

LOCAL GOVERNMENT PUBLIC NOTICE ACT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 6062 as introduced
Sponsor: Rep. Kevin Coleman
Committee: Oversight
Complete to 5-19-22

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 6062 would create a new act, the Local Government Public Notice Act, to establish procedures for the posting of public notices by certain governmental entities as required by various statutes.

Under the new act, beginning January 1, 2024, a local government or governmental entity that is allowed to provide public notice under the new act and that has a website that has been active for at least 180 days would have to do both of the following:

- Post the public notice on the active notice portion of the website of the **required area** for the period of time provided by law. The local government or governmental entity also would have to make a printed copy of each posted notice available for public inspection during that time. Within 24 hours after posting the notice, the government or entity would have to send an email notifying each **newspaper** and **local media outlet** that serves the required area.
- Continue to provide that public notice as provided by law.

Beginning January 1, 2024, a local government or governmental entity that is allowed to provide public notice under the new act and that does not have a website, or has one that has been active less than 180 days, would have to continue to provide that notice as provided by law.

Local media outlet would mean a television station or radio broadcast station licensed by the Federal Communications Commission.

Required area would mean the county, city, township, village, district, or other geographic territory where the notice is required to be posted.

Except as described below, **newspaper** would mean a print publication that is published for the dissemination of local news of a general character or for the dissemination of legal news and to which all of the following apply:

- It is published and distributed in not less than weekly intervals.
- At least 50% of the words in it are in English.
- It has a bona fide list of subscribers in one or more Michigan counties or is available at retail locations in one or more Michigan counties, or both.
- It accepts and publishes official and other notices.
- It regularly contains information of a public character or of interest or value to residents, property owners, or the general public.
- It has been published or distributed for at least one year.

If no publication in the required area met the above definition, **newspaper** would mean a publication in an adjoining county, city, township, village, or district, as applicable, that otherwise meets the above definition.

A person operating a publication that qualified as a **newspaper** would have to maintain in the required area a permanent and complete printed copy of each published edition for archival and verification purposes.

Website and retention requirements

Beginning January 1, 2024, a local government or other governmental entity that posts a public notice on its website would have to maintain an online archive for public notices. After the notice was no longer required to be posted, it would have to be maintained in the archival notice portion of the website in compliance with the record retention schedule for that local government or other governmental entity as provided for in the Michigan History Center Act. The government or entity would also have to maintain, in a format that includes the dates of posting, a printed copy of each public notice for archival and verification purposes.

A website used for posting public notices under the act would have to meet both of the following requirements:

- The website homepage and the portion of the website containing active and archival notices must be publicly accessible and free.
- The website homepage must include a prominently displayed link to the active and archival notices.

Annual public notice list

A local government or other governmental entity would have to create and maintain an annual public notice list. An individual, organization, firm, or corporation could make a written request to be placed on the annual public notice list to receive by email or first-class mail any public notice posted under the act. (This option would not apply to a newspaper or local media outlet that the government or entity must email within 24 hours after posting a notice.)

Those on the annual list requesting public notices by first-class mail would be sent those notices upon payment of a yearly fee of not more than the estimated cost of printing and postage for the notices. The local government or other governmental entity would have to transmit an electronic copy to those requesting notices by email within 24 hours after posting a notice.

To continue to receive notices by email or first-class mail, an individual, organization, firm, or corporation would have to request in writing annually to be placed on the annual public notice list of a local government or other governmental entity. A government or entity could require that the written request be made by first-class mail or in person.

Change in notice method

If a local government or other governmental entity changed the method by which public notice was provided under the act, the government or entity would have to provide notice of that change by using the most recent method that the government or entity used for publishing or posting public notices.

BACKGROUND:

Recent amendments to the definition of “newspaper” in Michigan law

The Revised Judicature Act had provided conditions that had to be met for a publication to qualify as a “newspaper” when that term is used in that act in provisions that require publication of notices. Recently, 2022 PA 74 (Senate Bill 259, which took effect May 12, 2022) changed the definition of **newspaper** in the Revised Judicature Act—with respect to the publication of a notice—to mean that term as defined in section 1 of 1963 PA 247, with the required area being the county in which the court is located, unless the Revised Judicature Act designates a different required area.

1963 PA 247 was recently amended by 2022 PA 76 (Senate Bill 258, which also took effect May 12, 2022) to change the requirements for **newspapers**, to provide for publication of notices on the internet, and to require permanent printed copies of notices to be retained for archival and verification purposes.

Definition of “newspaper” under 1963 PA 247

Under 1963 PA 247 as amended, when used in any Michigan statute in relation to publication of a **notice** (unless expressly provided otherwise in that statute), **newspaper** means a print publication that meets all of the following:

- It is published in the English language.
- It is published for the dissemination of either of the following:
 - Local news of a general character.
 - Legal news.
- There is a bona fide list of paying subscribers to it or it has been published at not less than weekly intervals in the same community without interruption for at least two years.
- It has been published and of general circulation at not less than weekly intervals without interruption for at least one year in the **required area**. A newspaper would not lose eligibility for interruption of continuous publication due to any of the following:
 - Acts of God.
 - Labor disputes.
 - Military service of the publisher for up to two years as long as publication is resumed within six months after the end of the military service.
 - The COVID-19 pandemic, for the period beginning March 10, 2020, through the **end of the COVID-19 pandemic**. [The bill states that this particular provision would apply retroactively beginning March 10, 2020.]
- It annually averages at least 25% news and editorial content (i.e., not paid advertising) per issue.

Notice includes an order, ordinance, advertisement, report, and any other statement or information required by statute to be published.

Required area means the county, township, city, village, district, or other geographic territory where the statute requires the notice to be published or requires that the newspaper be published, circulated, or printed.

End of the COVID-19 pandemic means the earliest date after March 10, 2020, on which none of the following is in effect:

- A presidential declaration of national emergency relating to COVID-19 under the federal National Emergencies Act.
- An executive order issued by the governor during a state of disaster or emergency relating to COVID-19 declared under the Emergency Management Act or 1945 PA 302.
- An emergency order relating to COVID-19 issued under section 2253 of the Public Health Code.

A publication meeting the above requirements that is ***controlled*** by the person on whose behalf the notice is published, or by an officer, employee, agent, or affiliate of that person, does not qualify to serve as a newspaper for publication of the notice.

Control means that the person has one or more of the following:

- Ownership of or the power to vote, directly or indirectly, more than 50% of a class of voting securities or voting interests of the person that operates the publication.
- Power by the person's own action to elect or appoint a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of the person that operates the publication.
- The legal right by the person's own action to direct, restrict, regulate, govern, or administer the management or policies of the person that operates the publication.

If no publication in the required area qualified under the above provisions, ***newspaper*** means a publication in an adjoining county, township, city, village, district, or other geographic territory that otherwise met those requirements.

Internet access to notices under 1963 PA 247

1963 PA 247, as amended by 2022 PA 76, also requires the operator of a newspaper in which a notice is published under the act to do both of the following, at no additional cost beyond the charge for the print publication:

- Provide access to the notice on the newspaper's website. The website would have to satisfy all of the following requirements:
 - Its homepage must have a link to a website area where notices published under 1963 PA 247 are available for viewing. This area could not be put behind any sort of pay wall. The public would have to be able to read notices for free.
 - Notices published under 1963 PA 247 must remain on the website during the full required publication period.
 - Notices published under 1963 PA 247 must remain searchable on the website as a permanent record of the publication.
- Place the notice on a website that is established and maintained by a state association of newspapers that represents a majority of newspapers in the state as a comprehensive central repository for notices published under 1963 PA 247 throughout the state. The website would have to do all of the following:
 - Allow searching for a notice by criteria contained in the notice.
 - Maintain all notices published under 1963 PA 247 on a permanent basis.

- Provide access through standard computer browsers and mobile platforms, such as smartphones and tablets.
- Provide a method to alert the public of notices published under 1963 PA 247 by text message, email notification, or both.

An error or omission in posting a notice as described above does not invalidate the notice published in the print version of the newspaper.

Finally, the operator of a newspaper that publishes a notice is required to maintain a permanent and complete printed copy of each published edition that contains the notice for archival and verification purposes in the required area.

FISCAL IMPACT:

The package of bills would have a varying fiscal impact on local governments and other governmental entities subject to the notice provisions of the bill. It should be noted that the provisions of the bill related to online notices are discretionary and would not mandate an entity to create an online webpage for posting notices online. Local governments and other governmental entities with an established website that is able to accommodate the posting and archiving of notices electronically likely would realize a net reduction of costs related to notice publishing by eliminating other publishing costs if they chose to publish notices online. It is assumed that the savings from the elimination of notice publishing in newspapers would be greater than the marginal increase in website administration related to posting and archiving notices.

Additionally, entities that currently do not have an established website or have a website that cannot accommodate the posting and archiving of notices could develop and operate a website if they wanted to post notices on their own website. Once an active website was created, the entity could publish notices on that website after 180 days. In the alternative, all entities could continue to publish notices as provided by law. While an entity choosing to publish a notice on its website would presumably realize savings through the elimination of newspaper publishing costs, the net fiscal impact for each entity would depend on the cost of website development or service contract compared to the print publishing savings realized.

Local governments and other governmental entities likely would incur minor costs associated with archiving paper copies of the notices. While HB 6062 would generate administrative duties related to the maintenance and administration of a permanent public notice list those costs would be minimal (in the case of email) or covered, or substantially covered, by a fee (in the case of first-class mail).

There is no impact on state revenues or costs.

Legislative Analysts: Susan Stutzky
Rick Yuille
Fiscal Analyst: Ben Gielczyk

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