The bill allows persons registering a fictitious name to advertise their intention to register the name on a publicly accessible website in lieu of publishing such advertisement in a newspaper. At least one registrant must still certify the fact of the advertisement's publication in the registration.

The bill provides an effective date of July 1, 2022.

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., relating to publication when no newspaper in county.
- Section 3:** Amends s. 50.0211, F.S., relating to 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., relating to 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. 120.81, F.S., relating to educational units.
- Section 13:** Amends s. 121.0511, F.S., relating to revocation of election and alternative plan.
- Section 14:** Amends s. 121.055, F.S., relating to senior management service class.
- Section 15:** Amends s. 125.66, F.S., relating to ordinances; enactment procedure; emergency ordinances; rezoning or change of land use ordinances or resolutions.
- Section 16:** Amends s. 162.12, F.S., relating to notices.
- Section 17:** Amends s. 166.041, F.S., relating to procedures for adoption of ordinances and resolutions.
- Section 18:** Amends s. 189.015, F.S., relating to meetings; notice; required reports.
- Section 19:** Amends s. 190.005, F.S., relating to establishment of district.
- Section 20:** Amends s. 190.046, F.S., relating to termination, contraction, or expansion of district.
- Section 21:** Amends s. 194.037, F.S., relating to disclosure of tax impacts.
- Section 22:** Amends s. 197.402, F.S., relating to advertisement of real or personal property with delinquent taxes.
- Section 23:** Amends s. 200.065, F.S., relating to method of fixing millage.
- Section 24:** Amends s. 338.223, F.S., relating to proposed turnpike projects.

³³ Section 610.109, F.S., authorizes local governments to operate governmental access channels, which are channels set aside by cable operators for local government use. See Federal Communications Commission, *Public, Educational, And Governmental Access Channels ("PEG Channels")*, <https://www.fcc.gov/media/public-educational-and-governmental-access-channels-peg-channels> (last visited Mar. 8, 2021).

- Section 25:** Amends s. 348.0308, F.S., relating to public-private partnership.
- Section 26:** Amends s. 348.635, F.S., relating to public-private partnership.
- Section 27:** Amends s. 348.7605, F.S., relating to public-private partnership.
- Section 28:** Amends s. 373.0397, F.S., relating to Floridan and Biscayne aquifers; designation of prime groundwater recharge areas.
- Section 29:** Amends s. 373.146, F.S., relating to publication of notices, process, and papers.
- Section 30:** Amends s. 403.722, F.S., relating to permits; hazardous waste disposal, storage, and treatment facilities.
- Section 31:** Amends s. 712.06, F.S., relating to contents of notice; recording and indexing.
- Section 32:** Amends s. 849.38, F.S., relating to proceedings for forfeiture; notice of seizure and order to show cause.
- Section 33:** Amends s. 865.09, F.S., relating to fictitious name registration.
- Section 34:** Amends s. 932.704, F.S., relating to forfeiture proceedings.
- Section 35:** Provides an effective date of July 1, 2022.

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 have an indeterminate impact on local government expenditures. The bill gives governmental agencies the option to publish legal notices online if online publication costs less than newspaper publication and any other applicable requirements are met, which may reduce a local government's legal notice publication costs. However, the bill also requires a governmental agency publishing legal notices online to publish a notice, at least annually, in a newspaper or other publication mailed or delivered to all residents and property owners in the agency's jurisdiction stating that such persons may receive legal notices by first-class mail or e-mail after registering with the agency. The cost associated with this requirement, and with subsequently providing the notices, may offset to an unknown amount the savings realized from online notice publication.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce newspaper revenue if governmental agencies, storage facility and unit owners, and persons registering fictitious names cease publishing legal notices in newspapers. However, the bill may increase savings for storage facility and unit owners, as well as for persons registering fictitious names, if online publication, as authorized by the bill, costs less than newspaper publication.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2021, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment makes a conforming change to the educational units statute.

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