

Legislative Analysis



REVISE PUBLIC NOTICE REQUIREMENTS TO INCLUDE WEBSITES

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Senate Bill 7 (H-1) & Senate Bill 8 (H-1)

Sponsor: Sen. Tory Rocca

House Committee: Local Government

Senate Committee: Judiciary

First Analysis (5-13-13)

BRIEF SUMMARY: The bills would revise the requirements concerning legal notices that must be published in newspapers, so that a publisher's internet website could qualify as a newspaper under certain conditions.

FISCAL IMPACT: As written, the bill would have no impact on state revenues or expenditures. To the extent that posting notices on a website is more cost effective than current options, local government expenditures could possibly decline by an unknown, but likely small, amount.

THE APPARENT PROBLEM:

Numerous state statutes require state and local governments and governmental agencies to publish notices and other information in a newspaper. Local governments incur considerable expense—often spending thousands of dollars each year—to comply with the requirement to publish.

Public notices include, for example, government meeting minutes, bid proposals, election notices, and public hearing announcements. In addition, publication of legal notices, such as notice of bankruptcy or foreclosure, also may be required.

Customarily, a statute requires publication in a newspaper of general circulation in the applicable city, township, or county, or, if there is none, then in a newspaper located in an adjoining jurisdiction. For the purpose of these requirements, the Michigan Compiled Laws contain a definition of the term "newspaper," defining the term to mean to a published newspaper meeting specified criteria.

Traditional news media face a changing environment due to economic conditions and technological advances. In several regions of Michigan, newspapers are no longer published, or their publication schedules have been scaled back; electronic versions have replaced print versions of the news. For example, according to committee testimony, in Ann Arbor, Michigan, the seven-days-a-week newspaper has been replaced by an online version and two weekly printed editions.

In order to accommodate situations in which no print publication meets the statutory criteria, it has been suggested that the law should allow public and legal notices to be published online. To that end, legislation has been introduced.

THE CONTENT OF THE BILLS:

BRIEF SUMMARY:

The bills would amend two acts, and repeal sections of a third act, to revise the requirements concerning notices that must be published in newspapers to inform citizens about matters before the courts, and about surplus land sales. Under the bills, an internet website could qualify as a newspaper under certain conditions.

In summary, Senate Bill 8 (H-1) would amend Public Act 247 of 1963 (MCL 324.2133), which defines "newspaper" (as that term is used in state statutes to describe the publication of a notice) to do the following:

- Apply the current definition to print publications.
- Define "newspaper" as an internet website if no print publication met a public act's criteria.
- Require an internet website to be an online version of a previous newspaper and meet other standards.
- Allow a notice to be published in a publication or website in an adjoining area if no newspaper met the criteria for a print publication or internet website.
- Require the retention of a printed copy for archival and verification purposes.
- Repeal sections of the Revised Judicature Act that define "newspaper."

Senate Bill 7 (H-1) would amend the Natural Resources and Environmental Protection Act (MCL 324.2133) to make a complementary amendment. The bill would make NREPA refer to a "newspaper" as it is defined in Public Act 247 of 196, rather than refer to the definition in the Revised Judicature Act when establishing requirements for publication of a notice of the sale of surplus land. As noted, the definition in the RJA would be repealed by Senate Bill 8. Senate Bill 7 would also revise provisions for publication in an adjoining county.

The bills are tie-barred to each other so that neither could go into effect unless both are enacted into law.

DETAILED SUMMARY:

A more detailed description of each bill follows.

Senate Bill 8 (H-1)

Print Publication

Under Public Act 247 of 1963 the term "newspaper," as used in any statute of the state except the Revised Judicature Act, in relation to the publication of a notice, refers to a newspaper published in the English language for the dissemination of local news of a general character or the dissemination of legal news that meets all of the following criteria:

- The newspaper has a bona fide list of paying subscribers or it has been published at least weekly in the same community without interruption for at least two years.
- It has been published and of general circulation at least weekly without interruption for at least one year in the county, township, city, village, or district where the notice is required to be published.
- It annually averages at least 25 percent news and editorial content per issue.

Under the bill, as used in any state statute in relation to the publication of a notice, unless the statute expressly provided otherwise, "newspaper" would mean a print publication that meets the criteria described above.

Currently, a newspaper does not lose eligibility for interruption of continuous publication because of acts of God; labor disputes; or the publisher's military service for up to two years, as long as publication is resumed within six months after the military service ends. The bill would delete these provisions.

The bill would define "notice" as an order, ordinance, advertisement, report, and any other statement or information required by statute to be published.

Internet Website

Under the bill, if no publication that met the definition of "newspaper" described above were published and of general circulation in the required area, "newspaper" would mean a website on the internet that meets all of the following requirements:

- The website is identified as a continuing online version of a publication that previously met the definition of "newspaper" and was published and of general circulation in the required area.
- The website is published in the English language for the dissemination of local news of a general character or for the dissemination of legal news for the required area.
- The website has been established and operating without interruption for at least two years.
- The website contains at least 25 percent news and editorial content.
- News content on the website is published and posted and was updated at least every seven days for the preceding two years.
- The website includes a clearly designated area for public notices that is accessible via a conspicuously displayed and clearly labeled link from its homepage and the posted notices are maintained permanently in a searchable database accessible on the website.
- A majority of visitors to the website are residents of the required area.

In addition, the website would have to list all of the following:

- Contact information, including a list of staff located in the required area.
- An address and telephone number in the required area.
- An address in the required area where complaints can be made.
- An address in the required area where the public may view printed copies of notices.

The bill would define "required area" as the county, township, city, village, district, or other geographic territory where the statute requires the notice to be published or the newspaper to be published, circulated, or printed.

"News and editorial content" would mean any content other than advertising.

Publication in Adjoining Area

Currently, if there is no qualifying newspaper in the county where a court is situated, the term "newspaper" includes any newspaper in an adjoining county that is qualified under the act to publish notices of actions commenced in that county. The bill would delete that provision.

Under the bill, if there were no publication or website that met either of the definitions described above in the required area, "newspaper" would mean a publication or website in an adjoining county, township, city, village, district, or other geographic territory, as applicable, that met either definition.

Retention of Printed Copy

Under the bill, a person who operated a publication that qualified as a newspaper would have to maintain a permanent and complete printed copy of each published edition for archival and verification purposes in the required area.

A person who operated a website that qualified as a newspaper would have to create a printed copy of any notice in a format that included the date of publication, on the first day that the notice was published on the website, and would have to maintain the printed copy in the required area for archival and verification purposes.

Control of Publication or Website

A publication or website that met either definition could not serve as a newspaper for publication of a notice if it were controlled by the person on whose behalf the notice was published or by an officer, employee, agent, or affiliate of that person. "Controlled" would mean that the person has one or more of the following:

- Ownership of or the power to vote more than 50 percent of a class of voting securities or voting interests of the entity that operates the publication or website.
- Power to elect or appoint a majority of executive officers, managers, directors, trustees, or others exercising managerial authority of the entity that operates the publication or website.

- The legal right to direct, restrict, regulate, govern, or administer the management or policies of the entity that operates the publication or website.

Revised Judicature Act Definitions

Chapter 14 (General Provisions) and Chapter 19 (Commencement of Action and Service of Process) of the RJA include definitions of "newspaper" that are similar to the definition in Public Act 247 of 1963. The definitions are found in Sections 1461 and 1950 of the RJA. The bill would repeal those sections.

Senate Bill 7 (H-1)

Part 21 (entitled "General Real Estate Powers") of the Natural Resources and Environmental Protection Act allows the Department of Natural Resources to sell surplus state land that is under the department's control, if various conditions are met. At least 10 days before surplus land is sold at a public auction or before the department authorizes the negotiated sale of surplus land, a notice of the sale must be published at least once in a newspaper *as defined in Section 1461 of the Revised Judicature Act*.

The bill would refer, instead, to a newspaper *as defined in Public Act 247 of 1963*. The bill also would require publication at least 10 days before the department sold surplus land in a negotiated sale (rather than authorized a negotiated sale of surplus land).

In addition, the bill would require notice to be published in a newspaper in a county nearest to the county in which surplus land was located, if there were no publication or website that met the requirements of Public Act 247 in the county where the land was located or in an adjoining county. Currently, notice must be published in a newspaper in a county nearest to the county in which surplus land is located if a newspaper is not published in that county.

HOUSE COMMITTEE ACTION:

The the House Local Government Committee amended each Senate-passed bill to specify *these amendatory acts would take effect on the expiration of 90 days after the date they were enacted into law*.

ARGUMENTS:

For:

Proponents of these bills argue they are needed so that state and local governments can publish their legal notices online.

The traditional business model of printing newspapers on paper and delivering them to readers is changing. In Ann Arbor, for example, after 174 years in print, the *Ann Arbor News* converted to an online version in July 2009. While AnnArbor.com still offers a print publication twice a week, there may be other communities where the printed newspaper is replaced entirely by an internet website.

When newspapers scale back paper publication, they often "publish" on line. These bills would enable local officials to undertake online publication of notices.

Senate Bill 8 (H-1) sets up a hierarchy to address statutory requirements for the publication of information in a "newspaper." Where a print publication met the criteria for a newspaper in Public Act 247 of 1963, public notices would have to be published in that newspaper. Where an internet website had replaced the print publication and met the standards in the bill, notices would be published on that website. If there were no print publication or website that qualified, notices would have to be published in an adjoining community's hard-copy newspaper or website that met the criteria. These provisions would accommodate the evolving nature of today's news business and the way many people obtain information.

Response:

Perhaps the law should allow all public and legal notices to be published online, since more and more people are turning to the internet for their news. Online publication could save local units the cost of publishing notices in printed media, while increasing the transparency of governmental affairs.

For:

The bills would bring consistency to the statutes. In addition to revising the definition of "newspaper" in Public Act 247 of 1963, Senate Bill 8 (H-1) would repeal similar definitions in the Revised Judicature Act. The provisions of Public Act 247, then, would apply to RJA requirements for the publication of notices in a newspaper. Since Part 21 of the Natural Resources and Environmental Protection Act refers to one of the RJA sections that would be repealed, in regard to the publication of notices of surplus land sales, Senate Bill 7 (H-1) would refer instead to Public Act 247. The bill also would modify provisions regarding publication in a nearby county, to address situations in which there was no qualifying print publication or website in the county where surplus land was located or in an adjoining county.

Against:

Opponents of the bills say the bills perpetuate the faulty assumption that newspapers are the primary source of news. In fact, the Michigan Association of Broadcasters notes that more people get their news from television. In addition, a spokesperson for the association notes that broadcasters who own television stations have popular websites that could be used to disseminate legal notices to the public.

These opponents of the bills say that the publication of public notices needs to be broadened to include not only newspaper publishers' online editions, but also broadcasters' online websites. Further, opponents argue local officials should be free to choose from the most cost-effective option after receiving competing bids.

POSITIONS:

The Legal News Public Notice Research Center supports the bills. (4-18-13)

The Michigan Bankers Association supports the bills. (4-18-13)

The Michigan Press Association supports the bills. (4-18-13)

The Michigan Association of Counties is neutral on Senate Bills 7 & 8. (4-18-13)

The Michigan Townships Association is neutral on Senate Bill 8. (4-18-13)

The Michigan Association of Broadcasters opposes the bills. (5-9-13)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.